

Site: Boilermaker IND195  
BUN: 811108

## FIRST AMENDMENT TO LICENSE AND RIGHT-OF-WAY AGREEMENT

**THIS FIRST AMENDMENT TO LICENSE AND RIGHT-OF-WAY AGREEMENT** (the “Amendment”) is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2011 (the “Effective Date”), by and between **BOARD OF WORKS, CITY OF WEST LAFAYETTE** (“Licensor”), having a mailing address of 609 West Navajo Drive, West Lafayette, Indiana 47906-1995, and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company (“Licensee”), successor by merger to Westel-Indianapolis, LLC, a Florida limited liability company, successor by merger to Westel-Indianapolis Company, a Florida corporation, with its principal place of business located at 12555 Cingular Way, Suite 1300, Alpharetta, Georgia 30004.

### RECITALS:

WHEREAS, Licensor and Licensee are the current parties under that certain License and Right-of-Way Agreement executed by Licensor on July 15, 1997 and executed by Westel-Indianapolis, a Florida corporation doing business as Cellular One (“Westel”) on July 29, 1997, originally by and between Licensor and Westel (the “Agreement”); whereby Licensee leases from Licensor certain real property located in Tippecanoe County, Indiana, together with access and utility easements, which is more particularly described in the Agreement (the “Premises”);

WHEREAS, the Premises is located entirely within the real property owned by Licensor (the “Parent Parcel”) which is more particularly described in the attached **Exhibit “A”**;

WHEREAS, the Agreement was memorialized by that certain Memorandum of License and Right-of-Way Agreement dated July 15, 1997 and recorded August 1, 1997 as Document No. 9715344 in the Official Records of Tippecanoe County;

WHEREAS, the Premises may be used for the purpose of installing, removing, replacing, modifying, maintaining and operating a communications facility, including, without limitation, antenna equipment, cable wiring, back-up power sources (including generators and fuel storage tanks), related fixtures and, if applicable to the Premises, an antenna structure;

WHEREAS, the term of the Agreement commenced September 1, 1997, and, including all renewal terms, will terminate on August 31, 2022 (“Original Term”), and Licensor and Licensee desire to amend the terms of the Agreement to provide for additional terms beyond the Original Term; and

WHEREAS, Licensor and Licensee desire to further amend the Agreement on the terms and conditions contained herein.

NOW THEREFORE, for and in consideration of the sum of \$50.00, the mutual covenants contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Licensor and Licensee agree as follows:

1. Defined Terms. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement.

2. Renewal Terms. Notwithstanding anything to the contrary in Section 2 of the Agreement, Licensee shall have the option to renew the Agreement for eight (8) terms of five (5) years each (each, an "Extension Term"). The parties acknowledge that if the term of the Agreement is extended for the maximum number of Extension Terms, the Agreement will expire August 31, 2042.

In addition, the references to the "fourth (4<sup>th</sup>) extended term" in Section 4 of the Lease are hereby deleted and "eighth (8<sup>th</sup>) Extension Term" is substituted in its place.

3. Licensor's Use of the Premises. Licensee acknowledges that nothing in this Amendment shall disrupt Licensor's current right place and operate its own telecommunications equipment on the Premises under that certain unrecorded Consent to Sublease dated September 14, 2004.

4. Notice. The parties agree and acknowledge that all notices provided to Licensee pursuant to the Agreement shall be sent to the following addresses:

New Cingular Wireless PCS, LLC  
Attn: AT&T Network Real Estate Administration  
Re: Site Name: Boilermaker IND195/Site Number: 811180 (IN)  
Fixed Asset No.: 10023847  
12555 Cingular Way, Suite 1300  
Alpharetta, Georgia 30004

With a copy to:

New Cingular Wireless PCS, LLC  
Attn: Legal Department  
Re: Site Name: Boilermaker IND195/Site Number: 811180 (IN)  
Fixed Asset No.: 10023847  
15 East Midland Avenue  
Paramus, New Jersey 07652

With a copy to:

Crown Castle USA Inc.  
E. Blake Hawk, General Counsel  
Attn: Real Estate Department  
2000 Corporate Drive  
Canonsburg, PA 15317

5. IRS Form W-9. Licensor agrees to provide Licensee 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 Licensee. In the event the Parent Parcel is transferred, the succeeding lessor shall have a duty at the time of such transfer to provide Licensee with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in rent to the new lessor. Licensor's failure to provide the IRS Form W-9 within thirty (30) days after Licensee's request shall be considered a default and Licensee may take any reasonable action necessary to comply with IRS regulations, including, but not limited to, withholding applicable taxes from rent payments.

6. Effect of Amendment. All of the terms, provisions, covenants and agreements contained in the Agreement are hereby incorporated herein by reference in the same manner and to the same extent as if all such terms, provisions, covenants and agreements were fully set forth herein. Licensor and Licensee ratify, confirm and adopt the Agreement as of the date hereof and acknowledge that there are no defaults under the Agreement or events or circumstances which, with the service of notice or passage of time, or both, would ripen into events of default. Except as otherwise expressly amended herein, all the terms and conditions of the Agreement shall remain and continue in full force and effect. This Amendment shall be binding upon the heirs, legal representatives, successors and assigns of the parties.

7. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same agreement.

8. Representations, Warranties and Covenants of Licensor. Licensor represents, warrants and covenants to Licensee as follows:

(a) The Premises is owned by Licensor free and clear of any mortgage, deed of trust, lien or right of any individual, entity or governmental authority arising under any option, right of first refusal, lease, license, easement or other instrument, except for the rights of Licensee arising under the Agreement, as hereby amended, and the right of utility providers under recorded easements.

(b) Upon Licensee's request, Licensor agrees to discharge and cause to be released (or, if approved by Licensee, subordinated to Licensee's rights under the Agreement, as hereby amended) any mortgage, deed of trust, lien or other encumbrance that may now or hereafter exist against the Premises.

(c) Upon Licensee's request, Licensor agrees to cure any defect in Licensor's title to the Premises which in the reasonable opinion of Licensee has or may have an adverse effect on Licensee's use or possession of the Premises.

(d) Licensor agrees to execute such further documents and provide such further assurances as may be reasonably requested by Licensee to effect any release or cure referred to in this paragraph, to evidence the full intention of the parties, and to assure Licensee's use, possession and quiet enjoyment of the Premises under the Agreement, as hereby amended.

(e) That Licensor is the current fee owner of the Parent Parcel.

(f) That the individual executing this Amendment on behalf of Licensor is authorized to do so and has the full power to bind Licensor.

(g) Licensor and Licensee agree that Licensee is the current Licensee under the Agreement, the Agreement is in full force and effect and the Agreement, as it may have been previously amended and as amended herein, contains the entire agreement between Licensor and Licensee with respect to the Site.

(h) No default exists under the Agreement on the part of Licensee, and, to Licensor's knowledge, no event or condition has occurred or exists which, with notice or the passage of time or both, would constitute a default by Licensee under the Agreement.

(i) Should Licensee's lender (together with its successors and assigns, "Lender") take on all rights and responsibilities of the Agreement and exercise any rights of Licensee under the Agreement, including the right to exercise any renewal option(s) or purchase option(s) set forth in the Agreement, Licensor agrees to accept such exercise of rights by Lender as if same had been exercised by Licensee; provided, however, Licensee shall provide written notice to Licensor of the name and address of such Lender.

(j) If there shall be a monetary default by Licensee under the Agreement, Licensor shall accept the cure thereof by Lender within any grace period provided to Licensee under the Agreement to cure such default, prior to terminating the Agreement. If there shall be a non-monetary default by Licensee under the Agreement, Licensor shall accept the cure thereof by Lender within any grace period provided to Licensee under the Agreement to cure such default prior to terminating the Agreement.

(k) The Agreement may not be amended in any respect which would be reasonably likely to have a material adverse effect on Lender's interest therein without the prior written consent of Lender.

9. Governmental Approvals. If requested by Licensee, Licensor will execute, at Licensee's sole cost and expense, all documents required by any governmental authority in connection with any development of, or construction on, the Premises, including documents necessary to petition the appropriate public bodies for certificates, permits, licenses and other

approvals deemed necessary by Licensee in Licensee's absolute discretion to utilize the Premises for the purpose of constructing, maintaining and operating communications facilities, including without limitation, tower structures, antenna support structures, cabinets, meter boards, buildings, antennas, cables, equipment and uses incidental thereto. Licensor agrees to be named applicant if requested by Licensee. In furtherance of the foregoing, Licensor hereby appoints Licensee as Licensor's attorney-in-fact to execute all land use applications, permits, licenses and other approvals on Licensor's behalf. Licensor shall be entitled to no further consideration with respect to any of the foregoing matters.

10. Ratification. Licensor and Licensee agree that any and all actions or inactions that have occurred or should have occurred prior to the date of this Amendment are approved and ratified by the parties and the parties agree that no breaches or defaults exist as of the date of this Amendment.

11. Remainder of Agreement Unaffected. In all other respects, the remainder of the Agreement and all amendments thereto shall remain in full force and effect. Any portion of the Agreement and all amendments thereto that are inconsistent with this Amendment are hereby amended to be consistent.

*[Remainder of page intentionally left blank; signature pages to follow]*

**IN WITNESS WHEREOF**, Licensor and Licensee have executed this Amendment as of the date first written above:

**LICENSOR:**

**BOARD OF WORKS, CITY OF WEST  
LAFAYETTE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

[LICENSEE'S SIGNATURE PAGE TO FOLLOW]

**LICENSEE:**

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

By: AT&T Mobility Corporation, a Delaware  
corporation

Its: Manager

By: \_\_\_\_\_  
Name: Nellie Jabbari  
Title: Area Manager Real Estate  
Transactions

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PARENT PARCEL**

The land referred to is situated in City of West Lafayette, Tippecanoe County, Indiana and is described as follows:

Part of the Northeast Quarter of Section 30, Township 23 North, Range 4 West, Second Principal Meridian, Tippecanoe, Indiana.

Commonly known as: 705 South River Road, West Lafayette, Indiana 47906-1912

Tax ID No.: 79-07-30-200-002.000-023