

1 **..Title**

2 **New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility Corporation - Lease Agreement –**  
3 For the purpose of approving the lease for certain City-owned property within the City of  
4 Annapolis between New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility Corporation and the  
5 City of Annapolis; and matters generally relating to said Lease Agreement.

6 **..Body**

7 **CITY COUNCIL OF THE**  
8 **City of Annapolis**

9 **Ordinance 3-22**

10 **Introduced by: Mayor Buckley**

11 **AN ORDINANCE** concerning

12 **New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility Corporation**

13 **FOR** the purpose of approving the lease for certain City-owned property within the City of  
14 Annapolis between New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility Corporation  
15 and the City of Annapolis; and matters generally relating to said Lease Agreement.

16 **WHEREAS,** the City owns, maintains and operates utility poles, street light poles and other  
17 structures and buildings; and

18 **WHEREAS,** New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility Corporation is seeking  
19 permission from the City to use the Structures to support those small-cell antennas  
20 limited in size to no larger than 48 inches tall and 28 inches wide, remote radio  
21 heads, cables, appurtenant power lines and cables, aerial and underground  
22 communications cables, and other appurtenant communications equipment with  
23 each Structure’s specifics provided in a site supplement in a form set forth in  
24 Attachment A attached hereto and incorporated herein for communications  
25 purposes in the area of the City of Annapolis; and

26 **WHEREAS,** the City is willing to lease the structures to New Cingular Wireless PCS, LLC, d/b/a  
27 AT&T Mobility Corporation for the purposes described and in accordance with the  
28 terms and conditions set forth in the Lease Agreement attached hereto and  
29 incorporated herein; and

30 **WHEREAS,** Article III, Section 8 of the Charter of the City of Annapolis requires the passage  
31 of an ordinance to authorize the lease.

32 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY**  
33 **COUNCIL** that the Lease Agreement, a copy of which is attached hereto and made a part hereof,

1 between New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility Corporation and the City of  
2 Annapolis for the lease of certain municipal property, is hereby approved and authorized.

3  
4 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**  
5 **ANNAPOLIS CITY COUNCIL** that in accordance with Article III, Section 8 of the Charter of  
6 the City of Annapolis, the proposed lease of City-owned property will better serve the public need  
7 for which the property was acquired.

8  
9 **SECTION III: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**  
10 **ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its passage.

11  
12  
13 **EXPLANATION**

14 ~~Strikethrough~~ indicates matter stricken from existing law.

15 Underlining indicates matter added to existing law.

1                   **CITY OF ANNAPOLIS SMALL CELLS MASTER LEASE AGREEMENT**

2                   **THIS SMALL CELLS MASTER LEASE AGREEMENT** ("Agreement") is made this \_\_\_\_\_  
3 day of \_\_\_\_\_, 20\_\_, by and between the City of Annapolis, a municipal corporation of  
4 the State of Maryland (the "City"), and New Cingular Wireless PCS, LLC, 1025 Lenox Park Blvd.  
5 NE, 3<sup>rd</sup> Floor, Atlanta, Georgia 30319, a Delaware limited liability company (collectively, the  
6 "Lessee").

7                   **WHEREAS**, the City owns, maintains and operates utility poles, street light poles and  
8 other structures/buildings (each a "Structure" and collectively the "Structures"); and

9                   **WHEREAS**, the Lessee is seeking permission from the City to use the Structures to  
10 support those small-cell antennas limited in size to no larger than 48 inches tall and 28 inches  
11 wide, remote radio heads, cables, appurtenant power lines and cables, aerial and underground  
12 communications cables, and other appurtenant communications equipment (collectively, the  
13 "Facilities"), with each Structure's specifics provided in a site supplement in a form set forth in  
14 Attachment A attached hereto and incorporated herein (each a "Site Supplement"), for  
15 communications purposes in the area of the City of Annapolis; and

16                   **WHEREAS**, the City is willing to give the Lessee permission to use the Structures, and  
17 access the Structure pursuant to the terms and conditions of this Agreement.

18                   **NOW, THEREFORE**, in consideration of these premises and the terms stated below, and  
19 for other good and valuable consideration, the receipt and sufficiency of which the parties  
20 acknowledge, the parties agree as follows:

21                   **1. Contingency.**

22                   a. This Agreement is contingent upon the Lessee submitting detailed engineered  
23 preliminary plans to the City specifying the Lessee's proposed construction and installation of its  
24 Facilities on one or more of the Structures (the "Plans"), in conformance with the Annapolis Small  
25 Cell System Guidelines (the "Guidelines"), attached hereto and incorporated herein as  
26 Attachment B, and the Lessee's proposed use and operation of its Facilities. The Plans for each  
27 Structure shall be finalized and approved by the City, as defined herein, prior to any construction  
28 or installation by the Lessee of the Facilities for that Structure. The City shall approve or reject  
29 such submitted Plans, and grant or deny any other Governmental Approvals (as defined below)  
30 under the control of the City, within sixty (60) calendar days of the City's receipt of those Plans.  
31 In the event of rejection of any Plans or denial of a City Governmental Approval, the City shall  
32 provide a written explanation to the Lessee of the basis for the rejection or denial. The Lessee  
33 shall not modify any of the approved Plans without the City's prior written approval. All approved  
34 Plans shall be physically included as an exhibit to the Site Supplement for each Structure.

35                   b. It is understood and agreed that the Lessee's ability to use the Structures shall be  
36 contingent upon its obtaining after the execution date of this Agreement all of the certificates,  
37 permits and other approvals (collectively the "Governmental Approvals") that may be required by  
38 any Federal, State, Local or City authorities, and as further described in Paragraph 4 of this  
39 Agreement, as well as satisfactory structural analysis that will permit Lessee use of the Structures  
40 as set forth in Paragraph 6 of this Agreement. The City shall reasonably cooperate with the Lessee  
41 in its effort to obtain such Governmental Approvals. In the event that (1) any applications for such  
42 Governmental Approvals should be finally rejected; (2) any Governmental Approval issued to the  
43 Lessee is canceled, expires, lapses, or is otherwise withdrawn or terminated by the applicable  
44 governmental authority; (3) the Lessee determines that such Governmental Approvals may not

1 be obtained in a timely manner; (4) the Lessee determines that any structural analysis is  
2 unsatisfactory; (5) the Lessee determines that the Structure are no longer technically or  
3 structurally compatible for its use; or (6) the Lessee determines that the use of the Structures is  
4 obsolete or unnecessary, the Lessee shall have the right to terminate this Agreement upon sixty  
5 (60) calendar days prior written notice to the City.

6 c. The City shall give the Lessee reasonable access to the Structures and the  
7 properties on which the Structures are located for the purposes of undertaking, at its sole cost  
8 and expense, any necessary tests, studies, surveys and inspections relating to the proposed  
9 construction, installation, use and operation of its Facilities on the Structure.

10 d. If the Lessee determines that it is unable to use the Structure for its Facilities, the  
11 Lessee shall restore any areas of the Structures and any related property altered by reason of  
12 tests, studies, surveys and inspections to their prior condition, and this Agreement shall be void  
13 and shall not go into effect.

## 14 **2. Term.**

15 a. The initial term ("Initial Term") of this Agreement shall commence upon the full  
16 execution of this Agreement (the "Commencement Date"), and shall end on June 30<sup>th</sup>, 2031.

17 b. Provided that the Lessee is not in breach or default of this Agreement beyond any  
18 applicable notice and cure period hereunder, the Lessee shall have the option to renew this  
19 Agreement for up to four (4) additional five (5) year terms (each a "Renewal Term"). Each Renewal  
20 Term shall begin on July 1<sup>st</sup> and end on June 30<sup>th</sup> of the applicable years to coincide with the  
21 City's fiscal year. The Lessee's right to renew shall be deemed requested and exercised  
22 automatically unless the Lessee gives the City written notice of its election not to renew not later  
23 than six (6) months prior to the expiration of the then Initial or Renewal Term. The Initial Term and  
24 all applicable Renewal Terms shall be referred to as the "Term."

25 c. The initial term for each Site Supplement (each a "Site Term") shall commence on  
26 the date of the Site Supplement and shall be for a term of ten (10) years. Each Site Term shall be  
27 automatically extended for three (3) successive five (5) year terms unless either party notifies the  
28 other party in writing of its intent not to renew that Site Term at least thirty (30) calendar days prior  
29 to the expiration of the Site Term, or any extension thereof. Notwithstanding anything herein, after  
30 the expiration or earlier termination of this Agreement, the terms and conditions of a Site  
31 Supplement which was approved during the Term of the Agreement shall survive and remain in  
32 full force and effect until the expiration or earlier termination of such Site Supplement.

## 33 **3. Rent and Rental Escalations.**

34 a. During the Initial Term and any Renewal Term of this Agreement and/or all  
35 applicable Site Terms, the Lessee shall pay to the City a fiscal yearly base rent ("Rent"), due and  
36 payable on July 1<sup>st</sup> of each fiscal year, commencing on the Commencement Date and prorated  
37 for any partial fiscal year. The Rent shall be delivered to the City's Office of Finance at 160 Duke  
38 of Gloucester Street, Annapolis, Maryland 21401 or to such other place as the City may from time  
39 to time determine. Notwithstanding anything herein to the contrary, the parties acknowledge that  
40 Lessee's delivery of the first fiscal year's installment of Rent may not occur until thirty (30)  
41 calendar days after the Commencement Date.

42 b. The Rent shall be in the amount of Two Hundred Seventy Dollars (\$270.00), per  
43 year per Site Supplement.

1 c. The Rent shall be in addition to all other costs and expenses which the Lessee is  
2 required to pay or which the Lessee otherwise pays pursuant to this Agreement.

3 **4. Permits and Approvals.**

4 a. After the full execution of this Agreement and submission of the Plans described  
5 in Paragraph 1(a), Lessee shall promptly file applications for all Governmental Approvals, at its  
6 sole cost and expense, including but not limited to zoning approvals and permits required for the  
7 construction and installation of the Facilities and/or the use of the Structure for which Plans were  
8 submitted to the City.

9 b. After the Lessee has obtained all necessary Governmental Approvals, the Lessee,  
10 at its sole cost and expense, may construct and install the Facilities in accordance with the Plans,  
11 the Guidelines, the Governmental Approvals, and otherwise pursuant to all City laws and  
12 regulations and any other applicable laws and regulations.

13 c. All construction, installation, use and operation of the Facilities shall meet all  
14 applicable rules, regulations and codes of the Federal Communications Commission ("FCC"), the  
15 Federal Aviation Administration ("FAA"), the State of Maryland and the City.

16 d. The Lessee shall comply with all FAA authorizations and its FCC license with  
17 respect to supporting structures and lighting requirements as the same specifically relate to  
18 Lessee's use and installations on the Structures; however, the City acknowledges that it is solely  
19 responsible for ensuring that the Structures comply with all applicable laws and regulations that  
20 are not specifically related to Lessee's use thereof.

21 e. At such time that the City indicates, the Lessee shall contract with a licensed  
22 inspector and/or consultant ("Consultant"), designated by the City for review and prior approval  
23 by the City and the Consultant of the Plans and other permit plans prepared or provided by the  
24 Lessee for all Governmental Approvals, and for inspection of the Facilities, including but not  
25 limited to welding, seams and paint. The Lessee shall be responsible for all reasonable and non-  
26 discriminatory costs and expenses associated with the Consultant, and upon completion of the  
27 Facilities inspection by the Consultant, the Lessee shall comply with all recommendations of the  
28 Consultant within ninety (90) calendar days, weather permitting. The Facilities shall further comply  
29 with all requirements specified in the Guidelines.

30 f. The Lessee shall provide copies of any additional plans necessary to satisfy all  
31 requirements for Governmental Approvals.

32 g. The Lessee shall install and maintain, at its sole cost and expense, any  
33 landscaping set forth in the Plans, as may be modified by any Governmental Approvals.

34 **5. Permission to Use.**

35 a. Upon the City's final approval of the Lessee's Plans, the approval of all necessary  
36 Governmental Approvals, and compliance with all other requirements under Paragraph 4 of this  
37 Agreement, the City shall permit the Lessee to construct and install Facilities on the Structures  
38 for the purposes and under the terms set forth in this Agreement.

39 b. The Lessee accepts the applicable Structures in the condition in which they may  
40 then be, and waives and releases any right or claim against the City arising out of the condition  
41 of the Structure at such time.

1 c. The Lessee's construction and installation of the Facilities shall be included in and  
2 pursuant to the Plans and the Guidelines, and all such Facilities shall be expressly subject to the  
3 City's prior written approval.

4 d. Notwithstanding anything herein to the contrary, Lessee may replace any of its  
5 then existing Facilities with like or similar equipment without City approval, provided that the  
6 replacement Facility does not increase the loading on the Structure, create any substantial or  
7 material interference with any other communication system or equipment owned or operated by  
8 or on behalf of the City or any other governmental agency, or alter or change the previously  
9 approved space utilized on the Structure.

## 10 **6. Use of Structure and Property.**

11 a. The Lessee, at its sole cost and expense, shall be permitted to:

12 1. Access a Structure as is reasonably required to construct, install, operate,  
13 maintain, and repair the Facilities, including those Facilities to be constructed or installed from the  
14 Structure over, across and through the property upon and to the nearest available utility poles or  
15 sources **but only to the extent** described in the Site Supplement the approved Plans attached  
16 thereto. The Lessee shall provide reasonable notice to the City if the Lessee's access will disrupt  
17 use of the surrounding area by the City, or any pedestrians and vehicles on the roadway.

18 2. Use any existing driveway, approach, or access road designated by the  
19 City for ingress and egress to and from the Structure for purposes related to this Agreement, as  
20 applicable.

21 3. Subject to the City's prior written approval and in accordance with the Plans  
22 and the Guidelines, make reasonable and appropriate alterations to the Structure in order to  
23 accomplish the construction, installation, operation maintenance, repair or renovation of the  
24 Facilities.

25 b. The Lessee shall not be permitted to place any sign, advertisement, or other notice  
26 on or about the Structure which identifies the Lessee in any way, except as may be required by  
27 applicable law.

28 c. No materials shall be used in the installation of the Facilities that shall cause  
29 corrosion, rust or deterioration of the Structure or its appurtenances.

30 d. Except as otherwise required by applicable law, all antenna(s) on the Structure  
31 shall be identified by a marking fastened securely to its bracket on the Structure, and all  
32 transmission lines are to be tagged at the conduit opening where it enters any user's equipment  
33 space.

34 e. The Lessee shall perform all work in a good and workmanlike manner, and in such  
35 a manner as to not interfere with any aspect of City property or the operation of the City generally.

36 f. The Lessee shall maintain the Facilities in proper operating condition and maintain  
37 its use of the Structure in a condition satisfactory to the City as to appearance and safety.

38 g. The Lessee's Facilities shall meet the noise ordinances of the City. Upon oral or  
39 written notice from the City that any of the Facilities violate such ordinance, or that otherwise  
40 violate any other law, the Lessee shall take all actions required to correct and reduce the noise to  
41 the satisfaction of the City in order to comply with such ordinance or law. If, within ten (10)

1 business days of receipt of such notification, the Lessee is unable to bring the noise to satisfactory  
2 levels and/or within legal limits, the Lessee shall immediately remove or replace the Facilities or  
3 any part thereof that is causing the noise, or if such is not effective, the City may terminate this  
4 Agreement upon thirty (30) calendar days prior written notice to the Lessee.

5 h. The Lessee, at its own cost and expense, shall be responsible for acquiring all  
6 electrical or other utilities it requires to construct, install, use and operate the Facilities, and shall  
7 ensure that all such utilities are separately metered from the City's utilities. The Lessee shall pay  
8 all charges for all utilities assessed to it directly to the applicable utility provider(s). The Lessee,  
9 at its sole cost and expense, shall be responsible for any expansion or improvement of the utility  
10 services needed for the Facilities, with the prior written approval of and under the supervision of  
11 the City, such approval not to be unreasonably withheld, conditioned or delayed.

12 j. The Lessee, at its sole cost and expense, shall be responsible for any backup  
13 emergency power system it may require for the Facilities, with the prior written approval of and  
14 under the supervision of the City, such approval not to be unreasonably withheld, conditioned or  
15 delayed. The City shall not be liable in damages or otherwise to the Lessee for any failure or  
16 interruption of any utility service being furnished to the Facilities, and no such failure or interruption  
17 shall entitle the Lessee to terminate this Agreement, except to the extent such damages are  
18 caused by the gross negligence or willful misconduct of the City.

19 k. The Lessee shall notify the City immediately upon the receipt of any violations,  
20 notices of interference, and/or other notices from the FCC.

## 21 **7. Temporary Relocation.**

22 a. The Lessee shall be responsible for the removal of the Facilities at any time the  
23 City requests to allow the City to perform maintenance on the Structure. The City shall give the  
24 Lessee at least one hundred eighty (180) calendar days prior written notice of when such  
25 maintenance will begin and when the Facilities need to be removed, except in the case of an  
26 emergency, in which the City shall provide as much notice as is reasonably practical under the  
27 circumstances. The City will assist the Lessee with identifying a relocation location with  
28 substantially similar signal coverage for the Facilities as that of the original Structure and will  
29 expedite the issuance of the approvals necessary to facilitate the relocation of the Facilities. The  
30 City agrees to use reasonable efforts to minimize any requirement for Lessee's removal of its  
31 Facilities during any maintenance work on the Structure.

32 b. If the Lessee wants to install a temporary communications site for the duration of  
33 the maintenance or temporary relocation period, the Lessee shall obtain the City's prior written  
34 approval for its use and location (which approval shall not be unreasonably withheld, conditioned  
35 or delayed), and obtain in advance any permits and Governmental Approvals required for a  
36 temporary communications site. An approved temporary communications site may consist of a  
37 portable cell site with a cellular antenna tower and electronic radio transceiver equipment on a  
38 truck or trailer, or other installation approved by the City. The City reserves the right to deny  
39 approval of a temporary communications site on the Property if the same would unreasonably  
40 impact the City's operations or the maintenance of the Structure.

41 c. Upon the completion of any maintenance, repair or similar work by the City during  
42 any temporary relocation period, the Lessee will be permitted to return to its original location on  
43 the Structure.

44

1 **8. Studies.**

2 At any time during the Initial Term and any Renewal Term of this Lease, the City, in its  
3 sole reasonable discretion, when legitimate concerns arise regarding the Lessee's use, operation  
4 or maintenance of its Facilities at the Structure or on the Property, may require that interference  
5 studies be performed at the Lessee's sole expense with emphasis on potential radio frequency  
6 interference issues related to the Lessee's use and operation of the Facilities on the Structure  
7 and/or the Property. Such studies shall include an assessment of radio frequency interference  
8 with public safety radio communications, particularly transmission and reception, which  
9 assessment may involve Federal, State, Local and/or City government agencies. The Lessee, at  
10 its sole cost and expense, shall resolve any substantiated interference or other feasibility issues  
11 promptly to the City's reasonable satisfaction after a written direction to do so by the City.

12 **9. Assumption of Risk.**

13 The Lessee shall assume any and all risks of every nature, type and description  
14 associated directly or indirectly with its access to or presence upon the Structure and its  
15 construction, installation, use and operation of the Structure, including the access or presence of  
16 its employees, contractors, subcontractors, agents and representatives; provided, however,  
17 Lessee does not assume any risk associated with the negligence or willful misconduct of any City  
18 employee, agent or contractor.

19 **10. Ownership and Removal of Facilities.**

20 a. Throughout the Initial Term and all Renewal Terms of this Agreement, the Lessee  
21 shall own all of the Facilities. The City agrees and acknowledges that all of the Facilities shall  
22 remain the personal property of the Lessee, and the Lessee shall have the right to remove the  
23 Facilities, or any portion thereof, at any time during this Agreement, whether or not said items are  
24 considered fixtures and attachments to real property under applicable laws.

25 b. Upon expiration or termination of this Agreement or a Site Supplement, the Lessee  
26 shall, within one hundred eighty (180) calendar days and at its own cost and expense, dismantle  
27 and remove all of the Facilities from the Structures. Any such Facilities or other property not  
28 removed at the expiration of this Agreement in accordance with the preceding sentence and  
29 Lessee's continued failure to remove the same within thirty (30) calendar days after receipt of  
30 written notice from the City, shall be deemed abandoned and, at the election of the City, shall  
31 become the property of the City without payment of any kind to the Lessee, without increasing  
32 the City's liability to the Lessee, and for any disposition of it as the City decides to make.

33 c. Upon expiration or termination of this Agreement or a Site Supplement, the  
34 Lessee, at its sole cost and expense, shall fully restore any part of the Structures and the  
35 properties that have been damaged, modified or altered by the Lessee to the condition which  
36 existed on the date of the execution of this Agreement, reasonable wear and tear and damage  
37 due to casualty excepted.

38 d. The Lessee shall have no right to retain possession of the Structure, or any part  
39 thereof, beyond the expiration of that removal period set forth in Paragraph 10(b) above.

40 **11. Maintenance and Repair.**

41 a. The Lessee, at its own cost and expense, shall at all times during the Initial Term  
42 and any Renewal Term of this Agreement maintain and repair the Facilities in a proper and safe



1 condition, and shall repair any damage to the Structure and/or the property where the Structure  
2 is located caused by any waste, misuse, actions, omissions, or neglect by the Lessee, its  
3 employees, contractors, subcontractors, agents or representatives.

4 b. The Lessee shall leave no debris, trash or garbage on the Structure or the  
5 associated property during the Initial Term and any Renewal Term of this Agreement.

## 6 **12. Taxes.**

7 a. The Lessee shall be responsible for the payment of any personal property, real  
8 estate taxes (including any increase thereof), assessments, or charges owed in connection with  
9 the Structure, within thirty (30) calendar days of documentation provided by the City, and which  
10 is the result of the Lessee's use of the Structure, and/or the installation, maintenance, and  
11 operation of the Lessee's Facilities or other improvements, and any sales tax imposed on the  
12 Rent (except to the extent that the Lessee is or may become exempt from the payment of sales  
13 tax in the jurisdiction in which the Property is located).

14 b. If Lessee does not make such payment(s) within the applicable time periods and  
15 the City does, the Lessee shall reimburse the City within sixty (60) calendar days of the City's  
16 written request.

## 17 **13. Environmental.**

18 a. At all times during the Initial Term and any Renewal Term of this Agreement, the  
19 Lessee shall not use, generate, handle, store or dispose of any hazardous material in, on, under,  
20 upon or affecting the Structure, in violation of any applicable law or regulation, and shall not permit  
21 others to do so.

22 b. "Hazardous material" means any solid, gaseous or liquid wastes (including  
23 hazardous wastes), regulated substances, pollutants or contaminants or terms of similar import,  
24 as such terms are defined in any applicable environmental law or regulation, and shall include,  
25 without limitation, any petroleum or petroleum products or by-products, flammable explosives,  
26 radioactive materials, asbestos in any form, polychlorinated biphenyls and any other substance  
27 or material which constitutes a threat to health, safety, property or the environment or which has  
28 been or is in the future determined by any governmental entity to be prohibited, limited or  
29 regulated by any applicable environmental law or regulation.

## 30 **14. Interference.**

31 a. The Lessee shall not construct, install, use or operate any of its Facilities on the  
32 Structure which interferes in any manner or to any degree, including through radio frequency  
33 interference, with any communication system or equipment owned or operated by or on behalf of  
34 the City or any other governmental agency.

35 b. In the event of any such interference and upon notification by the City, which shall,  
36 in all instances, be made to the Lessee's emergency contact hotline at [(\_\_\_\_) \_\_\_\_-\_\_\_\_], the  
37 Lessee shall promptly dispatch authorized representatives to inspect and test the Lessee's  
38 Facilities. The City may, but is not required to, perform its own technical evaluation of the  
39 Lessee's Facilities to determine the cause of the interference. If after the Lessee and the City  
40 evaluate the cause of the interference, the City reasonably determines that the Lessee is causing  
41 the interference, then the Lessee shall have twelve (12) hours to cease all operation of its  
42 interfering Facilities and take all corrective actions which the City reasonably requires for

1 interference with a City Structure. The Lessee shall not recommence operations until the  
2 Lessee's Facilities no longer interfere with the communication system or equipment of the City or  
3 other governmental agency and such non-interference is documented to the City's reasonable  
4 satisfaction. If the Lessee fails to do so, the City may take all reasonable actions with respect to  
5 the Facilities to cause the cessation of the interference and the Lessee shall be responsible for  
6 all of the City's costs and expenses, including wages and overtime wages or contractual expenses  
7 for those involved. Under these circumstances of interference, there shall be no abatement of the  
8 Rent for any period when the Lessee is unable to operate its communication systems or  
9 equipment, and the Lessee shall not be entitled to any damages from the City for any period of  
10 time that the Lessee was not able to operate its Facilities, through and including the date on which  
11 it recommences operations, and hereby releases all such claims and actions for damages.

12 c. The Lessee's failure, upon the City notification as set forth in Paragraph 14(b)  
13 above, to immediately cease operation of any communication system or equipment that interferes  
14 with any communication system of the City or other governmental agency shall constitute a  
15 material breach of this Agreement for which the City is authorized, without any liability to Lessee,  
16 to immediately power down Lessee's equipment in order to prevent any further interference.

17 d. In addition to and not in limitation of other obligations set forth in this Paragraph,  
18 the Lessee shall comply with all applicable Federal laws, rules and regulations, whether adopted  
19 before or after the date of this Agreement, the purpose of which is to avoid interference with the  
20 transmission or reception of public safety communication.

21 e. The Lessee acknowledges that this Agreement does not preclude the placement  
22 of other communication systems or equipment on the Structure (other than the Facilities) by the  
23 City or by other licensees or lessees of the City, and that as of the date of the execution of this  
24 Agreement, such other communications systems or equipment may be placed on the Structure.  
25 The Lessee shall cooperate with the City concerning the placement, use and operation of such  
26 other communications systems or equipment not inconsistent with this Agreement, provided that  
27 such communication systems and equipment of others do not interfere with the Lessee's  
28 Facilities. After the placement of any such other communication systems or equipment on the  
29 Structure, the Lessee shall not alter its Facilities, in placement or operation, in a manner that  
30 interferes with such other communication systems or equipment, in placement or operation.

31 f. The City will not, nor will the City permit its employees, authorized agents, or  
32 independent contractors to cause interference with the Lessee's existing Facilities, or the  
33 Lessee's use of any Structure for which there is a Site Supplement. If the Lessee reasonably  
34 determines that interference as described herein is occurring, then the City will meet and confer  
35 with the Lessee within five (5) business days of the City's receipt of notice of interference from  
36 the Lessee, and otherwise diligently work in good faith with the Lessee to determine the root  
37 cause of the interference and to develop workable solutions to resolve the interference in a  
38 mutually acceptable manner.

39 **15. Access.**

40 The Lessee shall have free access on foot or motor vehicle, including trucks, but at  
41 reasonable times and in a reasonable manner to maintain, operate, repair, and replace the  
42 Facilities. Lessee shall provide reasonable notice to City if Lessee's access will disrupt normal  
43 use of the surrounding area by pedestrians and vehicles on the roadway. Access to the Structure  
44 for the purpose of constructing, installing, repairing, maintaining, replacing, using and operating  
45 the Facilities must be in accordance with the Plans, the Guidelines, and this Agreement.

1 **16. Indemnification.**

2 a. The Lessee shall indemnify, defend and hold the City and its elected officials,  
3 appointees, directors and employees harmless, in their official and individual capacities, for  
4 injuries or damages and from all claims, complaints, suits and other actions seeking injuries or  
5 damages, to persons or property, including but not limited to loss of use of the Structure, which  
6 may arise out of: (1) the Lessee's activities at or on the Structure; (2) the construction, installation,  
7 repair, maintenance, replacement, use and operation of its Facilities; (3) the use of the Structure;  
8 and (4) any negligent act or omission by the Lessee, its employees, contractors, subcontractors,  
9 agents or representatives in connection with this Agreement; excepting, however, in all instances,  
10 to the extent any of the aforesaid arise out of the negligent acts or willful misconduct of the City  
11 or its elected officials, appointees, directors and employees.

12 b. The City may assert all immunities to which it and its elected officials, appointees,  
13 directors and employees are entitled in all such claims, complaints, suits and actions, and shall  
14 be entitled to participate in its own defense.

15 c. The Lessee shall reimburse the City, within sixty (60) calendar days after invoicing  
16 for such reimbursement, for any damage to the Structure and associated property caused by the  
17 negligence or willful misconduct of the Lessee, its employees, contractors, subcontractors, agents  
18 or representatives.

19 d. Notwithstanding any provision of this Agreement to the contrary, in no event shall  
20 either party be liable for consequential, incidental, punitive, exemplary or indirect damages  
21 suffered by the other party or by any customer or any purchaser of such party or any other person,  
22 for lost profits or other business interruption damages, whether by virtue of any statute, in tort or  
23 in contract, except that the express indemnification obligations made by the parties in this  
24 Paragraph 16 of this Agreement shall still apply.

25 **17. Insurance.**

26 a. The Lessee, at its sole cost and expense, shall at all times during the Initial Term  
27 and any Renewal Term of this Agreement maintain in effect a Workers' Compensation insurance  
28 policy which covers Lessee and its employees while working at the Structure and the Property.  
29 The Lessee shall provide the City annually with a copy of its Workers' Compensation Certificate  
30 of Compliance.

31 b. The Lessee, at its sole cost and expense, shall at all times during the Initial Term  
32 and any Renewal Term of this Agreement maintain in effect a personal injury and property  
33 damage commercial general liability insurance policy adequate to protect the City against liability  
34 for injury or death to any person or damage to any property caused, in whole or in part, by: (1)  
35 the Lessee's use of the Property, the Structure and its Facilities, (2) the condition of the Structure  
36 and the Property, and (3) any driveway, approach and access road leading to the Structure, with  
37 coverage in an amount of One Million Dollars (\$1,000,000.00) combined single limit each  
38 occurrence and Three Million Dollars (\$3,000,000.00) general aggregate. Such policy shall  
39 include the City and its elected officials, appointees, directors and employees as additional  
40 insureds by endorsement as their interests may appear as respects this Agreement excluding  
41 workers' compensation and employer's liability. Lessee shall provide at least thirty (30) calendar  
42 days advance written notice from either the insurer or the Lessee to the City of cancellation of any  
43 required coverage that is not replaced. A Certificate of Insurance, including the City and its elected  
44 officials, appointees, directors and employees as additional insured as their interest may appear

1 excluding worker's compensation and employer's liability shall be filed with the City Attorney  
2 annually.

3 **18. Sale and Assignment.**

4 a. This Agreement shall not be sold by the Lessee.

5 b. This Agreement shall not be assigned by the Lessee without the City's prior written  
6 consent, except this Agreement may be assigned or transferred by the Lessee without any  
7 approval or consent of the City (but by prior written notice to the City) to Lessee's principal,  
8 affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of  
9 Lessee's assets in the market defined by the FCC in which the Structures are located by reason  
10 of a merger, acquisition or other business reorganization. No change of stock ownership,  
11 partnership interest or control of the Lessee or transfer upon partnership or corporate dissolution  
12 of the Lessee shall constitute an assignment hereunder. No assignment or transfer by the Lessee  
13 shall release the Lessee from its primary liability or obligations under this Agreement.

14 **19. Non-Exclusive.**

15 a. Subject to Paragraphs 14(e) and 19(b) of this Lease, nothing in this Lease shall be  
16 construed to preclude the City from granting permission to any other party, including any other  
17 communications entity, to use the Structure for any purpose, including but limited to use as a  
18 communications system site.

19 b. The City shall incorporate into each agreement related to the Structures into which  
20 it enters with any other party subsequent to this Agreement a covenant ensuring that the rights  
21 allowed by the subsequent agreement shall not interfere with the Lessee's rights pursuant to this  
22 Agreement.

23 **20. Termination.**

24 a. *Termination for Default or Breach.*

25 1. If the Rent or any other payment due from the Lessee pursuant to this  
26 Agreement remains unpaid thirty (30) business days after becoming due and payable, the Lessee  
27 shall be in default of this Agreement and shall pay a late charge upon the unpaid balance equal  
28 to one and one-half percent (1.5%) per month until such unpaid balance is paid in full.

29 2. If the Lessee fails or neglects to perform and comply with any one of the  
30 terms of this Agreement or of any permit or Governmental Approval required pursuant to this  
31 Agreement, and such failure or neglect continues for more than thirty (30) calendar days after  
32 written notice, or such other period as the City may determine in its sole discretion to be  
33 reasonably required to cure with exercise of due diligence, after written notice from the City  
34 specifying the lack of compliance, the Lessee shall be in default of this Agreement and the City,  
35 at its option, may automatically terminate the right to use the specific Structure to which the default  
36 pertains, or in the case of a default pertaining to all Structures, this Agreement, and pursue all  
37 available legal remedies. Notwithstanding the above, no default shall exist if the Lessee has  
38 commenced efforts to cure any failure or neglect within the provided thirty (30) calendar day period  
39 and exercises continued due diligence until their completion.

40 b. *Termination for Other Reasons.* In addition to termination provisions elsewhere in  
41 this Agreement, the right to use a specific Structure may be terminated and be of no further force  
42 and effect as follows:

1           1.       If a Structure is completely destroyed or destroyed to a degree sufficiently  
2 substantial so that the Lessee's operations cannot be restored within one hundred eighty (180)  
3 calendar days, and the Lessee elects to terminate this Agreement by written notice to the City (it  
4 being expressly acknowledged and agreed that the City shall have no obligation, whether or not  
5 the Lessee elects to terminate this Agreement, to rebuild or restore the Structure in any manner  
6 or to any extent for the Lessee's benefit).

7           2.       If the Structure is removed from the City's other system and the City elects  
8 to dismantle the Structure as a result thereof; provided that the City shall provide the Lessee with  
9 not less than twelve (12) months written notice prior to termination.

10          3.       Upon any determination by and in the sole discretion of the City that any  
11 interference pursuant to Paragraph 14 of this Agreement is permanently unresolvable; provided  
12 that Lessee has been provided a reasonable opportunity to demonstrate that either the Lessee's  
13 Facilities are not the cause of such interference or that such interference can be permanently and  
14 completely resolved by modifications to the Lessee's Facilities.

15          4.       If all or any part of the property containing the Structure, or if all or any part  
16 of the parcel or access right-of-way to the Structure is taken by eminent domain or other action  
17 by jurisdictions having the legal right to take said lands, and if said taking in the reasonable opinion  
18 of the Lessee renders the Structure unusable for its intended purpose under this Agreement.

19          c.       In the event that the City determines that: (1) the City requires the use of the  
20 exterior of the Structure and the City's use thereof would be incompatible with Lessee's  
21 maintenance or operation of the Lessee's Facilities, or (2) provided the same is consistent with  
22 applicable laws, the City no longer allows the use of the exterior of the Structure by third parties  
23 such as Lessee, the City may terminate the right to use a specific Structure at any time by  
24 providing prior written notice to the Lessee equal to twenty percent (20%) of the remaining term  
25 of the Agreement, but in no event less than at least six (6) months prior notice; provided, however,  
26 that the City may not exercise such right to terminate this use of such Structure unless it is also  
27 then terminating the leases of any other parties that have communications equipment installed on  
28 the exterior of the Structure.

29          d.       Any termination of this right to use a Structure, whether pursuant to this Paragraph  
30 20 or elsewhere under this Agreement, shall not discharge the Lessee from any obligation it may  
31 have to the City by reason of any transaction, loss, cost, damage, expense or liability which shall  
32 occur or arise (or the circumstances, events or basis of which shall occur or arise) prior to such  
33 termination, whether the same be known or unknown at the time of such termination.

34          e.       All Rent and other payments paid prior to any specified termination date, whether  
35 pursuant to this Paragraph 20 or elsewhere under this Agreement, shall be retained or prorated  
36 by the City, in the City's sole discretion.

37          f.       Nothing in this Paragraph 20 shall be construed to limit any other remedy or  
38 enforcement procedure the City may have as a result of any default or breach of this Agreement.

39 **21. Representations and Warranties.**

40           The Lessee represents and warrants to the City that:

41          a.       The Lessee is a limited liability company organized under the laws of the State of  
42 Delaware, qualified to do business in the State of Maryland, and authorized to conduct the

1 business in which it is engaged and as described in this Agreement.

2 b. The Lessee is authorized to execute, deliver and perform this Agreement.

3 c. The Lessee shall not violate the order of any court or governmental authority or  
4 breach any contract or other agreement by entering into this Agreement.

5 d. There are no actions, suits, or other claims pending against the Lessee or which  
6 might adversely affect the Lessee's right to enter into or perform under this Agreement.

7 e. The representations set forth in this Agreement shall be true and valid throughout  
8 the Initial Term and all Renewal Terms.

9 **22. Access to Records.**

10 a. At any time during normal business hours with reasonable prior notice from the  
11 City, and as often as the City may deem necessary, the Lessee shall make available to and allow  
12 inspection by the City, its employees or agents, of all records, information and documentation of  
13 the Lessee related to annual inspections, as-builts of any work undertaken on a Structure  
14 including replacements of like or similar items, and reports of interference incidents as relates to  
15 or as required by this Agreement ("Records").

16 b. The Lessee shall maintain all Records for a period of at least one (1) year after the  
17 date of termination of this Agreement including any renewals, except in the event of litigation or  
18 settlement of claims arising from the performance of this Agreement, in which case the Lessee  
19 shall do so until one (1) year after final adjudication of such litigation or settlement of claims.

20 **23. Remedies Cumulative and Concurrent.**

21 No remedy provided by this Agreement or reserved to the City is intended to be exclusive  
22 of any other remedies provided for in this Agreement, and each such remedy shall be cumulative,  
23 and shall be in addition to every other remedy given under this Agreement, or now or hereafter  
24 existing at law or in equity or by statute. Every right, power and remedy given to the City shall be  
25 concurrent and may be pursued separately, successively or together against the Lessee, and  
26 every right, power and remedy given to the City may be exercised from time to time as often as  
27 may be deemed expedient by the City.

28 **24. Waiver of Remedies for Breach or Default.**

29 No failure or delay by the City to insist upon the strict performance of any term, condition  
30 or covenant of this Agreement, or to exercise any right, power or remedy consequent upon a  
31 breach or default thereof, shall constitute a waiver of any such term, condition or covenant or of  
32 any such breach or default, or preclude the City from exercising any such right, power or remedy  
33 at any later time or times.

34 **25. Independent Contractor Status.**

35 Nothing contained in this Agreement shall be construed to constitute the Lessee as an  
36 agent, representative or employee of the City, or to create any relationship between the parties  
37 other than leaser and lessee.

38

1 **26. Binding Effect.**

2 The terms of this Agreement shall be binding on and enforceable against the parties and  
3 their respective successors and assigns.

4 **27. Governing Law.**

5 a. In all actions arising from this Agreement, the laws of the State of Maryland, and  
6 where applicable, federal law, shall govern, and the venue for all actions initiated pursuant to this  
7 Agreement shall be exclusively the Courts of Anne Arundel County, Maryland and applicable  
8 federal courts.

9 b. The parties waive jury trial in all actions initiated pursuant to this Agreement.

10 **28. Recitals.**

11 The recitals of this Agreement are incorporated into this Agreement.

12 **29. Severability.**

13 If any of the provisions of this Agreement are declared by a court or other lawful authority  
14 to be unenforceable or invalid for any reason, the remaining provisions hereof shall not be affected  
15 and shall remain enforceable to the full extent permitted by law.

16 **30. Survival.**

17 Those paragraphs in this Agreement which by their nature are intended to survive shall  
18 survive the termination of this Agreement.

19 **31. Amendment or Modification; Order of Precedence.**

20 a. This Agreement sets forth the entire agreement between the parties relative to the  
21 subject matter of this Agreement, the Facilities and the Structure. No representation, promise or  
22 condition, whether oral or written, not incorporated herein shall be binding upon either party to  
23 this Agreement. This Agreement shall not be waived, amended or modified except in writing and  
24 signed by the authorized representative(s) of both parties.

25 b. In the event of a conflict, the order of precedence shall be as follows, listed from  
26 highest precedence to lowest precedence:

- 27  
28 1. Any written amendment;  
29 2. This Agreement;  
30 3. Any attachments to this Agreement; and  
31 4. Any proposal or bid by the Lessee.  
32

33 **32. Counterparts.**

34 This Agreement may be executed in any number of counterparts and by the parties hereto  
35 in separate counterparts, each of which when so executed and delivered shall be deemed to be  
36 an original and all of which taken together shall constitute but one and the same instrument.

37 **33. Notice.**

38 Any notice required to be delivered shall be deemed to have been received when the

1 notice has been sent and received, refused or returned undeliverable, by certified mail, return  
2 receipt, overnight carrier, or hand delivered with signed receipt to the following address and  
3 individual or such other address and/or such other individual as a party may identify in writing to  
4 the other party:

5 To the City: Director, Department of Public Works  
6 145 Gorman Street, 2<sup>nd</sup> Floor  
7 Annapolis, Maryland 21401  
8

9 With a Copy to: City Attorney  
10 160 Duke of Gloucester Street  
11 Annapolis, Maryland 21401  
12

13 To the Lessee: New Cingular Wireless PCS, LLC  
14 Attn: Tower Asset Group – Lease Administration  
15 Re: Wireless Installation on Structures  
16 (Annapolis, Maryland)  
17 FA No.: \_\_\_\_\_  
18 1025 Lenox Park Blvd NE, 3<sup>rd</sup> Floor  
19 Atlanta, GA 30319  
20

21 With a Copy to: New Cingular Wireless PCS, LLC  
22 Attn: AT&T Legal Dept. - Network Operations  
23 Re: Wireless Installation on Structures  
24 (Annapolis, Maryland)  
25 FA No: \_\_\_\_\_  
26 208 S. Akard Street  
27 Dallas, TX 75202-4206  
28

29 **34. Legislation.**

30 This Agreement has been authorized according to the requirements of the Annapolis City  
31 Charter by Ordinance O-3-22.

32 **35. Force Majeure**

33 Time periods for performance under this Agreement shall be deemed extended day for  
34 day for time lost attributable to any delay resulting from any act of God, strike, civil riot, fire, flood,  
35 material or labor shortage, restriction by governmental authority, and any other cause not within  
36 the reasonable control of the party whose performance is required under the Agreement.

37 **36. Change of Law**

38 In the event that any legislative, regulatory, judicial, or other action (“New Law”) affects  
39 the rights or obligations of the parties, or establishes rates, terms or conditions for the  
40 construction, operation, maintenance, repair or replacement of Facilities on public infrastructure  
41 or in the right-of-way, that differ, in any material respect from the terms of this Agreement, then  
42 either party may, upon thirty (30) calendar days’ written notice, require that the terms of this  
43 Agreement be renegotiated to conform to the New Law on a going forward basis for all existing  
44 and new Facilities installations, unless the New Law requires retroactive application. In the event  
45 that the parties are unable to agree upon such new terms within ninety (90) calendar days after  
46 such notice, then any rates contained in the New Law shall apply from the 90th calendar day



1 forward until the negotiations are completed or a party obtains a ruling regarding the appropriate  
2 conforming terms from a commission or court of competent jurisdiction. Except as provided in  
3 the proceeding, all terms in the existing Agreement shall remain in effect while the parties are  
4 negotiating.

5 **IN WITNESS WHEREOF**, it is the intent of the parties that the Lessee has signed this  
6 Agreement under seal and, further, that the parties have executed this Agreement the day and  
7 year first written above.

8 WITNESS: NEW CINGULAR WIRELESS PCS, LLC

9

10 By: AT&T Mobility Corporation

11 Its: Manager

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ATTEST:

CITY OF ANNAPOLIS

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

Gavin Buckley, Mayor (Seal)

Regina C. Watkins-Eldridge, MMC,  
City Clerk

APPROVED FOR SUFFICIENT APPROPRIATIONS  
AND AVAILABILITY OF FUNDS:

\_\_\_\_\_  
Joanna D. Dickinson, Director  
Finance Department  
Source of Funds: \_\_\_\_\_

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Office of Law  
D. Michael Lyles, City Attorney

**ATTACHMENT A  
FORM OF SITE SUPPLEMENT**

This is Site Supplement, is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between CITY OF ANNAPOLIS, MARYLAND, a municipal corporation of the State of Maryland (the "City") and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company (the "Lessee").

1. License Agreement for Facilities on Structures. This Site Supplement as referenced in that certain Lease Agreement for Facilities On Structures, between the City and the Lessee dated \_\_\_\_\_, 20\_\_\_\_ ("Agreement"). The Licensee has submitted Plans pursuant to the Agreement for the Leased Site (as defined below), and the City has reviewed those Plans and the City hereby grants its approval of those Plans, this Site Supplement, and the Leased Site, subject to the terms of this Site Supplement. All of the terms and conditions of the Agreement are incorporated hereby by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction or inconsistency between the terms of the Agreement and this Site Supplement, the terms of this Site Supplement shall govern. Capitalized terms used in this Site Supplement shall have the same meaning ascribed to them in the Agreement unless otherwise indicated herein.

2. Project Description and Locations. The Lessee shall have the right to install and attach Facilities on, under, and above the public right-of-way owned or controlled by City, on, in and adjacent to the specific Structure as identified and described in Exhibit A attached hereto (collectively the "Leased Site"), and in accordance with the approved Plans included as part of Exhibit A.

3. Term. The Site Term of this Site Supplement shall be as set forth in Paragraph 2 of the Agreement.

4. Fee. The Fee shall be in the amount and otherwise payable in accordance with the Agreement as set forth in Paragraph 3 of the Agreement.

5. Special Provisions, If Any (Specific to the Licensed Site).

[SIGNATURES APPEAR ON FOLLOWING PAGE]

1           **IN WITNESS WHEREOF**, the parties hereto have caused this Site Supplement to be duly  
2 executed as of the Effective Date.

3  
4           ATTEST:

CITY OF ANNAPOLIS

5  
6  
7 \_\_\_\_\_  
8 Regina C. Watkins-Eldridge, MMC,  
9 City Clerk

By: \_\_\_\_\_  
Gavin Buckley, Mayor           (Seal)

10  
11           APPROVED FOR SUFFICIENT APPROPRIATIONS  
12 AND AVAILABILITY OF FUNDS:

13  
14 \_\_\_\_\_  
15 Joanna D. Dickinson, Director  
16 Finance Department  
17 Source of Funds: \_\_\_\_\_

18  
19           APPROVED FOR FORM AND LEGAL SUFFICIENCY:

20  
21 \_\_\_\_\_  
22 Office of Law  
23 D. Michael Lyles, City Attorney

24  
25  
26  
27           LESSEE:                           NEW CINGULAR WIRELESS PCS, LLC,  
28 a Delaware Limited Liability Company

29  
30   By: AT&T Mobility Corporation  
31   Its: Manager

32  
33   By: \_\_\_\_\_  
34   Print Name: \_\_\_\_\_  
35   Title: \_\_\_\_\_  
36   Date: \_\_\_\_\_

**EXHIBITS A**  
**Leased Site, Facility Equipment List and Plans**

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Lessee Facility Reference: [LESSEE TO COMPLETE]  
FA / USID:  
Site Name: CRAN\_POLYGON NAME\_NODE #  
PTN / PACE:  
Structure pole number: [CITY TO COMPLETE]  
Structure Latitude and Longitude (Approximate): [LESSEE TO COMPLETE]  
Facility Equipment List: [LESSEE TO COMPLETE]  
Facility Plans: See the attached plan set dated \_\_\_\_\_ 20\_\_ prepared by \_\_\_\_\_  
consisting of (\_\_\_\_) page(s).

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**ATTACHMENT B  
GUIDELINES**