

**RESOLUTION R-16-23**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A THIRD AMENDMENT TO ANTENNA SITE LEASE WITH NEW CINGULAR WIRELESS PCS, LLC, AT THE ANTIOCH WATER TOWER.**

**WHEREAS**, New Cingular Wireless PCS, LLC (“Tenant”), currently maintains equipment at the City of Gladstone, Missouri (“City”) Antioch water tower pursuant to an Antenna Site Lease originally dated April 26, 2005 as amended by a first amendment dated September 22, 2011 and by a second amendment dated August 15, 2014 (collectively the “Lease”); and

**WHEREAS**, the term of the Lease will expire on June 30, 2020; and

**WHEREAS**, the Tenant has requested that the term of the Lease be extended for a new initial term of five years commencing on July 1, 2020 and for up to three additional five year terms thereafter; and

**WHEREAS**, the City and Tenant have negotiated terms for said extensions including rent adjustments pursuant to the terms of a Third Amendment to Antenna Site Lease at Antioch Water Tower; and

**WHEREAS**, the City Council desires for the City to enter into the Third Amendment to Antenna Site Lease at Antioch Water Tower with the Tenant.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, AS FOLLOWS:**

**THAT**, the City Manager of the City of Gladstone is hereby authorized to execute the Third Amendment to Antenna Site Lease at Antioch Water Tower with New Cingular Wireless PCS, LLC, attached hereto as Exhibit A and to execute other documents and take such other actions as may be necessary to effectuate the intent of this Resolution.

**INTRODUCED, READ, PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI THIS 28<sup>th</sup> DAY OF MARCH, 2016.**



\_\_\_\_\_  
Mayor Bill Garnos

ATTEST:   
Ruth Bocchino, City Clerk

Exhibit A

Third Amendment to Antenna Site Lease at Antioch Water Tower

[see attached]



---

---

**LEASE AMENDMENT TRANSMITTAL FORM**

---

---

**TO:** Ruth Bocchino

**FROM:** BLACK DOT WIRELESS

**SUBJECT:** 10063639/4540 BRIGHTON - LEASE AMENDMENT

**DATE:** May 17, 2016

**CC:** AT&T - 42892

---

Please find enclosed (2) Fully Executed Amendments to Lease for your records.

Thank you.

R 16-23

Cell Site No. KS5539  
Cell Site Name: North Brighton  
Fixed Asset No. 10063639  
Market: KS-MO  
Address: 6803 Northeast Antioch Road, Gladstone, MO 64119

**THIRD AMENDMENT TO ANTENNA SITE LEASE AT ANTIOCH WATER TOWER**

THIS THIRD AMENDMENT TO ANTENNA SITE AT ANTIOCH WATER TOWER (“**Third Amendment**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is by and between City of Gladstone, a municipal corporation, having a mailing address of 7010 North Holmes Street, Gladstone, MO 64118 (hereinafter referred to as “**City**”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive, Atlanta, GA 30324 (hereinafter referred to as “**Tenant**”).

**WHEREAS**, City and Tenant (or its respective predecessor) entered into an Antenna Site Lease at Antioch Water Tower dated April 26, 2005, as amended by that certain First Amendment to Antenna Site Lease dated September 22, 2011, as further amended by that certain Second Amendment to Antenna Site Lease dated August 15, 2014, whereby City leased to Tenant certain Leased Property, therein described, that are a portion of the Property located at 6803 Northeast Antioch Road, Gladstone, MO 64119 (hereinafter, collectively referred to as the “**Lease**”); and

**WHEREAS**, the term of the Lease will expire on June 30, 2020 and the parties mutually desire to renew the Lease, memorialize such renewal period and modify the Lease in certain other respects, all on the terms and conditions contained herein; and

**WHEREAS**, City and Tenant desire to amend the Lease to extend the term of the Lease; and

**WHEREAS**, City and Tenant desire to amend the Lease to adjust the rent in conjunction with the modifications to the Lease contained herein; and

**WHEREAS**, City and Tenant desire to amend the Lease to modify the notice section thereof; and

**WHEREAS**, City and Tenant, in their mutual interest, wish to amend the Lease 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, City and Tenant 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 Lease shall be extended to provide that the Lease has a new initial term of five (5) years (“**New Initial Term**”) commencing on July 1, 2020. The Lease will automatically renew, commencing on the expiration of the New Initial Term, for up to three (3) separate consecutive additional periods of five (5) years each (each such five (5) year additional period is hereinafter referred to as an “**Additional Extension Term**” and each such Additional Extension Term shall be considered an Extension Term under the Lease), upon the same terms and conditions of the Lease, as amended herein, unless Tenant notifies City in writing of Tenant’s intention not to renew the Lease 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**”).

Cell Site No. KS5539  
Cell Site Name: North Brighton  
Fixed Asset No. 10063639  
Market: KS-MO  
Address: 6803 Northeast Antioch Road, Gladstone, MO 64119

2. **Rent.** Commencing on July 1, 2020, the rent payable under the Lease shall be Three Thousand Six Hundred Sixty and 59/100 Dollars (\$3,660.59) per month, and shall continue during the Term, subject to adjustment as provided herein.

3. **Future Rent Increase / Additional Extension Term Increase.** The Lease is amended to provide that commencing on July 1, 2025, rent shall increase by fifteen percent (15%) and at the beginning of each Additional Extension Term, as applicable.

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

5. **Notices.** Paragraph 30 of the Lease is hereby deleted in its entirety and replaced with the following:

“(a) 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, 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 Tenant:

New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site #: KS5539; Cell Site Name: North Brighton (MO)  
Fixed Asset No: 10063639  
575 Morosgo Drive  
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 #: KS5539; Cell Site Name: North Brighton (MO)  
Fixed Asset No: 10063639  
208 S. Akard Street  
Dallas, Texas, 75202-4206

As to City:

City of Gladstone, Missouri  
Attn: City Attorney  
Gladstone City Hall  
7010 North Holmes Street  
Gladstone, MO 64118

Cell Site No. KS5539  
Cell Site Name: North Brighton  
Fixed Asset No. 10063639  
Market: KS-MO  
Address: 6803 Northeast Antioch Road, Gladstone, MO 64119

(b) In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, City will send the below documents to Tenant. In the event Tenant does not receive such appropriate documents, Tenant shall not be responsible for any failure to pay the current landlord and reserves the right to hold payments due under the Lease.

- (i) New deed to Property
- (ii) New W-9
- (iii) New Payment Direction Form
- (iv) Full contact information for new City including all phone numbers
- (v) Bill of Sale or Transfer
- (vi) Copy of current Tax Bill

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.”

6. **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.

7. **Rental Stream Offer.** If at any time after the date of this Third Amendment, City receives a bona fide written offer from a third party seeking an assignment or transfer of the rent payments associated with the Lease (“**Rental Stream Offer**”), City shall immediately furnish Tenant with a copy of the Rental Stream Offer. Tenant shall have the right within thirty (30) days after it receives such copy to match the Rental Stream Offer and agree in writing to match the terms of the Rental Stream Offer. Such writing shall be in the form of a contract substantially similar to the Rental Stream Offer. If Tenant chooses not to exercise this right or fails to provide written notice to City within the thirty (30) day period, City may assign the right to receive Rent payments pursuant to the Rental Stream Offer, subject to the terms of the Lease. If City attempts to assign or transfer rent payments without complying with this Section, the assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under the Lease and reserves the right to hold payments due under the Lease until City complies with this Section.

8. **Charges.** All charges payable under the Lease such as utilities and taxes shall be billed by City 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 City, and shall not be payable by Tenant. The foregoing shall not apply to rent which is due and payable without a requirement that it be billed by City. The provisions of this subsection shall survive the termination or expiration of the Lease.

9. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Lease and this Third Amendment, the terms of this Third Amendment shall control. Except as expressly set forth in this Third Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the Lease to itself shall be deemed also to refer to this Third Amendment.

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

[SIGNATURES APPEAR ON THE NEXT PAGE]

Cell Site No. KS5539  
Cell Site Name: North Brighton  
Fixed Asset No. 10063639  
Market: KS-MO  
Address: 6803 Northeast Antioch Road, Gladstone, MO 64119

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


**CITY:**

City of Gladstone

By:   
Name: MIKE DAVIS  
Title: CITY MANAGER  
Date: 3/29/16

**TENANT:**

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

By:   
Name: MICHAEL BRIDWELL  
Title: Area Mgr - Const & Eng  
Date: 4/19/16

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]





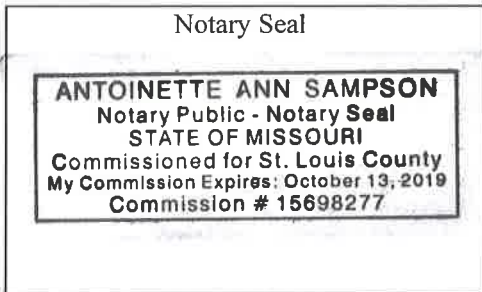
Cell Site No. KS5539  
Cell Site Name: North Brighton  
Fixed Asset No. 10063639  
Market: KS-MO  
Address: 6803 Northeast Antioch Road, Gladstone, MO 64119

TENANT ACKNOWLEDGEMENT

STATE OF Mo )  
COUNTY OF St. Louis ) SS.

I certify that I know or have satisfactory evidence that Michael Bidart 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 Area Mgr-CBE 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: 4-19-16



Antoinette Ann Sampson  
(Signature of Notary)  
Antoinette Ann Sampson  
(Legibly Print or Stamp Name of Notary)  
Notary Public in and for the State of MO  
My appointment expires: 10-13-19

ATTACHMENT 1

Prepared by and When

Recorded Return to:

Black Dot Wireless  
27271 Las Ramblas, Suite 300  
Mission Viejo, CA 92691

Re: Cell Site #KS5539; Cell Site Name: North Brighton (MO)  
Fixed Asset Number: 10063639  
State: Missouri  
County: Clay

MEMORANDUM  
OF  
LEASE

This Memorandum of Lease is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between City of Gladstone, a municipal corporation, having a mailing address at 7010 North Holmes Street, Gladstone, MO 64118 (hereinafter referred to as "**City**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive, Atlanta, GA 30324 (hereinafter referred to as "**Tenant**").

1. City and Tenant (or its respective predecessor) entered into an Antenna Site Lease at Antioch Water Tower dated April 26, 2005, as amended by that certain First Amendment to Antenna Site Lease dated September 22, 2011, as further amended by that certain Second Amendment to Antenna Site Lease dated August 15, 2014, as amended by that certain Third Amendment to Antenna Site Lease at Antioch Water Tower dated \_\_\_\_\_, 2016 (hereinafter, collectively the "**Lease**") for the purpose of installing, operating and maintaining a communications facility and other improvements at City's real property located in the City of Gladstone, County of Clay, commonly known as 6803 Northeast Antioch Road, Gladstone, MO 64119. All of the foregoing are set forth in the Lease.
2. The Lease commenced and has been in effect since April 25, 2005 and the parties agree to continue the Lease with a new initial lease term of five (5) years ("**New Initial Term**") commencing on July 1, 2020, with three (3) successive five (5) year Additional Extension Terms, unless Tenant notifies City in writing of Tenant's intention not to renew the Lease 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 Tenant (the "**Leased Property**") 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 Lease,

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 Lease, the provisions of the Lease shall control. The Lease 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 Lease.

**IN WITNESS WHEREOF**, the parties have executed this Memorandum of Lease as of the day and year first above written.

CITY:  
City of Gladstone

TENANT:  
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: \_\_\_\_\_

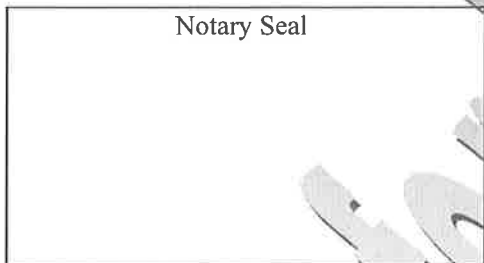
NOT FOR EXECUTION

**CITY ACKNOWLEDGEMENT**

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

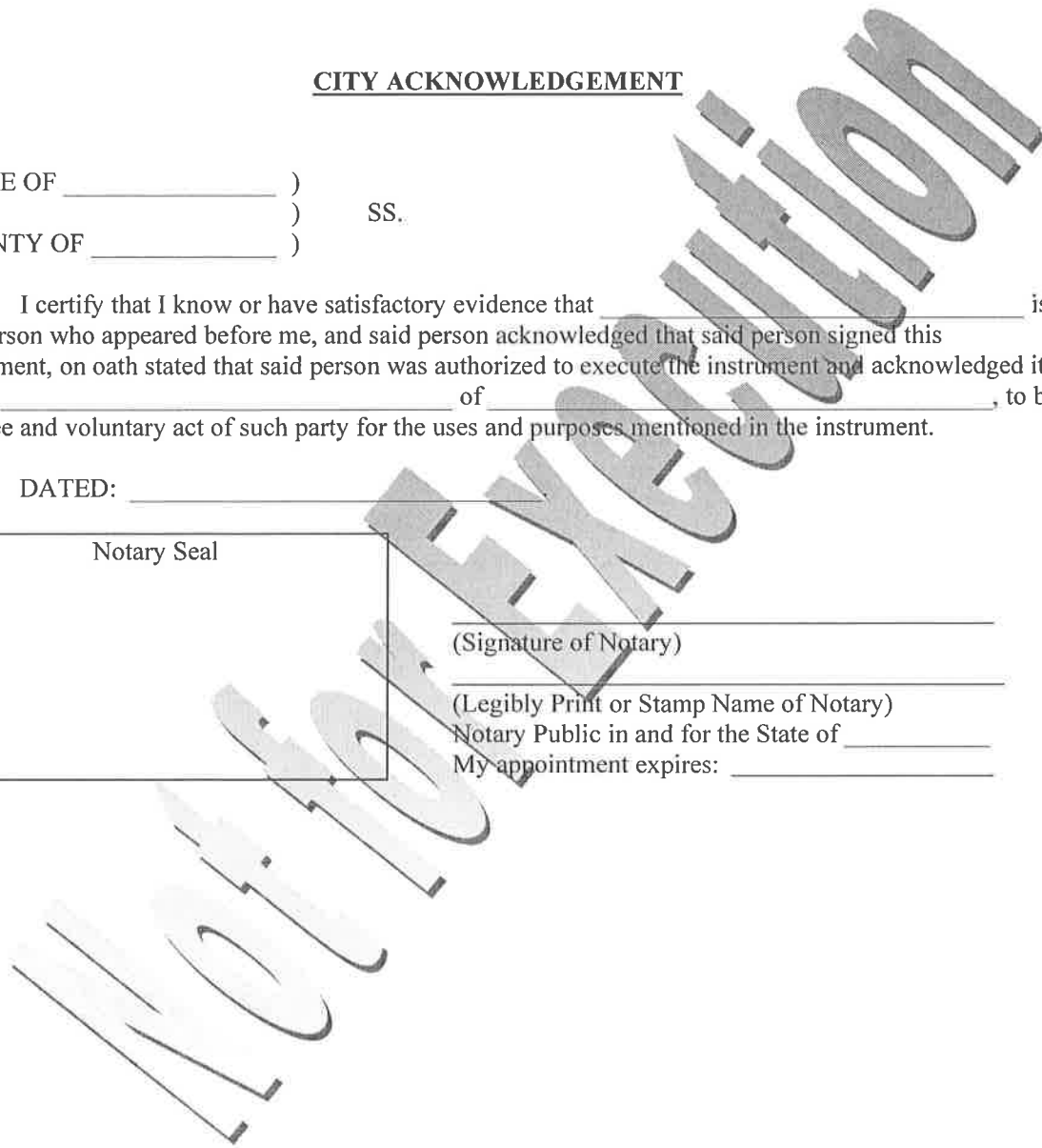
I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_,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

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



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

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

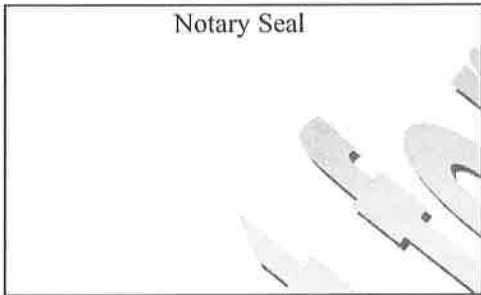


**TENANT ACKNOWLEDGEMENT**

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: \_\_\_\_\_

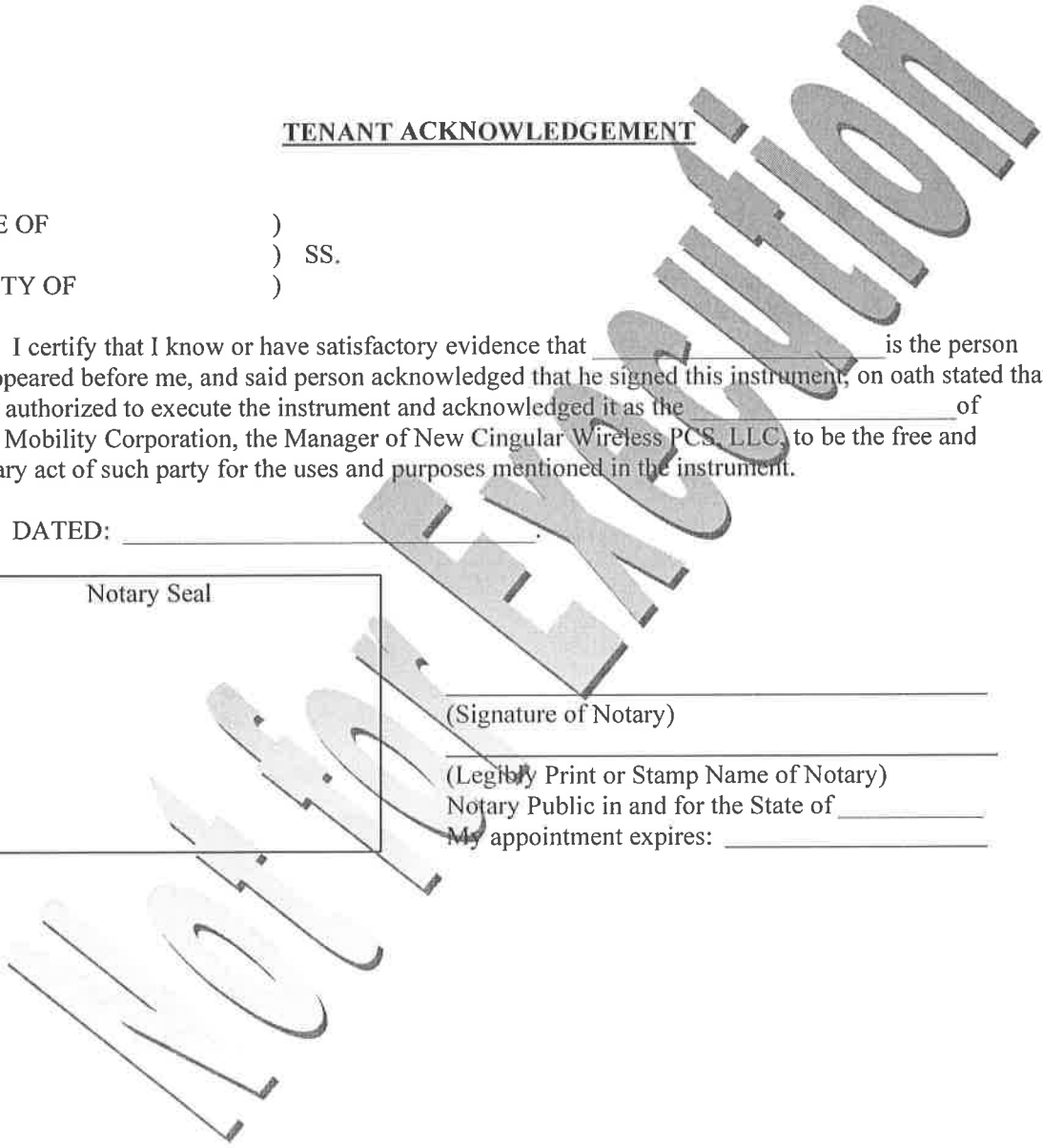


\_\_\_\_\_  
(Signature of Notary)

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

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

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



**Exhibit 1 to Memorandum of Lease**

**Leased Property**

The Leased Property consists of space on City's water tower which is located on a portion of the Property described and/or depicted as follows:

Property Address:

6803 Northeast Antioch Road  
Gladstone, MO 64119