

7/20/05

**WATER TOWER LEASE AGREEMENT**

This Water Tower Lease Agreement (the "Agreement"), made this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between the City of Taylor, a municipal corporation located in Williamson County, Texas (the "LANDLORD"), and Houston Cellular Telephone Company, LP, by its general partner New Cingular Wireless PCS, LLC, its successors and assigns (the "TENANT").

**PROPERTY**

LANDLORD is the owner of certain real property located at Mallard Lane in Williamson County, State of Texas (the "Tower Site"), on which there is located a water tower owned by LANDLORD (the "Water Tower"), and TENANT desires to lease a portion of such real property containing approximately 400 square feet (the "Leased Parcel"), together with certain positions on the Water Tower more fully described below and a right-of-way thereto as hereinafter described (the Leased Parcel, such positions on the Water Tower and such right of way being hereinafter called the "Leased Property"). The Water Tower Site is more particularly described on Exhibit "A" attached hereto. The Leased Property is more specifically described in, and substantially shown on, Exhibit "B" attached hereto and made a part hereof, as the same may be hereafter supplemented and amended by a survey of the Leased Property obtained by TENANT.

**LEASE AGREEMENT**

1. **Lease of Leased Property.** LANDLORD hereby leases to TENANT the Leased Property, which includes (without limitation) (i) the Leased Parcel described above, (ii) certain positions on the Water Tower as described below, and (iii) the grant of a nonexclusive right and easement during the term of this Agreement for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or by motor vehicle, including trucks, and for the installation and maintenance of utility wires, cables, conduits and pipes over, under, or along the twenty foot (20') wide right of way extending from the nearest public right of way, which is known as Mallard Lane, to the Leased Parcel, as such right-of-way is shown on Exhibit "B" hereto. TENANT shall have the right to install utilities, at TENANT's expense, and to improve present utilities on the Leased Property (including but not limited to the installation of emergency power generators). LANDLORD shall cooperate with TENANT in its effort to obtain utility services along the aforementioned right of way by signing such documents or easements as may be required by said utility companies. In the event any public utility is unable or unwilling to use the aforementioned right of way LANDLORD hereby agrees to grant an additional right of way either to TENANT or to the public utility at no cost to TENANT.

2. **Initial Term and Rental.** This Agreement shall be for an initial term of five (5) years beginning on the date on which TENANT commences construction of its Communications Facility at the Leased Property but no later than July 1, 2005 (the "**Commencement Date**"), at an annual rental of Twelve Thousand and No/100 Dollars (\$12,000.00), to be paid annually on the first day of each calendar year during the term hereof, in advance, to LANDLORD or to such other person, firm or place as LANDLORD may, from time to time, designate in writing at least sixty (60) days in advance of any rental payment due date. If the lease term shall commence on a date other than the first day of a calendar month, TENANT shall make a prorated payment of the annual rental payable for the first year of the term of this Agreement.

3. **Extension of Term.** TENANT shall have the option to extend the term of this Agreement for four (4) additional consecutive five (5) year periods. Each option for an extended term shall be deemed automatically exercised without notice by TENANT to LANDLORD unless TENANT gives LANDLORD written notice of its intention not to exercise any such extension option at least six (6) months prior to the end of the then current term. If TENANT gives LANDLORD written notice of its intention not to exercise any such option, the term of this Agreement shall expire at the end of the then current term. All references herein to the term of this Agreement shall include the term as it is extended from time to time as provided in this Agreement.

4. **Extended Term Rental.** The annual rental for the extended terms shall be as follows:

<b><u>Extended Term</u></b>	<b><u>Annual Rental</u></b>
1st	\$13,800.00
2nd	\$15,870.00
3rd	\$18,250.50
4th	\$20,988.07

The annual rental for the extended terms shall be payable in the same manner as the annual rental for the initial term.

5. **Continuance of Lease.** If, at least six (6) months prior to the end of the fourth (4th) extended term, either LANDLORD or TENANT has not given the other written notice of its desire that the term of this Agreement end at the expiration of the fourth (4th) extended term, then upon the expiration of the fourth (4th) extended term this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of any such annual

term. Annual rental during such annual terms shall be equal to the rent paid for the last year of the fourth (4th) extended term.

**6. Use.**

(a) TENANT shall use the Leased Property for the purpose of constructing, maintaining and operating a communications facility (as described in Section 6(b)(i), (ii), and (iii) below) and any and all uses incidental thereto, which may also include a security fence of chain link or comparable construction that may, at the option of TENANT, be placed around the perimeter of the Leased Parcel (collectively, the "**Communications Facility**"). TENANT shall be allowed from time to time, at TENANT's expense, to replace any of its antennas, microwaves, equipment, improvements, or other appurtenances at the Leased Property with like items of similar physical characteristics. LANDLORD grants TENANT the right to use such portions of LANDLORD's contiguous, adjoining or surrounding property as described on Exhibit "A" hereto (the "**Surrounding Property**"), as are reasonably required during construction, installation, maintenance, and operation of the Communications Facility. TENANT shall maintain the Leased Property in a reasonable condition and shall be solely responsible for the repair and maintenance of all of TENANT's improvements on the Leased Property, excluding repair and maintenance due to the willful misconduct or negligence of LANDLORD, its employees, agents, contractors, licensees, or tenants (other than TENANT).

(b) The Leased Parcel and positions on the Water Tower shall be used for, and LANDLORD agrees that TENANT is authorized to perform, the construction, installation, maintenance and operation, all at TENANT's sole expense, of the following improvements, radio or microwave equipment, antennas and other associated transmission lines and equipment:

(i) Wireless antenna systems and associated equipment to be mounted on the Water Tower and in the 120 foot range on the Water Tower, such type of systems, equipment, and range as stipulated in the attached Exhibit "C" of this Agreement;

(ii) A prefabricated equipment shelter not to exceed 12 feet by 20 feet (12' x 20') to be located on the Leased Parcel; and

(iii) Flexible coaxial transmission line between the Water Tower and the radio equipment located in the equipment shelter.

**7. Governmental Approvals.** TENANT's ability to use the Leased Property is contingent upon its obtaining and maintaining in effect all certificates, permits, licenses and other approvals that may be required by any governmental authorities. LANDLORD shall cooperate with TENANT in its effort to obtain and maintain in effect such certificates, permits, licenses and other approvals. In furtherance thereof, LANDLORD agrees to sign such papers as are required to file applications with the appropriate zoning authority and other governmental

authorities for the proper zoning of the Leased Property and for other certificates, permits, licenses and approvals as are required for the use of the Leased Property as intended by TENANT. If requested by TENANT, any such applications may be filed with respect to, not only the Leased Property, but also LANDLORD's Surrounding Property. TENANT will perform all other acts and bear all expenses associated with any zoning or other procedure necessary to obtain any certificate, permit, license or approval for the Leased Property deemed necessary by TENANT. LANDLORD agrees not to register any written or verbal opposition to any such procedures. If at any time during the term of this Agreement, TENANT is unable to use the Leased Property for a Communications Facility in the manner intended by TENANT due to imposed zoning conditions or requirements, or in the event that any necessary certificate, permit, license or approval is finally rejected or any previously issued certificate, permit, license or approval is canceled, expires, lapses or is otherwise withdrawn or terminated by the applicable governmental authority, or any structural analyses, subsurface boring tests, environmental inspections, radio frequency tests, or other investigations are found to be unsatisfactory so that TENANT, in its sole discretion, will be unable to use the Leased Property for a Communications Facility in the manner intended by TENANT, TENANT shall have the right to terminate this Agreement by written notice to LANDLORD. In such case, LANDLORD shall retain all rentals paid to LANDLORD prior to the termination date. Upon such termination, LANDLORD and TENANT shall have no other further obligations to each other, other than TENANT's obligation to remove its property as hereinafter provided.

#### **8. Interference.**

(a) LANDLORD acknowledges and agrees that it will not permit the installation of any additional antennas or equipment on the Water Tower or at the Tower Site, or the relocation of any existing antennas or equipment installed on the Water Tower or at the Tower Site, if such installation or relocation would adversely affect TENANT's space on the Water Tower or TENANT's operation, use or enjoyment of its Communications Facility, taking into account customary and commercially reasonable practices for multi-tenant wireless communication sites and towers thereon.

(b) LANDLORD shall not, and shall not permit any licensee, tenant, subtenant or other user of the Water Tower (collectively, other than Tenant, "**Other Tenants**"), to (i) install or change, alter or improve the frequency, power, or type of any communications equipment that interferes with the operation of TENANT's Communications Facility or is not authorized by, or violates, applicable Laws or is not made or installed in accordance with good engineering practices, or (ii) implement a configuration which interferes with the operation of TENANT's Communications Facility. LANDLORD shall not, and shall not permit any licensee, tenant, subtenant or other user of the Surrounding Property to (i) install or change, alter or improve the frequency, power, or type of any communications equipment that interferes with the operation of TENANT's Communications Facility, or (ii) implement a configuration which interferes with the operation of TENANT's Communications Facility.

(c) In the event of any interference occurring at the Tower Site as a result of any actions of LANDLORD or any Other Tenants described in Section 8(b) above, LANDLORD shall be responsible for coordinating and resolving any such interference problems caused by LANDLORD or such Other Tenants, including, without limitation, using its best efforts to correct and eliminate the interference within forty-eight (48) hours of receipt of notification from TENANT and, if appropriate, performing an interference study in accordance with industry-standard procedures and practices. If the interference cannot be corrected or eliminated within such 48-hour period, LANDLORD shall cause any of LANDLORD's or its Other Tenants' communications equipment that interferes with the operation of TENANT's Communications Facility or TENANT's authorized frequency spectrum or signal strength, to be immediately powered down or turned off, with the right to turn such interfering equipment back up or on only during off-peak hours specified by TENANT in order to determine whether such interference continues or has been eliminated; provided, however, that if any interference continues at the time the interfering equipment is powered down, the communications equipment that interferes with the operation of TENANT's Communications Facility shall be turned off. If LANDLORD or any such Other Tenant cannot correct or eliminate, to the satisfaction of TENANT, such interference within twenty (20) days of receipt of written notice from TENANT, LANDLORD shall or shall cause such Other Tenant to cease the operations of the objectionable communications equipment and to stop providing services from the Tower Site until the interference problems are resolved; provided, however, that if LANDLORD does not timely cease or cause such Other Tenant to cease such operations, TENANT may elect to terminate this Agreement by written notice to LANDLORD.

(d) TENANT shall not (i) install or change, alter or improve the frequency, power, or type of any communications equipment that interferes with the operation of LANDLORD's or any existing Other Tenant's existing communications equipment installed at the Tower Site or is not authorized by, or violates, applicable Laws or is not made or installed in accordance with good engineering practices, or (ii) implement a configuration which interferes with the operation of LANDLORD's or any existing Other Tenant's existing communications equipment installed at the Tower Site.

(e) In the event of any interference occurring at the Tower Site as a result of any actions of TENANT described in Section 8(d) above, TENANT shall be responsible for coordinating and resolving any such interference problems caused by TENANT, including, without limitation, using its best efforts to correct and eliminate the interference within forty-eight (48) hours of receipt of notification from LANDLORD. If the interference cannot be corrected or eliminated within such 48-hour period, TENANT shall cause any of TENANT's communications equipment that interferes with the operation of LANDLORD's or any Other Tenant's communications equipment or their authorized frequency spectrum or signal strength, to be immediately powered down or turned off, with the right to turn such interfering equipment back up or on only during off-peak hours specified by LANDLORD in order to determine

whether such interference continues or has been eliminated; provided, however, that if any interference continues at the time the interfering equipment is powered down, the communications equipment that interferes with the operation of LANDLORD's or any Other Tenant's communications equipment shall be turned off. If TENANT cannot correct or eliminate, to the satisfaction of LANDLORD, such interference within twenty (20) days of receipt of written notice from LANDLORD, TENANT shall cease the operations of the objectionable communications equipment and stop providing services from its Communications Facility until the interference problems are resolved. If TENANT determines that such interference cannot be corrected or eliminated by commercially reasonable measures, then either LANDLORD or TENANT may elect to terminate this Agreement by written notice to the other.

(f) As used herein, "**Laws**" means all federal, state, county, municipal and other governmental constitutions, statutes, ordinances, codes, regulations, resolutions, rules, requirements and directives and all decisions, judgments, writs, injunctions, orders, decrees or demands of courts, administrative bodies and other authorities (including, without limitation, the Federal Communications Commission) construing any of the foregoing.

#### **9. Maintenance and Repair.**

(a) LANDLORD shall maintain the Water Tower and Tower Site, including the lighting systems and LANDLORD's antennas, transmission lines, equipment and buildings, in good operating condition. TENANT is solely responsible for the licensing, operation and maintenance of TENANT's Communication Facility, including, without limitation, compliance with any terms of its FCC license.

(b) The costs of maintaining the Water Tower and the Tower Site (exclusive of TENANT's Communication Facility) shall be borne by LANDLORD.

(c) If the Water Tower shall undergo renovations, in whole or in part, so as, in TENANT's reasonable judgment, to hinder the effective use of the Premises, the LANDLORD shall allow TENANT to erect a temporary structure, such as a cell on wheels ("COW") to maintain service. If the LANDLORD has not completed renovations on the Water Tower within 120 days period, TENANT may terminate this Agreement upon written notice to the LANDLORD. In such event, all rights and obligations of the parties shall cease thirty (30) days upon receipt of written notice to the LANDLORD and the TENANT shall be entitled to reimbursement of any prepaid rent.

**10. Taxes.** TENANT shall be responsible for making any necessary returns for and paying any and all personal property taxes separately levied or assessed against TENANT's facilities or the improvements constructed by TENANT on the Leased Property TENANT shall pay for any documented increase in ad valorem real estate taxes levied against the Leased Property which are directly attributable to the improvements constructed by TENANT on

the Leased Property and are not separately levied or assessed by the taxing authorities against TENANT or the improvements of TENANT. LANDLORD shall pay all other ad valorem real property taxes levied against the Leased Property on or before the date such taxes become delinquent. LANDLORD hereby agrees that if the taxes which are levied against LANDLORD and TENANT's improvements on LANDLORD's property are incorrectly assessed, TENANT maintains the right to appeal the tax assessment to the appropriate governmental authority, which appeal shall be paid for by TENANT. Should the State in which the Leased Property is located offer an early payment tax incentive, LANDLORD hereby agrees that TENANT shall be allowed to pay the taxes under the incentive plan which shall allow for TENANT to take advantage of any offered incentives. LANDLORD shall furnish TENANT within thirty (30) days of receipt by LANDLORD or LANDLORD's representative, a copy of the tax assessment or bill for any real or personal property taxes which are levied against the Leased Property. LANDLORD'S ability to bill TENANT for said taxes is limited to the current year tax billing in question. In no event will LANDLORD have the ability to bill for pro-rata share or estimates of taxes on future tax billings.

**11. Insurance.** TENANT shall, at its sole cost and expense, at all times during the term of this Agreement maintain in effect a policy or policies of insurance: a) covering its personal property located on the Leased Property and TENANT's improvements to the Leased Property, providing protection against any peril included under insurance industry practices within the classification "fire and extended coverage," providing protection as deemed desirable by TENANT with respect to its personal property and to the full insurable value of TENANT's improvements; and b) commercial general liability insurance with minimum limits of \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$1,000,000 for damage to or destruction of properties in any one occurrence. TENANT shall name LANDLORD as an additional insured as its interest may appear in regards to the aforementioned general liability insurance policy and shall furnish LANDLORD with a certificate of insurance upon request by LANDLORD.

**12. Intentionally Omitted.**

**13. Indemnification.**

(a) TENANT shall indemnify and hold LANDLORD harmless against any liability or loss from personal injury or property damage resulting from or arising out of the use or occupancy of the Leased Property or LANDLORD'S Surrounding Property by TENANT or its employees, agents or contractors, excepting, however, such liabilities and losses as may be due to or caused by the acts or omissions of LANDLORD or its employees, agents, contractors, licensees, or tenants (other than TENANT).

**14. Sale of Leased Property.** If LANDLORD, at any time during the initial

or any extended term of this Agreement, decides to sell, subdivide or rezone any of the Leased Property, the Water Tower or all or any part of LANDLORD's Surrounding Property, to a purchaser other than TENANT, LANDLORD shall promptly notify TENANT in writing, and such sale, subdivision or rezoning shall be subject to this Agreement and TENANT's rights hereunder. LANDLORD shall not initiate or consent to any change in the zoning of the Leased Property or LANDLORD's Surrounding Property or impose or consent to any other restriction that would prevent or limit TENANT from using the Leased Property for the uses intended by TENANT as set forth in this Agreement.

**15. Quiet Enjoyment.** LANDLORD warrants and represents that (i) LANDLORD holds good and marketable title to the Leased Property; (ii) LANDLORD has the full power and authority to enter into and perform this Agreement, (iii) the person executing this Agreement on behalf of LANDLORD is duly authorized and empowered to enter into this Agreement on behalf of LANDLORD, and (iv) execution and performance of this Agreement will not cause a breach or event of default under any other agreement to which LANDLORD is a party. LANDLORD further warrants that there are no deeds to secure debt, deeds of trust, mortgages, liens or judgments encumbering the Leased Property, and no restrictive covenants, servitudes, easements, licenses, rights of use or other encumbrances on the Leased Property that would interfere with or actually or constructively prevent TENANT from using the Leased Property for the uses intended by TENANT as set forth in this Agreement. LANDLORD covenants that TENANT, on paying the rental and performing the covenants, terms and conditions required of TENANT contained herein, shall peaceably and quietly have, hold and enjoy the Leased Property and the leasehold estate granted to TENANT by virtue of this Agreement.

**16. Assignment.** This Agreement may be sold, assigned, subleased, or transferred at any time by TENANT to any Affiliate of TENANT, or to any entity with or into which TENANT is merged or consolidated, or to any entity resulting from a reorganization of TENANT or its Affiliates. Otherwise, this Agreement may not be sold, assigned, subleased, or transferred without the written consent of LANDLORD, such consent not to be unreasonably withheld, conditioned, or delayed. For the purposes of this Agreement, "Affiliate" shall be defined as SBC Wireless, LLC, a Delaware limited liability company ("SBC"); BellSouth Mobility LLC, a Georgia limited liability company ("BellSouth"); any entity in which SBC or BellSouth directly or indirectly holds an equity or similar interest; any entity which directly or indirectly holds an equity or similar interest in SBC or BellSouth; and any entity directly or indirectly under common control with SBC or BellSouth.

**17. Condemnation.** If notice is given to LANDLORD that the Leased Property will be condemned by any legally constituted public authority, then LANDLORD shall promptly notify TENANT of such taking or condemnation. If the whole of the Leased Property, or such portion thereof as will make the Leased Property unusable by TENANT for the purposes herein leased (as determined by TENANT in its sole discretion), is condemned by any legally

constituted public authority, then this Agreement, and the term hereby granted, shall terminate and expire at such time as possession thereof is taken by the public authority, and rental shall be accounted for as between LANDLORD and TENANT as of that date. However, nothing in this Section 17 shall be construed to limit or adversely affect TENANT's right to seek an award of compensation from any public authority that is seeking condemnation proceeding for the taking of TENANT's leasehold interest hereunder or for the taking of TENANT's improvements, fixtures, equipment or personal property, or for TENANT's moving, relocation, and other business dislocation expenses.

**18. Casualty.**

(a) If TENANT's Communications Facility or improvements are damaged or destroyed, in whole or in part, by fire or other casualty, TENANT shall not be required to repair or replace the Communications Facility or any of TENANT's improvements made by TENANT, and TENANT may terminate this Agreement by giving written notice to LANDLORD. Termination shall be effective immediately after such notice is given. Upon such termination, this Agreement shall become null and void, and LANDLORD and TENANT shall have no other further obligations to each other hereunder, other than TENANT's obligation to remove its property as hereinafter provided.

(b) In the event the Water Tower (excluding any damage the repair of which is required to be completed by tenants of the Water Tower) is damaged to the extent of twenty-five percent (25%) or more of the cost of replacement thereof (whether or not the Leased Property is damaged) and such damage (i) occurs during the last two years of the Term (taking into account any extensions of the Term by TENANT in accordance with the terms of this Lease), or (ii) in the reasonable judgment of LANDLORD, cannot reasonably be repaired or restored within a period of one hundred and eighty (180) days following commencement of such repair or restoration using standard working methods and procedures, or (iii) is not, or would not have been, covered by a standard fire and extended coverage insurance policy, or (iv) is compensable with insurance proceeds all or a significant portion of which is required to be paid to LANDLORD'S mortgagee in reduction of the indebtedness secured by any Mortgage encumbering the Water Tower or Tower Site, LANDLORD shall have the right and option, in its sole discretion, to terminate this Agreement upon the delivery of notice thereof to TENANT within ninety (90) days after the occurrence of such damage or destruction. If such notice is given, LANDLORD agrees to use its reasonable efforts to permit TENANT to place temporary transmission facilities at an alternative location acceptable to TENANT until such time as TENANT is able to secure a replacement transmission location for the Leased Property. If LANDLORD elects to rebuild the Water Tower, LANDLORD agrees to use its reasonable efforts to permit TENANT to place temporary transmission facilities at an alternative location acceptable to TENANT until such time as the rebuilding is completed. In any case, TENANT agrees that it will use its reasonable efforts to avoid interfering with LANDLORD's efforts to rebuild the Water Tower. If, for any reason, LANDLORD does not complete the rebuilding within two hundred and seventy (270) days after

the occurrence of such damage or destruction, TENANT shall have the right and option, in its sole discretion, to terminate this Agreement upon the delivery of notice thereof to LANDLORD.

**19. Subordination.** LANDLORD shall obtain for the benefit of TENANT a commercially reasonable subordination, non-disturbance and attornment agreement (a “**Non-Disturbance Agreement**”) from each holder of a mortgage, deed of trust, deed to secure debt or other similar instrument now or hereafter encumbering the Leased Property (a “**Mortgage**”), confirming that TENANT’s right to quiet possession of the Leased Property during the term of this Agreement (including any extensions thereof) shall not be disturbed as long as TENANT is not in default hereunder. No such subordination shall be effective unless the holder of such Mortgage shall, either in the Mortgage itself or in a separate agreement with TENANT, agree that in the event of a foreclosure, or conveyance in lieu of foreclosure, of LANDLORD’s interest in the Leased Property, such holder shall recognize and confirm the validity and existence of this Agreement and the rights of TENANT hereunder, and this Agreement shall continue in full force and effect and TENANT shall have the right to continue its use and occupancy of the Leased Property in accordance with the provisions of this Agreement as long as TENANT is not in default of this Agreement beyond applicable notice and cure periods. TENANT shall execute in a timely manner whatever instruments may reasonably be required to evidence the provisions of this Section 1. In the event the Leased Property is encumbered by one or more Mortgages on the Commencement Date, LANDLORD, no later than thirty (30) days after the Commencement Date, shall obtain and furnish to TENANT a Non-Disturbance Agreement in recordable form from the holder of each such Mortgage.

**20. Title Insurance.** TENANT, at TENANT’s option, may obtain title insurance on the Leased Property. LANDLORD shall cooperate with TENANT’s efforts to obtain title insurance by executing documents or obtaining such requested documentation as may be required by the title insurance company.

**21. Hazardous Substances.** LANDLORD warrants, represents and agrees that (i) neither LANDLORD nor, to the best of LANDLORD’s knowledge, any third party has used, generated, stored, or disposed of any Hazardous Materials in, on or under the Leased Property, and (ii) LANDLORD will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Materials in, on, or under the Tower Site in violation of any law or regulation. “Hazardous Materials” shall mean petroleum or any petroleum product, asbestos, and any other substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable Federal, State, or Local law, rule, regulation, order or ordinance. TENANT agrees that it will not use, generate, store or dispose of any Hazardous Materials in, on, or under the Leased Property in violation of any law or regulation. TENANT shall indemnify, defend and hold LANDLORD harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorney’s fees and consultant’s and expert’s fees) resulting from the presence or release of any Hazardous Materials on the Leased Property if caused by TENANT or persons acting under

TENANT. This Agreement shall, in addition to any other right or remedy available hereunder or at law or equity, at the option of TENANT, terminate and be of no further force or effect if Hazardous Materials are discovered to exist on the Leased Property or LANDLORD's Surrounding Property through no fault of TENANT after TENANT takes possession of the Leased Property, and TENANT shall be entitled to a refund of all the consideration paid in advance to LANDLORD under this Agreement.

**22. Opportunity to Cure.**

If TENANT should fail to pay any rental or other amounts payable under this Agreement when due, or if TENANT should fail to perform any other of the covenants, terms or conditions of this Agreement, prior to exercising any rights or remedies against TENANT on account thereof, LANDLORD shall first provide TENANT with written notice specifying the nature of the failure and provide TENANT with a thirty (30) day period following TENANT's receipt of such notice to cure such failure (if the failure is a failure to pay rental or any other sum of money under this Agreement) or a sixty (60) day period following TENANT's receipt of such notice to cure such failure (if the failure is a failure to perform any other covenant, term or condition of this Agreement). If the failure is not a failure to pay rental or any other sum of money hereunder but is not capable of being cured within a sixty (60) day period, TENANT shall be afforded a reasonable period of time following TENANT's receipt of notice to cure the failure, provided that TENANT promptly commences curing the failure after receipt of the notice and prosecutes the cure to completion with due diligence.

**23. Waiver of Incidental and Consequential Damages.** In no event will the parties to this Agreement be liable to each other, or to any third party claiming through or on behalf of LANDLORD or TENANT, for any indirect, special, incidental or consequential damages, including without limitation, lost profits or revenues arising from breach of this Agreement or otherwise.

**24. Notices.** Except as otherwise provided herein, any notices or demands which are required by law or provided under the terms of this Agreement shall be given or made by LANDLORD or TENANT in writing and shall be given by hand delivery, or sent via certified or registered mail, with postage prepaid and return receipt requested, or by a national overnight receipted delivery service which provides signed acknowledgments of receipt (including Federal Express, UPS, Emery, Purolator, DHL, Airborne and other similar couriers delivery services), and addressed to the respective parties set forth below. Such notices shall be deemed to have been given when delivered. Every notice, demand, or request hereunder shall be sent to the addresses listed below:

If to LANDLORD: City of North Taylor  
P.O. Box 810  
Taylor, Texas 76574

If to TENANT: c/o Cingular Wireless LLC  
Attn: Network Real Estate Administration  
Re: Cell Site #1004-9839; Cell Site Name: North Taylor  
6100 Atlantic Boulevard  
Norcross, Georgia 30071

With copy to: Cingular Wireless LLC  
Attn: Legal Department  
Re: Cell Site #1004-9839; Cell Site Name: North Taylor  
15 E Midland Avenue  
Paramus, New Jersey 07652

Rejection or refusal to accept delivery of any notice, or the inability to deliver any notice because of a changed address of which no notice was given, shall be deemed to be receipt of any such notice.

**25. Termination.**

(a) Notwithstanding any other termination rights available to TENANT under this Agreement, TENANT, at its sole and absolute discretion, shall have the right to terminate this Agreement with ninety (90) days prior written notice to LANDLORD and a lump sum payment to LANDLORD in an amount equal to six (6) months rent or the total of the remaining months of the term, whichever is less. The rental rate shall be computed at the rate that is in effect at the time of termination. At termination, TENANT shall execute upon the request of LANDLORD a written cancellation of this Agreement vacating the Leased Property in recordable form and TENANT shall have no other further obligations, other than TENANT's obligation to remove its property as hereinafter provided.

(b) In addition to and in not limitation of any other provisions of this Agreement, TENANT shall have the right, exercisable by at least ten (10) days prior written notice thereof to LANDLORD, to terminate this Agreement upon occurrence of one or more of the following events:

(i) If LANDLORD shall violate or breach, or shall fail fully and completely to observe, keep, satisfy, perform and comply with, any agreement, term, representation, warranty, covenant, and shall not cure such violation, breach or failure within thirty (30)

days after TENANT gives LANDLORD written notice thereof, or, if such failure shall be incapable of cure within thirty (30) days, if LANDLORD shall not commence to cure such failure within such thirty (30) day period and continuously prosecute the performance of the same to completion with due diligence; or

(ii) the commencement by LANDLORD of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or the consent by LANDLORD to or acquiescence in the appointment of a receiver, liquidator, assignee, trustee, custodian, (or other similar official) of any substantial part of the property of LANDLORD, or to the taking of possession of any such property by any such functionary or the making of an any assignment for the benefit of creditors by LANDLORD; or

(iii) as otherwise provided in this Agreement.

**26. Removal of Improvements.** Title to all improvements constructed or installed by TENANT on the Leased Property shall remain with TENANT, and all improvements constructed or installed by TENANT shall at all times be and remain the property of TENANT, regardless of whether such improvements are attached or affixed to the Leased Property. Furthermore, all improvements constructed or installed by TENANT shall be removable by TENANT at the expiration or earlier termination of this Agreement, provided TENANT shall not at such time be in default under any covenant or agreement contained in this Agreement. TENANT, upon termination of this Agreement, shall, within ninety (90) days, remove all improvements, fixtures and personal property constructed or installed on the Leased Property by TENANT and restore the Leased Property to substantially the same condition as received, reasonable wear and tear and damage by insured casualty excepted. TENANT shall not be required to remove any foundations, driveways, or underground cables or wires. If such removal causes TENANT to remain on the Leased Property after termination of this Agreement, TENANT shall pay rent at the then existing monthly rate, or on the existing monthly pro rata basis if based upon a longer payment term, until such time as the removal is completed.

**27. Miscellaneous.** This Agreement cannot be modified except by a written modification executed by LANDLORD and TENANT in the same manner as this Agreement is executed. The headings, captions and numbers in this Agreement are solely for convenience and shall not be considered in construing or interpreting any provision in this Agreement. Wherever appropriate in this Agreement, personal pronouns shall be deemed to include other genders and the singular to include the plural, if applicable. This Agreement contains all agreements, promises and understandings between LANDLORD and TENANT, and no verbal or oral agreements, promises, statements, assertions or representations by LANDLORD or TENANT or any employees, agents, contractors or other representatives of either, shall be binding upon LANDLORD or TENANT.

**28. Contractual Limitations Period.** No action or proceeding may be





















maintained or brought against any party to this Agreement unless such action or proceeding is commenced within forty-eight (48) months after the cause of action accrued unless such cause of action could not have reasonably been discovered by such party.

**29. RF Emissions.**

(a) TENANT shall have the right to place electromagnetic energy warning signs on or about the Leased Property and proximate to its Communications Facility and equipment and to restrict access to its Communications Facility so long as such warning signs are in compliance with applicable law.

(b) LANDLORD shall and shall require each Other Tenant to operate their respective equipment in compliance with all laws and regulations governing radio frequency energy emissions (the "**RF Emissions Regulations**"). LANDLORD agrees that it shall, and shall require all potential or actual Other Tenants that locate and operate transmitting equipment at the Tower Site to agree that if the Tower Site fails to meet the RF Emissions Regulations, or would fail by the addition or modification of the equipment at the Tower Site, to comply with the RF Emissions Regulations at any time during the term of this Agreement, then the existing or prospective Other Tenant at the Tower Site causing or who would cause such failure, shall promptly take commercially reasonable steps to bring the Tower Site into compliance, including preparation and filing of any required environmental assessments and modifications of its equipment.

**30. Security Interest.** It is the express intent of the parties to this Agreement that LANDLORD have no lien or security interest whatsoever in any personal property of TENANT, and, to the extent that any applicable statute, code, or law grants LANDLORD any lien or security interest, LANDLORD hereby expressly waives any rights thereto.

**31. Brokers/Agents.** LANDLORD and TENANT warrant to each other that they were represented in this transaction by no real estate brokerage firms, agents or other intermediaries. Additionally, the parties warrant and covenant to each other that they will each hold the other harmless from and indemnify each other against claims made by any broker, agent or other intermediary claiming to have represented the indemnifying party in this transaction.

**32. Governing Law.** This Agreement shall be governed and interpreted by, and construed in accordance with, the laws of the State of Texas. This Agreement is performable and venue is located in Williamson County, Texas

**33. Attorney's Fees.** In any proceeding which either party may prosecute to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees.

34. **Memorandum of Agreement.** At the request of TENANT, LANDLORD agrees to execute a memorandum or short form of this Agreement, in recordable form, setting forth a description of the Leased Property, the term of this Agreement and other information desired by TENANT for the purpose of giving public notice thereof to third parties.

35. **Surveys.** LANDLORD hereby grants to TENANT the right to survey the Leased Property and LANDLORD's Surrounding Property, and the legal description of the Leased Property on the survey obtained by TENANT shall then be added to and incorporated into Exhibit "B" of this Agreement, and shall control in the event of discrepancies between it and any preliminary description of the Leased Property shown on Exhibit "B".

36. Intentionally Omitted

37. **Binding Effect.** This Agreement shall extend to and bind the heirs, personal representatives, successors, and assigns of LANDLORD and TENANT and shall constitute covenants running with the land.

38. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which shall constitute the same agreement.

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

**LANDLORD:**

**City of North Taylor**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

**STATE OF TEXAS** §  
§  
**COUNTY OF** \_\_\_\_\_ §

Before me, \_\_\_\_\_ the undersigned, a Notary Public for the State, personally appeared \_\_\_\_\_, who is the \_\_\_\_\_ of the City of Taylor, a municipal corporation located in Williamson County, Texas personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

[AFFIX NOTARY SEAL]

\_\_\_\_\_  
Notary Public

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

**TENANT:**

Houston Cellular Telephone Company, LP  
by its general partner  
New Cingular Wireless PCS, LLC

By: Shaun Rickman

Title: Real Estate and Construction Manager  
Greater Texas Region

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

Before me, \_\_\_\_\_ the undersigned, a Notary Public for the State, personally appeared Shaun Rickman, who is the Real Estate and Construction Manager, Greater Texas Region of Houston Cellular Telephone Company, LP, by its general partner, New Cingular Wireless PCS, LLC personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2005.

Signature \_\_\_\_\_

NOTARY SEAL

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

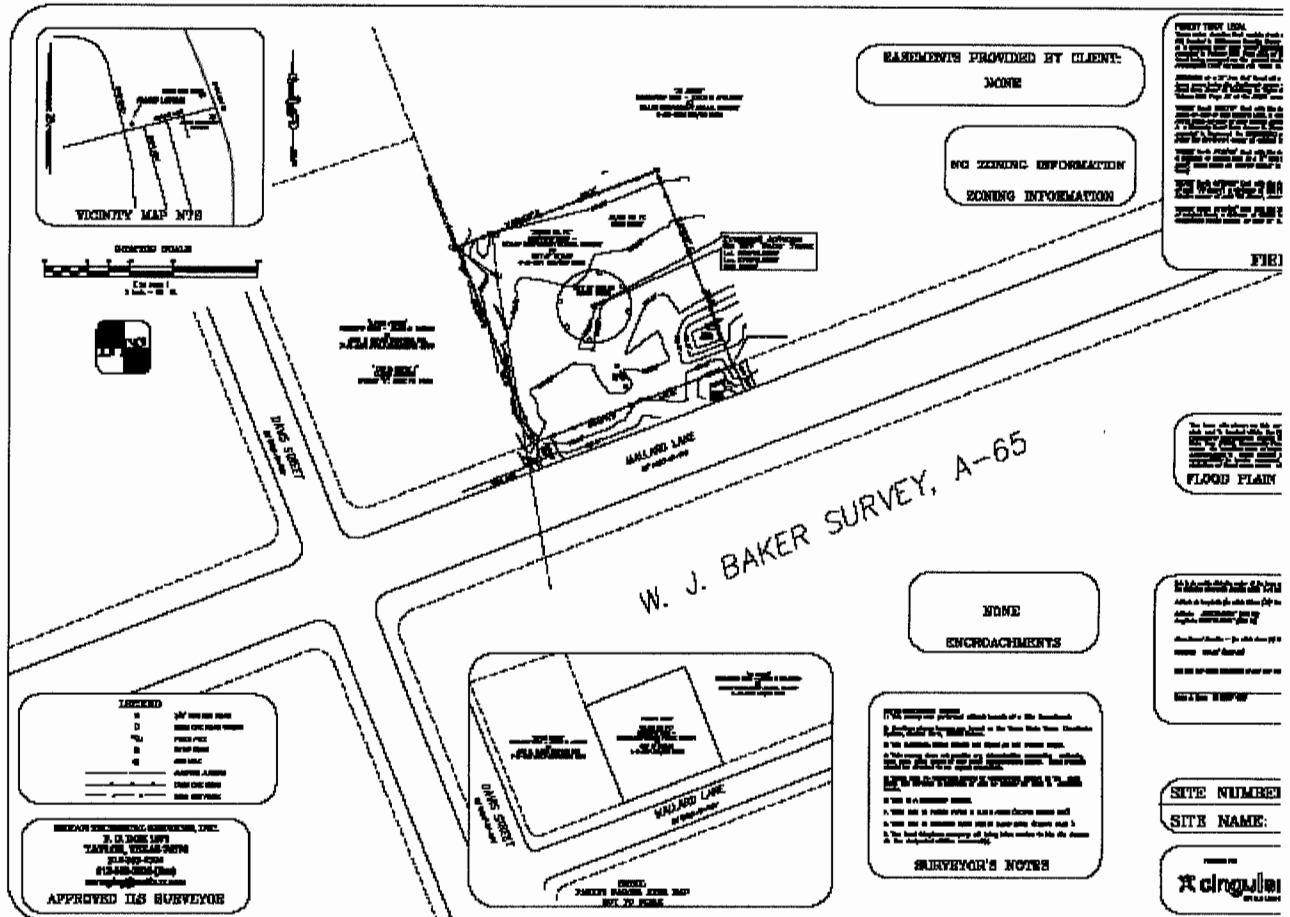
**EXHIBIT "A"**

**Description of Tower Site**

## EXHIBIT "B"

### Description of Leased Property

An approximately 16' x 25' tract of land, together with easements for ingress, egress and utilities legally described as follows:



And depicted on the Site Sketch attached hereto.

**Notes:**

1. This Exhibit may be supplemented by a land survey of the Leased Property once it is received by Tenant.
2. Width of access road shall be the width required by the applicable governmental authorities and utility providers, including police and fire departments.



**EXHIBIT "C"**  
**Description of Tenant's Communications Equipment**

TOWERLEASE-KDM-02/28/02

20

Cingular Site Name: North Taylor  
Cingular Site #: 5435-3733 (10049839)

TOWERLEASE-KDM-02/28/02

Cingular Site Name: North Taylor  
Cingular Site #: 5435-3733 (10049839)

## Bob Vantil

---

**From:** Bob Vantil  
**Sent:** Tuesday, July 05, 2005 10:10 AM  
**To:** Ted Hejl (ted@hejllawfirm.com); Bill Brown; Casey Sledge (casey@sledge.biz)  
**Cc:** Frank Salvato  
**Subject:** FW: Water Tower Lease Agreement



North Taylor  
base legal clean

Please let me know by next Monday, 7/11/05, if we need to change anything.

Thanks,  
Bob

-----Original Message-----

**From:** Bob Vantil  
**Sent:** Thursday, June 23, 2005 7:13 PM  
**To:** Ted Hejl (ted@hejllawfirm.com); Casey Sledge (casey@sledge.biz); Bill Brown; Frank Salvato  
**Cc:** 'sshmidl@bechtel.com'  
**Subject:** FW: Water Tower Lease Agreement

Please let me know if this is the latest version. Is it ready for Council consideration?

Bill, Steven mentions below that he sent David S. some plans last week. Do you need to send those to Casey?

Thanks,  
Bob

-----Original Message-----

**From:** Shmidl, Steven [mailto:sshmidl@bechtel.com]  
**Sent:** Tuesday, June 21, 2005 3:00 PM  
**To:** Bob Vantil  
**Subject:** FW: Water Tower Lease Agreement

> Bob, thanks for returning my call today. Attached is the lease form  
> that should be at or near the final stages. Please review the lease  
> and if the City's Legal gives it their blessing we would love to get  
> this in process. From our conversation today, the revised construction  
> drawings were sent to Dave Simons last week (just found out that he is  
> no longer with the  
> City) and they reflect his request to move the building to the NNW  
> corner of the property. Also, Dave did approve the antennas being  
> mounted on the leg of the tower but he requested and we approved the  
> conditions that the antennas be painted to match the leg.  
>  
> If everything looks good, we would like to be on the July 14 meeting  
> agenda that you mentioned today. Please let me know your thoughts.  
>  
> Steve Shmidl  
> Site Acquisition Project Manager  
> Bechtel Telecommunications  
> 14400 Northbrook, Suite 120  
> San Antonio, Texas 78232  
> sshmidl@bechtel.com

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North Taylor  
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> Steve Shmidl  
> Site Acquisition Project Manager  
> Bechtel Telecommunications  
> 14400 Northbrook, Suite 120  
> San Antonio, Texas 78232  
> sshmidl@bechtel.com  
> Office(210)-491-3445  
> Cell (832) 465-4198  
>  
> <<North Taylor Lease legal clean v2.doc>>