

RESOLUTION R-30-10

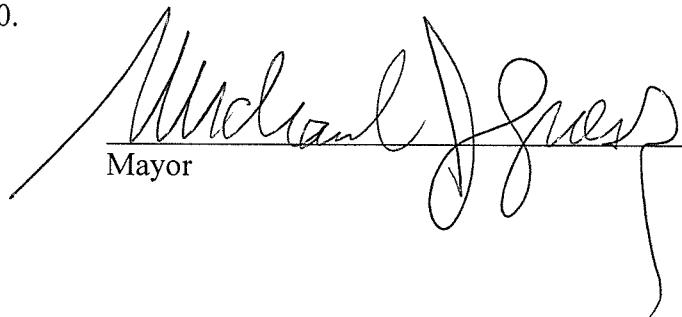
A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH CHICAGO SMSA LIMITED PARTNERSHIP d/b/a VERIZON WIRELESS (ORCHARD ROAD WATER TOWER)

WHEREAS, the City of Wheaton owns a certain piece of property commonly known as the Orchard Road Water Tower site; and

WHEREAS, Verizon Wireless desires to lease certain portions of the Orchard Road Water Tower site for the purpose of constructing and maintaining certain facilities associated with radio communication operations.

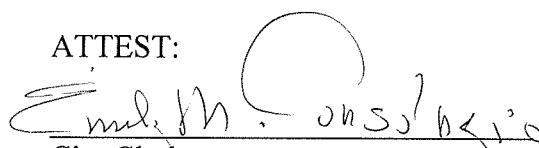
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to execute a Water Tower Lease Agreement with Chicago SMSA Limited Partnership d/b/a Verizon Wireless.

ADOPTED this 7th day of June, 2010.



Michael J. Gresk
Mayor

ATTEST:


Emily M. Ohnsorge
City Clerk

Ayes:

Roll Call Vote:
Councilman Prendiville
Councilman Scalzo
Councilman Suess
Councilwoman Corry
Councilman Levine
Councilman Mouhelis
Mayor Gresk

Nays: None
Absent: None

Motion Carried Unanimously

WATER TOWER LEASE AGREEMENT

This Water Tower Lease Agreement ("Agreement") is entered into as of this 8 day of July, 2010, between Chicago SMSA Limited Partnership d/b/a Verizon Wireless, ("Lessee"), and CITY OF WHEATON, an Illinois municipal corporation ("Lessor").

For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Premises

Lessor is the owner of a parcel of land ("Land") and a water tower ("Tower") located thereon in the City of Wheaton, County of DuPage, State of Illinois, commonly known as the Orchard Road Water Tower (the Tower and Land are collectively, the "Property"). The Land is more particularly described in Exhibit A attached hereto and made a part hereof. Lessor hereby leases to Lessee and Lessee leases from Lessor, approximately One Hundred Sixty (160) square feet of the Land ("Land Space") and space on the Tower, along with the non exclusive right ("the Right of Way") for ingress and egress, seven (7) days a week, twenty four (24) hours a day, on foot or motor vehicle, including trucks, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along a ten (10) foot wide right of way extending from the nearest public right of way to the Land Space; and together with any further rights of way (the "Further Rights of Way") over and through the Land between the Land Space and the Tower for the installation and maintenance of utility wires, poles, cables, conduits, and pipes, (collectively, the "Premises") as described in Exhibit B annexed hereto and for Lessee's use.

2. Use

The Premises may be used by Lessee for the provision of communications services subject to and in accordance with all applicable laws including but not limited to the transmission and reception of communication signals and for the construction, maintenance, repair, replacement of related facilities, antennas, equipment or buildings and related activities all as depicted on Exhibit B and as defined in Paragraph 6. The final plans and location of the facilities shall be subject to approval by Lessor, however, Lessor hereby approves the site plans attached hereto as Exhibit B. Lessor agrees to cooperate with Lessee, at Lessee's expense, in making application for and obtaining all licenses, permits and any and all other approvals that may be required for Lessee's intended use of the Premises.

3. Tests and Construction

A. Lessee shall have the right upon reasonable notice to Lessor, following the full execution of this Agreement to enter upon the Land for the purpose of: making necessary engineering surveys, inspections, other reasonable necessary tests and constructing the Lessee Facilities (as defined in Paragraph 6(A); provided, however, such tests and construction shall be at Lessee's sole cost and expense and subject to inspection by Lessor. Upon Lessee's request, Lessor agrees to provide promptly to Lessee copies of all existing plans, specifications, surveys and Tower maps for the Land and Tower. The Tower map shall include the elevation of all antennas on the Tower.

B. Prior to commencing construction, Lessee shall obtain Lessor's approval of Lessee's test and construction plans, which approval shall not be unreasonably withheld. Lessor shall give such approval or provide Lessee with its requests for changes within fifteen (15) working days of

Lessor's receipt of Lessee's plans. If Lessor does not provide such approval or request for changes within such fifteen (15) working day period, it shall be deemed to have approved the plans. Lessor shall not be entitled to receive any additional consideration in exchange for giving its approval of Lessee's plans, other than any applicable permit fees. In addition, Lessee shall supply in writing frequency information for each of its antennas, the Effective Radiated Power (ERP) for each antenna, and the area around each antenna which is considered unsafe for personnel to be near. A site plan, site survey, elevations and/or other documents related to the construction of the development are to be all attached as Exhibit B. Construction shall be in substantial conformance with said attached documents.

4. Term

The term of this Agreement shall be five (5) years commencing on the first day of the month in which Lessee begins construction of the Lessee Facilities (as defined in Paragraph 6(a)) or September 1, 2010, whichever first occurs ("Commencement Date") and terminating on the fifth anniversary of the Commencement Date ("Term") unless otherwise terminated as provided in Paragraph 10. Lessee shall provide the City of Wheaton with written notice 24 hours prior to the commencement of the construction. Lessee shall have the right to extend the Term for three (3) successive five (5) year periods ("Renewal Terms") on the same terms and conditions as set forth herein. This Agreement shall automatically be extended for each successive Renewal Term unless the Lessee notifies Lessor of its intention not to renew prior to commencement of the succeeding Renewal Term.

5. Rent

A. Commencing on the Commencement Date, Lessee shall pay to Lessor as rent TWO THOUSAND NINE HUNDRED Dollars (\$2,900) per month on the first day of the month in advance ("Rent"). Lessee shall send a written acknowledgement to Lessor indicating the Commencement Date and Lessor shall have 14 days to object to the Commencement Date. In the event Lessor does not object, the Commencement Date shall be deemed approved. The initial rental payment only shall be sent by Lessee within 30 days after the approval of the Commencement Date and all other rental payments under the Lease shall be made in advance as described above. Rent for any fractional month at the beginning or at the end of the Term or any Renewal Term) shall be prorated. Rent shall be payable to Lessor at City of Wheaton, 303 W. Wesley Street, P.O. Box 727, Wheaton, Illinois 60189; Attention: Finance Department.

B. On each anniversary of the Commencement Date, Lessee shall pay the then current monthly Rent, increased by three percent (3%) from the preceding year. The percentage increased shall then be applied to each monthly payment throughout the current year. The rent increase shall apply to the term of this lease and to any extensions of the lease provided herein. The Lessee shall undertake the aforementioned rent adjustment computation.

C. Within fifteen (15) days of the Commencement Date, Lessee shall deposit with Lessor the sum of Ten Thousand and 00/100 Dollars (\$10,000.00) (the "Fee"). Said Fee shall be held by Lessor as security for the faithful performance by Lessee of the terms, covenants and conditions of this Agreement. If Lessee defaults under this Agreement, which default is not cured by Lessee within the timeframes provided in this Agreement, Lessor may use, apply or retain all or a part of this Fee to compensate Lessor for any loss, damage or expense incurred or suffered by Lessor by reason of Lessee's uncured default. Prior to Lessor invading the Fee, it shall first give Lessee written notice of its intention to do so and with that notice shall provide to Lessee written documentation of the loss, damage or expense for which Lessor seeks compensation from the Fee. Such notice and documentation shall be provided by Lessor to Lessee within thirty (30) days after the date of the occurrence which gives rise to Lessor's claimed loss, damage or expense. Failure to provide such notice and documentation within such time shall result in a waiver by Lessor of the right to invade the Fee. If the Fee is invaded by Lessor in accordance with this

paragraph, Lessee shall restore the Fee within forty-five (45) days after the written notice and demand from Lessor. Lessor shall return the Fee to Lessee or Lessee's assignee within forty-five (45) days after the date of expiration or termination of this Agreement.

D. The Rent and the annual incremental increases thereof, shall be subject to renegotiation by the parties on the tenth (10th) anniversary of the Commencement Date to reflect comparable market rates, provided the Lease is so extended. In the event the parties are unable to agree to renegotiate payments under the subparagraphs 5 (A) and 5 (B) for the eleventh (11th) and subsequent years of this Agreement, then the parties shall submit the dispute to arbitration by the American Arbitration Association ("AAA"). The costs of such arbitration shall be borne equally by the parties; i.e., each party shall bear fifty percent (50%) of the costs to be paid to the AAA for said binding arbitration.

6. Facilities; Utilities; Access

A. Lessee, at its sole cost and expense, has the right to erect, maintain and operate on the Premises a communications facility, including utility lines, transmission lines, an air conditioned equipment shelter, electronic equipment, transmitting and receiving antennas and supporting structures thereto, as specifically identified on Exhibit B ("Lessee Facilities"). In connection therewith, Lessee shall do all work necessary to prepare, maintain and alter the Premises for Lessee's business operations and to install transmission lines connecting the antennas to the transmitters and receivers in accordance with Exhibit B. Lessee shall be solely responsible for placing and safely securing and maintaining Lessee Facilities. Lessee's construction and installation work shall be performed in a neat and workmanlike manner. Title to the Lessee's Facilities shall be held by Lessee. Lessee Facilities shall remain Lessee's personal property and are not fixtures. Lessee has the right to remove all Lessee Facilities at its sole expense on or before the expiration or earlier termination of the Agreement; provided, Lessee repairs any damage to the Premises caused by such removal. It is further understood and agreed to by the parties hereto that Lessee, at its sole cost, shall paint that area of the Premises on the Tower within four (4) feet of Lessee Facilities with Lessor approved paint. Lessee agrees to pay a Consulting Engineer of Lessor's choice a maximum of \$1,000.00 to inspect the work done by Lessee or its agents. Payment shall be made by Lessee to the Consulting Engineer upon presentation of his invoice for services. Lessor shall not move or remove any of the Lessee Facilities without Lessee's prior written consent; provided, however, that in emergency or life threatening situations involving the Lessee Facilities, Lessor may take immediate action to alleviate such emergency or threat to life and give verbal notice within one (1) hour of such action.

B. Lessee shall pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. Lessee shall obtain, at its sole cost and expense, separate utility service from any utility company that will provide service to the Property (including a standby power generator for Lessee's exclusive use). Any easement necessary for such power or other utilities will be at a location acceptable to Lessor and the servicing utility company. In the event any public utility is unable to use the current access or easements that provide utilities to this property as of the date of this agreement, the Lessor hereby agrees to grant an additional access either to the Lessee or to the public utility at no cost to the Lessee, unless Lessee's conduct is a cause of the inability public utility service.

C. Lessee, Lessee's employees, agents and subcontractors shall have access to the Premises without notice to Lessor twenty-four (24) hours a day, seven (7) days a week, at no charge, except for the secured catwalk located on the Tower providing access to Tower antennas and other communication equipment. Access to the secured catwalk located on the Tower requires that reasonable notice be provided to the City in order to allow the City to unlock the secured Tower catwalk, at no charge to the Lessee.

D. Within forty-five (45) days of execution of the Agreement, Lessee shall deposit with the Lessor the sum of Twenty-Five hundred Dollars (\$2,500.00) ("Landscape Deposit"). Said Landscape Deposit shall be held by the Lessor as security for the faithful performance by the Lessee of completing landscape restoration of the Land after the initial installation of Lessee's Facilities, as depicted in the photographs attached as Exhibit C. Prior to Lessor invading the Landscape Deposit, it shall first give Lessee written notice of its intention to do so and with that notice shall provide to Lessee written documentation of the corrective measures. Within forty-five (45) days after the date of notice, should the Lessee fail to correct restoration of the Land, the Lessor shall have the right to complete such restoration and invade the Landscaping Deposit to compensate the Lessor for any and all costs associated with complete restoration of the Land. Once the Lessor has accepted the landscape restoration in its reasonable determination, the Landscape Deposit will be returned to the Lessee.

7. Interference

A. Lessee shall perform all activities provided for by this Agreement, including but not limited to the construction, operation, inspection, management and maintenance of Lessee's Facilities, in a manner that will not cause interference to Lessor and other lessees or licensees of the Property, provided that their installations predate the execution of this Agreement. All operations by Lessee shall be in compliance with all Federal Communication Commission ("FCC") requirements, including the operation of all equipment.

B. Subsequent to the installation of the Lessee's Facilities, Lessor shall not permit itself, its lessees or licensees to install new equipment on the Property if such equipment is likely to cause interference with Lessee's operations. Such interference shall be deemed a material breach by Lessor. In the event interference occurs, Lessor agrees to take all reasonable steps necessary to eliminate such interference, in a reasonable time period. Lessor shall have the right to install equipment that is in compliance with all FCC standards and regulations.

C. Should Lessor or citizens thereof claim interference with their existing residential uses due to Lessee Facilities, Lessee shall, at its sole cost and expense, cooperate with Lessor to determine if Lessee Facilities are the source of such claimed interference. Such cooperation shall include but not be limited to, intermodulation studies. Should it be determined by such studies that such interference is directly attributable to the operations of the Lessee Facilities on the Premises, Lessee, at its sole cost and expense, shall take all reasonable measures to modify the Lessee Facilities in order to mitigate such interference to Lessor's reasonable satisfaction.

D. Lessor represents that Lessor maintains lease agreements with other entities ("Other Lessees"), for the operation of cellular telecommunications facility, radio equipment, antennas, microwave and other dishes, for transmitting and receiving communication signals from the Orchard Road Water Tower. The lease agreements allow the Other Lessees to locate cellular transmit/receive antennas installed approximately 100 feet above ground level on the legs of the Orchard Road Water Tower and to use the Property and its Premises for telecommunications services. The Lessor also represents that the Other Lessees lease agreements prohibit Lessor from interfering in any way with Other Lessees' use of the Property and its Premises. The Lessee has represented to Lessor that Lessee's use of the Property and Premises will not interfere in any way with Other Lessees' use of the Property and its premises. The Lessee shall be solely responsible for all costs if it is necessary as determined by the Lessor to substantiate the Lessee's claims that their use of the Property and Premises do not interfere with Other Lessees' use of the Property and its Premises.

8. Taxes

If lease hold taxes are assessed, Lessee shall pay any portion of such taxes directly attributable to the Lessee's tenancy. Lessee shall pay any portion of such taxes attributable to the Premises. Lessor shall pay all real property taxes attributable to the Land. Lessee shall reimburse Lessor for any increase in real property taxes which are assessed as a result of Lessee's improvements to the Land. As a condition of Lessee's obligation to pay such tax increases, Lessor shall provide to Lessee the documentation from the taxing authority, reasonably acceptable to Lessee, indicating the increase is due to Lessee's improvements.

9. Waiver of Lessor's Lien

Lessor waives any lien rights it may have concerning the Lessee Facilities which are deemed Lessee's personal property and not fixtures, and Lessee has the right to remove the same at any time without Lessor's consent.

10. Termination

This Agreement may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant or term thereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, provided that the grace period for any monetary default is fifteen (15) days from receipt of written notice; or (ii) by Lessee for any reason or for no reason, provided Lessee delivers written notice of early termination to Lessor no later than thirty (30) days prior to the Commencement Date; or (iii) by Lessee if Lessee 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 in the event any of Lessee's applications for governmental approvals should be finally rejected, or such approvals are canceled, expire, lapse, or are otherwise withdrawn or terminated; or (iv) by Lessee if Lessee determines that the Premises are not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference; or (v) Lessor may terminate this Agreement following a determination by a qualified engineer (using appropriate instruments which are properly calibrated) that the power density levels emitted from Lessee's equipment located on the Premises exceed those set by the Federal Communications Commission, at points accessible to and intended for the general public and the inability of Lessee to bring its equipment into compliance with such standard within sixty (60) days after receipt of a written copy of Lessor's engineering findings; or (vi) by Lessor if Lessor determines that the Property is not appropriate for its use as a water tower. In the event that Lessor determines pursuant to 10 (vi) above, that the property is not suitable for its use as a water tower, then Lessor will give Lessee in writing, at least one hundred eighty (180) days notice to terminate this Agreement and to vacate Lessee Facilities, with no further liability or obligations hereunder between the parties.

11. Relocation

A. Lessor shall have the right to relocate the Lessee Facilities during the Term or any Renewal Term of this Agreement upon not less than twelve (12) months prior written notice to Lessee; provided, however, that the new premises (the "Alternate Premises") shall be similar in area and appropriateness for Lessee's purposes and any such substitution is effected for the purpose of razing the Tower and/or replacing the Tower. Lessee shall pay any and all expenses connected with moving the Lessee Facilities to the Alternate Premises. Additionally, Lessee shall be allowed to place a temporary communications facility on the Property, at its cost, to ensure that its ability to operate is not interrupted, so long as it is safe and does not interfere with razing or replacement of the Tower. The location, type and timing of construction and/or use of such temporary facility shall be subject to the reasonable approval of Lessor.

B. The size, location and dimensions of the Alternate Premises shall be chosen by Lessor but must, in Lessee's reasonable judgment, be at least as suitable for purposes of operating the Lessee Facilities as the size, location and dimensions of the Property. If the Alternate Premises are not suitable for Lessee's operations, as determined by Lessee in its sole judgment, then Lessor

shall not require Lessee to relocate to such Alternate Premises and Lessee shall remain on the Premises until the expiration of the twelve (12) month notice period or, if Lessee is not willing to relocate, Lessee may terminate this Agreement upon thirty (30) days written notice to Lessor and Lessee shall have no further liability hereunder.

C. The relocation of the Lessee Facilities to the Alternate Premises shall not cause the Rent payable under this Agreement to be increased.

D. Upon the relocation of the Lessee Facilities from the Premises to the Alternate Premises, all references in this Agreement to the Premises shall be deemed to be references to the Alternate Premises. Following such relocation, Lessee may, at its expense, prepare plans delineating the Alternate Premises, which shall then replace Exhibit B of this Agreement.

12. Destruction or Condemnation

A. In the event of any condemnation of all or any portion of the Land, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If as a result of a partial condemnation of the Premises or Tower, Lessee, in Lessee's sole discretion, is unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt Lessee's operations at the Premises for more than forty-five (45) days, Lessee may, at Lessee's option, to be exercised in writing within fifteen (15) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within fifteen (15) days after the condemning authority shall have taken possession) terminate this Agreement as of the date the condemning authority takes such possession. In the event of condemnation, Lessee's share of any condemnation award or proceeds from sale in lieu of condemnation shall be limited to compensation for Lessee Facilities, if destroyed or otherwise unable to be removed. Lessee shall not receive any part or portion of condemnation award or sales proceeds relating to compensation for property owned by the Lessor.

B. Lessee, at its sole cost and expense, shall maintain the Premises in accordance with all regulations of the Lessor for the duration of this Agreement. In the event the Premises and/or Property is destroyed or damaged in whole or in part by casualty during the term of this Agreement, then the responsible party (Lessor or Lessee) that caused such damage through fault or negligence shall at its sole expense repair and restore the Premises and/or Property. Such repair and restoration shall be performed within sixty (60) days of receipt of written notice of casualty by Lessor or Lessee. If such damage is caused by Lessee, the Lessee shall not have the right to terminate the Agreement until such repairs and restoration are performed.

C. Upon expiration or termination hereof, Lessee shall restore the Premises and/or Property to the condition in which it existed upon execution hereof, reasonable wear and tear and loss by casualty or damage caused by reasons beyond Lessee's control excepted.

13. Indemnification and Insurance

A. Disclaimer of Liability.

Lessor shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Lessee's construction, maintenance, repair, replacement, use, operation, conditioning or dismantling of the Property, except if such injury, damage or liability is solely caused by the act, omission, misconduct, negligence or breach of any provision of this Agreement by Lessor or any agent, employee, contractor or subcontractor of Lessor.

B. Indemnification.

Lessee shall, at its sole cost and expense, indemnify defend and hold harmless Lessor and all its officers, boards, commissions, employees, agents and attorneys (hereinafter collectively referred to as the "Lessor Indemnitees"), from and against:

- 1) Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Lessor Indemnitees by reason of any act or omission of Lessee, its personnel, employees, agents, contractors or subcontractors, resulting directly or indirectly in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Property, including interruption of telecommunications service or providing of inadequate telecommunications service, or the Lessee's failure to comply with any federal, state or local statute, ordinance or regulation.
- 2) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), which are imposed upon, incurred by or asserted against the Lessor Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to Lessee, its contractors or subcontractors, for the installation, construction, operation, maintenance or use of the Property and, upon the written request of Lessor, Lessee shall cause such claim or lien covering Lessor's property to be discharged or bonded within thirty (30) days following such request.
- 3) Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Lessor Indemnitees by reason of any financing or securities offering by Lessee or its affiliates for violations of the common law or any laws, statutes, or regulations of the State of Illinois or the United States of America, including those of the Federal Securities and Exchange Commission, by Lessee.

C. Exclusion.

Lessee's obligation to indemnify Lessor Indemnitees under this Agreement shall not extend to claims, losses, and other matters covered hereunder to the extent that the same are solely caused by the act, omission, misconduct, negligence or breach of any provision of this Agreement by one or more Lessor Indemnitees.

D. Assumption of Risk.

Lessee undertakes and assumes for its officers, agents, affiliates, contractors and subcontractors and employees (collectively "Lessee" for the purpose of this section), all risk of dangerous conditions, if any, on or about the Property, existing at the Commencement Date of this Agreement, and Lessee hereby agrees to indemnify and hold harmless the Lessor Indemnitees against and from any claim asserted or liability imposed upon the Lessor Indemnitees for personal injury or property damage to any person (other than solely from any Lessor Indemnitees's acts, omissions, misconduct, negligence or breach of any provision of this Agreement) arising out of

the Lessee's installation, operation, maintenance, condition or use of the Property or Lessee's failure to comply with any federal, state or local statute, ordinance or regulation.

E. Defense of Indemnitees.

In the event any action or proceeding shall be brought against the Lessor Indemnitees by reason of any matter for which the Lessor Indemnitees are indemnified hereunder, Lessee shall, upon notice from any of the Lessor Indemnitees, at Lessee's sole cost and expense, resist and defend the same with legal counsel selected by Lessee; provided however, that Lessee shall not admit liability in any such matter on behalf of the Lessor Indemnitees without the written consent of Lessor and provided further that Lessor Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Lessee.

F. Notice, Cooperation and Expenses.

Lessor shall give Lessee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this paragraph. Nothing herein shall be deemed to prevent Lessor from cooperating with Lessee and participating in the defense of any litigation by Lessor's own counsel at Lessor's own expense. If Lessee requests Lessor to assist it in such defense then Lessee shall pay all reasonable expenses incurred by Lessor in response thereto, including defending itself with regard to any such actions, suits or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as attorney fees and shall also include the costs of any services rendered by the Lessor's attorney, and the actual expenses of Lessor's agents, employees, consultants, or expert witnesses, and disbursements and liabilities assumed by Lessor in connection with such suits, actions or proceedings.

G. Lessor's Indemnity.

Lessor shall, at its sole cost and expense, indemnify, defend and hold harmless Lessee and all of its partners, shareholders, members, officers, directors, employees, agents and attorneys (hereinafter collectively referred to as the "Lessee Indemnities") from and against any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the Lessee Indemnities by reason of any act, omission, misconduct, negligence or breach of any provision of the Lease by Lessor, any Lessor Indemnities or any other person or entity claiming by, through or under Lessor or any claim by a non-party to this Agreement that this Agreement is invalid. In furtherance thereof, the provisions of Sections E and F are hereby incorporated by reference into this Section G, except that for purposes of this Section G, the references in said Sections to "Lessor" are hereby changed to read "Lessee" and the references therein to "Lessee" are hereby changed to read "Lessor" and the references therein to "Lessor Indemnitees" are hereby changed to read "Lessee Indemnitees." Nothing in the Agreement shall be interpreted to waiver or release any and all statutory or common law privileges and/or immunities of the Lessor which are expressly reserved and shall take precedence over any indemnities described in this Section G.

H. Insurance.

During the term of the Lease, Lessee shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

- 1) Commercial general liability insurance with minimum limits of Three Million Dollars (\$3,000,000) per occurrence (combined single limit) including bodily injury and property damage in an amount not less than Three Million Dollars (\$3,000,000) annual aggregate for each personal injury and products and completed operations. All insurance

policies shall name the City of Wheaton as an additional insured as respects all coverages. All insurance shall provide that it will not be canceled or materially altered to reduce the policy limits until Lessor has received at least thirty (30) days written notice of such cancellation or change.(10 days notice shall apply to non-payment). The policy shall provide customary contractual liability insurance, and shall include coverage for products and completed operations liability, independent contractor's liability, and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCV coverage; and

- 2) Worker's Compensation Insurance meeting applicable statutory requirements and employers liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000) for each accident; and
- 3) Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Lessee, its employees and agents on or about the Property with minimum limits of One Million Dollars (\$1,000,000) as the combined single limit for each occurrence for bodily injury and property damage; and
- 4) At the start of and during the period of any construction, customary builders all-risk insurance. Upon completion of the installation of the Facility, Lessee shall substitute for the foregoing insurance policy for fire, extended coverage and vandalism and malicious mischief property insurance on the Facility. The amount of insurance at all times shall be representative of the insurable values installed or constructed as determined by Lessee; and
- 5) All policies shall be written on an occurrence and not on a claims made basis; and
- 6) The coverage amounts set forth above may be met by blanket policies and by a combination of underlying and umbrella policies so long as, in combination, the limits equal or exceed those stated; and
- 7) After the first five years, and for every five years thereafter, the Lessor shall have the right to require such coverages and limits as are comparable to those specified above, taking into account inflation, or to require such other coverages and limits that may be reasonably necessary to carry out the intent of this paragraph or that may be based on reported claims experiences of Lessors in connection with similar telecommunication facilities. Each policy which is to be endorsed to add additional insureds herein under, shall (if reasonably available) contain severability of interests cross liability wording.

I. Evidence of Insurance.

Prior to Lessee commencing construction, Lessee shall file with Lessor the required original certificates of insurance which shall clearly state all of the following;

- 1) The policy number; name of: Insurance Company; name and address of the agent or authorized representative; name, address, and telephone number of the insured; project name and address; policy expiration date; and specific coverage amounts; and
- 2) That Lessor shall receive thirty (30) days written notice prior to the cancellation or alterations reducing the policy limits; and
- 3) That the Lessee's insurance is primary as respects its Facility, the Property and any other valid or collectable insurance that Lessor may possess, including any self assured retention that the Lessor may have; and

4) Any insurance that Lessor possesses shall be considered excess only and shall not be required to contribute with Lessee's insurance. Any certificates of insurance required by this Lease shall be filed and maintained with the Lessor annually during the term of the Agreement.

J. Insurance Companies.

All insurance carriers and surplus line carriers providing coverage under this Agreement shall be admitted and authorized to do business by the State of Illinois and shall be rated at least A minus or better by A.M. Best Company Insurance Guide. Insurance policies and certificates that are issued by non-admitted insurance companies are not acceptable.

K. Deductibles.

Lessee agrees to indemnify and save harmless Lessor, the Lessor Indemnitees and Additional Insureds from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by the Lessee under the terms of this Agreement.

L. Contractors.

Lessee shall require that each and every one of its contractors and their subcontractors who perform work on the Property carry, in full force and effect, workers' compensation, commercial general liability and automobile liability insurance coverages of the type which Lessee is required to obtain under the terms of this paragraph with appropriate (as determined by Lessee) limits of insurance. During the construction phase of the facilities, Lessee shall require that its general contractor include Lessor on its General Contractor's general liability Insurance Policy as an additional insured. Proof that the general contractor has included the Lessor as an additional insured shall be submitted in conformance with the requirements of Paragraph h of this Agreement. Furthermore, contractor shall execute and Lessee shall submit a signed indemnification substantially similar to the indemnification contained at paragraph B (1, (2), and (3) of this Agreement further indemnifying the Lessor for the Acts or Omissions of the Lessee's contractor.

15. Assignment

Lessee may not assign, or otherwise transfer all or any part of its interest in this Agreement or in the Premises without the prior written consent of Lessor which may not be unreasonably withheld or delayed; provided, however, that Lessee may freely assign its interest to its parent company, any subsidiary or affiliate or to any entity which acquires all or substantially all of Lessee's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. Lessor may assign this Agreement upon written notice to Lessee, subject to the assignee assuming all of Lessor's obligations herein.

16. Warranty of Title and Quiet Enjoyment

Lessor warrants that: (i) Lessor owns the Property in fee simple and has rights of access thereto; (ii) Lessor has full right to make and perform this Agreement; and (iii) Lessor covenants and agrees with Lessee that upon Lessee paying the Rent and observing and performing all the terms, covenants and conditions on Lessee's part to be observed and performed, Lessee may peaceably and quietly enjoy the Premises.

17. Miscellaneous

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

B. 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.

C. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

D. Any notice or demand required to be given 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:

• Lessor: City of Wheaton 303 W. Wesley Street Wheaton, IL 60189-0727 Attn: City Manager	Lessee: Chicago SMSA Limited Partnership d/b/a Verizon Wireless 180 Washington Valley Road Bedminster, New Jersey 07921 Attention: Network Real Estate
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Lessor or Lessee may from time to time designate any other address for this purpose by written notice to the other party.

E. This Agreement shall be governed by the laws of the State of Illinois.

F. Lessor acknowledges that a Memorandum of Agreement in the form attached hereto as Exhibit D will be recorded in the Office of the Recorder of Deeds of DuPage County. In the event the Property is encumbered by a mortgage or deed of trust, Lessor agrees to assist Lessee in obtaining a non-disturbance and attornment instrument for each such mortgage or deed of trust.

G. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such approval or consent shall not be unreasonably delayed or withheld.

H. All Riders and Exhibits annexed hereto form material parts of this Agreement.

I. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

J. If any action at law or equity is necessary to enforce the terms of this Agreement, the prevailing party will be entitled to reasonable attorney, accountant and other professional fees, costs and expenses in addition to any other relief to which such prevailing party may be entitled.

18. Marking and Lighting Requirements

Lessor shall be responsible for compliance with all marking and lighting requirements of the Federal Aviation Administration ("FAA") for the property including the Tower; provided, however, with respect to the Lessee Facilities, Lessee shall be responsible for compliance with all marking and requirements of the FAA and FCC. Should Lessor be cited because the Property (specifically excluding the Premises) is

not in compliance and, should Lessor fail to cure the conditions of noncompliance, Lessee may either terminate this Agreement or proceed to cure the conditions of noncompliance at Lessor's expense, which amounts may be deducted from the Rent.

19. Emergency Measures

Notwithstanding other provisions of this Agreement, whenever, in the opinion of the City of Wheaton, there is imminent danger due to an unsafe condition of the Lessee Facilities, Lessor shall provide notice to Lessee by contacting Lessee's Network Operations Center at 800-852-2671. In the event Lessee does not promptly take action to correct the unsafe condition, the City of Wheaton may take any and all action to render any such portion of Lessee Facilities temporarily safe; and shall cause such other action to be taken as the City of Wheaton deems necessary to meet such emergency. The cost of any such measures shall be paid by Lessee and Lessor shall not be responsible for any damage to the Lessee Facilities in taking such emergency measures.

20. Tower Painting and Maintenance

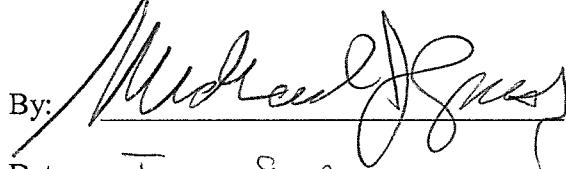
In the event the Lessor undertakes maintenance, repair, painting, construction or other alterations on the Tower, upon ninety (90) days prior written notice to Lessee, Lessee shall take reasonable measures, to cover Lessee's equipment and protect such from paint and debris fallout which may occur during the maintenance, repair, painting, construction or alteration process or Lessor may require that Lessee temporarily remove and/or relocate Lessee's equipment until such planned painting or construction is completed. In the event such removal of Lessee's equipment is necessary or, in the event that the covering and protection of the Lessee's equipment and Lessor's equipment does not permit the continued operation of Lessee's equipment during the period of painting, construction or other alteration, Lessee shall be allowed, at no additional charge, the right to erect a reasonable temporary antenna facility on the Property during such painting, construction or other alterations on the Tower. The location of Tenant's temporary antenna facility on Property is subject to the Lessor's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed. The Lessor shall have forty-five (45) days to review the site plan indicating the location of the temporary antenna facility, if the Lessor does not respond within said forty-five (45) day period, the site plan shall be deemed approved. Lessee shall bear all cost of all reasonable Lessor-mandated removal of Lessee equipment or Lessee use of a temporary antenna facility (either a "Temporary Relocation") pursuant to this Paragraph. Upon the completion of any maintenance, repair or similar work by Lessor, Lessee is permitted to return to its original location from the temporary location at Lessee's cost. Lessee acknowledges that Lessor intends to commence painting the Tower on or about September 1, 2010 and that this acknowledgement satisfies the notice requirement contemplated by this Section 20 of the Agreement.

[SIGNATURE PAGE FOLLOWS]

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

LESSOR:

CITY OF WHEATON
an Illinois municipal corporation

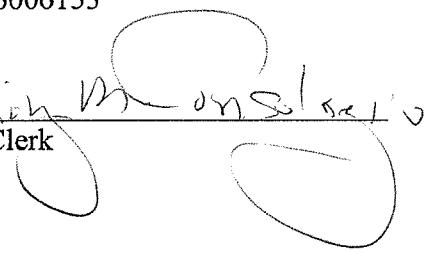
By: 

Date: June 9, 2010

Title: Mayor

Tax ID # 36-6006153

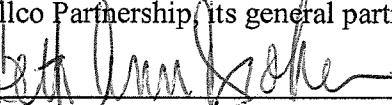
Attest:


Emily M. Monsalve
City Clerk

LESSEE:

Chicago SMSA Limited Partnership d/b/a
Verizon Wireless

By: Cellco Partnership, its general partner

By: 

Name: Beth Ann Drohan

Its: Area Vice President Network

Date: 7/8/10

EXHIBIT A

LEGAL DESCRIPTION OF LAND

THE SOUTH 150 FEET OF THE WEST 120 FEET OF LOT 2 OF WETMORE'S RESUBDIVISION OF LOT "A" OF WETMORE'S ASSESSMENT PLAT OF THE SOUTH $\frac{1}{2}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID WETMORE'S RESUBDIVISION OF LOT "A" RECORDED FEBRUARY 19, 1958 AS DOCUMENT 871202, IN DUPAGE COUNTY, ILLINOIS.

P.I.N. 5-29-200-014

EXHIBIT B
PREMISES
(SEE ATTACHED SITE PLANS)

EXHIBIT C
SEE ATTACHED PHOTOGRAPH

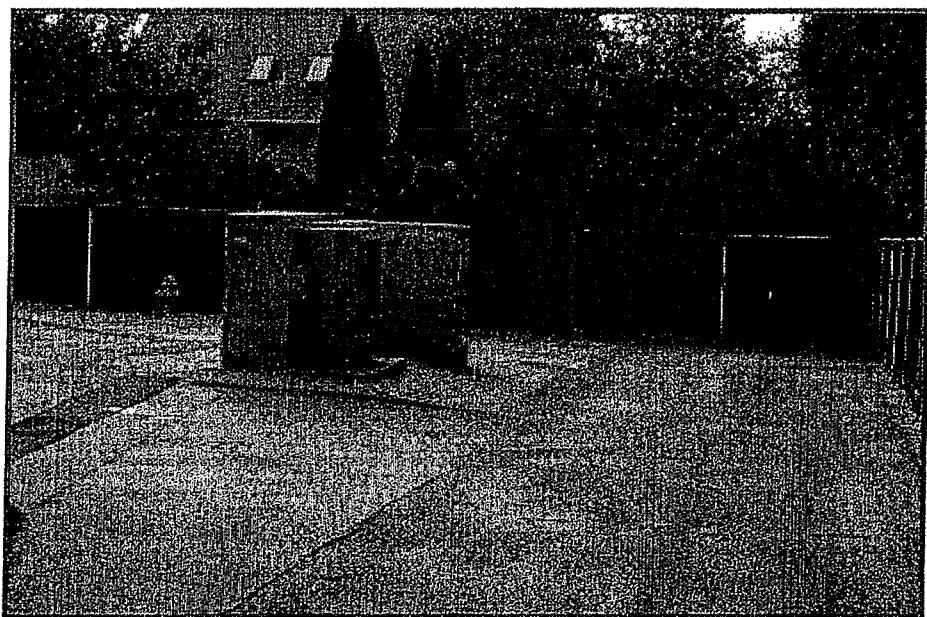


EXHIBIT D
(SEE ATTACHED MEMORANDUM)

Prepared by and upon recording
Please return to:

Ginsberg Jacobs LLC
300 South Wacker Drive
Suite 2450
Chicago, Illinois 60606
Attn: Steven F. Ginsberg, Esq.
(Site Name: South Wheaton)

MEMORANDUM OF WATER TOWER LEASE AGREEMENT

This Memorandum of WATER TOWER LEASE AGREEMENT is made this _____ day of _____, 2010, between the City of Wheaton, with a mailing address of 303 West Wesley Street, Wheaton, Illinois 60189, hereinafter collectively referred to as "LESSOR", and Chicago SMSA Limited Partnership d/b/a Verizon Wireless, with its principal office located at One Verizon Way, Mailstop 4AW100, Basking Ridge, New Jersey 07920, hereinafter referred to as "LESSEE". LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

1. LESSOR and LESSEE entered into a Water Tower Lease Agreement (the "Agreement") on _____, 2010 for an initial term of five (5) years, commencing on the Commencement Date. The Water Tower Lease Agreement shall automatically be extended for three (3) additional five (5) year terms unless the LESSEE terminates it at the end of the then current term by giving the LESSOR written notice of the intent to terminate prior to the end of the then current term.
2. LESSOR hereby leases to LESSEE a portion of that certain space on the LESSOR's Tower, located at 71 South Marywood Trail, Wheaton, Illinois, as shown on the Tax Map of the County of DuPage as a portion of Tax Parcel No. 05-29-200-014-0000 (the entirety of LESSOR's property is referred to hereinafter as the "Property"), together with a 10' x 16' parcel of property containing One Hundred Sixty square feet for the installation of LESSEE's equipment building and other equipment, together with 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 for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along a ten foot (10') wide right-of-way extending from the nearest public right-of-way, to the demised premises. The tower space, demised premises and right-of-way are hereinafter collectively referred to as the "Premises". The Premises are described in Exhibit A attached hereto and made a part hereof, and as shown on the plat of survey attached hereto and incorporated herein as Exhibit B.
3. The Commencement Date of the Agreement, of which this is a Memorandum, is _____.

4. The terms, covenants and provisions of the Agreement, the terms of which are hereby incorporated by reference into this Memorandum, shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of LESSOR and LESSEE.

IN WITNESS WHEREOF, hereunto and to a duplicate hereof, LESSOR and LESSEE have caused this Memorandum to be duly executed on the date first written hereinabove.

LESSOR:

CITY OF WHEATON, an Illinois municipal corporation

By: _____

Name: _____

Title: Mayor

Date: _____

Attest: _____
City Clerk

LESSEE:

**CHICAGO SMSA LIMITED PARTNERSHIP
D/B/A VERIZON WIRELESS**

**BY: CELLCO PARTNERSHIP, its general
partner**

BY: _____
Beth Ann Drohan
Area Vice President Network

Date: _____

STATE OF ILLINOIS

)

COUNTY OF DUPAGE

)

ACKNOWLEDGEMENT

I, _____, a Notary Public for said County and State, do hereby certify that _____ personally came before me this day and acknowledged that s/he is the Mayor of the City of Wheaton, an Illinois municipal corporation, and s/he, being authorized to do so, executed the foregoing **MEMORANDUM OF WATER TOWER LEASE AGREEMENT** as his/her own act and deed on behalf of the City of Wheaton.

WITNESS my hand and official Notarial Seal, this _____ day of _____, 2010.

Notary Public

My Commission Expires:

State of Illinois)
) ss.
County of Cook)

On _____, 2010, before me, _____, notary public, personally appeared Beth Ann Drohan, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION

THE SOUTH 150 FEET OF THE WEST 120 FEET OF LOT 2 OF WETMORE'S RESUBDIVISION OF LOT "A" OF WETMORE'S ASSESSMENT PLAT OF THE SOUTH ½ OF THE NORTHEAST ¼ OF SECTION 29, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID WETMORE'S RESUBDIVISION OF LOT "A" RECORDED FEBRUARY 19, 1958 AS DOCUMENT 871202, IN DUPAGE COUNTY, ILLINOIS.

P.I.N. 5-29-200-014

EXHIBIT B

[See attached survey and site plan]

Memorandum of Water Tower Lease Agreement - [South Wheaton]
Exhibit "B"
Page 1 of ____
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