

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A FIRST AMENDMENT TO TOWER ATTACHMENT-GROUND LEASE AGREEMENT AND MEMORANDUM OF AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC; AND FOR OTHER PURPOSES.

WHEREAS, the City of North Little Rock (“the City”) has had a telecommunications equipment ground lease agreement in effect for property located at 3417 Magnolia since May, 1999 with the current ground lease to expire on May 31, 2019; and

WHEREAS, New Cingular Wireless PCS, LLC (“New Cingular”), successor by merger to Southwestern Bell Wireless, Inc., desires to amend the agreement to extend the term thereof and to permit the lessee to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including emergency 911 communication services; and

WHEREAS, it is in the best interests of the City that it enter into an amendment to the Tower Attachment/Ground Lease Agreement and Memorandum of Agreement with New Cingular Wireless PCS.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor is hereby authorized to enter into a First Amendment to Tower Attachment/Ground Lease Agreement (said First Amendment being substantially similar to Exhibit “A” attached hereto) and Memorandum of Agreement (substantially similar to Exhibit “B” attached hereto) with New Cingular Wireless PCS to extend the term of the telecommunications equipment ground lease for property located at 3417 Magnolia and to permit the lessee to add, modify and/or replace equipment at the site.

SECTION 2: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

Mayor Joe A. Smith

SPONSOR:

ATTEST:



Mayor Joe A. Smith

Diane Whitbey, City Clerk

APPROVED AS TO FORM:


C. Jason Carter, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/b

FILED	<u>11:02</u>	A.M.	_____	P.M.
By	<u>City Atty Carter</u>			
DATE	<u>9-8-15</u>			
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas				
RECEIVED BY	<u>J. Marshall</u>			

Cell Site No.: AR1049
Cell Site Name: PARK HILL
Fixed Asset No.: 10006692
Market: OK / AR
Address: 3417 Magnolia, North Little Rock, AR 72116



FIRST AMENDMENT TO TOWER ATTACHMENT / GROUND LEASE AGREEMENT

THIS FIRST AMENDMENT TO TOWER ATTACHMENT / GROUND LEASE AGREEMENT ("**First Amendment**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is by and between The City of North Little Rock, Arkansas, having a mailing address of 120 Main Street, North Little Rock, AR 72114 (hereinafter referred to as "**Lessor**"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, successor by merger to Southwestern Bell Wireless Inc., having a mailing address of 575 Morosgo Drive NE, Atlanta, GA 30324 (hereinafter referred to as "**Lessee**").

WHEREAS, Lessor (or its respective predecessor-in-interest) and Lessee (or its respective predecessor-in-interest) entered into a Tower Attachment / Ground Lease Agreement dated May 24, 1999 (hereinafter, the "**Agreement**"), whereby Lessor leased to Lessee certain Leased Premises, therein described, that are a portion of the property ("**Property**") located at 3417 Magnolia, North Little Rock, AR; and

WHEREAS, the term of the Agreement will expire on May 31, 2019, and the parties mutually desire to renew the Agreement, memorialize such renewal period and modify the Agreement in certain other respects, all on the terms and conditions contained herein; and

WHEREAS, Lessor and Lessee desire to amend the Agreement to extend the term of the Agreement; and

WHEREAS, Lessor and Lessee desire to amend the Agreement to adjust the Rent (as defined below) in conjunction with the modifications to the Agreement contained herein; and

WHEREAS, Lessor and Lessee desire to amend the Agreement to modify the notice section thereof; and

WHEREAS, Lessor and Lessee desire to amend the Agreement to permit Lessee to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services; and

WHEREAS, Lessor and Lessee desire to amend the Agreement to clarify scope of Lessee's permitted use of the Leased Premises; and

WHEREAS, Lessor and Lessee desire to amend the Agreement to provide Lessee the right to enlarge the Leased Premises; and

WHEREAS, Lessor and Lessee, in their mutual interest, wish to amend the Agreement as set forth below accordingly.

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NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree that the recitals set forth above are incorporated herein as if set forth in their entirety and further agree as follows:

1. **Extension of Term.** The term of the Agreement shall be extended to provide that the Agreement has a new initial term of five (5) years ("**New Initial Term**") commencing on June 1, 2019 ("**New Term Commencement Date**"). As of the New Term Commencement Date, the term provided in the Agreement and any extensions thereof, as applicable, shall be void and of no further force and consequence. The Agreement will automatically renew, commencing on the expiration of the New Initial Term, for up to five (5) separate consecutive additional periods of five (5) years each (each such five (5) year additional period is hereinafter referred to as an "**Additional Extension Term**" and each such Additional Extension Term shall be considered an Extension Term under the Agreement), upon the same terms and conditions of the Agreement, as amended herein, without further action by Lessee unless Lessee notifies Lessor in writing of Lessee's intention not to renew the Agreement at least sixty (60) days prior to the expiration of the then current Additional Extension Term. The New Initial Term, the Additional Extension Term are collectively referred to as the Term ("**Term**").

2. **Rent.** Commencing on June 1, 2019, the current rent payable under the Agreement shall be Twenty Thousand Seventy-Five and No/100 Dollars (\$20,075.00) per year (the "**Rent**"), and shall continue during the Term, subject to adjustment as provided herein. Paragraph 3 of the Agreement shall be amended to provide that Rent shall be adjusted as follows: commencing on June 1, 2024, and each Additional Extension Term exercised thereafter, the Annually Rent will increase by ten percent (10%) over the Rent paid during the previous Term.

3. **Expansion of Permitted Use.** Lessee, its personnel, invitees, contractors, agents, sublessees, or its authorized sublessees, or assigns may use the Leased Premises, at no additional cost or expense, for the transmission and reception of any and all communications signals and to modify, supplement, replace, upgrade, expand, including but not limited to the number and type(s) of antennas, or refurbish the equipment and/or improvements thereon (collectively, "**Communications Facility**"), or relocate the same within the Leased Premises at any time during the term of the Agreement for any reason, or in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services, or for any other reason. Lessor shall reasonably cooperate in obtaining governmental and other use permits or approvals necessary or desirable for the foregoing permitted use. If Lessor does not comply with the terms of this section, in addition to Lessor any other rights it may have at law, Lessee may terminate the Agreement and shall have no further liability to Lessor. If Lessor does not comply with the terms of this section, Lessee will have the right to exercise any and all rights available to it under law and equity, including the right to cure Lessor's default and to deduct the costs of such cure from any monies due to Lessor from Lessee.

4. **Rental Stream Offer.** If at any time after the date of this First Amendment, Lessor receives a bona fide written offer from a third party or receives a modified bona fide written offer from a third party seeking an assignment or transfer of the Rent payments associated with the

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Agreement (“**Rental Stream Offer**”), Lessor shall immediately furnish Lessee with a copy of the Rental Stream Offer. Lessee shall have the right within ninety (90) days after it receives such copy to match the Rental Stream Offer and agree in writing to match the terms of the Rental Stream Offer. Such writing shall be in the form of a contract substantially similar to the Rental Stream Offer. If Lessee chooses not to exercise this right or fails to provide written notice to Lessor within the ninety (90) day period, Lessor may assign the right to receive Rent payments pursuant to the Rental Stream Offer, subject to the terms of the Agreement. If Lessor attempts to assign or transfer Rent payments without complying with this Paragraph, the assignment or transfer shall be void. Lessee shall not be responsible for any failure to make payments under the Agreement and reserves the right to hold payments due under the Agreement until Lessor complies with this Paragraph.

5. **Expansion of the Leased Premises.** Lessor grants, to the extent practicable and on a space available basis, the Lessee the right to enlarge the Leased Premises or the Lessor shall make space available on the Property for Lessee so that Lessee or its authorized sublessees may implement any necessary modifications, supplements, replacements, refurbishments, or expansions to the Communications Facility or to any equipment related thereto, or for any other reasons, as determined by Lessee in its sole discretion. Should Lessee exercise the right to expand the Leased Premises, Lessee will pay and Lessor will accept as additional Rent under the Agreement an amount equal to the then current Rent calculated on a per square foot basis as multiplied by each additional square foot added to the Leased Premises. Upon notice to Lessor, a description and/or depiction of the modified Leased Premises ground will become part of the Agreement without any additional action on the part of Lessee and Lessor; however, at the request of Lessee, the parties will execute a Memorandum of Agreement in recordable form memorializing the modification of the ground space of Lessor's Property, which either party may record at its option.

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

7. **Acknowledgement.** Lessor acknowledges that: 1) this First Amendment is entered into of the Lessor's free will and volition; 2) Lessor has read and understands this First Amendment and the underlying Agreement and, prior to execution of this First Amendment, was free to consult with counsel of its choosing regarding Lessor's decision to enter into this First Amendment and to have counsel review the terms and conditions of this First Amendment; 3) Lessor has been advised and is informed that should Lessor not enter into this First Amendment, the underlying Agreement between Lessor and Lessee, including any termination or non-renewal provision therein, would remain in full force and effect.

8. **Notices.** Paragraph 19 of the Agreement is hereby deleted in its entirety and replaced with the following:

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

If to Lessee:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: AR1049
Cell Site Name: PARK HILL (AR); Fixed Asset No.: 10006692
575 Morosgo Drive NE
Atlanta, GA 30324

With a required copy of the notice sent to the address above to AT&T Legal at:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site #: AR1049
Cell Site Name: PARK HILL (AR); Fixed Asset No: 10006692
208 S. Akard Street
Dallas, Texas, 75202-4206

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

And as to Lessor:

The City of North Little Rock, Arkansas
120 Main Street
North Little Rock, AR 72114

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

9. Memorandum of Agreement. Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Agreement substantially in the form of the Attachment 1. Either party may record this memorandum at any time, in its absolute discretion.

10. Other Terms and Conditions Remain. In the event of any inconsistencies between the Agreement and this First Amendment, the terms of this First Amendment shall control. Except as expressly set forth in this First Amendment, the Agreement otherwise is unmodified and remains

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in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this First Amendment.

11. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

[NO MORE TEXT ON THIS PAGE - SIGNATURES TO FOLLOW ON NEXT PAGE]

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IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute this First Amendment on the dates set forth below.

LESSOR:
The City of North Little Rock, Arkansas

LESSEE:
New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____
Joe A. Smith, Mayor

By: _____

Print Name: _____

Date: _____

Title: _____

Date: _____

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]

Cell Site No.: AR1049
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Attachment 1

Memorandum of Agreement

Cell Site No.: AR1049
Cell Site Name: PARK HILL
Fixed Asset No.: 10006692
Market: OK / AR
Address: 3417 Magnolia, North Little Rock, AR 72116

Exhibit A

Copy of Agreement



THIS DOCUMENT PREPARED BY,
and
WHEN RECORDED RETURN TO:

Md7, LLC
10590 W. Ocean Air Drive, Suite 300
San Diego, CA 92130

PARCEL #: 33N-018.05-014.01

SPACE ABOVE FOR RECORDER'S USE

Re: Cell Site #: AR1049
Cell Site Name: PARK HILL
Fixed Asset Number: 10006692
State: AR
County: Pulaski

**MEMORANDUM
OF
AGREEMENT**

This Memorandum of Agreement is entered into on this ____ day of _____, 201__, by and between The City of North Little Rock, Arkansas, having a mailing address at 120 Main Street, North Little Rock, AR 72114 (hereinafter referred to as "**Lessor**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, successor by merger to Southwestern Bell Wireless Inc., having a mailing address of 575 Morosgo Drive NE, Atlanta, GA 30324 (hereinafter referred to as "**Lessee**").

1. Lessor and Lessee (or their predecessors in interest) entered into a certain Tower Attachment / Ground Lease Agreement dated May 24, 1999, as amended by that certain First Amendment to Tower Attachment / Ground Lease Agreement dated _____, 201__ (hereinafter, collectively, the "**Agreement**") for the purpose of installing, operating and maintaining a communications facility and other improvements at Lessor's real property located in the City of North Little Rock, County of Pulaski, commonly known as 3417 Magnolia. All of the foregoing are set forth in the Agreement.
2. The New Initial Term will be five (5) years ("**New Initial Term**") commencing on June 1, 2019, with five (5) successive five (5) year options to renew.
3. The portion of the land being leased to Lessee (the "**Leased Premises**") is described in **Exhibit 1** annexed hereto.
4. This Memorandum of Agreement is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the

event of a conflict between the provisions of this Memorandum of Agreement and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

[NO MORE TEXT ON THIS PAGE - SIGNATURES TO FOLLOW ON NEXT PAGE]

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

LESSOR:
The City of North Little Rock, Arkansas

LESSEE:
New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____
Joe A. Smith, Mayor

By: _____

Print Name: _____

Date: _____

Title: _____

Date: _____

Exhibit 1 to Memorandum of Agreement

Legal Description

Street Address: 3417 Magnolia, North Little Rock, AR 72116

Parcel #: 33N-018.05-014.01

That certain Leased Premises (and access and utility easements) on a portion of the real property described as follows:

Part of Lot 21 and Lot 22 of Block No. 33, Park Hill Addition to the City of North Little Rock, Pulaski County, Arkansas.