TOWN OF FALMOUTH, MAINE

REQUEST FOR CONDITIONAL REZONING APPROVAL TO INCREASE THE HEIGHT

OF AN EXISTING
TIER II PERSONAL WIRELESS SERVICE FACILITY
LOCATED AT
356 US RTE 1, FALMOUTH, ME

PROPOSAL BY AT&T MOBILITY

EXHIBIT #14

RIGHT, TITLE, OR INTEREST (LEASE)

TOWER LEASE AGREEMENT

THIS TOWER LEASE AGREEMENT ("Agreement"), made this 23'day of _______, 20 ______, by and between Light Tower Wireless LLC ("LANDLORD"), and New Cingular Wireless PCS, LLC ("TENANT").

BACKGROUND

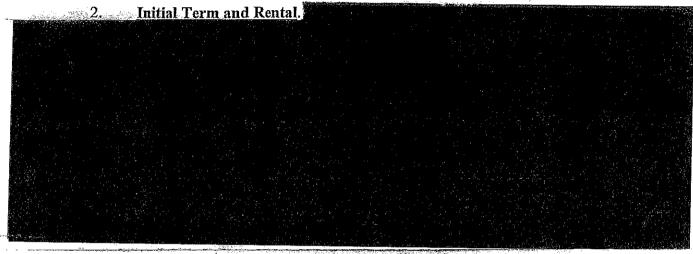
LANDLORD possesses a leasehold interest in certain real property located at 365 Route 1, Town of Falmouth, in Cumberland County, State of Maine (the "Tower Site"). LANDLORD has constructed a communications tower (the "Tower") on the Tower Site. The Tower Site is more particularly described on Exhibit "A" attached hereto. The property leased to Tenant ("Leased Property") is more specifically described in, and substantially shown on, Exhibit "B" attached hereto and made a part hereof.

LEASE AGREEMENT

1. Lease of Leased Property.

- (a) LANDLORD hereby leases to TENANT a portion of the Tower Site containing approximately 240 square feet (the "Leased Parcel"), together with certain spaces on the Tower as described below and the grant of a nonexclusive right and easement during the term of this Agreement for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or by motor vehicle, including trucks, and for the installation and maintenance of utility wires, cables, conduits and pipes over, under, or along the Tower Site extending from the nearest public right of way to the Leased Parcel, as such right-of-way is shown on Exhibit "B" hereto (the Leased Parcel, positions on the Tower and such right-of-way being hereinafter called the "Leased Property"). LANDLORD shall reasonably cooperate with TENANT in its effort to obtain utility services along said right of way by signing such documents or easements as may be reasonably required by said utility companies.
- (b) TENANT acknowledges that LANDLORD's right to occupy the Tower Site and to lease the Leased Property to TENANT are derived from a certain Communications Site Lease Agreement dated January 11, 2006, between William Skoolicas, as lessor, and National Grid Communications, Inc., predecessor in interest to LANDLORD, as lessee (the "Prime Lease"), a redacted copy of which is attached to this Agreement as Exhibit "D," and that the term of this Agreement shall not exceed the term of the Prime Lease, as the same may be extended. Notwithstanding anything to the contrary contained in this Agreement, this Agreement shall automatically terminate upon the termination of LANDLORD's right to possession of the Tower Site under the Prime Lease. Neither LANDLORD nor TENANT will do, attempt, permit or suffer anything to be done which could be construed to be a violation of the Prime Lease. LANDLORD will use due diligence in exercising renewal terms under the Prime Lease.

(c) In consideration of TENANT's paying the full cost and expense thereof, LANDLORD will install a ten (10) foot extension to the Tower. Upon installation of such extension, the term "Tower" as used in this Agreement shall include such extension.



- 3. Extension of Term. TENANT shall have the option to extend the term of this Agreement for four (4) additional consecutive five (5) year periods. Each option for an extended term shall be deemed automatically exercised without notice by TENANT to LANDLORD unless TENANT gives LANDLORD written notice of its intention not to exercise any such extension option at least six (6) months prior to the end of the then current term. If TENANT gives LANDLORD written notice of its intention not to exercise any such option, this Agreement shall expire at the end of the then current term. All references herein to the term of this Agreement shall include the term as it is extended from time to time as provided in this Agreement.
- 4. <u>Extended Term Rental</u>. The annual rental for each year of each of the extended terms shall be three (3%) percent over rent due during the prior year. The annual rental for the extended terms shall be payable monthly, in the same manner as the annual rental for the Initial Term.
- Continuance of Lease. If, at least six (6) months prior to the end of the fourth (4th) extended term, either LANDLORD or TENANT has not given the other written notice of its desire that the term of this Agreement end at the expiration of said fourth (4th) extended term, then upon the expiration of said fourth (4th) extended term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of any such annual term. Monthly rental during such annual terms shall be increased by the same percentage as was effective during the extended terms.

6. <u>Use</u>.

- General Conditions. TENANT agrees that during the Initial Term, any (a) extended term or any other extension of this Agreement, TENANT will use the Leased Property solely for the purpose of constructing, installing, maintaining and operating at its sole cost and expense the Communications Facility, and any and all uses incident thereto, (i) in a good and workmanlike order and condition, and (ii) in compliance with all applicable federal, state and local laws, statutes, rules, codes and regulations, including those of the FCC ("Applicable LANDLORD grants TENANT the right to use such portions of LANDLORD's contiguous, adjoining or surrounding property, if any, under the Prime Lease (the "Surrounding Property") as is reasonably required during construction, installation, maintenance and operation of the Communications Facility, so long as the use of such Surrounding Property by TENANT does not unreasonably interfere with the use and occupancy of any other tenant of the Tower. All work by TENANT at the Leased Property and Surrounding Property shall be undertaken only by qualified contractors reasonably acceptable to LANDLORD and specifically approved by LANDLORD in a Notice to Proceed ("NTP") as set forth in this Agreement. TENANT shall have access to the Leased Property 24 hours a day/7 days a week subject to reasonable security, safety and personnel identification procedures as may be required by LANDLORD from time to time for the purpose of installing, operating, inspecting, servicing, maintaining, repairing and removing the Communications Facility, any NTPs issued from time to time and any agreements between LANDLORD and any underlying land owner(s). LANDLORD shall provide TENANT fifteen (15) days advance notice (except in cases of emergency where advance notice cannot reasonably be given) of any planned shut downs for scheduled routine maintenance or repairs at or to the Tower Site which would materially affect the operation of the Communications Facility. LANDLORD shall make reasonable efforts to minimize inconvenience, possible loss and/or expense to TENANT arising therefrom, but shall not be liable to TENANT for loss and/or expense which may be suffered by TENANT, except as otherwise specifically set forth herein. LANDLORD shall use commercially reasonable efforts not to disrupt TENANT's radio frequency signal during such maintenance or repair. In the event that such signal will be disrupted for a significant period of time, LANDLORD shall reasonably cooperate with TENANT to locate temporary facilities at the Tower Site, including TENANT's efforts to obtain any required permits. LANDLORD shall reimburse TENANT for its actual costs and reasonable expenses incurred due to the installation of any temporary facilities, upon receipt and verification of an invoice from TENANT. If TENANT cannot reasonably continue operations during such shut down, LANDLORD shall proportionally abate the rent.
- (b) <u>Initial Installation</u>; <u>Notice to Proceed</u>. Prior to commencing the initial installation of the Communications Facility, TENANT shall request an NTP from LANDLORD and shall concurrently submit to LANDLORD reasonably detailed construction drawings and specifications (collectively, "Plans") stamped by a registered professional engineer, equipment specifications, contractor name and contact information, certificates of insurance for TENANT and any of TENANT's contractors conforming to the requirements of Section 10 of this Agreement, building permit and electrical permit (collectively, "TENANT's NTP Documents"). LANDLORD shall provide TENANT with LANDLORD's standard form safety plan, safety plan acknowledgement form and any existing information concerning the Tower Site not deemed confidential or previously provided to TENANT, as requested by TENANT. LANDLORD shall

review TENANT's NTP Documents and approve, approve with conditions, or disapprove with specific reasons within fifteen (15) business days from LANDLORD's receipt of the NTP Documents and signed safety plan acknowledgment form. In the event that LANDLORD does not approve, approve with conditions or provide specific reasons for disapproval within fifteen (15) business days, then the NTP Documents shall be deemed approved. LANDLORD shall not unreasonably withhold or condition approval. Upon approval of TENANT's NTP Documents and safety plan acknowledgement form signed by TENANT and TENANT's contractors, LANDLORD shall issue a NTP to TENANT which may contain reasonable conditions to TENANT's initial installation. Upon completion of the installation of TENANT's Communications Facility, TENANT shall submit to LANDLORD reasonably detailed as-built drawings showing the location and dimensions of the Communications Facility on the Tower and within the Leased Property.

(c) Subsequent Modifications or Changes to TENANT's Equipment. Prior to commencing any modifications, changes or additions to the approved Communications Facility in physical dimensions or operating characteristics that will result in an increase in the size of the Communications Facility, or change the weight, size, configuration or wind loading of TENANT's equipment on the Tower, TENANT shall submit new plans conforming to the requirements for Plans to LANDLORD together with updated TENANT's NTP Documents and a safety plan acknowledgment if deemed reasonably necessary by LANDLORD. LANDLORD shall act reasonably in determining whether to require TENANT to submit updated TENANT's NTP Documents, a safety plan acknowledgment and in waiving or modifying the requirements of this subsection for work deemed to be minor in scope. LANDLORD shall review the new plans and approve, approve with conditions, or disapprove with specific reasons within fifteen (15) business days from LANDLORD's receipt of the plans, TENANT's NTP Documents and signed safety plan acknowledgment form, if required by LANDLORD. In the event that LANDLORD does not approve, approve with conditions or provide specific reasons for disapproval within fifteen (15) business days, then the new plans shall be deemed approved. LANDLORD shall not unreasonably withhold or condition approval; however, TENANT acknowledges that LANDLORD may require an increase in the rent set forth herein as a condition of LANDLORD's approval. Upon approval of the new plans, receipt of TENANT's NTP Documents and safety plan acknowledgement form signed by TENANT and TENANT's contractors, LANDLORD shall issue a NTP to TENANT which may contain reasonable conditions to TENANT's subsequent modifications or changes. Notwithstanding the foregoing, TENANT may undertake to repair or replace the Communications Facility with equipment of identical physical and operating characteristics, subject only to the other provisions of this Agreement and any agreement between LANDLORD and underlying land owner(s). Notwithstanding anything to the contrary herein, if the modification, change or addition to the Communications Facility does not increase the structural, wind loading or space utilization to the Tower or to the Leased Property to more than that which the Tower and the Leased Property would be subject to by installation of all of TENANT's Communications Facility authorized hereunder, TENANT may implement such modification, change or addition to the Communications Facility without an increase in the rent due hereunder, and LANDLORD may not disapprove of same. TENANT has the right to utilize any amount or combination of TENANT's FCC licensed or unlicensed frequencies and LANDLORD shall act reasonably in approving TENANT's Plans submitted subsequent to the initial installation of the

Communications Facility for the purpose of utilizing its radio frequencies without requiring a rent increase provided that the Communications Facility shall not interfere with the operations of any third party licensed to use the Tower Site on or before the date of TENANT's submittal of such Plans. TENANT has the right to utilize any amount of any frequencies that TENANT has legal rights to utilize, without limitation or approval by LANDLORD, subject to the normal interference and frequency coordination provisions as set forth in this Agreement.

7. Governmental Approvals. The parties agree to cooperate with one another in their efforts to obtain and maintain in effect all certificates, permits, licenses and other approvals required by governmental authorities for the Tower and TENANT's use of the Leased Property. In furtherance thereof, each party agrees to sign such papers as are required to file applications with the appropriate zoning authority and other governmental authorities for the proper zoning and for other certificates, permits, licenses and approvals as are required for the use of the Leased Property. TENANT will perform all other acts and bear all expenses associated with any zoning or other procedure necessary to obtain any certificate, permit, license or approval for the Leased Property deemed necessary by TENANT. LANDLORD agrees not to register any written or verbal opposition to any such procedures, provided that TENANT's application and statements in meetings or public hearings shall not violate or have the effect of violating the provisions of this Agreement or the Prime Lease. If at any time during the term of this Agreement, TENANT is unable to use the Leased Property for a Communications Facility in the manner intended by TENANT due to imposed zoning conditions or requirements, or in the event that any necessary certificate, permit, license or approval is finally rejected or any previously issued certificate, permit, license or approval is canceled, expires, lapses or is otherwise withdrawn or terminated by the applicable governmental authority, or radio frequency propagation tests are found to be unsatisfactory so that TENANT, in its sole discretion, will be unable to use the Leased Property for a Communications Facility in the manner intended, by no fault of TENANT, TENANT shall have the right to terminate this Agreement by written notice to LANDLORD. In such case, LANDLORD shall retain all rentals paid to LANDLORD prior to the termination date. Upon such termination, LANDLORD and TENANT shall have no other further obligations to each other, other than TENANT's obligation to remove its property as hereinafter provided, or as otherwise provided in this Agreement.

8. Interference.

- (a) LANDLORD acknowledges and agrees that it will not permit the installation of any additional antennas or equipment on the Tower or at the Tower Site, or the relocation of any existing antennas or equipment installed on the Tower or at the Tower Site, if such installation or relocation would adversely affect TENANT's space on the Tower or TENANT's operation, use or enjoyment of its Communications Facility, taking into account customary and commercially reasonable practices for multi-tenant wireless communication sites and towers.
- (b) LANDLORD shall not, and shall not permit any licensee, tenant, subtenant of the Tower (collectively, other than Tenant, "Other Tenants"), to (i) install or change, alter or improve the frequency, power, or type of any communications equipment that interferes with the operation of TENANT's Communications Facility or is not authorized by, or violates Laws (as

hereinafter defined) or is not made or installed in accordance with good engineering practices, or (ii) implement a configuration which interferes with the operation of TENANT's Communications Facility.

- In the event of any interference occurring at the Tower Site as a result of any actions of LANDLORD or any Other Tenants described in Section 8(b) above, LANDLORD shall use reasonable efforts to correct and eliminate the interference within forty-eight (48) hours of receipt of notification from TENANT and, if appropriate, performing an interference study in accordance with industry-standard procedures and practices. If the interference cannot be corrected or eliminated within such 48-hour period, LANDLORD may cause, at LANDLORD's option, any of LANDLORD's or its Other Tenants' communications equipment that interferes with the operation of TENANT's Communications Facility or TENANT's authorized frequency spectrum or signal strength, to be immediately powered down or turned off, with the right to turn such interfering equipment back up or on only during off-peak hours in order to determine whether such interference continues or has been eliminated; provided, however, that if any interference continues at the time the interfering equipment is powered down, the communications equipment that interferes with the operation of TENANT's Communications Facility shall be turned off. If LANDLORD or any such Other Tenant cannot correct or eliminate, to the reasonable satisfaction of TENANT, such interference within twenty (20) days of receipt of written notice from TENANT, LANDLORD shall or shall cause such Other Tenant to cease the operations of the objectionable communications equipment and to stop providing services from the Tower Site until the interference problems are resolved. In no event will LANDLORD be liable to TENANT for any indirect, special, incidental or consequential damages (including, without limitation, loss of profits, income or business opportunities) arising from any such interference.
- (d) TENANT shall not (i) install or change, alter or improve the frequency, power, or type of any communications equipment that interferes with the operation of LANDLORD's or any Other Tenants' communications equipment installed at the Tower Site or contracted with LANDLORD prior to the date of this Agreement or is not authorized by, or violates Laws or is not made or installed in accordance with good engineering practices; (ii) implement a configuration which interferes with the operation of LANDLORD's or any Other Tenants' communications equipment installed or contracted with LANLDORD prior to the date of this Agreement at the Tower Site; or (iii) diplex or combine radio frequency signals for others or install so-called dual band antennas or any other technology that enables the transmission of communications signals and/or operation of the Communications Facility by any party other than TENANT.
- (e) In the event of any interference occurring at the Tower Site as a result of any actions of TENANT described in Section 8(d) above, TENANT shall eliminate the interference within forty-eight (48) hours of receipt of notification from LANDLORD. If the interference cannot be eliminated within such 48-hour period, TENANT shall cause any of TENANT's communications equipment that interferes with the operation of LANDLORD's or any Other Tenants' communications equipment or their authorized frequency spectrum or signal strength, to be immediately powered down or turned off, with the right to turn such interfering equipment back up or on only during off-peak hours specified by LANDLORD in order to

determine whether such interference continues or has been eliminated; provided, however, that if any interference continues at the time the interfering equipment is powered down, the communications equipment that interferes with the operation of LANDLORD's or any Other Tenants' communications equipment shall be turned off. If TENANT cannot correct or eliminate, to the satisfaction of LANDLORD, such interference within twenty (20) days of receipt of written notice from LANDLORD, TENANT shall cease the operations of the objectionable communications equipment and stop providing services from its Communications Facility until the interference problems are resolved. In no event will TENANT be liable to LANDLORD for any consequential damages (including, without limitation, lost profits) arising from any such interference.

- (f) As used herein, "Laws" means all federal, state, county, municipal and other governmental constitutions, statutes, ordinances, codes, regulations, resolutions, rules, requirements and directives and all decisions, judgments, writs, injunctions, orders, decrees or demands of courts, administrative bodies and other authorities (including, without limitation, the Federal Communications Commission) construing any of the foregoing.
- Taxes. TENANT shall be responsible for making any necessary returns for and paying any and all real or personal property taxes separately levied or assessed against or in connection with TENANT's operations or its Communications Facility or the improvements constructed by TENANT on the Leased Property. Taxes are not to be considered as additional rent, but rather as reimbursement to LANDLORD and to be separately billed. TENANT shall pay for any documented increase in ad valorem real estate taxes levied against the Leased Property which are directly attributable to the improvements constructed by TENANT on the Leased Property and are not separately levied or assessed by the taxing authorities against TENANT or the improvements of TENANT. LANDLORD shall pay all other ad valorem real property taxes levied against the Leased Property on or before the date such taxes become delinguent. LANDLORD hereby agrees that if the taxes which are levied against the LANDLORD and TENANT's improvements on LANDLORD's property are incorrectly assessed, TENANT maintains the right to appeal the tax assessment to the appropriate governmental authority, which appeal shall be paid for by TENANT. LANDLORD shall furnish TENANT within thirty (30) days of receipt by LANDLORD or LANDLORD's representative, a copy of the tax assessment or bill for any real or personal property taxes which are levied against the Leased Property, which shall be promptly reimbursed by TENANT. LANDLORD shall not bill TENANT for pro-rata share or estimates of future tax billings.
- Insurance. TENANT and TENANT's contractors performing work at the Tower Site on behalf of TENANT shall, prior to commencing any work, submit to LANDLORD a certificate of insurance reasonably satisfactory to LANDLORD, including LANDLORD as additional insured. Such certificate of insurance must specifically indicate that TENANT and TENANT's contractor or agent has insurance specifically related to tower work. TENANT agrees to accept all responsibility and liability for any and all actions of each of its contractors, agents and employees in connection with any work at the Leased Property. TENANT shall also carry and cause all contractors and agents performing work at the Leased Property on TENANT's behalf to carry such insurance as will protect TENANT and/or any contractor or agent performing work at Leased Property on TENANT's behalf from all claims under all

applicable workers' compensation laws in at least the amount required under the laws of the state in which the Tower Site is located. All policies shall be issued by insurers authorized in the state in which the Tower Site is located with a Best's rating of A- or better. TENANT shall maintain in effect throughout the Term of this Agreement and for any period(s) of time that it may enter the Tower Site a commercial general liability policy in the amounts of not less than One Million Dollars (\$1,000,000) as to any one occurrence for injury or death to each person, not less than One Million Dollars (\$1,000,000) as to any one occurrence for damage or destruction of property and Two Million Dollars (\$2,000,000) in the aggregate, and worker's compensation insurance in an amount not less than the amount required by statute in the state where the Leased Property is located. In addition, TENANT or any contractor performing work on the Tower or operating a crane at the Tower Site is required to carry insurance for injury or death to any one or more persons in an amount of not less Five Million Dollars (\$5,000,000). Polices of insurance may be provided as an individual policy or as blanket coverage. All insurance required hereunder shall include LANDLORD as an additional insured and shall require underwriters to endeavor to provide at least twenty (20) days written notice to LANDLORD prior to any cancellation. Certificates evidencing such insurance shall be delivered to LANDLORD annually.

11. <u>Utilities</u>. If LANDLORD provides that TENANT's electricity supply to the Tower Site is to be separately metered, TENANT shall install and operate a meter at its sole cost and expense. In the event that TENANT's power requirements exceed the existing capacity or power distribution, it will be TENANT's responsibility, at its sole cost and expense, to increase the capacity to meet TENANT's needs. Any such installation shall be done in conformity with applicable laws and in accordance with the requirements for approval of the Communications Facility set forth in this Agreement. If TENANT connects to LANDLORD's meter, TENANT shall reimburse LANDLORD for TENANT's actual share of the costs of any utility service made available to TENANT by LANDLORD. In no event shall LANDLORD be responsible or liable for any interruption or termination of any utility service except on account of LANDLORD's intentional act or gross negligence.

12. Indemnification.

- (a) TENANT shall indemnify and hold LANDLORD, its agents, subsidiaries, employees, shareholders, managers, members, officers, directors and affiliates (collectively, "LANDLORD's Indemnified Parties") harmless against any and all liability, damages, claims, demands, and losses (including reasonable attorneys' fees and expenses), suffered or incurred by any of LANDLORD's Indemnified Parties in connection with or as a result of (i) the use of the Communications Facility or occupancy of the Leased Property by TENANT or its employees or agents; (ii) the failure of TENANT to perform any of its obligations under this Agreement; or (iii) any breach of a representation or warranty of TENANT herein; excepting however, such liabilities and losses as may be due to or caused by the acts or omissions of LANDLORD or its employees or agents.
- (b) LANDLORD shall indemnify and hold TENANT, its agents, subsidiaries, employees, shareholders, managers, members, officers, directors and affiliates (collectively, "TENANT's Indemnified Parties") harmless against any and all liability, damages, claims, demands, and losses (including reasonable attorneys' fees and expenses), suffered or incurred by

any of TENANT's Indemnified Parties in connection with or as a result of (i) the failure of LANDLORD to perform any of its obligations under this Agreement; or (ii) any breach of a representation or warranty of LANDLORD herein. In no event shall LANDLORD be liable to TENANT or indemnify TENANT against the acts or omissions of other occupants of the Tower Site or any person not in the legal control of LANDLORD.

- 13. <u>Sale of Leased Property</u>. If LANDLORD, at any time during the initial or any extended term of this Agreement, decides to convey the Leased Property to a purchaser other than TENANT, LANDLORD shall promptly notify TENANT in writing, and such sale shall be subject to this Agreement and TENANT's rights hereunder.
- 14. <u>Quiet Enjoyment</u>. LANDLORD covenants that TENANT, on paying the rental and performing the covenants, terms and conditions required of TENANT contained herein, shall peaceably and quietly have, hold and enjoy the Leased Property and the leasehold estate granted to TENANT by virtue of this Agreement.
- Assignment. TENANT may sell, assign, or transfer this Agreement at any time upon notice to the LANDLORD to the TENANT's principals, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of TENANT's assets in the market defined by the Federal Communications Commission in which the Tower Site is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned, subleased or transferred without the written consent of the LANDLORD, which consent shall not be unreasonably withheld, conditioned or delayed. In no event shall TENANT sublease the Leased Property in whole or in part, nor permit any third party other than its principals, affiliates or subsidiaries to transmit from or through the For the purposes of this Agreement, TENANT's "principals". Communications Facility. "affiliates" and "subsidiaries" shall be defined as any party controlling, controlled by or under common control with TENANT, any party that merges or consolidates with TENANT or its parent, or any party that purchases or otherwise acquires all or substantially all of TENANT's assets or ownership interest in the market (as defined by the FCC) in which the Leased Property Roaming is specifically allowed for facilities under this Agreement. LANDLORD may assign this Agreement or any of its rights or obligations hereunder upon notice to TENANT. LANDLORD may also assign, pledge, hypothecate or otherwise transfer with notice its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom LANDLORD (i) has obligations for borrowed money or in respect of guaranties thereof; (ii) has obligations evidenced by bonds, debentures, notes or similar instruments; or (iii) has obligations under or with respect to letters of credit, bankers' acceptances and similar facilities or in respect of guaranties thereof.
- 16. <u>Condemnation</u>. If notice is given to LANDLORD that the Leased Property will be condemned by any legally constituted public authority, then LANDLORD shall promptly notify TENANT of such taking or condemnation. If the whole of the Leased Property (or such portion thereof as will make the Leased Property unusable by TENANT for the purposes herein leased as determined by TENANT in its reasonable discretion), is condemned by any legally constituted public authority, then this Agreement, and the term hereby granted, shall terminate and expire at such time as possession thereof is taken by the public authority, and rental shall be

accounted for as between LANDLORD and TENANT as of that date. However, nothing in this paragraph shall be construed to limit or adversely affect TENANT's right to seek an award of compensation from any public authority under a condemnation proceeding for the taking of TENANT's leasehold interest hereunder or for the taking of TENANT's improvements, fixtures, equipment or personal property. If such part of the Tower Site is condemned by any legally constituted public authority or the lessor under the Prime Lease conveys a deed in lieu of condemnation and the taking or conveyance is such that LANDLORD, in its sole discretion, will be unable to operate the Tower Site, then LANDLORD may terminate this Agreement upon notice to TENANT.

17. Casualty.

- (a) If TENANT's Communications Facility or improvements are damaged or destroyed, and TENANT elects to repair or replace same, the rent shall abate for the reasonable time necessary for TENANT to repair or replace the Communications Facility. However, if TENANT's Communications Facility or improvements are damaged or destroyed, in whole or by fifty (50%) percent or more of the cost of replacement thereof, TENANT shall not be required to repair or replace the Communications Facility, and TENANT may terminate this Agreement upon notice to LANDLORD.
- (b) In the event the Tower is damaged to such extent that in the reasonable judgment of LANDLORD, the Tower cannot reasonably be repaired or restored, LANDLORD shall have the right and option, in its sole discretion, to terminate this Agreement upon the delivery of notice thereof to TENANT within ninety (90) days after the occurrence of such damage or destruction. If such notice is given, LANDLORD agrees to use its reasonable efforts to permit TENANT to place temporary transmission facilities on the Tower Site until such time as TENANT is able to secure a replacement transmission location for the Leased Property, or the Prime Lease is terminated by LANDLORD. If LANDLORD elects to rebuild the Tower, LANDLORD agrees to use its reasonable efforts to permit TENANT to place temporary transmission facilities on the Tower Site until such time as the rebuilding is completed; provided however, that TENANT's temporary transmission facilities shall not interfere with LANDLORD's efforts to rebuild the Tower.
- 18. <u>Subordination</u>. LANDLORD shall use commercially reasonable efforts to obtain for the benefit of TENANT a commercially reasonable subordination, non-disturbance and attornment agreement (a "Non-Disturbance Agreement") from each holder of a mortgage, deed of trust, deed to secure debt or other similar instrument given by LANDLORD now or hereafter encumbering the Leased Property (a "Mortgage"), confirming that TENANT's right to quiet possession of the Leased Property during the term of this Agreement (including any extensions thereof) shall not be disturbed as long as TENANT is not in default hereunder. No such subordination shall be effective unless the holder of such Mortgage shall, either in the Mortgage itself or in a separate agreement with TENANT, agree that in the event of a foreclosure, or conveyance in lieu of foreclosure, of LANDLORD's interest in the Leased Property, such holder shall recognize and confirm the validity and existence of this Agreement and the rights of TENANT hereunder, and this Agreement shall continue in full force and effect and TENANT shall have the right to continue its use and occupancy of the Leased Property in accordance with

the provisions of this Agreement as long as TENANT is not in default of this Agreement beyond applicable notice and cure periods. TENANT shall execute in a timely manner whatever instruments may reasonably be required to evidence the provisions of this paragraph.

- 19. <u>Title Insurance</u>. TENANT, at TENANT's option, may obtain title insurance on the Leased Property. LANDLORD shall cooperate with TENANT's efforts to obtain title insurance by executing documents as may be required by the title insurance company, provided however, that such documents are in such form as may be reasonably acceptable to LANDLORD.
- Hazardous Substances. Neither LANDLORD nor, to the best of LANDLORD's knowledge, any third party has used, generated, stored, or disposed of any Hazardous Materials in, on or under the Leased Property. "Hazardous Materials" shall mean petroleum or any petroleum product, asbestos, and any other substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable Federal, State, or local law, rule, regulation, order or ordinance. TENANT may place a diesel or propane emergency generator, required fuel for the generator and sealed gel-cell batteries at the Tower Site. TENANT shall comply with all laws with respect to the presence and usage of such generator, fuel and batteries. TENANT shall indemnify, defend and hold LANDLORD harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees and consultants' and experts' fees) resulting after the date hereof from the presence or release of any Hazardous Materials on the Leased Property if caused by TENANT or persons acting under TENANT. LANDLORD shall hold TENANT harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees and consultants' and experts' fees) resulting from the presence or release of any Hazardous Materials on the Leased Property or LANDLORD's Surrounding Property caused by LANDLORD or persons acting under LANDLORD.

21. Intentionally omitted.

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

If to LANDLORD:

Light Tower Wireless LLC 80 Central Street Boxborough, MA 01719 Attn: Legal Department With a copy to:

Light Tower Wireless LLC

80 Central Street

Boxborough, MA 01719

Attn: Director of Real Estate

If to TENANT:

New Cingular Wireless PCS, LLC

Attn: Network Real Estate Administration

Re: Cell Site #: 1595; Cell Site Name: Falmouth, ME

6100 Atlantic Boulevard Norcross, Georgia 30071

With a copy to:

New Cingular Wireless PCS, LLC

Attn.: Legal Department

Re: Cell Site #: 1595; Cell Site Name: Falmouth, ME

5 Wood Hollow Road Parsippany, NJ 07054

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

23. Default and Termination.

- (a) Each of the following shall constitute an event of default ("Event of Default") by TENANT hereunder:
 - (i) The failure by TENANT to pay, within fifteen (15) days of receipt of written notice by LANDLORD, any rent or portion thereof or other amounts payable to LANDLORD hereunder, including reimbursement of electric bills, if any.
 - (ii) The failure by TENANT to commence to cure any non-monetary obligation under this Agreement within thirty (30) days following written notice by LANDLORD and diligently continuing such cure to completion (except if such default results from any violation of a contractual obligation, governmental or judicial order, law, regulation or statute in which case TENANT shall be required to effectuate cure within such shorter time period as may be provided);
 - (iii) The filing of a petition under the bankruptcy laws, whether voluntary or involuntary, which proceeding is not dismissed within sixty (60) days, an assignment for the benefit of creditors or if TENANT becomes insolvent and generally unable to pay its bills; or

- (iv) Cessation of broadcast operations at Leased Property by TENANT for a period of six (6) months, unless such cessation is due to no fault of TENANT.
- (b) If an Event of Default occurs and continues for such period without cure as set forth herein, LANDLORD may terminate this Agreement upon written notice to TENANT and LANDLORD may enter upon and repossess the Leased Property by summary proceedings, ejectment or otherwise, and may remove the Communications Facility and TENANT's personnel and any other property therefrom, all to the extent permitted by law.
- (c) At any time or from time to time after repossession of the Leased Property pursuant to the terms of this Agreement, LANDLORD may (but shall be under no obligation to) re-let the Leased Property or any part thereof for the account of TENANT, for such term or terms (which may be greater than or less than the period which would otherwise have constituted the balance of the term of this Agreement) and on such conditions and for such uses as LANDLORD, in its absolute discretion, may determine, and may collect and receive rents or fees therefrom. LANDLORD shall not be responsible or liable for any failure to re-let the Leased Property or any part thereof or for any failure to collect any rent or fees due upon any such re-letting.
- (d) Except as expressly provided herein, no expiration or termination of this Agreement, by operation of law or otherwise (except as expressly provided herein), and no repossession of the Leased Property pursuant to this Agreement or otherwise, shall relieve TENANT of TENANT's obligations or liabilities hereunder, all of which shall survive such expiration, termination or repossession. Without limiting the foregoing, upon repossession of the Leased Property pursuant to the terms of this Agreement and as referenced above in Section 23(c), TENANT shall remain liable for all rent, excepting deduction for any amounts received by LANDLORD from other tenants as a result of re-letting Leased Property for the remainder of the then current term.
- (e) No failure by LANDLORD or TENANT to insist upon the strict performance of and compliance with any term, covenant, or condition hereof or to exercise or enforce any right, power or remedy upon a breach thereof, and no submission by TENANT or acceptance by LANDLORD of full or partial rent during the continuance of any such breach shall constitute a waiver of any such breach or of any such term, covenant or condition. No waiver of any breach of any term, covenant or condition under this Agreement shall affect or alter this Agreement, which shall continue in full force and effect, or the respective rights, powers or remedies of LANDLORD with respect to any other then existing or subsequent breach.
- (f) All of the rights, powers and remedies of LANDLORD and/or TENANT provided for in this Agreement or now or hereafter existing at law or in equity, or by statute or otherwise, shall be deemed to be separate, distinct, cumulative, and concurrent. No one or more of such rights, powers or remedies, nor any mention or reference to any one or more of them in this Agreement, shall be deemed to be an exclusion of, or a waiver of, any other rights, powers, or remedies provided for in this Agreement, or now or hereafter existing at law or in equity, or

by statute or otherwise. The exercise or enforcement by LANDLORD and/or TENANT of any one or more of such rights, powers, or remedies shall not preclude the simultaneous or later exercise or enforcement by LANDLORD of any or all of such other rights, powers, or remedies.

- (g) No modification or surrender of this Agreement or surrender of the Leased Property or any interest therein by TENANT shall be valid or effective unless agreed to and accepted in writing by LANDLORD, and no act by any representative or agent of LANDLORD, other than an authorized written agreement and acceptance, shall constitute an acceptance thereof.
- (h) The failure by LANDLORD to commence to cure any obligation under this Agreement within thirty (30) days following written notice by TENANT and diligently continuing such cure to completion (except if such default results from any violation of a contractual obligation, governmental or judicial order, law, regulation or statute in which case LANDLORD shall be required to effectuate cure within such shorter time period as may be provided) shall constitute an Event of Default by LANDLORD hereunder. If such an Event of Default by LANDLORD occurs and continues for such period without cure as set forth herein, TENANT may terminate this Agreement upon written notice to LANDLORD, or shall be entitled to a remedy in law or equity.
- 24. Removal of Improvements. Title to all improvements constructed or installed by TENANT on the Leased Property shall remain with TENANT, and all improvements constructed or installed by TENANT shall at all times be and remain the property of TENANT, regardless of whether such improvements are attached or affixed to the Leased Property. Furthermore, all improvements constructed or installed by TENANT shall be removable by TENANT at the expiration or earlier termination of this Agreement, provided TENANT shall not at such time be in default under any covenant or agreement contained in this Agreement. TENANT shall, within ninety (90) days of termination of this Agreement, remove all improvements, fixtures and personal property constructed or installed on the Leased Property by TENANT and restore the Leased Property to substantially the same condition as received, reasonable wear and tear and damage from the elements excepted. TENANT shall not be required to remove any foundations, driveways, or underground cables or wires. If such removal causes TENANT to remain on the Leased Property after termination of this Agreement, TENANT shall pay rent at the then existing monthly rate, or on the existing monthly pro rata basis if based upon a longer payment term, until such time as the removal is completed.
- Miscellaneous. This Agreement cannot be modified except by a written amendment or modification executed by LANDLORD and TENANT in the same manner as this Agreement is executed. The headings, captions and numbers in this Agreement are solely for convenience and shall not be considered in construing or interpreting any provision in this Agreement. Wherever appropriate in this Agreement, personal pronouns shall be deemed to include other genders and the singular to include the plural, if applicable. This Agreement contains all agreements, promises and understandings between LANDLORD and TENANT, and no verbal or oral agreements, promises, statements, assertions or representations by LANDLORD or TENANT or any employees, agents, contractors or other representatives of either, shall be binding upon LANDLORD or TENANT.

- 26. <u>Contractual Limitations Period</u>. No action or proceeding may be maintained or brought against any party to this Agreement unless such action or proceeding is commenced within twenty-four (24) months after the cause of action accrued unless such cause of action could not have reasonably been discovered by such party.
- 27. Regulatory Compliance. Each of LANDLORD and TENANT agree to maintain their respective facilities, equipment and operations in compliance with all FCC, FAA, and other regulatory requirements applicable to wireless tower owners and users. LANDLORD agrees that it has sole responsibility for compliance with FCC and FAA tower registration, marking and lighting requirements. TENANT agrees that it has sole responsibility for FCC radio licensing requirements.
- 28. <u>Security Interest</u>. It is the express intent of the parties to this Agreement that LANDLORD have no lien or security interest whatsoever in any personal property of TENANT, and, to the extent that any applicable statute, code, or law grants LANDLORD any lien or security interest, LANDLORD hereby expressly waives any rights thereto.
- 29. <u>Brokers/Agents</u>. LANDLORD and TENANT warrant to each other that they were not represented in this transaction by any real estate brokerage firms, agents or other intermediaries. Additionally, the parties warrant and covenant to each other that they will each hold the other harmless from and indemnify each other against claims made by any broker, agent or other intermediary claiming to have represented the indemnifying party in this transaction.
- 30. Governing Law. This Agreement shall be governed and interpreted by and construed in accordance with the laws of the State where the Leased Property is located.
- 31. Attorneys' Fees. In any proceeding which either party may prosecute to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees.
- 32. <u>Memorandum of Agreement</u>. At the request of TENANT, and provided the Prime Lease does not otherwise prohibit or restrict LANDLORD, LANDLORD agrees to execute a memorandum or short form of this Agreement, in recordable form, setting forth a description of the Leased Property, the term of this Agreement and other information agreed to by LANDLORD and TENANT for the purpose of giving public notice thereof to third parties.
- 33. <u>Surveys</u>. LANDLORD hereby grants to TENANT the right to survey the Leased Property and the legal description of the Leased Property on the survey obtained by TENANT shall then be added to and incorporated into Exhibit "B" of this Agreement, and shall control in the event of discrepancies between it and any preliminary description of the Leased Property shown on Exhibit "B".
- 34. <u>Confidentiality</u>. LANDLORD and TENANT agree not to discuss publicly, advertise, nor publish in any newspaper, journal, periodical, magazine or other form of mass media, the terms or conditions of this Agreement. It is agreed that the parties to this Agreement will not discuss the terms and conditions contained herein with any unrelated third parties, other

than the real estate brokers or agents involved in this transaction and the parties' respective accountants and legal counsel (who shall be bound by the same confidentiality requirements).

- 35. <u>Binding Effect</u>. This Agreement shall extend to and bind the personal representatives, successors, and assigns of LANDLORD and TENANT.
- 36. <u>Counterparts</u>. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which shall constitute the same Agreement.
- 37. WAIVER OF DAMAGES. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, EACH OF LANDLORD AND TENANT HEREBY UNCONDITIONALLY WAIVES AND RELEASES THE OTHER FROM ANY CLAIM OR LIABILITY FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT. IN ADDITION, EACH OF LANDLORD AND TENANT HEREBY UNCONDITIONALLY WAIVES AND RELEASES THE OTHER FROM ANY CLAIM OR LIABILITY FOR LOSS OF BUSINESS INCOME, LOST PROFITS OR ANY OTHER TYPE OF DAMAGES OTHER THAN ORDINARY CONTRACT DAMAGES IN CONNECTION WITH THIS AGREEMENT. THIS WAIVER SHALL APPLY EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS IS A CONSPICUOUS WAIVER AND IS IN ADDITION TO ANY OTHER WAIVER(S) PROVIDED BY LAW.

[signatures on following page]

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

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Light Tower Wireless LLC

By:_____ Name: __

Douglas C. Wiest

Title: _

Chief Executive Officer

6.03-08

TENANT:

New Cingular Wireless PCS, LLC

By: AT&T Mobility Corporation

Its: Manager

By:

Napie: James R. Hormann

Title: Executive Director