

Cell Site No. 368-130  
Cell Site Name: Carrboro  
Fixed Asset No. 10017450  
Market: NC/SC  
Address: 301 West Main Street, Carrboro, NC 27510

## FIRST AMENDMENT TO CO-LOCATION AGREEMENT

THIS FIRST AMENDMENT TO CO-LOCATION AGREEMENT ("**First Amendment**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is by and between Town of Carrboro, a North Carolina municipal corporation, having a mailing address of 301 West Main Street, Carrboro, NC 27510 (hereinafter referred to as "**Lessor**"), 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 "**Lessee**").

**WHEREAS**, Lessor and Lessee entered into a Co-Location Lease Agreement dated September 21, 2007 (the "**Agreement**"), whereby Lessor granted to Lessee an exclusive and non-revocable license to maintain and operate their Equipment, on and around the base of the Tower (hereinafter referred to as the "**Premises**") located at 301 West Main Street (Town Hall), Carrboro, NC 27510 (hereinafter referred to as the "**Property**"); and

**WHEREAS**, the term of the Agreement will expire on August 20, 2017 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

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

**WHEREAS**, Lessor and Lessee desire to amend the Agreement to adjust the Base Fee in conjunction with the modifications to the Agreement contained herein; and

**WHEREAS**, Lessor and Lessee desire to modify, as set forth herein, the Lessee's obligations to pay the Base Fee to Lessor for a Base Fee Guarantee Period; 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 clarify scope of Lessee's permitted use of the Premises; 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 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 extended to provide that the Agreement has a new initial term of five (5) years ("**New Initial Term**") commencing on August 21, 2017. The Agreement will automatically renew, commencing on the expiration of the New Initial Term, for one (1) separate consecutive additional period of five (5) years (such five (5) year additional period is hereinafter referred to as an "**Additional Extension Term**" and shall be considered an Extension Term

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under the Agreement), upon the same terms and conditions of the Agreement, as amended herein, unless Lessee notifies Lessor in writing of Lessee's intention not to renew the Agreement at least sixty (60) days prior to the expiration of the then current Additional Extension Term. The New Initial Term and the Additional Extension Term are collectively referred to as the Term ("**Term**").

2. **Termination.** In addition to any rights that may exist in the Agreement, after the Base Fee Guarantee Period, as defined below, Lessee may terminate the Agreement at any time with twelve (12) months prior written notice to Lessor for any or no reason.

3. **Base Fee.** Commencing on August 21, 2017, the current Base Fee payable under the Agreement shall be Thirty-Four Thousand Five Hundred and No/100 Dollars (\$34,500.00) payable annually in advance, and shall continue during the Term, subject to adjustment as provided herein.

4. **Modification of Lessee's Obligation to Pay – Base Fee Guarantee.** Notwithstanding Lessee's obligations to pay the Base Fee set forth under the Agreement, for a twenty-four (24) month period commencing August 21, 2017 and ending August 20, 2019 ("Base Fee Guarantee Period"), Lessee's obligation to pay the Base Fee is guaranteed and such obligation will not be subject to offset or cancellation by Lessee, except as due to loss from casualty or condemnation. Notwithstanding the foregoing, if Lessor exercises any of Lessor's rights to terminate the Agreement, if any, Lessee will be released from any and all of its obligations to pay Base Fee during the Base Fee Guarantee Period as of the effective date of the termination. In addition, Lessee shall be released from any and all of its obligations to pay the Base Fee during the Base Fee Guarantee Period if any of the following shall occur: (a) Lessor is in breach of the Agreement, including but not limited to any default under the terms of the Agreement beyond any applicable grace and cure period; (b) there is a foreclosure of the Property; (c) the Lessor shall require Lessee to relocate Lessee's equipment and facilities to a location that is not acceptable to Lessee in its reasonable business judgment if allowed for in the Agreement, (d) any existing government permits and/or approvals cannot be obtained or maintained, at no fault of the Lessee or (e) Lessee terminates the Agreement pursuant to the terms of the Permitted Use section as modified below. If this Agreement is further modified in the future with an obligation for Lessee to pay an additional Base Fee, the payment of base fee guarantee established in this paragraph will not be diminished or limited, but such base fee guarantee will not extend to that future additional Base Fee obligation.

5. **Future Base Fee Increase / Extension Term Increase.** The Agreement is amended to provide that commencing on August 21, 2022, the Base Fee shall increase by fifteen percent (15%)..

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

7. **Notices.** Paragraph 12 of the Agreement is hereby deleted in its entirety and replaced with the following:

"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,

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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 #: 368-130; Cell Site Name: Carrboro (NC)  
Fixed Asset No: 10017450  
575 Morosgo Drive NE  
Atlanta, GA 30324

With a required copy of the notice sent to the address above to:

New Cingular Wireless PCS, LLC  
Attn: AT&T Legal Department – Network Counsel  
Re: Cell Site #: 368-130; Cell Site Name: Carrboro (NC)  
Fixed Asset No: 10017450  
208 S. Akard Street  
Dallas, Texas, 75202-4206

As to Lessor:

Town of Carrboro  
301 West Main Street  
Carrboro, NC 27510  
Attn: Town Manager

With a copy to:

The Brough Law Firm, PLLC  
1526 East Franklin Street, Suite 200  
Chapel Hill, NC 27514

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. **Expansion of the Premises.** Lessor grants, to the extent practicable and on a space available basis, the Lessee the right to enlarge the Premises so that Lessee or its authorized sub lessees may implement any necessary modifications, supplements, replacements, refurbishments, or expansions to the communication facility or to any equipment related thereto, or for any other reasons, as determined by Lessee in its sole discretion. Should Lessee exercise the right to expand the Premises, Lessee will pay and Lessor will accept as additional Base Fee under the Agreement an amount equal to the then current Base Fee calculated on a per square foot basis as multiplied by each additional square foot added to the Premises. Upon notice to Lessor, a description and/or depiction of the modified Premises ground will become part of the Agreement without any additional action on the part of Lessee and Lessor; however, at the request of Lessee, the parties will execute a Memorandum of Lease in recordable form memorializing

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the modification of the ground space of Lessor's Property, which either party may record at its option. Any new space taken must have the consent of the Landlord which will not be unreasonably withheld.

9. **Permitted Use.** Lessee, its personnel, invitees, contractors, agents, sublessees, or its authorized sub lessees, or assigns may use the Premises, at no additional cost or expense, for the transmission and reception of any and all communications signals and 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, or relocate the same within the Premises at any time during the term of the Agreement for any reason, 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. Lessor shall reasonably cooperate in obtaining governmental and other use permits or approvals necessary or desirable for the foregoing permitted use. If Lessor does not comply with the terms of this section, in addition to any other rights it may have at law, Lessee may terminate the Agreement and shall have no further liability to Lessor. If Lessor does not comply with the terms of this section, Lessee will have the right to exercise any and all rights available to it under law and equity, including the right to cure Lessor's default and to deduct the costs of such cure from any monies due to Lessor from Lessee.

10. **Exhibit A-1.** Exhibit 1 to the Agreement is hereby deleted in its entirety and replaced with the new Exhibit A-1, which is hereby attached hereto and made part of this Third Amendment.

11. **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.

12. **Sale of Property.**

(a) Lessor shall not be prohibited from the selling, leasing or use of any of the Property or the surrounding property except as provided below.

(b) If Lessor, at any time during the Term of the Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property or surrounding property, to a purchaser other than Lessee, Lessor shall promptly notify Lessee in writing, and such rezoning, sale, subdivision or transfer shall be subject to the Agreement and Lessee's rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Lessor or its successor shall send the documents listed below in this subsection (b) to Lessee. Until Lessee receives all such documents, Lessee shall not be responsible for any failure to make payments under the Agreement and reserves the right to hold payments due under the Agreement.

- i. Old deed to Property
- ii. New deed to Property
- iii. Bill of Sale or Transfer
- iv. Copy of current Tax Bill
- v. New IRS Form W-9
- vi. Completed and Signed AT&T Payment Direction Form
- vii. Full contact information for new Lessor including phone number(s)

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(c) The provisions of this Section shall in no way limit or impair the obligations of Lessor under the Agreement, including interference and access obligations.

13. **Base Fee Stream Offer.** If at any time after the date of this First Amendment, Lessor receives a bona fide written offer from a third party seeking an assignment or transfer of the Base Fee payments associated with the Agreement ("**Base Fee Stream Offer**"), Lessor shall immediately furnish Lessee with a copy of the Base Fee Stream Offer. Lessee shall have the right within ninety (90) days after it receives such copy to match the Base Fee Stream Offer and agree in writing to match the terms of the Base Fee Stream Offer. Such writing shall be in the form of a contract substantially similar to the Base Fee Stream Offer. If Lessee chooses not to exercise this right or fails to provide written notice to Lessor within the ninety (90) day period, Lessor may assign the right to receive Base Fee payments pursuant to the Base Fee Stream Offer, subject to the terms of the Agreement. If Lessor attempts to assign or transfer Base Fee payments without complying with this Section, the assignment or transfer shall be void. Lessee shall not be responsible for any failure to make payments under the Agreement and reserves the right to hold payments due under the Agreement until Lessor complies with this Section.

14. **Charges.** All charges payable under the Agreement such as utilities and taxes shall be billed by Lessor 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 Lessor, and shall not be payable by Lessee. The foregoing shall not apply to the Base Fee which is due and payable without a requirement that it be billed by Lessor. The provisions of this subsection shall survive the termination or expiration of the Agreement.

15. **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. Each reference in the Agreement to itself shall be deemed also to refer to this First Amendment.

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

[SIGNATURES APPEAR ON THE NEXT PAGE]

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

**LESSOR:**

Town of Carrboro

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: \_\_\_\_\_

**[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]**

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## **LESSOR ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) SS.

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_.

Notary Seal

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary Public in and for the State of \_\_\_\_\_

My appointment expires: \_\_\_\_\_

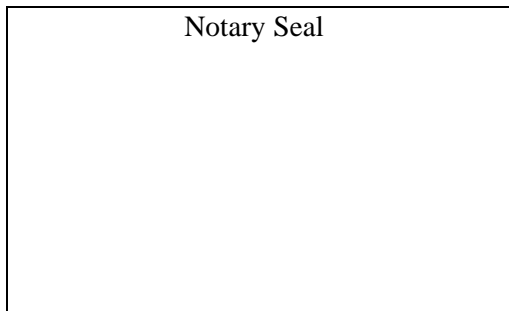
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Market: NC/SC  
Address: 301 West Main Street, Carrboro, NC 27510

**LESSEE ACKNOWLEDGEMENT**

STATE OF )  
 ) SS.  
COUNTY OF )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_.



\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

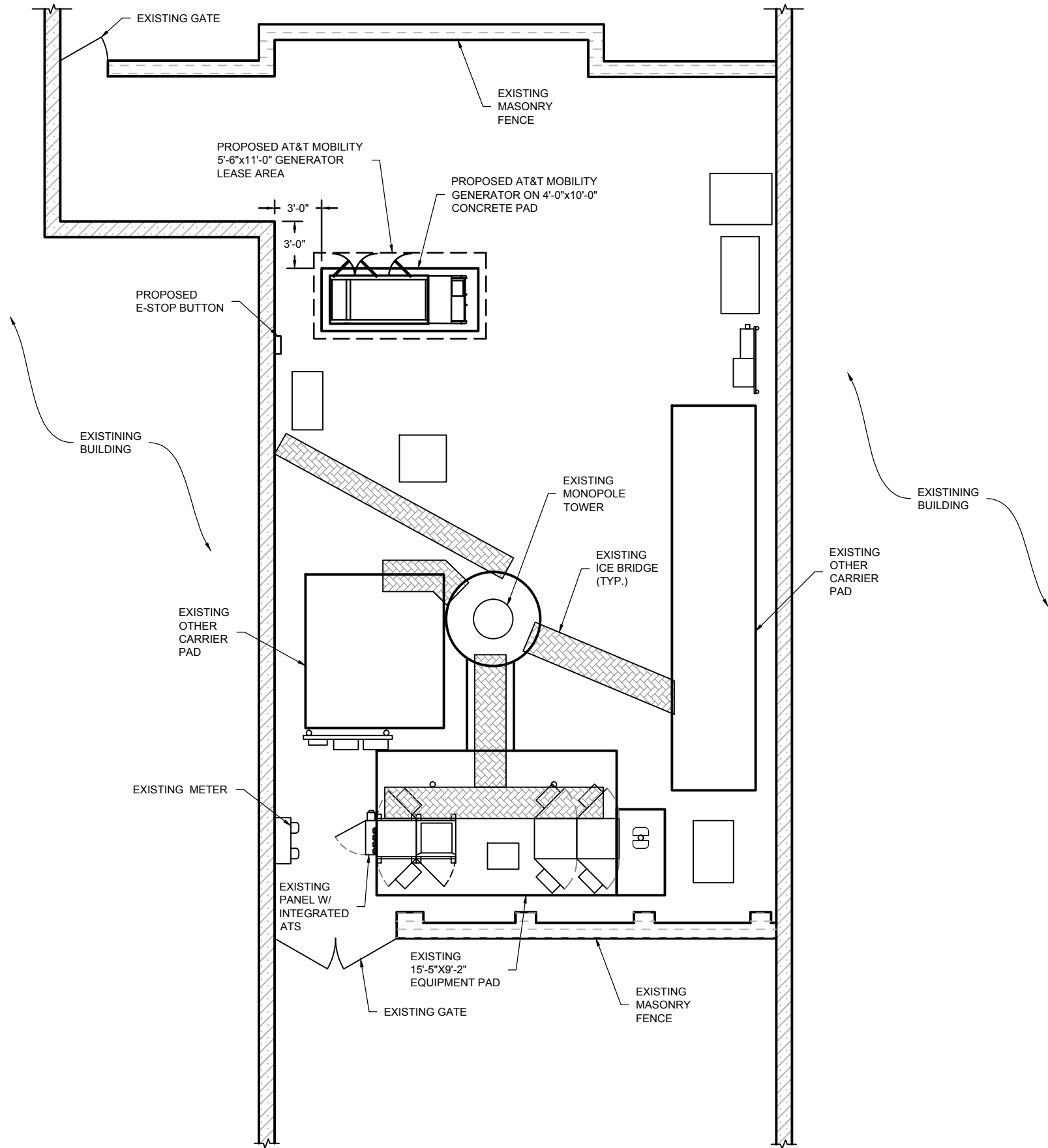
Notary Public in and for the State of \_\_\_\_\_

My appointment expires: \_\_\_\_\_



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## **EXHIBIT A-1**



1 SITE PLAN  
SCALE: 1/8" = 1'



ENGINEER:



PREPARED FOR:



CONSULTANT:



SEAL:

FA NUMBER: 10017450 SITE NUMBER: 368-130  
SITE NAME: CARRBORO  
SITE ADDRESS: 301 WEST MAIN STREET  
CARRBORO, NC 27510  
WAKE COUNTY

THE INFORMATION CONTAINED IN THIS SET OF DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO THE CLIENT IS STRICTLY PROHIBITED.

CLIENT PROJECT NO: TBD

| NO. | DATE     | SUBJECT          |
|-----|----------|------------------|
| 0   | 01/07/13 | GENERATOR LAYOUT |

REVISION OR ISSUE

SSOE, Inc.  
320 Seven Springs Way, Suite 350  
Brentwood, TN 37027  
T 615-661-7585

PROJECT NO: 013-00178-00  
PROJECT MANAGER: Floyd White  
DESIGNED: Greg Dulnik  
CHECKED: Travis Leute

DRAWING TITLE:

ENLARGED SITE PLAN

DRAWING NO:

A1

C:\dgn\0355568\10017450\_A&E\_SiteSketch\_20130107.dwg  
DATE: Jan 07, 2013 - 5:00pm USER: 14200

## ATTACHMENT 1

### Prepared by and When

### Recorded Return to:

*Black Dot Wireless*

*27271 Las Ramblas, Suite 300*

*Mission Viejo, CA 92691*

Re: Cell Site #368-130; Cell Site Name: Carrboro (NC)  
Fixed Asset Number: 10017450  
State: North Carolina  
County: Orange

### MEMORANDUM OF LEASE

This Memorandum of Lease is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between Town of Carrboro, a North Carolina municipal corporation, having a mailing address at 301 West Main Street, Carrboro, NC 27510 (hereinafter referred to as "**Lessor**") 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 "**Lessee**").

1. Lessor and Lessee entered into a Co-Location Lease Agreement dated September 21, 2007, as amended by that certain First Amendment to Co-Location Lease Agreement dated \_\_\_\_\_, 2016 (hereinafter, collectively the "**Agreement**") for the purpose of installing, operating and maintaining a communications facility and other improvements at Lessor's real property located in the City of Carrboro, County of Orange, commonly known as 301 West Main Street (Town Hall), Carrboro, NC 27510. All of the foregoing are set forth in the Agreement.
2. The Agreement commenced and has been in effect since August 21, 2007 and the parties agree to continue the Agreement with a new initial lease term of five (5) years ("**New Initial Term**") commencing on August 21, 2017, with one (1) successive five (5) year Additional Extension Term, unless Lessee notifies Lessor in writing of Lessee's intention not to renew the Agreement at least sixty (60) days prior to the expiration of the then current Additional Extension Term.
3. The portion of the land being leased to Lessee (the "**Premises**") is described in **Exhibit 1** annexed hereto.
4. This 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 Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement 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 Memorandum of Lease as of the day and year first above written.

LESSOR:  
Town of Carrboro

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**LESSOR ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) SS.

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_.

Notary Seal

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary Public in and for the State of \_\_\_\_\_

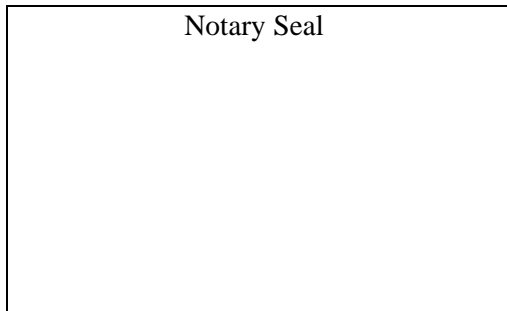
My appointment expires: \_\_\_\_\_

**LESSEE ACKNOWLEDGEMENT**

STATE OF                                 )  
  ) SS.  
COUNTY OF                             )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_.



\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)  
Notary Public in and for the State of \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

**Exhibit 1 to Memorandum of Lease**

**Premises**

The Premises is located on a portion of the Property described and/or depicted as follows:

Property Address:

301 West Main Street (Town Hall)  
Carrboro, NC 27510

Assessor's Parcel Number: 216330