

FIRST AMENDMENT TO ANTENNA AGREEMENT SHEPARD WATER TOWER

THIS FIRST AMENDMENT to Antenna Agreement (“Amendment”) is executed this _____ day of _____, 2016 by and between City of Columbia, Missouri, a Missouri Municipal Corporation, having an address of P.O. Box 6015 Columbia, Missouri 65205 (“Grantor” hereinafter referred to as “City”) and Celco Partnership d/b/a Verizon Wireless (hereinafter “Lessee”).

WHEREAS, City and Lessee and its predecessors and assignors, are parties to a certain Antenna Agreement dated May 3, 2006 (“Agreement”) for Lessee’s use of a portion of real estate (hereinafter referred to as “Leased Premises”) located at 1160 Cinnamon Hill Lane, Columbia, Missouri, also known as Shepard Water Tower, and,

WHEREAS, Lessee, Verizon Communications Inc., a Delaware corporation, and other parties identified therein, entered into a Management Agreement and a Master Prepaid Lease, both with an effective date of March 27, 2015 and both with ATC Sequoia LLC, a Delaware limited liability company (“**American Tower**”), pursuant to which American Tower subleases, manages, operates and maintains, as applicable, the Leased Premises, all as more particularly described therein; and

WHEREAS, Lessee has granted American Tower a limited power of attorney (the “**POA**”) to, among other things, prepare, negotiate, execute, deliver, record and/or file certain documents on behalf of Lessee, all as more particularly set forth in the POA; and

WHEREAS, City and Lessee desire to amend and supplement the Agreement as provided herein,

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree to the following modifications to the Agreement:

1. Lessee shall pay to City the sum of Fifteen Thousand Dollars (\$15,000.00) as a one-time lump sum payment within thirty (30) days of the signing of this Amendment. Such sum shall be in addition to the rents required under the terms of this Amendment. This one-time payment is subject to the following conditions precedent: (a) Lessee’s

receipt of this Amendment executed by the City, on or before December 31, 2016; and (b) receipt by Lessee of an original Memorandum (as defined herein) executed by the City.

2. Notwithstanding anything to the contrary contained in the Agreement or this Amendment, the Parties agree the Agreement originally commenced on May 3, 2006, and, without giving effect to the terms of this Amendment but assuming the exercise by Lessee of all remaining renewal options contained in the Agreement (each an “**Existing Renewal Term**” and, collectively, the “**Existing Renewal Terms**”), the Agreement is otherwise scheduled to expire on May 2, 2021. In addition to any Existing Renewal Term(s), the Agreement is hereby amended to provide Lessee with the option to extend the Agreement for each of three (3) additional five (5) year renewal terms (each a “**New Renewal Term**” and, collectively, the “**New Renewal Terms**”). Notwithstanding anything to the contrary contained in the Agreement, all Existing Renewal Terms and New Renewal Terms shall automatically renew unless either party notifies the other party that they elect not to renew the Agreement at least six (6) months prior to the commencement of the next Renewal Term (as defined below). References in this Amendment to “**Renewal Term**” shall refer, collectively, to the Existing Renewal Term(s) and the New Renewal Term(s). The City hereby agrees to execute and return to Lessee an original Memorandum of Agreement in the form and of the substance attached hereto as **Exhibit B** and by this reference made a part hereof (the “**Memorandum**”) executed by City, together with any applicable forms needed to record the Memorandum, which forms shall be supplied by Lessee to City.

3. City shall be able to terminate this Agreement in the event of a material default by Lessee, which default is not cured within sixty (60) days of Lessee’s receipt of written notice thereof, provided, however, in the event that Lessee has diligently commenced to cure a material default within sixty (60) days of Lessee’s actual receipt of notice thereof, and Lessee requires additional time to completely cure said default, time to cure said default may be extended upon mutual agreement of the parties.

4. On May 3, 2021 the annual rent will be increased to Twenty Five Thousand Nine Hundred Twenty Dollars (\$25,920.00) per year. During the term of the Agreement, as extended pursuant to this Amendment, annual rent installments shall be paid by May 23rd of each year and may be paid by electronic funds transfer, as long as City provides any requested documentation required for electronic funds transfer, otherwise paid by check. The annual rent shall increase by twenty percent (20%) upon the commencement of each Renewal Term.

5. The parties' notice addresses in Section 9 of the Agreement are hereby amended as follows:

If to City:

City Manager's Office
Attn: Legal Department
P.O. Box 6015
Columbia, MO 65205-6015

If to Lessee:

Verizon Wireless
Attn: Network Real Estate
180 Washington Valley Road
Bedminster, NJ 07921

With a copy to:

ATC Sequoia LLC
c/o American Tower
Attn: Legal Department
116 Huntington Ave; 11th Floor
Boston, MA 02116

And

ATC Sequoia LLC
c/o American Tower
Attn: Legal Department
116 Huntington Ave.; 11th Floor
Boston, MA 02116

6. Section 16. (Site Entry) of the Agreement is deleted in its entirety and replace with the following:

"Lessee understands and agrees that the Water Tower Enclosure is a locked and secure site. Neither Lessee nor any employee, contractor or subcontractor shall enter the site at any time, day or night without first contacting the City of Columbia Water and Light Department at one of the following numbers:

William Strawn	573-874-9011 (office)	573-819-6620 (cell)
Scott Hern	573-817-6477 (office)	573-537-4872 (cell)

Lessee shall give twenty four (24) hour notice to City before requesting entry except in emergencies. Upon contracting the City's Water and Light Department arrangements will be made to open the site as quickly as possible. Lessee, nor any employee, contractor or subcontractor shall enter the water tower site until it has been opened by a City employee."

This section does not apply to Lessee's access to the Leased Premises.

7. Lessee shall and hereby does indemnify and hold City harmless from all demands, claims, actions, causes of action, assessments, expenses, costs, damages, losses, and liabilities (including reasonable attorney's fees and costs) actually incurred, asserted, and/or suffered (collectively, the "**Losses**"), whether to persons or property, arising directly from Lessee's use of the Leased Premises and the use of the Leased Premises by Lessee's employees, agents, contractors, guests, licensees, or invitees; provided, in all events, the aforementioned indemnification shall not apply if and to the extent that the Losses relate to, or arise as the result of, the negligence, gross negligence, or willful misconduct of City or any of City's employees, agents, contractors, and/or invitees.

8. Section 18. (Insurance) of the Agreement is deleted in its entirety and replaced with the following:

"Lessee will procure and maintain a commercial general liability insurance policy with a limit of not less than one million dollars (\$1,000,000.00) for each occurrence, and two million dollars (\$2,000,000.00) general aggregate coverage, and an excess liability insurance policy with a limit of five million dollars (\$5,000,000.00). Coverage to be provided shall be an insurance company authorized to do business in the State of Missouri.

9. Venue for any litigation involving the Agreement will be in Boone County, Missouri Circuit Court or the U.S. District Court for the Western District of Missouri.

10. Except as specifically set forth in this Amendment, the Agreement is otherwise unmodified and remains in full force and effect and is hereby ratified and reaffirmed. In the event of any inconsistencies between the Agreement and this Amendment, the terms of this Amendment shall take precedence.

11. City represents and warrants to Lessee that the City is the sole owner in fee simple title to the Leased Premises and easements and the City's interest under the Agreement and that consent or approval of no other person is necessary for the City to enter into this Amendment.

12. This Amendment may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same Agreement.

13. Nothing in the Agreement shall be deemed to be a waiver of either sovereign immunity or public official immunity by the City.

14. The Agreement shall be deemed to meet the Commercial Lease safe harbor of the Bankruptcy Code. In the event Lessee files for bankruptcy relief, Lessee shall either affirm the Agreement and bring all payments current or reject the Agreement and remove all towers and equipment within the period allows by applicable law.

15. Lessee shall have the right to record this Amendment.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names by their respective duly authorized representatives as of the date first above written.

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor

STATE OF MISSOURI)
) ss
COUNTY OF BOONE)

On this day of _____, 2016, before me appeared Mike Matthes, to me personally known, who, being by me duly sworn, did say that he is the City Manager of the City of Columbia, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of the City and that this instrument was signed and sealed on behalf of the City by authority of its City Council and the City Manager acknowledged this instrument to be the free act and deed of the City.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal, at my office in Columbia, Boone County, Missouri, the day and year first above written.

Notary Public

EXHIBIT A

This Exhibit A may be replaced at Tenant's option as described below

PARENT PARCEL

Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's improvements thereon

Being Lot 1 on the Plat titled Water Tower Place Subdivision Plat 2, dated November 30, 2000 and being recorded in the Boone County Recorder of Deeds on February 7, 2001 at book 35, page 8.

AND BEING a portion of the same property conveyed to City of Columbia, a Municipal Corporation from Eagle Park Development Corporation by General Warranty Deed dated January 27, 1975 and recorded March 20, 1975 in Deed Book 421, Page 940.

Tax Parcel No. 17-402-00-12-002.00 01

LEASED PREMISES

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements The Square footage of the Leased Premises shall be the greater of: (i) 3,600 square feet; (ii) Tenant's existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

A 60 foot by 60 foot Lease Area along with a 20 foot wide Right of Access situated in Water Tower Place Subdivision Plat 2, as recorded in Book 35, Page 8 in Boone County Deed Records, Boone County, Missouri, more particularly described as follows:

COMMENCING at the Southeast corner of said subdivision (fnd. 1/2" Alum. Man), said point bears South 00°12'06" West, a distance of 249.92 feet (250 feet, plat) from the Northeast corner of said subdivision (fnd. 1/2" Pipe w/ Cap), and bears South 89°42'41" East, a distance of 250.13 feet (250 feet, plat) from the Southwest corner of said subdivision (fnd. 1/2" Alum. Man.); thence North 17°31'13" West, a distance of 199.03 feet to the POINT OF BEGINNING of said 60 foot by 60 foot Lease Area; thence North 00°17'19" East, a distance of 46.00 feet to a point hereafter referred to as Point "A"; thence continuing North 00°17'19" East, a distance of 14.00 feet; thence South 89°42'41" East, a distance of 60.00 feet; thence South 00°17'19" West, a distance of 60.00 feet; thence North 89°42'41" West, a distance of 60.00 feet to the POINT OF BEGINNING. Containing 3,600 square feet, more or less.

EXHIBIT A (continued)

ACCESS AND UTILITIES

The access and utility easements include all easements of record as well that portion of the Parent Parcel currently utilized by Tenant for ingress, egress and utility purposes from the Leased Premises to and from a public right of way including but not limited to:

Together with a 20 foot wide Right of Access, lying 10.00 feet on each side of the following described centerline:

BEGINNING at aforesaid Point "A"; thence North 89°42'43" West, a distance of 29.00 feet to a point hereafter referred to as Point "B"; thence continuing North 89°42'43" West, a distance of 128.66 feet; thence South 00°09'46" East, a distance of 205.68 feet; thence North 90°00'00" East, a distance of 60.97 feet; thence South 00°17'19" West, a distance of 44.92 feet; thence South 79°52'36" West, a distance of 65.23 feet; thence North 88°26'45" West, a distance of 329.76 feet to a POINT OF TERMINATION on the East right of way line of Cinnamon Hill Lane, as it presently exists; thence BEGINNING at aforesaid Point "B"; thence South 00°17'19" West, a distance of 35.00 feet to the POINT OF TERMINATION. Containing 17.764 square feet, more or less.

EXHIBIT B

FORM OF MEMORANDUM OF AGREEMENT

Prepared by and Return to:

American Tower
10 Presidential Way
Woburn, MA 01801
Attn: Land Management/Sarah Kmiecik, Esq.
ATC Site No: 414653
ATC Site Name: City of Columbia MO
Assessor's Parcel No(s): 17-402-12-002-00-01

Prior Recorded Lease Reference:

Book _____, Page _____
Document No: _____
State of Missouri
County of Boone

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (the "**Memorandum**") is entered into on the _____ day of _____, 201__ by and between **City of Columbia, Missouri, a Missouri Municipal Corporation ("Grantor"** hereinafter referred to as "**City**") and **Cellco Partnership d/b/a Verizon Wireless ("Lessee")**.

NOTICE is hereby given of the Agreement (as defined and described below) for the purpose of recording and giving notice of the existence of said Agreement. To the extent that notice of such Agreement has previously been recorded, then this Memorandum shall constitute an amendment of any such prior recorded notice(s).

1. **Parent Parcel and Agreement.** City is the owner of certain real property being described in **Exhibit A** attached hereto and by this reference made a part hereof (the "**Parent Parcel**"). City (or its predecessor-in-interest) and Lessee (or its predecessor-in-interest) entered into that certain Antenna Agreement Shepard Water Tower (2nd Tower) dated May 3, 2006 (as the same may have been amended from time to time, collectively, the "**Agreement**"), pursuant to which the Lessee leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Agreement (such portion of the Parent Parcel so leased along with such portion of the Parent Parcel so affected, collectively, the "**Leased Premises**"), which Leased Premises is also described on **Exhibit A**.
2. **American Tower.** Lessee, Verizon Communications Inc., a Delaware corporation, and other parties identified therein, entered into a Management Agreement and a Master Prepaid Lease, both with an effective date of March 27, 2015 and both with ATC Sequoia LLC, a Delaware limited liability company ("**American Tower**"), pursuant to which American Tower subleases, manages, operates and maintains, as applicable, the Leased Premises, all as more particularly described therein. In connection with these responsibilities, Lessee has also granted American Tower a limited power of attorney (the "**POA**") to, among other things, prepare, negotiate, execute, deliver, record and/or file certain documents on behalf of Lessee, all as more particularly set forth in the POA.
3. **Expiration Date.** Subject to the terms, provisions, and conditions of the Agreement, and assuming the exercise by Lessee of all renewal options contained in the Agreement, the final expiration date of the Agreement would be May 2, 2036. Notwithstanding the foregoing, in no event shall the parties be

required to exercise any option to renew the term of the Agreement.

4. **Effect/Miscellaneous.** This Memorandum is not a complete summary of the terms, provisions and conditions contained in the Agreement. In the event of a conflict between this Memorandum and the Agreement, the Agreement shall control.
5. **Notices.** All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein: to City at: City Manager's Office, Attn: Legal Department, P.O. Box 6015, Columbia, MO 65205-6015; to Lessee at: Verizon Wireless, Attn. Network Real Estate, 180 Washington Valley Road, Bedminster, NJ 07921; with copy to: American Tower, Attn: Land Management, 10 Presidential Way, Woburn, MA 01801, and also with copy to: Attn Legal Dept. 116 Huntington Avenue, Boston, MA 02116. Any of the parties hereto, by thirty (30) days prior written notice to the other in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.
6. **Counterparts.** This Memorandum may be executed in multiple counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.
7. **Governing Law.** This Memorandum shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, City and Lessee have each executed this Memorandum as of the day and year set forth below.

CITY

City of Columbia, Missouri
a Missouri Municipal Corporation

Signature: _____
Print Name: Mike Matthes
Title: City Manager
Date: _____

WITNESS AND ACKNOWLEDGEMENT

State of Missouri

County of Boone

On this ____ day of _____, 201____, before me, the undersigned Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public
Print Name: _____
My commission expires: _____

[SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

LESSEE

Cellco Partnership d/b/a Verizon Wireless

By: ATC Sequoia LLC,
a Delaware limited liability company
Title: Attorney-in-Fact

Signature: [Signature]
Print Name: **Edward P. Maggio, Jr.**
Title: **Senior Counsel, US Tower**
Date: 10/17/16

WITNESS AND ACKNOWLEDGEMENT

Commonwealth of Massachusetts

County of Middlesex

On this 17th day of October, 2016, before me, the undersigned Notary Public, personally appeared Edward P. Maggio Jr., who proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]
Notary Public
Print Name: Renee Byrd
My commission expires: 4/27/2023



RENEE BYRD
Notary Public
Commonwealth of Massachusetts
My Commission Expires
April 27, 2023

[SEAL]

EXHIBIT A

This Exhibit A may be replaced at Tenant's option as described below

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