

Cell Site No.: IL0434
Cell Site Name: Westmont
Fixed Asset No.: 10035849
Market: IL / WI
Address: 328 South Wilmette Avenue

THIRD AMENDMENT TO SITE LICENSE AGREEMENT NO. 434

THIS THIRD AMENDMENT TO SITE LICENSE AGREEMENT NO. 434 (“**Third Amendment**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is by and between the Village of Westmont, an Illinois municipal corporation, having a mailing address of 31 West Quincy Street, Westmont, IL 60559 (hereinafter referred to as “**the Village**”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive NE, Atlanta, GA 30324 (hereinafter referred to as “**Licensee**”).

WHEREAS, the Village and Licensee entered into a Site License Agreement No. 434 dated November 5, 2001, as amended by an Amendment to Site License Agreement No. 434 dated May 14, 2003, and as further amended by Second Amendment to License Agreement dated June 9, 2006 (hereinafter, collectively, the “**Agreement**”), whereby the Village leased to Licensee certain Licensed Premises, therein described, that are a portion of the property (“**Property**”) located at 328 South Wilmette Avenue, Westmont, IL; and

WHEREAS, the term of the Agreement will expire on November 30, 2026, and the parties mutually desire to renew the Agreement, memorialize such renewal period and modify the Agreement in certain other respects, all on the terms and conditions contained herein; and

Comment [AML1]: This is 8 years from now... why are we doing this? Is this a typo? It is not consistent with the paragraph number 1, below.

WHEREAS, the Village and Licensee desire to amend the Agreement to extend the term of the Agreement; and

WHEREAS, the Village and Licensee desire to amend the Agreement to adjust the Rent (as defined below) in conjunction with the modifications to the Agreement contained herein; and

Comment [AML2]: Are we adjusting up or down? Why do we want to adjust the rent if it is downward? Why should we agree to this at this time?

WHEREAS, the Village and Licensee desire to amend the Agreement to modify the notice section thereof; and

WHEREAS, the Village and Licensee desire to amend the Agreement to clarify scope of Licensee's permitted use of the Licensed Premises; and

WHEREAS, the Village and Licensee, in their mutual interest, wish to amend the Agreement 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, the Village and Licensee agree that the recitals set forth above are incorporated herein as if set forth in their entirety and further agree as follows:

1. **Extension of Term.** The term of the Agreement shall be amended to provide that the current term, which commenced on December 1, 2016, shall expire on November 30, 2021 (“**Current Term**”), and commencing on December 1, 2021, will be automatically renewed, upon

Comment [AML3]: Are there “terms” within the life of the Agreement? See the 2nd WHEREAS clause which states that the Agreement ends in 8 years.

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the same terms and conditions of the Agreement, as amended herein, for up to six (6) separate consecutive additional periods of five (5) years each (each such five (5) year additional period is hereinafter referred to as an "Additional Renewal Term" and each such Additional Renewal Term shall be considered an Renewal Term under the Agreement), without further action by Licensee unless Licensee notifies the Village in writing of Licensee's intention not to renew the Agreement at least sixty (60) days prior to the expiration of the Current Term or the then current Additional Renewal Terms. The Current Term and the Additional Renewal Terms are collectively referred to as the Term ("Term").

2. **Rent.** Commencing on **December 1, 2018**, the current rent payable under the Agreement shall be Fifty Thousand Six Hundred Sixty and No/100 Dollars (\$50,660.00) per year (the "Rent"), and shall continue during the Term, subject to adjustment as provided herein. Section 3.03(B) of the Agreement shall be amended to provide that Rent shall be adjusted as follows: on December 1, 2026, and each year thereafter on December 1st, including throughout any Additional Renewal Term exercised, the annual Rent will increase by two percent (2%) over the Rent paid during the previous year.

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3. **Expansion of Permitted Use.** The Licensee, its personnel, invitees, contractors, agents, or assigns may use the Licensed Premises, at no additional cost or expense, for the transmission and reception of any and all communications signals and, with prior written notice to the Village, to modify, supplement, replace, upgrade, expand, including but not limited to the number and type(s) of antennas, or refurbish the equipment and/or improvements thereon (collectively, "Communications Facility"), or relocate the same within the Licensed Premises at any time during the term of the Agreement for any reason, so long as these changes do not exceed the structural capacity of the tower/structure at this height, or at Licensee's sole expense upgrade the structural capacity, or in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services or for any other reason. Licensee may operate the Communications Facility at any frequency for which it has all requisite licenses and permits so long as these frequencies do not cause an interference issue with an existing lawfully installed and properly operated tenant on the tower/structure. The Village shall reasonably cooperate in obtaining governmental and other use permits or approvals necessary or desirable for the foregoing permitted use. If the Village does not comply with the terms of this section, in addition to any other rights it may have at law, Licensee may terminate the Agreement and shall have no further liability to the Village. If the Village does not comply with the terms of this section, Licensee will have the right to exercise any and all rights available to it under law and equity, including the right to cure the Village's default and to deduct the costs of such cure from any monies due to the Village from Licensee. In exchange, Licensee does hereby indemnify and hold harmless the Village, its agents, personnel and/or assigns from any liability related to Licensee's Expanded Use, as identified above, of the Licensed Premises, including but not limited to damages, attorney's fees and penalties.

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Comment [AML4]: Added language and deleted language related to Licensee's ability to deduct costs of any cure from the monies due to the Village by Licensee.

4. **Rental Stream Offer.** If at any time after the date of this Agreement, the Village receives a bona fide written offer from a third party seeking an assignment or transfer of the Rent

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payments associated with this Agreement (“**Rental Stream Offer**”), the Village shall immediately furnish Licensee with a copy of the Rental Stream Offer. Licensee shall have the right within ninety (90) days after it receives such copy to match the Rental Stream Offer and agree in writing to match the terms of the Rental Stream Offer. If Licensee chooses not to exercise this right or fails to provide written notice to the Village within the ninety (90) day period, the Village may assign the right to receive Rent payments pursuant to the Rental Stream Offer, subject to the terms of this Agreement. If the Village attempts to assign or transfer Rent payments without complying with this Section, the assignment or transfer shall be void. ~~Licensee shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement until the Village complies with this Section.~~

Comment [AML5]: Removed language related to Licensee not having to pay during any dispute time period.

5. **Charges.** All charges payable under the Agreement such as utilities and taxes shall be billed by the Village 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 the Village, and shall not be payable by Licensee. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by the Village. The provisions of this subparagraph shall survive the termination or expiration of the Agreement.

6. **Acknowledgement.** The Village acknowledges that: 1) this Third Amendment is entered into of the Village’s free will and volition; 2) the Village has read and understands this Third Amendment and the underlying Agreement and, prior to execution of this Third Amendment, was free to consult with counsel of its choosing regarding the Village’s decision to enter into this Third Amendment and to have counsel review the terms and conditions of this Third Amendment; 3) the Village has been advised and is informed that should the Village not enter into this Third Amendment, the underlying Agreement between the Village and Licensee, including any termination or non-renewal provision therein, would remain in full force and effect.

7. **Notices.** Section 16.12 of the Agreement is hereby deleted in its entirety and replaced with the following:

“(a) **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 Licensee:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: IL0434
Cell Site Name: Wesmont (IL); Fixed Asset No.: 10035849
575 Morosgo Drive NE

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Atlanta, GA 30324

With a required copy of the notice sent to the address above to AT&T Legal at:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site #: IL0434
Cell Site Name: Westmont (IL); Fixed Asset No: 10035849
208 S. Akard Street
Dallas, Texas, 75202-4206

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

And as to the Village:

Village of Westmont
31 West Quincy Street
Westmont, IL 60559

(b) In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, the Village will send the below documents to Licensee. In the event Licensee does not receive such appropriate documents, Licensee shall not be responsible for any failure to pay the current landlord

- (i) New deed to Property
- (ii) New W-9
- (iii) New Payment Direction Form
- (iv) Full contact information for new Village including all phone numbers

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.”

8. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this Third Amendment, the terms of this Third Amendment shall control. Except as expressly set forth in this Third 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 Third Amendment.

9. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

[NO MORE TEXT ON THIS PAGE - SIGNATURES TO FOLLOW ON NEXT PAGE]

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

VILLAGE:
Village of Westmont,
an Illinois municipal corporation

LICENSEE:
New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: [NOT FOR EXECUTION]

By: [NOT FOR EXECUTION]

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

[ACKNOWLEDGEMENTS APPEAR ON THE NEXT PAGE]

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