

CITY OF CORAL GABLES, FLORIDA
RESOLUTION NO. 2021-03

A RESOLUTION OF THE CITY COMMISSION AUTHORIZING ENTERING INTO THE FIFTH 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, and Fourth Amendment to Lease Agreement dated June 19, 2020 (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 Fifth 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 Fifth 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 Fifth 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 and 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 engineering and 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 JANUARY, A.D., 2021.

(Moved: Lago / Seconded: Keon)

(Unanimous Voice Vote)

(Agenda Item: E-3)

APPROVED:



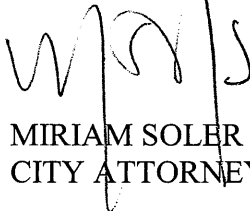
RAUL VALDES-FAULI
MAYOR

ATTEST:



BILLY Y. URQUIA
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



MIRIAM SOLER RAMOS
CITY ATTORNEY

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

FA # 10023646 FHJX

Partially Executed Agreement

12/9/2020

Attached is the partially-executed lease for FA # 10023646 FHJX
Please return (1) fully-executed original copy to:

Ryan Eaves
2859 Cormorant Road
Delray Beach, FL 33444
713-530-2773

**ATTN: Ryan Eaves
2859 Cormorant Road
Delray Beach, FL 33444
713-530-2773**

FA # 10023646 FHJX

Fully-Executed Agreement

12/9/2020

Attached is the fully executed agreement.

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

FIFTH AMENDMENT TO LEASE AGREEMENT

THIS FIFTH AMENDMENT TO LEASE AGREEMENT ("Fifth 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, 3rd 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, and as by certain Fourth Amendment to Lease Agreement dated June 19, 2020 ("**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 Fifth Amendment as if they were more fully set forth herein.
- B. **Landlord's Consent.** 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-2** attached hereto, and only as depicted therein. Landlord's consent herein is subject to Tenant obtaining all Government Approvals at its cost. **Exhibit B-2** hereby replaces Exhibit B-1 referenced in Fourth Amendment 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 Fifth Amendment. It is acknowledged that Tenant submitted a deposit for six thousand five hundred dollars (\$6,500) toward such cost recovery. Reimbursement of any additional amounts invoiced by Landlord shall be made by Tenant prior to Landlord's execution of this Fifth Amendment.

- D. Non-Interference.** Tenant warrants that its use of equipment shown on Exhibit B-2 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-2 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 Fifth 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 Fifth Amendment, the terms of this Fifth Amendment shall control. Except as expressly set forth in this Fifth 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 Fifth Amendment.
- G. Counterparts.** This Fifth 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 Fifth 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

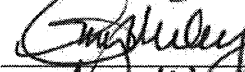
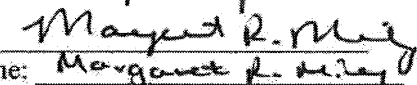
Billy Y. Urquia
City Clerk

"TENANT"

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

By: 
Name: John F. Heggy
Title: Area Manager
Date: 12/11/2020

WITNESSES:

By: 
Name: Amy Wiley
By: 
Name: Margaret R. Wiley

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]

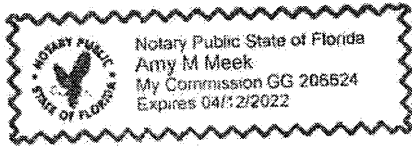
Notary Public Signature
Print Notary Name: _____
My commission expires: _____

TENANT ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF Seminole

THE FOREGOING INSTRUMENT was acknowledged before me by means of physical presence or online notarization, this 11th day of December, 2020, by John Haggerty, as Area Manager of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company, on behalf thereof, who is personally known to me, or produced _____ as identification.

[AFFIX NOTARY SEAL]



[Signature]
Notary Public Signature
Print Notary Name: AMY MEEK
My commission expires: 4/12/2022

Exhibit B-2

See attached exhibit comprised of 2 pages, dated 10/19/2020 prepared by Dewberry Engineering.

/820000/1#42517661 v1

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

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[SIGNATURES ON FOLLOWING PAGE]

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"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: 12/11/2020

WITNESSES:

By: 
Name: Amy Wiley
By: Margaret R. Miya
Name: Margaret R. Miya

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]

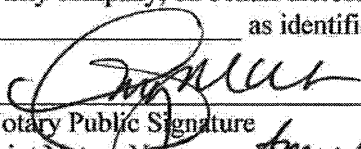
Notary Public Signature
Print Notary Name: _____
My commission expires: _____

TENANT ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF Seminole

THE FOREGOING INSTRUMENT was acknowledged before me by means of physical presence or online notarization, this 1st day of December, 2020, by John Heagy, as Area Manager of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company, on behalf thereof, who is personally known to me, or produced _____ as identification.

[AFFIX NOTARY SEAL]


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

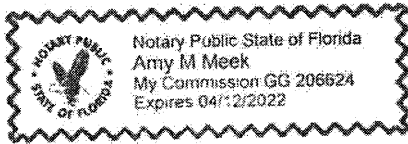


Exhibit B-2

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