

CITY OF MARGATE, FLORIDA

RESOLUTION NO. 12-328

A RESOLUTION OF THE CITY OF MARGATE, FLORIDA, APPROVING "SECOND AMENDMENT TO OPTION AND LEASE AGREEMENT" AND AMENDED LEASE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC FOR THE WIRELESS COMMUNICATION SITE LOCATED AT 2500 ROCK ISLAND ROAD; PROVIDING FOR EXTENSION OF LEASE TERM; PROVIDING FOR FLAG MAINTENANCE.

WHEREAS, The City Commission of the City of Margate adopted and approved Resolution 12-243 on December 12, 2012 which authorized and directed the Mayor and City Manager to execute a letter agreement attached to the same resolution; and

WHEREAS, As a result of negotiations, the terms of the letter agreement made a part of Resolution 12-243 regarding the maintenance and replacement of flags used of wireless communications facilities have changed.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MARGATE, FLORIDA:

SECTION 1: That the City Commission of the City of Margate, Florida hereby approves a "SECOND AMENDMENT TO OPTION AND LEASE AGREEMENT" with NEW CINGULAR WIRELESS PCS, LLC for the wireless communication site located at 2500 Rock Island Road, to provide for four (4) lease renewal terms of five (5) years each and extending the final lease term to August 31, 2035 and providing for flag maintenance by Lessee NEW CINGULAR WIRELESS PCS, LLC.

SECTION 2: That the Mayor and City Manager are hereby authorized and directed to execute said "SECOND AMENDMENT TO OPTION AND LEASE AGREEMENT" on behalf of the City of Margate, a copy of which is attached and made a part of this Resolution.

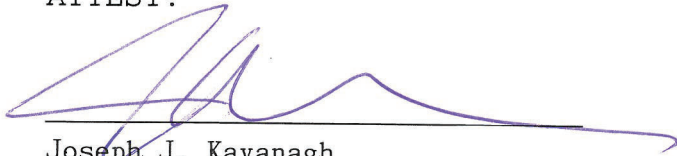
SECTION 3: That the Mayor and City Manager are hereby authorized to execute a Lease Agreement pursuant to the terms of

the "SECOND AMENDMENT TO OPTION AND LEASE AGREEMENT", on behalf of the City of Margate, a copy of which is attached and made a part of this Resolution.

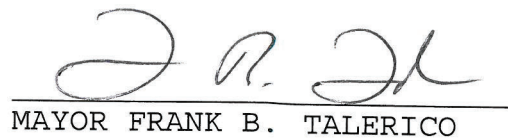
SECTION 4: That this Resolution shall become effective immediately upon its passage.

PASSED, ADOPTED AND APPROVED THIS 15TH DAY OF MAY, 2013.

ATTEST:



Joseph J. Kavanagh
Deputy City Clerk


MAYOR FRANK B. TALERICO

RECORD OF VOTE

Ruzzano	<u>Yes</u>
Donahue	<u>Aye</u>
Simone	<u>Yes</u>
Peerman	<u>Yes</u>
Talerico	<u>Aye</u>



Crown Castle International Corp.
1220 Augusta Drive, Suite 500
Houston, TX 77057

Tel 713 570.3000
Fax 724-416-6955
www.crowncastle.com

July 16, 2013

Dear Landlord:

Attached hereto please find fully executed copies of the Amendment for your records.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Kelser McMiller

PEP – Project Coordinator
Kelser.mcmiller@crowncastle.com

SECOND AMENDMENT TO OPTION AND LEASE AGREEMENT

THIS SECOND AMENDMENT TO OPTION AND LEASE AGREEMENT (this "Amendment") dated as of the last of the signature dates below (the "Effective Date") by and between THE CITY OF MARGATE, FLORIDA, having a mailing address of 5790 Margate Boulevard, Third Floor, Margate, Florida 33063 ("Lessor") and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company (the successor by December 31, 2004 merger with BellSouth Mobility, LLC) ("Tenant"), having a mailing address of Suite 13-F West Tower, 575 Morosgo Drive, Atlanta, GA 30324.

WITNESSETH:

WHEREAS, Lessor and Tenant entered into that certain Option and Lease Agreement dated June 18, 1999 (the "Original Lease") whereby Lessor leased to Tenant a portion of land in Margate, Broward County, Florida, together with access and utility easements appurtenant thereto (the "Property"), as more particularly described in the Original Lease and on Exhibit "A" attached hereto; and

WHEREAS, the Original Lease was amended by that certain Addendum to Option and Lease Agreement dated June 23, 2000 ("First Amendment") by and between Lessor and Tenant, and evidenced by that certain Resolution No. 9098 dated June 21, 2000 (the Original Lease and the First Amendment shall be collectively referred to herein as the "Agreement"); and

WHEREAS, the Agreement has a initial term and extension terms that will expire on August 31, 2020 ("Existing Term"), and Lessor and Tenant desire to enter into this Amendment in order to amend the Agreement to provide for, among other things, additional extension terms for a period of fifteen (15) years beyond the Existing Term, upon the terms and conditions more fully set forth herein.

NOW THEREFORE, for the mutual covenants and premises herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the undersigned parties, intending to be bound, hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are hereby made a part hereof for all purposes.
2. **Defined Terms.** Capitalized terms not otherwise defined herein shall have the meaning set forth for such term in the Agreement.
3. **Extension Terms.** The first and second sentence of Paragraph 5 of the Agreement are hereby deleted and inserted in lieu thereof is the following:

"Tenant shall have the option to extend the term of this Agreement for six (6) additional consecutive five (5) year terms."

The parties acknowledge that, pursuant to this Amendment, the lease term exceeds the Existing Term by an additional fifteen (15) years and that final extension term, unless the Agreement is terminated sooner, will expire on August 31, 2035.

4. **Extension Term Rent.** Paragraph 4 of the Agreement is hereby amended to add the following to the end of the sentence:

“; for the fifth five-year extension term shall be \$48,272.57; for the sixth five-year extension term shall be \$55,513.46.”

5. **Continuance of Lease.** Paragraph 6 of the Agreement is hereby amended by deleting all references therein to “fourth (4th) extended term” and replacing them with “sixth (6th) extended term.”

6. **Flag Pole Inspection and Maintenance.** Tenant hereby agrees to comply with the Flag Pole Configuration, Inspection, and Maintenance Standards set forth on Exhibit “B” attached hereto (“Crown Standards”). Notwithstanding the Crown Standards, Tenant hereby agrees to (i) timely cause any such flag to be displayed in accordance with 36 USC §174(d) relating to method of display on particular holidays, and with 36 USC §175(m) relating to federal or state declarations and (ii) train an employee of the Owner in accordance with proper safety protocols as established by the Tenant in order to permit Owner access to the Property to change the display of the flag as may be necessary to comply, in emergency situations, with the provisions of the US Flag Code (i.e. federal or state declared emergency events) in the event Tenant is unable to change the display of the flag within thirty (30) minutes prior to the time designated for the change. To the extent Owner is required to change the display of the flag, Tenant shall reimburse Owner for the administrative and labor costs of taking such action; provided such costs to Tenant shall not exceed \$1,000 per event. In the event any terms or conditions of the Crown Standards are inconsistent with the terms herein, the terms herein shall control.

7. **Notice Address.** Paragraph 20 of the Agreement is hereby amended by deleting the notice address contained therein for Tenant and substituting the following therefor:

TENANT: AT&T Network Real Estate Administration
Re: FA# 10023339
Suite 13-F West Tower
575 Morosgo Drive
Atlanta, GA 30324

With a copy to: AT&T Legal Department- Network
Attn: Network Counsel
Re: FA# 10023339
208 S. Akard Street
Dallas, Texas, 75202-4206

And a copy to: Crown Castle South LLC
c/o Crown Castle USA Inc.
Attn: Legal Department
Re: Cell Site 801517 – FL CDZC
2000 Corporate Drive
Canonsburg, PA 15317
Attn: Legal Department

8. **One-Time Payment.** As additional consideration for the additional extended terms and option granted to Tenant herein, a one-time payment in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) (the “Payment”) shall be made to Lessor. Such Payment shall be paid by Crown Castle South LLC (“Crown”), as Tenant’s management company, within sixty (60) days after the full execution and delivery of this Amendment by Lessor and Tenant. Lessor agrees to accept the payment from Crown and Lessor further agrees that the acceptance by Lessor of the Payment shall be a complete accord and satisfaction of said obligation. Upon payment of the Payment, Lessor waives and releases Tenant and Crown from any and all claims Lessor may have pursuant to the Agreement (or otherwise) related to or arising out of the Payment. The annual rent and all other consideration will continue to be paid by Tenant pursuant to the terms of the Agreement.

9. **Representations, Warranties and Covenants of Lessor.** Lessor represents, warrants and covenants to Tenant as follows:

- (a) Lessor is duly authorized to and has the full power and authority to enter into this Amendment and to perform all of Lessor’s obligations under the Agreement as amended hereby.
- (b) Except as expressly identified in this Amendment, Lessor owns the Property free and clear of any mortgage, deed of trust, or other lien secured by any legal or beneficial interest in the Property, or any right of any individual, entity or governmental authority arising under an option, right of first refusal, lease, license, easement or other instrument other than any rights of Tenant arising under the Agreement as amended hereby and the rights of utility providers under recorded easements.
- (c) Upon Tenant’s request, Lessor shall discharge and cause to be released (or, if approved by Tenant, subordinated to Tenant’s rights under the Agreement as amended hereby) any mortgage, deed of trust, lien or other encumbrance that may now or hereafter exist against the Property.
- (d) Upon Tenant’s request, Lessor shall cure any defect in Lessor’s title to the Property which in the reasonable opinion of Tenant has or may have an adverse affect on Tenant’s use or possession of the Property.

- (e) Tenant is not currently in default under the Agreement, and to Lessor's knowledge, no event or condition has occurred or presently exists which, with notice or the passage of time or both, would constitute a default by Tenant under the Agreement.
- (f) Lessor agrees to execute and deliver such further documents and provide such further assurances as may be requested by Tenant to effect any release or cure referred to in this paragraph, carry out and evidence the full intent and purpose of the parties under the Agreement as amended hereby, and ensure Tenant's continuous and uninterrupted use, possession and quiet enjoyment of the Property under the Agreement as amended hereby.

10. **IRS Form W-9.** Owner agree to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Amendment and at such other times as may be reasonably requested by Tenant. In the event Owner's property on which the Site is located is transferred, the succeeding owner 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 rental to the new owner. Owner'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.

11. **Construction of Documents.** Each party hereto acknowledges that this Amendment shall not be construed in favor of or against the drafter hereof.

12. **Remainder of Agreement Unaffected.** In all other respects, the remainder of the Agreement shall remain in full force and effect. Any portion of the Agreement that is inconsistent with this Amendment is hereby amended to be consistent.

13. **Entire Agreement.** This Amendment supersedes that certain Letter Agreement by and between Lessor and Tenant dated December 6, 2012 and in case of any conflict or inconsistency between the terms and conditions contained in the Letter Agreement and the terms and conditions contained in this Amendment, the terms and conditions in this Amendment shall control.

14. **Counterparts.** This Amendment may be executed in separate and multiple counterparts, each of which shall be deemed an original but all of which taken together shall be deemed to constitute one and the same instrument.

15. **Recordation.** Tenant, at its cost and expense, shall have the right to record a memorandum of this Amendment in the public records of Broward County, Florida, at any time following the execution of this Amendment by all parties hereto.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY;

SIGNATURE PAGES BEGIN ON FOLLOWING PAGE]

EXHIBIT "A"
(Site Description)

LEGAL DESCRIPTION OF LEASE PARCEL

A PORTION OF PARK PARCEL 1, OF "HOLIDAY SPRINGS EAST", ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 133, AT PAGE 49 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF SAID PARK PARCEL 1: THENCE NORTH $89^{\circ}28'40''$ W., ALONG THE SOUTHERLY LINE OF SAID PARK PARCEL 1, FOR A DISTANCE OF 22.76 FEET; THENCE N. $01^{\circ}02'32''$ W. FOR A DISTANCE OF 46.00 FEET; THENCE S. $89^{\circ}28'40''$ E. FOR A DISTANCE OF 22.76 FEET; THENCE S. $01^{\circ}02'32''$ E., ALONG THE EASTERLY LINE OF SAID OPARK PARCEL 1, FOR A DISTANCE OF 46.00 FEET TO THE POINT OF BEGINNING.

ALL OF THE ABOVE LAND SITUATED, BEING AND LYING IN BROWARD COUNTY, FLORIDA.

See following page for description of ingress and egress easement

LEGAL DESCRIPTION OF INGRESS & EGRESS EASEMENT

A PORTION OF PARK PARCEL 1 AND PARK PARCEL 2, OF "HOLIDAY SPRINGS EAST", ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 133, AT PAGE 49 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA AND A PORTION OF THAT CERTAIN FLORIDA POWER & LIGHT EASEMENT BEING ADJACENT TO SAID PARK PARCEL 1 AND PARK PARCEL 2 AS RECORDED IN OFFICIAL RECORD BOOK 4171, PAGE 808 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID PARK PARCEL 1; THENCE N. 89°28'40" W., ALONG THE SOUTHERLY LINE OF SAID PARK PARCEL 1 FOR 22.76 FEET TO THE POINT OF BEGINNING OF THE HEREINAFTER DESCRIBED INGRESS AND EGRESS EASEMENT, SAID POINT ALSO BEING THE POINT OF CURVATURE OF A CIRCULAR CURVE, CONCAVE TO THE NORTHWEST WITH THE CENTER POINT OF SAID CURVE BEARING N. 89°28'40" W. FROM THIS LAST DESCRIBED POINT; THENCE RUN SOUTHEASTERLY, SOUTHERLY AND SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 31.75 FEET, A CENTRAL ANGLE OF 90°47'04" FOR 50.31 FEET TO A POINT OF TANGENCY; THENCE S. 89°44'32" W. FOR 21.91 FEET; THENCE S. 74°38'58" W. FOR 83.81 FEET; THENCE S. 87°55'36" W. FOR 378.48 FEET, THENCE N. 79°38'22" W. FOR 268.92 FEET; THENCE N. 35°50'26" W. FOR 184.21 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE TO THE LEFT; THENCE RUN NORTHWESTERLY AND WESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 80.00 FEET AND A CENTRAL ANGLE OF 53°38'14" FOR 74.89 FEET TO A POINT OF TANGENCY; THENCE N. 89°28'40" W. FOR 57.45 FEET TO A POINT OF THE WESTERLY LINE OF SAID PARK PARCEL 1, SAID LINE ALSO BEING THE EASTERLY RIGHT-OF-WAY LINE OF ROCK ISLAND ROAD; THENCE N. 00°31'20" E., ALONG SAID EASTERLY LINE OF PARK PARCEL 1, FOR 52.00 FEET; THENCE S. 89°28'40" E. FOR 54.91 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE TO THE RIGHT; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 130.00 FEET AND A CENTRAL ANGLE OF 63°41'24" FOR 144.51 FEET TO A POINT OF TANGENCY; THENCE S. 25°47'16" E. FOR 158.49 FEET; THENCE S. 79°38'22" E. FOR 259.45 FEET; THENCE N. 87°55'36" E. FOR 373.97 FEET; THENCE N. 74°38'58" E. FOR 84.13 FEET; THENCE N. 89°44'32" E. FOR 24.56 FEET TO A POINT OF CURVATURE OF A CIRCULAR CURVE TO THE LEFT; THENCE RUN EASTERLY AND NORTHERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 11.75 FEET AND A CENTRAL ANGLE OF 90°47'04" FOR 18.62 FEET TO A POINT OF TANGENCY; THENCE N. 01°02'32" W. FOR 46.88 FEET; THENCE S. 89°28'40" E. FOR 20.01 FEET; THENCE S. 01°02'32" E. FOR 46.00 FEET TO THE POINT OF BEGINNING.

ALL OF THE ABOVE LAND, SITUATED, LYING AND BEING IN BROWARD COUNTY, FLORIDA.

EXHIBIT "B"
(Crown Standards)
See following page

Flag Pole Configuration, Inspection and Maintenance Standards

Document #	OPS-STD-10197
Revision	-
Issue Date	4-1-2011
Dept. Owner	Dir. of Operations
Distribution	Intradepartmental

4.0 Design/Configuration Requirements

Any flag flown at a Crown Castle flagpole site will be all weather and capable of withstanding expected weather and environmental conditions for a period of no less than one year.

Any American flag flown at a Crown Castle flagpole site 24 hours per day will be illuminated in accordance with local zoning ordinances. Any acquired flagpole site without illumination does not require illumination to be compliant with this standard. Sites with illumination shall maintain consistency with the configuration approved by local zoning. This applies to size of flag as well as the need for illumination, quantity of lights and associated wattage/brightness requirements.

4.1 Display at Half Mast

In the event that the President has ordered flags to be flown at half staff, the NOC will relay information to the TOMs via email that flags are to be flown at half staff. FOTs will be expected to fly the flag at half staff until notification is received from the NOC to return them to full staff.

5.0 Inspection and Maintenance Requirements:

Flag pole sites will be inspected semi annually during the months of April and October to ensure repairs and/or replacements are complete by Memorial Day in May and Veteran's Day November.

During inspection, each flag will be lowered and visually inspected. Flags will be replaced annually at a minimum, but will also be replaced when any of the following conditions exist.

- The flag or its edges are tattered, torn or ripped.
- The flag's colors are faded or worn.
- The flag is dirty, stained or soiled and cannot be cleaned.

During the raising and lowering of the flag, the rope or lanyard will be inspected to confirm that it is free of any defects including frays, cuts or damage that could inhibit the lanyard's ability to raise and lower the flag.

The cleat will also be inspected to confirm that it is properly affixed to the pole.

During every semi-annual inspection lights will be confirmed to be operational.

5.1 Proactive Maintenance:

Regardless of condition, all flags will be replaced annually at a minimum. Flags subjected to more severe environments may require more frequent replacement. It is the responsibility Area Operations team to determine sites requiring more frequent replacement and plan and budget accordingly.

Regardless of condition, bulbs used in lights to illuminate flags will be replaced every two years. Bulbs must have a minimum 10,000 hour rating.

Flag Pole Configuration, Inspection and Maintenance Standards

Document #	OPS-STD-10197
Revision	-
Issue Date	4-1-2011
Dept. Owner	Dir. of Operations
Distribution	Intradepartmental

5.2 Response Procedures:

Response to calls from landlords and/or neighboring property owners reporting condition of flags will be opened and managed as Class B incidents per the Incident Response Plan.

Each Field Trouble tickets identifying the need to replace a flag will be addressed in 3 days.

6.0 Best Practices

Best practices in the support and management of flag pole sites include:

- 1) Development of relationships with neighbors and landlords who can keep watch and provide assistance as required.
- 2) Proactive annual replacement of flags. Note: At sites with more severe environments, more frequent replacement may be required.
- 3) Proactive replacement of bulbs every two years, regardless of condition.
- 4) Each FOT should maintain an inventory on their trucks a minimum of one replacement flag for every flagpole site for which they are responsible. Maintaining a minimum inventory of one flag per site on vehicles will assure response times for replacement within 3 days to satisfy any landlord or neighbor complaint as specified in 5.2.

PREPARED OUT-OF-STATE BY:

David F. Webber
Singleton Cooksey PLLC
Attorneys at Law
6363 Woodway, Suite 600
Houston, Texas 77057

**RECORDING REQUESTED BY AND
AFTER RECORDING RETURN TO:**

Tax Parcel No.: 48-41-23-06-0200

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

THIS MEMORANDUM OF SECOND AMENDMENT TO OPTION AND LEASE AGREEMENT (this "Memorandum") dated as of the last of the signature dates below (the "Effective Date") by and between **THE CITY OF MARGATE, FLORIDA**, having a mailing address of 5790 Margate Boulevard, Third Floor, Margate, Florida 33063 ("Lessor") and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company (the successor by December 31, 2004 merger with BellSouth Mobility, LLC) ("Tenant"), having a mailing address of Suite 13-F West Tower, 575 Morosgo Drive, Atlanta, GA 30324.

WITNESSETH:

WHEREAS, Lessor and Tenant entered into that certain Option and Lease Agreement dated June 18, 1999 (the "Original Lease") whereby Lessor leased to Tenant a portion of land in Margate, Broward County, Florida, together with access and utility easements appurtenant thereto (the "Property"), as more particularly described in the Original Lease and on Exhibit "A" attached hereto; and

WHEREAS, the Original Lease was amended by that certain Addendum to Option and Lease Agreement dated June 23, 2000 (“First Amendment”) by and between Lessor and Tenant, and evidenced by that certain Resolution No. 9098 dated June 21, 2000 (the Original Lease and the First Amendment shall be collectively referred to herein as the “Agreement”); and

WHEREAS, the parties entered into that certain Second Amendment to Option and Lease Agreement dated as of the Effective Date hereof (the “Amendment”) in order to amend the Agreement to provide for, among other things, additional extension terms for a period of fifteen (15) years beyond the expiration of the existing extension terms, upon the terms and conditions more fully set forth in the Amendment.

NOW THEREFORE, for the mutual covenants and premises herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the undersigned parties, intending to be bound, agreed in the Amendment as follows:

1. **Extension Terms.** Paragraph 5 of the Agreement was modified in the Amendment to provide for three (3) additional terms of five (5) years each (the final such extension term, unless the Agreement is terminated sooner, will expire August 31, 2035], upon the terms and conditions set forth in the Agreement (as amended).
2. **Capitalized Terms.** Capitalized terms not otherwise defined herein shall have the meaning set forth for such term in the Agreement (as amended).
3. **Remainder of Agreement Unaffected.** Except as expressly amended or modified by the Amendment, the Agreement remains unchanged and in full force and effect.
4. **Agreement Controls.** This Memorandum summarizes, for purposes of the public record, certain rights granted to Tenant in the Agreement by virtue of the Amendment, and this Memorandum does not and it should not be interpreted to amend, amplify or diminish any of the terms and provisions contained in the Agreement (as amended). The parties agree and intend that the terms and provisions contained in the Agreement (as amended) shall control in the event of any conflict between any sentence contained in this Memorandum and the terms and provisions contained in the Agreement (as amended).
5. **Counterparts.** This Memorandum may be executed in separate and multiple counterparts, each of which shall be deemed an original but all of which taken together shall be deemed to constitute one and the same instrument.
6. **Recordation.** Tenant, at its cost and expense, shall have the right to record this Memorandum in the public records of Broward County, Florida, upon the terms and conditions set forth in the Amendment.

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