

AMENDMENT NO. 2
ANTENNA LEASE AGREEMENT
New Cingular Wireless PCS, LLC
Hoffman Water Storage Tank
3920 Hoffman Court
Olympia, Washington 98501

THIS Amendment No. 2 ("Second Amendment") is effective as of the date of the last authorizing signature below (the "Effective Date"). The parties to this Second Amendment are the CITY OF OLYMPIA, a Washington municipal corporation ("Olympia" or sometimes "Lessor"), and NEW CINGULAR WIRELESS PCS, LLC a Delaware limited liability company ("Lessee"). Olympia and Lessee are sometimes referred to collectively as the "Parties" and each individually as a "Party".

RECITALS

- A. On April 20, 2017, Olympia and Lessee entered into an Antenna Lease Agreement for the Hoffman Storage Tank Site located at 3920 Hoffman Court, Olympia, Washington (the "Lease"). The term of the Lease was to run until December 31, 2021.
- B. Effective March 24, 2022, the Parties executed Amendment No. 1 to the Antenna Lease Agreement ("First Amendment"), by which the Parties extended the term of the Lease to December 31, 2022, amended the compensation provision, and amended the insurance provision.

- C. Section 25 of the Lease (Holding Over) provides:

Any holding over after the expiration of the term hereof, with the consent of Olympia, shall be construed to be a tenancy from month to month at two times the rent, or two hundred percent (200%) herein specified (prorated on a monthly basis) and shall otherwise be for the term and on the conditions herein specified, so far as applicable.

- D. With the original term of the Lease (as amended by the First Amendment) having expired on December 31, 2022, and with Olympia having consented, pursuant to Section 25 of the Lease, Lessee became a tenant from month to month as of January 1, 2023, with applicable terms of the Lease still in effect.
- E. The Parties wish to amend the Lease a second time to extend the term, increase the Rent amount, and make other changes, as set forth below. The Parties intend that this Second Amendment is effective *nunc pro tunc* to December 31, 2022, and that, with this Second Amendment, the parties will be bound by the Lease, as amended by

this Second Amendment, and that the term of the Lease is as provided in the Lease, as amended by this Second Amendment, such that Lessee is not a tenant from month to month

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Section 2C of the Lease is hereby amended as follows:

Any other use of the Area shall cancel this Lease. This Lease does not grant to Lessee any zoning or land use approvals for the uses mentioned herein. Lessee shall obtain any and all land use and zoning approvals as are necessary for its operations, including but not limited to, permits for buildings, structures, towers, and antennas. Olympia agrees, at no cost to Olympia, to cooperate (by signing as property owners for all applications and/or permits that are required by governmental agencies) with Lessee in making application for and obtaining all licenses, permits, and any and all necessary approvals that may be required for Lessee's intended use of the Area as provided in this Lease. Lessee may access, through the Property, the Area to install, operate, and maintain its Equipment. Lessee shall request access to the Property twenty-four (24) hours in advance through Public Works Dispatch (360.753.8333). In the event of an emergency, should the Lessee need access to the Property outside of normal business hours, the Lessee shall contact Public Works Dispatch (360.753.8333). Olympia may charge Lessee for whatever expense, including employees' wages, that Lessee may incur in providing after-hours access to the Lessee.

2. Section 3A of the Lease, as previously amended by the First Amendment, is hereby further amended as follows:

Lessee shall pay rent ("Rent") to Olympia in the amount of Thirty-Seven Thousand Seven Hundred Ninety-Five and 32/100 Dollars (\$37,795.32) on or before January 1, 2023 to cover the one year time period January 1, 2023 through December 31, 2023. Payment shall be made to the Director of Finance and Budget at Olympia City Hall, 601 4th Avenue East Olympia, WA 98507.

Rent amount is based on a) Antenna: size and quantity, b) Ground Area: square footage, and c) Utility, Electrical and Conduit Runs: linear feet, and will increase as Lessee increases number of antennas on the tank or expands beyond the Area's leased footprint.

3. Section 3B of the Lease is hereby deleted:
4. Section 3E of the Lease is hereby amended as follows:

Any failure to pay Rent or any amount due in Section 3.A , or any other amount to be paid by Lessee under the terms of this Lease, within thirty (30) days of Lessee's receipt of written notice that such amounts are past due shall be considered a breach of contract and shall entitle the City to pursue all remedies legally available, including the right to terminate this Lease.

5. Section 7 of the Lease is hereby amended as follows:

The term of this Lease runs through December 31, 2023 during which time Olympia will develop new master lease language for Lessee's consideration in anticipation of the Parties entering into a new lease agreement. No additional extension of the term of this Lease will be granted by Olympia. If Olympia and Lessee do not enter into a new Lease within thirty (30) days prior to the expiration of this Lease, Olympia shall provide written notification to the Lessee that the Lessee shall remove all of its Equipment and personal property whatsoever from the Property within sixty (60) days of the end of the term of the Lease, or sixty (60) days from the date of Olympia's written notification, whichever is later.

6. Section 20 of the Lease is hereby amended as follows:

In addition to termination under Section 9 herein, Lessor may terminate this Lease after written notice to Lessee of its intent to do so given at least sixty (60) days prior to such termination; provided there is a bona fide threat of public health and safety hazard to the public caused or contributed to by Lessee's continued use of the Area (as permitted herein). Lessee may terminate this Lease with sixty (60) days written notice. Such termination is permitted in the event Lessee wishes to terminate this Lease at any time for any reason.

7. This Lease is further hereby amended to provide that, within sixty (60) days of the Effective Date of the Second Amendment, Lessee shall clearly mark its Tower Equipment located on the Property (i.e., the antenna sectors and associated equipment, located on the Property, that Lessee owns or controls). Olympia will use this ownership information to determine if any antenna sectors and associated equipment must be relocated due to proximity to essential Drinking Water Utility infrastructure such as access vents. If notified by Olympia that relocation of antenna sectors and associated equipment is required, Lessee shall relocate the antenna sectors and associated equipment a minimum of ten (10) feet circumference from the edge of the vent; Lessee shall commence efforts to relocate identified equipment within sixty (60) days of receipt of notice from Olympia. Failure to meet this requirement to relocate the antenna sectors and associated equipment is grounds for termination of the Lease at the sole discretion of Olympia.

8. Lessee's notice addresses in Section 11 of the Lease are hereby replaced with the following:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site No.: WA6527; Cell Site Name: Hoffman Road (WA)
Fixed Asset No.: 10029561
1025 Lenox Park Blvd. NE, Third Floor
Atlanta, GA 30319

With a required copy to:

New Cingular Wireless PCS, LLC
Attn: Legal Dept. - Network
Re: Cell Site No.: WA6527; Cell Site Name: Hoffman Road (WA)
Fixed Asset No.: 10029561
208 S. Akard Street
Dallas, TX 75202

9. The Parties hereby ratify and reaffirm the Lease Agreement, as amended by this Second Amendment. The Parties hereby confirm that the Lease, as amended by this Second Amendment remains in effect.
10. All remaining provisions of the Lease not here amended or supplemented remain as written in said Lease and continue in full force and effect.
11. Each Party hereto represents and warrants to the other that all necessary corporate authorizations required for execution and performance of this Second Amendment have been given and that the undersigned signatory of each Party is duly authorized to execute this Second Amendment and bind the Party for which it signs.

IN WITNESS WHEREOF, the Parties, having read the foregoing and intending to be legally bound hereby, have caused this Second Amendment to be executed by their duly authorized representatives as of the date(s) written below.

****Signatures on the following Page****

CITY OF OLYMPIA

By: _____
Steven J Burney
City Manager
Date of Signature: _____

APPROVED AS TO FORM:

Deputy City Attorney

NEW CINGULAR WIRELESS PCS, LLC
A Delaware limited liability company

By: AT&T Mobility Corporation, its Manager

By: W. Wooten
Name Wayne Wooten
Title Director
Date of Signature: 5-18-23

CITY OF OLYMPIA ACKNOWLEDGMENT

[illegible]

On the ____ day of _____ 2023, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Steven J. Burney, to me known to be the City Manager of the City of Olympia, a municipal corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that he/she/they is/are authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

Signature

Print Name _____

NOTARY PUBLIC in and for the State of

Residing at

My appointment expires:

LESSEE ACKNOWLEDGMENT

STATE OF OREGON)
) ss.
COUNTY OF WASHINGTON)

On the 18th day of May, 2023, before me, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared Wayne Wooten, to me known to be the Director a Delaware limited liability corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability corporation for the uses and purposes therein mentioned and on oath states that Wayne Wooten is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.



Signature _____

Judith Mullen

Print Name

**NOTARY PUBLIC in and for the State of
Oregon**

Residing at 19801 SW 72nd Ave Tualatin, OR 97062

My appointment expires: 4/11/2027