

AMENDMENT NO. 2 TO LEASE AGREEMENT

THIS AMENDMENT NO. 2 ("Agreement") is made and entered into as of the _____ day of _____, 2018, by and between **The City of Delray Beach** a Florida Municipal Corporation ("City") and New Cingular Wireless PCS, LLC, a Delaware limited liability company ("AT&T"), concerning the City of Delray Beach's police tower located at 300 West Atlantic Avenue, Delray Beach, FL 33444 ("Site"):

WHEREAS, the City and AT&T entered into a Lease Agreement (Lease) dated June 6, 2001 whereby the City leased to AT&T certain Premises, therein described, that are a portion of the Property located at 300 West Atlantic Avenue, Delray Beach, Florida 33444; and

WHEREAS, AT&T requires access to the Premises to maintain its equipment and to make modifications and upgrades to its equipment in order to continue to provide service to its customers; and

WHEREAS, City and AT&T desire to provide for the entry upon and modification activities and applications concerning the Site pursuant to the terms contained in this Agreement; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, undertakings, and other consideration set forth in this Agreement, City and AT&T agree as follows:

1. Section 11 of the Lease is hereby deleted and replaced with the following:

11. Consent and Access

(a) Consent. City consents and agrees that, subject to any restrictions contained in the Ground Lease, AT&T, its employees, authorized agents may enter upon the Site to upgrade and modify ("Permitted Activities") the City tower located at 300 West Atlantic Avenue. AT&T, its employees or agents, shall adhere to all City policies and regulations concerning pre-authorization background checks prior to gaining admission to the Site to perform said Permitted Activities. AT&T agrees to be responsible for any and all costs related to the Permitted Activities and shall not seek reimbursement from City for same. AT&T understands that City will not participate in negotiations with any other carriers presently on the Site should AT&T seek reimbursement from those entities. AT&T further understands that said Permitted Activities are conducted for the sole benefit of AT&T and their customer base.

(b) Access. When AT&T requires access to the Premises, AT&T or its contractor shall contact Don Marese to arrange a mutually agreeable time for AT&T or its contractor to access the Premises for purposes of conducting the needed work. AT&T shall provide the following information in writing to the City:

- (1) A general description of the work to be done;
- (2) if a permit is required for the work, a copy of the permit or such other information as is acceptable to the City to evidence that the appropriate permit has been issued;
- (3) the identities of the individuals who will be accessing the Premises to perform the work; and

- (4) an affirmative statement that the individuals who will be accessing the Premises have satisfied the required background checks; and
- (5) a structural analysis of the tower with the proposed updates prepared by an approved engineering firm.

For non-emergency matters, AT&T shall contact the City and provide the required written information at least fourteen (14) days in advance of the work to be performed. In emergency situations, the City will reasonably cooperate with AT&T to provide access as soon as reasonably practicable under the circumstances.

- (c) **Suspension of Access.** The City shall have the authority, in its sole discretion, to suspend AT&T's access to the Premises if the actions of AT&T or any one acting through AT&T result in any interference or disruption of the City's police, fire or personnel radio or cell phone communications, result in any interference or disruption of the operations of the City's police or fire personnel, or are a violation of the City's policies. Such suspension shall continue until the City receives adequate assurance that the issues resulting in the suspension have been addressed.

2. Section 16 of the Lease is hereby deleted and replaced with the following:

16. 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. Notice will be addressed to the parties at the following addresses:

If to City:	City of Delray Beach 100 N.W. 1st Avenue Delray Beach, FL 33444 Attention: City Manager
If to AT&T:	AT&T 8250 W. Oakland Park Blvd. Sunrise, FL 33331 Attention: Dianna Terry

Either party hereto may change the place for the giving of notice to it by thirty (30) days written notice to the other as provided herein.

2. Subsection 23(e) of the Lease is hereby deleted and replaced with the following:

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without reference to conflict of laws principles. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the federal or state courts in Palm Beach County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or

other jurisdictional device. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, each party is responsible for their own attorney's fees and costs incurred. **BY ENTERING INTO THIS AGREEMENT, CITY AND AT&T HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

3. New subsection 23(m) is added to the Lease to read as follows:

(m) **Inspector General.** AT&T is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from AT&T. AT&T understands and agrees that in addition to all other remedies and consequences provided by law, the failure of AT&T to fully cooperate with the Inspector General when requested may be deemed by the Company to be a material breach of this Agreement justifying its termination.

4. All other terms and conditions not explicitly amended herein continue in force, in particular, Section 8 Indemnification, Section 12 Removal / Restoration, Section 22 Insurance,

[SIGNATURES ON NEXT PAGE]

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

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

City Clerk

By: _____
Mark R. Lauzier, City Manager

Approved as to Form:

City Attorney

NEW CINGULAR WIRELESS PCS, LLC

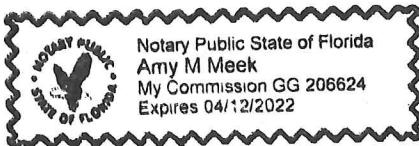
By: H. Galan
Print Name: Henry Galan
Title: Area Manager
R E & Construction

NEW CINGULAR WIRELESS PCS, LLC

STATE OF FLORIDA

COUNTY OF *Seminole*

The foregoing instrument was acknowledged before me this 25th day of June, 2018 by Henry Galan (name of officer or agent, title of officer or agent) of New Circular Wireless Pcs LLC (name of corporation acknowledging), a Delaware Limited LLC (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced as identification.



Signature of Notary Public - State
of Florida