COUNCIL ITEM 10A
DATE 4/23/12

ORDINANCE 12-20

AN ORDINANCE AUTHORIZING THE CITY MANAGER OF THE CITY OF PORT ST. LUCIE TO ENTER INTO A FIRST AMENDMENT TO SITE LEASE AGREEMENT BETWEEN THE CITY OF PORT ST. LUCIE AND NEW CINGULAR WIRELESS PCS, LLC; PROVIDING AN EFFECTIVE DATE

THE CITY OF PORT ST. LUCIE HEREBY ORDAINS:

Section 1. The City Manager of the City of Port St. Lucie is hereby authorized and directed to enter into a First Amendment to Site Lease Agreement between the City of Port St. Lucie and New Cingular Wireless PCS, LLC, for a telecommunication tower located at Becker Road and Florida Turnpike; to be substantially in the form of the First Amendment to Site Lease Agreement attached hereto as Exhibit "A" and by reference incorporated herein.

Section 2. This Ordinance shall become effective ten (10) days after its final adoption.

PASSED AND APPROVED by the City Council of the City of Port St. Lucie, Florida, this ____ day of _____, 2012.

CITY COUNCIL
CITY OF PORT ST. LUCIE

BY:_____
JoAnn M. Faiella, Mayor

ATTEST:

_____
Carol Heintz, Assistant City Clerk

APPROVED AS TO FORM:_____
Roger G. Orr, City Attorney

EXHIBIT "A"

FIRST AMENDMENT TO SITE LEASE AGREEMENT

THIS FIRST AMENDMENT TO SITE LEASE AGREEMENT (the "Amendment"), dated as of the latter of the signature dates below (the "Effective Date"), by and between **THE CITY OF PORT ST. LUCIE**, a Florida municipal corporation, having a mailing address 121 SW Port St. Lucie Blvd., Port St. Lucie, Florida 34984 ("Owner"), and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company (the successor by December 31, 2004 merger with BellSouth Mobility, LLC) ("Tenant"), having a mailing address of 12555 Cingular Way, Suite 1300, Alpharetta, Georgia 30004.

WITNESSETH

WHEREAS, Owner and Tenant entered into that certain Site Lease Agreement dated August 4, 1998 ("Lease"), whereby Owner leased to Tenant a portion of land consisting of approximately 5,322 square feet in the City of Port St. Lucie, St. Lucie County, Florida, together with access and utility easements thereto (the "Site"), as more particularly described in the Lease and on Exhibit "A" attached hereto; and

WHEREAS, the Lease has an initial term and renewal terms that will expire on August 3, 2023 (the "Original Term"), and Owner and Tenant desire to enter into this Amendment in order to amend the Lease to, among other things, provide for additional renewal terms beyond the Original Term; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Owner and Tenant hereby acknowledge the accuracy of and agree to the recitals in the "WHEREAS" paragraphs set forth above, which are further hereby incorporated into this Amendment, and additionally agree as follows:

1. **Defined Terms**. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Lease. Any reference to "BMI" in the Lease shall be deleted and substituted therein with "Tenant."

2. **Initial Term Commencement Date**. The parties hereby ratify and affirm that the commencement date for the Initial Term of the Lease was August 4, 1998.

3. **Paragraph 2 Amendment: Extended Term**. Paragraph 2 of the Lease is hereby amended to delete the third (3rd) sentence thereof and insert in lieu thereof the following:

> "This Lease will be automatically renewed for six (6) additional and successive terms (each a "Renewal Term") of five (5) years each commencing on each five (5) year anniversary of the Rent Start Date, unless Tenant provides Owner notice of intention not to renew not less than ninety (90) days prior to the expiration of the Initial Term or any Renewal Term."

The Initial Term and the Renewal Terms shall be collectively referred to herein as the "Lease Term." The parties acknowledge that pursuant to this Amendment the Lease Term exceeds the Original

Term by ten (10) years and that, unless terminated sooner, the final Renewal Term of the Lease will expire on August 3, 2033.

4. **Paragraph 6 Amendment: Notice**. Paragraph 6 of the Lease is hereby amended by deleting the address for Tenant, and inserting in lieu thereof the following:

TENANT:	New Cingular Wireless PCS, LLC Attn: Network Real Estate Administration Re: Cell Site #813808 – South Port St. Lucie Fixed Asset No.: _____ 12555 Cingular Way, Suite 1300 Alpharetta, GA 30004
With a copy to:	New Cingular Wireless PCS, LLC Attn: AT&T Legal Department Re: Cell Site #813808 – South Port St. Lucie Fixed Asset No.: _____ 1025 Lenox Park Blvd., 5th Floor Atlanta, GA 30319-5309
And a copy to:	Crown Castle South LLC c/o Crown Castle USA Inc. Attn: Legal Department Re: Cell Site #813808 – South Port St. Lucie 2000 Corporate Drive Canonsburg, PA 15317

5. **IRS Form W-9**. Owner agrees to provide Tenant 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 Tenant. In the event the Site is transferred, the succeeding landlord shall have a duty at the time of such transfer to provide Tenant with a completed IRS Form W-9, or its equivalent, and other related paper work to affect a transfer in rent to the new landlord.

6. **Authority**. Owner represents and warrants that, as of the date of this Amendment, Owner is duly authorized and has the full power, right and authority to enter into this Amendment and to perform all of the Owner's obligations under this Amendment and to execute and deliver this Amendment to Tenant.

7. **Remainder of Lease Unaffected**. In all other respects, the remainder of the Lease shall remain in full force and effect. Any portion of the Lease that is inconsistent with this Amendment is hereby amended to be consistent.

8. **Headings**. The headings contained in this Amendment are for reference purposes only and shall not modify or affect this Amendment in any manner whatsoever.

9. **Counterparts**. This Amendment may be executed in counterparts, all of which together shall constitute one agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or same counterpart.

10. **Recordation**. Tenant, at its cost and expense, shall have the right to record a memorandum of this Amendment in the public records of St. Lucie County, Florida, at any time following the execution of this Amendment by all parties hereto.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY;
SIGNATURE PAGES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Owner and Tenant have caused this Amendment to be duly executed as of the date of their execution.

OWNER:

Signed, sealed and delivered in the presence of:

CITY OF PORT ST. LUCIE,
a Florida municipal corporation

_____

Print Name:_____

By: _____
Name: Gregory J. Oravec
Title: City Manager
Date: _____

_____

Print Name:_____

STATE OF FLORIDA :
: ss
COUNTY OF ST. LUCIE :

The foregoing First Amendment to Site Lease Agreement was acknowledged before me this ____ day of _____, 2012, by Gregory J. Oravec, as City Manager for **THE CITY OF PORT ST. LUCIE**, a Florida municipal corporation, for and on behalf of said entity and for the consideration, intent and purposes set forth in the foregoing First Amendment to Site Lease Agreement. He/She is personally known to me or has produced _____ as identification.

In Witness Whereof, I have hereunto signed this acknowledgment with said appearer and said witnesses, on the date set forth above.

_____
Signature of Notary Public

_____
Printed Name of Notary Public:
[Seal]

My Commission Expires:

TENANT:

Signed, sealed and delivered in the presence of:

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

_____

Print Name:_____

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

_____

Print Name:_____

By: _____
Name: Nellie Jabbari
Title: Area Manager Real Estate Transactions
Date: _____

STATE OF _____ :
: ss
COUNTY OF _____ :

The foregoing First Amendment to Site Lease Agreement was acknowledged before me this ____ day of _____, 2012, by Nellie Jabbari, Area Manager Real Estate Transactions, AT&T Mobility Corporation, a Delaware corporation, the Manager of **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company, for and on behalf of said entities and for the consideration, intent and purposes set forth in the foregoing First Amendment to Site Lease Agreement. She is personally known to me or has produced _____ as identification.

In Witness Whereof, I have hereunto signed this acknowledgment with said appearer and said witnesses, on the date set forth above.

_____
Signature of Notary Public

_____
Printed Name of Notary Public:
[Seal]

My Commission Expires:

EXHIBIT "A"

TOWER PARCEL:

A PARCEL OF LAND LYING IN SECTION 33, TOWNSHIP 37 SOUTH, RANGE 40 EAST BEING A PORTION OF THE PLAT OF PORT ST. LUCIE, SECTION THIRTY-FOUR, TRACT "U" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 15, PAGES 9 & 9A- 9W OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF KESTOR DRIVE (80 FOOT RIGHT-OF-WAY) AND BECKER ROAD (100 FOOT RIGHT-OF-WAY) PROCEED SOUTH 89°56'41" EAST ALONG THE CENTERLINE OF BECKER ROAD A DISTANCE OF 1973.39 FEET; THENCE NORTH 00°03'19" EAST A DISTANCE OF 172.81 FEET TO THE POINT OF BEGINNING; THENCE NORTH 00°04'52" EAST A DISTANCE OF 30.00 FEET; THENCE NORTH 45°38'05" EAST A DISTANCE OF 86.35 FEET; THENCE SOUTH 23°34'10" EAST A DISTANCE OF 80.00 FEET; THENCE SOUTH 38°43'14" WEST A DISTANCE OF 22.00 FEET; THENCE NORTH 89°55'08" WEST A DISTANCE OF 80.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 5322.3 SQUARE FEET MORE OR LESS.

ACCESS EASEMENT:

A 20 FOOT WIDE PARCEL OF LAND LYING IN SECTION 33, TOWNSHIP 37 SOUTH, RANGE 40 EAST BEING A PORTION OF THE PLAT OF PORT ST. LUCIE, SECTION THIRTY FOUR, TRACT "U" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 15, PAGES 9 & 9A- 9W OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF KESTOR DRIVE (80 FOOT RIGHT-OF-WAY) AND BECKER ROAD (100 FOOT RIGHT-OF-WAY) PROCEED SOUTH 89°56'41" EAST ALONG THE CENTERLINE OF BECKER ROAD A DISTANCE OF 1684.08 FEET; THENCE NORTH 00°03'19" EAST A DISTANCE OF 50.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF BECKER ROAD SAID POINT BEING THE POINT OF BEGINNING; THENCE NORTH 04°23'48" EAST A DISTANCE OF 143.34 FEET; THENCE SOUTH 89°55'08" EAST A DISTANCE OF 278.27 FEET THENCE SOUTH 00°04'52" WEST A DISTANCE OF 20.00 FEET; THENCE NORTH 89°55'08" WEST A DISTANCE OF 259.72 FEET; THENCE SOUTH 04°23'48" WEST A DISTANCE OF 123.27 FEET; THENCE NORTH 89°56'41" WEST A DISTANCE OF 20.06 FEET TO THE POINT OF BEGINNING.

CONTAINING 8046.5 SQUARE FEET MORE OR LESS.

EXHIBIT "A" – CONTINUED

UTILITY EASEMENT #1:

A 10 FOOT WIDE PARCEL OF LAND LYING IN SECTION 33, TOWNSHIP 37 SOUTH, RANGE 40 EAST BEING A PORTION OF THE PLAT OF PORT ST. LUCIE, SECTION THIRTY FOUR, TRACT "U" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 15, PAGES 9 & 9A– 9W OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF KESTOR DRIVE (80 FOOT RIGHT–OF–WAY) AND BECKER ROAD (100 FOOT RIGHT–OF–WAY) PROCEED SOUTH 89°56'41" EAST ALONG THE CENTERLINE OF BECKER ROAD A DISTANCE OF 1684.08 FEET; THENCE NORTH 00°03'19" EAST A DISTANCE OF 50.00 FEET TO THE NORTH RIGHT–OF–WAY LINE OF BECKER ROAD, SAID POINT BEING THE POINT OF BEGINNING; THENCE NORTH 89°56'41" WEST ALONG SAID NORTH RIGHT–OF–WAY LINE A DISTANCE OF 139.08 FEET; THENCE NORTH 00°03'19" EAST A DISTANCE OF 10.00 FEET THENCE SOUTH 89°56'41" EAST A DISTANCE OF 139.84 FEET; THENCE SOUTH 04°23'48" WEST A DISTANCE OF 10.03 FEET TO THE NORTH R/W LINE AND THE POINT OF BEGINNING.

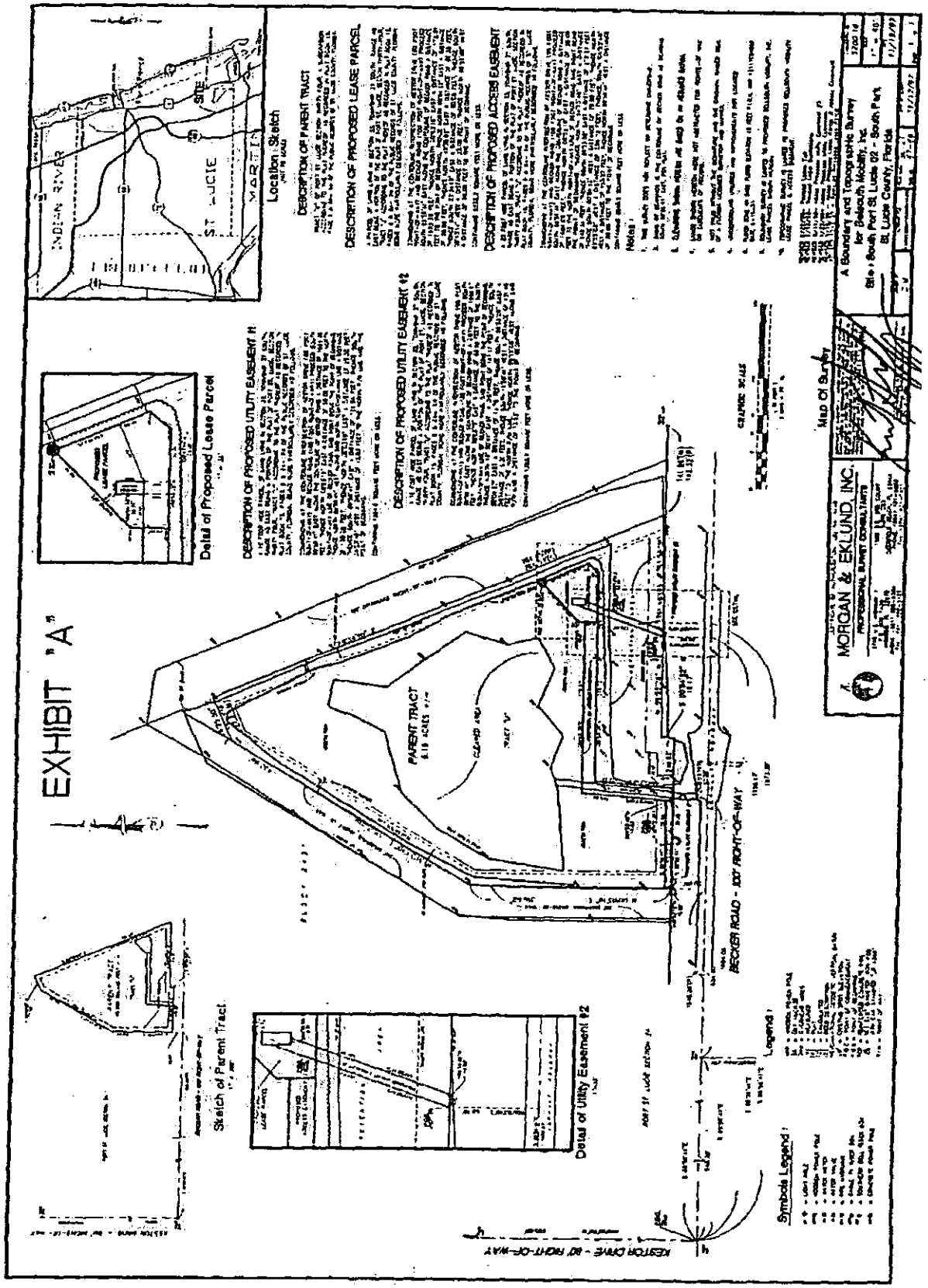
CONTAINING 1394.6 SQUARE FEET MORE OR LESS.

UTILITY EASEMENT #2:

A 10 FOOT WIDE PARCEL OF LAND LYING IN SECTION 33, TOWNSHIP 37 SOUTH, RANGE 40 EAST BEING A PORTION OF THE PLAT OF PORT ST. LUCIE, SECTION THIRTY FOUR, TRACT "U" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 15, PAGES 9 & 9A– 9W OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF KESTOR DRIVE (80 FOOT RIGHT–OF–WAY) AND BECKER ROAD (100 FOOT RIGHT–OF–WAY) PROCEED SOUTH 89°56'41" EAST ALONG THE CENTERLINE OF BECKER ROAD A DISTANCE OF 1950.67 FEET; THENCE NORTH 00°03'19" EAST A DISTANCE OF 69.10 FEET TO THE NORTH RIGHT–OF–WAY LINE OF BECKER ROAD, SAID POINT BEING THE POINT OF BEGINNING; THENCE NORTH 19° 50'41" EAST A DISTANCE OF 147.17 FEET; THENCE SOUTH 00°04'52" EAST A DISTANCE OF 14.79 FEET; THENCE SOUTH 89°55'08" EAST A DISTANCE OF 5.31 FEET; THENCE SOUTH 19°50'41" WEST A DISTANCE OF 131.46 FEET TO THE NORTH R/W LINE; THENCE NORTH 89°55'08" WEST ALONG SAID R/W LINE A DISTANCE OF 10.63' TO THE POINT OF BEGINNING.

CONTAINING 1353.9 SQUARE FEET MORE OR LESS.



Site Name: South Port St. Lucie
BU#: 813808

COUNCIL ITEM
DATE

MEMORANDUM

TO: GREGORY J. ORAVEC, CITY MANAGER

FROM: PAM E. BOOKER, ACTING CITY ATTORNEY

DATE: APRIL 11, 2012

SUBJECT: BECKER ROAD COMMUNICATION TOWER
FIRST AMENDMENT TO LEASE AGREEMENT

Attached please find a proposed First Amendment to Site Lease Agreement between the City of Port St. Lucie and New Cingular Wireless PCS, LLC, for telecommunication tower site located at Becker Road and Florida Turnpike. New Cingular has requested an additional ten years as it is difficult to obtain long term tenants with a short term lease agreement. Therefore the extended term will allow them to maintain tenants. The original Lease was executed on or about August 4, 1998, between the City of Port St. Lucie and Bellsouth Mobility, Inc. The initial Lease was for five years, plus four five year renewals, for a total term of 25 years. The Amendment adds two five years terms to the Lease. The additional 10 year lease extension creates a new expiration date of 2033.

This Amendment has been reviewed and approved by the Legal Department. Please place this item on the next available City Council Agenda. Should you have any questions or need additional information, please contact me at 871-5165.

PB/liw

First Reading
of Ordinances
4/18/12

RECEIVED
APR 13 2012
City Manager's Office

Denise/pam/memos/cel tower becker road 1st amendment to site lease agreem