

Cell Site Name: 368-325
Fixed Asset No. 10040302
Market: North Carolina
Address: 610 Tingen Road, Apex, NC 27502

FIRST AMENDMENT TO OPTION AND STRUCTURE LEASE AGREEMENT

THIS FIRST AMENDMENT TO OPTION AND STRUCTURE LEASE AGREEMENT (“**First Amendment**”) dated as of latter of the signature dates below is by and between Town of Apex, a North Carolina municipal corporation, having a mailing address at 73 Hunter Street, Apex, NC 27502 (hereinafter referred to as “**Landlord**”) 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, Landlord and Tenant entered into an Option and Structure Lease Agreement dated March 14, 2008 (hereinafter referred to as the “**Agreement**”), whereby Landlord leased to Tenant certain Premises, therein described, that are a portion of the Property located at 610 Tingen Road, Apex, NC 27502; and

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

WHEREAS, Landlord and Tenant desire to amend the Agreement to adjust the Rent in conjunction with the modifications to the Agreement contained herein; and

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

WHEREAS, Landlord and Tenant desire to amend the Agreement to clarify scope of Tenant's permitted use of the Premises; and

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

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

1. **Term.** The Term of the Agreement shall be amended to provide that the current term, which commenced on July 1, 2018, shall expire on June 30, 2023 (“**Current Term**”), and commencing on July 1, 2023, will be automatically renewed, upon the same terms and conditions of the Agreement, for three (3) additional five (5) year terms (each an “**Extension Term**”). Hereafter, “**Term**” shall include the Current Term and any applicable Extension Term. The Terms will automatically renew without further action by Tenant, unless Tenant notifies Landlord 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. Landlord 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. **Rent.** Commencing on July 1, 2023, the current Rent payable under the Agreement shall be Three Thousand Seven Hundred Twenty-Seven and No/100 Dollars (\$3,727.00) per month and shall continue during the Term, subject to adjustment as provided herein. In the event of any overpayment of Rent prior to or after the Effective Date, Tenant shall have the right to deduct from any future Rent payments an amount equal to the overpayment amount.

3. **Future Rent Increase.** The Agreement is amended to provide that commencing on July 1, 2028, Rent shall increase by ten percent (10.0%) and at the beginning of each Extension Term thereafter, as applicable.

4. **Permitted Use.** Tenant, its personnel, invitees, contractors, agents, subtenants, or its authorized sublessees, or assigns may use the 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, or relocate the same within the 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. Landlord shall reasonably cooperate in obtaining governmental and other use permits or approvals necessary or desirable for the foregoing permitted use. If Landlord 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 shall have no further liability to Landlord. If Landlord 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 Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant.

5. **Removal/Restoration.** In addition to the terms set forth in the Agreement, Landlord agrees that the Communications Facility and any related equipment brought to the Premises by Tenant, its agents, contractors, predecessors-in-interest or subtenants, except for the corral referred to in Section 2(b) of the Agreement, shall be and remain Tenant's personal property or the personal property of its subtenant(s), as the case may be. Landlord waives any and all rights it may have, including any rights it may have in its capacity as Landlord under the Agreement to assert any liens, encumbrances or adverse claims, statutory or otherwise, related to or in connection with the Communications Facility or any portion thereof. Tenant, in its sole discretion, may remove the Communications Facility or any portion of the Communications Facility at any time during the Term of the Agreement, without notice to Landlord and without Landlord's consent. Notwithstanding any terms to contrary, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation, nor will Tenant be required to remove from the Premises or the Property any foundations or underground utilities. Tenant, may, in its sole discretion, transfer any improvements or alterations to the Premises to Landlord at any time during the Term of the Agreement without notice to the Landlord and without the Landlord's consent.

6. **Notices.** The notice provision set forth in Section 17(a) of the Agreement is deleted in its entirety, and the following is inserted in lieu thereof:

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.

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If to Landlord, to:

Town of Apex
73 Hunter Street
Apex, NC 27502

If to Tenant, to:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
RE: Site Name: 368-325 (NC)
Fixed Asset No. 10040302
1025 Lenox Park Blvd. NE, 3rd Floor
Atlanta, GA 30319

With a required copy to:

New Cingular Wireless PCS, LLC
Attn: General Counsel - Network
RE: Site Name: 368-325 (NC)
Fixed Asset No. 10040302
208 S. Akard Street
Dallas, TX 75202

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

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

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

9. **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 this First Amendment on the dates set forth below.

LANDLORD:

Town of Apex,
a North Carolina municipal corporation

By: _____

Name: _____

Title: _____

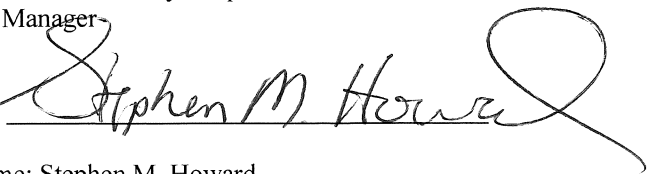
Date: _____

TENANT:

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

By: AT&T Mobility Corporation

Its: Manager

By:  _____

Name: Stephen M. Howard

Title: Area Manager

Date: 13 JULY 2022

Recording Requested By
& When Recorded Return To:

Black Dot Wireless
23456 Madero – Suite 210
Mission Viejo, CA 92691

Re: Cell Site Name: 368-325
Fixed Asset Number: 10040302
State: North Carolina
County: Wake

**MEMORANDUM
OF
LEASE**

This Memorandum of Lease is entered into on this ____ day of _____, 2022, by and between Town of Apex, a North Carolina municipal corporation, having a mailing address at 73 Hunter Street, Apex, NC 27502 (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 entered into an Option and Structure Lease Agreement dated March 14, 2008, as amended by that certain First Amendment to Agreement dated _____, 2022 (hereinafter 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 610 Tingen Road, Apex, NC 27502. All of the foregoing is set forth in the Agreement.
2. The Agreement Term initially commenced July 1, 2008, and commencing on July 1, 2023, the parties agree to further extend the Agreement for three (3) additional five (5) year terms.
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.

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

LANDLORD:

Town of Apex,
a North Carolina municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

TENANT:

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

By: AT&T Mobility Corporation
Its: Manager

By:  _____

Name: Stephen M. Howard

Title: Area Manager

Date: 13 JULY 2022

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]

LANDLORD ACKNOWLEDGMENT

CORPORATE ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____)

I CERTIFY that on _____, 202__, _____ [name
of representative] personally came before me and acknowledged under oath that he or she:

- (a) is the _____ [title] of _____ [name
of corporation], the corporation named in the attached instrument,
- (b) was authorized to execute this instrument on behalf of the corporation and
- (c) executed the instrument as the act of the corporation.

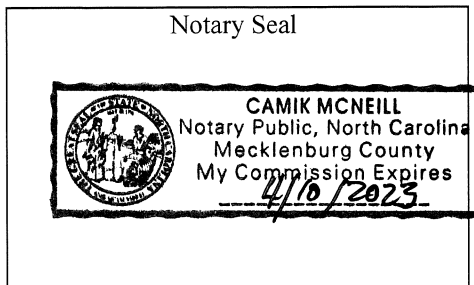
Notary Public: _____
My Commission Expires: _____


TENANT ACKNOWLEDGMENT

STATE OF NORTH CAROLINA)
) SS.
COUNTY OF MECKLENBURG)

I certify that I know or have satisfactory evidence that Stephen Howard is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she 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: 7/13/2022





(Signature of Notary)
Camik McNeill

(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of NC
My appointment expires: 4/10/2023

EXHIBIT 1

DESCRIPTION OF PREMISES

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to the Memorandum of Lease dated _____, 2022, by and between Town of Apex, a North Carolina municipal corporation, 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 610 Tingen Road, Apex, NC 27502, and legally described and/or depicted as follows:

From NC Grid monument, Salem NAD 83, N 719,622.2057, East 2,043,233.8600, COMB FACTOR 0.9998890, thence South 25 degrees 41 minutes 52 seconds West 1,027.50 feet to an iron pipe set at the southernmost intersection of the right-of-ways of Tingen Road and Salem Street, thence South 00 degrees 15 minutes 35 seconds West 188.49 feet to an existing iron pipe, thence South 01 degrees 30 minutes 38 seconds West 100 feet to an iron pipe set being the PLACE AND POINT OF BEGINNING, thence South 01 degrees 30 minutes 38 seconds 117.33 feet to an iron pipe set, thence along a curve with length 107.56 feet, radius 2,814.76 feet, chord bearing North 49 degrees 28 minutes 19 seconds East, chord distance 107.55 feet to an iron pipe set, thence North 73 degrees 25 minutes 10 seconds West 5.80 feet to an existing iron pipe, thence North 73 degrees 25 minutes 10 seconds West 163.96 feet to an iron pipe set, thence North 29 degrees 47 minutes 17 seconds East 154.25 feet to an iron pipe set, thence North 87 degrees 44 minutes 29 seconds East 165.49 feet to the place and point of beginning. This property is also shown as "Rose A. Lowe Heirs" on that certain plat entitled "Survey for the Town of Apex, Salem and Tingen Road Water Tank Site," being recorded in Map Book 2001, Page 556, Wake County Registry.