

Site Agreement

This Site Agreement ("Agreement") is entered into this _____ day of _____, 2011, by and between the City of Lawrence, Kansas, a municipal corporation ("Owner" or "City"), and T-Mobile Central, LLC, a Delaware limited liability company, its successors and assigns ("Tenant"), and provides for the granting and leasing of certain property interests on the following terms:

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **PROPERTY.** The property interests hereby leased and granted by Owner ("Property") shall include the following:

- [] Real property constituting approximately 368 square feet;
- [] Space sufficient for the installation and maintenance of wires, cables, conduit and pipes to connect the equipment building and antennas located on the Tower (as defined below), only as approved in writing by Owner, which approval shall not be unreasonably denied, delayed, or conditioned;
- [] Non-exclusive easements over, under or along Owner's Property sufficient for the installation and maintenance of utility lines and cables from the nearest public right of way to the Property, only as approved in writing by Owner;
- [] Non-exclusive easement across Owner's Property hereinafter defined, for access (the "Access Easement"), only as approved in writing by Owner, which approval shall not be unreasonably denied, delayed, or conditioned; and
- [] A portion of space on Owner's water tower (the "Tower") located on the Property, for the placement of 7 antennas, 13 lines of coaxial cable, and 3 tower mounted amplifiers.

in, under or upon the Owner's real property ("Owner's Property") described in Exhibit "A" affixed hereto; as shown on site plan affixed hereto as Exhibit "B"; and subject to the specifications and location as generally shown and described on Exhibit "C".

2. **TERM.** The initial term of this Agreement shall be five (5) years commencing on the first (1st) day of the month following the date this Agreement is executed by the parties or the first (1st) day of the month following the date Tenant is

granted a building permit by the governmental agency charged with issuing such permits, whichever event occurs last (the "Commencement Date").

3. **RENT.** Tenant's obligation to pay rent shall arise on the Commencement Date. Thereafter, Tenant shall pay Owner rent monthly, in advance, on the first (1st) day of each calendar month. The monthly rent for the first year of the initial term shall be Two Thousand and No/100 Dollars (\$2,000.00) ("Rent"), together with any applicable sales tax. Commencing on the first annual anniversary of the Commencement Date, and on each annual anniversary thereafter during the initial term and any Option Periods (as defined below), the annual rental amount shall be increased by three percent (3%) of the annual Rent for the immediately preceding year. All Rent shall be paid at the following address: City of Lawrence, Kansas, Attn: City Clerk, 6 East 6th Street, P.O. Box 708, Lawrence, Kansas 66044.
4. **OPTION TERMS.** Tenant may extend the term of the Agreement for two (2) additional and successive five (5) year option periods (individually, an "Option Period" and collectively, the "Option Periods"). Tenant shall have elected to extend the term for each successive Option Period unless it gives Owner written notice of its intention not to extend at least sixty (60) days prior to the expiration of the then-current term.
5. **USE.** Tenant may use the Property for the transmission and reception of communications signals and the installation, maintenance, operation, repair and replacement of its communication facilities, fixtures and related equipment, cables, accessories and improvements (collectively, the "Communications Facility") as described in Exhibit "B" and for no other purposes. Minor modifications to the Communications Facility, such as replacement of antennas, coaxial cable or base station equipment, shall not require the Owner's approval provided that the replacement facilities are not greater in number or size than the existing facilities and that any change in their location on the Tower is approved in writing by the Owner. Major modifications to the Communications Facility such as relocation or expansion of the equipment or structures (including the addition of antennas and/or cables) will require prior written consent of the Owner and may require Owner's approval as a land use regulator. Tenant shall be solely responsible for installing, maintaining, operating and repairing the Communications Facility on the Property and may subcontract qualified professionals to perform such services, all at Tenant's sole cost and expense. All earth, turf, shrubbery, trees, sidewalks, paving, fences, public improvements or improvements of any kind injured, damaged or removed by Tenant, or Tenant's contractors or agents, in the installation, repair, and/or maintenance of the Communications Facility shall be fully repaired or replaced within a reasonable time by Tenant, at its sole cost and expense, and to the satisfaction of the Owner. Tenant shall comply with all applicable federal, state and local laws,

rules, statutes and regulations, relating to its use of the Communications Facility on the Property. It is understood and agreed that Tenant's ability to use the Property is contingent upon its obtaining, after the execution date of this Agreement, all of the certificates, permits, and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities, as well as satisfactory soil boring tests which will permit Tenant use of the Property as set forth above. In the event that any of such applications for such Governmental Approvals should be finally rejected or Tenant determines that such Governmental Approvals may not be obtained in a timely manner, or any Governmental Approvals issued to Tenant are canceled, expire, lapse, or are otherwise withdrawn or terminated by a governmental authority, or soil boring tests are found to be unsatisfactory so that Tenant, in its sole discretion, will be unable to use the Property for its intended purposes or the Tenant determines that the Property is no longer technically compatible for its intended use, Tenant shall have the right to terminate this Agreement. All rentals paid to said termination date shall be retained by the Owner.

6. ATTACHMENT OF ANTENNAS, CONSTRUCTION GROUND EQUIPMENT, IMPROVEMENTS, AND INTERFERENCE.

- a. Tenant warrants that its use of the Property will not interfere with any existing radio frequency users on the Property as long as the existing radio frequency users operate and continue to operate within the frequencies existing as of the date of this Agreement and in accordance with all applicable laws and regulations. If at any time during the term of this Agreement, Tenant's use of the Property interferes with any existing radio frequency user's operations, and after Owner has notified Tenant of such interference, Tenant shall take all necessary actions to discontinue the interference. Tenant's use of the Property shall in all matters be subordinate to the Owner's and/or any governmental entity's use of the Property for any public purposes. Tenant shall relocate or adjust its Communications Facility or adjust its operations to accommodate the Owner's use within a reasonable time when such relocation or adjustment is requested by the Owner to accommodate the Owner's use, or any governmental entity's use, of the Property for public purposes; provided, however, in the event Owner requires such relocation or adjustment more than one (1) time during the term of this Agreement or if such relocation or adjustment impairs Tenant's ability to use the Property as a Communications Facility, Tenant shall have the option to instead terminate this Agreement effective as of the date such relocation or adjustment was to have taken effect. Any relocation or adjustment shall be at the sole cost and expense of the Tenant.
- b. If any interference with Owner's or any other governmental entity's use cannot be eliminated within three (3) days of written notice thereof, Tenant

agrees to suspend operations (transmissions) at the site while the interference problems are studied and a means is found to mitigate them. If said interference cannot be eliminated, then this Agreement will be terminated, and Tenant shall remove its building and equipment from Owner's Property.

- c. Owner shall cause all subsequent users of the Tower to first coordinate with Tenant to ensure that their frequencies and antenna locations will be compatible with Tenant's and to agree to a clause similar to this Paragraph 6 herein.

- d.

- i. Tenant shall attach 6 antennas and 3 tower mounted amplifiers at the 85-foot level and one GPS antenna at the 150-foot level (mounted on top) of the Tower, as well as construct the necessary ground equipment and ancillary support facilities and structures needed to perform the expressed intended purpose of this Agreement. Prior to commencing construction, Tenant shall submit plans and specifications for all improvements to Owner for Owner's written approval, such approval not to be unreasonably withheld or delayed. No improvement, construction, installation, or alteration shall be commenced until plans for such work has been approved by the Owner and all necessary permits have been properly issued.
 - ii. Such plans shall include: Fully dimensioned site plans that are drawn to scale and show (1) the proposed location of the antennas, equipment shelter/cabinets, driveway and parking areas, (2) the proposed clearing and landscaping, (3) the proposed type and height of fencing, (4) the proposed color of all structures, including fencing, (5) the proposed type of construction material for all structures, including fencing, and any other details that the Owner may request.
 - iii. Prior to commencing construction, Tenant shall provide Owner with the name of the contractor that will be constructing the improvements. The contractor is subject to the prior written approval of Owner, such approval not to be unreasonably withheld or delayed. All improvements shall be constructed in a workmanlike manner without the attachment of any liens to the Property and shall be completed in compliance with all applicable laws, rules, ordinances and regulations.

- e. Tenant or Tenant's Contractor shall, prior to commencing any construction on the Property, post a payment bond assuring that the improvements will be constructed without the attachment of any construction liens.
 - f. No improvements or modifications to the Property shall be made without the Owner's consent. Such consent by the Owner shall not be unreasonably withheld or delayed. Moreover, any such improvements or modifications are subject to the conditions set forth in section d (i), (ii) and (iii) above.
7. **TENANT'S ACCESS TO PROPERTY.** Owner shall provide Tenant with access to the Property in accordance with the procedures outlined in this Paragraph 7 twenty-four (24) hours a day, seven (7) days a week, for the purpose of installing and maintaining said Communications Facility and the equipment therein. It is agreed that only authorized engineers, employees or properly authorized contractors or persons under their direct supervision will be permitted to enter the Property. To obtain access to the Property, Tenant's authorized person or persons shall sign in with Owner. An employee of Owner shall accompany Tenant's authorized person or persons to the Property and provide them access to the Communications Facility. In the event this procedure shall be discontinued or no longer be available, Owner shall provide an alternative procedure to allow Tenant access to the Property twenty-four (24) hours a day, seven (7) days a week.
8. **CONDITION OF PROPERTY.** Owner represents that it will keep the Tower in good repair as required by all federal, state, county and local laws.
- No materials may be used in the installation of the antennas or transmission lines that will cause corrosion or rust or deterioration of the Tower structure or its appurtenances. Nothing in this Agreement shall be construed or interpreted as creating a guarantee or warranty enforceable against the Owner that the Property or Communications Facility is or will remain suitable for use in transmitting or receiving communications signals for use by the Tenant.
- Tenant's antenna(s) on the Tower shall be identified by a marking fastened securely to its bracket on the Tower and all transmission lines shall be tagged at the conduit opening where they enter Tenant's equipment space. Tenant shall also utilize any markings required by federal, state, or local laws.
9. **PROPERTY TAXES.** Tenant shall pay all personal property taxes assessed against Tenant's Communications Facility location on the Property as a result of Tenant's use or ownership of the Communications Facility. Owner is a municipal corporation and is exempt from the payment of real property taxes, and Tenant

shall be responsible for any real property taxes assessed against the Property as a result of the use or development of the Property by Tenant. Owner shall allocate real estate taxes among the different tenants of the Tower.

Owner shall provide to Tenant a copy of any notice, assessment or billing relating to real estate taxes for which Tenant is responsible under this Agreement upon receipt of the same by Owner. Tenant shall have no obligation to make payment of any real estate taxes until Tenant has received the notice, assessment or billing relating to such payment as set forth in the preceding sentence. Should any such taxes or assessments be levied or assessed directly against and be paid by Owner, Tenant shall reimburse Owner for the full amount thereof within thirty (30) days of receipt of Owner's notice to Tenant of its payment of such taxes and assessments.

Tenant shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which Tenant is wholly or partially responsible for payment under this Agreement. Owner shall reasonably cooperate with Tenant in filing, prosecuting and perfecting any appeal or challenge to such taxes as set forth in the preceding sentence, including but not limited to, executing any consent to appeal or other similar documents. Failure to pay any such taxes or assessments by Tenant within 30 days after written notice of the same is given to Tenant by Owner shall result in the immediate termination of this Agreement and removal of the Tenant's facilities on the Property.

Tenant shall indemnify Owner from any and all liability, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against Tenant in relation to the taxes owed or assessed on the Property directly resulting from the use/occupancy of the Property by Tenant.

If the methods of taxation in effect at the Commencement Date of the Agreement are altered so that in lieu of or as a substitute for any portion of the property taxes and special assessments imposed on property there is imposed a tax on or against the rentals payable by Tenant to Owner, Tenant shall pay those amounts in the same manner as provided for the payment of real and personal property taxes.

10. **LIENS.** Tenant shall not allow any mechanic's or materialmen's liens to be placed on the Property as a result of its activity on the Property. Tenant shall provide to the Owner, or shall cause its contractors to provide to the Owner, performance and payment bonds to assure timely performance of and payment for the work to be performed on the Property.

11. **UTILITIES.** Payment for electric service and for telephone or other utility services used or consumed by the Tenant on the Property shall be Tenant's responsibility. Owner agrees to cooperate with Tenant in its efforts to connect, at Tenant's expense, the Communications Facility to existing utility services. Tenant shall install a separate meter to record Tenant's electrical and other utilities associated with the use of the Property and shall timely pay all costs associated therewith. Tenant shall not install power generators or fuel storage facilities on the Property without a separate agreement or an amendment to the Agreement. However, in consultation with Owner, Tenant may install and operate, on a temporary basis, during an extended loss of commercial power, a portable propane or diesel fueled emergency generator. The generator shall be promptly removed from the Property after restoral of commercial power.
12. **REMOVAL OF COMMUNICATIONS FACILITY.** Within ninety (90) days after the expiration or earlier termination of this Agreement, Tenant shall remove all personal property and trade fixtures of Tenant from the Property and the Property shall be surrendered to Owner in substantially the same condition as on the Commencement Date, ordinary wear and tear excepted, unless Owner gives Tenant express written consent to leave any such personal property and trade fixtures on the Property beyond such ninety (90) day period. On or before the Commencement Date, Tenant shall provide Owner a Five Thousand and No/100 Dollars (\$5,000.00) escrow payment ("Escrow Funds") to be held until such time as Tenant's personal property and trade fixtures are removed to the satisfaction of Owner. The Escrow Funds shall be held, administered and distributed as provided by the terms of the Escrow Agreement to be entered into by and between Owner and Tenant of even date herewith, a copy of which is affixed hereto as Exhibit "D".

Owner agrees and acknowledges that all of the equipment, fixtures and personal property of the Tenant shall remain the personal property of the Tenant and the Tenant shall have the right to remove the same, whether or not said items are considered fixtures and attachments to real property under applicable law.

13. **INSURANCE.** Tenant, at its sole cost and expense, shall procure and maintain, until such date as all equipment and installations of Tenant have been removed by Tenant from the Property, commercial general liability insurance insuring Tenant against liability for personal injury, death or damage to personal property arising out of use of the Property by Tenant, with a minimum combined single limit of One Million and No/100 Dollars (\$1,000,000.00). Such insurance shall provide that the insurer shall provide Owner with at least thirty (30) days prior written notice of the cancellation of such policy for any reason. On or before the Commencement Date, and annually thereafter, Tenant shall provide Owner with

an insurance certificate evidencing that Tenant maintains the insurance required by this Agreement. Owner agrees that Tenant may self-insure against any loss or damage which could be covered by a commercial general liability insurance policy; provided, however, Tenant or its parent company maintains a minimum net worth of at least Twenty-Five Million Dollars (\$25,000,000.00). The parties hereby waive any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the parties, or either of them. These waivers and releases shall apply between the parties and they shall also apply to any claims under or through either party as a result of any asserted right of subrogation. All policies of insurance covering property damage obtained by either party concerning their property shall waive the insurer's right of subrogation against the other party.

Owner warrants and represents to the Tenant that Owner maintains either private insurance or self-insurance, in aggregate amounts, pursuant to the limits set forth in the Kansas Tort Claims Act to provide coverage against claims for liability for bodily injury, death, and property damage arising out of its ownership, use and management of the Property and Water Storage Facility and fire and extended coverage on the Property and Water Storage Facility.

In addition to the insurance requirements listed above, Tenant shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

- a. Workers' compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000) for each accident, One Hundred Thousand Dollars (\$100,000) for each employee and Five Hundred Thousand Dollars (\$500,000) policy limit.
- b. Automobile liability insurance covering all owned, hired and non-owned vehicles in use by Tenant, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of state law with minimum limits of One Million Dollars (\$1,000,000) as the combined single limit for each occurrence for bodily injury and property damage.
- c. At the start of and during the period of construction or installation, property coverage covering cables, materials, machinery and supplies of any nature whatsoever which are to be used in or incidental to the installation on the Tower. Upon completion of the installation on the Tower, Tenant shall substitute for the foregoing insurance policies of fire,

extended coverage and vandalism and malicious mischief insurance on its personal property. The amount of insurance at all times shall be representative of the insurable values installed or constructed.

- d. Intentionally deleted.
- e. Additional Insureds: All policies, except for fire, extended coverage and vandalism and malicious mischief, business interruption and workers' compensation policies, shall name Owner as an additional insured (herein referred to as to the "Additional Insureds").
- f. Evidence of Insurance: Certificates of Insurance for each insurance policy required to be obtained by Tenant in compliance with this paragraph, shall be filed and maintained with Owner annually during the term of the Agreement. Tenant shall immediately advise Owner of any claim or litigation that may result in liability to Owner.
- g. Cancellation of Policies of Insurance: The Certificate of Insurance shall contain the following:
 - i. "At least thirty (30) days prior written notice shall be given to Owner by the insurer of any intention not to renew such policy or to cancel or replace same."
 - ii. Insurance Companies: All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of Kansas or surplus line carriers on the State of Kansas Insurance Commissioner's approval list of companies qualified to do business in the State of Kansas.
 - iii. Contractors: Tenant shall require that each and every one of its contractors and their subcontractors who perform work on the Property to carry, in full force and effect, workers' compensation, comprehensive general liability and automobile liability insurance coverages of the type which Tenant is required to obtain under the terms of this paragraph with appropriate limits of insurance.
- h. Review of Limits: once during each calendar year during the term of this Agreement, Owner may review the insurance coverages to be carried by Tenant. If Owner and Tenant mutually agree that higher limits of coverage are necessary to protect the interest of Owner or the Additional Insureds, or that Tenant has failed to comply with the insurance requirements as stated in the Agreement, Tenant shall obtain the additional limits of insurance, at its sole cost and expense.

14. **TERMINATION.**

- a. By Tenant. Notwithstanding anything to the contrary contained herein, provided Tenant is not in default hereunder and shall have paid all rents and sums due and payable to the Owner by Tenant, Tenant shall have the right to terminate this Agreement upon the annual anniversary of this Agreement provided that ninety (90) days prior written notice is given the Owner.
- b. By Owner.
 - i. Notwithstanding anything to the contrary in this Agreement, Owner may terminate this Agreement upon at least one (1) year's prior written notice to Tenant (unless an emergency or imminent danger exists) if Owner determines, in its reasonable discretion, that continued use of the Tower by Tenant is a threat to the public health, safety or welfare or violates applicable laws or ordinances.
 - ii. Notwithstanding anything to the contrary in this Agreement, Owner shall have the right to terminate this Agreement upon at least two (2) years' prior written notice to Tenant if, in the sole but reasonable discretion of Owner, it becomes necessary to do so for reasons other than leasing space on the Tower to a company or companies which are in competition with Tenant.

15. **INDEMNITY.** Disclaimer of Liability: Except as otherwise provided by law, Owner shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Tenant's construction, maintenance, repair, use, operation, condition or dismantling of the Property or Tower, except to the extent attributable to the negligent or intentional act or omission of Owner, its employees, agents or independent contractors.

- a. Indemnification: Tenant shall indemnify and hold harmless Owner and its employees, agents, and contractors (hereinafter referred to as "Indemnitees"), from and against:
 - i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of the indemnifying party's employees, agents, contractors or subcontractors, resulting in their personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or

destruction of tangible or intangible property, and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Property or the failure to comply with any federal, state or local statute, ordinance or regulation.

- ii. Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), which are imposed upon, incurred by or asserted against the Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to the indemnifying party, its contractors or subcontractors, for the installation, construction, operation, maintenance or use of the Property, and, upon the written request of an Indemnitee, the indemnifying party shall cause such claim or lien covering Owner's Property to be discharged or bonded within thirty (30) days following such request.
 - iii. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any financing or securities offering by Tenant or its affiliates for violations of the common law or any laws, statutes, or regulations of the State of Kansas or United States, including those of the Federal Securities and Exchange Commission, whether by Tenant or otherwise.
- b. Defenses of Indemnitees: In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, indemnitors shall, upon notice from any of the Indemnitees, at their sole cost and expense, resist and defend the same with legal counsel; provided however, that indemnitors shall not admit liability in any such matter on behalf of the Indemnitees without the written consent of Indemnitees and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of indemnitor.

- c. Notice: Each party shall give the other party prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this paragraph.
16. **HAZARDOUS SUBSTANCES.** Owner warrants that Owner has no knowledge of any substance, chemical, or waste on the Owner's Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation as of the date of the Agreement. Tenant represents and warrants that its use of the Property herein will not generate any hazardous substance, and it will not store or dispose on the Property nor transport to or over the Property any hazardous substance in violation of applicable laws. Tenant further agrees to hold City harmless from and indemnify City and its agents, officers, and employees against Tenant's release of any such hazardous substance and any damage, loss, or expense or liability directly resulting from such release, including all reasonable attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the negligence of the City, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.
17. **CASUALTY.** If any portion of the Owner's Property is damaged by any casualty and such damage adversely affects Tenant's use of or access to the Property, this Agreement shall terminate as of the date of the casualty if Tenant gives written notice of the same within thirty (30) days after the occurrence of such casualty. Notwithstanding the foregoing all rental shall abate during the period following such casualty where Tenant is unable to use the Property for its intended purpose.
18. **CONDEMNATION.** If a condemning authority takes any portion of the Owner's Property and such taking adversely affects Tenant's use of or access to the Property, this Agreement shall terminate as of the date the title vests in the condemning authority, if Tenant gives written notice of the same within thirty (30) days after Tenant receives notice of the taking. The parties shall be entitled to make claims in any condemnation proceeding for the value of their respective interests in the Owner's Property, or Property, as applicable.

19. **QUIET ENJOYMENT.** Tenant, upon paying the Rent, shall peaceably and quietly have, hold and enjoy the Property. At Owner's option, this Agreement shall be subordinate to any mortgage or other security interest by Owner which from time to time may encumber all or part of the Property or right-of-way; provided, however, every such mortgage or other security interest shall recognize the validity of this Agreement in the event of a foreclosure of Owner's interest and also Tenant's right to remain in occupancy of and have access to the Property as long as Tenant is not in default of this Agreement. Tenant shall execute whatever instruments may reasonably be required to evidence this subordination clause. In the event the Property is encumbered by a mortgage or other security interest, the Owner immediately after this Agreement is executed will obtain and furnish to Tenant a non-disturbance agreement for each such mortgage or other security interest in recordable form. In the event the Owner defaults in the payment and/or other performance of any mortgage or other security interest encumbering the Property, Tenant, may, at its sole option and without obligation, cure or correct Owner's default and upon doing so, Tenant shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgage or security interest and the Tenant shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by Tenant to cure or correct such defaults.
20. **DEFAULT.** Default and Owner's Remedies. It shall be a default if Tenant defaults in the payment or provision of Rent or any other sums to Owner when due, and does not cure such default within ten (10) days after written notice from Owner specifying the default complained thereof; or if either party defaults in the performance of any other covenant or condition of this Agreement and does not cure or make reasonable attempts to cure, such other default within thirty (30) days after written notice from the other party specifying the default complained of; or if Tenant abandons or vacates the Property; or if Tenant is adjudicated as bankrupt or makes any assignment for the benefit of creditors; or if Tenant becomes insolvent.

In the event of a default by Tenant, Owner shall have the right, at its option, in addition to and not exclusive of any other remedy Owner may have by operation of law, without any further demand or notice, to re-enter the Property and eject all persons therefrom, and terminate this Agreement, in which event Tenant shall immediately vacate the Property (and proceed as set forth in paragraph 12) and pay Owner a sum of money equal to the total of (i) the amount of the unpaid Rent accrued through the date of termination and (ii) liquidated damages equal to the lesser of (a) one (1) year's Rent for the then-current term, or (b) the amount of unpaid Rent reserved for the balance of the then-current term.

In the event of a default by Owner, Tenant shall have the right, at its option, in addition to and not exclusive of any other remedy Tenant may have by operation of law, without any further demand or notice, to terminate this Agreement.

For purposes of this Agreement, "abandons or vacates" means, at any time during the term of this Agreement Tenant moves from or ceases to occupy the Property, relinquishing or giving up with the intent, express or implied, to never again resume any interest or right created by this Agreement. Removal of equipment or antennas, without replacing the same in a reasonable time, shall be deemed an external act of Tenant's intent to abandon or vacate.

21. **CURE BY OWNER.** In the event of any default of this Agreement by Tenant, the Owner may at any time, after notice, cure the default for the account of and at the expense of the Tenant. If Owner is compelled to pay or elects to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense in instituting, prosecuting or defending any action to enforce the Owner's rights under this Agreement, the sums so paid by Owner, with all interest, costs (including but not limited to actual attorney's fees) and damages shall be deemed to be Additional Rental and shall be due from the Tenant to Owner on the first day of the month following the incurring of the respective expenses, provided the Owner's payment, performance or enforcement of rights is due to Tenant's breach of the Agreement, intentional misconduct or negligence.

22. **ASSIGNMENT AND SUBLETTING.**

- a. Upon written notice this Agreement may be sold, assigned or transferred by the Tenant without any approval or consent of the Owner to the Tenant's principal, affiliates, subsidiaries of its principal; to any entity which acquires all or substantially all of Tenant's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization; or to any entity which acquires or receives an interest in the majority of communication towers of the Tenant in the market defined by the Federal Communications Commission in which the Property is located.

As to all other parties, this Agreement may not be sold, assigned, sublet or transferred without the written consent of the Owner, which such consent will not be unreasonably withheld or delayed. Consent by Owner to any assignment shall not constitute a waiver of the necessity of such consent to any subsequent assignment. Upon Owner's receipt of an agreement or acknowledgment by which Tenant's assignee agrees to assume and perform all of Tenant's duties and obligations under this Agreement, Tenant shall be

released from performing all duties, obligations and liabilities under this Agreement that arise or accrue after the effective date of the assignment.

- b. Any person or entity to which this Agreement is assigned pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. Sections 101, *et seq.*, shall be deemed without further act to have assumed all of the obligations of Tenant arising under this Agreement on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Owner an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to Owner, shall be the exclusive property of Owner, and shall not constitute property of the Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any monies or other considerations constituting Owner's property under the preceding sentence not paid or delivered to Owner shall be held in trust for the benefit of Owner and be promptly paid to Owner.
23. **TREATMENT IN BANKRUPTCY.** The parties to this Agreement hereby expressly agree and acknowledge that it is the intention of both parties that in the event that during the term of this Agreement Tenant shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a "Proceeding") under the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.* (the "Code"), this Agreement is and shall be treated as an "unexpired lease of nonresidential real property" for purposes of Section 365 of the Code, 11 U.S.C. § 365, and, accordingly, shall be subject to the provision of subsections (d)(3) and (d)(4) of said Section 365.
24. **LICENSE FEES.** Tenant shall pay, as they become due and payable, all fees, charges, taxes and expenses required for licenses and/or permits required for or occasioned by Tenant's use of the Property.
25. **SIGNS/GRAFFITI.** Tenant shall not place signs or advertising signs, except safety-related signage, on the Tower or Property. Tenant shall remove graffiti, if any, every 90 days. Owner may, upon 30 days prior written notice to Tenant, enter the Property and undertake any activities necessary to abate or remove graffiti located therein which has not been removed within said 90 day period. Tenant shall reimburse Owner all costs incurred by Owner in connection with such abatement or removal within 30 days of Owner's presenting Tenant with a statement of such costs.
26. **MAINTENANCE.** Tenant shall, at its expense, maintain its own, equipment and other personal property on the Property and keep the same in good working order, condition and repair. Tenant shall keep the Property free of debris and anything of a dangerous, noxious or offensive nature or which

would create a hazard or undue vibration, heat, noise or interference. Owner may require Tenant to submit to an annual inspection of its improvements, equipment, fixtures and personal property placed on the Property by Tenant. As a part of the annual inspection, Tenant, may be required to make reasonable repairs, at its cost, for damage to the Property, equipment or personal property, attributable to Tenant's use.

27. **ACCEPTANCE OF PROPERTY.** Except as explicitly provided in this Agreement, by taking possession of the Property, Tenant accepts the Property in the condition existing as of the Commencement Date. Except as explicitly provided in this Agreement, Owner makes no representation or warranty with respect to the condition of the Property and Owner shall not be liable for any latent or patent defect in the Property.
28. **ESTOPPEL CERTIFICATE.** Tenant shall, at any time and from time to time, upon not less than sixty (60) days prior request by Owner, deliver to Owner a statement in writing certifying that (a) the Agreement is unmodified and in full force (or if there have been modifications, that the Agreement is in full force as modified and identifying the modifications);(b) the dates to which Rent and other charges have been paid; (c) so far as the person making the certificate knows and with no duty to investigate, Owner is not in default under any provisions of the Agreement; and (d) such other matters as Owner may reasonably request.
29. **NOTICES.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested or by a recognized overnight delivery service, to the following addresses:

If to Owner, to:

City of Lawrence, Kansas
Attn: City Clerk
6 East 6th
P.O. Box 708
Lawrence, KS 66044

With a copy to:

Attn: Legal Department
Toni Ramirez Wheeler
6 East 6th
P.O. Box 708
Lawrence, KS 66044

If to Tenant, to:

T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: PCS Lease Administrator

And with a copy to:

T-Mobile Central LLC
12980 Foster, Suite 200
Overland Park, KS 66213
Attn: Lease Administration Manager

Any such notice shall be deemed effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

30. **Intentionally Deleted.**
31. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors and assigns.
32. **NON-WAIVER.** Failure of either party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but the Party shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by the Party after a breach of this Agreement shall not be deemed a waiver of such breach unless expressly set forth in writing.
33. **IMMUNITY OF OFFICERS, EMPLOYEES, AND MEMBERS OF THE CITY.** No personal recourse shall be had for the creation of this Agreement or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Agreement against any past, present or future officer, member, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and any liability of any such officers, members, directors, employees or agents is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement. Furthermore, no past, present or future officer, member, employee or agent of the City shall be personally liable to the Tenant, or any successor in interest, for any default or breach by the City.

34. **MISCELLANEOUS.**

- a. Owner represents and warrants that Owner has full authority to enter into and sign this Agreement and has good and marketable title to the Owner's Property. Owner and Tenant also represent and warrant that the execution of this Agreement will not violate any other agreement to which they are a party or any order, decree, or judgment of any judicial or administrative entity.
- b. This Agreement supersedes all prior discussions and negotiations and contains all agreements and understandings between the Owner and Tenant with respect to the subject matter hereof. This Agreement may only be amended in writing signed by all parties.
- c. Exhibits "A", "B" "C" and "D" are incorporated into this Agreement by reference.
- d. Intentionally Deleted.
- e. This Agreement shall be construed in accordance with the laws of the State of Kansas. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Douglas County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.
- f. If any term of this Agreement is found to be void or invalid, such validity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.
- g. Owner agrees to execute a Memorandum of this Site Agreement which Tenant may record with the appropriate Recording Officer. The date set forth in the Memorandum is for recording purposes only and bears no reference to commencement of either term or Rent payments.
- h. The provisions of the Agreement relating to indemnification shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.
- i. This Agreement is not a franchise pursuant to K.S.A. 12-2001 *et seq.*, nor is it a permit or license to use any public Right of Way. Any such franchise, permit or license if applicable must be obtained separately from Owner.

- j. In the event any Court or Governmental Authority of competent jurisdiction orders, decrees or otherwise requires Owner to limit, restrict or cease operating the Property as a Communications Facility or operating the Property as a Communications Facility becomes economically not viable for Owner, this Agreement shall immediately terminate without further liability to either Owner or Tenant. Tenant shall immediately remove any equipment, antennas or personal property in accordance with the terms of this Agreement.
- k. This Agreement is contingent upon Tenant's obtaining all necessary governmental approvals, permits or licenses that are necessary.
- l. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one (1) or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument.
- m. The prevailing party in any litigation arising hereunder shall be entitled to reimbursement from the other party of its reasonable attorneys' fees and court costs, including appeals, if any.

IN WITNESS WHEREOF, the parties hereto bind themselves to this Agreement on the day and year first written above.

[Signature Page Follows]

OWNER

CITY OF LAWRENCE, KANSAS

By: _____
David L. Corliss, City Manager
Date:

TENANT

T-MOBILE CENTRAL LLC

By: _____
Hossein Sepehr, Area Director, Eng. and Ops.
Date:

EXHIBIT A

Owner's Property

EXHIBIT B

Site Plans

See Attached Site Plans

EXHIBIT C

Plans and Specifications

(See attached Construction Drawings)

EXHIBIT D

ESCROW AGREEMENT

This Escrow Agreement ("Escrow Agreement") is entered into this _____ day of _____, 20__ by and between the **CITY OF LAWRENCE, KANSAS** (the "City"), and **T-Mobile Central LLC**, a Delaware limited liability company, its successors and assigns ("Tenant"), and provides for the following:

RECITALS:

A. The City is granting and leasing certain Property to Tenant for the installation, maintenance, and operation of a Communications Facility pursuant to the Site Agreement between the City and Tenant dated _____ (the "Site Agreement");

B. Under the terms of the Site Agreement, Tenant agrees to remove all personal property and trade fixtures within ninety (90) days of the termination of the Site Agreement unless the City gives Tenant express written consent to leave any such personal property and trade fixtures;

C. Under the terms of the Site Agreement, Tenant agrees to make a payment to the City to be held until such time as Tenant's personal property and trade fixtures are removed;

NOW THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. **Creation of Account.** There is hereby created and established with the City the following special and separate account to be held by the City and designated as the T-MOBILE COMMUNICATIONS FACILITY REMOVAL ACCOUNT (the "Account").

2. **Deposit to Account.** Concurrently with the execution and delivery of this Escrow Agreement, and pursuant to the provisions of the Site Agreement, Tenant herewith deposits with the City, and the City acknowledges receipt and deposit into the Account, an interest-bearing account, the sum of Five Thousand and No/100 Dollars (\$5,000.00) (the "Escrow Funds").

3. **Creation of Lien and Application of Escrow Funds.** City is hereby given an express lien on and security interest in the Account, and all earnings thereon, until used and applied or returned in accordance with this Escrow Agreement. The principal and earnings on the Account are hereby pledged and assigned and shall be applied solely for the payment of the costs incurred by the City for the removal of the Communications Facility upon the termination of the Site Agreement referenced above if Tenant fails to timely remove the Communications Facility as provided in the Site

Agreement. Within thirty (30) days following the removal of the Communications Facility, including complete removal of the shelter foundation and any grading and seeding work required thereby, whether by Tenant within the period specified in the Site Agreement or by the City following said period, any sums remaining in the Account, including all accrued interest, shall be returned to Tenant.

4. **Amendments to Agreement.** This Escrow Agreement is made for the benefit of the City and Tenant, and it shall not be repealed, revoked, altered or amended without the written consent of the City and Tenant.

5. **Termination.** This Escrow Agreement shall terminate when the Communications Facility has been removed pursuant to the terms of the Site Agreement.

6. **Notices.** Except as otherwise provided herein, it shall be sufficient service of any notice, request, complaint, demand to be given to or filed with the following parties if the same is duly mailed by first class, certified or registered mail addressed:

To the City at:

City of Lawrence, Kansas
City Hall
6 East Sixth Street
P.O. Box 708
Lawrence, KS 66044
Attention: City Manager

To Tenant at:

T-Mobile Central LLC
12980 Foster, Suite 200
Overland Park, KS 66213
Attention: Lease Administration

7. **Successors and Assigns.** All of the covenants, promises, and agreements in this Escrow Agreement contained by or on behalf of the City or Tenant shall be binding upon and inure to the benefit of their respective successors and assigns whether so expressed or not.

8. **Governing Law.** This Escrow Agreement shall be governed by the applicable law of the State of Kansas.

IN WITNESS WHEREOF, the parties hereto have each caused this Escrow Agreement to be executed as of the date first above written.

CITY OF LAWRENCE, KANSAS

By: _____

David L. Corliss, City Manager

Date: _____

T-MOBILE CENTRAL LLC

By: _____

Hossein Sepehr, Area Director, Eng. & Ops.

Date: _____