

**Proposed Lease Amendment to AT&T's Cell Phone Antenna Facility
Located at Memorial Park (Monopole)**

SECOND AMENDMENT TO TOWER/LAND LEASE AGREEMENT

THIS SECOND AMENDMENT TO TOWER/ LAND LEASE AGREEMENT (“**Second Amendment**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is by and between City of Appleton, a Wisconsin municipal corporation, having a mailing address of 1819 East Witzke Blvd., Appleton, WI 54911 (the “**CITY**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive, Atlanta, GA 30324 (“**COMPANY**”). The CITY and COMPANY shall be jointly referred to herein as the Parties.

WHEREAS, CITY and COMPANY entered into a Tower/Land Lease Agreement dated June 6, 2006 (“**Original Agreement**”), as amended by First Amendment to Tower/Land Lease Agreement dated May 16, 2008 (“**First Amendment**”) (the Original Agreement and First Amendment are collectively referred to herein as the “**Agreement**”) whereby CITY leased to COMPANY certain premises (“**Premises**”), therein described, that are a portion of the property (“**Property**”) located at 1620 East Witzke Boulevard, Appleton, WI 54911; and

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

WHEREAS, CITY and COMPANY desire to amend the Agreement to modify the Rent escalation rate; and

WHEREAS, CITY and COMPANY desire to modify, as set forth herein, COMPANY’S obligations to pay Rent to CITY for a Rent Guarantee Period (as defined below); and

WHEREAS, CITY and COMPANY desire to amend the Agreement to modify the notice section thereof; and

WHEREAS, CITY and COMPANY, in their mutual interest, further 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, CITY and COMPANY agree that the recitals set forth above are incorporated herein as if set forth in their entirety and further agree as follows:

1. **Rent.** Commencing on June 1, 2016, the current Rent payable under the Agreement shall be Fifteen Thousand Five Hundred Dollars and No/100 Dollars (\$15,500.00) annually, and shall continue during the Term, subject to adjustment as provided below.
2. **Future Rent Increase / Extension Term Increase.** The Agreement is amended to provide that commencing on June 1, 2018, Rent shall increase by twelve percent (12%) and at the beginning of each Extension Term, as applicable.

3. Termination and Rent Guarantee. In addition to any rights that may exist in the Agreement, after the Rent Guarantee Period, as defined below, COMPANY or CITY may terminate the Agreement at any time with ninety (90) days prior written notice to the other party for any or no reason with rents remaining payable, if applicable, pursuant to the terms herein.

4. Modification of Company's Obligation to Pay – Rent Guarantee. Notwithstanding COMPANY's obligations to pay Rent set forth under the Agreement, for a forty-eight (48) month period commencing June 1, 2016 and ending May 31, 2020 ("Rent Guarantee Period"), COMPANY's obligation to pay Rent is guaranteed and such obligation will not be subject to offset or cancellation by COMPANY. Notwithstanding the foregoing, if CITY exercises any of CITY's rights to terminate the Agreement, if any, other than CITY'S right to terminate the Agreement due to the default of COMPANY under the terms of the Agreement beyond any applicable grace period, COMPANY will be released from any and all of its obligations to pay Rent during the Rent Guarantee Period as of the effective date of the termination. In addition, COMPANY shall be released from any and all of its obligations to pay Rent during the Rent Guarantee Period if the following shall occur: (a) CITY 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; , or (c) any existing government permits and/or approvals cannot be obtained or maintained, at no fault of COMPANY. If this Agreement is further modified in the future with an obligation for COMPANY to pay additional Rent, the payment of Rent guarantee established in this paragraph will not be diminished or limited, but such Rent guarantee will not extend to that future additional Rent obligation.

5. Expansion of the Premises. CITY grants, to the extent practicable and on a space available basis, both as determined solely by the CITY, COMPANY the right to enlarge the premises or CITY shall make space available on the property for COMPANY so that COMPANY or its authorized sub lessees may implement any necessary modifications, supplements, replacements, refurbishments, or expansions to the Antenna Facilities or to any equipment related thereto, or for any other reasons, as determined by COMPANY in its sole discretion. Should COMPANY exercise the right to expand the Premises, COMPANY will pay and CITY 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 Premises. Upon agreement between the Parties, a description and/or depiction of the modified Premises ground will become part of the Agreement and at the request of COMPANY or CITY, the parties will execute a Memorandum of Lease in recordable form memorializing the modification of the ground space of CITY'S Property, which either party may record at its option.

6. Removal In addition to the terms set forth in the Agreement, CITY agrees that the Antenna Facilities and any related equipment brought to the Premises by COMPANY, its agents, contractors, predecessors-in-interest or subtenants, shall be and remain COMPANY'S personal property or the personal property of its subtenant(s), as the case may be. CITY waives any and all rights it may have, including any rights it may have in its capacity as CITY under the Agreement to assert any liens, encumbrances or adverse claims, statutory or otherwise, related to or in connection with the Antenna Facilities or any portion thereof, unless COMPANY is in

violation of the Agreement or the Amendments. COMPANY, in its sole discretion, may remove the Antenna Facilities or any portion of the Antenna Facilities at any time during the Term of the Agreement, without notice to CITY and without CITY's consent. . COMPANY, may, in its sole discretion, transfer any improvements or alterations to the Premises to CITY at any time during the Term of the Agreement with notice to CITY and with CITY'S consent.

7. Care of Premises. COMPANY agrees to fully restore the premises to the condition it was in it at the start of the Agreement, subject to normal wear and tear, or COMPANY shall be liable for reasonable repair and/or restoration costs and/or for the reasonable costs associated with the dismantling and/or disposal of any of the COMPANY'S abandoned property per Section 9(4)(b) of the Agreement. This includes, but is not limited to, damage to any surrounding vegetation such as tress, plants, shrubs, flowers, and grass, and damage to any infrastructure such as sidewalks, curbs, gutters, signs or streets. COMPANY agrees to maintain a high standard of care regarding the premises and surrounding area and shall ensure that at no times will its employees or agents litter or intentionally damage property, including vegetation. COMPANY agrees it will immediately notify the CITY should COMPANY become aware of any harm, damage and/or destruction to CITY property.

8. Sale of Property.

(a) CITY 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 CITY, at any time during the Term of this Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property or Surrounding Property, to a purchaser other than COMPANY, CITY shall promptly notify COMPANY in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and COMPANY'S rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, CITY or its successor shall send the documents listed below in this subsection (b) to COMPANY. Until COMPANY receives all such documents, COMPANY shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this 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 landlord including phone number(s)

(c) CITY 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 COMPANY'S Permitted Use or communications equipment as determined by radio propagation tests performed by COMPANY in its sole discretion. CITY or CITY'S prospective purchaser shall reimburse COMPANY for any costs and expenses of such testing. If the radio frequency propagation tests demonstrate levels of interference unacceptable to COMPANY, CITY 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 CITY under this Agreement, including interference and access obligations.

9. Rental Stream Offer. If at any time after the date of this Agreement, CITY receives a bona fide written offer from a third party seeking an assignment or transfer of the Rent payments associated with this Agreement ("**Rental Stream Offer**"), CITY shall immediately furnish COMPANY with a copy of the Rental Stream Offer. COMPANY 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 COMPANY chooses not to exercise this right or fails to provide written notice to CITY within the ninety (90) day period, CITY may assign the right to receive Rent payments pursuant to the Rental Stream Offer, subject to the terms of this Agreement. If CITY attempts to assign or transfer Rent payments without complying with this Section, the assignment or transfer shall be void. COMPANY 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 CITY complies with this Section.

10. Notices. Section 14 of the Original Agreement and Section 8 of the First Amendment are hereby deleted in their 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 COMPANY: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: WI6001; Cell Site Name: Memorial Park (WI)
FA No: 10091812
575 Morosgo Drive
Atlanta, GA 30324

With a copy to: New Cingular Wireless PCS, LLC
Attn: Legal Department
Re: Cell Site #: WI6001; Cell Site Name: Memorial Park (WI)
FA No: 10091812
208 S. Akard Street
Dallas, TX 75202-4206

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

If to CITY: City of Appleton

1819 East Witzke Blvd.
Appleton, WI 54911

With a copy to: City of Appleton
Legal Services Department
100 N. Appleton Street
Appleton, WI 54911

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.

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

12. Other Terms and Conditions Remain. In the event of any inconsistencies between the Agreement and this Second Amendment, the terms of this Second Amendment shall control. Except as expressly set forth in this Second 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 Second 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 NEXT PAGE]

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

“CITY”

City of Appleton,
a Wisconsin municipal corporation

By: _____
Name: _____
Title: _____
Date: _____

“COMPANY”

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

By: AT&T Mobility Corporation
Its: Manager

By: _____
Name: _____
Title: _____
Date: _____

[ACKNOWLEDGEMENTS APPEAR ON NEXT PAGE]

COMPANY ACKNOWLEDGEMENT

STATE OF

COUNTY OF _____

On the ____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Printed Name: _____

My Commission Expires: _____

CITY ACKNOWLEDGEMENT

STATE OF

COUNTY OF _____

On the ____ day of _____ in the year _____ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Printed Name: _____

My Commission Expires: _____