

Cell Site Name: CITY OF LK WALES.GSM
Fixed Asset No. 10016558
Market: North Florida
Address: 138 East Sessoms Avenue, Lake Wales, FL 33853

FIFTH AMENDMENT TO TOWER OPTION AND LEASE AGREEMENT

THIS FIFTH AMENDMENT TO TOWER OPTION AND LEASE AGREEMENT (“**Fifth Amendment**”) dated as of the later date below is by and between City of Lake Wales, a Florida municipality, having a mailing address at P.O. Box 1320, Lake Wales, FL 33859 (hereinafter referred to as “**Lessor**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address at 1025 Lenox Park Boulevard NE, 3rd Floor, Atlanta, GA 30319 (hereinafter referred to as “**Tenant**”).

WHEREAS, Lessor and Tenant (or its predecessor ~~in interest~~) entered into a Tower Option and Lease Agreement dated March 19, 1998, as amended by that certain Amendment No. 1 dated June 9, 1998, a Corrected Amendment No. 1 dated October 22, 1998, a Second Amendment to Tower Option and Lease Agreement dated May 20, 2008, a Third Amendment to Tower Option and Lease Agreement dated May 9, 2011 and a Fourth Amendment to Tower Option and Lease Agreement dated October 22, 2014, (collectively referred to as the “**Agreement**”), whereby Lessor leased to Tenant that certain Leased Parcel, therein described, that are a portion of the Property located at 138 East Sessoms Avenue, Lake Wales, FL 33853; and

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

WHEREAS, Lessor and Tenant desire to modify, as set forth herein, the Rental payable under the Agreement; and

WHEREAS, Lessor and Tenant desire to modify, as set forth herein, the Tenant’s obligations to pay Rental to Lessor for a Rental Guarantee Period, as defined below; and

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

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

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Tenant agree as follows:

1. **Term.** The Term of the Agreement shall be amended to provide that the current term, which commenced on May 1, 2016 (“**Current Term**”), will be renewed commencing on May 1, 2019, upon the same terms and conditions of the Agreement, for six (6) additional five (5) year terms (each an “**Extension Term**”). Hereafter, “Term” shall include the Current Term and any applicable Extension Terms. The Terms will automatically renew without further action by Tenant, unless Tenant notifies Lessor in writing of Tenant’s intention not to renew the Agreement at least sixty (60) days prior to the expiration of the Current Term or any Extension Term. Lessor agrees and acknowledges that, except as such permitted use or other rights may be amended herein, Tenant may continue to use and exercise its rights under the Agreement as permitted prior to the first Extension Term.

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2. **Modification of Rental.** Commencing on May 1, 2019 and ending April 30, 2024, the Rental payable under the Agreement shall be in accordance with the following Rental schedule, and shall continue during the Term, subject to adjustment, if any, as provided below.

<u>Start Date – End Date</u>	<u>Rental</u>
May 1, 2019 – April 30, 2020	\$3,600.00 per month
May 1, 2020 – April 30, 2021	\$3,600.00 per month
May 1, 2021 – April 30, 2022	\$3,600.00 per month
May 1, 2022 – April 30, 2023	\$3,600.00 per month
May 1, 2023 – April 30, 2024	\$3,600.00 per month

3. **Modification of Tenant's Obligation to Pay – Rental Guarantee.** Notwithstanding Tenant's obligations to pay Rental set forth under the Agreement, for a seventy-two (72) month period commencing May 1, 2019 and ending April 30, 2025 ("Rental Guarantee Period"), Tenant's obligation to pay Rental is guaranteed and such obligation will not be subject to offset or cancellation by Tenant. Notwithstanding the foregoing, if Lessor exercises any of Lessor's rights to terminate the Agreement, if any, other than the Lessor's right to terminate the Agreement due to the default of Tenant under the terms of the Agreement beyond any applicable grace period, Tenant will be released from any and all of its obligations to pay Rental during the Rental Guarantee Period as of the effective date of the termination. In addition, Tenant shall be released from any and all of its obligations to pay Rental during the Rental Guarantee Period if the following shall occur: (a) Lessor is in breach of the Agreement, including but not limited to any default under the terms of the Agreement beyond any applicable grace and cure period; (b) there is a foreclosure of the Property which results in a termination of the Agreement; (c) the Lessor shall require Tenant to relocate Tenant's equipment and facilities to a location that is not acceptable to Tenant in its reasonable business judgment if allowed for in the Agreement, or (d) any existing government permits and/or approvals cannot be obtained or maintained, at no fault of the Tenant. If the Agreement is further modified in the future with an obligation for Tenant to pay additional Rental, the payment of Rental guarantee established in this paragraph will not be diminished or limited, but such Rental guarantee will not extend to that future additional Rental obligation.

4. **Future Rental Payments.** Effective May 1, 2019, Section 4 of the Third Amendment is deleted in its entirety and replaced with the following:

"The Agreement is amended to provide that commencing on May 1, 2024, Rental shall increase by one and seven tenths percent (1.7%) over the Rental paid during the previous year and on an annual basis thereafter."

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5. **Permitted Use.** Tenant, its personnel, invitees, contractors, agents, subtenants, or its authorized sublessees, or assigns may use the Leased Parcel, 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, or relocate the same within the Leased Parcel 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 any other rights it may have at law, Tenant may terminate the Agreement and

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shall have no further liability to Lessor. If Lessor does not comply with the terms of this section, Tenant 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 Tenant. Further, notwithstanding anything to the contrary contained herein, Tenant's Permitted Use shall not materially impact the structural integrity of the Tower or Leased Parcel. In the event Tenant proposes to install additional antennas that increase the structural weight, Tenant agrees to provide a passing third-party structural analysis, at Tenant's sole cost and expense. Tenant's upgrades will not interfere with Lessor's other tenants on Lessor's Tower operating within their respective frequencies and in accordance with all applicable laws and regulations.

6. Sale of Property.

- (a) Lessor shall not be prohibited from the selling, leasing or use of any of the Property or the surrounding property except as provided below.
- (b) If Lessor, at any time during the Term of the Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Leased Parcel, or all or any part of the Property or surrounding property, to a purchaser other than Tenant, Lessor shall promptly notify Tenant in writing, and such rezoning, sale, subdivision or transfer shall be subject to the Agreement and Tenant's rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Lessor or its successor shall send the documents listed below in this subsection (b) to Tenant. Until Tenant receives all such documents, Tenant shall not be responsible for any failure to make payments under the Agreement and reserves the right to hold payments due under the Agreement.
 - i. Old deed to Property
 - ii. New deed to Property
 - iii. Bill of Sale or Transfer
 - iv. Copy of current Tax Bill
 - v. New IRS Form W-9
 - vi. Completed and Signed AT&T Payment Direction Form
 - vii. Full contact information for new Lessor including phone number(s)
- (c) Lessor agrees not to sell, lease or use any areas of the Property or surrounding property for the installation, operation or maintenance of other wireless communications facilities if such installation, operation or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion. Lessor or Lessor's prospective purchaser shall reimburse Tenant for any costs and expenses of such testing. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Lessor shall be prohibited from selling, leasing or using any areas of the Property or the surrounding property for purposes of any installation, operation or maintenance of any other wireless communications facility or equipment.
- (d) The provisions of this Section shall in no way limit or impair the obligations of Lessor under the Agreement, including interference and access obligations.

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7. **Rental Stream Offer.** If at any time after the date of the Agreement, Lessor receives a bona fide written offer from a third party seeking an assignment or transfer of the Rental payments associated with the Agreement ("**Rental Stream Offer**"), Lessor shall immediately furnish Tenant with a copy of the Rental Stream Offer. Tenant shall have the right within forty-five (45) 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 Tenant chooses not to exercise this right or fails to provide written notice to Lessor within the forty-five (45) day period, Lessor may assign the right to receive Rental payments pursuant to the Rental Stream Offer, subject to the terms of this Agreement. If Lessor attempts to assign or transfer Rental payments without complying with this Section, the assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement until Lessor complies with this Section.

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

9. **Notices.** Section 20 of the Agreement is hereby deleted in its entirety and replaced with the following:

NOTICES: All notices, requests, demands and communications 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 Tenant:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site Name: CITY OF LK WALES.GSM (FL)
Fixed Asset No.: 10016558
1025 Lenox Park Boulevard NE
3rd Floor
Atlanta, GA 30319

With a required copy of the notice sent to:

New Cingular Wireless PCS, LLC
AT&T Legal Department- Network
Attn: Network Counsel
Re: Cell Site Name: CITY OF LK WALES.GSM (FL)
Fixed Asset No.: 10016558
208 South Akard Street
Dallas, TX 75202-4206

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

As to Lessor:
Sarah B. Kirkland
Utilities Director
City of Lake Wales
863-678-4182 ext. 286
skirkland@cityoflakewales.com

With copy to:
City Attorney
City of Lake Wales
P.O. Box 1320
Lake Wales, FL 33859

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.

10. **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 Tenant. The foregoing shall not apply to monthly Rental which is due and payable without a requirement that it be billed by Lessor. The provisions of this subsection shall survive the termination or expiration of the Agreement.

11. **Memorandum of Lease.** 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 Lease substantially in the form of the Attachment 1. Either party may record this memorandum at any time, in its absolute discretion.

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12. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this Fifth Amendment, the terms of this Fifth Amendment shall control. Except as expressly set forth in this Fifth Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this Fifth Amendment.

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

[SIGNATURES APPEAR ON THE NEXT PAGE]

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IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Fifth Amendment on the date and year below.

LESSOR:

City of Lake Wales,
a Florida Municipality

Witness 1:

By: _____

Name: _____

By: _____

Name: _____

Witness 2:

By: _____

Name: _____

Title: _____

Date: _____

TENANT:

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

By: AT&T Mobility Corporation
Its: Manager

Witness 1:

By: _____

Name: _____

By: _____

Name: John Heggy

Witness 2:

By: _____

Name: _____

Title: Area Manager

Date: _____

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]

I certify that I know or have satisfactory evidence that _____
 person who appeared before me, and said person acknowledged that said person signed _____
 ment, on oath stated that said person was authorized to execute the instrument and act as _____
 of _____
 e and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

Notary Seal

(Signature of Notary)

(Legibly Print or Stamp Name of Notary Public in and for the State of _____
 My appointment expires: _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Notary Seal

(Legibly Print or Stamp Name of Notary)

Notary Public in and for the State of _____
My appointment expires: _____

STATE OF ~~ALABAMA~~FLORIDA)
) SS.
COUNTY OF ~~JEFFERSON~~SEMINOLE)

DATED: _____.

(Signature of Notary)

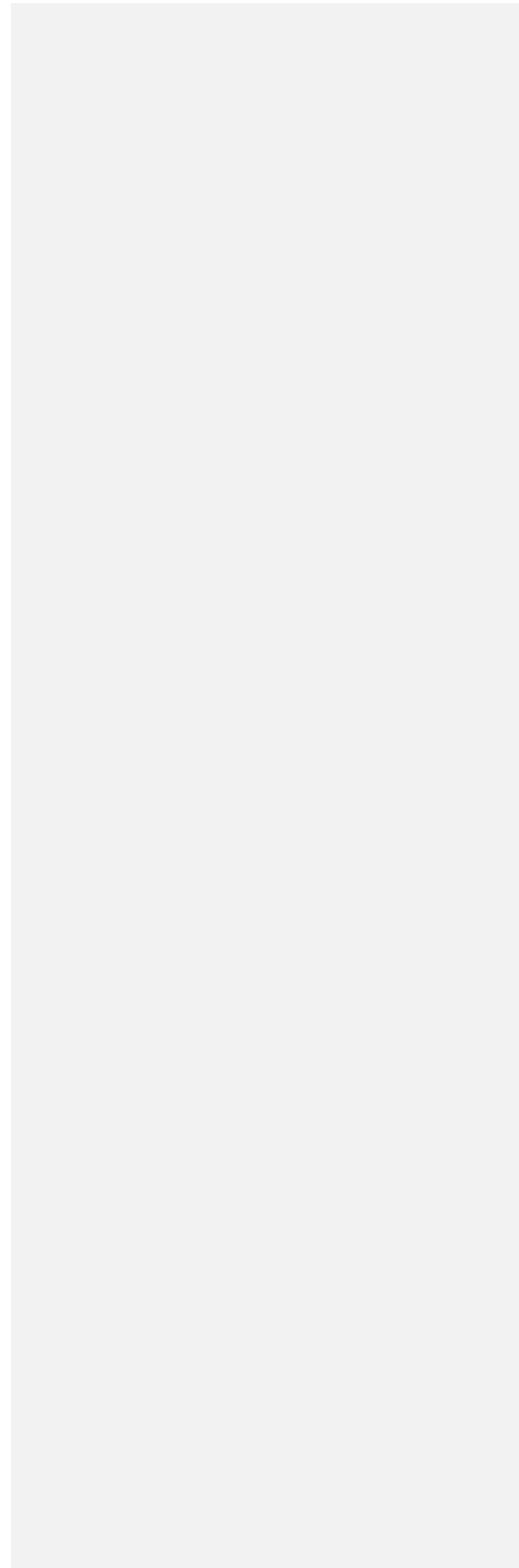
(Legibly Print or Stamp Name of Notary)

Notary Public in and for the State of _____

My appointment expires: _____

ATTACHMENT 1

Memorandum of Lease



Recording Requested By
& When Recorded Return To:

Black Dot Wireless
27271 Las Ramblas - Suite 300
Mission Viejo, CA 92691

Re: Cell Site Name: CITY OF LK WALES.GSM
Fixed Asset No.: 10016558
State: Florida
County: Polk

**MEMORANDUM
OF
LEASE**

This Memorandum of Lease is entered into on this ____ day of _____, 2019, by and between City of Lake Wales, a Florida municipality, having a mailing address at P.O. Box 1320, Lake Wales, FL 33859 (hereinafter referred to as "**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Boulevard NE, 3rd Floor, Atlanta, GA 30319 (hereinafter referred to as "**Tenant**").

1. Landlord and Tenant (or its respective predecessor) entered into a certain Tower Option and Lease Agreement dated March 19, 1998, as amended by that certain Amendment No. 1 dated June 9, 1998, a Corrected Amendment No. 1 dated October 22, 1998, a Second Amendment to Tower Option and Lease Agreement dated May 20, 2008, a Third Amendment to Tower Option and Lease Agreement dated May 9, 2011, a Fourth Amendment to Tower Option and Lease Agreement dated October 22, 2014 and a Fifth Amendment to Tower Option and Lease Agreement dated _____, 2019 (hereinafter, collectively referred to as the "**Agreement**") for the purpose of installing, operating and maintaining a communications facility and other improvements at Landlord's real property located at 138 East Sessoms Avenue, Lake Wales, FL 33853. All of the foregoing are set forth in the Agreement.
2. The Agreement Term initially commenced May 7, 1998, and the parties agree to further extend the Agreement for six (6) additional five (5) year options to renew commencing on May 1, 2019.

3. The portion of the land being leased to Tenant (the “**Premises**”) is described in **Exhibit 1** annexed hereto.
4. This Memorandum of Lease 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 Lease 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.

[SIGNATURES APPEAR ON THE NEXT PAGE]

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

LESSOR:

City of Lake Wales,
a Florida Municipality

Witness 1:

By: _____

Name: _____

By: _____

Name: _____

Witness 2:

By: _____

Name: _____

Title: _____

Date: _____

TENANT:

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

By: AT&T Mobility Corporation
Its: Manager

Witness 1:

By: _____

Name: _____

By: _____

Name: John Heggy

Witness 2:

By: _____

Name: _____

Title: Area Manager

Date: _____

LANDLORD ACKNOWLEDGMENT

STATE OF _____)
)
COUNTY OF _____) SS.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

Notary Seal

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary Public in and for the State of _____

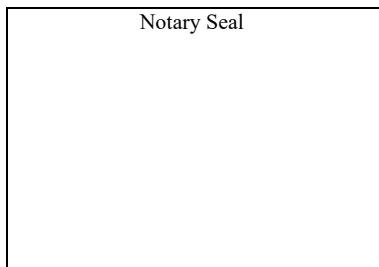
My appointment expires: _____

TENANT ACKNOWLEDGMENT

STATE OF FLORIDA)
) SS.
COUNTY OF SEMINOLE)

I certify that I know or have satisfactory evidence that John Heggy is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Area Manager of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.



(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary Public in and for the State of _____

My appointment expires: _____

EXHIBIT 1

DESCRIPTION OF PREMISES

Page 1 of 1

to the Memorandum of Lease dated _____, 2019, by and between City of Lake Wales, a Florida Municipality, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Premises are a portion of the Property located at 138 East Sessoms Avenue, Lake Wales, FL 33853, and legally described and/or depicted as follows:

The parcel beginning at a point 148.8 feet South of the Northwest corner of Lot 10, Block 21, Town of Lake Wales, according to the map or plat thereof, as recorded in Plat Book 1, Page 88, Public Records of Polk County, Florida, thence run North 102.8 feet, thence East to the West boundary of Atlantic Coast Line Right-of-Way, thence Southeasterly along said Right-of-Way to a point East of point of beginning, thence West to point of beginning.

AND

Lots 45 and 46, Block 2, Lake Wales Terrace, according to the map or plat thereof, as recorded in Plat Book 8, Page 25, of the Public Records of Polk County, Florida.

AND

Lots 1, 2, 3 and 4, Block 22, Original Town of Lakes Wales, Florida, according to the map or plat thereof, as recorded in Plat Book 1, Page 88, of the Public Records of Polk County, Florida.

AND

The North 46 feet of Lot 10, Block 21, Original Town of Lake Wales, Florida, according to the map or plat thereof, as recorded in Plat Book 1, Page 88, of the Public Records of Polk County, Florida.

AND

Lot 10, Block 5, of a subdivision of the part of Blocks 14 and 15 lying west of the Atlantic Coast Line Railroad in the Town of Lake Wales, said lot also being described as Lot 10, Block 5, Lake Wales Land Company's re-subdivision, according to the map or plat thereof, as recorded in Plat Book 4, Page 25, of the Public Records of Polk County, Florida.

AND

Lot 5, Block 22, Lake Wales, Florida, according to the map or plat thereof, as recorded in Plat Book 1, Page 88, of the Public Records of Polk County, Florida; lying in and comprising a part of the West 1/2 of the Northeast 1/4 of Section 2, Township 30 South, Range 27 East.