

ENROLLED ORDINANCE 175-12

APPROVE FOURTH AMENDMENT TO LEASE WITH NEW CINGULAR
WIRELESS AT THE HEALTH AND HUMAN SERVICES SMOKESTACK

WHEREAS, pursuant to a December 1, 1998 Lease, as amended, with Milwaukee SMSA Limited Partnership d/b/a New Cingular Wireless PCS, LLC ("New Cingular Wireless"), the County leases space to New Cingular Wireless on the Old Health and Human Services Building Smokestack for use as a cellular tower, and

WHEREAS, the County and New Cingular Wireless wish to amend the Lease to modify the legal description of the leased premises and other provisions therein.

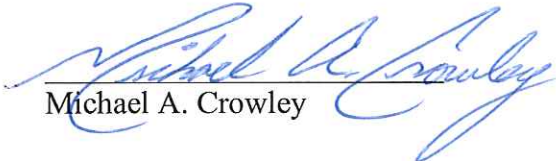
THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the Fourth Amendment to Lease between the County and New Cingular Wireless PCS, LLC substantially in the form on file with the Office of Corporation Counsel is hereby approved.

BE IT FURTHER ORDAINED that the Director of Emergency Preparedness or his designee is authorized to execute the Fourth Amendment to Lease as approved by Corporation Counsel and any other documents necessary to effectuate the intent thereof.


APPROVE FOURTH AMENDMENT TO LEASE WITH NEW CINGULAR WIRELESS AT THE HEALTH AND HUMAN SERVICES SMOKESTACK

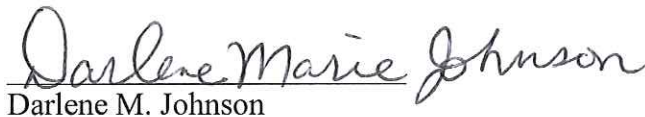
Presented by:
Judiciary & Law Enforcement Committee


Peter M. Wolff, Chair


Michael A. Crowley

absent
Tyler J. Foti



Christine M. Howard


Darlene M. Johnson


Larry Nelson

absent
Steve Whittow

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 5/29/2020, 
Margaret Wartman, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X
Vetoed: _____

Date: 6/1/2020, 
Paul Farrow, County Executive



Ordinance 175-O-010

Ordinance 175-O-010: Approve Fourth Amendment To Lease With New Circular Wireless At The Health And Human Services Smokestack

VOTE RESULTS: Passed By Majority Vote

AYE: 24 NAY: 1 ABSENT: 0

D1 - Foti		Yes
D2 - Zimmermann		Yes
D3 - Morris		Yes
D4 - Batzko		Yes
D5 - Dondlinger		Yes
D6 - Walz		Yes
D7 - Grant		Yes
D8 - Michalski		Yes
D9 - Heinrich		Yes
D10 - Swan		Yes
D11 - Howard	Second	Yes
D12 - Wolff	Motion	Yes
D13 - Decker		Yes

D14 - Mommaerts	Yes
D15 - Mitchell	Yes
D16 - Crowley	Yes
D17 - Paulson	Yes
D18 - Nelson	Yes
D19 - Cummings	No
D20 - Schellinger	Yes
D21 - Gaughan	Yes
D22 - Wysocki	Yes
D23 - Hammitt	Yes
D24 - Whittow	Yes
D25 - Johnson	Yes

Market: WISIL
Cell Site Number: WI0159
Cell Site Name: Downtown Waukesha
Fixed Asset Number: 10011988

FOURTH AMENDMENT TO LEASE AGREEMENT

THIS FOURTH AMENDMENT TO LEASE AGREEMENT ("**Fourth Amendment**"), dated as of the latter of the signature dates below, is by and between Waukesha County, Wisconsin, a municipal corporation, having a mailing address of 515 W. Moreland Blvd., Waukesha, WI 53188 ("**County**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 ("**Lessee**").

WHEREAS, County and Lessee (or its predecessor) entered into a Lease dated December 1, 1998, as amended by that certain First Amendment to Lease dated June 26, 2012, as further amended by that certain Second Amendment to Lease dated June 5, 2015, as further amended by that certain Third Amendment to Lease dated October 19, 2018 whereby County leased to Lessee certain Premises, therein described, that are a portion of the Property located at 500 Riverview Avenue, Waukesha, WI 53188 ("**Agreement**"); and

WHEREAS, Lessee desires to change, modify or relocate its communication facility (the "Communication Facility"), which County is willing to approve, and;

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

WHEREAS, County 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, County and Lessee agree as follows:

1. **New Exhibit A-3.** Lessee shall have the right, in its sole discretion, to change, modify or relocate the Communication Facility in accordance with and as more completely described on attached Exhibit A-3. County's execution of this Fourth Amendment will signify County's approval of Exhibit A-3. Subject to the terms of the Agreement, future modifications or improvements to the Communication Facility identified in Exhibit A-3 that result in additional equipment, changes to space requirements or changes in configuration, placement or number or antennas or feedlines remain subject to County's prior approval and may result in a demand for increased rent or renegotiation of other Agreement terms. Lessee's Communication Facility and Premises are currently described in Exhibit A-2 to the Third Amendment ("**Old Location**"). Pursuant to this Section 1, Lessee intends to relocate its Communication Facility and/or Premises from the Old Location to the location as described in Exhibit A-3 ("**New Location**"), and County hereby agrees to such relocation. Upon completion of the relocation of the Communication Facility

from the Old Location to the New Location: (i) Exhibit A-2 of the Agreement shall be hereby deleted in its entirety and superseded by Exhibit A-3; (ii) the Premises under the Agreement prior to this Fourth Amendment shall be replaced with the relocated Premises in the New Location; and (iii) all references to the Premises in the Agreement shall be deemed to refer to the relocated Premises.

2. Removal of Equipment at New Location. Within one hundred and twenty (120) days after the expiration or termination of this Agreement, except for the items specifically listed in Schedule 1, Lessee shall remove all equipment located within the New Location, but will not be required to remove, tear down, or deconstruct the shelter building or structure (the "Shelter Building"), which shall be deemed County's property (i) one hundred and twenty (120) days after the expiration or termination of this Agreement, or (ii) upon Lessee's removal of its equipment pursuant to this Section 2, whichever occurs first. County shall cooperate with Lessee with completing any documentation needed to effectuate the transfer of the Shelter Building at that time. For the avoidance of any doubt, this Section 2 specifically applies to the New Location exclusively and any references in the Agreement to Communication Facility or the Premises shall include the New Location.

3. Removal of Equipment at Old Location. Within one hundred and twenty (120) days after Lessee has relocated to the New Location, Lessee shall remove the Communication Facility at the Old Location, except for the Shelter Building, electrical conduits to the Shelter Building, fiber conduits to the Shelter Building, and mounting brackets for the coax in the Shelter Building. County shall execute a Bill of Sale within sixty (60) days after Lessee has removed the equipment at the Old Location.

4. Notices. Paragraph 4 of the Third Amendment to Lease regarding notices incorrectly referenced replacing Section 17 of the original Lease as opposed to Section 24. Section 17 of the original Lease is hereby restored as originally stated and Section 24 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 # WI0159 Cell Site Name: Downtown Waukesha (WI)
 FA No.: 10011988
 1025 Lenox Park Blvd NE, 3rd Floor
 Atlanta, GA 30319

With a copy to: New Cingular Wireless PCS, LLC
 Attn: Legal Department
 Re: Cell Site # WI0159 Cell Site Name: Downtown Waukesha (WI)
 FA No.: 10011988
 208 S. Akard Street

Dallas, TX 75202-4206

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

If to County: Waukesha County Department of Administration Radio Services
 Attn: Chris Petterson
 2120 Davidson Road
 Waukesha, Wisconsin 53816

With a copy to: Waukesha County Corporation Counsel
 Attn: Erik G. Weidig, Esq.
 515 W. Moreland Blvd., Room AC-330
 Waukesha, WI 53188

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.

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

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

[SIGNATURES FOLLOW ON NEXT PAGE]

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

“COUNTY”

Waukesha County, Wisconsin, a municipal corporation

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

“LESSEE”

New Cingular Wireless PCS, LLC, a Delaware limited liability company
By: AT&T Mobility Corporation
Its: Manager

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

[ACKNOWLEDGEMENTS APPEAR ON NEXT PAGE]

LESSEE ACKNOWLEDGEMENT

STATE OF

COUNTY OF _____

On the ____ day of _____ in the year 2020, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Printed Name: _____

My Commission Expires: _____

COUNTY ACKNOWLEDGEMENT

STATE OF

COUNTY OF _____

On the ____ day of _____ in the year 2020, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Printed Name: _____

My Commission Expires: _____

EXHIBIT A-3

The Property is Described and/or depicted as follows:

500 Riverview Avenue, Waukesha, WI

TAX ID No. WAKC1000983

The Premises is described and/or depicted as follows:

A part of the Southeast Quarter (SE1/4) of Section Thirty-Four (34), Township Seven (7) North, Range Nineteen (19) East, City of Waukesha, Waukesha County, Wisconsin containing 891 square feet (0.020 acres) of land and being described by:

Commencing at the East Quarter Corner of said Section 34; thence S88°-45'-17"W 2034.78 feet along the North line of the SE1/4 of said Section 34; thence S01°-14'-43"E 1192.17 feet to the point of beginning; thence N86°-29'-17"E 33.00 feet; thence S03°-30'-43"E 27.00 feet; thence S86°-29'-17"W 33.00 feet; thence N03°-30'-43"W 27.00 feet to the point of beginning; being subject to any and all easements and restrictions of record.

PROPOSED 12 FEET WIDE ACCESS EASEMENT

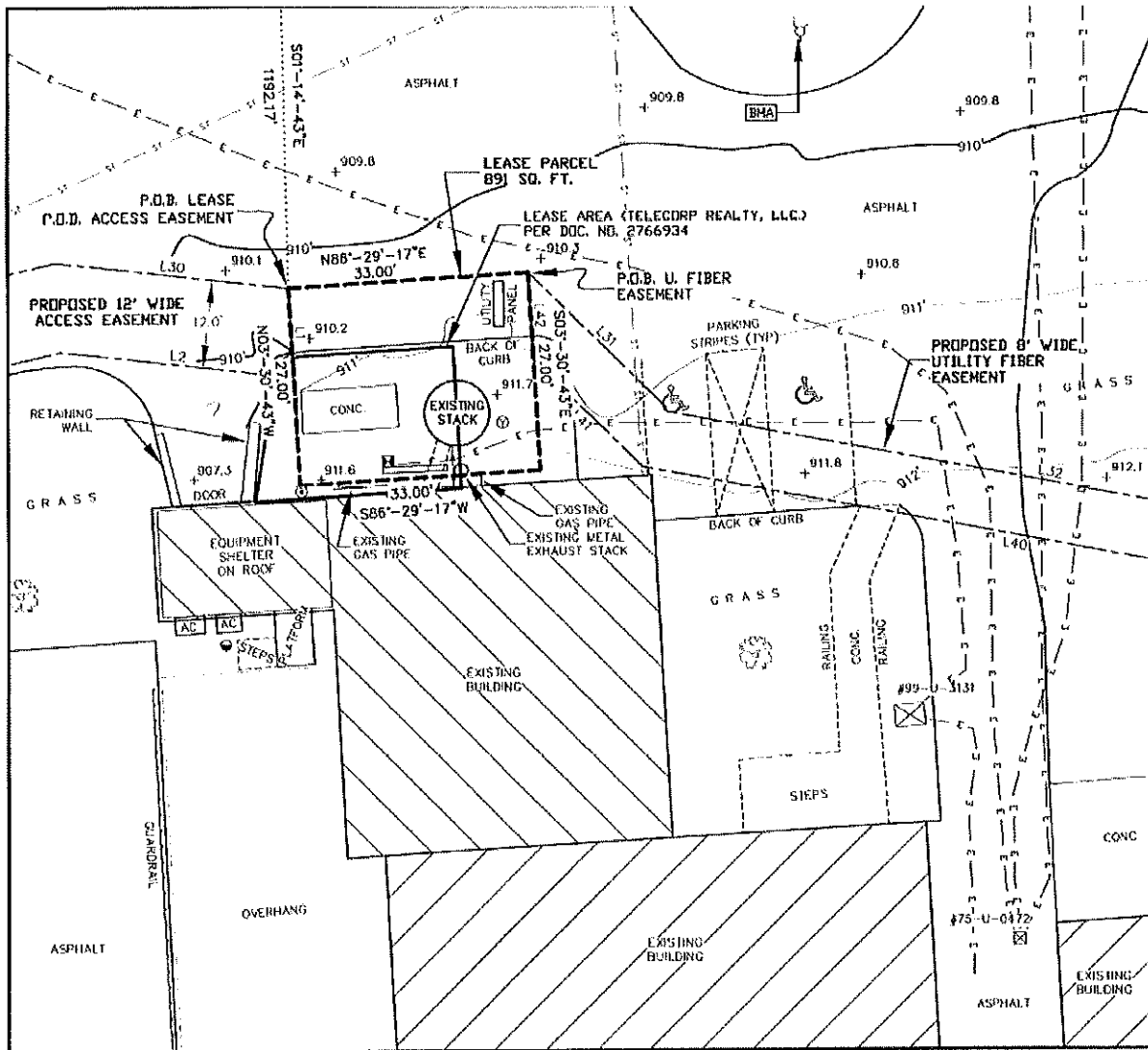
A part of the Southeast Quarter (SE1/4) of Section Thirty-Four (34), Township Seven (7) North, Range Nineteen (19) East, City of Waukesha, Waukesha County, Wisconsin containing 15,769 square feet (0.362 acres) of land and being described by:

Commencing at the East Quarter Corner of said Section 34; thence S88°-45'-17"W 2034.78 feet along the North line of the SE1/4 of said Section 34; thence S01°-14'-43"E 1192.17 feet to the point of beginning; thence S03°-30'-43"E 12.18 feet; thence N83°-32'-56"W 31.95 feet; thence S76°-41'-52"W 18.93 feet; thence S54°-12'-07"W 30.28 feet; thence S37°-43'-55"W 64.11 feet; thence S03°-26'-19"E 280.23 feet; thence Southeasterly 42.45 feet along the arc of a curve to the left, having a radius of 25.56 feet and a chord of which bears S50°-57'-19"E 37.74 feet; thence N81°-28'-11"E 117.98 feet; thence S89°-30'-46"E 79.07 feet; thence S77°-27'-15"E 44.19 feet; thence S72°-27'-20"E 95.69 feet; thence N86°-46'-13"E 221.04 feet; thence N83°-53'-46"E 40.93 feet; thence N71°-15'-45"E 37.51 feet; thence N59°-16'-03"E 36.21 feet; thence N50°-29'-45"E 155.39 feet to a point on the West right-of-way line of Riverview Avenue; thence S00°-45'-43"E 15.39 feet along said West right of way line; thence S50°-29'-45"W 146.69 feet; thence S59°-16'-03"W 38.40 feet; thence S71°-15'-45"W 40.09 feet; thence S83°-53'-46"W 42.56 feet; thence S86°-46'-13"W 223.54 feet; thence N72°-27'-20"W 97.37 feet; thence N77°-27'-15"W 42.39 feet; thence N89°-30'-46"W 76.86 feet; thence S81°-28'-11"W 117.03 feet; thence Northwesterly 62.38 feet along the arc of a curve to the right, having a radius of 37.56 feet and a chord of which bears N50°-57'-19"W 55.46 feet thence N03°-26'-19"W 284.72 feet; thence N37°-43'-55"E 70.36 feet; thence N54°-12'-07"E 34.41 feet; thence N76°-41'-52"E 23.41 feet; thence S83°-32'-56"E 31.94 feet to the point of beginning; being subject to any and all easements and restrictions of record.

PROPOSED 8 FOOT WIDE UTILITY FIBER EASEMENT

A part of the Southeast Quarter (SE1/4) of Section Thirty-Four (34), Township Seven (7) North, Range Nineteen (19) East, City of Waukesha, Waukesha County, Wisconsin containing 3,983 square feet (0.091 acres) of land and being described by:

Commencing at the East Quarter Corner of said Section 34; thence S88°-45'-17"W 2034.78 feet along the North line of the SE1/4 of said Section 34; thence S01°-14'-43"E 1192.17 feet; thence N86°-29'-17"E 33.00 feet to the point of beginning; thence S45°-32'-09"E 27.32 feet; thence S79°-31'-17"E 105.18 feet; thence S30°-43'-38"E 41.14 feet; thence S03°-30'-43"E 148.55 feet; thence S04°-54'-57"W 183.95 feet; thence N85°-05'-03"W 8.00 feet; thence N04°-54'-57"E 183.37 feet; thence N03°-30'-43"W 146.03 feet; thence N30°-43'-38"W 35.58 feet; thence N79°-31'-17"W 104.00 feet; thence N45°-32'-09"W 20.88 feet; thence N03°-30'-43"W 11.95 feet to the point of beginning; being subject to any and all easements and restrictions of record.



Notes:

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY LESSEE.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.

Schedule 1

Items approved to leave behind after lease expiration or termination

Equipment shelter building, not including any equipment located within the shelter building

Attachment 1
First Amendment to Memorandum of Lease

Prepared by and Return to:

Debra Neuman
AT&T Mobility
c/o: MasTec Network Solutions
1351 East Irving Park Road
Itasca, IL 60143

Re: Cell Site #WI0159; Cell Site Name: Downtown Waukesha
Fixed Asset#: 10011988
State: Wisconsin
County: Waukesha

TAX ID No. WAKC1000983

**FIRST AMENDMENT TO MEMORANDUM OF
LEASE AGREEMENT**

This First Amendment to Memorandum of Lease is entered into on this ____ day of _____, 2020, by and between Waukesha County, Wisconsin, a municipal corporation, having a mailing address of 515 W. Moreland Blvd., Waukesha, Wisconsin 53188 (“**County**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as successor to Milwaukee SMSA Limited Partnership, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 (“**Lessee**”).

1. County and Lessee (or its predecessor) entered into a certain Lease dated December 1, 1998, as amended by that certain First Amendment to Lease dated June 26, 2012, as further amended by that Second Amendment to Lease dated June 5, 2015, as further amended by that certain Third Amendment to Lease dated October 19, 2018, as further amended by that certain Fourth Amendment to Lease dated _____, 2020, for the purpose of installing, operating and maintaining a communications facility and other improvements. A Memorandum of Lease reflecting the Lease was recorded January 8, 1999 in the public records of Waukesha County, State of Wisconsin.
2. The term of the Lease commenced on December 1, 1998. Commencing on December 1, 2023, the Lease will automatically renew for three (3) additional consecutive periods of five (5) years each upon the same terms and conditions of the Lease, unless Lessee notifies County in writing of Lessee’s intention not to renew the Lease at least sixty (60) days prior to the expiration of the existing term.
3. County agrees to amend the leased premises to relocate the equipment shelter to a new location. County leases to Lessee the premises as more completely described on attached **Exhibit 2-A**. **Exhibit 2-A** hereby replaces **Exhibit 1-A** to the First Amendment of Memorandum of Lease.

4. This First Amendment to Memorandum of Lease Agreement 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 Lease, 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 Agreement and the provisions of the Lease, the provisions of the Lease shall control. The Lease 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 Lease.

IN WITNESS WHEREOF, the parties have executed this First Amendment to Memorandum of Lease Agreement as of the day and year first above written.

"COUNTY"

Waukesha County, Wisconsin,
a municipal corporation

By: _____
Print Name: _____
Its: _____
Date: _____

"LESSEE"

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

By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name: _____
Its: _____
Date: _____

LESSEE ACKNOWLEDGEMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____ in the year 2020, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the _____ of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company described herein and that the instrument was signed on behalf of the limited liability company, authority of the limited liability company and that he./she acknowledged this instrument to the be the free act and deed of the limited liability company.

Notary Public: _____
My Commission Expires: _____

COUNTY ACKNOWLEDGEMENT

STATE OF _____)
) ss:
COUNTY OF _____)

BE IT REMEMBERED, that on this ____ day of _____, 2020, before me, the subscriber, a person authorized to take oaths in the State of _____, personally appeared _____ who, being duly sworn on his/her/their oath, deposed and made proof to my satisfaction that he/she/they is/are the person(s) named in the within instrument; and I, having first made known to him/her/them the contents thereof, he/she/they did acknowledge that he/she/they signed, sealed and delivered the same as his/her/their voluntary act and deed for the purposes therein contained.

Notary Public: _____
My Commission Expires: _____

EXHIBIT 2-A

DESCRIPTION OF PREMISES

to the First Amendment to Memorandum of Lease Agreement dated _____, 2020 by and between Waukesha County, Wisconsin, a municipal corporation, as County and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Lessee.

The Property is described and/or depicted as follows:

500 Riverview Avenue, Waukesha, WI

Tax ID No. WAKC1000983

The Premises is described and/or depicted as follows:

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