

**RESOLUTION NO. 23-56**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES,  
COLORADO, APPROVING A COMMUNICATIONS SITE LEASE AGREEMENT  
WITH NEW CINGULAR WIRELESS PCS, LLC**

**WHEREAS**, the City of Castle Pines (“City”) is authorized to enter into contracts for lawful purposes for the protection of the health, safety, and welfare of its citizens; and

**WHEREAS**, Article I, Section 1.3 of the City of Castle Pines Home Rule Charter authorizes the City to purchase, lease, sell, and dispose of real and personal property; and

**WHEREAS**, the City is the owner of land and facilities described as Tract S, Canyons Filing No. 3, 1<sup>st</sup> Amendment, in the City of Castle Pines, Douglas County, State of Colorado, 80108 (the “Property”); and

**WHEREAS**, the City desires to permit use of the Property by New Cingular Wireless PCS, LLC, a Delaware limited liability company (“AT&T”) to enable AT&T to erect, operate, and maintain a camouflaged stealth tower and related communication equipment in connection with AT&T’s wireless communications business; and

**WHEREAS**, the City wishes to lease to AT&T a portion of the Property consisting of a ground space area of approximately 3,600 square feet, together with a route to bring utilities to the site and a non-exclusive easement for ingress and egress; and

**WHEREAS**, the City and AT&T mutually agree on the terms and conditions set forth in the Communications Site Lease Agreement (“Agreement”) in substantially the same form as attached to this Resolution as **Exhibit 1**; and

**WHEREAS**, the City Council finds that it is in the best interest of the residents and the Castle Pines community to enter into a communications site lease agreement with AT&T for AT&T’s payment of rent to support the City’s needs.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF CASTLE PINES, COLORADO, THAT:**

**Section 1.** The City Council hereby: (a) approves the Communications Site Lease Agreement between the City of Castle Pines, Colorado and AT&T in substantially the same form as attached hereto as **Exhibit 1**; (b) authorizes the City Attorney, in consultation with the City Manager, to make such changes that do not increase the obligations of the City; and (c) authorizes the Mayor to execute the Agreement and any associated documents, site improvement plans or agreements related to AT&T’s occupancy of the Property and operation and maintenance of the

camouflaged stealth tower.

**Section 2.** **Effective Date.** This Resolution shall take effect upon its approval by the City Council.

**INTRODUCED, READ, AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES BY A VOTE OF 7 IN FAVOR AND 0 AGAINST THIS 12<sup>th</sup> DAY OF DECEMBER, 2023.**



**ATTEST:**

*Tobi Duffey*

\_\_\_\_\_  
Tobi Duffey, MMC, City Clerk

*Tracy Engerman*  
Tracy Engerman (Dec 27, 2023 22:02 MST)

\_\_\_\_\_  
Tracy Engerman, Mayor

**APPROVED AS TO FORM:**

*Linda C. Michow*

\_\_\_\_\_  
Linda C. Michow, City Attorney

**EXHIBIT 1**

*[see attached agreement]*

## COMMUNICATIONS SITE LEASE AGREEMENT

THIS COMMUNICATIONS SITE LEASE AGREEMENT (“Agreement”), dated as of the latter of the signature dates below (the “Effective Date”), is entered into by the City of Castle Pines, Colorado (“Landlord”), a Colorado home rule municipal corporation, with a mailing address of 7437 Village Square Drive, Suite 200, Castle Pines, CO 80108, and New Cingular Wireless PCS, LLC, a Delaware limited liability company (“Tenant”), with a mailing address of 1025 Lenox Park Blvd NE, 3<sup>rd</sup> Floor, Atlanta, GA 30319.

### BACKGROUND

Landlord is the owner of land and facilities described as Tract S, Canyons Filing No. 3, 1<sup>st</sup> Amendment, in the City of Castle Pines, Douglas County, State of Colorado 80108, 6000 Canyonside Blvd, Castle Pines, CO 80108 (the “Property”), as legally described on **Exhibit A**. Tenant is a wireless communications provider, and permitted, licensed or otherwise authorized by the applicable federal or state governmental authority to operate in some areas of the City of Castle Pines. Landlord desires to permit use by Tenant and the Tenant desires to use a portion of the Property as described below to enable Tenant to erect, operate and maintain a camouflaged/stealth tower and related communication equipment of Tenant in connection with its wireless communications business.

#### 1. RIGHT TO LEASE.

Landlord hereby leases to Tenant a portion of the Property consisting of ground space area of approximately 3,600 square feet (“Leased Premises”) together with a route to bring utilities (the “Utility Route”) to the site; and a non-exclusive easement for ingress and egress. The Leased Premises, the Utility Route, the access easement, and the specific Tenant facilities and equipment located on the Leased Premises are described and depicted on **Exhibit B**.

#### 2. PERMITTED USE.

(a) The Leased Premises may be used for the transmission and reception of communications signals and the installation, construction, maintenance and operation of tower and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, equipment shelters or cabinets and any other items necessary to the successful and secure use of the Leased Premises (collectively, the “Tower Facilities”). Tenant shall install and maintain in good and living condition a mix of evergreen trees and shrubs (“Landscaping”) to provide screening of the equipment shelters and cabinets on the north and west side as depicted on **Exhibit B**, and shall provide temporary irrigation for a minimum period of two years, or until Landscaping is established as determined by the City, whichever occurs first. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the main entry point to the equipment shelter or cabinet in the locations depicted on **Exhibit B**. Tenant agrees that the Tower Facilities shall be designed to look like a farm silo and that the Tower Facilities’ design is subject to Landlord approval. Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Tower

Facilities on the Property. Tenant shall be responsible for the cost of any repairs for any damage caused to any part of the Property during installation, use, maintenance and removal of Tenant's Tower Facilities. If **Exhibit B** includes drawings of the initial installation of the Tower Facilities, Landlord's execution of this Agreement will signify Landlord's approval of **Exhibit B**, but does not signify approval of Tenant's site improvement plan, which is subject to Landlord's approval pursuant to Landlord's Zoning Ordinance, as amended.

(b) Prior to any alteration or modification to the Tower Facilities (excluding routine maintenance, repairs, the like-kind replacement of the Tower Facilities, or any modifications to the equipment located inside of the equipment shelter, cabinets, tower silo or items housed therein), Tenant shall submit copies of the site plan, floor plans, sections, elevations, structural plans, and specifications to Landlord for prior approval. Landlord shall give such written approval or provide Tenant with its requirements for changes upon completion of the development application review process.

(c) Smoking; Solicitations. The Leased Premises are a smoke-free environment. Tenant shall not permit any smoking, canvassing, soliciting or peddling on the Leased Premises.

(d) Compliance with Zoning Ordinance, as amended. Tenant's use of the Property is expressly contingent upon Tenant's compliance with and maintaining compliance with all applicable regulations for its Tower Facilities under Section 27A of the Landlord's Zoning Ordinance as amended ("Zoning Ordinance") during the Term of this Agreement and compliance with applicable terms of The Canyons Planned Development, as amended ("Canyons PD"). Tenant's failure to comply with the Zoning Ordinance or correct noncompliance in accordance with the enforcement provisions of the Zoning Ordinance may be considered a breach of this Agreement. Notwithstanding the foregoing, this paragraph and any requirement to comply with the Zoning Ordinance set forth elsewhere in this Agreement shall not be applicable to the extent that the terms of The Canyons PD supersede the requirements of the Zoning Ordinance.

(e) Tenant may add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services at a location mutually acceptable to both Landlord and Tenant, and subject to Landlord Zoning Ordinance requirements then in effect.

### 3. **TERM.**

(a) The "Initial Term" of this Agreement shall be five (5) years commencing upon the Effective Date ("Term Commencement Date"). The Initial Term will terminate on the fifth (5<sup>th</sup>) annual anniversary of the Term Commencement Date.

(b) This Agreement will automatically renew for five (5) additional five (5) year terms (the "Extension Term"), upon the same terms and conditions unless the Tenant notifies Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the then existing Initial Term or any subsequent Extension Term.

(c) The Initial Term and any Extension Terms are collectively referred to as the “Term”.

#### 4. RENT.

(a) Commencing on the later of the Effective Date or the first day of the month following the date the City issues Tenant a building permit for initial construction of the Tower Facilities (“Rent Commencement Date”), Tenant shall pay to Landlord an annual rental in the amount of Thirty-Six Thousand and No/100 Dollars (\$36,000.00) (“Rent”), at the Landlord’s address set forth herein below. The first annual Rent payment shall be prorated to the end of the current calendar year, and shall be paid by Tenant to Landlord within forty-five (45) days after the Rent Commencement Date. Thereafter, the annual Rent payments are due on or before the first (1<sup>st</sup>) day of January in each subsequent year during the Term. Rent shall be made payable to Landlord and mailed to City of Castle Pines, Finance Department; Attention: Finance Director, 7437 Village Square Drive, Suite 200, Castle Pines, CO 80108. Alternative payment arrangements, including electronic fund transfer, may be agreed upon by Landlord and Tenant, as documented in writing between the Parties.

(b) The Rent shall increase by three percent (3%) on January 1, 2025, and on each January 1<sup>st</sup> thereafter during the Term.

(c) In the event Tenant sublets or licenses space on or in the Tower Facilities to a third party collocator (“Collocator”), Tenant shall remit thirty percent (30%) of the annual rent or license fees collected by Tenant from such Collocator (the “Collocator Rent”) to Landlord (the “Landlord’s Revenue Share”). The Collocator Rent shall be negotiated by and between Tenant and the Collocator, on terms acceptable to Tenant, in Tenant’s sole discretion. Upon Landlord’s written request, Tenant shall certify to Landlord the amount of the Collocator Rent. In calculating the amount of Landlord’s Revenue Share, the Collocator Rent shall not include (i) any payment received by Tenant under the applicable sublease or license for reimbursement of operating expenses or construction costs relating to the Tower Facilities paid by Tenant, or (ii) any other payment other than regular recurring rent or license fees. In the event Tenant sublets to more than one Collocator, Tenant shall be obligated to pay the Landlord’s Revenue Share for each Collocator. Tenant’s obligation to pay Landlord’s Revenue Share to Landlord shall expire or abate, as applicable, at such time as the Collocator does not pay Collocator Rent to Tenant, and shall resume, as applicable, if and when the Collocator resumes paying such recurring Collocator Rent and the Landlord’s Revenue Share shall be prorated for partial periods.

(d) New Cingular Wireless PCS, LLC, including its Affiliates (as defined in Section 16(a) below), is considered the anchor tenant (“**Anchor Tenant**”) on the Tower Facilities. As such, notwithstanding any possible assignment or conveyance of this Agreement or interest in the Leased Premises or Tower Facilities by the Anchor Tenant to a third party, and the sublet or license back of all or any space on or in the Tower Facilities or Leased Premises by the Anchor Tenant from such assignee, in no event will the Anchor Tenant ever be considered or interpreted to be a Collocator under Section 4(c) for purposes of payment of the Collocator Rent or Landlord’s Revenue Share.

(e) If any Rent, Landlord's Revenue Share or any other payment required by this Agreement is not received by Landlord within fifteen (15) days after Tenant's receipt of written notice that such amount is past due, then Tenant shall pay to Landlord a late charge equal to five percent (5%) of such overdue amount, plus interest at the rate of twelve percent (12%) per annum on all delinquent amounts from the date on which it was due until the date on which it is paid in full with accrued interest.

(f) As additional consideration for this Agreement, Tenant agrees to place one (1) "City of Castle Pines" identification sign, including logo, on the Tenant's silo during initial construction of the Tower Facilities. The general design of the Landlord's sign is described and depicted on **Exhibit C** subject to plans submitted by Landlord to Tenant prior to installation and reasonably approved by Tenant. The Tenant shall be responsible for reasonable maintenance, repair, removal, and replacement (if necessary due to damage that is not easily repaired, provided the replacement is with like for like only) of the Landlord's sign during the Term of this Agreement, but not for any upgrades or replacement with a different sign.

## **5. APPROVALS.**

(a) Landlord agrees that Tenant's ability to use the Leased Premises is contingent upon the suitability of the Leased Premises for Tenant's permitted use and Tenant's ability to obtain and maintain all governmental licenses, permits, approvals, or other permission required of or deemed necessary or appropriate at Tenant's sole discretion for its use of the Leased Premises, including without limitation applications for zoning approval and approvals, amendments, special use permits, and construction permits (collectively, the "Government Approvals"). Landlord authorizes Tenant to prepare, execute and file any required applications to obtain Government Approvals for Tenant's permitted use under this Agreement and further agrees to cooperate with Tenant, at no cost to Landlord, in making such applications for and with obtaining and maintaining the Government Approvals required for the provision of communication services.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice, and to have the Property surveyed by a surveyor of Tenant's choice, and Tenant shall be responsible for any costs or fees incurred in connection therewith. Tenant may also perform and obtain, at Tenant's sole cost and expense including remediation of damage to the Leased Premises arising from Tenant's Testing, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property ("Testing"), necessary to determine if Tenant's use of the Leased Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals. In the event Tenant determines, in its reasonable discretion, due to the title report results, survey results, or other due diligence reports provided for in this Section that the condition of the Leased Premises will not permit the use granted under this Agreement, Tenant will have the right to terminate this Agreement upon thirty (30) days' advance written notice to Landlord.

6. **TERMINATION.** This Agreement may be terminated as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15, Default and Right to Cure, of this Agreement after the applicable cure periods;

(b) by Tenant upon six (6) months prior written notice to Landlord, if Tenant is unable to obtain, or maintain, any required Government Approval(s) necessary for the construction or operation of the Tower Facilities as now and hereafter intended by Tenant or if Tenant determines in its reasonable discretion that the cost of obtaining or retaining the same is commercially unreasonable; or

(c) by Tenant upon sixty (60) days prior written notice to Landlord for any reason, so long as Tenant pays Landlord a termination fee equal to twelve (12) 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 Tenant under any one or more of Sections 5(b) Approvals, 6(a) Termination, 6(b) Termination, 11(c) Hazardous Substances, 18 Condemnation, 19 Casualty, or 25(i) Severability of this Agreement.

(d) by Landlord upon thirty (30) days prior written notice to Tenant if Tenant does not keep a Bond or Letter of Credit in effect as required by Section 24.

(e) by Landlord upon thirty (30) days prior written notice to Tenant if Tenant has not commenced construction of the Tower Facilities, as evidenced by Landlord's issuance of a building permit, within twelve (12) months from the Effective Date of this Agreement.

(f) by Landlord if any government body, other than Landlord, passes an ordinance, law or regulation that would interfere or render impossible performance of this Agreement. If permissible, Landlord shall provide Tenant with ninety (90) days' notice to surrender the Leased Premises and all interests to the Landlord. Tenant shall have no claim against the Landlord for any loss or damage.

(g) This Agreement shall terminate automatically if events occur, and notice is provided as described in Sections 18 and 19 of this Agreement.

(h) Force Majeure. Neither party shall be liable for its inability to perform its obligations under this Agreement if caused by conditions beyond its reasonable control including but not limited to acts of terrorism, environmental conditions, pandemics, epidemics, social unrest, labor strikes, protests, perils and hazards, and acts of God. In the event either party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its control, that party shall have a reasonable time, under the circumstances, to perform the affected obligation under this Agreement or to procure a substitute for such obligation which is satisfactory to the other party. If either party believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Agreement, that party shall provide documentation as reasonably required by the other party to substantiate the claim. If the party has not yet cured the deficiency, it shall also provide the other party with its proposed plan for remediation, including



the timing for such cure.

## 7. INSURANCE.

(a) During the Term of this Agreement, Tenant shall maintain, or cause to be maintained, in effect and at its sole cost and expense, the following types and limits of insurance:

(i) Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with of One Hundred Thousand Dollars (\$100,000.00) for each accident, per disease policy limit, per disease per employee.

(ii) Commercial general liability insurance per ISO form CG 00 01 or its equivalent with combined single limits of TWO MILLION DOLLARS (\$2,000,000.00) each occurrence and FOUR MILLION DOLLARS (\$4,000,000.00) aggregate of bodily injury, personal injury and property damage. The policy shall provide contractual liability insurance for all written contracts, and shall include coverage for products and completed operations liability, independent contractor's liability, and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage. The policy shall contain a separation of insureds provision.

(iii) Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Tenant, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of state law with limits of Two Million Dollars (\$2,000,000.00) as the combined single limit for each accident for bodily injury and property damage.

(iv) At the start of and during the period of any construction, builders all-risk insurance, together with soft costs coverage and an installation floater or equivalent property coverage covering cables, materials, machinery and supplies of any nature whatsoever which are to be used in or incidental to the installation of the Tower Facilities. Upon completion of the installation of the Tower Facilities, Tenant shall substitute for the foregoing insurance policies of fire, extended coverage and vandalism and malicious mischief insurance on the Tower Facilities. The amount of insurance at all times shall be representative of the insurable values installed or constructed. Tenant self-insures this risk.

(b) All policies other than those for Worker's Compensation shall be written on an occurrence and not on a claims made basis.

(c) The coverage amounts set forth above may be met by a combination of underlying and follow-form umbrella/excess policies so long as in combination the limits equal or exceed those stated.

(d) All policies, except for worker's compensation policies, shall include Landlord and its officers, boards, commissions, employees, agents and contractors as additional insureds (herein referred to as the "Additional Insureds") by endorsement as respects Agreement.

(e) Certificates of insurance for each insurance policy required to be carried by Tenant in compliance with this paragraph, along with written evidence of payment of required premiums shall be filed and maintained with Landlord annually during the term of the Agreement. Tenant shall immediately advise Landlord of any claim or litigation that may result in liability to Landlord.

(f) Cancellation of Policies of Insurance. Tenant will provide at least thirty (30) days advance written notice to the Landlord, of cancellation or non-renewal of any required coverage that is not replaced.

(g) Insurance Companies. All insurance shall be effected under valid and enforceable policies, insured by insurers eligible to do business by the State of Colorado or surplus line carriers on the State of Colorado Insurance Commissioner's approved list of companies qualified to do business in the State of Colorado. All insurance carriers and surplus line carriers shall be rated A- or better by A.M. Best Company.

(h) Deductibles. Tenant or Tenant's parent company shall be responsible for payment of all deductibles, self-insured retentions or related costs. Tenant agrees to indemnify and hold harmless Landlord, the Indemnitees (defined below), and Additional Insureds from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Agreement.

(i) Contractors. Tenant shall require that every one of its contractors and their subcontractors who perform work on the Leased Premises carry, in effect, workers' compensation commercial general liability and automobile liability insurance coverages of the type which Tenant is required to carry under the terms of this paragraph with appropriate limits of insurance.

(j) Review of Limits. Once during each Renewal Term during the term of this Agreement, Landlord may review the insurance coverages to be carried by Tenant. If Landlord reasonably determines that higher limits of coverage are necessary to protect the interests of Landlord or the Additional Insureds and to the extent that it is required of similar operations of Landlord, Tenant shall be so notified with at least sixty (60) days advanced written notice and shall evidence the additional limits of insurance, at its sole cost and expense.

## **8. INTERFERENCE.**

(a) Tenant agrees that it will cooperate with Landlord and with any other radio frequency user(s) Landlord permits to be on the Property, by sharing the requisite information to determine what potential interference issues may exist and to take all reasonable steps necessary to avoid such interference.

(b) Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party for use of the Property, if such use may in any way adversely affect or interfere with the Tower Facilities, the operations of Tenant or the rights of Tenant under this Agreement.

(c) The Tenant's Tower Facilities shall be of the type and frequency which will not cause measurable interference, as defined by the Federal Communications Commission ("FCC"), to any currently leased and operating communications equipment of Landlord, other existing entities on the Property, or adjacent landowners. In the event Tenant's Tower Facilities causes such interference, Tenant shall take all reasonable steps necessary to correct and eliminate the interference.

(d) Prior to commencing operations of its Tower Facilities, Tenant shall provide written assurance, in a format reasonable and customarily accepted by the federal government, ensuring that Tenant's Tower Facilities comply with all federal requirements for RF emissions and that Tenant's Tower Facilities will not cause measurable interference with the equipment located on the Property and/or adjacent property. Within thirty (30) days of commencing operations at the Property, Tenant shall, at its expense, provide Landlord with a report from a qualified radio frequency engineer, certifying that the Tower Facilities are operating within the federal and any other applicable standards for maximum permitted exposure to RF emissions. Upon written request of Landlord, but no more frequently than twice in any given Term, additional tests shall be undertaken to verify compliance, and reports regarding such compliance shall be provided to the Landlord.

(e) Tenant understands that no use of the Leased Premises and/or Property will be permitted which exceeds federal RF emissions standards, or state and local standards, if any, within and at the boundaries of the Leased Premises and/or Property. If the cumulative RF emissions levels ever exceed federal or other applicable standards, all users of the Leased Premises and/or Property that are not public sector entities, including Tenant, will be required to modify operations on a reasonably comparable level, in order to bring the overall RF emissions into compliance.

(f) Landlord will not, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Tower Facilities, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will take commercially reasonable steps to cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period, Landlord shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected.

(g) Notwithstanding any other provision to the contrary, Tenant's activities shall not interfere with Landlord's normal business operations at the Property or endanger the health or safety of Landlord's employees and/or pre-existing tenants, lessees or licensees.

(h) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Tower Facilities.

**9. INDEMNIFICATION.**

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses arising from the installation, use, maintenance, repair, or removal of the Tower Facilities or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, agents or independent contractors ("Indemnitees").

(b) Notwithstanding anything to the contrary in this Agreement, Tenant and Landlord waive any claims that each may have against the other with respect to consequential, incidental or special damages.

(c) The provisions of this Section 9 shall survive termination of this Agreement.

(d) Nothing contained in Sections 7 or 9 regarding insurance and indemnification are intended to limit or shall have the effect of limiting any protections or defenses Landlord may have available to it under the Colorado Governmental Immunity Act, as amended, or any other provision of law.

**10. WARRANTIES.**

Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

**11. HAZARDOUS SUBSTANCES.**

(a) Tenant represents and warrants that its use of the Leased Premises will not generate any Hazardous Substance, and it will not store or dispose on the Leased Premises nor transport to or over the Leased Premises any Hazardous Substance. Tenant further represents and warrants that its installation and maintenance of its Tower Facilities will not involve the bringing of any asbestos containing material onto the Property. Tenant further agrees to hold Landlord harmless from and indemnify Landlord against any release of any such Hazardous Substance by Tenant or Tenant's contractors, subcontractors, agents or employees and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the negligence of Landlord, its employees or agents. Landlord shall be responsible for any release of a Hazardous Substance caused by Landlord, including any damage, loss, or expense or liability resulting from such release. "Hazardous Substance" shall be interpreted broadly to mean any substance or material defined or designated, or other similar term by any federal, state, or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

(b) The indemnifications of this Section 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority, and shall survive termination of this Agreement.

(c) In the event Tenant becomes aware of any Hazardous Substance on the Property, or any environmental or industrial hygiene condition or matter relating to the Property that, in Tenant's reasonable determination, renders the condition of the Leased Premises unsuitable for Tenant's use, or if the leasing or continued leasing of the Leased Premises would expose Tenant to undue risks of government action, intervention or third-party liability, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon notice to Landlord.

(d) Notwithstanding anything to the contrary contained in this Agreement, Tenant shall have the right to store and use standard quantities of batteries, diesel fuel for backup generators, and any other substances required for the operation of Tenant's Tower Facilities so long as it does so in full compliance with all applicable laws.

## **12. ACCESS.**

(a) At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and contractors, will have reasonable access, including emergency access, twenty-four (24) hour per day, seven (7) days per week pedestrian and vehicular access to and over the Property, to the Leased Premises, from Wild Indigo Street (a public right of way), for the installation, maintenance and operation of the Tower Facilities and any utilities serving the Leased Premises. All work to the maximum extent possible, however, shall be performed by Tenant on a non-holiday weekday between the hours of 7:00 am to 10:00 pm. Tenant shall immediately call Landlord at 303-705-0200 to report any emergency arising from the Tower Facilities or the Leased Premises. In the event any public utility is unable to use the access provided to Tenant then the Landlord agrees to work with Tenant to identify and grant additional access in a location acceptable to both parties for Tenant and/or to the public utility, for the benefit of Tenant, at no cost to Tenant.

(b) Security and Invitees. Landlord does not represent that the Property or Leased Premises are safe from theft, injury or damage to Tenant or Tenant's property. Notwithstanding any provision to the contrary, Landlord is not liable for any lack of security with respect to the Property or Leased Premises or for any damages caused by any error or other action regarding the admission to or exclusion from the Property of any person. Tenant is solely responsible for the security of the Leased Premises and its personal property on the Leased Premises. Tenant shall make good faith efforts to monitor and control the conduct of its staff and agents while on the Leased Premises. Tenant has the right to construct a fence around the Leased Premises or Tower Facilities, install warning signs to make individuals aware of risks, install protective barriers, install any other control measures reasonably required by Tenant's safety procedures or applicable law, and undertake any other appropriate means to secure the Leased Premises or Tower Facilities at Tenant's expense, subject to prior approval by Landlord in accordance with applicable procedures and processes set forth in the Zoning Ordinance.

(c) If Tenant elects to utilize an Unmanned Aircraft System (“UAS”) in connection with its installation, construction, monitoring, site audits, inspections, maintenance, repair, modification, or alteration activities at the Leased Premises, Landlord hereby grants Tenant, or any UAS operator acting on Tenant’s behalf, express permission to fly over the applicable Property and Leased Premises, and consents to the use of audio and video navigation and recording in connection with the use of the UAS only to the extent necessary for the purposes set forth in this subsection (c).

**13. REMOVAL/RESTORATION.** All portions of the Tower Facilities brought onto the Leased Premises by Tenant will be and will remain Tenant’s personal property and, at Tenant’s option, may be removed by Tenant at any time during the Term. Landlord covenants and agrees that no part of the Tower Facilities constructed, erected or placed on the Leased Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Leased Premises will be and remain the property of the Tenant and may be removed by Tenant at any time during the Term. Within forty-five (45) days of the termination of this Agreement, Tenant will remove all of Tenant’s improvements and Tenant will restore the Leased Premises to its condition at the commencement of this Agreement, reasonable wear and tear and loss by casualty or other causes beyond Tenant’s control excepted. Any property not removed within forty-five (45) days shall be deemed abandoned. Landlord, in its sole discretion, may remove the improvements and restore the Leased Premises, and Tenant shall be responsible to Landlord for all costs and expenses incurred thereby for removal, storage and sale of the Tower Facilities and any related equipment, and restoration of the Leased Premises within thirty (30) days from receipt of an invoice and reasonable supporting documentation from Landlord. If Tenant fails to make such payment, Landlord may recover such costs through Section 24 of this Agreement. This Section shall survive the expiration or earlier termination of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation that were displaced with the removal of the Tower Facilities on the Premises, nor will Tenant be required to remove from the Leased Premises or the Property any underground utilities.

**14. MAINTENANCE/UTILITIES.**

(a) Tenant will keep and maintain the Leased Premises in good condition. Tenant shall maintain the outward appearance of any equipment shelter or other ground equipment and will remove any graffiti that may be drawn on the shelter or equipment by unknown third parties within ten (10) business days after it has received notice of such graffiti. At Tenant’s sole expense, any ground facilities shall be fenced, secured and screened to the Landlord’s reasonable satisfaction and in accordance with any applicable requirements of Section 27A of the Zoning Ordinance, as depicted on **Exhibit B**. Landlord will maintain and repair the Property and access thereto, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements.

(b) Notwithstanding any other provision to the contrary and at Landlord’s sole discretion, Landlord may at any time examine, inspect and protect the Property (excluding the

Leased Premises) and make alterations, renovations, restorations, repairs and or improvements to the Property (excluding the Leased Premises).

(c) Tenant shall be responsible for obtaining its own electric source to power Tenant's Tower Facilities. All costs associated with the Tenant's electrical requirement shall be at the Tenant's expense. Tenant shall be required to secure its own utility metered electric service and will be responsible for permitting the new electric service as well as any line extension costs, metering equipment, and other applicable fees and charges.

(d) Tenant will have the right to install fiber, cable and electrical utilities, at Tenant's expense, and to improve present utilities on the Property and the Leased Premises for purposes of serving the Tower Facilities. Landlord agrees to grant by separate easement agreement to any service company providing utility or similar services, including electric power and telecommunications, to Tenant an easement over the Property, from an open and improved public road and/or the utility point of connection to the Leased Premises, and upon the Leased Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such service companies may from time to time require in order to provide such services to the Tower Facilities. Upon Tenant's or service company's request, Landlord will execute a separate recordable easement evidencing this grant, in a form approved by the Landlord, at no cost to Tenant or the service company.

#### **15. DEFAULT AND RIGHT TO CURE.**

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after receipt of written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement, including maintaining compliance with the Landlord's Zoning Code, within forty-five (45) days after receipt of written notice from Landlord specifying the failure; or (iii) if Tenant is adjudicated as bankrupt, makes any assignment for the benefit of creditors, or if Tenant becomes insolvent. Notwithstanding the foregoing, no such failure except for payment of Rent, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence, and complies with all other provisions of Section 6(h). If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide access to the Leased Premises or cure any access interference problem within twenty-four (24) hours after written notice of such default; or (ii) Landlord's failure to perform any term, condition, or breach of any warranty or covenant under this Agreement within forty-five (45) days after receipt of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence, and complies with all other provisions of Section 6(h). Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have the right to exercise any

rights available to it under law and equity, including the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord by Tenant.

**16. ASSIGNMENT.**

(a) Tenant may not assign, sublet or otherwise transfer any portion of its interest in this Agreement or to the Tower Facilities, by operation of law or otherwise, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. A violation of this section is null and void and unenforceable against Landlord. Notwithstanding anything to the contrary contained in this Agreement, Tenant may assign its interest under this Agreement and to the Tower Facilities without Landlord's consent but with written notice to Landlord within sixty (60) days after such assignment to (a) one or more entities which shall control, be controlled by, or be under common control with Tenant ("Affiliates"), or (b) to any entity which acquires all or substantially all of Tenant's stock or assets in the market defined by the Federal Communications Commission in which the Property is located, (c) any entity in connection with any merger, consolidation or reorganization of Tenant, or (d) an entity whose primary business is managing and maintaining wireless communications towers. Any assignment to an unaffiliated third party must, in order to be valid and binding upon Landlord, acknowledge the assignee's obligation to comply with all duties and obligations under this Agreement, including the curing of any pending violations of Tenant prior to any assignment becoming effective. Upon notification to Landlord of such assignment, the assignor will be relieved of all future performance, liabilities and obligations under this Agreement to the extent of such assignment. Notwithstanding anything herein to the contrary, Tenant shall have the right to sublet or license space within the Leased Premises to the Anchor Tenant without Landlord's prior written consent, but shall provide Landlord written notice thereof within sixty (60) days thereafter.

(b) Subject to the terms of Section 23, Sale of Property, of this Agreement, effective immediately upon transfer by Landlord of Landlord's interest in the Property, Landlord shall be released from all obligations and liabilities arising out of this Agreement.

(c) The parties hereby expressly agree and acknowledge that it is the intention of both parties that in the event that during the Term of this Agreement, Tenant shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a Proceeding) under the United States Bankruptcy Code, 11 U.S.C. 101, et seq. (the Code), for the purposes of proceeding under the Code, this Agreement shall be treated as an unexpired lease of nonresidential real property under Section 365 of the Code, 11 U.S.C. 365 (as may be amended), and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said Section 365. Any person or entity to which this Agreement is assigned pursuant to the provisions of the Code, shall be deemed without further act to have assumed all of the obligations of the Tenant arising under this Agreement both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the Landlord an instrument confirming such assumption. Any Rents or other considerations due and payable under this Agreement or otherwise to be delivered to Landlord in connection with such assignment shall be paid to the Landlord, shall be the exclusive property of the Landlord, and shall not constitute property of the Tenant or of the estate of the Tenant within the meaning of the Code. Any monies or other considerations constituting the Landlord's property



under the preceding sentence not paid or delivered to the Landlord shall be held in trust for the benefit of the Landlord and be promptly paid to the Landlord.

17. **NOTICES.** All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notice will be addressed to the parties as follows:

If to Tenant:               New Cingular Wireless PCS, LLC  
                                  Attn: Tower Asset Group - Lease Administration  
                                  Re: Cell Site #: COL00152; Cell Site Name: The Canyons (CO)  
                                  Fixed Asset #: 15221751  
                                  1025 Lenox Park Blvd NE, 3<sup>rd</sup> Floor  
                                  Atlanta, GA 30319

With a copy to:            New Cingular Wireless PCS, LLC  
                                  Attn.: Legal Dept – Network Operations  
                                  Re: Cell Site #: COL00152; Cell Site Name: The Canyons (CO)  
                                  Fixed Asset #: 15221751  
                                  208 S. Akard Street  
                                  Dallas, TX 75202-4206

If to Landlord:            City of Castle Pines, Colorado  
                                  7437 Village Square Dr., Suite 200  
                                  Castle Pines, CO 80108  
                                  Attention: City Manager

Either party hereto may change the place for the giving of notice to it by thirty (30) days written notice to the other as provided herein. The copy sent to Tenant's Legal Department is an administrative step which alone does not constitute legal notice.

18. **CONDEMNATION AND EMINENT DOMAIN.**

(a) In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within fifteen (15) days. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's reasonable determination, to render the Leased Premises unsuitable for Tenant's permitted use, this Agreement will terminate as of the date the title vests in the condemning authority. Tenant shall have the right at its sole option and at its sole cost and expense, to claim and recover from the condemning authority, but not from Landlord, such compensation including reimbursement for any prepaid Rent on a *pro rata* basis, as may be separately awarded or recoverable by Tenant on account of any damage to Tenant's business and any costs or expenses incurred by Tenant in moving/removing its Tower Facilities, personal property and leasehold improvements.

(b) If the entire Property or a portion sufficient to render the Leased Premises unfit for occupancy or make it impossible for Tenant to conduct its business by the power of eminent domain, this Agreement shall terminate as of the date of taking. Tenant shall immediately

surrender the Leased Premises and all interests to the Landlord. Tenant shall have no claim against Landlord for any loss or damage.

**19. CASUALTY.**

Landlord will provide notice to Tenant of any casualty affecting the Property within seven (7) days of the casualty if the casualty is not caused by Tenant, its employees, agents or contractors, and if such casualty renders the Leased Premises unsuitable for Tenant's operations. If any part of the Tower Facilities or Property is damaged by fire or other casualty so as to render the Leased Premises unsuitable, in Tenant's reasonable determination, then Tenant may terminate this Agreement by providing written notice to the Landlord, which termination will be effective as of the date of such damage or destruction so long as such damage is not caused by Tenant, its employees, agents or independent contractors. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a pro rata basis. If notice of termination is given, or if Tenant intends to undertake to rebuild the Tower Facilities, Landlord agrees to use its reasonable efforts to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until such time as Tenant is able to activate a replacement transmission facility at another location or the reconstruction of the Tower Facilities are completed.

**20. WAIVER OF LANDLORD'S LIENS.**

Landlord waives all lien rights it may have, statutory or otherwise, concerning the Tower Facilities or any portion thereof. The Tower Facilities shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law, and Landlord consents to Tenant's right to remove all or any portion of the Tower Facilities from time to time in Tenant's sole discretion and without Landlord's consent, subject to the provisions of this Agreement.

**21. MECHANICS' AND MATERIALMANS' LIENS.**

Tenant shall not permit any mechanics' or materialman's liens to be filed against the Leased Premises or the Property by reason of work, labor, services or materials performed or furnished to or for the benefit of Tenant, its transferees, successors, or assigns. If any such lien is filed, Tenant may contest the same in good faith, but notwithstanding contest, Tenant shall, within thirty (30) days after notice of the filing thereof, cause such lien to be released of record by payment, bond, entry of an order of court of competent jurisdiction, or otherwise.

**22. TAXES.**

(a) Landlord is exempt from paying taxes. Tenant shall be solely responsible for and shall timely pay all personal property taxes levied and assessed against it or its personal property. Tenant shall reimburse the Landlord for Tenant's proportionate share of the real estate taxes if any, upon timely receipt of a copy of the tax bill and request for reimbursement from the Landlord. For purposes herein, Tenant's proportionate share shall be determined based upon the square footage of the Leased Premises relative to Landlord's entire parcel of real estate (using, in the case of

building space, the net usable square footage of the building, and in the case of leased land, the unimproved portion of Landlord's real estate (including parking areas)). At the request of either party, the other shall provide evidence of payment of taxes.

(b) Tenant shall have the right to, at its sole option and at its sole cost and expense, to contest all taxes, assessments, charges and impositions assessed against its personal property or improvements, and any real estate taxes it is required to pay pursuant to this Agreement.

### **23. SALE OF PROPERTY.**

(a) Landlord may sell the Property or a portion thereof to a third party, provided the sale is made subject to the terms of this Agreement, and provided further Landlord transfers to such purchaser or assignee all prepaid and unearned Rent, Bond and/or Letter of Credit.

(b) If Landlord, at any time during the Term of this Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Leased Premises to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Tenant's rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within twenty (20) days of such transfer, Landlord or its successor shall send the documents listed below in this Section 23(b) to Tenant. Until Tenant receives all such documents, Tenant's failure to make payments under this Agreement shall not be an event of default and Tenant reserves the right to hold payments due under this Agreement.

- i. New deed to that part of the Property that includes the Leased Premises;
- ii. New IRS Form W-9;
- iii. Completed and Signed Tenant Payment Direction Form a copy of which is attached to this Agreement as **Exhibit D**; and
- iv. Contact information for new Landlord including phone number(s).

(c) Landlord agrees not to sell, lease or use any areas of the Property for the installation, operation or maintenance of other wireless communication facilities if such installation, operation or maintenance would interfere with Tenant's permitted use or communications equipment as determined by radio propagation tests performed by Landlord or its prospective tenant or purchaser. If the radio frequency propagation tests demonstrate levels of interference that would exceed federal standards, Landlord shall be prohibited from selling, leasing or using any areas of the Property for purposes of any installation, operation or maintenance of any other wireless communication facility or equipment until such time as the interference can be mitigated.

### **24. LETTER OF CREDIT; BOND; SECURITY DEPOSIT.**

On or prior to the commencement of the Term Commencement Date, Tenant shall provide to Landlord a bond ("Bond") or Letter of Credit in the amount of Five Thousand Dollars (\$5,000.00), in a form approved by the Landlord, for the cost of removing Tenant's Tower Facilities at the expiration or termination of this Agreement and for any damage to the Property resulting therefrom, plus pay Landlord a security deposit equal to one (1) month's rent, to cover Landlord's

costs or damages incurred as a result of any Tenant default of this Agreement. The Letter of Credit or Bond shall be in effect at the applicable amount during the Term of the Agreement and for a period of ninety (90) days after termination or expiration of this Agreement. The Tenant's failure to keep a Letter of Credit or Bond in the applicable amount in effect as provided herein shall be cause for Landlord to terminate this Agreement in accordance with Section 6(d), Termination, of this Agreement. Within ninety (90) days after termination or expiration of this Agreement, Landlord shall either return the security deposit in full to Tenant or provide a written account of the damages or costs incurred for which all or part of the security deposit was retained and return any remaining security deposit to Tenant.

## **25. MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Landlord and an authorized agent of the Tenant. No provision may be waived except in a writing signed by both parties. Landlord's or Tenant's expressed or implied assent to the other party's breach of this Agreement is not a waiver of any other breach.

(b) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(c) **Third Party Rights.** This Agreement does not create a standard of care for Landlord and does not enlarge Landlord's duties under any applicable law, regulation or ordinance. This Agreement is for the sole benefit of and binds the parties, their successors and assigns. This Agreement affords no claim, benefit, or right of action to any third party. Any party besides Landlord or Tenant receiving services or benefits under this Agreement is only an incidental beneficiary.

(d) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

(e) **Governing Law/Venue.** This Agreement will be governed by the laws of the State of Colorado, without regard to conflicts of law. Venue for any proceeding brought pursuant to this Agreement shall be in Douglas County, Colorado.

(f) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including, without limitation"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; and (vi) reference to a default will take into consideration any applicable notice, grace and cure periods.

(g) **Estoppel.** Either party will, at any time upon twenty (20) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Property. The requested party's failure to deliver such a statement within such time will be conclusively relied upon by the requesting party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting party, (ii) there are no uncured defaults in either party's performance, and (iii) no more than one year's Rent has been paid in advance.

(h) **W-9.** Landlord shall provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, as a condition precedent to Tenant's obligation to pay Landlord Rent and any other amounts due under this Agreement.

(i) **Severability.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects the totality of this Agreement, then this Agreement may be terminated by either party on ten (10) business days prior written notice to the other party hereto.

(j) **Counterparts.** This Agreement may be executed in two (2) or more counterparts, all of which shall be considered on and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. It being understood that all parties need not sign the same counterpart.

(k) **Memorandum of Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum of Lease substantially in the form attached as **Exhibit E**. Either party may record this Memorandum of Lease at any time during the Term, in its absolute discretion. Thereafter during the Term, either party will, at any time upon fifteen (15) business days' prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease.

**[SIGNATURES APPEAR ON THE NEXT PAGE]**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date of the last signature below.

**LANDLORD**

**City of Castle Pines, Colorado,**  
a Colorado home rule municipal corporation

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Linda Michow, City Attorney

State of Colorado    )  
                                  ) ss.  
County of Douglas    )

I attest that the foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by \_\_\_\_\_, as the Mayor of the City of Castle Pines.

Witness my hand and official seal.

\_\_\_\_\_  
CITY CLERK, Notary Public

My commission expires: \_\_\_\_\_



**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

Parcel Number: 2351-123-01-006

The Property is described as follows:

Tract S, The Canyons Filing No. 3, 1<sup>st</sup> Amendment, City of Castle Pines, County of Douglas, State of Colorado recorded in the Douglas County Clerk and Recorder's office at Reception No. 2023021279 and Tract A, The Canyons Filing No. 3, 1st Amendment as recorded at reception No. 2023021279

The Leased Premises is described as follows:

LEASE AREA

BEING A TELECOMMUNICATIONS LEASE PARCEL LYING WITHIN A PORTION OF PARCEL 10 OF THE CANYONS SUPERBLOCK PLAT NO. 2, CITY OF CASTLE PINES, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 12, TOWNSHIP 7 SOUTH, RANGE 67 WEST OF THE 6TH P.M.; THENCE ALONG THE SOUTH LINE OF SAID SECTION, S89°27'06"E, 696.52 FEET; THENCE DEPARTING SAID SOUTH LINE, N00°32'54"E, 752.22 FEET TO THE POINT OF BEGINNING; THENCE N88°32'10"W, 60.00 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A"; THENCE N01°27'50"E, 60.00 FEET; THENCE S88°32'10"E, 60.00 FEET; THENCE S01°27'50"W, 60.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 3,600 SQ. FT. OR 0.083 ACRES MORE OR LESS.

ACCESS/UTILITY EASEMENT

BEING A STRIP OF LAND 20.00 FEET IN WIDTH LYING WITHIN A PORTION OF PARCEL 10 OF THE CANYONS SUPERBLOCK PLAT NO. 2, CITY OF CASTLE PINES, COUNTY OF DOUGLAS, STATE OF COLORADO, LYING 10.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT POINT "A" AS DESCRIBED ABOVE; THENCE S01°27'50"W, 10.00 FEET TO THE POINT OF BEGINNING; THENCE S88°32'10"E, 370.00 FEET; THENCE N01°27'50"E, 308.45 FEET; THENCE N21°08'59"E, 23.98 FEET TO THE END OF SAID STRIP OF LAND.

SIDELINES OF SAID STRIP OF LAND ARE TO BE LENGTHENED AND/OR SHORTENED TO PREVENT GAPS AND/OR OVERLAPS.



The Utility Easement is described as follows:

BEING A STRIP OF LAND 15.00 FEET IN WIDTH, LYING WITHIN A PORTION OF TRACT A, CANYONS FILING NO. 3 – 1ST AMENDMENT, COUNTY OF DOUGLAS, STATE OF COLORADO, LYING 7.50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

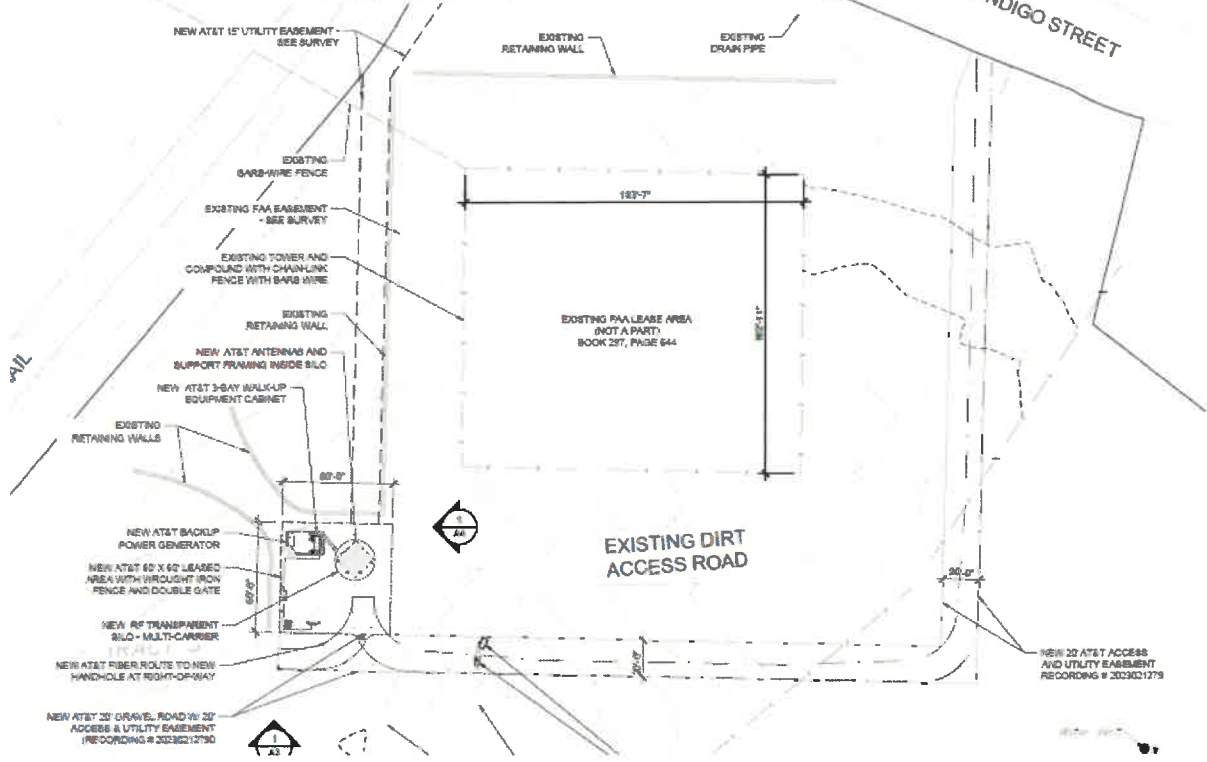
COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT A; THENCE ALONG THE WESTERLY LINE OF SAID TRACT, N39°58'59"E, 353.62 FEET; THENCE DEPARTING SAID WESTERLY LINE, S48°19'03"E, 158.03 FEET TO A POINT ON THE NORTH LINE OF TRACT S, CANYONS FILING NO. 3 – 1ST AMENDMENT AND THE POINT OF BEGINNING; THENCE N01°27'50"E, 244.50 FEET; THENCE N34°34'38"E 145.65 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF WILD INDIGO STREET AND THE END OF SAID STRIP OF LAND.

EXCEPT ANY PORTION LYING WITHIN THE RIGHT-OF-WAY OF WILD INDIGO STREET.

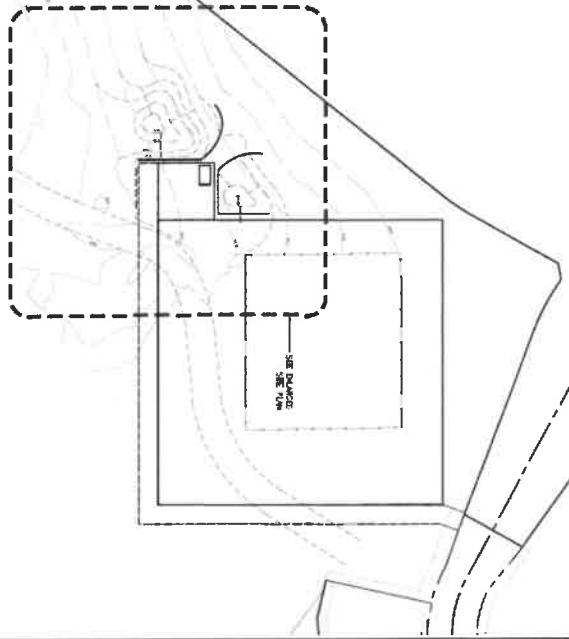
SIDELINES OF SAID STRIP OF LAND ARE TO BE LENGTHENED AND/OR SHORTENED TO PREVENT GAPS AND/OR OVERLAPS.



THE CANYONS, FILING NO. 3, 1ST AMENDMENT, TRACT S  
 SW 1/4 SECTION 12, TOWNSHIP 7 SOUTH, RANGE 67 WEST  
 PLANNING AREA I: 3600 SQ. FT.  
 SITE IMPROVEMENT PLAN - SIP-2023-001



# Landscaping Plan

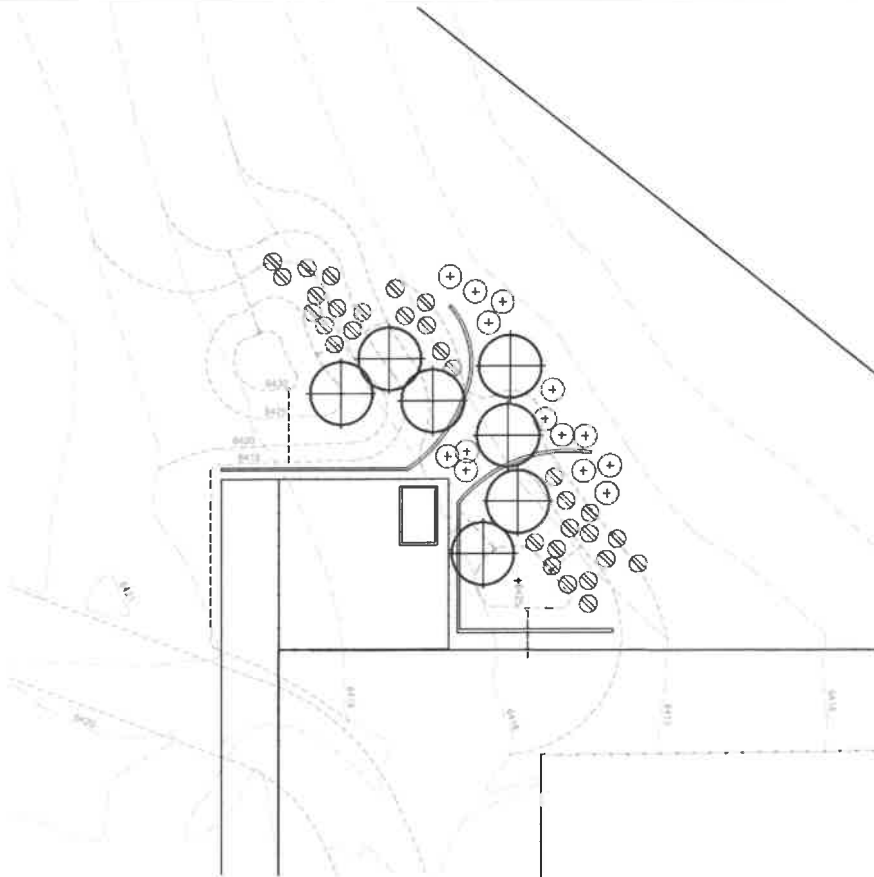


## PLANT LEGEND

SYM.	BOTANICAL NAME	COMMON NAME	SIZE	QTY.	SIZE AT Maturity
	TREES				
	PAVILION	MON PINE	3' CALIPER 8' L.B.	7	30'-0" HGT. X 30' CALIPER
	SHRUBS				
	OLD GROW PLANTING	OLD GROW JUNIPER	8 GAL.	24	2'-0" HGT. X 4'-0" W.
	OLD GROW	PIVOT GLOBE	8 GAL.	4	3'-0" HGT. X 4'-0" W.
	PAVILION	PAVILION	8 GAL.	4	3'-0" HGT. X 4'-0" W.

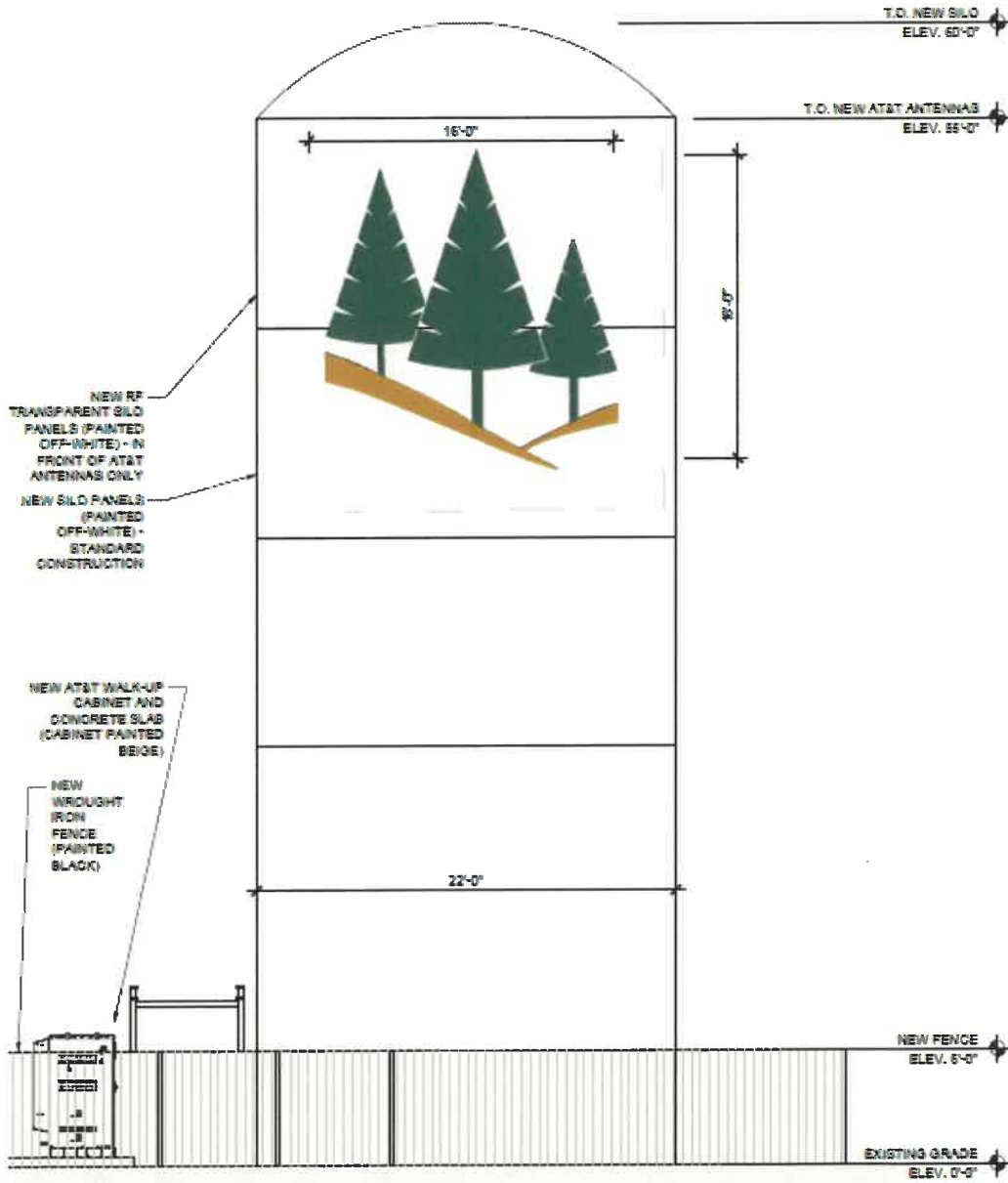
## PLANTING NOTES

1. ALL PLANTING TO BE DONE AFTER THE MAIN STRUCTURE IS COMPLETED. PLANTING SHALL BE MAINTAINED BY THE PROPERTY OWNER AFTER THE PROJECT IS COMPLETED.
2. PLANTING SHALL BE INSTALLED AS NECESSARY UNTIL PLANTING ARE ESTABLISHED.
3. ALL PLANTING TO BE DONE ON THE PLAN SHALL BE MAINTAINED BY THE PROPERTY OWNER AFTER THE PROJECT IS COMPLETED.



# EXHIBIT C

## City of Castle Pines Identification sign



**EXHIBIT D**  
**Tenant Payment Direction Form**  
**[To Be Provided By Tenant]**

**EXHIBIT E**  
**Memorandum of Lease**

This Memorandum of Lease is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between City of Castle Pines, Colorado, a Colorado home rule municipal corporation, having its principal office at 7437 Village Square Drive, Suite 200, Castle Pines, CO 80108 (hereinafter called "**Landlord**"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 ("**Tenant**").

1. Landlord and Tenant entered into a certain Communications Site Lease Agreement ("**Agreement**") on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("**Effective Date**"), for the purpose of installing, operating and maintaining a communication facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The initial lease term will be five (5) years commencing on the Effective Date, with five (5) successive automatic five (5) year options to renew.
3. The portion of the land being leased to Tenant and associated easements are described in **Exhibit 1** annexed hereto.
4. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

**[SIGNATURES APPEAR ON NEXT TWO PAGES]**

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

**LANDLORD**

**City of Castle Pines, Colorado,**  
a Colorado home rule municipal corporation

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Linda Michow, City Attorney

State of Colorado     )  
                                  ) ss.  
County of Douglas    )

I attest that the foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by \_\_\_\_\_, as the Mayor of the City of Castle Pines, Colorado.

Witness my hand and official seal.

\_\_\_\_\_  
CITY CLERK, Notary Public

My commission expires: \_\_\_\_\_





