

## LEASE AGREEMENT

This Lease and Easement Agreement (the "Agreement") is effective the date of the last signature on this Agreement (the "Effective Date") by and between City of Kerman, a political subdivision of the State of California ("Landlord"), and T-Mobile West LLC, a Delaware limited liability company ("Tenant").

**NOW, THEREFORE**, in consideration of these premises and the mutual promises and conditions in this Agreement, the parties agree as follows:

1. **Location.** Landlord and Tenant agree to provide for Tenant's entry upon and access to the location described in the attached **Exhibit A** (the "Property") for Tenant's non-exclusive use of the Property to install and operate telecommunications equipment, including but not limited to, certain space on Landlord's tower ("Tower") and space on the ground (the "Antenna Facilities"). The location and orientation of the Antenna Facilities on the Property, together with all necessary space and easements for access and utilities, is generally described and depicted in the attached **Exhibit B** (the "Premises").

2. **Use.**

a) The Premises may be used exclusively by Tenant solely for the transmission and reception of radio communication signals and for the installation, maintenance, repair, or replacement of the Antenna Facilities described and depicted in attached **Exhibit B**. Tenant shall, at Tenant's expense, keep and maintain the Antenna Facilities on the Premises in commercially reasonable condition during the term of this Agreement.

b) The Antenna Facilities shall be installed at Tenant's sole cost and expense and Tenant shall have a right to upgrade and modify its facilities with Landlord's consent, which consent shall not be unreasonably withheld, delayed, or conditioned, and shall not be subject to additional compensation unless the Premises are expanded. Landlord consents to Tenant modifying Landlord's Tower for Tenant's use and Landlord agrees to cooperate with Tenant to complete any required modifications to Landlord's Tower for Tenant's use. Tenant agrees to provide Landlord design drawings and structural calculations for Landlord's review and approval prior to making modifications to Landlord's Tower. Any modifications to Landlord's Tower for Tenant's use shall be at Tenant's sole cost and expense.

c) Upon termination of this Agreement, Tenant shall remove the Antenna Facilities from the Premises and restore the Premises to its original condition prior to this Agreement, normal wear and tear and casualty excepted. Notwithstanding the foregoing, if Tenant modifies Landlord's Tower for Tenant's use, Tenant shall not be required to return Landlord's Tower to its original condition.

3. **Term.** The term of this Agreement shall commence upon the Effective Date (the "Commencement Date"). The initial term granted herein shall continue for a term of five years ("Initial Term"). The Initial Term shall automatically renew for four (4) successive renewal terms of five (5) years each (each a "Renewal Period"). Provided, however, Tenant shall have the right to not renew this Agreement by providing one (1) year's prior written notice to the Landlord. The Initial Term, together with any Renewal Terms are referred to collectively as the "Term."

#### 4. Lease Fee.

a) Upon the first day of the month following the start of construction of Tenant's modifications to the Landlord's Tower described on Exhibit B ("Rent Commencement Date"), Tenant shall pay Landlord rent in the amount of Three Thousand and No/100 (\$3,000.00) per month (the "Rent"). Tenant shall deliver Rent to Landlord at the address specified in the Notice section, or by electronic payment. The first Rent payment shall be due within thirty (30) days after the Rent Commencement Date. Subsequent Rent shall be payable, in advance, by the fifth day of each month.

b) The Lease Fee at each anniversary of the Rent Commencement Date shall be increased by three percent (3%) of the Lease Fee for the immediately preceding year.

5. **Access.** Tenant shall have unimpeded twenty-four-hour-a-day, seven-day-a-week access to the Premises at all times during the term of this Agreement. Tenant agrees to install fencing approved by Landlord around the Premises with a secure access gate at Tenant's expense that provides access to the Premises directly from the public right of way. Upon the Effective Date, Landlord shall provide all applicable access key(s) and a defined and accessible location on the Property for Tenant to install a secure lockbox to store any such access key(s) necessary to allow for 24-hours-a-day, 7-days-a-week physical access to all of Tenant's equipment or conduits. Landlord shall not change the method(s) of access or access key(s), without providing Tenant prior written notice and an updated set of access keys or new access code(s).

6. **Interference.** Tenant shall not use the Premises in any way which interferes with the use of the Property by Landlord or lessees or licensees of Landlord with rights in the Property prior in time to Tenant's (subject to Tenant's rights under this Agreement, including, without limitation, non-interference). Similarly, Landlord shall not use, nor shall Landlord permit its lessees, licensees, employees, invitees or agents to use, any portion of the Property in any way which interferes with the operations of Tenant. Such interference shall be deemed a material breach by the interfering party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Lease immediately upon written notice.

7. **Utility Services.** Tenant shall have the right to connect to, maintain, repair, modify, upgrade, remove or replace existing utility-related equipment and/or construct and install new utility-related equipment and lines, including a generator, optical fiber facilities and alternative energy related equipment, to service its Antenna Facilities (collectively, the "Utility Facilities"). Landlord shall have the right to review and approve the equipment referenced herein, such approval not to be unreasonably withheld, conditioned or delayed. The Utility Facilities may be brought by Tenant to the Property and the Premises, and the charges for utility usage (the "Utility Fees") shall be payable, by one of the following methods:

a) **Separate Meter.** Tenant may install a separate meter at any time during the Term of the Lease and will remit payment directly to the utility provider. The Landlord may also have the right to install a separate meter at any time during the Term of the Lease and may then require Tenant remit payment directly to the utility provider.

b) **Smart Sub-meter.** Tenant may install a submeter that can be remotely managed and read ("Smart Submeter"). The Smart Submeter will be read on a regular/ quarterly basis and Tenant will be directly invoiced for its Utility Fees, with a copy provided to Landlord's email address. Tenant will remit payment to the Landlord within thirty (30) days of receipt of the invoice.

c) Until Tenant installs a separate meter or submeter, Tenant shall pay Landlord Utility Fees in the amount of Three Hundred Dollars (\$300.00) per month for its utility usage when usage commences.

8. **Environmental Laws.** Landlord and Tenant agree that it will conduct its activities on the Property in compliance with all applicable environmental laws. Landlord represents and agrees that, to the best of its knowledge, it has in the past and will in the future conduct its activities on the Property in compliance with all applicable environmental laws and that the Property is free of hazardous, toxic, or dangerous substances (collectively, the "Hazardous Substances") as of the date of this Agreement. Tenant agrees to be responsible for all losses or damage caused by any Hazardous Substances that it may bring onto the Property and will indemnify Landlord for all such losses or damages. Landlord agrees to be responsible for all losses or damage caused by any Hazardous Substances on or entering the Property, except those brought onto the Property by Tenant, and will indemnify Tenant for all such losses or damages including the cost of any investigation or remediation, or other actions required to comply with applicable law.

9. **Hold Harmless.** Landlord and Tenant each agree to defend, 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 Property by the indemnifying party or the employees, agents, contractors, licensees, tenants and/or subtenants of the indemnifying party, (b) any spill or other release of any Hazardous Substances (as defined below) on the Property by the indemnifying party or the employees, agents, contractors, licensees, tenants or subtenants of the indemnifying party, or (c) a breach of any obligation of the indemnifying party under this Lease. The indemnifying party's obligations under this subsection are contingent upon its receiving prompt written notice of any event giving rise to an obligation to indemnify the other party and the indemnified party's granting it the right to control the defense and settlement of the same. In no event shall either party be liable for any consequential, special, indirect, or punitive damages, or causes of loss, whether arising from breach of strict liability, contract, tort, or otherwise, and regardless of whether such party was advised of, or should have known, the possibility of such damages.

10. **Insurance.**

(a) During the Term, Tenant will provide Commercial General Liability insurance at least as broad as Insurance Services Office (ISO) form CG 00 01 in an amount not less than \$2,000,000 per occurrence, \$4,000,000 in the general aggregate, and \$4,000,000 products and completed operations, and ~~be endorsed~~ to include Landlord its officers, officials, employees, and agents as additional insureds on the policy or policies with a blanket additional insured endorsement. The policy shall contain a per project or per location general aggregate endorsement. Coverage shall contain a waiver of subrogation in favor of the Landlord and its officers, officials, employees, and agents. Tenant may satisfy this requirement by obtaining appropriate endorsement to any primary policy of liability insurance Tenant may maintain.

(b) During the Term, Tenant shall provide Automobile Liability insurance coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01 (or equivalent) with a limit of not less than one million dollars (\$1,000,000) per accident. The policy shall provide that the Landlord shall be included as additional insured. Coverage shall contain a waiver of subrogation in favor of the Landlord and its officers, officials, employees, and agents.

(c) During the Term, Tenant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for all persons employed directly or indirectly by Vendor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 each accident, \$1,000,000 by disease-policy limit, and

\$1,000,000 by disease-each employee. No proprietor, partner, executive officer, or member shall be excluded. In the alternative, Vendor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code.

(d) Intentionally Omitted.

(e) Umbrella or Excess Liability: The limits of liability for Commercial General Liability and Automobile Liability may be provided through a combination of primary and umbrella or excess liability policies provided each policy complies with the requirements set forth in this agreement. Excess policies shall be follow-form to the underlying policies. Umbrella or excess policies shall include the required parties as additional insured.

11. **Notice.** All notices, requests, demands and other communications shall be in writing and are effective three (3) days after deposit in the U.S. mail, certified and postage paid, or upon receipt if personally delivered or sent by next-business-day delivery via a nationally recognized overnight courier to the addresses set forth below. Landlord or Tenant may from time to time designate any other address for this purpose by providing written notice to the other party.

If to Tenant:  
T-Mobile USA, Inc.  
12920 SE 38th Street  
Bellevue, WA 98006  
Attn: Lease Compliance/SC70098A

If to Landlord:  
City of Kerman  
Attn: City Manager  
850 S, Madera Avenue  
Kerman, CA 93630

12. **Termination.**

(a) Tenant may terminate this Agreement upon thirty (30) days prior written notice to Landlord, for any of the following reasons: (i) changes in local or state laws or regulations which adversely affect Tenant's ability to operate; (ii) a Federal Communications Commission ("FCC") ruling or regulation that is beyond the control of Tenant; (iii) in its sole discretion for technical, or economic reasons; or (iv) if Tenant is unable to obtain or maintain any Governmental Approval required for the construction or operation of Tenant's Antenna Facilities.

(b) Upon two (2) year prior written notice to the other party, Landlord or Tenant may terminate this Agreement for any or no reason.

(c) If either party is in default under this Agreement for a period of thirty (30) days following receipt of written notice from the non-defaulting party, the non-defaulting party may pursue any remedies available to it against the defaulting party at law and in equity, including, but not limited to, the right to terminate this Agreement. If a non-monetary default cannot reasonably be cured within a 30-day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within the 30-day period and proceeds with due diligence to fully cure the default.

### 13. Miscellaneous

- (a) This Agreement may not be modified, and no waiver is effective, except by written agreement signed by both parties. The Tenant acknowledges that Landlord employees have no authority to modify this Agreement except as expressly provided in this Agreement.
- (b) Non-Assignment. Neither party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Tenant will have the right, without consent of Landlord, to sublease (or otherwise transfer or allow the use of) all or any portion of the Premises or assign its rights under this Agreement in whole or in part to: (a) any entity controlling, controlled by or under common control with Tenant; (b) any entity acquiring substantially all of the assets of Tenant; or (c) any successor entity in a merger, acquisition or consolidation involving Tenant. Upon an assignment or transfer, Tenant shall be relieved of all liabilities and obligations and Landlord shall look solely to the transferee for performance under this Lease.
- (c) Governing Law. The laws of the State of California govern all matters arising from or related to this Agreement.
- (d) Jurisdiction and Venue. This Agreement is signed and performed in Fresno County, California. The parties consent to California jurisdiction for actions arising from or related to this Agreement, and, subject to the Government Claims Act, all such actions must be brought and maintained in Fresno County.
- (e) Construction. The final form of this Agreement is the result of the parties' combined efforts. If anything in this Agreement is found by a court of competent jurisdiction to be ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement against either party.
- (f) Days. Unless otherwise specified, "days" means calendar days.
- (g) Headings. The headings and section titles in this Agreement are for convenience only and are not part of this Agreement.
- (h) Severability. If anything in this Agreement is found by a court of competent jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in effect, and the parties shall make best efforts to replace the unlawful or unenforceable part of this Agreement with lawful and enforceable terms intended to accomplish the parties' original intent.
- (i) Nondiscrimination. During the performance of this Agreement, the Landlord shall not unlawfully discriminate against any employee or applicant for employment, or recipient of services, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military status or veteran status pursuant to all applicable State of California and federal statutes and regulation.
- (j) No Waiver. Payment, waiver, or discharge by the Tenant of any liability or obligation of the Landlord under this Agreement on any one or more occasions is not a waiver of performance of any continuing or other obligation of the Landlord and does not prohibit enforcement by the Tenant of any obligation on any other occasion.

Exhibit 'A'

- (k) Entire Agreement. This Agreement, including its exhibits, is the entire agreement between the Landlord and the Tenant with respect to the subject matter of this Agreement, and it supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature unless those things are expressly included in this Agreement. If there is any inconsistency between the terms of this Agreement without its exhibits and the terms of the exhibits, then the inconsistency will be resolved by giving precedence first to the terms of this Agreement without its exhibits, and then to the terms of the exhibits.
- (l) No Third-Party Beneficiaries. This Agreement does not and is not intended to create any rights or obligations for any person or entity except for the parties.
- (m) Authorized Signature. The Landlord represents and warrants to Tenant that Landlord is duly authorized and empowered to sign and perform its obligations under this Agreement. Tenant represents and warrants to the Landlord that the individual signing this Agreement on behalf of the Tenant is duly authorized to do so and his or her signature on this Agreement legally binds the Tenant to the terms of this Agreement.
- (n) Counterparts. This Agreement may be signed in counterparts, each of which is an original, and all of which together constitute this Agreement.

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[Signature page follows]

Market: Sacramento  
Site Number: SC70098A  
Site Name: Kerman

Exhibit 'A'

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed set forth below as of the Effective Date.

**LANDLORD**

City of Kerman,  
a political subdivision of the State of California

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

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

Its: \_\_\_\_\_

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

**TENANT**

T-Mobile West LLC, a Delaware limited liability company

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

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

Its: \_\_\_\_\_

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

Market: Sacramento  
Site Number: SC70098A  
Site Name: Kerman

Exhibit 'A'

## **EXHIBIT A**

Lots 1, 2, 3, and 4 in Block 13 of the Town of Kerman, in the City of Kerman, County of Fresno, State of California, as per map recorded March 27, 1906, in Book 3, Page 31 of Record of Surveys, Fresno County Records.



### EXHIBIT B

**THIS EXHIBIT TO BE REPLACED WITH SITE PLAN AND ELEVATION FROM CONSTRUCTION DRAWINGS PRIOR TO EXECUTION**

