RESOLUTION APPROVING AND AUTHORIZING CHAIRMAN TO SIGN FIRST AMENDMENT TO OPTION AND LEASE AGREEMENT WITH NCWPCS MPL 31 – YEAR SITES TOWER HOLDINGS LLC

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104(6), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103, the powers of the County as a body are exercised by the County Board; and,

WHEREAS, Sarpy County entered into an Option and Lease Agreement with New Cingular Wireless PCS, LLC (“Original Tenant”) on April 27, 2006 (Resolution 2006-0112); and,

WHEREAS, NCWPCS MPL 31 – Year Sites Tower Holdings LLC (“Tenant”) is currently the tenant under the Agreement as successor in interest to the Original Tenant; and

WHEREAS, the First Amendment to the Option and Lease Agreement in part extends the lease agreement and grants Tenant the option to expand its lease premises.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS THAT this Board hereby approves and authorizes the Chairman of this Board to sign the First Amendment to Option and Lease Agreement with NCWPCS MPL 31 – Year Sites Tower Holdings LLC.

The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the __________ day of ___, 2018.

Attest

SEAL

Sarpy County Board Chairman

County Clerk
MEMO

To: Sarpy County Board of Commissioners
From: Beth Garber
Re: Crown Castle Tower Lease and Extension

On June 5, 2018, the County Board will be asked to approve two lease documents between Crown Castle and the County. The first document is a contract extension for Crown Castle’s lease for the Sarpy Platteview tower. This extension is under the same terms and conditions as the previous agreement modifying the contract date through 2106. As part of this contract amendment, the County will receive a $5,000 signing bonus and 20% revenue share of all future subleases. Sarpy County currently receives $1,539.45 a month for lease payments. The amendment states these payments will increase 5% annually.

The second document is a new lease for the Gretna Fire Station tower. This is a Crown Castle tower with space being leased to the County at no cost. The lease is for a five year period with ten, five year renewal options. The space will be used for E911’s radio system upgrade project to improve radio coverage within the County.

Please contact me with any questions at bgarber@sarpy.com.

June 1, 2018

Beth Garber

cc: Dan Hoins
Scott Bovick
Brian Hanson
Deb Houghtaling
Stu DeLaCastro
Bill Muldoon
Jim Tracy
MEMORANDUM OF FIRST AMENDMENT TO
OPTION AND LEASE AGREEMENT

This Memorandum of First Amendment to Option and Lease Agreement is made effective this 5th day of June, 2018 by and between THE COUNTY OF SARPY, NEBRASKA, with a mailing address of 1210 Golden Gate Drive, Suite 1220, Papillion, Nebraska 68046 ("Landlord") and NCWPCS MPL 31 - YEAR SITES TOWER HOLDINGS LLC, a Delaware limited liability company, by and through its attorney in fact, CCATT LLC, a Delaware limited liability company, with a mailing address of 2000 Corporate Drive, Canonsburg, Pennsylvania 15317 ("Tenant").

1. Landlord and New Cingular Wireless PCS, LLC, a Delaware limited liability company ("Original Tenant") entered into an Option and Lease Agreement dated April 27, 2006 (the "Agreement") whereby Original Tenant leased certain real property, together with access and utility easements, located in Sarpy County, Nebraska from Landlord (the "Premises"), all located within certain real property owned by Landlord (the "Property"). The Property, of which the Premises is a part, is more particularly described on Exhibit A attached hereto.

When Recorded Return to:

Site Name: RICHFIELD
Business Unit #: 844707
2. NCWPCS MPL 31 - Year Sites Tower Holdings LLC is currently the tenant under the Agreement as successor in interest to the Original Tenant.

3. The Premises may be used for the purpose of constructing, maintaining and operating a communications facility, including tower structures, equipment shelters, cabinets, meter boards, utilities, antennas, equipment, any related improvements and structures and uses incidental thereto.

4. The Agreement had an initial term that commenced on September 1, 2006, and expired on August 31, 2011. The Agreement provides for four (4) extensions of five (5) years each, the first and second of which were exercised by Tenant (each extension is referred to as a “Extension Term”). According to the Agreement, the final Extension Term expires on August 31, 2031.

5. Landlord and Tenant have entered into a First Amendment to Option and Lease Agreement (the “First Amendment”), of which this is a Memorandum, providing for fifteen (15) additional Extension Terms of five (5) years each. Pursuant to the Agreement, as amended by the First Amendment, seventeen (17) Extension Terms remain unexercised by Tenant and the final Extension Term expires on August 31, 2106.

6. By the First Amendment, Landlord granted to Tenant the option to expand the Premises by up to an additional three hundred (300) square feet adjacent to the Premises. Additional details of the foregoing expansion are set forth in the First Amendment.

7. By the First Amendment, Landlord granted to Tenant the right of first refusal to purchase all, or a portion, of the Property, the details of which are set forth in the First Amendment.

8. If requested by Tenant, Landlord will execute, at Tenant’s sole cost and expense, all documents required by any governmental authority in connection with any development of, or construction on, the Premises, including documents necessary to petition the appropriate public bodies for certificates, permits, licenses and other approvals deemed necessary by Tenant in Tenant’s absolute discretion to utilize the Premises for the purpose of constructing, operating and
maintaining communications facilities, including without limitation, tower structures, antenna support structures, cabinets, meter boards, buildings, antennas, cables, equipment and uses incidental thereto. Landlord agrees to be named applicant if requested by Tenant. Landlord shall be entitled to no further consideration with respect to any of the foregoing matters.

9. In the event of any inconsistency between this Memorandum and the First Amendment, the First Amendment shall control.

10. The terms, covenants and provisions of the First Amendment shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of Landlord and Tenant.

11. This Memorandum does not contain the social security number of any person.

12. A copy of the First Amendment is on file with Landlord and Tenant.

[Execution Pages Follow]
IN WITNESS WHEREOF, hereunto and to duplicates hereof, Landlord and Tenant have caused this Memorandum to be duly executed on the day and year first written above.

LANDLORD:
THE COUNTY OF SARPY, NEBRASKA

By: [Signature]
Print Name: Don Kelly
Title: Chairman

Approved as to Form:

Deputy Sarpy County Attorney

[Acknowledgment Appears on Following Page]
ALL PURPOSE ACKNOWLEDGMENT

STATE OF Nebraska

COUNTY OF Sarpy

On this 5th day of June, 2018 before me Renee Lansman (notary public), personally appeared Don Kelly (print name), who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Nebraska that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Renee S Lansman (notary public)

(GENERAL NOTARY - State of Nebraska
RENEE S LANSMAN
My Comm. Exp. April 22, 2021)

(ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW.

Title of Document Type: Memorandum of First Amendment to Option and Lease Agreement
Number of Pages Date of Document 6/5/18

[Tenant Execution Page Follows]
TENANT:
NCWPCS MPL 31 - YEAR SITES TOWER HOLDINGS LLC,
a Delaware limited liability company

By: CCATT LLC,
a Delaware limited liability company
Its: Attorney In Fact

By: ____________________________
Print Name: Lisa A. Sedgwick
Title: RET Manager

[Acknowledgment Appears on Following Page]
State of Texas
County of Harris

Before me, Veronica Lawrence, a Notary Public, on this day personally appeared Lisa Sedgwick RET MANAGER of CCATT LLC, a Delaware limited liability company, as Attorney in Fact for NCWPCS MPL 31 - YEAR SITES TOWER HOLDINGS LLC, a Delaware limited liability company, known to me (or proved to me on the oath of or through driver’s license, state id card, resident id card, military id card, or passport) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she/he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 25th day of June, 20__

[Signature]

(Personalized Seal) Notary Public’s Signature

VERONICA NICOLE LAWRENCE
Notary Public, State of Texas
Comm. Expires 04-29-2021
Notary ID 131103553
EXHIBIT A
(Legal Description of the Property)

FIRST AMENDMENT TO
OPTION AND LEASE AGREEMENT

THIS FIRST AMENDMENT TO OPTION AND LEASE AGREEMENT (this "First Amendment") is entered into this 5th day of June, 2018, by and between THE COUNTY OF SARPY, NEBRASKA, with a mailing address of 1210 Golden Gate Drive, Suite 1220, Papillion, Nebraska 68046 ("Landlord") and NCWPCS MPL 31 - YEAR SITES TOWER HOLDINGS LLC, a Delaware limited liability company, by and through its attorney in fact, CCATT LLC, a Delaware limited liability company, with a mailing address of 2000 Corporate Drive, Canonsburg, Pennsylvania 15317 (collectively referred to as "Tenant").

RECITALS

WHEREAS, Landlord and New Cingular Wireless PCS, LLC, a Delaware limited liability company ("Original Tenant") entered into an Option and Lease Agreement dated April 27, 2006 (the "Agreement") whereby Original Tenant leased certain real property, together with access and utility easements, located in Sarpy County, Nebraska from Landlord (the "Premises"), all located within certain real property owned by Landlord (the "Property"); and

WHEREAS, NCWPCS MPL 31 - Year Sites Tower Holdings LLC is currently the tenant under the Agreement as successor in interest to the Original Tenant; and

WHEREAS, the Premises may be used for the purpose of constructing, maintaining and operating a communications facility, including tower structures, equipment shelters, cabinets, meter boards, utilities, antennas, equipment, any related improvements and structures and uses incidental thereto; and

WHEREAS, the Agreement had an initial term that commenced on September 1, 2006, and expired on August 31, 2011. The Agreement provides for four (4) extensions of five (5) years each, the first and second of which were exercised by Tenant. According to the Agreement, the final extension expires on August 31, 2031; and

WHEREAS, Landlord and Tenant desire to amend the Agreement on the terms and conditions contained herein.
NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Landlord and Tenant agree as follows:

1. **Recitals; Defined Terms.** The parties acknowledge the accuracy of the foregoing recitals. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement.

2. **Term.** Subsections 3(b) and (c) of the Agreement are hereby deleted in their entirety and the following is inserted in their place:

   (b) This Agreement will automatically renew for nineteen (19) additional five (5) year terms (each five (5) year term shall be defined as an “Extension Term”), upon the same terms and conditions unless Tenant notifies Landlord in writing of Tenant’s intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Term.

   (c) If at least sixty (60) days prior to the end of the final Extension Term, either Landlord or Tenant has not given the other written notice of its desire that the term of this Agreement end at the expiration of the final Extension Term, then upon the expiration of the final Extension Term this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of any such annual term. Monthly rental during such annual terms shall be equal to the rent paid for the last month of the final Extension Term. The monthly rental shall increase by five percent (5%) over the rent paid for the previous year. If Tenant remains in possession of the Premises after the termination of this Agreement then Tenant will be deemed to be occupying the Premises on a month to month basis (the “Holdover Term”), subject to the terms and conditions of this Agreement.

   Landlord and Tenant hereby acknowledge that Tenant has exercised the first and second Extension Terms, leaving a balance of seventeen (17) Extension Terms, with the final Extension Term expiring on August 31, 2106.

3. **Conditional Signing Bonus.** Tenant will pay to Landlord a one-time amount of Five Thousand and 00/100 Dollars ($5,000.00) for the full execution of this First Amendment (and any applicable memorandum of amendment) (“Conditional Signing Bonus”), within sixty (60) days of the full execution of this First Amendment. In the event that this First Amendment (and any applicable memorandum of amendment) is not fully executed by both Landlord and Tenant for any reason, Tenant shall have no obligation to pay the Conditional Signing Bonus to Landlord.
4. **Right of First Refusal.** If Landlord receives an offer from any person or entity that owns towers or other wireless telecommunications facilities (or is in the business of acquiring Landlord’s interest in the Agreement) to purchase fee title, an easement, a lease, a license, or any other interest in the Property, or Landlord’s interest in the Agreement, or an option for any of the foregoing, Landlord shall provide written notice to Tenant of said offer, and Tenant shall have a right of first refusal to acquire such interest on the same terms and conditions in the offer, excluding any terms or conditions that are (a) not imposed in good faith; or (b) directly or indirectly designed to defeat or undermine Tenant’s possessory or economic interest in the Premises. If Landlord’s notice covers portions of the Property beyond the Premises, Tenant may elect to acquire an interest in only the Premises, and the consideration shall be pro-rated on an acreage basis. Landlord’s notice shall include the prospective buyer’s name, the purchase price and/or other consideration being offered, the other terms and conditions of the offer, the due diligence period, the proposed closing date and, if a portion of Landlord’s parent parcel is to be sold, leased or otherwise conveyed, a description of said portion. If the Landlord’s notice shall provide for a due diligence period of less than sixty (60) days, then the due diligence period shall be extended to be sixty (60) days from exercise of the right of first refusal and closing shall occur no earlier than fifteen (15) days thereafter. If Tenant does not exercise its right of first refusal by written notice to Landlord given within thirty (30) days, Landlord may convey the property as described in the Landlord’s notice. If Tenant declines to exercise its right of first refusal, then the Agreement shall continue in full force and effect and Tenant’s right of first refusal shall survive any such conveyance. Tenant shall have the right, at its sole discretion, to assign the right of first refusal to any person or entity, either separate from an assignment of the Agreement or as part of an assignment of the Agreement. Such assignment may occur either prior to or after Tenant’s receipt of Landlord’s notice and the assignment shall be effective upon written notice to Landlord.

5. **Expansion Option.** As further consideration for Tenant entering into this First Amendment, during the term of the Agreement, Tenant shall have the irrevocable option (“Expansion Option”) to lease up to a maximum of three hundred (300) square feet of real property directly south of the existing Premises at a location to be determined at Tenant’s sole discretion (“Additional Lease Area”) at no additional cost to Tenant and on the same terms and conditions set forth in the Agreement. Tenant may conduct any reasonable due diligence activities on the Additional Lease Area at any time after full execution of this First Amendment. Tenant may
exercise the Expansion Option by providing written notice to Landlord at any time; provided, however, that following Tenant’s delivery of notice to Landlord, Tenant may at any time prior to full execution of the Additional Lease Area Documents (defined below) withdraw its election to exercise the Expansion Option if Tenant discovers or obtains any information of any nature regarding the Additional Lease Area which Tenant determines to be unfavorable in its sole discretion. Within thirty (30) days after Tenant’s exercise of the Expansion Option, Landlord agrees to execute and deliver an amendment to the Agreement, a memorandum of lease and/or amendment, and any other documents necessary to grant and record Tenant’s interest in the Additional Lease Area ("Additional Lease Area Documents"). In addition, within thirty (30) days after Tenant’s exercise of the Expansion Option, Landlord shall obtain and deliver a non-disturbance agreement in recordable form for any mortgages, deeds of trust, liens or encumbrances affecting the Additional Lease Area to Tenant’s satisfaction.

6. **Revenue Share.** If, after full execution of this First Amendment, Tenant enters into any future sublease or license with a Broadband Tenant not already a subtenant on the Premises (each a “Future Broadband Sublease”), Tenant shall pay to Landlord a monthly fee for such Future Broadband Sublease equal to twenty percent (20%) of the Agreement monthly base rent then in effect on each applicable due date set forth below ("Future Broadband Sublease Fee"). The first payment of the Future Broadband Sublease Fee shall be due on the first day of the month following the commencement date of the applicable Future Broadband Sublease, and each subsequent payment shall be due on the first day of each month thereafter. If any Future Broadband Sublease expires or terminates for any reason, Tenant shall no longer be obligated to pay a Future Broadband Sublease Fee for such Future Broadband Sublease. Notwithstanding anything in this paragraph to the contrary, Landlord shall not be entitled to a Future Broadband Sublease Fee for any sublease or license to any subtenant of Tenant or any successors and/or assignees of such subtenant who commenced use of the Premises or executed a sublease or license prior to the effective date of this First Amendment, including Verizon Wireless and the anchor tenant AT&T. As used herein, “Broadband Tenant” shall mean any subtenant which is a Commercial Mobile Radio Service ("CMRS") provider (as defined in 47 C.F.R. §20.3) engaged primarily in the business of providing wireless telephony services to its customers.
7. **Condemnation.** The third sentence of Section 19 of the Agreement, and only that sentence, is hereby deleted and the following is inserted in its place:

In the event Tenant remains in possession of that portion of the Premises and easements that will not be taken, there shall be an equitable adjustment in rent on account of the portion of the Premises and easements so taken. With either option Tenant shall have the right to contest the taking and directly pursue an award.

8. **Landlord’s Cooperation.** If requested by Tenant, Landlord will execute, at Tenant’s sole cost and expense, all documents required by any governmental authority in connection with any development of, or construction on, the Premises, including documents necessary to petition the appropriate public bodies for certificates, permits, licenses and other approvals deemed necessary by Tenant in Tenant’s absolute discretion to utilize the Premises for the purpose of constructing, maintaining and operating communications facilities, including without limitation, tower structures, antenna support structures, cabinets, meter boards, buildings, antennas, cables, equipment and uses incidental thereto. Landlord agrees to be named applicant if requested by Tenant. Landlord shall be entitled to no further consideration with respect to any of the foregoing matters.

9. **Ratification.**

a) Landlord and Tenant agree that Tenant is the current tenant under the Agreement, the Agreement is in full force and effect, as amended herein, and the Agreement contains the entire agreement between Landlord and Tenant with respect to the Premises.

b) Landlord agrees that any and all actions or inactions that have occurred or should have occurred prior to the date of this First Amendment are approved and ratified and that no breaches or defaults exist as of the date of this First Amendment.

c) Landlord represents and warrants that Landlord is duly authorized and has the full power, right and authority to enter into this First Amendment and to perform all of its obligations under the Agreement as amended.

d) Landlord acknowledges that the Premises, as defined, shall include any portion of the Property on which communications facilities or other Tenant improvements exist on the date of this First Amendment.
10. **Notices.** Tenant’s notice address as stated in Section 17 of the Agreement is amended as follows:

   If to Tenant:          NCWPCS MPL 31 - Year Sites Tower Holdings LLC  
                         Attn: Network Legal  
                         208 S. Akard Street  
                         Dallas, TX 75202  

   With a copy to:        CCATT LLC  
                         Attn: Legal Dept.  
                         2000 Corporate Drive  
                         Canonsburg, PA 15317

11. **IRS Form W-9.** Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this First Amendment and at such other times as may be reasonably requested by Tenant. In the event the Premises 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 effect a transfer in the rent to the new landlord. Landlord’s failure to provide the IRS Form W-9 within thirty (30) days after Tenant’s request shall be considered a default and Tenant may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from rent payments.

12. **Remainder of Agreement Unaffected.** The parties hereto acknowledge that except as expressly modified hereby, the Agreement remains unmodified and in full force and effect. In the event of any conflict or inconsistency between the terms of this First Amendment and the Agreement, the terms of this First Amendment shall control. The terms, covenants and provisions of this First Amendment shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of Landlord and Tenant. This First Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

13. **Survey.** Tenant reserves the right, at its discretion and at its sole cost, to obtain a survey ("Survey") specifically describing the Premises and any access and utility easements associated therewith. Tenant shall be permitted to attach the Survey as an exhibit to this First Amendment and any related memorandum for recording, which shall update and replace the existing description, at any time prior to or after closing of this First Amendment.
This First Amendment is executed by Landlord as of the date first written above.

**LANDLORD:**
THE COUNTY OF SARPY, NEBRASKA

By:  
Print Name:  Donald R. Kelly  
Title:  Chairman, Sarpy County Board

Approved as to form:  
Deputy Sarpy County Attorney

[Tenant Execution Page Follows]
This First Amendment is executed by Tenant as of the date first written above.

**TENANT:**
NCWPCS MPL 31 - YEAR SITES TOWER HOLDINGS LLC,
a Delaware limited liability company

By: CCATT LLC,
a Delaware limited liability company
Its: Attorney In Fact

By: [Signature]
Print Name: Lisa A. Sedgwick
Title: RET Manager