

**RESOLUTION NO. 138-2020**  
**AUTHORIZING SECOND AMENDMENT TO THE TEMPORARY CELL  
TOWER LEASE AGREEMENT WITH T-MOBILE NORTHEAST LLC**

Councilmember Leckstein offered the following resolution and moved its adoption; seconded by Councilmember Birdsall:

**WHEREAS**, the Borough of Sea Bright (Lessor) is the owner of property located at the corner of Wayne Street and East Center Street, Block 20, Lot 7, located in the Borough of Sea Bright, County of Monmouth, State of New Jersey; and

**WHEREAS**, The Lessor and T-Mobile Northeast LLC, a Delaware limited liability company (Lessee), entered into a Temporary Tower Agreement for use of the aforesaid property for co-location on an existing telecommunications tower dated May 31, 2018 which was subsequently amended by a First Amendment, authorized by Resolution No. 30-2020 on January 4, 2020 (collectively, the "Temporary Agreement"); and

**WHEREAS**, Lessor and Lessee desire to extend the Temporary Agreement; and

**WHEREAS**, Lessee agrees to allow New Cingular Wireless PCS, LLC ("AT&T") to co-locate on their Temporary Facilities, with co-location rent to be paid directly to Lessor; and

**WHEREAS**, Lessor does not authorize an increase in height to the Lessee's Temporary Facilities to allow New Cingular Wireless PCS, LLC ("AT&T") to co-locate; and

**WHEREAS**, Lessor and Lessee desire to modify, as set forth herein, the Rent (as defined below) payable under the Lease; and

**WHEREAS**, Lessor and Lessee hereby affirm that, as of the date hereof: (i) no breach or default by Lessor or Lessee occurred, and (ii) the Lease, and all the terms, covenants, conditions, provisions and agreement thereof, except as expressly modified by the Second Amendment are in full force and effect, with no defenses or offsets thereto; and

**WHEREAS**, Lessor and Lessee, in their mutual interest, further wish to amend the Temporary Agreement as set forth below.

**WHEREAS**, in consideration of the mutual covenants contained in the Lease and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

**1. Term.** The Lessor and Lessee agree to one final extension to the term of the Temporary Agreement ("2<sup>nd</sup> Extension Term") commencing May 15, 2020 ("2<sup>nd</sup> Extension Commencement Date"). The 2<sup>nd</sup> Extension Term shall terminate on the earlier of either (a) the date of completion of construction of the permanent Tower and full operation of the Lessee's Facilities on the permanent tower or (b) November 1, 2020 ("Termination Date"). Any Rent for any fractional month from the Termination Date shall be appropriately prorated.

**2. Co-locators.** Lessee agrees to allow AT&T the option to execute a temporary agreement to co-locate on the Temporary Facilities. Lessee also agrees that all co-location rent owed by AT&T shall be paid directly by AT&T to Lessor. Co-location rent shall be at a rate agreed upon between Lessor and AT&T.

**3. Rent.** Effective on the 2<sup>nd</sup> Extension Commencement Date, the monthly rent paid by AT&T shall be four thousand five hundred dollars and 00/100 (\$4,500.00) and the monthly rent paid by Lessee shall be increased to three thousand nine hundred seventy eight dollars and 38/100 (\$3,978.38).

**4. Terms; Conflicts.** The terms and conditions of the Temporary Agreement are incorporated herein by this reference, and capitalized terms used in this 2<sup>nd</sup> Amendment shall have the same meanings such terms are given in the Temporary Agreement. Except as specifically set forth herein, this Second Amendment shall in no way modify, alter or amend the remaining terms of the Temporary Agreement, all of which are ratified by the parties and shall remain in full force and effect. To the extent there is any conflict between the terms and conditions of the Temporary Agreement and this Second Amendment, the terms and conditions of this Second Amendment will govern and control.

**5. Approvals.** Lessor represents and warrants to Lessee that the consent or approval of no third party, including, without limitation, a lender, is required with respect to the execution of this Second Amendment, or if any such third-party consent or approval is required, Lessor has obtained any and all such consents or approvals.

**6. Authorization.** The persons who have executed this Second Amendment represent and warrant that they are duly authorized to execute this Second Amendment in their individual or representative capacity as indicated.

**NOW, THEREFORE, BE IT RESOLVED,** that the Borough Council of the Borough of Sea Bright, County of Monmouth, State of New Jersey, hereby authorize the Mayor and Borough Clerk to execute the attached Second Amendment to the Temporary Tower Lease Agreement (attached hereto) between the Borough of Sea Bright (Lessor) and T-Mobile Northeast LLC, a Delaware limited liability company (Lessee) with the addition of the aforementioned terms.

**BE IT FURTHER RESOLVED** that a copy of this resolution, certified to be a true copy, be forwarded to the following:

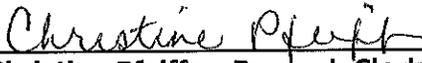
1. Finance Manager
2. Borough Attorney
3. FSD Enterprises, LLC
4. T-Mobile Northeast, LLC

<b>Roll Call:</b>	Birdsall,	Catalano,	Keeler,	Leckstein,	Rooney,	Schwartz
	Yes	Yes	Yes	Yes	Yes	Yes

July 21, 2020

**CERTIFICATION**

I, Christine Pfeiffer, Borough Clerk, do hereby certify that the foregoing is a Resolution adopted by the Borough Council of the Borough of Sea Bright, County of Monmouth, State of New Jersey, at a Council Meeting held on July 21, 2020.

  
**Christine Pfeiffer, Borough Clerk**