



City Hall, 215 Sycamore St.
Muscatine, IA 52761-3840
(563) 264-1550 Voice/TT
Fax (563) 264-0750

Finance and Records

MEMO

To: Gregg Mandsager, City Administrator

From: Nancy A. Lueck, Finance Director

Date: June 10, 2016

Re: Resolution Approving First Amendment to the Option and Lease Agreement with Crown Castle Towers 05 LLC for their Cell Tower and Equipment at Greenwood Cemetery

Introduction:

On October 15, 2000, the City entered into a lease agreement with Crown Castle Towers 05 LLC for property at Greenwood Cemetery for their cell tower and related equipment. The original agreement was for a five-year period through October 14, 2005 and provided for four five-year extensions with the final extension expiring on October 14, 2025.

Background Information:

Several months ago Crown Castle contacted the City and indicated that they were interested in extending the current lease for additional five-year terms after it expires in 2025. After several months of negotiations, terms of the lease amendment were agreed to, subject to City Council approval. The proposed lease amendment provides for (1) six additional five-year extensions through October 14, 2055, (2) commencing October 15, 2025, the monthly rent would increase by 3% per year, (3) there would also be a one-time 15% increase in the monthly rent on October 15, 2025 at the time the lease amendment goes into effect, and (4) a \$5,000 one-time amount paid after the lease amendment is executed by the City and Crown Castle. The amendment also includes provisions for (1) additional lease payments if Crown Castle sub-leases a portion of their equipment, and (2) a provision for Crown Castle to lease up to 1,000 additional square feet of adjacent property at their option.

The 30 year extension and 3% annual lease escalation is the same as the terms recently negotiated for the USCOC (US Cellular) lease extension for the Clark House property.

Since the proposed lease amendment is for more than three years, a public hearing has been scheduled for June 16, 2016.

Recommendation:

Please include the attached resolution approving the first amendment to the option and lease agreement with Crown Castle 05 LLC on the agenda for the June 16, 2016 meeting.

Please contact me if you have any questions or need additional information.

RESOLUTION NO. _____

**RESOLUTION APPROVING FIRST AMENDMENT TO OPTION AND LEASE
AGREEMENT WITH CROWN CASTLE TOWERS 05 LLC
FOR THEIR CELL TOWER AND EQUIPMENT
LOCATED AT GREENWOOD CEMETERY**

WHEREAS, the City of Muscatine has received a request for the first amendment to the Option and Lease Agreement with Crown Castle Towers 05 LLC for continued use of space located at the Greenwood Cemetery for their cell tower, telephone communication antennas, and related equipment; and

WHEREAS, a public hearing must be conducted for any agreement that involves more than a (3) year lease of real property.

WHEREAS, said public hearing was held on June 16, 2016; and

WHEREAS, an acceptable lease amendment has been received from Crown Castle Towers 05 LLC.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MUSCATINE that the first amendment to the Option and Lease Agreement with Crown Castle Towers 05 LLC is approved upon execution of said lease amendment.

PASSED, APPROVED AND ADOPTED THIS 16th DAY OF JUNE, 2016.

CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA

Diana L. Broderson, Mayor

ATTEST:

David Gobin, Acting City Clerk

WHEN RECORDED RETURN TO:

Prepared by:
Parker Legal Group, PC
600 West Broadway, Suite 700
San Diego, California 92101

Space above this line for Recorder's Use

A.P.N. 1303251911

**Prior recorded document(s) in Muscatine County, Iowa:
Recorded on August 10, 2001 at #200105869**

**MEMORANDUM OF FIRST AMENDMENT TO
OPTION AND LEASE AGREEMENT**

This Memorandum of First Amendment to Option and Lease Agreement is made effective this ____ day of _____, 2016 by and between CITY OF MUSCATINE, IOWA, with a mailing address of 215 Sycamore Street, Muscatine, Iowa 52761 ("Landlord") and CROWN CASTLE TOWERS 05 LLC, a Delaware limited liability company, with a mailing address of 2000 Corporate Drive, Canonsburg, Pennsylvania 15317 ("Tenant").

1. Landlord and iPCS Wireless, Inc., a Delaware corporation ("Original Tenant") entered into an Option and Lease Agreement dated August 21, 2000 (the "Lease") whereby Original Tenant leased certain real property, together with access and utility easements, located in Muscatine County, Iowa from Landlord (the "Parcel"), all located within certain real property owned by Landlord (the "Property"). The Property, of which the Parcel is a part, is more particularly described on Exhibit A attached hereto.

2. Crown Castle Towers 05 LLC is currently the tenant under the Lease as successor in interest to the Original Tenant.

3. The Lease had an initial term that commenced on October 15, 2000 and expired on October 14, 2005. The Lease provides for four (4) extensions of five (5) years each, the first three (3) of which were exercised by Tenant (each extension is referred to as an "Extended Term"). According to the Lease, the final Extended Term expires on October 14, 2025.

4. 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 six (6) additional Extended Terms of five (5) years each. Pursuant to the First Amendment, the final Extended Term expires on October 14, 2055.

5. By the First Amendment, Landlord granted to Tenant the option to expand the Parcel by up to an additional 1,000 square feet adjacent to the Parcel. Additional details of the foregoing expansion are set forth in the First Amendment.

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

7. 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 Parcel, 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 Parcel 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 shall be entitled to no further consideration with respect to any of the foregoing matters.

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

9. 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.

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

11. 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:
CITY OF MUSCATINE, IOWA

By: _____
Print Name: _____
Title: _____

[Acknowledgment Appears on Following Page]

ALL PURPOSE ACKNOWLEDGMENT

STATE OF _____ }
}

COUNTY OF _____ }
}

On this ____ day of _____, 2016 before me _____ (notary public), personally appeared _____ (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 _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (notary public)

(NOTARY SEAL)

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 _____

[Tenant Execution Page Follows]

TENANT:
CROWN CASTLE TOWERS 05 LLC,
a Delaware limited liability company

By: _____
Print Name: _____
Title: _____

[Acknowledgment Appears on Following Page]

State of Texas

County of _____

Before me, _____, a Notary Public, on this day personally appeared _____ of **CROWN CASTLE TOWERS 05 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 _____ day of _____, 2016.

(Personalized Seal)

Notary Public's Signature

EXHIBIT A
(Legal Description of the Property)

BLDGS ON LEASED LAND W 1/2 OL 19 SMALLEYS 3RD ADD S MUSC

**FIRST AMENDMENT TO
OPTION AND LEASE AGREEMENT**

THIS FIRST AMENDMENT TO OPTION AND LEASE AGREEMENT (the “First Amendment”) is entered into this ____ day of _____, 2016, by and between CITY OF MUSCATINE, IOWA, with a mailing address of 215 Sycamore Street, Muscatine, Iowa 52761 (“Landlord”) and CROWN CASTLE TOWERS 05 LLC, a Delaware limited liability company, with a mailing address of 2000 Corporate Drive, Canonsburg, Pennsylvania 15317 (hereinafter referred to as “Tenant”).

RECITALS

WHEREAS, Landlord and iPCS Wireless, Inc., a Delaware corporation (“Original Tenant”) entered into an Option and Lease Agreement dated August 21, 2000 (the “Lease”) whereby Original Tenant leased certain real property, together with access and utility easements, located in Muscatine County, Iowa from Landlord (the “Parcel”), all located within certain real property owned by Landlord (the “Property”); and

WHEREAS, Crown Castle Towers 05 LLC is currently the tenant under the Lease as successor in interest to the Original Tenant; and

WHEREAS, the Parcel 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 Lease had an initial term that commenced on October 15, 2000 and expired on October 14, 2005. The Lease provides for four (4) extensions of five (5) years each, the first three (3) of which were exercised by Tenant. According to the Lease, the final extension expires on October 14, 2025; and

WHEREAS, Landlord and Tenant desire to amend the Lease 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 Lease.

2. Term. Section 9 of the Lease is hereby deleted in its entirety and the following is inserted in its place:

Provided Tenant is not then in material default of this Lease beyond any applicable notice, grace or cure period, at the expiration of the Initial Term or any Extended Term then in effect, Tenant shall have the right to extend the term of this Lease for ten (10) additional five (5) year terms (each extension is referred to as an "Extended Term"). Each Extended Term shall be on the same terms and conditions as set forth in this Lease except that Rent shall increase as provided in Section 10. This Lease shall automatically be renewed for each successive Extended Term unless Tenant notifies Landlord of Tenant's intention not to renew the Lease before the expiration of the Initial Term or the Extended Term which is then in effect. All references to the term of this Lease shall include by reference the Initial Term and all Extended Terms.

Landlord and Tenant hereby acknowledge that Tenant has exercised the first three (3) Extended Terms, leaving a balance of seven (7) Extended Terms.

3. Annual Rent Escalation. Commencing on October 1, 2025 and every year thereafter (each an "Adjustment Date"), the monthly rent shall increase by an amount equal to three percent (3%) of the monthly rent in effect for the month immediately preceding the Adjustment Date ("Annual Rent Escalation"). Such rent escalations shall replace and be in lieu of any rent escalations currently in the Lease.

4. One-Time Rent Increase. On October 1, 2025, the monthly rent shall increase by an amount equal to fifteen percent (15%) of the monthly rent in effect for the immediately preceding month ("One-Time Rent Increase") in addition to the Annual Rent Escalation that is scheduled to occur pursuant to Section 3 of this First Amendment. The Annual Rent Escalation shall be applied first, and then this One-Time Rent Increase shall be applied after the rent is increased pursuant to the Annual Rent Escalation.

5. 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 (the “Conditional Signing Bonus”). Tenant will pay to Landlord the 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) 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.

6. Expansion Option. As further consideration for Tenant entering into this First Amendment, during the term of the Lease, Tenant shall have the irrevocable option (“Expansion Option”) to lease up to a maximum of one thousand (1,000) square feet of real property adjacent to the existing Parcel at a location to be determined at Tenant’s sole discretion (“Additional Lease Area”) on the same terms and conditions set forth in the Lease. 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 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 Lease, 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 any documentation necessary to remove, subordinate or satisfy any mortgages, deeds of trust, liens or encumbrances affecting the Additional Lease Area to Tenant’s satisfaction.

7. Revenue Share. In addition to the rent currently paid by Tenant to Landlord pursuant to the Lease, as further consideration for the right to exclusively use and lease the Parcel, if, after full execution of this First Amendment, Tenant subleases, licenses or grants a similar right of use or occupancy in the Parcel to an unaffiliated third party not already a subtenant on the Parcel (each a “Future Subtenant”), Tenant agrees to pay to Landlord fifteen percent (15%) of the rental, license or similar payments actually received by Tenant from such Future Subtenant (excluding any reimbursement of taxes, construction costs, installation costs, revenue share reimbursement or

other expenses incurred by Tenant) (the "Additional Rent") within thirty (30) days after receipt of said payments by Tenant. Tenant shall have no obligation for payment to Landlord of such share of rental, license or similar payments if not actually received by Tenant. Non-payment of such rental, license or other similar payment by a Future Subtenant shall not be an event of default under the Lease. Tenant shall have sole discretion as to whether, and on what terms, to sublease, license or otherwise allow occupancy of the Parcel and there shall be no express or implied obligation for Tenant to do so. Landlord acknowledges that Landlord shall have no recourse against Tenant as a result of the failure of payment or other obligation by a Future Subtenant. Notwithstanding anything in this paragraph to the contrary, the parties agree and acknowledge that revenue derived from subtenants and any successors and/or assignees of such subtenants who commenced use and/or sublease of the Parcel prior to execution of this First Amendment shall be expressly excluded from the Additional Rent and Landlord shall have no right to receive any portion of such revenue, including Sprint.

8. Right of First Refusal. If Landlord receives an offer that Landlord intends to consider 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 Lease) to purchase fee title, an easement, a lease, a license, or any other interest in the lease area, or Landlord's interest in the Lease, 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 which are (i) not imposed in good faith or (ii) directly or indirectly designed to defeat or undermine Tenant's possessory or economic interest in the Parcel. 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, and the proposed closing date. 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 Lease 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 Lease or as part of an assignment of the Lease. 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.

9. Governmental Approvals. 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 Parcel, 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 Parcel 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 shall be entitled to no further consideration with respect to any of the foregoing matters.

10. Condemnation. Section 19 of the Lease is hereby deleted in its entirety and the following is inserted in its place:

If Landlord receives written or other notice of a proposed taking by eminent domain of any part of the parcel of land upon which the Parcel is situated, Landlord will notify Tenant of the proposed taking within five (5) days of receiving said notice and Tenant will have the option to: (i) declare this Lease null and void and thereafter neither party will have any liability or obligation hereunder; or (ii) remain in possession of that portion of the Parcel that will not be taken, in which event there shall be an equitable adjustment in rent on account of the portion of the Parcel so taken. With either option, Tenant shall have the right to contest the taking and directly pursue an award.

11. Ratification.

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

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 Lease as amended.

12. Notices. Tenant's notice address as stated in Section 27 of the Lease is amended as follows:

TENANT'S PRIMARY CONTACT

Crown Castle Towers 05 LLC
c/o Crown Castle USA Inc.
Attn: Legal – Real Estate Dept.
2000 Corporate Drive
Canonsburg, PA 15317

13. 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 Property 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.

14. Remainder of Lease Unaffected. The parties hereto acknowledge that except as expressly modified hereby, the Lease 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 Lease, the terms of this First Amendment shall control. 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.

[Execution Pages Follow]

This First Amendment is executed by Landlord as of the date first written above.

LANDLORD:
CITY OF MUSCATINE, IOWA

By: _____
Print Name: _____
Title: _____

[Tenant Execution Page Follows]

This First Amendment is executed by Tenant as of the date first written above.

TENANT:
CROWN CASTLE TOWERS 05 LLC,
a Delaware limited liability company

By: _____
Print Name: _____
Title: _____