

## **SECOND AMENDMENT TO LICENSE AGREEMENT**

THIS SECOND AMENDMENT TO LICENSE AGREEMENT (this “Second Amendment”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the CITY OF POMONA, a Municipal corporation, with a mailing address of 505 South Garey Avenue, Box 660, Pomona, California 91769 (“Licensor”) and NCWPCS MPL 34 – YEAR SITES TOWER HOLDINGS LLC, a Delaware limited liability company, by and through CCATT LLC, a Delaware limited liability company, its attorney in fact, with a mailing address of 2000 Corporate Drive, Canonsburg, Pennsylvania 15317 (collectively referred to as “Licensee”).

### **RECITALS**

WHEREAS, Licensor and New Cingular Wireless PCS, LLC, a Delaware limited liability company (“Original Licensee”) entered into a License Agreement dated May 24, 2006, whereby Original Licensee licensed certain real property, together with non-exclusive access and utility easements, located in Los Angeles County, California from Licensor (the “Premises”), all located within certain real property owned by Licensor (the “Real Property”); and

WHEREAS, NCWPCS MPL 34 – YEAR SITES TOWER HOLDINGS LLC is currently the licensee under the Original License as ultimate successor in interest to the Original Licensee; and

WHEREAS, the Original License was amended by that certain First Amendment to License Agreement dated September 28, 2015 (hereinafter the Original License and all subsequent amendments are collectively referred to as the “License”); and

WHEREAS, the Premises may be used for the purpose of constructing, maintaining and operating a communications facility, including tower structures, equipment shelters, cabinets, meter boards, utilities, antennas, equipment, any related improvements and structures and uses incidental thereto; and

WHEREAS, the License had an initial term that commenced on June 2, 2006 and expired on June 1, 2011. The License provides for five (5) renewal terms of five (5) years (each an “Renewal Term”), the first two (2) of which were exercised by Licensee. According to the License, the final Renewal Term expires on June 1, 2036; and

WHEREAS, Licensors and Licensee desire to amend the License on the terms and conditions contained herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Licensors and Licensee agree as follows:

1. Recitals; Defined Terms. The parties acknowledge the accuracy of the foregoing recitals. Any capitalized terms not defined herein shall have the meanings ascribed to them in the License.

2. Term. The Term of the License is hereby extended for a period of thirty-one (31) years, commencing on the date of this Second Amendment.

3. Pre-Payment. Licensee shall pay to Licensors a one-time, non-refundable payment of Five Hundred Fifty-Five Thousand One Hundred Sixty-Six and 66/100 Dollars (\$555,166.66) within sixty (60) days after execution of this Second Amendment by the parties, which sum shall be deemed to be the License Fee and Sublicense Fee for the period beginning on the date of this Second Amendment and ending thirty-one (31) years thereafter ("Pre-Payment Period"). During the Pre-Payment Period, Licensors and Licensee agree that the obligation of Licensee to pay the License Fee and Sublicense Fee to Licensors shall be suspended. Licensors shall have no contractual right to terminate the License for any reason and waives its right to declare a default for non-payment of the License Fee and Sublease Fee; provided however, if there occurs an Event of Default by Licensee, as defined by the License, Licensors may pursue any remedies available to Licensors at law or in equity, and this section shall not limit any order issued by a court of competent jurisdiction concerning the License. In addition, provided that Licensee shall provide prior written notice of any sublease or sublicense to Licensors, Licensors waives its right to consent to any sublease or sublicense of all or a portion of the Premises.

4. Expansion Option.

a. Option. Licensee shall have the irrevocable right and option during the Pre-Payment Period (the "Option"), exercisable not for use by sublessees or sublicensees already using the Premises but in connection with leases, subleases, licenses or grants of a similar right of use or occupancy to a future sublicensee(s) (each a "Future Sublicensee"), at any time, and from time to time, following the execution of the License,

to amend the License to include up to a maximum of five hundred (500) square feet of real property adjacent to the Premises in a location as more specifically depicted in Exhibit "B" (the "Additional Premises"). The Additional Premises added by proper exercise of the Option shall be licensed upon the same terms and conditions as the Premises set forth in this License, except as otherwise provided in this Section 4. Licensee may conduct any reasonable due diligence activities on the Additional Premises related to Licensee's permitted use under the License at any time after full execution of this Second Amendment. Licensee may exercise the Option for the entire Additional Premises in a single exercise, or may exercise the Option multiple times in increments, by providing written notice to Licensors at any time; provided, however, that following Licensee's delivery of notice to Licensors, Licensee may at any time prior to full execution of the Additional Premises Documents (as defined herein) withdraw its election to exercise the Option if Licensee discovers or obtains any information of any nature regarding the Additional Premises which Licensee determines to be unfavorable in its sole discretion. Within thirty (30) days after Licensee's exercise of the Option, Licensors agree to execute and deliver an amendment to the License, a memorandum of amendment (each of which may include a metes and bounds description of the Additional Premises), and any other documents necessary to grant and record Licensee's interest in the Additional Premises ("Additional Premises Documents"). In addition, within thirty (30) days after Licensee's exercise of the Option, Licensors shall obtain and deliver any documentation necessary to remove, subordinate or satisfy any mortgages, deeds of trust, liens or encumbrances affecting the Additional Premises to Licensee's satisfaction. In the event that Licensee exercises the Option, Licensee's installation of Licensee's Facilities in the Additional Premises shall be underground or in a mutually agreeable design. Licensee shall at its sole cost obtain a survey ("Survey") specifically describing the Premises and any access and utility rights associated therewith and shall replace Exhibit B with the Survey approved by Licensors as an exhibit to this Second Amendment and any related memorandum for recording.

b. Additional Premises Revenue Share. In the event that Licensee exercises the Option, Licensee shall pay to Licensors, in lieu of any additional License Fee and Sublicense Fee, fifty percent (50%) of all recurring rental, license or similar payments

actually received by Licensee from such Future Sublicensee (which do not include any reimbursement of taxes, construction costs or installation costs incurred by Licensee) (the “Future Sublicense Fee”) within thirty (30) days after receipt of said payments by Licensee. Licensee shall have no obligation for payment to Licensor of the Future Sublicense Fee if such rental, license or similar payments are not actually received by Licensee, provided that Licensee shall use all commercially reasonable efforts to collect all amounts due from Future Sublicensees and shall terminate a future sublicense for non-payment within a reasonable period of time. Licensee shall have sole discretion as to whether, and on what terms, to lease, sublease, license, or otherwise allow occupancy of the Additional Premises by Future Sublicensees provided, however, Licensee shall use its best efforts to obtain a market value rent. There shall be no express or implied obligation for Licensee to exercise the Option for the Additional Premises. Notwithstanding anything in this paragraph to the contrary, the parties agree and acknowledge that revenue derived from sublicensees and any successors and/or assignees of such sublicensees who commenced use and/or sublease of the Premises prior to execution of the License shall be expressly excluded from use of the Additional Premises and the Future Sublicense Fee and Licensor shall have no right to receive any portion of such revenue. On or about June 1 of each calendar year, Licensee shall provide a certified business summary affidavit pertaining to Licensee’s payment obligations for Future Sublicensees (as defined herein) for the prior year. Licensor may request reasonable access to supporting documentation (as may be reasonably redacted by Licensee) to verify the information in the business summary affidavit within sixty (60) days after Licensor’s receipt of such affidavit. Licensor agrees to maintain the confidentiality of such documentation except where disclosure is required by law.

5. Notice of Offers. If Licensor receives an offer that it intends to accept to purchase fee title, an easement, a lease, a license, or any other interest in the Premises, or Licensor’s interest in the License, or an option for any of the foregoing, Licensor shall provide written notice to Licensee no later than fifteen (15) days prior to Licensor accepting said offer.

6. Facilities Construction. Section 6 of the License is hereby deleted in its entirety, and the following is inserted in its place:

A site plan depicting the current configuration of Licensee's Facilities, is set forth in Exhibit "B" attached hereto. Licensee's Facilities shall be removed upon the expiration or earlier termination of this License. If Licensee's tower is being used as a light standard upon the expiration or earlier termination of this License, then upon the expiration or earlier termination of this License, Licensee shall, at Licensee's option, either: (1) replace the light standard with a light standard that substantially conforms with the design and appearance of similarly situated light standards then-existing on the Real Property, or (2) leave the light standard, which shall become the property of Licensor; provided however, before leaving the light standard to become the property of Licensor, Licensee shall: (1) notify Licensor of its decision in writing, (2) allow thirty (30) days for Licensor to inspect the light standard, and (3) perform at Licensee's cost any reasonable maintenance and repairs determined by Licensor to be necessary to ensure that the light standard is structurally sound, in good repair and properly functioning. In either case, Licensee's antennas and equipment will be removed by Licensee. If Licensee's tower is not being used as a light standard upon the expiration or earlier termination of this License, then upon the expiration or earlier termination of this License, Licensee shall remove the tower in addition to the antennas and equipment.

7. Improvements. The following is hereby added to the end of Section 7(b) of the License:

Licensee has the right to repair, replace and supplement Licensee's Facilities and the obligation to do so in compliance with all applicable laws and regulations, including all applicable local zoning and permitting codes and regulations. Further, Licensee shall maintain the Licensee's Facilities, Premises, and Additional Premises, if any, in a safe and debris-free condition and graffiti-free condition. Licensee shall use all commercially reasonable efforts to design and construct Licensee's Facilities to be consistent with the aesthetics of the surrounding Real Property, including stealth design and construction. In the event Licensee replaces the tower structure (the "Tower") or increases the height of the Tower, Licensee shall obtain Licensor's prior written approval of the design of the Tower replacement or height increase, such approval not to be unreasonably withheld, conditioned or delayed. Licensee agrees that it may have only one Tower on the Premises at one time without the prior written consent of Licensor, such consent not to be unreasonably withheld, conditioned or delayed; provided, however, that in the event Licensee deems it necessary to replace the Tower, Licensee may construct or utilize a second Tower or cell on wheels and equipment related thereto for a limited period of time, as reasonably necessary until Licensee completes construction of a replacement Tower provided, however, such period shall not exceed one hundred eighty (180) days without Licensor's written consent, such consent not to be unreasonably withheld, conditioned or delayed. Licensee shall not be required to remove the existing or temporary Tower until the replacement Tower is completed and any occupants on the existing or temporary Tower have been relocated to the replacement Tower,

provided that Licensee continuously and diligently pursues construction of the replacement Tower.

8. Insurance. The following is hereby added to the end of the first paragraph of Section 13 of the License:

The limits may be met by any combination of primary and excess or umbrella insurance.

9. Termination. Section 9 of the License is hereby deleted in its entirety, and the following is inserted in its place:

This License may be terminated without further liability, except any terms and conditions that by their nature would survive cancellation or termination of this License, on thirty (30) days prior written notice as follows: (i) by Licensee upon a material default of any covenant, condition, or term hereof by Licensor, which default is not cured within thirty (30) days of receipt of written notice of default; unless such default cannot reasonably be cured within such thirty (30) day period and Licensor is diligently endeavoring to cure the default, in which case the cure period shall be extended for as long as Licensor diligently endeavors to cure the default; (ii) by Licensee, if Licensee does not obtain or maintain, licenses, permits or other approvals necessary to the construction or operations of Licensee's Facilities; or (iii) by Licensee, if Licensee is unable to occupy or utilize the Premises due to a ruling or directive of the FCC or other governmental or regulatory agency, including, but not limited to, a take back of channels or change in frequencies; or (iv) by Licensee, if Licensee determines that the Premises are not appropriate for its operations for economic, environmental or technological reasons, including, without limitation, signal strength or interference. Subject to Section 6, within ninety (90) days following the expiration or earlier termination of this License, Licensee shall remove its personal property and fixtures including, without limitation, Licensee's Facilities, foundations, footings and anchors, and restore the Real Property to the condition in which it existed prior to the installation of the Licensee Facilities reasonable wear and tear and damage beyond Licensor's control excepted. Licensee's below-ground removal maybe limited to a depth of three (3) feet only if, prior to expiration of earlier termination of this License, Licensee makes such a request in writing and Licensor approves such request in writing.

10. Holdover. In the event Licensee remains in possession of the Premises following expiration of the License, such holding over by Licensee shall be a month-to-month holdover term, subject to the terms and conditions of the License, and either party shall have the right to terminate the License upon thirty (30) days' notice during such month-to-month holdover term.

During any month-to-month holdover term, Licensee shall pay to Licensor a monthly holdover fee equal to Nine Thousand Seven Hundred Eighty-Four and No/100 Dollars (\$9,784.00).

11. Taxes. Section 10 of the License is hereby deleted in its entirety, and the following is inserted in its place:

Taxes and Revenue & Taxation Code Section 107.6 Notice. Licensee recognizes and understands that this License may create a possessory interest subject to property taxes and that, if a possessory interest is created, Licensee shall pay personal property taxes assessed against Licensee's Facilities and shall reimburse Licensor for any increase in real property or possessory interest taxes levied against the Real Property as a result of the improvements constructed by Licensee on the Premises only for so long as this License has not expired of its own terms or is not terminated by either party. Licensor hereby grants to Licensee the right to challenge, whether in a Court, Administrative Proceeding, or other venue, on behalf of Licensor and/or Licensee, any personal property, real property or possessory interest tax assessments that may affect Licensee. If Licensor receives notice of any personal property or real property tax assessment against the Licensor which may affect Licensee and is directly attributable to Licensee's installation, Licensor shall provide timely notice of the assessment to Licensee sufficient to allow Licensee to consent to or challenge such assessment. Further, Licensor shall provide to Licensee any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section 10.

12. Condemnation. If Licensor receives written or other notice of a proposed taking by eminent domain of any part of the parcel of land upon which the Premises is situated, Licensor will notify Licensee of the proposed taking within five (5) days of receiving said notice and Licensee will have the option to: (i) declare the License null and void and thereafter neither party will have any liability or obligation hereunder; or (ii) remain in possession of that portion of the Premises that will not be taken, in which event there shall be an equitable adjustment to any recurring flat rate payments that may be due from Licensee to Licensor pursuant to the License, as applicable, on account of the portion of the Premises so taken. With either option, Licensee shall have the right to contest the taking and directly pursue an award.

13. Licensor's Cooperation. The first paragraph of Section 12 of the License, and only that paragraph, is hereby deleted, and the following is inserted in its place:

If requested by Licensee, Licensor will reasonably cooperate in executing, in Licensor's proprietary capacity as the Real Property owner only, at Licensee's sole cost and expense, all documents required by any governmental authority in

connection with any development of, or construction on, the Premises, including documents necessary to petition the appropriate public bodies for certificates, permits, licenses and other approvals deemed necessary by Licensee in Licensee's absolute discretion to utilize the Premises for the purpose of constructing, maintaining and operating communications facilities, including without limitation, tower structures, antenna support structures, cabinets, meter boards, buildings, antennas, cables, equipment and uses incidental thereto. Licensor agrees to be named applicant, in its proprietary capacity as the Real Property owner only, if requested by Licensee. Licensor shall be entitled to no further consideration with respect to any of the foregoing matters.

14. Licensee Defaults. Section 15 of the License is hereby deleted in its entirety, and the following is inserted in its place:

(a) The occurrence of the following event shall constitute an "Event of Default" hereunder by Licensee:

(1) the failure by Licensee to observe or perform any of the terms and conditions of this License to be observed or performed by Licensee, other than as specified in Section 15(a)(1), where such failure shall continue for a period of thirty (30) days after written notice thereof is received by Licensee from Licensor; provided, however, that it shall not be deemed an Event of Default by Licensee if Licensee shall commence to cure such failure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(b) If there occurs an Event of Default by Licensee, Licensor may pursue any remedies available to Licensor at law or in equity. Nothing in this License shall limit any order issued by a court of competent jurisdiction concerning the License.

15. Assignment and Subletting. Section 16 of the License is hereby deleted in its entirety, and the following is inserted in its place:

Licensee has the right, at its sole discretion, to sublease or license use of the Premises or to assign all or any part of its interest in this License or in the Premises. Licensee shall provide prior written notice of any assignment, sublease or sublicense to Licensor.

16. Ratification.

a) Licensor and Licensee agree that Licensee is the current Licensee under the License, the License is in full force and effect, as amended herein, and the License contains the entire agreement between Licensor and Licensee with respect to the Premises.



b) Licenser agrees that no breaches or defaults exist to Licenser's knowledge (without duty of investigation) as of the date of this Second Amendment.

c) Licenser represents and warrants that Licenser is duly authorized and has the full power, right and authority to enter into this Second Amendment and to perform all of its obligations under the License as amended.

17. Compliance with Laws. Section 21(c) of the License is hereby deleted in its entirety, and the following is inserted in its place:

Licenser warrants and agrees that to the best of Licenser's knowledge (without duty to investigate) the Real Property and all improvements thereon materially comply with applicable laws, codes and regulations of any governmental or quasi-governmental authority.

18. Remainder of License Unaffected. The parties hereto acknowledge that except as expressly modified hereby, the License remains unmodified and in full force and effect. In the event of any conflict or inconsistency between the terms of this Second Amendment and the License, the terms of this Second Amendment shall control. The terms, covenants and provisions of this Second Amendment shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of Licenser and Licensee. This Second Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

19. Survey. Exhibit "B" attached hereto hereby replaces Exhibit "B" to the License.

*[Execution Pages Follow]*

This Second Amendment is executed by Licensor as of the date first written above.

LICENSOR:  
CITY OF POMONA,  
a Municipal corporation

\_\_\_\_\_  
City Manager  
Name: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk  
Name: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney  
Name: \_\_\_\_\_

*[Licensee Execution Page Follows]*

This Second Amendment is executed by Licensee as of the date first written above.

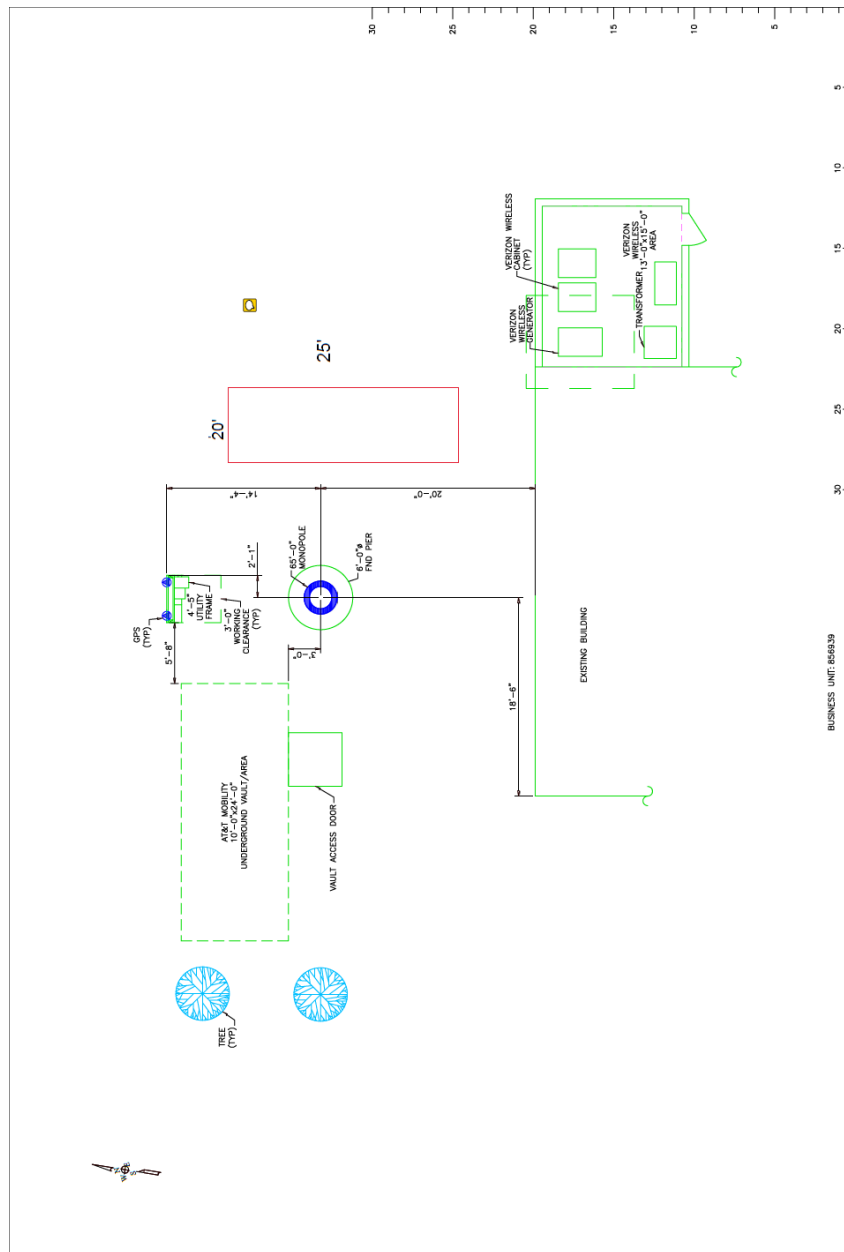
**LICENSEE:**

NCWPCS MPL 34 – YEAR SITES TOWER  
HOLDINGS LLC,  
a Delaware limited liability company

By: CCATT LLC,  
a Delaware limited liability company  
Its: Attorney in Fact

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

# **Exhibit B** **Site Plan Depicting Premises and Additional Premises**



## **FIRST AMENDMENT TO LICENSE AGREEMENT**

THIS FIRST AMENDMENT TO LICENSE AGREEMENT (this "First Amendment") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the CITY OF POMONA, a Municipal corporation, with a mailing address of 505 South Garey Avenue, Box 660, Pomona, California 91769 ("Licensor") and T-Mobile West Tower LLC, a Delaware limited liability company, by and through CCTMO LLC, a Delaware limited liability company, its attorney in fact, with a mailing address of 2000 Corporate Drive, Canonsburg, Pennsylvania 15317 (collectively referred to as "Licensee").

### **RECITALS**

WHEREAS, Licensor and Omnipoint Communications, Inc., a subsidiary of T-Mobile USA, Inc., a Delaware corporation ("Original Licensee") entered into a License Agreement dated December 19, 2007 (the "License"), whereby Original Licensee licensed certain real property, together with non-exclusive access and utility easements, located in Los Angeles County, California from Licensor (the "Premises"), all located within certain real property owned by Licensor (the "Real Property"); and

WHEREAS, T-Mobile West Tower LLC is currently the licensee under the License as ultimate successor in interest to the Original Licensee; and

WHEREAS, the Premises may be used for the purpose of constructing, maintaining and operating a communications facility, including tower structures, equipment shelters, cabinets, meter boards, utilities, antennas, equipment, any related improvements and structures and uses incidental thereto; and

WHEREAS, the License had an initial term that commenced on February 7, 2008 and expired on February 6, 2013. The License provides for five (5) renewal terms of five (5) years (each an "Renewal Term"), the first two (2) of which were exercised by Licensee. According to the License, the final Renewal Term expires on February 6, 2038; and

WHEREAS, Licensor and Licensee desire to amend the License on the terms and conditions contained herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Licensor and Licensee agree as follows:

1. Recitals; Defined Terms. The parties acknowledge the accuracy of the foregoing recitals. Any capitalized terms not defined herein shall have the meanings ascribed to them in the License.

2. Term. The Term of the License is hereby extended for a period of thirty-one (31) years, commencing on the date of this First Amendment.

3. Pre-Payment. Licensee shall pay to Licensor a one-time, non-refundable payment of Five Hundred Fifty-Five Thousand One Hundred Sixty-Six and 66/100 Dollars (\$555,166.66) within sixty (60) days after execution of this First Amendment by the parties, which sum shall be deemed to be the License Fee for the period beginning on the date of this First Amendment and ending thirty-one (31) years thereafter (“Pre-Payment Period”). During the Pre-Payment Period, Licensor and Licensee agree that the obligation of Licensee to pay the License Fee to Licensor shall be suspended. Licensor shall have no contractual right to terminate the License for any reason and waives its right to declare a default for non-payment of the License Fee; provided however, if there occurs an Event of Default by Licensee, as defined by the License, Licensor may pursue any remedies available to Licensor at law or in equity, and this section shall not limit any order issued by a court of competent jurisdiction concerning the License. In addition, provided that Licensee shall provide prior written notice of any sublease or sublicense to Licensor, Licensor waives its right to consent to any sublease or sublicense of all or a portion of the Premises.

4. Expansion Option.

a. Option. Licensee shall have the irrevocable right and option during the Pre-Payment Period (the “Option”), exercisable not for use by sublessees or sublicensees already using the Premises but in connection with leases, subleases, licenses or grants of a similar right of use or occupancy to a future sublicensee(s) (each a “Future Sublicensee”), at any time, and from time to time, following the execution of the License, to amend the License to include up to a maximum of five hundred (500) square feet of real property adjacent to the Premises in a location as more specifically depicted in Exhibit “B” (the “Additional Premises”). The Additional Premises added by proper exercise of the Option shall be licensed upon the same terms and conditions as the Premises set forth in this License, except as otherwise provided in this Section 4.

Licensee may conduct any reasonable due diligence activities on the Additional Premises related to Licensee's permitted use under the License at any time after full execution of this First Amendment. Licensee may exercise the Option for the entire Additional Premises in a single exercise, or may exercise the Option multiple times in increments, by providing written notice to Licensors at any time; provided, however, that following Licensee's delivery of notice to Licensors, Licensee may at any time prior to full execution of the Additional Premises Documents (as defined herein) withdraw its election to exercise the Option if Licensee discovers or obtains any information of any nature regarding the Additional Premises which Licensee determines to be unfavorable in its sole discretion. Within thirty (30) days after Licensee's exercise of the Option, Licensors agree to execute and deliver an amendment to the License, a memorandum of amendment (each of which may include a metes and bounds description of the Additional Premises), and any other documents necessary to grant and record Licensee's interest in the Additional Premises ("Additional Premises Documents"). In addition, within thirty (30) days after Licensee's exercise of the Option, Licensors shall obtain and deliver any documentation necessary to remove, subordinate or satisfy any mortgages, deeds of trust, liens or encumbrances affecting the Additional Premises to Licensee's satisfaction. In the event that Licensee exercises the Option, Licensee's installation of Licensee's Facilities in the Additional Premises shall be underground or in a mutually agreeable design. Licensee shall at its sole cost obtain a survey ("Survey") specifically describing the Premises and any access and utility rights associated therewith and shall replace Exhibit B with the Survey approved by Licensors as an exhibit to this First Amendment and any related memorandum for recording.

b. Additional Premises Revenue Share. In the event that Licensee exercises the Option, Licensee shall pay to Licensors, in lieu of any additional License Fee, fifty percent (50%) of all recurring rental, license or similar payments actually received by Licensee from such Future Sublicensee (which do not include any reimbursement of taxes, construction costs or installation costs incurred by Licensee) (the "Future Sublicense Fee") within thirty (30) days after receipt of said payments by Licensee. Licensee shall have no obligation for payment to Licensors of the Future Sublicense Fee if such rental, license or similar payments are not actually received by Licensee, provided

that Licensee shall use all commercially reasonable efforts to collect all amounts due from Future Sublicensees and shall terminate a future sublicense for non-payment within a reasonable period of time. Licensee shall have sole discretion as to whether, and on what terms, to lease, sublease, license, or otherwise allow occupancy of the Additional Premises by Future Sublicensees provided, however, Licensee shall use its best efforts to obtain a market value rent. There shall be no express or implied obligation for Licensee to exercise the Option for the Additional Premises. Notwithstanding anything in this paragraph to the contrary, the parties agree and acknowledge that revenue derived from sublicensees and any successors and/or assignees of such sublicensees who commenced use and/or sublease of the Premises prior to execution of the License shall be expressly excluded from use of the Additional Premises and the Future Sublicense Fee and Licensors shall have no right to receive any portion of such revenue. On or about June 1 of each calendar year, Licensee shall provide a certified business summary affidavit pertaining to Licensee's payment obligations for Future Sublicensees (as defined herein) for the prior year. Licensors may request reasonable access to supporting documentation (as may be reasonably redacted by Licensee) to verify the information in the business summary affidavit within sixty (60) days after Licensors' receipt of such affidavit. Licensors agree to maintain the confidentiality of such documentation except where disclosure is required by law.

5. Notice of Offers. If Licensors receive an offer that it intends to accept to purchase fee title, an easement, a lease, a license, or any other interest in the Premises, or Licensors' interest in the License, or an option for any of the foregoing, Licensors shall provide written notice to Licensee no later than fifteen (15) days prior to Licensors accepting said offer.

6. Facilities Construction. Section 6 of the License is hereby deleted in its entirety, and the following is inserted in its place:

A site plan depicting the current configuration of Licensee's Facilities, is set forth in Exhibit "B" attached hereto. Licensee's Facilities shall be removed upon the expiration or earlier termination of this License. If Licensee's tower is being used as a light standard upon the expiration or earlier termination of this License, then upon the expiration or earlier termination of this License, Licensee shall, at Licensee's option, either: (1) replace the light standard with a light standard that substantially conforms with the design and appearance of similarly situated light standards then-existing on the Real Property, or (2) leave the light standard, which



shall become the property of Licensor; provided however, before leaving the light standard to become the property of Licensor, Licensee shall: (1) notify Licensor of its decision in writing, (2) allow thirty (30) days for Licensor to inspect the light standard, and (3) perform at Licensee's cost any reasonable maintenance and repairs determined by Licensor to be necessary to ensure that the light standard is structurally sound, in good repair and properly functioning. In either case, Licensee's antennas and equipment will be removed by Licensee. If Licensee's tower is not being used as a light standard upon the expiration or earlier termination of this License, then upon the expiration or earlier termination of this License, Licensee shall remove the tower in addition to the antennas and equipment.

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The limits may be met by any combination of primary and excess or umbrella insurance.

9. Termination. Section 9 of the License is hereby deleted in its entirety, and the following is inserted in its place:

This License may be terminated without further liability, except any terms and conditions that by their nature would survive cancellation or termination of this License, on thirty (30) days prior written notice as follows: (i) by Licensee upon a material default of any covenant, condition, or term hereof by Licensor, which default is not cured within thirty (30) days of receipt of written notice of default; unless such default cannot reasonably be cured within such thirty (30) day period and Licensor is diligently endeavoring to cure the default, in which case the cure period shall be extended for as long as Licensor diligently endeavors to cure the default; (ii) by Licensee, if Licensee does not obtain or maintain, licenses, permits or other approvals necessary to the construction or operations of Licensee's Facilities; or (iii) by Licensee, if Licensee is unable to occupy or utilize the Premises due to a ruling or directive of the FCC or other governmental or regulatory agency, including, but not limited to, a take back of channels or change in frequencies; or (iv) by Licensee, if Licensee determines that the Premises are not appropriate for its operations for economic, environmental or technological reasons, including, without limitation, signal strength or interference. Subject to Section 6, within ninety (90) days following the expiration or earlier termination of this License, Licensee shall remove its personal property and fixtures including, without limitation, Licensee's Facilities, foundations, footings and anchors, and restore the Real Property to the condition in which it existed prior to the installation of the Licensee Facilities reasonable wear and tear and damage beyond Licensor's control excepted. Licensee's below-ground removal maybe limited to a depth of three (3) feet only if, prior to expiration of earlier termination of this License, Licensee makes such a request in writing and Licensor approves such request in writing.

10. Holdover. In the event Licensee remains in possession of the Premises following expiration of the License, such holding over by Licensee shall be a month-to-month holdover term, subject to the terms and conditions of the License, and either party shall have the right to terminate the License upon thirty (30) days' notice during such month-to-month holdover term. During any month-to-month holdover term, Licensee shall pay to Licensor a monthly holdover fee equal to Nine Thousand Seven Hundred Eighty-Four and No/100 Dollars (\$9,784.00).

11. Taxes. Section 10 of the License is hereby deleted in its entirety, and the following is inserted in its place:

Taxes and Revenue & Taxation Code Section 107.6 Notice. Licensee recognizes and understands that this License may create a possessory interest subject to property taxes and that, if a possessory interest is created, Licensee shall pay personal property taxes assessed against Licensee's Facilities and shall reimburse

Licensor for any increase in real property or possessory interest taxes levied against the Real Property as a result of the improvements constructed by Licensee on the Premises only for so long as this License has not expired of its own terms or is not terminated by either party. Licensor hereby grants to Licensee the right to challenge, whether in a Court, Administrative Proceeding, or other venue, on behalf of Licensor and/or Licensee, any personal property, real property or possessory interest tax assessments that may affect Licensee. If Licensor receives notice of any personal property or real property tax assessment against the Licensor which may affect Licensee and is directly attributable to Licensee's installation, Licensor shall provide timely notice of the assessment to Licensee sufficient to allow Licensee to consent to or challenge such assessment. Further, Licensor shall provide to Licensee any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section 10.

12. Condemnation. If Licensor receives written or other notice of a proposed taking by eminent domain of any part of the parcel of land upon which the Premises is situated, Licensor will notify Licensee of the proposed taking within five (5) days of receiving said notice and Licensee will have the option to: (i) declare the License null and void and thereafter neither party will have any liability or obligation hereunder; or (ii) remain in possession of that portion of the Premises that will not be taken, in which event there shall be an equitable adjustment to any recurring flat rate payments that may be due from Licensee to Licensor pursuant to the License, as applicable, on account of the portion of the Premises so taken. With either option, Licensee shall have the right to contest the taking and directly pursue an award.

13. Licensor's Cooperation. The first paragraph of Section 12 of the License, and only that paragraph, is hereby deleted, and the following is inserted in its place:

If requested by Licensee, Licensor will reasonably cooperate in executing, in Licensor's proprietary capacity as the Real Property owner only, at Licensee's sole cost and expense, all documents required by any governmental authority in connection with any development of, or construction on, the Premises, including documents necessary to petition the appropriate public bodies for certificates, permits, licenses and other approvals deemed necessary by Licensee in Licensee's absolute discretion to utilize the Premises for the purpose of constructing, maintaining and operating communications facilities, including without limitation, tower structures, antenna support structures, cabinets, meter boards, buildings, antennas, cables, equipment and uses incidental thereto. Licensor agrees to be named applicant, in its proprietary capacity as the Real Property owner only, if requested by Licensee. Licensor shall be entitled to no further consideration with respect to any of the foregoing matters.

14. Licensee Defaults. Section 15 of the License is hereby deleted in its entirety, and the following is inserted in its place:

(a) The occurrence of the following event shall constitute an “Event of Default” hereunder by Licensee:

(1) the failure by Licensee to observe or perform any of the terms and conditions of this License to be observed or performed by Licensee, other than as specified in Section 15(a)(1), where such failure shall continue for a period of thirty (30) days after written notice thereof is received by Licensee from Licensor; provided, however, that it shall not be deemed an Event of Default by Licensee if Licensee shall commence to cure such failure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(b) If there occurs an Event of Default by Licensee, Licensor may pursue any remedies available to Licensor at law or in equity. Nothing in this License shall limit any order issued by a court of competent jurisdiction concerning the License.

15. Assignment and Subletting. Section 16 of the License is hereby deleted in its entirety, and the following is inserted in its place:

Licensee has the right, at its sole discretion, to sublease or license use of the Premises or to assign all or any part of its interest in this License or in the Premises. Licensee shall provide prior written notice of any assignment, sublease or sublicense to Licensor.

16. Ratification.

a) Licensor and Licensee agree that Licensee is the current Licensee under the License, the License is in full force and effect, as amended herein, and the License contains the entire agreement between Licensor and Licensee with respect to the Premises.

b) Licensor agrees that no breaches or defaults exist to Licensor’s knowledge (without duty of investigation) as of the date of this First Amendment.

c) Licensor represents and warrants that Licensor is duly authorized and has the full power, right and authority to enter into this First Amendment and to perform all of its obligations under the License as amended.

17. Notices. Licensee’s notice addresses as stated in Section 20 of the License are amended as follows:

LICENSEE: T-Mobile West Tower LLC  
12920 S.E. 38th Street  
Bellevue, Washington 98006  
Attention: Leasing Administration

With a copy to: T-Mobile West Tower LLC  
c/o CCTMO LLC  
Attn: Legal - Real Estate Department  
2000 Corporate Drive  
Canonsburg, PA 15317

18. IRS Form W-9. Lessor agrees to provide Licensee with a completed IRS Form W-9, or its equivalent, upon execution of this First Amendment and at such other times as may be reasonably requested by Licensee. In the event the Premises are transferred, the succeeding Lessor shall have a duty at the time of such transfer to provide Licensee with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in payment to the new Lessor. Lessor's failure to provide the IRS Form W-9 within thirty (30) days after Licensee's request shall be considered a default and Licensee may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from any payments.

19. Compliance with Laws. Section 21(c) of the License is hereby deleted in its entirety, and the following is inserted in its place:

Lessor warrants and agrees that to the best of Lessor's knowledge (without duty to investigate) the Real Property and all improvements thereon materially comply with applicable laws, codes and regulations of any governmental or quasi-governmental authority.

20. Remainder of License Unaffected. The parties hereto acknowledge that except as expressly modified hereby, the License remains unmodified and in full force and effect. In the event of any conflict or inconsistency between the terms of this First Amendment and the License, the terms of this First Amendment shall control. The terms, covenants and provisions of this First Amendment shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of Lessor and Licensee. This First Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

21. Survey. Exhibit "B" attached hereto hereby replaces Exhibit "B" to the License.

*[Execution Pages Follow]*

This First Amendment is executed by Licensor as of the date first written above.

LICENSOR:  
CITY OF POMONA,  
a Municipal corporation

\_\_\_\_\_  
City Manager  
Name: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk  
Name: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney  
Name: \_\_\_\_\_

*[Licensee Execution Page Follows]*

This First Amendment is executed by Licensee as of the date first written above.

**LICENSEE:**

T-MOBILE WEST TOWER LLC,  
a Delaware limited liability company

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_



3'-0" MONUMENT CLEARANCE (TYP)

2'-0" UTILITY FRAME

3'-0" by 25'-0" Additional Premises

4'-0" by 5'-4" MOBILE UNIT IN A 12'-0" by 5'-0" AREA

19'-0" MONOPOLE

4'-0" PNE PER

CONTROL BOX

7'-3"

8'-6"

21'-12"

34'-11"

66'-3"

## **FIRST AMENDMENT TO LICENSE AGREEMENT**

THIS FIRST AMENDMENT TO LICENSE AGREEMENT (this "First Amendment") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the CITY OF POMONA, a Municipal corporation, with a mailing address of 505 South Garey Avenue, Box 660, Pomona, California 91769 ("Licensor") and T-Mobile West Tower LLC, a Delaware limited liability company, by and through CCTMO LLC, a Delaware limited liability company, its attorney in fact, with a mailing address of 2000 Corporate Drive, Canonsburg, Pennsylvania 15317 (collectively referred to as "Licensee").

### **RECITALS**

WHEREAS, Licensor and Omnipoint Communications, Inc., a subsidiary of T-Mobile USA, Inc., a Delaware corporation ("Original Licensee") entered into a License Agreement dated December 19, 2007 (the "License"), whereby Original Licensee licensed certain real property, together with non-exclusive access and utility easements, located in Los Angeles County, California from Licensor (the "Premises"), all located within certain real property owned by Licensor (the "Real Property"); and

WHEREAS, T-Mobile West Tower LLC is currently the licensee under the License as ultimate successor in interest to the Original Licensee; and

WHEREAS, the Premises may be used for the purpose of constructing, maintaining and operating a communications facility, including tower structures, equipment shelters, cabinets, meter boards, utilities, antennas, equipment, any related improvements and structures and uses incidental thereto; and

WHEREAS, the License had an initial term that commenced on February 1, 2008 and expired on January 31, 2013. The License provides for five (5) renewal terms of five (5) years (each an "Renewal Term"), the first two (2) of which were exercised by Licensee. According to the License, the final Renewal Term expires on January 31, 2038; and

WHEREAS, Licensor and Licensee desire to amend the License on the terms and conditions contained herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Licensor and Licensee agree as follows:

1. Recitals; Defined Terms. The parties acknowledge the accuracy of the foregoing recitals. Any capitalized terms not defined herein shall have the meanings ascribed to them in the License.

2. Term. The Term of the License is hereby extended for a period of thirty-one (31) years, commencing on the date of this First Amendment.

3. Pre-Payment. Licensee shall pay to Licensors a one-time, non-refundable payment of Five Hundred Fifty-Five Thousand One Hundred Sixty-Six and 66/100 Dollars (\$555,166.66) within sixty (60) days after execution of this First Amendment by the parties, which sum shall be deemed to be the License Fee for the period beginning on the date of this First Amendment and ending thirty-one (31) years thereafter ("Pre-Payment Period"). During the Pre-Payment Period, Licensors and Licensee agree that the obligation of Licensee to pay the License Fee to Licensors shall be suspended. Licensors shall have no contractual right to terminate the License for any reason and waives its right to declare a default for non-payment of the License Fee; provided however, if there occurs an Event of Default by Licensee, as defined by the License, Licensors may pursue any remedies available to Licensors at law or in equity, and this section shall not limit any order issued by a court of competent jurisdiction concerning the License. In addition, provided that Licensee shall provide prior written notice of any sublease or sublicense to Licensors, Licensors waives its right to consent to any sublease or sublicense of all or a portion of the Premises.

4. Expansion Option.

a. Option. Licensee shall have the irrevocable right and option during the Pre-Payment Period (the "Option"), exercisable not for use by sublessees or sublicensees already using the Premises but in connection with leases, subleases, licenses or grants of a similar right of use or occupancy to a future sublicensee(s) (each a "Future Sublicensee"), at any time, and from time to time, following the execution of the License, to amend the License to include up to a maximum of five hundred (500) square feet of real property adjacent to the Premises in a location as more specifically depicted in Exhibit "B" (the "Additional Premises"). The Additional Premises added by proper exercise of the Option shall be licensed upon the same terms and conditions as the Premises set forth in this License, except as otherwise provided in this Section 4.

Licensee may conduct any reasonable due diligence activities on the Additional Premises related to Licensee's permitted use under the License at any time after full execution of this First Amendment. Licensee may exercise the Option for the entire Additional Premises in a single exercise, or may exercise the Option multiple times in increments, by providing written notice to Licensors at any time; provided, however, that following Licensee's delivery of notice to Licensors, Licensee may at any time prior to full execution of the Additional Premises Documents (as defined herein) withdraw its election to exercise the Option if Licensee discovers or obtains any information of any nature regarding the Additional Premises which Licensee determines to be unfavorable in its sole discretion. Within thirty (30) days after Licensee's exercise of the Option, Licensors agree to execute and deliver an amendment to the License, a memorandum of amendment (each of which may include a metes and bounds description of the Additional Premises), and any other documents necessary to grant and record Licensee's interest in the Additional Premises ("Additional Premises Documents"). In addition, within thirty (30) days after Licensee's exercise of the Option, Licensors shall obtain and deliver any documentation necessary to remove, subordinate or satisfy any mortgages, deeds of trust, liens or encumbrances affecting the Additional Premises to Licensee's satisfaction. In the event that Licensee exercises the Option, Licensee's installation of Licensee's Facilities in the Additional Premises shall be underground or in a mutually agreeable design. Licensee shall at its sole cost obtain a survey ("Survey") specifically describing the Premises and any access and utility rights associated therewith and shall replace Exhibit B with the Survey approved by Licensors as an exhibit to this First Amendment and any related memorandum for recording.

b. Additional Premises Revenue Share. In the event that Licensee exercises the Option, Licensee shall pay to Licensors, in lieu of any additional License Fee, fifty percent (50%) of all recurring rental, license or similar payments actually received by Licensee from such Future Sublicensee (which do not include any reimbursement of taxes, construction costs or installation costs incurred by Licensee) (the "Future Sublicense Fee") within thirty (30) days after receipt of said payments by Licensee. Licensee shall have no obligation for payment to Licensors of the Future Sublicense Fee if such rental, license or similar payments are not actually received by Licensee, provided

that Licensee shall use all commercially reasonable efforts to collect all amounts due from Future Sublicensees and shall terminate a future sublicense for non-payment within a reasonable period of time. Licensee shall have sole discretion as to whether, and on what terms, to lease, sublease, license, or otherwise allow occupancy of the Additional Premises by Future Sublicensees provided, however, Licensee shall use its best efforts to obtain a market value rent. There shall be no express or implied obligation for Licensee to exercise the Option for the Additional Premises. Notwithstanding anything in this paragraph to the contrary, the parties agree and acknowledge that revenue derived from sublicensees and any successors and/or assignees of such sublicensees who commenced use and/or sublease of the Premises prior to execution of the License shall be expressly excluded from use of the Additional Premises and the Future Sublicense Fee and Licensors shall have no right to receive any portion of such revenue. On or about June 1 of each calendar year, Licensee shall provide a certified business summary affidavit pertaining to Licensee's payment obligations for Future Sublicensees (as defined herein) for the prior year. Licensors may request reasonable access to supporting documentation (as may be reasonably redacted by Licensee) to verify the information in the business summary affidavit within sixty (60) days after Licensors' receipt of such affidavit. Licensors agree to maintain the confidentiality of such documentation except where disclosure is required by law.

5. Notice of Offers. If Licensors receive an offer that it intends to accept to purchase fee title, an easement, a lease, a license, or any other interest in the Premises, or Licensors' interest in the License, or an option for any of the foregoing, Licensors shall provide written notice to Licensee no later than fifteen (15) days prior to Licensors accepting said offer.

6. Facilities Construction. Section 6 of the License is hereby deleted in its entirety, and the following is inserted in its place:

A site plan depicting the current configuration of Licensee's Facilities, is set forth in Exhibit "B" attached hereto. Licensee's Facilities shall be removed upon the expiration or earlier termination of this License. If Licensee's tower is being used as a light standard upon the expiration or earlier termination of this License, then upon the expiration or earlier termination of this License, Licensee shall, at Licensee's option, either: (1) replace the light standard with a light standard that substantially conforms with the design and appearance of similarly situated light standards then-existing on the Real Property, or (2) leave the light standard, which

shall become the property of Licensor; provided however, before leaving the light standard to become the property of Licensor, Licensee shall: (1) notify Licensor of its decision in writing, (2) allow thirty (30) days for Licensor to inspect the light standard, and (3) perform at Licensee's cost any reasonable maintenance and repairs determined by Licensor to be necessary to ensure that the light standard is structurally sound, in good repair and properly functioning. In either case, Licensee's antennas and equipment will be removed by Licensee. If Licensee's tower is not being used as a light standard upon the expiration or earlier termination of this License, then upon the expiration or earlier termination of this License, Licensee shall remove the tower in addition to the antennas and equipment.

7. Improvements. The following is hereby added to the end of Section 7(b) of the License:

Licensee has the right to repair, replace and supplement Licensee's Facilities and the obligation to do so in compliance with all applicable laws and regulations, including all applicable local zoning and permitting codes and regulations. Further, Licensee shall maintain the Licensee's Facilities, Premises, and Additional Premises, if any, in a safe and debris-free condition and graffiti-free condition. Licensee shall use all commercially reasonable efforts to design and construct Licensee's Facilities to be consistent with the aesthetics of the surrounding Real Property, including stealth design and construction. In the event Licensee replaces the tower structure (the "Tower") or increases the height of the Tower, Licensee shall obtain Licensor's prior written approval of the design of the Tower replacement or height increase, such approval not to be unreasonably withheld, conditioned or delayed. Licensee agrees that it may have only one Tower on the Premises at one time without the prior written consent of Licensor, such consent not to be unreasonably withheld, conditioned or delayed; provided, however, that in the event Licensee deems it necessary to replace the Tower, Licensee may construct or utilize a second Tower or cell on wheels and equipment related thereto for a limited period of time, as reasonably necessary until Licensee completes construction of a replacement Tower provided, however, such period shall not exceed one hundred eighty (180) days without Licensor's written consent, such consent not to be unreasonably withheld, conditioned or delayed. Licensee shall not be required to remove the existing or temporary Tower until the replacement Tower is completed and any occupants on the existing or temporary Tower have been relocated to the replacement Tower, provided that Licensee continuously and diligently pursues construction of the replacement Tower.

8. Insurance. The following is hereby added to the end of the first paragraph of Section 13 of the License:

The limits may be met by any combination of primary and excess or umbrella insurance.

9. Termination. Section 9 of the License is hereby deleted in its entirety, and the following is inserted in its place:

This License may be terminated without further liability, except any terms and conditions that by their nature would survive cancellation or termination of this License, on thirty (30) days prior written notice as follows: (i) by Licensee upon a material default of any covenant, condition, or term hereof by Licensor, which default is not cured within thirty (30) days of receipt of written notice of default; unless such default cannot reasonably be cured within such thirty (30) day period and Licensor is diligently endeavoring to cure the default, in which case the cure period shall be extended for as long as Licensor diligently endeavors to cure the default; (ii) by Licensee, if Licensee does not obtain or maintain, licenses, permits or other approvals necessary to the construction or operations of Licensee's Facilities; or (iii) by Licensee, if Licensee is unable to occupy or utilize the Premises due to a ruling or directive of the FCC or other governmental or regulatory agency, including, but not limited to, a take back of channels or change in frequencies; or (iv) by Licensee, if Licensee determines that the Premises are not appropriate for its operations for economic, environmental or technological reasons, including, without limitation, signal strength or interference. Subject to Section 6, within ninety (90) days following the expiration or earlier termination of this License, Licensee shall remove its personal property and fixtures including, without limitation, Licensee's Facilities, foundations, footings and anchors, and restore the Real Property to the condition in which it existed prior to the installation of the Licensee Facilities reasonable wear and tear and damage beyond Licensor's control excepted. Licensee's below-ground removal maybe limited to a depth of three (3) feet only if, prior to expiration of earlier termination of this License, Licensee makes such a request in writing and Licensor approves such request in writing.

10. Holdover. In the event Licensee remains in possession of the Premises following expiration of the License, such holding over by Licensee shall be a month-to-month holdover term, subject to the terms and conditions of the License, and either party shall have the right to terminate the License upon thirty (30) days' notice during such month-to-month holdover term. During any month-to-month holdover term, Licensee shall pay to Licensor a monthly holdover fee equal to Nine Thousand Seven Hundred Eighty-Four and No/100 Dollars (\$9,784.00).

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Licensor for any increase in real property or possessory interest taxes levied against the Real Property as a result of the improvements constructed by Licensee on the Premises only for so long as this License has not expired of its own terms or is not terminated by either party. Licensor hereby grants to Licensee the right to challenge, whether in a Court, Administrative Proceeding, or other venue, on behalf of Licensor and/or Licensee, any personal property, real property or possessory interest tax assessments that may affect Licensee. If Licensor receives notice of any personal property or real property tax assessment against the Licensor which may affect Licensee and is directly attributable to Licensee's installation, Licensor shall provide timely notice of the assessment to Licensee sufficient to allow Licensee to consent to or challenge such assessment. Further, Licensor shall provide to Licensee any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section 10.

12. Condemnation. If Licensor receives written or other notice of a proposed taking by eminent domain of any part of the parcel of land upon which the Premises is situated, Licensor will notify Licensee of the proposed taking within five (5) days of receiving said notice and Licensee will have the option to: (i) declare the License null and void and thereafter neither party will have any liability or obligation hereunder; or (ii) remain in possession of that portion of the Premises that will not be taken, in which event there shall be an equitable adjustment to any recurring flat rate payments that may be due from Licensee to Licensor pursuant to the License, as applicable, on account of the portion of the Premises so taken. With either option, Licensee shall have the right to contest the taking and directly pursue an award.

13. Licensor's Cooperation. The first paragraph of Section 12 of the License, and only that paragraph, is hereby deleted, and the following is inserted in its place:

If requested by Licensee, Licensor will reasonably cooperate in executing, in Licensor's proprietary capacity as the Real Property owner only, at Licensee's sole cost and expense, all documents required by any governmental authority in connection with any development of, or construction on, the Premises, including documents necessary to petition the appropriate public bodies for certificates, permits, licenses and other approvals deemed necessary by Licensee in Licensee's absolute discretion to utilize the Premises for the purpose of constructing, maintaining and operating communications facilities, including without limitation, tower structures, antenna support structures, cabinets, meter boards, buildings, antennas, cables, equipment and uses incidental thereto. Licensor agrees to be named applicant, in its proprietary capacity as the Real Property owner only, if requested by Licensee. Licensor shall be entitled to no further consideration with respect to any of the foregoing matters.



14. Licensee Defaults. Section 15 of the License is hereby deleted in its entirety, and the following is inserted in its place:

(a) The occurrence of the following event shall constitute an “Event of Default” hereunder by Licensee:

(1) the failure by Licensee to observe or perform any of the terms and conditions of this License to be observed or performed by Licensee, other than as specified in Section 15(a)(1), where such failure shall continue for a period of thirty (30) days after written notice thereof is received by Licensee from Licensors; provided, however, that it shall not be deemed an Event of Default by Licensee if Licensee shall commence to cure such failure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(b) If there occurs an Event of Default by Licensee, Licensors may pursue any remedies available to Licensors at law or in equity. Nothing in this License shall limit any order issued by a court of competent jurisdiction concerning the License.

15. Assignment and Subletting. Section 16 of the License is hereby deleted in its entirety, and the following is inserted in its place:

Licensee has the right, at its sole discretion, to sublease or license use of the Premises or to assign all or any part of its interest in this License or in the Premises. Licensee shall provide prior written notice of any assignment, sublease or sublicense to Licensors.

16. Ratification.

a) Licensors and Licensee agree that Licensee is the current Licensee under the License, the License is in full force and effect, as amended herein, and the License contains the entire agreement between Licensors and Licensee with respect to the Premises.

b) Licensors agrees that no breaches or defaults exist to Licensors’s knowledge (without duty of investigation) as of the date of this First Amendment.

c) Licensors represents and warrants that Licensors is duly authorized and has the full power, right and authority to enter into this First Amendment and to perform all of its obligations under the License as amended.

17. Notices. Licensee’s notice addresses as stated in Section 20 of the License are amended as follows:

LICENSEE: T-Mobile West Tower LLC  
12920 S.E. 38th Street  
Bellevue, Washington 98006  
Attention: Leasing Administration

With a copy to: T-Mobile West Tower LLC  
c/o CCTMO LLC  
Attn: Legal - Real Estate Department  
2000 Corporate Drive  
Canonsburg, PA 15317

18. IRS Form W-9. Lessor agrees to provide Licensee with a completed IRS Form W-9, or its equivalent, upon execution of this First Amendment and at such other times as may be reasonably requested by Licensee. In the event the Premises are transferred, the succeeding Lessor shall have a duty at the time of such transfer to provide Licensee with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in payment to the new Lessor. Lessor's failure to provide the IRS Form W-9 within thirty (30) days after Licensee's request shall be considered a default and Licensee may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from any payments.

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Lessor warrants and agrees that to the best of Lessor's knowledge (without duty to investigate) the Real Property and all improvements thereon materially comply with applicable laws, codes and regulations of any governmental or quasi-governmental authority.

20. Remainder of License Unaffected. The parties hereto acknowledge that except as expressly modified hereby, the License remains unmodified and in full force and effect. In the event of any conflict or inconsistency between the terms of this First Amendment and the License, the terms of this First Amendment shall control. The terms, covenants and provisions of this First Amendment shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of Lessor and Licensee. This First Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

21. Survey. Exhibit "B" attached hereto hereby replaces Exhibit "B" to the License.

*[Execution Pages Follow]*

This First Amendment is executed by Licensor as of the date first written above.

LICENSOR:  
CITY OF POMONA,  
a Municipal corporation

\_\_\_\_\_  
City Manager  
Name: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk  
Name: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney  
Name: \_\_\_\_\_

*[Licensee Execution Page Follows]*

This First Amendment is executed by Licensee as of the date first written above.

**LICENSEE:**

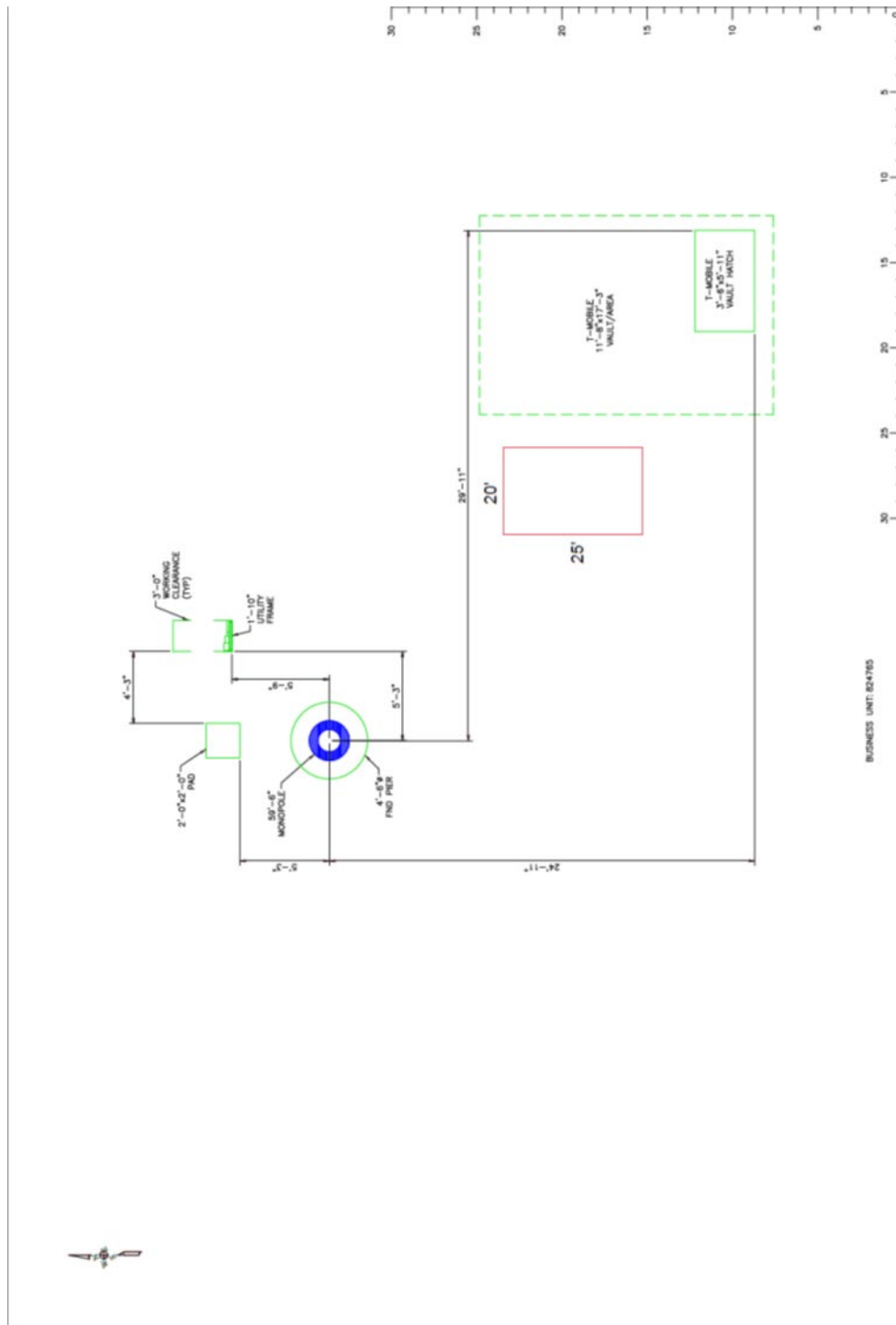
T-MOBILE WEST TOWER LLC,  
a Delaware limited liability company

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

## Exhibit B

### Site Plan Depicting Premises and Additional Premises



## **FIRST AMENDMENT TO LICENSE AGREEMENT**

THIS FIRST AMENDMENT TO LICENSE AGREEMENT (this "First Amendment") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the CITY OF POMONA, a Municipal corporation, with a mailing address of 505 South Garey Avenue, Box 660, Pomona, California 91769 ("Licensor") and T-Mobile West Tower LLC, a Delaware limited liability company, by and through CCTMO LLC, a Delaware limited liability company, its attorney in fact, with a mailing address of 2000 Corporate Drive, Canonsburg, Pennsylvania 15317 (collectively referred to as "Licensee").

### **RECITALS**

WHEREAS, Licensor and Omnipoint Communications, Inc., a subsidiary of T-Mobile USA, Inc., a Delaware corporation ("Original Licensee") entered into a License Agreement dated April 17, 2006 (the "License"), whereby Original Licensee licensed certain real property, together with non-exclusive access and utility easements, located in Los Angeles County, California from Licensor (the "Premises"), all located within certain real property owned by Licensor (the "Real Property"); and

WHEREAS, T-Mobile West Tower LLC is currently the licensee under the License as ultimate successor in interest to the Original Licensee; and

WHEREAS, the Premises may be used for the purpose of constructing, maintaining and operating a communications facility, including tower structures, equipment shelters, cabinets, meter boards, utilities, antennas, equipment, any related improvements and structures and uses incidental thereto; and

WHEREAS, the License had an initial term that commenced on May 12, 2006 and expired on May 11, 2011. The License provides for five (5) renewal terms of five (5) years (each an "Renewal Term"), the first two (2) of which were exercised by Licensee. According to the License, the final Renewal Term expires on May 11, 2036; and

WHEREAS, Licensor and Licensee desire to amend the License on the terms and conditions contained herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Licensor and Licensee agree as follows:

1. Recitals; Defined Terms. The parties acknowledge the accuracy of the foregoing recitals. Any capitalized terms not defined herein shall have the meanings ascribed to them in the License.

2. Term. The Term of the License is hereby extended for a period of thirty-one (31) years, commencing on the date of this First Amendment.

3. Pre-Payment. Licensee shall pay to Licensor a one-time, non-refundable payment of Five Hundred Fifty-Five Thousand One Hundred Sixty-Six and 66/100 Dollars (\$555,166.66) within sixty (60) days after execution of this First Amendment by the parties, which sum shall be deemed to be the License Fee for the period beginning on the date of this First Amendment and ending thirty-one (31) years thereafter ("Pre-Payment Period"). During the Pre-Payment Period, Licensor and Licensee agree that the obligation of Licensee to pay the License Fee to Licensor shall be suspended. Licensor shall have no contractual right to terminate the License for any reason and waives its right to declare a default for non-payment of the License Fee; provided however, if there occurs an Event of Default by Licensee, as defined by the License, Licensor may pursue any remedies available to Licensor at law or in equity, and this section shall not limit any order issued by a court of competent jurisdiction concerning the License. In addition, provided that Licensee shall provide prior written notice of any sublease or sublicense to Licensor, Licensor waives its right to consent to any sublease or sublicense of all or a portion of the Premises.

4. Expansion Option.

a. Option. Licensee shall have the irrevocable right and option during the Pre-Payment Period (the "Option"), exercisable not for use by sublessees or sublicensees already using the Premises but in connection with leases, subleases, licenses or grants of a similar right of use or occupancy to a future sublicensee(s) (each a "Future Sublicensee"), at any time, and from time to time, following the execution of the License, to amend the License to include up to a maximum of five hundred (500) square feet of real property adjacent to the Premises in a location as more specifically depicted in Exhibit "B" (the "Additional Premises"). The Additional Premises added by proper exercise of the Option shall be licensed upon the same terms and conditions as the Premises set forth in this License, except as otherwise provided in this Section 4.



Licensee may conduct any reasonable due diligence activities on the Additional Premises related to Licensee's permitted use under the License at any time after full execution of this First Amendment. Licensee may exercise the Option for the entire Additional Premises in a single exercise, or may exercise the Option multiple times in increments, by providing written notice to Licensors at any time; provided, however, that following Licensee's delivery of notice to Licensors, Licensee may at any time prior to full execution of the Additional Premises Documents (as defined herein) withdraw its election to exercise the Option if Licensee discovers or obtains any information of any nature regarding the Additional Premises which Licensee determines to be unfavorable in its sole discretion. Within thirty (30) days after Licensee's exercise of the Option, Licensors agree to execute and deliver an amendment to the License, a memorandum of amendment (each of which may include a metes and bounds description of the Additional Premises), and any other documents necessary to grant and record Licensee's interest in the Additional Premises ("Additional Premises Documents"). In addition, within thirty (30) days after Licensee's exercise of the Option, Licensors shall obtain and deliver any documentation necessary to remove, subordinate or satisfy any mortgages, deeds of trust, liens or encumbrances affecting the Additional Premises to Licensee's satisfaction. In the event that Licensee exercises the Option, Licensee's installation of Licensee's Facilities in the Additional Premises shall be underground or in a mutually agreeable design. Licensee shall at its sole cost obtain a survey ("Survey") specifically describing the Premises and any access and utility rights associated therewith and shall replace Exhibit B with the Survey approved by Licensors as an exhibit to this First Amendment and any related memorandum for recording.

b. Additional Premises Revenue Share. In the event that Licensee exercises the Option, Licensee shall pay to Licensors, in lieu of any additional License Fee, fifty percent (50%) of all recurring rental, license or similar payments actually received by Licensee from such Future Sublicensee (which do not include any reimbursement of taxes, construction costs or installation costs incurred by Licensee) (the "Future Sublicense Fee") within thirty (30) days after receipt of said payments by Licensee. Licensee shall have no obligation for payment to Licensors of the Future Sublicense Fee if such rental, license or similar payments are not actually received by Licensee, provided

that Licensee shall use all commercially reasonable efforts to collect all amounts due from Future Sublicensees and shall terminate a future sublicense for non-payment within a reasonable period of time. Licensee shall have sole discretion as to whether, and on what terms, to lease, sublease, license, or otherwise allow occupancy of the Additional Premises by Future Sublicensees provided, however, Licensee shall use its best efforts to obtain a market value rent. There shall be no express or implied obligation for Licensee to exercise the Option for the Additional Premises. Notwithstanding anything in this paragraph to the contrary, the parties agree and acknowledge that revenue derived from sublicensees and any successors and/or assignees of such sublicensees who commenced use and/or sublease of the Premises prior to execution of the License shall be expressly excluded from use of the Additional Premises and the Future Sublicense Fee and Licensors shall have no right to receive any portion of such revenue. On or about June 1 of each calendar year, Licensee shall provide a certified business summary affidavit pertaining to Licensee's payment obligations for Future Sublicensees (as defined herein) for the prior year. Licensors may request reasonable access to supporting documentation (as may be reasonably redacted by Licensee) to verify the information in the business summary affidavit within sixty (60) days after Licensors' receipt of such affidavit. Licensors agree to maintain the confidentiality of such documentation except where disclosure is required by law.

5. Notice of Offers. If Licensors receive an offer that it intends to accept to purchase fee title, an easement, a lease, a license, or any other interest in the Premises, or Licensors' interest in the License, or an option for any of the foregoing, Licensors shall provide written notice to Licensee no later than fifteen (15) days prior to Licensors accepting said offer.

6. Facilities Construction. Section 6 of the License is hereby deleted in its entirety, and the following is inserted in its place:

A site plan depicting the current configuration of Licensee's Facilities, is set forth in Exhibit "B" attached hereto. Licensee's Facilities shall be removed upon the expiration or earlier termination of this License. If Licensee's tower is being used as a light standard upon the expiration or earlier termination of this License, then upon the expiration or earlier termination of this License, Licensee shall, at Licensee's option, either: (1) replace the light standard with a light standard that substantially conforms with the design and appearance of similarly situated light standards then-existing on the Real Property, or (2) leave the light standard, which

shall become the property of Licensor; provided however, before leaving the light standard to become the property of Licensor, Licensee shall: (1) notify Licensor of its decision in writing, (2) allow thirty (30) days for Licensor to inspect the light standard, and (3) perform at Licensee's cost any reasonable maintenance and repairs determined by Licensor to be necessary to ensure that the light standard is structurally sound, in good repair and properly functioning. In either case, Licensee's antennas and equipment will be removed by Licensee. If Licensee's tower is not being used as a light standard upon the expiration or earlier termination of this License, then upon the expiration or earlier termination of this License, Licensee shall remove the tower in addition to the antennas and equipment.

7. Improvements. The following is hereby added to the end of Section 7(b) of the License:

Licensee has the right to repair, replace and supplement Licensee's Facilities and the obligation to do so in compliance with all applicable laws and regulations, including all applicable local zoning and permitting codes and regulations. Further, Licensee shall maintain the Licensee's Facilities, Premises, and Additional Premises, if any, in a safe and debris-free condition and graffiti-free condition. Licensee shall use all commercially reasonable efforts to design and construct Licensee's Facilities to be consistent with the aesthetics of the surrounding Real Property, including stealth design and construction. In the event Licensee replaces the tower structure (the "Tower") or increases the height of the Tower, Licensee shall obtain Licensor's prior written approval of the design of the Tower replacement or height increase, such approval not to be unreasonably withheld, conditioned or delayed. Licensee agrees that it may have only one Tower on the Premises at one time without the prior written consent of Licensor, such consent not to be unreasonably withheld, conditioned or delayed; provided, however, that in the event Licensee deems it necessary to replace the Tower, Licensee may construct or utilize a second Tower or cell on wheels and equipment related thereto for a limited period of time, as reasonably necessary until Licensee completes construction of a replacement Tower provided, however, such period shall not exceed one hundred eighty (180) days without Licensor's written consent, such consent not to be unreasonably withheld, conditioned or delayed. Licensee shall not be required to remove the existing or temporary Tower until the replacement Tower is completed and any occupants on the existing or temporary Tower have been relocated to the replacement Tower, provided that Licensee continuously and diligently pursues construction of the replacement Tower.

8. Insurance. The following is hereby added to the end of the first paragraph of Section 13 of the License:

The limits may be met by any combination of primary and excess or umbrella insurance.

9. Termination. Section 9 of the License is hereby deleted in its entirety, and the following is inserted in its place:

This License may be terminated without further liability, except any terms and conditions that by their nature would survive cancellation or termination of this License, on thirty (30) days prior written notice as follows: (i) by Licensee upon a material default of any covenant, condition, or term hereof by Licensor, which default is not cured within thirty (30) days of receipt of written notice of default; unless such default cannot reasonably be cured within such thirty (30) day period and Licensor is diligently endeavoring to cure the default, in which case the cure period shall be extended for as long as Licensor diligently endeavors to cure the default; (ii) by Licensee, if Licensee does not obtain or maintain, licenses, permits or other approvals necessary to the construction or operations of Licensee's Facilities; or (iii) by Licensee, if Licensee is unable to occupy or utilize the Premises due to a ruling or directive of the FCC or other governmental or regulatory agency, including, but not limited to, a take back of channels or change in frequencies; or (iv) by Licensee, if Licensee determines that the Premises are not appropriate for its operations for economic, environmental or technological reasons, including, without limitation, signal strength or interference. Subject to Section 6, within ninety (90) days following the expiration or earlier termination of this License, Licensee shall remove its personal property and fixtures including, without limitation, Licensee's Facilities, foundations, footings and anchors, and restore the Real Property to the condition in which it existed prior to the installation of the Licensee Facilities reasonable wear and tear and damage beyond Licensor's control excepted. Licensee's below-ground removal maybe limited to a depth of three (3) feet only if, prior to expiration of earlier termination of this License, Licensee makes such a request in writing and Licensor approves such request in writing.

10. Holdover. In the event Licensee remains in possession of the Premises following expiration of the License, such holding over by Licensee shall be a month-to-month holdover term, subject to the terms and conditions of the License, and either party shall have the right to terminate the License upon thirty (30) days' notice during such month-to-month holdover term. During any month-to-month holdover term, Licensee shall pay to Licensor a monthly holdover fee equal to Nine Thousand Seven Hundred Eighty-Four and No/100 Dollars (\$9,784.00).

11. Taxes. Section 10 of the License is hereby deleted in its entirety, and the following is inserted in its place:

Taxes and Revenue & Taxation Code Section 107.6 Notice. Licensee recognizes and understands that this License may create a possessory interest subject to property taxes and that, if a possessory interest is created, Licensee shall pay personal property taxes assessed against Licensee's Facilities and shall reimburse

Licensor for any increase in real property or possessory interest taxes levied against the Real Property as a result of the improvements constructed by Licensee on the Premises only for so long as this License has not expired of its own terms or is not terminated by either party. Licensor hereby grants to Licensee the right to challenge, whether in a Court, Administrative Proceeding, or other venue, on behalf of Licensor and/or Licensee, any personal property, real property or possessory interest tax assessments that may affect Licensee. If Licensor receives notice of any personal property or real property tax assessment against the Licensor which may affect Licensee and is directly attributable to Licensee's installation, Licensor shall provide timely notice of the assessment to Licensee sufficient to allow Licensee to consent to or challenge such assessment. Further, Licensor shall provide to Licensee any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section 10.

12. Condemnation. If Licensor receives written or other notice of a proposed taking by eminent domain of any part of the parcel of land upon which the Premises is situated, Licensor will notify Licensee of the proposed taking within five (5) days of receiving said notice and Licensee will have the option to: (i) declare the License null and void and thereafter neither party will have any liability or obligation hereunder; or (ii) remain in possession of that portion of the Premises that will not be taken, in which event there shall be an equitable adjustment to any recurring flat rate payments that may be due from Licensee to Licensor pursuant to the License, as applicable, on account of the portion of the Premises so taken. With either option, Licensee shall have the right to contest the taking and directly pursue an award.

13. Licensor's Cooperation. The first paragraph of Section 12 of the License, and only that paragraph, is hereby deleted, and the following is inserted in its place:

If requested by Licensee, Licensor will reasonably cooperate in executing, in Licensor's proprietary capacity as the Real Property owner only, at Licensee's sole cost and expense, all documents required by any governmental authority in connection with any development of, or construction on, the Premises, including documents necessary to petition the appropriate public bodies for certificates, permits, licenses and other approvals deemed necessary by Licensee in Licensee's absolute discretion to utilize the Premises for the purpose of constructing, maintaining and operating communications facilities, including without limitation, tower structures, antenna support structures, cabinets, meter boards, buildings, antennas, cables, equipment and uses incidental thereto. Licensor agrees to be named applicant, in its proprietary capacity as the Real Property owner only, if requested by Licensee. Licensor shall be entitled to no further consideration with respect to any of the foregoing matters.

14. Licensee Defaults. Section 15 of the License is hereby deleted in its entirety, and the following is inserted in its place:

(a) The occurrence of the following event shall constitute an “Event of Default” hereunder by Licensee:

(1) the failure by Licensee to observe or perform any of the terms and conditions of this License to be observed or performed by Licensee, other than as specified in Section 15(a)(1), where such failure shall continue for a period of thirty (30) days after written notice thereof is received by Licensee from Licensors; provided, however, that it shall not be deemed an Event of Default by Licensee if Licensee shall commence to cure such failure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(b) If there occurs an Event of Default by Licensee, Licensors may pursue any remedies available to Licensors at law or in equity. Nothing in this License shall limit any order issued by a court of competent jurisdiction concerning the License.

15. Assignment and Subletting. Section 16 of the License is hereby deleted in its entirety, and the following is inserted in its place:

Licensee has the right, at its sole discretion, to sublease or license use of the Premises or to assign all or any part of its interest in this License or in the Premises. Licensee shall provide prior written notice of any assignment, sublease or sublicense to Licensors.

16. Ratification.

a) Licensors and Licensee agree that Licensee is the current Licensee under the License, the License is in full force and effect, as amended herein, and the License contains the entire agreement between Licensors and Licensee with respect to the Premises.

b) Licensors agrees that no breaches or defaults exist to Licensors’s knowledge (without duty of investigation) as of the date of this First Amendment.

c) Licensors represents and warrants that Licensors is duly authorized and has the full power, right and authority to enter into this First Amendment and to perform all of its obligations under the License as amended.

17. Notices. Licensee’s notice addresses as stated in Section 20 of the License are amended as follows:

LICENSEE: T-Mobile West Tower LLC  
12920 S.E. 38th Street  
Bellevue, Washington 98006  
Attention: Leasing Administration

With a copy to: T-Mobile West Tower LLC  
c/o CCTMO LLC  
Attn: Legal - Real Estate Department  
2000 Corporate Drive  
Canonsburg, PA 15317

18. IRS Form W-9. Lessor agrees to provide Licensee with a completed IRS Form W-9, or its equivalent, upon execution of this First Amendment and at such other times as may be reasonably requested by Licensee. In the event the Premises are transferred, the succeeding Lessor shall have a duty at the time of such transfer to provide Licensee with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in payment to the new Lessor. Lessor's failure to provide the IRS Form W-9 within thirty (30) days after Licensee's request shall be considered a default and Licensee may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from any payments.

19. Compliance with Laws. Section 21(c) of the License is hereby deleted in its entirety, and the following is inserted in its place:

Lessor warrants and agrees that to the best of Lessor's knowledge (without duty to investigate) the Real Property and all improvements thereon materially comply with applicable laws, codes and regulations of any governmental or quasi-governmental authority.

20. Remainder of License Unaffected. The parties hereto acknowledge that except as expressly modified hereby, the License remains unmodified and in full force and effect. In the event of any conflict or inconsistency between the terms of this First Amendment and the License, the terms of this First Amendment shall control. The terms, covenants and provisions of this First Amendment shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of Lessor and Licensee. This First Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

21. Survey. Exhibit "B" attached hereto hereby replaces Exhibit "B" to the License.

*[Execution Pages Follow]*



This First Amendment is executed by Licensor as of the date first written above.

LICENSOR:  
CITY OF POMONA,  
a Municipal corporation

\_\_\_\_\_  
City Manager  
Name: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk  
Name: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney  
Name: \_\_\_\_\_

*[Licensee Execution Page Follows]*

This First Amendment is executed by Licensee as of the date first written above.

**LICENSEE:**

T-MOBILE WEST TOWER LLC,  
a Delaware limited liability company

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

[illegible]

## **FIRST AMENDMENT TO LICENSE AGREEMENT**

THIS FIRST AMENDMENT TO LICENSE AGREEMENT (this “First Amendment”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the CITY OF POMONA, a Municipal corporation, with a mailing address of 505 South Garey Avenue, Box 660, Pomona, California 91769 (“Licensor”) and NCWPCS MPL 33 – YEAR SITES TOWER HOLDINGS LLC, a Delaware limited liability company, by and through CCATT LLC, a Delaware limited liability company, its attorney in fact, with a mailing address of 2000 Corporate Drive, Canonsburg, Pennsylvania 15317 (collectively referred to as “Licensee”).

### **RECITALS**

WHEREAS, Licensor and New Cingular Wireless PCS, LLC, a Delaware limited liability company (“Original Licensee”) entered into a License Agreement dated November 22, 2005 (the “License”), whereby Original Licensee licensed certain real property, together with non-exclusive access and utility easements, located in Los Angeles County, California from Licensor (the “Premises”), all located within certain real property owned by Licensor (the “Real Property”); and

WHEREAS, NCWPCS MPL 33 – YEAR SITES TOWER HOLDINGS LLC is currently the licensee under the License as ultimate successor in interest to the Original Licensee; and

WHEREAS, the Premises may be used for the purpose of constructing, maintaining and operating a communications facility, including tower structures, equipment shelters, cabinets, meter boards, utilities, antennas, equipment, any related improvements and structures and uses incidental thereto; and

WHEREAS, the License had an initial term that commenced on December 1, 2005 and expired on November 30, 2010. The License provides for five (5) renewal terms of five (5) years (each an “Renewal Term”), the first two (2) of which were exercised by Licensee. According to the License, the final Renewal Term expires on November 30, 2035; and

WHEREAS, Licensor and Licensee desire to amend the License on the terms and conditions contained herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Licensors and Licensee agree as follows:

1. Recitals; Defined Terms. The parties acknowledge the accuracy of the foregoing recitals. Any capitalized terms not defined herein shall have the meanings ascribed to them in the License.

2. Term. The Term of the License is hereby extended for a period of thirty-one (31) years, commencing on the date of this First Amendment.

3. Pre-Payment. Licensee shall pay to Licensors a one-time, non-refundable payment of Five Hundred Fifty-Five Thousand One Hundred Sixty-Six and 66/100 Dollars (\$555,166.66) within sixty (60) days after execution of this First Amendment by the parties, which sum shall be deemed to be the License Fee for the period beginning on the date of this First Amendment and ending thirty-one (31) years thereafter ("Pre-Payment Period"). During the Pre-Payment Period, Licensors and Licensee agree that the obligation of Licensee to pay the License Fee to Licensors shall be suspended. Licensors shall have no contractual right to terminate the License for any reason and waives its right to declare a default for non-payment of the License Fee; provided however, if there occurs an Event of Default by Licensee, as defined by the License, Licensors may pursue any remedies available to Licensors at law or in equity, and this section shall not limit any order issued by a court of competent jurisdiction concerning the License. In addition, provided that Licensee shall provide prior written notice of any sublease or sublicense to Licensors, Licensors waives its right to consent to any sublease or sublicense of all or a portion of the Premises.

4. Expansion Option.

a. Option. Licensee shall have the irrevocable right and option during the Pre-Payment Period (the "Option"), exercisable not for use by sublessees or sublicensees already using the Premises but in connection with leases, subleases, licenses or grants of a similar right of use or occupancy to a future sublicensee(s) (each a "Future Sublicensee"), at any time, and from time to time, following the execution of the License, to amend the License to include up to a maximum of five hundred (500) square feet of real property adjacent to the Premises in a location as more specifically depicted in

Exhibit "B" (the "Additional Premises"). The Additional Premises added by proper exercise of the Option shall be licensed upon the same terms and conditions as the Premises set forth in this License, except as otherwise provided in this Section 4. Licensee may conduct any reasonable due diligence activities on the Additional Premises related to Licensee's permitted use under the License at any time after full execution of this First Amendment. Licensee may exercise the Option for the entire Additional Premises in a single exercise, or may exercise the Option multiple times in increments, by providing written notice to Licensors at any time; provided, however, that following Licensee's delivery of notice to Licensors, Licensee may at any time prior to full execution of the Additional Premises Documents (as defined herein) withdraw its election to exercise the Option if Licensee discovers or obtains any information of any nature regarding the Additional Premises which Licensee determines to be unfavorable in its sole discretion. Within thirty (30) days after Licensee's exercise of the Option, Licensors agree to execute and deliver an amendment to the License, a memorandum of amendment (each of which may include a metes and bounds description of the Additional Premises), and any other documents necessary to grant and record Licensee's interest in the Additional Premises ("Additional Premises Documents"). In addition, within thirty (30) days after Licensee's exercise of the Option, Licensors shall obtain and deliver any documentation necessary to remove, subordinate or satisfy any mortgages, deeds of trust, liens or encumbrances affecting the Additional Premises to Licensee's satisfaction. In the event that Licensee exercises the Option, Licensee's installation of Licensee's Facilities in the Additional Premises shall be underground or in a mutually agreeable design. Licensee shall at its sole cost obtain a survey ("Survey") specifically describing the Premises and any access and utility rights associated therewith and shall replace Exhibit B with the Survey approved by Licensors as an exhibit to this First Amendment and any related memorandum for recording.

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Sublicense Fee”) within thirty (30) days after receipt of said payments by Licensee. Licensee shall have no obligation for payment to Licensor of the Future Sublicense Fee if such rental, license or similar payments are not actually received by Licensee, provided that Licensee shall use all commercially reasonable efforts to collect all amounts due from Future Sublicensees and shall terminate a future sublicense for non-payment within a reasonable period of time. Licensee shall have sole discretion as to whether, and on what terms, to lease, sublease, license, or otherwise allow occupancy of the Additional Premises by Future Sublicensees provided, however, Licensee shall use its best efforts to obtain a market value rent. There shall be no express or implied obligation for Licensee to exercise the Option for the Additional Premises. Notwithstanding anything in this paragraph to the contrary, the parties agree and acknowledge that revenue derived from sublicensees and any successors and/or assignees of such sublicensees who commenced use and/or sublease of the Premises prior to execution of the License shall be expressly excluded from use of the Additional Premises and the Future Sublicense Fee and Licensor shall have no right to receive any portion of such revenue. On or about June 1 of each calendar year, Licensee shall provide a certified business summary affidavit pertaining to Licensee’s payment obligations for Future Sublicensees (as defined herein) for the prior year. Licensor may request reasonable access to supporting documentation (as may be reasonably redacted by Licensee) to verify the information in the business summary affidavit within sixty (60) days after Licensor’s receipt of such affidavit. Licensor agrees to maintain the confidentiality of such documentation except where disclosure is required by law.

5. Notice of Offers. If Licensor receives an offer that it intends to accept to purchase fee title, an easement, a lease, a license, or any other interest in the Premises, or Licensor’s interest in the License, or an option for any of the foregoing, Licensor shall provide written notice to Licensee no later than fifteen (15) days prior to Licensor accepting said offer.

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A site plan depicting the current configuration of Licensee’s Facilities, is set forth in Exhibit “B” attached hereto. Licensee’s Facilities shall be removed upon the expiration or earlier termination of this License. If Licensee’s tower is being used

as a light standard upon the expiration or earlier termination of this License, then upon the expiration or earlier termination of this License, Licensee shall, at Licensee's option, either: (1) replace the light standard with a light standard that substantially conforms with the design and appearance of similarly situated light standards then-existing on the Real Property, or (2) leave the light standard, which shall become the property of Licensor; provided however, before leaving the light standard to become the property of Licensor, Licensee shall: (1) notify Licensor of its decision in writing, (2) allow thirty (30) days for Licensor to inspect the light standard, and (3) perform at Licensee's cost any reasonable maintenance and repairs determined by Licensor to be necessary to ensure that the light standard is structurally sound, in good repair and properly functioning. In either case, Licensee's antennas and equipment will be removed by Licensee. If Licensee's tower is not being used as a light standard upon the expiration or earlier termination of this License, then upon the expiration or earlier termination of this License, Licensee shall remove the tower in addition to the antennas and equipment.

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The limits may be met by any combination of primary and excess or umbrella insurance.

9. Termination. Section 9 of the License is hereby deleted in its entirety, and the following is inserted in its place:

This License may be terminated without further liability, except any terms and conditions that by their nature would survive cancellation or termination of this License, on thirty (30) days prior written notice as follows: (i) by Licensee upon a material default of any covenant, condition, or term hereof by Licensors, which default is not cured within thirty (30) days of receipt of written notice of default; unless such default cannot reasonably be cured within such thirty (30) day period and Licensors is diligently endeavoring to cure the default, in which case the cure period shall be extended for as long as Licensors diligently endeavors to cure the default; (ii) by Licensee, if Licensee does not obtain or maintain, licenses, permits or other approvals necessary to the construction or operations of Licensee's Facilities; or (iii) by Licensee, if Licensee is unable to occupy or utilize the Premises due to a ruling or directive of the FCC or other governmental or regulatory agency, including, but not limited to, a take back of channels or change in frequencies; or (iv) by Licensee, if Licensee determines that the Premises are not appropriate for its operations for economic, environmental or technological reasons, including, without limitation, signal strength or interference. Subject to Section 6, within ninety (90) days following the expiration or earlier termination of this License, Licensee shall remove its personal property and fixtures including, without limitation, Licensee's Facilities, foundations, footings and anchors, and restore the Real Property to the condition in which it existed prior to the installation of the Licensee Facilities reasonable wear and tear and damage beyond Licensors's control excepted. Licensee's below-ground removal maybe limited to a depth of three (3) feet only if, prior to expiration of earlier termination of this License, Licensee makes such a request in writing and Licensors approves such request in writing.

10. Holdover. In the event Licensee remains in possession of the Premises following expiration of the License, such holding over by Licensee shall be a month-to-month holdover term, subject to the terms and conditions of the License, and either party shall have the right to terminate the License upon thirty (30) days' notice during such month-to-month holdover term. During any month-to-month holdover term, Licensee shall pay to Licensors a monthly holdover fee equal to Nine Thousand Seven Hundred Eighty-Four and No/100 Dollars (\$9,784.00).

11. Taxes. Section 10 of the License is hereby deleted in its entirety, and the following is inserted in its place:

Taxes and Revenue & Taxation Code Section 107.6 Notice. Licensee recognizes and understands that this License may create a possessory interest subject to property taxes and that, if a possessory interest is created, Licensee shall pay personal property taxes assessed against Licensee's Facilities and shall reimburse Licensors for any increase in real property or possessory interest taxes levied against the Real Property as a result of the improvements constructed by Licensee on the Premises only for so long as this License has not expired of its own terms or is not terminated by either party. Licensors hereby grants to Licensee the right to challenge, whether in a Court, Administrative Proceeding, or other venue, on behalf of Licensors and/or Licensee, any personal property, real property or possessory interest tax assessments that may affect Licensee. If Licensors receives notice of any personal property or real property tax assessment against the Licensors which may affect Licensee and is directly attributable to Licensee's installation, Licensors shall provide timely notice of the assessment to Licensee sufficient to allow Licensee to consent to or challenge such assessment. Further, Licensors shall provide to Licensee any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section 10.

12. Condemnation. If Licensors receives written or other notice of a proposed taking by eminent domain of any part of the parcel of land upon which the Premises is situated, Licensors will notify Licensee of the proposed taking within five (5) days of receiving said notice and Licensee will have the option to: (i) declare the License null and void and thereafter neither party will have any liability or obligation hereunder; or (ii) remain in possession of that portion of the Premises that will not be taken, in which event there shall be an equitable adjustment to any recurring flat rate payments that may be due from Licensee to Licensors pursuant to the License, as applicable, on account of the portion of the Premises so taken. With either option, Licensee shall have the right to contest the taking and directly pursue an award.

13. Licensors's Cooperation. The first paragraph of Section 12 of the License, and only that paragraph, is hereby deleted, and the following is inserted in its place:

If requested by Licensee, Licensors will reasonably cooperate in executing, in Licensors's proprietary capacity as the Real Property owner only, at Licensee's sole cost and expense, all documents required by any governmental authority in connection with any development of, or construction on, the Premises, including documents necessary to petition the appropriate public bodies for certificates, permits, licenses and other approvals deemed necessary by Licensee in Licensee's

absolute discretion to utilize the Premises for the purpose of constructing, maintaining and operating communications facilities, including without limitation, tower structures, antenna support structures, cabinets, meter boards, buildings, antennas, cables, equipment and uses incidental thereto. Licensor agrees to be named applicant, in its proprietary capacity as the Real Property owner only, if requested by Licensee. Licensor shall be entitled to no further consideration with respect to any of the foregoing matters.

14. Licensee Defaults. Section 15 of the License is hereby deleted in its entirety, and the following is inserted in its place:

(a) The occurrence of the following event shall constitute an “Event of Default” hereunder by Licensee:

(1) the failure by Licensee to observe or perform any of the terms and conditions of this License to be observed or performed by Licensee, other than as specified in Section 15(a)(1), where such failure shall continue for a period of thirty (30) days after written notice thereof is received by Licensee from Licensor; provided, however, that it shall not be deemed an Event of Default by Licensee if Licensee shall commence to cure such failure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(b) If there occurs an Event of Default by Licensee, Licensor may pursue any remedies available to Licensor at law or in equity. Nothing in this License shall limit any order issued by a court of competent jurisdiction concerning the License.

15. Assignment and Subletting. Section 16 of the License is hereby deleted in its entirety, and the following is inserted in its place:

Licensee has the right, at its sole discretion, to sublease or license use of the Premises or to assign all or any part of its interest in this License or in the Premises. Licensee shall provide prior written notice of any assignment, sublease or sublicense to Licensor.

16. Ratification.

a) Licensor and Licensee agree that Licensee is the current Licensee under the License, the License is in full force and effect, as amended herein, and the License contains the entire agreement between Licensor and Licensee with respect to the Premises.

b) Licensor agrees that no breaches or defaults exist to Licensor’s knowledge (without duty of investigation) as of the date of this First Amendment.

c) Licenser represents and warrants that Licenser is duly authorized and has the full power, right and authority to enter into this First Amendment and to perform all of its obligations under the License as amended.

17. Notices. Licensee's notice addresses as stated in Section 20 of the License are amended as follows:

LICENSEE: NCWPCS MPL 33 – YEAR SITES TOWER  
HOLDINGS LLC  
Legal Department  
Attn: Network Legal  
208 S. Akard Street  
Dallas, TX 75202-4206

With a copy to: CCATT LLC  
Attn: Legal - Real Estate Department  
2000 Corporate Drive  
Canonsburg, PA 15317

18. IRS Form W-9. Licenser agrees to provide Licensee with a completed IRS Form W-9, or its equivalent, upon execution of this First Amendment and at such other times as may be reasonably requested by Licensee. In the event the Premises are transferred, the succeeding Licenser shall have a duty at the time of such transfer to provide Licensee with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in payment to the new Licenser. Licenser's failure to provide the IRS Form W-9 within thirty (30) days after Licensee's request shall be considered a default and Licensee may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from any payments.

19. Compliance with Laws. Section 21(c) of the License is hereby deleted in its entirety, and the following is inserted in its place:

Licenser warrants and agrees that to the best of Licenser's knowledge (without duty to investigate) the Real Property and all improvements thereon materially comply with applicable laws, codes and regulations of any governmental or quasi-governmental authority.

20. Remainder of License Unaffected. The parties hereto acknowledge that except as expressly modified hereby, the License remains unmodified and in full force and effect. In the

event of any conflict or inconsistency between the terms of this First Amendment and the License, the terms of this First Amendment shall control. The terms, covenants and provisions of this First Amendment shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of Licensors and Licensees. This First Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

21. Survey. Exhibit "B" attached hereto hereby replaces Exhibit "B" to the License.

*[Execution Pages Follow]*

This First Amendment is executed by Licensor as of the date first written above.

LICENSOR:  
CITY OF POMONA,  
a Municipal corporation

\_\_\_\_\_  
City Manager  
Name: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk  
Name: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney  
Name: \_\_\_\_\_

*[Licensee Execution Page Follows]*

This First Amendment is executed by Licensee as of the date first written above.

**LICENSEE:**

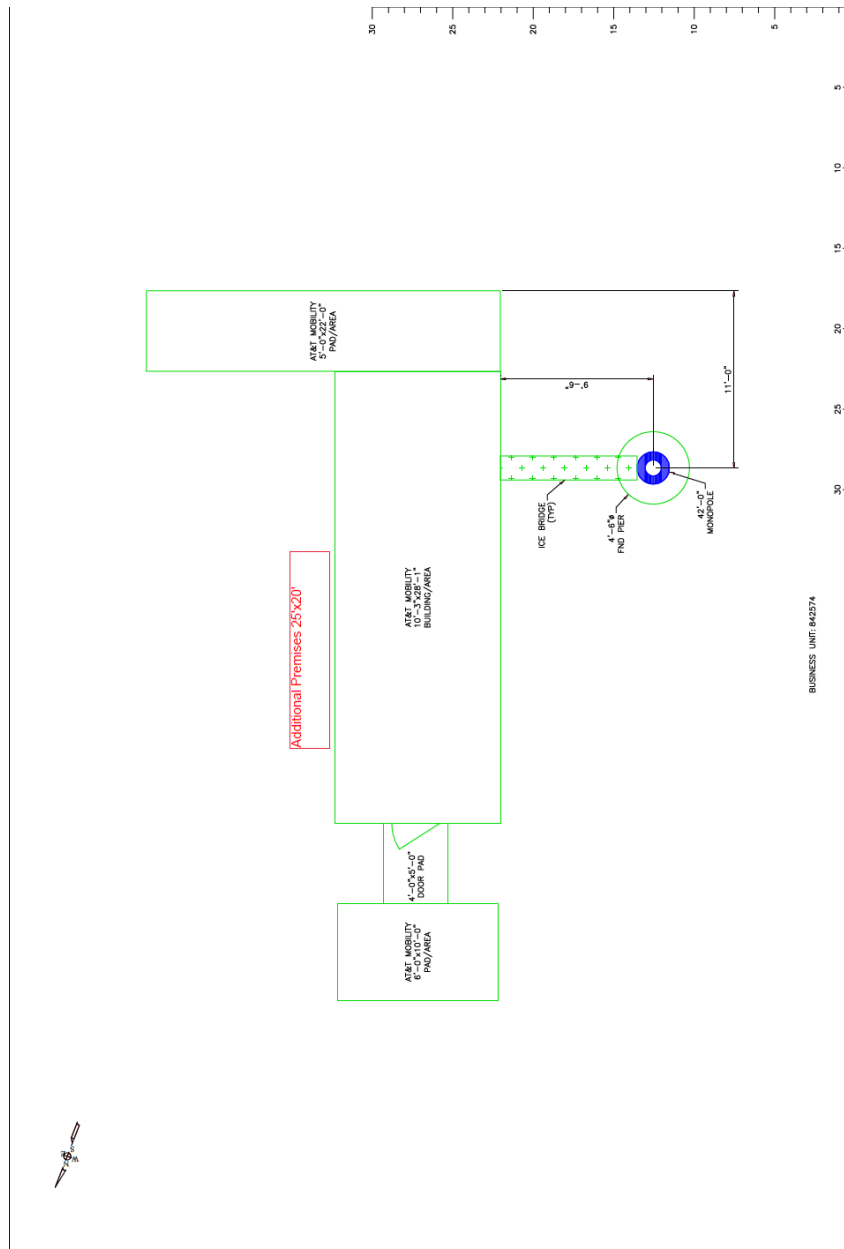
NCWPCS MPL 33 – YEAR SITES TOWER  
HOLDINGS LLC,  
a Delaware limited liability company

By: CCATT LLC,  
a Delaware limited liability company  
Its: Attorney in Fact

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

## Exhibit B

### Site Plan Depicting Premises and Additional Premises





## **LICENSE AGREEMENT**

**THIS LICENSE AGREEMENT** ("License"), made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019, between the CITY OF POMONA, a municipal corporation ("Licensor"), and CCTM1 LLC, a Delaware limited liability company ("Licensee").

**WHEREAS**, Licensor is the owner of that certain real property commonly known as 1400 East Mission Boulevard, Pomona, California, 91766-2229 and identified by APN 8327-0 14-006 and is more particularly described in Exhibit "A" (the "Real Property"); and

**WHEREAS**, Licensee intends to operate a communications facility on a portion of the Real Property including any applicable access and utilities rights as such communications facility and rights are more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference, (collectively the "Premises").

**NOW, THEREFORE**, Licensor, for and in consideration of the faithful performance by Licensee of the terms, covenants and agreements hereinafter set forth to be kept and performed by Licensee, does hereby grant to Licensee an irrevocable license to use the Premises, solely for the purpose hereinafter specified, upon and subject to the terms, reservations, covenants and conditions hereinafter set forth as follows:

1. Premises.

(a) Licensor owns the Real Property legally described herein. Licensor grants to Licensee an exclusive and irrevocable license to use the Premises, subject to the Original Lease, as defined in Section 21 herein. Licensee's option rights to the Additional Premises shall take effect upon full execution of this License, whereas Licensee's use of and possessory rights to the Original Premises under this License shall only take effect upon the expiration or earlier termination of the Original Lease. Licensee's rights to the Original Premises shall be subordinate to the Original Lease.

(b) Expansion Option. Licensee shall have the irrevocable right and option during the Term (the "Option"), exercisable not for use by sublessees or sublicensees already using the Premises, but in connection with a sublease or sublicense or grants of a similar right of use or occupancy to a future sublicensee(s) (each a "Future Sublicensee"), at any time and from time to time, following the execution of this License, to amend this License for no additional consideration except as provided herein, to include up to a maximum of five hundred (500) square feet of real property adjacent to the Premises in a location as more specifically depicted in Exhibit "C" (the "Additional Premises"). The Additional Premises added by proper exercise of the Option shall be licensed upon the same terms and conditions as the Premises set forth in this License, except as otherwise provided in this Section 1. Licensee may conduct any reasonable due diligence activities on the Additional

Premises at any time after full execution of this License. Licensee may exercise the Option for the entire Additional Premises in a single exercise, or may exercise the Option multiple times in increments, by providing written notice to Licensors at any time; provided, however, that following Licensee's delivery of notice to Licensors, Licensee may at any time prior to full execution of the Additional Premises Documents (as defined herein) withdraw its election to exercise the Option if Licensee discovers or obtains any information of any nature regarding the Additional Premises which Licensee determines to be unfavorable in its sole discretion. Within thirty (30) days after Licensee's exercise of the Option, Licensors agree to execute and deliver an amendment to this License, a memorandum of amendment (each of which may include a metes and bounds description of the Additional Premises), and any other documents necessary to grant and record Licensee's interest in the Additional Premises ("Additional Premises Documents"). In addition, within thirty (30) days after Licensee's exercise of the Option, Licensors shall obtain and deliver any documentation necessary to remove, subordinate or satisfy any mortgages, deeds of trust, liens or encumbrances affecting the Additional Premises to Licensee's satisfaction. In the event that Licensee exercises the Option, Licensee's installation of Licensee's Facilities in the Additional Premises shall be underground. Licensee shall at its sole cost obtain a survey ("Survey") specifically describing the Premises and any access and utility rights associated therewith and shall replace Exhibit C with the Survey approved by Licensors as an exhibit to this First Amendment and any related memorandum for recording.

(c) Additional Premises Revenue Share. In the event that Licensee exercises the Option, Licensee shall pay to Licensors, in lieu of any additional License Fee, fifty percent (50%) of all recurring rental, license or similar payments actually received by Licensee from such Future Sublicensee (which do not include any reimbursement of taxes, construction costs, or installation costs incurred by Licensee) (the "Future Sublicense Fee") within thirty (30) days after receipt of said payments by Licensee. Licensee shall have no obligation for payment to Licensors of the Future Sublicense Fee if such rental, license or similar payments are not actually received by Licensee, provided that Licensee shall use all commercially reasonable efforts to collect all amounts due from Future Sublicensees and shall terminate a future sublicense for non-payment if commercially reasonable. Licensee shall have sole discretion as to whether, and on what terms, to lease, sublease, license, or otherwise allow occupancy of the Additional Premises provided, however, Licensee shall use its best efforts to obtain a market value license fee. There shall be no express or implied obligation for Licensee to lease, sublease, license or otherwise allow occupancy of the Additional Premises. Notwithstanding anything in this paragraph to the contrary, the parties agree and acknowledge that revenue derived from sublicensees and any successors and/or assignees of such sublicensees who commenced use and/or sublease of the Premises prior to execution of this License shall be expressly excluded from the Future Sublicense Fee and Licensors shall have no right to receive any portion of such revenue. On or about June 1 of each calendar year, Licensee shall provide a certified business summary affidavit pertaining to Licensee's payment obligations for Future Sublicensees (as defined herein) for the prior year. Licensors may request reasonable access to supporting documentation (as may be

reasonably redacted by Licensee) to verify the information in the business summary affidavit within sixty (60) days after Licensor's receipt of such affidavit. Licensor agrees to maintain the confidentiality of such documentation except where disclosure is required by law.

2. Use. Subject to the Original Lease, the Premises may be used by Licensee for any lawful activity in connection with the provisions of mobile/wireless communications services, including without limitation, the transmission and the reception of radio communication signals on various frequencies and the construction, maintenance and operation of related communications facilities. Licensor agrees, at no expense to Licensor, to cooperate with Licensee, in making application for the obtaining all licenses, permits and any and all other necessary approvals that may be required for Licensee's intended use of the Premises.

3. Conditions Precedent. This License is conditioned upon Licensee, or Licensee's assigns, obtaining all governmental permits and approvals enabling Licensee, or its assigns, to construct and operate mobile/wireless communications facilities on the Premises.

4. Term. The term of this License ("Term") shall be thirty-one (31) years commencing upon the full execution of this License ("Commencement Date"). In the event Licensee remains in possession of the Premises following expiration of this License, such holding over by Licensee shall be a month-to-month holdover term, subject to the terms and conditions of this License, and either party shall have the right to terminate this License upon thirty (30) days' notice during such month-to-month holdover term. During any month-to-month holdover term, Licensee shall pay to Licensor a monthly holdover fee equal to Nine Thousand Seven Hundred Eighty-Four and No/100 Dollars (\$9,784.00).

5. License Fee. Within sixty (60) days following the Commencement Date of this License, Licensee shall pay to Licensor a one-time license fee in the amount of Five Hundred Fifty-Five Thousand One Hundred Sixty-Six and 66/100 Dollars (\$555,166.66). ("License Fee"), which sum shall be consideration for the entire Term of this License. The License Fee shall be payable to Licensor at its address set forth in Section 20 below. Licensor shall have no right to terminate this License for any reason and waives its right to declare a default for non-payment of any additional amounts provided, however, if there occurs an Event of Default by Licensee, as defined by this License, Licensor may pursue any remedies available to Licensor at law or in equity, and this section shall not limit any order issued by a court of competent jurisdiction concerning this License.

6. Facilities Construction. A site plan depicting the current configuration of Licensee's Facilities is set forth in Exhibit "B" attached hereto. Licensee's Facilities shall be removed upon the expiration or earlier termination of this License.

7. Improvements; Access.

(a) If Licensee determines that the Premises are unsuitable for Licensee's contemplated use, then Licensee will notify Licensors and this License will terminate immediately upon notice to Licensors.

(b) Licensee has the right to construct, maintain, and operate on the Premises a wireless communications facility, including tower structures, equipment shelters, cabinets meter boards, utilities, antennas, equipment, and related improvements and structures and uses incidental thereto (collectively, the "Licensee's Facilities"). In connection therewith, Licensee has the right to do all work necessary to prepare, replace, supplement, add, maintain and alter the Premises for Licensee's communications operations and to install utility lines and transmission lines connecting antennas to transmitters and receivers. Licensee shall construct Licensee's Facilities in compliance with all applicable laws and regulations, including all applicable local zoning and permitting codes and regulations. Further, Licensee shall maintain the Licensee's Facilities, Premises, and Additional Premises, if any, in a safe and debris-free condition and graffiti-free condition. Licensee shall use all commercially reasonable efforts to design and construct Licensee's Facilities to be consistent with the aesthetics of the surrounding Real Property, including stealth design and construction. In the event Licensee replaces the tower structure (the "Tower") or increases the height of the Tower, Licensee shall obtain Licensors' prior written approval of the design of the Tower replacement or height increase, such approval not to be unreasonably withheld, conditioned or delayed. Except as described in this section, Licensee agrees that it may have only one (1) Tower on the Premises at one time without the written consent of Licensors, such consent not to be unreasonably withheld, conditioned or delayed; provided, however, that in the event Licensee deems it necessary to replace the existing Tower, Licensee may construct or utilize a second tower structure or cell on wheels and equipment related thereto for a limited period of time, as reasonably necessary until Licensee's completes construction of a replacement tower provided, however, such period shall not exceed one hundred eighty (180) days without Licensors' written consent, such consent not to be unreasonably withheld, conditioned, or delayed.. Licensee shall not be required to remove the Tower until the replacement tower facility is completed and any occupants on the Tower have been relocated to the replacement tower, provided that Licensee continuously and diligently pursues construction of the replacement tower. All of Licensee's construction and installation work shall be performed at Licensee's sole cost and expense and in a good and workmanlike manner. Title to Licensee's Facilities and any equipment placed on the Premises by Licensee shall be held by Licensee. All of Licensee's Facilities shall remain the property of Licensee and are not fixtures. Licensee has the right to remove all of Licensee's Facilities at its sole expense on or before the expiration or earlier termination of this License.

(c) Lessor shall provide access to Licensee, Licensee's employees, agents, contractors and subcontractors to the Premises (including any necessary access over the Real Property to get to the Premises) twenty-four (24) hours a day, seven (7) days a week, at no charge to Licensee. Lessor represents and warrants that it has full rights of ingress to and egress from the Real Property, and hereby grants such rights to Licensee to the extent required to construct, maintain, install and operate Licensee's Facilities on the Premises. Licensee's exercise of such rights shall not cause undue inconvenience to Lessor.

(d) Licensee shall have the right to install utilities, at Licensee's expense, and to improve the present utilities on or near the Real Property (including, but not limited to the installation of emergency back-up power). Subject to Lessor's approval of the location, which approval shall not be unreasonably withheld, Licensee shall have the right to place utilities on (or to bring utilities across) the Real Property in order to serve the Premises and Licensee's Facilities. Upon Licensee's request, Lessor shall execute recordable easement(s) evidencing this right.

(e) Licensee shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of Licensee's Facilities.

8. Interference with Communications. Licensee's Facilities shall not disturb the communications configurations equipment and frequency which existed on the Real Property prior to the original installation of Licensee's Facilities ("Pre-existing Communications"), and Licensee's Facilities shall comply with all non-interference rules of the Federal Communications Commission ("FCC"). Lessor shall not knowingly permit the use of any portion of the Real Property in a way which materially interferes with the communications operations of Licensee described in Section 2, above. Such interference with Licensee's communications operations shall be deemed a material breach by Lessor, and upon receipt of written notice from Licensee, Lessor shall have the responsibility to promptly terminate said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference will cause irreparable injury to Licensee, and therefore, Licensee shall have the right to bring action to enjoin such interference or to terminate this License immediately upon notice to Lessor. Notwithstanding the foregoing, Pre-existing Communications operating in the same manner as prior to the original installation of Licensee's Facilities shall not be deemed interference, provided such communications are operating properly and in compliance with FCC non-interference rules.

9. Termination. This License may be terminated without further liability, except any terms and conditions that by their nature would survive cancellation or termination of this License, on thirty (30) days prior written notice as follows: (i) by Licensee upon a default of any covenant, condition, or term hereof by Lessor, which default is not cured within thirty (30) days of receipt of written notice of default; unless such default cannot reasonably

be cured within such thirty (30) day period and Licensor is diligently endeavoring to cure the default, in which case the cure period shall be extended for as long as Licensor diligently endeavors to cure the default; (ii) by Licensee, if Licensee does not obtain or maintain, licenses, permits or other approvals necessary to the construction or operations of Licensee's Facilities; or (iii) by Licensee, if Licensee is unable to occupy or utilize the Premises due to a ruling or directive of the FCC or other governmental or regulatory agency, including, but not limited to, a take back of channels or change in frequencies; or (iv) by Licensee, if Licensee determines that the Premises are not appropriate for its operations for economic, environmental or technological reasons, including, without limitation, signal strength or interference. Within ninety (90) days following the expiration or earlier termination of this License, Licensee shall remove its personal property and fixtures including, without limitation, Licensee's Facilities, foundations, footings and anchors, and restore the Real Property to the condition in which it existed upon the installation of the Licensee Facilities reasonable wear and tear and damage beyond Licensor's control excepted.

10. Taxes and Revenue & Taxation Code Section 107.6 Notice. Licensee recognizes and understands that this License may create a possessory interest subject to property taxes and that, if a possessory interest is created, Licensee shall pay personal property taxes assessed against Licensee's Facilities and shall reimburse Licensor for any increase in real property or possessory interest taxes levied against the Real Property as a result of the improvements constructed by Licensee on the Premises only for so long as this License has not expired of its own terms or is not terminated by either party. Licensor hereby grants to Licensee the right to challenge, whether in a Court, Administrative Proceeding, or other venue, on behalf of Licensor and/or Licensee, any personal property or real property tax assessments that may affect Licensee. If Licensor receives notice of any personal property or real property tax assessment against the Licensor which may affect Licensee and is directly attributable to Licensee's installation, Licensor shall provide timely notice of the assessment to Licensee sufficient to allow Licensee to consent to or challenge such assessment. Further, Licensor shall provide to Licensee any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section 10.

11. Utilities. Licensee shall be responsible directly to the serving entities for all utilities required by Licensee's use of the Premises. Should electric power be provided by Licensor, Licensee will install an electric meter and Licensee's usage shall be read by Licensor or, at Licensor's option, by Licensee, on a monthly basis and the cost of electricity used by Licensee shall be paid by Licensee to Licensor as a payment separate from the License Fee and shall be computed at the then-current public utility rate. Should water be provided by Licensor, Licensee will, on a monthly basis, reimburse Licensor for water used by Licensee as a payment separate from the License Fee and computed at then-current public utility rate.

12. Cooperation and Indemnity. If requested by Licensee, Licenser will reasonably cooperate in executing, in Licenser's proprietary capacity as the Real Property owner only, at Licensee's sole cost and expense, all documents required by any governmental authority in connection with any development of, or construction on, the Premises, including documents necessary to petition the appropriate public bodies for certificates, permits, licenses and other approvals deemed necessary by Licensee in Licensee's absolute discretion to utilize the Premises for the purpose of constructing, maintaining and operating communications facilities, including without limitation, tower structures, antenna support structures, cabinets, meter boards, buildings, antennas, cables, equipment and uses incidental thereto. Landlord agrees to be named applicant, in its proprietary capacity as the Real Property owner only, if requested by Licensee. Licenser shall be entitled to no further consideration with respect to any of the foregoing matters.

Licenser and Licensee each agree to indemnify and hold harmless the other party from and against any and all claims, damages, cost and expenses, including reasonable attorney fees to the extent caused by or arising out of (a) the negligent acts or omissions or willful misconduct in the operations or activities on the Real Property by the indemnifying party or the employees, agents, contractors, licensees, tenants and/or subtenants of the indemnifying party, or (b) a breach of any obligation of the indemnifying party under this License. Notwithstanding the foregoing, this indemnification shall not extend to indirect, special, incidental or consequential damages, including, without limitation, loss of profits, income or business opportunities to the indemnified party or anyone claiming through the indemnified party. The indemnifying party's obligations under this section are contingent upon (i) its receiving prompt written notice from the indemnified party of any event giving rise to an obligation to indemnify the other party and (ii) the indemnified party's granting the indemnifying party the right to control the defense and settlement of the same. Notwithstanding anything to the contrary in this License, the parties hereby confirm that the provisions of this section shall survive the expiration or termination of this License.

13. Insurance. Licensee and Licenser shall each maintain the following insurance: (1) Commercial General Liability with limits of \$2,000,000.00 per occurrence, (2) Automobile Liability with combined single limit of \$1,000,000.00 per accident, (3) Workers Compensation as required by law, and (4) Employee's Liability with limits of \$1,000,000.00 per occurrence. Licensee may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Licensee may maintain. The limits may be met by any combination of primary and excess or umbrella insurance.

Licensee shall provide Licenser satisfactory evidence of personal property insurance in an amount sufficient to fully protect all personal property owned or controlled by Licensee from theft, fire, or other loss or damage while upon the Premises.

Each party to this License shall each maintain standard form property insurance ("All Risk" coverage) equal to at least ninety percent (90%) of the replacement cost covering

their respective property. Each party waives any rights of recovery against the other for injury or loss due to hazards covered by their property insurance and each party shall require such insurance policies to contain a waiver of recovery against the other. Licensee shall name Licensor as an additional insured with respect to the above Commercial General Liability insurance. Licensor shall have the right to self-insure with respect to any of the above insurance.

14. Environmental. Licensee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Real Property in violation of any law or regulation. Licensor represents, warrants and agrees (1) that, to the knowledge of Licensor without investigation, Licensor has not used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material (defined below) on, under, about or within the Premises in violation of any law or regulation, and (2) that Licensor will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises in violation of any law or regulation. Licensor and Licensee each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph; provided however, a party will not be required to indemnify the other in the event that loss, liability claim and/or costs is caused by the other's negligence or willful misconduct. As used in this paragraph, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, any substance known by the State of California to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. This paragraph shall survive the expiration or earlier termination of this License.

15. Licensee Defaults.

(a) The occurrence of the following event shall constitute an "Event of Default" hereunder by Licensee:

(1) the failure by Licensee to observe or perform any of the terms and conditions of this License to be observed or performed by Licensee, other than as specified in Section 15(a)(1), where such failure shall continue for a period of thirty (30) days after written notice thereof is received by Licensee from Licensor; provided, however, that it shall not be deemed an Event of Default by Licensee if Licensee shall commence to cure such failure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(b) If there occurs an Event of Default by Licensee, Licensor may pursue any remedies available to Licensor at law or in equity. Nothing in this License shall limit any order issued by a court of competent jurisdiction concerning this License



16. Assignment and Subletting. Licensee has the right, at its sole discretion, to sublease or license use of the Premises or to assign all or any part of its interest in this License or in the Premises. Licensee shall provide prior written notice of any sublease or sublicense to Licensors.

17. Waiver of Licensors' Lien.

(a) Licensors waives any lien rights it may have concerning Licensee's Facilities which are deemed Licensee's personal property and not fixtures, and Licensee has the right, subject to Section 7(c), to remove the same at any time without Licensors' consent.

(b) Licensors acknowledges that Licensee has entered, or may enter, into a financing arrangement including promissory notes and financial and security agreements for the financing of Licensee's Facilities (the "Collateral") with a third-party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, Licensors (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise, and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment or distress for any payment due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

18. Sale or Transfer by Licensors. Should Licensors, at any time during the term of this License, sell, lease, transfer or otherwise convey all or any part of the Real Property to any transferee other than Licensee, then such transfer shall be under and subject to this License and all of Licensee's rights hereunder.

19. Title and Quiet Enjoyment.

(a) Subject to the Original Lease, Licensors warrants that it has full right, power, and authority to execute this License; Licensors further warrants that Licensee shall have quiet enjoyment of the Premises during the Term, subject to the Original Lease.

(b) Licensee has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice. If, in the opinion of Licensee, such title report shows any defects of title or any liens or encumbrances which may adversely affect Licensee's use of the Premises, Licensee shall have the right to terminate this License immediately upon written notice to Licensors, if, and only if, such notice to terminate is received within sixty (60) days from the full execution of this License, otherwise Licensee shall be deemed to have accepted the condition of title and shall not have any future rights to terminate this License based on the condition of title.

20. Notices. All notices hereunder must be in writing and unless otherwise provided herein, shall be deemed validly given if sent by certified mail, return receipt requested, addressed as follows (or to any mailing address which the party to be notified may designate to the other party by such notice). Should Licensor or Licensee have a change of address, the other party shall immediately be notified as provided in this paragraph of such change. Unless Licensor otherwise specifies in writing, License Fee checks from Licensee shall be made payable to the address listed below.

LICENSEE:

CCTM1 LLC  
Attn: Legal - Real Estate Department  
2000 Corporate Drive  
Canonsburg, PA 15317

LICENSOR:

City of Pomona  
505 South Garey Avenue, Box 660  
ATTN Finance Department  
Pomona, CA 91769

21. Top License. Licensor is a party to that certain Communications Site Lease Agreement dated October 10, 1995, between Licensor, as successor in interest to Gene Stalians, Trustee of the Gene Stalians 1989 Trust for the benefit of Gene Stalians, under instrument dated October 27, 1989 and SBC Tower Holdings LLC, a Delaware limited liability company, successor in interest to Pacific Bell Mobile Services, a California corporation ("Original Lessee") (the "Original Lease"). The Original Lease covers a 136.5 square foot parcel of the Real Property (the "Original Premises"). The Original Lease had an initial term that commenced on July 9, 1996, and expired on July 8, 2001. The Original Lease provides for five (5) extensions of five (5) years each, the first four (4) of which have been exercised by Original Lessee. Unless the Original Lessee provides notice of termination pursuant to the Original Lease, the final extension of the Original Lease will occur automatically and expire on July 8, 2026. The parties agree that this License shall be subject to the Original Lease until terminated or expired with respect to the Original Premises alone. In addition, Licensor waives its right to consent to any sublease of all or a portion of the Original Premises provided, however, Licensee shall provide prior written notice to Licensor of any such sublease.

22. Notice of Offers. If Licensor receives an offer that it intends to accept to purchase fee title, an easement, a lease, a license, or any other interest in the Premises, or Licensor's interest in this License, or an option for any of the foregoing, Licensor shall provide written notice to Licensee no later than fifteen (15) days prior to Licensor accepting said offer.

23. Eminent Domain. If Licensor receives written or other notice of a proposed taking by eminent domain of any part of the parcel of land upon which the Premises are situated, Licensor will notify Licensee of the proposed taking within five (5) days of receiving said notice and Licensee will have the option to: (i) declare this License null and void and thereafter neither party will have any liability or obligation hereunder; or (ii) remain in

possession of that portion of the Premises that will not be taken, in which event there shall be an equitable adjustment to any recurring flat rate payments that may be due from Licensee to Licenser pursuant to this License, as applicable, on account of the portion of the Premises so taken. With either option, Licensee shall have the right to contest the taking and directly pursue an award.

24. IRS W-9. Licenser agrees to provide Licensee with a completed IRS Form W-9, or its equivalent, upon execution of this License and at such other times as may be reasonably requested by Licensee. In the event the Premises is transferred, the succeeding Licenser shall have a duty at the time of such transfer to provide Licensee with a completed IRS Form W-9, or its equivalent, and other related paperwork to effect a transfer in any payments to the new Licenser. Licenser's failure to provide the IRS Form W-9 within thirty (30) days after Licensee's request shall be considered a default and Licensee may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from any payments.

25. Miscellaneous Provisions.

(a) Licenser warrants and agrees that Licenser is seized of good and sufficient title to and interest in the Real Property and has full authority to enter into and execute this License, subject to the Original Lease, and that there are no undisclosed liens, judgments or impediments of title on the Real Property that would affect this License.

(b) This License, including attached exhibits, incorporates all agreements and understandings between Licenser and Licensee, and any addition, variation or modification to this License shall be ineffective unless made in writing and signed by both parties.

Licenser warrants and agrees that to the best of Licenser's knowledge (without duty to investigate) the Real Property and all improvements thereon materially comply with applicable laws, codes and regulations of any governmental or quasi-governmental authority.

(c) This License and the performance hereof shall be governed, interpreted, construed and regulated by the laws of the State of California.

(d) This License, and each and every covenant and condition herein, is intended to benefit the parties hereto and shall extend to and bind the heirs, personal representatives, successors and assigns of the parties.

(e) Licenser and Licensee agree that all of the provisions hereof shall be construed as both covenants and conditions, the same as if the words importing such covenants and conditions has been used in each separate paragraph.

(f) The language of each part of this License shall be construed simply and according to its fair meaning, and this License shall never be construed either for or against either party.

(g) This License shall be subordinate to any mortgage by Licenser which from time to time may encumber all or any part of the Real Property, provided that every such mortgagee shall recognize (in writing and in a form acceptable to Licensee's counsel) the validity of this License in the event of a foreclosure of Licenser's interest and also Licensee's right to remain in occupancy and have access to the Premises so long as Licensee is not in default of this License. Licensee shall execute whatever instruments may reasonably be required to evidence this subordination. If, as of the date of the full execution of this License, there is any deed of trust, ground lease or other similar encumbrance affecting the Real Property, except the Original Lease, Licenser agrees to use its best efforts in cooperating with Licensee to obtain from the holder of such encumbrance an agreement that Licensee will not be disturbed in its possession, use and enjoyment of the Premises.

(i) If any portion of this License is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion shall be deemed modified to the extent necessary in such court's opinion to render such portion enforceable and, as so modified, such portion and the balance of this License shall continue in full force and effect.

(j) If either party institutes any action or proceedings in court to enforce any provisions hereof, or any action for damages for any alleged breach of any provisions hereof, then the prevailing party in such action or proceeding shall be entitled to receive from the losing party such amount as the court may adjudge to be reasonable attorneys' fees for the services rendered to the prevailing party, together with its other reasonable litigation expenses.

(k) In addition to the other remedies provided for in this License, Licenser and Licensee shall be entitled to immediate restraint by injunction of any violation of any of the covenants, conditions or provisions of this License.

(l) Licenser acknowledges that Licensee will record a Memorandum of this License ("Memorandum") in the Official Records of the Los Angeles County Recorder. Licenser hereby agrees to sign such Memorandum and consents to its recordation.

(m) The captions of the paragraphs of this License are for convenience of reference only and shall not affect the interpretation of this License.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

**IN WITNESS WHEREOF**, Licensor and Licensee have duly executed this License as of the day and year first above written.

LICENSOR:  
CITY OF POMONA,  
a Municipal corporation

LICENSEE:  
CCTM1 LLC,  
a Delaware limited liability company

\_\_\_\_\_  
City Manager  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk  
Name: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney  
Name: \_\_\_\_\_

**EXHIBIT A**  
Legal Description

The Real Property of which Premises are a part is legally described as follows:

The west 190 feet of Lot 3, Tract No. 63, in the City of Pomona, County of Los Angeles, State of California, as per map recorded in Book 13 Page 86 of Maps, in the Office of the County Recorder of said County.

Except the interest in the northerly 15 feet thereof conveyed to the City of Pomona in deed recorded in Book 24191 Page 75 of Official Records.

Also except therefrom the south 15 feet of the westerly 190 feet of said Lot 3.

## **EXHIBIT B**

**[to be inserted]**

E. MISSION BLVD

