

STATE OF NORTH CAROLINA
COUNTY OF CABARRUS

COMMUNICATIONS SITE LEASE AND ATTACHMENT AGREEMENT

This COMMUNICATIONS SITE LEASE AND ATTACHMENT AGREEMENT ("*Agreement*") is entered into this 10th day of November, 2006 ("*Effective Date*"), by CELLCO PARTNERSHIP, a Delaware general partnership, d/b/a Verizon Wireless ("*Tenant*") and the CITY OF CONCORD, a North Carolina Municipal Corporation ("*City*"). The Tenant and City are at times collectively referred to hereinafter as the "*Parties*" or individually as the "*Party*".

For One Dollar (\$1.00) paid to City, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Premises.** City owns a parcel of land ("*Land*") and a water tank ("*Water Tank*") located in the City of Concord, County of Cabarrus, State of North Carolina, commonly known as the Downtown water tank located near the intersection of Cabarrus Avenue West and Spring Street Northwest, Concord, North Carolina, as shown on the Tax Map of Cabarrus County as Tax Parcel Number 5620885011 and being further described in Deed Book 131 at Page 170 as recorded in the Office of the Register of Deeds for Cabarrus County (the entirety of City's property is referred to hereinafter as the "*Property*"). City hereby leases to Tenant a portion of that certain space (the "*Tower Space*") on the City's Water Tank, together with a parcel of land (the "*Land Space*") sufficient for the installation of Tenant's equipment building. City and Tenant recognize that access to the Water Tank and Premises shall be had from that existing pavement and then connecting from Union Street to the Water Tank which is owned by Cabarrus County. The Parties further recognize that egress from the Premises shall be made by exiting through the City-owned parking garage. The City hereby grants the non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, and together with a right of way (the "*Right-of-Way*") over and through the Property between the Land Space and the Tower Space for the installation and maintenance of utility wires, poles, cables, conduits and pipes. The Tower Space, Land Space, and Right-of-Way, if any, are substantially described in Exhibit A, attached hereto and incorporated herein, and collectively referred to hereinafter as the "*Premises.*"

City hereby grants permission to Tenant to install, maintain and operate the radio communications equipment, antennas and appurtenances described in Exhibit B attached hereto.

Tenant reserves the right to replace the aforementioned equipment with similar and comparable equipment provided said replacement does not increase tower loading of said Water Tank.

City also hereby grants to Tenant the right to survey the Property and Premises, and said survey shall then become Exhibit C which shall be attached hereto and made a part hereof, and shall control in the event of boundary and access discrepancies between it and Exhibit A. Cost for such work shall be borne by the Tenant.

2. **Effective Date/Due Diligence Period.** This Agreement shall be effective on the date of full execution hereof ("*Effective Date*"). Beginning on the Effective Date and continuing until the Term Commencement Date as defined in Paragraph 3 below ("*Due Diligence Period*"), Tenant shall only be permitted to enter the

Property for the limited purpose of making appropriate engineering and boundary surveys, inspections, and other reasonably necessary investigations and signal, topographical, geo-technical, structural and environmental tests (collectively, "*Investigations and Tests*") that Tenant may deem reasonably necessary or desirable to determine the physical condition, feasibility and suitability of the Premises. In the event that Tenant determines, during the Due Diligence Period, that the Premises are not appropriate for Tenant's intended use, Tenant shall have the right to terminate this Agreement without penalty upon written notice to City at any time prior to the Term Commencement Date. However, Tenant is obligated by commercial good faith and best efforts during the Due Diligence period to determine Premises to be appropriate. City and Tenant expressly acknowledge and agree that Tenant's access to the Property during this Due Diligence Period shall be solely for the limited purpose of performing the Investigations and Tests, and that Tenant shall not be considered an owner, lessee or operator of any portion of the Property, and shall have no ownership, leasehold or control of any portion of the Property (except as expressly provided in this Paragraph 2), prior to the Term Commencement Date. Tenant shall repair or indemnify the City for any damages caused, at the reasonable request of the City.

3. **Term.** The term of Tenant's tenancy hereunder shall commence upon the Commencement Date (as hereinafter defined) and shall terminate on the tenth (10th) anniversary of the Commencement Date unless otherwise terminated as provided herein. The Commencement Date shall be the first day of the month following the date Tenant commences installation of the equipment on the Premises (the "*Commencement Date*"). City and Tenant agree that they shall execute a written acknowledgement confirming the Commencement Date. City and Tenant acknowledge and agree that initial rental payment(s) shall not actually be sent by Tenant until thirty (30) days after the full execution of the written acknowledgement confirming the Commencement Date. By way of illustration of the preceding sentence, if the Commencement Date is January 1 and the written acknowledgement confirming the Commencement Date is fully executed on January 14, Tenant shall send to City the rental payments for January 1 and February 1 by February 13. Each payment thereafter shall be paid on the first day of each month. In the preceding example, the rental payment for March 1, would be due and payable on March 1.

4. **License and Attachment Fees.**

(a) The Tenant shall pay to City a non-cancelable fee and rental in the sum of _____ (hereinafter referred to as the "*Base Fee*") which shall be paid in equal monthly installments of _____ on the first (1st) day of each month. All payments shall be made directly to City of Concord. The Base Fee set forth above is exclusive of charges for the furnishing any utilities such as, but not limited to, electricity, gas, potable water, storm water, sewer or telephone.

(b) Commencing on the first annual anniversary of the Commencement Date and on each annual anniversary thereafter during the term of this Agreement (including all extension terms), the annual Base Fee shall increase by an amount equal to three percent (3%) of the annual Base Fee due for the immediately preceding lease year.

All of Tenant's monetary obligations set forth in this Agreement are conditioned upon Tenant's receipt of an accurate and executed W-9 Form from City.

5. **Use.** From and after the Effective Date, the Premises may be used by Tenant for any reasonable and lawful activity in connection with the provision of communications services, and Tenant shall have the

ongoing right to perform such Investigations and Tests as Tenant may deem reasonably necessary or desirable. It is understood and agreed that Tenant's ability to use the Premises is contingent upon its obtaining after the Effective Date of this Agreement all of the certificates, permits and other approvals (collectively the "**Governmental Approvals**") that may be required by any federal, state or local authorities as well as satisfactory soil boring tests and structural analysis which will permit Tenant use of the Premises as set forth above. City agrees to cooperate with Tenant, at Tenant's expense, in making application for and obtaining all Governmental Approvals that may be required for Tenant's intended use of the Premises and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by Tenant. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to Tenant is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Tenant determines that such Governmental Approvals may not be obtained in a timely manner; (iv) Tenant determines that any soil boring tests or structural analysis is unsatisfactory; (v) Tenant determines that the Premises is no longer technically or structurally compatible for its use, or (vi) Tenant, in its sole discretion, determines that it will be unable to use the Premises for its intended purposes, Tenant shall have the right to terminate this Agreement. Notice of Tenant's exercise of its right to terminate shall be given to City in writing by certified mail, return receipt requested, and shall be effective upon the receipt of such notice by City, or upon such later date as designated by Tenant. The removal of all Tenant's property from the Tower Space and Land Space and the restoration of the Property to its original condition, normal wear and tear and casualty excepted, shall be completed by Tenant no later than 120 days after the date upon which the termination is effective and in accordance with all provisions contained in paragraph 19 herein, including the provision for payment of compensation for any period in which Tenant's property remains on the Premises. All rentals paid to said termination date, or to such date as Tenant's property and fixtures are completely removed from the Premises and the Premises reasonably restored in accordance with paragraph 19, shall be retained by City. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder. Otherwise, subsequent to the removal of its property and the restoration of City's property as herein provided, the Tenant shall have no further obligations for the payment of rent to City.

All improvements, equipment and conduits shall be at Tenant's expense and the installation of all improvements shall be at the discretion and option of Tenant, provided the same are installed in locations approved by the City. Tenant shall have the right to replace, repair, add or otherwise modify its equipment and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, conduits or frequencies are specified or not on any exhibit attached hereto, during the Term. However, all plans and specifications of construction or modification of the Premises which would affect the tower loading, and/or any change in location of equipment on or conduit attached to the Water Tank must be approved in writing by the City. It is of particular interest to the City that any of Tenant's construction, operations and maintenance be performed both safely and prudently so that no damage is caused to the City's Water Tank and radio equipment.

Tenant shall immediately notify City of any damage to Premises cause by Tenant, whether or not such damage constitutes an emergency. If the circumstances of the damage are such that verbal notification is necessary or expedient to prevent further damage or economic loss, then Tenant shall also notify the City in writing as soon as practically possible after the verbal notification. City shall immediately make any emergency repairs and shall repair any non-emergency damage at its discretion. Whether or not any particular damage constitutes an emergency shall be at the sole discretion of the City. At no time shall Tenant make any repairs to any damages to Premises caused by Tenant, or otherwise, without written permission from the City. All costs of

repairs to damage caused by Tenant, whether emergency or non-emergency, shall be paid by Tenant. Tenant shall promptly remit payment of any bill for repairs. Should Tenant fail to remit payment of any bill for the repair of damages covered by this paragraph 7, within thirty (30) days from the billing date shown on the bill, interest shall be calculated at the highest rate allowed by law as determined by N.C. G.S § 24-1.1(c).

6. **Leased Premises for Attachment to a Water Tank.** City, subject to the terms and conditions hereof, grants to Tenant the non-exclusive lease to install, maintain and operate the radio communications equipment described in Exhibit B annexed hereto ("*Equipment*") on the elevated Water Tank and the right to construct and use a building ("*Building*") located at or adjacent to the Property. The Tenant shall submit construction plans for the building or equipment pad to the City and obtain the written approval of the City before beginning construction, such approval shall not be unreasonably withheld, conditioned or delayed. The Tenant shall, also, attend a pre-construction conference with City and City's water tank maintenance contractor who shall perform the work before beginning any construction activities at the site.

CITY AND TENANT AGREE THAT THE PRIMARY FUNCTION OF THE TANK IS TO PROVIDE WATER SERVICE TO THE CITY'S WATER CUSTOMERS. SHOULD THE CITY DETERMINE, IN ITS SOLE DISCRETION, THAT THE PERFORMANCE OF THIS AGREEMENT INTERFERES WITH THAT PRIMARY FUNCTION, THE CITY MAY TERMINATE THIS AGREEMENT WITH NINETY (90) DAYS WRITTEN NOTICE TO TENANT. TENANT SHALL HAVE THE RIGHT DURING SAID NINETY (90) DAY PERIOD TO CURE THE INTERFERENCE PROBLEM TO THE SATISFACTION OF THE CITY; PROVIDED, HOWEVER, THAT IF SAID CURE IS NOT ACHIEVED IN THE SOLE JUDGMENT OF THE CITY, TENANT MUST HAVE COMPLETELY VACATED THE TANK BY THE EXPIRATION OF SAID NINETY (90) DAY PERIOD. IF TENANT DETERMINES, IN ITS SOLE JUDGMENT, THAT THE OPERATION OF THE WATER TANK BY THE CITY IS CREATING INTERFERENCE WITH TENANT'S USE AND OPERATION OF ITS FACILITIES AT THE WATER TANK, TENANT MAY TERMINATE THIS AGREEMENT BY GIVING THE CITY NINETY (90) DAYS' WRITTEN NOTICE. TENANT'S RIGHT TO TERMINATE THIS AGREEMENT IS SUBJECT TO ALL OF THE TERMS HEREOF REGARDING TENANT'S OBLIGATION TO REMOVE THE EQUIPMENT AND BUILDING AT THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

7. **Interference.**

(a) Tenant shall operate its Equipment in compliance with all Federal Communications Commission ("*FCC*") requirements and in a manner that will not cause interference to City or the equipment of other pre-existing lessees or licensees of the Property. The provisions of paragraph 7 shall not apply to the operation of the Water Tank in its primary function to provide water service to the City's water customers, and any interference with that primary function caused by any activities of Tenant shall be controlled by the provisions of paragraph 6.

(b) Subsequent to the installation of Tenant's Equipment, City will not, and will not permit its lessees or licensees to, install new equipment on or make any alterations to the Property, Water Tank or property contiguous thereto owned or controlled by City, if such modifications are likely to cause interference with Tenant's operations. In the event interference occurs, City agrees to use best efforts to eliminate such interference, in a reasonable time period. If after thirty (30) days, City is unable to cure the interference, despite its good faith efforts, Tenant may, at its discretion, initiate procedures to terminate this Agreement as set forth hereinafter in paragraph 11 (i). City's failure to comply with this paragraph shall be a material breach of this Agreement. City does not whatsoever extend any exclusive rights to Tenant; other lessees, including

competitors of Tenant, may be granted such use of Property although subject to not interfering with Tenant's operations on the Premises.

(c) In the event any after-installed Tenant's Equipment causes interference with City's operations or the operations of any pre-existing tenants, in any matter whatsoever except interference with the primary function of the Water Tank as controlled by the provisions of paragraph 6, and after City has notified Tenant in writing of such interference, Tenant will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at Tenant's option, powering down such Equipment and later powering up such Equipment for intermittent testing. In no event will City be entitled to terminate this Agreement, except in accordance with the provisions herein set forth in paragraph 6 of this Agreement, or relocate the equipment, during the thirty (30) day cure period, as long as Tenant is making a good faith effort to remedy the interference issue. If after thirty (30) days, Tenant is unable to cure the interference despite its good faith efforts, Tenant shall will remove the equipment which caused the interference, or at Tenant's option, Tenant may terminate this Agreement in accordance with paragraph 11 (i).

8. **Taxes.** When property taxes are assessed, Tenant shall pay any portion of such taxes directly attributable to the Tenant's facilities. City shall provide to Tenant a copy of any notice, assessment or billing relating to real estate taxes for which Tenant is responsible under this Agreement within ten (10) days of receipt of the same by City. Tenant shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any real estate tax assessment or billing for which Tenant is wholly or partly responsible for payment under this Agreement.

9. **Utilities.** City shall, at all times during the Agreement, provide electrical service and telephone service access within the Premises. To the extent any utility service is not currently available on the Premises, City will cooperate with Tenant and with the utility provider and will permit said utility service access to the Premises through and across contiguous City-owned property. City will grant an easement to said utility provider across its property should that become necessary for the provision of electric or telephone service to the property. If permitted by the local utility company servicing the Premises, Tenant shall furnish and install an electrical meter at the Premises for the measurement of electrical power used by Tenant's installation. In the event no meter has been installed, Tenant shall pay for its own power consumption used thirty (30) days after receipt of an invoice from City indicating the usage amount. Tenant shall be permitted at any time during the Agreement, to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by City. Tenant shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premises, provided that the temporary power source and conduits do not interfere with the operation and maintenance of the Water Tank. Tenant shall fully cooperate with City or any public utility company requesting an easement over and across the Property or other contiguous lands owned by City in order that any utility company may provide service to Tenant. Tenant shall be permitted to run underground utility lines directly from the utility source to Tenant's Equipment. The location of any utility lines shall be reviewed and approved by City prior to installation, such approval not to be unreasonably withheld, conditioned or delayed.

10. **Waiver of City's Lien.**

(a) City waives any lien rights it may have concerning the Tenant's Equipment which are deemed Tenant's personal property and not fixtures, and Tenant has the right to remove the same at any time without City's consent.

11. **Termination.** This Agreement may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a monetary or non-monetary default of any covenant or term hereof by the other party, which default is not cured within thirty (30) days of receipt of written notice of default, except that the Agreement shall not be terminated if the non-monetary default cannot reasonably be cured within such thirty (30) day period and the defaulting party has commenced to cure the non-monetary default within such thirty (30) day period and diligently pursues the cure to completion; or (ii) by Tenant if it does not obtain or maintain any Governmental Approval as set forth in Paragraph 5 herein; or (iii) by Tenant if Tenant is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies; or (iv) by Tenant if any environmental report for the Property reveals the presence of any Hazardous Material; or (v) by Tenant if Tenant, having exerted commercial good faith and best efforts, determines that the Premises are not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference; or (vi) by Tenant if the City fails to deliver to Tenant an executed memorandum of agreement pursuant to Paragraph 20(g) below.

12. **Destruction or Condemnation.** If the Property or Premises are damaged, destroyed, condemned or transferred in lieu of condemnation, Tenant may elect to terminate this Agreement as of the date of the damage, destruction, condemnation or transfer in lieu of condemnation by giving notice to City within forty five (45) days of such damage, destruction, condemnation or transfer in lieu of condemnation. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. If Tenant chooses not to terminate this Agreement, rental shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises and City shall promptly make commercially reasonable repairs to any damage or destruction to the Premises. Tenant may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the Equipment, conduits, fixtures, its relocation costs and its damages and losses (but not for the loss of its leasehold interest).

13. **Insurance.** City and Tenant shall maintain insurance policies at all times with minimum limits as follows:

<u>Coverage</u>	<u>Minimum Limits</u>
Workers' Compensation Statutory	Employers Liability: \$100,000 each accident, \$500,000 bodily injury by disease, \$500,000 bodily injury by disease policy limit
General Liability	\$2,000,000 per occurrence/\$3,000,000 aggregate
Automobile Liability	\$1,000,000 per occurrence

City shall be named as additional insured on Tenant's General Liability policy. Tenant shall provide a Certificate of Insurance showing the City of Concord as an additional insured at execution of this Agreement. Tenant's broker or Tenant's insurance carrier shall notify the City of any notification of cancellation or cancellation of insurance company immediately, but no later than thirty (30) days before the date of cancellation of the policy.

In no event will either Party be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the

possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

14. **Safety Training.** Tenant agrees that all of its employees have had proper training and approved equipment that meets the requirements and standards of the N.C. Department of Labor and the U.S. Occupational Safety and Health Administration.

15. **Waiver of Subrogation.** Landlord and Tenant release each other and their respective principals, employees, representatives and agents, from any claims for damage to any person or to the Land or the Premises or to the Tenant Facilities or any other property thereon caused by, or that result from, risks insured against under any insurance policies carried by the parties and in force at the time of any such damage. City and Tenant shall cause each insurance policy obtained by them to provide that the insurance company waives all right of recovery by way of subrogation against the other in connection with any damage covered by any policy.

16. **Liability and Indemnity.** Each Party shall each indemnify, defend and hold the other harmless from and against all claims losses, liabilities, damages, costs, and expenses (including reasonable attorneys' and consultants' fees, costs and expenses) (collectively "*Losses*") arising from the indemnifying party's breach of any term or condition of this Agreement or from the negligence or willful misconduct of the indemnifying party's agents, employees or contractors in or about the Property, except to the extent such Losses may be due to or caused by the negligence or willful misconduct of the other Party, or its agents, employees or contractors. Tenant shall indemnify, defend, and hold harmless City for any and all damage claims of third parties proximately caused by any damage to the water system of City by Tenant. The duties described in this Paragraph 16 shall apply as of the Effective Date of this Agreement and survive the termination of this Agreement.

17. **Assignment and Subletting.** This Agreement may be sold, assigned or transferred without the written consent of City to Tenant's principal, 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 FCC in which the Property is located by reason of merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of City, which such consent will not be unreasonably withheld, conditioned or delayed. No change of stock ownership or control of Tenant shall constitute an assignment hereunder. Tenant may not sublease the Premises or any interest therein without the prior written consent of City.

18. **Quiet Enjoyment.** City possesses the Property and has rights of access thereto; and City covenants and agrees with Tenant that Tenant may peacefully and quietly enjoy the Premises, provided that Tenant is not in default hereunder after notice and expiration of all cure periods.

19. **Removal Of Tenant's Improvements Upon Termination; Repairs.** Tenant covenants and agrees that no part of the improvements constructed, erected or placed by Tenant on the Premises shall become, or be considered as being affixed to or a part of, the Premises, any and all provisions and principles of law to the contrary notwithstanding, it being the specific intention of Tenant that all improvements of every kind and nature constructed, erected or placed by the Tenant on the Premises shall be and remain the property of Tenant. Tenant, upon termination of this Agreement, shall within one hundred twenty (120) days remove all such improvements, including without limitation the antennae, and associated equipment from the Premises. The Premises shall be returned in a condition that reasonably matches its original condition, reasonable wear and tear excepted, and damage from fire and casualty excepted, unless such fire or casualty is caused by the actions

or inactions of Tenant, its agents or employees. Tenant shall compensate City, on a pro-rata basis, for each day said personal property and fixtures remain on the Premises after termination of this Agreement, at the monthly rent in effect at the time of termination until such time as removal of the improvements is completed.

In the event this Agreement is terminated by either party pursuant to the provisions of paragraph 6, Tenant must have completely vacated the Water Tank by the expiration of the ninety (90) day time period provided in that paragraph, and in no event shall the ninety (90) day time period allowed therein be extended unless approved in writing by the City. All other provisions of this paragraph shall apply to any termination under paragraph 6.

20. Hazardous Material.

(a) As of the Effective Date of this Agreement: (1) Tenant hereby represents and warrants that it shall not use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon or affecting the Property in violation of any Environmental Law (as defined below), and (2) City hereby represents and warrants that (i) it has no knowledge of the presence of any Hazardous Material located in, on, under, upon or affecting the Property in violation of any Environmental Law; (ii) no notice has been received by or on behalf of City from, and City has no knowledge that notice has been given to any predecessor City or operator of the Property by, any governmental entity or any person or entity claiming any violation of, or requiring compliance with any Environmental Law for any environmental damage in, on, under, upon or affecting the Property; and (iii) it will not permit itself or any third party to use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon, or affecting the Property in violation of any Environmental Law.

(b) Without limitation of Paragraph 16, City and Tenant shall each indemnify, defend and hold the other harmless from and against all Losses arising from (i) any breach of any representation or warranty made in this Paragraph 20 by such party; and/or (ii) environmental conditions or noncompliance with any Environmental Law (as defined below) that result, in the case of Tenant, from operations in or about the Premises by Tenant or Tenant's agents, employees or contractors, and in the case of City, from the ownership or control of, or operations in or about, the Property by City or City's predecessors in interest, and their respective agents, employees, contractors, tenants, guests or other parties. The duties described in this Paragraph 20 shall apply as of the Effective Date of this Agreement and survive termination of this Agreement.

(c) "*Hazardous Material*" means any solid, gaseous or liquid wastes (including hazardous wastes), regulated substances, pollutants or contaminants or terms of similar import, as such terms are defined in any Environmental Law, and shall include, without limitation, any petroleum or petroleum products or by-products, flammable explosives, radioactive materials, asbestos in any form, polychlorinated biphenyls and any other substance or material which constitutes a threat to health, safety, property or the environment or which has been or is in the future determined by any governmental entity to be prohibited, limited or regulated by any Environmental Law.

(d) "*Environmental Law*" means any and all federal, state or local laws, rules, regulations, codes, ordinances, or by-laws, and any judicial or administrative interpretations thereof, including orders, decrees, judgments, ruling, directives or notices of violation, that create duties, obligations or liabilities with respect to: (i) human health; or (ii) environmental pollution, impairment or disruption, including, without limitation, laws governing the existence, use, storage, treatment, discharge, release, containment, transportation, generation, manufacture, refinement, handling, production, disposal, or management of any Hazardous Material, or otherwise regulating or providing for the protection of the environment.

21. **Bankruptcy.** If any bankruptcy or insolvency proceedings are commenced against Tenant and are not dismissed within thirty (30) days after service of such proceeding on Tenant, or if Tenant shall file a petition in bankruptcy or for reorganization or to effect a plan or other arrangement with creditors, or be adjudicated bankrupt or make an assignment for the benefit of creditors, or be dissolved or liquidated, or shall admit in writing its inability to pay its debts generally as they become due, or a receiver, trustee or liquidator of Tenant or of the Tenant's Equipment subject to this Agreement is appointed in any proceeding brought by Tenant, or if any such receiver, trustee, or liquidator is appointed in any proceeding against Tenant, and any such receiver, trustee or liquidator is not discharged within thirty (30) days after service of such appointment on Tenant, and Tenant is in default on its rental and the cure period has expired, this Agreement shall be null and void without further action or notice by City. Tenant agrees to provide written notification to the City within thirty (30) days of the commencement of any of the above-enumerated events and of any change in the status of such event.

22. **Title.** City represents and warrants to Tenant as of the execution date of this Agreement, and covenants during the Term that City is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. City further covenants during the Term that there are no other liens, judgments or impediments of title on the Property, or affecting City's title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Premises by Tenant as set forth above.

23. **Annual Termination.** Notwithstanding anything to the contrary contained herein, provided Tenant is not in default hereunder beyond applicable notice and cure periods, Tenant shall have the right to terminate this Agreement upon the annual anniversary of the Commencement Date provided that three (3) months prior notice is given to City.

24. **Access to Land Space and Water Tank.** City agrees the Tenant shall have free access to the Land Space that is the subject of this Agreement and shall have access to the Water Tank at all times for the purpose of installing and maintaining the said Equipment. City shall furnish Tenant with necessary means of access for the purpose of ingress and egress to the Land Space location. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of Tenant or persons under their direct supervision will be permitted to enter the Land Space.

Tenant agrees that in no case whatsoever shall any person climb the Water Tank, whether partially or fully, or in any other manner access the Tower Space or any other part of the Water Tank without the presence of a representative of the City of Concord Department of Water. It is understood and agreed by Tenant that said representative of the Department of Water shall be authorized to require proper identification from any person requesting access to the Water Tank and shall be authorized to verify said identification and affiliation with Tenant. Tenant understands and agrees that compliance with this provision is essential for the security of the City's water supply and any failure by Tenant to comply with this provision shall be grounds for the immediate termination of this Agreement by City in accordance with the provisions set forth in paragraph 6 of this Agreement.

Tenant may arrange for a Water Department representative to be present while Tenant accesses the Water Tank by telephoning the Concord Communications Center at 704-920-5555 at least one (1) hour prior to time Tenant intends to access the Tower Space. City agrees to provide such representative of the Water Department as soon as practically possible after notification by Tenant. Tenant agrees and understands that the availability of such representative may be delayed by weather, emergencies or other unforeseen circumstances.

25. Water Tank Compliance. City covenants that it will keep the Water Tank in good repair as required by all federal, state, county and local laws. City shall also comply with all rules and regulations enforced by the FCC with regard to the lighting, marking and painting of towers.

No materials may be used in the installation of the antennas or transmission lines that will cause corrosion or rust or deterioration of the Water Tank structure or its appurtenances.

All antenna(s) on the Water Tank must be identified by a marking fastened securely to its bracket on the Water Tank and all transmission lines are to be tagged at the conduit opening where it enters any user's equipment space.

26. Rights Upon Sale. Should City, at any time during the Term decide (i) to sell or transfer all or any part of the Property or the Water Tank thereon to a purchaser other than Tenant, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Water Tank and or Property occupied by Tenant for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize Tenant's rights hereunder under the terms of this Agreement. To the extent that City grants to a third party by easement or other legal instrument an interest in and to that portion of the Water Tank and or Property occupied by Tenant for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, assigns this Agreement to said third party, City shall not be released from its obligations to Tenant under this Agreement, and Tenant shall have the right to look to the third party for the full performance of this Agreement.

27. Subordination and Non-Disturbance. City shall obtain not later than fifteen (15) days following the execution of this Agreement, a Non-Disturbance Agreement, as defined below, from its existing mortgagee(s), ground lessors and master lessors, if any, of the Property. At City's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "Mortgage") by City which from time to time may encumber all or part of the Property, Water Tank or right-of-way; provided, however, as a condition precedent to Tenant being required to subordinate its interest in this Agreement to any future Mortgage covering the Water Tank or Property, City shall obtain for Tenant's benefit a non-disturbance and attornment agreement for Tenant's benefit in the form reasonably satisfactory to Tenant, and containing the terms described below (the "Non-Disturbance Agreement"), and shall recognize Tenant's right to remain in occupancy of and have access to the Premises as long as Tenant is not in default of this Agreement beyond applicable notice and cure periods. The Non-Disturbance Agreement shall include the encumbering party's ("Lender's") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "Purchaser") acquires an ownership interest in the Water Tank or Property, Lender or such successor-in-interest or Purchaser will (1) honor all of the terms of the Agreement, (2) fulfill City's obligations under the Agreement, and (3) promptly cure all of the then-existing City defaults under the Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non-Disturbance Agreement, Tenant will execute an agreement for Lender's benefit in which Tenant (1) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the owner of the Water Tank or Property, (3) agrees to give Lender copies of whatever notices of default Tenant must give City, (4) agrees to accept a cure by Lender of any of City's defaults, provided such cure is completed within the deadline applicable to City, (5) agrees to not pay rent more than one month in advance and (6) agrees that no material modification or material amendment of

the Agreement will be binding on Lender unless it has been consented to in writing by Lender. City and Tenant agree that, for the purposes of Paragraph 27, nonmaterial amendments or modifications shall include, but shall not be limited to, the following: (i) any extension of the term of the Agreement, (ii) any addition to, alteration, modification, or replacement of Tenant's Equipment, (iii) any relocation of Tenant's Equipment, (iv) any increase in the rent, and (v) any decrease in the rent, provided however, that such an amendment shall become material should the decrease in rent result in rent lower than the amount then prescribed by the unamended Agreement.

28. Remedies. Upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefore. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the laws or judicial decisions of the state in which the Premises are located; provided, however, the non-defaulting party shall use reasonable efforts to mitigate its damages in connection with a default by the defaulting party. If the non-defaulting party so performs any of the defaulting party's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by the non-defaulting party shall immediately be owing by the defaulting party to the non-defaulting party, and the defaulting party shall pay to the non-defaulting party upon demand the full undisputed amount thereof with interest thereon from the date of payment at the highest rate permitted by law as determined by N.C.G.S § 24-1.1 (c). Notwithstanding the foregoing, if the defaulting party does not pay the non-defaulting party the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due from the non-defaulting party, the non-defaulting party may offset the full undisputed amount, including all accrued interest, due against all fees due and owing to the defaulting party until the full undisputed amount, including all accrued interest, is fully reimbursed to the non-defaulting party.

29. Hold-Over. Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration of that removal period set forth in Paragraph 19 herein, unless the Parties are negotiating a new lease or lease extension in good faith. In the event that the Parties are not in the process of negotiating a new lease or lease extension in good faith, Tenant holds over in violation of Paragraph 19 and this Paragraph 29, then the rent then in effect payable from and after the time of the expiration or earlier removal period set forth in Paragraph 19 shall be increased to one hundred and fifty percent (150%) of the rent applicable during the month immediately preceding such expiration or earlier termination.

30. Stealth Covering. Tenant will add stealth covering and/or screening to its Equipment located on the Water Tank, at the option and request of the City, to the extent that it is structurally feasible.

31. Miscellaneous.

(a) This Agreement constitutes the entire agreement and understanding between the Parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this Agreement must be in writing and executed by both Parties.

(b) Both Parties represent and warrant that their use of the Property and their real and personal property located thereon is in compliance with all applicable, valid and enforceable statutes, laws, ordinances and regulations of any competent government authority.

(c) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(d) Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below:

City:

City of Concord
PO Box 308
Concord, NC 28026-0308
Attn: Director Water Resources

Tenant:

Cellco Partnership d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attn: Network Real Estate

With a copy to:

Albert M. Benshoff
City Attorney
PO Box 308
Concord, NC 28026-0308
Fax: 704-784-1791

With a copy to:

Not Applicable

City or Tenant may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt.

(e) This contract shall be deemed made in Cabarrus County, North Carolina. This contract shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the appropriate division of the North Carolina General Court of Justice, in Cabarrus County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(f) No action or failure to act by either Party shall constitute a waiver of any of its rights or remedies that arise out this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(g) Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(h) If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(i) Unless the City otherwise agrees in writing, the Tenant and all assigns shall be subject to all of the City's defenses and shall be liable for all of the Tenant's duties that arise out of this Agreement and all of the City's claims that arise out of this Agreement. It is agreed that the duties of the Parties that arise out of this contract shall be binding upon the Party and the Party's heirs, personal representatives, successors, and assigns.

(j) In performing all of the Work, the Tenant shall comply with all applicable law.

(k) THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS TENANTS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO

PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

- (l) This contract is intended for the benefit of the City and the Tenant and not any other person.
- (m) In this contract, unless the context requires otherwise the singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. Reference to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The word "person" includes natural persons, firms, companies associations, partnerships, trusts, corporations, governmental agencies and units, and any other legal entities.
- (n) A modification of this contract is not valid unless signed by both Parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or other duly authorized official signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Agreement.
- (o) If required, City agrees to execute and deliver to Tenant a Memorandum of Agreement in the form annexed hereto as Exhibit D and acknowledges that such Memorandum of Agreement will be recorded by Tenant in the official records of the county where the Property is located. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either the Term or rent payments.
- (p) In any case where the approval or consent of one Party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay, condition or withhold its approval or consent.
- (q) Each of the parties hereto represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Agreement.
- (r) The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision of this Agreement.
- (s) All Riders and Exhibits annexed hereto form material parts of this Agreement.
- (t) The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement by the Parties.
- (u) The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

*****SIGNATURES ON FOLLOWING PAGE*****