RESOLUTION
OF THE CARY TOWN COUNCIL
AUTHORIZING LICENSE AGREEMENT
FOR CO-LOCATION ON FIRE STATION 3 RADIO TOWER

WHEREAS, the Town owns a monopole radio tower located at Town of Cary Fire Station 3 (‘Tower’); and

WHEREAS, Cellco Partnership d/b/a Verizon Wireless (‘Licensee’) is a commercial telecommunications carrier which provides wireless voice and data service to Cary citizens and the Town, currently has equipment installed on the Tower, and desires to renew its expired agreement with the Town to continue co-locating on the Tower; and

WHEREAS, the Town Council finds that space on the Tower is surplus space not presently needed by the Town and desires that the surplus space be utilized in a productive manner; and

WHEREAS, the Town and the Licensee have agreed on a License Agreement under which Town will license designated space on the Tower to Licensee to co-locate its equipment, commencing as of December 1, 2018 for an initial term of five years with an automatic renewal for another five year term; and

WHEREAS, in consideration of leasing the Premises, Tenant shall pay annual rent of 36,000 Dollars ($36,000) beginning on the commencement date for the first year of License, which rent shall increase by 3% each year; and

WHEREAS, N.C.G.S. §160A-272 authorizes the Town to enter into leases of up to ten (10) years upon resolution of the Town Council adopted at a regular meeting after thirty (30) days public notice; and

WHEREAS, the required notice has been published and the Town Council is convened in a regular meeting.

NOW THEREFORE, The Town Council of the Town of Cary resolves that:

The Town Council hereby approves the attached License Agreement (‘Agreement’) with Licensee and authorizes the Town Manager or Deputy Town Manager to execute an agreement substantially like the Agreement and to provide such notices and take such action as Agreement contemplates. The Manager and Deputy Manager are further authorized to approve and execute amendments to Agreement that do not change the term or rental amount and to approve and execute notices and instruments necessary to the same.
Adopted this the ___ day of July, 2019.

__________________________________
Harold Weinbrecht, Jr., Mayor

ATTEST:

________________________________________
Brittany L Strickland, Deputy Town Clerk
COUNTY OF WAKE
STATE OF NORTH CAROLINA

LICENSE AGREEMENT
(Radio Tower Site)

THIS LICENSE AGREEMENT ("Agreement"), made this _____ day of
__________, 2____, by and between the Town of Cary, a N.C. municipal corporation
having an address at 316 North Academy Street, Cary, North Carolina 27513
(hereinafter referred to as the “Licensor” or “Town”) and Cellco Partnership d/b/a
Verizon Wireless, having an address of One Verizon Way, Mail Stop 4AW100, Basking
Ridge, New Jersey 07920 (telephone 866-862-4404) (the “Licensee”).

1. LICENSED AREA AND USE: Licensor owns a parcel of land at 1807 Kildaire
Farm Road, Cary, Wake County, North Carolina 27511 and more particularly described
on Exhibit 1 attached hereto and incorporated herein by reference (the “Property”) on
which it has constructed and operates a radio tower (the "Radio Tower" or "Tower").
Licensor, subject to the terms and conditions of this Agreement, grants to Licensee the
non-exclusive license to maintain and operate the radio communications antennas and
related equipment described in Exhibit 2 attached hereto and incorporated herein by
reference (hereinafter referred to as the “Equipment”) on the Radio Tower at the
location and elevation shown on Exhibit 1 (the "Tower Site"). Licensor also grants
Licensee the license to construct, maintain and use equipment housing (the "Building")
at the location shown on Exhibit 1 (the “Building Site”) to house the ground equipment
described in Exhibit 2. The Tower Site and the Building Site are referred to as the
“Licensed Areas”. Licensee originally installed radio communications antenna and
related equipment on Tower in 1993 pursuant to the terms of prior license agreements
(see Paragraph 32). No new radio communications antenna or related equipment are
proposed to be installed with this Agreement; existing Equipment and Building are to
remain unless modified pursuant to Paragraph 4.

Licensee shall use the Licensed Areas for the use and maintenance of Equipment and
ancillary supporting cables and antennas ("Permitted Use"), and for no other purpose.
Licensee’s use shall be at Licensee’s sole risk and expense and shall be in strict
conformance with the terms and conditions of this Agreement. Licensee access to
Licensed Areas to support the Permitted Use shall be as provided on Exhibit 1 or as
may be directed by Licensor from time to time. Property is a working fire station that
must be ready to respond to emergencies at all times. Licensee may not place items of
any type or size, including tools, vehicles, or cranes, outside of Licensed Areas at any
time without express, advance, written (includes e-mail) permission from the Fire Chief,
Deputy Fire Chief, or Assistant Fire Chief.
LICENSOR AND LICENSEE AGREE THAT THE PRIMARY FUNCTION OF THE RADIOTOWER IS TO PROVIDE COMMUNICATIONS SERVICES TO THE TOWN’S NETWORK AND APPLICATIONS. SHOULD THE TOWN DETERMINE, IN ITS SOLE DISCRETION, THAT THE RADIOTOWER HAS REACHED THE END OF ITS USEFUL LIFE OR IS NO LONGER NECESSARY FOR THAT PRIMARY FUNCTION OR THAT THE PERFORMANCE OF THIS AGREEMENT INTERFERES WITH THAT PRIMARY FUNCTION, THE TOWN MAY TERMINATE THIS AGREEMENT WITH NINETY (90) DAYS WRITTEN NOTICE TO LICENSEE STATING THE REASON FOR TERMINATION. IF THE REASON FOR TERMINATION IS LICENSEE INTERFERENCE WITH THE PRIMARY FUNCTION OF THE RADIOTOWER, AND THE NATURE OF SUCH INTERFERENCE IS SOMETHING THAT IS ABLE TO BE PROMPTLY CURED BY LICENSEE, LICENSEE SHALL, AFTER WRITTEN NOTICE TO LICENSOR, HAVE THE RIGHT DURING THE FIRST SIXTY (60) DAYS OF SAID NINETY (90) DAY PERIOD TO CURE THE INTERFERENCE PROBLEM TO THE SATISFACTION OF THE LICENSOR; PROVIDED, HOWEVER, THAT IF A CURE SATISFACTORY TO LICENSOR, IN ITS SOLE JUDGMENT, IS NOT ACHIEVED WITHIN THAT SIXTY (60) DAY PERIOD, LICENSEE SHALL COMPLETELY VACATE THE LICENSED AREAS BY THE EXPIRATION OF SAID NINETY (90) DAY NOTICE PERIOD. THIS PROVISION IS IN ADDITION TO AND CONTROLS OVER OTHER TERMINATION PROVISIONS OF THIS AGREEMENT. IN THE EVENT LICENSEE FAILS OR REFUSES TO VACATE THE LICENSED AREAS AS PROVIDED ABOVE, LICENSOR MAY REMOVE AND DISPOSE OF EQUIPMENT AND BUILDING AT LICENSEE’S EXPENSE AT THE END OF THE NINETY (90) DAY PERIOD WITHOUT FURTHER NOTICE.

2. TERM: This Agreement shall commence on December 1, 2018 (“Commencement Date”) and shall be for a period of five (5) years (the “Initial Term”). Unless Licensee is in default hereunder, there shall be one (1) renewal term of five (5) years (“Renewal Term”) which shall commence automatically unless Licensee terminates this Agreement by giving Licensor written notice of termination at least ninety (90) days prior to the expiration of the Initial Term. Unless Licensee is in default under this Agreement, Licensee, upon payment of an amount equal to a monthly installment of the then current License Fee (“Termination Deposit”) may have up to thirty (30) days after the termination of the Initial Term or Renewal Term, as the case may be, within which to remove its Equipment and Building from Licensed Areas during which time all obligations of Licensee under this Agreement shall remain in effect. If the Equipment and Building are fully removed from the Licensed Areas by the expiration of the thirty (30) days, the Termination Deposit shall be refunded to Licensee. If the Equipment and Building are not fully removed by the end of such thirty (30) day period, Licensor shall retain Termination Deposit and may remove and dispose of all such Equipment and Building at Licensee’s sole cost and expense.

3. LICENSE FEE:

   (a) The License Fee shall be thirty-six thousand dollars ($36,000.00) for the first year of the Term and shall increase by three percent (3%) of the then current
License Fee each year thereafter. The increase shall occur on each anniversary of the Commencement Date. The License Fee shall be paid in equal monthly installments, each installment due on the first day of each month commencing on the Commencement Date. The License Fee for any period during the Term which is less than one month shall be the pro-rated portion of the monthly installment due, based upon a thirty (30) day month. All payments shall be made directly to Town of Cary Finance Department. If Licensor fails to receive the full License Fee due within five (5) days after it becomes due, Licensee shall pay Licensor, as an additional fee, a late charge equal to five (5%) of the License Fee that is due.

The License Fee is exclusive of charges for any utilities such as, but not limited to, electricity, gas, water, sewer, fiber, internet service, or telephone, which are the responsibility of Licensee.

(b) The License Fee for the first year of the Renewal Term shall be equal to the annual License Fee for the fifth year of the Initial Term plus three percent (3%). Thereafter the License Fee shall increase by three percent (3%) on each annual anniversary of the Commencement Date. License Fee shall continue to be paid in equal monthly installments, each installment due on the first day of each month.

(c) Licensee shall have a separate electric meter to measure Licensee’s electric consumption and Licensee shall pay directly to the public utility company for the installation of the meter and for any electricity used by Licensee. If Licensee has any other utility services, all such service is subject to Licensor approval and shall be established in Licensee’s name and paid by Licensee.

4. USE OF LICENSED AREA, OPERATION OF EQUIPMENT:

(a) Licensee shall comply with all Laws and Regulations (as such term is defined below) applicable to Licensee’s Equipment and Building, the modification and operation thereof, and Licensee’s use of Licensed Areas. “Laws and Regulations” means all federal, state, and local laws, ordinances, rules, codes, regulations, orders, and rules of any and all governmental bodies, agencies, authorities, and courts having jurisdiction, as amended or enacted from time to time, applicable to the Licensee and the Permitted Use. Laws and Regulations includes, but is not limited to, the laws, rules, and regulations of or related to the Federal Communications Commission (the “FCC”), the Federal Aviation Administration (the “FAA”), the Environmental Protection Agency (the “EPA”), the Occupational Safety and Health Act (“OSHA”), the Town of Cary Code of Ordinances and Land Development Ordinance, and includes all building and electrical codes and fall protection requirements. Licensee shall ensure that its officers, employees, and agents including all contractors of Licensee, comply with all applicable Laws and Regulations.

(b) In addition to compliance with Laws and Regulations, all Equipment and Building, and the modification thereof, shall conform to Licensor’s design specifications and
requirements as shown on approved plans and as more particularly described in subsection (c) below.

(c) Prior to making any modifications or changes to its Equipment or Building, Licensee shall, at Licensee’s sole cost and expense, do the following for Licensor review and approval:

(i) Prepare and submit a detailed site plan showing and accurately describing Equipment, ground Equipment, Building, coax/cable routing, antenna locations and the following:

- Details and explanations of how attachments and coax/cable routing will be accomplished and details of other changes that may affect the Tower or its appearance;
- Details and explanations of antenna installation(s) and their heights and of ground Equipment installations;
- Routing diagrams for trucks, cranes, and other equipment used in the installation, including Licensee access to the Licensed Areas during the construction phase; and
- The Town of Cary general construction notes for radio towers.

and

(ii) Provide construction plans and specifications for Building and plans and specifications for Equipment; and

(iii) Prior to commencement of any work, Licensee shall obtain permits and approvals required by any federal, state, and local authorities and shall promptly deliver to Licensor written proof of compliance with such requirement. Licensee shall also provide Licensor with such evidence of compliance with applicable Laws and Regulations as Licensor shall require. Licensee shall provide Licensor with a certificate of insurance as required by paragraph 10 and shall attend a preconstruction conference with Licensor before commencing any building or installation; and

(iv) Obtain and submit to Licensor the following certified and sealed engineering studies. All studies must accurately reflect the existing conditions of the Tower and Licensed Areas and shall not contain any disclaimers, except those allowed in the TIA/EIA-222 Revision G, Classification II standard. All antenna heights must match in all submittals. All submittals shall be sealed by a N.C. licensed engineer (structural analysis shall be sealed by a NC Structural Engineer/Firm). If Licensor has established a list of approved licensed engineers, then Licensee shall utilize engineers or engineering firms from the approved list in accordance with procedures established by Licensor unless Licensee obtains Licensor’s prior written consent to use of a different engineer or engineering firm. Failure to meet these criteria will result in disapproval of the request.

Required studies:
A structural analysis, sealed by a licensed N.C. structural engineer or engineering firm, that establishes that Tower loading and stress specifications will not be exceeded, and including the following:

- Codes and standards used for the analysis - TIA/EIA-222 Revision G, Classification III, as amended from time to time, shall be used for the overall Tower structure unless a different standard is directed by Licensor.
- Wind loading used for the analysis – Fastest mile 80 mph (95 mph three second gusts) with no ice, 30 mph with .75 inch ice thickness and 50 mph (60 mph three second gusts) under service loads.
- Existing and proposed loading, resulting stresses that the overall structure must withstand for the existing and proposed loading, as well as the percentage of total capacity for each.
- Identification by name and contact information for the engineer who visited the Licensed Area for data collection.

An Interference and Intermodulation engineering study which establishes that the modifications or changes to Licensee’s Equipment will not cause inter-modulation problems or interfere with the communications system(s) or equipment of Licensor or any other person or entity located on the Property as of the date on which the Interference and Intermodulation study is conducted. The study shall also establish that Equipment will be and remain in compliance with all applicable Laws and Regulations, including but not limited to those of the FAA, EPA, OSHA, and the FCC.

An inspection report upon completion of any modification. Such report shall show that all equipment, cables, and antennas are installed in accordance with section 4(b) above and the approved submittals as described above.

(v) Provide Licensor with the name and license number(s) of contractor(s) it intends to use for work on the Licensed Areas, which contractor(s) shall be appropriately licensed in the State of North Carolina, for Licensor review and approval. Approval shall not be unreasonably withheld. Licensee shall assure that Licensee and all of its contractor(s) attend a pre-construction conference with Licensor; and

(iv) Clearly mark all Equipment to show Licensee’s name, address, telephone number, the name of the person to contact in case of emergency, FCC call sign, frequency(s) and location, and maintain such marking so it is clearly legible. All coaxial cable and other transmission lines shall be identified in the same manner at the bottom and at the top of each transmission line. All such information shown shall be updated as necessary to keep it current.

(d) Licensee shall, at its sole cost and expense, obtain its electrical power supply directly from the public utility company. Licensee hereby agrees that all power
lines installed by Licensee shall be located as shown on Exhibit 1 or as approved by Licensor.

(e) In the event that Licensee requires fiber, internet, or telephone service (collectively, “telecommunication service”), Licensee, at its sole cost and expense, shall obtain such telecommunication service. Any work performed in connection with the telecommunication service shall comply with the requirements hereof, including the provisions of paragraph 4(a) above. Any telecommunication service installed by Licensee shall be located as shown on Exhibit 1 or as approved by Licensor.

(f) In the event a zoning variance, special use permit, or other similar governmental approval is required in connection with any proposed modification of Licensee’s Equipment or Building, Licensee shall be solely responsible for obtaining the appropriate approval.

(g) Licensee shall reimburse Licensor for Licensor’s reasonable expenses incurred in connection with reviewing plans, specifications, and reports.

5. INTERFERENCE AND TOWER MAINTENANCE:

(a) The operation of Licensee’s Equipment shall not interfere electrically, physically, or in any other manner whatsoever, with the equipment or communications system(s) of Licensor or with any equipment or communications system(s) installed by other licensees prior to the date Licensee’s Equipment (identified in Exhibit 2) was installed. Modifications or updates to Equipment made after the Commencement Date shall be subject to Paragraph 4(c). All Licensee’s repeater systems shall be equipped with, at a minimum, a single stage isolator and a bandpass/reject type duplexer. No notch type duplexers will be allowed. If at any time Licensee fails to have an operating isolator and duplexer as required or if the installation or operation of Licensee’s Equipment interferes with the equipment or communications systems of Licensor or Prior Licensees, Licensee shall upon oral or written request of Licensor, immediately suspend its operations on the Licensed Area and do whatever is necessary to provide operating isolator and duplexer as required and eliminate or remedy such interference. If Licensee fails or refuses to eliminate or remedy the interference, Licensor may, at its option, take such action as it deems necessary to remedy or eliminate the interference at Licensee’s cost and expense. If Licensee is unable to eliminate or remedy the interference, then Licensee shall immediately upon oral or written notice from Licensor turn off Equipment and cease operations on the Licensed Area, removing such Equipment as may be necessary to fully address the interference problem. If Licensee fails or refuses to remove the interfering Equipment, then Licensor may, at its option, immediately and without prior notice perform, or cause to be performed, all necessary removal at Licensee’s cost and expense, and such sums shall be immediately due upon the rendering of an invoice as an additional license fee hereunder. In the event that Licensor elects to provide oral notice as permitted in this
Paragraph 5(a), Licensor must: (i) contact Licensee’s Network Operations Center at 1-800-852-2671; and (ii) send written notice to Licensee by the following business day.

If interference problems are caused to Licensee’s Equipment by the equipment or operations of a licensee who occupies the Property after the date of the Prior Agreement, as defined in Paragraph 32 (“Subsequent Licensee”), it shall be the obligation of Subsequent Licensee to adjust its equipment or operations to remedy the interference or remove its equipment, unless such interference results from modifications to Licensee’s Equipment (see Paragraph 4). Licensor shall not require Licensee to modify its Equipment or adjust its operations to correct interference problems resulting solely from or to a Subsequent Licensee. Licensee has primary responsibility for enforcing its’ rights against Subsequent Licensees with appropriate assistance from Licensor.

(b) Licensee understands and agrees that Licensor may, from time to time, perform, or cause to be performed, corrective maintenance and preventive maintenance to the Tower or Property. If maintenance will affect Licensed Areas or will cause interruption to the operation of Licensee’s Equipment or require the temporary removal of Equipment, Licensor will give Licensee 30 days’ written notice, which may take the form of email notice, and Licensee shall make adjustments as needed, including temporary removal of Licensee’s Equipment from the Tower. In the event of an emergency or the need for emergency repairs to the Property or Tower, Licensee’s operations may be interrupted or Equipment may be required to be temporarily removed without prior notice although Licensor will endeavor to provide as much advance oral or written notice as reasonably possible under the circumstances. If the interruption to Licensee’s operations is expected to last greater than 24 hours, Licensor agrees to work with Licensee, if consistent with Laws and Regulations and otherwise possible, to allow Licensee to install at Licensee’s expense temporary equipment (including a cell on wheels and/or a temporary generator) on the Property at a location acceptable to Licensor in its sole discretion, to attempt to mitigate disruption of Licensee operations.

6. MAINTENANCE AND REMOVAL OF EQUIPMENT:

(a) Licensee at its own cost and expense shall maintain its Equipment, Building and the Licensed Areas free of debris, keeping the same in good condition and repair and in accordance with all applicable Laws and Regulations and this Agreement. All maintenance work shall be performed by contractors licensed by the State of North Carolina. Property is a working fire station that must be ready to respond to emergencies at all times. Licensee may not place items of any type or size, including tools, vehicles, or cranes, outside of Licensed Areas at any time without express, advance, written (includes e-mail) permission from the Fire Chief, Deputy Fire Chief, or Assistant Fire Chief. Licensee shall bear all costs and expenses of moving its Building or Equipment as necessary to enable Town to effect maintenance or repair of Tower. If Licensee at any time causes any damage to the Tower or Property, or if the structural integrity or safety of the Tower is impaired as a result of the presence of Licensee’s Equipment on the Tower, Licensee shall be responsible for the cost of all necessary
modifications and repairs, and shall itself make such repairs, at the discretion of Licensor. Additionally, Licensee shall pay a proportionate share of expenses for Tower maintenance and repair, and shall bear all costs of moving its Building or Equipment as necessary to effect such maintenance or repair. In the event Licensor uses its own work for maintenance or repair, Licensee shall pay a proportionate share of the reasonable value of such repairs or maintenance performed by Licensor’s work force. Licensee’s share shall be determined by dividing the total cost of the repair or maintenance, or the reasonable value thereof, by the total number of licensees, including Licensor, using Tower. The sum of that division shall be Licensee’s share. Licensee’s share shall be due thirty (30) days after a detailed statement showing maintenance or repair procedures and their cost, or the reasonable value thereof, is provided by Licensor to Licensee. Notwithstanding the foregoing or any other provision of this Agreement, Licensor shall have the right to replace the Tower at any time during the Term of this Agreement. The Licensor will give the Licensee as much advance written notice as possible of the replacement, but in no case less than 90 days’ written notice (except in the case of emergencies). Licensee will be allowed to occupy the replacement tower upon its completion subject to all terms of this Agreement. Further, Licensor will consider allowing Licensee, at Licensee expense, to use a temporary communications facility, including a cell on wheels, at the Property until the replacement Tower is completed, provided a temporary facility does not interfere with the construction process and further provided that all Laws and Regulations, including the Town ordinances, such as the Land Development Ordinance, are complied with fully.

(b) Upon the expiration or earlier termination of this Agreement and upon the payment of the License Fee and all other sums due Licensor, Licensee shall remove all Licensee’s Equipment and Building. Such removal work shall be performed by a contractor licensed by the State of North Carolina and in a workmanlike manner, without any interference, damage or destruction to Property, Tower, Tower Site, or any equipment, structures, or operations located thereon, including any other equipment or buildings of other licensees. Any and all interference or damage caused to the Tower, Property or equipment of Licensor or others by such removal shall be immediately repaired or eliminated by Licensee. If Licensee fails to make such repairs or address such interference at Licensee’s sole cost and expense within three (3) days after the occurrence of such damage, injury, or interference, or if Licensee fails to remove all of Licensee’s Equipment and Building within thirty (30) days of the termination of this Agreement, Licensor may perform, or cause to be performed, all necessary removal or repairs at Licensee’s cost and expense and such sum shall be immediately due upon the rendering of an invoice as an additional license fee hereunder.

7. OTHER PROVISIONS AND REQUIREMENTS:

(a) All permitted improvements made to the Tower or Licensed Area by Licensee are subject to the Town’s normal regulatory requirements. Nothing contained in this Agreement shall be deemed or construed so as to restrict or inhibit the Town’s police powers or regulatory authority.
(b) Immediately upon completion of any installation, construction, repair, maintenance, or permitted modification or replacement work, Licensee shall restore any area disturbed to a condition equal to or better than the original condition.

(c) All Equipment of the Licensee must operate so as to comply fully with the noise ordinance of the Town of Cary, as amended from time to time.

(d) Licensee shall not commit, or cause to be committed, any nuisance or waste on the Licensed Area, or commit or permit the commission of any waste or nuisance by its agents, employees, contractors, representatives, or invitees. Neither Licensee nor its agents, employees, contractors, representatives or invitees shall bring any Hazardous Materials onto Property, provided however, when Licensor has approved the use of a temporary generator, petroleum products may be brought onto the Site for use as generator fuel. Hazardous Materials means any chemical, material, substance or other matter that (i) is defined as a hazardous substance, hazardous material or waste, or toxic substance pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and recovery Act, the Hazardous Materials Transportation Act, or any other Law or Regulation regulating hazardous or toxic substances (collectively “Hazardous Materials Laws”), (ii) is regulated, controlled, or governed by any Hazardous Materials Laws, (iii) is petroleum or a petroleum product, or (iv) is asbestos, formaldehyde, a radioactive material, or other injurious or potentially injurious material by itself or in combination with other materials.

(e) Licensor’s right to review and approve contractors, Equipment, site plans, specifications, reports, and work is for Licensor’s purposes only, and neither Licensee nor any other party shall rely on any such reviews or approvals for any reason whatsoever. Unless specifically provided otherwise, Licensor’s approval shall be in its sole discretion. Any approval by Licensor shall be as the owner and operator of the Tower, and not in its regulatory capacity.

8. LIABILITY AND INDEMNITY: To the fullest extent permitted by Laws and Regulations, Licensee shall indemnify and hold harmless Licensor, its officers, employees and agents, from and against any and all losses, costs, liabilities, claims, damages, lawsuits, judgments, penalties and demands whatsoever, including costs of investigation and reasonable expert and legal fees, in connection with (i) the bodily injury or death of any person, (ii) damage to or destruction of any property, (iii) the violation of any Law or Regulation, or (iv) damage to the environment, which may arise out of or be caused by any act or omission of Licensee, its agents, employees, invitees or contractors (hereafter jointly “Licensee or Agents”), or which may arise out of or be caused by the maintenance, presence, use, installation or removal of any Equipment or Building or other property owned or operated by Licensee or Licensee Agents, or which may arise out of or be caused by the breach by Licensee of this Agreement. This includes all costs of any damage done to Licensor’s or any other licensee’s facilities or equipment maintained at the Property.
Licensee hereby acknowledges and assumes all risks associated with locating on the Tower and Property, including but not limited to (i) risks of personal injury and property damage; (ii) interference with its business, Equipment, or operations; (iii) power failures that might be caused by or attributed to Licensor or others located at Property; (iv) damage to or failure of Tower or Property; and (v) any failure of Licensee’s Equipment for any reason whatsoever. Licensee shall make no claim for damages, including consequential damages and business loss or interruption.

These representations and indemnifications shall survive the termination of this Agreement.

9. **DAMAGE TO OR DESTRUCTION OF THE TOWER OR LICENSED AREAS:** If the Tower or Licensed Areas or any part thereof is damaged or destroyed by casualty or by any other cause, Licensor may terminate this Agreement on written notice to Licensee within thirty (30) days after such damage or destruction. If the Licensor does not elect to terminate this Agreement and if the damage or destruction is such that it affects Licensee’s use of Licensed Areas, Licensor shall provide Licensee with a schedule for reconstruction or repair (“Reconstruction Schedule”) within forty-five (45) days after such occurrence. Licensee shall have fourteen days within which it may accept or reject such proposed Reconstruction Schedule in writing. If Licensee rejects the Reconstruction Schedule, this Agreement shall terminate upon Licensor’s receipt of such rejection. If Licensee accepts such Reconstruction Schedule, Licensor shall undertake reconstruction or repairs in accordance with such Reconstruction Schedule and prosecute diligently to completion. The License Fee shall be suspended as of the date of such casualty until the Tower and Licensed Area is restored to a usable condition for Licensee’s operation. If Licensor fails to repair the Tower or Licensed Areas in substantial accordance with Reconstruction Schedule, Licensee may terminate this Agreement by giving written notice of termination to Licensor. Licensor shall not be responsible or liable to Licensee for any loss, damage, or expense that may be occasioned by, through, or in connection with such casualty or termination or for any acts or omissions of other licensees or tenants occupying the Tower or Property, or for any structural or power failure, or by the destruction of or damage to the Tower or Licensed Areas.

10. **INSURANCE:**

   (a) Licensee shall keep in full force and effect during the Initial Term and any Renewal Term, and if applicable, for all time after termination date that Equipment or Building remain on Tower or Tower Site: commercial general liability insurance, including blanket contractual and completed operations coverage with limits of liability of $2,000,000 per occurrence; and $4,000,000 aggregate and business auto liability insurance including hired and non-owned vehicles with a combined single limit of $1,000,000. Licensee may use a combination of primary and excess or umbrella insurance to satisfy the insurance requirements. Said insurance policy shall include Licensor as an additional insured. Licensee shall provide Licensor at least thirty (30)
days prior written notice of any cancellation or non-renewal of any required coverage that is not replaced. Licensee shall, prior to the installation of the Equipment or Building, furnish to Licensor a certificate of insurance evidencing the insurance coverage as specified herein is in full force and effect. Licensee may self-insure with the approval of the Licensee’s Risk Manager any required coverage; however, Licensee’s coverage will be primary. Insurance carrier(s) shall be licensed and admitted to do business in the state of North Carolina.

(b) Notwithstanding the foregoing insurance requirements, the insolvency, bankruptcy, or failure of any insurance company carrying insurance for Licensee, or the failure of any such insurance company to pay claims accruing, shall not be held to waive any of the provisions of this Agreement or relieve Licensee from any obligations under this Agreement.

11. **TAXES:** Licensee shall pay annually an amount equal to any increase in real estate taxes, if any, directly attributable to any Improvement to Licensee’s portion of the Property. If such tax is paid by Licensor, Licensee shall reimburse Licensor for the amount of any such tax payment within sixty (60) days of receipt of sufficient documentation indicating the amount paid and the calculation of Licensee’s pro-rata share; such documentation shall be deemed sufficient if it definitively evidences that portion of the tax increase arising directly out of the Improvement such as, by way of example, the relevant tax assessor’s designation of the value of such Improvement. Upon written request by Licensee, Licensor shall furnish evidence of payment of all taxes.

12. **END OF AGREEMENT – EQUIPMENT AND BUILDING:** Equipment, Building, and other improvements constructed, erected, or placed by Licensee on the Licensed Areas are and shall remain the property of Licensee and shall not be considered fixtures. Licensee shall remove the Building, Equipment, and other Licensee improvements at Licensee’s expense upon the termination of this Agreement for any reason; provided, however Licensee shall not remove underground utilities installed on Property unless specifically required by Licensor.

13. **NOTICES:** Unless otherwise provided, all written notices required to be given hereunder shall be in writing and shall be sent by certified mail, return receipt requested to the other party at the address shown below. Notice given by mail shall be effective upon the earlier of: (a) actual receipt; or (b) 3 days after deposit in the U.S. mail. Any party may change the person to whom or the address to which notices shall be provided by giving written notice to the other party of the change.

Licensee:
Cellco Partnership d/b/a Verizon Wireless
Attention: Network Real Estate
180 Washington Valley Road
Bedminster, New Jersey 07921
14. **DEFAULT AND REMEDIES:** The happening of any one or more of the following events (any one of which may be referred to as an “Event of Default”) during the Term shall constitute a breach of this Agreement: (i) Licensee fails to pay the License Fee or any other fee or charge when due and such failure to pay has not been cured within ten (10) days after receipt of written notice from Licensor; (ii) Licensee fails to comply with or abide by and perform any non-monetary obligation imposed on Licensee under this Agreement within seven (7) days after written notice of such breach; (iii) Licensee abandons the Equipment, Building, or the Licensed Area; (iv) Licensee fails to or is unable to cure interference in violation of Paragraph 5(a) hereinafore; (v) the filing of any case, proceeding, or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, or relief of debtors, seeking to have an order for relief entered with respect to Licensee, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to Licensee or its debts; or (vi) the making by Licensee of an assignment or any other arrangement for the general benefit of creditors under any state statute. Upon the occurrence of an Event of Default, Licensor may pursue any one or more of the following remedies separately or concurrently, without prejudice to any other remedy provided herein or by law: (i) Licensor may terminate this Agreement by giving written notice to Licensee and upon such termination (a) shall be entitled to recover from Licensee damages as may be permitted under applicable law; or (b) shall be entitled to recover from Licensee damages in an amount equal to the License Fee which is due and the total License Fee which would otherwise have become due throughout the remainder of the Term. Upon termination for any reason, Licensor may remove and dispose of all of Licensee’s Equipment, Building, improvements and other personal property located on the Licensed Areas or Property at Licensee’s cost and expense. Costs and expenses incurred by Licensor shall be immediately due to Licensor, as an additional license fee hereunder upon rendering of an invoice to Licensee.

Licensor’s rights to terminate are in addition to those set forth at the end of Paragraph 1.
15. **NON-EXCLUSIVE REMEDIES/NO WAIVER:** The selection of one or more remedies for breach shall not limit a party’s right to invoke any other remedy available under Agreement or by law. No delay, omission or forbearance to exercise any right, power or remedy accruing to a party shall impair any such right, power or remedy or shall be construed to be a waiver of any breach hereof or default. Every right, power or remedy may be exercised from time-to-time and as often as deemed expedient.

16. **ASSIGNMENT:** This Agreement shall bind Licensee and its successors and permitted assigns. Licensee shall not assign or transfer its rights or interests in Agreement, nor shall Licensee delegate its duties under Agreement, without prior written consent of Licensor, which Licensor may withhold in its sole discretion. Notwithstanding the foregoing, Licensee may assign its interest to an affiliate that is as creditworthy as Licensee, meets all of the requirements under this Agreement, possesses all necessary licenses and is qualified to do business in the State of North Carolina without the prior written consent of Licensor, provided Licensee provides immediate notice to Licensor with evidence the affiliate meets the requirements set forth herein and the affiliate agrees in writing to assume this Agreement and perform all of the obligations of Licensee under this Agreement. An affiliate is an entity owned or controlled by Licensee, an entity that owns or controls Licensee, an entity owned or controlled by the same entity that controls or owns Licensee, a successor by merger to Licensee, or an entity which acquires all or substantially all of Licensee’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. No change of stock ownership, partnership interest, or control of Licensee or transfer upon partnership or corporate dissolution of Licensee shall constitute an assignment hereunder.

In the event of an approved assignment and as a condition of such assignment, such person or entity must agree in writing in a document reasonably satisfactory to Licensor to assume all of Licensee’s obligations under this Agreement. An approved assignment shall not release Licensee of any obligation under Agreement and Licensee and permitted assigns shall be subject to all of Town’s defenses.

17. **BINDING ON SUCCESSORS:** Subject to Paragraph 16, this Agreement shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

18. **GOVERNING LAW AND VENUE:** The parties acknowledge Agreement is a “business contract” subject to the provisions of N.C.G.S. Chapter 1G and agree that Agreement and the rights and duties of the Parties shall be governed by the laws of the State of North Carolina, without regards to conflict of laws provisions. The Parties further agree that any dispute arising from Agreement shall be litigated in the courts of the State of North Carolina and any and all suits or actions related to Agreement shall be brought exclusively in Wake County, North Carolina. Service of process may be effected by delivery by any method permitted under the N.C. Rules of Civil Procedure.
on the office or individual specified in Paragraph 13 “Notice” or on any officer of the Contractor.

19. ENTIRE AGREEMENT; AMENDMENTS: This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral, including clickthrough agreements, clickwrap agreements, clickwrap licenses, or similar non-reciprocal agreements (collectively, "clickthrough agreement"). Agreement may be amended only by written amendment signed by both parties. Neither party may amend, or seek to amend, this Agreement by clickthrough agreement.

20. HEADINGS: The headings of sections and subsections are for convenient reference only and shall not be deemed to limit, construe, affect, modify, or alter the meaning of such sections or subsections.

21. SURVIVAL AND SEVERABILITY: Those provisions of this Agreement that by their nature would reasonably be expected to continue after the termination or expiration of this Agreement, including the indemnification provisions, shall survive the termination of this Agreement. If any section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term or provision of the Agreement or the application of same to parties or circumstances other than those to which it was held invalid or unenforceable, shall not be affected thereby and each remaining section, subsection, term or provision of this Agreement shall be valid or enforceable to the fullest extent permitted by law.

22. FURTHER ASSURANCES: Each of the parties agree to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence or confirm this Agreement or any other agreement contained herein the manner contemplated hereby.

23. NO THIRD PARTY BENEFICIARIES. There are no third party beneficiaries to this Agreement.

24. PUBLIC RECORDS. Licensee acknowledges that the records in the custody of Licensor are public records and subject to public records requests. Licensor may provide copies of such records, including copyrighted records, in response to public record requests, except that, upon request of and indemnification by Licensee, the Licensor will not disclose records that meet all of the requirements of a trade secret as set forth in N.C.G.S. 66-152, that are specifically designated as a “trade secret” or “confidential” at the time of initial disclosure by contractor, and that are otherwise entitled to protection under N.C.G.S. 132-1.2(1).

25. GIFTS AND FAVORS. Licensee is aware of and shall comply with laws related to gifts and favors and conflicts of interest and the like, including N.C.G.S. §14-234 and §133-32.
26. **ELECTRONIC VERSION OF AGREEMENT.** Licensor may convert a signed original of this Agreement and any instruments required hereunder to an electronic record pursuant to a North Carolina Department of Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of this Agreement, and any instruments related to Agreement, shall be deemed for all purposes to be an original signed Agreement or instrument, as the case may be.

27. **VERIFICATION OF WORK AUTHORIZATION.** Licensee, and all subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes.

28. **WARRANTIES.** Each of Licensee and Licensor acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power, and authority or capacity, as applicable, to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

29. **NO WAIVER OF SOVEREIGN OR QUALIFIED IMMUNITY.** Nothing in this Agreement shall be construed to mandate purchase of insurance by Town pursuant to N.C.G.S. 160A-485 or to in any way waive Town's defense of sovereign or governmental immunity from any cause of action alleged or brought against any Party for any reason if otherwise available as a matter of law. No officer, agent or employee of Town shall be subject to any personal liability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

30. **NONDISCRIMINATION:** Neither party shall discriminate on any prohibited basis. Contractor shall comply with the Americans with Disabilities Act of 1990 ("ADA").

31. **PRINCIPLES OF INTERPRETATION AND DEFINITIONS:** In this Agreement, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. (2) References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (3) References to a "Section" or "section" or "paragraph" shall mean a section or paragraph of this Agreement. (4) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (5) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this Agreement. (6) "Duties" includes obligations. (7) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (8) The word "shall" is mandatory. (9) The word "day" means
calendar day. (10) Normal business hours means Monday through Friday from 8:00 a.m. until 5:00 p.m. Eastern Standard Time.

32. TERMINATION OF PRIOR AGREEMENT. This Agreement shall supersede and replace that certain Radio Tower Lease Agreement between Licensor and GTE Mobilnet of the Southeast Incorporated, predecessor in interest to Licensee, dated December 9, 1993, as amended by that certain First Amendment to Radio Tower Lease Agreement dated June 7, 1999, that certain Second Amendment to Radio Tower Lease Agreement dated July 29, 2005, that certain Third Amendment to Radio Tower Lease Agreement dated September 22, 2011 and that certain Fourth Amendment to Radio Tower Lease Agreement dated November 17, 2015, referenced by Licensee as Contract #26602 (collectively, the “Prior Agreement”). Upon the execution of this Agreement, the Prior Agreement shall terminate and be replaced by this Agreement. Licensor and Licensee acknowledge that notwithstanding the termination of the Prior Agreement and the commencement of this Agreement, any rental, license, or other payments made pursuant to the Prior Agreement after its termination shall be applied and credited against any rental, license, or other payments due under this Agreement.
IN WITNESS WHEREOF, the parties have executed this License Agreement on the day and year first above written and Licensee hereby warrants and represents that its respective signatory whose signature appears below has been and is on the date of this Agreement duly authorized by all necessary and appropriate corporate action to execute this Agreement.

**LICENSOR**

**Town of Cary**

By: __________________________
(Signature)

Name: _______________________
Title: _______________________

**LICENSEE**

**Cellco Partnership**

d/b/a Verizon Wireless

By: __________________________

Name: Andrea Caldini
Title: Vice President - Field Network
1. The Property: 1.24 acre tract located at 1807 Kildaire Farm Road, Cary NC 27511. See also attached legal description on Page 2 of this Exhibit.

2. Tower Site (Description of the Tower Site):

nine (9) antennas, three (3) raycap boxes, three (3) RRUs, twelve (12) lines of coax, four (4) lines of fiber

3. Location and elevation of Licensee Equipment on Tower:

   126' AGL

4. Description of area for location of Building ("Building Site"): 12’ x 24’-2” precast concrete building with brick exterior

5. Means of access to Building and Tower:

   paved road to double swing gates to compound

6. “Building” (or equipment enclosures):

   Building or Pad Dimensions: 12’ x 24’-2” shelter

   Building Materials: concrete

   Style: Precast concrete

   Heating and Air Conditioning (if any): two (2) three (3) ton wall mount high volume AC units

   Other: N/A
BEGINNING at a point in the eastern right-of-way of Kildaire Farm Road, said point also being the southeast corner of Lot 13, Ponderosa Subdivision, proceeding thence with the southern line of said lot N 62°-38'-46" E 275.00', thence S 17°-27'-36" E 200.00' thence S 62°-38'-46" W 275.00' to the eastern right-of-way of Kildaire Farm Road, thence along said right-of-way N 17°-27'-36" W to the point and place of BEGINNING containing 1.24 acres.
EXHIBIT 2
EQUIPMENT

Equipment installed on the Tower Site and Building Site. Such Equipment shall be at location and elevation approved by Licensor and described on Exhibit 1 and on approved site plan.

Six (6) Andrew LNX-6515DS-A1M antennas
Three (3) Ericsson AIR 32 antennas
Twelve (12) coax lines
Four (4) Raycap boxes
Three (3) RRUs
Four (4) fiber lines

Equipment location: Antennas at 126’ AGL