

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
4 corporation of the State of Maryland (the "City"), and New Cingular Wireless PCS, LLC, 1025
5 Lenox Park Blvd. NE, 3rd Floor, Atlanta, Georgia 30319, a Delaware limited liability company
6 (collectively, the "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,
19 and 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
25 Small 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
28 construction or installation by the Lessee of the Facilities for that Structure. The City shall
29 approve or reject such submitted Plans, and grant or deny any other Governmental Approvals
30 (as defined below) under the control of the City, within sixty (60) calendar days of the City’s
31 receipt of those Plans. In the event of rejection of any Plans or denial of a City Governmental
32 Approval, the City shall provide a written explanation to the Lessee of the basis for the rejection
33 or denial. The Lessee shall not modify any of the approved Plans without the City’s prior written
34 approval. All approved Plans shall be physically included as an exhibit to the Site Supplement
35 for each Structure.

36 b. It is understood and agreed that the Lessee's ability to use the Structures shall
37 be contingent upon its obtaining after the execution date of this Agreement all of the certificates,
38 permits and other approvals (collectively the "Governmental Approvals") that may be required
39 by any Federal, State, Local or City authorities, and as further described in Paragraph 4 of this
40 Agreement, as well as satisfactory structural analysis that will permit Lessee use of the
41 Structures as set forth in Paragraph 6 of this Agreement. The City shall reasonably cooperate
42 with the Lessee in its effort to obtain such Governmental Approvals. In the event that (1) any

1 applications for such Governmental Approvals should be finally rejected; (2) any Governmental
2 Approval issued to the Lessee is canceled, expires, lapses, or is otherwise withdrawn or
3 terminated by the applicable governmental authority; (3) the Lessee determines that such
4 Governmental Approvals may not be obtained in a timely manner; (4) the Lessee determines
5 that any structural analysis is unsatisfactory; (5) the Lessee determines that the Structure are no
6 longer technically or structurally compatible for its use; or (6) the Lessee determines that the
7 use of the Structures is obsolete or unnecessary, the Lessee shall have the right to terminate
8 this Agreement upon sixty (60) calendar days prior written notice to the City.

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

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

17 **2. Term.**

18 a. The initial term ("Initial Term") of this Agreement shall commence upon the full
19 execution of this Agreement (the "Commencement Date"), and shall end on June 30th, 2031.

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

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

37 **3. Rent and Rental Escalations.**

38 a. During the Initial Term and any Renewal Term of this Agreement and/or all
39 applicable Site Terms, the Lessee shall pay to the City a fiscal yearly base rent ("Rent"), due
40 and payable on July 1st of each fiscal year, commencing on the Commencement Date and
41 prorated for any partial fiscal year. The Rent shall be delivered to the City's Office of Finance at
42 160 Duke of Gloucester Street, Annapolis, Maryland 21401 or to such other place as the City

1 may from time to time determine. Notwithstanding anything herein to the contrary, the parties
2 acknowledge that Lessee's delivery of the first fiscal year's installment of Rent may not occur
3 until thirty (30) calendar days after the Commencement Date.

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

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

8 **4. Permits and Approvals.**

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

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

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

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

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

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

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

1 **5. Permission to Use.**

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

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

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

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

18 **6. Use of Structure and Property.**

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

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

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

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

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

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

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

5 e. Prior to installation of any Facilities, the Lessee shall notify the City of any
6 existing cables so that the City can contact the responsible party to remove any excess and/or
7 unnecessary cabling. The Lessee shall perform all work in a good and workmanlike manner,
8 and in such a manner as to not interfere with any aspect of City property or the operation of the
9 City generally.

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

13 g. The Lessee's Facilities shall meet the noise ordinances of the City. Upon oral or
14 written notice from the City that any of the Facilities violate such ordinance, or that otherwise
15 violate any other law, the Lessee shall take all actions required to correct and reduce the noise
16 to the satisfaction of the City in order to comply with such ordinance or law. If, within ten (10)
17 business days of receipt of such notification, the Lessee is unable to bring the noise to
18 satisfactory levels and/or within legal limits, the Lessee shall immediately remove or replace the
19 Facilities or any part thereof that is causing the noise, or if such is not effective, the City may
20 terminate this Agreement upon thirty (30) calendar days prior written notice to the Lessee.

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

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

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

37 **7. Temporary Relocation.**

38 a. The Lessee shall be responsible for the removal of the Facilities at any time the
39 City requests to allow the City to perform maintenance on the Structure. The City shall give the
40 Lessee at least one hundred eighty (180) calendar days prior written notice of when such
41 maintenance will begin and when the Facilities need to be removed, except in the case of an
42 emergency, in which the City shall provide as much notice as is reasonably practical under the

1 circumstances. The City will assist the Lessee with identifying a relocation location with
2 substantially similar signal coverage for the Facilities as that of the original Structure and will
3 expedite the issuance of the approvals necessary to facilitate the relocation of the Facilities. The
4 City agrees to use reasonable efforts to minimize any requirement for Lessee's removal of its
5 Facilities during any maintenance work on the Structure.

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

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

18 **8. Studies.**

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

30 **9. Assumption of Risk.**

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

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

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

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

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

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

17 **11. Maintenance and Repair.**

18 a. The Lessee, at its own cost and expense, shall at all times during the Initial Term
19 and any Renewal Term of this Agreement maintain and repair the Facilities in a proper and safe
20 condition, and shall repair any damage to the Structure and/or the property where the Structure
21 is located caused by any waste, misuse, actions, omissions, or neglect by the Lessee, its
22 employees, contractors, subcontractors, agents or representatives.

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

25 **12. Taxes.**

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

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

36 **13. Environmental.**

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

1 b. “Hazardous material” means any solid, gaseous or liquid wastes (including
2 hazardous wastes), regulated substances, pollutants or contaminants or terms of similar import,
3 as such terms are defined in any applicable environmental law or regulation, and shall include,
4 without limitation, any petroleum or petroleum products or by-products, flammable explosives,
5 radioactive materials, asbestos in any form, polychlorinated biphenyls and any other substance
6 or material which constitutes a threat to health, safety, property or the environment or which has
7 been or is in the future determined by any governmental entity to be prohibited, limited or
8 regulated by any applicable environmental law or regulation.

9 **14. Interference.**

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

14 b. In the event of any such interference and upon notification by the City, which
15 shall, in all instances, be made to the Lessee’s emergency contact hotline at [(____) ____-____],
16 the Lessee shall promptly dispatch authorized representatives to inspect and test the Lessee’s
17 Facilities. The City may, but is not required to, perform its own technical evaluation of the
18 Lessee’s Facilities to determine the cause of the interference. If after the Lessee and the City
19 evaluate the cause of the interference, the City reasonably determines that the Lessee is
20 causing the interference, then the Lessee shall have twelve (12) hours to cease all operation of
21 its interfering Facilities and take all corrective actions which the City reasonably requires for
22 interference with a City Structure. The Lessee shall not recommence operations until the
23 Lessee’s Facilities no longer interfere with the communication system or equipment of the City
24 or other governmental agency and such non-interference is documented to the City’s
25 reasonable satisfaction. If the Lessee fails to do so, the City may take all reasonable actions
26 with respect to the Facilities to cause the cessation of the interference and the Lessee shall be
27 responsible for all of the City’s costs and expenses, including wages and overtime wages or
28 contractual expenses for those involved. Under these circumstances of interference, there shall
29 be no abatement of the Rent for any period when the Lessee is unable to operate its
30 communication systems or equipment, and the Lessee shall not be entitled to any damages
31 from the City for any period of time that the Lessee was not able to operate its Facilities, through
32 and including the date on which it recommences operations, and hereby releases all such
33 claims and actions for damages.

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

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

1 e. The Lessee acknowledges that this Agreement does not preclude the placement
2 of other communication systems or equipment on the Structure (other than the Facilities) by the
3 City or by other licensees or lessees of the City, and that as of the date of the execution of this
4 Agreement, such other communications systems or equipment may be placed on the Structure.
5 The Lessee shall cooperate with the City concerning the placement, use and operation of such
6 other communications systems or equipment not inconsistent with this Agreement, provided that
7 such communication systems and equipment of others do not interfere with the Lessee's
8 Facilities. After the placement of any such other communication systems or equipment on the
9 Structure, the Lessee shall not alter its Facilities, in placement or operation, in a manner that
10 interferes with such other communication systems or equipment, in placement or operation.

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

19 **15. Access.**

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

27 **16. Indemnification.**

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

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

41 c. The Lessee shall reimburse the City, within sixty (60) calendar days after
42 invoicing for such reimbursement, for any damage to the Structure and associated property

1 caused by the negligence or willful misconduct of the Lessee, its employees, contractors,
2 subcontractors, agents or representatives.

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

9 **17. Insurance.**

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

15 b. The Lessee, at its sole cost and expense, shall at all times during the Initial Term
16 and any Renewal Term of this Agreement maintain in effect a personal injury and property
17 damage commercial general liability insurance policy adequate to protect the City against
18 liability for injury or death to any person or damage to any property caused, in whole or in part,
19 by: (1) the Lessee's use of the Property, the Structure and its Facilities, (2) the condition of the
20 Structure and the Property, and (3) any driveway, approach and access road leading to the
21 Structure, with coverage in an amount of One Million Dollars (\$1,000,000.00) combined single
22 limit each occurrence and Three Million Dollars (\$3,000,000.00) general aggregate. Such policy
23 shall include the City and its elected officials, appointees, directors and employees as additional
24 insureds by endorsement as their interests may appear as respects this Agreement excluding
25 workers' compensation and employer's liability. Lessee shall provide at least thirty (30) calendar
26 days advance written notice from either the insurer or the Lessee to the City of cancellation of
27 any required coverage that is not replaced. A Certificate of Insurance, including the City and its
28 elected officials, appointees, directors and employees as additional insured as their interest may
29 appear excluding worker's compensation and employer's liability shall be filed with the City
30 Attorney annually.

31 **18. Sale and Assignment.**

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

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

1 **19. Non-Exclusive.**

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

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

10 **20. Termination.**

11 a. *Termination for Default or Breach.*

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

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

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

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

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

40 3. Upon any determination by and in the sole discretion of the City that any
41 interference pursuant to Paragraph 14 of this Agreement is permanently unresolvable; provided

1 that Lessee has been provided a reasonable opportunity to demonstrate that either the Lessee's
2 Facilities are not the cause of such interference or that such interference can be permanently
3 and completely resolved by modifications to the Lessee's Facilities.

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

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

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

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

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

31 **21. Representations and Warranties.**

32 The Lessee represents and warrants to the City that:

33 a. The Lessee is a limited liability company organized under the laws of the State of
34 Delaware, qualified to do business in the State of Maryland, and authorized to conduct the
35 business in which it is engaged and as described in this Agreement.

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

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

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

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

3 **22. Access to Records.**

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

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

15 **23. Remedies Cumulative and Concurrent.**

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

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

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

29 **25. Independent Contractor Status.**

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

33 **26. Binding Effect.**

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

36 **27. Governing Law.**

37 a. In all actions arising from this Agreement, the laws of the State of Maryland, and
38 where applicable, federal law, shall govern, and the venue for all actions initiated pursuant to

1 this Agreement shall be exclusively the Courts of Anne Arundel County, Maryland and
2 applicable federal courts.

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

4 **28. Recitals.**

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

6 **29. Severability.**

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

10 **30. Survival.**

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

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

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

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

- 21
- 22 1. Any written amendment;
 - 23 2. This Agreement;
 - 24 3. Any attachments to this Agreement; and
 - 25 4. Any proposal or bid by the Lessee.
- 26

27 **32. Counterparts.**

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

32 **33. Notice.**

33 Any notice required to be delivered shall be deemed to have been received when the
34 notice has been sent and received, refused or returned undeliverable, by certified mail, return
35 receipt, overnight carrier, or hand delivered with signed receipt to the following address and
36 individual or such other address and/or such other individual as a party may identify in writing to
37 the other party:

38

1 To the City: Director, Department of Public Works
2 145 Gorman Street, 2nd Floor
3 Annapolis, Maryland 21401
4
5 With a Copy to: City Attorney
6 160 Duke of Gloucester Street
7 Annapolis, Maryland 21401
8
9 To the Lessee: New Cingular Wireless PCS, LLC
10 Attn: Tower Asset Group – Lease Administration
11 Re: Wireless Installation on Structures
12 (Annapolis, Maryland)
13 FA No.: _____
14 1025 Lenox Park Blvd NE, 3rd Floor
15 Atlanta, GA 30319
16
17 With a Copy to: New Cingular Wireless PCS, LLC
18 Attn: AT&T Legal Dept. - Network Operations
19 Re: Wireless Installation on Structures
20 (Annapolis, Maryland)
21 FA No.: _____
22 208 S. Akard Street
23 Dallas, TX 75202-4206
24

25 **34. Legislation.**

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

28 **35. Force Majeure**

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

33 **36. Change of Law**

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

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1 parties are negotiating.

2

**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]

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).

**ATTACHMENT B
GUIDELINES**

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