

**GARFIELD HEIGHTS BOARD OF EDUCATION  
GARFIELD HEIGHTS, OHIO**

**RECORD OF PROCEEDINGS  
Minutes – Regular Board Meeting  
January 18, 2011**

The Board of Education of the Garfield Heights City School District met in Regular session on Tuesday, January 18, 2011 at the Garfield Heights Board of Education Offices at 6:00 p.m. with Mr. Joseph M. Juby, President of the Board, presiding.

**ROLL CALL**

Present: Mr. Juby, Mr. Wolske, Mr. Dobies, Mrs. Geraci, Mrs. Kitson  
Absent: None

**MOMENT OF SILENT REFLECTION & PLEDGE OF ALLEGIANCE**

**ADOPTION OF AGENDA**

Moved by Mr. Dobies, seconded by Mr. Wolske to adopt agenda as presented.

Ayes: Dobies, Wolske, Geraci, Kitson, Juby  
Nays: None

**READING AND APPROVAL OF MINUTES**

Moved by Mrs. Geraci, seconded by Mr. Dobies to approve the minutes of:

Regular Board meeting of December 20, 2010 as presented.  
Organizational meeting of January 3, 2011 as amended to reflect meetings will be called to order at 6:00 p.m. unless otherwise noted.

Ayes: Geraci, Dobies, Kitson, Wolske, Juby  
Nays: None

**BOARD PRESIDENT'S REPORT**

Mr. Juby welcomed everyone to the first regular Board Meeting of 2011.

I would like to thank my fellow Board Members for their vote of confidence in me to be their Board President. I would be remiss in not thanking Mr. Dobies and Mrs. Kitson for their dedicated service this past year as our Board President and Vice President. It was their dedication that carried us through a very trying year. They spent countless hours behind the scenes to ensure that all Board Members were properly advised of all that took place throughout the district. Once again I would like to thank Bob and Chris on a job well done and I hope I can live up to the standards that you have set.

Twenty days. That is all that is left before we vote on the future of the district. As Mr. Dobies has stated on numerous occasions, the citizens will make our decisions for us. We can regress as district if the levy fails; or we can improve and make this an excellent district if the levy passes. The citizens cannot say they were not informed. Our Superintendent, Treasurer, parents, faculty, and staff have spent numerous hours going from group to group to explain the need for this levy. The decision is yours.

### COMMITTEE REPORTS

Cuyahoga Valley Career Center – Mrs. Geraci – Provided information on the CVCC meeting. In search for a new Superintendent, they would like hire a candidate who will be more visible in associate school districts.

Curriculum & Instruction – Christine Kitson – No report.

Student Activities – Mr. Juby – Congratulated the High School's Boys' Basketball team. The team is undefeated ranking first in Greater Cleveland and tenth in Ohio. Mr. Juby wished them good luck in the future.

Legislative Liaison – Mr. Wolske – No Report

City Liaison – Mr. Dobies – The following programs are accepting registrations:

- Futsal (indoor soccer) January 4<sup>th</sup> through January 30<sup>th</sup>. The season begins the beginning of February and runs through the first week in April. The season was extended due to spring break which is the last week in March.
- In House Hockey Session #2 started this past Saturday. This is a ten week session held on Saturday mornings for beginners.
- Learn to Skate Session #3 begins January 26<sup>th</sup>. This is an eight week session and has been very popular this year, attracting an average of sixty to seventy beginning skaters.
- Fitness classes begin today, January 18<sup>th</sup>. This is a ten week session including aerobics, strength training and step aerobics.

These programs are listed on the cable TV channel and are posted on the new website. For more information, please call the Recreation Department during business hours.

The city is updating their website. This has been long overdue. Go to [www.garfieldhts.org](http://www.garfieldhts.org) to take a look. It is inviting and much more user friendly.

Parent Involvement – Mrs. Kitson – No Report

Community Liaison to Faith Based Initiatives – Mr. Wolske – No Report

### PRESENTATION

Mr. Pete Devine of PCS used a Power Point presentation to update the Board on the Elmwood/Maple Leaf OSFC projects.

RECOGNITIONS/COMMENDATIONS

January is Board Recognition month. Mrs. Linda Reid recognized the members of the Garfield Heights Board of Education for their service to the school district.

SUPERINTENDENT'S REPORT

None

REMARKS FROM THE PUBLUC REGARDING AGENDA ITEMS

None

REPORTS AND RECOMMENDATIONS OF THE TREASURER

Moved by Mr. Wolske, seconded by Mrs. Kitson to approve the financials for December 2010, as presented in Exhibit "A"

Ayes: Wolske, Kitson, Dobies, Geraci, Juby

Nays: None

Moved by Mrs. Kitson, seconded by Mrs. Geraci to approve the annual membership in the Ohio School Boards Association for the period January through December 2011 in the amount of \$6,576 including association publication fees.

Ayes: Kitson, Geraci, Dobies, Wolske, Juby

Nays: None

RECOMMENDATIONS OF THE BOARD OF EDUCATIONRECOMMENDATIONS OF THE SUPERINTENDENT TO THE BOARDPERSONNEL:

Moved by Mrs. Geraci, seconded by Mrs. Kitson to approve the following classified staff for the 2010-2011 school year:

<u>Name</u>	<u>Position</u>	<u>Hours</u>	<u>Exp.</u>
Jen Orlosky	WF – General Cafeteria – 1C	4	0

Ayes: Geraci, Kitson, Dobies, Wolske, Juby

Nays: None

Moved by Mr. Juby, seconded by Mrs. Geraci to approve the spring sports supplemental appointments for the 2010-2011 school year as follows:

<u>Name</u>	<u>Supplemental</u>
Timothy Duhanich	Assistant Baseball Coach – HS
Scott Terranova	JV Baseball Coach – HS
Kyle Kovach	FR Baseball Coach – HS
Matt Mihalyov	Head Baseball Coach (7/8) – MS
Tina Gruly	Assistant Fast Pitch Softball Coach – HS
Mary Beth Hoagland	JV Fast Pitch Softball Coach – HS
Brad Farmer	Head Fast Pitch Softball Coach – MS

Ayes: Geraci, Kitson, Dobies, Wolske, Juby

Nays: None

Moved by Mrs. Geraci, seconded by Mrs. Kitson to approve the Leave of Absences.

Ayes: Geraci, Kitson, Dobies, Wolske, Juby

Nays: None

Moved by Mrs. Geraci, seconded by Mrs. Kitson to accept the resignation of Ronald Hanwell Jr., Bus Driver, effective January 3, 2011.

Ayes: Geraci, Kitson, Dobies, Wolske, Juby

Nays: None

Moved by Mrs. Geraci, seconded by Mrs. Kitson to accept the resignation of Tracy L. Keaveney, General Cafeteria at William Foster, effective January 4, 2011.

Ayes: Geraci, Kitson, Dobies, Wolske, Juby

Nays: None

Moved by Mrs. Geraci, seconded by Mrs. Kitson to approve the following teacher as Credit Recovery Course Grader, to be paid a stipend of \$525, effective January 18 and ending May 27, 2011.

<u>Name</u>	<u>Subject</u>
Jeanne Tiefenbach	Art

Ayes: Geraci, Kitson, Dobies, Wolske, Juby

Nays: None

POLICY

None

CONTRACTS:

None

RENTALS & FACILITY USAGES

None

MISCELLANEOUS

Moved by Mrs. Geraci, seconded by Mr. Wolske to request that the Ohio Department of Commerce – Division of Liquor Control document the Board’s objection to the Institution Notice for Liquor Permit for the transfer of a C1 C2 liquor permit for Ohio CVS Stores LLC (DBA CVS Pharmacy 4341).

Ayes: Geraci; Wolske; Dobies; Kitson; Juby

Nays: None

Moved by Mrs. Geraci, seconded by Mr. Wolske to adopt the “Diversity in History” course. This course combines the content of the current “Women in History” and “African-American History” into one semester course. This is a specialized American History course that aligns to the Ohio Content Standards.

Ayes: Geraci; Wolske; Dobies; Kitson; Juby

Nays: None

Moved by Mrs. Geraci, seconded by Mr. Wolske to approve the Memorandum of Agreement with John Carroll University to allow teacher education students in the district classrooms during the 2010-2012 school years to participate in student teacher and other field-based teacher education experiences following the rules of the Ohio State Board of Education.

Ayes: Geraci; Wolske; Dobies; Kitson; Juby

Nays: None

Moved by Mrs. Geraci, seconded by Mr. Wolske to approve Resolution 2011-001, a resolution authorizing the execution of an option and lease agreement with new Cingular Wireless PCS, LLC for a cellular phone tower at the High School with additional leasing, restoration of land and upgrade of the football field, as presented in Exhibit “B” and amended this authorization to include the right to approve the actual lease agreement before any movement forward on this project takes place by the school district.

Ayes: Geraci, Wolske, Dobies, Kitson, Juby

Nays: None

REMARKS FROM THE PUBLIC REGARDING MISCELLANEOUS SCHOOL ITEMS

None

ANNOUNCEMENT OF NEXT BOARD MEETING

Board of Education Special Meeting – 4:00 p.m.

Monday, January 24, 2011

Garfield Heights Board of Education Offices

5640 Briarcliff Drive

Garfield Heights, Ohio 44125

Board of Education Regular Meeting - 6:00 p.m.

Wednesday, February 23, 2011

Garfield Heights Board of Education Offices

5640 Briarcliff Drive

Garfield Heights, Ohio 44125

Moved by Mrs. Geraci, seconded by Mrs. Kitson to adjourn the meeting at 6:31 p.m.

Ayes: Geraci, Kitson, Dobies, Wolske, Juby

Nays: None



\_\_\_\_\_  
President



\_\_\_\_\_  
Treasurer

For monthly financial information (Exhibit A) from this meeting, please check our website under Finance and Business Operations and the link “Financials”. Thank you

**Resolution No. 2011-001**

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN OPTION AND LEASE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC FOR A CELLULAR PHONE TOWER AT THE HIGH SCHOOL.**

WHEREAS, the Board has determined that the portion of the High School described in the proposed Option and Lease Agreement is not needed for school district purposes and should be leased to the New Cingular Wireless PCS, LLC to provide cellular service to the broader community; and

WHEREAS, the lease will generate revenue to be used to educate the District's students.

NOW, THEREFORE BE IT RESOLVED, by the Board of Education that after careful consideration and evaluation of the information before it:

Section 1. The Board authorizes the execution of the Option and Lease Agreement with New Cingular Wireless PCS, LLC for a cellular phone tower at the High School as described in the document on file with the Treasurer.

Section 2. The Board hereby finds and determines that all formal actions related to the adoption of this resolution were taken in open meetings of this Board; and that all deliberations of this Board and of its committees, which resulted in formal action, were taken in meetings open to the public in full compliance with applicable law.

Section 3. This resolution shall be in full force and effect from and immediately after its adoption



Market: OH/PA  
Cell Site Number: OH0774  
Cell Site Name: Garfield Heights  
Fixed Asset Number: 10146819

## OPTION AND LEASE AGREEMENT

THIS OPTION AND LEASE AGREEMENT ("**Agreement**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is entered into by The Board of Education of the Garfield Heights City School District, an Ohio political subdivision, having a mailing address of 5640 Briarcliff Drive, Garfield Heights, Ohio 44125 (hereinafter referred to as "**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 12555 Cingular Way, Suite 1300, Alpharetta, Georgia 30004 (hereinafter referred to as "**Tenant**").

### BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, located at 4900 Turney Road, in the City of Garfield Heights, in the County of Cuyahoga, State of Ohio (collectively, the "**Property**"). Tenant desires to use a portion of the Property in connection with its federally licensed communications business. Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

#### 1. OPTION TO LEASE.

(a) Landlord grants to Tenant an option (the "**Option**") to lease a certain portion of the Property containing approximately One Thousand Two Hundred Fifty (1,250) including the air space above such ground space for the placement of Tenant's Communication Facility as described on attached **Exhibit 1**(the "**Premises**").

(b) During the Option Term (as defined below) , and during the term of this Agreement, Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, radio frequency testing and other geological or engineering tests or studies of the Property (collectively, the "**Tests**"), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant's sole discretion for its use of the Premises and include, without limitation, applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that, in the opinion of Tenant, are necessary in Tenant's sole discretion to determine the physical condition of the Property, the environmental history of the Property, Landlord's title to the Property and the feasibility or suitability of the Property for Tenant's Permitted Use, all at Tenant's expense (provided that Tenant's use of the Property or Premises shall not interfere with the District's operation of the High School). Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Tenant's inspection. Tenant will restore the Property to its condition as it existed at the commencement of the Option Term, reasonable wear and tear and casualty not caused by Tenant excepted. In addition, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or claims arising directly out of Tenant's Tests.

(c) In consideration of Landlord granting Tenant the Option, Tenant agrees to pay Landlord the sum of One Thousand and No/100 Dollars (\$1,000.00) within thirty (30) business days of the Effective Date. The Option will be for an initial term of one (1) year commencing on the Effective Date (the "**Initial Option Term**") and may be renewed by Tenant for an additional one (1) year (the "**Renewal Option Term**") upon written notification to Landlord and the payment of an additional One Thousand and No/100 Dollars

(\$1,000.00) no later than ten (10) days prior to the expiration date of the Initial Option Term. The Initial Option Term and any Renewal Option Term are collectively referred to as the “**Option Term.**”

(d) The Option may be sold, assigned or transferred at any time by Tenant to an Affiliate of Tenant or to any third party agreeing to be subject to the terms hereof. Otherwise, the Option may not be sold, assigned or transferred without the written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed. From and after the date the Option has been sold, assigned or transferred by Tenant to a third party agreeing to be subject to the terms hereof, Tenant shall immediately be released from any and all liability under this Agreement, including the payment of any rental or other sums due, without any further action.

(e) During the Option Term, Tenant may exercise the Option by notifying Landlord in writing. If Tenant exercises the Option then Landlord leases the Premises to Tenant subject to the terms and conditions of this Agreement. If Tenant does not exercise the Option during the Initial Option Term or any extension thereof, this Agreement will terminate and the parties will have no further liability to each other.

(f) If during the Option Term, or during the term of this Agreement if the Option is exercised, Landlord decides to subdivide, sell, or change the status of the zoning of the Premises, Property or any of Landlord’s contiguous, adjoining or surrounding property (the “**Surrounding Property,**”) or in the event of foreclosure, Landlord shall immediately notify Tenant in writing. Any sale of the Property shall be subject to Tenant’s rights under this Agreement. Landlord agrees that during the Option Term, or during the Term of this Agreement if the Option is exercised, Landlord shall not initiate or consent to any change in the zoning of the Premises, Property or Surrounding Property or impose or consent to any other restriction that would prevent or limit Tenant from using the Premises for the Permitted Use.

**2. PERMITTED USE.** Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of its communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (collectively, the “**Communication Facility**”), as well as the right to test, survey and review title on the Property; Tenant further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord (collectively, the “**Permitted Use**”) (provided that Tenant’s use of the Property or Premises shall not interfere with the District’s operation of the High School). Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant’s Permitted Use (provided that Tenant’s use of the Property or Premises shall not interfere with the District’s operation of the High School). If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord’s execution of this Agreement will signify Landlord’s approval of **Exhibit 1**. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of Landlord’s contiguous, adjoining or Surrounding Property as described on **Exhibit 1** as may reasonably be required during construction and installation of the Communications Facility (provided that Tenant’s use of the Property or Premises shall not interfere with the District’s operation of the High School). Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property’s main entry point to the equipment shelter or cabinet, and to make Property improvements, alterations, upgrades or additions appropriate for Tenant’s use (“**Tenant Changes**”). Tenant Changes include the right to construct a fence around the Premises and undertake any other appropriate means to secure the Premises at Tenant’s expense. Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations relating to its use of the Communication Facility on the Property. Tenant has the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the Communication Facility within the Premises at any time during the term of this Agreement (provided that Tenant’s use of the Property or Premises shall not interfere with the District’s operation of the High School). Tenant will be allowed to make such alterations to the Property in order to accomplish Tenant’s Changes or to insure that Tenant’s Communication Facility

complies with all applicable federal, state or local laws, rules or regulations. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.

### 3. **TERM.**

(a) The initial lease term will be five (5) years (the "**Initial Term**"), commencing on the effective date of written notification by Tenant to Landlord of Tenant's exercise of the Option (the "**Term Commencement Date**"). The Initial Term will terminate on the fifth (5<sup>th</sup>) anniversary of the Term Commencement Date.

(b) This Agreement will automatically renew for four (4) additional five (5) year term(s) (each five (5) year term shall be defined as an "**Extension Term**"), upon the same terms and conditions unless Tenant notifies Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Term.

(c) If, at least sixty (60) days prior to the end of the final Extension 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 the final Extension Term, then upon the expiration of the final Extension 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 ("**Annual Term**") 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 equal to the rent paid for the last month of the final Extension Term. If Tenant remains in possession of the Premises after the termination of this Agreement then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the "**Holdover Term**"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, any Extension Terms, any Annual Terms and any Holdover Term are collectively referred to as the Term (the "**Term**").

### 4. **RENT.**

(a) Commencing on the first day of the month following the date that Tenant commences construction (the "**Rent Commencement Date**"), Tenant will pay the Landlord a monthly rental payment of One Thousand Five Hundred and No/100 Dollars (\$1,500.00) ("**Rent**"), at the address set forth above, on or before the fifth (5<sup>th</sup>) day of each calendar month in advance. In partial months occurring after the Rent Commencement Date, Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within thirty (30) days after the Rent Commencement Date.

(b) In year one (1) of each Extension Term, the monthly Rent will increase by Fifteen Percent (15 %) over the Rent paid during the previous Term.

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

### 5. **APPROVALS.**

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

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

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the

Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

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

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

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

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

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

(e) by Tenant upon sixty (60) days' prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to three (3) months' Rent, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any one or more of Sections 5 Approvals, 6(a) Termination, 6(b) Termination, 6(c) Termination, 8 Interference, 11(d) Environmental, 18 Condemnation, 19 Casualty or 24(l) Severability of this Agreement.

(f) by Landlord if the Premises are needed for school district purposes or if Tenant's use of the Property or Premises interferes with the District's operation of the High School. In the event, the district invokes this provisions, then it shall give one (1) year notice to the Tenant.

**7. INSURANCE.** During the Term, Tenant will carry, at its own cost and expense, the following insurance: (i) "All Risk" property insurance for its property's replacement cost; (ii) Workers' Compensation Insurance as required by law; and (iii) commercial general liability (CGL) insurance with respect to its activities on the Property, such insurance to afford minimum protection of Three Million Dollars (\$3,000,000) combined single limit, per occurrence and in the aggregate, providing coverage for bodily injury and property damage. Tenant's CGL insurance shall contain a provision including Landlord as an additional insured to the extent of the indemnity provided by Tenant under this Agreement. Notwithstanding the foregoing, Tenant shall have the right to self-insure against the risks for which Tenant is required to insure against in this Section. In the event Tenant elects to self-insure its obligation to include Landlord as an additional insured as permitted by the previous sentence, the following provisions shall apply: (1) Landlord shall promptly and no later than seven (7) days after notice thereof provide Tenant with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Tenant with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (2) Landlord shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Tenant; (3) Landlord shall fully cooperate with Tenant in the defense of the claim, demand, lawsuit, or the like; (4) Tenant's self-insurance obligation for Landlord shall not extend to claims for punitive damages, exemplary damages, or gross negligence; and (5) such obligation shall not apply when the claim or liability arises from the negligent or intentional act or omission of Landlord, its employees, agents, or independent contractors.

**8. INTERFERENCE.**

(a) Where there are existing radio frequency user(s) on the Property, Landlord will provide Tenant, upon execution of this Agreement, with a list of all existing radio frequency user(s) on the Property to allow Tenant to evaluate the potential for interference. Tenant warrants that its use of the Premises will not interfere with existing radio frequency user(s) on the Property so disclosed by Landlord, as long as those existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Tenant shall notify Landlord if a user of the Property is interfering with the Communication Facility. Landlord will work with Tenant to eliminate the interference. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord will not use, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to use, any portion of the Property in any way which interferes with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord, tenants, licensees, invitees and agents may engage in any activities that are consistent with the School District's educational mission. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant unless Landlord's interference is consistent with its educational mission. In the event any such interference does not cease within the aforementioned cure period, Landlord shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected. Tenant will not be entitled to enjoin such interference if the interference is related to the School District's educational mission.

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

## **9. INDEMNIFICATION.**

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, agents or independent contractors.

(b) To the extent permitted by applicable law, Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the gross negligence or intentional misconduct of, or Landlord's material breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.

## **10. WARRANTIES.**

(a) Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

(b) Landlord represents and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement other than restrictions defined in the Ohio Revised Code that relate to school districts; (iii) as long as Tenant is not in default then Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement.

## **11. ENVIRONMENTAL.**

(a) Landlord represents that, except as may be identified in **Exhibit 11** attached to this Agreement, (i) the Property, as of the date of this Agreement, is free of hazardous substances, including asbestos-containing

materials and lead paint, and (ii) the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property.

(b) Landlord, to the extent permitted by applicable law, and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) the indemnifying party's failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Property and activities conducted by the party thereon, unless the environmental conditions are caused by the other party.

(c) The indemnifications of this Paragraph 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Paragraph 11 will survive the expiration or termination of this Agreement.

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

**12. ACCESS.** At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("Access") to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises provided that Tenant's use of the Property or Premises shall not interfere with the District's operation of the High School. As may be described more fully in **Exhibit 1**, Landlord grants to Tenant an easement for such access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such access at no additional cost to Tenant. Landlord acknowledges that in the event Tenant cannot access the Premises, Tenant shall incur significant damage. If Landlord fails to provide the access granted by this Section 12, such failure shall be a default under this Agreement. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. Landlord shall execute a letter granting Tenant access to the Property substantially in the form attached as **Exhibit 12**; upon Tenant's request, Landlord shall execute additional letters during the Term.

**13. REMOVAL/RESTORATION.** All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during the Term. Within one hundred twenty (120) days of the termination of this Agreement, Tenant will remove all of Tenant's above-ground improvements and Tenant will, to the extent reasonable, restore the Premises to its condition at the commencement of this Agreement, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted. Notwithstanding the foregoing,

Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation, nor will Tenant be required to remove from the Premises or the Property any structural steel or any foundations or underground utilities.

**14. MAINTENANCE/UTILITIES.**

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto and all areas of the Premises where Tenant does not have exclusive control, in good and tenable condition, subject to reasonable wear and tear and damage from the elements. Landlord will be responsible for maintenance of landscaping on the Property, including any landscaping installed by Tenant as a condition of this Agreement or any required permit.

(b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to submeter from Landlord. When submetering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Landlord agrees that it will not include a markup on the utility charges but will be able to pass on to the Tenant any costs incurred to read the meter. . Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within forty-five (45) days of receipt of the usage data and required forms. As noted in Section 4(c) above, any utility fee recovery by Landlord is limited to a twelve (12) month period. If Tenant submeters electricity from Landlord, Landlord agrees to give Tenant at least twenty-four (24) hours advanced notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

(c) Provided that the easement does not interfere with the District's operation of the High School Landlord hereby grants to any utility company providing utility services to Tenant an easement over the Property, from an open and improved public road to the Premises, and upon the Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such utility companies may from time to time require in order to provide such services to the Premises. Upon Tenant's or a utility company's request, Landlord will execute a separate recordable easement evidencing this grant, at no cost to Tenant or the public utility.

**15. DEFAULT AND RIGHT TO CURE.**

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

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) failure to provide access to the Premises or to cure an interference problem within twenty-four (24) hours after receipt of written notice of such default; or (ii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after receipt of written notice from

Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have: (i) the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant, and (ii) any and all other rights available to it under law and equity.

**16. ASSIGNMENT/SUBLEASE.** Tenant will have the right to assign this Agreement or sublease the Premises and its rights herein, in whole or in part, without Landlord's consent. Tenant shall have the right to only sublease the tower within the Premises without Landlord's consent. Tenant shall not sublease any ground space within the Premises. Any potential sublessee shall lease directly with Landlord for any and all ground space on the Property.

**17. NOTICES.**

(a) All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Tenant:                   New Cingular Wireless PCS, LLC  
  Attn: Network Real Estate Administration  
  Re: Cell Site # OH5712; Cell Site Name: Rte. 603 & 42  
  Fixed Asset No: 10146819  
  12555 Cingular Way, Suite 1300  
  Alpharetta, GA 30004

With a copy to:                New Cingular Wireless PCS, LLC  
  Attn: Legal Department  
  Re: Cell Site # OH5712; Cell Site Name: Rte. 603 & 42  
  Fixed Asset No: 10146819  
  15 East Midland Ave.  
  Paramus, NJ 07652

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

If to Landlord:                The Board of Education of the Garfield Heights City School District  
  5640 Briarcliff Drive  
  Garfield Heights, Ohio 44125

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

(b) In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord or its successor will send the documents listed below in this subsection (b) to Tenant. Until Tenant receives all such documents, Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement.

- i.        Old deed to Property
- ii.       New deed to Property
- iii.      Bill of Sale or Transfer
- iv.      Copy of current Tax Bill



- v. New IRS Form W-9
- vi. Completed and Signed AT&T Payment Direction Form
- vii. Full contact information for new Landlord including phone number(s)

**18. CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent on a prorata basis.

**19. CASUALTY.** Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within forty-eight (48) hours of the casualty or other harm. If any part of the Communication Facility or Property is damaged by casualty or other harm as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis. Landlord agrees to permit Tenant to place a temporary transmission and reception facilities on the Property, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of the Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Communication Facility, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until the reconstruction of the Premises and/or the Communication Facility is completed. If Landlord determines not to rebuild or restore the Premises, Landlord will notify Tenant of such determination within thirty (30) days after the casualty or other harm. If Landlord does not so notify Tenant, then Landlord will promptly rebuild or restore the Premises to substantially the same condition as existed before the casualty or other harm. Landlord agrees that the Rent shall be abated until the Premises are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

**20. WAIVER OF LANDLORD'S LIENS.** Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

21. **TAXES.** Landlord shall be responsible for payment of all ad valorem taxes levied upon the lands, improvements and other property of Landlord provided that if Tenant's use of the Property causes the remainder of the Property to be taxable, then Landlord may terminate this Agreement without any further obligations to the Tenant.. Tenant shall be responsible for all taxes levied upon Tenant's leasehold improvements (including Tenant's equipment building and tower) on the Premises. Landlord shall endeavor to provide Tenant with copies of all assessment notices on or including the Premises, along with sufficient written documentation detailing any assessment increases attributable to the leasehold improvements, within thirty (30) days after receipt by Landlord. Tenant shall have the right to contest, in good faith, the validity or the amount of any tax or assessment levied against the Premises by such appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as Tenant may deem appropriate. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant.

22. **SALE OF PROPERTY INTENTIONALLY DELETED**

23. **RENTAL STREAM OFFER.** If at any time after the date of this Agreement, Landlord receives a bona fide written offer from a third party seeking an assignment of the rental stream associated with this Agreement ("**Rental Stream Offer**"), Landlord shall immediately furnish Tenant with a copy of the Rental Stream Offer. Tenant shall have the right within twenty (20) days after it receives such copy and representation to match the Rental Stream Offer and agree in writing to match the terms of the Rental Stream Offer. Such writing shall be in the form of a contract substantially similar to the Rental Stream Offer. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the twenty (20) day period, Landlord may assign the rental stream pursuant to the Rental Stream Offer, subject to the terms of this Agreement.

24. **MISCELLANEOUS.**

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

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

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

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

(e) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced.

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

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

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

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

(j) **W-9.** Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant.

(k) **No Electronic Signature/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant.

(l) **Severability.** If any provision of this Agreement is held invalid, illegal or unenforceable by a court or agency of competent jurisdiction, (a) the validity, legality and enforceability of the remaining provisions of this Agreement are not affected or impaired in any way if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired; and (b) the parties shall negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be invalid, illegal or unenforceable) that is valid, legal and enforceable and carries out the parties' intentions to the greatest lawful extent. If any such action or determination renders the overall performance of this Agreement impossible or materially impairs the original purpose, intent or consideration of this Agreement, and the parties are, despite the good faith efforts of each, unable to amend this Agreement to retain the original purpose, intent and consideration in compliance with that court or agency determination, either party may terminate this Agreement upon sixty (60) days' prior written notice to the other party.

(m) **Counterparts.** This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

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

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

**"LANDLORD"**

The Board of Education of the  
Garfield Heights City School District,  
an Ohio non-profit corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: Board President  
Date: \_\_\_\_\_  
By: \_\_\_\_\_  
Print Name: Al Sluka  
Its: Treasurer  
Date: \_\_\_\_\_

**"TENANT"**

New Cingular Wireless PCS, LLC  
By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_  
Print Name: Thomas Proctor  
Its: Real Estate & Construction Manager  
Date: \_\_\_\_\_

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

**TENANT ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared Thomas Proctor, and acknowledged under oath that he is the Real Estate & Construction Manager of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the limited liability company named in the attached instrument, and as such was authorized to execute this instrument on behalf of the limited liability company.

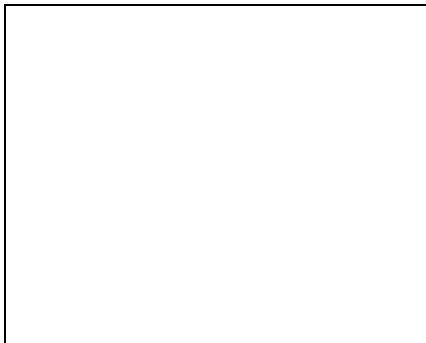
\_\_\_\_\_  
Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**LANDLORD ACKNOWLEDGMENT**

STATE OF OHIO )  
 ) ss.  
COUNTY OF CUYAHOGA )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ and \_\_\_\_\_ are the people who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the President of the School Board and the Treasurer of The Board of Education of the Garfield Heights City School District, an Ohio non-profit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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



\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

(Use this space for notary stamp/seal)

**EXHIBIT 1**

**DESCRIPTION OF PREMISES**

**DESCRIPTION OF PREMISES**

Page \_\_\_ of \_\_\_

to the Agreement dated \_\_\_\_\_, 2010, by and between The Board of Education of the Garfield Heights City School District, an Ohio non-profit corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company as Tenant.

The Premises are described and/or depicted as follows:

SEE ATTACHED LEGAL DESCRIPTION AND SITE PLAN/ELEVATION

**Notes:**

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT [and approved by Landlord](#).
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.

## **EXHIBIT 11**

### **ENVIRONMENTAL DISCLOSURE**

Landlord represents and warrants that the Property, as of the date of this Agreement, is free of hazardous substances except as follows:

1. NONE.

**EXHIBIT 12**

**STANDARD ACCESS LETTER**

**[FOLLOWS ON NEXT PAGE]**



[Landlord Letterhead]

DATE

Building Staff / Security Staff  
Landlord, Lessee, Licensee  
Street Address  
City, State, Zip

Re: Authorized Access granted to AT&T

Dear Building and Security Staff,

Please be advised that we have signed a lease with AT&T permitting AT&T to install, operate and maintain telecommunications equipment at the property. The terms of the lease grant AT&T and its representatives, employees, agents and subcontractors (“representatives”) 24 hour per day, 7 day per week access to the leased area.

To avoid impact on telephone service during the day, AT&T representatives may be seeking access to the property outside of normal business hours. AT&T representatives have been instructed to keep noise levels at a minimum during their visit.

Please grant the bearer of a copy of this letter access to the property and to leased area. Thank you for your assistance.

---

Landlord Signature

**EXHIBIT 24b**

**MEMORANDUM OF LEASE**

**[FOLLOWS ON NEXT PAGE]**

## MEMORANDUM OF LEASE

### Prepared by:

John R. Sindyla, Esq.  
Sindyla & Associates  
7425 Royalton Road  
North Royalton, Ohio 44133

### Return to:

New Cingular Wireless PCS, LLC  
12555 Cingular Way, Suite 1300  
Alpharetta, Georgia 30004  
Attn: Network Real Estate Administration

Re: Cell Site # OH0774; Cell Site Name: Garfield Heights  
Fixed Asset # 10146819  
State: Ohio  
County: Cuyahoga

## MEMORANDUM OF LEASE

This Memorandum of Lease is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between The Board of Education of the Garfield Heights City School District, an Ohio non-profit corporation, having a mailing address of 5640 Briarcliff Drive, Garfield Heights, Ohio 44125 (hereinafter referred to as "**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 12555 Cingular Way, Suite 1300, Alpharetta, Georgia 30004 (hereinafter referred to as "**Tenant**").

1. Landlord and Tenant entered into a certain Option and Lease Agreement ("**Agreement**") on the \_\_\_\_ day of \_\_\_\_\_, 2010, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing are set forth in the Agreement.
2. The initial lease term will be five (5) years ("**Initial Term**") commencing on the effective date of written notification by Tenant to Landlord of Tenant's exercise of the Option, with four (4) successive five (5) year options to renew.
3. The portion of the land being leased to Tenant (the "**Premises**") is described in **Exhibit 1** annexed hereto.
4. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

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

**"LANDLORD"**

The Board of Education of the  
Garfield Heights City School District,  
an Ohio non-profit corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**"TENANT"**

New Cingular Wireless PCS, LLC  
By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_  
Print Name: Thomas Proctor  
Its: Real Estate & Construction Manager  
Date: \_\_\_\_\_

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

**TENANT ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared Thomas Proctor, and acknowledged under oath that he is the Real Estate & Construction Manager of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the limited liability company named in the attached instrument, and as such was authorized to execute this instrument on behalf of the limited liability company.

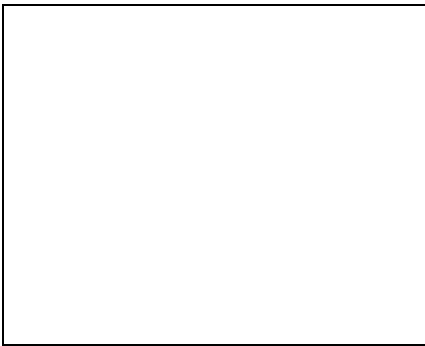
\_\_\_\_\_  
Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**LANDLORD ACKNOWLEDGMENT**

STATE OF OHIO )  
 ) ss.  
COUNTY OF CUYAHOGA )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ are the people who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the President of the School Board and the Treasurer of The Board of Education of the Garfield Heights City School District, an Ohio non-profit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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



\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

(Use this space for notary stamp/seal)

## EXHIBIT 1

### DESCRIPTION OF PREMISES

to the Agreement dated \_\_\_\_\_, 2010, by and between The Board of Education of the Garfield Heights City School District, an Ohio non-profit corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company as Tenant.

The Premises are described and/or depicted as follows:

SEE ATTACHED LEGAL DESCRIPTION AND SITE PLAN/ELEVATION

#### Notes:

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT [and approved by Landlord](#).
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.

**W-9 FORM**

[FOLLOWS ON NEXT PAGE]

## Request for Taxpayer Identification Number and Certification

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

Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ ..... <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
List account number(s) here (optional)		

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
OR
Employer identification number

### Part II Certification

Under penalties of perjury, I certify that:

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

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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### General Instructions

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

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

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

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,