

20090819000319370 1/6 \$26.00  
Shelby Cnty Judge of Probate, AL  
08/19/2009 12:25:49 PM FILED/CERT

This Instrument Prepared By:  
Matthew W. Barnes, Esq.  
Baker, Donelson, Bearman,  
Caldwell & Berkowitz, PC  
420 20<sup>th</sup> Street North, Suite 1600  
Birmingham, Alabama 35203

Return to:  
Stewart Title Guaranty Company  
National Title Services  
1980 Post Oak Blvd, Suite 610  
Houston, TX 77056  
Attn: MYRON LAMPKIN

STATE OF ALABAMA     )  
  
COUNTY OF SHELBY     )

Cross Reference:  
Instrument No. 2001-34648  
Shelby County, Alabama Records

**AGREEMENT AND MEMORANDUM OF SECOND AMENDMENT TO  
LEASE AGREEMENT**

**THIS AGREEMENT AND MEMORANDUM OF SECOND AMENDMENT TO LEASE AGREEMENT ("Memorandum")** is made and entered into on this 13<sup>th</sup> day of February, 2009 by and between **THE CITY OF PELHAM**, an Alabama municipality ("**LESSOR**"), and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company, successor by merger to BellSouth Mobility LLC, a Georgia limited liability company, successor by corporate election to BellSouth Mobility Inc., a Georgia corporation ("**TENANT**").

**WITNESSETH:**

**WHEREAS**, LESSOR and BellSouth Mobility Inc. entered into that certain Lease Agreement dated March 15, 1985, as amended by that certain Addendum to Lease Agreement dated May 14, 1985 (the "**Agreement**"), covering certain real property together with easements for ingress, egress and utilities thereto, as described in **Exhibit "A"** attached hereto (the "**Property**"), a memorandum of which Agreement was recorded as Instrument No. 2001-34648 in the Office of the Judge of Probate of Shelby County, Alabama (the "**MOL**");

**WHEREAS**, the Agreement has an original term (including all extension terms) that will terminate on April 30, 2010 (the "**Original Term**") and the parties desire to amend the Agreement to extend the Original Term and as otherwise set forth herein; and

**WHEREAS**, effective as of the date of this Memorandum, LESSOR and TENANT have amended the Agreement and desire to acknowledge, confirm and make record of the above-referenced amendment.

**NOW, THEREFORE**, LESSOR and TENANT hereby acknowledge and agree that the following accurately represents the Agreement, as amended by that Second Amendment to Lease Agreement dated as of the date hereof:

**MEMORANDUM OF SECOND AMENDMENT  
TO LEASE AGREEMENT**

**Lessor:** The City of Pelham, an Alabama municipality, with a mailing address of P.O. Box 1419, Pelham, AL 35124, Attn: Tom Seale.

**Tenant:** New Cingular Wireless PCS, LLC, a Delaware limited liability company, with its principal offices at 12555 Cingular Way, Suite 1300, Alpharetta, GA 30004.

**Property:** The real property leased by LESSOR to TENANT, together with easements for ingress and egress, is described in Exhibit "A," attached to this Memorandum and incorporated herein by this reference.

**Initial Lease Term:** For a term of five (5) years, beginning on May 1, 1985.

**Expiration Date:** The first four extensions having been exercised, if not otherwise extended or renewed, the Agreement shall expire on April 30, 2010.

**Right to Extend or Renew:** TENANT has the right to extend/renew the Agreement as follows: Ten (10) options to extend the Agreement for a period of five (5) years each on the terms and conditions set forth in the Agreement, as amended. If TENANT exercises all extensions/renewals, the final expiration of the Agreement will occur on April 30, 2040.

**Option to Purchase:** No.

**Right of First Refusal:** No.

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. Lessor and Tenant ratify, confirm and adopt the Agreement as of the date hereof for purposes of compliance with Code of Alabama Section 35-4-6 (1975) (as amended) and acknowledge that there are no defaults under the Agreement or events or circumstances which, with the giving 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 Agreement and Memorandum of Second Amendment to Lease Agreement will be recorded in the applicable land records and is intended to provide notice to third parties



of the Agreement and any and all amendments thereto. The Agreement and any and all amendments thereto contain terms and conditions in addition to those set forth in this Memorandum. This Memorandum is not intended to amend or modify the terms and conditions of the Agreement or of any amendments thereto. To the extent that the terms and conditions of this Memorandum differ from the terms and conditions of the Agreement and/or any amendments thereto, the terms and conditions of the Agreement and/or any amendments thereto shall govern and prevail. Capitalized terms not otherwise defined herein shall have the meaning defined in the Agreement and/or any amendments thereto. This Memorandum may be executed in two (2) or more counterparts and by facsimile, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

**[Signatures appear on the following pages.]**



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

LESSOR:

THE CITY OF PELHAM,  
an Alabama municipality

By: Don Murphy (SEAL)  
Name: Don Murphy  
Its: Mayor

ATTEST:

By: Jim Dever  
Its: Finance Director

STATE OF Alabama )

COUNTY OF Shelby )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Don Murphy, whose name as Mayor of **THE CITY OF PELHAM**, an Alabama municipality, has signed the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he/she with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal this 19th day of November, 2008.

Marsha A. Yates  
Notary Public

My Commission Expires: 08-29-2010

[SEAL]

*2* **TENANT:**

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

By: AT&T Mobility Corporation,  
a Delaware corporation  
Its: Manager

By: *Nellie Jabbari* (SEAL)  
Name: Nellie Jabbari  
Its: Senior Manager – Partnerships/MLAs

STATE OF GEORGIA )

COUNTY OF WINNETT )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that, Nellie Jabbari, whose name as Senior Manager – Partnerships/MLAs of AT&T Mobility Corporation, Manager of **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company, has signed the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, she with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal this 13<sup>th</sup> day of February, 2009.


*J Y Anderson*  
Notary Public

My Commission Expires: 01/08/2013


[SEAL]



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**EXHIBIT "A"**

  
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**Commence at the SW corner of the SE 1/4 of the NW 1/4 of Section 6, Township 20 South, Range 2 West; run thence in an Easterly direction along the south line of said quarter-quarter section for a distance of 380.75 feet to the point of beginning; from the point of beginning thus obtained, thence continue along last described course for a distance of 100 feet; thence turn an angle to the left of 90 degrees and run in a northerly direction for a distance of 100 feet; thence turn an angle to the left of 90 degrees, and run in a westerly direction for a distance of 100 feet; thence turn an angle to the left of 90 degrees and run in a southerly direction for 100 feet to the point of beginning.**

The above property located in Shelby County, Alabama