

**CITY OF CORAL GABLES, FLORIDA**

**RESOLUTION NO. 2020-98**

A RESOLUTION OF THE CITY COMMISSION AUTHORIZING ENTERING INTO THE FOURTH AMENDMENT TO LEASE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC WITH REGARD TO CITY OWNED PROPERTY LOCATED AT 11911 OLD CUTLER ROAD, CORAL GABLES, FLORIDA.

**WHEREAS**, Landlord, City of Coral Gables, Florida, (“Landlord”) and Bellsouth Mobility, LLC entered into a Lease Agreement dated March 25, 1993, as amended by that certain First Amendment to Lease Agreement dated August 21, 2012, Second Amendment to Lease Agreement dated November 30, 2016 and Third Amendment and Extension to Lease Agreement dated September 26, 2019 (the “Lease Agreement”), with respect to certain Premises, therein described, that are a portion of the Property located at 11911 Old Cutler Road, Coral Gables, FL 33156 (the "Property"); and

**WHEREAS**, effective December 31, 2004, Bellsouth Mobility, LLC was merged with and into New Cingular Wireless PCS, LLC, a Delaware limited liability company, successor-in-interest to Bellsouth Mobility LLC, a Georgia limited liability company d/b/a AT&T Wireless (the “Tenant”); and

**WHEREAS**, Tenant desires to modify its Communications Facility on the tower, and the requested modification has been reviewed and approved by Landlord’s tower engineer consultant; and

**WHEREAS**, Landlord and Tenant desire to amend the Lease Agreement as provided in the attached Fourth Amendment to Lease Agreement (“Lease Amendment”); and

**WHEREAS**, the City Commission finds it is in the public interest to amend the Agreement;

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:**

**SECTION 1.** That the foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon the adoption hereof.

**SECTION 2.** That the Fourth Amendment to Lease Agreement with New Cingular Wireless PCS, LLC is hereby approved in substantially the form attached hereto as **Exhibit "A."**



**SECTION 3.** That the City Commission does hereby authorize the City Manager to execute the Fourth Amendment to Lease Agreement with such modifications to the form attached hereto as Exhibit "A" as may be approved by the City Manager and City Attorney as are necessary to implement the intent of this resolution.

**SECTION 4.** The City Commission authorizes the City Manager to invoice the Tenant costs incurred by the City that have not been paid by Tenant in connection with this Lease Amendment, including reasonable attorneys' fees, in accordance with Division 12, Section 2-1093 of the City Code and Section 3.5 of the Lease Amendment. The City Attorney and City Manager are authorized to rescind the City's approval of the Lease Amendment, withhold Landlord approvals required under the Lease Amendment, or take other appropriate action if such funds are not paid within 30 days of receipt of an appropriate invoice.

**SECTION 5.** That this Resolution shall become effective immediately upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS TWELFTH DAY OF MAY, A.D., 2020.  
(Moved: Keon / Seconded: Mena)  
(Unanimous Voice Vote)  
(Agenda Item: D-6)

APPROVED.



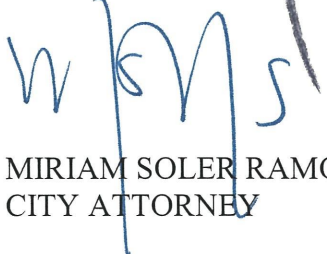
RAUL VALDES-FAULI  
MAYOR

ATTEST:



BILLY Y. URQUIA  
CITY CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:



MIRIAM SOLER RAMOS  
CITY ATTORNEY



Cell Site Number: FHJX  
Cell Site Name: FHJX  
Fixed Asset Number: 10023646  
Market: S. Florida  
Address: 11911 Old Cutler Road, Miami FL 33156

#### **FOURTH AMENDMENT TO LEASE AGREEMENT**

**THIS FOURTH AMENDMENT TO LEASE AGREEMENT ("Fourth Amendment")**, is by and between City of Coral Gables, a municipal corporation, having a mailing address of 405 Biltmore Way, Coral Gables, FL 33134 ("**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, have a mailing address of 1025 Lenox Park Blvd. NE, 3<sup>rd</sup> Floor, Atlanta, GA 30319-5309 ("**Tenant**").

WHEREAS, Landlord and Tenant (or its predecessor) entered into a Lease Agreement dated March 25, 1993, as amended by certain First Amendment to Lease Agreement dated August 21, 2012, as amended by certain Second Amendment to Lease Agreement dated November 30, 2016, and as by certain Third Amendment and Extension to Lease Agreement dated September 26, 2019 ("**Agreement**"), with respect to certain Premises, that are a portion of the Property located at 11911 Old Cutler Road, Coral Gables, FL 33156, therein described in Exhibit A to the Agreement ("**Property**"); and

WHEREAS, Tenant desires to modify or relocate its Communications Facility, which Landlord is willing to approve; and

WHEREAS, Landlord and Tenant desire to amend the Agreement to permit Tenant to modify and/or replace its equipment as set forth herein.

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 as follows:

- A. The foregoing "Whereas" clauses are hereby incorporated as part of this Fourth Amendment as if they were more fully set forth herein.
- B. **Landlord's Consent.** Pursuant to Section 2.2 of the Agreement, Landlord hereby consents to Tenant's request to modify or to replace its equipment located in the area of the Tower depicted on **Exhibit B-1** attached hereto, and only as depicted therein. Landlord's consent herein is subject to Tenant obtaining all Government Approvals at its cost. **Exhibit B-1** hereby replaces Exhibit B referenced in Sections 1.2 and 2.1 of the Agreement. Tenant may not install any equipment in alternate areas of the Tower or premises without a further amendment to the Agreement.
- C. **Cost Recovery.** Pursuant to Section 3.5 of the Agreement, Tenant agrees to reimburse Landlord for all costs, including engineering and attorney's fees, incurred by Landlord to process Tenant's request associated with this Fourth Amendment. It is acknowledged that Tenant submitted a deposit for two-thousand five hundred dollars (\$2,500) toward such cost recovery. Landlord may assess Tenant an additional cost recovery deposit prior to its consideration of this Fourth Amendment. Reimbursement of any additional amounts invoiced Landlord for cost recovery shall be made by Tenant prior to Landlord's execution of this Amendment.

- D. Non-Interference.** Tenant warrants that its use of equipment shown on Exhibit B-1 will not interfere with existing radio frequency users on the Property at the time of such installation, as long as those existing radio frequency users operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.
- E. Inspection.** Tenant agrees that upon completion of the modification contemplated herein, such work will be inspected and certified as having been completed in accordance with engineering requirements and Exhibit B-1 by Landlord's engineering consultant ("Engineering Consultant"). If the Landlord's Engineering Consultant determines that repair or modification of Tenant's equipment, the Tower, or other equipment on the Tower are necessary as a result of Tenant's construction pursuant to this Amendment, Tenant shall be responsible for the cost of such repairs or modifications. Tenant shall be solely responsible for the cost of such inspection and certification by the Landlord's Engineering Consultant.
- F. Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this Fourth Amendment, the terms of this Fourth Amendment shall control. Except as expressly set forth in this Fourth 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 Fourth Amendment.
- G. Counterparts.** This Fourth Amendment may be executed in two (2) Counterparts, each of which shall be deemed an original, and such counterparts shall constitute but the same agreement.

**[SIGNATURES ON FOLLOWING PAGE]**

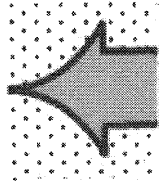
IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Fourth Amendment on the dates set forth below.

**"LANDLORD"**

City of Coral Gables  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**WITNESSES:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_



Approved as to Form

Attest:

\_\_\_\_\_  
Miriam Ramos, City Attorney

\_\_\_\_\_  
Billy Y. Urquia  
City Clerk

**"TENANT"**

New Cingular Wireless PCS, LLC,  
By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_  
Name: John F. Heggy  
Title: Area Manager  
Date: 4/23/2020

**WITNESSES:**

By: \_\_\_\_\_  
Name: Amy M. Meek  
By: Margaret R. Meely  
Name: Margaret R. Meely

**LANDLORD ACKNOWLEDGEMENT**

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

THE FOREGOING INSTRUMENT was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf thereof, who  is personally known to me, or  produced \_\_\_\_\_ as identification.

[AFFIX NOTARY SEAL]

\_\_\_\_\_  
Notary Public Signature  
Print Notary Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

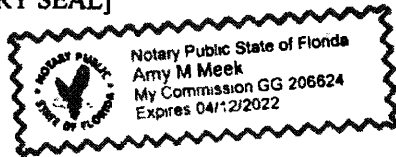


**TENANT ACKNOWLEDGEMENT**

STATE OF FLORIDA  
COUNTY OF Summit

THE FOREGOING INSTRUMENT was acknowledged before me by means of  physical presence or  online notarization, this 23<sup>rd</sup> day of April, 2020, by John Hayes, as Area Manager of Starlink Wireless PCS LLC Tenant, on behalf thereof, who  is personally known to me, or  produced \_\_\_\_\_ as identification.

[AFFIX NOTARY SEAL]



Amy M Meek  
Notary Public Signature  
Print Notary Name: Amy M. Meek  
My commission expires: 4/12/2022

**Exhibit B-1**

See attached exhibit comprised of 2 pages, dated 3/4/2020 prepared by Dewberry Engineering.


#39643315 v1

ANTENNA & COAX SCHEDULE DETAIL																		
SECTION	CABLE	TYPE	SCHEDULE	SCHEDULE	SCHEDULE	SCHEDULE	SCHEDULE	SCHEDULE	SCHEDULE	CABLE		SCHEDULE		SCHEDULE		SCHEDULE		
										SIZE	OF CABLE	TYPE	TYPE	TYPE	TYPE	TYPE	TYPE	
1000A	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
1000B	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
1000C	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
1000D	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
1000E	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
1000F	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
1000G	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
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1000Y	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
1000Z	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000


**BILL OF MATERIALS**

DC FIBER DEMARCATION BOX					
QUANTITY	DESCRIPTION	UNIT	PRICE	TOTAL	REMARKS
1	DC FIBER DEMARCATION BOX	EA	120.00	120.00	
1	DC FIBER DEMARCATION BOX	EA	120.00	120.00	

**DC FIBER DEMARCATION**



8001 W. SAMPLE BLVD  
PLANTATION, FL 33322

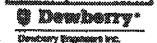


1977 ANNAPOLIS EXPRESS PARKWAY  
SUITE 300  
ANNAPOLIS, MD 21401


**PL&E**  
FA NO.: 10323048

**CONSTRUCTION DRAWINGS**

1/15/2018 FOR CONSTRUCTION  
1/16/18 FOR CONSTRUCTION  
0/04/21/18 FOR CONSTRUCTION



Dewberry Engineers Inc.  
20000 WINDY HILL RD  
SUITE 200  
MIAMI, FL 33156  
TEL: 305.444.8800  
WWW.DEBERRY.COM



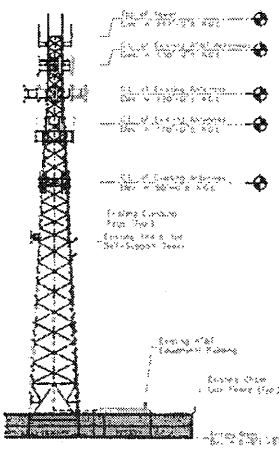
31540  
STATE OF FLORIDA  
Professional Engineer Seal

DESIGNED BY: JWP  
CHECKED BY: JWP  
PROJECT NUMBER: 10323048  
JOB NUMBER: 10323048  
SHEET NUMBER:

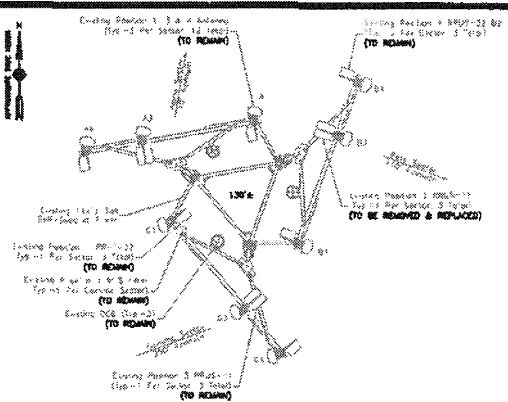
11911 OLD CUTLER ROAD  
MIAMI, FL 33156

SHEET TITLE:  
**ANTENNA & CABLE SCHEDULE**

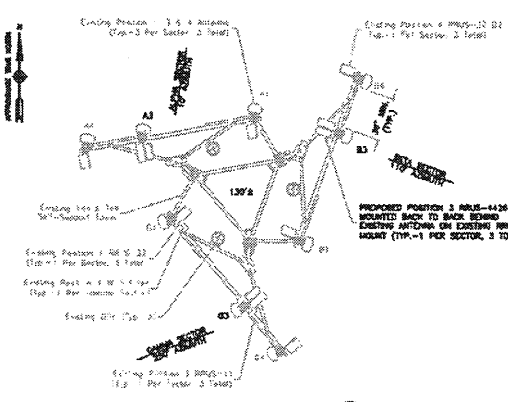
SHEET NUMBER:  
C-3



**PROPOSED ELEVATION**  
SCALE 1/8" = 1'-0" PER SECTOR  
(1" = 8'-0" TOTAL)



**EXISTING ANTENNA LAYOUT**  
SCALE 1/8" = 1'-0" PER SECTOR  
(1" = 8'-0" TOTAL)



**PROPOSED ANTENNA LAYOUT**  
SCALE 1/8" = 1'-0" PER SECTOR  
(1" = 8'-0" TOTAL)

ALL WORK SHOWN SHALL BE PERFORMED IN ACCORDANCE WITH THE LATEST EDITION OF THE NATIONAL ELECTRICAL SAFETY CODE (NEC) AND THE NATIONAL FIRE ALARM AND SIGNAL CODE (NFPA 72).  
CONSTRUCTION SHALL BE PERFORMED IN ACCORDANCE WITH THE LATEST EDITION OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE INTERNATIONAL MECHANICAL AND ELECTRICAL CODE (IMC).  
ALL MATERIALS SHALL BE APPROVED BY THE ENGINEER OF RECORD.

PROPOSED POSITION 3' x 3' x 3' ANTENNA MOUNTED BACK TO BACK BEHIND EXISTING ANTENNA ON EXISTING RWJ MOUNT (TYP. -1 PER SECTOR, 3 TOTAL)

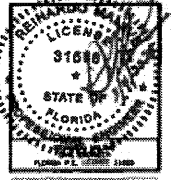
- NOTES:
1. PRIOR TO START OF WORK A RECORD SURVEY SHALL BE OBTAINED BY A LICENSED SURVEYOR TO VERIFY THE EXISTING ANTENNA LOCATION AND ORIENTATION.
  2. ALL MATERIALS SHALL BE APPROVED BY THE ENGINEER OF RECORD PRIOR TO INSTALLATION.
  3. SECTOR OWNERS ARE ADVISED TO MAINTAIN ACCESS TO ALL SECTORS AT ALL TIMES DURING CONSTRUCTION.

1877 ANNAPOLIS EXCHANGE PARKWAY  
SUITE 200  
ANNAPOLIS, MD 21401

**FHJX**  
FA NO.: 10023646

CONSTRUCTION DRAWINGS	

Dewberry Engineers Inc.  
100 SOUTH WASHINGTON ST.  
ANNAPOLIS, MD 21401  
TEL: 410.291.2000  
FAX: 410.291.2001  
WWW.DEBERRY.COM



DESIGNED BY	DATE
CHECKED BY	DATE
PROJECT NUMBER	REVISION
JOB NUMBER	DATE
DATE	

18711 OLD CUTLER ROAD  
MIAMI, FL 33156

**PROPOSED ELEVATION & ANTENNA ORIENTATION**  
SHEET NO. 1  
C-2

Market: S. Florida  
Cell Site Number: FHJX  
Cell Site Name: FHJX  
Fixed Asset Number: 10023646  
Address: 11911 Old Cutler Road, Miami, FL 33156

### THIRD AMENDMENT AND EXTENSION TO LEASE AGREEMENT

**THIS THIRD AMENDMENT AND EXTENSION TO LEASE AGREEMENT** (“**Third Amendment**”), dated as of April 22, 2018, is by and between City of Coral Gables, a municipal corporation, having a mailing address of 405 Biltmore Way, Coral Gables, FL 33134 (“**Landlord**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd, 3<sup>rd</sup> Floor, NE, Atlanta, GA 30319 (“**Tenant**”).

WHEREAS, Landlord and Tenant entered into a Lease Agreement dated March 25, 1993, as amended by certain First Amendment to Lease Agreement dated August 21, 2012, and as amended by certain Second Amendment to Lease Agreement dated November 30, 2016 (collectively, the Lease Agreement, First Amendment to Lease Agreement, and Second Amendment to Lease Agreement are referred to as, “**Agreement**”); and

WHEREAS, Landlord and Tenant desire to amend the Agreement to extend the term and to modify various provisions of the Agreement, including but not limited to an adjustment in the rent, 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 as follows:

A. The foregoing “Whereas” clauses are hereby incorporated as part of this Third Amendment as if they were more fully set forth herein.

B. Sections 1 through 36 of the Agreement are hereby deleted in their entirety and replaced with the following new Sections of this Third Amendment, which constitutes the new terms for the lease going forward. The terms of the lease following this Third Amendment shall be referred to as the “**New Agreement**”.

**1. Leased Premises. Landlord hereby leases to Tenant the following:**

1.1 The property with respect to certain premises described in the Agreement, that are a portion of the Property located at 11911 Old Cutler Road, Miami, FL 33156, described in the attached **Exhibit A (“Property”)**.

1.2 That portion of the Tower as shown on **Exhibit B**, attached hereto (“**Tower Space**”). Tenant may not install any equipment in alternate areas of the Tower or other locations without an amendment to this New Agreement;

1.3 That portion of the Building as shown on **Exhibit C**, attached hereto (“**Building Space**”);

1.4 Other locations throughout the Property, the Tower and the Building necessary and appropriate for the connection of antenna equipment on the Tower Space to the Building Space. The Tower Space, Building Space and other locations described in this Section shall be collectively referred to as the "**Premises**". Tenant shall not install any equipment in alternate areas of the Premises or other locations on the Property without an amendment to this New Agreement.

## 2. PERMITTED USE.

2.1 Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, removal, replacement and upgrade of its communications fixtures and related equipment, cables, accessories and improvements, which may include associated antennas, equipment, racks and other items necessary to the successful and secure use of the Premises as shown on **Exhibits B and C** (collectively, the "**Communications Facility**"), subject to Landlord's consent, and applicable Government Approvals as described below, at Tenant's sole cost and expense. Tenant shall not remove, damage, disturb or otherwise interfere with any facilities or equipment on the Property or within the Premises that do not belong to Tenant without Landlord's prior approval. Landlord's execution of this New Agreement signifies Landlord's approval of **Exhibits B and C**. By executing this New Agreement, Tenant accepts the Premises in the condition existing as of the Effective Date of this New Agreement and acknowledges that the Premises are acceptable for Tenant's use of its Communications Facility. Landlord makes no representation or warranty with respect to the condition of the Premises or Property.

2.2 Modifications to Use of Premises. Tenant may modify, supplement, replace, upgrade, and expand the Communications Facility within the Premises, including adding or expanding equipment, increase the number and or dimensions of antennas and equipment on the Premises or relocate the Communication Facility within the Premises at any time during the term of this Agreement with Landlord's prior written consent and subject to Government Approvals. Modifications to Exhibit A or B shall require an amendment to this New Agreement. Any alterations and/or modifications as provided for in this New Agreement shall be performed in a workmanlike manner and shall not result in the placement of any mechanics' laborers' or materialmen's lien against the Property or the Premises, nor shall such alterations or improvements compromise the structural integrity of any structure within the Premises. Tenant agrees to discharge at its cost and expense any such liens within sixty (60) days' notice by Landlord. In the event Tenant fails to discharge such lien, Landlord may do so and charge Tenant all costs and expenses, including reasonable attorney's fees.

2.3 Lease of Additional Property. In the event Tenant desires to modify its Communications Facility in a manner that requires an additional portion of the Property beyond the Premises as depicted on Exhibits B and C, as they may be amended (the "**Additional Property**"), Landlord reserves the right in its sole discretion to lease to Tenant the Additional Property, at terms that Tenant and Landlord may agree upon, provided that the Rent shall increase as negotiated but in no event less than the amount equivalent to the then-current per square foot rental rate times the square footage of the Additional Property leased by Tenant. The lease of Additional Property shall require an amendment to this New Agreement.

2.4 Tenant's Permitted Uses of the Premises shall not compromise the structural integrity of the Tower, Building or the Premises, and shall at all times be subject to applicable codes, including but not limited to the Florida Building Code and City of Coral Gables Code of

Ordinances. Landlord shall have the right, at Landlord's cost and expense, to inspect Tenant's Permitted Uses and Tenant's Communications Facility. Notwithstanding this provision, Landlord may inspect the Tower, Premises and Tenant's Communications Facility at Tenant's reasonable cost and expense, in connection with Tenant's request for consent to modify, revise or alter its Communications Facility. Nothing herein shall prohibit the City from inspecting the Structure, Premises and Communications Facility at Tenant's expense in the exercise of the City's regulatory and police powers in reviewing Tenant's application for Government Approval. Structural analyses of any proposed installation, addition, modification, upgrading or replacement of Tenant's Communications Facilities on the Structure by a licensed engineer who satisfies the requirements of Section 471.003, Florida Statutes, shall be performed at Tenant's sole cost and expense in accordance with applicable national standards and building codes.

2.5 Tenant agrees that upon completion of any upgrades or modifications to its equipment or Communications Facility, the Landlord may inspect such work to certify as having been completed in accordance with engineering requirements and an approved amended Exhibit B or C, as applicable by the Landlord's engineering consultant ("Engineering Consultant"). If the Landlord's Engineering Consultant determines that repairs or modifications of Tenant's equipment, the Tower, other equipment on the Tower or the Premises are necessary as a result of Tenant's construction pursuant to any amendment approved by Landlord, Tenant shall be responsible for the cost of such repairs or modifications. The cost of such inspection and certification by the Landlord's Engineering Consultant shall be borne solely by Tenant.

2.6 Interference. Tenant warrants that its installation of new or modified equipment will not interfere with existing radio frequency user(s) on the Property at the time of such installation, as long as those existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

2.7 Access to the Property and Premises. Landlord hereby grants Tenant a non-exclusive right of ingress and egress to and from the Premises, including parking areas, seven days a week, 24 hours a day for the Permitted Use outlined in this New Agreement. At Landlord's request, Tenant will notify Landlord sufficiently in advance of accessing the Tower Space or Building Space so that Landlord may arrange to have someone observe Tenant or its contractors. Tenant hereby acknowledges and agrees that Landlord's Property is used as a fire station which provides emergency, police, and fire station services ("City Services"). Tenant shall take all steps necessary to ensure that Tenant's use of and access to the Premises and Property does not interfere with, limit, or restrict the City Services at any time. Landlord, within its reasonable discretion, may restrict Tenant's access to the Property, upon prior notice to Tenant, if Landlord determines such restriction is necessary to avoid interference with City Services. Such prior notice from Landlord to Tenant shall not be required in the event of an emergency.

### **3. Rent.**

3.1 Commencing as of April 22, 2018, and for each successive year of the Initial and Extension Terms, rent will be paid in equal monthly installments and shall commence at \$5,000 per month. On an annual basis commencing April 22, 2019, rent will increase by three percent (3 %) over the monthly rent paid during the previous year. Monthly rent for any Holdover Period shall increase five percent (5%) of the monthly rent for the immediately preceding month. The initial rent payments due will be forwarded by Tenant to Landlord within forty-five (45) days after the full execution and delivery of this Third Amendment.

3.3 All charges payable under this New Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of this Agreement. Tenant shall pay any invoice from Landlord within forty-five (45) days of receipt. If Tenant disputes any invoice, it must pay such invoice and notify Landlord of the nature of its dispute and amount of the dispute within forty-five (45) days of receipt, otherwise, Tenant shall be deemed to waive any dispute of an invoice. All invoices to Tenant shall be sent to Tenant at the address provided herein.

3.4 Late Fees. Tenant shall pay Landlord a late payment charge equal to five percent (5%) of any payment which is late, for any payment not paid within 30 calendar days after receipt of written notice from Landlord of such late payment. Any amounts not paid within such 30 calendar days period shall also bear interest from the date due until paid at the lesser of the rate of two percent (2%) per month or the highest rate permitted by law.

3.5 Reimbursement. In addition to Rent and not to be deducted from Rent or any other fees and costs due under this New Agreement, pursuant to Division 12, Section 2-2015 of the City Code, the Landlord reserves the right to charge Tenant for reasonable costs including engineering review and attorney's fees, incurred by Landlord in processing Tenant's requests that require an amendment to this New Agreement. Landlord may invoice Tenant a deposit as a good-faith estimate for such amounts to be incurred. The amount of such reimbursements and the basis for such amounts will be provided to Tenant and will be due as provided in Landlord's invoice to Tenant.

#### 4. Term.

4.1 The initial term of this New Agreement shall commence as of April 22, 2018, and subject to the right of extension or termination provided for herein, shall terminate April 21, 2028 ("Initial Term").

4.2 Option to Extend Lease Term. Subject to termination as provided herein, Tenant shall have the option to extend this New Agreement for four (4) additional terms of five (5) years each ("Extension Term"), and such Extension Terms shall automatically occur unless the Tenant gives the Landlord written notice of its intention not to extend this New Agreement at least six (6) months prior to the end of the then current Extension Term. In the event Tenant provides notice not to extend the New Agreement, but does not remove its Communications Facility by the end of such Extension Term, Tenant shall be in a Holdover Period. Either party may terminate this New Agreement at any time during the Holdover Period with sixty (60) days' prior written notice.

4.3 If at the end of the last five (5) year extension term this New Agreement has not been terminated by either party by giving to the other written notice of an intention to terminate it at least six (6) months prior to the end of such final term, this New Agreement shall continue in force upon the covenants, terms and conditions contained in this New Agreement as it may be amended, for a further term of one (1) year, and for annual terms thereafter until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of such annual term.



**5. Government Approvals.**

5.1 Tenant at its sole cost and expense shall be responsible for obtaining all of the necessary governmental approvals required for the Permitted Use. These approvals include, but are not limited to, building permits, FAA, FCC, and Miami-Dade County approvals (the "Government Approvals").

5.2 Landlord shall cooperate with the Tenant in its efforts to obtain the Government Approvals and shall take no action which would adversely affect the Tenant's Permitted Use of the Premises.

5.3 Notwithstanding any provision herein to the contrary, Landlord cannot and hereby expressly does not waive or relinquish any of its land use, regulatory and police power authority, approval or enforcement rights and obligations, as they may relate to government regulations of general applicability which may govern the Property, any improvements thereon, or any operations on the Property. Nothing in this New Agreement shall be deemed to create an affirmative duty of Landlord to abrogate its right to exercise its police power and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules and regulations, federal laws and regulations, state laws and regulations and grant agreements, as they may be amended. In addition, nothing herein shall be considered zoning by contract.

5.4 Landlord shall have the right, at Landlord's cost and expense, to inspect Tenant's Permitted Uses and the addition, modification, upgrading or replacement of Tenant's Communications Facility. Notwithstanding this provision, Landlord may inspect the Tower, Premises and Tenant's Communications Facility at Tenant's reasonable cost and expense, in connection with Tenant's request for consent to modify, revise or alter its Communications Facility, or in the event Landlord has a reasonable belief that inspection is warranted. Nothing herein shall prohibit the Landlord from inspecting the Tower, Premises and Communications Facility at Tenant's expense in the exercise of the Landlord's regulatory and police powers in reviewing Tenant's application for Government Approval. Structural analyses of any proposed installation, addition, modification, upgrading or replacement of Tenant's Communications Facilities on the Tower by a licensed engineer who satisfies the requirements of Section 471.003, Florida Statutes, shall be performed at Tenant's sole cost and expense in accordance with applicable national standards, electrical codes, and building codes.

5.5 If at any time during this New Agreement any of the Government Approvals are either rejected, terminated, expired, lapsed, withdrawn, canceled or if radio frequency tests conducted by the Tenant are found to be unsatisfactory, so that the Tenant at the Tenant's sole discretion is unable to use any or all of the Premises for the Permitted Use, the Tenant shall have the right to terminate this New Agreement. Notice of the Tenant's right to terminate this New Agreement as provided for in this Section shall be given to the Landlord in writing, and shall be effective upon ninety (90) days after receipt by Landlord. All rentals paid and owing up to said termination date shall be retained by the Landlord. Upon such termination, the parties shall have no further obligations, including the payment of Rent to each other, except for such provisions that survive the termination of this New Agreement.

**6. Maintenance.**

6.1 Tenant, at its sole cost and expense, shall be responsible for repairing and maintaining the Communications Facility installed by Tenant on the Premises in a proper

operating and safe condition, in compliance with applicable codes and industry standards. To the extent any repair or maintenance of the Premises is required due to the acts or omissions of Tenant, its agents or employees, Tenant shall reimburse Landlord the reasonable costs incurred by Landlord to restore the damaged areas to the condition which existed immediately prior thereto, as long as Landlord has provided Tenant at least thirty (30) days' prior written notice of the alleged damage and an opportunity for Tenant to repair said damage itself to Landlord's reasonable satisfaction, unless an emergency condition has been created.

6.2 Landlord may arrange for periodic inspections of the Tower and the Premises by its Engineering Consultant or other appropriate inspector. In the event it is necessary to perform maintenance of the Tower, or any portion of the Premises to maintain use of the Tower and Premises in accordance with engineering or industry standards, that is not the result of any action or omission by any other carrier using the Tower or Premises for which such carrier is responsible, Tenant agrees to pay its share of the reasonable costs for such inspections and maintenance by Landlord. Tenant's share shall be based on the amount of useable space of the Premises used by Tenant at the time the need for such maintenance arises.

6.3 Temporary Removal. Tenant agrees to reasonably cooperate with Landlord in the event Landlord reasonably determines it is necessary to make substantial repairs to the Tower or any portion of the Premises that would impact or require the temporary removal of Tenant's Communications Facility. In such event, the following conditions shall apply: (i) Landlord shall provide at least ninety (90) days prior written notice to Tenant of Landlord's need to make such repairs; provided, however, if Landlord believes that it is unable to give 90 days' notice because of events beyond Landlord's reasonable control, or because Landlord is required to meet regulatory requirements or reasonably necessitated by public safety considerations, then Landlord agrees to give Tenant notice as soon as reasonably practical under the circumstances; (ii) Tenant, or its contractors, at Tenant's sole cost and expense, shall temporarily remove and relocate any equipment as may be necessary to accommodate the work to be performed by Landlord, to a mutually acceptable location; and (iii) in the event Tenant's Communications Facility located on the Tower, on the ground or in the Building Space must be temporarily relocated, Tenant may request of the Landlord the ability to use a temporary transmission site or cell on wheels ("COW") on the Landlord's Property at a location sufficient to meet Tenant coverage or engineering needs and as reasonably agreed upon by the parties. Landlord is under no obligation to consent to the use of a COW. Tenant's installation of any temporary facilities or COW shall be subject to Tenant obtaining any Government Approvals, as applicable, at Tenant's cost and expense. Landlord agrees to diligently and in good faith undertake and complete the work and repairs as expeditiously as possible to minimize the period of time that Tenant's equipment needs to be relocated. Tenant shall be afforded the opportunity, if space is available, and sufficient time, if possible under the circumstances, to install temporary communications equipment in alternative locations on the Tower prior to removing its existing equipment to ensure that Tenant has continuous coverage, subject to obtaining appropriate Government Approvals at Tenant's cost and expense. Under no circumstances will Landlord or anyone acting on its behalf attempt to move, relocate or remove any equipment of Tenant, unless Tenant has not commenced the temporary relocation of its equipment within thirty (30) calendar days of the commencement of the repairs by Landlord as specified in the notice.

## **7. Replacement of Tower.**

If Landlord determines in its reasonable discretion based on considerations concerning the structural capacity of the Tower, engineering issues, or compliance with applicable codes and

standards, that it is necessary to replace the Tower with a new tower ("Replacement Tower"), Landlord shall provide at least six (6) months prior written notice to Tenant, and the parties shall reasonably cooperate to accomplish such removal of the Tower ("Decommission") and construction of a Replacement Tower so as to avoid disruption of the parties' use of the Premises, unless Tenant notifies Landlord that it wishes to terminate the Agreement. If it is anticipated that the Tower or other portions of the Premises will become unusable for temporary periods of time as a result of such construction activities, Landlord will provide Tenant with reasonable prior notice of such dates. As set forth in this Section, Tenant may request that the Landlord allow Tenant the ability to use a temporary transmission site or COW on the Landlord's Property at a location sufficient to meet Tenant's coverage or engineering needs and as reasonably agreed upon by the parties. Landlord's consent to the use of temporary facilities or COW shall not be unreasonably withheld or conditioned. Installation of such temporary facilities, COW or relocation of equipment and facilities shall be subject to Tenant obtaining, at its cost and expense, any Government Approvals that may be necessary. Landlord agrees to undertake diligently and in good faith the construction of the Replacement Tower and Decommission of the existing Tower. Tenant shall be responsible for its pro rata share, based on the percentage of useable space on the Tower that it is using at the time Landlord provides notice of the intent to replace the Tower, of the costs and expenses incurred in connection with the Decommission and removal of the Tower and the construction and installation of the Replacement Tower ("Tenant Share"). Tenant shall be provided detailed cost estimates and an opportunity to opt out of payment of Tenant's Share if Tenant terminates the Agreement. To exercise such right to terminate, Tenant must provide Landlord notice of termination no later than thirty (30) days after receipt of the cost estimate from Landlord. If Tenant does not provide such timely notice, Tenant shall continue to be bound by this New Agreement, as amended, and to pay Tenant's Share of the costs as set forth herein. If Tenant exercises its right to terminate, such termination shall be effective upon the date of Decommission. Tenant shall continue to pay rent and fees that may be due pursuant to the New Agreement through such date. Landlord shall be responsible for obtaining Government Approvals at its costs and expense for removing the existing Tower and for construction and installation of the Replacement Tower. Tenant shall be responsible, at its costs and expense, for obtaining Government Approvals to install its antennas, equipment and Communications Facility on the Replacement Tower and for performing such installation, which Tenant shall pursue in a diligent fashion once notified by Landlord that the Replacement Tower is available. If there are less than three Renewal Terms remaining on the New Agreement at the time of notice by the Landlord of the need to install a Replacement Tower, the parties agree to negotiate in good faith a reasonable extension of the New Agreement to accommodate the costs incurred by the parties.

8. **Bond.** Tenant shall submit a performance bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) in a form of an Irrevocable Letter of Credit reasonably acceptable to the Landlord's attorney. Tenant shall maintain such bond for as long as the New Agreement is in effect to guarantee Tenant's compliance with the terms of the New Agreement, as amended, and to provide funds for Landlord's removal of Tenant's Communications Facility and restoration of the Premises if Tenant does not perform such removal and restoration when required herein.

9. **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 Tenant:

New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site #: FHJX, Cell Site Name: FHJX (FL)  
FA No.: 10023646  
1025 Lenox Park Blvd, NE  
3<sup>rd</sup> Floor  
Atlanta, GA 30324

With the required copy of legal notice sent to Tenant at the address above, a copy to the Legal Department:

New Cingular Wireless PCS, LLC  
Attn: Legal Department,  
Re: Cell Site #: FHJX, Cell Site Name: FHJX (FL)  
FA No.: 10023646  
AT&T Legal Department – Network  
208 S. Akard Street  
Dallas, TX 75202-4206

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

If to Landlord:

City of Coral Gables  
405 Biltmore Way  
Coral Gables, Florida 33134  
Attn: City Manager

With a copy to: City Attorney

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.

**10. Shared Generator.** Tenant and Landlord acknowledge that Tenant currently has use of Landlord's generator located in the Building Space of the Premises. Tenant and Landlord further acknowledge that nothing in the Agreement authorizes Tenant to install or Landlord to provide a backup power supply for Tenant's use and that Tenant's current use of Landlord's generator is provided by Landlord without any obligation to do so. The existing generator is used by Landlord as backup power supply for City's Services, as well as by Tenant and other carriers on the Property. Landlord contemplates removing the existing generator and purchasing, installing, operating and maintaining on the Property a generator and fuel storage facility to be shared by Landlord, Tenant and other then-existing wireless carriers on the tower (the new generator and fuel storage collective are referred to as "Shared Generator"). It is contemplated that each wireless carrier on the Tower seeking to use the Shared Generator will contribute its pro rata share to cover the cost of purchase, installation, operation and maintenance thereof, and Landlord will not contribute towards the cost of the Shared Generator. Landlord will be responsible for conducting the purchase and installation of the Shared Generator with appropriate permits and will own the Shared Generator. Tenant agrees that it will utilize the Shared Generator,

and will pay its pro rata share of the cost for the purchase, installation, operation and maintenance of the Shared Generator. The parties anticipate entering into a mutually approved Shared Generator Agreement between the parties as well as others who may utilize the Shared Generator. As a good faith payment of Tenant's commitment, Tenant agrees to pay Landlord \$25,000 toward its share of the Shared Generator within sixty (60) days from the Effective Date. Such amount will be held in trust by Landlord and used solely in connection with costs incurred associated with the project for the purchase and installation of the Shared Generator.

**11. Covenant of Quiet Enjoyment.** Landlord covenants that, the Tenant's quiet enjoyment of the Premises at all times during the term of this New Agreement shall not be disturbed by any act of the Landlord, or of anyone acting by, through, or under the Landlord so long as (a) no event of default by the Tenant shall have occurred beyond all applicable notice, cure, and grace periods, and (b) the Tenant shall have fully performed all of the terms and conditions of this New Agreement. With the exception of radio equipment used for municipal purposes, the Landlord agrees not to place or allow for the placement of any equipment on the Tower which will cause measurable interference with the Tenant's Permitted Use that cannot be eliminated. If at any time during this New Agreement, new equipment installed on the Tower (other than the Landlord's equipment) causes measurable interference with the Tenant's Communications Facility, Landlord agrees to immediately perform (or cause to be performed) the necessary adjustments to the new equipment to eliminate the interference. If new equipment placed by Landlord causes unacceptable and measurable interference, the Landlord will use all reasonable efforts with reasonable cooperation of Tenant to eliminate the interference as soon as possible after notice from the Tenant.

**12. Removal after Termination of New Agreement.** Upon termination of this New Agreement, the Tenant shall, at its cost, within a reasonable time not to exceed ninety (90) days, remove all of its Communications Facility from the Premises and repair any damage to the Premises or Property caused by the removal, ordinary wear and tear excepted. If the Tenant does not remove its Communications Facility, or any portion thereof as required herein, the Tenant shall pay rent as determined during the Holdover Period. If Tenant does not remove its Communications Facility as required herein, following fifteen (15) days' notice from Landlord, Landlord may remove or cause to be removed all or a portion of Tenant's Communications Facility from the Premises and charge all such costs to Tenant. Alternatively and in its sole discretion, Landlord may assume ownership of all or a portion of Tenant's Communications Facility with no liability to Tenant. Tenant shall execute any documents reasonably required by Landlord to transfer ownership to Landlord, with no compensation due from Landlord. Landlord may draw down any bond, letter of credit or security fund received from Tenant to accomplish such removal at Tenant's cost.

**13. Utilities.**

13.1 The Landlord shall furnish the Building Space with electric service sufficient for the Permitted Use. The Tenant shall be responsible for payment of all electrical consumption required by the Tenant for its Permitted Use and may cause the Building Space to be separately metered for such purpose. The Landlord hereby agrees that the Tenant at the Tenant's sole cost and expense may provide and install its own electrical power with sufficient capacity to permit the Tenant's Permitted Use.

13.2 The Tenant shall have the right to install, at its sole cost and expense, supplementary air conditioning equipment to provide air conditioning on a twenty-four (24) hour a day, seven (7)

days a week basis. Should the Tenant so desire, the Landlord shall provide reasonable additional space on the Building for the Tenant's supplemental air conditioning components.

**14. Indemnification.**

14.1 Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this New Agreement, except to the extent attributable to the grossly negligent or intentional act or omission of Landlord, its employees, agents or independent contractors.

14.2 Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Landlord, its employees or agents, or Landlord's breach of any provision of this New Agreement, except to the extent attributable to the grossly negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.

14.3 The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section and provide the indemnifying party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except (1) to the extent the indemnifying party can show it was prejudiced by the delay; and (2) the indemnifying party shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

14.4 Notwithstanding any provision to the contrary in this Lease, nothing in this Lease shall constitute or be deemed to create an affirmative duty of Landlord to waive its sovereign immunity pursuant to Section 768.28, Florida Statutes. The provisions of this Section 14 shall survive the termination of this New Agreement.

**15. WARRANTIES.**

15.1 Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this New Agreement and bind itself hereto through the party set forth as signatory for the party below.

15.2 Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license and solely owns the Tower; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this New Agreement; (iii) as long as Tenant is not in default then Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises without hindrance or ejection by any persons lawfully claiming under Landlord; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered

by a deed to secure a debt, mortgage or other security interest, Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest.

**16. ENVIRONMENTAL.**

16.1 Landlord represents and warrants, that to the best of Landlord's knowledge without investigation, the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant shall comply with all federal, state and local laws in connection with any substances brought onto the Property that are identified by any law, ordinance or regulation as hazardous, toxic or dangerous (collectively, the "**Hazardous Substances**"). Landlord and Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property.

16.2 Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding ("**Claims**"), to the extent arising from that party's breach of its obligations or representations under this Section. To the extent permitted by applicable law, Landlord agrees to hold harmless and indemnify Tenant from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Landlord for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Property with hazardous substances that it brought onto the Property prior to the effective date of the Agreement or from such contamination caused by the acts or omissions of the Landlord during the Term. Tenant agrees to hold harmless and indemnify Landlord from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Tenant for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from hazardous substances brought onto the Property by Tenant.

16.3 The indemnifications of this Section specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any government authority. The provisions of this Section will survive the expiration or termination of this Agreement.

**17. Assignment.** This New Agreement may not be sold, assigned or transferred by Tenant at any time except to the Tenant's principal, affiliates or subsidiaries of its principal or to any company upon which the Tenant is merged or consolidated. As to other parties, Tenant may not assign or otherwise transfer this New Agreement without the prior written consent of Landlord, which will not be unreasonably withheld or delayed. Upon an assignment or transfer, Tenant shall be relieved of all liabilities and obligations hereunder upon Landlord's receipt of an assignment and assumption agreement signed by Tenant and its assignee. Tenant may not sublet its rights under this New Agreement without Landlord's prior written consent. Landlord shall have the right to assign and transfer this New Agreement. Upon Tenant's receipt of written verification of a sale, or transfer of the Tower and/or Property, or assignment of this New Agreement, Landlord shall be relieved of all liabilities and obligations to the extent of such sale, assignment, or transfer, and

Tenant shall look solely to the new landlord for performance under this New Agreement. Until Tenant receives required information and documents, Tenant shall not be responsible for any failure to make payments under this New Agreement to new landlord. Nothing herein shall prohibit Landlord from transferring or selling the Tower or any improvement on or portion of the Property belonging to Landlord, provided such transferee shall agree to abide by the terms of this New Agreement.

18. **Condemnation.** If the whole of the Property or such portion thereof as will make any of the Premises unusable for the Permitted Use, are condemned by any legally constituted authority for any public use or purpose, then in either of said events the term hereby granted shall cease from the time when possession thereof is taken by public authorities, and rental shall be accounted for as between the Landlord and the Tenant hereunder. Nothing in this provision shall be construed to limit or affect the Tenant's right to an award of compensation of any eminent domain proceeding for the taking of the Tenant's leasehold interest hereunder.

19. **Restoration After Casualty.** In the event the Building and/or Tower shall be destroyed or so damaged or injured by fire, hurricane or other casualty during the term of this Agreement and any extensions thereof, whereby any or all of the Premises are rendered untenable, then the Landlord, at its sole cost and expense shall have the right to render said Premises tenantable by repairs within 120 days therefrom. If said Premises are not rendered tenantable within said time, it shall be optional with either party hereto to cancel this New Agreement, and in the event of such cancellation, the rent shall be paid only to the date of such fire, hurricane or casualty. The cancellation herein mentioned shall be evidenced in writing. The Tenant shall be entitled to abatement of the rental payment during the time that it takes the Landlord to render the Premises tenantable under this section, unless places temporary transmission and reception facilities on the Property. If Landlord determines not to rebuild or restore the Property, Landlord will notify Tenant of such determination within ninety (90) days after the casualty or other harm. If Landlord does not so notify Tenant, and Tenant decides not to terminate under this Section, then Landlord will rebuild or restore any portion of the Property interfering with or required for Tenant's Permitted Use of the Premises to substantially the same condition as existed before the casualty or other harm. Landlord agrees that the Rent shall be abated until the Property and/or the Premises are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

20. **Subordination of Agreement.** At the Landlord's option, this Agreement shall be subordinate to any mortgage by the Landlord which from time to time may encumber all or part of the Property, provided, however, every such mortgagee shall provide the Tenant with a non-disturbance agreement and recognize the validity of this Agreement in the event of a foreclosure of the Landlord's interest. Mortgagee shall also recognize the Tenant's right to remain in occupancy of and have access to the Premises as long as the Tenant is not in default of this New Agreement. The Tenant shall execute whatever instruments may reasonably be required to evidence this subordination clause.

21. **TAXES.**

21.1 Tenant shall be responsible for any taxes and assessments attributable to and levied upon Tenant's leasehold improvements on the Premises if and as set forth in this Section. In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice to Tenant's address listed herein immediately upon receipt, but in no event later than sixty (60) days after the date of such notice of assessment. Tenant shall pay such



assessment, and provide proof of payment to Landlord, or Tenant shall reimburse Landlord for the tax or assessments identified on the notice of assessment on Tenant's leasehold improvements, which has been paid by Landlord. If Landlord seeks reimbursement from Tenant, Landlord shall, no later than thirty (30) days after Landlord's payment of the taxes or assessments for the assessed tax year, provide Tenant with written notice including evidence that Landlord has timely paid same.

21.2 For any tax amount for which Tenant is responsible under this New Agreement, Tenant shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as Tenant may deem appropriate. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate with respect to the commencement and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant, to the extent the amounts were originally paid by Tenant. In the event Tenant notifies Landlord by the due date for assessment of Tenant's intent to contest the assessment, Landlord shall not pay the assessment pending conclusion of the contest, unless required by applicable law.

22. **Sale of Property.** Should the Landlord, at any time during the term of this New Agreement and any extensions thereof, decide to sell all or part of the Property, such sale shall be under and subject to this New Agreement and the Tenant's rights hereunder. Any person or entity acquiring title to the Building, Tower and/or the Property shall recognize the validity of this New Agreement, shall assume all of the Landlord's obligations hereunder and shall deliver to the Tenant a non-disturbance agreement.

23. **Recording.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum or Short Form of Lease substantially in the form attached as **Exhibit D** to be recorded in the Public Records of Miami-Dade County, Florida, by Tenant, at its cost.

24. **Compliance with Law.** Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("Laws") applicable to Tenant's use of the Communications Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord's ownership and use of the Property and any improvements on the Property.

25. **Default And Right To Cure.**

24.1 The following will be deemed a default by Tenant and a breach of this New Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's material failure to perform any other term or condition under this New Agreement within forty-five (45) days after written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

24.2 The following will be deemed a default by Landlord and a breach of this New Agreement: (i) Landlord's failure to provide access to the Premises as required by this New Agreement within five (5) days after written notice of such failure; (ii) Landlord's failure to cure an interference problem as required by this Agreement within five (5) days after written notice of such failure; or (iii) Landlord's material failure to perform any term, condition or material breach of any warranty or covenant under this Agreement within forty-five (45) days of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have: (i) the right to cure Landlord's default and to deduct the reasonable costs of such cure from any monies due to Landlord from Tenant provided Tenant has provided Landlord with an estimate of such costs. Landlord will review and approve or deny estimate within fifteen (15) days or estimate is deemed approved, and (ii) any and all other rights available to it under law and equity.

26. **Attorneys' Fees.** In the event of litigation arising out of this New Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, including fees for the services of paralegals and similar persons, and all such expenses and costs incurred by the prevailing party through all appellate levels.

27. **Provisions Severable.** Every provision of this New Agreement shall be valid and be enforced to the fullest extent permitted by law. If any provision of this New Agreement, or the application of such provision to any person or circumstance, shall be determined by appropriate judicial authority to be illegal, invalid, or unenforceable to any extent, such provision shall, only to such extent, be deemed stricken from this New Agreement as if never included. The remainder of this New Agreement, and the application of such provision to persons or circumstances other than those as to which such provision is held illegal, invalid, or unenforceable, shall not be affected.

28. **Survival.** Any provisions of this New Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this New Agreement that by their sense and context are intended to survive the termination or expiration of this New Agreement shall so survive.

29. **W-9.** As a condition precedent to payment, Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon request following execution of this New Agreement and at such other times as may be reasonably requested by Tenant, including, any change in Landlord's name or address.

30. **Time of the Essence.** Time is of the essence as to all material terms of this New Agreement.

31. **Governing Law.** This New Agreement shall be construed and governed in accordance with the laws of the State of Florida without application of conflict of law principles. Any action arising out of this New Agreement shall be brought exclusively in an appropriate court in the county in which the Premises are located.

32. **Negotiated Agreement.** All of the parties to this New Agreement have participated fully in its negotiation and preparation. Accordingly, this New Agreement shall not be more strictly construed against any one of the parties.

33. **Radon Gas.** In accordance with Florida Law, the following statement is hereby made: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

34. **No Partnership.** The Landlord shall not be deemed, in any way or for any purpose, to have become, by the execution of this New Agreement or any action taken under this New Agreement, a partner of the Tenant, in the Tenant's business or otherwise, or a member of any joint enterprise or venture with the Tenant.

35. **Entire Agreement.** This New Agreement contains the sole and entire agreement, and supersedes all other prior written or oral agreements, between the parties with respect to the subject matter of this New Agreement.

36. **Amendment/Waiver.** This New Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this New Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

37. **Binding Effect.** The terms and conditions of this New Agreement shall bind the parties and their respective successors and assigns, and shall inure to the benefit of the parties and their respective permitted successors and assigns. Any waiver of rights by either party shall be deemed not only to be a waiver of such rights by such party but also a waiver of such rights for and on behalf of such party's successors and assigns.

38. **Counterparts.** This New Agreement may be executed in two (2) counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same agreement.


[SIGNATURES ON FOLLOWING PAGE]

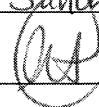
IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this New Agreement on the dates set forth below.

**"LANDLORD"**

**WITNESSES:**


City of Coral Gables

By:   
Name: Peter J. Iglesias  
Title: City Manager  
Date: 9/26/19

By: Sandra Rodriguez  
Name: Sandra Rodriguez  
By:   
Name: Alexandra Tolkoff

Approved as to Form


*for* Cristina M. Suarez  
Miriam Ramos, City Attorney



Attest:   
**Billy Y. Urquia**  
**City Clerk**

**"TENANT"**

**WITNESSES:**

New Cingular Wireless PCS, LLC  
By: AT&T Mobility Corporation  
Its: Manager

By:   
Name: John F. Heggy  
Title: Area Manager  
Date: 6/5/2019

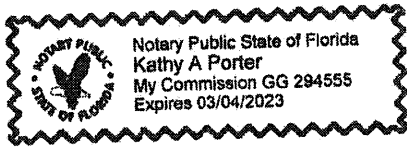
By:   
Name: Kathy Porter  
By:   
Name: Yasmarie Nevarez

TENANT ACKNOWLEDGEMENT

STATE OF FLORIDA \_\_\_\_\_ )

COUNTY OF SEMINOLE )ss:

On the 5<sup>TH</sup> day of JUNE, 2019 before me personally appeared John F. Heggy, and acknowledged under oath that he is the Area Manager of AT&T Mobility Corporation, manager of New Cingular Wireless PCS LLC, the company named in the attached instrument, and as such was authorized to execute this instrument on behalf of the company.



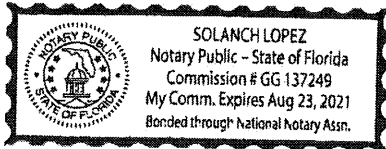
Kathy A. Porter  
Notary Public: Kathy Porter  
My Commission Expires: \_\_\_\_\_

LANDLORD ACKNOWLEDGEMENT

STATE OF FLORIDA \_\_\_\_\_ )

COUNTY OF MIAMI-DADE \_\_\_\_\_ )ss:

On the 26<sup>th</sup> day of September 2019 before me personally appeared Peter J. Iglesias, and acknowledged under oath that he is the City Manager of Coral Gables, the City named in the attached instrument, and as such was authorized to execute this instrument on behalf of the City of Coral Gables



Solanch Lopez  
Notary Public: Solanch Lopez  
My Commission Expires: August 23, 2021

Exhibit A

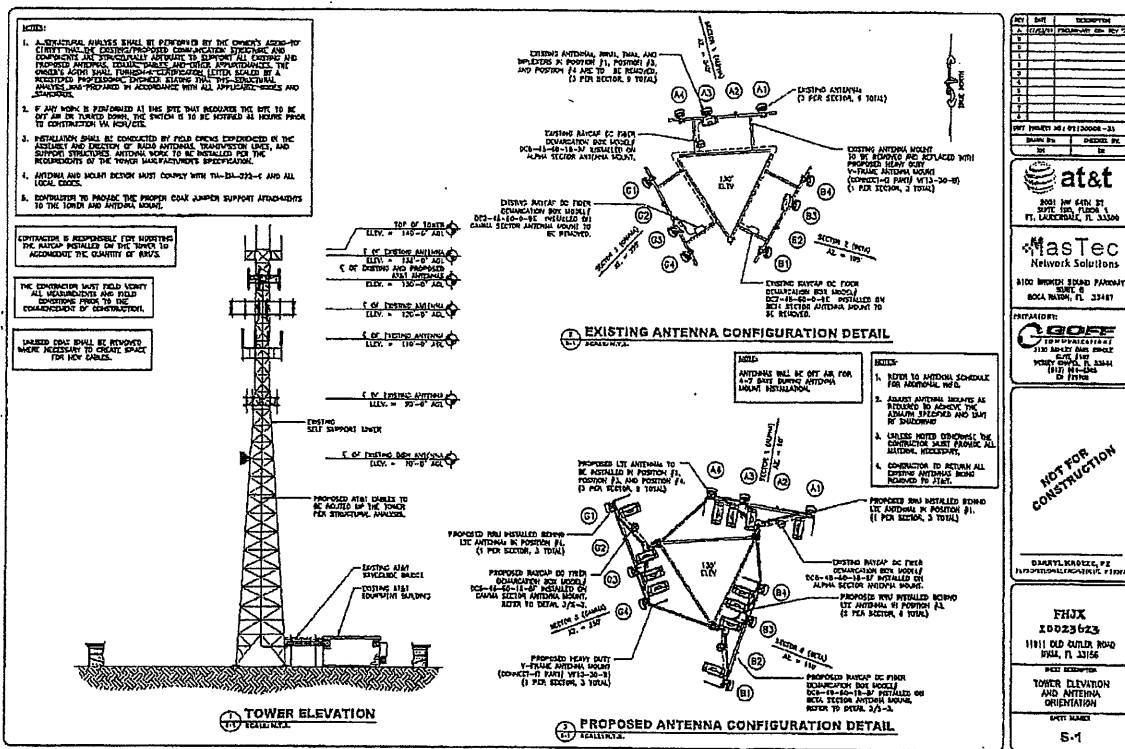
**LEGAL DESCRIPTION**

THAT PORTION OF LAND LYING ON THE S.W. 1/4 OF SEC. 7, TOWNSHIP 55 SOUTH, RANGE 41 EAST, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID SECTION 7. THENCE RUN SOUTH 89°49'30" EAST ALONG THE SOUTH LINE OF SAID SECTION 7, FOR A DISTANCE OF 452.42 FEET; THENCE DUE NORTH ALONG A LINE PARALLEL TO THE WEST LINE OF SAID SECTION 7, FOR A DISTANCE OF 824.84 FEET; THENCE RUN NORTH 89°48'30" WEST, FOR A DISTANCE OF 218.92 FEET; THENCE DUE NORTH FOR A DISTANCE OF 439.89 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF OLD CUTLER ROAD, SAID POINT BEING 70.00 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLE TO THE NORTH LINE OF THE S.W. 1/4 OF THE S.W. 1/4 OF SAID SECTION 7; THENCE SOUTH 89°51'00" EAST ALONG THE SOUTH RIGHT OF WAY LINE OF OLD CUTLER ROAD, SAID LINE BEING 70.00 FEET SOUTH AND PARALLEL TO THE NORTH LINE OF THE S.W. 1/4 OF THE S.W. 1/4 OF SAID SECTION 7, FOR A DISTANCE OF 90.115 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE TO THE LEFT; THENCE RUN EASTERLY ALONG SAID CURVE HAVING A RADIUS OF 1101.28 FEET AND A CENTRAL ANGLE OF 4°36'05.2" FOR AN ARC DISTANCE OF 95.58 FEET, TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED, WHOSE RADIUS LINE BEARS NORTH 04°29'05.0" WEST; THENCE CONTINUE ALONG SAID CURVE, HAVING A RADIUS OF 1181.28 FEET, AND A CENTRAL ANGLE OF 7°38'45.1", FOR AN ARC DISTANCE OF 157.98 FEET TO A POINT, WHOSE RADIUS LINE BEARS NORTH 12°08'50.3" WEST; THENCE RUN SOUTH 34°46'15.7" EAST, FOR A DISTANCE OF 105.86 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE TO THE RIGHT; THENCE RUN SOUTHERLY ALONG SAID CURVE, HAVING A RADIUS 80.00 FEET, AND A CENTRAL ANGLE OF 52°24'48", FOR AN ARC DISTANCE OF 45.28 FEET TO THE POINT OF TANGENCY; THENCE RUN SOUTH 02°21'27.7" EAST, FOR A DISTANCE OF 24.43 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE TO THE RIGHT; THENCE RUN SOUTHWESTERLY ALONG SAID CURVE, HAVING A RADIUS OF 75.00 FEET, AND A CENTRAL ANGLE OF 90°02'57.7", FOR AN ARC DISTANCE OF 117.87 FEET TO THE POINT OF TANGENCY; THENCE RUN SOUTH 87°41'30" WEST, FOR A DISTANCE OF 150.00 FEET; THENCE RUN NORTH 02°38'08.2" WEST, FOR A DISTANCE OF 215.00 FEET TO THE POINT OF BEGINNING, CONTAINING 1.0478 ACRES MORE OR LESS.



EXHIBIT B



OFF. REC. 5877P00762

227  
GYMNASIUM

229  
A/C ROOM

228  
TOILET

230  
STAIR NO.3

231  
EQUIPMENT ROOM

232  
EQUIPMENT ROOM  
(BellSouth Mobility)

FOR 1/4" PLAN  
REFER TO A3.4

50'-6"

71'-0"

17'-6"

3'-0"

17'-6"

8'-5"

25'-11"

7A  
A5.6

10  
A5.7

A-A  
A2.9

RECORDED IN OFFICIAL RECORDS BOOK  
OF DADE COUNTY, FLORIDA.  
RECORD VERIFIED  
HARVEY RUVIN  
CLERK CIRCUIT COURT,

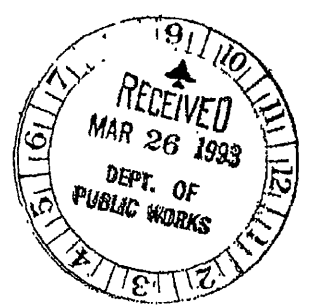


EXHIBIT "C"



**Exhibit D**

**MEMORANDUM OF AGREEMENT**

**Prepared by:**

*Black Dot Wireless  
27271 Las Ramblas - Suite 300  
Mission Viejo, CA 92691*

**Return to:**

New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site #: FHJX, Cell Site Name: FHJX (FL)  
FA No.: 10023646  
1025 Lenox Park Blvd, NE  
3<sup>rd</sup> Floor  
Atlanta, GA 30324

Re: Cell Site # FHJX; Cell Site Name: FHJX  
Fixed Asset Number:10023646  
State: Florida  
County: Dade

**MEMORANDUM  
OF  
AGREEMENT**

This Memorandum of Agreement is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between City of Coral Gables, a municipal corporation, having a mailing address at 405 Biltmore Way, Coral Gables, FL 33134 (hereinafter referred to as "**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, Atlanta, GA 30319 (hereinafter referred to as "**Tenant**").

1. Landlord and Tenant entered into a certain Lease Agreement dated March 25, 1993, as amended by certain First Amendment to Lease Agreement dated August 21, 2012, Second Amendment to Lease Agreement dated November 30, 2016, and as amended by that certain Third Amendment and Extension to Lease Agreement dated \_\_\_\_\_, 2019 (hereinafter, the "**Agreement**") for the purpose of installing, operating and maintaining a communications facility and other improvements at Landlord's real property located in the City of Miami, County of Dade, commonly known as 11911 Old Cutler Road. All of the foregoing is set forth in the Agreement.
2. The term of the Agreement commenced on April 22, 1993. The new extension term is five (5) years and commenced on April 22, 2018, with four (4) successive five (5) year options to renew.
3. The portion of the land being leased to Tenant (the "**Premises**") is described in **Exhibit 1** annexed hereto.

4. This Memorandum of Agreement 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 Agreement 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 Agreement as of the day and year first above written.

**LANDLORD:**

City of Coral Gables

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**TENANT:**

New Cingular Wireless PCS, LLC  
By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_  
Name: John Heggy  
Title: Area Manager  
Date: \_\_\_\_\_

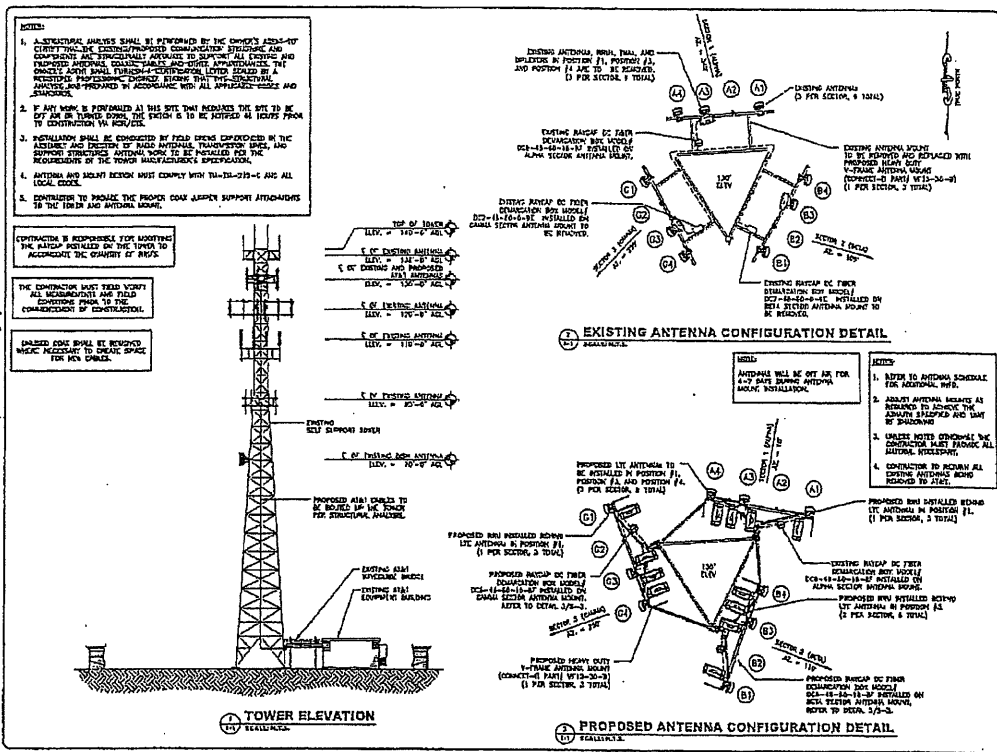
Witness: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Witness: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Witness: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Witness: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

EXHIBIT 1



REV	DATE	DESCRIPTION
1	01/15/03	ISSUED FOR PERMITS
2	02/10/03	ISSUED FOR PERMITS
3	03/10/03	ISSUED FOR PERMITS
4	04/10/03	ISSUED FOR PERMITS
5	05/10/03	ISSUED FOR PERMITS
6	06/10/03	ISSUED FOR PERMITS
7	07/10/03	ISSUED FOR PERMITS
8	08/10/03	ISSUED FOR PERMITS
9	09/10/03	ISSUED FOR PERMITS
10	10/10/03	ISSUED FOR PERMITS
11	11/10/03	ISSUED FOR PERMITS
12	12/10/03	ISSUED FOR PERMITS

DATE: 01/15/03  
DRAWN BY: [Name]  
CHECKED BY: [Name]

**at&t**  
3001 W. 84TH ST.  
SUITE 100, FLOOR 1  
FT. LAUDERDALE, FL 33309

**MastTec**  
Network Solutions  
8100 BROWNS LANE PARKWAY  
SUITE 5  
ROCK HAVEN, FL 32487

**CDPE**  
COMMUNICATIONS DESIGN PROFESSIONALS ENGINEERS  
1001 W. 84TH ST., SUITE 100  
FT. LAUDERDALE, FL 33309

**NOT FOR CONSTRUCTION**

DATE: 01/15/03  
DRAWN BY: [Name]  
CHECKED BY: [Name]

**FLUX**  
10023623  
18111 OLD OULDER ROAD  
GULF, FL 33508

**TOWER ELEVATION AND ANTENNA CONFIGURATION**

POST NAME: S-1

## MEMORANDUM OF AGREEMENT

### Prepared by:

*Black Dot Wireless*  
27271 Las Ramblas - Suite 300  
Mission Viejo, CA 92691

### Return to:

New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site #: FHJX, Cell Site Name: FHJX (FL)  
FA No.: 10023646  
1025 Lenox Park Blvd, NE  
3<sup>rd</sup> Floor  
Atlanta, GA 30324

Re: Cell Site # FHJX; Cell Site Name: FHJX  
Fixed Asset Number:10023646  
State: Florida  
County: Dade

## MEMORANDUM OF AGREEMENT

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


**LANDLORD:**

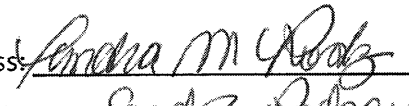
City of Coral Gables


By:   
Name: Peter A. Iglesias  
Title: City Manager  
Date: 9/26/19


**TENANT:**

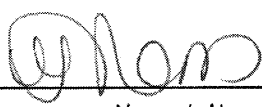
New Cingular Wireless PCS, LLC  
By: AT&T Mobility Corporation  
Its: Manager

By:   
Name: John Heggy  
Title: Area Manager  
Date: 6/5/2019

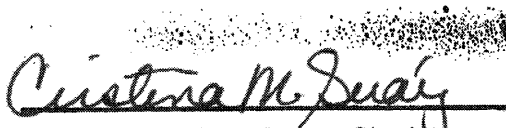
Witness:   
Printed Name: Sandra Rodriguez  
Date: 9/26/19


Witness:   
Printed Name: Kathy Porter  
Date: \_\_\_\_\_

Witness:   
Printed Name: Alexander T. [unclear]  
Date: 9.26.19

Witness:   
Printed Name: Yasmarié Nevarez  
Date: 6-5-2019

Approved as to form and legal sufficiency

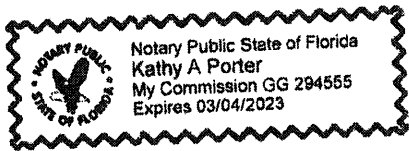
  
Cristina M. Suárez, Deputy City Attorney

Attest:   
Billy Y. Urquia  
City Clerk

TENANT ACKNOWLEDGEMENT

STATE OF FLORIDA \_\_\_\_\_ )  
 )ss:  
COUNTY OF SEMINOLE \_\_\_\_\_ )

On the 5<sup>TH</sup> day of JUNE, 2019 before me personally appeared John F. Heggy, and acknowledged under oath that he is the Area Manager of AT&T Mobility Corporation, manager of New Cingular Wireless PCS LLC, the company named in the attached instrument, and as such was authorized to execute this instrument on behalf of the company.

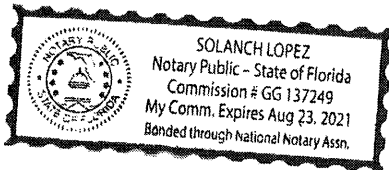


Kathy A. Porter  
Notary Public Kathy Porter  
My Commission Expires: \_\_\_\_\_

LANDLORD ACKNOWLEDGEMENT

STATE OF FLORIDA \_\_\_\_\_ )  
 )ss:  
COUNTY OF MIAMI-DADE \_\_\_\_\_ )

On the 26<sup>th</sup> day of September 2019 before me personally appeared Peter S. Iglesias and acknowledged under oath that he is the City Manager of Coral Gables the City named in the attached instrument, and as such was authorized to execute this instrument on behalf of the City of Coral Gables



Solanch Lopez  
Notary Public: Solanch Lopez  
My Commission Expires: August 23, 2021

# Exhibit 1

