

RESOLUTION NO. 2815

**A RESOLUTION OF THE MAYOR AND PAYSON TOWN COUNCIL APPROVING LEASE AGREEMENTS BETWEEN THE TOWN OF PAYSON AND AT&T/NEW CINGULAR WIRELESS PCS RELATING TO THE COMMUNICATIONS POLE AT THE VANDERLINK WATER TANK SITE AND THE COMMUNICATIONS BUILDING AT THE HILLCREST WATER TANK SITE, AND AUTHORIZING THE MAYOR TO SIGN SUCH LEASE AGREEMENTS.**

**WHEREAS**, AT&T/New Cingular Wireless PCS and its predecessors in interest have had lease agreements with the Town for placement of telecommunications equipment at various sites; and

**WHEREAS**, the lease agreement between AT&T and the Town related to the communications pole at 511 S. Vanderlink ("the Vanderlink site") expired in April of 2014; and

**WHEREAS**, AT&T and the Town have negotiated a new lease agreement for the Vanderlink site, including provisions for back rent; and

**WHEREAS**, AT&T has communications equipment located in the Town's Communications Building at 902 N. Hillcrest ("the Communications Building"); and

**WHEREAS**, the placement of such equipment is ancillary to the installation of communications equipment on a Tower located at the same address, but there has been no formal lease agreement in place as to AT&T's use of a portion of the Communications Building; and

**WHEREAS**, AT&T and the Town have negotiated a lease agreement to formalize AT&T's use of a portion of the Communications Building going forward,

**NOW, THEREFORE, THE MAYOR AND PAYSON TOWN COUNCIL, RESOLVE AS FOLLOWS:**

Section 1. The Lease Agreement between the Town of Payson and AT&T/New Cingular Wireless PCS relating to AT&T's use of the communications pole at 511 S. Vanderlink, attached as Exhibit A, is approved in substantially the form attached.

Section 2. The Lease Agreement between the Town of Payson and AT&T/New Cingular Wireless PCS relating to AT&T's use of a portion of the Town's communications building located at 902 N. Hillcrest, attached as Exhibit B, is approved in substantially the form attached.

Section 3. Kenny J. Evans, Mayor of the Town of Payson is authorized to execute the Lease Agreements attached as Exhibits A and B in substantially the form attached.

NOV 06 2014 D. 3

Section 4. The Town of Payson, is authorized to take any additional actions necessary to carry out the provisions of this Resolution or the Lease Agreements attached.

**PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON** this \_\_\_\_ day of November, 2014, by the following vote:

AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSTENTIONS \_\_\_\_\_ ABSENT \_\_\_\_\_

\_\_\_\_\_  
Kenny J. Evans, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Silvia Smith, Town Clerk

  
\_\_\_\_\_  
Timothy M. Wright, Town Attorney

**Exhibit A**  
to  
**Resolution 2815**  
**(Vanderlink Pole Lease Agreement)**

Market: AZ/NM  
Cell Site Number: AZPHU3402  
Cell Site Name: ZOD ALLTELL PAYSON #2  
FA Number: 10139938  
Lessor Site Name: Vanderlink

---

## LEASE AGREEMENT

This Lease Agreement (the Agreement) is made this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the Town of Payson, an Arizona municipal corporation (LESSOR), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive, Suite 13-F, West Tower, Atlanta, Georgia 30324 (LESSEE), collectively, the Parties or individually the Party.

### BACKGROUND

- A. LESSEE currently has communications equipment located on LESSOR'S VANDERLINK Pole located at 511 S. Vanderlink Payson, AZ 85541. Such equipment was placed pursuant to a Construction and Use Agreement between the Parties that expired on April 27, 2014.
- B. The Parties desire to execute this Agreement to allow LESSEE to continue use of LESSOR's VANDERLINK Pole.
- C. This Agreement shall address back rent owing from May 1, 2014 through the execution date of the Agreements.
- D. The Parties desire to allow LESSEE to replaced the VANDERLINK Pole at LESSEE's option.

### AGREEMENT

1. PREMISES. LESSOR is the owner of certain real property located in the Town of Payson, Gila County, Arizona, legally described on Exhibit A (the Property). LESSEE desires to lease a portion of the Property, with an access easement (together referred to as the Premises), containing approximately One Hundred (100) square feet, as substantially described on Exhibit B Site Plan attached.

LESSOR leases the Premises to LESSEE and shall permit LESSEE's installation and maintenance of utility wires, poles, cables, conduits and pipes over, under, or along the Premises.

2. IMPROVEMENTS. All improvements shown on Exhibit C are the property of LESSOR.
3. OPTION OF LESSEE TO CONSTRUCT ADDITIONAL AND/OR REPLACEMENT IMPROVEMENTS.

LESSEE shall have the right to construct a replacement pole of the same height with similar communications equipment in the leased area.

If a replacement pole is constructed, upon issuance of a building permit for such pole,

Market: AZ/NM  
Cell Site Number: AZPHU3402  
Cell Site Name: ZOD ALLTELL PAYSON #2  
FA Number: 10139938  
Lessor Site Name: Vanderlink

---

LESSEE shall pay LESSOR One Thousand Dollars (\$1,000.00) for the value of the existing pole. LESSEE shall own any replacement pole during the term of this Agreement.

LESSEE shall not disrupt any communication equipment not owned by LESSEE during construction/replacement of the pole.

4. TERM. This Agreement shall be for Twenty-five (25) years beginning on June 1, 2014.
5. RENTS. LESSEE shall pay rent of seven Hundred Dollars (\$700.00) per month which shall be due on the first day of each month. Such rent shall increase annually by two percent (2%). If not paid by the first day of each month, LESSEE shall pay a penalty of Forty Dollars (\$40.00) per day for each day the rent is unpaid.
  - 5.1 PRE-EXECUTION RENTS. LESSEE shall also pay rent between June 1, 2014 and the last day of the month in which this Agreement is executed at the monthly rate of one Hundred Dollars (\$100.00) per month. .
6. USE; GOVERNMENTAL APPROVALS. LESSEE shall use the Premises for the purpose of maintaining and operating a communications facility and uses incidental thereto and all necessary appurtenances. All improvements shall be at LESSEE's expense and the installation of all improvements shall be at the discretion and option of LESSEE, but shall remain subject to the approval of LESSOR as provided in this Paragraph. Before commencing any alterations to the Premises or the Property, LESSEE shall submit plans and specifications to LESSOR for LESSOR's written approval, which approval shall not be unreasonably withheld, conditioned or delayed. In the event LESSOR does not either (i) object to the plans in writing or (ii) furnish LESSEE with written approval within thirty (30) days of the date of submission of the plans, LESSOR will be deemed to have approved the plans. Notwithstanding the foregoing, LESSOR's approval shall not be required for any equipment repairs or replacements with equipment that is of a like kind or substantially similar in nature. All work to be done by LESSEE shall be performed in accordance with the approved plans, unless otherwise approved in writing by LESSOR, which approval shall not be unreasonably withheld, conditioned or delayed. During the term of this Agreement, LESSEE shall have the right to replace, repair, add or otherwise modify its equipment or any portion thereof, whether the equipment is specified or not on any exhibit attached hereto. LESSEE will maintain the Premises in good condition, reasonable wear and tear excepted. LESSOR shall cooperate with LESSEE and shall take no action which would adversely affect the status of the Property or the Premises with respect to the proposed use by LESSEE.
7. TERMINATION. This Agreement may be terminated, without penalty or further liability, as follows:
  - (a) by either Party on thirty (30) days prior written notice, if the other Party remains in default under Section 17 of this Agreement after the applicable cure periods;

Market: AZ/NM  
Cell Site Number: AZPHU3402  
Cell Site Name: ZOD ALLTELL PAYSON #2  
FA Number: 10139938  
Lessor Site Name: Vanderlink

---

(b) by LESSEE upon written notice to LESSOR, if LESSEE is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by LESSEE; or if LESSEE determines, in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;

(c) by LESSEE, upon written notice to LESSOR, if LESSEE determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by LESSEE upon written notice to LESSOR for any reason or no reason, at any time prior to commencement of construction by LESSEE; or

(e) by LESSEE upon sixty (60) days' prior written notice to LESSOR for any reason or no reason, so long as LESSEE pays LESSOR a termination fee equal to three (3) months' Rent, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by LESSEE under any termination provision contained in any other Section of this Agreement.

8. REMOVAL UPON TERMINATION. Upon the termination of this Agreement, LESSEE shall, within ninety (90) days, remove LESSEE's improvement(s), antenna structure(s) (except footings), fixtures and all personal property and otherwise restore the Premises and immediately surrounding Property to its original condition, reasonable wear and tear excepted. LESSOR agrees and acknowledges that all of the equipment, fixtures and personal property of LESSEE shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same, whether or not said items are considered fixtures and attachments to real property under applicable law. If such time for removal causes LESSEE to remain on the Premises after termination of this Agreement, LESSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the building, antenna structure, fixtures and all personal property is completed.

If LESSOR desires to take possession of LESSEE's improvements upon the termination of this Agreement, LESSOR shall give LESSEE written notice no later than thirty (30) days prior to the expiration thereof, or within ten (10) days after the termination of this Agreement of LESSOR's election to take such possession, and in such event, LESSEE shall remove only its antennas and other personal property. If LESSOR elects to take possession of such improvements, LESSOR acknowledges and agrees that it shall take possession of the same in their then AS IS condition, and that LESSEE makes no representation or warranty regarding their condition or fitness for a particular purpose and shall incur no liability therefor.

9. RECORDING. LESSOR agrees to execute a Memorandum of this Agreement which LESSEE may record with the appropriate officer. The date set forth in the Memorandum of Lease is for recording purposes only and shall bear no reference to rent payments.

10. CASUALTY. In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days or, if the Premises is

Market: AZ/NM  
Cell Site Number: AZPHU3402  
Cell Site Name: ZOD ALLTELL PAYSON #2  
FA Number: 10139938  
Lessor Site Name: Vanderlink

---

damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, LESSEE may, following such fire or other casualty, provided LESSOR has not completed the restoration required to permit LESSEE to resume its operation, terminate this Agreement upon fifteen (15) days written notice to LESSOR. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, all rents shall abate during the period of repair following such fire or casualty.

11. CONDEMNATION. In the event of any condemnation of the Premises, LESSEE may terminate this Agreement upon fifteen (15) days written notice to LESSOR, if such condemnation may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the antennas, equipment, its relocation costs and its damages and losses (but not for the loss of its leasehold interest), to the extent such claims are permissible in such proceedings. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement.
12. APPLICABLE LAWS. LESSEE shall use the Premises as is required or permitted by applicable laws, rules and regulations, including those of LESSOR acting in its governmental capacity. LESSOR agrees to reasonably cooperate with LESSEE regarding any compliance required by LESSEE with respect to its use of the Premises.
13. SURVIVAL. The provisions of this Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall survive such termination or expiration.
14. CAPTIONS. The captions in this Agreement are inserted for convenience, are not intended to be part of the Agreement, and shall not or be utilized in the construction or interpretation of this Agreement.
15. IMPROVEMENTS. All of LESSEE's construction and installation work shall be performed at LESSEE's sole cost and expense, in a good and workman-like manner and in compliance with all laws, rules, orders, ordinances, directions, regulations and requirements of Federal, State, County and Municipal authorities to the extent such laws relate to LESSEE's use of the Premises. LESSOR neither assumes, nor shall it have any responsibility for the condition of the Premises.

Market: AZ/NM  
Cell Site Number: AZPHU3402  
Cell Site Name: ZOD ALLTELL PAYSON #2  
FA Number: 10139938  
Lessor Site Name: Vanderlink

---

16. **MAINTENANCE.** LESSEE shall be responsible for all maintenance and repairs of its equipment and any pole or structure upon which its equipment is maintained regardless of ownership of such pole or structure.
17. **LESSEE INTERFERENCE.** LESSEE shall not operate, nor shall LESSEE permits its sublessees to operate, telecommunications or other systems at the Premises in any manner that interferes in any way with LESSOR's public safety communications installed at the Property. Any such interference shall be deemed a material breach of this Agreement. In the event such interference creates an actual public safety concern, LESSOR shall provide LESSEE with notice of such interference and LESSEE shall have twelve (12) hours after LESSEE's receipt of such notice to eliminate such interference. If LESSEE fails to correct such interference within such twelve (12) hour period, LESSEE shall cease operating the equipment causing such interference (with the exception of intermittent testing) until the condition causing the interference is remedied to LESSOR's reasonable satisfaction. In the event such interference is not eliminated within thirty (30) days after LESSEE's initial receipt or refusal of such notice, LESSEE shall remove the equipment causing such interference. The Parties acknowledge and agree that for the purposes of this Paragraph, LESSOR may give LESSEE notice of any interference issue by calling AT&T National Operations Center - NOC at 800-638-2822, which is available seven (7) days a week, twenty-four (24) hours a day. If LESSEE fails to cease operating any equipment or remove any equipment causing such interference as provided herein, LESSOR shall have the right to immediately correct or remove the interference with whatever means are reasonably necessary. In such event, LESSOR shall not be liable to LESSEE, or any of LESSEE's sublessees, assignees, or customers for any costs, consequential damages, or loss of revenue associated with LESSOR's actions; provided, however, that LESSOR shall be responsible for any damage caused to LESSEE's equipment due to LESSOR's negligence or willful misconduct.
- LESSEE shall not operate, nor shall LESSEE permit its sublessees to operate telecommunications or other systems at the Premises in a manner that unreasonably causes interference to other commercial wireless communications systems operating at the Property as of the date of this Agreement. If LESSOR gives LESSEE written notice of such interference, LESSEE shall take all steps necessary to correct and eliminate the interference within a reasonable time, at its sole cost. If the interference cannot be eliminated within a reasonable length of time, LESSEE agrees to immediately cease or cause its sublessees, as may be applicable, to cease using the equipment that is creating the interference (except for short tests necessary for the elimination of the interference). If LESSEE cannot eliminate such interference, LESSEE shall remove the equipment causing such interference.
18. **UTILITIES.** LESSEE shall pay for all utilities for its operations at the Premises.
19. **ELECTRICAL BACK-UP POWER.** If LESSEE has or constructs electrical back-up power on the Premises, LESSEE shall allow all current and future communications equipment on the Property to utilize such electrical back-up power. The costs of connecting to such

Market: AZ/NM  
Cell Site Number: AZPHU3402  
Cell Site Name: ZOD ALLTELL PAYSON #2  
FA Number: 10139938  
Lessor Site Name: Vanderlink

---

back-up power shall be the responsibility of the owner of any equipment utilizing such back-up power.

20. RIGHT OF INGRESS AND EGRESS. LESSEE shall have at all times the full and free right of ingress to and egress from the Premises for LESSEE, its employees, sublessees, and contractors. This right shall also extend to persons or organizations supplying materials or furnishing services to LESSEE, to include vehicles, machinery and equipment reasonably required by such persons or organizations.
21. INDEMNIFICATION. In addition to Paragraph 23 below, LESSEE shall indemnify, defend and hold harmless LESSOR, from and against any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including any reasonable attorneys' fees and/or litigation expenses, which may be brought or made against or incurred by LESSOR on account of:
- a. Loss or damage to any property or interest of LESSOR to the extent caused by LESSEE,
  - b. Any damages, injury to person or property or death of any person to the extent arising out of any acts, errors, omissions, work or services of LESSEE and its employees, sublessees, agents, representatives or subcontractors, their employees, agents or representatives; or
  - c. Any workers' compensation claims, unemployment compensation claims or unemployment disability compensation claims of employees of LESSEE or claims under similar such laws or obligations,
  - d. Any action taken by LESSOR pursuant to Paragraph 17 above (Lessee Interference).

This indemnification obligation shall not extend to any loss, damage, injury or death to the extent caused by the negligence or willful misconduct of LESSOR or its employees. The amount and type of insurance coverage requirements set forth in this Agreement shall in no way be construed as limiting the scope of the indemnity in this Paragraph.

22. INSURANCE. During the term of this Agreement, LESSEE shall maintain general comprehensive liability insurance of at least Three Million Dollars (\$3,000,000.00) per occurrence, naming LESSOR as an additional insured. Upon request by LESSOR from time to time, LESSEE shall deliver a certificate of insurance evidencing such coverage. Such insurance policies shall provide, among other things, for LESSOR to be notified ten (10) days in advance of any cancellation thereof.
23. LESSEE'S DEFAULT. If LESSEE fails to pay any rents or other amounts payable under this Agreement when due, or if LESSEE should fail to perform any other of the covenants, terms or conditions of this Agreement, prior to exercising any rights or remedies against LESSEE on account thereof, LESSOR shall first provide LESSEE with written notice of the failure and provide LESSEE with a ten (10) day period after LESSEE's receipt of written notice thereof to cure such failure if the failure is to pay rents or any other sum of money under this Agreement, or a sixty (60) day period to cure after LESSEE's receipt of

Market: AZ/NM  
Cell Site Number: AZPHU3402  
Cell Site Name: ZOD ALLTELL PAYSON #2  
FA Number: 10139938  
Lessor Site Name: Vanderlink

---

written notice of such failure if the failure is other than failure to pay rents or any other sum of money hereunder and is not reasonably capable of being cured with a sixty (60) day period, LESSEE shall be afforded such reasonable period of time as is necessary to cure the failure, provided that LESSEE promptly commences curing the failure after its receipt of such notice and prosecutes the cure to completion with reasonable due diligence. In the event LESSEE fails to cure its default within the applicable cure periods, or LESSEE breaches this Agreement or otherwise fails to perform or observe any covenant or condition applicable to it under the terms of this Agreement, then LESSOR may elect any one or more of the following remedies:

- a. LESSOR may terminate this Agreement; and
- b. LESSOR may reenter the Premises and take possession thereof and remove all LESSEE's personal property therefrom; and,
- c. LESSOR may pursue any and all other legal remedies available to it without election, with or without cancelling this Agreement, including, without limitation, recovering its actual damages caused by the breach or failure of LESSEE.

The provisions of this Paragraph shall not apply to LESSEE's interference with government or other existing commercial wireless communications and the same shall be governed by the other applicable provisions.

Any termination of this Agreement shall also terminate all of LESSEE's rights in and to any easement for ingress and egress provided pursuant to this Agreement.

24. LESSOR'S DEFAULT. In the event that LESSOR breaches a provision of this Agreement or otherwise fails to perform or observe any covenant or condition applicable to it under the terms of this Agreement, then LESSEE may elect any one or more of the following remedies:
  - a. LESSEE may compel specific performance by LESSOR; or,
  - b. LESSEE may terminate this Agreement; or,
  - c. LESSEE may pursue any and all other legal remedies available to it, with or without cancelling this Agreement, including, without limitation, recovering its actual damages caused by the breach or failure of LESSOR.
  
25. ASSIGNMENT AND SUBLEASING. LESSEE shall not assign its interest in this Agreement without the prior written consent of LESSOR. Any attempted assignment by LESSEE in violation of this provision shall render this Agreement void. Notwithstanding the foregoing, LESSOR's consent shall not be required if LESSEE assigns, transfers or sells this Agreement to LESSEE's principal, affiliates, subsidiaries of its principal; to any entity other than a lender or financial institution which acquires all or substantially all of LESSEE's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization; or to any entity which acquires or receives an interest in the majority of communication towers of LESSEE in the market defined by the Federal Communications Commission in which the Property is located. Upon the expiration or earlier termination of this Agreement, and provided that LESSOR assumes ownership of LESSEE's

Market: AZ/NM  
Cell Site Number: AZPHU3402  
Cell Site Name: ZOD ALLTELL PAYSON #2  
FA Number: 10139938  
Lessor Site Name: Vanderlink

---

improvements pursuant to Paragraph 8, LESSEE shall assign its interest in any then-existing licenses, subleases and sublicenses to LESSOR.

LESSEE agrees that it will permit third party wireless carriers (a Carrier) to sublease space if it constructs a new monopole pursuant to Paragraph 3, provided that a commercially reasonable sublease agreement is mutually agreed upon between LESSEE and the Carrier, the proposed equipment of the Carrier may be accommodated on the monopole, and the Carrier's proposed equipment does not interfere with LESSEE's operations at the Premises in LESSEE's sole, good faith discretion, subject to the provision in Paragraph 6. Any needed equipment space shall be obtained by a Carrier directly from LESSEE, and LESSOR and LESSEE agree that LESSOR shall receive twenty-five percent (25%) of any sublease payments.

26. DISPUTE RESOLUTION.

- a. This Agreement shall be governed and construed in accordance with the laws of the State of Arizona.
- b. With the written consent of the Parties, any dispute, controversy, claim, or cause of action arising out of or related to this Agreement may be settled by submission to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, *et seq.*
- c. The venue for any dispute shall be Gila County, Arizona. Both Parties consent in advance to such venue.
- d. Neither Party shall be entitled to recover from the other Party any of its attorneys' fees, costs, or expert witness fees incurred in any such dispute, controversy, claim, or cause of action. Each Party shall bear its own attorneys' fees without contribution from the other Party.

27. SALE OF PROPERTY. If at any time during the term of this Agreement LESSOR decides to sell all or part of LESSOR's Property which is subject to this Agreement to a purchaser other than LESSEE, then such sale shall be under and subject to this Agreement and LESSEE's rights hereunder. Any sale by LESSOR of the portion of the Property underlying the easement for ingress and egress herein granted shall be under and subject to the right of LESSEE in and to said easement for ingress and egress.

28. ABANDONMENT OF PREMISES. LESSEE shall neither vacate nor abandon the Premises at any time during the term of this Agreement. If LESSEE abandons, vacates or surrenders the Premises, or is dispossessed by process of law, or otherwise, any personal property belonging to LESSEE and left on the Premises shall be deemed to have been abandoned. Notwithstanding the foregoing, LESSOR acknowledges that after LESSEE's communications facility is built, it will be operated as an unmanned facility, but inspected by LESSEE on at least a monthly basis during the term of this Agreement and that such operation of the facility shall not be deemed to be an abandonment of the Premises.

29. NOTICES. All notices, requests, demands, rent payments, and other communications

Market: AZ/NM  
Cell Site Number: AZPHU3402  
Cell Site Name: ZOD ALLTELL PAYSON #2  
FA Number: 10139938  
Lessor Site Name: Vanderlink

---

hereunder shall be in writing and shall be deemed given if personally delivered or mailed via certified mail, return receipt requested, or sent by overnight courier (provided the couriers regular business is delivery service and further provided that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender) to the following addresses, on the date received or refused:

If to LESSOR to:       Town of Payson  
                                  Attention: Town Manager  
                                  303 North Beeline Highway  
                                  Payson, Arizona 85541  
                                  Telephone: (928) 474-5242

If to LESSEE to:       New Cingular Wireless PCS, LLC  
                                  Attn: Network Real Estate Administration  
                                  Re: Cell Site #: AZPHU34302 ; Cell Site Name: ZOD ALLTEL  
                                  PAYSON # 2 AZ  
                                  Fixed Asset No.: 10139938\_\_  
                                  Suite 13-F West Tower  
                                  575 Morosgo Drive. NE  
                                  Atlanta, GA 30324

With a copy to:       New Cingular Wireless PCS, LLC  
                                  AT&T Legal Department- Network-Operations  
                                  Attn: Network Counsel  
                                  Re: Cell Site #: AZPHU34302 ; Cell Site Name: ZOD ALLTEL  
                                  PAYSON # 2 AZ  
                                  Fixed Asset No.: 10139938\_\_  
                                  208 S. Akard Street  
                                  Dallas, Texas, 75202-4206

With a copy to Local Contact:  
                                  New Cingular Wireless PCS, LLC  
                                  Attn: AZ/NM Network Property Management  
                                  20830 N. Tatum Blvd. #400  
                                  Phoenix, AZ 85050

30. HAZARDOUS SUBSTANCES. LESSOR and LESSEE each agree that they will not use, generate, store or dispose of any Hazardous Substances on the Property in violation of any law or regulation. LESSOR and LESSEE each agree to defend and indemnify the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) to the extent arising from any breach of any warranty or agreement contained in this Paragraph, and except to the extent caused by other's negligence or willful misconduct. The Parties shall each be responsible for remediating any Hazardous Substances as may be required under applicable Hazardous Substances Law. For purposes of this Agreement,

Market: AZ/NM  
Cell Site Number: AZPHU3402  
Cell Site Name: ZOD ALLTELL PAYSON #2  
FA Number: 10139938  
Lessor Site Name: Vanderlink

---

"Hazardous Substances" shall mean:

- a. Any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons,
- b. Any substance which is flammable, radioactive, corrosive or carcinogenic,
- c. Any substance the presence of which on the Premises causes or threatens to cause a nuisance or health hazard affecting human health, the environment, the Premises or property adjacent thereto,
- d. Any substance the presence of which on the Premises or property adjacent thereto requires investigation or remediation under any hazardous substance law, as the same may hereafter be amended. "Hazardous Substance Law" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401, *et seq.*; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 136, *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601, *et seq.*; the Emergency Planning and Community Right to Know Act (SARA Title III), 42 U.S.C. Section 11,001, *et seq.*; and any similar and applicable State Law or Regulation.

Notwithstanding anything to the contrary in this Agreement, LESSEE and LESSOR hereby waive the right to recover consequential (including lost profits), punitive, exemplary and similar damages arising from a violation of this Paragraph.

31. AUTHORITY. The Parties warrant that each person executing this Agreement has the right and authority to execute this Agreement. Each Party agrees to execute and deliver all documents and to perform all further acts as may be reasonably necessary to carry out the provisions of this Agreement.
32. BINDING EFFECT. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of LESSOR and LESSEE.
33. LIMITED RELATIONSHIP. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto or by any third person to create the relationship of principal and agent, partnership, joint venture or any association between LESSEE and LESSOR other than as contracting parties or LESSOR and LESSEE.
34. SEVERABILITY. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be severed from this Agreement and the remainder shall remain in full force and effect.
35. WAIVERS. The failure of either Party to require performance of any provision of this Agreement shall not limit such Party's right to enforce said provision or require the timely performance of any other obligation. The waiver of any breach of any provision in this Agreement shall not constitute a waiver of any succeeding breach thereof or the breach of

Market: AZ/NM  
Cell Site Number: AZPHU3402  
Cell Site Name: ZOD ALLTELL PAYSON #2  
FA Number: 10139938  
Lessor Site Name: Vanderlink

---

any other provision.

36. **TIME OF PERFORMANCE.** Time is of the essence in the performance of each obligation set forth in this Agreement.
37. **ENTRY BY LESSOR.** LESSEE agrees that, after construction of LESSEE's facilities is completed, representatives of LESSOR shall, during normal business hours, have the right to enter the Premises with a representative of LESSEE present to inspect and determine if same complies with the terms and conditions of this Agreement and with all applicable Town, County, State and Federal laws, rules, ordinances and regulations relating to building occupancy and the conduct of LESSEE's business, provided LESSOR gives LESSEE no less than seventy-two (72) hours prior written notice. LESSOR shall be permitted to have and retain a key with which to unlock, only in the event of emergency, any entrances to any perimeter enclosures (fencing, etc.) surrounding LESSEE's facilities. LESSOR agrees that it shall not duplicate such key and shall not permit any third parties access to same, and LESSOR shall indemnify and hold LESSEE harmless from any damages and losses incurred by LESSEE as a result of LESSOR's breach of the foregoing. It is expressly agreed that LESSOR shall not have a key to LESSEE's equipment shelter. LESSOR shall be responsible for all damage, if any, caused to any of LESSEE's property or facilities as a result of LESSOR's entry.
- LESSEE acknowledges that LESSOR has its own equipment on the Property, and LESSOR may enter the Property at any time to inspect or repair its own equipment.
38. **AMENDMENT.** This Agreement cannot be changed, modified or amended in whole or in part except by a written amendment executed by LESSOR and LESSEE in the same manner as this Agreement is executed.
39. **ENTIRE AGREEMENT.** This Agreement, including the exhibits, and any written amendments, constitutes the entire Agreement between the Parties pertaining to the subject matter and contains all of the agreements, promises and understandings between LESSOR and LESSEE, and no verbal or oral agreements, promises, statements, ascertains or representations by LESSOR or LESSEE or any employees, agents, contractors or other representations of either, shall be binding upon LESSOR or LESSEE.
40. **CONSTRUCTION OF AGREEMENT.** This Agreement shall be construed and interpreted according to its plain meaning, and no presumptions shall be deemed to apply in favor of, or against the Party drafting this Agreement. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.
41. **CANCELLATION.** This Agreement is subject to the provisions of A.R.S. § 38-511 which provides for cancellation of agreements by the municipality for certain conflicts of interest.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first

Market: AZ/NM  
Cell Site Number: AZPHU3402  
Cell Site Name: ZOD ALLTELL PAYSON #2  
FA Number: 10139938  
Lessor Site Name: Vanderlink

written above.

**LESSOR:**

Town of Payson,  
an Arizona municipal corporation

**LESSEE:**

New Cingular Wireless PCS, LLC,  
a Delaware Limited Liability Company

By: AT&T Mobility Corporation  
Its: Manager

\_\_\_\_\_  
Kenny J. Evans, Mayor

\_\_\_\_\_  
Scott September, Area Manager

**ATTEST:**

\_\_\_\_\_  
Silvia Smith, Town Clerk

\_\_\_\_\_  
Witness

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Timothy M. Wright, Town Attorney

Market: AZ/NM  
Cell Site Number: AZPHU3402  
Cell Site Name: ZOD ALLTELL PAYSON #2  
FA Number: 10139938  
Lessor Site Name: Vanderlink

---

**EXHIBIT A-1**

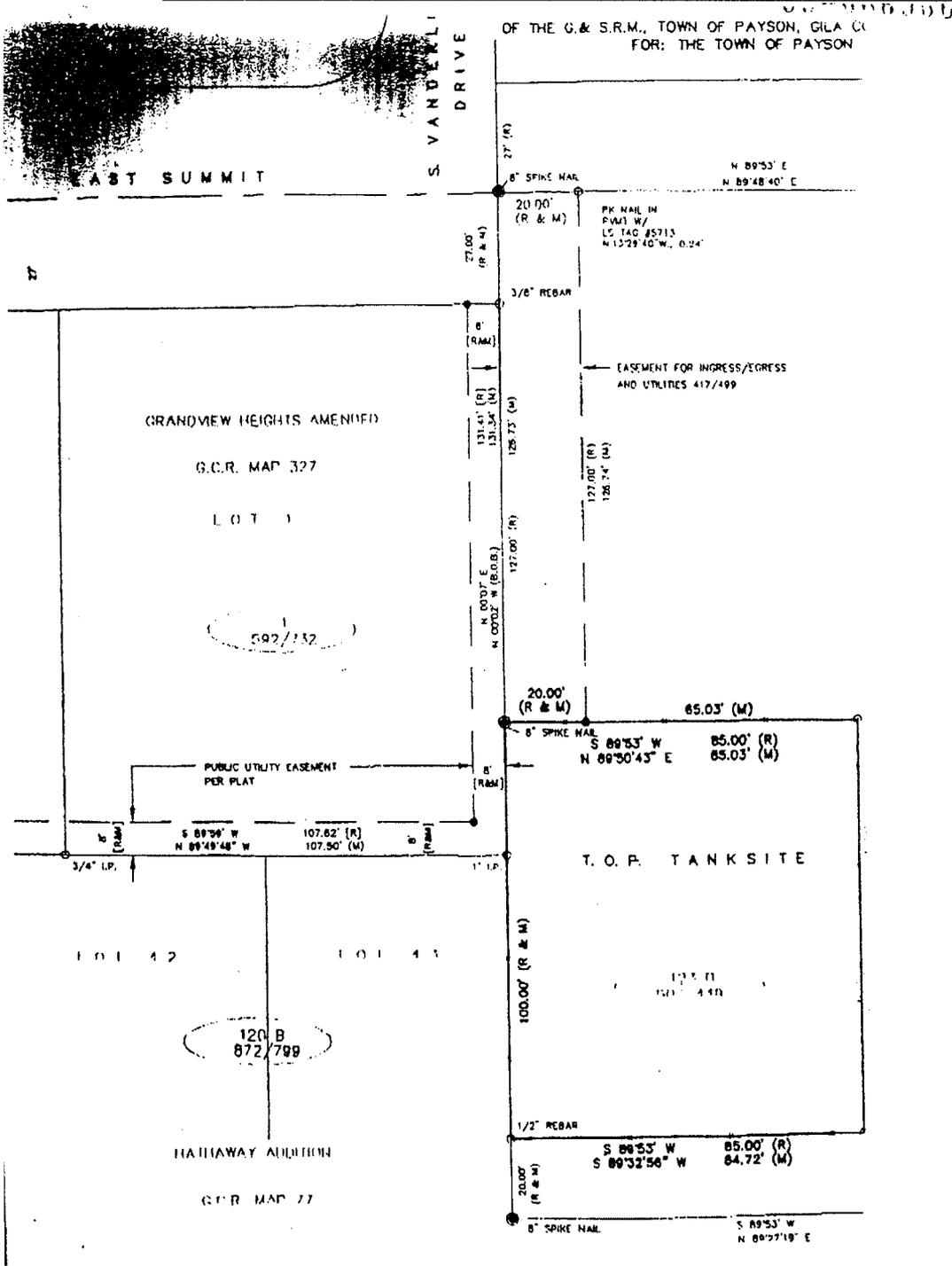
**LEGAL DESCRIPTION AND DIAGRAM OF SITE**

**The land is situated in Gila County, Arizona:  
TS 10N R 10E S4 SW SE Lot 123B APN# 304-08-123B**

**EXHIBIT A-2**

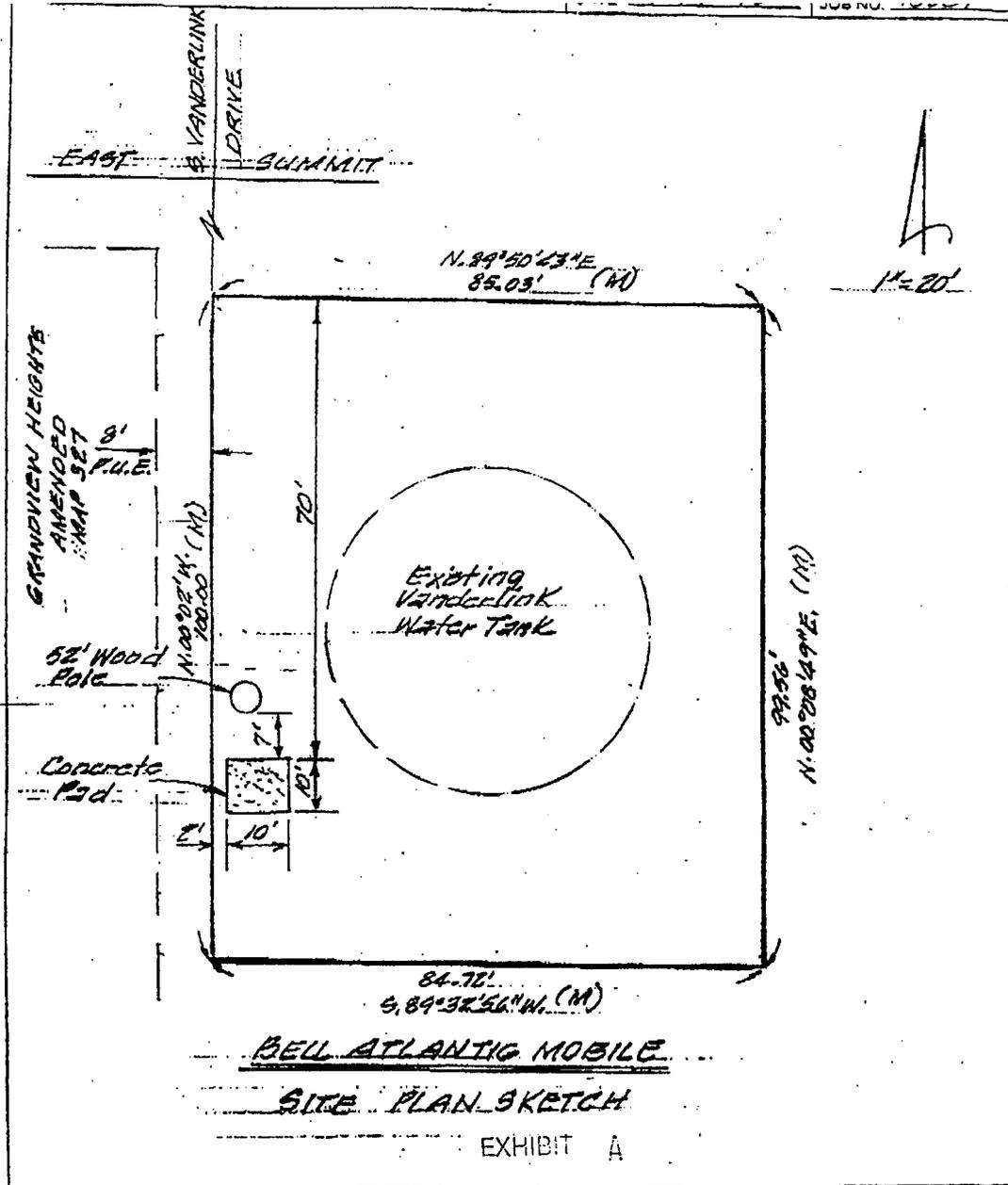
**LEGAL DESCRIPTION AND DIAGRAM OF SITE**

Market: AZ/NM  
 Cell Site Number: AZPHU3402  
 Cell Site Name: ZOD ALLTELL PAYSON #2  
 FA Number: 10139938  
 Lessor Site Name: Vanderlink



Market: AZ/NM  
 Cell Site Number: AZPHU3402  
 Cell Site Name: ZOD ALLTELL PAYSON #2  
 FA Number: 10139938  
 Lessor Site Name: Vanderlink

**EXHIBIT B**  
**Site Plan**



**Kugh Engineering, Inc.**  
 15650 N. BLACK CANYON HWY. • SUITE 245 • PHOENIX, AZ 85023  
 PHONE (602) 375-9363 FAX (602) 375-2473

CHECKED BY \_\_\_\_\_  
 DATE \_\_\_\_\_

SHEET NO 1  
 OF 2

Market: AZ/NM  
Cell Site Number: AZPHU3402  
Cell Site Name: ZOD ALLTELL PAYSON #2  
FA Number: 10139938  
Lessor Site Name: Vanderlink

---

**EXHIBIT C**  
**Lessor list of equipment**

**DESCRIPTION OF TOWERS  
CURRENTLY OWNED BY THE TOWN**

**Exhibit B**  
to  
**Resolution 2815**  
**(Communications Building Lease Agreement)**

## COMMUNICATIONS BUILDING LEASE AGREEMENT

This Lease Agreement (the Agreement) is made this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the Town of Payson, an Arizona municipal corporation (LESSOR), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive, Suite 13-F, West Tower, Atlanta, Georgia 30324 (LESSEE), collectively, the Parties or individually the Party.

### BACKGROUND

- A. LESSEE currently has communications equipment located in LESSOR'S Hillcrest communications building located at 902 N. Hillcrest, Payson, Arizona ("the Communications Building"). The Parties desire to execute a lease to formalize such use.
- B. LESSEE is willing to pay the costs associated with the placement of its communications equipment in the Communications Building as outlined in this Lease Agreement.

### AGREEMENT

- 1. PREMISES. LESSOR agrees to allow LESSEE of space in the Communications Building as described in Exhibit A attached.
- 2. TERM. This Agreement shall be for \_\_\_\_\_ years beginning on June 1, 2014.
- 3. RENTS. LESSEE shall pay rent of Seven Hundred Fifty Dollars (\$700.00) per month which shall be due on the first day of each month. Such rent shall increase annually by two percent (2%). If not paid by the first day of each month, LESSEE shall pay a penalty of Forty Dollars (\$40.00) per day for each day the rent is unpaid.
- 4. TERMINATION. This Agreement may be terminated by LESSEE upon sixty (60) days' prior written notice to LESSOR for any reason or no reason, so long as LESSEE pays LESSOR a termination fee equal to three (3) months' Rent, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by LESSEE under any termination provision contained in any other Section of this Agreement.
- 5. REMOVAL UPON TERMINATION. Upon the termination of this Agreement, LESSEE shall, within thirty (30) days, remove LESSEE's communications equipment from the Communications Building.
- 6. RECORDING. LESSOR agrees to execute a Memorandum of this Agreement upon request of LESSEE, which LESSEE may record with the appropriate officer. The date set forth in the Memorandum of Lease is for recording purposes only and shall bear no reference to rent payments.
- 7. CASUALTY. In the event of damage by fire or other casualty to the Communications Building that cannot reasonably be expected to be repaired within forty-five (45) days or, if

the Communications Building is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations for more than forty-five (45) days, LESSEE may, following such fire or other casualty, provided LESSOR has not completed the restoration required to permit LESSEE to resume its operation, terminate this Agreement upon fifteen (15) days written notice to LESSOR. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, all rents shall abate during the period of repair following such fire or casualty.

8. CONDEMNATION. In the event of any condemnation of the Communications Building, LESSEE may terminate this Agreement upon fifteen (15) days written notice to LESSOR, if such condemnation may reasonably be expected to disrupt LESSEE's operations at the Communications Building for more than forty-five (45) days. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Communications Building for losses, to the extent such claims are permissible in such proceedings. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement.
9. CAPTIONS. The captions in this Agreement are inserted for convenience, are not intended to be part of the Agreement, and shall not or be utilized in the construction or interpretation of this Agreement.
10. MAINTENANCE. LESSEE shall be responsible for all maintenance and repairs of its equipment located in the Communications Building.
11. ELECTRICAL POWER. LESSOR shall provide and pay for ordinary electrical service to the Communications Building.
12. ELECTRICAL BACK-UP POWER.
  - 12.1 If LESSEE desires to have backup electrical power, LESSEE may install such backup power at LESSEE'S sole expense.
  - 12.2 If LESSEE constructs and operates electrical back-up power for its equipment in the Communications Building, LESSEE shall allow all current and future communications equipment in the Communications Building to utilize such electrical back-up power. The costs of connecting to such back-up power shall be the responsibility of the owner of any equipment utilizing such back-up power.
13. RIGHT OF INGRESS AND EGRESS. LESSEE shall have at all times the full and free right of ingress to and egress from the Communications Building for LESSEE, its employees, sublessees, and contractors. This right shall also extend to persons or organizations supplying materials or furnishing services to LESSEE, to include vehicles, machinery and equipment reasonably required by such persons or organizations. Upon

request from LESSOR, LESSEE shall furnish LESSOR with a list with contact information of all agents of LESSEE who require access to the water storage tank site and the Communications Building.

14. INDEMNIFICATION. LESSEE shall indemnify, defend and hold harmless LESSOR, from and against any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including any reasonable attorneys' fees and/or litigation expenses, which may be brought or made against or incurred by LESSOR on account of:
- a. Loss or damage to any property or interest of LESSOR to the extent caused by LESSEE,
  - b. Any damages, injury to person or property or death of any person to the extent arising out of any acts, errors, omissions, work or services of LESSEE and its employees, sublessees, agents, representatives or subcontractors, their employees, agents or representatives; or
  - c. Any workers' compensation claims, unemployment compensation claims or unemployment disability compensation claims of employees of LESSEE or claims under similar such laws or obligations,
  - d. Any action taken by LESSOR pursuant to Paragraph 17 above (Lessee Interference).

This indemnification obligation shall not extend to any loss, damage, injury or death to the extent caused by the negligence or willful misconduct of LESSOR or its employees. The amount and type of insurance coverage requirements set forth in this Agreement shall in no way be construed as limiting the scope of the indemnity in this Paragraph.

15. LOSS/DAMAGE TO LESSEE'S EQUIPMENT. LESSOR shall not be responsible for any loss or damage to LESSEE'S equipment from any cause, including, but not limited to vandalism, theft, fire, and lightning.
16. INSURANCE. During the term of this Agreement, LESSEE shall maintain general comprehensive liability insurance of at least Three Million Dollars (\$3,000,000.00) per occurrence, naming LESSOR as an additional insured. Upon request by LESSOR from time to time, LESSEE shall deliver a certificate of insurance evidencing such coverage. Such insurance policies shall provide, among other things, for LESSOR to be notified ten (10) days in advance of any cancellation thereof. LESSEE shall maintain insurance to cover loss of equipment installed in and affixed to the Communications Building.
17. LESSEE'S DEFAULT. If LESSEE fails to pay any rents or other amounts payable under this Agreement when due, or if LESSEE should fail to perform any other of the covenants, terms or conditions of this Agreement, prior to exercising any rights or remedies against LESSEE on account thereof, LESSOR shall first provide LESSEE with written notice of the failure and provide LESSEE with a ten (10) day period after LESSEE's receipt of written notice thereof to cure such failure if the failure is to pay rents or any other sum of money under this Agreement, or a sixty (60) day period to cure after LESSEE's receipt of written notice of such failure if the failure is other than failure to pay rents or any other sum of money hereunder and is not reasonably capable of being cured with a sixty (60) day period, LESSEE shall be afforded such reasonable period of time as is necessary to cure the failure, provided that LESSEE promptly commences curing the failure after its receipt of such notice and prosecutes the cure to completion with reasonable due diligence. In

the event LESSEE fails to cure its default within the applicable cure periods, or LESSEE breaches this Agreement or otherwise fails to perform or observe any covenant or condition applicable to it under the terms of this Agreement, then LESSOR may elect any one or more of the following remedies:

- a. LESSOR may terminate this Agreement; and
- b. LESSOR may reenter the Premises and take possession thereof and remove all LESSEE's personal property therefrom; and,
- c. LESSOR may pursue any and all other legal remedies available to it without election, with or without cancelling this Agreement, including, without limitation, recovering its actual damages caused by the breach or failure of LESSEE.

The provisions of this Paragraph shall not apply to LESSEE's interference with government or other existing commercial wireless communications and the same shall be governed by the other applicable provisions.

Any termination of this Agreement shall also terminate all of LESSEE's rights in and to any easement for ingress and egress provided pursuant to this Agreement.

18. LESSOR'S DEFAULT. In the event that LESSOR breaches a provision of this Agreement or otherwise fails to perform or observe any covenant or condition applicable to it under the terms of this Agreement, then LESSEE may elect any one or more of the following remedies:
  - a. LESSEE may compel specific performance by LESSOR; or,
  - b. LESSEE may terminate this Agreement; or,
  - c. LESSEE may pursue any and all other legal remedies available to it, with or without cancelling this Agreement, including, without limitation, recovering its actual damages caused by the breach or failure of LESSOR.
19. ASSIGNMENT AND SUBLEASING. LESSEE shall not assign its interest in this Agreement without the prior written consent of LESSOR. Any attempted assignment by LESSEE in violation of this provision shall render this Agreement void. Notwithstanding the foregoing, LESSOR's consent shall not be required if LESSEE assigns, transfers or sells this Agreement to LESSEE's principal, affiliates, subsidiaries of its principal; to any entity other than a lender or financial institution which acquires all or substantially all of LESSEE's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization; or to any entity which acquires or receives an interest in the majority of communication towers of LESSEE in the market defined by the Federal Communications Commission in which the Property is located. Upon the expiration or earlier termination of this Agreement, and provided that LESSOR assumes ownership of LESSEE's improvements pursuant to Paragraph 8, LESSEE shall assign its interest in any then-existing licenses, subleases and sublicenses to LESSOR.

LESSEE agrees that it will permit third party wireless carriers (a Carrier) to sublease space if it constructs a new monopole pursuant to Paragraph 3, provided that a commercially reasonable sublease agreement is mutually agreed upon between LESSEE and the Carrier, the proposed equipment of the Carrier may be accommodated on the monopole, and the Carrier's proposed equipment does not interfere with LESSEE's operations at the Premises in LESSEE's sole, good faith discretion, subject to the provision in Paragraph 6.

Any needed equipment space shall be obtained by a Carrier directly from LESSEE, and LESSOR and LESSEE agree that LESSOR shall receive twenty-five percent (25%) of any sublease payments.

20. DISPUTE RESOLUTION.

- a. This Agreement shall be governed and construed in accordance with the laws of the State of Arizona.
- b. With the written consent of the Parties, any dispute, controversy, claim, or cause of action arising out of or related to this Agreement may be settled by submission to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, *et seq.*
- c. The venue for any dispute shall be Gila County, Arizona. Both Parties consent in advance to such venue.
- d. Neither Party shall be entitled to recover from the other Party any of its attorneys' fees, costs, or expert witness fees incurred in any such dispute, controversy, claim, or cause of action. Each Party shall bear its own attorneys' fees without contribution from the other Party.

21. SALE OF PROPERTY. If at any time during the term of this Agreement LESSOR decides to sell all or part of LESSOR's Property on which the Communications Building is located to a purchaser other than LESSEE, then such sale shall be under and subject to this Agreement and LESSEE's rights hereunder. Any sale by LESSOR of the portion of the Property underlying the easement for ingress and egress herein granted shall be under and subject to the right of LESSEE in and to said easement for ingress and egress.

22. NOTICES. All notices, requests, demands, rent payments, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed via certified mail, return receipt requested, or sent by overnight courier (provided the couriers regular business is delivery service and further provided that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender) to the following addresses, on the date received or refused:

If to LESSOR to:       Town of Payson  
                                  Attention: Town Manager  
                                  303 North Beeline Highway  
                                  Payson, Arizona 85541  
                                  Telephone: (928) 474-5242

If to LESSEE to:       New Cingular Wireless PCS, LLC  
                                  Attn: Network Real Estate Administration  
                                  Re: Cell Site #: AZPHU34302 ; Cell Site Name: ZOD ALLTEL  
                                  PAYSON # 2 AZ  
                                  Fixed Asset No.: 10139938\_\_  
                                  Suite 13-F West Tower  
                                  575 Morosgo Drive. NE  
                                  Atlanta, GA 30324

With a copy to:       New Cingular Wireless PCS, LLC  
                                  AT&T Legal Department- Network-Operations

Attn: Network Counsel  
Re: Cell Site #: AZPHU34302 ; Cell Site Name: ZOD ALLTEL  
PAYSON # 2 AZ  
Fixed Asset No.: 10139938\_\_  
208 S. Akard Street  
Dallas, Texas, 75202-4206

With a copy to Local Contact:

New Cingular Wireless PCS, LLC  
Attn: AZ/NM Network Property Management  
20830 N. Tatum Blvd. #400  
Phoenix, AZ 85050

23. HAZARDOUS SUBSTANCES. LESSOR and LESSEE each agree that they will not use, generate, store or dispose of any Hazardous Substances in the Communications Building in violation of any law or regulation. LESSOR and LESSEE each agree to defend and indemnify the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) to the extent arising from any breach of any warranty or agreement contained in this Paragraph, and except to the extent caused by other's negligence or willful misconduct. The Parties shall each be responsible for remediating any Hazardous Substances as may be required under applicable Hazardous Substances Law. For purposes of this Agreement, "Hazardous Substances" shall mean:
- a. Any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons,
  - b. Any substance which is flammable, radioactive, corrosive or carcinogenic,
  - c. Any substance the presence of which on the Premises causes or threatens to cause a nuisance or health hazard affecting human health, the environment, the Premises or property adjacent thereto,
  - d. Any substance the presence of which on the Premises or property adjacent thereto requires investigation or remediation under any hazardous substance law, as the same may hereafter be amended. "Hazardous Substance Law" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401, *et seq.*; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 136, *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601, *et seq.*; the Emergency Planning and Community Right to Know Act (SARA Title III), 42 U.S.C. Section 11,001, *et seq.*; and any similar and applicable State Law or Regulation.

Notwithstanding anything to the contrary in this Agreement, LESSEE and LESSOR hereby waive the right to recover consequential (including lost profits), punitive, exemplary and similar damages arising from a violation of this Paragraph.

24. AUTHORITY. The Parties warrant that each person executing this Agreement has the right and authority to execute this Agreement. Each Party agrees to execute and deliver all documents and to perform all further acts as may be reasonably necessary to carry out the provisions of this Agreement.

25. BINDING EFFECT. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of LESSOR and LESSEE.
26. LIMITED RELATIONSHIP. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto or by any third person to create the relationship of principal and agent, partnership, joint venture or any association between LESSEE and LESSOR other than as contracting parties or LESSOR and LESSEE.
27. SEVERABILITY. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be severed from this Agreement and the remainder shall remain in full force and effect.
28. WAIVERS. The failure of either Party to require performance of any provision of this Agreement shall not limit such Party's right to enforce said provision or require the timely performance of any other obligation. The waiver of any breach of any provision in this Agreement shall not constitute a waiver of any succeeding breach thereof or the breach of any other provision.
29. TIME OF PERFORMANCE. Time is of the essence in the performance of each obligation set forth in this Agreement.
30. AMENDMENT. This Agreement cannot be changed, modified or amended in whole or in part except by a written amendment executed by LESSOR and LESSEE in the same manner as this Agreement is executed.
31. ENTIRE AGREEMENT. This Agreement, including the exhibits, and any written amendments, constitutes the entire Agreement between the Parties pertaining to the subject matter and contains all of the agreements, promises and understandings between LESSOR and LESSEE, and no verbal or oral agreements, promises, statements, ascertains or representations by LESSOR or LESSEE or any employees, agents, contractors or other representations of either, shall be binding upon LESSOR or LESSEE.
32. CONSTRUCTION OF AGREEMENT. This Agreement shall be construed and interpreted according to its plain meaning, and no presumptions shall be deemed to apply in favor of, or against the Party drafting this Agreement. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.
33. CANCELLATION. This Agreement is subject to the provisions of A.R.S. § 38-511 which provides for cancellation of agreements by the municipality for certain conflicts of interest.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

LESSOR:

Town of Payson,  
an Arizona municipal corporation

LESSEE:

New Cingular Wireless PCS, LLC,  
a Delaware Limited Liability Company

By: AT&T Mobility Corporation  
Its: Manager

\_\_\_\_\_  
Kenny J. Evans, Mayor

\_\_\_\_\_  
Scott September, Area Manager

ATTEST:

\_\_\_\_\_  
Silvia Smith, Town Clerk

\_\_\_\_\_  
Witness

APPROVED AS TO FORM:

\_\_\_\_\_  
Timothy M. Wright, Town Attorney

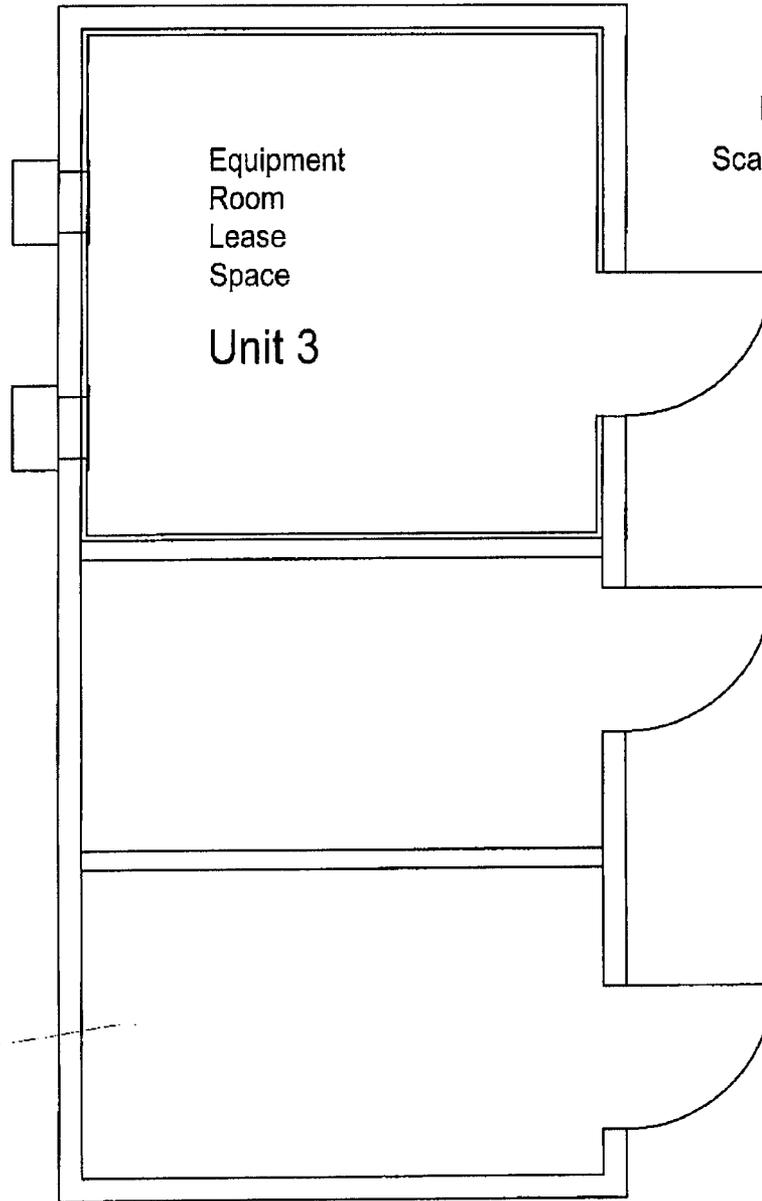
**EXHIBIT A**

# EXHIBIT A

902 N Hillcrest Unit 3



North  
Scale 1/4" = 1'



COMMUNICATIONS  
BUILDING