

## **FIRST AMENDMENT TO COMMUNICATIONS SITE LEASE AGREEMENT (GROUND)**

This First Amendment to Communications Site Lease Agreement (Ground) (the “**First Amendment**”) is effective as of the last signature below (the “**Effective Date**”), by and between The City of Lancaster, a municipal corporation (“**Lessor**”), and T-Mobile West LLC, a Delaware limited liability company (“**Lessee**”) (each a “**Party**”, or collectively, the “**Parties**”).

Lessor and Lessee entered into that certain Communications Site Lease Agreement (Ground) dated October 28, 2002, (the “**Agreement**”) regarding the leased premises (“**Premises**”) located at 3295 W Avenue K, Lancaster, CA 93536 (the “**Property**”).

For good and valuable consideration, Lessor and Lessee agree as follows:

1. At the expiration of the Agreement, the term of the Agreement will automatically be extended for five (5) additional and successive five (5) year terms (each a “**Renewal Term**”), provided that Lessee may elect not to renew by providing Lessor at least thirty (30) days' notice prior to the expiration of the current term or the then current Renewal Term.
2. At the commencement of the first Renewal Term, provided for in this First Amendment, Lessee shall pay Lessor One Thousand Nine Hundred Eighty-Nine and 08/100 Dollars (\$1,989.08) per month as Rent, partial calendar month to be prorated in advance, by the fifth (5<sup>th</sup>) day of each calendar month. As of the date of this First Amendment, the escalation set forth in the Lease shall terminate and the Rent will escalate by 15% on the first day of each Renewal Term. Tenant shall pay Landlord any outstanding Rent due as of the Effective Date within sixty (60) days of the Effective Date. Where duplicate Rent would occur, a credit shall be taken by Lessee for any prepayment of duplicate Rent by Lessee.
3. Lessor consents to allow Lessee to complete upgrades and additions of the Antenna Facilities on the Premises for no additional consideration, in compliance with required permits.
4. Lessor shall only have the right to assign and transfer this Agreement pursuant to a sale or transfer of ownership of the Property. Upon Lessee's receipt of written verification of a sale or transfer of the Property, (a) Lessor shall be relieved of all liabilities and obligations and (b) Lessee shall look solely to the new owner for performance under this Agreement. Lessor shall not attempt to assign or otherwise transfer this Agreement separate from a sale or transfer of ownership of the Property (“the “**Severance Transaction**”), without the prior written consent of Lessee, which consent may be withheld or conditioned in Lessee's sole discretion. If Lessee consents to a Severance Transaction, Lessor and its successors and assigns shall remain jointly and severally responsible for the performance of all duties and obligations of Lessor under this Agreement.

The City of Lancaster  
44933 Fern Avenue  
Lancaster, CA, 92534  
Attn: City Manager

6. **Insurance.**

- A. The Lessee at its expense, shall maintain in effect at all times during the term of this Agreement the following coverage and limits of insurance, which shall be maintained with insurers listed “A-, VIII” or better in the Best’s Key Rating Guide:

## Commercial General Liability

Each Occurrence	\$2,000,000
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Per Project General Aggregate	\$5,000,000
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Including Products/Completed Operations; Contractual Liability/claims arising from Lessee's Independent Contractors; Property Damage and Bodily injury

*(Coverage shall be at least as broad as ISO form CG2010 and CG2037 combined, or an equivalent providing ongoing and completed operations)*

- B. For claims arising out of Lessee's operations, negligent acts or willful misconduct, commercial general liability insurance shall be primary and non-contributory as respects the City insured entities. Any insurance or self-insurance maintained by the City insured entities shall be in excess of the Lessee's insurance and shall not contribute with it.

- C. Lessee shall furnish the City with Certificates of Insurance and with endorsements effecting coverage required by this Agreement.

- D. Lessee will provide notice and agree that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after 30 days' prior written notice (10 days' written notice for non-payment) to the City of Lancaster.
- E. The additional insureds included in the foregoing commercial general liability policy shall include: the City of Lancaster, its elected officials, officers, employees and volunteers are included as additional insureds on the policy, but only insofar as the Lessee's operations under this contract are concerned.
- F. The City of Lancaster, 44933 Fern Avenue, Lancaster, California 93534 shall be Certificate Holder.
7. Any charges payable under the Agreement other than Rent shall be billed by Lessor to Lessee within twelve (12) months from the date in which the charges were incurred or due; otherwise, the same shall be deemed time-barred and be forever waived and released by Lessor.
8. Except as expressly set forth in this First Amendment, the Agreement otherwise is unmodified. To the extent any provision contained in this First Amendment conflicts with the terms of the Agreement, the terms and provisions of this First Amendment shall control. Each reference in the Agreement to itself shall be deemed also to refer to this First Amendment.
9. This First Amendment may be executed in duplicate counterparts, each of which will be deemed an original. Signed electronic, scanned, or facsimile copies of this First Amendment will legally bind the Parties to the same extent as originals.
10. Each of the Parties represents and warrants that it has the right, power, legal capacity and authority to enter into and perform its respective obligations under This First Amendment. Lessor represents and warrants to Lessee that the consent or approval of a third party has either been obtained or is not required with respect to the execution of First Amendment. If Lessor is represented by any property manager, broker or any other leasing agent ("Agent"), then (a) Lessor is solely responsible for all commission, fees or other payment to Agent and (b) Lessor shall not impose any fees on Lessee to compensate or reimburse Lessor for the use of Agent, including any such commissions, fees or other payments arising from negotiating or entering into this First Amendment or any future amendment.

11. This First Amendment will be binding on and inure to the benefit of the Parties herein, their heirs, executors, administrators, successors-in-interest and assigns.

IN WITNESS, the Parties execute this First Amendment as of the Effective Date.

**Lessor:**

The City of Lancaster, a municipal corporation

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

Print Name: Trolis Niebla

Title: City Manager

Date: \_\_\_\_\_

**Lessee:**

T-Mobile West LLC, a Delaware limited liability company

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY