

INTRODUCED: September 14, 2020

AN ORDINANCE No. 2020-196

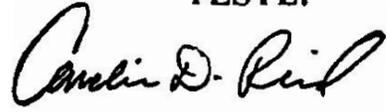
To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Lease between the City of Richmond and T-Mobile USA Tower LLC for the purpose of permitting T-Mobile USA Tower LLC to operate existing telecommunications equipment at 4827 Old Warwick Road.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

A TRUE COPY:

TESTE:



City Clerk

PUBLIC HEARING: SEP 28 2020 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a Lease between the City of Richmond and T-Mobile USA Tower LLC for the purpose of permitting T-Mobile USA Tower LLC to operate existing telecommunications equipment at 4827 Old Warwick Road. The Lease shall be approved as to form by the City Attorney and shall be substantially in the form of the documents attached to this ordinance.

§ 2. This ordinance shall be in force and effect upon adoption.

AYES: 8 NOES: 0 ABSTAIN: _____

ADOPTED: SEP 28 2020 REJECTED: _____ STRICKEN: _____



CITY OF RICHMOND

INTRACITY CORRESPONDENCE

O&R REQUEST

DATE: August 10, 2020

EDITION: 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: Lenora Reid, Acting Chief Administrative Officer *lgr*

THROUGH: Stephen M. Willoughby, Director
Department of Emergency Communications *SW*

FROM: Rouchey M. Edmundson, Program & Operations Supervisor
Department of Emergency Communications *RME*

RE: To Authorize the Acting Chief Administrator Officer to Execute a Lease Agreement Between the City of Richmond and T-Mobile USA Tower LLC.

ORD. OR RES. No. _____

PURPOSE: To authorize the Acting Chief Administrative Officer to execute a lease agreement with T-Mobile USA Tower LLC ("T-Mobile Tower") to permit T-Mobile Tower to continue operating a telecommunications tower and associated equipment at 4827 Old Warwick Road (Broad Rock Park).

REASON: The ground lease between the City and T-Mobile Tower permitting the latter to operate its telecommunications tower at 4827 Old Warwick Road has expired.

RECOMMENDATION: Approval is recommended by the City Administration and the Department of Emergency Communications.

BACKGROUND: T-Mobile Tower's predecessor erected and established, and T-Mobile has operated, a telecommunications tower and an associated telecommunications compound (the "Facility") at 4827 Old Warwick Road (Broad Rock Park) pursuant to a 2005 ground lease with the City. That lease has expired, and T-Mobile Tower and the City Administration wish for the parties to enter a new lease, to expire in April 2025. A new lease would permit T-Mobile Tower to continue operating the Facility, which would allow for continued reliable wireless coverage in the area and bring the City significant annual revenue, including at minimum an initial rental fee of \$31,569.26, to increase annually according to the annual percentage increases in the

O&R Request

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Consumer Price Index All Urban Consumer US City Average, 1982-84 + 100 (CPI-U), as published by the US Department of Labor, Bureau of Statistics or successor index. would provide for the first year rent of

FISCAL IMPACT / COST: There will be some lease management responsibilities over the length of the agreement.

FISCAL IMPLICATIONS: This lease agreement will generate minimum revenue of \$158k over a five (5) year period and open avenues to additional revenue by permitting the City to establish sublicense agreements with wireless companies wishing to collocate additional telecommunications facilities on T-Mobile's tower.

BUDGET AMENDMENT NECESSARY: None

REVENUE TO CITY: A minimum of \$31,569.26 a year, adjusted annually based on the CPI-U, is applied to Dept. of Emergency Communication's Special Fund revenue account.

DESIRED EFFECTIVE DATE: Upon adoption

REQUESTED INTRODUCTION DATE: September 14, 2020

CITY COUNCIL PUBLIC HEARING DATE: September 28, 2020

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: Land Use, Housing and Transportation Committee – September 22, 2020

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: None

AFFECTED AGENCIES: Department of Emergency Communications

RELATIONSHIP TO EXISTING ORD. OR RES.: None

REQUIRED CHANGES TO WORK PROGRAM(S): None

ATTACHMENTS: Lease Agreement

STAFF: Rouchey M. Edmundson, Program & Operations Supervisor, Department of Emergency Communications - 646-1340

LEASE

THIS LEASE AGREEMENT ("Lease") is entered into as of the ____ day of ____ 2020 ("Commencement Date"), by and between the **CITY OF RICHMOND**, a municipal corporation of the Commonwealth of Virginia (hereinafter referred to as "Lessor"), and **T-MOBILE USA TOWER LLC**, a Delaware limited liability company (hereinafter referred to as "Lessee").

WHEREAS, on April 13, 2005, Lessor and Omnipoint Communications CAP Operations, LLC ("Omnipoint") entered into a five (5)-year lease agreement ("Initial Lease") by which Omnipoint leased the Premises, as defined in Section 3 of this Lease, from Lessor for the purpose of installing and operating a tower and related telecommunications equipment on the Premises; and

WHEREAS, on January 25, 2010, the City Council for the City of Richmond ("City Council") authorized renewal of the Initial Lease for a subsequent five (5)-year term, to begin on April 13, 2010, pursuant to the terms of a First Option to Renew and Amend Lease Agreement ("Renewed Lease") to which Lessor and T-Mobile Northeast, LLC ("T-Mobile Northeast"), a successor to Omnipoint, were parties; and

WHEREAS, the Renewed Lease expired as of April 13, 2015, but T-Mobile Northeast, and subsequently its successor, Lessee, desiring to retain the right to occupy the Premises as a holdover tenant, has continued to pay annual rent to Lessor on or before April 13 of each year since 2015 and to occupy the Premises pursuant to the terms of the Renewed Lease, which rent Lessor has continued to accept and to which occupation Lessor has not objected; and

WHEREAS, as of April 13, 2020, Lessee had paid Lessor \$31,412.00 as annual rent (“Initial Rent”), in advance, to maintain its holdover tenancy through April 12, 2021, which sum Lessor has accepted; and

WHEREAS, by this Lease, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the Premises through April 12, 2025; and

WHEREAS, Lessee and Lessor agree that Lessee’s payment of the Initial Rent shall, along with payment by Lessee to Lessor of an additional One Hundred and Fifty Seven Dollars and Twenty-Six Cents (\$157.26) within thirty (30) days from the Commencement Date, be sufficient payment for not only Lessee’s occupation of the Premises as a holdover tenant from April 13, 2020 until the Commencement Date but also for Lessee’s occupation of the Premises under this Lease from the Commencement Date through April 12, 2021.

NOW, THEREFORE, in consideration of the promises and covenants contained herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto agree as follows:

1. **RECITALS**

The recitals above are incorporated herein by reference.

2. **PURPOSE**

The sole and specific purpose for which the Premises are devised are for the use by the Lessee to conduct personal communications services, cellular radio telephone and other telecommunications operations, and in connection therewith, for the installation, repair, maintenance, operation, housing and removal of a 150 foot galvanized steel monopole communications tower (the “Tower”) with related equipment including, but not limited to, antennas, supports, cables, wires, wire transmitters, receivers, appliances, machinery, trade

fixtures and communications and other related equipment, facilities or improvements to be installed or constructed by Lessee (the "Communications Facility"), on or about the Premises. Lessee covenants that it shall not materially interfere with the normal and customary operations of Lessor. Lessee shall have the right to use and occupy the Premises for any and all lawful purposes related to the transaction of the business of operating a communications system, including but not limited to antenna for transmitting and receiving communication signals. The Lessee shall not make any significant additions to its initial installation without obtaining the prior written consent of the Lessor, which consent will not be unreasonably withheld. Such approval shall be deemed granted if no letter to the contrary is received by Lessee within Forty- five (45) days after Lessee's request for consent has been received by Lessor.

3. LEASED PREMISES

Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Leased Premises ("Premises") known as a portion of Broad Rock Park, which is more specially described as the "Omnipoint Lease Area" on Exhibit "A" attached hereto and by this reference made a part hereof, all on property owned by Lessor as more fully described in Exhibit "B", attached hereto and by this reference made a part hereof (the "Property"), and including a non-exclusive easement for access to and from the Premises over the Property.

4. TERM

The term (the "Term") of this Lease shall commence on the date it is executed by both parties (the "Commencement Date") and expire at 11:59 p.m. EST on April 12, 2025.

5. RENT

Lessee has paid Lessor the Initial Rent and shall pay Lessor an additional sum of One Hundred and Fifty Seven Dollars and Twenty-Six Cents (\$157.26) within thirty (30) days

following the Commencement Date, which additional sum together with the Initial Rent shall total Thirty One Thousand Five Hundred and Sixty-Nine Dollars and Twenty-Six Cents (\$31,569.26) and shall be the Initial Rental Fee. Lessee shall pay Lessor a second rental fee payment that is 103% of the Initial Rental Fee on or before April 13, 2021, and shall thereafter pay Lessor an annual rental fee due by each anniversary of that date that is 103% of the rental fee due the prior year. Rental fee(s) shall be payable to City of Richmond and forwarded as follows:

**City of Richmond
Dept. of Emergency Communications
3516 N. Hopkins Road
Richmond, VA 23224**

6. ACCESS

During the Term, the Lessee, Lessee's employees, agents, contractors, subcontractors, lenders, guests and invitees shall have access to the Premises without notice to Lessor twenty-four (24) hours a day, seven (7) days a week, at no charge. Lessor grants to Lessee and its agents, employees, contractors, subcontractors, lenders, guests and invitees, a non-exclusive right and easement for pedestrian and vehicular ingress and egress across that portion of the Property described as a "20' Wide Access Easement" on Exhibit "A."

7. IMPROVEMENTS

Lessee shall have the right to install a Communications Facility and other necessary equipment and related wiring, conduits, cabling and support structures on the Premises, including the use of a compound area not to exceed 20 ft. x 30 ft. (a total of 600 square feet), for Lessee's use and that of co-locators, as indicated on the site plans described in Exhibit "D" (the "Site Plans"), attached hereto and by this reference made a part hereof. In connection therewith, subject to Lessor's approval as required herein and upon the issuance of any necessary local, state and

federal permits ("Permits"), Lessee may complete all work necessary to prepare, maintain and alter the Premises for operation of the Communications Facility. Prior to commencing construction or installation of the Communications Facility, the Lessee shall secure all necessary Permits and submit its plans and specifications to Lessor for Lessor's approval. Lessee shall not commence such work until it has obtained Permits and Lessor's approval of the plans and specifications. Lessor shall not unreasonably withhold, delay or condition its approval. Such approval shall be deemed granted if no letter to the contrary is received by Lessee within forty- five (45) days after Lessee's request for consent has been received by Lessor. Notwithstanding its affixation to the Premises, Lessee's Communications Facility shall remain Lessee's personal property and Lessor waives any lien rights it may have concerning the Communications Facility. Lessee may remove and/or exchange the equipment and antennas comprising the Communications Facility with equipment and antennas of the same type and size without the prior written approval of the Lessor. However, for any additions or modifications that would materially change the Communications Facility installed at the Premises. Lessee must notify Lessor in writing of the proposed additions or modifications for approval. Lessor shall not unreasonably withhold or condition its approval. Such approval shall be deemed granted if no letter to the contrary is received by Lessee within forty-five (45) days after Lessee's request for approval is received by Lessor. Nothing herein will relieve Lessee of applying for and obtaining all-necessary permits and inspections.

8. INTERFERENCE WITH CITY OF RICHMOND EMERGENCY COMMUNICATION CENTER

- a) In the case of measurable Interference, as defined in Section 9 below, that disables operating public safety communication systems owned by the Lessor, the Lessee shall immediately cease and desist operations, or modify operations so that such

Interference to the public safety systems is abated, once it has received written notice that its equipment is known to be a significant contributor to the Interference. Lessee shall be notified orally at the telephone numbers listed in Section 9(b) below. All proposed methods of testing for and eliminating such interference shall be subject to approval of Lessor's technical staff or consultant. Lessor will provide prompt cooperation and assistance in these efforts.

- b) If the Interference suffered by public safety systems is limited to a specific number of channels representing less than 10% of the total capacity of the system affected, the Interference must be corrected by Lessee within 168 hours. Interference affecting between 11% and 25% of the total system capacity must be resolved within 72 hours by Lessee. Failure of Lessee to correct the Interference will result in work being undertaken by Lessor to correct interference at no expense and/or liability to Lessor.
- c) If requested by Lessee, Lessor shall make reasonable accommodations to its operating system, where those changes do not degrade the performance or functionality of Lessor's system. Such changes shall be at the Lessee's expense unless they can be attributed to unlawful operation, improper repair, equipment defects, or design deficiencies in the Lessor's system.

9. INTERFERENCE WITH OTHERS

- a) Lessee shall install and operate the Communications Facility, including any modification to any of its Communications Facility, in a manner that shall not cause technical Interference to Lessor and shall comply with all current and future federal, state and local regulations governing the installation and operation of the

Communications Facility. Beginning on the Commencement Date of this Lease, Lessor shall not knowingly enter into any agreements or permit or suffer the installation of equipment that would allow any other use of the Property that will cause Interference with Lessee's use. In the event of such Interference, Lessor shall timely take all reasonable steps to ensure that the party causing the Interference takes appropriate action to correct and eliminate the interference to the extent that such steps do not cause Lessor additional financial liability or administrative expense. Should such Interference continue after Lessor's attempts to eliminate the Interference, Lessee may (i) take such legal or equitable action as Lessee may deem appropriate to enforce its rights under this Lease, and/or (ii) terminate this Lease, either immediately or after Lessee's efforts to obtain such enforcement, in either case without further liability to Lessor hereunder. For purposes of this Lease, "Interference" shall mean material degradation, interruption or blockage of signals transmitted or received on the Premises by either party or acts which prevent or obstruct either party from operating or maintaining its equipment on the Premises. Lessee agrees it will provide technical information to any other prospective tenants who may wish to install communications equipment on the Premises, which information shall include the nature of the equipment, operating frequencies and power output, and the antenna locations utilized by Lessee. Lessor agrees that it will obtain similar information from any lessees with tenancies and rights to install telecommunications equipment on the Property arising after the Commencement Date of this Lease and will provide same to Lessee prior to installation of that Lessee's equipment.

- b) Upon discovery by either Lessor or Lessee of Interference, damage or other emergency conditions in or affecting equipment belonging to either party, the party discovering the emergency condition shall notify the other by telephone at the following twenty-four (24) hour response numbers:

<u>LESSOR:</u>	<u>Numbers</u>
City of Richmond Emergency Communications Supervisor (ON DUTY)	804/646-5110

<u>LESSEE:</u>	<u>Numbers</u>
National Operations Communication Center	800/264-6620

10. **TERMINATION OF LEASE**

- a) Upon expiration of the Term or within forty-five (45) days of giving or receiving notice of termination of this Lease, whichever first occurs, Lessee shall furnish Lessor with a written certification from a licensed environmental engineering firm that the Premises have not been environmentally contaminated by Lessee's operations. If a condition of environmental contamination exists or is believed to exist on any part of the Premises, because of Lessee's operations, Lessee shall give notice of that fact to Lessor and Lessee shall promptly eliminate said condition no later than sixty (60) days after discover: provided it is feasible to do so within said sixty (60) days. Otherwise, Lessee shall commence such cure within said sixty (60) day period and diligently pursue same to completion.
- b) Upon the expiration or earlier termination of this Lease, the Tower and any pads, foundations, fencing, barriers or other similar equipment necessary for the continued use of the Tower, constructed or erected upon the Premises and occupied

by the Lessor or other tenants shall, then at the sole option of Lessor and upon Lessor's prior written notice of approval and acceptance, be transferred to the Lessor. If the Lessor does not elect to have such equipment remain, then Lessee will vacate the Premises within thirty (30) days and remove all improvements. In such event, Lessee will leave the Premises in the same condition as at the start of occupancy, allowing for reasonable and normal wear and tear.

- c) Lessee may terminate this Lease without any penalty or further liability, on sixty (60) day prior notice:
- i. If Lessee is unable to occupy and utilize the Premises due to an action of the Federal Communications Commission, including (but not limited to) a take back of channels or change in frequencies;
 - ii. If hazardous substances are or become present on the Property or Premises, due to no fault of Lessee, in violation of any applicable environmental laws;
 - iii. If an event of casualty or condemnation occurs that materially interferes with Lessee's operations at the Premises.
 - iv. If any permit, license or approval is canceled, expires, lapses or is otherwise withdrawn or terminated.

11. DEFAULT BY EITHER PARTY

- a) If Lessee defaults on its obligation to pay rent or any other material condition or Term of this Lease and fails to cure the default within thirty (30) days of receipt of written demand from Lessor, then Lessor may cancel this Lease and bring legal action to collect unpaid rent or seek any other available remedy at law or in equity or any combination of remedies.

- b) If Lessor defaults on any material obligation herein and fails to cure the default within thirty (30) days of receipt of written demand from Lessee, then Lessee, at its option, may be entitled to a reduction in rent commensurate with the breach and may cancel this Lease and bring legal action to seek any other available remedy at law or in equity or any combination of remedies.
- c) If within thirty (30) days after notice from the non-defaulting party of such default, the defaulting party has not cured such default (or, if such default is of a nature which cannot be cured in such thirty (30) days, commenced diligently to cure the defaults and continued to pursue such cure to completion), then the non-defaulting party may elect to terminate this Lease.

12. OWNERSHIP

Lessee's Communications Facility and all equipment shall be and remain the property of Lessee and Lessor's equipment shall be and remain the property of Lessor, except as otherwise noted herein.

13. LESSOR'S RIGHT TO SUBLICENSE SPACE ON THE TOWER TO THIRD PARTIES

Provided capacity exists on the Tower, Lessee hereby grants to Lessor a license, for the Term of this Lease, to enter into sublicense agreements with third parties (a "Third Party") to place communications equipment on the Tower and in the compound as described in Paragraph 6 herein. Lessee may review plans and specifications for such communications equipment prior to the execution of any such sublicense agreement. If Lessee reasonably determines that there is insufficient capacity on the Tower for such equipment, based on a structural analysis performed at the Third Party's sole cost and expense by a licensed engineer, or Lessee reasonably believes that

the Third Party's communications equipment will cause interference with the operation of its communications equipment, it may refuse to allow the installation of such equipment and the execution of the related sublicense agreement. If operation of such equipment interferes with Lessee's use of its equipment, Lessor will terminate the sublicense agreement relating to equipment which causes such interference. Lessor shall receive seventy-five percent (75%) of all rent received from all Third Party use of the Tower; Lessee will receive twenty-five percent (25%) of any rent received. Lessor shall pay any amounts due to Lessee in connection with Third Party use of the Tower, as described above, within forty-five (45) days of receipt of such payments from the Third Party. Each Third Party licensing space on the Tower from Lessor shall be responsible for and pay any and all costs associated with utilities and services, as described in Paragraph 13 below. Moreover, each Third Party shall agree to indemnify and hold Lessee harmless from any and all costs (including reasonable attorneys' fees) and claims of liability or loss which arise out of that Third Party's use and/or occupancy of the Tower. In addition, each Third Party shall agree to name Lessee as an additional insured for any policy or policies, or comprehensive general liability insurance as may be required by Lessor as a condition of any sublicense agreement.

14. UTILITIES AND SERVICES

Lessee shall be responsible for and shall pay all cost and charges for utilities and services in connection with Lessee's occupancy of the Premises, including but not limited to water, sewer, energy, telephone, trash removal and other services for the Term of this Lease. All of the foregoing utilities and services shall be instituted and obligated for in the name of Lessee, and Lessor shall have no responsibility whatsoever for the furnishing or cost of same.

15. CONDEMNATION AND LOSS OR DAMAGE

If the Premises, or any part thereof, shall be taken or condemned for any public purpose (or conveyed in lieu or in settlement thereof) by any governmental authority except Lessor, so as to render, in either party's reasonable discretion, the Premises unsuitable for Lessee's use, this Lease shall forthwith cease and terminate, and all proceeds from any taking or condemnation of the Premises shall belong to and be paid to Lessor, and Lessor shall promptly refund the pro-rata portion of Lessee's rent for the unexpired portion of the Term. In the event of condemnation, Lessee on its own behalf may make a separate claim in any condemnation proceeding for losses related to the Communications Facility, its relocation cost and its damages and losses other than the loss of its leasehold interest, as long as such claim does not in any way adversely affect the Lessor's condemnation award on the Property.

16. LESSOR'S RIGHT OF ENTRY

At any time during the Term of this Lease, Lessor or any representative of Lessor's choosing shall have the right to enter the Premises at all reasonable times for purposes of inspecting the Premises to ensure compliance with terms of this Lease. Notwithstanding Lessor's right to inspect the Premises, Lessor shall have no obligation to inspect said Premises. If Lessor detects any violation of the terms set forth herein, then Lessor shall so notify Lessee of the violation in writing and Lessee shall then timely take steps to eliminate such violation. If in the Lessor's reasonable judgment, steps taken by Lessee are inadequate or not timely, Lessor or its representative shall be entitled to re-enter the Premises and take corrective actions as Lessor deems necessary to eliminate the violation. This remedy is in addition to remedies set forth under other sections of this Lease. Lessor's failure to detect any violation or to notify Lessee of any violation shall not relieve Lessee of obligations under terms of this Lease. It is further understood and agreed herein that Lessee shall indemnify and hold Lessor harmless from liability resulting from

conditions present at the Premises resulting from Lessee's violations of the terms of this Lease and agrees to reimburse Lessor for all actual costs and expenses incurred by Lessor in remedying such conditions.

17. TIME OF ESSENCE

In all instances where either party is required hereunder to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood and stipulated that time is of the essence.

18. INSURANCE, SUBROGATION, LIABILITY, INDEMNITY, AND WAIVER

- a) Lessee, at its sole cost and expense, shall carry and maintain a policy or policies or comprehensive general liability insurance insuring the Lessee and naming the Lessor as additional insured, against liability from injury to persons or property occurring in or about the Premises or arising out of the maintenance, use or occupancy thereof. The coverage under such insurance shall not be less than Two Million Dollars (\$2,000,000.00) for any one person injured or killed and not less than Two Million Dollars (\$2,000,000.00) for any one accident and not less than Two Million Dollars (\$2,000,000.00) for property damage per accident. Each party hereby waives its right of recovery against the other for any loss or damage to the extent covered by any insurance policies maintained by the waiving party. Each insurance policy maintained by the parties applicable to the Premises shall be written or endorsed so as to preclude the exercise of the right of subrogation against the other party.
- b) Not subject to the limitations provided in 17(a), Lessee hereby releases and indemnifies and agrees to defend, protect, and hold harmless Lessor and Lessor's

agents, employees, invitees and contractors from and against any and all losses, damages, claims, suits, actions, judgments, and costs (including, but not limited to, reasonable attorney's fees) arising from or in connection with any injury whatsoever, including death and property damage, suffered by Lessee or any of Lessee's directors, officers employees, agents, invitees or contractors arising out of or in connection with this Lease and the use or occupation of the Premises and other improvements, sidewalks, and streets appurtenant to or adjacent to the Premises, regardless of how such injury is caused, except where such injury, loss or damage is caused, occasioned or contributed to, by the gross negligence, sole or concurrent, or willful misconduct of Lessor or its agent, employees, invitees or contractors.

19. ASSIGNMENT

Lessee will not assign or transfer this Lease of the Premises without the prior written consent of Lessor, which will not be unreasonable, withheld or conditioned. The Lessor shall notify Lessee as to whether consent is granted within forty-five (45) days after receiving request from Lessee. However, it is understood and agreed herein that Lessee shall assign its rights under this Lease, without consent of Lessor, to any of its subsidiaries, affiliates, or successor legal entities, to any entity acquiring substantially all of the assets of Lessee or to any subsidiary or affiliate of T-Mobile USA Tower LLC (collectively, "Affiliate") upon written notice to Lessor. Notwithstanding anything to the contrary contained in this Lease, Lessee may assign, mortgage, pledge, hypothecate or otherwise transfer without consent, its interest in this Lease to any financing entity or agent on behalf of any financing entity to whom Lessee (i) has obligations for borrowed money or in respect of guaranties thereof; (ii) has obligations evidenced by bonds, debentures,

notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

20. CERTIFICATION

This Lease is contingent on Lessee's providing to Lessor certification by a licensed professional engineer primarily experienced with the design and operation of communication equipment, antenna support structures, and antennas that the non-ionizing electromagnetic radiation (NIER) emitted from the communications equipment will not result in a level of exposure at any point beyond the property line of the Premises, which exceeds the lowest applicable exposure standards established by any regulatory agency of the Federal government or by the American National Standards Institute (ANSI).

This Lease is further contingent on the Lessee's presenting assurances by an expert in the field of telecommunications technology and by intermodulation study that the communications equipment operated by Lessee will not interfere or otherwise restrict the use and effectiveness of the Lessor's emergency equipment system or any other telecommunication system operated by the Lessor to conduct official government business. These assurances are subject to review and approval by the Lessor's Department of Emergency Communications, which approval shall not be unreasonably withheld. Such approval shall be deemed granted if no letter to the contrary is received by Lessee within thirty (30) days after Lessee's request for consent has been received by

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21. QUIET POSSESSION

Lessor hereby covenants that the Lessee shall have quiet and peaceable possession of the Premises, free from all encumbrances, that the Lessor has done no act to encumber the Premises, and that Lessor will provide such further assurances of title as may be necessary or appropriate.

22. CARE AND MAINTENANCE OF THE LEASED PREMISES

Lessee shall maintain the Premises in a clean, attractive condition, and not commit or allow any waste or damage to be committed on or to any portion of the Premises.

23. COMPLIANCE WITH LAWS AND USAGE; LIENS

Lessee, at its cost, shall comply with all federal, state, municipal, and other laws and ordinances applicable to the Premises to obtain all necessary Permits and inspections; will not commit any act which is a nuisance or annoyance to Lessor; and will not permit waste in the Premises. Lessee further agrees not to use or keep or allow the Premises or any portion thereof to be used or occupied for any unlawful or immoral purposes or in violation of any certificate of occupancy or certificate of compliance covering or affecting the use of the Premises or any portion thereof, and will not suffer any act to be done or any condition to exist on the Premises or any portion thereof, or any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or avoidable any insurance then in force on the Premises. Neither Lessor nor Lessee has authority to encumber the Premises with any materialmen's or mechanic's lien, nor shall they suffer or permit any such lien to exist. Should any such lien hereafter be filed as a result of either of their actions or failure to act, such party shall at its sole cost within thirty (30) days after filing, discharge the same or post a bond in the amount of the lien or be in default of this Lease.

24. NOTICE

Unless provided otherwise, any notice which may be or shall be given under the terms of this Lease shall be in writing and shall be either delivered by hand or sent by United States Registered or Certified Mail, postage prepaid, return receipt requested to the party being notified

at the addresses hereinafter specified, or upon receipt when delivered by overnight courier to the party being notified at the addresses hereinafter specified.

Any such notice given by United States Postal Service shall be deemed given and sufficient upon receipt, refusal or non-delivery after five (5) days if addressed to:

LESSOR: City of Richmond
C/o Chief Administrative Officer
900 E. Broad Street
Richmond, Virginia 23219

With copies to: City of Richmond City Attorney
900 E. Broad Street, Room 400
Richmond, VA 23219

City of Richmond Real Estate Services
Dept. of Emergency Communications
3516 N. Hopkins Road
Richmond, VA 23224

LESSEE: T-Mobile USA Tower LLC
c/o CCTMO LLC
Attn: Legal Department
2000 Corporate Drive
Canonsburg, PA 15317

With a Copy To: T-Mobile USA Tower LLC
12920 S.E. 38th Street
Bellevue, Washington 98006
Attn: Leasing Administration

25. AMENDMENTS

This Lease may be amended or modified only in writing signed by authorized parties of both the Lessor and the Lessee.

26. SEVERABILITY

In the event that any term or condition of this Lease or the application thereof to any circumstance or situation shall be invalid or unenforceable in whole or in part, the remainder

thereof and the application of said term or condition to any other circumstance or situation shall be affected thereby and each term and condition of this Lease shall be valid and enforceable to the full extent permitted by law.

27. IDENTITY OF INTEREST

The execution of this Lease or the performance of any act or acts pursuant to the provisions hereof shall not be deemed to have the effect of creating between Lessor and Lessee any relationship of principal and agent, partnership, or relationship other than that of Lessor and Lessee.

28. DAMAGES

In no event will Lessor or any of its employees or affiliates be responsible or liable for any indirect special, incidental or consequential damages arising from this Lease, including without limitation damages for economic loss, regardless of the legal theory, even if Lessor has been advised of the possibility of such damages.

29. HAZARDOUS SUBSTANCES

Lessor represents and warrants to Lessee that to the best of its knowledge, Hazardous Substances (as defined below) have not been generated, stored, or disposed of on the Property nor have the same been transported to or over the Property. "Hazardous Substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease. Lessee will hold Lessor

harmless from and indemnify Lessor against and from any damage, loss, expenses or liability resulting from Hazardous Substances generated, stored, disposed of or transported to, on or under the Property as a result of Lessee's use of the Property including all reasonable attorney's fees and cost incurred as a result thereof. Lessor, to the extent permitted by law, will hold Lessee harmless from any damages, loss, expenses or liability resulting from any breach of this representation and warranty including all reasonable attorney's fees and costs incurred as a result thereof. Notwithstanding the foregoing, Lessee shall have the right to have any environmental audit performed prior to occupancy of the Property, and, in the event that conditions exist which, in the opinion of Lessee may adversely affect Lessee's use of the Property or Lessee's ability to obtain leasehold financing, Lessee shall have the right to terminate the agreement and not proceed with occupancy of the Property.

30. AGENTS AND BROKERS

Each party hereunder represents and warrants that it did not consult or deal with any broker or agent, real estate or otherwise, with regard to this Lease or the transactions contemplated hereby, and each party hereto agrees to indemnify and hold harmless the other party from all liability, expense, lost, cost or damage, including reasonable attorney's fees, that may arise by reason of any claim, demand or suit of any agent or broker arising out of facts constituting a breach of the foregoing representations and warranties.

31. ENTIRE AGREEMENT

This Lease and any written addenda and all exhibits hereto (which are expressly incorporated herein by this reference) shall constitute the entire agreement between Lessor and Lessee; no prior written or prior or contemporaneous oral promises or representations shall be binding.

32. GOVERNING LAW

This Lease shall be governed, construed, and enforced by and in accordance with the laws of the Commonwealth of Virginia. Any suit or controversy arising under this Lease shall be litigated in the General District or Circuit Court of the City of Richmond, Virginia.

33. SURVIVABILITY OF TERMS

All provisions and conditions of this Lease, unless the context clearly indicates a contrary intent, shall survive termination of Lease unless otherwise stated.

34. BINDING EFFECT

This lease shall be binding on and inure to the benefit of the successors and permitted assigns of the respective parties.

35. MEMORANDUM OF LEASE

Lessor and Lessee hereby agree, following the execution of this Lease, to execute the short form of Memorandum of Lease, in form suitable for recording under the laws of the state in which the Premises is located, substantially in the form of Exhibit "C", attached hereto and incorporated herein by reference. Lessee, at its sole expense, shall have the right to file the Memorandum of Lease of records in the Clerk's Office, Circuit Court of the City of Richmond.

36. AUTHORITY

Each of the parties hereto warrants to the other that the person or persons executing this Lease on behalf of such party has the full right, power and authority to enter into and execute this Lease on such party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Lease.

37. SUBJECT TO APPROPRIATION

All payments and other performance by Lessor under this Lease are subject to annual appropriations by the City Council for the City of Richmond (the "City Council"); consequently, this Lease shall bind Lessor only to the extent the City Council appropriates sufficient funds for Lessor to perform its obligations hereunder. If Lessor fails to perform its obligations hereunder due to lack of sufficient funds and cannot cure such failure within forty-five (45) days following receipt of notice thereof, Lessee may perform same on Lessor's behalf and subtract the amount paid or incurred to so perform from its subsequent rental fee payment; provided however, in no event shall such reduction of rent exceed the amount of the next rental fee payment due Lessor.

[SIGNATURES ON FOLLOWING PAGE]

IN TESTIMONY WHEREOF, Lessor and Lessee have executed this instrument under seal, the ____ day of _____, 2020.

LESSOR:

City of Richmond, as authorized by Ordinance No. _____ approved by City Council on _____.

BY: _____
Lenora G. Reid
Acting Chief Administrative Officer

Date: _____

Approved as to Form:

Neil Gibson

Approved as to Terms:

Director, Dept. of Emergency Communications

LESSEE:

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

By: CCTMO. LLC,
a Delaware limited liability company,
its Attorney-in-Fact, as established by that
Limited Power of Attorney dated
November 30, 2012

By: Melanie Webb
Print Name: Melanie Webb
Date: Senior Transaction Manager

EXHIBIT B

(LEGAL DESCRIPTION)

Order No 20040200166
(VA31443-C)

All that certain lot or parcel of land situate in the City of Richmond, Virginia (formerly Manchester Magisterial District, County of Chesterfield, Virginia) as shown enclosed in red lines designated as Parcel No 10 on the plan on file in the office of the Department of Public Works on the Grantee entitled "Proposed acquisition of Property on the west side of Warwick Road at Broad Rock Road (Recreation and Parks), marked "Drawing No P-18523-A" a copy of which is attached hereto and made a part of this deed and containing 17.06 acres, more or less and described as follows to-wit

Beginning at a point on the Western line of Warwick Road 506.89 feet in the Northerly direction from the point where said Warwick Road intersects the Northern line of a 20 foot private road thence running and fronting on said Warwick Road North 12°39'15" West 210.12 feet to a point, thence South 77°20'45" West 333 feet to a point, thence North 12°39'15" West 387.95 feet to a point, thence South 86°35'45" West 731.81 feet to a point, thence North 86°09'15" West 990 feet to a point, thence South 27°35'45" West 165 feet to a point, thence South 69°39'15" East 1688.3 feet to a point, thence North 20°39'45" East 280 feet to a point, thence South 85°17'15" East 611.82 feet to the point of beginning

Being a portion of same real estate conveyed to James T. Morris and Florence Barksdale Morris his wife to Russell E. Lowery and Pauline Taylor Lowery, his wife by a Deed of Partition dated June 24, 1950, Clerk's office, Circuit Court of the County of Chesterfield, Virginia Deed Book 370 page 535

EXHIBIT C

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, dated as of this ____ day of _____ 2020, by and between **CITY OF RICHMOND**, a municipal corporation of the Commonwealth of Virginia (the "Lessor"), and **T-MOBILE USA TOWER LLC**, a Delaware limited liability company (the "Lessee").

WITNESSETH:

Recitals

By Lease dated _____ 2020 (the "Lease"), between Lessor and Lessee, Lessor has agreed to lease to Lessee a certain parcel of real property, including improvements and fixtures thereon and appurtenant rights thereto, located in the City of Richmond, Commonwealth of Virginia, more particularly described on Exhibit A attached hereto and made a part hereof (collectively, the "Leased Property"). Lessor and Lessee now desire to enter into this memorandum of the Lease Agreement, in accordance with the provisions of Section 55.1-1601A of the Code of Virginia of 1950, as amended, and to record such Memorandum of Lease in the Clerk's Office, Circuit Court, City of Richmond, Virginia (the "Clerk's Office"). to give record notice of the Lease Agreement, which is incorporated herein by this reference.

Memorandum of Lease

Pursuant to Section 55.1-1601A of the Code of Virginia of 1950, as amended, Lessor and Lessee do hereby state the following:

1. The name of the Lessor is City of Richmond, a municipal corporation of the Commonwealth of Virginia.
2. The name of the Lessee is T-Mobile USA Tower LLC, a Delaware limited liability company.
3. Lessor has agreed to lease the Leased Property to Lessee pursuant to the terms, provisions and conditions contained in the Lease.
4. The address of Lessor set forth in the Lease is City of Richmond, c/o Chief Administrative Officer, 900 E. Broad Street, Richmond, VA 23219; and the address of Lessee set forth in the Lease is T-Mobile USA Tower LLC, c/o CCTMO LLC, Attn: Legal Department, 2000 Corporate Drive, Canonsburg, PA 15317; with a copy to: T-Mobile USA Tower LLC, 12920 S.E. 38th Street Bellevue, Washington 98006. Attn: Leasing Administration.
5. The date of the Lease is _____, 2020.

6. A description of the Leased Property is attached hereto and made a part hereof as Exhibit A.
7. The term of the Lease shall commence on the date it is executed by both parties and expire at 11:59 p.m. EST on April 12, 2025.
8. Lessee agrees to execute and deliver to Lessor such reasonable documents as Lessor may request upon the expiration or any earlier termination of the term of the Lease to terminate and release this Memorandum of Lease in the Clerk's Office.
9. Lessor executes this Memorandum of Lease for the sole purpose of providing record notice of the Lease in the Clerk's Office. Any conflict between the terms of this Memorandum of Lease and the Lease shall be resolved in accordance with the terms, provisions and conditions contained in the Lease, which are paramount and controlling.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each party hereto has caused this Memorandum of Lease to be executed in its name and on its behalf by its duly authorized representative.

LESSOR:

City of Richmond, as authorized by Ordinance No. _____ approved by City Council on _____.

BY: _____
Lenora G. Reid
Acting Chief Administrative Officer

Date: _____

Approved as to Form:

Approved as to Terms:

Neil Gibson

Director. Dept. of Emergency Communications

STATE / COMMONWEALTH OF _____

COUNTY OF _____

I, _____, a Notary Public, do hereby certify that _____ personally appeared before me this day and acknowledged that he/she is the _____ of the City of Richmond, and that by authority duly given, and as the act of the City of Richmond, the foregoing Memorandum of Lease was signed in its name by her/him as its _____.

Given under my hand this ____ day of _____, 2020.

Notary Public

Registration Number: _____

My Commission expires: _____

[SEAL OR STAMP]

IN WITNESS WHEREOF, each party hereto has caused this Memorandum of Lease to be executed in its name and on its behalf by its duly authorized representative.

LESSEE:

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

By: CCTMO, LLC,
a Delaware limited liability company,
its Attorney-in-Fact, as established by that
Limited Power of Attorney dated
November 30, 2012

By: _____
Print Name: _____
Date: _____

STATE / COMMONWEALTH OF _____

COUNTY OF _____

I, _____, a Notary Public, do hereby certify that _____ personally appeared before me this day and acknowledged that he/she is the _____ of the CCTMO LLC, a Delaware limited liability company, as attorney-in-fact for T-Mobile USA Tower LLC, a Delaware limited liability company, and that by authority duly given, and as the act of the CCTMO LLC, a Delaware limited liability company, as attorney-in-fact for T-Mobile USA Tower LLC, a Delaware limited liability company, the foregoing Memorandum of Lease was signed in its name by her/him as its _____.

Given under my hand this ____ day of _____, 2020.

Notary Public

Registration Number: _____

My Commission expires: _____

[SEAL OR STAMP]

EXHIBIT D

