

RENEWAL RIGHT-OF-WAY USE AGREEMENT FOR TELECOMMUNICATIONS FACILITIES

This Renewal Right-of-Way Use Agreement for Telecommunications Facilities (“Agreement”) is entered into this ____ day of ____, 2025, between the City of Mercer Island, a Washington municipal corporation (“Grantor” or “City”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, successor in interest to AT&T Wireless Services of Washington, LLC, (“Grantee”), (each a “Party” and together the “Parties”).

RECITALS

WHEREAS, Grantor and Grantee are parties to that certain Telecommunications Site Lease Agreement dated August 25, 2003 originally by and between Grantor and AT&T Wireless Services of Washington, LLC, an Oregon limited liability company, d/b/a AT&T Wireless, by AT&T Wireless Services, Inc., a Delaware corporation, its member (“2003 Agreement”); and

WHEREAS, the City of Mercer Island has authority pursuant to RCW 35.99.030 to enter into agreements to permit telecommunications providers to enter, use and occupy the right-of-way for the purpose of locating telecommunications facilities; and

WHEREAS, Grantor and Grantee desire to enter into a renewal agreement to permit Grantee to continue to occupy the Site, subject to updated terms and conditions as provided below.

NOW THEREFORE, effective upon the Commencement Date, this Agreement will replace all of the terms and conditions of the 2003 Agreement with the terms and conditions set forth herein. For and in consideration of the mutual covenants contained herein, the parties hereby agree as follows:

AGREEMENT

1. **Premises.** Grantor is the owner of rights-of-way (the “Site”) located in the City of Mercer Island, County of King, State of Washington, located on the east side of Island Crest Way west of 87th Avenue SE and south of SE 46th Street, Mercer Island, Washington. The Site is more particularly described by its legal description and depiction as **Exhibit A** attached hereto and incorporated herein by reference. Grantor hereby grants to Grantee for the term of this Agreement a portion of the air and approximately two hundred (200) square feet of the Site and all access and utility easements, if any, (the “Premises”) as described in **Exhibit B** attached hereto and incorporated herein by reference.

2. **Use.**

(a) The Premises may only be used by Grantee, its subtenants, and licensees, for constructing, operating, repairing, replacing, and maintaining Facilities, as defined below in Section 5, subject to the provisions herein. Grantee shall keep the Premises and the Facilities in good repair and

condition, and shall promptly repair or maintain such, including removal of debris as needed, in the event of damage, vandalism, etc.

(b) All improvements, equipment, antennas, and conduits shall be at Grantee's expense. It is understood and agreed that Grantee's ability to use the Premises is contingent upon its obtaining all of the certificates, permits, and any other approvals (collectively the "Governmental Approvals") that may be required by any federal, state, or local authorities. Grantor agrees to cooperate with Grantee, at Grantee's sole expense, in making application for and obtaining all licenses, permits, and any and all other necessary approvals that may be required for Grantee's intended use of the Premises. The City's Chief of Operations is authorized to execute necessary landlord approval affidavits and other consents on behalf of Grantor necessary for Grantee's applications for such Governmental Approvals without the necessity for additional City Council approval.

(c) Grantee shall conduct and carry on in the Premises only the business for which the Premises authorized by this Agreement, and shall not use the Premises for any additional and/or illegal purposes.

(d) Grantee is authorized to install all necessary supporting improvements, subject to Grantee obtaining required Governmental Approvals, including necessary permits from the City. No additional use of ground space outside of the Premises shall be permitted without first having received prior authorization from the City through an amendment to this Agreement, including additional consideration (rental payments) to Grantor.

(e) Rights Granted. Nothing contained within this Agreement shall infringe upon the City's right to use the Site upon which Grantee's equipment and improvements are installed, provided that such use does not unreasonably interfere with Grantee's use of the Premises. Further, nothing contained herein shall convey any right, title, or interest in the Site. This Agreement merely authorizes Grantee to use and occupy the Premises for the limited purposes stated herein. Finally, this Agreement shall not be deemed to constitute any warranty of title—Grantee takes the Premises on an "as is" basis, with all faults. Grantee waives all claims against Grantor in respect to defects in the Premises or the Property and its structures and appurtenances, and their suitability for any particular purpose, as they exist on the Commencement Date.

(f) Access for construction, routine maintenance and/or repair, and other non-emergency visits shall only be during business hours (Monday through Friday, 7:00 a.m. through 7:00 p.m.). Access shall be by foot or motor vehicle.

3. **Term**

(a) The term of this Agreement shall be five (5) years commencing on August 25, 2023 ("Commencement Date") and terminating on the fifth (5th) anniversary of the Commencement Date (the "Term") unless otherwise terminated as provided in paragraph 10. Grantee shall have

the right to extend the term for four (4) successive five (5) year periods (collectively the “Renewal Terms” and each a “Renewal Term”) on the same terms and conditions as set forth herein. This Agreement shall automatically be extended for each successive Renewal Term, except as otherwise provided herein.

4. **Rent.**

(a) Within 30 days of the Commencement Date, Grantee shall pay to Grantor as rent Twelve Thousand, Five Hundred Dollars (\$12,500.00) per year (Rent”) without notice or request from Grantor. Rent for the first year shall be paid within 30 days of the Commencement Date. Rent for subsequent years shall subsequently be due on or before the annual anniversary of the mutual execution of this Agreement. Rent shall be payable to Grantor at such places may be designated by Grantor from time to time.

(b) Rent shall be increased on each anniversary of the Commencement Date by an amount equal to three percent (3%) of the Rent payable during the previous year.

(c) Within ninety (90) days of the Commencement Date, Grantee shall pay Grantor a one-time payment of Eight Thousand One Hundred Thirty-one and Fifty-six Hundredths Dollars (\$8,131.56) (“One-time Payment”) for reimbursement of the City's administrative, legal, and appraisal fees incurred in the review and preparation of this Agreement. This One-Time Payment shall not be refundable.

(d) Grantee acknowledges that late payment by Grantee of Rent or other sums due under this Agreement shall cause City to incur costs not contemplated by this Agreement, the exact amount of which would be extremely difficult and impractical to ascertain. Therefore, in the event Grantee shall fail to pay any installment of Rent or other sums due within twenty (20) business days of the due date, the City will issue to Grantee a written notice of such failure to pay, accompanied by an invoice applying a late charge equal to fifteen percent (15%) of the sum due. Further, all delinquent sums payable by Grantee to City and not paid within ten (10) business days after their due date shall bear interest at the rate of twelve percent (12%) per annum, or the highest rate of interest allowable by law, whichever is less. Interest on all delinquent accounts shall be calculated from the expiration of the ten (10) business day cure period set forth above to the date of payment. A fifty-dollar (\$50.00) charge will be paid by Grantee to the City for each check returned “NSF” or otherwise rejected by the City’s depositing institution for insufficient funds.

5. **Facilities; Utilities; Access.**

(a) Grantee has the right to erect, maintain, and operate on the Premises: antennas to be collocated on a single PSE wooden pole and an underground equipment cabinet covering no more than a one hundred thirty-one (131) square foot area (“Facilities”) as shown on the attached Exhibit B. All equipment shall be located within this 131 square foot area, as more particularly described in Exhibit B. In connection therewith, Grantee has the right to do all work necessary to prepare

and maintain the Premises for Grantee's business operations and to install communication and utility lines connecting the antenna(s) to the transmitters and receivers. Grantee's Facilities shall be erected and maintained at the expense of Grantee at its sole risk and expense. All of Grantee's construction and installation work shall be performed at Grantee's sole cost and expense and in a good and workmanlike manner. Title to Grantee's Facilities shall be held by Grantee. All of Grantee's Facilities shall remain the personal property of Grantee and are not fixtures. Grantee has the right to remove all of Grantee's Facilities at its sole expense on or before the expiration or termination of this Agreement, subject to the terms of paragraph 10, Removal.

(b) Grantee shall pay for the electricity, and any other utilities it consumes in its operations at the rate charged by the servicing utility company. Grantee shall have the right to draw electricity and other utilities from any utility company that will provide service to the premises (including a standby power generator for Grantee's exclusive use). Grantor agrees to sign such documents or easements as may be reasonably required by said utility companies to provide such service to the premises, including the grant to Grantee or to the servicing utility company, of a license or easement in, over across, or through the site is required by such servicing utility company to provide utility services as provided herein. However, the location of any such utility easement on the subject property shall require the City's written approval and consent. Such approval by the City should not be unreasonably withheld, delayed, or conditioned.

(c) Grantee shall have at all times the right of ingress and egress to and from the Premises, over and across the City's property adjacent to the Premises, as delineated in Exhibit B; provided however, that such right will not in any manner materially interfere with the City's use of the Site, and this right of ingress and egress shall terminate concurrently with the termination of this Agreement. "Materially interfere" and "material interference" are defined as any use that prevents vehicular, pedestrian, or bicycle traffic, circulation, and/or parking, and/or pedestrian access or circulation, and/or any right-of-way work by City or other crews (paving, road striping, etc.). Except as specified in paragraph 17, Emergency Work, below, Grantee shall give advance notice to the City prior to entry upon the Premises. For major maintenance or repair activities, ten (10) days' advance notice shall be provided by telephone to the Chief of Operations, publicworks@mercerisland.gov and (206) 275-7608. For minor maintenance or repair, at least 24 hours advance notice shall be provided by telephoning the Chief of Operations during normal business hours at (206) 275-7608. The City shall, upon request of Grantee, provide a list of emergency telephone numbers known to the City of any other tenants at the Site. As used herein, "major" maintenance or repair activities means a significant structural alteration or addition to the pole (including but not limited to the adding of height to the pole) or other alteration or addition resulting in a significant change in the Facilities (such as, by way of example, a material change in the color of any of the Facilities). Notwithstanding the language above, nothing in this Agreement absolves Grantee from obtaining all permits or other approvals required under the Mercer Island City Code.

(d) Grantee shall maintain all landscaping installed or required to be installed due to Grantee's use of the Premises. Grantee shall not have the right to remove or damage any trees or vegetation

at the Site without advance approval by the City. Further, Grantee shall work with the City to eliminate the possibility of or minimize damage to surrounding trees and/or vegetation when engaging in any privileges afforded by this Agreement. At least thirty (30) days prior to performing any work under this Agreement that may result in the disturbance to any trees on Site or disturbing or taking place within the drip line of any trees on Site, Grantee shall provide to Grantor a tree protection plan for Grantor's review and approval prior to the commencement of any such work. The tree protection plan shall be prepared by a certified arborist and include, at minimum, the following elements: a description of the proposed work, a description of the area such work will be performed in, a listing of all equipment to be used in such work, and how soil compaction and/or damage to tree roots, trunk and canopy will be avoided, minimized, and/or mitigated. Such tree protection plan shall be submitted to the City's Public Works Department. Further, the provisions of the Mercer Island City Code, including Chapter 19.10, Trees, or as hereafter amended or recodified, is hereby incorporated by reference.

6. **Interference.** Grantee shall operate Grantee's Facilities in a manner that will not cause interference to Grantor and other Grantees or licensees of the Site, provided that their installations predate that of the Grantee's Facilities. With respect to Grantees or licensees of Grantor whose operations commence after installation of the Facilities, Grantee shall not make any change in its operations that causes or is intended to cause material interference with such Grantees or licensees. All operations by Grantee shall be in compliance with all Federal Communications Commission ("FCC") and Federal Aviation Administration ("FAA") requirements; provided, however, that Grantor and Grantee shall cooperate with all other users to identify the causes of and work towards resolution of any electronic or radio frequency interference problem. In addition, Grantee agrees, at Grantee's own cost and expense, to eliminate any radio or television interference caused by Grantee's facilities to City facilities or surrounding residences that pre-date the Facilities, without impairing the function of City equipment. If any collocation by Grantor or Grantor's other Grantees or licensees results in interference with Grantee's operations, Grantor agrees to take reasonable steps to encourage the interfering party to eliminate such interference. In the event that the interference is not eliminated within thirty (30) days of notice to Grantor by Grantee, Grantee may terminate this Agreement upon thirty (30) days' prior written notice to Grantor.

7. **Taxes**

(a) Prior to locating the Grantee's Facilities on the Premises, Grantee shall obtain a business license endorsement from the City as may be required. Further, Grantee shall pay promptly, and before they become delinquent, all taxes on all merchandise, personal property, and improvements owned or placed by Grantee on the Premises; shall pay all license fees and public utility charges related to the conduct of Grantee's business on the Premises; shall pay for all permits, licenses, and zoning approvals relating to the conduct of business on the Premises by Grantee, and shall pay any other tax including utility taxes and business license fees billed to Grantee by the City.

(b) In addition to the Rent, Grantee shall pay annually in advance to the City the then-current applicable leasehold excise tax unless Grantee is centrally assessed by the state of Washington and

provides advanced documentation of its central assessment prior to execution of this Agreement. If Grantee is centrally assessed by the state of Washington and Grantee provides evidence of its central assessment to the City prior to execution of this Agreement, then for any and all periods that Grantee reports the property is “operating property” as defined in RCW 84.12.200, Grantee will not be required to pay leasehold excise tax to the City. Should the City collect from Grantee and pay to the Department of Revenue leasehold excise tax which is subsequently determined to be a duplicate payment or overpayment of the tax by Grantee, Grantee shall not have any claim against the City, but shall look directly to the Department of Revenue for reimbursement. City shall reasonably cooperate, at no expense or liability to City, to the extent the Department of Revenue requires any information or action from City to resolve Grantee’s claim for reimbursement.

8. Termination

(a) In the event that (i) any Governmental Approval issued to Grantee is cancelled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; or (ii) Grantee determines that the Premises is no longer compatible for its use, Grantee shall have the right to terminate this Agreement. Grantee shall provide Grantor written notice at least sixty (60) days prior to such termination. All rentals paid to said termination date shall be retained by Grantor. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties, and indemnities made by each Party to the other hereunder and as otherwise described in Paragraph 21(n), Survival, below. In the event that Grantee terminates this Agreement for reasons listed in (ii) above, Grantee shall pay an immediate termination fee equal to one (1) years’ Rent at the then-current rental amount. Otherwise, Grantee shall have no further obligations for the payment of Rent to Grantor.

(b) In addition to any other remedies available to it at law or in equity, a non-breaching Party may terminate this Agreement upon thirty (30) days’ written notice following a determination of a material breach which the other Party fails to cure within thirty (30) days after written notice by the non-breaching Party, or, if the failure cannot reasonably be remedied in such time, if the breaching Party does not commence a remedy within the allotted thirty (30) days and diligently pursues the cure to completion within ninety (90) days after the initial written notice.

(c) Following the Commencement Date, Grantor may terminate this Agreement immediately in the event of an emergency, or within thirty (30) days’ notice for reasons involving public health, safety, or welfare not constituting an emergency. In the event of any termination under this paragraph occurring in the first ten (10) years following the Commencement Date, Grantor shall reimburse previously prepaid Rent for the remainder of the then-current year on a pro rata basis, beginning as of the date that Grantee fully completes removal of its Facilities pursuant to Section 9, below.

(d) If Grantee's tenancy remains after the termination of this Agreement, the occupancy of the Premises after the termination shall be that of a tenancy at sufferance. Grantee's occupancy of the Premises during the holdover shall be subject to all the terms and provisions of this Agreement and Grantee shall pay an amount (on a per month basis without reduction for partial months during the holdover) equal to one hundred fifty percent (150%) of the then-annual Rent divided by twelve ("Holdover Rent"). Such Holdover Rent shall be payable in advance on or before the first (1st) day of each month. No holdover by Grantee or payment by Grantee after the termination of this Agreement shall be construed to extend the Term or shall be construed to waive any applicable terms of the Agreement or prevent Grantor from immediate recovery of possession of the Premises by summary proceedings or otherwise. In addition to the payment of the amounts provided above, if Grantor is unable to deliver possession of the Premises to a new tenant, or perform improvements for a new tenant as a result of Grantee's holdover, Grantee shall be liable to Grantor for all damages. Nothing herein shall be construed as Grantor's consent to such holding over.

9. Facilities Removal.

(a) Upon termination of this Agreement, Grantee shall remove its Facilities, and all other personal property and restore the Premises to its original condition or better, reasonable wear and tear excepted. Grantor agrees and acknowledges that all of the equipment, conduits, and all other personal property of Grantee shall remain the personal property of Grantee, who shall have the right to remove the same at any time during the Term. If such time for removal causes Grantee to remain on the Premises after termination of this Agreement, Grantee shall pay Rent consistent with the requirements of Paragraph 8(e) above, until such time as the removal of the personal property is completed. If Grantee maintains Facilities on the Premises longer than one hundred twenty (120) days after the termination of this Agreement, Grantor may, at its sole option, remove Grantee's personal property and dispose of Grantee's equipment at Grantee's sole cost and expense.

(b) Grantee shall remove all Facilities to a depth of three (3) feet below grade unless the City and Grantee mutually agree, in each party's discretion, that any such improvements shall remain on the Site, in which event Grantee shall transfer, bequest, or devise its interest in the improvements to the City. Restoration of the Premises shall be to a condition that is equivalent to or better than the condition of the Premises prior to the installation, operation, or maintenance of the Facilities and to a condition satisfactory to Grantor.

10. Destruction or Condemnation. If the Premises or Grantee's Facilities are substantially damaged or destroyed by a third-party or event outside of Grantee's control, or condemned or transferred in lieu of condemnation, Grantee may elect to terminate this Agreement as of the date of the damage, destruction, condemnation, or transfer in lieu of condemnation by giving notice to Grantor no more than thirty (30) days following the date of such substantial damage, destruction, condemnation, or transfer in lieu of condemnation. If Grantee chooses not to terminate this Agreement, Rent shall continue to be due to the City without reduction or proration. In any condemnation proceeding, each Party shall be entitled to make a claim against the condemning authority for just compensation. Sale of all or part of the Premises to a purchaser with the power

of eminent domain in the face of exercise of its power of eminent domain, shall be treated as a taking by a condemning authority.

11. **Insurance.**

(a) Grantee shall procure and maintain for so long as Grantee in any way occupies the Premises, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the acts or omissions of Grantee. Grantee shall require that every subcontractor maintain insurance commensurate with their scope of work. Grantee shall procure insurance from insurers with a current A.M. Best rating of not less than A:VII. Grantee shall provide a copy of a certificate of insurance and blanket additional insured endorsement to the Grantor for its inspection at the time of acceptance of this Agreement, and such insurance certificate shall evidence a policy of insurance that includes:

- i. Commercial General Liability insurance with limits not less than \$5,000,000 per occurrence for bodily injury and damage or destruction to property and \$10,000,000 general aggregate.
- ii. Commercial Auto Liability insurance on all owned, non-owned, and hired automobiles with a combined single limit of not less than two million (\$2,000,000) each accident.
- iii. Workers Compensation insurance, applicable to work performed in Washington State, providing the statutory benefits and Employers Liability with a limit of \$1,000,000 each accident/disease/policy limit.
- iv. Umbrella liability policy with limits of \$5,000,000 per occurrence and in the aggregate.
- v. Contractors Pollution Liability insurance covering losses caused by pollution conditions that arise from the operations of the Contractor. Contractors Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000. Contractors Pollution Liability shall cover bodily injury, property damage, cleanup costs and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. If the Contractors Pollution Liability insurance is written on a claims-made basis, the Grantee warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Agreement; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time this Agreement expires or is terminated. The City shall be named by endorsement as an additional insured on the Contractors Pollution Liability insurance policy.

(b) Payment of deductibles or self-insured retention shall be the sole responsibility of the Grantee. Grantee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section. Grantee's umbrella liability policy shall provide

“follow form” or at least as broad as required coverage over its required commercial general liability, automobile liability, and workers compensation/employer’s liability insurance policies.

(c) The required insurance policies, with the exception of Workers’ Compensation and Employer’s Liability obtained by Grantee shall include the Grantor, its officers, officials, employees, agents, and volunteers (“Additional Insureds”), as an additional insured with coverage at least as broad as Additional Insured Managers or Lessees of Premises ISO form CG 20 11 or equivalent. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer’s liability. Grantee shall provide to the Grantor upon mutual execution of this Agreement, a certificate of insurance and blanket additional insured endorsement. Receipt by the Grantor of any certificate showing less coverage than required under this Agreement is not a waiver of Grantee’s obligations to fulfill the requirements under this Section. Grantee’s required general and auto liability insurance shall be primary insurance with respect to the Grantor. Any insurance, self-insurance, or insurance pool covered maintained by the Grantor shall be in excess of Grantee’s required insurance and shall not contribute with it.

(d) Upon receipt of notice from its insurer(s), Grantee shall provide the Grantor with thirty (30) days’ prior written notice of cancellation of any insurance policy except for non-payment of premium, required pursuant to this Section 11. Grantee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 11. Failure to maintain insurance policies meeting the requirements of this Section 11 shall be a material breach of this Agreement.

(e) Grantee’s maintenance of insurance as required by this Section 11 shall not be construed to limit the liability of Grantee to only the coverage provided by such insurance, or otherwise limit the Grantor’s recourse to any remedy available at law or equity. Further, Grantee’s maintenance of insurance policies required by this Agreement shall not be construed to excuse unfaithful performance under this Agreement by Grantee.

(f) Grantor may review all insurance limits once every calendar year during the duration of this Agreement and may make reasonable adjustments in the limits upon thirty (30) days’ prior written notice to Grantee. Grantee shall then issue a certificate of insurance to the Grantor showing compliance with these adjustments.

12. Indemnification.

(a) Grantee releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, volunteers, and representatives from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person, or damage to property caused by or arising out of any acts or omissions of Grantee, its agents,

servants, officers, or employees in relation to this Agreement and any rights granted within this Agreement, except to the extent attributable to the sole negligence or intentional misconduct of Grantor, its officers, officials, employees, agents, or contractors. These indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Grantee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

(b) Inspection or acceptance by the City of any work performed by Grantee shall not be grounds for avoidance by Grantee of any of its obligations under this Section 12, Indemnification.

(c) To the extent the provisions of RCW 4.24.115 are applicable, the Parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein. It is further specifically and expressly understood that the indemnification provided constitutes Grantee's waiver of immunity under Title 51 RCW. This waiver has been mutually negotiated by the Parties.

(d) Notwithstanding any other provisions of this Section 12, Indemnification, Grantee assumes the risk of damage to its Facilities located upon the Premises from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any negligence, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, volunteers, elected or appointed officials, or contractors. In no event shall either Party be liable to the other Party for any indirect, incidental, special, consequential, exemplary, or punitive damages, including by way of example and not limitation: lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with its performance or failure to perform under this Agreement. Each Party releases and waives any and all such claims against the other Party, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

(e) The provisions of this Section 12, Indemnification, shall survive the expiration, revocation, or termination of this Agreement.

13. **Assignment**. Grantee may not assign, nor otherwise transfer, all or any part of its interest in this Agreement or in the Premises without the prior written consent of Grantor; provided, however, that Grantee may assign its interest to its parent company, any subsidiary, or affiliate, or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets, subject to any financing entity's interest, if any, in this Agreement. Grantor may assign this Agreement upon written notice to Grantee, subject to the assignee assuming all of Grantor's obligations herein. Notwithstanding anything to the contrary contained in this Agreement, Grantee may assign, mortgage, pledge, hypothecate, or otherwise transfer without consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Grantee: (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes, or similar instruments, or (iii) has obligations under or with

respect to letters of credit, bankers acceptances, and similar facilities or in respect of guaranties thereof.

14. **Sublease.** Grantee shall not have the right to sublet or license all or any portion of Grantee's Facilities and the Premises, together with access and utilities thereto, without Grantor's prior written consent which shall not be unreasonably withheld, conditioned, or delayed. Any subtenant shall comply with the terms and conditions of this Agreement pertaining to the subtenant's usage of the Premises, including but not limited to, sections 11 (Insurance) and 12 (Indemnification).

15. **Repairs.** Grantee shall not be required to make any repairs to the Premises or Site unless such repairs shall be necessitated by reason of the act, default, or neglect of Grantee.

16. **Hazardous Substances.**

(a) Grantee agrees that it will not, and will not permit any third party to use, generate, store, release, or dispose of any Hazardous Material (as defined below) in, on, under, about, or within the Premises in violation of any law or regulation. Grantor represents and agrees that Grantor will not, and will not permit any third party to use, generate, store, release, or dispose of any Hazardous Material in, on, under, about, or within the Site (including the soil, surface water, and groundwater thereunder) except in compliance with any applicable law or regulation.

(b) Grantee shall defend, indemnify, protect, and hold harmless Grantor and its employees, partners, affiliates, agents, contractors, directors, successors, representatives, and assigns from any against any and all losses, liabilities, damages, penalties, fines, claims, and/or costs (including reasonable attorneys' and consultants' fees and costs) of every type and nature arising out of or in connection with the generation, storage, release, or disposal of any Hazardous Materials by Grantee in, on under, about, or within the Premises in violation of any laws or regulations, except to the extent caused by Grantor or its employees, partners, affiliates, agents, contractors, directors, successors, representatives, or assigns in violation of applicable law.

(c) Grantee and its partners, affiliates, agents, and employees, contractors, directors, successors, representatives, or assigns shall store and handle all equipment and materials in a safe, careful, and workmanlike manner while on the Site. Grantee shall promptly remove from the Site and remediate in compliance with the law any discharge, leak emission, or release of Hazardous Materials from Grantee's activities, improvements, or other Grantee equipment. All costs and expenses associated in any way with a discharge, leak, emission, or release of Hazardous Material from Grantee's activities, other improvements, or other Grantee equipment shall be at the sole cost and expense of Grantee.

(d) As used herein, the term "Hazardous Material" means:

- i. Any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder;

- ii. Any “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder; and
- iii. Any “hazardous substance” as defined by Washington’s Model Toxics Control Act, Chapter 70.105D RCW, as amended from time to time, and regulations promulgated thereunder; and
- iv. Any substances, material, waste, or emission that has been found to be “hazardous,” “toxic,” “radioactive,” a “pollutant,” or a “contaminant” under applicable law relating to the regulation of pollution or protection of human health and the environment.

(e) The indemnifications of the Grantor and the Grantee in this Section shall survive the expiration or termination of this Agreement.

17. **Emergency Work.** In the event of any emergency in which any of Grantee’s Facilities in or on the Premises breaks, are damaged, or if Grantee’s construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety or any individual, Grantee shall immediately take the proper emergency measures to repair its Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals without having to first apply for any obtain permit or other authorizations as required by this Agreement. However, Grantee shall notify the Grantor of the need for such emergency work immediately upon learning of the emergency and further, Grantee shall obtain any Governmental Approvals necessary for this purpose after the emergency work within two (2) business days of commencing such work.

18. **Dangerous Conditions, Authority for Grantor to Abate.** Whenever construction, installation, or excavation of the Facilities authorized by this Agreement has caused or contributed to a condition that appears to substantially impair the lateral support of the Site, adjoining public way, street, or public place, or endangers the public, street utilities, or City-owned property, the Chief of Operations may direct Grantee, at Grantee’s own expense, to take action to protect the Site, public, adjacent public places, City-owned property, utilities, and public ways. Such action may include compliance within a reasonable prescribed time.

(a) In the event that Grantee fails or refuses to promptly take the actions directed by the Grantor or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the Grantor may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, public ways, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and Grantee shall be liable to the Grantor for the costs thereof. When acting under this subsection, the City will take such necessary actions accompanied by a representative of the Grantee; however, notwithstanding the above, the City shall have no obligation to take actions accompanied by a representative of Grantee in the event of emergency conditions requiring emergency action. The provisions of this Paragraph shall survive the expiration, revocation, or termination by other means of this Agreement.

19. **Security Bond.** Upon execution of this Agreement, Grantee shall post a corporate performance bond in the amount of \$30,0000 (“Security Bond”), in a form reasonably acceptable to the City Attorney, to guarantee the full and complete performance of the requirements of this Agreement and to guarantee payment of any costs, expenses, damages, or losses the City pays or incurs, including civil penalties, because of any failure caused by the Grantee to comply with the requirement of this Agreement or any Governmental Approvals. Before any sums are withdrawn from the Security Bond, the City shall give written notice to Grantee (1) describing the default or failure to be remedied, or the damages, cost, or expenses that the City has incurred by reason of Grantee’s act or default; (2) providing a reasonable opportunity for Grantee to first remedy the existing or ongoing default or failure, if applicable; and (3) that Grantee will be given an opportunity to review the act, default, or failure described in the notice with the Chief of Operations or their designee. If a dispute arises under this provision, the Security Bond may not be used to pay the City’s attorneys’ fees unless and until the City is determined to be the prevailing party.

20. **Reimbursement of City Expenses.** Where the Grantor incurs costs and/or expenses for review, inspection, or supervision of activities taken through the authority granted in this Agreement or any ordinances relating to the subject for which a permit fee is not established, Grantee shall reimburse the Grantor directly for all incurred costs after receiving an invoice documenting such costs and expenses. Grantee shall reimburse Grantor for any and all actually incurred costs the Grantor incurs in response to any emergency regarding or related to Grantee’s facilities within thirty (30) days of City’s provision of receipts/invoice for such actually incurred costs to Grantor.

21. **Vacation.** If at any time the Grantor, by ordinance, vacates all or any portion of the Premises, the Grantor will not be liable for any damages or loss to the Grantee by reason of such vacation. The Grantor shall notify Franchisee in writing not less than sixty (60) days before vacating all or any portion of the Premises. The Grantor may, after thirty sixty (60) days written notice to Grantee, terminate this Agreement with respect to any such vacated area.

22. **Right-of-Way Maintenance/Construction.** Grantee acknowledges that the Premises and the Site are within public rights-of-way. Grantee understands and agrees that it shall fully cooperate with any traffic control plans associated with work performed in and/or adjacent to the Premises.

23. **Utility Locates.** Grantee shall, before commencing any construction on the Site, comply with all regulations of Chapter 19.122 RCW, the one call locator service.

24. **Miscellaneous.**

- (a) **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement and understanding between the Parties, and supersedes all offers, negotiations, and other agreements, written or otherwise, concerning the subject matter contained herein. Any amendments to this Agreement must be in writing and executed by both Parties.

- (b) **Severability.** If a court of competent jurisdiction holds this Agreement to be illegal, invalid, or otherwise unenforceable, in whole or in part, the remaining terms, covenants, and provisions, shall remain in full force in effect to the fullest extent possible and will in no way be impaired, affected, or invalidated.
- (c) **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective Parties.
- (d) **Notices.** Any notice or demand required to be given herein shall be made by (i) certified or registered mail, return receipt requested, or (ii) reliable overnight courier to the address of the respective parties set forth below:

Grantor: City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040
Attn: City Manager, Chief of Operations, City Attorney

Grantee:

For Notices or Demands Required By This Agreement:

To Grantee's Lease Administration Department by e-mail at NoticeIntake@att.com; and to Grantee's Law Department at:

New Cingular Wireless PCS, LLC
Attn.: Legal Dept – Network Operations
Re: Cell Site SD82 (WA)
Fixed Asset #: 10097866
208 S. Akard Street
Dallas, TX 75202-4206

All Other Notices: To Grantee's Lease Administration Department by e-mail at NoticeIntake@att.com with the FA# (10097866), Cell Site # (SD82), and Cell Site Name (Midmercer) in the e-mail subject line.

Grantee and Grantor may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt.

(e) **Applicable Law/Venue.** This Agreement shall be governed by the laws of the State of Washington. The venue and jurisdiction over any dispute related to this Agreement shall be with the King County Superior Court.

(f) **Compliance with all Applicable Laws.** Grantee agrees to comply with all laws, ordinances, rules, and regulations of the public authorities with jurisdiction in performing any and all work upon the Facility.

(g) **Non-Release of Obligations Upon Termination.** No termination, forfeiture, or cancellation of this Agreement shall release Grantee from any liability or obligation with respect to any matter occurring prior to such termination, default, or cancellation, nor shall termination, default, or cancellation release Grantee from its obligation and liability as described in Paragraph 9, Removal, herein to remove its Facilities and restore the Premises to its original condition or better.

(h) **Exhibits Incorporated.** All riders and exhibits annexed hereto form material parts of this Agreement.

(i) **Counterparts.** This Agreement may be executed in duplicate counterparts, each of which shall be deemed to be an original.

(j) **Nonwaiver.** The Failure of Grantor to insist upon strict performance of any of the covenants or agreements within this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenant, agreement, or option, or any other covenant agreement or option.

(k) **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

(l) **Attorneys' Fees.** If a suit or other action is instituted in connection with any controversy arising out of this Agreement, the prevailing party ("Prevailing Party") shall be entitled to recover its costs and expenses including attorneys' fees, in such sum as set by the Court, including fees upon appeal of any judgment or ruling.

(m) **Survival.** The following paragraphs shall survive termination or expiration of this Agreement: 8(e), Termination, 9, Facilities Removal, 12, Indemnification, 16, Hazardous Materials, 17, Emergency Work, 18, Dangerous Conditions, Authority for Grantor to Abate, 21, Applicable Law/Venue. Further, any provisions of this Agreement that require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

IN WITNESS THEREOF, the Parties have executed this Agreement as of the date first above written.

GRANTEE

NEW CINGULAR WIRELESS PCS, LLC

GRANTOR

CITY OF MERCER ISLAND

a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

Andrea Larson, City Clerk

APPROVED AS TO FORM:

Bio Park, City Attorney

Exhibit A- Legal Description

Being a portion of public right of way on the east side of Island Crest Way, west of 87th Ave SE and south of SE 46th Street, within the Plat of Allview Heights Add. To Seattle as recorded in Volume 16, Pg. 20 in the Southwest quarter of Section 18, Township 24 North, Range 5 East, W.M., described as follows:

An area, approximately 200 square feet, adjacent to and running parallel with the western most property line of King County Parcel 0191100485, addressed as 4603 87th Avenue SE, Mercer Island, King County, Washington.

Exhibit B – Description of Premises

The location of the Premises within the Site is more particularly depicted in the drawings that follow:

