DRAWN BY AND MAIL TO:
SMITH HELMS MULLISS & MOORE, L.L.P.
214 North Church Street
Charlotte, North Carolina 28202

FORSYTH CO,NC 150 FEE:$ 24.00
PRESENTED & RECORDED: 09/09/1997 4:25PM
DICKIE C. WOOD REGISTER OF DEEDS BY:HOODVA

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement"), is made and entered into this 29th day of August, 1997, by and among **NORTH CAROLINA HOUSING FINANCE AGENCY**, ("Mortgagee"); **FALCON POINTE LIMITED PARTNERSHIP**, a Virginia limited partnership having its principal office in Roanoke, Virginia ("Landlord"); and **AT&T WIRELESS PCS, INC.**, a Delaware corporation, acting by and through its agent Wireless PCS, Inc., a Delaware corporation having an office at 2223 Executive Street, Charlotte, North Carolina 28208 (hereinafter called "Tenant").

W I T N E S S E T H:

WHEREAS, Tenant and Landlord have entered into a certain lease dated April 30, 1996 (the "Lease"), covering property more fully described in Exhibit 1 attached hereto and made a part hereof (the "Leased Premises"); and

WHEREAS, Landlord conveyed to A. Robert Kucab, as trustee, for the benefit of Mortgagee a deed of trust mortgage (the "Mortgage") upon property located at the intersection of Penny Lane and Falcon Point Drive, Forsyth County, Southfork Township, North Carolina (the "Property"), a part of which Property contains the Leased Premises;

WHEREAS, the Mortgage secures the indebtedness of Landlord to Mortgagee in the original principal sum of Eighteen Thousand and No/100 Dollars ($18,000.00) and has been recorded at Book 1725, Page 3841 in the real estate records of Forsyth County, North Carolina.

WHEREAS, Tenant desires to be assured of continued occupancy of the Leased 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. So long as this Agreement shall remain in full force and effect, the Lease is and shall be subject and subordinate to the lien and effect of the Mortgage insofar as it affects the real property and fixtures of which the Leased Premises forms a part (but not Tenant's trade fixtures and other personal property), and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal sum secured thereby and interest thereon, with the same force and effect as if the Mortgage had been executed, delivered, and duly recorded among the above-mentioned public records, prior to the execution and delivery of the Lease.

Name: SNDA FALCON POINTE
Doc No: 140934

2. Tenant certifies that the Lease is presently in full force and effect and represents the entire agreement between Landlord and Tenant, and has not in any way been amended, modified, assigned or sublet; that Tenant has received no notice of default under the Lease; that Landlord is not in default under the Lease and there is no other ground for ceasing or reducing the payment of rental or for cancellation or termination of the Lease; that no rent under the Lease has been paid more than one month in advance of its due date; and that Tenant, as of this date, has no charge, lien, or claim of offset under the Lease, or otherwise against the rents or other amounts due or to become due thereunder.

3. In the event Mortgagee takes possession of the Leased Premises, whether as mortgagee-in-possession or by deed in lieu of foreclosure, foreclosure of the Mortgage or other measures, Mortgagee agrees that in the exercise of its rights, Mortgagee shall not affect or disturb Tenant's right to possession of the Leased Premises or any of the Tenant's other rights under the Lease so long as Tenant is not in default, after applicable notice and/or grace periods, under any of the terms, covenants, or conditions of the Lease.

4. In the event Mortgagee succeeds to the interest of Landlord or any successor of Landlord under the Lease and/or title to the Leased Premises, Mortgagee and Tenant hereby agree to be bound to one another under all of the terms, covenants, and conditions of the Lease, except the Lease shall be amended at that time as follows:

(a) Subsection 7(a) of the Lease is amended by deleting in its entirety the sixth (6th) sentence which reads:

> "Any property which is not removed by Tenant within ninety (90) days after the expiration or earlier termination of this Lease shall, upon the expiration of said ninety (90) day period, become the property of Landlord, and Tenant shall thereafter have no rights, obligations or liabilities whatsoever with respect thereof."

and replacing the aforementioned with the following:

> "Upon termination of this Lease, Tenant shall remove its Antenna Facilities and other personal property within a reasonable time, not to exceed ninety (90) days, and in the event Tenant fails to remove the Antenna Facilities or any of its other property, Landlord may remove the same at Tenant's sole cost and expense. Tenant shall pay to Landlord upon written demand the reasonable cost of such removal. The terms of this subsection shall survive the expiration of the term of the Lease."

(b) Subsection 7(d) of the Lease is amended by the addition of the following language to the end thereof:

> "In the event it becomes necessary for Tenant to relocate its utilities within the Property, any such relocation shall not interfere with any of Landlord's

improvements or impending improvements on the Property. Tenant's relocation of its utilities shall require Landlord's approval which approval shall not be unreasonably denied, withheld or delayed."

(c) Subsection 12(a) of the Lease is amended by inserting the phrase "Except the extent covered under Subsection 11(b) above," at the beginning of the first sentence.

(d) Subsection 12(a) is further amended by deleting the words "intentional act or omission" in the eighth line thereof and inserting in their place "willful misconduct."

(e) Subsection 12(b) of the Lease is amended by inserting the phrase "Except to the extent covered under Subsection 11(b) above," at the beginning of the first sentence thereof.

(f) Subsection 12(b) of the Lease is further amended by deleting the words "any act, omission" in the fifth and sixth lines thereof, and inserting in their place "any willful misconduct."

(g) Paragraph 3 of Section 15 on Page 9 of the Lease is amended by deleting the words "not caused solely by Tenant" in the fourth line thereof, and inserting in their place "except to the extent caused by Tenant (for which Tenant shall be responsible)."

(h) Section 16 of the Lease is amended by adding the following to the end of the first sentence thereof:

"; provided, however, that no such assignment shall be assigned to an assignee or sublessee having a net worth of less than Two Million and No/100 Dollars ($2,000,000.00)."

(i) Section 16 of Lease is amended by deleting in its entirety the fourth sentence thereof which reads:

"In addition to the foregoing, Tenant may permit the use of the Premises and Property by others (either in lieu of or in conjunction with the use thereof by Tenant) for the Permitted Use."

and replacing the aforementioned with the following:

"In addition to the foregoing, the Tenant may permit the use of the Premises, together with the easements over the Property as set forth in this Lease, by others (either in lieu of or in conjunction with the use thereof by Tenant) for the Permitted Use."

(j) Exhibit A of the Lease is amended by deleting in its entirety the third sentence which reads:

"If for any reason the Easement as then located shall at any time during the term of this Lease prove inadequate to provide Tenant with the rights and access sought to be provided by the foregoing Site Lease Agreement, the Easement shall be relocated to such other portions of the Property as Tenant reasonably determines will enable Tenant to have and enjoy such rights and access."

and replacing the aforementioned with the following:

"If the Easement (whose location is limited to the area of the Property as depicted on this survey) proves to be inadequate to provide Tenant with the rights and access sought to be provided by the foregoing Site Lease Agreement, the Easement shall be relocated to such other portions of the Property as Landlord and Tenant mutually and reasonably determine will enable Tenant to have and enjoy such rights and access. Tenant acknowledges that in consideration of the placement of the relocated Easement, such relocation shall not interfere with any existing improvements or planned future development of the Property by Landlord."

5. Should Mortgagee succeed to the interest of Landlord or any successor of Landlord under the Lease and/or to title to the Leased Premises, Mortgagee and Tenant hereby agree to be bound to one another under all of the terms, covenants and conditions of the Lease. From and after the occurrence of such event, Mortgagee and Tenant shall have the same remedies for the breach of any provision of the Lease that Tenant and Landlord had before Mortgagee succeeded to Landlord's interest; provided, however, that Mortgagee shall not be:

(a) personally liable for any act or omission of any prior landlord (including Landlord); or

(b) bound by any rent or additional rent which Tenant might have paid for more than the one month in advance to any prior landlord (including Landlord); or

(c) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); or

(d) bound by any amendment or modification of the Lease made without Mortgagee's consent, which consent shall not be unreasonably withheld or delayed.

6. In the event that any other party acquires title to or the right to possession of the Leased Premises upon the foreclosure of the Mortgage, or upon the sale of the Leased Premises by Mortgagee or its successors or assigns after foreclosure or acquisition of title in lieu thereof or otherwise, Tenant agrees not to seek to terminate the Lease by reason thereof, but shall remain bound under the Lease so long as the new owner is bound thereunder (subject to Paragraph 3 above).

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 shall acquire no interest in any towers, cables, equipment 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 towers, cables, equipment 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 shall be binding upon and shall inure to and benefit the respective successors and assigns of the parties hereto and any assignees or subtenants of Tenant which are permitted under the Lease. As used herein, the term "Mortgagee" shall be deemed to include any person or entity which directly or indirectly acquires title to or the right to possession of the Leased Premises by, through or under Mortgagee and/or the Mortgage.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed under seal this 29th day of AUGUST, 1997.

TENANT:

AT&T WIRELESS PCS, INC.

By: Wireless PCS, Inc., its Agent

By: _____ (SEAL)
William Goddard
Site Development Manager

MORTGAGEE:

NORTH CAROLINA HOUSING FINANCE AGENCY

By: _____
Title: Executive Director

ATTEST: _____
Secretary

[CORPORATE SEAL]

[Landlord Signature Page Follows Notary Acknowledgments for Tenant and Mortgagee]

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I, Cori Senna **, a Notary Public, do hereby certify that WILLIAM GODDARD** personally appeared before me this day and acknowledged that he is the Site Development Manager of **WIRELESS PCS, INC.,** which is the agent for **AT&T WIRELESS PCS, INC.**, a Delaware corporation, and that by authority duly given, and as the act of the Wireless PCS, Inc. for and on behalf of AT&T Wireless PCS, Inc., the foregoing instrument was signed in its name by him as its Site Development Manager.

WITNESS my hand and official seal this 3rd day of September, 1997.

Cori Senna
Notary Public

CORI SENNA NOTARY PUBLIC IREDELL COUNTY, N.C.

My Commission Expires:
My Commission Expires November 20, 2000

[NOTARIAL SEAL/STAMP]

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, Denise E. Brooks, a Notary Public, do hereby certify that Donna A. Pace personally appeared before me this day and acknowledged that she is the _____ Secretary of **NORTH CAROLINA HOUSING FINANCE AGENCY** and that by authority duly given, and as the act of the corporation, the foregoing instrument was signed in its name by its Executive Director, sealed with its corporate seal, and attested by Donna A. Pace as its _____ Secretary.

WITNESS my hand and official seal this 29th day of August, 1997.

Denise E. Brooks
Notary Public

DENISE E. BROOKS NOTARY PUBLIC WAKE COUNTY

My Commission Expires: 3-12-2001

[NOTARY SEAL]

[See Next Page For Counterpart Signature Page of Landlord]

Landlord Counterpart Signature Page

LANDLORD:

FALCON POINTE LIMITED PARTNERSHIP **(SEAL)**

By: F&W Management Corporation, its General Partner

By: _____
_____ President

ATTEST:
_____
Secretary

[CORPORATE SEAL]

STATE OF Virginia

COUNTY OF Roanoke

I, Janet Scott, a Notary Public for said County and State, do hereby certify that Dan N. Joiner, personally appeared before me this day and acknowledged that he~~/she~~ is the _____ Secretary of **F&W MANAGEMENT CORPORATION,** a VA corporation, (the "Corporation") which is a General Partner in **FALCON POINTE LIMITED PARTNERSHIP,** a Virginia limited partnership (the "Partnership") and that by authority duly given, and as the act of the Corporation as the General Partner of the Partnership, the foregoing instrument was signed in the Corporation's name by its _____ President, sealed with its corporate seal, and attested by him~~/her~~ as its Secretary on behalf of the Partnership.

WITNESS my hand and notarial seal, this 5th day of Sept., 1997.

Janet Scott
Notary Public

My Commission Expires:

Nov. 30, 1998

[NOTARIAL SEAL]

STATE OF NC – FORSYTH CO.
The Foregoing certificate of Cori Senna, Denise E Brooks, Janet Scott, NP(s)
is certified to be correct this the 9th day of Sept., 1997
Dickie C. Wood, Register of Deeds by: _____ Asst/Deputy

8

August 22, 1997

BK1963 P3015

EXHIBIT 1

Two tracts or parcels of land in Forsyth County, North Carolina, in Southfork Township, and described as follows:

All those two certain tracts of parcels of land located at the intersection of Penny Lane and Falcon Point Drive, one tract containing 4.7624 acres, and one tract containing 13.7113 acres, all as more fully shown on a "Map for Falcon Point Phase One" prepared by Richard Howard, dated June 19, 186, and recorded in Plat Book 31, Page 39, in the office of the Register of Deeds for Forsyth County, North Carolina.