

CITY OF COLUMBIA, ILLINOIS

ORDINANCE NO. 3076

AN ORDINANCE TO AUTHORIZE THE CITY OF COLUMBIA, ILLINOIS, TO ENTER INTO A FIRST AMENDMENT TO LEASE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC, THE SUCCESSOR IN INTEREST TO EASTERN MISSOURI CELLULAR LIMITED PARTNERSHIP, PERTAINING TO THE LEASE OF PROPERTY LOCATED AT 1253 BREMSER ROAD IN THE CITY OF COLUMBIA, ILLINOIS

**Adopted by the
City Council
of the
City of Columbia, Illinois
this 2nd day of December, 2013**

**Published in pamphlet form by
authority of the City Council
of the City of Columbia,
Illinois, this 2nd day
of December, 2013**

DEC - 2 2013


City Clerk

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WHEREAS, the City of Columbia, Illinois (“City”) entered into a Lease Agreement, dated April 6, 1994 (pursuant to the passage of Ordinance No. 1230), with New Cingular Wireless PCS, LLC, a Delaware limited liability company, as successor in interest to Eastern Missouri Cellular Limited Partnership (“New Cingular Wireless”), wherein the City leased of a portion of its property located at 1253 Bremser Road located in the City to New Cingular Wireless for a twenty (20) year term (“Lease Agreement”); and

WHEREAS, the City and New Cingular Wireless desire to amend the Lease Agreement to (i) extend the term of the Lease Agreement by five (5) additional years with an adjustment to the current rental amount; and (ii) incorporate other changes mutually agreed upon by the City and New Cingular Wireless; and

WHEREAS, it is necessary and appropriate that this Ordinance be enacted for the purpose of authorizing the City to enter into a First Amendment to Lease Agreement document to amend the Lease Agreement as stated in the preceding paragraph.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

Section 1. The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference, the same as if set forth in this Section of this Ordinance verbatim, as findings of the City Council of the City of Columbia, Illinois.

Section 2. The City Council of the City of Columbia, Illinois, does hereby authorize and direct the Mayor to execute and deliver a First Amendment to Lease Agreement, substantially in the form attached hereto as EXHIBIT “A”, including its First Amendment to Memorandum of Lease attachment document, evidencing the incorporation of the changes agreed upon by the City and New Cingular Wireless to the Lease Agreement, which First Amendment to Lease Agreement is hereby approved as to form, in as many counterparts as the Mayor shall determine.

Section 3. This Ordinance shall be in full force and effect following its passage and publication in pamphlet form, as provided by law.

Alderman Holtkamp moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Ebersohl, and the roll call vote was as follows:

YEAS: Aldermen Ebersohl, Agne, Niemietz, Roessler, Huch, Mathews, Reis and Holtkamp.

NAYS: None.

ABSENT: None.


ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 2nd day of December, 2013.



KEVIN B. HUTCHINSON, Mayor

ATTEST:



J. RONALD COLYER, City Clerk

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

CERTIFICATE OF PUBLICATION

I, J. Ronald Colyer, certify that I am the duly elected and acting City Clerk of the City of Columbia, Illinois.

I further certify that on the 2nd day of December, 2013, the Corporate Authorities of the City of Columbia, Illinois, passed and approved Ordinance No. 3076 entitled:

“AN ORDINANCE TO AUTHORIZE THE CITY OF COLUMBIA, ILLINOIS, TO ENTER INTO A FIRST AMENDMENT TO LEASE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC, THE SUCCESSOR IN INTEREST TO EASTERN MISSOURI CELLULAR LIMITED PARTNERSHIP, PERTAINING TO THE LEASE OF PROPERTY LOCATED AT 1253 BREMSER ROAD IN THE CITY OF COLUMBIA, ILLINOIS”

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 3076, including the ordinance and a cover sheet thereof, was prepared, and a copy of such ordinance was posted in the Columbia City Hall, commencing on December 3, 2013 and continuing for at least ten (10) days thereafter. Copies of such ordinance were also made available for public inspection upon request in the office of the City Clerk.

DATED at Columbia, Illinois this 2nd day of December, 2013.



J. RONALD COLYER, City Clerk

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

CERTIFICATE OF TRUE COPY

I, J. Ronald Colyer, hereby certify that I am the duly elected and acting City Clerk of the City of Columbia, Illinois, and as such I am the keeper of the books, records, files and corporate seal of said City.

I do further certify that Ordinance No.3076, entitled:

“AN ORDINANCE TO AUTHORIZE THE CITY OF COLUMBIA, ILLINOIS, TO ENTER INTO A FIRST AMENDMENT TO LEASE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC, THE SUCCESSOR IN INTEREST TO EASTERN MISSOURI CELLULAR LIMITED PARTNERSHIP, PERTAINING TO THE LEASE OF PROPERTY LOCATED AT 1253 BREMSER ROAD IN THE CITY OF COLUMBIA, ILLINOIS”

to which this certificate is attached, is a true, perfect, complete and correct copy of said ordinance as adopted at a regular meeting of the Columbia, Illinois, City Council held on the 2nd day of December, 2013.

IN WITNESS WHEREOF, I have made and delivered this certificate for the uses and purposes hereinabove set forth this 2nd day of December, 2013.

(SEAL)



J. RONALD COLYER, City Clerk

Market: MO/KS
Cell Site Number: MO1134
Cell Site Name: Columbia
Fixed Asset Number: 10002973

EXHIBIT "A"

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT ("**First Amendment**"), dated as of the latter of the signature dates below, is by and between City of Columbia, Monroe and St. Clair Counties, Illinois, a municipal corporation and body and both corporate and politic of the State of Illinois, having a mailing address of 208 South Rapp, Columbia, IL 62236 ("**Lessor**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Dr. NE, Suite 13-F West Tower, Atlanta, GA 30324, as successor in interest to Eastern Missouri Cellular Limited Partnership ("**Lessee**").

WHEREAS, Lessor and Lessee (or their respective predecessors in interest) entered into a Lease Agreement dated April 6, 1994, whereby Lessor leased to Lessee certain Premises, therein described, that are a portion of the Property located at 1253 Bremser Road, Columbia, Monroe County, Illinois ("**Agreement**"); and

WHEREAS, Lessor and Lessee desire to amend the Agreement to extend the term of the Agreement; and

WHEREAS, Lessor and Lessee desire to adjust the rent in conjunction with the modifications to the Agreement contained herein; and

WHEREAS, Lessor and Lessee desire to amend the Agreement to modify the notice section thereof; and

WHEREAS, Lessor and Lessee desire to amend the Agreement to permit Lessee to add, modify and/or replace equipment 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; and

WHEREAS, Lessor and Lessee, 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, Lessor and Lessee agree as follows:

1. **Extension of Term.** In addition to the Term presently set forth in the Agreement, the parties hereby agree to add one (1) additional five (5) year period. Accordingly, at the end of the fourth five year period presently set forth in the Agreement, the Term will automatically renew for a fifth five year period.

Section 3 of the Agreement shall be amended to include the following additional text at the end of this section:

“The fifth five year period of this Lease shall have an annual rental of \$12,000.00 to be paid in equal monthly installments as aforesaid. During the fifth five year period, in addition to the \$1,000.00 monthly installments, Lessee agrees to pay Lessor 50% of collocation rent charged to any co-locator of the Lessee pursuant to any sublease of the Leased Premises. The Lessee shall provide Lessor with a copy of any sublease within 30 days of entering into same with any co-locator.”

2. Section 4 of the Agreement is hereby deleted in its entirety and replaced with the following:

“4. If at the end of the Twenty-Five (25) years this Agreement has not been terminated by either party giving to the other written notice of an intention to so terminate it at least six (6) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions including rental payments, for a further term of one (1) year, and so on from year to year until terminated by either party at the end of a one (1) year term by giving to the other written notice of an intention to so terminate at least sixty (60) days prior to the end of such term.

Provided Lessee is not in default hereunder, and shall have paid all rents and sums due and payable to Lessor by Lessee, Lessee shall have the right to terminate this Agreement at anytime upon one (1) year’s prior written notice from Lessee to Lessor.”

3. **Notices.** Section 15 of the Agreement is hereby deleted in its entirety and replaced with the following:

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 Lessee: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #:MO1134, Cell Site Name: Columbia (IL),
Fixed Asset No: 10002973
575 Morosgo Dr. NE
Suite 13-F West Tower
Atlanta, GA 30324

With the required copy of legal notice sent to Lessee at the address above, a copy to the Legal Department: New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site #:MO1134, Cell Site Name: Columbia (IL)
Fixed Asset No: 10002973
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 Lessor: City Administrator
Columbia City Hall
208 South Rapp Avenue
Columbia, IL 62236

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.”

4. **Emergency 911 Service.** In the future, without the payment of additional rent and at a location mutually acceptable to Lessor and Lessee, Lessor agrees that Lessee may add, modify and/or replace equipment 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.

5. **Memorandum of Lease.** Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease substantially in the form of the Attachment 1. Either party may record this memorandum at any time, in its absolute discretion.

6. **Rental Stream Offer.** If at any time after the date of this Agreement, Lessor receives a bona fide written offer from a third party seeking an assignment of the Rent payments associated with this Agreement (“**Rental Stream Offer**”), Lessor shall immediately furnish Lessee with a copy of the Rental Stream Offer. Lessee shall have the right within twenty (20) days after it receives such copy and representation to match the Rental Stream Offer and agree in writing to match the terms of the Rental Stream Offer. Such writing shall be in the form of a contract substantially similar to the Rental Stream Offer. If Lessee chooses not to exercise this right or fails to provide written notice to Lessor within the twenty (20) day period, Lessor may assign the Rent payments pursuant to the Rental Stream Offer, subject to the terms of this Agreement.

7. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this First Amendment, the terms of this First Amendment shall control. Except as expressly set forth in this First Amendment, the Agreement otherwise is unmodified and remains in full force and effect.

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

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

“LESSOR”

City of Columbia, Monroe and St. Clair Counties,
Illinois, a municipal corporation and body and both
corporate and politic of the State of Illinois

By: _____
Name: Kevin B. Hutchinson
Title: Mayor
Date: _____

“LESSEE”

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

By: _____
Name: Michael Bridwell
Title: Area Manager - Construction & Engineering
Date: _____

LESSEE ACKNOWLEDGEMENT

STATE OF _____)
)ss:
COUNTY OF _____)

On the ____ day of _____, 2013 before me personally appeared Michael Bridwell, and acknowledged under oath that he is the Area Manager - Construction & Engineering of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the limited liability company named in the attached instrument, and as such was authorized to execute this instrument on behalf of the limited liability company.

Notary Public: _____
My Commission Expires: _____

LESSOR ACKNOWLEDGEMENT

CORPORATE ACKNOWLEDGEMENT

STATE OF _____)
)
COUNTY OF _____)

I CERTIFY that on _____, 2013, Kevin B. Hutchinson personally came before me and acknowledged under oath that he:

- (a) is the Mayor of the City of Columbia, Monroe and St. Clair Counties, Illinois, a municipal corporation and body and both corporate and politic of the State of Illinois, the corporation named in the attached instrument,
- (b) was authorized to execute this instrument on behalf of the corporation and
- (c) executed the instrument as the act of the corporation.

Notary Public
My Commission Expires: _____

Attachment 1

Prepared by:

*Network Real Estate, LLC
5055 Hwy N, Suite 200
St. Charles, MO 63304*

Return to:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
575 Morosgo Dr. NE
Atlanta, GA 30324

Re: Cell Site #MO1134; Cell Site Name: Columbia
Fixed Asset #: 10002973
State: Illinois
County: Monroe

FIRST AMENDMENT TO MEMORANDUM OF LEASE

This First Amendment to Memorandum of Lease is entered into on this ____ day of _____, 2013, by and between City of Columbia, Monroe and St. Clair Counties, Illinois, a municipal corporation and body and both corporate and politic of the State of Illinois, having a mailing address of 208 South Rapp, Columbia, IL 62236 ("**Grantor**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Dr. NE, Suite 13-F West Tower, Atlanta, GA 30324, as successor in interest to Eastern Missouri Cellular Limited Partnership ("**Grantee**").

1. Grantor and Grantee (or their respective predecessors in interest) entered into a certain Lease Agreement on the 6th day of April, 1994, as amended by that certain First Amendment to Lease Agreement, dated _____, 2013 (collectively the "**Agreement**") for the purpose of installing, operating and maintaining a communications facility and other

improvements. A Memorandum of Lease reflecting the Agreement was recorded April 27, 1994 in Book 185, page(s) 11-15, in the public records of Monroe County, State of Illinois.

2. In addition to the Term presently set forth in the Agreement, the Agreement will automatically renew for one (1) additional five (5) year period pursuant to the provisions set forth in the Agreement.
3. This First Amendment to Memorandum of Lease 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 First Amendment to Memorandum of Lease and the provisions of the Agreement, the provisions of the First Amendment 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 First Amendment to Memorandum of Lease as of the day and year first above written.

"GRANTOR"

City of Columbia, Monroe and St. Clair
Counties, Illinois, a municipal corporation and
body and both corporate and politic of the State
of Illinois

By: _____
Print Name: Kevin B. Hutchinson
Its: Mayor
Date: _____

"GRANTEE"

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

By: _____
Print Name: Michael Bridwell
Its: Area Manager - Construction & Engineering
Date: _____

GRANTEE ACKNOWLEDGEMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____, 2013, before me personally appeared Michael Bridwell, and acknowledged under oath that he is the Area Manager - Construction & Engineering of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the limited liability company named in the attached instrument, and as such was authorized to execute this instrument on behalf of the limited liability company

Notary Public: _____
My Commission Expires: _____

GRANTOR ACKNOWLEDGEMENT

CORPORATE ACKNOWLEDGEMENT

STATE OF _____)
) ss:
COUNTY OF _____)

I CERTIFY that on _____, 2013, Kevin B. Hutchinson personally came before me and acknowledged under oath that he:

- (a) is the Mayor of the City of Columbia, Monroe and St. Clair Counties, Illinois, a municipal corporation and body and both corporate and politic of the State of Illinois, the corporation named in the attached instrument,
- (b) was authorized to execute this instrument on behalf of the corporation and
- (c) executed the instrument as the act of the corporation.

Notary Public: _____
My Commission Expires: _____