

AMENDMENT TO LEASE

This Amendment to Lease (“Amendment”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation (as landlord; the “**City**”), and **New Cingular Wireless PCS, LLC**, a Delaware limited liability company, as successor in interest to Cincinnati SMSA Limited Partnership, a Delaware limited partnership (a subsidiary of AT&T, Inc.) (as tenant; “**NCWPCS**”).

Recitals:

A. The City and NCWPCS are parties to a *Lease of Space* dated November 2, 1998 (the “**Lease**”) pursuant to which the City leases to NCWPCS space on the City’s water tower and associated ground space located at 6141 Campus Lane in Cincinnati, as more particularly described in the Lease, which is under the management and control of Greater Cincinnati Water Works (“**GCWW**”), pursuant to which NCWPCS operates various antennas and other telecommunications equipment at the site (collectively, the “**Equipment**”). Capitalized terms used herein but not defined herein, if any, shall have the meanings ascribed to them in the Lease.

B. The term of the Lease (having an initial term of 5 years, with 3 automatic 5-year renewals) expired on November 1, 2018, and the parties desire to extend the term.

C. The City’s execution of this Amendment was authorized by Ordinance No. ____-2020, passed by Cincinnati City Council on _____, 2020.

NOW THEREFORE, the parties hereby agree as follows:

1. Extension of Term.

(A) Extended Term. With reference to section 2 (*Term*) of the Lease, the term of the Lease is hereby extended for the 5-year period from **Nov 1, 2018 – Oct 31, 2023** (the “**Extended Term**”), subject to the parties’ early termination rights under the Lease.

(B) Renewal Periods. Provided NCWPCS is not in default under the Lease at the time of each renewal, the term of the Lease shall automatically be extended beyond the Extended Term for three (3) consecutive renewal periods of five (5) years each (namely: [1] Nov 1, 2023 – Oct 31, 2028; [2] Nov 1, 2028 – Oct 31, 2033; [3] Nov 1, 2033 – Oct 31, 2038). The foregoing notwithstanding, NCWPCS may avoid such automatic renewal by notifying the City in writing, no less than six (6) months prior to the scheduled expiration date of the then current term, that the current term will not be extended.

2. Base Rent. With reference to section 4 (*Rent*) of the Lease, effective Nov 1, 2018, base rent payable by NCWPCS during the Extended Term and renewal periods shall be as set forth on Exhibit A (Base Rent Table) hereto. Payments of base rent shall made, in advance, on the first day of each month, without demand, notice or setoff. Payments shall be made to “Greater Cincinnati Water Works,” and mailed to: GCWW, 4747 Spring Grove Avenue, Cincinnati, OH 45232.

3. Modification or Additional Equipment; Coordinated Report Conditions (CR #106-2018). With reference to section 5 (*Installation and Location of Antennas or Other Telecommunication Equipment on Tower*), section 6 (*Installation and Location of Telecommunication Equipment Enclosures or Cabinets on Tower Property*), section 8 (*Electrical Interference*), and section 11 (*Liability and Indemnification*) of the Lease, and without limitation of other restrictions, approvals, obligations or liability imposed upon NCWPCS under the Lease, NCWPCS shall abide by the following with respect to any

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proposed alterations, upgrades or additions to its existing Equipment, radio frequency exposure from the Equipment, or signage at the site ("**Changes**"):

(i) NCWPCS shall not make any Changes without in each instance the prior written consent of GCWW.

(ii) Prior to beginning any work at the site or other initiation of Changes, NCWPCS shall provide GCWW with copies of all plans, designs and drawings pertaining to the proposed work, and any and all other information requested by GCWW in order to evaluate such request, including without limitation radio frequency information, radio frequency tests, and other information needed to thoroughly assess any potential safety issues. NCWPCS shall contract with a City of Cincinnati prequalified third party inspection services firm to inspect and approve all work involving structural modifications, welding, coatings, and the like. NCWPCS's commencement of work at the site prior to obtaining the written consent of GCWW shall constitute an immediate default under the Lease. Upon completion of Changes, GCWW shall have the right to request that NCWPCS perform a radio frequency exposure study of the site, provide the results to GCWW, and work with GCWW to address any radio frequency exposure concerns.

(iii) NCWPCS shall ensure that all Changes comply with all applicable zoning requirements, including without limitation those pertaining to screening and concealment. NCWPCS shall utilize best efforts to minimize detractions from the tower's architecture or aesthetics.

(iv) If the tower is then being used by the City or any other governmental entity for telecommunications purposes, NCWPCS shall provide GCWW with an interference study or other evidence satisfactory to GCWW establishing that the Changes will not cause interference or damage thereto.

(v) In addition to NCWPCS's other obligations under section 11 (*Liability and Indemnification*) of the Lease, NCWPCS shall defend, indemnify and hold harmless the City, its employees, agents, contractors, licensees and invitees from and against any and all losses, damages, costs, expenses, or liability caused by NCWPCS's Equipment or Changes, including without limitation any of the foregoing caused by exposure to radio frequency radiation.

(vi) NCWPCS shall ensure that the Equipment, Changes, and other activities of NCWPCS and its contractors shall not interfere with the rights of utility companies that have utility facilities at the site (e.g., Cincinnati Bell, Duke Energy, Metropolitan Sewer District of Greater Cincinnati, GCWW) to access, operate or maintain their facilities. Any damage to such facilities caused by NCWPCS or its contractors shall be repaired at NCWPCS's sole expense.

4. Government Approvals. With reference to the requirements of section 13 (*Government Approvals*) of the Lease, and without limitation of other restrictions, approvals, obligations or liability imposed upon NCWPCS under the Lease, NCWPCS shall provide the City with a copy of any and all notices of violations of federal or state regulations in connection with the Equipment, including without limitation, OSHA or FCC requirements as to radio frequency energy exposure in connection with the Equipment or Changes.

5. Access and Security. With reference to the requirements of section 7 (*Access and Security*) of the Lease, and without limitation of other restrictions, approvals, obligations or liability imposed upon NCWPCS under the Lease, in order to provide for the safety and security of the City's employees and contractors, NCWPCS shall:

(i) arrange for power to the Equipment to be turned off within 30 minutes of notice of the City's need to access or perform work at the water tower. The Equipment shall remain deenergized for the duration of the City's access or work per the City's notice;

(ii) provide to the City any radio frequency exposure studies conducted on the Equipment promptly upon completion;

(iii) upon the City's request, provide to the City any information reasonably needed to understand the potential radio frequency exposure from the Equipment (subject to the City signing a nondisclosure agreement for NCWPCS's proprietary information).

6. Notices. With reference to section 14 (*Notices*) of the Lease, NCWPCS's notice address shall be updated as follows:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: SOH1154
Cell Site Name: MT WASHINGTON; Fixed Asset No.: 10011669
1025 Lenox Park Blvd. NE
3rd Floor
Atlanta, GA 30319

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 #: SOH1154
Cell Site Name: MT WASHINGTON; Fixed Asset No: 10011669
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.

7. Ratification. All terms of the Lease not amended hereby or not inconsistent herewith shall remain in full force and effect and by this reference are incorporated herein as if fully rewritten herein, and the Lease, as amended hereby, is hereby ratified by the parties.

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

**City of Cincinnati,
an Ohio municipal corporation**

By: _____
Paula Boggs Muething, Interim City Manager

Date: _____, 2020

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Paula Boggs Muething, Interim City Manager of the City of Cincinnati, an Ohio municipal corporation, on behalf of the corporation. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Recommended by:

Cathy Bailey, Director, Greater Cincinnati Water Works

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

EXHIBIT A

BASE RENT TABLE (Mt. Washington Tower - 6141 Campus Lane)

	Monthly Installment	Annual Amount
<i>Extended Term:</i>		
(1) Nov 1, 2018 – Oct 31, 2019	\$5,916.02	\$70,992.24
(2) Nov 1, 2019 – Oct 31, 2020	\$6,152.66	\$73,831.92
(3) Nov 1, 2020 – Oct 31, 2021	\$6,398.77	\$76,785.24
(4) Nov 1, 2021 – Oct 31, 2022	\$6,654.72	\$79,856.64
(5) Nov 1, 2022 – Oct 31, 2023	\$6,920.91	\$83,050.92
<i>1st Renewal Period:</i>		
(1) Nov 1, 2023 – Oct 31, 2024	\$7,197.74	\$86,372.88
(2) Nov 1, 2024 – Oct 31, 2025	\$7,485.65	\$89,827.80
(3) Nov 1, 2025 – Oct 31, 2026	\$7,785.08	\$93,420.96
(4) Nov 1, 2026 – Oct 31, 2027	\$8,096.48	\$97,157.80
(5) Nov 1, 2027 – Oct 31, 2028	\$8,420.34	\$101,044.08
<i>2nd Renewal Period:</i>		
(1) Nov 1, 2028 – Oct 31, 2029	\$8,757.15	\$105,085.80
(2) Nov 1, 2029 – Oct 31, 2030	\$9,107.44	\$109,289.28
(3) Nov 1, 2030 – Oct 31, 2031	\$9,471.74	\$113,660.88
(4) Nov 1, 2031 – Oct 31, 2032	\$9,850.61	\$118,207.32
(5) Nov 1, 2032 – Oct 31, 2033	\$10,244.63	\$122,935.56
<i>3rd Renewal Period:</i>		
(1) Nov 1, 2033 – Oct 31, 2034	\$10,654.42	\$127,853.04
(2) Nov 1, 2034 – Oct 31, 2035	\$11,080.59	\$132,967.08
(3) Nov 1, 2035 – Oct 31, 2036	\$11,523.82	\$138,285.84
(4) Nov 1, 2036 – Oct 31, 2037	\$11,984.77	\$143,817.24
(5) Nov 1, 2037 – Oct 31, 2038	\$12,464.16	\$149,569.92