



500 West Big Beaver  
Troy, MI 48084  
troymi.gov

## CITY COUNCIL AGENDA ITEM

Date: June 4, 2024

To: Honorable Mayor and Troy City Council Members

From: Robert J. Bruner, Acting City Manager  
Megan E. Schubert, Assistant City Manager  
Lori Grigg Bluhm, City Attorney

Subject: First Amendment Sylvan Glen Cell Tower



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### **History**

Since October 1998, AT & T Wireless and its successors and affiliates have leased a space on the cell tower located at the Sylvan Glen Golf Course, and also a cell tower located on Lowery Street. AT & T has subcontractors negotiate its leases, and we worked with several different ones to negotiate renewals for both of the cell tower leases. We were finally able to reach a satisfactory lease amendment for the Lowery Street cell tower. Unfortunately, the separate subcontractors for the Sylvan Glen site were not being responsive at that time. However, we presented two identical leases to City Council at its December 5, 2022 regular City Council meeting, which were approved. (Resolution 2022-12-184). We then sent the approved amended leases to the subcontractors for execution. The subcontractor handling the Lowery Street cell tower lease executed the document and it was recorded with the Oakland County Register of Deeds. Unfortunately, the subcontractor handling the Sylvan Glen lease left his employment, and we were unsuccessful in our many efforts to identify his replacement. Finally, our communications were internally forwarded to another subcontractor, and we sent them the approved amended lease. The new subcontractor reviewed the approved lease, but needed to make some tweaks to update the lease and the contact information. The attached proposed First Amendment to Lease Agreement has been approved by the subcontractor. If this is also approved by City Council, then we anticipate recording the attached Memorandum of Understanding (without the specific lease amounts) with the Oakland County Register of Deeds, and then the City will receive its 2023 and 2024 annual lease payments. This proposed First Amendment can be renewed in five- year increments, but can be extended until June 30, 2047.

### **Financial**

Under the terms of the First Amendment, the City would receive an annual lease payment of \$40,000 for 2023 (retroactive), and the annual payments for each year thereafter will increase by 3%.

### **Recommendation**

City Administration recommends approval of the attached First Amendment to Lease Agreement for the Sylvan Glen Golf Course communications/ cell tower, as well as the Memorandum of Understanding.



500 West Big Beaver  
Troy, MI 48084  
[troymi.gov](http://troymi.gov)

## **CITY COUNCIL AGENDA ITEM**

## FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT ("**Amendment**") dated as of the later date below (the "**Effective Date**") is by and between City of Troy, a Michigan municipal corporation, having a mailing address at 500 West Big Beaver Road, Troy, MI 48084 ("**Landlord**") and NCWPCS MPL 27 - Year Sites Tower Holdings LLC, a Delaware limited liability company, by CCATT LLC, a Delaware limited liability company, its Attorney in Fact, having a mailing address at Attn: Legal - Real Estate Department, 2000 Corporate Drive, Canonsburg, PA 15317 ("**Tenant**").

WHEREAS, Landlord and Tenant, as successor in interest to New Cingular Wireless PCS, LLC, a Delaware limited liability company, successor by merger to AT&T Wireless Services PCS, Inc., a Delaware corporation, acting by and through its Agent, Wireless PCS, Inc., d/b/a AT&T Wireless Services, are parties to that certain Lease Agreement dated October 6, 1998, whereby Landlord leases to Tenant certain Premises, therein described, that are a portion of the Property located at 5709 Rochester Road, Troy, MI 48085 (as amended and/or assigned, collectively, the "**Lease**"); and

WHEREAS, the term of the Lease expired on June 30, 2022, and the parties mutually desire to renew the Lease, memorialize such renewal period and modify the Lease in certain other respects, all on the terms and conditions contained herein; and

WHEREAS, Landlord and Tenant desire to amend the Lease to extend the term of the Lease; and

WHEREAS, Landlord and Tenant desire to adjust the rent in conjunction with the modifications to the Lease contained herein; and

WHEREAS, Landlord and Tenant, desire to amend the Lease to modify the notice section thereof; and

WHEREAS, Landlord and Tenant, in their mutual interest, wish to amend the Lease as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. **Term.** The term of the Lease shall be amended to provide that the Lease has a new initial term of five (5) years ("**New Initial Term**"), commencing on July 1, 2022, ("**New Term Commencement Date**"). The Lease will be automatically renewed for up to four (4) additional five (5) year terms (each a "**Renewal Term**") upon the same terms and conditions of the Lease, as amended herein, without further action by Tenant, unless Tenant notifies Landlord in writing of Tenant's intention not to renew the Lease at least sixty (60) days prior to the expiration of the New Initial Term or the then current Renewal Term. Hereafter, the defined term "**Term**" shall include the New Initial Term and any applicable Renewal Term. Landlord agrees and acknowledges that

except that as such permitted use or other rights may be amended herein, Tenant may continue to use and exercise its rights under the Lease as permitted prior to the New Initial Term. If all Renewal Terms are exercised, the last Renewal Term shall expire on June 30, 2047.

2. **Modification of Rent.** Commencing on July 1, 2022, the annual rent payable under the Lease shall be Forty Thousand Four Hundred and No/100 Dollars (\$40,000.00) (the "**Rent**"), and shall continue during the Term, subject to adjustment, if any, as provided below. In the event of any overpayment of Rent prior to or after the Effective Date, Tenant shall have the right to deduct from any future Rent payments an amount equal to the overpayment amount.

3. **Future Rent Increase / Annual Payments.** The Lease is amended to provide that commencing on July 1, 2023 and for the duration of the Term, the annual Rent shall increase by three percent (3%) over the Rent paid during the previous year.

4. **Permitted Use.** Tenant, its personnel, invitees, contractors, agents, or assigns may use the Premises, at no additional cost or expense, for the transmission and reception of any and all communications signals, and with advanced written permission from Landlord, which shall not be unreasonably withheld, may modify, replace, upgrade, or expand, including but not limited to the number and type(s) of antennas, or refurbish the equipment and/or improvements thereon or relocate the same within the Premises at any time during the term of the Lease, or in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services, or for any other reason. Landlord shall reasonably cooperate in obtaining governmental and other use permits or approvals necessary or desirable for the foregoing permitted use.

5. **Acknowledgement.** Landlord and Tenant acknowledge that: 1) this Amendment is entered into of the Tenant's and Landlord's free will and volition; 2) Tenant and Landlord have read and understand this Amendment and the underlying Lease and, prior to execution of this Amendment, were free to consult with counsel of their choosing regarding its decision to enter into this Amendment and to have counsel review the terms and conditions of this Amendment.

6. **Notices.** Section 29 of the Lease is hereby deleted in its entirety and replaced with the following:

**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. Notices will be addressed to the parties as follows.

If to Landlord:

City of Troy  
City Manager and City Attorney  
500 West Big Beaver Road  
Troy, MI 48084

If to Tenant:

NCWPCS MPL 27 - Year Sites Tower Holdings LLC  
Legal Department  
Attn: Network Legal  
208 S. Akard Street  
Dallas, TX 75202-4206

With a copy to:

CCATT LLC  
Attn: Legal - Real Estate Department  
2000 Corporate Drive  
Canonsburg, PA 15317

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice. 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.

7. **Charges.** All charges payable under the Lease such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of the Lease.

8. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Lease and this Amendment, the terms of this Amendment shall control. Except as expressly set forth in this Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the Lease to itself shall be deemed also to refer to this Amendment.

9. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Lease.

[NO MORE TEXT ON THIS PAGE- SIGNATURES TO FOLLOW ON NEXT PAGE]

**IN WITNESS WHEREOF**, the parties have caused this Amendment to be effective as of the last date written below.

**LANDLORD:**

City of Troy,  
a Michigan municipal corporation

**TENANT:**

NCWPCS MPL 27 - Year Sites Tower Holdings  
LLC, a Delaware limited liability company

By: CCATT LLC, a Delaware limited liability  
company

Its: Attorney in Fact

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

Printed Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

[ACKNOWLEDGEMENTS APPEAR ON THE NEXT PAGE]

**LANDLORD ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_)

\_\_\_\_\_)  
COUNTY OF \_\_\_\_\_)

I CERTIFY that on \_\_\_\_\_, 2024, \_\_\_\_\_  
[name of representative] personally came before me and acknowledged under oath that he or she:

(a) is the City Manager of **City of Troy, a Michigan municipal corporation**, the corporation named in the attached instrument;

(b) was authorized to execute this instrument on behalf of the corporation; and

(c) executed the instrument as the act of the corporation.

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

My Commission Expires: \_\_\_\_\_

**TENANT ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_)

\_\_\_\_\_)  
COUNTY OF \_\_\_\_\_)

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledge it as the of CCATT LLC, a Delaware limited liability company, the Attorney in Fact for **NCWPCS MPL 27 - Year Sites Tower Holdings LLC, a Delaware limited liability company**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary Public in and for the State of \_\_\_\_\_

My appointment expires: \_\_\_\_\_



## MEMORANDUM OF FIRST AMENDMENT TO LEASE AGREEMENT

**THIS MEMORANDUM OF FIRST AMENDMENT TO LEASE AGREEMENT** (“**Memorandum**”) is to be effective as of the date of the last signature below, by and between City of Troy, a Michigan municipal corporation, having a mailing address at 500 West Big Beaver Road, Troy, MI 48084 (“**Landlord**”) and NCWPCS MPL 27 - Year Sites Tower Holdings LLC, a Delaware limited liability company, by CCATT LLC, a Delaware limited liability company, its Attorney in Fact, having a mailing address at Attn: Legal - Real Estate Department, 2000 Corporate Drive, Canonsburg, PA 15317 (“**Tenant**”), with reference to the following facts:

Landlord and Tenant desire to have this Memorandum recorded in the Oakland County Register of Deeds, Michigan.

The parties have agreed as follows:

1. Landlord and Tenant, as successor in interest to New Cingular Wireless PCS, LLC, a Delaware limited liability company, successor by merger to AT&T Wireless Services PCS, Inc., a Delaware corporation, acting by and through its Agent, Wireless PCS, Inc., d/b/a AT&T Wireless Services, are parties to that certain Lease Agreement dated October 6, 1998, whereby Landlord leases to Tenant certain Premises, therein described, that are a portion of the Property located at 5709 Rochester Road, Troy, MI 48085 (as amended and/or assigned, collectively, the “**Lease**”), as more particularly described in the Lease (the “**Premises**”), being part of a larger parcel of property owned by Landlord (the “**Property**” and as further described in Exhibit “A”), together with easements for ingress, egress and general utility purposes as described more fully in the Lease.

2. Landlord is the current landlord under the Lease.

3. Tenant is the current tenant under the Lease.

4. Landlord and Tenant have entered into that certain First Amendment to Lease Agreement with an effective date on or about the same as this Memorandum (the “**First Amendment**”).

5. The current term of the Lease commenced on July 1, 2022 and is for an initial term of (5) years. At the conclusion of the current term, Tenant shall be entitled to four (4) additional renewal

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Site Name: Sylvan Glen Golf  
BUN #: 843387

terms of five (5) years each (each a “**Renewal Term**”), without the necessity of any further action by the parties. Landlord and Tenant hereby acknowledge that if all Renewal Terms are exercised, the last Renewal Term shall end June 30, 2047.

6. The terms, covenants and provisions of the Lease, as modified by the First Amendment, shall extend to and be binding upon the respective heirs, executors, administrators, successors and assigns of Landlord and Tenant.

7. This Memorandum in no way modifies the terms of the Lease or any modification thereof. If there is any conflict between the terms of the Lease and this Memorandum, the terms of the Lease shall prevail.

**[SIGNATURE PAGE TO FOLLOW]**

**IN WITNESS WHEREOF**, Landlord and Tenant have caused this Memorandum of First Amendment to Lease Agreement to be duly executed effective on the day and year last written below.

**LANDLORD:**

City of Troy,  
a Michigan municipal corporation

**TENANT:**

NCWPCS MPL 27 - Year Sites Tower Holdings  
LLC, a Delaware limited liability company

By: CCATT LLC, a Delaware limited liability  
company  
Its: Attorney in Fact

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

Printed Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

[ACKNOWLEDGEMENTS APPEAR ON THE NEXT PAGE]

**LANDLORD ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_)

)

COUNTY OF \_\_\_\_\_)

I CERTIFY that on \_\_\_\_\_, 2024, \_\_\_\_\_ [name of representative] personally came before me and acknowledged under oath that he or she:

(a) is the City Manager of **City of Troy, a Michigan municipal corporation**, the corporation named in the attached instrument;

(b) was authorized to execute this instrument on behalf of the corporation; and

(c) executed the instrument as the act of the corporation.

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

My Commission Expires: \_\_\_\_\_

**TENANT ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )

)

COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledge it as the of CCATT LLC, a Delaware limited liability company, the Attorney in Fact for **NCWPCS MPL 27 - Year Sites Tower Holdings LLC, a Delaware limited liability company**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary Public in and for the State of \_\_\_\_\_

My appointment expires: \_\_\_\_\_

Instrument prepared by:  
Christopher R. Mykytiak, Esq.  
Taft Stettinius & Hollister LLP  
200 Public Square, Suite 3500  
Cleveland, Ohio 44114  
216-706-3893

After recording return to:  
Crown Castle  
8020 Katy Freeway  
Houston, TX 77024

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

Part of the Northeast  $\frac{1}{4}$  of Section 11, Town 2 North, Range 11 East, City of Troy, Oakland County, Michigan more particularly described as: Commencing at the Northeast Corner of said Section 11; thence along the East line of said Section also the centerline of John R. Road due South 505.00 feet; thence South 89 degrees 50 minutes 00 seconds West, 312.00 feet; thence due North, 505.00 feet to the North line of said Section 1 and also the centerline of Square Lake Road; thence along said line South 89 degrees 50 minutes 00 seconds East, 312.00 feet to the point of beginning, subject to rights of the public on Square Lake Road and John R. Road.

Site Name: Sylvan Glen Golf  
BUN #: 843387

## LEASE AGREEMENT

This Lease ("Lease") is entered into this 6<sup>th</sup> day of October, 1998, between the CITY OF TROY, a Michigan municipal corporation, whose address is 500 West Big Beaver, Troy, Michigan 48084, ("Landlord") and AT&T WIRELESS SERVICES PCS, INC., a Delaware corporation, acting by and through its Agent, WIRELESS PCS, INC., d/b/a AT&T WIRELESS SERVICES, whose address is 26877 Northwestern Highway, Suite 350, Southfield, MI 48034, ("Tenant").

### RECITALS

- A. Landlord is the owner of a certain parcel of land located in the City of Troy, commonly known as "Sylvan Glen Golf Course", legally described on the attached **Exhibit A** (the "Property").
- B. Tenant is in the telecommunications business and desires to lease from Landlord a certain part of the Property, which part is legally described on **Exhibit B** (the "Premises") to construct and operate on the Premises a one hundred sixty-six (166') foot high monopole-type tower (the "Tower") as shown on the plans and specifications for the Premises for use by Tenant in connection with its telecommunications business and for use by Landlord and others authorized by Landlord and Tenant for communication purposes and other non-interfering uses.
- C. Landlord is willing to lease to Tenant and Tenant is willing to lease from Landlord the Premises upon the terms and conditions set forth in this Lease Agreement (the "Lease").

THEREFORE, in consideration of the mutual covenants contained in this Lease, the Landlord and Tenant agree as follows:

1. **Leased Premises.** Landlord leases to Tenant and Tenant leases from Landlord the ground space described on **Exhibit A** to construct the Tower and one equipment shelter of 21' x 42-1/2' size in accordance with the site plan attached as **Exhibit B** (the "Equipment Shelter") for use by Landlord, Tenant and two (2) other users, together with a non-exclusive easement for ingress, egress and utilities over the adjacent real property as legally described on the attached **Exhibit B** under the caption "Access Easement" and "Utilities Easement". Landlord and Tenant acknowledge that Landlord may use the vertical space \_\_\_\_\_ feet on the Tower, and that Tenant may use the vertical space at 166 feet on the Tower, unless modified by a written amendment executed by Landlord and Tenant. The Equipment Shelter shall be constructed with separate rooms for use by Tenant, Landlord and two (2) other users, with separate entrances, electrical outlets and utility services for each occupant. All of the foregoing are collectively referred to as the "Premises". This Lease is not a franchise pursuant to Article 7, Section 29 of the Michigan Constitution, nor is it a permit to use the rights-of-way under Article 2A of the Michigan Telecommunications Act, Act No. 216 of the Public Acts of 1995. Any such franchise or Act 216 permit must be obtained separately from Landlord.

2. **Term and Renewals.** The initial term of this Lease shall commence on the date of issuance of a Certificate of Occupancy by the City (the "Commencement Date") and shall end on June 30, 2007. Provided Tenant is not in default under this Lease, this Lease shall be automatically renewed for up to three (3) successive renewal terms of five (5) years each at the expiration of each preceding term and one (1) final renewal term of three (3) years, unless Tenant notifies Landlord in writing at least one hundred twenty (120) days prior to expiration of the then current term of the Lease. Each renewal shall be on the same terms and conditions as are contained in this Lease, except that the rental rate shall be adjusted as provided on Exhibit C of this Lease and there shall be no renewal after the final renewal term.

3. **Rent and Other Consideration.**

a. Tenant shall pay Landlord a lump sum, non-refundable initial payment of Sixty Thousand (\$60,000.00) Dollars in lieu of rent, which represents Ten Thousand (\$10,000.00) Dollars for the purchase of microwave communications equipment by the City and Fifty Thousand (\$50,000.00) Dollars as a non-refundable payment in lieu of annual rent for the initial four years and two months. As additional consideration for the initial term of the Lease, Tenant shall construct the Tower and Equipment Shelter as specified in paragraph 1 of this Lease, and as shown and described on Exhibit B and Exhibit D. In addition, Tenant shall pay Landlord as annual rent for the Premises each year during the term of this Lease the rental specified on Exhibit C. The annual rent payments shall commence without further notice on July 1, 2004. If the term of the Lease shall commence on a date other than July 1, the term of the initial term shall be adjusted by the number of days between the Commencement Date and July 1 so that all of Landlord's Tower and Antennae Leases shall be on July 1 anniversary dates. Tenant shall pay Landlord Rent annually in advance on July 1 of each year that the Lease is in effect. All Rent shall be paid without offset.

b. Tenant shall pay Landlord a late payment charge equal to five (5%) percent of the late payment for any payment not paid when due. Any amounts not paid when due shall also bear interest until paid at the lesser of the rate of two (2%) percent per month or the highest rate permitted by law.

c. To the extent that Landlord desires to purchase telephone service from Tenant, Tenant shall offer this service to Landlord at the most favorable rate and terms that Tenant offers to any other municipality.

d. In addition, upon execution of this Lease by Tenant, Tenant shall reimburse Landlord for its reasonable costs and expenses, including hardware, consultant and attorney fees, incurred by Landlord in connection with the negotiation and preparation of this Lease, Ten Thousand (\$10,000.00) Dollars for all of the leases negotiated concurrently at the time of this Lease.

e. Tenant agrees to use its best efforts to colocate future facilities and minimize the number of new Towers in the City.



4. **Use of Premises; Compliance with Laws.** Tenant shall use the Premises for the construction, operation, maintenance and repair of a telecommunications tower, equipment shelter, related facilities, antennae or buildings and for no other purposes. Tenant agrees to restrict its use of the Tower to that portion of the structure as set forth in Paragraph 1. Landlord reserves the right to require Tenant to move Tenant's antenna locations on the Tower to accommodate Landlord's own needs, provided, however, that Tenant shall in all cases be able to utilize the Tower at the new location for its intended purpose. Upon receipt of notice directing Tenant to move its antenna locations, Tenant shall move such antennae at Landlord's cost, subject to Landlord's supervision in accordance with the following provisions:

a. If Landlord desires that Tenant move its antenna locations, Landlord shall give Tenant sixty (60) days notice, which notice shall contain the location on the Tower required by Landlord to be occupied by Tenant in order to allow Tenant to comply with applicable rules and regulations of the Federal Communications Commission ("FCC") and to provide similar coverage.

b. Any movement of Tenant's antenna(e) shall not serve to increase or decrease the Rent to be paid by Tenant.

c. At the request of Landlord, Tenant shall at Landlord's reasonable cost and only with Landlord's prior approval, obtain the written opinion of a licensed structural engineer and/or electronics engineer in good standing with the State of Michigan which determines that the new location of the antenna(e) is structurally appropriate and will not interfere with the communication requirements of other Tower users, including Landlord.

Tenant shall, at its expense, comply with all present and future federal, state, and local laws, ordinances, rules and regulations (including but not limited to laws and ordinances relating to health, safety, radio frequency emissions, and radiation) in connection with the use, operation, maintenance, construction and/or installation of the Premises. In connection with any required approvals or extensions, Landlord agrees to cooperate with Tenant in obtaining, at Tenant's expense, all licenses, permits and authorizations required for Tenant's use of the Premises from all applicable governmental and regulatory entities (the "Governmental Approvals"). Landlord agrees to allow Tenant to perform surveys, soils testing, and other engineering procedures and environmental investigations on, under and over the Premises to determine that the Premises are suitable for Tenant's intended use, provided Tenant restores any property or soil disturbed by such activities. Tenant expressly agrees to indemnify and hold the Landlord, its employees, appointed and elected officials, and volunteers and other individuals working on behalf of the Landlord, harmless against any losses, costs, expenses, damages, liabilities, or claims whether groundless or not, arising out of bodily injury, sickness or disease, including death resulting at any time therefrom, which may be sustained or claimed by any person or persons, or destruction of any property, (including the loss of use thereof) based on any act or omission, negligent or otherwise, of the Tenant or anyone acting on behalf of the Tenant incident to the entry, investigation or testing of the Premises, except that Tenant shall not be responsible for indemnification to the Landlord for damages caused by or resulting from the Landlord's sole negligence; and Tenant shall at its own cost and expense, defend any such claim and any suit,

action or proceeding which may be commenced thereunder and Tenant shall pay any and all judgments which may be recovered in any such suit, action or proceeding and any and all expenses, including but not limited to costs, attorney fees and settlement expenses which may be incurred therein as they relate in any way to such investigation.

5. **Landlord's Use of Premises.** Until such time as the Tower is conveyed to Landlord pursuant to Paragraph 34(c) of the Lease, the Tower shall be installed and owned by Tenant. Landlord shall have the right to use the Premises and the portion of the Tower to be constructed by Tenant for any lawful purpose. In addition, Landlord shall have the right to lease the Tower to other users for commercial purposes (except for that part occupied or served by Tenant and Landlord), subject to review by Landlord and Tenant to determine that the proposed use will not interfere with either's operation. The person seeking to install the additional antennae upon the Tower shall provide at its expense sufficient information as may be required by Landlord and Tenant to determine that the new proposed use will not interfere with Tenant's use of the Tower by Landlord or Tenant or cause any adverse effect on the structural integrity of the Tower. All rental income derived from the Tower and Premises shall be payable to Landlord, and the terms of any such agreement must be approved by Landlord and Tenant shall not unreasonably withhold its approval of any such use.

6. **Tenant Improvements; Tenant's Use of Landlord's Tower.** Immediately after the Commencement Date and after obtaining site plan approval for the Tower, Tenant shall construct the Tower and the Equipment Shelter as shown on the attached Exhibits within ninety (90) days thereafter. The Tower and related facilities shall be so constructed to be able to accommodate the antennae of Tenant, Landlord, and two (2) other wireless communication providers. The Equipment Shelter shall be for use by the Tenant, Landlord and two (2) other users. The Equipment Shelter shall be constructed of brick materials to match the existing building on the Property or of other suitable materials approved by the Landlord's City Manager. Tenant shall also construct all ancillary support facilities as set forth in the Specifications set forth in Exhibit E, within the time period specified above. Prior to commencing construction, Tenant shall submit plans and specifications for all improvements to Landlord for Landlord's written approval, such approval not to be unreasonably withheld. Prior to commencing construction, Tenant shall also provide Landlord with the name of the contractor that will be constructing the improvements. Tenant shall also install antennae for the Landlord if engineering, design and other specifications are timely made available to Tenant by Landlord. The contractor is subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld. All improvements shall be constructed in a workmanlike manner without the attachment of any liens to the Premises and shall be completed in compliance with all applicable laws, rules, ordinances and regulations. Until conveyed by the Tenant pursuant to Paragraph 34(c), the Tower shall remain the property of the Tenant with all rental income derived payable to Landlord. At that time, Tenant shall execute and deliver a Bill of Sale in a form satisfactory to Landlord's counsel conveying to the Landlord the Tower and related facilities to which Landlord is entitled to own under the terms of this Lease.

7. **Net Lease.** Landlord shall not be required to make any expenditures of any kind in connection with this Lease or to make any maintenance, repairs or improvements to the Premises. The parties agree that this is a net Lease intended to assure Landlord the rent reserved on an absolute net basis. In addition to the Rent reserved above, Tenant shall pay to the party entitled thereto its prorated share of all taxes, assessments, insurance premiums, maintenance charges, and any other charges, costs and expenses against the Premises which may be contemplated under any provisions of this Lease, provided however, that the taxes, maintenance and insurance charges for the Tower shall be prorated among the users, other than the Landlord, based upon the number of such users. In addition, Tenant shall be responsible for its prorata share of the taxes, maintenance and insurance charges relating to the Tower that would otherwise be chargeable to the Landlord. If the number of commercial users shall change during the term of this Lease, the proportionate share of the expenses shall be adjusted accordingly between any commercial users (except Landlord).

8. **Signs.** Tenant shall not place any signs on the Premises without Landlord's approval. Landlord shall have the right to withhold approval of any sign which in Landlord's sole discretion is not compatible with Landlord's use and development of the Property.

9. **Taxes.** Tenant shall pay all real property taxes and assessments for the Premises, if any, which become due and payable during the term of this Lease which are associated with its use. All such payments shall be made, and evidence of all such payments shall be provided to Landlord, at least ten (10) days prior to the delinquency date of the payment. Tenant shall pay all taxes on its personal property on the Premises. If the methods of taxation in effect at the Commencement Date of the Lease are altered so that in lieu of or as a substitute for any portion of the real property taxes and special assessments now imposed on real property there is imposed any tax Tenant shall pay those amounts in the same manner as provided for the payment of real property taxes.

10. **Maintenance.** Tenant shall, at its own expense, maintain the Premises and all improvements, equipment and other personal property installed upon the Premises by Tenant in good working order, condition and repair. As additional consideration for this Lease, Tenant agrees to pay Landlord's share of the maintenance of the Tower. Tenant shall require all other users of the Tower to pay for their respective share of the maintenance cost of the Tower and related facilities. Such users shall be equally responsible for maintenance and insurance (including if Tenant terminates this Lease), and Tenant shall provide itemized statements for the maintenance work if requested by Landlord or any user of the Tower. Tenant shall also keep the Premises free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference. Tenant shall submit to Landlord and other users of the Tower an annual inspection report prepared by a competent tower inspection company regarding the integrity and maintenance of the Tower. Costs of the annual inspection report shall be prorated among the commercial users of the Tower.

11. **Quiet Enjoyment.** Landlord covenants and agrees that upon payment by the Tenant of the Rent under this Lease and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall

peaceably and quietly hold and enjoy the property, the rights, and privileges granted for the term demised without hindrance or interference by Landlord or any other person, and Landlord shall perform all of its obligations under this Lease. Tenant acknowledges that the Property is a municipal golf course. Tenant agrees that it will not at any time interfere with the use of the Premises by Landlord or its invitees except in the case of an emergency. Tenant shall conduct its maintenance activities at times when the outdoor area of the Premises are not in use. Landlord and its invitees shall have the right to conduct activities in the area of the Tower without constituting a breach of Tenant's right of quiet enjoyment of the Property.

12. **Access.** Subject to the limitation set forth in Paragraph 11, Landlord and its agents shall have the right to enter the Premises at reasonable times to examine and inspect the Premises. Tenant shall have access to the Premises 24 hours a day 7 days per week, provided it does not interfere with Landlord's operations on the Premises.

13. **Utilities.** Tenant shall at its sole expense provide any utility service to the Premises that it desires. If there are additional users of the Tower, each user's utility usage shall be separately metered. Tenant shall pay when due all charges for its usage of utilities to the Premises during the term of the Lease.

14. **License Fees.** Tenant shall pay, as they become due and payable, all fees, charges, taxes and expenses required for licenses and/or permits required for or occasioned by Tenant's use of the Premises.

15. **Broadcast Interference.**

a. **Definition.** As used in this Lease, "interference" with a broadcasting activity means:

- (i) Interference within the meaning of the provisions of recommended practices of the Electronics Industries Associations (EIA) and the rules and regulations of the Federal Communications Commission (FCC) then in effect, or
- (ii) A material impairment of the quality of either sound or picture signals on a broadcasting activity as may be defined by the FCC at any hour during the period of operation of activity, as compared with that which would be obtained if no other broadcaster were broadcasting from the Property or had any equipment on the Property.

b. Tenant shall take reasonable actions to prevent and properly remove any interference with broadcast activities of Landlord or other tenants of Landlord caused by Tenant's use of the Premises. Landlord shall take reasonable actions to prevent and promptly remove or cause to be removed any interference with Tenant's broadcast activities caused by Landlord or Landlord's lessees, licensees, invitees, or agents.

16. **Governmental Approvals.** This Lease is contingent upon Tenant's obtaining all necessary governmental approvals, permits or licenses that Tenant may deem necessary. This contingency shall be deemed waived sixty (60) days after date of this Lease unless Tenant provides Landlord written notice within the sixty (60) day period that it is terminating the Lease due to its inability to obtain necessary approvals.

17. **Default and Landlord's Remedies.**

a. It shall be a default if:

- (i) Tenant defaults in the payment of any sums to Landlord when due, and does not cure such default within ten (10) days.
- (ii) Tenant defaults in the performance of any other covenant or condition of this Lease and does not cure such other default within thirty (30) days after written notice from Landlord specifying the default complained of.
- (iii) Tenant abandons or vacates the Premises.
- (iv) Tenant is adjudicated a bankrupt or makes any assignment for the benefit of creditors.
- (v) Tenant becomes insolvent or Landlord reasonably believes itself to be insecure.

b. In the event of a default under this Lease by Tenant, Landlord shall be entitled to any remedies provided under this Lease and as shall then be provided by law; except that Landlord shall not be entitled to distrain any personal property (including fixtures) on the property except those to which Landlord is entitled at the end of the term of the Lease; provided that prior to and as a condition precedent to the exercise of any remedy, Landlord shall give to Tenant written notice of default and the nature of the default and Tenant shall have thirty (30) days (or if the default cannot be cured within thirty (30) days a longer period as shall be necessary to cure the default acting with due diligence) after receipt of the notice within which to cure the default during which period no remedy shall be pursued.

c. For a breach of any provision of this Lease requiring that the use be in compliance with all applicable laws, rules, regulations, or standards, including but not limited to FCC rules and regulations, interference standards, environmental laws, or health protection laws, rules or regulations, Landlord may, in addition to any other remedy it may have under this Lease or at law, obtain a temporary restraining order and preliminary injunction compelling it to cease and desist all operations on the Leased Premises until further order of the Court, since Landlord does not have an adequate remedy at law. Prior to invoking such remedy, Tenant shall be given a thirty (30) day notice of the alleged default so that it may cure such default.

d. No re-entry and taking of possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease, regardless of the extent of renovations and alterations by Landlord, unless a written notice of such intention is given to Tenant by Landlord. Notwithstanding any reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

e. If suit shall be brought by Landlord for recovery of possession of the Premises, for the recovery of any rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant, the Tenant shall pay to the Landlord all expenses incurred therefor, including reasonable attorney fees.

18. **Cure by Landlord.** In the event of any default of this Lease by Tenant, the Landlord may at any time, after notice, cure the default for the account of and at the expense of the Tenant. If Landlord is compelled to pay or elects to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorney fee in instituting, prosecuting or defending any action to enforce the Landlord's rights under this Lease, the sums so paid by Landlord, with all interest, costs and damages shall be deemed to be Additional Rental and shall be due from the Tenant to Landlord on the first day of the month following the incurring of the respective expenses.

19. **Damage or Destruction.** If the Tower or any portion of the Tower is destroyed or damaged so as to materially hinder effective use of the Tower due to an "act of God" or other cause which is not the fault of the Landlord, Landlord may elect to terminate this Lease if Tenant does not repair or restore the Premises within one hundred twenty (120) days of written notice to Tenant of the damage or destruction which period Landlord agrees to reasonably extend if Tenant has diligently pursued such repair or restoration, but has been unable to complete such work for reasons beyond its control. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction. Landlord shall be entitled to retain any consideration paid. Landlord requires Tenant to repair or restore the Premises for use by Landlord.

20. **Condemnation.** In the event the Premises are taken by eminent domain, this Lease shall terminate as of the date title to the Premises vests in the condemning authority. In the event a portion of the Premises is taken by eminent domain so as to materially hinder effective use of the Premises by Tenant, either party shall have the right to terminate this Lease as of said date of title transfer, by giving thirty (30) days written notice to the other party. In the event of any taking under the power of eminent domain, Tenant shall not be entitled to any portion of the award paid for the taking and the Landlord shall receive full amount of such award. Tenant shall hereby expressly waive any right or claim to any portion thereof although all damages, whether awarded as compensation for diminution in value of the leasehold or to the fee of the Premises, shall belong to Landlord. Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant on account of any and all damage to Tenant's business and any costs or expenses incurred by Tenant in moving/removing its equipment, personal property, and leasehold improvements.

## 21. Indemnity and Insurance.

a. **Disclaimer of Liability.** Landlord shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Tenant's construction, maintenance, repair, use, operation, condition or dismantling of the Premises.

b. **Indemnification.** Tenant shall, at its sole cost and expense, indemnify and hold harmless Landlord and all associated, affiliated, allied and subsidiary entities of Landlord, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against:

- (i) Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of Tenant, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Premises or the Tenant's failure to comply with any federal, state or local statute, ordinance or regulation.
- (ii) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), which are imposed upon, incurred by or asserted against the Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to Tenant, its contractors or sub-contractors, for the installation, construction, operation, maintenance or use of the Premises and, upon the written request of Landlord, Tenant shall cause such claim or lien covering Landlord's property to be discharged or bonded within thirty (30) days following such request.

c. **Assumption.** Tenant undertakes and assumes for its officers, agents, contractors and subcontractors and employees (collectively "Tenant" for the purpose of this section), all risk of dangerous conditions, if any, on or about the Premises, and Tenant hereby agrees to indemnify and hold harmless the Indemnitees against and from any claim asserted or

liability imposed upon the Indemnitees for personal injury or property damage to any person (other than from Indemnitee's gross negligence) arising out of the Tenant's installation, operation, maintenance, condition or use of the Premises or Tenant's failure to comply with any federal, state or local statute, ordinance or regulation.

d. **Defense of Indemnitees.** In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Tenant shall, upon notice from any of the Indemnitees, at Tenant's sole cost and expense, resist and defend the same with legal counsel mutually selected by Tenant and Landlord; provided however, that Tenant shall not admit liability in any such matter on behalf of the Indemnitees without the written consent of Landlord and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Tenant.

e. **Notice, Cooperation and Expenses.** Landlord shall give Tenant prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this paragraph. Nothing shall be deemed to prevent Landlord from cooperating with Tenant and participating in the defense of any litigation by Landlord's own counsel. Tenant shall pay all expenses incurred by Landlord in response to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by the Landlord's attorney, and the actual expenses of Landlord's agents, employees or expert witnesses, and disbursements and liabilities assumed by Landlord in connection with such suits, actions or proceedings but shall not include attorneys fees for services that are unnecessarily duplicative of services provided Landlord by Tenant. If Tenant requests Landlord to assist it in such defense then Tenant shall pay all expenses incurred by Landlord, including defending itself with regard to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the costs of any services rendered by the Landlord's attorney, and the actual expenses of Landlord's agents, employees or expert witnesses, and disbursements and liabilities assumed by Landlord in connection with such suits, actions or proceedings.

f. **Insurance.** During the term of the Lease, Tenant shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

- (i) Worker's compensation insurance meeting Michigan statutory requirements.
- (ii) Comprehensive commercial general liability insurance with minimum limits of Three Million (\$3,000,000) Dollars as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall provide blanket contractual liability insurance for all written contracts, and shall include coverage for completed operations liability, independent contractor's liability; coverage for property damage from perils of



explosion, collapse or damage to underground utilities, commonly known as XCU coverage.

- (iii) Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Tenant, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of the Michigan No-Fault Insurance Law including residual liability, insurance with minimum limits of One Million (\$1,000,000) Dollars as the combined single limit for each occurrence for bodily injury and property damage.
- (iv) Property insurance in the full insurable replacement value of the Tower, Equipment Shelter and related facilities on a prorata basis with other commercial users.
- (v) At the start of and during the period of any construction, builders all-risk insurance, together with an installation floater or equivalent property coverage covering cables, materials, machinery and supplies of any nature whatsoever which are to be used in or incidental to the installation of the Tower. Upon completion of the installation of the Tower, Tenant shall substitute for the foregoing insurance policies of fire, extended coverage and vandalism and malicious mischief insurance on the Premises. The amount of insurance at all times shall be representative of the insurable values installed or constructed.
- (vi) Business interruption insurance coverage in an amount sufficient to cover such loss of revenues, for the period of time which it would take, under normal circumstances, to repair or replace that part(s) of the Premises which is damaged and caused the loss of revenue.
- (vii) All policies other than those for Worker's Compensation shall be written on an occurrence and not on a claims made basis.
- (viii) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

g. **Named Insured.** All policies, except for business interruption and worker's compensation policies, shall name Landlord and all associated, affiliated, allied and subsidiary entities of Landlord, now existing or hereafter created, and their respective officers, boards, commissions, employees, agents and contractors, as their respective interests may appear as additional insured (herein referred to as the "Additional Insured"). Each policy which is to be endorsed to add Additional Insured hereunder, shall contain cross-liability wording, as follows:

In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder.

h. **Evidence of Insurance.** Certificates of insurance for each insurance policy required to be obtained by Tenant in compliance with this paragraph, along with written evidence of payment of required premiums shall be filed and maintained with Landlord annually during the term of the Lease. Alternatively, Tenant shall provide Landlord with evidence of participation in a satisfactory self-insurance program. Tenant shall immediately advise Landlord of any claim or litigation that may result in liability to Landlord.

i. **Cancellation of Policies of Insurance.** All insurance policies maintained pursuant to this Lease shall contain the following endorsement:

At least sixty (60) days prior written notice shall be given to Landlord by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the parties named in this paragraph of the Lease.

j. **Insurance Companies.** All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of Michigan which are satisfactory to Landlord.

k. **Deductibles.** All insurance policies may be written with deductibles, not to exceed \$50,000 unless approved in advance by Landlord. Tenant agrees to indemnify and save harmless Landlord, the Indemnitees and Additional Insured from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Lease.

l. **Contractors.** Tenant shall require that each and every one of its contractors and their subcontractors carry, in full force and effect, workers' compensation, comprehensive public liability and automobile liability insurance coverage of the type which Tenant is required to obtain under the terms of this paragraph with appropriate limits of insurance.

m. **Review of Limits.** Once during each calendar year during the term of this Lease, Landlord may review the insurance coverage to be carried by Tenant. If Landlord determines that higher limits of coverage are necessary to protect the interests of Landlord or the Additional insured, Tenant shall be so notified and shall obtain the additional limits of insurance, at its sole cost and expense.

22. **Hazardous Substance Indemnification.** Landlord and Tenant represent and warrant that their respective use of the Premises will not generate any hazardous substance, and they will not store or dispose on the Premises nor transport to or over the Premises any hazardous substance. Each party further agrees to hold the other harmless from and indemnify such party against any release of any such hazardous substance and any damage, loss, or expense or liability resulting from such release, including all attorney fees, costs and penalties incurred as a result thereof except any release caused by the negligence of the releasing party, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

23. **Holding Over.** Any holding over after the expiration of the term hereof, with the consent of the Landlord, shall be construed to be a tenancy from month to month at two times the rents specified in this Lease prorated on a monthly basis) and shall otherwise be for the term and on the conditions specified in this Lease, so far as applicable.

24. **Subordination to Mortgage.** Any mortgage now or subsequently placed upon any property of which the Premises are a part shall be deemed to be prior in time and senior to the rights of the Tenant under this Lease. Tenant subordinates all of its interest in the leasehold estate created by this Lease to the lien of any such mortgage. Tenant shall, at Landlord's request, execute any additional documents necessary to indicate this subordination.

25. **Removal of Equipment; Restoration;** Except as otherwise provided herein, upon the expiration of this Lease, or the earlier termination and cancellation of this Lease by Tenant for any reason, Tenant may remove all of its antennae, equipment and other personal property located within the Equipment Shelter, and fixtures, including but not limited to its transmitting and receiving equipment, transmitting and receiving antennae and transmission lines. The Tower and Equipment Shelter will remain at the Leased Premises and, if requested by Landlord, be conveyed to the Landlord for One (\$1.00) Dollar at Landlord's option upon the termination of the Agreement. Conveyance of the Tower, Equipment Shelter and Related Facilities shall be by an instrument approved by Landlord's counsel. If requested by Landlord, Tenant shall removal the Tower, Equipment Shelter and related facilities. Tenant shall not remove any improvements which are required to be or which have been conveyed to Landlord pursuant to this Lease unless requested by Landlord. All removals required to be made by Tenant shall be completed with ninety (90) days after the effective date of expiration or other termination. Tenant shall restore the Property to substantially the same condition as existed as of the commencement of the term of this Lease, reasonable wear and tear excepted, provided, however, that Tenant will remove any driveways, sidewalks and foundation if requested by Landlord in accordance with Landlord's codes, ordinances or regulations. Underground piping or wiring or any other fixtures or improvements shall be reduced to a depth of not less than one foot below ground level, unless other requirements are imposed by Landlord under its applicable codes. Tenant shall not remove

any security fence built by Tenant (unless otherwise requested by Landlord) and same shall become the property of the Landlord. In the event that the Tenant fails to remove any improvements it installed on the Property which it is required or entitled to remove within ninety (90) days of the termination of the Lease, Landlord may do so with the reasonable costs of same to be charged to the Tenant.

26. **Removal Bond.** Upon default, Tenant shall provide a letter of credit, cash deposit or other security satisfactory to Landlord's counsel in an amount determined by a licensed structural engineer for Tenant's proportionate amount of the cost of removing the Tower, Equipment Shelter and related facility as required under Section 25.

27. **Acceptance of Premises.** By taking possession of the Premises, Tenant accepts the Premises in the condition existing as of the Commencement Date. Landlord makes no representation or warranty with respect to the condition of the Premises and Landlord shall not be liable for any latent or patent defect in the Premises.

28. **Estoppel Certificate.** Tenant shall, at any time and from time to time upon not less than ten (10) days prior request by Landlord, deliver to Landlord a statement in writing certifying that

- a. the Lease is unmodified and in full force (or if there have been modifications, that the Lease is in full force as modified and identifying the modification);
- b. the dates to which rent and other charges have been paid;
- c. so far as the person making the certificate knows, Landlord is not in default under any provisions of the Lease; and
- d. such other matters as Landlord may reasonably request.

29. **Notices.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; to the following addresses:

If to Landlord, to:

City Manager  
City of Troy  
500 West Big Beaver Road  
Troy, MI 48084

With a copy to:

City Attorney  
City of Troy  
500 West Big Beaver Road  
Troy, MI 48084

If to Tenant, to:

AT&T Wireless Services, PCS, Inc.  
Attn: General Counsel  
26877 Northwestern Highway, Suite 350  
Southfield, MI 48034

30. **Assignment and Subletting.** Tenant shall not assign this Lease in whole or in part, or sublet all or any part of the Premises without the Landlord's prior written consent, except that it is permissible to assign such Lease to a parent or subsidiary of the Tenant or to any entity which purchases substantially all of the assets of the Tenant. Consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity of such consent to any subsequent assignment or subletting. This prohibition against any assignment or subletting shall not be construed to include a prohibition against any subletting or assignment by operation of law. If this Lease is assigned, or if the Premises or any part thereof is sublet or occupied by anyone other than Tenant, Landlord may collect rent from the assignee, subtenant or occupant and apply the net amount collected to the rent and other obligations of Tenant, but no assignment, subletting, occupancy or collection shall be deemed a waiver or release of Tenant from the further performance by Tenant of the covenants on the part of Tenant. Notwithstanding any assignment or sublease, Tenant shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease. Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code, 11 USC §101, et seq., shall be deemed without further act to have assumed all of the obligations of Tenant arising under this Lease on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to Landlord, shall be the exclusive property of Landlord, and shall not constitute property of the Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid to Landlord.

31. **Successors and Assigns.** This Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors and assigns.

32. **Co-Location.** Tenant agrees to allow the Landlord and two (2) other telecommunications providers to lease space upon the Tower upon reasonable request of such users, provided the use does not unreasonably interfere with Tenant's use, with rent received from the Tower payable to Landlord. Such co-location and lease terms, by additional users, shall be subject to review and approval by Landlord as required by this Lease.

33. **Contact Person; Notice of Change.** In order to have Landlord be able to contact the Tenant at any time with respect to the construction or operation of the Tower or its ancillary facilities, it is imperative that the Landlord have a current contact person and current phone number of such contact person at all times. Tenant has designated the following person with the following phone number as the contact person in charge of the oversight of construction and operation of the Tower:

Anthony Amine  
Office - (248) \_\_\_\_\_  
Pager - (248) \_\_\_\_\_

Tenant shall advise Landlord with 24 hours of any change in either the contact person or the phone number of the contact person.

34. **Lease Memorandum.** Simultaneous with the execution of this Lease, the parties have executed a Memorandum of Lease. Tenant or Landlord may record the Memorandum of Lease. If Tenant's survey of the Premises requires a correction to the legal description rider attached to the Memorandum of Lease, the parties will execute in recordable form a modified Memorandum of Lease or a supplement to the Memorandum of Lease.

35. **Termination.**

a. By Landlord, Landlord may terminate this Lease for any default by Tenant in its obligations under this Lease as provided in Paragraph 17.

36. **Miscellaneous.**

a. Landlord and Tenant represent that each, respectively has full right, power, and authority to execute this Lease.

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

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

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

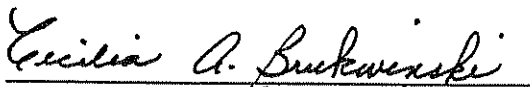
e. Tenant agrees to look solely to the interest of Landlord in the Premises for the satisfaction of any judgment against Landlord as a result of any breach by Landlord of its obligations under this Lease. No other property of Landlord shall be subject to levy or execution as a result of any claim by Tenant against Landlord arising out of the relationship created by this Lease.

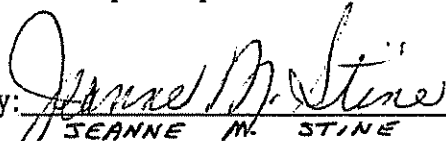
This Lease was executed as of the date first set above.

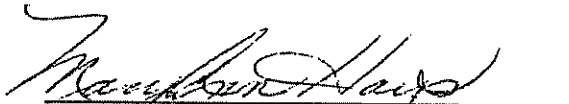
WITNESSED:


LANDLORD:

CITY OF TROY, a Michigan  
municipal corporation

  
CECILIA A. BRUKWINSKI

By:   
JEANNE M. STINE  
Its: Mayor

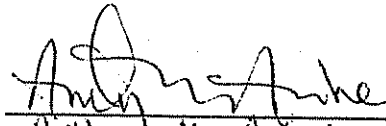
  
MARANN HAYS

By:   
TAMARA A. RENSHAW  
Its: Clerk  
T

WITNESSES:

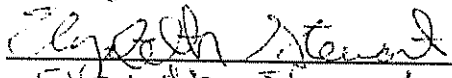
TENANT:

AT&T Wireless PCS, Inc., a Delaware corporation, acting by and through its Agent, Wireless PCS Inc., d/b/a AT&T Wireless Services

  
Anthony M. Amine

By:

  
SCOTT SANTI

  
Elizabeth Stewart

Title: Director of System Development

STATE OF MICHIGAN)

)ss.

COUNTY OF \_\_\_\_\_)

The foregoing Lease Agreement was acknowledged before me this 6<sup>th</sup> day of October, 1998, by JEANNE M. STINE and TAMARA A. RENSNAU Mayor and City Clerk, respectively, of the CITY OF TROY, a Michigan municipal corporation, on behalf of the Corporation.



Notary Public

\_\_\_\_\_ County Michigan

My Commission Expires:

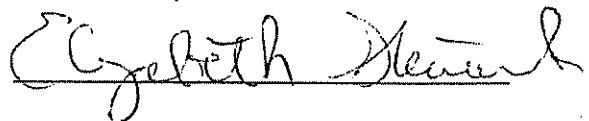
CECILIA A. BRUKWINSKI  
Notary Public, Oakland County, MI  
My Commission Expires June 18, 2000

STATE OF MICHIGAN)

)ss.

COUNTY OF Oakland)

The foregoing Lease Agreement was acknowledged before me this 20<sup>th</sup> day of October, 1998, by SCOTT SANTI, Director of System Development of AT&T Wireless PCS, Inc., a Delaware corporation, acting by and through its Agent, Wireless PCS Inc., d/b/a AT&T Wireless Services, on behalf of the corporation.



Notary Public

Oakland County Michigan

My Commission Expires: 7/22/99

DRAFTED BY:

Neil J. Lehto

O'Reilly, Rancilio, Nitz,

Andrews & Turnbull, P.C.

12900 Hall Road, Suite 350

Sterling Heights, MI 48313-1151



## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

To the Agreement dated \_\_\_\_\_, 1998 by and between the City of Troy, a Michigan municipal corporation ("Landlord") and AT&T Wireless Services PCS, Inc., a Delaware corporation, acting by and through its Agent, Wireless PCS, Inc., d/b/a AT&T Wireless.

Part of the Northeast  $\frac{1}{4}$  of Section 11, Town 2 North, Range 11 East, City of Troy, Oakland County, Michigan more particularly described as: Commencing at the Northeast Corner of said Section 11; thence along the East line of said Section also the centerline of John R. Road due South 505.00 feet; thence South 89 degrees 50 minutes 00 seconds West, 312.00 feet; thence due North, 505.00 feet to the North line of said Section 1 and also the centerline of Square Lake Road; thence along said line South 89 degrees 50 minutes 00 seconds East, 312.00 feet to the point of beginning, subject to rights of the public on Square Lake Road and John R. Road.

**SITE PLAN OF THE PREMISES, WITH  
LEGAL DESCRIPTION OF THE PREMISES TO BE LEASED  
AND ACCESS AND UTILITY EASEMENTS**

## EXHIBIT B-2

### SITE PLAN OF THE PREMISES, WITH LEGAL DESCRIPTION OF THE PREMISES TO BE LEASED AND ACCESS AND UTILITY EASEMENTS

To the Agreement dated \_\_\_\_\_, 1998 by and between the City of Troy, a Michigan municipal corporation ("Landlord") and AT&T Wireless Services PCS, Inc., a Delaware corporation, acting by and through its Agent, Wireless PCS, Inc., d/b/a AT&T Wireless.

#### LEGAL DESCRIPTION

(Total Parcel From The Phillip F. Greco Title Company No. 63-678228)

Situated in the City of Troy, Oakland County, Michigan, the Northeast ¼ of Section 10, T.2 N., R.11 E, City of Troy, Oakland County, Michigan.

#### LEGAL DESCRIPTION

##### PARCEL "A"

Part of the Northeast ¼ of Section 10, T.2 N., R.11 E, City of Troy, Oakland County, Michigan, commencing at the Northeast corner of Section 10; thence along the East section line South, 1964.14 feet; thence West 9.68 feet; thence 48.53 feet along a curve to the left, radius 31.00 feet, central angle 89°41'22", chord bearing N 44°01'00" W, 43.72 feet; thence N 68°34'57" W, 49.90 feet; thence N 83°55'31" W, 59.46 feet; thence N 88°34'57" W, 168.80 feet; thence S 01°25'15" W, 170.88 feet; thence N 79°24'59" W, 902.34 feet; thence N 06°01'31" E, 105.66 feet; thence N 74°45'29" W, 57.90 feet; thence N 13°12'15" E, 15.01 feet to the Point of Beginning: Thence S 13°12'15" W, 56.50 feet; thence N 76°47'45" W, 44.50 feet; thence N 13°12'15" E, 56.50 feet; thence S 76°47'45" E, 44.50 feet to the Point of Beginning, containing 2514.2 square feet or 0.057 acres.

NM   SS   LP

#### LEGAL DESCRIPTION

##### INGRESS/EGRESS EASEMENT

An ingress/egress easement over part of the Northeast ¼ Section of 10, T.2N., R.11 E, City of Troy, Oakland County, Michigan, commencing at the Northeast corner of Section 10; thence along the East section line South, 1845.42 feet to the Point of Beginning: Thence continuing South 118.72 feet; thence West 9.68 feet; thence 48.53 feet along a curve to the left, radius 31.00 feet, central angle 89°41'22", chord bearing N 44°01'00" W, 43.72 feet; thence N 88°34'57" W, 49.90 feet; thence N 83°55'31" W, 59.46 feet; thence N 88°34'57" W, 168.80 feet; thence S 01°25'15" W, 170.88 feet; thence N 79°24'59" W, 902.34 feet; thence N 06°01'31" E, 105.66 feet; thence N 74°45'29" W, 57.90 feet; thence N 13°12'15" E, 15.01 feet; thence S 74°45'29" E, 71.20 feet; thence S 06°01'31" W, 61.33 feet; thence S 75°10'23" E, 49.33 feet; thence S 14°49'37" W, 39.57 feet; thence S 79°24'59" E, 803.36 feet; thence N 59°51'52" E, 22.74 feet; thence N 01°25'15" E, 157.43 feet; thence S 88°34'57" E, 161.00 feet; thence N 45°00'00" E, 44.41 feet; thence S 88°34'57" E 90.64 feet; thence 50.19 feet along a curve to the left, radius 31.00 feet, central angle 92°46'0", chord bearing N 48°12'58" E, 44.89 feet thence East 20.88 feet to the Point of Beginning.

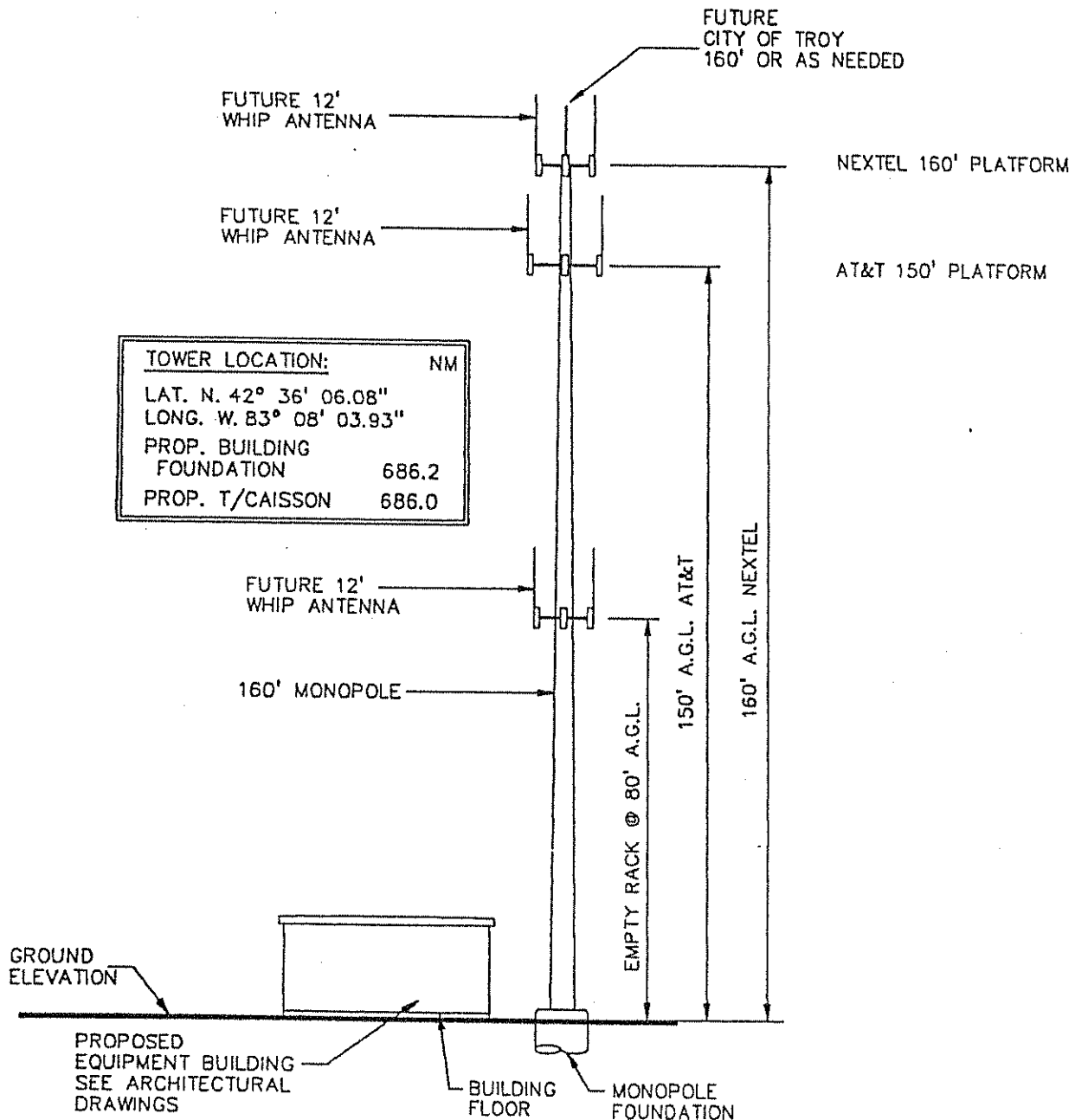
**EXHIBIT C****RENT SCHEDULE**

<u>Years 1 through 7</u>		<u>Annual Rent</u>
1.	July 1, 1997 - June 30, 1998	\$ -0-
2.	July 1, 1998 - June 30, 1999	-0-
3.	July 1, 1999 - June 30, 2000	-0-
4.	July 1, 2000 - August 31, 2001	-0-
5.	Sept 1, 2001 - June 30, 2002	10,000.00
6.	July 1, 2002 - June 30, 2003	14,400.00
7.	July 1, 2003 - June 30, 2004	14,400.00
<u>Years 8 through 12</u>		<u>Annual Rent</u>
8.	July 1, 2004 - June 30, 2005	\$16,800.00
9.	July 1, 2005 - June 30, 2006	16,800.00
10.	July 1, 2006 - June 30, 2007	16,800.00
11.	July 1, 2007 - June 30, 2008	16,800.00
12.	July 1, 2008 - June 30, 2009	16,800.00
<u>Years 13 through 17</u>		<u>Annual Rent</u>
13.	July 1, 2009 - June 30, 2010	\$19,200.00
14.	July 1, 2010 - June 30, 2011	19,200.00
15.	July 1, 2011 - June 30, 2012	19,200.00
16.	July 1, 2012 - June 30, 2013	19,200.00
17.	July 1, 2013 - June 30, 2014	19,200.00
<u>Years 18 through 22</u>		<u>Annual Rent</u>
18.	July 1, 2014 - June 30, 2015	\$21,600.00
19.	July 1, 2015 - June 30, 2016	21,600.00
20.	July 1, 2016 - June 30, 2017	21,600.00
21.	July 1, 2017 - June 30, 2018	21,600.00
22.	July 1, 2018 - June 30, 2019	21,600.00
<u>Years 23 through 25</u>		<u>Annual Rent</u>
23.	July 1, 2019 - June 30, 2020	\$24,000.00
24.	July 1, 2020 - June 30, 2021	24,000.00
25.	July 1, 2021 - June 30, 2022	24,000.00

Final

# DESCRIPTION AND ADDITIONAL EQUIPMENT AND SERVICES

To the Agreement dated \_\_\_\_\_, 1998 by and between the City of Troy, a Michigan municipal corporation ("Landlord") and AT&T Wireless Services, PCS, Inc., a Delaware corporation, acting by and through its Agent, Wireless PCS, Inc.



## TYPICAL SITE ELEVATION

NOT TO SCALE

AT& T SITE # 3329B

## EXHIBIT E

### ANCILLARY AND SUPPORT FACILITIES

To the Agreement dated \_\_\_\_\_, 1998 by and between the City of Troy, a Michigan municipal corporation ("Landlord") and AT&T Wireless Services PCS, Inc., a Delaware corporation, acting by and through its Agent, Wireless PCS, Inc., d/b/a AT&T Wireless.

