

# **Attachment 3**

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AGREEMENT NO.

353-06

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PUBLIC WORKS DEPARTMENT  
**PERMIT TO INSTALL  
WIRELESS TELECOMMUNICATIONS ANTENNAS  
ON LIGHT STANDARDS/POLES  
AND VAULTS FOR SUPPORTING EQUIPMENT**

THIS PERMIT TO INSTALL WIRELESS TELECOMMUNICATIONS ANTENNAS ON LIGHT STANDARD/POLES AND VAULTS FOR SUPPORTING EQUIPMENT (this "Agreement") is made as of September 19, 2006, by and between the CITY OF BEVERLY HILLS, a California municipal corporation ("City"), and NEW CINGULAR WIRELESS PCS, LLC, A DELAWARE LIMITED LIABILITY COMPANY ("CINGULAR").

1. PERMIT. City hereby grants, pursuant to provisions of Title 8, Chapter 3 of City's Municipal Code (the "**Municipal Code**"), a nonexclusive and revocable (pursuant to the terms and conditions set forth herein) encroachment permit (the "**Permit**") to CINGULAR to (a) construct, install, operate, maintain, upgrade, repair and/or replace wireless telecommunications antennas (individually, an "**Antenna**," and, collectively, the "**Antennas**") on the light standards and/or poles in the City of Beverly Hills, County of Los Angeles, State of California, within the public right-of-way at the following location: 403 South Peck Drive, Beverly Hills, CA, as set forth on Exhibit A attached hereto (individually, a "**Light Standard**,"); (b) construct, install, operate, maintain, upgrade, repair and/or replace a vault for the placement of such telecommunications equipment as is reasonably necessary for the operation of each Antenna (individually, a "**Vault**,"); (c) install, operate, maintain, upgrade, repair and/or replace such utility wires, cables, conduits and pipes from the Vaults to the Antennas as are reasonably necessary for the operation of each Antenna (the "**Wires**"); and (d) access the Light Standard and the Vaults over such portions of the public right-of-way adjacent thereto as are reasonably necessary therefore (the "**Adjacent Property**"). Pursuant to the provisions of Municipal Code Sections 8-3.05 and 8-3.07, the Permit is granted in consideration of the fees, and subject to the covenants and conditions, set forth herein, and, by its acceptance of this Permit, Cingular agrees to comply therewith.

2. PERMIT AREAS. Exhibit A attached hereto depicts: (a) the Light Standard; (b) the portion of the Light Standard where an Antenna may be located thereon (the "**Antenna Area**"); (c) the portion of the Light Standard where the Wires may be located thereon (the "**Wire Areas**"); (d) the location in the vicinity of each Light Standard where a Vault may be located (the "**Vault Areas**"); and (e) the location of the Adjacent Property applicable to each Light Standard and Vault (the "**Access Areas**"). The Antenna Area, the Wire Areas, the Vault Areas and the Access Areas shall be collectively referred to herein as the "**Permit Areas**." Except as specifically stated in this Agreement, City makes no warranties or representations regarding the condition of the Permit Areas.

3. RELOCATION OF PERMIT AREAS. City shall have the right to relocate the Permit Areas to alternate locations in accordance with the following: (a) City shall only have the right to do so once during the "Initial Term" and each "Extended Term" (as those terms are defined below), as applicable; (b) the alternate locations shall permit Cingular to make substantially the same use

thereof as Cingular made of the existing Permit Areas as permitted by this Agreement; (c) the relocation shall be accomplished at the sole cost and expense of City; (d) City shall provide Cingular with at least one hundred eighty (180) days notice thereof; (e) the "Permit Fee" (as defined below) shall be fully abated for any time during the relocation process that Cingular is not able to conduct its business as otherwise contemplated by this Agreement; (f) Cingular shall be allowed if necessary to place a shall amend this Agreement to identify the alternate locations of the Permit Areas.

4. REPLACEMENT LIGHT STANDARD. Cingular shall, at its sole cost and expense, obtain and install replacement light standards and/or poles for the Light Standard identified, and in accordance with the specifications (including appropriate base size) approved, by City's Civil Engineering Department (individually, a "**Replacement Light Standard**"). City's Inspector shall determine the actual location for the Replacement Light Standard at the time of its installation. Upon acceptance of the Replacement Light Standard by City, ownership thereof shall be transferred to City and the same shall constitute a Light Standard.

5. AS-BUILT PICTURES. Upon completion of Cingular's initial improvements in the Permit Areas, Cingular shall, at its sole cost and expense, provide City with photographs showing the actual location of the Antennas in the Antenna Areas, the Wires in the Wire Areas and the Vaults in the Vault Areas, and copies of such photographs shall, once reviewed and reasonably approved by City, supplement Exhibit A for purposes of depicting the Permit Areas visible to the general public.

6. TERM. Pursuant to the provisions of Municipal Code Section 8-3.10(b), the Permit shall be irrevocable by City for five (5) years (the "**Initial Term**") from the date that City accepts the Replacement Light Standard, **or such earlier date as Cingular commences its initial improvements** (other than obtaining and installing the Replacement Light Standard as provided in Section 4) in the Permit Areas (the "**Commencement Date**"); provided, however, that if Cingular has not commenced construction, for whatever reason, on or before January 15, 2007, then the Permit may be revoked by City by giving notice thereof to Cingular at any time before the Commencement Date. Furthermore, the Permit shall automatically remain irrevocable by City for three (3) separate and successive five (5) year periods (individually, an "**Extended Term**," ) if (a) Cingular has not elected to allow the Initial Term or the first or second Extended Term, as applicable, to expire, and (b) Cingular is not in default hereunder on the last day of the Initial Term or the first or second Extended Term, as applicable. From and after the first (1st) day following the expiration of the third Extended Term (or the Initial Term or the first or second Extended Term, as applicable, if Cingular has elected to allow the same to expire, the Permit shall be revocable by City for any reason whatsoever by providing Cingular with thirty (30) days notice thereof.

7. TERMINATION BY CINGULAR. This Agreement may be terminated by Cingular, in its entirety or with respect to the Light Standard, without cause on an at-will basis, without further liability (except pursuant to those provisions of this Agreement that expressly provide that they survive such termination), and upon at least thirty (30) days notice; provided, however, that if Cingular so exercises its right to terminate this Agreement at-will and without cause (e.g., not in connection with a default by City hereunder, damage to or destruction, taking, appropriation or relocation of the Permit Areas), then City shall not be obligated to prorate the Permit Fee paid in advance for the applicable Light Standard for the year in which Cingular exercises such right.

→ Jan 2008

8. RESTORATION. Upon the revocation of the Permit and/or the termination of this Agreement, Cingular shall promptly restore the Permit Areas to the same condition as existed on the Commencement Date, reasonable wear and tear excepted, including the removal of all improvements/equipment constructed or installed in, on or about the Permit Areas by, or on behalf of, Cingular (and Cingular shall also be responsible for repairing any damage to the Permit Areas and the property thereon (including the Light Standard caused by such removal); provided, however, that if Cingular fails to do so, City shall have the rights provided pursuant to the provisions of Municipal Code Section 8-3.11, including the right, but not the obligation, to restore the Permit Areas and require Cingular to pay the cost thereof within thirty (30) days of notice thereof from City.

9. PERMIT FEE. Cingular shall pay, without deduction (except as expressly provided in Section 29), setoff, prior notice or demand, an annual fee to City for the Permit, in advance, within thirty (30) days after the Commencement Date and thereafter on the first (1st) day of each calendar year (the "Permit Fee"). The Permit Fee shall begin to accrue on the Commencement Date and shall be prorated for any partial year. The amount of the Permit Fee for the first year after the Commencement Date shall be Two Thousand Five Hundred Ninety-Four Dollars (\$2,594.00) per Light Standard. Beginning on the first anniversary of the Commencement Date, and every anniversary thereafter (each, a "CPI Adjustment Date"), the amount of the Permit Fee shall be increased at the same proportion as the increase, if any, in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the U.S. Department of Labor, Los Angeles-Orange County-Riverside Metropolitan Area, All Items (1982-84 = 100), during the twelve (12) month period from the fourteenth (14th) month prior to the CPI Adjustment Date to the second (2nd) month prior to the CPI Adjustment Date. If the government discontinues such index, then the most nearly comparable cost of living index shall be substituted therefore. Cingular shall pay the Permit Fee to the order of "Office of the Cashier of the City of Beverly Hills" at 455 North Rexford Drive, Beverly Hills, California 90210, or at such other address, or to such other persons, as City may from time to time designate.

10. LATE PAYMENT. A late payment charge of ten percent (10%) of the Permit Fee or any other amount required to be paid by Cingular to City hereunder, shall be paid by Cingular to City if such payment is not received by City on or before the tenth (10th) day after Cingular receives notice from City that it did not receive such payment on the due date. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs City will incur by reason of such late payment. Acceptance of the late charge by City shall not constitute a waiver of Cingular's default with respect to the late payment itself, nor prevent City from exercising any of its other rights and remedies hereunder, at law, in equity or otherwise.

11. USE. Cingular agrees to use the Permit Areas only for the purpose of accessing, constructing, installing, operating, maintaining, upgrading, repairing and/or replacing wireless telecommunications antenna facilities, initially to consist of the Antennas, the Wires and the Vaults and such other equipment, cables and/or conduits as may be appropriate for Cingular's business use of the Permit Areas, and for no other use. Notwithstanding the foregoing, Cingular shall not do or permit anything to be done in, on or about the Permit Areas, nor bring or keep anything in, on or about the Permit Areas, that will in any way increase the existing rate of, or otherwise affect (including cancellation), any fire or other insurance upon the Permit Areas or any property located thereon. In addition, Cingular shall not cause, maintain or permit any nuisance in, on or about the

Permit Areas, nor shall Cingular commit, or allow to be committed, any waste in, on or about the Permit Areas.

12. INTERFERENCE. Cingular shall not do or permit anything to be done in, on or about the Permit Areas that will materially obstruct or measurably interfere with other equipment (whether owned by City or a third-party) located in, on or about the Permit Areas as of the date hereof (the "Existing Equipment"); provided, however, that:

12.1. Continuing Uses. City shall provide Cingular with a list of the owners of the Existing Equipment to allow Cingular to evaluate the potential for obstruction or interference, and such owners shall continue to operate the Existing Equipment in substantially the same manner (including operating within the same radio frequencies) as the Existing Equipment is being used on the date hereof and in compliance with all applicable governmental permits, laws, ordinances and regulations.

12.2. Grant Restrictions. City shall not grant a lease, license, permit or any other right to a third party to use the Permit Areas if such use may materially obstruct or measurably interfere with Cingular's use of the Permit Areas as permitted hereunder. Furthermore, City shall notify Cingular prior to granting a lease, license, permit or any other right to a third party to use the Permit Areas in a manner that will not adversely obstruct or measurably interfere with Cingular's use of the Permit Areas as permitted hereunder.

12.3. Cingular Use. Nothing contained herein shall restrict Cingular's right to upgrade or otherwise modify its equipment in, on or about the Permit Areas as permitted hereunder to the extent that the same does not materially obstruct or measurably interfere with the Existing Equipment.

12.4. City Use. City shall not use any portion of the Permit Areas in any way that materially obstructs or measurably interferes with Cingular's use of the Permit Areas as permitted hereunder, and City shall cause any such obstruction or interference to cease within twenty-four (24) hours after receipt of notice thereof from Cingular. In the event any such obstruction or interference does not cease within such twenty-four (24) hour cure period then the parties acknowledge that Cingular will suffer irreparable injury. Therefore, Cingular shall have the right, in addition to any other rights or remedies that it may have at law or in equity for a breach of this Agreement by City, to elect to enjoin such interference or terminate this Agreement.

13. RESERVATIONS. City, for itself, reserves such rights with respect to the Permit Areas as City deems necessary or desirable, including the right to access, construct, install, operate, maintain, upgrade, repair and/or replace utilities, services, pipes and conduits in, on and about the Permit Areas so long as the same do not interfere with the permitted use of the Permit Areas by Cingular.

14. RIGHT OF ACCESS. City, and its employees, representatives and agents, shall have the right to enter the Permit Areas at all times for any purpose, except that City shall not enter the Permit Areas for the purpose of inspecting Cingular's improvements/equipment thereon (including the Antennas, the Wires and the Vaults) without providing Cingular with at least forty-eight (48)

hours notice thereof (except that such notice shall not be required in the event of an emergency). Without limiting the foregoing, City shall attempt to minimize the inconvenience, interruption or disturbance to Cingular's use of the Permit Areas as permitted by this Agreement that may be caused by any such entry; provided, however, that City shall not be liable in any manner for, or damage caused by, any such inconvenience, interruption (including loss of business) or disturbance, except damage resulting from the negligent or intentional wrongful acts or omissions of City or its employees, representatives and agents. Cingular shall not be entitled to an abatement or reduction of the Permit Fee if City exercises any rights reserved in this Section 14.

→ 15. ALTERATIONS AND IMPROVEMENTS. Cingular may, at its sole cost and expense, make alterations, additions or changes to the Permit Areas, so long as Cingular first obtains approval thereof from City in accordance with the provisions of Municipal Code Section 8-3.12; provided, however, that such approval shall not be unreasonably withheld, conditioned or delayed unless such alterations, additions or changes may affect the structure of the Light Standards, in which case City's approval may be withheld in its sole and absolute discretion.

16. CONDITIONS OF CONSTRUCTION. Once any such work is begun, Cingular shall, with reasonable diligence, prosecute the same to completion. All such work shall be performed at the sole cost and expense of Cingular, in a good and workmanlike manner, in substantial compliance with the plans and specifications submitted to, and approved by, City and otherwise in compliance with all applicable governmental permits, laws, ordinances and regulations (including the rules and regulations described in Section 23).

17. MAINTENANCE. City shall, at its sole cost and expense, maintain and repair the Light Standards; provided, however, that such obligation shall not include any improvements thereon made by Cingular pursuant to this Agreement (e.g., the Antennas and the Wires) and shall not apply to the extent of any damage caused by any negligent act or omission or willful misconduct of Cingular or its customers, employees, agents, invitees, licensees or contractors. Cingular shall, at its sole cost and expense, maintain all of its improvements to the Permit Areas in good order, condition, cleanliness and repair; provided, however, that if Cingular fails to do so, City shall have the right, but not the obligation, to so maintain such improvements and Cingular shall pay the reasonable cost thereof within twenty (20) days of notice thereof from City.

18. COMPLIANCE WITH LAWS. Cingular agrees to comply with all existing and future governmental permits, laws, ordinances and regulations that are applicable to the Permit Areas or the operations of Cingular in, on or about the Permit Areas.

19. LIEN FREE. Cingular shall keep the Permit Areas free from, and clear of, any liens or stop notices arising out of any work performed, materials furnished or obligations incurred by, or on behalf of, Cingular.

20. UTILITIES AND SERVICES. Cingular shall, at its sole cost and expense, obtain all utilities and other services required by, furnished to and used by it in, on or about the Permit Areas, including electricity; provided, however, that if Cingular fails to pay any charge for any such utility or other service prior to delinquency, then City shall have the right, but not the obligation, to do so, and Cingular shall reimburse City therefore within thirty (30) days of notice thereof from City.

21. TAXES AND ASSESSMENTS. Cingular shall pay all taxes and assessments levied against, or which become a lien upon, its interest in the Permit Areas, or its improvements/equipment in, on or about the Permit Areas, prior to delinquency. Cingular acknowledges and agrees that this Agreement may create an interest in the Permit Areas that is subject to taxes or assessments being levied thereon.

22. SIGNS. Cingular shall not construct, install or affix any lighting fixtures, shades, awnings, decorations, signs, lettering, placards or the like on the exterior of the Light Standards without first obtaining City's approval thereof, which approval may be withheld in City's sole and absolute discretion.

23. RULES AND REGULATIONS. Cingular shall faithfully observe and comply with any rules and regulations promulgated by City from time to time pursuant to the provisions of Municipal Code Section 8-3.14 with respect to construction on, and the maintenance of, the Permit Areas. If there is a conflict between such rules and regulations and the provisions of this Agreement, the provisions of this Agreement shall prevail. To this end, Cingular acknowledges and agrees that a rule prohibiting non-emergency work in, on or about the Permit Areas during the hours from 6:00 P.M. until 8:00 A.M. is reasonable; provided, however, that Cingular shall have twenty-four (24) hour, seven (7) days a week, access to the Permit Areas in the event of an emergency. City shall use reasonable efforts to enforce such rules and regulations uniformly against all permitted users of the Permit Areas; provided, however, that City shall not be responsible to Cingular for the failure of any other person to faithfully observe and comply with such rules and regulations.

24. HAZARDOUS SUBSTANCES. For purposes of this Agreement, the term "Hazardous Substances" means any material or substance that is toxic, ignitable, reactive or corrosive and that is regulated by any local, state or federal governmental agencies with jurisdiction over the Permit Areas, including any material or substance that is defined by law, ordinance or regulation as "hazardous waste," "extremely hazardous waste" or a "hazardous substance," as well as asbestos, polychlorobiphenyls and oil, petroleum and their by-products. Cingular shall not cause or permit any Hazardous Substances to be used, stored, generated or disposed of in, on or about the Permit Areas without first obtaining approval thereof from City (including City's Department of Building and Safety and City's Fire Department), which approval shall not be unreasonably withheld, conditioned or delayed if the use, storage, generation or disposal thereof is customary within the wireless telecommunications industry and is otherwise legally permissible. If Cingular causes, or permits, the use, storage, generation, disposal or other presence of Hazardous Substances in on or about the Permit Areas that results in contamination thereof, Cingular shall, at its sole cost and expense, promptly take, or cause to be taken, any and all necessary actions to return the Permit Areas to the condition that existed prior to such contamination; provided, however, that Cingular shall first obtain approval of any such remedial action from City (including City's Department of Building and Safety and City's Fire Department).

25. INDEMNIFICATION. Cingular hereby agrees to protect, indemnify, defend and hold City and its agents, representatives, employees and officers (including the members of City's City Council) (collectively, "Indemnitees") free and harmless from and against (collectively, "Indemnify") any and all claims, causes of action, demands, damages, liens, liabilities, fines, judgments, penalties, losses, costs and expenses (including reasonable attorneys' fees) to the extent

they result from (a) the use of the Permit Areas by, or on behalf of, Cingular; (b) any breach or default in the performance of any obligations on Cingular's part to be performed hereunder; and (c) Hazardous Substances being used, stored, generated or disposed of by, or on behalf of, Cingular in, on or about the Permit Areas without City's approval, or if the Permit Areas otherwise become contaminated with Hazardous Substances in a manner that would subject Cingular to legal liability therefor (collectively, "Losses"). Notwithstanding the foregoing, it is the intent of Cingular and City that Cingular shall be liable to Indemnify Indemnitees under this Section 25, except to the extent that the cause of the Losses is the negligence or willful misconduct of Indemnitees. Furthermore, Cingular hereby assumes all risk of damage to property or injury to persons in, on or about the Permit Areas, resulting, either directly or indirectly, from Cingular' use of the Permit Areas or from fire, explosion, earthquake, flood, automobile accidents, latent defects, electricity or any other cause whatsoever in, on or about the Permit Areas; and Cingular hereby waives all claims with respect thereto against Indemnitees and Indemnitees shall not be liable therefor except to the extent the same were caused by Indemnitees. Cingular shall give prompt notice to City in case of casualty or accidents in, on or about the Permit Areas. The provisions of this Section 25 shall be in addition to any other obligations and liabilities that Cingular may have to City at law, in equity or otherwise, and shall survive the revocation and/or termination of this Agreement.

26. INSURANCE. Pursuant to the provisions of Municipal Code Section 8-3.09(b), Cingular shall be obligated to comply with the following insurance requirements:

26.1. Liability. Cingular shall, at its sole cost and expense, obtain and maintain insurance policies that will insure and indemnify Cingular and Indemnitees against liability resulting from suits, claims or actions and from all costs and expenses of litigation, in an amount of not less than Three Million Dollars (\$3,000,000) combined single limit for any injury to persons and/or damage to property in, on or about the Permit Areas by reason of the use of the Permit Areas by Cingular or its employees, agents, invitees, licensees or contractors, together with an endorsement as set forth in City's standard City Certificate of Insurance. Not more frequently than once each year, Cingular shall increase the limit amount of such insurance coverage as reasonably required by City's Risk Manager so long as such increase is commercially reasonable.

26.2. Fire. Cingular shall, at its sole cost and expense, obtain and maintain insurance covering: (a) the improvements made to the Permit Areas by, or on behalf of, Cingular, at its expense; (b) fixtures and equipment installed in, on or about the Permit Areas by, or on behalf of, Cingular, at its expense; and (c) all alterations, additions and changes made to the Permit Areas by, or on behalf of, Cingular, at its expense, providing protection to the extent of not less than ninety percent (90%) of the insurable value of all such items against any peril included under insurance industry practices in the jurisdiction of the Permit Areas within the classification "fire and extended coverage," together with insurance against vandalism and malicious mischief. Cingular and City hereby waive any and all rights of recovery against the other for any loss occurring to such items on account of fire or other casualty, and such insurance policies shall contain an appropriate provision recognizing this release by the parties and waiving all rights of subrogation by the insurance carriers. The proceeds of such insurance shall be used to repair or replace the items so insured in the event of loss on account of fire or other casualty.

26.3. Certificate. The insurance policies required under Sections 26.1 and 26.2 shall be issued by an insurer rated in Best's Insurance Guide with a financial rating of B+ VII or better. Cingular's insurance coverage shall not be cancelled by the insurance carrier without City having been given thirty (30) days prior written notice thereof. Cingular agrees that it will not cancel or reduce such insurance coverage. Cingular shall provide City's City Clerk with a certificate from the insurance carrier or carriers showing such insurance policies are in effect in the required amounts. Notwithstanding anything to the contrary contained herein, Cingular shall not have the right to commence its initial improvements in the Permit Areas until such certificate or certificates are provided to City's City Clerk.

26.4. Lapsed Insurance. Cingular agrees that if it does not keep the insurance policies required under Sections 26.1 and 26.2 in full force and effect, City may take out the necessary insurance and pay the premium thereon if Cingular does not obtain or maintain such coverage within thirty (30) days of receipt of notice from City, and Cingular shall reimburse City therefor within thirty (30) days of notice thereof from City.

27. DEFAULT BY CINGULAR. The occurrence of any one or more of the following events shall constitute a breach of this Agreement by Cingular causing Cingular to be in default hereunder:

27.1. Abandonment. The Permit Areas are vacated or abandoned by Cingular;

27.2. Payment. If Cingular fails to make any payment of the Permit Fee or any other amount required to be paid by Cingular to City hereunder prior to delinquency and such failure continues for a period of thirty (30) days after Cingular receives notice from City that it did not receive such payment on the due date;

27.3. Performance. If Cingular fails to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by Cingular (except those described in Section 27.2), where such failure continues for a period of thirty (30) days after notice thereof from City to Cingular; provided, however, that if the nature of Cingular's default is such that more than thirty (30) days are reasonably required for its cure, then Cingular shall not be deemed to be in default hereunder if Cingular commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion; or

27.4. Bankruptcy. If Cingular makes a general assignment for the benefit of its creditors; or the filing by or against Cingular of a petition to have Cingular adjudged a bankrupt (unless, in the case of a petition filed against Cingular, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of Cingular's interest in this Agreement and/or substantially all of Cingular's assets located in, on or about the Permit Areas (unless possession is restored to Cingular within thirty (30) days); or the attachment, execution or other judicial seizure of Cingular's interest in this Agreement and/or substantially all of Cingular's assets located in, on or about the Permit Areas (unless such seizure is discharged within thirty (30) days).

28. DEFAULT BY CITY. City shall not be in default hereunder unless City fails to perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by City, where such failure continues for a period of thirty (30) days after notice thereof from Cingular to City; provided, however, that if the nature of City's default is such that more than thirty (30) days are reasonably required for its cure, then City shall not be deemed to be in default hereunder if City commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

29. REMEDIES ON DEFAULT. At any time during the continuance of a default by Cingular as described in Section 27, City may, in its sole and absolute discretion: (a) Revoke the Permit and/or terminate this Agreement and recover from Cingular all damages incurred by City by reason of such default by Cingular, including the cost (including reasonable attorneys' fees) of recovering possession of the Permit Areas; or (b) Pursue any other remedy now or hereafter available to City at law, in equity or otherwise. At any time during the continuance of a default by City as described in Section 28, Cingular may, in its sole and absolute discretion: (y) Cure such default by City and deduct the reasonable cost thereof from the amount of the Permit Fee due on the next anniversary of the Commencement Date; or (z) Pursue any other remedy now or hereafter available to Cingular at law, in equity or otherwise.

30. DAMAGE.

30.1. Casualty. In the event the Permit Areas are damaged by fire or other perils, regardless of whether such casualty is covered by insurance, City agrees to repair such damage, and this Agreement shall remain in full force and effect, except that the Permit Fee shall be equitably reduced from the date of such damage and while such repairs are being made, such reduction to be based upon the extent to which the damage and making of such repairs interfere with Cingular's use of the Permit Areas as permitted hereunder; provided, however, that if such damage is caused by any negligent act or omission or willful misconduct of Cingular or its employees, agents, invitees, licensees, then the Permit Fee shall not be equitably reduced. City shall not be responsible for repairing damage to Cingular's improvements/equipment.

30.2. Improvements/Equipment. Notwithstanding anything to the contrary contained herein, City shall not be required to repair any damage to, or otherwise replace, any of Cingular's improvements/equipment in, on or about the Permit Areas.

31. EMINENT DOMAIN. If the Permit Areas shall be taken or appropriated by any authority under the power of eminent domain, then this Agreement shall automatically terminate concurrently therewith; provided, however, that if only part of the Permit Areas shall be taken or appropriated by any authority under the power of eminent domain, then either party hereto may, within sixty (60) days thereafter, elect to terminate this Agreement by providing the other party with thirty (30) days notice thereof. If neither party elects to so terminate this Agreement, then the Permit Fee shall thereafter be equitably reduced. In the event of any such taking or appropriation, City shall be entitled to all awards and/or settlements on account thereof other than amounts attributable to: (a) any of Cingular's improvements (but not the Replacement Light Standard) and/or equipment in, on or about the Permit Areas that were so taken or appropriated; and (b) relocation assistance for Cingular's use of the Permit Areas.



To City:

City of Beverly Hills  
345 Foothill Road  
Beverly Hills, California 90210  
Attention: Public Works Services Manager

Service of any such notice or other communications so made shall be deemed effective on the day of actual delivery (whether accepted or refused) as shown by the addressee's return receipt if by certified mail. No communications via overnight courier, facsimile or electronic mail shall be effective to give any notice, request, direction, demand, consent, waiver, approval or other communications hereunder.

34. GENERAL PROVISIONS.

35.1. Waiver. The waiver by City of any term, covenant or condition herein shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein. No failure on the part of City to exercise, and no delay by City in exercising, any right or remedy hereunder, at law, in equity or otherwise shall operate as a waiver thereof.

35.2. Headings. The headings of the sections of this Agreement are intended for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

35.3. Time. Subject to the remainder of this Section 35.3, time is of the essence with respect to this Agreement. Wherever the time for performance of any obligation hereunder or if, pursuant to this Agreement, a party must act by a particular time, or an act is effective only if done by a particular time, and the last date for the performance of such obligation or the doing or effectiveness of such act falls upon a day other than a business day, the time for the performance of such obligation or the doing or effectiveness of such act shall be extended to the next succeeding business day. When computing the time by which an act is to be done under this Agreement, the first day shall be excluded and the last day shall be included. All time periods identified herein, unless expressly provided to the contrary, shall end at 5:00 p.m. (California time).

35.4. Prior Agreements. This Agreement contains all of the agreements of the parties hereto with respect to the subject matter hereof, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this Agreement may be modified except by an agreement in writing signed by the parties hereto. This Agreement shall not be effective or binding on any party until fully executed by both parties hereto.

35.5. Inability to Perform. The time stated in this Agreement for the performance of any act (other than the payment of money) by either party shall be extended for the period of time that the party shall be delayed or prevented from performing by reason of strikes, acts of nature or any causes beyond the reasonable control of the party claiming the extension, provided that the party claiming the extension has notified the other of such delay or prevention within fifteen (15) days of

the inception thereof, and has thereafter notified the other party of the status of such delay or prevention not less often than once every fifteen (15) days.

35.6. Partial Invalidity. Any provision hereof that shall be held by a court of competent jurisdiction to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

35.7. Cumulative Remedies. No remedy, or election thereof, hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law, in equity or otherwise.

35.8. Choice of Law. This Agreement and the transaction contemplated hereunder shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflict of laws principles.

35.9. Successors and Assigns. The terms, covenants and conditions hereof shall inure to the benefit of, and shall bind, as the case may be, not only the parties hereto but each and every one of their successors and assigns; provided, however, that any assignment of this Agreement or the Permit Areas by Cingular, or any interest herein or therein shall be subject to the provisions of Section 32.

35.10. Authority. The execution of this Agreement, and the delivery and performance thereof, by Cingular has been duly authorized and is binding upon Cingular without the consent or joinder of any other party.

35.11. City Approvals. Neither City's execution hereof nor any consent or approval given by City hereunder in its capacity as City shall waive, abridge, impair or otherwise affect City's powers and duties as a governmental body. Any consent or approval by City that Cingular is required to obtain hereunder is in addition to, and not in lieu of, any approval or permit that Cingular is required to obtain by law; provided, however, that City shall attempt to coordinate its procedures for giving contractual and governmental consents, approvals and/or permits so that Cingular's requests and applications are not unreasonably denied or delayed.

35.12. No Recordation. Notwithstanding the provisions of Municipal Code Section 8-3.07(a), neither this Agreement, nor a memorandum hereof, shall be recorded.

35.13. Incorporation and Inconsistencies. The exhibit attached hereto is hereby incorporated into this Agreement. The provisions of Title 8, Chapter 3 of the Municipal Code (as the same may be amended and/or recodified from time to time as well as to any successor statutes thereto) are hereby incorporated into this Agreement. In the event of any inconsistencies between the provisions of this Agreement and the provisions of Title 8, Chapter 3 of the Municipal Code, the terms of this Agreement shall govern and prevail.

35.14. Interpretation. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. This Agreement has been prepared by City and its professional advisors and reviewed by Cingular and its professional advisors. City, Cingular and

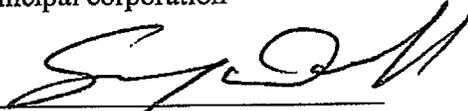
their respective advisors believe that this Agreement is the product of all of their efforts, that it expresses their agreement and that it should not be interpreted in favor of or against either City or Cingular. The parties further agree that this Agreement will be construed to effectuate the normal and reasonable expectations of sophisticated permittees and permitors. References to "\$" or "Dollars" are to cash or immediately available United States funds. References to "Sections" and "Exhibits" are to sections and exhibits of this Agreement, unless otherwise specifically provided. The words "include," "includes" and "including" shall be construed as if followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provisions of this Agreement.

[This Space Intentionally Left Blank; Signatures Begin On The Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this Permit to Install Wireless Telecommunications Antennas on Light Standards/Poles and Vaults for Supporting Equipment as of the date first above written.

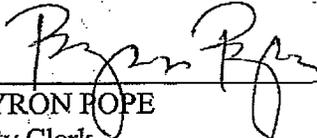
"City"

CITY OF BEVERLY HILLS, a California municipal corporation



STEPHEN P. WEBB  
Mayor of the City of Beverly Hills,  
California

ATTEST:



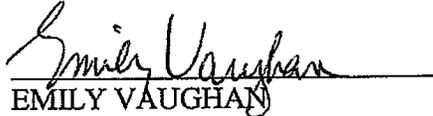
(SEAL)

BYRON POPE  
City Clerk

"Cingular"

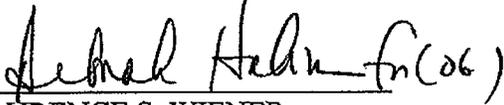
NEW CINGULAR WIRELESS PCS, LLC,  
a Delaware limited liability company

By:



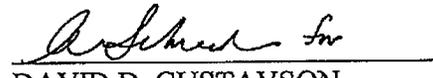
EMILY VAUGHAN  
Real Estate & Construction Manager

APPROVED AS TO FORM



LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT

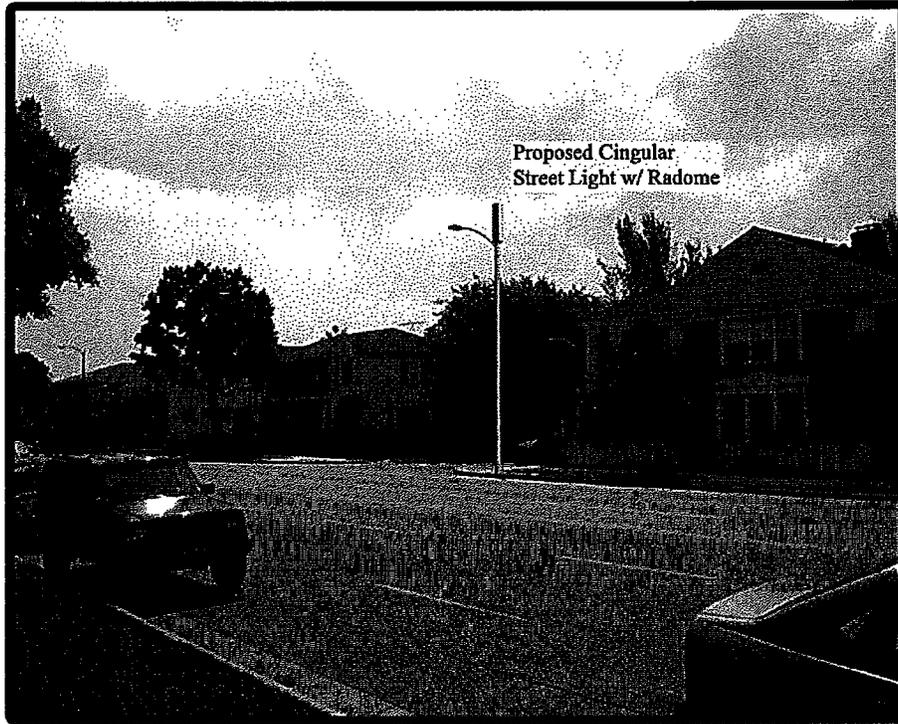


DAVID D. GUSTAVSON  
Director of Public Works and Transportation



KARL KIRKMAN  
Risk Manager

**EXHIBIT A**



**Olympic Blvd. /McCarty Dr.  
LSANCA0648F**

