

AMENDED AND RESTATED SITE LEASE AGREEMENT

AT 354 ANNAPOLIS STREET WEST

WEST ST. PAUL, MINNESOTA

THIS AMENDED AND RESTATED SITE LEASE AGREEMENT (“Lease”), is entered into the ___ day of _____, 2016 and made effective as of the 1st day of January, 2016 (the “Effective Date”) between **City of West St. Paul**, a Minnesota municipal corporation (“Landlord”), and **T-Mobile USA Tower LLC**, a Delaware limited liability company, by and through **CCTMO LLC**, a Delaware limited liability company, its attorney in fact (“Tenant”).

RECITALS:

1. **WHEREAS**, there existed a Site Lease Agreement dated November 10, 1997 (the “Original Lease”), and amended on June 9, 1998 and on June 30, 2008 (hereinafter the Original Lease and all subsequent amendments are collectively referred to as the “Board Site Lease Agreement”) by and between the Board of Water Commissioners of the City of Saint Paul (“Board”) and APT Minneapolis, Inc. for the purpose of operating communications facilities located at 354 Annapolis Street West, in West St. Paul (the “Property”), legally described on **Exhibit A** attached hereto and incorporated herein; and
2. **WHEREAS**, the Board deeded all rights and title to the Property to the City of West St. Paul, including the rights to the Board Site Lease Agreement pursuant to an Omnibus Agreement Pertaining to Transfer of West St. Paul Water System to the Board of Water Commissioners dated April 1, 2001; and
3. **WHEREAS**, T-Mobile USA Tower LLC is a successor in interest to APT Minneapolis, Inc.; and
4. **WHEREAS**, the Board Site Lease Agreement is set to expire in 2018; and
5. **WHEREAS**, T-Mobile USA Tower LLC has requested certain amendments to the Board Site Lease Agreement, including a significant extension of the Board Site Lease Agreement; and
6. **WHEREAS**, the Parties hereto desire to enter into a new lease agreement effective as of January 1, 2016, to govern the rights of the parties to ensure that there is uninterrupted telecommunication services to the citizens of West St. Paul and surrounding areas and desire that the Board Site Lease Agreement be amended by deleting it in its entirety and restating the Original Lease as provided for herein as of the Effective Date of this Lease.

FOR GOOD AND VALUABLE CONSIDERATION, the parties agree as follows:

1. **Recitals.** The Recitals stated above are incorporated into this Lease as if fully set forth herein.
2. **Leased Premises.** For purposes of operating wireless communications services, and subject to the terms and conditions of this Lease, Landlord hereby leases to Tenant and Tenant leases from Landlord a portion of the Property together with access and utility easements which shall be known as the “Leased Premises,” and which is depicted on **Exhibit B**, attached hereto and incorporated herein and includes:
 - a. A portion of the Property upon, in, under or over which Tenant’s Antenna Facilities (defined below) are attached, connected, enclosed or contained; and
 - b. A portion of the Property on which Tenant’s equipment shelter or sublessees’ equipment shelters are currently located; and
 - c. Non-exclusive easements over, under and through the Property required to run utility lines and cables to the Leased Premises; and
 - d. A non-exclusive easement across the Property for ingress and egress from the right of way to the Leased Premises for Tenant and subtenant access.

Tenant’s existing “Antenna Facilities” are collectively defined to include Tenant’s existing monopole structure, directional antennas, receivers, connecting cables, utility lines, equipment shelter, equipment cabinets and those of its sublessees, as more specifically depicted on **Exhibit B**.

3. **Rent and Fees.**

- a. **Initial Rent Amount, Adjustments, Taxes.** As consideration for this Lease, Tenant shall pay Landlord an annual rent in the amount of Thirteen Thousand and 00/100 Dollars (\$13,000.00) for the initial year, which shall be increased on January 1, 2017 and each January 1st thereafter by four percent (4.0%) of the previous year’s annualized rent. In addition to the annual rent, Tenant agrees to timely pay its prorata share of any taxes or payments(s) in lieu of taxes and any increase in property taxes directly attributable to Tenant’s Antenna Facilities at the Leased Premises.
- b. **Time of Payment.** The annual rent shall be paid on January 1 each year.
- c. **Subleases.** Tenant is allowed to sublease the Leased Premises. Tenant has four (4) subleases with additional telecommunication providers. Tenant shall not be allowed to sublease the Leased Premises to more than four (4) telecommunications providers or to sublease the use of its conduit or coaxial access to any other telecommunication providers as to allow any other telecommunications providers to use Tenant’s Antenna Facilities without providing written notification to Landlord. As a condition of this ability to sublease, Tenant shall pay Landlord twenty percent (20%) of all rents required in the subleases. Such payment shall be due with the annual rent. Tenant shall have no

obligation for payment to Landlord of such share of rental, license or other similar payments if not actually received by Tenant. Non-payment of such rental, license or other similar payment by a sublessee, licensee or other occupant shall not be a default under this Lease. Tenant shall have sole discretion as to whether, and on what terms, to sublease, license or otherwise allow occupancy of the Leased Premises and there shall be no express or implied obligation of Tenant to do so.

- d. **Business Summary Report.** Once per calendar year, Landlord may submit a written request to Tenant for a business summary report pertaining to Tenant's rent obligations for the prior twelve (12) month period, and Tenant shall provide such written accounting to Landlord within sixty (60) days after Tenant's receipt of such written request.
 - e. **Administrative Fee.** Prior to Landlord's approval of this Lease or any amendment hereto, Tenant shall pay Landlord an administrative fee of One Thousand Dollars (\$1,000).
 - f. **Attorneys' Fees for Amendments.** Tenant shall pay up to Three Thousand and 00/100 Dollars (\$3,000.00) for the reasonable costs and fees of Landlord's attorneys incurred in connection with any lease amendments, within thirty (30) days after Landlord sends an invoice for such fees to Tenant. The sum of \$3,000.00 shall escalate at the same time and in the same manner as the rent set forth in Section 3(a) of this Lease.
 - g. **Leased Premises Improvements.** Tenant shall pay for the costs of repairs, improvements or alterations to the Leased Premises required by Tenant.
 - h. **Maintenance Expenses.** In the event that Tenant does not comply with the maintenance requirements of Section 6(g) of this Lease, upon notification from Landlord, Tenant shall promptly pay all reasonable additional expenses incurred by Landlord in maintaining the Leased Premises that are caused by Tenant's occupancy of the Leased Premises. If Tenant fails to reimburse Landlord for any expenses within thirty (30) days after receipt of an invoice from Landlord, Tenant shall be deemed to be in default under this Lease.
4. **Term and Renewal.** The "Initial Term" of this Lease shall commence on January 1, 2016 ("Effective Date") and end on December 31, 2020. Subject to the terms and conditions of this Lease, Tenant shall have the right to renew this Lease for five (5) additional five (5) year renewal periods (each extension is referred to as a "Renewal Term") commencing on January 1, 2021 or on any subsequent Renewal Term. This Lease shall be automatically renewed for each successive Renewal Term unless either party sends written notice of non-renewal to the other party no later than ninety (90) days prior to the expiration of the Initial term or any Renewal Term, such notice to be provided in accordance with Section 22 of this Lease.
5. **Governmental Approval Contingency.**
- a. **Tenant Application.** Tenant's right to use the Leased Premises is expressly made contingent upon its obtaining and maintaining all the certificates, permits, zoning and other approvals that may be required by any federal, state or local authority. Landlord shall cooperate with Tenant in its efforts to obtain and retain such approvals and shall take no action that would adversely affect the status of the Leased Premises with respect

to the Tenant's proposed use thereof. Tenant shall not consider this Lease, or the negotiations to enter into a Lease, as alleviating the Tenant from any and all requirements for Tenant to obtain needed certificates, permits, zoning and other approvals including conditional use permits or other special approvals required by City, County, State or Federal Governments.

b. [not used]

c. Non-Approval. In the event that any application necessary under Section 5(a) above is rejected or any certificate, permit, license or approval issued to Tenant is canceled, denied, expires, lapses or is otherwise withdrawn or terminated by government authority so that Tenant, in its sole discretion, will be unable to use the Leased Premises for its intended purposes, or if an interference or engineering study should indicate, in Tenant's sole discretion, that the Leased Premises are unsatisfactory for Tenant's intended use, Tenant shall have the right to terminate this Lease and no further rent shall be due following the termination date. Notice of Tenant's exercise of its right to terminate pursuant to this Subsection shall be given to Landlord in writing as provided in accordance with Section 22, Notices, of this Lease. Except as required under Sections 12(c) or (d) below, upon such termination, this Lease shall become null and void and the parties shall have no obligation hereunder.

6. **Tenant Use.**

a. Purposes. Tenant shall use the Leased Premises only for the purpose of installing, maintaining, and operating the Antenna Facilities, and uses incidental thereto for providing wireless telecommunications services which Tenant is legally authorized to provide to the public. Landlord specifically reserves the right to allow Landlord's Property, except the Leased Premises, to be used by itself or other parties. Tenant's installation, maintenance and operation of the Antenna Facilities shall at all times comply with all applicable ordinances, statutes and regulations of local, state and federal governmental agencies. Tenant shall have exclusive use of its Antenna Facilities and the Leased Premises.

b. Modifications, Replacements or Other Improvements of Antenna Facilities. If Tenant seeks to modify, replace or improve its Antenna Facilities, then Tenant must obtain a building permit from the City as may be required by law, or ordinance.

c. Tenant's Operation and On-Going Maintenance. Tenant shall have the right, at its sole expense, to operate and maintain the Antenna Facilities on the Leased Premises, as depicted on **Exhibit B**, in accordance with commercially reasonable practices under all applicable FCC rules and regulations. Tenant's installation of all Antenna Facilities shall be done according to plans approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Any damage done by Tenant, its employees or agents to the Leased Premises or the Property during installation or during operations, shall be repaired by Tenant at Tenant's expense within thirty (30) days after notification of damage. Tenant shall have such extended periods as may be required beyond the thirty (30) day cure period if the nature of the cure is such that it reasonably

requires more than thirty (30) days to cure, and Tenant commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. The Antenna Facilities shall remain the exclusive property of the Tenant, unless otherwise provided in the Lease. Tenant's Antenna Facilities shall be maintained in a commercially reasonable state of repair.

- d. No Nuisance. Tenant shall, at its own expense, maintain and operate any equipment on or attached to the Leased Premises and owned by Tenant in a commercially reasonable condition so as not to create a nuisance or materially hinder the enjoyment or the use of Landlord's Property.
 - e. Access. Tenant, at all times during this Lease, shall have exclusive access to its Antenna Facilities located on the Leased Premises in order to install, operate, repair and maintain its Antenna Facilities. Access to Antenna Facilities on the Leased Premises requires Tenant's employees or contractors to possess identification at all times that they are on the Leased Premises or the Property.
 - f. Payment of Utilities. Landlord makes no representations that utilities adequate for Tenant's use of the Leased Premises are available. Tenant shall separately meter charges for the consumption of electricity and other utilities associated with its use of the Leased Premises and shall be responsible to promptly pay all costs associated therewith. Landlord will cooperate with Tenant in Tenant's efforts to obtain utilities from any location provided by the servicing utility.
 - g. Tenant's Maintenance of the Leased Premises. Tenant shall maintain the Leased Premises during the term of this Lease, including plowing snow as needed for Lessee's access, lawn maintenance and keeping the Leased Premises free from debris and other trash or junk.
7. **Emergency Facilities.** In the event of a natural or manmade disaster, in order to protect the health, welfare and safety of the community, Tenant may erect additional Antenna Facilities and install additional equipment on a temporary basis on the Leased Premises to ensure continuation of service. Such temporary operation shall not exceed ninety (90) days unless Tenant obtains written approval from the Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.
8. **Landlord's Maintenance, Improvement Expenses.** All modifications to the Leased Premises and all improvements made for Tenant's benefit shall be at the Tenant's expense.
9. **Defense and Indemnification.**
- a. General. Landlord and Tenant each indemnify the other against and hold the other harmless from any and all costs (including reasonable attorneys' fees and expenses) and claims, actions, damages, obligations, liabilities and liens which arise out of (i) the breach of the Lease by the indemnifying party; and (ii) the use and or occupancy of the Landlord's Property, except for any claims, actions, damage, obligations, liabilities and liens arising from any negligent or intentional misconduct of the indemnified party. This provision shall survive the termination to this Lease.

- b. Hazardous Materials. Without limiting the scope of Section 9(a) above, Tenant will be solely responsible for and will defend, indemnify, and hold Landlord, its agents, and employees harmless from and against any and all claims, cost, and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the Leased Premises associated with the Tenant's use of Hazardous Materials. This defense and indemnification shall not apply to claims, costs, and liabilities arising from Landlord's negligence or willful misconduct. For the purposes of this Lease "Hazardous Materials" shall be interpreted broadly and specifically includes, without limitation, asbestos, fuel, batteries or any hazardous substance, waste, or material as defined in any federal, state or local environmental or safety laws or regulation including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).
- c. Tenant's Warranty. Tenant represents and warrants that the use of the Leased Premises will not generate and Tenant will not store or dispose of on the Leased Premises, nor transport to or over the Leased Premises, any Hazardous Materials in violation of law.

10. Insurance.

- a. Workers' Compensation. The Tenant must maintain Workers' Compensation insurance in compliance with all applicable statutes. The policy shall also provide Employer's Liability coverage with limits of not less than Five Hundred Thousand Dollars (\$500,000) Bodily Injury each accident, Five Hundred Thousand Dollars (\$500,000) bodily injury by disease, policy limit, and not less than Five Hundred Thousand Dollars (\$500,000) Bodily Injury by disease, each employee.
- b. General Liability. The Tenant must maintain an occurrence form Commercial General Liability Coverage. Such coverage shall provide for third party bodily injury and property damage arising out of the use, maintenance or operation of the Leased Premises and Antenna Facilities. The Tenant must maintain aforementioned Commercial General Liability Coverage with limits of Liability of not less than One Million Dollars (\$1,000,000) each occurrence; not less than One Million Dollars (\$1,000,000) personal and advertising injury, not less than Three Million Dollars (\$3,000,000) general aggregate, and not less than Three Million Dollars (\$3,000,000) products and completed operations aggregate. These limits may be satisfied by the Commercial General Liability Coverage or in combination with an Umbrella or Excess Liability Policy, provided coverage afforded by the Umbrella or Excess Policy is no less than the underlying Commercial General Liability Coverages.
- c. Tenant Property Insurance. The Tenant must keep in force for the duration of the Lease a policy covering damages to its Antenna Facilities at the Leased Premises. The amount of coverage shall be sufficient to replace the damaged property, loss of use and comply with any ordinance or law requirements.
- d. Adjustment of Insurance Coverage Limits. Notwithstanding the foregoing insurance requirements of Tenant, Tenant agrees to periodically review and adjust insurance

coverage limits in accordance with then-current market and industry standards during the Initial Term and Renewal Terms.

- e. Additional Insured - Certificate of Insurance. The Tenant shall provide evidence of the required insurance in the form of a Certificate of Insurance issued by a company authorized to do business in the State of Minnesota, which includes all coverages required in this Section 10. Tenant will name Landlord as an Additional Insured on the Commercial General Liability and Commercial Automobile Liability Policies but only to the extent allowed in Section 9, Defense and Indemnification, of this Lease. The policies shall be endorsed to provide at least thirty (30) days prior written notice to Landlord, except for non-payment of premium. Any coverage that is canceled shall be replaced before the cancellation date. A certificate of insurance referencing the replacement coverage must be provided.

11. **Damage or Destruction.** Tenant's installation of any future Antenna Facilities shall be done according to plans approved by Landlord. Any damage done to the Leased Premises or other Landlord property during installation or during operations shall be repaired at Tenant's expense. Landlord shall give Tenant written notice of such damage. After Tenant's receipt of such written notice, Tenant shall have thirty (30) days in which to cure the damage. Tenant shall have such extended periods as may be required beyond the thirty (30) day cure period to cure the damage if the nature of the cure is such that it reasonably requires more than thirty (30) days to cure, and Tenant commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. Landlord may not maintain any action or effect any remedies for default against Tenant unless and until Tenant has failed to cure the same within the time periods provided in this Section. If the Leased Premises is destroyed or damaged, without contributory fault of the Tenant or its agents, so as, in Tenant's judgment, to hinder its effective use of the Antenna Facilities, Tenant may elect to terminate this Lease upon thirty (30) days written notice to Landlord. In the event Tenant elects to terminate the Lease, Tenant shall be entitled to reimbursement of prepaid rent covering the period subsequent to the date of damage to or destruction of the Leased Premises.

12. **Lease Termination.**

- a. Events of Termination. Except as otherwise provided herein, this Lease may be terminated by either party upon thirty (30) days' written notice to the other party, provided in accordance with Section 22, Notices, of this Lease, as follows:
 - i. By either party upon a default of any covenant or term hereof by the other party, which default is not cured within thirty (30) days of receipt of written notice of default to the other party (without, however, limiting any other rights of the parties pursuant to any other provision hereof). The defaulting party shall have such extended periods as may be required beyond the thirty (30) day cure period if the nature of the cure is such that it reasonably requires more than thirty (30) days to cure, and the defaulting party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion; or

- ii. By Tenant for cause if it is unable to obtain or maintain any license, permit or other governmental approval necessary for the construction and/or operation of the Antenna Facilities; or
 - iii. By Tenant for cause if the Leased Premises becomes unusable under Tenant's design or engineering specifications for its Antenna Facilities, or the communications system to which the Antenna Facilities belong or for technological reasons, including, without limitation, shadowing or interference under the Antenna Facilities; or
 - iv. By Landlord upon twenty-four (24) months' written notice to Tenant if its City Council decides, for any reason: (i) to redevelop the Leased Premises in a manner inconsistent with continued use of the Leased Premises by Tenant, or (ii) to construct new improvement that are inconsistent with Tenant's use pursuant to Subsection 12(e); or
 - v. By Landlord, if it determines that Tenant has failed to comply with applicable ordinances or state or federal law, or any conditions attached to government approvals granted there under after a thirty (30) day cure period with such extended periods as may be required beyond the thirty (30) day cure period if the nature of the cure is such that it reasonably requires more than thirty (30) days to cure, and Tenant commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion.
- b. Notice of Termination. In accordance with Section 22 Notices, the parties shall give notice of termination in writing by certified mail, return receipt requested. Such notice shall be effective upon receipt as evidenced by the return receipt. Except as set forth herein, all rent paid under the Lease prior to said termination date shall be retained by Landlord.
- c. Tenant's Liability for Early Termination. If Tenant terminates this Lease other than for cause or of right as provided in this Lease, Tenant shall pay to Landlord as liquidated damages for early termination, one hundred fifty percent (150%) of the annual rent for the year in which Tenant terminates, unless Tenant terminates during the last year of any Term under Section 4 and Tenant has paid the annual rent for that year.
- d. Leased Premises Restoration. In the event that this Lease is terminated or not renewed, Tenant shall immediately remove its Antenna Facilities and related equipment from the Leased Premises to a depth of three feet (3') (excluding footings and conduit), repair the Leased Premises and restore the surface of the Leased Premises, excepting ordinary wear and tear. Should this situation occur during the winter season, the restoration may commence at the start of weather permissible to commercially reasonable workmanship. Such time period shall be agreeable to Landlord and Tenant. In the event that the Antenna Facilities and related equipment are not removed to commercially reasonable standards, they shall be deemed abandoned and become the property of the Landlord, and Tenant shall have no further rights thereto. In the event that Tenant's Antenna Facilities, and

related equipment are not removed to commercially reasonable standards, the Landlord shall have the option to take the following actions:

- i. Fully decommission the Antenna Facilities, have the Antenna Facilities removed, and repair and restore the Leased Premises, excepting ordinary wear and tear, and send an invoice to Tenant for the cost of such actions. If Landlord removes the Antenna Facilities or related equipment, Landlord must give written notice to any mortgagee of Tenant at the addresses provided, informing them that Antenna Facilities or related property have been removed and will be deemed abandoned if not claimed and the storage fees and other reasonable costs paid within thirty (30) days; or
 - ii. Take full ownership of the Antenna Facilities.
- e. If Landlord elects to terminate this Lease pursuant to Section 12(a)(iv) following the City Council's decision to redevelop the Leased Premises in a manner inconsistent with continued use of the Leased Premises by Tenant or to construct new improvements that are inconsistent with Tenant's use ("New Structure") on or in the vicinity of the Leased Premises then:
- i. Landlord shall have the one-time right to require the relocation of the Antenna Facilities, or any part thereof, to an alternate ground location provided that (i) the relocation shall be performed exclusively by Tenant or its agents at Landlord's sole cost and expense, (ii) the relocation shall not result in any interruption of the communications services provided by Tenant to its customers, including, but not limited to, Tenant's continuous access, maintenance and operation of the Antenna Facilities, until such time that all tenants, subtenants and sublicensees that have been permitted by this Lease are successfully relocated, and (iii) the relocation shall not impair, or in any manner alter, the quality of communications services provided by Tenant to its customers on and from the Relocation Site as defined below.
 - ii. Relocation Process. To exercise the relocation rights, Landlord shall provide written notice to Tenant not less than twenty-four (24) months prior to the relocation date and shall propose an alternate site to which Tenant may relocate the Antenna Facilities ("Alternate Site Location"). Tenant shall have sixty (60) days from the date of the notice to evaluate the Alternate Site Location, including, but not limited to, conducting tests to determine the technological feasibility of the Alternate Site Location and obtaining written approval of all wireless telecommunications providers on the Leased Premises that have been permitted by this Lease. If Tenant fails to approve the Alternate Site Location in writing within said sixty (60) day period, Tenant will be deemed to have not approved such Alternate Site Location. If Tenant does not approve such Alternate Site Location, Tenant may then propose another Alternate Site Location by providing notice to Tenant in the manner set forth above. Upon Tenant's approval of any proposed Alternate Site Location, both parties will enter into a written agreement

concerning the relocation of the Antenna Facilities (“Relocation Agreement”) to the Alternate Site Location (“Relocation Site”). Tenant shall undertake reasonable efforts to provide an Alternate Site Location acceptable to Tenant. If no Alternate Site Location is available or if Tenant does not approve an Alternate Site Location, Landlord may, upon twenty-four (24) months’ written notice, terminate this Lease in accordance with the notice requirements set forth in Section 22 of this Lease.

- iii. No Additional Terms. Upon relocation of the Antenna Facilities, all references to the Leased Premises in this Lease shall be deemed to refer to the Relocation Site (including any access and utility easements). The Relocation Site shall be surveyed by a licensed surveyor at the sole cost of Tenant, in which event such survey shall replace and supersede the description of the Leased Premises under this Lease. Unless otherwise provided in the Relocation Agreement or any other written agreement of the parties, the relocation of the Antenna Facilities shall not affect, alter, modify or otherwise change any of the terms and conditions of this Lease.
- iv. Relocation Period. The “Relocation Period” shall mean that period of time commencing on the date Tenant has received all required permits and approvals for the Relocation Site and ending ninety (90) days thereafter. The relocation of the Antenna Facilities to the Relocation Site shall be substantially completed within the Relocation Period, to the extent reasonable feasible. The then-current rent shall be reduced by fifty percent (50%) during the Relocation Period.

13. **Limitation of Landlord’s Liability.** If Landlord terminates this Lease other than for cause as of right as provided in this Lease, or Landlord causes interruption of the business of Tenant, or for any other Landlord breach of this Lease, Landlord’s liability for damages to Tenant shall be limited to the actual and direct costs of the replacement of this site in Tenant’s network including, without limitation, equipment removal, relocation or repair, and all cost associated with the identification of a new site for Tenant’s replacement communications facility, applying for any necessary governmental approvals, and the cost of constructing a new antenna support structure, including without limitation, surveys, designs, foundation, steel, and erection of the structure and supporting facilities.

14. **Interference.**

- a. With Structure. Tenant shall not materially interfere with Landlord’s use of the Property and agrees to cease all such actions that unreasonably and materially interfere with Landlord’s use thereof no later than three (3) business days after receipt of written notice of the interference from Landlord. Tenant shall have such extended periods as may be required beyond the three (3) day cure period if the nature of the cure is such that it reasonably requires more than three (3) days to cure, and Tenant commences the cure within the three (3) day period and thereafter continuously and diligently pursues the cure to completion. In the event that Tenant’s cessation of action is material to Tenant’s use of the Leased Premises and such cessation frustrates Tenant’s use of the Leased Premises,

within Tenant's sole discretion, Tenant shall have the right to terminate this Lease for cause pursuant to Section 12(a)(iii).

- b. Subject to the provisions of this Lease, Landlord shall not use, nor shall Landlord permit its employees, representatives, invitees, contractors or agents to use, the Property in a way that interferes with the operations of Tenant. Such interference shall be deemed a material breach by Landlord, and Landlord shall have the responsibility to terminate said interference upon written notice from Tenant. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference will cause irreparable injury to Tenant and, therefore, Tenant shall have the right, in addition to any other rights that it may have at law or in equity, to elect to enjoin such interference or to terminate this Lease, upon written notice to Landlord.
 - c. Interference Study - New Occupants. Upon written notice by Landlord that it has a bona fide request from any other party to Lease an area in close proximity to the Leased Premises, Tenant shall provide to Landlord within sixty (60) days the radio frequencies currently in operation or anticipated by Tenant to be operated in the future of each transmitter and receiver installed and operational on the Leased Premises at the time of such request. Landlord may then have an independent, registered professional engineer of Landlord's choosing perform the necessary interference studies to determine if the new applicant's frequencies will cause harmful radio interference to Tenant. Landlord shall require the new applicant to pay for such interference studies.
 - d. Interference - New Occupants. Landlord agrees that it will not grant a future Lease in the Property to any party, if such party's use is reasonably anticipated to interfere with Tenant's operation of its Antenna Facilities. Landlord agrees that it will require any operators not existing at the Property as of the commencement date of the Original Lease to provide Tenant these same assurances against interference. Landlord shall have the obligation to eliminate any interference with the operation of Tenant caused by such subsequent occupants. If such interference is not eliminated, Tenant shall have the right to terminate this Lease or seek injunctive relief against the interfering occupant, at Tenant's expense.
15. **Tenant's Right of First Refusal.** If Landlord receives an offer from any person or entity that owns towers or other wireless telecommunications facilities (or is in the business of acquiring Landlord's interest in the Lease) to purchase fee title, an easement, a lease, a license, or any other interest in the Leased Premises, or Landlord's interest in the Lease, or an option for any of the foregoing, Landlord shall provide written notice to Tenant of said offer, and Tenant shall have a right of first refusal to acquire such interest on the same terms and conditions in the offer, excluding any terms or conditions which are (i) not imposed in good faith or (ii) directly or indirectly designed to defeat or undermine Tenant's possessory or economic interest in the Leased Premises. Landlord's notice shall include the prospective buyer's name, the purchase price and/or other consideration being offered, the other terms and conditions of the offer, the due diligence period, and the proposed closing date. If the Landlord's notice shall provide for a due diligence period of less than sixty (60) days, then the due diligence period shall be extended to be sixty (60) days from exercise of the right of first refusal and closing shall occur no earlier than fifteen (15) days thereafter. If Tenant

does not exercise its right of first refusal by written notice to Landlord given within thirty (30) days, Landlord may convey the property as described in the Landlord's notice. If Tenant declines to exercise its right of first refusal, then the Lease shall continue in full force and effect and Tenant's right of first refusal shall survive any such conveyance. Tenant shall have the right, at its sole discretion, to assign the right of first refusal to any person or entity, either separate from an assignment of the Lease or as part of an assignment of the Lease. Such assignment may occur either prior to or after Tenant's receipt of Landlord's notice and the assignment shall be effective upon written notice to Landlord.

16. **Noise.** All wireless service facilities shall be constructed and operated in such a manner as to reasonably minimize the amount of noise impacts to residents of nearby homes and the users of recreational areas, such as public parks and trails. Noise attenuation measures shall be required for all air-conditioning units. Backup generators shall only be operated during power outages, for testing and maintenance purposes and as otherwise authorized pursuant to this Lease. At any time, reasonable noise attenuation measures may be required by the Landlord when deemed necessary. Testing and maintenance activities that generate audible noise shall occur between the hours of eight o'clock (8:00) A.M. and five o'clock (5:00) P.M., weekdays (Monday through Friday, non-holiday) excluding emergency repairs, unless allowed at other times by Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Testing and maintenance activities that do not generate audible noise may occur at any time, unless otherwise reasonably restricted by the Landlord.
17. **Installation of a Generator.** Tenant shall not install or replace any generator on the Property or the Leased Premises without Landlord's prior written approval, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Tenant shall be permitted to place an emergency generator within the Leased Premises for a period up to seven (7) days in the event of a power failure to the Antenna Facilities. In the event that Landlord grants approval for the placement of a generator on the Leased Premises, Tenant agrees to maintain or repair any such generator within the Leased Premises. Tenant further agrees that Landlord may reasonably limit the noise level at the Property line. In the event that Tenant materially exceeds the noise level at the Property line, Tenant shall take all such steps reasonably requested by Landlord to reduce the sound levels, including, but not limited to, installing additional mufflers, or any other reasonable requirements that may be requested by Landlord. All sound reduction measures requested by Landlord shall be performed at Tenant's sole cost and expense. If Tenant fails to comply within a reasonable time to Landlord's proposed sound reduction measures, Tenant shall be deemed in default hereunder and Landlord may take any and all reasonable measures to stop the use of the generator. Tenant shall further repair any and all damage caused by the use of the generator upon the Property. Tenant shall reimburse Landlord up to One Thousand and 00/100 Dollars (\$1,000.00) (hereinafter the "Cap") for actual costs incurred enforcing this Section, including attorneys' fees, within thirty (30) days of Tenant's receipt of documentation reasonably evidencing such costs of enforcement. The Cap shall escalate at the same time and in the same manner as the rent set forth in Section 3(a) of this Lease.
18. **Assignment.** This Lease, or rights there under, may not be sold, assigned, or transferred at any time by Tenant except to Tenant's Affiliates without the written consent of the Landlord, such consent not to be unreasonably withheld, conditioned or delayed. For purposes of this

Section, an “Affiliate” means an entity that controls, is controlled by or under common control with Tenant. Landlord hereby consents to the assignment by Tenant of its rights under this Lease as collateral to any entity that provides financing for the purchase of equipment used by Tenant in connection with the provision of wireless telecommunication services.

19. **Condemnation.** In the event Landlord receives notice of a proposed taking by eminent domain of any part of the Leased Premises, Landlord will notify Tenant of the proposed taking within five (5) days of receiving said notice.
- a. If the use, occupancy, or title of the Leased Premises or any part thereof is taken, requisitioned or sold in, by or on account of any actual or threatened eminent domain proceeding or other action by any person having the power of eminent domain (a “Condemnation”), Landlord and Tenant agree that Tenant has the right to contest the taking and directly pursue an award or compensation on account of the taking.
 - i. Landlord and Tenant may each appear in any such proceeding or action, to negotiate, prosecute and adjust any claim for any award or compensation on account of any Condemnation as it relates to their respective interest in the Leased Premises. Landlord and Tenant shall each pay all of its costs and expenses in connection with each such proceeding, action, negotiation, prosecution and adjustment. Landlord shall have no interest in any such award, compensation or payment, or any portion thereof, made in respect of Tenant’s leasehold estate or the Antenna Facilities, all of which shall belong to and be paid to Tenant.
 - b. If a Condemnation shall affect all or a material portion of the Leased Premises which shall render the Leased Premises unsuitable for restoration for continued use and occupancy in Tenant’s business, then Tenant may, not later than one hundred eighty (180) days after receipt of Landlord’s notice of such a proposed taking, deliver to Landlord
 - i. notice of Tenant’s intention to terminate this Lease on a business day specified in such notice (the “Lease Termination Date);, and
 - ii. This Lease shall terminate on the Lease Termination Date, except with respect to obligations and liabilities of Tenant hereunder, actual or contingent, which have arisen on or prior to the Lease Termination Date, upon payment of all additional rent and other sums then due and payable hereunder to and including the Lease Termination Date.
 - c. If Tenant elects to remain in possession of that portion of the Leased Premises that will not be taken, then there shall be an equitable adjustment in rent on account of the portion of the Leased Premises so taken and this Lease shall otherwise continue in full force and effect.

20. **Disputes.** Any claim, controversy or dispute arising out of this Lease not resolved within ten (10) days following notice of the dispute shall be submitted first and promptly to mediation in accordance with the rules of the American Arbitration Association, excluding any claims for provisional remedies available at law, including injunctive relief. Each party shall bear its own cost of mediation. If mediation does not result in settlement, either party may file a claim in Dakota County District Court.
21. **Enforcement and Attorneys' Fees.** In the event that either party to this Lease shall bring a claim to enforce any rights hereunder, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees and other reasonable enforcement costs and expenses incurred as a result to such claim.
22. **Notices.** All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or by courier services, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

If to Landlord:

City of West St. Paul
Attention: City Manager
1616 Humboldt Ave.
West St. Paul, MN 55116

With a copy to:

LeVander, Gillen & Miller, P.A.
Attn: West St. Paul City Attorney
633 South Concord St., Suite 400
South St. Paul, MN 55075

If to Tenant:

T-Mobile USA Tower LLC
c/o Crown Castle USA Inc.
Attn: Legal - Real Estate Department
2000 Corporate Drive
Canonsburg, PA 15317

23. **Authority.** Each of the individuals executing this Lease on behalf of Tenant or Landlord represents to the other party that such individual is authorized to do so by requisite action of the party to this Lease.
24. **Binding Effect.** This Lease shall run with the Leased Premises. This Lease shall extend to and bind the heirs, personal representatives, successors and assigns of the parties hereto.
25. **Complete Lease; Amendments.** This Lease constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiation, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties hereto. The Exhibits hereto are incorporated into this Lease by reference.

26. **Governing Law.** This Lease shall be construed in accordance with the laws of the State of Minnesota.
27. **Severability.** If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.
28. **Memorandum.** Upon request by either party, the parties agree to promptly execute and deliver a recordable Memorandum of this Lease in a form acceptable to both parties, which may be recorded by the party requesting the Memorandum of Lease.
29. **Counterparts.** This Lease may be signed in counterpart by the parties hereto, each of which shall be deemed an original, but all of which when taken together, shall constitute a single instrument.
30. **Cooperation.** The parties hereby agree to cooperate with each other and their authorized representatives regarding any reasonable request made subsequent to execution of this Lease, to correct any clerical errors contained in this Lease and to provide any and all additional documentation deemed necessary by either party to effectuate the transaction contemplated by this Lease. The parties further agree that “to cooperate” as used in this Lease includes but is not limited to, the agreement by the parties to execute or re-execute any documents that either party reasonably deems necessary and desirable to carry out the intent to this Lease.
31. **IRS Form W-9.** Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Lease and at such other times as may be reasonably requested by Tenant. In the event the Property is transferred, the succeeding landlord shall have a duty at the time of such transfer to provide Tenant with a Change of Ownership Form as provided for by Tenant, a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in rent to the new landlord. Landlord’s failure to provide the IRS Form W-9 within thirty (30) days after Tenant’s request shall be considered a default and Tenant may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from rent payments.
32. **Deletion of Original Lease.** Landlord and Tenant agree that effective as of the Effective Date of this Lease, the Board Site Lease Agreement is hereby amended by deleting it in its entirety and restating the Board Site Lease Agreement as provided for in this Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the date and year first above written.

LANDLORD:
CITY OF WEST ST. PAUL

David Meisinger, Mayor

Matt Fulton, City Manager

TENANT:
T-MOBILE USA TOWER LLC,
a Delaware limited liability company

By: CCTMO LLC,
a Delaware limited liability company
Its: Attorney In Fact

By: _____
Print Name: _____
Title: _____

Exhibit A
Legal Description of the Property

Real property in Dakota County, Minnesota, legally described as follows:

The North 120 feet of the West 120 feet of the East 300 feet of Lot 1, Smith's Out Lots, according to the recorded plat thereof, Dakota County, Minnesota.

PID# 42-69950-00-013

Exhibit B
Antenna Facilities

(attached)
[Need to add]