

**CITY OF CEDARBURG
MEETING OF COMMON COUNCIL
November 11, 2019 – 7:00 P.M.**

A regular meeting of the Common Council of the City of Cedarburg, Wisconsin, will be held on **Monday, November 11, 2019 at 7:00 p.m.** at City Hall, W63 N645 Washington Avenue, Cedarburg, WI, in the second floor Council Chambers.

AGENDA - Addendum

14. **NEW BUSINESS - CONTINUED**

- H. Consider cellular tower lease and bill of sale with AT&T for location on the monopole constructed on Western Avenue; and action thereon*

* *Information attached for Council; available through City Clerk's Office.*

UPON REASONABLE NOTICE, EFFORTS WILL BE MADE TO
ACCOMMODATE THE NEEDS OF INDIVIDUALS WITH DISABILITIES.
PLEASE CONTACT THE CITY CLERK'S OFFICE AT (262) 375-7606
E-MAIL: cityhall@ci.cedarburg.wi.us

11/8/19 cww

TOWER/LAND LEASE AGREEMENT

THIS TOWER/LAND LEASE AGREEMENT (the "Lease") is entered into this ____ day of _____, 20__, between the **CITY OF CEDARBURG**, a Wisconsin municipal corporation, ("Cedarburg"), and **New Cingular Wireless, PCS, LLC, a Delaware Limited Liability Company** ("Tenant"). Cedarburg and Tenant may be individually referred to herein as a "Party", and collectively as "Parties".

In consideration of the terms and covenants of this Lease, and for other good and valuable consideration, the Parties agree as follows:

1. Leased Property.

a. Cedarburg is the owner of two parcels of land (the "Land") and a water tower (the "Water Tower") and well pump house (the "Building") both located thereon, in the City of Cedarburg, Ozaukee County, Wisconsin, commonly known as N49 W6411 and N49 W6409 Western Road, Cedarburg, (the Land, Building and the Tower, as hereinafter defined, are collectively referred to herein as the "Property"). The Land is legally described in **Exhibit A** attached hereto.

b. Cedarburg and Milwaukee SMSA Limited Partnership, a Delaware limited partnership, as predecessor in interest to Tenant entered into that certain Water Tower and Ground Lease Agreement dated October 6, 1994 which permits, among other things, Tenant to occupy certain ground space on the Land (within the Building), as well as install certain communications facilities on the Water Tower (the "Water Tower Lease"). Cedarburg has constructed a new monopole tower (the "Tower") for the purpose of serving as a cellular antenna tower, and intends to decommission the Water Tower, at an undetermined point of time in the future. Cedarburg, by Certified Mail, return receipt requested, dated November 13, 2018, served a Notice of Non-Renewal and Termination of the Water Tower Lease to Tenant, effective October 6, 2019.

c. Subject to the terms and conditions of this Lease, Cedarburg leases to Tenant and Tenant leases from Cedarburg: space on the Tower, as described in **Exhibit B-1** attached hereto; a certain portion of the Land legally described in **Exhibit B-2** attached hereto; and all access and utility easements if any, as described on **Exhibit C** attached hereto (collectively, the "Premises").

d. The Water Tower Lease shall remain in full force and effect until October 6, 2019 and this lease shall commence upon October 7, 2019 (the "Commencement Event"). In no event shall Tenant's equipment installed on the Water Tower exceed the structural load capacities of Tenant's existing equipment on the Water Tower at the time of execution of this Lease. Tenant shall not be required to remove the existing building housing its equipment serving its antenna on the Water Tower; however, Tenant shall be required, by no later than May 1, 2020, to remove all electronics from the existing shelter (the HVAC system can remain), properly retire all conduit, and mark for locating purposes in the future, all in a manner deemed acceptable to Cedarburg. Tenant shall further execute, contemporaneously with this Lease, a Bill of Sale, as shown in **Exhibit H**, confirming the transfer of the existing building to Cedarburg. Tenant shall also be required, by no later than March 1, 2020, to have construction complete of the Antenna Facilities on the Tower, and, by no later than January 6, 2020, install an electrical panel, in a location and pursuant to the specifications shown on **Exhibit G**. Said electrical panel shall serve Tenant's electric needs, as well as the other Tenants on the Tower (hereinafter "Joint Electrical Panel"). In the event that Tenant does not install the Joint Electrical Panel by January 6, 2020, then Cedarburg may, at its option, install the panel, using employees, agents or contractors of its choosing, and all costs related thereto, including but not limited to design, construction, and legal costs, shall be paid by Tenant within 30 days of Tenant receiving an invoice for same from Cedarburg.

2. Term. This Agreement shall be effective as of October 7, 2019. The initial term of this Lease shall be ten (10) years, commencing on the Commencement Event ("Initial Term"). Tenant shall have the right to extend this Lease for five (5) additional five (5) year terms, subject to the terms and conditions of this Lease. This Lease shall automatically be renewed for each successive renewal term unless Tenant shall notify Cedarburg of Tenant's intention not to renew the Lease at least six (6) months prior to the expiration of the initial term or any renewal term.

3. Rents.

a. The term "Rent" includes rent paid to Cedarburg. Upon the Commencement Event, and each year thereafter, Rent shall be paid to Cedarburg, Attention City Treasurer, or to such other person, firm, or place as Cedarburg may, from time to time, designate in writing pursuant to Paragraph 14, below.

b. The annual Rent shall be Forty-Five Thousand Six Hundred (\$45,600.00) Dollars, payable as provided in the preceding paragraph and to be mailed to the City of Cedarburg, W63 N645 Washington Avenue, and P.O. Box 49, Cedarburg, WI 53012-0049. On each annual anniversary of the Commencement Date the annual Rents shall be increased by an amount equal to three (3%) percent of the previous year's Rent.

c. If, at the end of the fifth (5th) five (5) year extension term, this Lease has not been terminated by either Party by giving to the other written notice of an intention to terminate it at least six (6) months prior to the end of such term, this Lease shall continue in force upon the same covenants, terms, and conditions, and at the rental amount specified for the fifth (5th) five (5) year extension term, for a further term of one (1) year and for annual terms thereafter until terminated by either Party giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of such term. The Initial Term and all extensions shall be collectively referred to herein as the "Term."

d. As additional consideration to induce Cedarburg to construct the Tower, to accommodate Tenant's structural load requirements, and avoid future maintenance costs or other related maintenance, Tenant covenants and agrees to provide to Cedarburg the sum of Thirty-Five Thousand (\$35,000.00) Dollars ("Onetime Fee") within 60 days of the Commencement Date. Said one-time fee is reduced by \$5,000 to reflect Tenant's cost of installation of the electric panel described in paragraph I(d) above to be a final payment of Thirty Thousand and No/100 Dollars (\$30,000.00)

e. For any party to whom Rent payments are to be made, Cedarburg or any successor in interest of Cedarburg hereby agrees, upon request from Tenant, to provide to Tenant: (i) a completed, current version of Internal Revenue Service Form W-9, or equivalent; (ii) complete and fully executed state and local withholding forms if required; and (iii) other documentation to verify such other party's right to receive Rent as is reasonably requested by Tenant. Rent shall accrue in accordance with this Lease, but Tenant shall have no obligation to deliver Rent until the reasonably requested documentation has been received by Tenant. Upon receipt of the requested documentation, Tenant shall deliver the accrued rental payments as directed.

f. Cedarburg and Tenant agree that Tenant can have temporary use of, and temporarily install its Antenna Facilities for the sector that is shadowed by the Water Tower only on the Tower at the 180' height location ("Temporary Antenna Facilities"). Tenant shall move, at Tenant's sole cost and expense, said Temporary Antenna Facilities, down to the sector height of its remaining Antenna Facilities, as described in **Exhibit D**, upon 120 days advance written notice from Cedarburg, which notice shall be concurrent with the schedule for razing and removal of the Water Tower as described in paragraph I(b), herein.

4. Use. Tenant may use the Premises for the installation, operation, and maintenance of facilities for the transmission and reception of radio communication signals in such frequencies as may be assigned to Tenant by the Federal Communications Commission ("FCC") and for the operation of related equipment in accordance with the provisions of this Lease. Tenant shall use the Premises in compliance with all federal, state, local laws and regulations. If for any reason Tenant's use of the Premises fails to comply with any federal, state or local law and Tenant fails to bring its use within compliance within thirty (30) days of written notice of such noncompliance, this Lease shall be terminated as provided herein, provided that such thirty (30) Days shall be extended as reasonably necessary in the event that Tenant is proceeding in good faith with due diligence to cure such default but is unable to do so within thirty (30) days. Cedarburg agrees to reasonably cooperate with Tenant in obtaining, at Tenant's expense, all licenses and permits required for Tenant's use of the Premises.

5. Installation of Improvements, Access, Utilities.

a. Tenant shall have the right, subject to the terms and conditions set forth herein, at its sole cost and expense, to install, operate and maintain on the leased portions of the Property the improvements described in **Exhibit D** attached hereto ("Antenna Facilities"). Tenant shall undertake, as described in more detail herein, at its sole expense, structural studies of the Tower and the impact of the addition of the Antenna Facilities thereon before and after the installation of the Antenna Facilities. All such improvements shall be constructed in accordance with Cedarburg's specifications and according to a site plan approved by Cedarburg, which approval shall not be unreasonably withheld, conditioned or delayed. The equipment stored or operated by Tenant on the Premises, for the benefit of Tenant, shall remain the exclusive property of Tenant. Tenant agrees that all cabling shall be internal within the Tower, with the exception of the ground space identified on **Exhibit B-2**.

1) Tenant Application. Tenant's right to use the Leased Premises is expressly made contingent upon its obtaining all the certificates, permits, zoning and other approvals that may be required by any federal, state, or local authority. This shall include the engineering studies specified in subparagraphs S(a)(2), (3), and (4) below on the Structure to be conducted at Tenant's expense. Cedarburg shall cooperate with Tenant in its efforts to obtain and retain such approval and shall take no action that would adversely affect the status of the Leased Premises with respect to the Tenant's proposed use thereof. Tenant shall not consider this Lease, or the negotiations to enter into a lease, as alleviating the Tenant from any and all requirements for Tenant to obtain needed certificates, permits, zoning, and other approvals including conditional use permits or other special approvals required by City, County, State or Federal Governments.

2) Structural Engineering Certification. Before obtaining a building permit, Tenant must pay for the reasonable cost of an engineering study carried out by a qualified engineer, showing that the Structure is able to support the Antenna Facilities, as shown on **Exhibit D** and Tenant's Site Application and Plan, attached hereto, marked **Exhibit E**, and incorporated herein by reference, and provisions for additional comparable antenna loads from additional tenants. If the study finds that the proposed structure is inadequate to support the proposed and future antenna loads, Cedarburg may terminate this Lease immediately and refund the Rent and any monies paid under subparagraph 3(e) to Tenant.

3) Construction, Alteration and Replacement. Tenant may erect and operate an antenna array in accordance with **Exhibit D**. Tenant agrees that it will install only antennas that Tenant knows will not interfere with existing antennas as of the date of this Lease.

i) Alteration. If Tenant seeks any alteration of the Antenna Facilities, and such alteration results in a change to the Tower space, or an addition to the overall quantity of its equipment on the Tower or the structural load on the Tower from that load approved by Cedarburg at the commencement of this Lease and as shown in **Exhibit D**, then, it must first pay the reasonable cost of an evaluation carried out by an independent and qualified professional selected by Cedarburg demonstrating that (i) the alteration will not result in interference with existing antennas, and that (ii) the Tower can structurally support the alteration. Tenant must obtain Cedarburg's consent prior to installation of any alteration(s); however, such consent will not be unreasonably withheld. If Tenant seeks to expand the ground space shown on **Exhibit B-2 or Exhibit C**, Tenant must obtain Cedarburg's consent, which may be conditioned upon an increase in the annualized rent. Any alteration increasing Tower space, ground space, or structural load on the Tower, after Commencement Event, may increase the annualized rental provided in Section 3(b), herein. Cedarburg shall use reasonable efforts to respond to Tenant's request for alteration of equipment on the Tower within thirty (30) days of its receipt of: i) the evaluation described in this Section; ii) a completed site application; and iii) permit application for said alteration.

ii) Replacement. Tenant may replace the Antenna Facilities, or any portion thereof, from time to time, upon the prior written consent of Cedarburg. Before Tenant may replace the Antenna Facilities, or any portion thereof, Tenant shall notify Cedarburg and provide Cedarburg with a detailed proposal for such replacement. A "replacement", as that term is used herein, is considered the direct replacement of items with equipment of the same size, weight, and location as the equipment being replaced. Replacement of equipment with equipment of different size, weight, and location may, at Cedarburg's determination, be determined to be an alteration, subject to the terms of Section S(a)(3)(i), herein.

4) Construction Plans. For the initial installation of all Antenna Facilities and for any and all subsequent replacements, alterations, and/or modifications thereof, or additions thereto, Tenant shall provide Cedarburg with two (2) sets of construction plans ("Construction Plans") of the equipment and improvements installed on the Leased Premises consisting of the following:

i) line or CAD drawings showing the actual physical location of all planned installations plus materials and construction methods;

ii) specifications for all planned installations;

iii) diagrams of proposed Antenna Facilities;

iv) a complete and detailed inventory of all equipment and personal property of Tenant actually placed on the Leased Premises. Cedarburg retains the right to survey the installed equipment.

As-built drawings shall be easily readable and Cedarburg shall be provided a copy in paper and electronic "PDF" form.

Tenant shall provide Cedarburg, within thirty (30) days after Tenant's installation of the Antenna Facilities, with a Site Application and Plan in electronic file format, consisting of as-built drawings of the Antenna Facilities and the improvements installed on the Property, which show the actual location of all equipment and improvements. Said drawings shall be accompanied by a complete and detailed site survey of the Property, inventory of all equipment, personal property, and Antenna Facilities.

5) Contractor Approval. Any contractor chosen by Tenant to carry out construction, installation, maintenance or any other work on the Tower must be pre-approved by Cedarburg prior to performing any work of any kind on the Property, approval not to be unreasonably conditioned, withheld, or delayed. Contractor information to include at the minimum:

- Name and contact information
- Experience
- OSHA violations within the previous three (3) years.

Cedarburg reserves the right to reject any and all contractors the Tenant may choose for the installation work as determined to be in the best interests of Cedarburg and to waive any informalities.

6) Inspection.

a. Consulting engineering inspection will be provided beginning with the preconstruction conference and continuing through installation/construction/punch-list and verification of as-builts at project completion as determined solely by Cedarburg, at Tenant's expense. Tenant shall, pursuant to any applicable permit applications, pay for all costs of Cedarburg's inspections/installation project management costs for this project within thirty (30) days after Cedarburg sends an invoice for such fees to Tenant. In addition to consulting and engineering inspection costs, Tenant shall reimburse Cedarburg for all costs associated with reviewing this Lease and approving Tenant's application, including but not limited to all attorneys' fees, staff and administrative review time and third party consultant fees and expenses. All fees and invoices must be paid within thirty (30) days after Cedarburg sends Tenant an invoice for the same. Prior to energizing Tenant's system (start up), all punch list items related to installation must be substantially complete, unless waived in writing by Cedarburg. All aforementioned fees, including permit fees, are not to exceed two thousand five hundred dollars (\$2,500) in the aggregate for each permit application.

b. Tenant, at all times during this Lease, shall have foot or motor vehicle, including trucks, access to the ground space on the Property, described in **Exhibit B-2**, 7 days a week, 24 hours a day, in order to install, operate and maintain its operations at the Premises. Tenant shall have free access to the Tower, upon 24 hours advance notice, for the purpose of installing and maintaining the said equipment. In the event of an emergency, requiring immediate access to the Tower, Tenant shall contact the Cedarburg Police Department non-emergency dispatch, and shall reimburse, within 30 days, any overtime or consultant costs incurred by Cedarburg related to the emergency access. Cedarburg shall furnish Tenant with necessary means of access for the purpose of ingress and egress to the Property and Tower location. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of Tenant or persons under their direct supervision will be permitted to enter the Premises. In order to prevent the unauthorized entry onto the Property by the public during Tenant's use of the Premises, Tenant shall secure the Property by locking the access gate immediately after its entry onto and exit from the Property.

c. Tenant shall have the right to draw electricity and other utilities from the existing utilities on the Property or obtain separate utility service from any utility company that has a legal right to provide service to the Property (including a standby power generator for Tenant's exclusive use); provided, however, Tenant shall separately meter charges for the consumption of electricity and any other utilities

associated with its use of the Property and shall pay all costs associated therewith, and all utilities will be buried.

d. Tenant shall have sole responsibility for the maintenance, repair, and security of its equipment, personal property, Antenna Facilities, and any other leasehold improvements, and shall keep the same in good repair and condition during the Term.

e. Tenant will adhere to all OSHA safety requirements.

f. There will be no advertising of any kind, or use of the Tenant's name on the Premises or on any structure on the Property.

g. Disturbed turf areas will be replaced with sod by Tenant at Tenant's cost. Any damage to the adjacent bicycle path caused by Tenant's use of the Premises shall be repaired by Tenant at Tenant's cost in a manner to return said bicycle path to its condition prior to the time said damage occurred.

6. Reasonable Approval. Both Parties shall not unreasonably withhold, delay or condition approvals required under this Lease.

7. Interference.

a. Tenant's installation, operation, and use of its Antenna Facilities under this Lease shall not damage or interfere in any way with Cedarburg's activities at the Property. Cedarburg, at all times during this Lease, reserves the right to take any action reasonably required to repair, maintain, alter, or improve the Premises. Cedarburg agrees to give reasonable advance notice of such activities to Tenant and to reasonably cooperate with Tenant to carry out such activities with a minimum amount interference with Tenant's transmission operation.

b. With the exception of Cedarburg's current tenants on the Tower, in the event any other party requests permission to place any type of additional antenna or transmission facility on the Tower or the Property after Tenant, this paragraph will govern the determination of whether such antenna or transmission facility will interfere with Tenant's transmission operations. If Cedarburg receives any such request, it shall submit the proposal to Tenant for review for non-interference. Tenant shall have thirty (30) days following receipt of said proposal to make any objections thereto, and failure to make any objection within said thirty (30) day period shall be deemed consent by Tenant to the installation of antennas or transmission facilities pursuant to said proposal. Any dispute between the Parties regarding the proposed additional installation and its potential for interference with Tenant's transmission operation shall be resolved by submitting the issue for dispute resolution, pursuant to Section 22.f. of this Lease.

c. This Lease is made with the knowledge of both Parties that Cedarburg has additional tenants on the Tower. If tenants cannot reach a mutually satisfactory agreement regarding equipment or antenna placement, an independent third party will decide the matter, as spelled out between them in the lease between Cedarburg, and each tenant.

d. Tenant warrants that it shall maintain all of its Antenna Facilities in full compliance with all applicable regulations of the FCC and other governing bodies. Tenant will be responsible for resolving any intermodulation problems with other preexisting users of the Property, for equipment installed and operated by Tenant, provided that the pre-existing user(s) are also in compliance with FCC requirements.

8. Termination.

a. Except as otherwise provided herein, this Lease may be terminated by one Party upon thirty (30) days prior written notice to the other Party as follows:

1) By either Party, upon a default of any covenant or term hereof by the other Party, which default is not cured within thirty (30) days of receipt of written notice of default to the other Party, provided that such thirty (30) day period shall be extended as reasonably necessary in the event that the Party alleged to be in default is proceeding in good faith and with due diligence to cure such default but is unable to do so within thirty (30) days;

2) By Tenant, if it is unable to obtain or maintain any license, permit, or other governmental approval necessary for the construction and/or operation of the Antenna Facilities or Tenant's business;

3) By Tenant, if the Property is or becomes unacceptable (other than due to signal interference) under the Tenant's design or engineering specifications for its Antenna Facilities or the communication systems to which the Antenna Facilities belong;

4) By Tenant, if Tenant determines that the Premises are not appropriate for its operations due to signal interference (other than interference caused by antennae or transmission facilities operated by (y) Cedarburg's tenants or (z) any subsequent tenant on the Tower, if Tenant has failed to object under section 7(b) to the proposal to place additional antennae and/or transmission facilities on the Tower and such antennae and/or transmission facilities are and have been operated in accordance with the proposal submitted to Tenant for its review);

S) By Cedarburg, upon 180 days advance written notice, if it determines in its sole discretion that the Tower is structurally unsound for use as a cell tower monopole, including, but not limited to, consideration of age of the structure, damage or destruction of all or part of the Tower or the Property from any source, or factors related to condition of the Property.

b. If the Tower is destroyed, dismantled, or removed, and Cedarburg does not elect to reconstruct the tower, or, in the alternative, terminate this Lease pursuant to Section 8(a)(S), Tenant shall have the right to construct its own communications tower, at its cost, of design approved by Cedarburg, which approval shall not be unreasonably withheld, delayed, or conditioned, at a location as close as reasonably possible to the location of the Tower so as to give Tenant similar radio signal coverage as Tenant enjoyed from the Tower. If a replacement Tower is constructed by Cedarburg in the same site, Tenant shall have the right without need for public hearing or further permitting process to place Tenant's Antenna Facilities on top of the new replacement Tower at Tenant's cost and in a similar manner as Tenant's Antenna Facilities are installed on the existing Tower. Rent payable to the City shall abate from the time in which Tenant is unable to occupy the Tower and until Tenant is able to occupy the replacement Tower. If Tenant constructs its own communications tower, the Parties shall work in good faith to negotiate revised rent reflecting the fact that Tenant is no longer leasing space on Cedarburg's Tower. The Parties shall enter into an amendment to this Lease with respect to any relocation under this section. The amendment shall also require that new exhibits, once approved, replace those plans attached as exhibits to this Lease.

c. This Lease shall terminate within thirty (30) days if Tenant (i) applies for, consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator, or similar official

for itself or for all or a substantial part of its property, (ii) makes a general assignment for the benefit of its creditors, (iii) commences a voluntary case under the United States Bankruptcy Code, as now or hereafter in effect, seeking liquidation, reorganization, or other relief with respect to itself; or its debts, (iv) files a petition seeking to take advantage of any other law providing for relief of debtors, (v) takes any action under the laws of its jurisdiction of incorporation or organization similar to any of the foregoing, or (vi) takes any corporate action for the purpose of effecting any of the foregoing.

d. Upon termination of this Lease for any reason, Tenant shall remove all of its equipment, personal property, Antenna Facilities, structure and leasehold improvements from the Tower and the Property within sixty (60) days after the date of termination, all at Tenant's sole cost and expense. If Tenant does not remove all of its equipment, personal property, Antenna Facilities, structure and leasehold improvements up to two (2) feet below grade as specified herein and provided that Cedarburg has given Tenant and any third-party financing entity thirty (30) days prior written notice, Tenant shall pay Cedarburg the costs of removal in an amount not to exceed Fifteen Thousand (\$15,000.00) Dollars.

e. In the event of termination under this Section 8, Prepaid Rent will be refunded to Tenant only in the event this Lease is terminated by Tenant under Section 8(a)(1) as a result of a default by Cedarburg, or Section 8(a)(S). In any other termination, Tenant shall not receive refunded Rent, in whole or in part.

9. Insurance.

a. Tenant shall, and shall require its contractors, agents, and assigns to obtain and maintain substantially the same coverage required of Tenant, and must maintain Worker's Compensation insurance in compliance with the statutory requirement of the state(s) of operation and employer's liability; Said policy of general liability insurance will at a minimum provide a combined single limit of six million and no/100 Dollars (\$6,000,000.00) or three million and No/100 dollars (\$3,000,000.00) per occurrence. Cedarburg shall be an additional insured under Tenant's insurance policies. Tenant shall have the right to self-insure such general liability. Notwithstanding the foregoing requirements, Tenant agrees to review and adjust these insurance coverage requirements and limits in accordance with then-current market and industry standards once during the Initial Term or each renewal term and upon Cedarburg's request.

b. Tenant shall provide to Cedarburg upon Commencement Date, evidence of the required insurance in the form of a certificate of insurance issued by an insurance company licensed, authorized or permitted to do business in the State of Wisconsin, which includes all coverage required above. During the Term, such policies of insurance shall be provided to Cedarburg upon request, but no more than once annually.

10. Damage or Destruction of Property. If the Property, Tower, or Antenna Facilities are destroyed or damaged, not as a result of any act or omission of Tenant, so as, in Tenant's judgment, to render the Property unusable as an antenna facility, Tenant may elect to terminate this Lease upon thirty (30) days written notice to Cedarburg. In the event Tenant elects to terminate the Lease, Tenant shall be entitled to reimbursement of any prepaid Rent prorated to the date of termination. In the event that the Tower or Antenna Facilities are damaged or destroyed, Cedarburg agrees to permit Tenant to place temporary transmission and reception facilities on the Property, but only until such time as Tenant is able to activate a replacement transmission facility at another location, or this lease is terminated, pursuant to the terms herein; such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent.

If Cedarburg or Tenant undertakes to rebuild or restore the Premises and/or the Communication Facility, as applicable, Cedarburg agrees to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until the reconstruction of the Premises and/or Communication Facility is completed.

11. Condemnation. In the event the whole of the Property is taken by eminent domain, this Lease shall terminate as of the date title to or possession of the Property vests in the condemning authority, whichever occurs first. In the event a portion of the Property is taken by eminent domain, either Party shall have the right to terminate this Lease as of said date of title transfer, by giving thirty (30) days written notice to the other Party. In the event of any taking under the power of eminent domain, Tenant shall not be entitled to any portion of the award paid for the taking and Cedarburg shall receive the full amount of such award, and Tenant hereby expressly waives any right or claim to any portion thereof. Although all damages, whether awarded as compensation for diminution in value of the leasehold or the fee of the property, shall belong to Cedarburg, Tenant shall have the right to claim and recover from the condemning authority, but not from Cedarburg, such compensation as may be separately awarded or recoverable by Tenant on account of any and all damage to Tenant's business by reason of the taking and for or on account of any cost or loss to which Tenant might be put in removing and relocating its equipment, personal property, Antenna Facilities and leasehold improvements. Cedarburg will refund all prepaid Rents on the date title to the Property vests in the condemning authority or on the date of termination in the event a portion of the Property is taken by the condemning authority and this Lease is terminated. If as a result of a partial condemnation of the Premises or Tower, Tenant, in Tenant's sole discretion, is unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt Tenant's operations at the Premises for more than 45 days, Tenant may, at Tenant's option, to be exercised in writing within 15 days after Cedarburg shall have given Tenant written notice of such taking (or in the absence of such notice, within 15 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. Any such notice of termination shall cause this Lease 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 Lease and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Lease. If Tenant does not terminate this Agreement in accordance with the foregoing, this Agreement shall remain in full force and effect as to the portion of the Premises remaining, except that the Rent shall be reduced in the same proportion as the rentable area of the Premises taken bears to the total rentable area of the Premises. In the event that this Agreement is not terminated by reason of such condemnation, Cedarburg shall promptly repair any damage to the Premises caused by such condemning authority.

12. Environmental Definitions for Purposes of this Lease.

a. "Applicable Environmental Laws" includes the Comprehensive Environmental Response, Compensation, and Liability Act, any so called, "Superfund" or "Superlien" law, or any other Federal, state or local statute, law, ordinance, code rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

b. "Hazardous Material" includes any hazardous, toxic or dangerous waste, substance or material as that term is defined in Applicable Environmental Laws.

13. Indemnification.

a. Tenant hereby agrees to indemnify, defend and hold Cedarburg harmless from and against any claim of liability or loss brought by a third party from personal injury or property damage in connection with the Property or resulting from or arising out of the use and occupancy of the Property by Tenant or its agents. Tenant further agrees to hold and save Cedarburg harmless and indemnify it against and from all claims, liabilities, damages or reasonable expenses (including reasonable attorneys' fees) of any kind, arising from or out of Cedarburg's review and approval of the plans and specifications for Tenant's Antenna Facilities and improvements and any replacement thereof. Neither Party shall have any obligations under this paragraph unless notified by writing of any such claim or loss within ninety (90) business days of receipt by the other Party of notice of such claim or loss.

b. Tenant indemnifies Cedarburg and agrees to hold Cedarburg harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses (including reasonable consultants' and reasonable attorneys' fees) and claims of any and every kind including the expenses and costs associated with an environmental inquiry, demand letter, reply, response of any kind or nature (whether required by law or otherwise), clean up, lawsuit, injunction, or any similar response whatsoever paid, incurred or suffered by or asserted against Cedarburg for, with respect to, or as a direct result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Property or into or upon any land, the atmosphere, or any water course, body of water or wetland, of any Hazardous Material (including without limitation any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under Applicable Environmental Laws) caused by or in the control of Tenant.

c. Tenant shall be solely responsible for and will defend, indemnify, and hold Cedarburg, its employees, agents, contractors and assigns, harmless from and against any and all claims, costs, and liabilities of any kind, including reasonable attorneys' fees and costs, arising out of or in connection to the clean up or restoration of the Property associated with the Tenant's use of Hazardous Material.

14. Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further 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 (or any other address that the Party to be notified may have designated to the sender by like notice):

IFTOCEDARBURG: City of Cedarburg
 c/o City Clerk
 W63 N645 Washington Avenue, PO Box 49
 Cedarburg, WI53012

IFTOTENANT: New Cingular Wireless PCS, LLC
 Attn: Network Real Estate Administration
 Re: Cell Site #:WI0079; Cell Site Name: City of Cedarburg
 (WI)
 Fixed Asset #:10011935
 1025 Lenox Park Blvd NE, 3rd Floor Atlanta, GA 30319

With a copy to:
New Cingular Wireless PCS, LLC
Attn: Legal Dept - Network Operations

Re: Cell Site #:WI0079; Cell Site Name: City of Cedarburg
(WI)
Fixed Asset #:10011935
208 S. Akard Street
Dallas, TX 75202-4206

15. Representations and Warranties:

a. Cedarburg warrants that (1) it has full right, power, and authority to execute this Lease; (2) to the best of its knowledge, it has good and unencumbered title to the Property, free and clear of any liens or mortgages, except as may be disclosed by review of title; and (3) that Tenant shall have the quiet enjoyment of the Property during the Term in accordance with its terms.

b. Tenant, its employees, agents or contractors, shall not introduce any Hazardous Material to or upon the Property, in violation of any applicable federal, state or local law or regulation.

c. Cedarburg warrants that it has no knowledge of any substance, chemical, or waste (collectively "Substance") on the Property, and Cedarburg will not generate, store or dispose of any material, that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Cedarburg indemnifies Tenant, its officers, agent, and employees, and agrees to hold Tenant, its officers, agents, and employees, harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses (including reasonable consultants' and attorneys' fees) and claims of any and every kind including the expenses and costs associated with an environmental inquiry, demand letter, reply, response of any kind or nature (whether required by law or otherwise), clean up, lawsuit, injunction, or any similar response whatsoever paid, incurred, or suffered by or asserted against Tenant for, with respect to, or as a direct or indirect result of, the presence on or under, or escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Property or into or upon any land, the atmosphere, or any watercourse, body of water or wetland, of any Hazardous Material (including without limitation any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under Applicable Environmental Laws) caused by or in the control of Cedarburg.

d. Tenant, at its own cost, has the right to obtain a title commitment for a leasehold title policy from a title insurance company of its choice and any environmental evaluation it deems necessary. If, in the opinion of Tenant, such environmental reports are unsatisfactory or such title commitment shows any defects of title or any liens or encumbrances which may adversely affect Tenant's use of the Property, Tenant shall have the right to cancel this Lease immediately upon written notice to Cedarburg and all prepaid Rents shall be refunded to Tenant.

16. Assignment. Tenant may not assign, sublet or otherwise transfer all or any part of its interest in or under this Lease without the prior written consent of Cedarburg; provided, however, that Tenant may assign its interest, without obtaining Cedarburg's consent to its parent company, to any subsidiary or affiliate of Tenant or its parent company, or to any successor-in-interest or entity acquiring fifty-one (51%) percent or more of its stock or assets, subject to any financing entity's interest, if any, in this Lease as set forth in Section 17, below. Notwithstanding anything to the contrary contained in this Lease, Tenant may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Lease to any financing entity, or agent on behalf of any financing entity to whom Tenant (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii)

has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

17. Waiver of Cedarburg's Lien.

a. Cedarburg waives any lien rights it may have concerning the Antenna Facilities, which are deemed Tenant's personal property and not fixtures, and Tenant has the right to remove the same at any time without Cedarburg's consent, provided, that within ninety (90) days after such removal, Tenant shall restore the Tower and the Property to the condition it was in on the Commencement Date, ordinary wear and tear excepted, all at Tenant's sole cost and expense.

b. Cedarburg acknowledges that Tenant has or may enter into a financing arrangement including promissory notes and financial and security agreements for the financing of the Antenna Facilities (the "Collateral") with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, Cedarburg (i) consents to the installation of the Collateral in accordance with the terms of this Lease; (ii) disclaims any interest in the Antenna Facilities, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

18. Limitation on City Liability. If Cedarburg terminates this Lease other than by right, as allowed herein, or Cedarburg causes interruption of the business of Tenant, for any reason, in violation of the terms of this Lease, or for any other City breach of this Lease, Cedarburg's liability for damages to Tenant shall be limited to the actual and direct costs of the replacement of this site in the Tenant's network, including, without limitation, equipment removal, relocation or repair, and all costs associated with the identification of a new site for Tenant's replacement Antenna Facilities, the negotiation of its purchase or lease, applying for any necessary governmental approvals, and the cost of constructing a new antenna support structure, including without limitation, surveys, designs, foundation, steel, and erection of the structure and supporting facilities, but not including Tenant's own communications equipment, and specifically excluding any recovery for value of the business of Tenant as a going concern, past, present or future profits, and related damages. Nothing contained in this Lease is intended to be a waiver or estoppel of Cedarburg or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including, but not limited to, those contained within Wisconsin Statutes sections 893.80, 895.52, and 345.05. To the extent that indemnification is available and enforceable, neither Cedarburg nor its insurer shall be liable in indemnification or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin Law. Subject to the forgoing, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, or loss of data even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

19. Successors and Assigns. This Lease shall run with the Property described in **Exhibit A**, attached hereto and incorporated herein by reference. This Lease shall be binding upon and inure to the benefit of the Parties, their respective successors, personal representatives, and assigns.

20. Applicable Laws. During the Term, Cedarburg shall maintain the Property and all structural elements of the Premises in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws

regulating hazardous substances) (collectively "Laws"). Tenant shall, in respect to the condition of the Premises and at Tenant's sole cost and expense, comply with: (a) all Laws relating solely to Tenant's specific and unique nature of use of the Premises; and (b) all building codes requiring modifications to the Premises due to the improvements being made by Tenant at the Premises.

21. Tower Compliance. Cedarburg covenants that it will keep the Tower in good repair as required by all Laws (as defined in Paragraph 20). Cedarburg shall also comply with all rules and regulations enforced by the FCC with regard to the lighting, marking and painting of towers. If Cedarburg fails to make such repairs including maintenance, Tenant may make the repairs and the costs thereof shall be payable to Tenant by Cedarburg on demand. If Cedarburg does not make payment to Tenant within ten (10) days after such demand, Tenant shall have the right to deduct the costs of the repairs from the succeeding monthly Rent amounts normally due from Tenant to Cedarburg.

22. Miscellaneous.

a. Each Party agrees to furnish to the other, within thirty (30) days after request, such truthful estoppel information as the other may reasonably request.

b. This Lease constitutes the entire agreement and understanding of the Parties, and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both Parties.

c. This Lease shall be construed in accordance with the laws of the State of Wisconsin.

d. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

e. A Memorandum of this Lease shall be prepared by Tenant and recorded in the Office of the Ozaukee County Register of Deeds within a reasonable time after full execution of this Lease and Tenant shall pay all recording costs therefor. The Memorandum of Lease shall be substantially in the form attached hereto as **Exhibit F**.

f. Disputes. If any disputes arise between the Parties, including, but not limited to disputes arising under Section 7(b), herein, the Parties to this Lease shall promptly attempt in good faith to settle the same by negotiations. All disputes not settled by negotiations shall, subject to the right to seek an injunction or other declaratory relief, be submitted to a binding arbitration. All disputes shall be decided by a single arbitrator found mutually agreeable to each Party to this Lease. In the event the Parties are unable to agree, then either Party may petition the Circuit Court for Ozaukee County for the appointment of an arbitrator. The award or decision rendered by the arbitrator shall be final and judgment may be entered upon it in accordance with the law in the State of Wisconsin. Each Party will pay and bear the cost of its own legal expenses. Other administrative expenses regarding the dispute, including but not limited to the arbitrator's fee, will be divided equally between the Parties. This section shall be enforced to the fullest extent allowed by law and requires the resolution of the disputes arising from this Lease in some way other than formal judicial proceedings.

[The remainder of this page left blank intentionally]

THE UNDERSIGNED HEREBY AGREE(S) TO LEASE THE ABOVE-MENTIONED PREMISES ON THE TERMS AND CONDITIONS AS SET FORTH HEREIN.

Dated this ____ day of _____, 20__.

CITY OF CEDARBURG

By: _____ by: _____
Michael O'Keefe, Mayor Claire Woodall-Vogg, Clerk

STATE OF WISCONSIN) ss.
COUNTY OF OZAUKEE)

Personally came before me this ____ day of _____, 20__, the above-named Michael O'Keefe, to me known to be the Mayor of the City of Cedarburg, who executed the foregoing instrument and acknowledged the same.

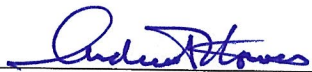
Notary Public, Wisconsin.
My commission _____

STATE OF WISCONSIN) ss.
COUNTY OF OZAUKEE)

Personally came before me this ____ day of _____, 20__, the above-named Claire Woodall-Vogg, to me known to be the Clerk of the City of Cedarburg, who executed the foregoing instrument and acknowledged the same.

Notary Public, Wisconsin.
My commission _____

NEW CINGULAR WIRELESS PCS, LLC
A Delaware Limited Liability Company
By: AT&T Mobility Corporation, Manager

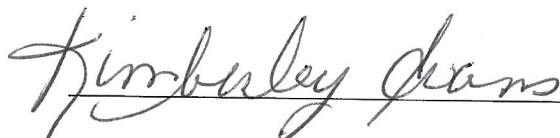
By: 
Name: Andrew T. Flowers
Title: Sr Real Estate & Construction Manager

STATE OF ILLINOIS

) ss.

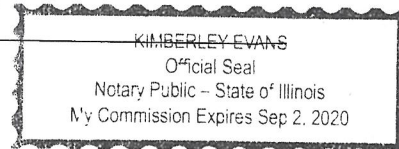
COUNTY OF COOK)

Personally came before me this 5 day of November, 2019, the above-named
Andrew T. Flowers, to me know to be the person who executed the foregoing instrument and
acknowledged the same.



Notary Public, Illinois.

My commission _____



BILL OF SALE

This Bill of Sale (the "Bill of Sale") is delivered pursuant to the Lease Agreement (the "Lease") dated as of _____, 2019, by and among New Cingular Wireless PCS, LLC, a Delaware Limited Liability Company, as the "Tenant," and the City of Cedarburg, a Wisconsin Municipal Corporation, "Cedarburg".

Pursuant to the Lease, the Tenant has agreed to lease monopole tower space and ground space from Cedarburg, which necessitates Tenant abandoning its current building ("Building"). Such abandonment would require Tenant to raze and remove the building at its expense. Pursuant to the terms of the Lease, Tenant and Cedarburg have agreed that the building does not need to be removed, but, instead, Tenant shall alter the building, as described in the lease, and transfer it by Bill of Sale to Cedarburg. The Tenant and Cedarburg now seek to consummate the terms of the Lease, as described herein.

NOW, THEREFORE, intending to be legally bound and in consideration of the mutual provisions set forth in this Bill of Sale and in the Lease Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Sale and Transfer of Purchased Assets. The Tenant hereby sells, assigns, conveys, transfers and delivers to Cedarburg all of its right, title and interest in the Building.

Section 2 Power of Attorney. The Tenant hereby constitutes and appoints Cedarburg as the Tenant's true and lawful agent and attorney-in-fact, with full power of substitution and re-substitution, in whole or in part, in the name and stead of Tenant but on behalf and for the benefit of the Cedarburg and its successors and assigns, to demand, receive and collect any of the right, title or interest in and to the Building and to give receipts and releases for and in respect of the same, and from time to time to institute and prosecute in Cedarburg's name, or otherwise for the benefit of the Cedarburg and its successors and assigns, any and all proceedings at law, in equity or otherwise, which Cedarburg or its successors or assigns may deem proper for the collection or recovery of any of the rights, title or interest in the Building or for the collection and enforcement of any claim or right of any kind hereby sold, assigned, conveyed and transferred, or intended so to be, and to take any other actions and make, sign, execute, acknowledge and deliver any documents and instruments as may from time to time be necessary or appropriate to assign to Cedarburg and its successors and assigns the Building and all rights granted to Cedarburg under the Lease Agreement. The Tenant declares that the foregoing powers are and will be irrevocable by the Tenant or by its dissolution or in any manner or for

any reason whatsoever. Nothing in this Section 2 will be deemed a waiver of any remedies otherwise available.

Section 3 General. This Bill of Sale (a) is irrevocable and effective upon the Tenant's signature to and delivery of a manually signed copy of this Bill of Sale or facsimile or email transmission of the signature to this Bill of Sale in connection with the Lease, if and only if the Lease is completed, (b) benefits and binds the parties to the Lease Agreement and their respective successors and assigns, (c) does not modify or affect, and is subject to, the provisions of the Lease Agreement and (d) may be signed in counterparts. In the event of any conflict or inconsistency between the provisions of the Lease Agreement and the provisions of this Bill of Sale, the provisions of the Lease Agreement will control.

[Signature page follows.]


The undersigned has signed this Bill of Sale on November 5 2019.

NEW CINGULAR WIRELESS PCS, LLC
A Delaware Limited Liability Company
By: AT&T Mobility Corporation, Manager

by: 
Name: Sr Real Estate & Construction Manager
Title: Andrew T. Flowers

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

Personally came before me this 5 day of November 2019, the above-named
Andrew T. Flowers Sr Real Estate & Construction Manager, to me know to be the person who executed the foregoing instrument and
acknowledged the same.


Notary Public, Illinois.
My commission _____

