

FIRST AMENDMENT TO SITE LEASE AGREEMENT

THIS FIRST AMENDMENT TO SITE LEASE AGREEMENT (this "Amendment") dated as of the last of the signature dates below (the "Effective Date") is entered into by and between **THE CITY OF BROKEN ARROW, OKLAHOMA**, an Oklahoma municipal corporation, with a mailing address of 220 South First Street, Broken Arrow, Oklahoma 74012 ("Landlord") and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company ("Tenant"), by CCATT LLC, a Delaware limited liability company, its attorney-in-fact.

WITNESSETH:

WHEREAS, on July 7, 1997, Landlord and AT&T Wireless Service of Tulsa, Inc., a Nevada corporation ("AT&T") entered into that certain Site Lease Agreement (the "Lease") whereby AT&T leased a portion of land consisting of approximately one thousand five hundred seventy-five (1,575) square feet located in Tulsa County, Oklahoma, together with access and utility easements thereto, as more particularly described in the Lease (the "Premises"); and

WHEREAS the Lease provided for an initial term of five (5) years with the right to renew for three (3) additional five-year renewal terms, contained an original annual rental payment of Four Thousand Eight Hundred and 00/100 Dollars (\$4,800.00) per year and provided for an increase of rent by fifteen percent (15%) upon the commencement of each renewal term; and

WHEREAS, Tenant is the successor-in-interest to AT&T and is the current tenant under the Lease; and

WHEREAS, the Lease has a term that will expire on July 31, 2017 (the "Original Term"), and Tenant and Landlord desire to amend the Lease to, among other things, extend the term of the Lease (unless terminated sooner) until July 6, 2037, and also to provide for increased rents effective July 1, 2017, as more specifically set forth below; and

NOW, THEREFORE, in consideration of the covenants and mutual obligations set out herein and in the Lease, and other consideration, the sufficiency of which the parties hereby acknowledge, the Landlord and Tenant hereby covenant and agree to the following amendments:

1. **Recitals.** The foregoing recitals are true and correct and are hereby made a part hereof for all purposes.
2. **Defined Terms.** Any capitalized terms not defined herein shall have the meanings ascribed to them in the Lease.
3. **Commencement Date.** The parties hereby ratify and affirm that the Commencement Date of the term of the Lease was July 7, 1997.
4. **Rent.** Section 4(a) of the Lease is hereby amended by adding to the end of the current text the following:

"Starting on July 1, 2017, the monthly Rent shall increase to the sum of One Thousand Seven Hundred and 00/100 Dollars (\$1,700.00) monthly and shall be

payable monthly on or before the 1st day of each month, in advance, to the City of Broken Arrow, at Landlord's address specified in Paragraph 13 below. This Rent increase replaces and is in lieu of the regular Rent increase scheduled to occur pursuant to the Lease on July 1, 2017. Following such increase, the annual Rent shall continue to adjust pursuant to the terms of Section 5 of the Lease."

5. **Renewal Terms.** Section 5(a) of the Lease is hereby amended by deleting the current text and inserting in lieu thereof the following:

"Tenant shall have the right to extend this Lease for seven (7) additional five (5) year terms (each a "Renewal Term"). Each Renewal Term shall be on the same terms and conditions as set forth herein except the Rent shall be increased after each Renewal Term by fifteen (15%) of the Rent applicable in the immediately preceding five-year term, except as provided in Section 4(a) above."

The Original Term and any Renewal Terms shall be collectively referred to herein as the "Lease Term". Landlord and Tenant hereby acknowledge that Tenant has exercised the first three (3) Renewal Terms, leaving a balance of four (4) Renewal Terms. The parties acknowledge that pursuant to this Amendment the term of the Lease Term exceeds the Original Term by twenty (20) years and that, unless terminated sooner, the final Renewal Term of the Lease will expire on July 6, 2037.

6. **Right of First Refusal.** If Landlord receives an offer from any person or entity that owns towers or other wireless telecommunications facilities (or is in the business of acquiring Landlord's interest in the Lease) to purchase fee title, an easement, a lease, a license, or any other interest in the Premises, or Landlord's interest in the Lease, or an option for any of the foregoing, Landlord shall provide written notice to Tenant of said offer, and Tenant shall have a right of first refusal to acquire such interest on the same terms and conditions in the offer, excluding any terms or conditions which are (i) not imposed in good faith or (ii) directly or indirectly designed to defeat or undermine Tenant's possessory or economic interest in the Premises. If Landlord's notice covers portions of Landlord's parent parcel beyond the Premises, Tenant may elect to acquire an interest in only the Premises, and the consideration shall be pro-rated on an acreage basis. Landlord's notice shall include the prospective buyer's name, the purchase price and/or other consideration being offered, the other terms and conditions of the offer, the due diligence period, the proposed closing date and, if a portion of Landlord's parent parcel is to be sold, leased or otherwise conveyed, a description of said portion. If the Landlord's notice shall provide for a due diligence period of less than sixty (60) days, then the due diligence period shall be extended to sixty (60) days from exercise of the right of first refusal and closing shall occur no earlier than fifteen (15) days thereafter. If Tenant does not exercise its right of first refusal by written notice to Landlord given within thirty (30) days, Landlord may convey the property as described in Landlord's notice. If Tenant declines to exercise its right of first refusal, then the Lease shall continue in full force and effect and Tenant's right of first refusal shall survive any such conveyance. Tenant shall have the right, at its sole discretion, to assign the right of first refusal to any person or entity, either separate from an assignment of the Lease or as part of an assignment of the Lease. Such assignment may occur either prior to or after Tenant's receipt of Landlord's notice and the assignment shall be effective upon written notice to Landlord.

7. **Notices.** The Lease is hereby amended by deleting the addresses for Tenant in Section 13 of the Lease and inserting in lieu thereof the following:

If to Tenant, to:

NEW CINGULAR WIRELESS PCS, LLC
Legal Department
Attn: Network Legal
208 S. Akard Street
Dallas, TX 75202-4206

with copy to:

CCATT LLC
c/o Crown Castle USA Inc.
2000 Corporate Drive
Canonsburg, PA 15317

8. **Eminent Domain.** Notwithstanding anything to the contrary contained in the Lease, including but not limited to Section 9(e), if Landlord receives written or other notice of a proposed taking by eminent domain of any part of the parcel of land upon which the Premises or any easements are situated, Landlord will notify Tenant of the proposed taking within five (5) days of receiving said notice and Tenant will have the option to: (i) declare the Lease null and void and thereafter neither party will have any liability or obligation hereunder; or (ii) remain in possession of that portion of the Premises or easements that will not be taken, in which event there shall be an equitable adjustment in rent on account of the portion of the Premises or easements so taken. With either option, Tenant shall have the right to contest the taking and directly pursue an award.

9. **Representations, Warranties and Covenants of Landlord.** Landlord represents, warrants and covenants to Tenant as follows:

- (a) Landlord is duly authorized to and has the full power and authority to enter into this Amendment and to perform all of Landlord's obligations under the Lease as amended hereby.
- (b) Except as expressly identified in this Amendment, Landlord owns the Premises free and clear of any mortgage, deed of trust, or other lien secured by any legal or beneficial interest in the Premises, or any right of any individual, entity or governmental authority arising under an option, right of first refusal, lease, license, easement or other instrument other than any rights of Tenant arising under the Lease as amended hereby and the rights of utility providers under recorded easements.
- (c) Upon Tenant's request, Landlord shall discharge and cause to be released (or, if approved by Tenant, subordinated to Tenant's rights under the Lease as amended hereby) any mortgage, deed of trust, lien or other encumbrance that may now or hereafter exist against the Premises.

- (d) Upon Tenant's request, Landlord shall cure any defect in Landlord's title to the Premises which in the reasonable opinion of Tenant has or may have an adverse effect on Tenant's use or possession of the Premises.
- (e) Tenant is not currently in default under the Lease, and to Landlord's knowledge, no event or condition has occurred or presently exists which, with notice or the passage of time or both, would constitute a default by Tenant under the Lease.
- (f) Landlord agrees to execute and deliver such further documents and provide such further assurances as may be requested by Tenant to effect any release or cure referred to in this paragraph, carry out and evidence the full intent and purpose of the parties under the Lease as amended hereby, and ensure Tenant's continuous and uninterrupted use, possession and quiet enjoyment of the Premises under the Lease as amended hereby.

10. **IRS Form W-9.** Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Amendment and at such other times as may be reasonably requested by Tenant. In the event Landlord's property on which the Premises is located is transferred, the succeeding landlord shall have a duty at the time of such transfer to provide Tenant with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in rental to the new landlord. Landlord's failure to provide the IRS Form W-9 within thirty (30) days after Tenant's request shall be considered a default and Tenant may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from rent payments.

11. **Construction of Documents.** Each party hereto acknowledges that this Amendment shall not be construed in favor of or against the drafter hereof.

12. **Remainder of Lease Unaffected.** In all other respects, the remainder of the Lease shall remain in full force and effect. Any portion of the Lease that is inconsistent with this Amendment is hereby amended to be consistent.

13. **Headings.** The headings contained in this Amendment are for reference purposes only and shall not modify or affect this Amendment in any manner whatsoever.

14. **Entire Lease.** The Lease (as amended by this Amendment) embodies the final, entire agreement between the parties with respect to the subject matter of this Amendment, and supersedes any and all prior agreements, representations, understandings and commitments, whether oral or written relating to this subject matter, and may not be contradicted or varied by evidence of prior, contemporaneous or subsequent oral agreements or discussions of or on behalf of the parties to this Amendment.

15. **Counterparts.** This Amendment may be executed in separate and multiple counterparts, each of which shall be deemed an original but all of which taken together shall be deemed to constitute one and the same instrument.

16. **Recordation.** Tenant, at its cost and expense, shall have the right to record a memorandum of this Amendment in the conveyance records of Tulsa County, Oklahoma, at any time following the execution of this Amendment by all parties hereto.

**[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY; SIGNATURE PAGES
BEGIN ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, each of the parties have caused this Amendment to be executed by its duly authorized officials and its official seal is to be impressed hereon, as of the Effective Date.

LANDLORD:

**THE CITY OF BROKEN ARROW,
OKLAHOMA,**
an Oklahoma municipal corporation

APPROVED AS TO FORM:



ASSISTANT CITY ATTORNEY


By: _____
Printed Name: _____
Title: _____
Date: _____

[Tenant Execution Page Follows]

TENANT:

NEW CINGULAR WIRELESS PCS, LLC,
a Delaware limited liability company

By: CCATT LLC,
a Delaware limited liability company
Its: Attorney-in-Fact

By: 
Printed Name: Lisa A. Sedgwick
Title: RET Manager
Date: _____