

**Proposed Lease Amendment to AT&T's Cell Phone Antenna Facility
Located at the Oneida Street Water Tower**

THIRD AMENDMENT TO TOWER/LAND LEASE AGREEMENT

THIS THIRD AMENDMENT TO TOWER/LAND LEASE AGREEMENT ("**Third Amendment**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is by and between the City of Appleton, a Wisconsin municipal corporation, having a mailing address of 100 North Appleton Street, Appleton, WI 54911 ("**the City**") and New Cingular Wireless PCS LLC, a Delaware limited liability company, as successor in interest to Telecorp Realty, L.L.C., a Delaware limited liability company, having a mailing address of 575 Morosgo Drive NE, Atlanta, GA 30324 ("**Tenant**") (the City and Tenant shall be referred to herein each as a "**Party**" and collectively as the "**Parties**").

WHEREAS, the City and Tenant, or their predecessors in interest, entered into a Tower/Land Lease Agreement dated June 5, 2001 ("**Original Agreement**") as amended by a certain First Amendment to Tower/ Land Lease Agreement, the terms of which commenced on June 1, 2009 ("**First Amendment**"), as amended by that certain Second Amendment to Tower/Land Lease Agreement dated February 5, 2013 ("**Second Amendment**") and both the City and Tenant acknowledge that neither Party is able to produce a fully executed copy of said First Amendment and both Parties agreed to proceed to the Second Amendment to Tower/Land Lease Agreement with the First Amendment as Exhibit A to the Second Amendment (the Original Agreement, First Amendment and Second Amendment are collectively referred to herein as the "**Agreement**") whereby the City leases to Tenant certain premises ("**Leased Premises**"), therein described, that are a portion of the property ("**Property**") located at 2505 North Oneida Street, Appleton, WI 54911; and

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

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

WHEREAS, the City and Tenant desire to modify, as set forth herein, the Tenant's obligations to pay Rent to the City for a Rent Guarantee Period (as defined below); and

WHEREAS, the City and Tenant desire to amend the Agreement to modify the Rent escalation rate; and

WHEREAS, the City and Tenant desire to amend the Agreement to modify Tenant's termination rights; and

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

WHEREAS, the City and Tenant desire to amend the Agreement to add the right for either party to record a memorandum of lease; and

WHEREAS, the City and Tenant, 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, the City 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 Agreement has four (4) new additional extension terms of five (5) years each ("**New Additional Extension Terms**"), commencing on June 18, 2026. Hereafter, the defined term "Term" shall include the New Additional Extension Terms. Landlord agrees and acknowledges that except that 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 New Additional Extension Terms.
2. **Modification of Rent.** Commencing on June 1, 2016, the Rent payable under the Agreement shall be Seventeen Thousand and Eight Hundred and No/100 Dollars (\$17,800.00) annually, and shall continue during the Term, subject to adjustment, if any, as provided below.
3. **Modification of Tenant's Obligation to Pay – Rent Guarantee.** Notwithstanding Tenant's obligations to pay Rent set forth under the Agreement, for a sixty (60) month period commencing June 1, 2016 and ending May 31, 2021 ("**Rent Guarantee Period**"), Tenant's obligation to pay Rent is guaranteed and such obligation will not be subject to offset or cancellation by Tenant. Notwithstanding the foregoing, if the City exercises any of the City's rights to terminate the Agreement, if any, other than the City'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 Rent during the Rent 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 Rent during the Rent Guarantee Period if the following shall occur: (a) the 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; (c) the City 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 this Agreement is further modified in the future with an obligation for Tenant 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.
4. **Future Rent Increase / Extension Term Increase.** The Agreement is amended to provide that commencing on June 1, 2019, Rent shall increase by twelve percent (12%) and at the beginning of each Extension Term, as applicable.
5. **Termination and Rent Guarantee.** In addition to any rights that may exist in the Agreement, after the Rent Guarantee Period, as defined above, the City or Tenant 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.

6. Permitted Use. Tenant, its personnel, invitees, contractors, agents, subtenants, or its authorized sub lessees, 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, or relocate the same within the Leased Premises at any time during the term of this Agreement for any reason, so long as these changes do not exceed the structural capacity of the Tower at this height, or at AT&T's sole expense upgrade the structural capacity 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. Tenant may operate the Antenna Facilities at any frequency for which it has all requisite licenses and permits so long as these frequencies do not cause an interference issue with an existing lawfully installed and properly operated tenant on the Tower. The City shall reasonably cooperate in obtaining governmental and other use permits or approvals necessary or desirable for the foregoing permitted use. If the City does not comply with the terms of this section, in addition to any other rights it may have at law, Tenant may terminate this Agreement pursuant to Sec. 5 herein and shall have no further liability to the City. If the City 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 the City's default and to deduct the costs of such cure from any monies due to the City from Tenant.

7. Removal/Restoration. In addition to the terms set forth in the Agreement, the City agrees that the Antenna Facilities and any related equipment brought to the Leased Premises by Tenant, its agents, contractors, predecessors-in-interest or subtenants, shall be and remain Tenant's personal property or the personal property of its subtenant(s), as the case may be. The City waives any and all rights it may have, including any rights it may have in its capacity as the 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. Tenant, 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 the City and without the City's consent. Tenant, may, in its sole discretion, transfer any improvements or alterations to the Leased Premises to the City at any time during the Term of the Agreement with notice to the City and with the City's consent.

8. Care of Leased Premises. In addition to provisions found in the Agreement Paragraph 8(4)(b), Tenant agrees to fully restore the Leased Premises to the condition it was in it at the start of the Agreement, subject to normal wear and tear, or Tenant 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 Tenant's abandoned property. This includes, but is not limited to, damage to any surrounding vegetation such as trees, plants, shrubs, flowers, and grass, and damage to any infrastructure such as sidewalks, curbs, gutters, signs or streets. Tenant agrees to maintain a high standard of care regarding the Leased Premises and surrounding area and shall ensure that at no times will its employees or agents litter or intentionally damage property, including vegetation.

Tenant agrees it will immediately notify the City should Tenant become aware of any harm, damage and/or destruction to the City property.

9. **24/7 Access.** The City hereby grants to Tenant, its authorized sub lessees, and to any public or private utility serving Tenant's Antenna Facilities or related equipment, access to the Leased Premises and to and over the Property twenty-four hours per day, seven days per week (24/7), including but not limited to, access from an accessible, open and maintained public road to the Leased Premises, for the installation, maintenance, repair, modification, alteration, or refurbishment of the Antenna Facilities or any equipment related to such Antenna Facilities as such access is deemed necessary by Tenant, in its sole discretion, without the requirement of notice by Tenant to the City. In the event that any public or private utility serving Tenant's Communication Facility is unable to use the access provided to Tenant, the City hereby agrees to grant additional access to Tenant or to such public or private utility, for the benefit of Tenant, at no cost to Tenant and pursuant to the same terms and conditions as noted above. The terms and conditions regarding access in the Agreement remain in full force and effect, except as modified by this paragraph.

10. **Sale of Property.**

(a) The City shall not be prohibited from the selling, leasing or use of any of the Property except as provided below.

(b) If the 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 Leased Premises, or all or any part of the Property, to a purchaser other than Tenant, the City shall promptly notify Tenant in writing, and such rezoning, sale, subdivision or transfer shall be subject to this 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, the City 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 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 the new landlord including phone number(s)

(c) The City agrees not to sell, lease or use any areas of the 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. The City or the City'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, the City shall be prohibited from selling, leasing or using

Market: Illinois/Wisconsin
Cell Site Number: WI6096
Cell Site Name: Appleton Water Tower
Fixed Asset Number: 10083249

any areas of the Property for purposes of any installation, operation or maintenance of any other wireless Antenna Facilities or equipment.

(d) The provisions of this Section shall in no way limit or impair the obligations of the City under this Agreement, including interference and access obligations.

11. Rental Stream Offer. If at any time after the date of this Agreement, the 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**"), the City shall immediately furnish Tenant with a copy of the Rental Stream Offer. Tenant 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 Tenant chooses not to exercise this right or fails to provide written notice to the City within the ninety (90) day period, the City may assign the right to receive Rent payments pursuant to the Rental Stream Offer, subject to the terms of this Agreement. If the City attempts to assign or transfer Rent 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 the City complies with this Section.

12. Notices. Section 13 of the Original Agreement and Section 8 of Exhibit A to the Second Amendment are hereby deleted in their entirety and replaced with the following:

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 Tenant: New Cingular Wireless PCS, LLC
 Attn: Network Real Estate Administration
 Re: Cell Site #: WI6096; Cell Site Name: Appleton Water Tower (WI)
 FA No: 10083249
 575 Morosgo Drive NE
 Atlanta, GA 30324

With a copy to: New Cingular Wireless PCS, LLC
 Attn: Legal Department
 Re: Cell Site #: WI6096; Cell Site Name: Appleton Water Tower (WI)
 FA No: 10083249
 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 the City: City of Appleton

1819 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.

13. 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.

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

15. Other Terms and Conditions Remain. In the event of any inconsistencies between the Agreement and this Third Amendment, the terms of this Third Amendment shall control. Except as expressly set forth in this Third 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 Third Amendment.

16. 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]

Market: Illinois/Wisconsin
Cell Site Number: WI6096
Cell Site Name: Appleton Water Tower
Fixed Asset Number: 10083249

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

"THE CITY"

City of Appleton
a Wisconsin 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: _____
Title: _____
Date: _____

[ACKNOWLEDGEMENTS APPEAR ON NEXT PAGE]

Market: Illinois/Wisconsin
Cell Site Number: WI6096
Cell Site Name: Appleton Water Tower
Fixed Asset Number: 10083249

TENANT ACKNOWLEDGEMENT

STATE OF

COUNTY OF _____

BEFORE ME, a Notary Public of the aforesaid State and County, personally appeared _____, to me personally known (or proved by sufficient evidence) who, being by me duly sworn (or affirmed) did say that he/she is the _____ of **AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC**, a Delaware limited liability company described herein and that the instrument was signed on behalf of the Company, by authority of the Company and that she acknowledged this instrument to be the free act and deed of the Company.

Notary Public

Printed Name: _____

My Commission Expires: _____

THE 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: _____

Attachment 1

Prepared by and when recorded, return to:

Paige Starks

SAC Wireless

540 W Madison St, 17th Fl

Chicago, IL 60661

Re: Cell Site # WI6096; Cell Site Name: Appleton Water Tower
Fixed Asset Number: 10083249
State: Wisconsin
County: Outagamie

MEMORANDUM OF LEASE

This Memorandum of Lease is entered into on this ____ day of _____, 20____, by and between the City of Appleton, a Wisconsin municipal corporation, having a mailing address at 100 North Appleton Street, 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 ("Tenant").

1. The City and Tenant, or their predecessors in interest, entered into a Tower/Land Lease Agreement dated June 5, 2001 ("Original Agreement") as amended by a certain First Amendment to Tower/ Land Lease Agreement, the terms of which commenced on June 1, 2009 ("First Amendment"), as amended by that certain Second Amendment to Tower/Land Lease Agreement dated February 5, 2013 ("Second Amendment") and both the City and Tenant acknowledge that neither Party is able to produce a fully executed copy of said First Amendment and both Parties agreed to proceed to the Second Amendment to Tower/Land Lease Agreement with the First Amendment as Exhibit A to the Second Amendment, as amended by Third Amendment to Tower/Land Lease Agreement dated _____, _____, ("Third Amendment") (together with the Original Agreement, First Amendment, Second Amendment, and Third Amendment are collectively referred to as, "Agreement") for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing are set forth in the Agreement.
2. The Agreement provided for an initial term of five (5) years that commenced on June 18, 2001 and was subject to four (4) Extension Terms of five (5) years each. In addition to the Extension Terms presently set forth in the Agreement, the Agreement

will automatically renew for four (4) additional terms of five (5) years each upon the same terms and conditions of the Agreement.

3. The portion of the land being leased to Tenant (the "**Leased 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.

"THE CITY"

City of Appleton
a Wisconsin municipal corporation

By: _____
Print Name: _____
Its: _____
Date: _____

"TENANT"

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

By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name: _____
Its: _____
Date: _____

[ACKNOWLEDGEMENTS APPEAR ON NEXT PAGE]

Market: Illinois/Wisconsin
Cell Site Number: WI6096
Cell Site Name: Appleton Water Tower
Fixed Asset Number: 10083249

TENANT ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

BEFORE ME, a Notary Public of the aforesaid State and County, personally appeared _____, to me personally known (or proved by sufficient evidence) who, being by me duly sworn (or affirmed) did say that he/she is the _____ of **AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC**, a Delaware limited liability company described herein and that the instrument was signed on behalf of the Company, by authority of the Company and that she acknowledged this instrument to be the free act and deed of the Company.

Notary Public

Printed Name: _____

My Commission Expires: _____

THE 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: _____

Market: Illinois/Wisconsin
Cell Site Number: WI6096
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EXHIBIT 1

DESCRIPTION OF LEASED PREMISES

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to the Memorandum of Lease dated _____, 20____, by and between the City of Appleton, a Wisconsin municipal corporation, as the City, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

Lot Eight (8), Block One (1), NORTH ACRES PLAT, City of Appleton, Outagamie County, Wisconsin.

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

Nine (9) Antenna locations located on the Water Tower located on the Property, legally described below and located at 2505 North Oneida Street, Appleton, WI 549411.