



**Ordinance NO. 4-2018**

**AN ORDINANCE OF THE CITY OF ABBEVILLE, S.C. AUTHORIZING THE LAND LEASE AGREEMENT BETWEEN THE CITY OF ABBEVILLE AND THE CELLCO PARTNERSHIP FOR REAL PROPERTY LOCATED AT 310 CAMBRIDGE STREET, ABBEVILLE, SOUTH CAROLINA FOR THE USE OF A CELL TOWER**

**WHEREAS**, the City of Abbeville has negotiated a land lease agreement with CellCo Partnership d/b/a Verizon Wireless to lease real property at 310 Cambridge Street behind the Public Utilities office for a period of five years; and

**WHEREAS**, approval of the agreement requires two readings from City Council via ordinance; and

**WHEREAS**, the agreement will be for a five-year term and eighteen-thousand dollars paid annually to the City of Abbeville; and

**WHEREAS**, the agreement will have an option to extend the agreement at the end of term four times with each consecutive extension being five years; and

**WHEREAS**, a majority of City Council is now prepared to enact an ordinance that will allow for the initiation of the land lease agreement between the City of Abbeville and CellCo Partnership d/b/a Verizon Wireless.

**Be It Therefore Ordained:**

**Introduced By:**

Councilman James Jackson

**Santana Delano Freeman  
Mayor**

**First Reading:** March 13, 2018

**Second Reading:** April 10, 2018

**Attest:**

**Amber M. Price  
City Clerk**

**Approval as to Form:**

  
  
**Tommy E. Hite, Jr., Heather Stone  
Thomas E. Hite, III  
City Attorney**

## ANNEX A

SITE NAME: Downtown Abbeville  
SITE NUMBER: 255661

### LAND LEASE AGREEMENT

This Land Lease Agreement (the "**Agreement**"), made this day of \_\_\_\_\_, 20\_\_, is between City of Abbeville, South Carolina ("**LESSOR**"), with its principal offices located at 100 Court Square, Abbeville, South Carolina 29620, and Cellco Partnership d/b/a Verizon Wireless ("**LESSEE**"), with its principal offices located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404). LESSOR and LESSEE are at times collectively referred to in this Agreement as the "**Parties**" or individually as the "**Party**."

In consideration of the mutual covenants in this Agreement and intending to be legally bound by this Agreement, the Parties agree as follows:

1. **GRANT.** As documented by the Parties' execution and delivery of this Agreement, LESSOR grants to LESSEE the right to install, maintain, and operate communications equipment ("**Use**") upon the Premises (as defined in this Agreement), which Premises are a part of the real property owned, leased, or controlled by LESSOR at 310 Cambridge Street, Abbeville, Abbeville County, South Carolina 29620 (the "**Property**"). The Property is legally described on **Exhibit A** to this Agreement. The Premises are a portion of the Property and are approximately 3600 Sq. Ft., as shown in detail on **Exhibit B** to this Agreement. LESSEE may survey the Premises at any time. Upon completion of a survey prepared after the Effective Date (as defined in this Agreement), the Parties shall amend this Agreement to replace **Exhibit B** in its entirety with the new survey.

2. **INITIAL TERM.** This Agreement shall be effective as of the date of execution by both Parties ("**Effective Date**"). The initial term of the Agreement shall be for 5 years, commencing on the first day of the month after LESSEE begins installation of LESSEE's communications equipment (the "**Commencement Date**").

3. **EXTENSIONS.** This Agreement shall automatically be extended for 4 additional 5 year terms, unless Lessee terminates this Agreement at the end of the then-current term by giving LESSOR written notice of the intent to terminate at least 3 months prior to the end of the then-current term. The initial term and all extension terms are collectively referred to in this Agreement as the "**Term**".

4. **RENTAL.**

(a) Rental payments shall begin on the Commencement Date and be due at a total annual rental of \$18,000.00, to be paid in equal monthly installments on the first day of the month, in advance, to LESSOR at 100 Court Square, Abbeville, South Carolina 29620, or to such other person, firm, or place as LESSOR may, from time to time, designate in writing at least 30 days in advance of any rental payment date, by notice given in accordance with this Agreement. The initial rental payment may not be delivered by LESSEE until 90 days after the Commencement Date. Upon agreement of the Parties, LESSEE may pay rent by electronic funds transfer, and in that event, LESSOR shall provide to LESSEE bank routing information for that

purpose upon request of LESSEE.

(b) For any party to whom rental payments are to be made, LESSOR, or any successor-in-interest of LESSOR, shall provide to LESSEE: (i) a completed, current version of Internal Revenue Service Form W-9, or equivalent; (ii) completed and fully-executed state and local withholding forms, if required; and (iii) any other documentation required to verify LESSOR's, or any other party's, right to receive rental, as is reasonably requested by LESSEE. Rental shall accrue in accordance with this Agreement, but LESSEE shall have no obligation to deliver rental payments until the requested documentation has been received by LESSEE. Upon receipt of the requested documentation, LESSEE shall deliver the accrued rental payments, as directed by LESSOR.

(c) The annual rental for each five (5) year extension term shall be increased by 5% of the annual rental paid for the immediately preceding five (5) year term.

5. ACCESS. LESSEE shall have the non-exclusive right of ingress and egress from a public right-of-way, 7 days a week, 24 hours a day, over the Property to and from the Premises for the purpose of installation, operation, and maintenance of LESSEE's communications equipment over or along a 30 ft. wide right-of-way ("**Easement**"). The Easement is depicted on Exhibit B to this Agreement. LESSEE may use the Easement for the installation, operation and maintenance of wires, cables, conduits, and pipes for all necessary electrical, telephone, fiber, and other similar support services. If necessary, LESSOR shall grant LESSEE, or the provider, the right to install the services on, through, over, and under the Property, provided the location of the services shall be as reasonably approved by LESSOR. Notwithstanding anything to the contrary, the Premises shall include such additional space as is sufficient for LESSEE's radio frequency signage, and barricades, as are necessary to ensure LESSEE's compliance with Laws (as defined in Paragraph 27).

6. CONDITION OF PROPERTY. LESSOR shall deliver the Premises to LESSEE in a condition ready for LESSEE's Use, and clean and free of debris. LESSOR represents and warrants to LESSEE that as of the Effective Date, the Premises are in compliance with all Laws and EH&S Laws (as defined in this Agreement).

7. IMPROVEMENTS. The communications equipment, including, without limitation, the tower structure, antennas, conduits, fiber, fencing, screening, and other improvements shall be at LESSEE's expense, and installation shall be at the discretion and option of LESSEE. LESSEE shall have the right to replace, repair, add, or otherwise modify its communications equipment, tower structure, antennas, conduits, fiber, fencing, and other screening, or other improvements, or any portion thereof, and the frequencies over which the communications equipment operates, whether or not any of the communications equipment, antennas, conduits, or other improvements are listed on any exhibit to this Agreement.

8. GOVERNMENT APPROVALS. LESSEE's Use is contingent upon LESSEE obtaining all of the certificates, permits, and other approvals (collectively, the "**Government Approvals**"), that may be required by any federal, state, or local authorities (collectively, "**Government Entities**"), and a satisfactory soil boring test, environmental studies, or any other due diligence LESSEE chooses that will permit LESSEE's Use. LESSOR shall cooperate with LESSEE in its effort to obtain the Government Approvals, and LESSOR shall take no action that would adversely affect the status of the Property with respect to LESSEE's Use.

9. TERMINATION. LESSEE may immediately terminate this Agreement upon written notice to LESSOR if: (i) any applications for the Government Approvals are finally rejected; (ii) any Government Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by any Government Entity; (iii) LESSEE determines that the Government Approvals may not be obtained in a timely manner; (iv) LESSEE determines that any structural analysis is unsatisfactory; or (v) LESSEE, in its sole discretion, determines the Use of the Premises is obsolete or unnecessary. In addition, LESSEE may terminate this Agreement for any reason or no reason in LESSEE's sole discretion with 3 months prior notice to LESSOR upon the annual anniversary of the Commencement Date, or at any time before the Commencement Date.

10. [Intentionally Deleted].

11. INSURANCE. LESSEE will maintain commercial general liability insurance, with limits of \$4,000,000 per occurrence for bodily injury (including death) and for damage or destruction to property .

LESSOR shall, at its sole cost, purchase and keep in force at all times during the term hereof, a policy or policies of insurance, issued by an insurance company of generally recognized responsibility and licensed to do business in the State of South Carolina, insuring LESSOR against all liability for property damage, environmental liability, and personal injury (including death) arising or alleged to arise out of any activity of failure to act of LESSOR on, about or with respect to the Premises. Upon request, LESSOR shall provide the contracting entity with a copy of all policies of insurance required under this Agreement. Said policy or policies shall also contain a contractual liability endorsement expressly covering the Release provisions of this Agreement. The combined single limit of liability of the aforesaid policy or policies shall not be less than One Million and No/100 (\$1,000,000.00) Dollars.

Each Party hereby waives and releases all rights of action for negligence against the other Party that may hereafter arise on account of damage to the Premises or the Property, resulting from any fire or other casualty that is insurable under "Causes of Loss - Special Form" property damage insurance, or for the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, that insurance is now or hereafter carried by the Parties, even if the fire or other casualty was caused by the fault or negligence of the other Party. These waivers and releases shall apply between the Parties, and they shall also apply to any claims under or through either Party as a result of any asserted right of subrogation.

12. LIMITATION OF LIABILITY. Except for indemnification pursuant to Paragraphs 10 and 24 of this Agreement, a violation of Paragraph 29 of this Agreement, or a violation of law, neither Party shall be liable to the other, or any of their respective agents, representatives, or employees, for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability, or otherwise.

13. INTERFERENCE.

(a) LESSEE will not cause interference to LESSOR's equipment that is measurable in accordance with industry standards. LESSOR and other occupants of the Property will not cause interference to the then existing equipment of LESSEE that is measurable in accordance with then-existing industry standards.

(b) Without limiting any other rights or remedies, if interference occurs and continues for a period in excess of 48 hours following notice to the interfering party via telephone to LESSEE's Network Operations Center [at (800) 224-6620/(800) 621-2622] or to LESSOR at (864-366-2109), the interfering party shall, or shall require any other user to, reduce power or cease operations of the interfering equipment until the interference is cured.

(c) The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph, and therefore, the Parties shall have the right to equitable remedies including, without limitation, injunctive relief and specific performance.

14. REMOVAL AT END OF TERM. Upon expiration of the Term or within 90 days of earlier termination of this Agreement, LESSEE shall remove LESSEE's communications equipment (except footings) and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. The communications equipment shall remain the personal property of LESSEE, and LESSEE shall have the right to remove all or any portion of its communications equipment at any time during the Term, whether or not any items of communications equipment are considered fixtures or attachments to real property under applicable laws. If the time required for removal causes LESSEE to remain on the Premises after termination of the Agreement, LESSEE shall pay rent at the then-existing monthly rate, or on the existing monthly pro-rata basis if based upon a longer payment term, until the removal of the communications equipment is completed.

15. HOLDOVER. Upon expiration of the Term, if the Parties are negotiating a new lease or a lease extension, then this Agreement shall continue during such negotiations on a month-to-month basis at the rental in effect upon expiration of the Term. If the Parties are not in the process of negotiating a new lease or lease extension, and LESSEE holds over after the expiration or earlier termination of the Term, then Lessee shall pay rent at the then-existing monthly rate, or on the existing monthly pro-rata basis if based upon a longer payment term, until the removal of the communications equipment is completed.

16. RIGHT OF FIRST REFUSAL. At any time after the Effective Date, if LESSOR receives an offer or letter of intent, for the acquisition of fee title, an easement, a lease, a license, or any other interest in the Premises or any portion of the Premises, or for the acquisition of any interest in this Agreement, or an option for any of the foregoing, from any person or entity that is in the business of owning, managing, or operating communications facilities, or that is in the business of acquiring landlord interests in agreements relating to communications facilities, then LESSOR shall provide written notice to LESSEE of the offer ("**LESSOR's Notice**"). LESSOR's Notice shall include the prospective buyer's name, the purchase price being offered, any other consideration being offered, the other terms and conditions of the offer, a description of the portion of, and interest in, the Premises and/or this Agreement that will be conveyed in the proposed transaction, and a copy of any letters of intent or form agreements presented to LESSOR by the third-party offeror. LESSEE shall have a right of first refusal to meet any third-party offer of sale or transfer on the terms and conditions of the offer, or by effectuating a transaction with substantially-equivalent financial

terms. If LESSEE fails to provide written notice to LESSOR that LESSEE intends to meet the third-party offer within thirty (30) days after receipt of LESSOR's Notice, then LESSOR may proceed with the proposed transaction in accordance with the terms and conditions of the third-party offer, in which event this Agreement shall continue in full force and effect, and the right of first refusal described in this Paragraph shall survive the conveyance to the third party. If LESSEE provides LESSOR with notice of LESSEE's intention to meet the third-party offer within thirty (30) days after receipt of LESSOR's Notice, then if LESSOR's Notice describes a transaction involving greater space than the Premises, LESSEE may elect to proceed with a transaction covering only the Premises, and the purchase price shall be pro-rated on a square-footage basis. Further, if LESSEE exercises this right of first refusal, LESSEE may require a reasonable period of time to conduct due diligence and effectuate the closing of a transaction on substantially-equivalent financial terms of the third-party offer. LESSEE may elect to amend this Agreement to effectuate the proposed financial terms of the third-party offer rather than acquiring fee simple title, or an easement interest, in the Premises. For purposes of this Paragraph, any transfer, bequest, or devise of LESSOR's interest in the Property as a result of the death of LESSOR, whether by will or intestate succession, or any conveyance to LESSOR's family members by direct conveyance, or by conveyance to a trust for the benefit of family members, shall not be considered a sale for which LESSEE has any right of first refusal.

17. RIGHTS UPON SALE. At any time during the Term, if LESSOR decides to sell or otherwise transfer all or any part of the Property, or to grant to a third party by easement or other legal instrument an interest in any portion of the Premises, such sale, transfer, or grant of an easement or interest therein shall be under and subject to this Agreement, and any such purchaser or transferee shall recognize LESSEE's rights under this Agreement. If LESSOR completes any sale, transfer, or grant described in this Paragraph, without executing an assignment of the Agreement, whereby the third party agrees in writing to assume all obligations of LESSOR under this Agreement, then LESSOR shall not be released from its obligations to LESSEE under this Agreement, and LESSEE shall have the right to look to LESSOR and the third party for the full performance of the Agreement.

18. LESSOR's TITLE. Upon paying the rent and performing the covenants in this Agreement, LESSEE shall peaceably and quietly have, hold, and enjoy the Premises. LESSOR represents and warrants to LESSEE as of the Effective Date and during the Term, that LESSOR has full authority to enter into and execute this Agreement, and that there are no liens, judgments, covenants, easements, restrictions, or other impediments of title that will adversely affect LESSEE's Use.

19. ASSIGNMENT. Without any approval or consent of the other Party, this Agreement may be sold, assigned, or transferred by either Party to: (i) any entity in which the Party directly or indirectly holds an equity or similar interest; (ii) any entity that directly or indirectly holds an equity or similar interest in the Party; or (iii) any entity directly or indirectly under common control with the Party. LESSEE may assign this Agreement to any entity that acquires all or substantially all of LESSEE's assets in the market defined by the FCC in which the Property is located by reason of a merger, acquisition, or other business reorganization, without approval or consent of LESSOR. As to other parties, this Agreement may not be sold, assigned, or transferred, without the written consent of the other Party, which consent may not be unreasonably denied, delayed, or conditioned. No change of stock ownership, partnership interest, or control of LESSEE or transfer upon partnership or corporate dissolution of either Party shall constitute an assignment under this Agreement.

LESSEE may sublet the Premises in LESSEE's sole discretion.

20. NOTICES. Except for notices permitted via telephone in accordance with Paragraph 13 of this Agreement, all notices under this Agreement must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or by commercial courier, provided the courier's regular business is delivery service, and provided further that the courier guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or to any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR: City of Abbeville, South Carolina  
100 Court Square  
Abbeville, South Carolina 29620

LESSEE: Cellco Partnership  
d/b/a Verizon Wireless  
Attention: Network Real Estate  
180 Washington Valley Road  
Bedminster, New Jersey 07921

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

21. SUBORDINATION AND NON-DISTURBANCE. Within 15 days after the Effective Date, LESSOR shall obtain a Non-Disturbance Agreement, as defined in this Agreement, from its existing mortgagee(s), ground lessors, and master lessors, if any, of the Property. At LESSOR's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust, or other security interest (a "**Mortgage**") by LESSOR, which from time to time may encumber all or part of the Property. However, as a condition precedent to LESSEE being required to subordinate its interest in this Agreement to any future Mortgage covering the Property, LESSOR shall obtain for LESSEE's benefit a non-disturbance and attornment agreement, in a form reasonably satisfactory to LESSEE, and containing the terms described in this paragraph (the "**Non-Disturbance Agreement**"), and shall recognize LESSEE's rights under this Agreement. The Non-Disturbance Agreement shall include the encumbering party's ("**Lender's**") agreement that, if Lender or its successor-in-interest, or any purchaser of Lender's or its successor's interest (a "**Purchaser**"), acquires an ownership interest in the Property, then Lender or such successor-in-interest or Purchaser will honor all of the terms of the Agreement. The Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any), and on all successors and assigns of Lender and/or its participants, and on all Purchasers. In return for the Non-Disturbance Agreement, LESSEE will execute an agreement for Lender's benefit, in which LESSEE: (i) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender; (ii) agrees to attorn to Lender if Lender becomes the owner of the Property; and (iii) agrees to accept a cure by Lender of any of LESSOR's defaults, provided such cure is completed within the deadline applicable to LESSOR. If LESSOR defaults in the payment or other performance of any mortgage or other real property interest encumbering the Property, LESSEE may, at its sole option and without obligation, cure or correct LESSOR's default, and upon doing so, LESSEE shall be

subrogated to any and all rights, titles, liens, and equities of the holders of the mortgage or other real property interest, and LESSEE shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by LESSEE to cure or correct those defaults.

22. DEFAULT. It is a "**Default**" if: (i) either Party fails to comply with this Agreement and does not remedy the failure within 30 days after written notice by the other Party, or if the failure cannot reasonably be remedied in such time, if the failing Party does not commence a remedy within the allotted 30 days and diligently pursue the cure to completion within 90 days after the initial written notice; or (ii) LESSOR fails to comply with this Agreement, the failure interferes with LESSEE's Use, and LESSOR does not remedy the failure within 5 days after written notice from LESSEE, or if the failure cannot reasonably be remedied in such time, if LESSOR does not commence a remedy within the allotted 5 days and diligently pursue the cure to completion within 15 days after the initial written notice. The cure periods set forth in this Paragraph 22 do not extend the period of time within which either Party has to cure interference pursuant to Paragraph 13 of this Agreement.

23. REMEDIES. In the event of a Default, without limiting the non-defaulting Party in the exercise of any right or remedy that the non-defaulting Party may have by reason of the default, the non-defaulting Party may terminate this Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Property is located. Further, upon a Default, the non-defaulting Party may, at its option (but without obligation to do so), perform the defaulting Party's duty or obligation. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. If LESSEE undertakes any such performance on LESSOR's behalf, and LESSOR does not pay LESSEE the full undisputed amount within 30 days of its receipt of an invoice setting forth the amount due, then LESSEE may offset the full undisputed amount due against all fees due and owing to LESSOR under this Agreement until the full undisputed amount is fully reimbursed to LESSEE.

24. ENVIRONMENTAL. LESSEE shall conduct its business in compliance with all applicable laws governing the protection of the environment or employee health and safety (collectively, "**EH&S Laws**"). LESSEE shall indemnify and hold harmless LESSOR from claims to the extent resulting from LESSEE's violation of any applicable EH&S Laws, or to the extent that LESSEE causes a release of any regulated substance to the environment. The Parties recognize that LESSEE is only leasing a small portion of LESSOR's property, and that LESSEE shall not be responsible for any environmental condition or issue, except to the extent resulting from LESSEE's specific activities and responsibilities. If LESSEE encounters any hazardous substances that do not result from its activities, LESSEE may relocate its facilities to avoid such hazardous substances to a mutually agreeable location, or if LESSEE desires to remove at its own cost all or some the hazardous substances or materials (such as soil) containing those hazardous substances, LESSOR shall sign any necessary waste manifest associated with the removal, transportation, and/or disposal of those substances.

25. CASUALTY. If a fire or other casualty damages the Property or the Premises and impairs LESSEE's Use, rent shall abate until LESSEE's Use is restored. If LESSEE's Use is not restored within 45 days, LESSEE may terminate this Agreement.

26. CONDEMNATION. If a condemnation of any portion of the Property or Premises impairs LESSEE's Use, Lessee may terminate this Agreement. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to LESSEE's communications equipment, relocation costs, and any other damages LESSEE may incur as a result of any such condemnation, but specifically excluding loss of LESSEE's leasehold interest.

27. APPLICABLE LAWS. During the Term, LESSOR shall maintain the Property in compliance with all applicable laws, EH&S Laws, rules, regulations, ordinances, directives, covenants, easements, consent decrees, zoning and land use regulations and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act *and* laws regulating hazardous substances) (collectively "**Laws**"). LESSEE shall, in respect to the condition of the Premises and at LESSEE's sole cost and expense, comply with: all Laws relating solely to LESSEE's specific and unique nature of use of the Premises; and all building codes requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises. LESSOR shall comply with all Laws relating to the Property, without regard to specific use (including, without limitation, modifications required to enable LESSEE to obtain all necessary building permits).

28. TAXES.

(a) LESSOR shall invoice, and LESSEE shall pay, any applicable transaction tax (including sales, use, gross receipts, or excise tax) imposed on LESSEE and required to be collected by LESSOR, based on any service, rental space, or equipment provided by LESSOR to LESSEE. LESSEE shall pay all personal property taxes, fees, assessments, or other taxes and charges imposed by any Government Entity that are imposed on LESSEE and required to be paid by LESSEE that are directly attributable to LESSEE's equipment or LESSEE's use and occupancy of the Premises. Payment shall be made by LESSEE within 60 days after presentation of a receipted bill or assessment notice that is the basis for the taxes or charges. LESSOR shall pay all ad valorem, personal property, real estate, sales and use taxes, fees, assessments or other taxes or charges that are attributable to LESSOR's Property or any portion thereof imposed by any Government Entity.

(b) LESSEE shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge, or seek modification of any tax assessment or billing for which LESSEE is wholly or partly responsible for payment. LESSOR shall reasonably cooperate with LESSEE at LESSEE's expense in filing, prosecuting, and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including, but not limited to, executing any consent, appeal, or other similar document. If as a result of any appeal or challenge by LESSEE, there is a reduction, credit, or repayment received by LESSOR for any taxes previously paid by LESSEE, LESSOR shall promptly reimburse to LESSEE the amount of the reduction, credit, or repayment. If LESSEE does not have the standing rights to pursue a good faith and reasonable dispute of any taxes under this paragraph, LESSOR will pursue such dispute at LESSEE's sole cost and expense upon written request of LESSEE.

29. NON-DISCLOSURE. This Agreement and any information exchanged

between the Parties regarding the Agreement are confidential. Neither Party shall provide copies of this Agreement or any other confidential information to any third party, without the prior written consent of the other Party, or as required by law. If a disclosure is required by law, prior to disclosure, the Party shall notify the other Party and cooperate to take lawful steps to resist, narrow, or eliminate the need for that disclosure.

30. MOST FAVORED LESSEE. LESSOR represents and warrants that the rent, benefits, terms, and conditions granted to LESSEE by LESSOR under this Agreement are now, and shall be during the Term, no less favorable than the rent, benefits, terms, and conditions for substantially the same or similar tenancies or licenses granted by LESSOR to other parties. If at any time during the Term, LESSOR shall offer more favorable rent, benefits, terms, or conditions for substantially the same or similar tenancies or licenses as those granted under this Agreement, then LESSOR shall, within 30 days after the effective date of such offering, notify LESSEE of such fact and offer LESSEE the more favorable offering. If LESSEE chooses, the Parties shall then enter into an amendment that shall be effective retroactively to the effective date of the more favorable offering, and shall provide the same rent, benefits, terms, and conditions to LESSEE. LESSEE shall have the right to decline to accept the offering. LESSOR's compliance with this requirement shall be subject, at LESSEE's option, to independent verification.

31. MISCELLANEOUS.

(a) This Agreement contains all agreements, promises, and understandings between LESSOR and LESSEE regarding this transaction, and no oral agreement, promises, or understandings shall be binding upon either LESSOR or LESSEE in any dispute, controversy, or proceeding.

(b) This Agreement may not be amended or varied, except in a writing signed by all Parties. This Agreement shall extend to, and bind the heirs, personal representatives, successors, and assigns of, the Parties.

(c) The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement, or to exercise any of its rights under this Agreement, shall not waive those rights, and that Party shall have the right to enforce those rights at any time.

(d) The performance of this Agreement shall be governed, interpreted, construed, and regulated by the laws of the state in which the Premises is located, without reference to its choice of law rules.

(e) Except as expressly set forth in this Agreement, nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other Party for any purpose whatsoever.

(f) LESSOR shall execute a Memorandum of this Agreement, in a form reasonably acceptable to LESSEE, which LESSEE may record with the appropriate recording office or officer.

(g) All exhibits referenced in, and attached to, this Agreement are incorporated by this reference in the Agreement.

(h) LESSOR and LESSEE each warrant to the other that the person executing this Agreement on behalf of the warranting Party has the full right, power and authority to enter into, and execute, this Agreement on that Party's behalf, and that no consent from any other

person or entity is necessary as a condition precedent to the legal effect of this Agreement.

(i) The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement.

*[Signature page follows. The remainder of this page is blank intentionally.]*

IN WITNESS OF THIS AGREEMENT, the Parties have executed this Agreement effective as of the Effective Date.

LESSOR:

City of Abbeville, South Carolina

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

LESSEE:

Cellco Partnership  
d/b/a Verizon Wireless

By: \_\_\_\_\_

Niraj Patel

Director - Network Field Engineering

Date: \_\_\_\_\_

## **EXHIBIT A**

### **DESCRIPTION OF PROPERTY**

Property located in Abbeville, SC

A lot of land containing approximately 0.96 of an acre bounded as follows: North for a distance of 295 feet by Shockley; East for a distance of 142 feet by House of Prayer and possibly Clarence Pressley; South for a distance of 295 feet by City of Abbeville; and West for a distance of 142 feet by Annette S. Nicholson.

AND BEING the same property conveyed to City of Abbeville, South Carolina from Annette S. Nicholson by Title to Real Estate dated March 10, 1976 and recorded March 12, 1976 in Deed Book 122, Page 26.

Tax Parcel No. 109-10-02-001

## ANNEX B

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(SPACE ABOVE LINE FOR CLERK'S USE ONLY)

This Instrument Was Prepared By  
and When Recorded Mail to:  
Lee Taylor  
Baker Donelson, Bearman, Caldwell & Berkowitz, PC  
211 Commerce Street, Suite 800  
Nashville, Tennessee 37201

### MEMORANDUM OF LAND LEASE AGREEMENT

This Memorandum of Land Lease Agreement ("**Memorandum**"), is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between City of Abbeville ("LESSOR") with its principal offices located at 100 Court Square, Abbeville, South Carolina 29620 and Cellco Partnership d/b/a Verizon Wireless with its principal office located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 ("LESSEE").

#### **RECITALS:**

**WHEREAS**, LESSOR is the owner of certain real property located at 310 Cambridge Street, Abbeville, Abbeville County, South Carolina 29620, which is more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference (the "**Property**"); and

**WHEREAS**, the Premises (as defined below) are a portion of the Property; and

**WHEREAS**, Lessee has leased the Premises from LESSOR pursuant to the Land Lease Agreement of even date herewith (the "**Lease**"); and

**WHEREAS**, LESSOR and LESSEE desire to file this Memorandum of record in the Office of the Register of Deeds of Abbeville County, South Carolina, in order to provide record notice to third parties of LESSEE's interest in the Premises;

**NOW, THEREFORE**, for and in consideration of the Premises, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are expressly

LICENSEE SITE NAME: DJJ  
LICENSEE SITE NUMBER: 277580

acknowledged by the parties, LESSOR and LESSEE agree and acknowledge for themselves and their respective successors and assigns, as follows:

1. LESSOR has leased to LESSEE certain premises located at 310 Cambridge Street, Abbeville, Abbeville County, South Carolina 29620, and being described as a parcel containing Three Thousand Six Hundred (3,600') (the "**Land Space**"), together with the non-exclusive right (the "**Rights of Way**") for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks over or along a Thirty ft. (30') wide right-of-way extending from the nearest public right-of-way, Branch Street, to the Land Space, and for the installation and maintenance of utility wires, fiber, poles, cables, conduits, and pipes over, under, or along one or more rights of way from the Land Space, said Land Space and Rights of Way (hereinafter collectively referred to as the "**Premises**"), being more particularly described in **Exhibit B**, attached hereto and incorporated herein by reference.

2. The term of the Lease is Five (5) years commencing on the Commencement Date as defined in the Lease. LESSEE may extend the term of the Lease for Four (4) renewal terms of Five (5) years each, upon the terms and conditions set forth in the Lease.

3. The Lease is binding upon LESSOR and LESSEE, and their respective successors and assigns.

4. This Memorandum contains only selected provisions of the Lease and reference is made to the full text of the Lease for all of the applicable terms and conditions. This Memorandum does not, in any way, amend or supersede the terms and conditions of the Lease.

*Balance of page intentionally left blank*

*Signature page following*

IN WITNESS WHEREOF, the LESSOR and LESSEE have executed this Memorandum the day and year first above written.

LESSOR:

City of Abbeville

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

LESSEE:

Cellco Partnership

d/b/a Verizon Wireless

By: \_\_\_\_\_

Niraj Patel

Director - Network Field Engineering

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

LEASEE SITE NAME: DJJ  
LICENSEE SITE NUMBER: 277580

STATE OF \_\_\_\_\_)  
COUNTY OF \_\_\_\_\_)

Before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, with whom I am personally acquainted, (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be \_\_\_\_\_ of **City of Abbeville**, the within named bargainor, and that being duly authorized, he/she executed the foregoing instrument on behalf of **City of Abbeville** for the purpose therein contained.

Witness my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

LEASEE SITE NAME: DJJ  
LICENSEE SITE NUMBER: 277580

STATE OF NORTH CAROLINA )  
COUNTY OF MECKLENBURG )

Before me, a Notary Public, personally appeared **Niraj Patel**, with whom I am personally acquainted, (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be **Director-Network Field Engineering of Cellco Partnership d/b/a Verizon Wireless**, the within named bargainor, and that being duly authorized, she executed the foregoing instrument on behalf of **Cellco Partnership d/b/a Verizon Wireless** for the purpose therein contained.

Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
NOTARY PUBLIC

(NOTARIAL SEAL)

My Commission Expires:

LEASEE SITE NAME: DJJ  
LICENSEE SITE NUMBER: 277580

## **Exhibit A**

### **Description of the Property**

Property located in Abbeville, SC

A lot of land containing approximately 0.96 of an acre bounded as follows: North for a distance of 295 feet by Shockley; East for a distance of 142 feet by House of Prayer and possibly Clarence Pressley; South for a distance of 295 feet by City of Abbeville; and West for a distance of 142 feet by Annette S. Nicholson.

AND BEING the same property conveyed to City of Abbeville, South Carolina from Annette S. Nicholson by Title to Real Estate dated March 10, 1976 and recorded March 12, 1976 in Deed Book 122, Page 26.

Tax Parcel No. 109-10-02-001

LEASEE SITE NAME: DJJ  
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## Exhibit B

### Description of the Premises

#### Lessee Land Space

Being a portion of that real property owned by the City of Abbeville and being shown as Tax Parcel #109-10-02-001 on the tax map of Abbeville County, South Carolina and also being described in Deed Book 122 at page 26 in the Abbeville County Public Registry.

**COMMENCE** at a fence corner located near the southeast corner of the Little River Electric Cooperative property as described in Deed Book 122 at page 290 in the aforementioned public registry, said fence corner having South Carolina State Plane Coordinates on the North American Datum of 1983 (2011) of North 857,302.90 feet and East 1,585,087.41 feet; thence N87°52'30"E 215.42 feet to a rebar set marking the southerly corner of the **Lessee Land Space**, the **POINT OF BEGINNING**, thence the following four (4) calls to rebars set; 1) N28°17'59"W 60.00 feet; 2) N61°42'01"E 60.00 feet; 3) S28°17'59"E 60.00 feet; 4) S61°42'01"W 60.00 feet to the **POINT OF BEGINNING** and containing 3,600 square feet as shown on a survey prepared by Michael P. McMurray, SCPLS #28601 dated April 21, 2017.

#### Lessee Non-Exclusive Access and Utility Rights of Way

Being a portion of that real property owned by the City of Abbeville and being shown as Tax Parcel #109-10-02-001 on the tax map of Abbeville County, South Carolina and also being described in Deed Book 122 at page 26 in the Abbeville County Public Registry.

**COMMENCE** at an axle found marking the southeast corner of the Allie Mae Crawford, et. al. property as described in Deed Book 245 at page 604 in the aforementioned public registry, said axle having South Carolina State Plane Coordinates on the North American Datum of 1983 (2011) of North 857,110.76 feet and East 1,585,469.39 feet; thence N63°35'07"E 33.50 feet to a point located on the northerly margin of the Branch Street right of way, the **POINT OF BEGINNING** of the **Lessee Non-Exclusive Access and Utility Rights of Way**; thence with the edge of the **Lessee Non-Exclusive Access and Utility Rights of Way** the following thirteen (13) calls: 1) N38°33'19"W 63.59 feet; 2) N35°00'40"W 84.71 feet; 3) N26°13'00"W 76.64 feet; 4) N25°50'51"W 33.15 feet; 5) S61°42'01"W 8.40 feet to a rebar set marking the easterly corner of the Lessee Land Space; 6) with the northeasterly edge of the Lessee Land Space N28°17'59"W 60.00 feet to a rebar set marking the northerly corner of the Lessee Land Space; 7) N61°42'01"E 38.11 feet; 8) S29°08'46"E 50.22 feet; 9) S25°50'51"E 44.13 feet; 10) S26°13'00"E 74.24 feet; 11) S35°00'40"E 81.47 feet; 12) S38°33'19"E 62.37 feet to a point on the northerly margin of the Branch Street right of way; 13) S50°53'37"W 30.00 feet to the **POINT OF BEGINNING** as shown on a survey prepared by Michael P. McMurray, SCPLS #28601 dated April 21, 2017.

LEASEE SITE NAME: DJJ  
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