

# UNOFFICIAL COPY



**Prepared by and Return to:**  
New Cingular Wireless PCS, LLC  
Attn: AT&T Mobility  
C/O: Mastec Network Solutions  
1351 E. Irving Park Road  
Itasca, IL 60143

**Doc#:** 1532017026 **Fee:** \$54.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 11/16/2015 03:09 PM Pg: 1 of 9

Cell Site No.: IL0546  
Cell Site Name: Northbrook  
Fixed Asset Number: 12564902  
State: Illinois  
County: Cook

## SUBJECT TO APPROVAL BY LANDLORD'S LENDER

### SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement")**, dated as of the date below, between **NORTHBROOK BANK & TRUST COMPANY** having its principal office at 1100 Waukegan Road, Northbrook, Illinois 60062 ("**Mortgagee**") and **North Suburban Young Men's Christian Association**, an Illinois not for profit corporation having its principal office/residing at 2705 Techny Road, Northbrook, Illinois 60062 ("**Landlord**"), and **New Cingular Wireless PCS, LLC**, a Delaware limited liability company, having a mailing address of 575 Morosgo Dr. NE, Suite 13-F West Tower, Atlanta, GA 30324 ("**Tenant**"). The Tenant, Mortgagee and Landlord are sometimes collectively referred to herein as the "**Parties**".

#### WITNESSETH:

**WHEREAS**, Tenant has entered into a certain Option and Lease Agreement with an Effective Date of December 13, 2013 (the "**Lease**") with Landlord, covering property more fully described in **Exhibit 1** attached hereto and made a part hereof (the "**Premises**"); and

**WHEREAS**, Landlord has given to Mortgagee a mortgage (the "**Mortgage**") upon property having a street address of 2705 Techny Road, Northbrook, Illinois 60062, being identified on **Exhibit 1** attached hereto ("**Property**"), a part of which Property contains the Premises; and

**WHEREAS**, the Mortgage on the Property is in the original principal sum of One Million Four Hundred Thousand and 00/100 Dollars (\$1,400,000.00), which Mortgage has been recorded in the appropriate public office in and for Cook County, Illinois ("**Mortgage**"); and

**WHEREAS**, Tenant desires to be assured of continued occupancy of the Premises under the terms of the Lease and subject to the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

1. The Lease, all rights of the Tenant, and all of Tenant's right, title and interest in and to the Property covered by the Lease and any lease thereafter executed by Tenant covering any part of the Property are and will be subject, subordinate and inferior in all respects to (a) the Mortgage and the rights

S gyw  
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of the Mortgagee thereunder, and all right, title and interest of the Mortgagee in the Property (but not Tenant's trade fixtures and other personal property), and to all renewals, modifications, consolidations, replacements and extensions thereof; and (b) all other security documents and to all renewals, modifications, consolidations, replacements and extensions thereof now or hereafter securing payment of any indebtedness of the Landlord (or any prior landlord) to Mortgagee which cover or affect all or any portion of the Property (collectively, "**Loan Documents**"), to the full extent of all indebtedness of the Landlord to Mortgagee including without limitation the principal sum, interest thereon, advancements and all indebtedness secured thereby. Without limiting the generality of the foregoing subordination provision, the Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Property, shall be subject and subordinate to the Mortgagee's right, title and interest in and to such proceeds and awards pursuant to the Mortgage or Loan Documents.

2. In the event Mortgagee takes possession of the Premises as mortgagee-in-possession, including but not limited to, by deed in lieu of foreclosure or foreclosure of the Mortgage, Mortgagee agrees not to affect or disturb Tenant's right to possession of the Premises and any of Tenant's other rights under the Lease in the exercise of Mortgagee's rights so long as Tenant is not then in default so long as the Lease is in full effect, after applicable notice and/or grace periods, under any of the terms, covenants, or conditions of the Lease.

3. In the event that Mortgagee succeeds to the interest of Landlord or other landlord under the Lease and/or to title to the Premises, Mortgagee and Tenant hereby agree to be bound to one another under all of the terms, covenants and conditions of the Lease; accordingly, from and after such event, Mortgagee and Tenant will have the same remedies against one another for the breach of an agreement contained in the Lease as Tenant and Landlord had before Mortgagee succeeded to the interest of Landlord; provided, however, that Mortgagee will not be:

(a) liable for any act, omission, default, misrepresentation, or breach of warranty, of any previous landlord (including Landlord) or obligations accruing prior to New Owner's actual ownership of the Property;

(b) subject to any offset, defense, claim or counterclaim which Tenant might be entitled to assert against any previous landlord (including Landlord) unless the Tenant shall have provided the Mortgagee with (A) notice of the applicable default that gave rise to such offset or defense, and (B) the opportunity to cure the same, all in accordance with the terms of **Section 5(b)** below;

(c) bound by any payment of rent, additional rent or other payments, made by Tenant to any previous landlord (including Landlord) for more than one (1) month in advance of the date when due under the Lease except for the Lump Sum Rent Payment made pursuant to **Section 5(a)** of the Lease. Mortgagee consents to the Lump Sum Rent Payment;

(d) bound by any amendment or modification of the Lease which decreases the rent payable by Tenant under the Lease or changes the Term of the Lease, without the written consent of Mortgagee (if such consent is required pursuant to the terms of the Loan Documents); or

(e) liable for any deposit that Tenant may have given to any previous landlord (including Landlord) which has not been transferred to New Owner.

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The provisions of this Agreement regarding attornment by Tenant shall be self-operative and effective without the necessity of execution of any new lease or other document on the part of any party hereto or the respective heirs, legal representatives, successors or assigns of any such party. Tenant agrees, however, to execute and deliver upon the request of Mortgagee or any New Owner, any reasonable instrument or certificate which in the reasonable judgment of Mortgagee or any New Owner may be necessary or appropriate to evidence such attornment, including a new lease of the Premises on the same terms and conditions as set forth in the Lease for the unexpired term of the Lease.

4. In the event that Mortgagee or anyone else acquires title to or the right to possession of the Premises upon the foreclosure of the Mortgage, or upon the sale of the Premises by Mortgagee or its successors or assigns after foreclosure or acquisition of title in lieu thereof or otherwise (each a "New Owner"), Tenant agrees not to seek to terminate the Lease by reason thereof, but will remain bound unto the New Owner so long as the New Owner is bound to Tenant (subject to **Section 3** above) under all of the terms, covenants and conditions of the Lease, except for except in no event shall New Owner be liable for the items listed in **Section 3(a)-(e)** above.

5. **Acknowledgment and Agreement by Tenant.** Tenant acknowledges and agrees as follows:

(a) Tenant will not amend, alter or waive any provision of, or consent to the amendment, alteration or waiver of any provision of the Lease without the prior written consent of Mortgagee. Tenant shall not prepay any rents or other sums due under the Lease for more than one (1) month in advance of the due date therefor. Tenant acknowledges that Mortgagee will rely upon this instrument in connection with the financing being made by Mortgagee and secured, in part, by the Mortgage.

(b) From and after the date hereof, in the event of a default by Landlord which would give Tenant the right, either immediately or after the lapse of time, to terminate the Lease or to claim a partial or total eviction, Tenant will not exercise any such right (i) until it has given written notice of such act or omission to the Mortgagee; and (ii) until Tenant has given Mortgagee the same cure period that is afforded Landlord under the Lease to cure such default, during which period of time Mortgagee shall be permitted to cure or remedy such default; provided, however, that Mortgagee shall have no duty or obligation to cure or remedy any default. It is specifically agreed that Tenant shall not, as to Mortgagee, require cure of any such default which is personal to Landlord, and therefore not susceptible to cure by Mortgagee.

(c) In the event that Mortgagee notifies Tenant of a default under the Mortgage or Loan Documents and demands that Tenant pay its rent and all other sums due under the Lease directly to Mortgagee, Tenant shall honor such demand and pay the full amount of its rent and all other sums due under the Lease directly to Mortgagee, without offset, or as otherwise required pursuant to such notice beginning with the payment next due after such notice of default, without inquiry as to whether a default actually exists under the Mortgage or other Loan Documents, and notwithstanding any contrary instructions of or demands from Landlord.

(d) Tenant has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Premises or the Property, or any portion thereof or any interest therein, and to the extent that Tenant has had, or hereafter acquires, any such right or option, the same is hereby acknowledged to be subject and subordinate to the Mortgage and is hereby waived and released as against Mortgagee and New Owner.

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(e) Mortgagee and any New Owner shall have no obligation nor incur any liability with respect to the erection or completion of any improvements in which the Premises are located or for completion of the Premises or any improvements for Tenant's use and occupancy, either at the commencement of the term of the Lease or upon any renewal or extension thereof or upon the addition of additional space, pursuant to any expansion rights contained in the Lease.

(f) Mortgagee and any New Owner shall have no obligation nor incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession provided that to the extent that the breach of any such warranty shall give the Tenant the right to terminate the Lease pursuant to the terms of the Lease, Tenant shall retain such right to terminate pursuant to the terms of the Lease.

(g) In the event that Mortgagee or any New Owner shall acquire title to the Premises or the Property, Mortgagee or such New Owner shall have no obligation, nor incur any liability, beyond Mortgagee's or New Owner's then equity interest, if any, in the Property or the Premises, and Tenant shall look exclusively to such equity interest of Mortgagee or New Owner, if any, for the payment and discharge of any obligations imposed upon Mortgagee or New Owner hereunder or under the Lease or for recovery of any judgment from Mortgagee, or New Owner, and in no event shall Mortgagee, New Owner, nor any of their respective officers, directors, shareholders, agents, representatives, servants, employees or partners ever be personally liable for such judgment.

6. **Acknowledgment and Agreement by Landlord.** Landlord, as landlord under the Lease and grantor under the Mortgage, acknowledges and agrees for itself and its heirs, representatives, successors and assigns, that: (a) this Agreement does not constitute a waiver by Mortgagee of any of its rights under the Mortgage or any of the other Loan Documents, or in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Mortgage and the other Loan Documents; (b) the provisions of the Mortgage and the other Loan Documents remain in full force and effect and must be complied with by Landlord; and (c) Tenant is hereby authorized to pay its rent and all other sums due under the Lease directly to Mortgagee upon receipt of a notice as set forth in Section 5(c) above from Mortgagee and that Tenant is not obligated to inquire as to whether a default actually exists under the Mortgage or any of the other Loan Documents. Landlord hereby releases and discharges Tenant of and from any liability to Landlord resulting from Tenant's payment to Mortgagee in accordance with this Agreement. Landlord represents and warrants to Mortgagee that a true and complete copy of the Lease has been delivered by Landlord to Mortgagee.

7. Mortgagee understands, acknowledges and agrees that notwithstanding anything to the contrary contained in the Mortgage and/or any related financing documents, including, without limitation, any UCC-1 financing statements, Mortgagee will acquire no interest in any furniture, equipment, trade fixtures and/or other property installed by Tenant on the Property. Mortgagee hereby expressly waives any interest which Mortgagee may have or acquire with respect to such furniture, equipment, trade fixtures and/or other property of Tenant now, or hereafter, located on or affixed to the Property or any portion thereof and Mortgagee hereby agrees that same do not constitute realty regardless of the manner in which same are attached or affixed to the Property.

8. This Agreement will be binding upon and will extend to and benefit the successors and assigns of the parties hereto and to any assignees or subtenants of Tenant which are permitted under the Lease. The term "**Mortgagee**", when used in this Agreement will be deemed to include any person or

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entity which acquires title to or the right to possession of the Premises by, through or under Mortgagee and/or the Mortgage, whether directly or indirectly.

9. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder shall be in writing and shall be deemed sufficiently given or furnished if delivered by personal delivery, by expedited delivery service with proof of delivery, or by registered or certified United States mail, postage prepaid, at the addresses specified at the end of this Agreement (unless changed by similar notice in writing given by the particular party whose address is to be changed). Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt by the parties hereto other than the particular party whose address is to be changed. This Section 9 shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Agreement or in the Lease or in any document evidencing, securing or pertaining to the loan secured by the Mortgage or to require giving of notice or demand to or upon any person in any situation or for any reason.

10. (a) This Agreement supersedes any inconsistent provision of the Lease.
- (b) Nothing contained in this Agreement shall be construed to derogate from or in any way impair, or affect the lien, security interest or provisions of the Mortgage or the other Loan Documents.
- (c) This Agreement shall inure to the benefit of the Parties hereto, their respective successors and permitted assigns, and any New Owner, and its heirs, personal representatives, successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of Mortgagee, all obligations and liabilities of the assigning Mortgagee under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Mortgagee's interest is assigned or transferred.
- (d) THIS AGREEMENT AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS.
- (e) The words "herein", "hereof", "hereunder" and other similar compounds of the word "here" as used in this Agreement refer to this entire Agreement and not to any particular section or provision.
- (f) This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.
- (g) If any provision of the Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not apply to or affect any other provision hereof, but this Agreement shall be construed as if such invalidity, illegality, or unenforceability did not exist.

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IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed as of the last signature date below.

**LANDLORD:**

**North Suburban Young Men's Christian Association,**  
an Illinois Not For Profit Corporation

By: [Signature]  
Name: Howard Schultz  
Title: Executive Director/CEO  
Date: 3/7, 2014

**TENANT:**

**New Cingular Wireless PCS, LLC,**  
a Delaware limited liability company

By: AT&T Mobility Corporation  
Its: Manager

By: [Signature]  
Name: Andrew T. Flowers  
Title: Sr Real Estate & Construction Manager  
Date: March 27, 2014

**MORTGAGEE:**

**NORTHBROOK BANK & TRUST COMPANY,**  
a Illinois Banking Corporation

By: [Signature]  
Name: Kathryn A. Nellis  
Title: VP  
Date: 3/11, 2014

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## LANDLORD (CORPORATION)

STATE OF ILLINOIS )  
 ) ss  
COUNTY OF Cook )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of March, 2014, by Howard Schultz, the Executive Director/CEO of North Suburban Young Men's Christian Association, an Illinois Not For Profit Corporation who is personally known to me.

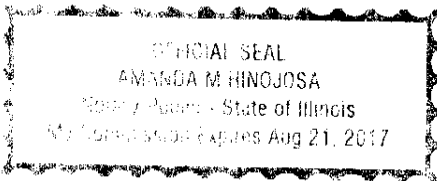


Barbara L. Savino  
Notary Public  
Print Name: BARBARA L SAVINO  
My Commission Expires: 4/22/14

## TENANT

STATE OF Illinois )  
 ) ss  
COUNTY OF Cook )

On the 27 day of March, 2014, before me personally appeared Andrew T. Flowers, who acknowledged under oath that he/she is the Sr Real Estate & Construction Manager, the Manager of New Cingular Wireless PCS, LLC, the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tenant.



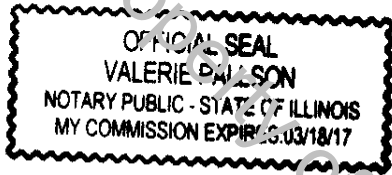
Amanda M. Hinojosa  
Notary Public  
Print Name: Amanda M. Hinojosa  
My Commission Expires: 8/21/17

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## MORTGAGEE (CORPORATION)

STATE OF ILLINOIS )  
 ) ss  
COUNTY OF Cook )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of March, 2014 by Kathryn A. Helms [name of representative] the Executive Vice President [title] of NORTHBROOK BANK & TRUST COMPANY, an Illinois Bank corporation on behalf of the corporation  who is personally known OR ( ) who produced \_\_\_\_\_ as identification.



Valerie Pallson  
Notary Public  
Print Name: Valerie Pallson  
My Commission Expires: 3-18-17

Cook County Clerk's Office



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## EXHIBIT 1

### DESCRIPTION OF PREMISES

The Property is legally described as follows:

THE EAST 289.0 FEET OF THE WEST 816.0 FEET OF THE SOUTH 452.55 FEET OF THE NORTH 485.55 FEET OF LOT 12 IN SCHOOL TRUSTEES SUBDIVISION OF SECTION 16, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

The Premises is legally described as follows:

A PART OF LOT 12, SCHOOL TRUSTEE'S SUBDIVISION, AND BEING LOCATED IN THE NORTHWEST QUARTER (NW ¼) OF THE SOUTHWEST QUARTER (SW ¼), SECTION 16 TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE VILLAGE OF NORTHBROOK, COOK COUNTY, ILLINOIS, CONTAINING 1250 SQUARE FEET (0.029 ACRES) OF LAND AND BEING DESCRIBED BY:

COMMENCING AT THE NORTHWEST CORNER OF LOT 12 OF SAID SCHOOL TRUSTEE'S SUBDIVISION;

THENCE SOUTH 89 DEGREES 52 MINUTES 51 SECONDS EAST 642.77 FEET ALONG THE NORTH LINE OF SAID LOT 12;

THENCE SOUTH 00 DEGREES 07 MINUTES 09 SECONDS WEST 383.77 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST 50 FEET;

THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 25 FEET;

THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST 50 FEET;

THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 25 FEET TO THE POINT OF BEGINNING BEING SUBJECT TO ANY AND ALL EASEMENTS AND RESTRICTIONS OF RECORD.