

ORDINANCE NO. 2002-174

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENTON, TEXAS AUTHORIZING THE CITY MANAGER TO APPROVE AND EXECUTE A TOWER/GROUND LEASE AGREEMENT BY AND BETWEEN THE CITY AS LESSOR AND [REDACTED] WIRELESS AS LESSEE FOR THE LEASE OF TOWER SPACE ON THE MCKENNA PARK TOWER AND ON THE GROUNDS; AUTHORIZING THE EXPENDITURE AND RECEIPT OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. That the City Manager is hereby authorized to execute a Tower/Ground Lease Agreement (the "Lease") as Lessor, with [REDACTED] Wireless, acting in its capacity as general partner of the Dallas SMSA Limited Partnership, as Lessee, for the lease of tower space on the McKenna Park Tower and grounds, a copy of which Lease Agreement is attached hereto and incorporated by reference herein.

SECTION 2. That the expenditure and the receipt of funds as provided in the attached Lease Agreement is hereby authorized.

SECTION 3. That this ordinance shall become effective immediately upon its passage and approval

PASSED AND APPROVED this the 10<sup>th</sup> day of June, 2002.

Euline Brock  
EULINE BROCK, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: Jennifer Walters

APPROVED AS TO LEGAL FORM:  
HERBERT L. PROUTY, CITY ATTORNEY

BY: Michael D. Goff

STATE OF TEXAS           §  
                                   §  
 COUNTY OF DENTON       §

## TOWER/GROUND LEASE AGREEMENT

THIS AGREEMENT, made this 19<sup>th</sup> day of ~~May~~ <sup>June</sup>, 2002, (the "Effective Date") by and between the CITY OF DENTON, TEXAS, a Texas Municipal Corporation, hereinafter called "**LESSOR**" and Southwestern Bell Wireless, LLC, d/b/a CINGULAR WIRELESS, in its capacity as General Partner of the Dallas SMSA Limited Partnership, hereinafter called "**LESSEE**," organized and existing under the laws of the State of Delaware, having its principal offices at 15660 Dallas Parkway, Suite 1300, Dallas, Texas 75248.

**WHEREAS, LESSOR** is the owner of the following described real property, including - the McKenna Park Radio Tower (the "Tower") and compound, commonly known and as described in Exhibit "A" attached hereto, in the City of Denton, Denton County, Texas; and

**WHEREAS, LESSEE** desires to lease antenna space from **LESSOR** on said Tower and ground space for **LESSEE'S** equipment building or cabinet, and all appurtenances thereto; together with a right-of-way for ingress and egress, for the purpose of installing, operating and maintaining facilities to provide commercial mobile radio services ("CMRS"); and

**NOW THEREFORE**, in consideration of the covenants, conditions, agreements, and rents hereinafter set forth, the adequacy of which is hereby acknowledged, **LESSOR** and **LESSEE** agree as follows:

### 1. **LESSEE Rights.**

a. **LESSOR** hereby leases, lets and remises to **LESSEE**, and **LESSEE** takes from **LESSOR**, sufficient space on **LESSOR'S** Tower at the 120 feet AGL to attach **LESSEE'S** nine (9) antenna array, an 18' x 22' area (approximately 396 square feet) of ground space adjacent to said Tower for **LESSEE'S** equipment building or cabinet and all appurtenances thereto. **LESSOR** also grants to **LESSEE** the right-of-way for ingress and egress to and from said Tower and equipment building or cabinet. The equipment space and ground space described above are hereinafter referred to as the "Leased Premises", which together with the right-of-way for ingress and egress are more particularly shown on Exhibit "A."

b. **LESSEE'S** antenna array, equipment cabinet, telecommunications

equipment (collectively the "CMRS facilities") and the location of these facilities, including where the antenna array attaches upon the Tower are more particularly illustrated and defined in Exhibit "A", which is attached hereto and made a part hereof for all purposes. LESSEE'S equipment cabinet shall be installed on a slab foundation or otherwise at LESSEE'S expense. Said equipment cabinet shall be owned by LESSEE and shall be removed from the Leased Premises by LESSEE within a reasonable period following termination of this Agreement, but in no event later than six (6) months thereafter. The equipment building or cabinet will be placed adjacent to the Tower as described in Exhibit "A."

c. LESSOR shall grant any and all easements on the Leased Premises as may be required by the appropriate electric, telephone, and any other utility company for the purpose of servicing LESSEE'S CMRS facilities. LESSEE shall not use or permit the property to be used for any purpose other than a CMRS facility. LESSOR shall allow LESSEE to install, operate, maintain, replace and remove its CMRS facilities, and related cables, wires, conduits, antennas, air conditioning equipment, and other appurtenances as it may from time to time require. Although such equipment and appurtenances may become fixtures, they shall be and shall remain the property of LESSEE, and LESSEE shall have the right to remove all of them at the expiration or termination of this Agreement. LESSEE, at its sole expense shall promptly repair the property once the fixtures are removed by LESSEE so that the property will be in substantially the same condition that it was at the beginning of the Agreement, less reasonable wear and tear excepted. LESSEE shall have twenty-four (24) hour, seven (7) days a week access to the Leased Premises in order to perform its business functions.

d. LESSOR grants to LESSEE a non-exclusive right to occupy the McKenna Park Radio Tower. This Lease in no way limits LESSOR'S ability to lease the use of the said Tower to other entities for lawful pursuits, subject to the provisions, however, of this Agreement.

2. Survey. LESSOR hereby grants to LESSEE the right to survey the Leased Premises at LESSEE'S sole expense. Said survey, if made, shall become Exhibit "B" to this Agreement and shall supersede Exhibit "A" to the extent required.

3. Access. Prior to and after the Effective Date, LESSEE and its authorized agents shall have access to the Leased Premises at such times as LESSOR and LESSEE mutually agree for the purpose of undertaking any necessary tests, studies and inspections relating to LESSEE'S proposed use of the Leased Premises. During the term of this Agreement, only qualified and adequately insured agents, contractors or persons under LESSEE'S direct supervision and control will be permitted to climb the tower structure or to install or remove LESSEE'S antennas and/or transmission lines from the Tower. LESSOR retains the right to permit its own employees and agents and employees and agents of subsequent users of the tower structure, to climb the Tower structure for all purposes that do not interfere with the LESSEE'S use of the Tower, and so long as such subsequent users comply with the provisions of Paragraph 7.b. of this Agreement.

#### 4. Term.

a. The term of this Agreement shall be fifteen (15) years beginning on the first (1<sup>st</sup>) day of the calendar month (hereafter, the "Commencement Date") following the earlier to occur of: (i) the issuance of all necessary City building permits or (ii) the commencement of LESSEE'S construction at the Leased Premises. Rent shall be paid in equal monthly installments, in advance, to LESSOR or to such other person, firm or place as LESSOR may from time to time so designate in writing at least thirty (30) days in advance of any rental payment date.

1. The first year's rental shall be Twelve Thousand Three Hundred Thirty One Dollars and Twenty Cents (\$12,331.20), payable to LESSOR by LESSEE in equal monthly installments of One Thousand and Twenty-Seven Dollars and Sixty Cents (\$1,027.60) per month. [Said first year's rental is calculated as follows: (i) Seventy Two Cents (\$.72) per foot, per antenna/coax, per month for each foot above ground level ("AGL") to antenna centerline as rental for the Tower space; plus (ii) Two Hundred and Fifty Dollars (\$250.00) per month as rental for the ground space].

2. The rent shall be payable in advance, on an equal monthly installment basis, on the 1<sup>st</sup> day of each month throughout the term hereof.

3. On each annual anniversary of the Commencement Date of the Agreement, the rent in Paragraph 4.a.1. above shall be automatically increased by a rate of 4% per annum over the immediately preceding year's rental. By way of illustration, this provision, for the primary fifteen (15) year term of the Agreement, provides for fifteen (15) separate rate increases.

b. If, at the end of fifteen (15) years, this Agreement has not been terminated by either party giving to the other written notice of an intention to so terminate it at least nine (9) months prior to the end of such fifteen (15) year term, and the Agreement is not then in default, then LESSOR grants to LESSEE an option to continue the Agreement for a five (5) year renewal term under the same covenants, terms, and conditions, SAVE AND EXCEPT that the subject of rental payments due under said five (5) year option shall be negotiable by LESSOR and LESSEE (based on then-current fair market rental rates for comparable CMRS facility sites).

c. If, at the expiration of the first five (5) year renewal term provided for in paragraph 4.b. hereinabove, the Agreement is not then in default, then LESSOR grants to LESSEE a second, and final option to continue the Agreement for a second five (5) year renewal term under the same covenants, terms, and conditions, SAVE AND EXCEPT that the subject of rental payments due under the said second five (5) year option shall be negotiable by LESSOR and LESSEE (based on then-current fair market rental rates for comparable CMRS facility sites).

d. **LESSOR and LESSEE** agree that both the first five (5) year term option and the second five (5) year term option, if exercised, shall be negotiated as well as documented and executed no later than thirty (30) days prior to the expiration of the previous term.

e. **PROVIDED HOWEVER**, if **LESSEE** is not in default hereunder and shall have paid all rents and sums due and payable to **LESSOR** by **LESSEE** as required herein, **LESSEE** shall have the right to terminate this Agreement at any time following the expiration of three (3) years from the Effective Date hereof, with six (6) months prior written notice to **LESSOR**, without further obligation hereunder. Notwithstanding the preceding sentence, **LESSEE** shall have the right to terminate this Agreement upon thirty (30) days prior written notice if: (i) environmental contamination not caused by **LESSEE** is found on the Leased Premises or (ii) before issuance of all necessary Governmental Approvals.

### **5. Contingencies.**

a. It is understood and agreed that **LESSEE'S** ability to use the Leased Premises is contingent upon its obtaining, either before or after the Effective Date of this Agreement, all of the certificates, permits, and other approvals that may be required by any federal, state or local authorities ("Government Approvals") as well as satisfactory soil boring tests, tower load studies, title review, and/or environmental studies that **LESSEE**, in its sole discretion, deems necessary ("Initial Tests"). **LESSEE** shall make due and timely application for all such necessary Government Approvals, which **LESSEE** shall obtain at its sole expense. **LESSEE** shall be allowed to place on the Leased Premises all signs required by federal, state, or local law.

b. **LESSOR** shall cooperate with **LESSEE** in its effort to obtain all Government Approvals and perform Initial Tests. **LESSEE** shall have the right to terminate this Agreement immediately if (i) any application for Governmental Approval is finally rejected; (ii) **LESSEE**, in its sole discretion, believes such application or obtaining any Governmental Approvals will be too costly, time consuming or there is reasonable likelihood that said application will be rejected; (iii) any Governmental Approval issued to **LESSEE** is cancelled or otherwise withdrawn or terminated by governmental authority; or (iv) in **LESSEE'S** reasonable opinion the results of any Initial Tests are unsatisfactory. Notice of said termination shall be given to **LESSOR** in writing by certified mail, return receipt requested, at the address shown herein. All rentals paid for the lease of the Leased Premises through said termination date shall be retained by the **LESSOR**; and **LESSEE** shall pay **LESSOR** for any costs expended by **LESSOR** in preparing the Leased Premises for the location of **LESSEE'S** equipment. Upon such termination, this Agreement shall become null and void, and the parties shall have no further obligations, including the payment of money, to each other.

6. **LESSEE Covenants.** **LESSEE** covenants and agrees that **LESSEE'S** equipment, its installation, operation and maintenance will:

a. Not interfere with the operation of existing radio equipment at the Leased

Premises. In the event there is harmful interference to said electronic equipment, LESSEE will promptly take all steps necessary to identify the problem, and, if caused by LESSEE'S equipment, take all reasonable steps to eliminate said harmful interference within seven (7) days after notice is received from LESSOR to LESSEE advising of the interference. If said interference cannot be eliminated within fifteen (15) days after receipt of notice thereof, LESSEE agrees to immediately suspend operations (transmissions) at the Leased Premises while the interference problems are studied and a means found to mitigate them. If said interference cannot be eliminated, then LESSEE shall remove its building and equipment from LESSOR'S property and this Agreement shall hereupon be terminated.

b. Comply with all applicable rules and regulations of the Federal Communications Commission ("FCC"), and electrical codes of the City and/or State. Under this Agreement, LESSOR assumes no responsibility for the licensing, operation and/or maintenance of LESSEE'S CMRS facilities and appurtenances. If the addition of LESSEE'S equipment on the Leased Premises requires an increase in the current height of the Tower or a change in the location of the Tower on the Leased Premises, LESSEE shall not install its equipment or increase the height of the Tower until obtaining clearance from LESSOR so that LESSEE may comply with all FCC and/or Federal Aviation Administration ("FAA") rules regarding Tower height and location.

**7. LESSOR Covenants.** LESSOR covenants that:

a. LESSOR is seized of good and sufficient title and interest to the Leased Premises and has full authority to enter into and perform this Agreement.

b. LESSOR shall cause all subsequent users of the Tower to coordinate with LESSEE prior to placing any equipment on the Tower to ensure that their frequencies and antenna locations will be compatible with LESSEE'S and to agree to a clause similar to that agreed to by LESSEE in Paragraph 6.a., above and promising to immediately eliminate harmful interference if said user's radio equipment should interfere with that of LESSEE.

c. LESSEE will enjoy undisturbed possession of the Leased Premises as provided in Paragraph 18.a.

**8. Condemnation.** If all or any part of the Leased Premises, or if all or any part of the LESSOR'S land underlying the CMRS facility or roadway to the Leased Premises is taken by eminent domain or other action by jurisdictions having the legal right to take said lands, and if said taking in the sole discretion of LESSEE renders the Leased Premises unusable for its intended purpose, then LESSEE may terminate this Agreement at its option and rent shall be prorated appropriately by LESSOR so that LESSEE recovers rent it paid for any time period after the date of such taking. There shall be no further payment of rents except that which may have been due and payable at the time of said taking. If LESSEE does not terminate this Agreement, LESSOR shall reduce the rental fees on the Leased Premises by an amount proportionate to the extent

to which the Leased Premises was reduced by the eminent domain or other legal action, said reduction to be mutually agreed upon by the parties.

**9. Indemnification.**

a. LESSEE shall indemnify, hold harmless, and defend LESSOR against any claim of liability or loss incurred by LESSOR to the extent caused by LESSEE'S acts or omissions at the Leased Premises that: (i) are negligent or willful acts or are omissions arising in connection with the provision of CMRS at the Leased Premises, or (ii) constitute a violation of Environmental Regulations as defined in Paragraph 10.d. below.

b. LESSOR shall indemnify, hold harmless, and defend LESSEE to the extent provided by applicable law in accordance with Paragraph 10.c. below.

**10. Environmental Issues.**

a. LESSEE represents, warrants, and covenants to LESSOR that LESSEE shall at no time during the term of this Agreement use or permit the Leased Premises to be used in violation of any Environmental Regulations. LESSEE will not exercise any control over environmental conditions or any activities, other than those conducted by LESSEE under this Agreement, at or near the Leased Premises that involve the generation, storage, treatment, or disposal of any hazardous substance, material, chemical, or waste. LESSEE and LESSOR also agree that LESSEE'S use of the Leased Premises will not involve the subsurface, except for the placement of a foundation for LESSEE'S equipment and facilities.

b. LESSOR represents and warrants to the best of its knowledge and belief that: (i) neither LESSOR, any present or previous tenant of the property on which the Tower is located (the "Property") nor any other third-party has released, used, generated, manufactured, stored or disposed of on or under the Leased Premises any hazardous substance, material, chemical or waste that is regulated by the Environmental Regulations; (ii) neither LESSOR, any present or previous tenant of the Property nor any other third-party has transported to or from the Property any flammable explosives, "hazardous waste," or any other "hazardous substance," as those terms are defined in applicable Environmental Regulations; (iii) there have been no orders, notices of violation, complaints or other similar communications of alleged or potential violations or failures to comply with applicable Environmental Regulations issued by a governmental agency regarding any acts or omissions upon or affecting the Property before the Effective Date of this Agreement; and (iv) except as disclosed by LESSOR to LESSEE and acknowledged by LESSEE, LESSOR is not aware of the presence on the Property of any asbestos, polychlorinated biphenyls (PCBs) or other known hazardous substances, material, chemicals or waste (as those terms are defined under applicable Environmental Regulations), wells or underground storage tanks other than normal household and janitorial supplies, chemicals and consumer amounts of petroleum products.

c. LESSOR, to the extent provided by applicable law, shall indemnify, hold harmless and defend, at LESSEE'S request, LESSEE from and against any and all liability, loss, damage or expense (including attorney's fees, court costs and cleanup costs, if any) incurred by LESSEE in connection with any claim, demand or suit for damages, injunction or other relief to the extent caused by, arising out of or resulting from (i) any breach of LESSOR'S representations and warranties contained in this clause, (ii) the generation, storage, use, handling, discharge, release or disposal of hazardous substances, chemicals, materials or waste, as those terms are defined under applicable Environmental Regulations, at the Property, which occurred before the Effective Date of this Agreement or during the term of this Agreement other than those caused by the acts or omissions of LESSEE, (iii) LESSOR'S failure to provide all information, make all submissions and take all actions required by Environmental Regulations, or (iv) any other negligent or willful act or omission of LESSOR (including any of its servants, agents, employees or contractors).

d. For the purposes of this clause, the term "Environmental Regulations" shall mean any law, statute, regulation, order or rule now or hereafter promulgated by any Governmental Authority, having jurisdiction, whether local, state or federal, relating to air pollution, water pollution, noise control and/or transporting, storing, handling, discharge, disposal or recovery of on-site or off-site hazardous substances or materials, as same may be amended from time to time, including without limitation the following: (i) the Clean Air Act (42 U.S.C. § 7401 et seq.); (ii) Marine Protection, Research and Sanctuaries Act (33 U.S.C. § 1401-1445); (iii) the Clean Water Act (33 U.S.C. § 1251 et seq.); (iv) Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. § 6901 et seq.); (v) Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601 et seq.); (vi) Toxic Substances Control Act (15 U.S.C. § 2601 et seq.) ; (vii) the Federal Insecticide, Fungicide and Rodenticide Act as amended (7 U.S.C. § 135 et seq.); (viii) the Safe Drinking Water Act (42 U.S.C. § 300 (f) et seq.); (ix) Occupational Health and Safety Act (29 U.S.C. § 651 et seq.); (x) the Hazardous Liquid Pipeline Safety Act (49 U.S.C. § 2001 et seq.); (xi) the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.); (xii) the Noise Control Act of 1972 (42 U.S.C. § 4901 et seq.); (xiii) Emergency Planning and Community Right to Know Act (42 U.S.C. §§ 11001-11050); and (xiv) the National Environmental Policy Act (42 U.S.C. §§ 4321-4347).

e. This Paragraph 10 shall survive the expiration or termination of this Agreement.

**11. Insurance.** During the term of this Agreement, LESSEE will carry commercial general liability insurance with customary coverage and exclusions in the following amounts:

Bodily Injury

\$1,000,000 for injury to any one person and \$2,000,000 for all



injuries sustained by more than one person in any one occurrence.

Property Damage

\$100,000 for damage as a result of any one accident.

LESSEE agrees to furnish LESSOR with certificates of insurance certifying that LESSEE has in force and effect the above specified insurance. LESSEE may elect to self-insure. In the event LESSEE elects to self-insure, for any part of the above, LESSEE agrees to satisfy the reasonable requirements of the LESSOR'S Risk Manager. LESSEE further agrees to cause said policies of insurance to reflect LESSOR as an additional insured, to the extent permitted by applicable law.

**12. Taxes.** LESSOR shall pay all real estate taxes, if any, or assessments on the real property, inclusive of the Leased Premises, and all personal property taxes, if any, levied against the Leased Premises and any improvements thereon before the same become delinquent. LESSEE shall pay all personal property taxes levied against its CMRS facilities and appurtenances located upon the Leased Premises before the same become delinquent.

**13. Utilities.** LESSEE shall have a separate power meter installed for its electric service and LESSEE agrees to pay any and all costs related to said electric service.

**14. Quiet Title.** LESSOR covenants that LESSEE, on paying the rent and performing the covenants by it herein made, shall and may peaceably and quietly have, hold and enjoy the Leased Premises under the terms and conditions specified in this Agreement.

**15. Choice of Law.** This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Texas. Any litigation concerning this Agreement shall be conducted exclusively in Denton County, Texas and the parties hereby agree to the venue and personal jurisdiction of these courts.

**16. Notices.** All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, postage prepaid, return receipt requested, addressed as shown below (or to any other address that the party to be notified may have designed to the sender by like notice):

LESSEE: Southwestern Bell Wireless, LLC  
Attn: Real Estate Manager, Site #4299  
P.O. Box 797246  
Dallas, Texas 75379

with a copy to: Southwestern Bell Wireless, LLC  
Attention: General Counsel, Site #4299

17330 Preston Road, Suite 100A  
Dallas, Texas 75252

**LESSOR:** City Manager  
City of Denton, Texas  
215 E. McKinney Street  
Denton, Texas 76201

with a copy to: City Attorney  
City of Denton, Texas  
215 E. McKinney Street  
Denton, Texas 76201

**17. Subordination.** At LESSOR'S option, this Agreement shall be subordinate to any mortgage by LESSOR that from time to time may encumber all or part of the Leased Premises of right-of-way provided; however, every such mortgage shall recognize the validity of this Agreement in the event of a foreclosure of LESSOR'S interest and also LESSEE'S right to remain in occupancy of and have access to the leased premises as long as LESSEE is not in default of this Agreement. LESSEE shall execute whatever instruments may reasonably be required to evidence this subordination clause. In the event the Leased Premises is encumbered by a mortgage, LESSOR immediately after this Agreement is exercised, will obtain and furnish to LESSEE, a non-disturbance instrument for each such mortgage in recordable form. If LESSOR fails to provide said non-disturbance instrument, LESSEE shall have the right to terminate this Agreement immediately without penalty upon written notice to LESSOR.

**18. Non-Disturbance.**

a. Subject to the other terms of this Agreement, LESSOR covenants that LESSEE shall, and may peacefully have, hold and enjoy the Leased Premises for the term of this Agreement provided that LESSEE pays the rent payable to LESSOR under this Agreement and performs all of LESSEE'S covenants and agreements herein contained. LESSOR shall take no action that will or could adversely affect LESSEE'S use of the Leased Premises.

b. LESSOR acknowledges that the Leased Premises have little or no value to LESSEE if LESSEE cannot use the Leased Premises as fully contemplated by LESSEE, that the Leased Premises are unique, and that LESSEE has made or will make a large investment in the Leased Premises, and therefore, LESSOR agrees that LESSEE, in addition to the remedies set forth in Paragraph 22, shall be entitled to injunctive relief or other equitable relief to require LESSOR to comply with all provisions of this Agreement which may interfere in any way with LESSEE'S contemplated use of the Leased Premises, so that LESSEE may continue with such use of the Leased Premises as fully contemplated by LESSEE.

c. Any sale or transfer or assignment by the LESSOR of all or part of the Leased Premises or its interest in and to this Lease Agreement, shall be under and subject to this Agreement and LESSEE'S rights hereunder, such that LESSEE'S rights hereunder shall not be disturbed.

**19. Assignment.** Upon written notification from LESSEE to LESSOR, this Agreement may be sold, assigned, subleased, or transferred by LESSEE at any time, without the consent of LESSOR, to a subsidiary, partner or affiliate of LESSEE; or to a successor to the primary business of LESSEE, with the advance written notice of LESSOR, only to the extent that said successor is of equal or greater creditworthiness than LESSEE. Any other assignment of this Agreement shall require the advance written approval of LESSOR, such approval not to be unreasonably withheld.

**20. Successors; Assigns.** This Agreement shall extend to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

**21. Memorandum of Lease.** For the purpose of providing constructive notice hereof, LESSOR and LESSEE hereby agree to execute a Memorandum of Lease Agreement, in recordable form and LESSEE may have the same recorded in the land records of Denton County, Texas. This Agreement shall not be recorded by either party.

**22. Default; Termination.**

a. If either party breaches a provision of this Agreement, the non-breaching party shall provide and deliver the other party written notice of the alleged breach. If the breaching party has not cured the breach within thirty (30) days of the receipt of such notice (the "Cure Period") or if the breach cannot be cured within the Cure Period, and the breaching party has not performed substantial work to cure the breach within the Cure Period, the non-breaching party may then give written notice of its intent to terminate this Agreement. Such termination shall become effective ten (10) days after the breaching party's receipt of the notice of intent to terminate letter; provided that the breaching party has not cured the breach within such additional ten (10) day period.

b. If, at any time during the term of this Agreement, LESSEE determines, following discussion of the subject with LESSOR, in its reasonable discretion, that due to technological reasons, including serious signal interference, the Leased Premises is not appropriate for providing CMRS, and a third disinterested expert party, to be selected jointly by LESSOR and LESSEE who examines the situation is in agreement, then LESSEE may terminate this Agreement on thirty (30) days notice to LESSOR. LESSEE shall also have the right to terminate this Agreement in accordance with Paragraphs 4.c., 5.b., and 8.

**23. Maintenance.** LESSOR shall be responsible and liable for the maintenance of LESSOR'S Tower in compliance with any and all applicable laws,

statutes, rules and regulations, including but not limited to, those rules and regulations, promulgated by the FCC and FAA regarding painting, marking and lighting of LESSOR'S Tower. LESSOR shall allow LESSEE to place any sign or placard on the Leased Premises or on the CMRS facilities and appurtenances attached thereto as required by federal, state, or local law, at no additional expense.

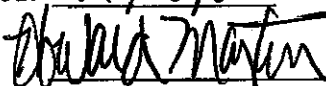
**24. No Representations.** It is hereby mutually agreed and understood that this Agreement contains all agreements, promises and understandings between the LESSOR and LESSEE and that no verbal or oral agreements, promises or understandings shall or will be binding upon either the LESSOR or LESSEE in any dispute, controversy or proceeding at law, and any addition to, variation or modification of this Agreement shall be void and ineffective unless in writing signed by the parties hereto.

**IN WITNESS WHEREOF,** the parties hereto have set their hand and affixed their respective seals on the dates and year above written.

**"LESSOR"**

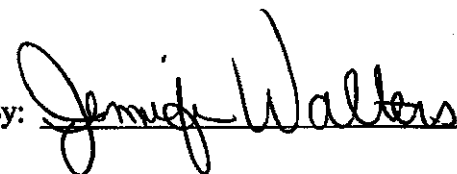
CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

Dated: 06/18/02

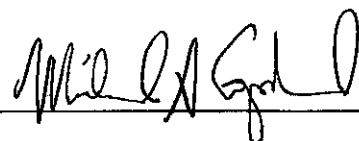
By:   
MICHAEL A. CONDUFF  
City Manager

6/19/02  
*for* Acting City Manager

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

By: 

APPROVED AS TO LEGAL FORM:  
HERBERT L. PROUTY, CITY ATTORNEY

By: 

**"LESSEE"**

SOUTHWESTERN BELL WIRELESS, LLC d/b/a  
Cingular Wireless, acting in its capacity as General  
Partner of the Dallas SMSA Limited Partnership

Dated: \_\_\_\_\_

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

*Paul Thompson*  
~~PAUL THOMPSON THE BUI~~  
~~Regional Director of Real Estate~~  
*Executive Director*  
*RF Engineering*

ATTEST:

By: \_\_\_\_\_  
APPROVED AS TO LEGAL FORM:

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

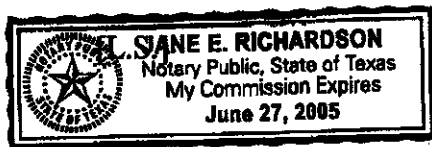
**ACKNOWLEDGMENT**

THE STATE OF TEXAS     §

COUNTY OF DENTON     §

BEFORE ME, the undersigned authority, on this day personally appeared ~~HOWARD MARTIN~~ <sup>Acting</sup> ~~MICHAEL A. CONDUFF~~, City Manager of the City of Denton, Texas, a Texas Municipal Corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said City Council of the City of Denton, Texas and that he executed the same as the act of such municipal corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 19<sup>th</sup> day of June, A.D. 2002.



Jane E. Richardson  
Notary Public in and for the State of Texas

My Commission Expires: 06/27/05

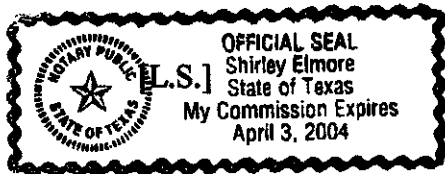
## ACKNOWLEDGMENT

THE STATE OF TEXAS     §

COUNTY OF DALLAS     §

*THE*  
*But* BEFORE ME, the undersigned authority, on this day personally appeared ~~Paul Thompson~~ <sup>*Executive*</sup> ~~Regional Director of Real Estate~~ <sup>*RE concerning*</sup>, Southwestern Bell Wireless, LLC d/b/a Cingular Wireless, a Delaware limited liability company as general partner of the Dallas SMSA Limited Partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the Dallas SMSA Limited Partnership, a Delaware Limited Partnership and that he executed the same as the act of such Limited Partnership for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 21<sup>st</sup>  
 day of May, A.D. 2002.



*Shirley Elmore*  
 Notary Public in and for the State of Texas

My Commission Expires: April 3, 2004

\*\*\*\*\*

## EXHIBIT "A"

Attached to and made a part of that certain Tower/Ground Lease Agreement dated June 19, 2002, by and between the City of Denton, Texas, Lessor and Southwestern Bell Wireless LLC, d/b/a Cingular Wireless, Lessee.

### Legal Description McKenna Park Communication Facility

BEING a 0.0791 Acre Tract of Land situated in the City of Denton, and being out of the ROBERT BEAUMONT SURVEY, Abstract No. 31, Denton County, Texas, and being part of a called 18.0 acre tract of land described to the City of Denton by a warranty deed as recorded in Volume 358, Page 559 of the Deed Records of Denton County, Texas and being more particularly described as follows;

COMMENCING the Southeast corner of said City of Denton tract of land now commonly known as McKenna Park;

THENCE North with the west right of way line of Thomas Road for a distance of 459.78 feet to a corner;

THENCE East departing said west right of way line for a distance of 169.72 feet to a metal corner for the PLACE OF BEGINNING;

THENCE North 89 degrees 08 minutes 33 seconds West for a distance of 98.47 feet to metal corner post for corner;

THENCE North 00 degrees 51 minutes 27 seconds East for a distance of 35.00 feet for corner;

THENCE South 89 degrees 08 minutes 33 seconds East for a distance of 98.47 feet for corner;

THENCE South 00 degrees 51 minutes 27 seconds West for a distance of 35.00 feet to PLACE OF BEGINNING and CONTAINING 3446 square feet of land or 0.0791 acre of land.

CELL SITE NAME: SCRIPTURE/THOMAS

EXHIBIT "A"

CENTER NUMBER: 4299 SWBW # \_\_\_\_\_ CELL NO. \_\_\_\_\_ Page 1 of 3

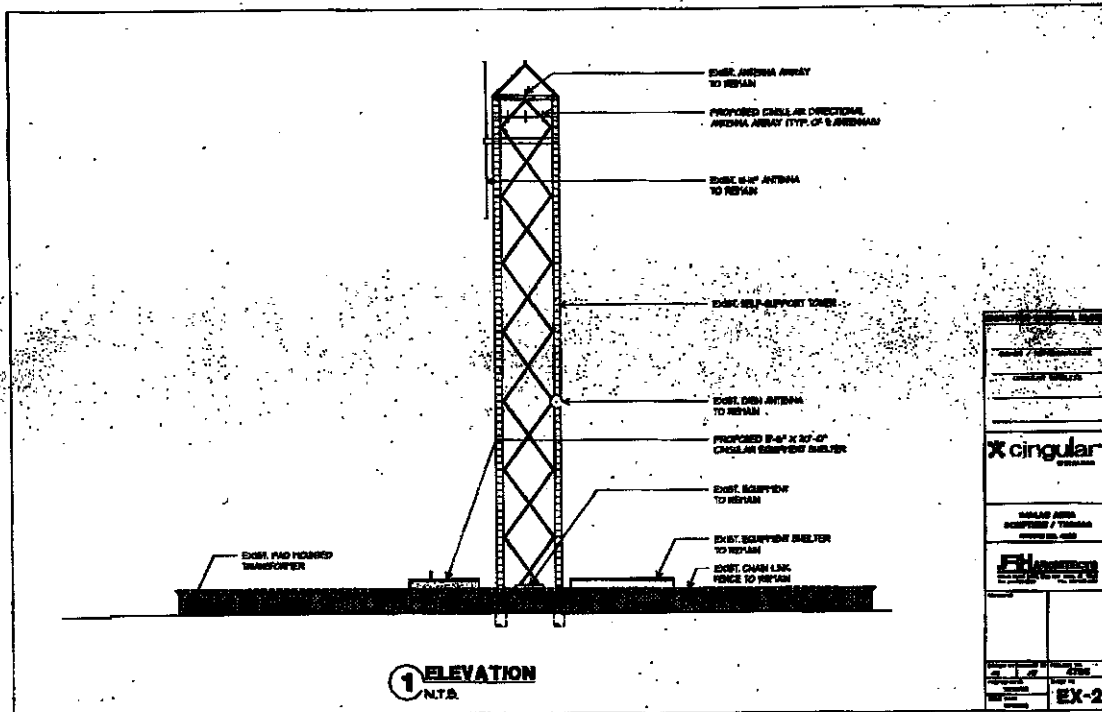
*Note: Owner and SBW may, at SBW's option, replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site.*

**Southwestern Bell Wireless, LLC, d/b/a Cingular Wireless**



**EXHIBIT "A"**

Attached to and made a part of that certain Tower/Ground Lease Agreement dated June 18, 2002, by and between the City of Denton, Texas, Lessor and Southwestern Bell Wireless LLC, d/b/a Cingular Wireless, Lessee.



CELL SITE NAME: SCRIPTURE/THOMAS

EXHIBIT "A"

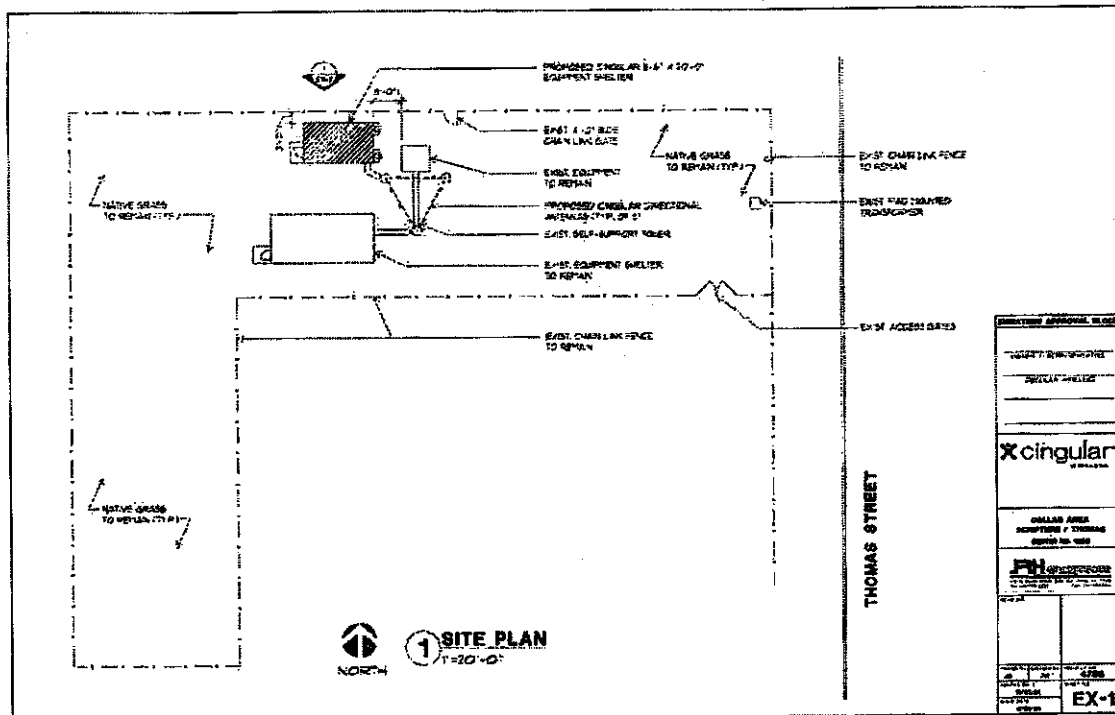
CENTER NUMBER: 4299 SWBW # \_\_\_\_\_ CELL NO. \_\_\_\_\_ Page 2 of 3

*Note: Owner and SBW may, at SBW's option, replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site.*

**Southwestern Bell Wireless, LLC, d/b/a Cingular Wireless**

**EXHIBIT "A"**

Attached to and made a part of that certain Tower/Ground Lease Agreement dated June 18, 2002, by and between the City of Denton, Texas, Lessor and Southwestern Bell Wireless LLC., d/b/a Cingular Wireless, Lessee.



CELL SITE NAME: SCRIPTURE/THOMAS

EXHIBIT "A"

CENTER NUMBER: 4299 SWBW # \_\_\_\_\_ CELL NO. \_\_\_\_\_ Page 3 of 3

*Note: Owner and SBW may, at SBW's option, replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site.*

**Southwestern Bell Wireless, LLC, d/b/a Cingular Wireless**

**Request for Taxpayer  
Identification Number and Certification**

Vendor # \_\_\_\_\_

Give form to the  
requester. Do NOT  
send to the IRS.

Name (If joint owner, list first and circle the name of the person or entity whose number you enter in Part I below. See instructions on page 2 if your name has changed.)  
THE CITY OF DENTON

Business name (See instructions on page 2)  
THE CITY OF DENTON

Please check appropriate box: ☐ Individual sole proprietor ☐ Partnership ☒ Other Municipality

Address (number, street, and apt. or suite no.)  
215 E MCKINNEY

City, state, and ZIP code  
DENTON TEXAS 76202

Requester's name and address (optional)  
\_\_\_\_\_  
\_\_\_\_\_

List account number(s) here (optional)  
\_\_\_\_\_  
\_\_\_\_\_

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). For sole proprietors, see the instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see How To Get a TIN below.

Social security number  
++++++

OR

Employer identification number  
751699015/12

Note: If the account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.

**Part II For Payees Exempt From Backup Withholding (See Part II instructions on page 2)**

**Part III Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.

**Certification Instructions.**—You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, the acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (Also see Part III instructions on page 2.)

Sign Here Signature Brenda Gimsly Date 5-31-02

Section references are to the Internal Revenue Code.

**Purpose of Form.**—A person who is required to file an information return with the IRS must get your correct TIN to report income paid to you, real estate transactions, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA. Use Form W-9 to give your correct TIN to the requester (the person requesting your TIN) and, when applicable, (1) to certify the TIN you are giving is correct for you are waiting for a number to be issued, (2) to certify you are not subject to backup withholding, or (3) to claim exemption from backup withholding if you are an exempt payee. Giving your correct TIN and making the appropriate certifications will prevent certain payments from being subject to backup withholding.

**Note:** If a requester gives you a form other than a W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**What is Backup Withholding?**—Persons making certain payments to you must withhold and pay to the IRS 31% of such

payments under certain conditions. This is called "backup withholding." Payments that could be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

If you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return, your payments will not be subject to backup withholding. Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester, or
2. The IRS tells the requester that you furnished an incorrect TIN, or
3. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
4. You do not certify to the requester that you are not subject to backup withholding under 3 above (for reportable

interest and dividend accounts opened after 1983 only), or

5. You do not certify your TIN. See the Part III instructions for exceptions.

Certain payees and payments are exempt from backup withholding and information reporting. See the Part II instructions and the separate instructions for the Requester of Form W-9.

**How To Get a TIN.**—If you do not have a TIN, apply for one immediately. To apply, get Form SS-5, Application for a Social Security Number Card (for individuals), from your local office of the Social Security Administration, or Form SS-4, Application for Employer Identification Number (for businesses and all other entities), from your local IRS office.

If you do not have a TIN, write "Applied For" in the space for the TIN in Part I, sign and date the form, and give it to the requester. Generally, you will then have 60 days to get a TIN and give it to the requester. If the requester does not receive your TIN within 60 days, backup withholding, if applicable, will begin and continue until you furnish your TIN.

# PAYMENT DIRECTION FORM

NEW ☒

CHANGE ☐

CINGULAR SITE NAME: 4299 SCRIPTURE/THOMAS
SITE ADDRESS: 500 THOMAS ST., DENTON, TEXAS 76201

LESSOR NAME:*	City of Denton - Denton Municipal Electric
PAYEE NAME:**	City of Denton
PAYMENT ADDRESS:	PO Box 961082 Fort Worth TX 76161-0082
LESSOR PHONE / FAX NUMBER:	940-349-7334
LESSOR/PAYEE VENDOR ID NUMBER: (if existing vendor)	
PREVIOUS MANAGEMENT COMPANY: (if applicable)	
LESSOR/PAYEE PAYMENT SHARE:***	100 %

- \* Lessor Name should be exactly as stated in Lease/License
- \*\* to be completed if rent payee is other than Lessor as stated in Lease/License
- \*\*\* percentage of rent payment to be paid to Lessor/Payee named herein

I hereby authorize Cingular Wireless and/or its subsidiaries to make all rent payments and other payments relating to the site named above to the Lessor/Payee and Payment Address listed above (subject to the Lessor/Payee Payment Share listed above). I further acknowledge and agree that the Lessor Payment Share listed above is correct.

This authorization shall remain in effect until I have cancelled it in writing in as much time as to afford you a reasonable time to act upon it.

  
LESSOR AUTHORIZED SIGNATURE

Director, Electric Utilities  
TITLE

6/18/02  
DATE

LESSOR AUTHORIZED SIGNATURE

TITLE

DATE

Return To:  
Cingular Wireless  
Network Real Estate Contracting  
Mail Code GAN 02  
6100 Atlantic Blvd  
Norcross, GA 30071

STATE OF TEXAS §

COUNTY OF DENTON §

### MEMORANDUM OF LEASE AGREEMENT

This Indenture, made this 18<sup>th</sup> day of June, 2002, by and between the City of Denton, Texas, a Texas Municipal Corporation, herein after called **LESSOR** and Southwestern Bell Wireless, LLC d/b/a Cingular Wireless, in its capacity as general partner of the Dallas SMSA Limited Partnership, hereinafter called **LESSEE**, organized and existing under the laws of the State of Delaware, having its principal offices at 15660 Dallas Parkway, Suite 1300, Dallas, Texas 75248.

**LESSOR** has agreed to let and hereby does let and demise to **LESSEE** and **LESSEE** has agreed to take and does hereby take from **LESSOR** a 18' x 22' portion of the following described real property lying and being and being situated at 500 Thomas Street, Denton, Denton County, Texas, on the McKenna Park Radio Tower, with space on the Tower at the 120 foot AGL for cabling and nine (9) antennas. The Legal Description from the Survey, if made, shall be attached and shall supersede the above legal description.

Said 18' x 22' portion of the above- described real property is hereinafter referred to as the "Leased Premises". Approximate location of said Leased Premises within the above described real property is illustrated on Exhibit "A" attached hereto.

TO HAVE AND TO HOLD the same for a Lease term of Fifteen (15) years, commencing on 18<sup>th</sup> day of June, 2002, subject to the terms and conditions more particularly set forth in that certain TOWER/GROUND LEASE AGREEMENT executed by the **LESSOR** and **LESSEE** referred to herein and bearing a date of even date herewith for the purposes of constructing, operating and maintaining commercial mobile radio services and all other activities related thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Indenture the day and year first hereinbelow written.

LESSEE

Southwestern Bell Wireless, LLC d/b/a  
Cingular Wireless, acting in its capacity as general  
partner of The Dallas SMSA Limited Partnership

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

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

Paul Thompson  
~~PAUL THOMPSON~~ THE BU I  
~~Regional Director of Real Estate~~  
Executive Director  
RF Engineering

LESSOR:

CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

Date: 06/19/02

By: *Howard Martin*  
MICHAEL A. CONDUFF  
City Manager

06/19/02  
*Acting City Manager*  
*MSL*

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

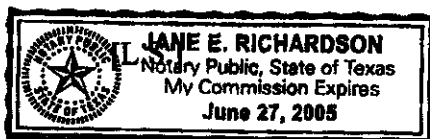
**ACKNOWLEDGMENT**

THE STATE OF TEXAS §

COUNTY OF DENTON §

BEFORE ME, the undersigned authority, on this day personally appeared ~~Michael A. Conduff~~ <sup>*Howard Martin*</sup> City Manager for the City of Denton, Texas, a municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the City Council of the City of Denton, Texas and that he executed the same as the act of such City Council for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 19<sup>th</sup>  
day of June, A.D. 2002.



*Jane E. Richardson*  
Notary Public in and for the State of Texas

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

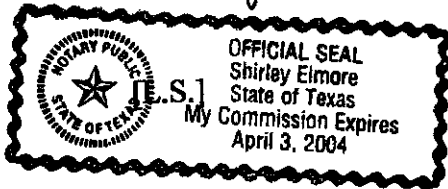
## ACKNOWLEDGMENT

THE STATE OF TEXAS §

COUNTY OF DALLAS §

*THE*  
*But* BEFORE ME, the undersigned authority, on this day personally appeared *Paul Thompson, Executive Director of Real Estate, RE Engineering*, Southwestern Bell Wireless, LLC d/b/a Cingular Wireless, a Delaware limited liability company as general partner of the Dallas SMSA Limited Partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the Dallas SMSA Limited Partnership, a Delaware Limited Partnership and that he executed the same as the act of such Limited Partnership for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 21<sup>st</sup>  
 day of May, A.D. 2002.



*Shirley Elmore*  
 Notary Public in and for the State of Texas

My Commission Expires: April 3, 2004

## EXHIBIT "A"

Attached to and made a part of that certain Memorandum of Lease Agreement dated June 18, 2002, by and between the City of Denton, Texas, LESSOR and Southwestern Bell Wireless LLC, d/b/a Cingular Wireless, LESSEE.

### Legal Description McKenna Park Communication Facility

BEING a 0.0791 Acre Tract of Land situated in the City of Denton, and being out of the ROBERT BEAUMONT SURVEY, Abstract No. 31, Denton County, Texas, and being part of a called 18.0 acre tract of land described to the City of Denton by a warranty deed as recorded in Volume 358, Page 559 of the Deed Records of Denton County, Texas and being more particularly described as follows:

COMMENCING the Southeast corner of said City of Denton tract of land now commonly known as McKenna Park;

THENCE North with the west right of way line of Thomas Road for a distance of 459.78 feet to a corner;

THENCE East departing said west right of way line for a distance of 169.72 feet to a metal corner for the PLACE OF BEGINNING;

THENCE North 89 degrees 08 minutes 33 seconds West for a distance of 98.47 feet to metal corner post for corner;

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THENCE South 89 degrees 08 minutes 33 seconds East for a distance of 98.47 feet for corner;

THENCE South 00 degrees 51 minutes 27 seconds West for a distance of 35.00 feet to PLACE OF BEGINNING and CONTAINING 3446 square feet of land or 0.0791 acre of land.

CELL SITE NAME: SCRIPTURE/THOMAS

EXHIBIT "A"

CENTER NUMBER: 4299 SWBW # \_\_\_\_\_ CELL NO. \_\_\_\_\_ Page 1 of 3

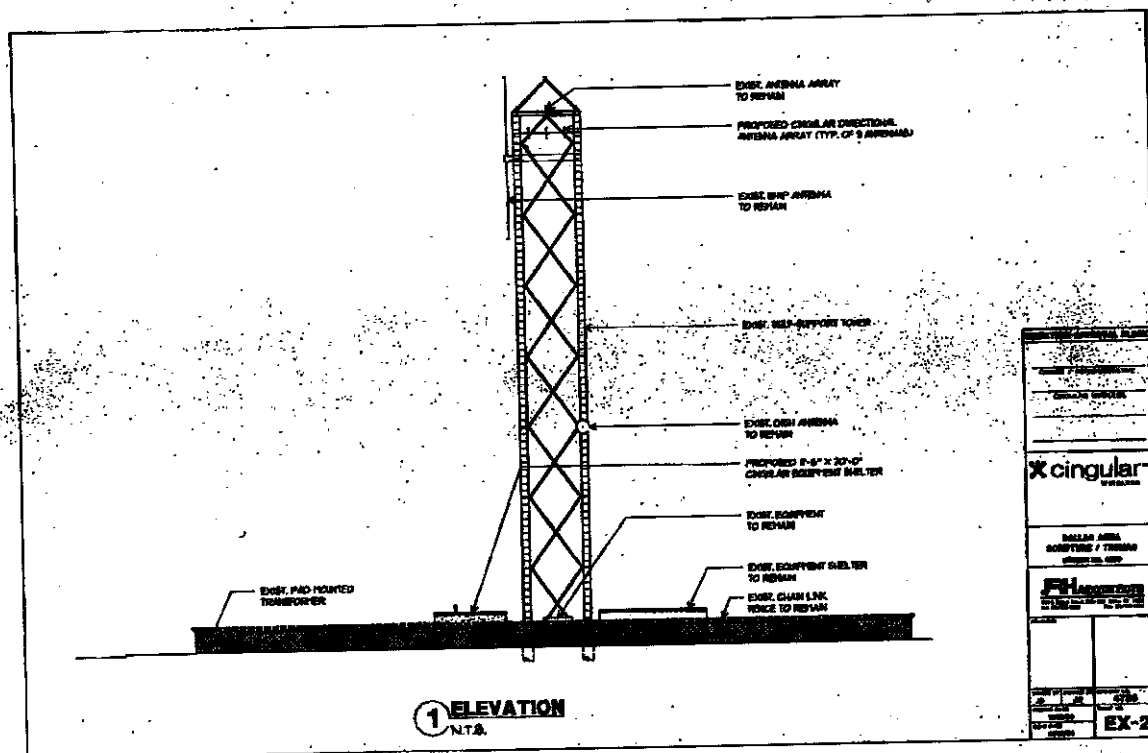
*Note: Owner and SWBW may, at SWBW's option, replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site.*

**Southwestern Bell Wireless, LLC, d/b/a Cingular Wireless .**



## EXHIBIT "A"

Attached to and made a part of that certain Memorandum of Lease Agreement dated June 10, 2002, by and between the City of Denton, Texas, LESSOR and Southwestern Bell Wireless LLC., d/b/a Cingular Wireless, LESSEE.



SOUTHWESTERN BELL	
WIRELESS	
Cingular	
WIRELESS	
DALLAS AREA	
SCRIPTURE / THOMAS	
SHOWN IN 2002	
FH	
EX-2	

11-12-01

CELL SITE NAME: SCRIPTURE/THOMAS

EXHIBIT "A"

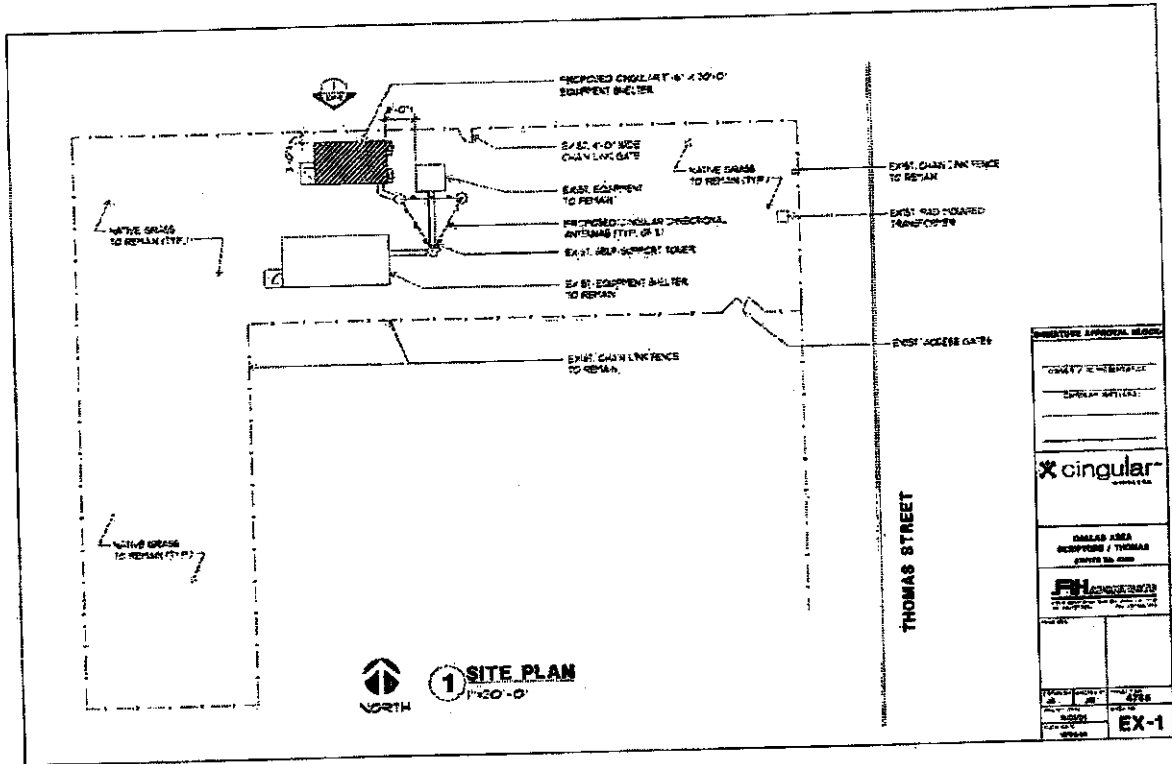
CENTER NUMBER: 4299 SWBW # \_\_\_\_\_ CELL NO. \_\_\_\_\_ Page 2 of 3

*Note: Owner and SWBW may, at SWBW's option, replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site.*

**Southwestern Bell Wireless, LLC, d/b/a Cingular Wireless.**

## EXHIBIT "A"

Attached to and made a part of that certain Memorandum of Lease Agreement dated June 19, 2002, by and between the City of Denton, Texas, LESSOR and Southwestern Bell Wireless LLC, d/b/a Cingular Wireless, LESSEE.



CELL SITE NAME: SCRIPTURE/THOMAS

EXHIBIT "A"

CENTER NUMBER: 4299 SWBW # \_\_\_\_\_ CELL NO. \_\_\_\_\_ Page 3 of 3

*Note: Owner and SWBW may, at SWBW's option, replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site.*

**Southwestern Bell Wireless, LLC, d/b/a Cingular Wireless**

Cell Site No. DX6057/10025474  
Market: North Texas  
Address: 500 Thomas St, Denton, Texas 76201

### AMENDMENT NO. 1 TO TOWER/GROUND LEASE AGREEMENT

THIS AMENDMENT NO. 1 TO TOWER/GROUND LEASE AGREEMENT ("Agreement"), dated as of the latter of the signature dates below, is by and between City of Denton, Texas a Texas Municipal Corporation, having a mailing address of 215 E. McKinney Street, Denton, Texas 76201 (hereinafter referred to as "Lessor") and AT&T Mobility•Texas LLC, a Delaware limited liability company, successor to Houston Cellular Telephone Company, LP, by its general partner, New Cingular Wireless PCS, LLC, having a mailing address of 5405 Windward Parkway, Alpharetta, GA 30004 (hereinafter referred to as "Lessee").

WHEREAS, Lessor and Lessee entered into a Tower/Ground Lease Agreement dated June 18, 2002, whereby Lessor leased to Lessee certain Premises, therein described, that are a portion of the Property located at 500 Thomas St., Denton, Texas (collectively, the "Agreement"); and

WHEREAS, Lessor and Lessee desire to amend the Agreement to allow for installation of additional TMAs ("Tower Mount Amplifiers"), associated cables, and other communication instruments, all as specified on Exhibit A hereto; and

WHEREAS, Lessor and Lessee desire to adjust the rent; and

WHEREAS, Lessor and Lessee desire to amend the Agreement to modify the notice section thereof; and

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

1. **Equipment.** Exhibit "A" to the original lease is deleted in its entirety and replaced with the Revised Exhibit "A" attached hereto and made a part of the Agreement.
2. **Rent.** Commencing on the first day of the month following the date that Lessee commences construction (the "Rent Commencement Date"), Rent shall be increased by \$316.80 per month over and above the current Rent, subject to the adjustments provided in the Agreement.
3. **LESSEE Covenants.** Section 6 of the Tower/Ground Lease Agreement is hereby deleted in its entirety and replaced with the following:

**LESSEE Covenants.** LESSEE covenants and agrees that LESSEE'S equipment, its installation, operation and maintenance will:

a. Not interfere with the operation of other users' radio equipment installed at the Leased Premises prior to the Commencement Date including, but not limited to, electrical interference to the communications provided by such facilities. Except as provided in subsection b. below in the case of LESSOR'S communications systems, in the event there is harmful interference to other users' electronic equipment, LESSEE will promptly take all steps necessary to identify the problem, and, if caused by LESSEE'S equipment, take all reasonable steps to eliminate said harmful interference within seven (7) days after notice is received from LESSOR to LESSEE advising of the interference. If said interference cannot be eliminated within fifteen (15) days after receipt of notice thereof, LESSEE agrees to immediately suspend operations (transmissions) at the Leased Premises while the interference problems are studied and a means found to mitigate them.

b. In the event of interference to LESSOR'S communications systems, LESSEE shall immediately take the corrective measures required by FCC Rules 90.672 et seq. If said interference cannot be eliminated, then, at LESSOR'S request LESSEE shall remove its building and equipment from LESSOR'S property at LESSEE'S cost and expense and the Agreement shall thereupon be terminated.

c. Comply with all applicable rules and regulations of the Federal Communications Commission ("FCC"), and electrical codes of the City and/or State. Under this Agreement, LESSOR assumes no responsibility for the licensing, operation and/or maintenance of LESSEE'S CMRS facilities and appurtenances. If the addition of LESSEE'S equipment on the Leased Premises requires an increase in the current height of the Tower or a change in the location of the Tower on the Leased Premises, LESSEE shall not install its equipment or increase the height of the Tower without the prior written approval of LESSOR and modification of this Agreement, so that LESSEE may comply with all FCC and/or Federal Aviation Administration ("FAA") rules regarding Tower height and location.

3. **Notices.** Section 16 of the Ground/Tower Lease Agreement 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 Tenant: Lessee:

AT&T Mobility Texas LLC (for certified mail)

Attn: Network Real Estate Administration

Re: Cell Site # \_\_\_\_\_; #: DX6057, Cell Site Name: \_\_\_\_\_ Fixed

Asset #. \_\_\_\_\_ Scripture/Thomas

PO Box 1630

Alpharetta, GA 30009



AT&T Mobility Texas LLC (for overnight mail)

Attn: Network Real Estate Administration

Re: Cell Site # \_\_\_\_\_; #: DX6057, Cell Site Name: \_\_\_\_\_ Fixed Asset

#. \_\_\_\_\_ Scripture/Thomas

12555 Cingular Way  
Alpharetta, GA 30004

With a copy to:

AT&T Mobility Texas LLC

Attn: Legal Department

Re: Cell Site # \_\_\_\_\_; #: DX6057, Cell Site Name: \_\_\_\_\_ Fixed Asset

#. \_\_\_\_\_ Scripture/Thomas

15 East Midland Ave.nue  
Paramus, NJ 07652

If to Landlord:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Lessor:

City Manager

City of Denton, Texas

215 E. McKinney Street

Denton, Texas 76201

with a copy to:

City Attorney

City of Denton, Texas

215 E. McKinney Street

Denton, Texas 76201

and

Harry F. Hettinger

Communications Superintendent

Denton Municipal Electric

901 A Texas Street

Denton, TX 76209

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.

4. **Memorandum of Lease.** Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease substantially in the form of the Attachment 1. Either party may record this memorandum at any time, in its absolute discretion.

5. **Equipment Shelter.** LESSEE has installed an equipment shelter on the Leased Premises, which structure LESSEE may continue to utilize for the term of the lease. Upon the expiration

of the term, or a termination of the Agreement prior thereto by LESSOR or by LESSEE, title to the equipment shelter shall revert to LESSOR without further consideration.

6. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this Amendment, the terms of this Amendment shall control. Except as expressly set forth in this Amendment, the Agreement otherwise is unmodified and remains in full force and effect.

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

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Amendment on the dates set forth below.

ATTEST:

JENNIFER WALTERS, CITY SECRETARY

By: Jennifer Walters

LESSOR:

City of Denton

By: [Signature]  
Name: Tom D. Shaw  
Title: Purchasing Agent  
Date: 1/6/09

APPROVED AS TO LEGAL FORM:

ANITA BURGESS, CITY ATTORNEY

By: [Signature]

LESSEE:

AT&T Mobility Texas LLC,  
a Delaware limited liability company,  
by AT&T Mobility Corporation, its Manager

By: [Signature]  
Name: Kevin J. Haynes,  
Title: Executive Director, North Texas  
Network Operations  
Date: 11/12/08

## LESSEE ACKNOWLEDGEMENT

STATE OF TEXAS

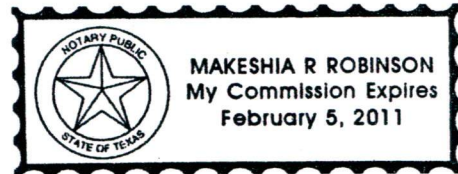
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Kevin J. Haynes, Executive Director, North Texas Network Operations of AT&T MOBILITY TEXAS LLC, a Delaware limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said AT&T Mobility Texas LLC, and that he executed the same as the act of such Limited Liability Company for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 12<sup>th</sup> day of November, 2008.

Makeshia R. Robinson  
Notary Public in and for the State of Texas

My Commission Expires February 5, 2011



## LESSOR ACKNOWLEDGEMENT

STATE OF TEXAS

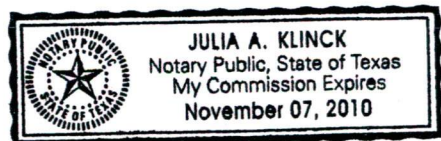
COUNTY OF DENTON

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Tom D. Shaw, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for and as the act of the CITY OF DENTON, TEXAS, a municipal corporation, of the State of Texas, Denton County, Texas, and as the Purchasing Agent thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 6 day of January, 2009.

Julia A. Klinck  
Notary Public in and for the State of Texas

My Commission Expires November 10, 2010



Julia A. Klinck  
Notary Public  
My Commission Expires: November 7, 2010





## REVISED EXHIBIT A

Sector	Sector 1	Sector 2	Sector 3	Sector 4	AUX
Desired Rad Center (ft (AGL))	120	120	120		120
Antenna Quantity	2/1	2/1	2/1		6/6
Antenna Manufacturer	EMS/Decibel	EMS/Decibel	EMS/Decibel		Ericsson/Ericsson
Antenna Model	MB72RR80 VDPACLQ/ 731DG65VT AXM	MB72RR80 VDPACLQ/ 731DG65VT AXM	MB72RR80 VDPACLQ/ 731DG65VT AXM		KRY112 75/1 / KRY112 76/1
Weight (lbs per antenna)	33/30	33/30	33/30		30/15.4
Antenna Dimensions (HxWxD) (in)	72x15x6.5/7 2x12x7	72x15x6.5/7 2x12x7	72x15x6.5/7 2x12x7		12x17x5.7/ 15.5x7x4.5
ERP (watts)					
Antenna Gain (dBi)	17.3 dBi	17.3 dBi	17.3 dBi		
Orientation/Azimuth (Degrees)					
Mechanical Tilt					
Channels					
Mount Mfg and Model					
Tower Mount Mounting Height (On Tower)					
Transmit Frequency (MHz)	1965-1970 MHz	1965-1970 MHz	1965-1970 MHz		
Receive Frequency (MHz)	1885- 18890MHz	1885- 18890MHz	1885- 18890MHz		
Number of Coax Cables (Per Sector)	4	4	4		
Diameter of Coax Cables (in)	7/8"	7/8"	7/8"		
Type of Service (i.e. CDMA, GSM, TDMA, PAGING):					

### Notes:

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Premises once it is received by Lessee.
2. Any setback of the Premises from the Property's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers and mounting positions may vary from what is shown above.

## SECOND AMENDMENT TO TOWER/GROUND LEASE AGREEMENT

THIS SECOND AMENDMENT TO TOWER/GROUND LEASE AGREEMENT ("**Amendment**"), dated as of the latter of the signature dates below, is by and between City of Denton, Texas, a Texas Municipal Corporation, having a mailing address of 215 E. McKinney Street, Denton, Texas 76201, ("**Lessor**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, successor in interest to AT&T Mobility Texas, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive NE, Suite 13-F West Tower, Atlanta, GA 30324 ("**Lessee**").

WHEREAS, Lessor and Lessee (or its predecessor-in-interest) entered into a Tower/Ground Lease Agreement dated June 18, 2002 (the "**Tower/Ground Lease**") as amended by Amendment No. 1 to Tower/Ground Lease Agreement dated January 6, 2009 (the "**First Amendment**" and, collectively with the Tower/Ground Lease, the "**Agreement**"), whereby Lessor leases to Lessee certain Leased Premises, therein described, that are located at 500 Thomas St., Denton, Texas;

WHEREAS, Lessor and Lessee desire to amend the Agreement to allow for the installation of additional antennas and equipment;

WHEREAS, Lessor and Lessee desire to amend the Agreement to modify the notice section thereof; and

WHEREAS, Lessor and Lessee, in their mutual interest, wish to amend the Agreement 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, Lessor and Lessee agree as follows:

1. **Equipment.** Exhibit "A" to the Tower/Ground Lease, as amended by the First Amendment, is deleted in its entirety and replaced with the Revised Exhibit "A" attached hereto and made a part of the Agreement.
2. **No Change to Rent.** This Amendment will not affect the rent required to be paid under the Agreement.

3. **Notices.** Section 3 "Notices." of the Amendment No. 1 To Tower/Ground Lease Agreement 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 Lessee:                New Cingular Wireless PCS, LLC  
                                  Attn: AT&T Network Real Estate Administration  
                                  Re: Cell Site #: DX6057 ; Cell Site Name: Scripture / Thomas (TX)  
                                  Fixed Asset No: 10025474  
                                  575 Morosgo Drive NE  
                                  Suite 13-F West Tower  
                                  Atlanta, GA 3032

With the required copy of legal notice sent to Tenant at the address above, a copy to the Legal Department:

                                  New Cingular Wireless PCS, LLC  
                                  Attn: AT&T Legal Department  
                                  Re: Cell Site # DX6057; Cell Site Name: Scripture / Thomas (TX)  
                                  Fixed Asset No.: 10025474  
                                  208 S. Akard Street  
                                  Dallas, Texas, 75202-4206

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

If to Lessor:                City Manager  
                                  City of Denton, Texas  
                                  215 E. McKinney Street  
                                  Denton, TX 76201

with a copy to:            City Attorney  
                                  City of Denton, Texas  
                                  215 E. McKinney Street  
                                  Denton, Texas 76201

and                            Darrell C. Washington  
                                  Communications Manager  
                                  Denton Municipal Electric  
                                  901 C Texas Street  
                                  Denton, TX 76209

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.

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

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

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

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Amendment on the dates set forth below.

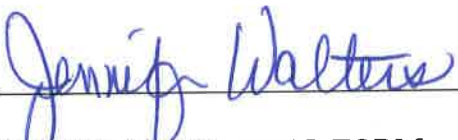
**"LESSOR"**

CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

By:   
GEORGE C. CAMPBELL  
CITY MANAGER

Date: 7/17/14

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

By: 

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

By: 

**"LESSEE"**

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

By: AT&T Mobility Corporation  
Its: Manager

By: 

Print Name: Paul S. Baumgardner, III  
Its: Area Manager-RE&C NTX Network Ops  
Date: 6/17/14

LESSEE ACKNOWLEDGEMENT

STATE OF TEXAS

COUNTY OF DALLAS

BEFORE ME, the undersigned authority, on this day personally appeared Paul S. Baumgardner, III, Area Manager – RE&C, NTX Network Ops of AT&T Mobility Corporation, Manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said New Cingular Wireless PCS, LLC, and that he executed the same as the act of such Limited Liability Company for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 17 day of June, 2014.



Kathleen Meza  
Notary Public: Kathleen Meza  
My Commission Expires: 2-21-18

LESSOR ACKNOWLEDGEMENT

STATE OF Texas )  
COUNTY OF Denton )

On the 15th day of July, 2014 before me, personally appeared George C. Campbell, who acknowledged under oath, that he/she is the person/officer named in the within instrument, and that he/she executed the same in his/her stated capacity as the voluntary act and deed of the Landlord for the purposes therein contained.



Jennifer K. Walters  
Notary Public  
My Commission Expires: 12/19/14

REVISED EXHIBIT "A"

[attached are the following documents:

1. Legal Description of Facility
2. Tower Elevation
3. Site Plan
4. List of Equipment]

## EXHIBIT "A"

Attached to and made a part of that certain Tower/Ground Lease Agreement dated June 19, 2002, by and between the City of Denton, Texas, Lessor and Southwestern Bell Wireless LLC., d/b/a Cingular Wireless, Lessee.

### Legal Description McKenna Park Communication Facility

BEING a 0.0791 Acre Tract of Land situated in the City of Denton, and being out of the ROBERT BEAUMONT SURVEY, Abstract No. 31, Denton County, Texas, and being part of a called 18.0 acre tract of land described to the City of Denton by a warranty deed as recorded in Volume 358, Page 559 of the Deed Records of Denton County, Texas and being more particularly described as follows;

COMMENCING the Southeast corner of said City of Denton tract of land now commonly known as McKenna Park;

THENCE North with the west right of way line of Thomas Road for a distance of 459.78 feet to a corner;

THENCE East departing said west right of way line for a distance of 169.72 feet to a metal corner for the PLACE OF BEGINNING;

THENCE North 89 degrees 08 minutes 33 seconds West for a distance of 98.47 feet to metal corner post for corner;

THENCE North 00 degrees 51 minutes 27 seconds East for a distance of 35.00 feet for corner;

THENCE South 89 degrees 08 minutes 33 seconds East for a distance of 98.47 feet for corner;

THENCE South 00 degrees 51 minutes 27 seconds West for a distance of 35.00 feet to PLACE OF BEGINNING and CONTAINING 3446 square feet of land or 0.0791 acre of land.

CELL SITE NAME: SCRIPTURE/THOMAS

EXHIBIT "A"

CENTER NUMBER: 4299 SWBW # \_\_\_\_\_ CELL NO. \_\_\_\_\_ Page 1 of 3

*Note: Owner and SBW may, at SBW's option, replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site.*

**Southwestern Bell Wireless, LLC, d/b/a Cingular Wireless**



REVISIONS	DATE
1	04/16/14
2	04/23/14
3	04/29/14

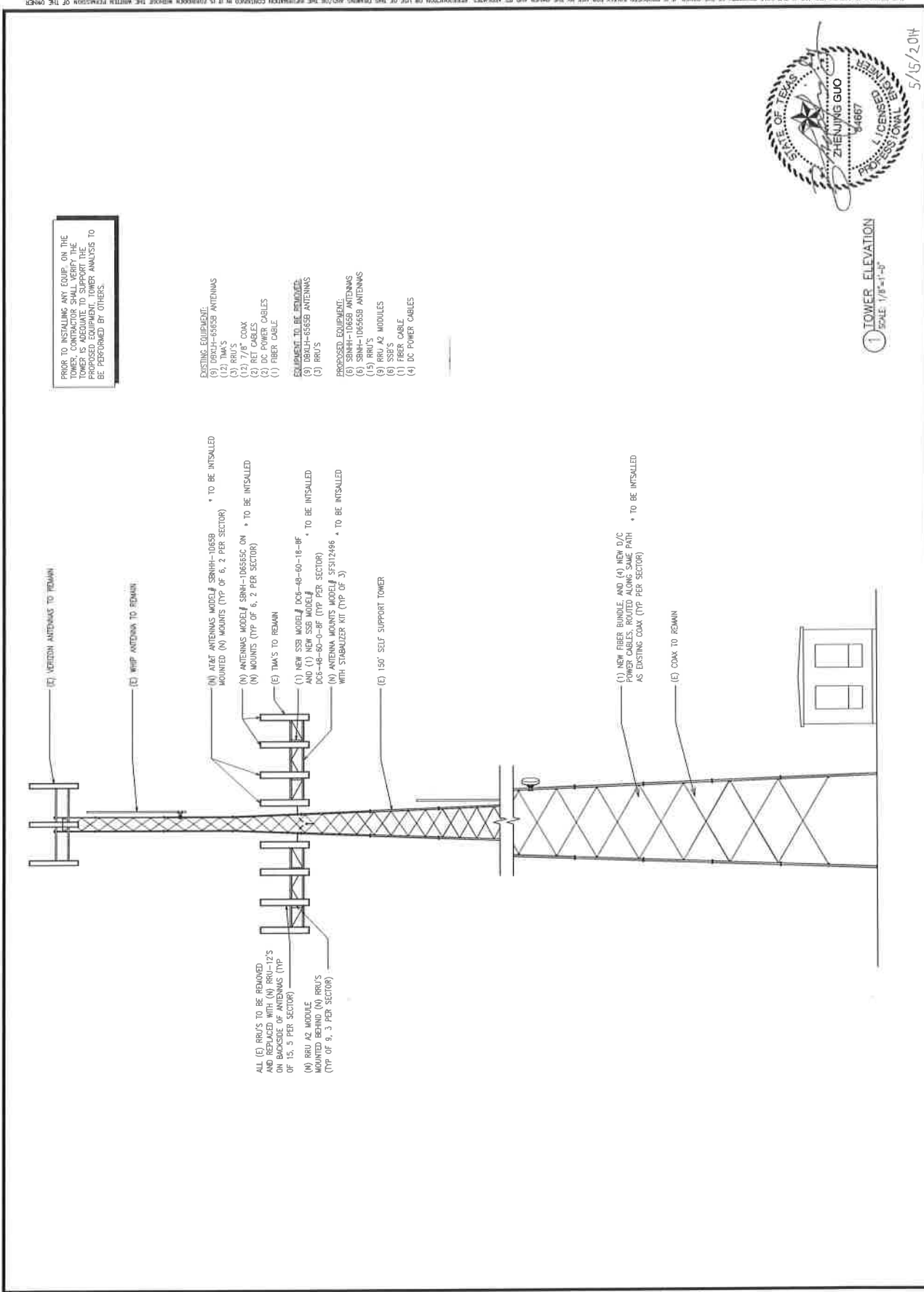
CELERS PROJECT NO. 14-5592

**CELERS GROUP**  
CONSULTING ENGINEERS  
2000 E. Lamar Blvd., Suite 550  
Arlington, TX 76010  
Office: 817.444.1700  
Fax: 817.460.0077  
TX FPM REG # F-13992



SITE NAME  
**SCRIPTURE / THOMAS**  
SITE NUMBER  
**DX6057**

OWNER	
ADDR	
CITY	
STATE	
ZIP	
DATE	04/23/14
BY	
CHECKED	
DESIGNED	
ELEVATION	
SHEET NO.	C01



1 TOWER ELEVATION  
SCALE: 1/8"=1'-0"



