



**CITY COUNCIL WORKSHOP AGENDA
January 3, 2024 – 4:00 pm**

*This is an in-person meeting at Saugatuck City Hall, 102 Butler St, Saugatuck, MI 49453.
The meeting will also be available live, virtually on Zoom.*

1. Call to Order
2. Roll Call
3. Agenda Changes (*Additions/Deletions*)
4. Guest Speaker
5. Public Comment on Agenda Items Only (*Limit 3 minutes*)
6. Discussion Items:
 - A. Audit Presentation
 - B. AT&T Lease
 - C. Dune Ridge Update
7. Public Comments (*Limit 3 minutes*)
8. Closed Session:
 - A. AT&T Lease:

Motion by _____, supported by _____, to move into a closed session pursuant to MCL 15.268(h) to discuss a confidential written legal opinion regarding a potential lease agreement with AT&T.

 - B. Dune Ridge Update:

Motion by _____, supported by _____, to move into closed session pursuant to MCL 15.268(e) and (h) to discuss a confidential written legal opinion regarding the ongoing lawsuit with Dune Ridge SA, LP.
9. Correspondence
10. Council Comments
11. Adjourn

NOTICE:
Join online by visiting:
<https://us02web.zoom.us/j/2698572603>

Join by phone by dialing:
**(312) 626-6799 -or-
(646) 518-9805**

Then enter "Meeting ID":
2698572603

Please send questions or comments regarding meeting agenda items prior to meeting to:
ryan@saugatuckcity.com

Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact Saugatuck City Clerk at 269-857-2603 or Wolters@saugatuckcity.com for further information.



City Council Agenda Workshop

FROM: Peter Stanislawski

MEETING DATE: January 3, 2024

SUBJECT: 2023 Annual Audit

DESCRIPTION:

Berthiaume & Company from Saginaw conducted the 2023 Annual Audit. Mr. Ken Berthiaume will present the audited financial statements to the city council via zoom. We have hard copies of the audit at city hall or you can review the audit at the following link:

<https://treas-secure.state.mi.us/LAFDocSearch/>

Then the following directions to get to our audit: County select Allegan Year select 2023 Document group select Audit Document Type select Audit Financial-report Municipality type select City Municipality select Saugatuck then hit search it will draw down our audit.



City Council Agenda Item Report

FROM: Ryan Heise

MEETING DATE: 12/3/24

SUBJECT: AT&T Proposed Lease Agreement

DESCRIPTION:

City staff, legal counsel, and appraisal consultants representing the city have been working with AT&T to negotiate a lease agreement. Legal counsel believes that the redline version of the lease included in the packet – “adequately protects the City and embraces the sensitive nature of the Mount Baldhead site and the unique challenges and considerations associated with the same.” The lease has been included in the packet for full transparency as the final lease will be a public document.

City staff has also included a closed session to specifically address questions concerning specific lease provisions and rent/escalation values.

BUDGET ACTION REQUIRED:

None

COMMITTEE/COMMISSION REVIEW

NA

LEGAL REVIEW:

Yes

SAMPLE MOTION:

Move into a closed session pursuant to MCL 15.268(h) to discuss a confidential written legal opinion regarding a potential lease agreement with AT&T.

Market: OUTSTATE MI
Cell Site Number: GRANMI5943 SAUGATUCK Cell Site Name: [Insert Site Name] GRANMI5943 SAUGATUCK
Search Ring Name:
Fixed Asset Number: 15448500

TOWER STRUCTURE LEASE AGREEMENT

THIS TOWER STRUCTURE AGREEMENT (“**Agreement**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is entered into by the City of Saugatuck, a Michigan Home Rule City, having a mailing address of 102 Butler Street, Saugatuck, MI 49453 (“**Landlord**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE 3rd Floor, Atlanta, GA 30319 (“**Tenant**”).

Commented [RB1]: Landlord to complete

BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, as described on **Exhibit 1**, improved with a tower structure, specifically the Mount Baldhead Radar Dome (the “**Tower**”), together with all rights and privileges arising in connection therewith, located at [Insert Address if known, or Describe Location] in the County of Allegan, State of Michigan (collectively, the “**Property**”). Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement. The parties acknowledge that the Tower is a landmark that is historically, culturally, and aesthetically important to Landlord, and thus agree that an integral purpose of this Agreement is to minimize, to the extent practicable, the visual impact of Tenant’s use of the Tower and Property and any damage or modification to the same.

Commented [RB2]: Is there a parcel ID # or other identifying information that may be inserted here?

Commented [RB3]: Landlord to complete

The parties agree as follows:

1. **LEASE OF PREMISES.** Landlord hereby leases to Tenant a portion of the Property consisting of:

(a) Approximately 300 square feet of ground space, as described on attached **Exhibit 1**, for the placement of Tenant’s equipment (the “**Ground Space**”);

Commented [RB4]: Michael please provide Exhibit 1

Commented [MSSR4]: CD’s to be added as Exhibit 1

(b) The portion of the Tower selected by Tenant and dedicated for Tenant’s exclusive use and consisting of an envelope of twelve (12) contiguous vertical feet of space located exclusively within the radar dome within which any portion of Tenant’s communication equipment and improvements might be located, operated or maintained (the “**Primary RAD Space**”). The Primary RAD Space includes any area on a horizontal plane, extending in all directions from the Tower, that is perpendicular to such 12-foot vertical envelope and is not occupied by other preexisting equipment within the radar dome, and any portion of vertical space on the Tower on which Tenant’s communication equipment is located, but does not include any area outside of the radar dome. The location of the Primary RAD Space is identified in **Exhibit 1**. Tenant shall not damage or make any alterations to the historic radar antenna and related equipment within the radar dome, but Landlord acknowledges the Tenant may have to make adjustments to the location of the historic radar antenna to mitigate material adverse impacts to Tenant’s Communication Facility. Landlord and Tenant agree that the Premises will be secured to prevent unauthorized entry, except by Landlord or Tenant. At any time during the Term of this Agreement, Tenant may, upon written request to Landlord, use portions of the Tower outside of, but adjacent to, the Primary RAD Space to accommodate Tenant’s improvements and equipment that extend outside the Primary RAD Space (the “**Extended Primary RAD Space**”), subject to Tenant’s confirmation that the space is available and that sufficient structural loading capacity is available or can be made available through structural modifications of the Tower and upon Landlord’s approval of the same, which may be withheld in Landlord’s sole discretion. In no event shall the Extended Primary RAD Space occupy any area outside the radar dome. The Primary RAD Space, as it might be expanded by the Extended Primary RAD Space at any time during the Term of this Agreement, shall continue to be referred to as the Primary RAD Space;

Commented [A6]: The City will need to review this exhibit before approving this language. It is important to the City that AT&T’s antennas be confined to the interior of the Mt Baldhead Dome, and I do not think that limitation is clearly expressed in this paragraph.

Commented [A7]: Given the aesthetic importance of the tower, the City will need final say over any such extensions. r

Commented [A8]:

(c) Those certain areas where Tenant’s conduits, wires, cables, cable trays and other necessary connections (and the cables, wires, and other necessary connections and improvements of such third parties related to Tenant, such as Tenant’s utility providers) are located between the Ground Space or any Incremental Ground

Space and the Primary RAD Space or any Additional RAD Space and between the electric power, telephone, fiber, and fuel sources for the Property (hereinafter collectively referred to as the “**Connection Space**”). Landlord agrees that Tenant shall have the right to install connections between Tenant’s equipment in the Ground Space and Primary RAD Space; and between Tenant’s equipment in the Ground Space and the electric power, telephone, and fuel sources for the Property, and any other improvements. Landlord further agrees that Tenant shall have the right to install, replace and maintain utility lines, wires, poles, cables, conduits, pipes and other necessary connections over or along any right-of-way extending from the aforementioned public right-of-way to the Premises. Tenant agrees that, to the extent possible, all such utility lines, wires, poles, cables, conduits, pipes and other necessary connections shall be placed underground. The Ground Space, Primary RAD Space, and Connection Space are hereinafter collectively referred to as the “**Premises.**”

2. PERMITTED USE.

(a) Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of communications fixtures and related equipment, cables, accessories and improvements, which may include antennas, an equipment shelter or cabinet and any other items necessary to the successful and secure use of the Premises (the “**Communication Facility**” or “**Communication Facilities**”), as well as the right to test, survey and review title on the Property; Tenant further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, provided such equipment is located within the Primary RAD Space and does not materially increase the size or weight of Tenant’s Communication Facility. (collectively, the “**Permitted Use**”). Landlord and Tenant agree that the Communication Facility and Tenant’s Permitted Use will adhere to drawings described on **Exhibit 1**. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord’s execution of this Agreement will signify Landlord’s approval of **Exhibit 1**. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its employees, independent contractors, subcontractors, agents, or assigns the right to use at their own risk Landlord’s contiguous, adjoining or surrounding property (the “**Surrounding Property**”) as may reasonably be required during construction and installation of the Communication Facility. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property’s main entry point to the equipment shelter or cabinet, install a generator and to make other improvements, alterations, upgrades or additions appropriate for Tenant’s Permitted Use, including the right to install warning signs to make individuals aware of risks, install protective barriers and to install any other control measures reasonably required by Tenant’s safety procedures or applicable law, and undertake any other appropriate means to secure the Premises or equipment at Tenant’s expense, provided that Tenant first confers with Landlord regarding the installation of warning signs, protective barriers and control measures reasonably required by Tenant’s safety procedures and obtains Landlord’s express approval for the same, which shall not be unreasonably withheld, conditioned, or delayed. Landlord’s approval will not be required for the installation of warning signs, protective barriers and other control measures required by applicable law, but Tenant shall still confer with Landlord and obtain Landlord’s confirmation that the visual impact of any such required warning signs, protective barriers and control measures is minimized to the extent practicable. Tenant may install, modify, supplement, replace, upgrade, expand Communication Facility within the Premises at any time during the Term, provided that: 1) Tenant obtains Landlord’s express approval, which shall not be unreasonably withheld, unduly delayed, or conditioned; and 2) such additional, modified, supplemented, replaced, upgraded, or expanded equipment does not materially increase the size or weight of the Tenant’s Communication Facility within the Primary RAD Space. Tenant will be allowed to make such alterations to the Property in order to ensure that the Communication Facility complies with all applicable federal, state or local laws, rules or regulations provided that Tenant first confers with Landlord regarding the alterations and obtains Landlord’s express approval for the same, which shall not be unreasonably withheld, conditioned or delayed. Landlord shall not prohibit Tenant from making alterations required by applicable laws, rules, or regulations, but Tenant shall still confer with Landlord and obtain Landlord’s confirmation that the visual impact of any such alterations is minimized to the extent practicable.

(b) [DELETED].

Commented [A9]: I do not believe any additional support structures or fencing is proposed or will be permitted.

Commented [RB10]: Christopher, the term "safety procedures" is not new. The revision in the following clause obligates AT&T to confer with your client and affords your client the right to approve signs, barriers and measures required by AT&T safety procedures. With respect to legally required signs, barriers, and measures, AT&T is obligated to confer with your client and obtain your client's confirmation as described.

Commented [A11]: Given the historic nature of the site, the City will need to approve such improvements in advance.

Commented [RB12]: Christopher, does this language address your concern? It balances Landlord's approval right with AT&T's obligation to comply with laws.

Commented [CP13R12]: See edits

Commented [RB14]: Christopher, language relating to expansion outside of Primary RAD space has been deleted.

Commented [RB15]: I inadvertently deleted the entire sentence rather than just the language relating to the expansion outside of Primary RAD space. So, I added the revised sentence here.

Commented [A16]: delete

3. **TERM.**

(a) The initial lease term will be ten (10) years (the “Initial Term”), commencing on the Effective Date. The Initial Term will terminate on the tenth (10th) anniversary of the Effective Date.

(b) This Agreement will automatically renew for three (3) additional five (5) year term(s) (each additional five (5) year term shall be defined as an “Extension Term”), upon the same terms and conditions set forth herein. Upon , Landlord or Tenant may notify the other party in writing of their intention not to renew this Agreement at least sixty (60) days prior to the expiration of the Initial Term. In the event Landlord so notifies Tenant prior to the expiration of the Initial Term, Landlord agrees to permit Tenant to lease the Premises on a month-to-month basis until Tenant is able to complete construction of a replacement site. Upon every second Extension Term (e.g., every ten (10) years after the Initial Term), Landlord or Tenant may notify the other party in writing of their intention not to renew this Agreement at least sixty (60) days prior to the expiration of the then applicable Extension Term.

(c) [DELETED].

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

Commented [A17]: tbd

Commented [RB18]: Christopher, please note the revisions in this subsection.

4. **RENT.**

(a) Commencing on the first day of the month following the date that Tenant commences construction (the “Rent Commencement Date”), Tenant will pay Landlord an annual rent payment of ~~Thirty Thousand~~TBD and No/100 Dollars (~~\$30,000.00~~TBD) (the “Rent”), at the address set forth above. In any partial year occurring after the Rent Commencement Date, the Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within ninety (90) days after the Rent Commencement Date. Each annual payment shall be received by Landlord on or before the anniversary of the Rent Commencement Date.

(b) [DELETED].

(c) [DELETED].

(d) [DELETED].

(e) Beginning on the first anniversary of the Rent Commencement Date and every year thereafter, the annual Rent will increase by ~~three percent (3~~TBD (TBD%) over the applicable Rent in effect the previous year.

(f) [DELETED].

Commented [A19]: tbd

Commented [RB20]: To be determined

5. **APPROVALS.**

(a) Landlord agrees that Tenant’s ability to use the Premises is contingent upon the suitability of the Premises and Property for the Permitted Use and Tenant’s ability to obtain and maintain all Government Approvals. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for the Permitted Use and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, at Tenant’s sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant’s use of the Premises will be compatible with Tenant’s engineering specifications, system, design, operations or Government Approvals. Tenant shall restore the Property to its original condition after completing the applicable tests.

(d) Landlord’s approval of this Agreement shall be not construed as a waiver of Landlord’s statutory, zoning, police, or other municipal powers, nor shall Landlord’s approval of this Agreement be construed as excusing Tenant from complying with any of Landlord’s applicable ordinances, codes, rules, regulations, or policies.

6. **TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

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

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Tenant upon written notice to Landlord for any reason or no reason, at any time prior to commencement of construction by Tenant; or

(e) by Tenant upon sixty (60) days' prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to six (6) months' Rent, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any termination provision contained in any other Section of this Agreement, including the following: Section 5 Approvals, Section 6(a) Termination, Section 6(b) Termination, Section 6(c) Termination, Section 6(d) Termination, Section 11(d) Environmental, Section 18 Condemnation or Section 19 Casualty.

(f) by either party as set forth in Section 3(b).

(g) by Landlord if Tenant's Communication Facility fails to provide cellular service to the area (including Oval Beach) within one (1) year following the execution of this Agreement. Landlord may, upon written request by Tenant and upon good cause shown, extend this deadline for ~~one (1)~~ up to five (5) additional ~~one (1)~~ year extensions. For the purposes of this Section, good cause shall include delays beyond Tenant's reasonable control related to Tenant's receipt of zoning and other necessary governmental approvals to construct its facilities on the Premises.

7. **INSURANCE.** During the Term, Tenant will carry and maintain in effect such commercial general liability policy. Said policy of commercial general liability insurance, per ISO Form CG 00 01 or equivalent, will provide a per occurrence single limit of One Million and No/100 Dollars (\$1,000,000.00) and ~~provide a combined~~ an aggregate limit of Two Million and No/100 Dollars (\$2,000,000.00) and shall include Landlord as an additional insured by endorsement with respect to this Agreement.

Commented [RB21]: Risk Assist review is required

Commented [LM22]: AT&T does not currently self-insure its CGL insurance. This statement is not needed.

8. **INTERFERENCE.**

(a) Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) and frequencies used on the Property as of the Effective Date. Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the Effective Date, a lease, license or any other right to any third party, if the exercise of such grant may in any way materially affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord will not, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement, except to the extent such interference is necessary to prevent imminent harm or injury to the public or the Premises. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period, Landlord shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected.

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

9. INDEMNIFICATION.

(a) Tenant agrees to indemnify, defend and hold Landlord, its elected officials, employees, officers, directors, agents, and representatives harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim (including reasonable attorneys' fees and court costs) arising directly from the installation, use, access, maintenance, repair or removal of the Communication Facility, Premises and Tower or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, invitees, agents or independent contractors.

(b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Landlord, its employees, invitees, agents or independent contractors, or Landlord's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors. Nothing in this Section shall be construed as a waiver of Landlord's governmental immunity.

(c) Tenant agrees to indemnify, defend, and hold harmless Landlord, its elected officials, employees, officers, directors, agents, and representatives from any and all injury, loss, damage and/or claims related to or arising out of Tenant's use of the Mount Baldhead Park Trail, related steps or other path/trail to access the Premises, which consists of an unimproved trail providing access to the west side of the Premises, and steps intended for pedestrian use providing access to the east side of the Premises (the "Mount Baldhead Park Trail²"); as well as Tenant's use of the Premises and Tower.)

(d) The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section 9 and provide the indemnifying party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except (1) to the extent the indemnifying party can show it was prejudiced by the delay; and (2) the indemnifying party shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

10. WARRANTIES.

(a) Each of Tenant and Landlord (to the extent not a natural person) each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power, and authority or capacity, as applicable, to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

(b) Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license and solely owns the Tower; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises in accordance with the terms of this Agreement without hindrance or ejection by any persons lawfully claiming under Landlord; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, then Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest in the form attached hereto as **Exhibit 10(b)**.

(c) The parties acknowledge that Landlord makes no warranty as to the condition or suitability of the Premises, the Tower, or access to the Premises.

11. ENVIRONMENTAL.

(a) Landlord represents and warrants, based on the personal knowledge of the current City Council members and City manager at the time of execution of this Agreement, (i) the Property, as of the Effective Date, has no known hazardous substances, including asbestos-containing materials and lead paint that have been identified in any evaluation or study of the Property by the City, and (ii) the Property has never been subject to any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property.

(b) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental, health or safety condition or matter relating to the Property, that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of liability to a government agency or other third party, then Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to Landlord.

12. ACCESS. At all times throughout the Term of this Agreement, Tenant and its employees, agents, and subcontractors, will have reasonable access ("Access") to and over the Property, from the Mount Baldhead Park Trail to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. Landlord shall provide Tenant with a means of accessing the Premises, which shall be secured to prevent unauthorized entry. Tenant acknowledges that the Mount Baldhead Park Trail is not designed for vehicular access, that the western portion of Mount Baldhead Park Trail is unimproved, and that Landlord is under no obligation under the terms of this Agreement to provide for upkeep, maintenance, preservation, or repairs to the Mount Baldhead Park Trail, including but not limited to snow removal. Tenant acknowledges and agrees its use of the Mount Baldhead Park Trail is at its own risk and that Tenant shall be responsible for any and all injury, loss, damage or liability, costs or expenses incurred by its employees, independent contractors, subcontractors, agents, or assigns while using the Mount Baldhead Park Trail. Before using the Mount Baldhead Park Trail to access the Premises, Tenant will provide Landlord with at least twenty-four (24) hours' advance notice, except in the event of an emergency, in which instance notice will be provided as soon as reasonably practical. As may be described more fully in **Exhibit 1**, Landlord grants to Tenant an easement for such Access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such Access. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. Landlord shall execute a letter granting Tenant Access to the Property substantially in the form attached as **Exhibit 12**; upon Tenant's request, Landlord shall execute additional letters during the Term. If Tenant elects to utilize an Unmanned Aircraft System ("UAS") in connection with its installation, construction, monitoring, site audits, inspections, maintenance, repair, modification, or alteration activities at the Property, Landlord hereby grants Tenant, or any UAS operator acting on Tenant's behalf, express permission to fly over the applicable Property and Premises, and consents to the use of audio and video navigation and recording in connection with the use of the UAS.

13. REMOVAL/RESTORATION.

(a) All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during or after the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during or after the Term. Tenant will repair any damage to the Property resulting from Tenant's removal activities.

(b) Upon expiration or termination of this Agreement for any reason, Tenant agrees to remove all portions of the Communication Facility brought onto the Property by Tenant at its own expense and repair any damage to the Tower and Property attributable to Tenant's use, ordinary wear and tear excepted, all within one hundred twenty (120) days after such expiration or termination. Tenant will pay the Rent during the one hundred twenty (120) day removal period or until Tenant's equipment is removed, whichever is earlier, at the amount that was in effect at the expiration or termination of the Agreement. Tenant's equipment removal obligations hereunder shall survive such expiration or termination for any reason. If the Communication Facility and any property belonging to Tenant are not removed from Property, and the Tower and Property are not returned to the condition required herein upon the termination or expiration of the Agreement within one hundred twenty (120) days after expiration or termination for any reason other than the fault of Landlord, Landlord may, at its sole discretion, remove and dispose of the Communication Facility and any property belonging to Tenant and restore the Tower and Property to the condition required hereunder. The cost incurred by Landlord will be charged to Tenant and paid within thirty (30) days of receipt of an invoice.

14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted.

(b) Tenant acknowledges that the Tower and Premises were not constructed by Landlord, are approximately 65 years old, and are located on certain sand dunes that may shift over time. In light of the unique nature of the Tower and Premises, Tenant acknowledges that it is not feasible for Landlord to guarantee the condition or structural integrity of the Tower or Premises, and that Landlord shall not be responsible for the maintenance or repair of the Tower or Premises beyond basic exterior painting and landscaping. Tenant agrees that it accepts the Tower and Premises "as is," that its use of the Tower and Premises will be at its own risk, and that the Tenant is responsible for conducting the necessary studies, tests, and surveys to determine that the Tower and Premises are suitable for Tenant's Communication Facilities and Permitted Use. ~~Tenant further agrees to indemnify, defend and hold harmless Landlord, its elected officials, employees, officers, directors, agents, and representatives from any and all injury, loss, damage and/or claims related to or arising out of Tenant's use of the Tower and/or Premises.~~

(c) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to sub-meter from Landlord. When sub-metering is required under this Agreement, Tenant will read the meter and provide Landlord with a reading and usage data on a monthly basis. Upon being provided with the meter reading and usage data from Tenant, Landlord will provide an invoice to Tenant and Tenant shall reimburse Landlord for such utility usage at the same rate charged to Landlord by the utility service provider. Landlord agrees to provide the invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within sixty (60) days of receipt of the usage data and required forms. Landlord shall maintain accurate and detailed records of all utility expenses, invoices, and payments applicable to Tenant's reimbursement obligations hereunder. Within thirty (30) days after a request from Tenant, Landlord shall provide copies of such utility billing records to the Tenant in the form of copies of invoices, contracts, and cancelled checks. If the utility billing records reflect an overpayment by Tenant, Tenant shall have the right to deduct the amount of such overpayment from any monies due to Landlord from Tenant.

(d) As noted in Section 4(c) above, any utility fee recovery by Landlord is limited to a twelve (12) month period. If Tenant submeters electricity from Landlord, Landlord agrees to give Tenant at least twenty-four (24) hours advance notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

(e) Tenant will have the right to install utilities, at Tenant's expense, and to improve present utilities on the Property and the Premises, subject to Landlord's approval, which shall not be unreasonably withheld,

conditioned, or delayed. Landlord hereby grants to any service company providing utility or similar services, including electric power and telecommunications, to Tenant an easement over the Property, from an open and improved public road to the Premises, and upon the Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such service companies may from time to time require in order to provide such services to the Premises. Upon Tenant's or service company's request, Landlord will execute a separate recordable easement evidencing this grant, at no cost to Tenant or the service company, at terms and conditions reasonably acceptable to Landlord.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, then Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide Access to the Premises as required by Section 12 within twenty-four (24) hours after written notice of such failure; (ii) Landlord's failure to cure an interference problem as required by Section 8 of this Agreement within twenty-four (24) hours after written notice of such failure; or (iii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have: (i) the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant, and (ii) any and all other rights available to it under law and equity.

16. ASSIGNMENT. Tenant will have the right to assign this Agreement without Landlord's consent, provided that the assignee assumes, recognizes and also agrees to become responsible to Landlord for the performance of all terms and conditions of this Agreement to the extent of such assignment. Upon notification to Landlord by Tenant of any assignment, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement to the extent of such assignment. Tenant shall have no right to sublease the Premises or its rights herein.

Commented [A23]: not appropriate

17. NOTICES. All notices, requests and demands 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 hereto as follows:

If to Tenant: New Cingular Wireless PCS, LLC
Attn: Tower Asset Group - Lease Administration
Re: Cell Site #: GRANMI5943; Cell Site Name: SAUGATUCK (MI)
Fixed Asset #: 15448500
1025 Lenox Park Blvd NE 3rd Floor
Atlanta, Georgia 30319

With a copy to: New Cingular Wireless PCS, LLC
Attn.: Legal Dept – Network Operations
Re: Cell Site #: _GRANMI5943_; Cell Site Name: _SAUGATUCK (MI)

Fixed Asset #: 15448500
208 S. Akard Street
Dallas, TX 75202-4206

Commented [RB24]: Michael, please complete

If to Landlord: City of Saugatuck
Attn: City Manager Ryan Heise
102 Butler Street
Saugatuck, MI 49453

Commented [RB25]: To be provided by landlord

Commented [RB26]: Landlord to complete

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other party hereto as provided herein.

18. CONDEMNATION. In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within twenty-four (24) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent on a *pro rata* basis.

19. CASUALTY; FORCE MAJEURE.

(a) Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within twenty-four (24) hours of the casualty or other harm. If any part of the Communication Facility or the Property is damaged by casualty or other harm as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a *pro rata* basis.

(b) The parties recognize that given the unique nature of the site, it may be impracticable for Landlord to rebuild in the event of casualty or harm to the Tower or Premises. Accordingly, Landlord shall have the sole discretion to determine whether it is feasible for Landlord to rebuild or restore the Tower or Premises so affected. Should Landlord determine not to rebuild or restore the Tower or Premises, Landlord shall terminate this Agreement upon Landlord's written notice to Tenant- within thirty (30) days of casualty or harm. If casualty or harm is only to Tenant's Communications Facilities and not to the Tower or Premises, Tenant shall have the sole discretion to determine whether to rebuild or restore the Communication Facilities or terminate this Agreement pursuant to subsection (a) herein.

(c) The parties recognize that given the unique nature of the site, it may be impracticable for Landlord to rebuild in the event of casualty or harm to the Tower or Premises. Accordingly, if the Premises or Tower is damaged or destroyed by a Force Majeure Event (defined below) Landlord shall have the sole discretion to determine whether it is feasible for Landlord to rebuild or restore the Tower or Premises so affected. Should Landlord determine not to rebuild or restore the Tower or Premises, the casualty or harm to the Tower or Premises shall be considered a force majeure event and shall terminate this Agreement upon Landlord's written notice to Tenant- within thirty (30) days of casualty or harm. For the purposes of this Section, "Force Majeure Event" means the complete or partial destruction of the Premises or Tower through: (a) fire, flood, earthquake, structural or subsurface collapse, physical deterioration, elements of nature, acts of God, or similar events; or (b) wars (declared and undeclared), acts of terrorism, sabotage, riots, civil disorders, rebellions, revolutions, or similar events.

(d) If Landlord or Tenant undertakes to rebuild or restore the Tower, Premises and/or the Communication Facility, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property, subject to necessary approvals and ~~permits~~ permits, until the reconstruction of the Tower, Premises, or Communication Facility is completed. Landlord agrees that the Rent shall be abated until the Property

and/or the Premises are rebuilt or restored, unless Tenant places a temporary transmission and reception facilities on the Property.

(e) If Landlord determines not to restore or rebuild the Tower or Premises, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of this Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement including Rent.

20. COMMUNICATION FACILITY AS PERSONAL PROPERTY. The Communication facility and any portion thereof shall be exempt from any and all liens, statutory or otherwise, except as agreed to between the parties. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent, subject to Section 13(b) above.

21. TAXES.

(a) Landlord is a unit of government exempt from taxation. Tenant shall be responsible for any taxes and assessments attributable to and levied upon Tenant's leasehold improvements on the Premises if and as set forth in this Section 21 and all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with an assignment of this Agreement.

(b) In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice immediately upon receipt, but in no event later than thirty (30) days after the date of such notice of assessment is received by Landlord. If Landlord provides a notice of assessment to Tenant within such time period and requests reimbursement from Tenant as set forth below, then Tenant shall reimburse Landlord for the tax or assessments identified on the notice of assessment on Tenant's leasehold improvements, which has been paid by Landlord. If Landlord seeks reimbursement from Tenant, Landlord shall, no later than thirty (30) days after Landlord's payment of the taxes or assessments for the assessed tax year, provide Tenant with written notice including evidence that Landlord has timely paid the same, and Landlord shall provide to Tenant any other documentation reasonably requested by Tenant to allow Tenant to evaluate the payment and to reimburse Landlord.

(c) For any tax amount for which Tenant is responsible under this Agreement, Tenant shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as permitted by law. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate with respect to the commencement and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant, to the extent the amounts were originally paid by Tenant. In the event Tenant notifies Landlord by the due date for assessment of Tenant's intent to contest the assessment, Landlord shall not pay the assessment pending conclusion of the contest, unless required by applicable law.

(d) Landlord shall have the right to split or cause the tax parcel on which the Premises are located to be split, bifurcated, separated or divided without the prior written consent of Tenant as long as the split, bifurcation, separation or division does not negatively or adversely affect the Tenants' access, Premises (as shown in Exhibit 1) or Tenant's Permitted Use.

(

(f) Any tax-related notices for which Landlord seek reimbursement shall be sent to Tenant in the manner set forth in Section 17 of this Agreement. Otherwise, any applicable state law, STC rule or guideline, or other local practice or policy shall control.

(

[DELETED].

23. [DELETED].

24. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Memorandum/Short Form Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum of Lease substantially in the form attached as **Exhibit 24(b)**. Either party may record this Memorandum of Lease at any time during the Term, in its absolute discretion. Thereafter during the Term, either party will, at any time upon fifteen (15) business days' prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease.

(c) **Limitation of Liability.** Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

(d) **Compliance with Law.** Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("**Laws**") applicable to Tenant's use of the Communication Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord's ownership and use of the Property and any improvements on the Property.

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

(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(h) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate, except as stated in Paragraph 2 and 3; and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement

shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates.** All references to "Tenant" shall be deemed to include any Affiliate of New Cingular Wireless PCS, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. "Affiliate" means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. "Control" of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(j) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment, Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including any change in Landlord's name or address.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

(m) **[DELETED].**

(n) **[DELETED] WAIVER OF JURY TRIAL.** EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES.

(o) **No Additional Fees/Incidental Fees.** Unless otherwise specified in this Agreement, all rights and obligations set forth in the Agreement shall be provided by Landlord and/or Tenant, as the case may be, at no additional cost. No unilateral fees or additional costs or expenses are to be applied by either party to the other party, for any task or service including, but not limited to, review of plans, structural analyses, consents, provision of documents or other communications between the parties.

(p) **Further Acts.** Upon request, Landlord will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents, and assurances as Tenant may request from time to time in order to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all transactions and Permitted Use contemplated by this Agreement.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the Effective Date.

Witnessed by:

Name: _____

Name: _____

“LANDLORD”

City of Saugatuck
a Michigan Home Rule City

By: _____
Print Name: [_____]
Its: _____ [Insert Title]
Date: _____ [Insert Date]

“TENANT”

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

By: AT&T Mobility Corporation
Its: Manager

Witnessed by:

Name: _____

Name: _____

By: _____
Print Name: [_____]
Its: _____ [Insert Title]
Date: _____ [Insert Date]

[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE]

TENANT ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, _____ of _____, a _____ corporation, on behalf of the corporation.

Name: _____
Notary Public

Serial No.: _____

[NOTARIAL SEAL]

LANDLORD ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, _____ of _____, a _____ corporation, on behalf of the corporation.

Name: _____
Notary Public

Serial No.: _____

[NOTARIAL SEAL]

EXHIBIT 1

Commented [A27]: Again, the City will need to review all of the exhibits once they are assembled.

DESCRIPTION OF PROPERTY AND PREMISES

Page of

to the Tower Structure Lease Agreement dated [Insert Date] , 20 , by and between the City of Saugatuck, a Michigan Home Rule City, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

The Premises are described and/or depicted as follows:

Notes:

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENT AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENT 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.

Tower Structure Lease
9.11.2018

EXHIBIT 10(b)
**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**
[FOLLOWS ON NEXT PAGE]

Commented [A28]: delete

Commented [RB29R28]: This exhibit needs to remain since it is specifically referenced in Section 10b.

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (“Agreement”), dated as of the date below, between [Insert Mortgagee's Name] having its principal office at [Insert Mortgagee's Address], (hereinafter called “**Mortgagee**”) and [Insert Landlord's Name], a [Insert Jurisdictional State, and Entity Type] having its principal office/residing at [Insert Landlord's Address] (hereinafter called “**Landlord**”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE 3rd Floor, Atlanta, GA 30319 (“**Tenant**”).

RECITALS:

- A. Tenant has entered into a certain Option and Lease Agreement dated [Insert Date], 20 , (the “**Lease**”) with Landlord, covering property more fully described in **Exhibit 1** attached hereto and made a part hereof (the “**Premises**”); and
- B. Landlord has given to Mortgagee a mortgage (the “**Mortgage**”) upon property having a street address of [Insert Address], being identified as Lot in Block in the of [Insert City], [Insert County] County, State of [Insert State] (“**Property**”), a part of which Property contains the Premises; and
- C. The Mortgage on the Property is in the original principal sum of [Spell Out Dollar Amount](\$) Dollars, which Mortgage has been recorded in the appropriate public office in and for [Insert County] County, [Insert State] (“**Mortgage**”); and
- D. Tenant desires to be assured of continued occupancy of the Premises under the terms of the Lease and subject to the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. So long as this Agreement will remain in full force and effect, the Lease is and will be subject and subordinate to the lien and effect of the Mortgage insofar as it affects the real property and fixtures of which the Premises forms a part (but not Tenant’s trade fixtures and other personal property), and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal sum secured thereby and interest thereon, with the same force and effect as if the Mortgage had been executed, delivered, and duly recorded among the above-mentioned public records, prior to the execution and delivery of the Lease.

2. In the event Mortgagee takes possession of the Premises as mortgagee-in-possession, including but not limited to, by deed in lieu of foreclosure or foreclosure of the Mortgage, Mortgagee agrees not to affect or disturb Tenant’s right to possession of the Premises and any of Tenant’s other rights under the Lease in the exercise of Mortgagee’s rights so long as Tenant is not then in default, after applicable notice and/or grace periods, under any of the terms, covenants, or conditions of the Lease.

3. In the event that Mortgagee succeeds to the interest of Landlord or other landlord under the Lease and/or to title to the Premises, Mortgagee and Tenant hereby agree to be bound to one another under all of the terms, covenants and conditions of the Lease; accordingly, from and after such event, Mortgagee and Tenant will have the same remedies against one another for the breach of an agreement contained in the Lease as Tenant and

Landlord had before Mortgagee succeeded to the interest of Landlord; provided, however, that Mortgagee will not be:

- (a) personally liable for any act or omission of any prior landlord (including Landlord); or
- (b) bound by any rent or additional rent which Tenant might have paid for more than the payment period as set forth under the Lease (one month, year etc.) in advance to any prior landlord (including Landlord).

4. In the event that Mortgagee or anyone else acquires title to or the right to possession of the Premises upon the foreclosure of the Mortgage, or upon the sale of the Premises by Mortgagee or its successors or assigns after foreclosure or acquisition of title in lieu thereof or otherwise, Tenant agrees not to seek to terminate the Lease by reason thereof, but will remain bound unto the new owner so long as the new owner is bound to Tenant (subject to paragraph 3 above) under all of the terms, covenants and conditions of the Lease.

5. Mortgagee understands, acknowledges and agrees that notwithstanding anything to the contrary contained in the Mortgage and/or any related financing documents, including, without limitation, any UCC-1 financing statements, Mortgagee will acquire no interest in any furniture, equipment, trade fixtures and/or other property installed by Tenant on the Property. Mortgagee hereby expressly waives any interest which Mortgagee may have or acquire with respect to such furniture, equipment, trade fixtures and/or other property of Tenant now, or hereafter, located on or affixed to the Property or any portion thereof and Mortgagee hereby agrees that same do not constitute realty regardless of the manner in which same are attached or affixed to the Property.

6. This Agreement will be binding upon and will extend to and benefit the successors and assigns of the parties hereto and to any assignees or subtenants of Tenant which are permitted under the Lease. The term "Mortgagee", when used in this Agreement will be deemed to include any person or entity which acquires title to or the right to possession of the Premises by, through or under Mortgagee and/or the Mortgage, whether directly or indirectly.

7. This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

[Remainder of Page Intentionally Blank – Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed as of the last signature date below.

LANDLORD: [Insert Landlord's Name]
[Insert Jurisdictional State, and Entity Type]

By: _____
Print Name: [_____]
Its: _____ [Insert Title]
Date: _____ [Insert Date]

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

By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name: [_____]
Its: _____ [Insert Title]
Date: _____ [Insert Date]

MORTGAGEE: [Insert Mortgagee's Name] ,

By: _____
Print Name: [_____]
Its: _____ [Insert Title]
Date: _____ [Insert Date]

[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE]

ACKNOWLEDGEMENTS

LANDLORD

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____, 20__, before me, personally appeared _____, 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.

Notary Public: _____
My Commission Expires: _____

TENANT

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____, 20__, before me personally appeared _____, who acknowledged under oath that he/she is the _____ of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tenant.

Notary Public: _____
My Commission Expires: _____

MORTGAGEE

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____, 20__ before me, personally appeared _____, 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 Mortgagee for the purposes therein contained.

Notary Public: _____
My Commission Expires: _____

EXHIBIT 1
DESCRIPTION OF PROPERTY AND PREMISES

The Property is legally described as follows:

The Premises is legally described as follows:

Tower Structure Lease
9.11.2018

EXHIBIT 11

ENVIRONMENTAL DISCLOSURE

Landlord represents and warrants that the Property, as of the Effective Date, is free of hazardous substances except as follows:

[INSERT AS APPLICABLE]

Commented [A30]: to be discussed

EXHIBIT 12
STANDARD ACCESS LETTER
[FOLLOWS ON NEXT PAGE]

Commented [A31]: delete

Commented [RB32R31]: This exhibit is specifically referenced in Section 12 so it must remain

EXHIBIT 24(b)
MEMORANDUM OF LEASE
[FOLLOWS ON NEXT PAGE]

Tower Structure Lease
9.11.2018

**MEMORANDUM
OF
LEASE**

This Memorandum of Lease is entered into on this _____ day of _____, 20____, by and between the City of Saugatuck, a Michigan Home Rule City having its principal office/residing at 102 Butler Street, Saugatuck, MI 49453 (hereinafter called "**Landlord**"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE 3rd Floor, Atlanta, GA 30319 ("**Tenant**").

1. Landlord and Tenant entered into a certain Tower Structure Lease Agreement ("**Agreement**") on the _____ day of _____, 20____, for the purpose of installing, operating and maintaining a communication facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The initial lease term will be ten (10) years commencing on the Effective Date, with ~~sixteen (16)~~three (3) successive automatic five (5) year options to renew. .
3. The portion of the land being leased to Tenant and associated easements are described in **Exhibit 1** annexed hereto.
4. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

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

LANDLORD:

the City of Saugatuck, a
a Michigan Home Rule City

By: _____
Print Name: [_____]
Its: _____ [Insert Title]
Date: _____ [Insert Date]

TENANT:

New Cingular Wireless PCS, LLC
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name: [_____]
Its: _____ [Insert Title]
Date: _____ [Insert Date]

[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE]

TENANT ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, _____ of _____, a _____ corporation, on behalf of the corporation.

Name: _____
Notary Public

Serial No.: _____

[NOTARIAL SEAL]

LANDLORD ACKNOWLEDGMENT

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, _____ of _____, a _____ corporation, on behalf of the corporation.

Name: _____
Notary Public

Serial No.: _____

[NOTARIAL SEAL]

EXHIBIT 1
DESCRIPTION OF PROPERTY AND PREMISES

Page of

to the Memorandum of Lease dated _____, 20____, by and between the City of Saugatuck, a Michigan Home Rule City, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

The Premises are described and/or depicted as follows:

W-9 FORM

[FOLLOWS ON NEXT PAGE]

Request for Taxpayer Identification Number and Certification

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the requester. Do not send to the IRS.

Print or type. See specific instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
<input type="checkbox"/> Individual/sole proprietor or single-member LLC	<input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate
<input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____	Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____
<input type="checkbox"/> Other (see instructions) ▶ _____	<small>(Applies to accounts maintained outside the U.S.)</small>
5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
6 City, state, and ZIP code	
7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number																				
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or																				
Employer identification number																				
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Part II Certification

Under penalties of perjury, I certify that:

- 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
- 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 (IRS) 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; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

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 you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, 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. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
 - Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
 - Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
 - Form 1099-S (proceeds from real estate transactions)
 - Form 1099-K (merchant card and third party network transactions)
 - Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
 - Form 1099-C (canceled debt)
 - Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.



City Council Agenda Item Report

FROM: Ryan Heise

MEETING DATE: 12/3/24

SUBJECT: Dune Ridge Cover Page

DESCRIPTION:

Legal Counsel is prepared to provide City Council with updates related to the ongoing Dune Ridge V. City of Saugatuck litigation.

BUDGET ACTION REQUIRED:

None

COMMITTEE/COMMISSION REVIEW

NA

LEGAL REVIEW:

Yes

SAMPLE MOTION:

Move into a closed session pursuant to MCL 15.268(e) and (h) to discuss a confidential written legal opinion regarding the ongoing lawsuit with Dune Ridge SA, LP.