

LAKEHAVEN UTILITY DISTRICT
King County, Washington

Resolution No. 2005-1054

A RESOLUTION of the Board of Commissioners of the Lakehaven Utility District, King County, Washington, approving the execution of a lease agreement for a parcel of real property owned by the District.

WHEREAS, the District owns real property utilized in the provision of municipal water and sewer service, and

WHEREAS, an entity in the business of providing telecommunication services has expressed an interest in locating telecommunications facilities at the Tank 4 property site located at 310th and 8th Avenue South, and

WHEREAS, the Board, after holding a public hearing to consider the leasing of such parcel for the location of telecommunications facilities, believing the execution of a lease agreement to be in the best interests of the District;

NOW, THEREFORE, **BE IT RESOLVED** as follows:

1. The Board hereby finds that, pursuant to the water and sewer system comprehensive plans, the District has a continuing need for ownership of the following parcel of property:
 - Tank 4 property site of 310th and 8th Avenue South
2. The Board additionally finds that the lease of a portion of the Tank 4 property to New Cingular Wireless PCS, under terms and conditions substantially as set forth in the "Lease Agreement" attached hereto as Exhibit "A", would be in the best interests of the District.
3. The General Manager is hereby authorized to execute a lease agreement substantially in the form as set forth in Exhibit "A" with New Cingular Wireless PCS.

ADOPTED by the Board of Commissioners of Lakehaven Utility District, King County, Washington, at an open public meeting this 10th day of NOVEMBER, 2005.

ATTEST:

Edward J. Stewart
President and Commissioner

✓
Yea

Nay

Abstain

Beverly J. Twedd ✓
Vice President and Commissioner Yea Nay Abstain

Donald L. Miller ✓
Secretary and Commissioner Yea Nay Abstain

D. Mayne ✓
Commissioner Yea Nay Abstain

Thomas M. Jovanich ✓
Commissioner Yea Nay Abstain

Approved as to form: [Signature]
General Counsel

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 21 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN; ALSO

THE WEST 120 FEET OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF NORTHWEST QUARTER OF SAID SECTION 8, ALSO

THE PORTION OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF NORTHWEST QUARTER OF SAID SECTION 8 LYING WESTERLY OF THE EAST 177 FEET THEREOF, ALSO

THE SOUTH 30 FEET OF THE WEST 147 FEET OF THE EAST 177 FEET OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF NORTHWEST QUARTER OF SAID SECTION 8.

(TWO TAX PARCELS)

equivalent to two-hundred and fifty dollars (\$250.00) per additional antenna, commencing upon the installation of such antenna(s). Such additional rent shall, during the period subsequent to installation, be subject to the 3% increase applicable to the monthly Rent. Lessee agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Communication Facility on the Property.

3. **TERM.**

(a) The initial lease term will be ten (10) years ("Initial Term"), commencing upon the Commencement Date, as defined below. The Initial Term will terminate on the last day of the month in which the tenth annual anniversary of the Commencement Date occurs.

(b) This Agreement will automatically renew for three (3) additional five (5) year Term(s) (each five (5) year term shall be defined as the "Extension Term"), upon the same terms and conditions unless Lessee notifies Lessor, in writing, of its intention not to renew this Agreement at least six (6) months prior to the expiration of the existing Term.

(c) If Lessee remains in possession of the Premises after the termination or expiration of this Agreement then Lessee will be deemed to be occupying the Premises on a month-to-month basis (the "Holdover Term"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, the Extension Term and the Holdover Term are collectively referred to as the Term ("Term").

4. **RENT.**

(a) Commencing on the date that Lessee commences construction or eighteen (18) months following the Effective Date, whichever first occurs (the "Commencement Date"), Lessee will pay the Lessor a monthly rental payment of Seventeen Hundred Dollars (\$1700.00), ("Rent"), at the address set forth above, on or before the 5th day of each calendar month in advance, provided that the first (1st) payment of Rent shall be due within fifteen (15) business days following the Commencement Date. Rent will be prorated for any partial month.

(b) Beginning with year two (2) of the Initial Term, and each year thereafter, including throughout any Extension Terms exercised, the monthly rent will be increased by three percent (3%) over the previous year's rent.

5. **APPROVALS.**

(a) Lessor agrees to cooperate with Lessee's efforts to obtain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Lessee for its use of the Premises, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively referred to as "Governmental Approvals"). Lessor authorizes Lessee to prepare, execute and file all required applications to obtain Governmental Approvals for Lessee's Permitted Use under this Agreement and agrees to reasonably assist Lessee with such applications.

(b) Lessee 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 Lessee's

choice. Lessor agrees to fully cooperate with Lessee (including obtaining and/or executing necessary documentation) to clear any outstanding title issues that could adversely affect Lessee's interest in the Premises created by this Agreement.

(c) Lessee may also obtain, at Lessee's sole cost and expense, soil boring, engineering procedures, environmental investigation or other tests or reports (collectively the "Tests") on, over, and under the Property, necessary to determine if the Lessee's use of the Premises will be compatible with Lessee's engineering specifications, system, design, operations or Governmental Approvals.

(d) The provisions of this Paragraph five (5) shall be in effect as of the Effective Date.

6. **INTERFERENCE.**

Lessor acknowledges that it shall not interfere, nor permit its other lessees, employees or agents, to materially interfere, with Lessee's use of the Premises. In the event interference occurs, Lessor agrees to use best efforts to eliminate such interference, in a reasonable time period. Lessor's failure to use best efforts shall be a material breach of this Agreement. Excepting communication interference, which is addressed below in this Paragraph six (6), Lessee shall not use the Premises in any way that unreasonably interferes with the use of the Property by Lessor, or other lessees, employees, or agents of Lessor. Lessee acknowledges that the Communication Facility it installs will not cause communication interference with other communication facilities which exist on or off the Premises on the date this Agreement has been signed by both parties. Lessee further acknowledges that, should its Communication Facility cause such prohibited communication interference with other communication facilities on or off the site, Lessee will, after written notice thereof from Lessor cause the communication interference to cease, within thirty (30) days. If interference, communication or other, cannot be resolved in the time periods listed herein, either party, in addition to all other rights under law and equity, will be entitled to terminate this Agreement, and render it null and void, consistent with its rights under Paragraph 10 hereunder.

7. **SECURITY.**

The parties acknowledge Lessee's obligation to provide and maintain security for Lessee's performance of the lease terms. It is agreed that Lessee shall be required to provide a form of security acceptable to the Lessor, whether it be a cash deposit or a Lease Bond ("Security"). If providing a Lease Bond, it has to be issued from a surety licensed in the State of Washington. The amount of Security will be \$38,977.00 during the Initial Term, to be provided by Lessee within fifteen (15) business days following the Commencement Date, or the amount of Rent for the last year of the Extension Term during any Extension Term, to be provided by Lessee, to the extent not previously provided, within fifteen (15) business days following the commencement of any Extension Term. If Lessee provides a cash deposit, and the Security required at the beginning of any Extension Term is less than the Security previously provided, Lessor shall provide a refund to Lessee within fifteen (15) business days following the commencement of the Extension Term. The Security will guarantee Lessee's performance of the terms of this Agreement and shall be returned to Lessee in full upon expiration or the earlier termination of this Agreement unless otherwise used by Lessor as permitted herein.

8. **IMPROVEMENTS/ACCESS.**

Lessee shall have a nonexclusive right, at its expense, to erect and maintain on the Premises, improvements, personal property and facilities necessary to operate its Communication Facilities. Lessee shall not be entitled, without the written consent of the Lessor which consent will not be unreasonably withheld, to make or install any improvements to its facilities not described herein or otherwise alter its use of the Premise, except for the replacement of equipment as allowed under Section 2 of this Agreement. A pre-construction meeting shall be held at least ten (10) working days prior to the initial installation of the Communication Facilities. Lessor shall have final approval over construction and/or installation of improvements, as further detailed below, which approval shall not be unreasonably withheld or delayed. Lessee shall submit a copy of the site plan to the Lessor. Lessor shall give approval or provide Lessee with its requests for changes within fifteen (15) days of Lessor's receipt of Lessee's plans. If Lessor does not provide such approval or request for changes within such fifteen (15) day period, Lessor shall be deemed to have approved the plans. Lessor shall not be entitled to receive any additional consideration in exchange for giving its approval of Lessee's plans. Lessor shall provide Lessee, Lessee's employees, agents, contractors, subcontractors and assigns with vehicular and pedestrian access to the Premises twenty-four (24) hours per day, seven (7) days per week. Access to the Premises during the non-business hours of Lessor will require that Lessee notify Lessor sufficiently ahead of time to allow Lessor to provide an escort to the Premises. Lessee agrees to reimburse Lessor for the reasonable cost of providing an escort. Lessee's exercise of access rights shall not cause undue inconvenience to Lessor. Lessee shall keep and maintain the Communication Facilities in commercially reasonable condition and repair during the term of this Agreement, normal wear and tear excepted. At the end of the Agreement, the Premises shall be returned to Lessor in substantially the condition in which it existed upon start of construction, normal wear and tear and loss by casualty or other causes beyond Lessee's control excepted. As partial consideration for Rent paid under this Agreement, Lessor hereby grants Lessee a non-exclusive easement, for the term of the Agreement, for ingress and egress to the Premises adequate to install and maintain the improvements and necessary appurtenances.

9. **OPERATING CONDITIONS.**

Lessee agrees to abide by each and every operating condition set forth in **Exhibit B**, attached hereto. ~~Failure to abide by any such operating condition shall constitute a material breach of the Agreement and, upon written notice to Lessee and failure to cure within fifteen (15) business days, Lessor shall have the right to terminate this Agreement in accordance with the terms and conditions set forth herein and enforce such termination in a court of competent jurisdiction. Notwithstanding the foregoing, if Lessee has commenced to cure the breach within said fifteen (15) day period, and such efforts are prosecuted to completion with reasonable diligence, Lessor shall not terminate this Agreement.~~

10. **TERMINATION.**

(a) Either party may terminate this Agreement (i) for any reason at the end of any Extension Term on the provision of written notice of not less than six (6) months prior to the end of such Extension Term; or (ii) on thirty (30) days prior written notice, if the other party remains in default under the terms of this Agreement after any applicable cure periods or after forty-five (45) days if none given.

(b) Lessee may terminate this Agreement upon written notice to Lessor, if Lessee is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now and hereafter intended by Lessee; or if any environmental report for the Property reveals the presence of any Hazardous Material after the Term Commencement Date; or if Lessee determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable.

(c) Lessee may terminate this Agreement on sixty (60) days written notice to Lessor for any reason, so long as Lessee pays Lessor a termination fee equal to six (6) months Rent, at the current rent rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Lessee under any one or more of Paragraphs 6, 10(a), 10(b), 18, 19, or 20 of this Agreement.

11. **REMOVAL/RESTORATION.**

All portions of the Communication Facility brought onto the Property by Lessee will be and remain Lessee's personal property and, at Lessee's option, may be removed by Lessee at any time during the Term. Lessor covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Lessee will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Lessor that all improvements of every kind and nature constructed, erected or placed by Lessee on the Premises will be and remain the property of the Lessee and may be removed by Lessee at any time during the Term. Within one hundred twenty (120) days of the termination of this Agreement, Lessee will remove all such improvements. Lessee will not be required to remove from the Premises or the Property any underground utilities.

12. **MAINTENANCE/UTILITIES.**

(a) Lessee will keep and maintain the Tenant Facilities in good condition, reasonable wear and tear and damage from the elements excepted. Lessor will maintain and repair the Property, in good and Tenatable condition, subject to reasonable wear and tear and damage from the elements, including all access roadways from the nearest public roadway to the Premises.

(b) Lessee will be solely responsible for and promptly pay all utilities charges for electricity, telephone service or any other utility used or consumed by Lessee on the Premises at the rate charged by the servicing utility provider. Lessor will fully cooperate with any utility company requesting an easement over, under and across the Property in order for the utility company to provide service to the Lessee.

13. **INDEMNIFICATION/INSURANCE.**

(a) Lessee agrees to indemnify, defend and hold Lessor harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from Lessee's or its agent's installation, use, maintenance, repair or removal of the Communication Facility or Lessee's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Lessor, its employees, agents or independent contractors, or

Lessor's breach of this Agreement. Lessor agrees to indemnify, defend and hold Lessee harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Lessor or its employees or agents, or Lessor's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Lessee, its employees, agents or independent contractors, or Lessee's breach of this Agreement.

(b) Notwithstanding anything to the contrary in this Agreement, each of Lessee and Lessor hereby waives any claims that each may have against the other with respect to consequential, incidental or special damages.

(c) Lessee shall procure a policy of commercial general liability insurance which names the Lessor as an additional insured with limits not less than \$1,000,000 per occurrence/\$3,000,000 aggregate, which limits may be met with a combination of underlying and umbrella policies.

(d) Lessee shall procure a policy of Automobile Liability Insurance with coverage of at least \$1,000,000 combined single limit and in the aggregate for Bodily Injury and Property Damage per occurrence. Coverage includes Contractual Liability, Owned, Non-Owned Leased, Hired Car Liability and associated defense costs. Lessor, its directors, officers, and Employees will be named as Additional Insureds.

(e) Lessor shall procure a policy of commercial general liability insurance with limits \$1,000,000 per occurrence/\$3,000,000 aggregate, which limits may be met with a combination of underlying and umbrella policies.

14. **WARRANTIES.**

(a) Lessee and Lessor 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 set forth as signatory for the party below.

(b) Lessor represents and warrants that: (i) Lessor solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license; (ii) the Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Lessee's Permitted Use and enjoyment of the Premises under this Agreement; (iii) as long as Lessee is not in default then Lessor grants to Lessee, actual, quiet and peaceful use, enjoyment and possession of the Premises; (iv) Lessor's execution and performance of this Agreement will not violate any Laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on the Lessor.

15. **ENVIRONMENTAL.**

(a) Lessor and Lessee agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or matters as may

now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in, or on the Property.

(b) Lessee agrees to defend, hold harmless and indemnify Lessor, its employees, agents and elected officials from, and to assume all duties, responsibilities and liabilities at its sole cost and expense, (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to Lessee's (i) failure to comply with any environmental or industrial hygiene law in its use or occupancy of the Premises, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to Lessee's activities on the Property, unless the environmental conditions are caused by the Lessor. Lessor agrees to defend, hold harmless and indemnify Lessee from, and to assume all duties, responsibilities and liabilities at its sole cost and expense, (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to Lessor's (i) failure to comply with any environmental or industrial hygiene law in its ownership, use or occupancy of the Property, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to Lessor's or any other person's activities on the Premises, unless the environmental conditions are caused by the Lessee.

Lessor represents to the best of its knowledge that it will not permit itself or any third (3rd) party to use, generate, handle, store, or dispose of any Hazardous Materials in, on, under, upon, or affecting the Property in violation of any Environmental Law. Notwithstanding any other provision of this Agreement, Lessee relies upon the representation stated herein as a material inducement for entering into this Lease.

~~(c) The indemnifications of this Paragraph 15 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. The provisions of this Paragraph 15 will survive the expiration or termination of this Agreement.~~

16. **DEFAULT AND RIGHT TO CURE.**

(a) The following will be deemed a default by Lessee 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 Lessor of such failure to pay; or (ii) Lessee's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Lessor specifying the failure. No such failure, however, will be deemed to exist if Lessee has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Lessee. If Lessee remains in default beyond any applicable cure period, Lessor will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed default by Lessor and a breach of this Agreement. Lessor'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 Lessee specifying the failure. No such failure, however, will be deemed to exist if Lessor has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Lessor. If Lessor remains in default beyond any applicable cure period, Lessee will have the right to exercise any and all rights available to it under law and equity, including the right to cure Lessor's default and to deduct the costs of cure from any monies owed to Lessor by Lessee.

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. As to Lessee, Notice Address: c/o Cingular Wireless LLC, Attn: Network Real Estate Administration; Re: Cingular Wireless Cell Site #: WA-931; Cell Site Name: Ranen/Federal Way Buena; 6100 Atlantic Boulevard Norcross, Georgia 30071 with copy to: Cingular Wireless, LLC; Attn.: Legal Department; Re: Cingular Wireless Cell Site #: WA-931; Cell Site Name: Ranen/Federal Way Buena; 15 East Midland Ave. Paramus, NJ 07652

and as to Lessor, Lakehaven Utility District, 31627 1st Avenue South, Federal Way, WA 98063-4249, P.O. Box 4249, Federal Way, Washington 98063-4249. Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

18. **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 this Agreement then the Agreement may be terminated by either party on ten (10) days prior written notice to the other party hereto.

19. **CONDEMNATION.**

In the event Lessor receives notification of any condemnation proceedings affecting the Property, Lessor will provide notice of the proceeding to Lessee within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Lessee's sole determination, to render the Premises unsuitable for Lessee, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will be entitled to share in the condemnation proceeds in proportion to the values of their respective interests in the Property, which for Lessee will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses. Lessee will be entitled to reimbursement for any prepaid Rent on a prorata basis.

20. **CASUALTY.**

Lessor will provide notice to Lessee of any casualty affecting the Property within forty-eight (48) hours of the casualty. If any part of the Communication Facility or Property is damaged by fire or other casualty so as to render the Premises unsuitable, then Lessee may terminate this Agreement by providing written notice to the Lessor, which termination will be effective as of the date of such damage or destruction. Upon such termination, Lessee will be entitled to collect all insurance proceeds payable to Lessee on account thereof and to be reimbursed for any prepaid Rent.

21. **WAIVER OF LESSOR'S LIENS.**

(a) Lessor hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility 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 Lessor hereby consents to Lessee's right to remove all or any portion of the Communication Facility from time to time in Lessee's sole discretion and without Lessor's consent.

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

22. **APPLICABLE LAWS.**

The Lessee, in the use and occupation of the demised premises and in the operation of any activity thereon, shall comply with all requirements of all applicable laws, orders, ordinances, rules and regulations of the federal, state, county and municipal authorities.

23. **TIME OF THE ESSENCE/WAIVER.**

Time is of the essence in all matters relating to the performance of each and every term of this Agreement herein. Any failure by either party to enforce any right arising hereunder shall not be deemed a waiver of such right.

24. **ASSIGNMENT/SUBLEASE.**

(a) Subject to the written approval of Lessor, which approval will not be unreasonably withheld, Lessee may assign or sublet all or any part of the Premises, and all or any rights, benefits, liabilities and obligations of this Agreement provided that the assignee or sublessee assumes, recognizes and also agrees to become responsible to the Lessor for the performance of all terms and conditions of this Agreement. Upon notification to Lessor by Lessee that an assignee or sublessee, permitted pursuant to this Paragraph 24, has assumed, recognized and also

agreed to become responsible to the Lessor for the performance of all terms and conditions of this Agreement, Lessee will be relieved of all-future performance, liabilities and obligations under this Agreement to the extent of such assignment or sublease. Notwithstanding the foregoing, Lessee will have the right to assign this Agreement, in whole or in part, to its parent company, any subsidiary or affiliate of it or its parent company or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets, subject to any financing entity's interest, if any, in this Agreement as set forth in Paragraph 21 above without Lessor's consent.

(b) Notwithstanding anything to the contrary contained in this Agreement, Lessee may assign, mortgage, pledge, hypothecate or otherwise transfer without notice or consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Lessee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

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 Lessor and an authorized agent of the Lessee. No provision may be waived except in writing signed by both parties.

(b) **Memorandum/Short Form Lease.** Either party will, at any time upon prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum or Short Form of Lease. Either party may record this Memorandum or Short Form of Lease at any time, in its absolute discretion.

(c) **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.

~~(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.~~

(e) **Governing Law.** This Agreement will be governed by the laws of the State of Washington .

(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 but not limited to"; (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 fifteen (15) 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 encumbrance of the Premises. 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 month's Rent has been paid in advance.

(h) **No Electronic Signatures/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Lessor and Lessee.

26. **MARKING AND LIGHTING.**

Lessor acknowledges that it shall be responsible for complying with all Federal Aviation Administration ("FAA") and FCC marking and lighting requirements that arise in connection with the Building. Lessee acknowledges that it shall be responsible for complying with all FAA and FCC marking and lighting requirements that arise as a result of the Lessee Facilities. Lessor and Lessee each agree to indemnify and hold the other harmless from any fines or other liabilities resulting from the other's failure to comply with such requirements. Should Lessor be cited by the FAA or FCC because the Lessee Facilities are not in compliance and, should Lessee fail to cure the conditions of noncompliance within the time frame allowed by the citing agency, Lessor may either terminate this Agreement immediately upon notice to Lessee or proceed to cure the conditions of noncompliance at Lessee's expense. Should Lessee be cited by the FCC or FAA because the Building is not in compliance and, should Lessor fail to cure the conditions of noncompliance within the time frame allowed by the citing agency, Lessee may either terminate this Agreement immediately upon notice to Lessor or proceed to cure the conditions of noncompliance at Lessor's expense, which amounts may be deducted from the Rent.

27. **RELOCATION.**

(a) At any time after the initial Term as specified in this Agreement, Lessor may, no more than once, per Term, upon twelve (12) months prior written notice to Lessee, elect to have Lessee relocate its Telecommunication Facility from the Premises to any other portion of the Property or any adjoining real property owned by Lessor (the "Alternate Premises"), subject to the terms set forth below.

(b) The size, location and dimensions of the Alternate Premises shall be chosen by Lessor but must, in Lessee's reasonable judgment, be at least as suitable for the purposes of operating telecommunication facilities as the size, location and dimensions of the Premises. If the Alternate Premises is not suitable for Lessee's operations, as determined by Lessee in its sole

judgment, then Lessee may terminate this Agreement with no further liability or penalty. In the event Lessee elects to terminate as aforesaid, Lessor shall have the option to withdraw its exercise of the relocation option, and in such event, Lessee's election to terminate shall be deemed null and void.

(c) Lessee shall not be required to conduct such relocation in a manner which would cause any material deterioration or diminution of such quality or which would cause any interruption of such service. Any relocation of Lessee by Lessor shall be made and completed, if reasonably possible, on a weekend so as not to disrupt Lessee's business operations conducted on the Premises.

(d) The relocation of Lessee's Telecommunication Facility to the Alternate Premises shall not cause the Fee payable under this Agreement to be increased.

(e) The relocation of Lessee's Telecommunication Facility to the Alternate Premises shall be accomplished by Lessee at Lessee's sole expense.

(f) Upon the relocation of Lessee's Telecommunication Facility from the Premises to the Alternate Premises, all references in this Agreement to the Premises shall be deemed to be references to the Alternate Premises. Following such relocation, Lessee may, at its expense, prepare plans delineating the Alternate Premises, which shall then replace Exhibit "B" of this Agreement.

LESSOR:

Lakehaven Utility District, successor in interest to
Lakehaven Sewer District and Federal Way Water
and Sewer District, a municipal corporation

By: _____

Print Name: Donald T. Perry

Its: General Manager

Date: 12-19-05

LESSEE:

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: _____

Print Name: E. Don MacLeod

Its: Executive Director of Network Services

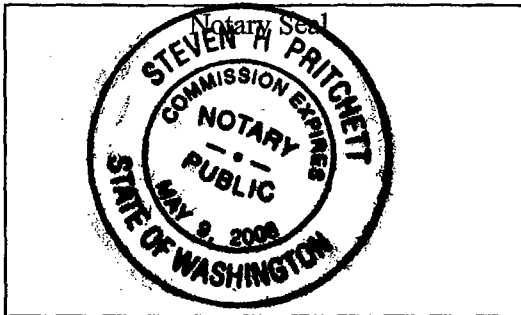
Date: 11-20-05

LESSOR ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that Am Perry is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the General Manager of Valentine Dry Cleaning, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: December 19/2005



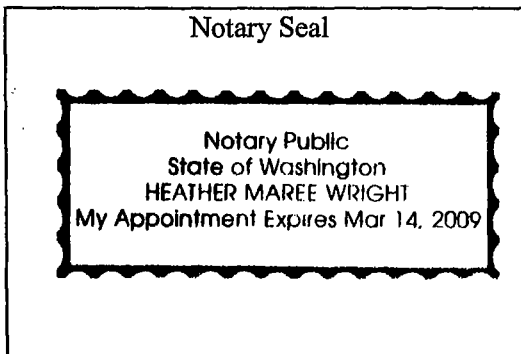
Steven H. Pritchett
(Signature of Notary)
Steven H. Pritchett
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: 5-9-09

LESSEE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that E. Don MacLeod is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Executive Director of Network Services of New Cingular Wireless PCS, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 11/30/05



Heather M. Wright
(Signature of Notary)
HEATHER M. WRIGHT
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: 03.14.09

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 21 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN; ALSO

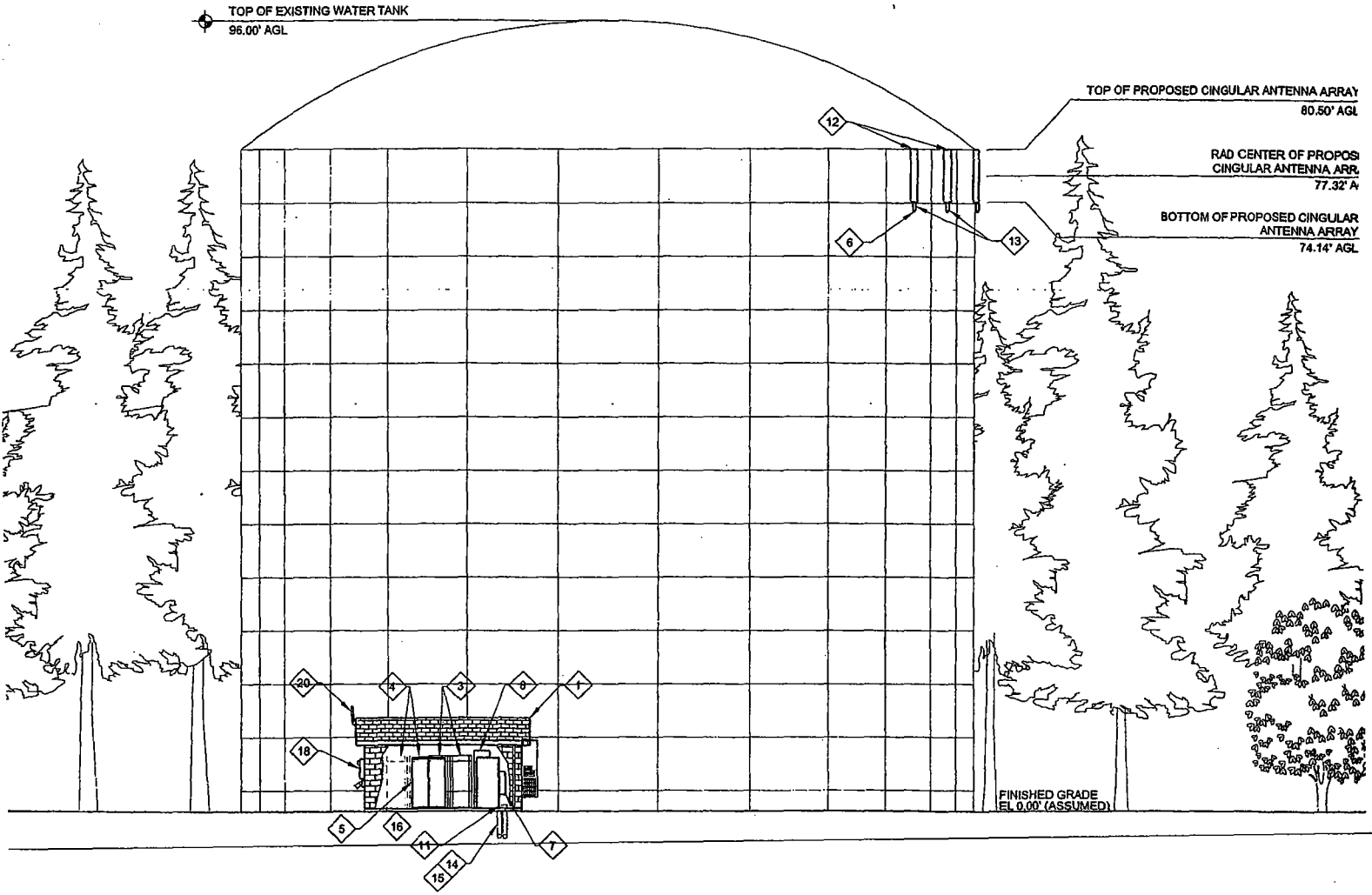
THE WEST 120 FEET OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF NORTHWEST QUARTER OF SAID SECTION 8, ALSO

THE PORTION OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF NORTHWEST QUARTER OF SAID SECTION 8 LYING WESTERLY OF THE EAST 177 FEET THEREOF, ALSO

THE SOUTH 30 FEET OF THE WEST 147 FEET OF THE EAST 177 FEET OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF NORTHWEST QUARTER OF SAID SECTION 8.

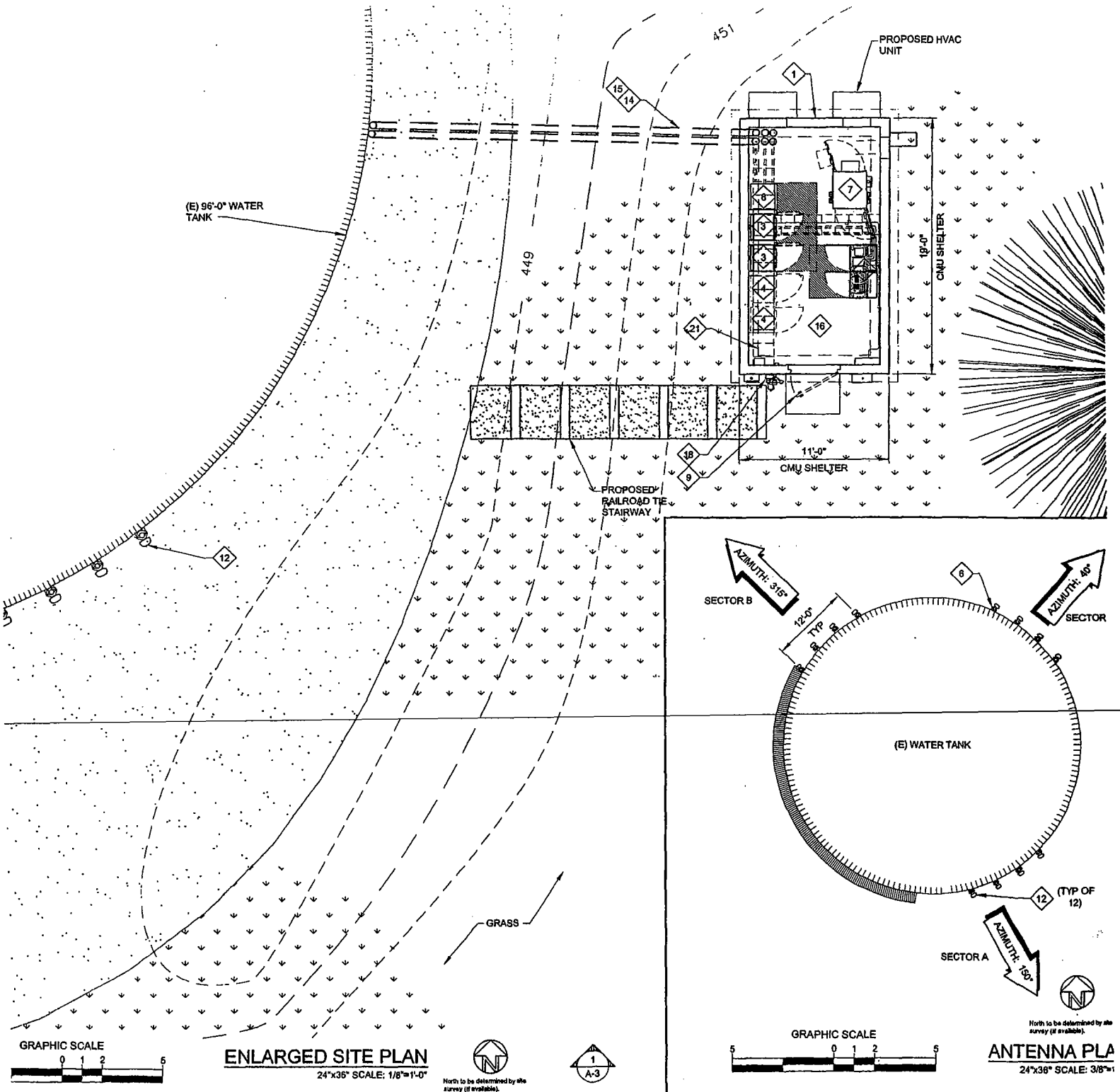
(TWO TAX PARCELS)

EXHIBIT A -1
SITE PLAN OF LESSEE COMMUNICATION FACILITY



EAST ELEVATIC
 24"x36" SCALE: 1/8" = 1'

EXHIBIT A-2
SITE PLAN OF LESSEE COMMUNICATION FACILITY



LAKEHAVEN UTILITY DISTRICT

LEASE AGREEMENT FOR TELECOMMUNICATIONS FACILITIES

Exhibit B

Operating Conditions

1. Lessee shall notify the District at least 24-hours in advance to arrange for site access. The District will either provide an escort through locked points of entry or provide an alternate method acceptable to the District at the District's discretion. Representatives of the Lessee arriving on site must have valid company identification badges.

i) **Contact information:**

The current District contacts are:

- 1st. Water Quality Engineer at (253) 946-5410.
2nd. Water Manager at (253) 946-5401.

The current District EMERGENCY (or off-hour) contacts are:

- 1st. Water On-call (253) 405-6667
2nd.

The current Lessee contacts are:

- 1st. _____
2nd. _____

The current Lessee EMERGENCY (or off-hour) contacts are:

- 1st. National Operations Center 1-800-832-6642
2nd. _____

- ii) Access for construction, routine maintenance and repair and other non-emergency visits shall only be during business hours (currently defined as Monday through Friday, 7:00 a.m. to 4:30 p.m.) with twenty-four (24) hours advance notice to Lakehaven Utility District to arrange for an escort.
- iii) In the event of an emergency, as described by Lessee, Lessee may access the Site twenty-four (24) hours per day, seven (7) days per week, escorted by Lakehaven Utility District as arranged using the emergency phone number(s). The Lessee shall reimburse the District for all costs associated with opening the facility outside of the business hours and the cost of providing staff after normal business hours.
- iv) Access to the Site may be by foot or motor vehicle.

- v) **Access to the Site shall be subject to such additional conditions as may be imposed by Lakehaven Utility District from time to time which shall be in effect after twenty (20) days notice to Lessee.**
 - vi) **Access to the Site is secondary to emergency power and water system operations and maintenance at the site. In the event of a water system emergency, Lessee's access may be delayed.**
- 3. Fencing of facilities/improvements within the fenced portions of District property is acceptable only as authorized by the District.**

Lessee shall not store any hazardous materials on site. This site is within a Wellhead Protection Area. If a substance is deemed non-hazardous and used or stored on site, the Lessee shall inform the District of the type of substance(s) and provide the appropriate Material Safety Data Sheet(s).

**RECORDING REQUESTED BY, AND
WHEN RECORDED, RETURN TO:**

Graham & Dunn PC
2801 Alaskan Way – Suite 100
Seattle, WA 98121-1128

MEMORANDUM OF AGREEMENT

Grantor: Lakehaven Utility District, successor in interest to Lakehaven Sewer District and Federal Way Water and Sewer District, a municipal corporation

Grantee: New Cingular Wireless PCS, LLC, a Delaware limited liability company

Legal Description: Official legal description attached as Exhibit A

Assessor's Tax Parcel No.: 082104-9029

Site Number & Name: WA-931 Ranen/Federal Way Buena

This Memorandum of Agreement is made by and between New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 6100 Atlantic Boulevard, Norcross, Georgia 30071 (hereinafter referred to as "Lessee"), and Lakehaven Utility District, successor in interest to Lakehaven Sewer District and Federal Way Water and Sewer District, a municipal corporation, whose address is 31627 First Avenue South, Federal Way, Washington, 98063 (hereinafter referred to as "Lessor").

RECITALS

WHEREAS, Lessor and Lessee have executed that certain Communication Site Lease Agreement ("Agreement") dated as of December 19, 2005, covering certain premises ("Premises") situated on certain real property located in the County of King, State of Washington, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, Lessor and Lessee desire to record notice of the Agreement in the county's official records;

NOW, THEREFORE, in consideration of the foregoing, Lessor and Lessee hereby declare as follows:

1. **Demise.** Lessor has leased Premises to Lessee (together with access rights), and Lessee has leased the Premises from Lessor, subject to the terms, covenants and conditions contained in the Agreement for the purpose of installing, operating and maintaining a radio communications facility and other improvements. All of the foregoing are set forth in the Agreement.

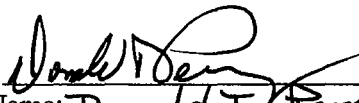
2. **Expiration Date.** The term of the Agreement is scheduled to commence with the commencement of construction by Lessee or eighteen (18) months following the Effective Date, whichever first occurs, and shall expire ten (10) years thereafter, subject to Lessee's option to extend the term for three (3) additional terms of five (5) successive years each.

3. **Agreement Controlling.** This Memorandum is solely for the purpose of giving constructive notice of the Agreement. In the event of conflict between the terms of the Agreement and this Memorandum, the terms of the Agreement shall control.

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


LESSOR:

Lakehaven Utility District, successor in interest to Lakehaven Sewer District and Federal Way Water and Sewer District, a municipal corporation

By: 
Print Name: Donald T. Perry
Its: General Manager
Date: 12-19-05

LESSEE:

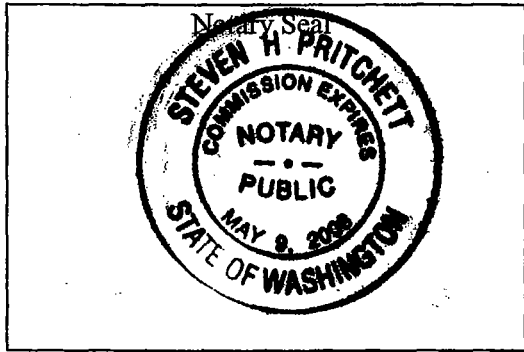
New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: 
Print Name: E. Don MacLeod
Its: Executive Director of Network Services
Date: 11-30-05

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that Don Perry is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the General Manager of Lakemore Utility District, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 12/19/05



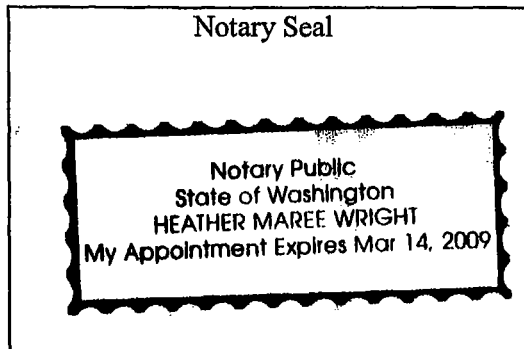
[Signature]
(Signature of Notary)
Steven H. Pritchett
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: 5-9-09

LESSEE'S ACKNOWLEDGMENT:

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that E. Don MacLeod is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Executive Director of Network Services of New Cingular Wireless PCS, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 11/30/05



[Signature]
(Signature of Notary)
HEATHER M. WRIGHT
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: 03/14/09

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 21 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN; ALSO

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(TWO TAX PARCELS)
