

AFTER RECORDING RETURN TO:

Stacey Mathis
1997 Annapolis Exchange Parkway
Suite 200
Annapolis, MD 21401

(Space Above This Line for Recorder's Use Only)

Cell Site Number: 266856
Cell Site Name: Malabar & Minton
Fixed Asset Number: 14386096

UTILITY EASEMENT AGREEMENT

THIS ACCESS AND UTILITY EASEMENT AGREEMENT ("**Agreement**") is entered into as of the latter of the signature dates below ("**Effective Date**"), by and between The City of Palm Bay, a municipal corporation, having a mailing address of 120 Malabar Road, Palm Bay, FL 32907 ("**Grantor**"), 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 ("**Grantee**"). Grantor and Grantee may jointly be referred to herein as the "**Parties**" or individually, a "**Party**."

Recitals

A. Grantor is the sole owner of that certain real property located in the City of Palm Bay, County of Brevard, State of Florida, as more particularly described in Exhibit A, attached hereto and incorporated herein by reference (the "**Servient Tenement**");

B. Grantee desires an Easement (as defined in Section 1 below) for utilities, over, across, under and through a portion of the Servient Tenement from a public right-of-way commonly known as Malabar Road to the Communication Facility located on the Dominant Tenement, and Grantor desires to grant and convey to Grantee such Easement on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby conclusively acknowledged, the Parties agree as follows:

1. **Grant and Description of Non-Exclusive Easement.** Grantor grants to Grantee, including its successors and assigns, for its use and the use of its employees, agents, contractors, subtenants, licensees and invitees, including any utility company (collectively, the "**Grantee Parties**") the following non-exclusive easement and rights incidental thereto, for the following purposes (collectively, the

“**Easement**”): the installation, construction, maintenance, operation, repair, replacement and upgrade of all utilities (“**Grantee Utility Facilities**”) deemed necessary or advisable by Grantee in connection with Grantee’s operation of the Communication Facility, over, across and through the Servient Tenement from the public right- of-way commonly known as Malabar Road to and for the benefit of Grantee’s Communication Facility on the Dominant Tenement and in the location more particularly described and/or depicted in Exhibit B, attached to this Agreement and incorporated herein by reference (“**Easement Area**”). Also, Grantee may temporarily use such additional portions of the Servient Tenement in reasonable proximity to the Easement during the times of, and as may reasonably be necessary for, the construction, installation, and maintenance of the Grantee Utility Facilities. In exercising these rights, Grantee must use reasonable care, and may not unreasonably increase the burden on the Servient Tenement or make any material changes not herein specified.

2. **Term.** The rights granted and conveyed herein shall commence as of the Effective Date and shall automatically terminate thirty (30) days following the date that Grantee removes its Communication Facility from the Dominant Tenement. (“**Termination Date**”).

3. **Surrender.** Within the thirty (30) day period prior to the Termination Date, Grantee shall restore any portion and/or improvements on the Servient Tenement damaged directly by use of the Easement Area by Grantee Parties, or any of them, to substantially the same condition that existed as of the Effective Date of the Agreement, reasonable wear and tear, and loss by casualty or other causes beyond the control or not the responsibility of Grantee excepted.

4. **Maintenance.** During the Term of this Agreement, Grantee shall, at Grantee’s sole expense, be responsible for maintaining the Easement Area in good condition and repair in a manner reasonably sufficient for Grantee Parties’ use of the Easement Area pursuant to the terms and conditions set forth herein. Although Grantee shall have the right, at Grantee’s sole cost and expense, to make improvements to and maintain the Easement Area as necessary to make it useable for the purposes stated herein, as determined in Grantee’s sole discretion, Grantee shall not be obligated to perform any improvements, maintenance or repair work on the Easement Area, except for damage thereto directly caused by use of the Easement Area by Grantee Parties, or any of them. If Grantee Parties cause any such damage, Grantee shall promptly repair same within thirty (30) days of receipt of Grantor’s written request, provided that if the damage directly caused by Grantee Parties is of such a nature that it may not be feasible to complete the repair within such thirty (30) day period, then Grantee shall have such additional time as Grantee may reasonably require to complete the repair, provided that Grantee commences to cure the repair within thirty (30) days of receipt of Grantor’s written request.

5. **Indemnification.** Grantee shall indemnify, defend and hold Grantor harmless from and against any and all third party injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys’ fees and court costs), arising directly from the use of the Servient Tenement by Grantee Parties, or any of them, for the purposes described in this Agreement, except to the extent attributable to the negligent or intentional act or omission of Grantor, its employees, agents or independent contractors. Grantor agrees to indemnify, defend and hold Grantee harmless from and against any and all third party injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys’ fees and court costs) arising directly from the actions or failure to act of Grantor or its employees, agents, contractors, or Grantor’s breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Grantee Parties, or any of them in an amount not to exceed the monetary limits on liability set forth in Section 768.28, Florida Statutes, as may be amended from time to time. The provisions and limitations of Section

768.28, Florida Statutes, as may be amended from time to time, are deemed to apply to this agreement to indemnify as though this statute applied to waiver of sovereign immunity, liability, and damages for claims or actions arising in tort or contract..

6. **Limitation of Liability.** Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Grantee and Grantor each waives any claims that each may have against the other with respect to consequential, incidental, punitive, exemplary or special damages, however caused, based on any theory of liability. Grantor's liability is limited as provided in Section 768.28, Florida Statutes.

7. **Environmental.** Grantor acknowledges that Grantee shall not be liable or responsible for any hazardous or toxic substance or material that is now located or later comes to be located on, over, under or about the Servient Tenement, except for any such substance or material that is placed or released on the Servient Tenement by Grantee Parties, or any of them.

8. **Grantor's Use of Easement Area.** Grantor shall not use, nor permit its successors or assigns or other grantees or any of Grantor's tenants, licensees, employees, agents, contractors or invited guests to use, the Servient Tenement in any manner which interferes with Grantee's use of the Easement Area including, without limitation, the excavation, or installation, construction or other placement or operation of any facilities, structure, improvement, equipment or fixture, in, upon or over the Easement Area, or the drilling or operation of any well upon, within or beneath the Easement Area.

9. **Apportionment.** The Parties expressly intend that the Easement shall be transferable, assignable, inheritable, divisible and apportionable. Grantee has the right to grant sub-easements or licenses over any portion of the Easement so long as (a) the use is for the same purposes as provided in this Agreement and such use will not interfere with any other existing use of the Easement, and (b) the term of such sub-easement or license may not exceed the term of this Agreement.

10. **Representations/Warranties.** Grantor represents, warrants and agrees that: (i) Grantor solely owns the Servient Tenement in fee simple, and has the full right, power and authority to grant the Easement to Grantee; (ii) the Servient Tenement is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Grantee's use of the Easement; and (iii) Grantor's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease, covenant or other agreement binding on Grantor.

11. **Attorneys' Fees, Applicable Law, Venue.** The prevailing Party in any action, court proceeding, or arbitration proceeding to enforce the terms of this Agreement is entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing Party. This Agreement is governed by the laws of the State of Florida. The location for settlement of any and all claims, controversies, or disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be Brevard County, Florida.

12. **Notices.** All notices, requests and demands 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. Notice will be addressed to the Parties as follows:

GRANTOR: City of Palm Bay
ATTN: CITY MANAGER
120 Malabar Road
Palm Bay, FL 32907

GRANTEE: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: 266856
Cell Site Name: Malabar & Minton FL
Fixed Asset Number: 14386096
1025 Lenox Park Blvd. NE, 3rd Floor
Atlanta, GA 30319

With a required copy of such notice sent to AT&T Legal at:
New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: 266856
Cell Site Name: Malabar & Minton FL
Fixed Asset Number: 14386096
208 S. Akard Street
Dallas, TX 75202

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

13. **Compliance With Laws.** Grantee agrees to comply with all federal, state and local laws, orders, rules and regulations ("Laws") applicable to Grantee's use of the Easement on the Servient Tenement. Grantor agrees to comply with all Laws relating to Grantor's ownership and use of the Servient Tenement and any improvements on the Servient Tenement.

14. **Recording of Agreement.** Either Party may record this Agreement in the Official Records of Brevard County, Florida.

15. **Waiver.** No waiver by either Party of any of the terms of this Agreement shall be construed as a waiver of the same term or other rights of that Party in the future.

16. **Severability; Partial Invalidity.** If any parts, terms or provisions of this Agreement are held by the courts to be illegal, invalid or unenforceable, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the Parties shall not be affected in regard to the remainder of the Agreement, the remainder of the Agreement being valid and enforced to the fullest extent permitted by law. If it should appear that any part, term or provision of this Agreement is in conflict with any applicable Laws, then the part, term or provision thereof that may be in conflict shall be deemed inoperative and null and void insofar as it may be in conflict therewith and this Agreement shall be deemed modified to conform to such statutory provision.

17. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.

18. **Miscellaneous.** The Agreement, including the Easement granted herein, runs with the land and is binding upon and inures to the benefit of the Parties, their respective heirs, legal representatives, executors, administrators, successors and assigns. This Agreement may not be amended, modified or revised, and no provision may be waived, unless done in writing and signed by both Parties. All statements provided in the Recitals to this Agreement are hereby incorporated as a material part of this Agreement. This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the Parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Unless otherwise specified, the following rules of construction and interpretation apply: (A) use of the term “including” will be interpreted to mean “including but not limited to”; (B) the exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (C) use of the terms “termination” or “expiration” are interchangeable; and (D) this Agreement shall not be construed against the drafter by virtue of said Party being the drafter.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be effective as of the Effective Date.

[SIGNATURES APPEAR ON NEXT PAGE]

GRANTOR:

Signed, sealed and delivered in the presence of the following witnesses:

Signature of Witness

Printed Name of Witness

Witness Address

Signature of Witness

Printed Name of Witness

Witness Address

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of () physical presence or () online notarization, this _____ day of _____, 202_, by Rob Medina, Mayor, who is personally known to me or produced _____ as identification.

(NOTARY SEAL)

CITY OF PALM BAY, FLORIDA

Rob Medina, Mayor

Date: _____

ATTEST:

Terese Jones, City Clerk

(Notary Public Signature)

(Print Name)

Notary Public, State of _____

Commission No.: _____

My Commission Expires: _____

GRANTEE

Signed, sealed and delivered in the presence of the following witnesses:

Debbie Lewis
Signature of Witness
Debbie Lewis
Printed Name of Witness
12150 Research Parkway, Orlando, FL 32826
Witness Address

Mason Porter
Signature of Witness
Mason Porter
Printed Name of Witness

12150 Research Pkwy Orlando, FL 32826
Witness Address

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

By: AT&T Mobility Corp.

Its: Manager

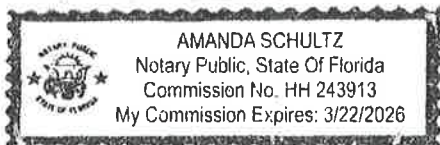
SLB
Print name and title: Steven J. Berghane
Associate Director

Date: 2/11/25

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of (☒) physical presence or (☐) online notarization, this 11th day of February, 2025, by Steven J. Berghane, the Associate Director of New Cingular Wireless PCS, LLC, a Delaware limited liability company, on behalf of the company, who is personally known to me or produced as identification.

(NOTARY SEAL)



Amanda Schultz
(Notary Public Signature)
Amanda Schultz
(Print Name)
Notary Public, State of FL
Commission No.: HH 243913
My Commission Expires: 3/22/2026

EXHIBIT A
LEGAL DESCRIPTION OF THE SERVIENT TENEMENT

ALL THAT PROPERTY SHOWN AS TRACT "A" ON THAT MAP ENTITLED "PORT MALABAR UNIT TEN" DATED SEPTEMBER 27, 1961 AND RECORDED SEPTEMBER 27, 1961 IN (BOOK) 15 (PAGE) 11, IN BREVARD COUNTY, FLORIDA.

LESS AND EXCEPT

A PARCEL OF LAND BEING A PORTION OF OFFICIAL RECORDS BOOK 2098, PAGE 15, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, ALSO A PORTION OF TRACT "A", PORT MALABAR UNIT 10 ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 15 AT PAGES 10 THROUGH 19 INCLUSIVE OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF BEGINNING, COMMENCE AT THE SOUTHWEST CORNER OF SAID TRACT "A", PORT MALABAR UNIT 10, ACCORDING THE PLAT THEREOF AS RECORDED IN PLAT BOOK 15 AT PAGES 10 THROUGH 19 INCLUSIVE OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE N 0°00'03" E, ALONG THE WEST LINE OF SAID TRACT "A", FOR A DISTANCE OF 223.30 FEET; THENCE N 90°00'00" E, FOR A DISTANCE OF 121.57 FEET; THENCE N 05°07'44" E, FOR A DISTANCE OF 141.13 FEET; THENCE S 84°21'07" E, FOR A DISTANCE OF 222.26 FEET; THENCE S 73°20'33" E, FOR A DISTANCE OF 59.31 FEET; THENCE N 90°00'00" E, FOR A DISTANCE OF 40.34 FEET, THENCE N 00°00'00" W, FOR A DISTANCE OF 72.62 FEET; THENCE N 90°00'00" E, FOR A DISTANCE OF 140.84 FEET; THENCE S 05°46'43" W, FOR A DISTANCE OF 256.95 FEET; THENCE S 45°00'00" E, FOR A DISTANCE OF 24.67 FEET; THENCE S 00°38'15" W, FOR A DISTANCE OF 131.03 FEET, TO THE SOUTH LINE OF SAID TRACT "A"; THENCE N 89°21'45" W, ALONG THE SAID SOUTH LINE, FOR A DISTANCE OF 583.71 FEET, TO THE POINT OF BEGINNING; CONTAINING 4.46 ACRES, MORE OR LESS; SUBJECT TO ANY AND ALL DEED RESTRICTIONS, EASEMENTS, AND RIGHTS-OF-WAY OF RECORD, INCLUDING, BUT NOT LIMITED TO, A FORTY (40) FOOT DRAINAGE AND UTILITY EASEMENT RUNNING ALONG THE SOUTHERLY BOUNDARY OF SAID PARCEL TO SERVE AND MAINTAIN THE DRAINAGE DITCH THAT RUNS ALONG AND ADJACENT TO SAID FORTY (40) FOOT EASEMENT, AND FOR OTHER UTILITIES.

RESERVING UNTO GRANTOR AN EASEMENT TO ENTER INTO AND UPON SUCH LAND FOR THE PURPOSES OF REPAIRING, MAINTAINING AND REBUILDING THE COMMUNICATION TOWER AND FACILITIES LOCATED THEREON.

FURTHER LESS AND EXCEPT

A PARCEL OF LAND LYING IN THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 29 SOUTH, RANGE 37 EAST, AND BEING A PORTION OF TRACT "A" PORT MALABAR UNIT TEN, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 15, PAGES 10 THROUGH 19 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID TRACT "A" FOR THE POINT OF BEGINNING SAID CORNER LYING ON THE SOUTH RIGHT-OF-WAY LINE OF MALABAR ROAD, ACCORDING TO STATE ROAD DEPARTMENT PROJECT W.P.S 181 DATED JANUARY 16, 1940; THENCE DEPARTING SAID SOUTH RIGHT-OF-WAY LINE SOUTH 02°00'02" WEST, ALONG THE EAST LINE OF SAID TRACT "A", 51.50 FEET TO A POINT LYING ON A NON TANGENT CURVE CONCAVE NORTHERLY; THENCE RUN WESTERLY, ALONG SAID CURVE, HAVING A RADIUS LENGTH OF 16069.86 FEET, A CENTRAL

ANGLE OF $0^{\circ}44'14''$, AN ARC LENGTH OF 193.91 FEET, A CHORD LENGTH OF 193.91 FEET, AND A CHORD BEARING OF NORTH $87^{\circ}00'04''$ WEST TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE SOUTHERLY; THENCE RUN WESTERLY, ALONG SAID CURVE, HAVING A RADIUS LENGTH OF 15069.86 FEET, A CENTRAL ANGLE OF $02^{\circ}14'39''$, AN ARC LENGTH OF 590.25 FEET, A CHORD LENGTH OF 590.22 FEET, AND A CHORD BEARING OF NORTH $87^{\circ}45'17''$ WEST; THENCE RUN NORTH $00^{\circ}41'54''$ EAST 3.00 FEET; THENCE RUN NORTH $88^{\circ}50'48''$ WEST 62.95 FEET; THENCE RUN NORTH $89^{\circ}15'00''$ WEST 86.00 FEET TO THE WEST LINE OF AFORESAID TRACT "A"; THENCE RUN NORTH $00^{\circ}30'38''$ EAST, ALONG SAID WEST LINE. 31.61 FEET TO THE AFORESAID SOUTH RIGHT-OF-WAY LINE OF MALABAR ROAD; THENCE RUN SOUTH $88^{\circ}50'48''$ EAST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, 934.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND LIES IN BREVARD COUNTY, FLORIDA AND CONTAINS 0.834 ACRES, MORE OR LESS PARCEL ID NO.: 29-37-06-GK-A (ACCOUNT: 2925038)

THIS BEING A PORTION OF THE SAME PROPERTY CONVEYED TO THE CITY OF PALM BEACH FROM GENERAL DEVELOPMENT CORPORATION IN A WARRANTY DEED DATED SEPTEMBER 26, 1979 AND RECORDED SEPTEMBER 26, 1979 IN BOOK 2098 PAGE 15 IN BREVARD COUNTY, FLORIDA.

EXHIBIT B

LEGAL DESCRIPTIONS OF THE DOMINANT TENEMENT

A STRIP OF LAND WITHIN "TRACT A", PORT MALABAR UNIT TEN, PLAT BOOK 15, PAGES 10 THROUGH 19 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EAST LINE OF SAID TRACT "A" WITH THE SOUTH RIGHT-OF-WAY LINE OF MALABAR ROAD SE; THENCE S01°33'45"W, DEPARTING SAID SOUTH RIGHT-OF-WAY LINE, AND ALONG THE EAST LINE OF SAID TRACT "A", A DISTANCE OF 119.48 FEET; THENCE N88°26'15"W, DEPARTING THE EAST LINE OF SAID TRACT "A", A DISTANCE OF 133.99 FEET TO THE CENTERLINE OF SAID EASEMENT AND THE POINT OF BEGINNING; THENCE N05°14'28"E, A DISTANCE OF 12.92 FEET; THENCE N73°19'40"E, A DISTANCE OF 76.92 FEET; THENCE N01°33'45"E, A DISTANCE OF 83.40 FEET MORE OR LESS TO THE SOUTH RIGHT-OF-WAY LINE OF SAID MALABAR ROAD SE AND THE POINT OF TERMINUS OF SAID CENTERLINE.

THE SIDELINES OF SAID EASEMENT ARE TO BE EXTENDED OR TRIMMED TO MEET AT THE NORTH LINE OF AN EXISTING EXCLUSIVE EASEMENT AREA AND THE SOUTH RIGHT-OF-WAY LINE OF MALABAR ROAD SE.

SAID PROPOSED 5' WIDE NON-EXCLUSIVE AT&T UTILITY EASEMENT CONTAINING 866 SQUARE FEET, MORE OR LESS.