



**LEASE AMENDMENT NO. 1**  
**Between T-Mobile and City of Hercules**

1. Parties. The parties to this Lease Agreement Amendment are the City of Hercules, a municipal corporation ("Landlord"); and T-Mobile West Tower LLC, a Delaware limited liability company ("Tenant").

2. Purpose. This Amendment No. 1 is being entered into to amend an existing Lease Agreement between the Landlord and Tenant which was originally approved by the City Council of the City of Hercules September 8, 2009 by Resolution No. 09-133. Said lease shall hereinafter be referred to as the "Original Lease Agreement" and is incorporated herein by reference.

3. Original Contract Provisions. The parties hereto agree to continue to abide by those original terms and conditions of the Original Lease Agreement, and any amendments thereto, which are unaffected by this Lease Amendment No. 1.

4. Amendment. This Amendment No. 1 is intended to amend the Original Lease Agreement (attached hereto as Exhibit B and incorporated by reference) and any previously approved amendments (collectively, the "Amended Lease") to add additional ground lease space to accommodate a second carrier on the existing 40' tall cellular tower facility at the Landlord's "Hercules Tower Farm" located at 998 Turquoise Avenue.

5. Amendment Lease Provisions: Commencing upon the execution of this amendment by both parties, such to be deemed the Effective Date of this amendment to Resolution 09-133, Landlord grants to Tenant an increase in the amount of the ground leased area of approximately 100 square feet. ("Additional Premises"). Tenant shall pay Landlord an additional sum of six hundred twenty five dollars (\$625.00) per month in addition to existing Rent required under the terms of the Original Lease Agreement ("Additional Premises Rent") upon commencement of Tenant installation of equipment in the Additional Premises. The approximate total of the current Rent plus Additional Premises Rent as of the Effective Date is \$3,791.93 per month, or \$45,503.16 per year. The Additional Premises Rent shall increase at the same time and in the same manner as the Rent under the Original Lease Agreement and shall terminate should Tenant's use of the Additional Premises terminate. The initial payment for any partial month shall be pro-rated for that month and the payment for such shall be due on the historic monthly due date. All other terms and conditions shall remain the same.

6. Amendment Approval: This Amendment No. 1 is hereby approved by the City Council of the City of Hercules on this 13 th day of November, 2018 by Resolution No. 18-\_\_\_\_\_.

IN WITNESS WHEREOF, the parties hereto have respectively executed this amendment effective as of the date of the last party to sign.

Landlord: City of Hercules

Lessor: T-Mobile West Tower LLC, a  
Delaware limited liability company

By \_\_\_\_\_  
David Biggs

By \_\_\_\_\_  
CCTMO LLC, a Delaware limited  
liability company

Title: City Manager

Title: Its Attorney in Fact

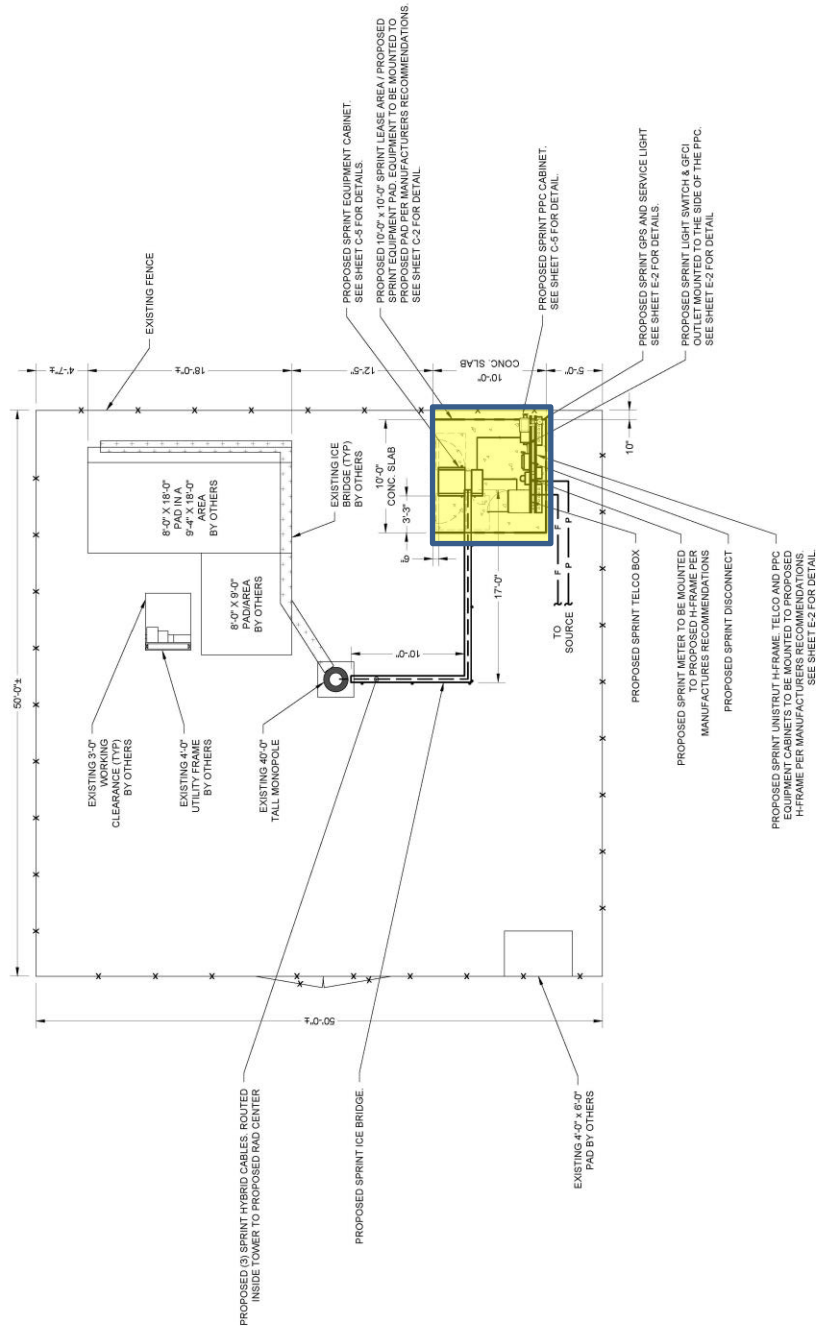
Date: \_\_\_\_\_

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

Form approved:

By \_\_\_\_\_  
Patrick Tang, City Attorney

**Exhibit A - Site Map of additional Lease Area**  
**Exhibit B - Original Lease Agreement**



**NOTE:**  
POWER AND TELCO COORDINATION  
TO BE PERFORMED BY OTHERS



**NOTES:**

ALL SITE INFORMATION HAS BEEN PROVIDED BY THE CLIENT. FOH VELOCITEL IS NOT LIABLE AND DOES NOT ASSUME RESPONSIBILITY FOR THIS CONTENT.

State of California                    )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, (here insert name and title of the officer), personally appeared

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personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_(Seal)

State of California                    )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, (here insert name and title of the officer), personally appeared

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personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_(Seal)

## **Exhibit B – Attach Original Site Lease with Option Documentation**

**RESOLUTION NO. 09-133**

**AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AND A MEMORANDUM OF LEASE WITH T-MOBILE FOR THE CONSTRUCTION OF A PROPOSED CELL SITE ON TURQUOISE DRIVE, HERCULES**

**WHEREAS**, T-Mobile has submitted a request to install antennas on City property located on Turquoise Drive; and

**WHEREAS**, T-Mobile is reserving the right to exercise its option to lease any time during the first year and, for a second \$1,000 option payment, any time during the second year. The term of the lease commences upon exercise of the option; and

**WHEREAS**, the business terms of this lease are as follows: 1) T- Mobile will front the construction of a 50 ft. by 50 ft. staging area east of the existing cell site and a 40 ft. high tower. This tower will be 70 ft. to accommodate additional carriers on the same tower; 2) the proposed monthly rent under this lease is \$2,500.00; 3) the City will reimburse T-Mobile the cost of construction by waving the monthly rent of the lease until it is paid off. We anticipate the payback period to be between five and six years; 4) the initial term of this Lease is five years commencing on the date of the exercise of the Option; 5) Tenant shall have the right to extend this Lease for four additional terms and successive five-year terms (each a "Renewal Term") on the same terms and conditions as set forth herein; and

**WHEREAS**, the potential revenue at built out at this site is anticipated to be approximately \$120,000.00 annually.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Hercules as follows:

1. The City Council hereby authorizes the City Manager To Execute A Lease And A Memorandum Of Lease With T-Mobile For Their Proposed Cell Site On Turquoise In Hercules.

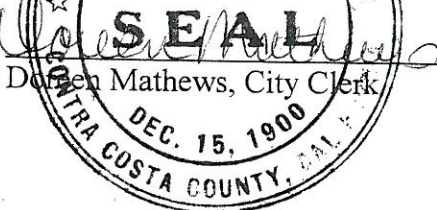
The foregoing Resolution was duly and regularly adopted at a meeting of the City Council of the City of Hercules held on the 8<sup>th</sup> day of September 2009 by the following vote of the Council:

AYES: Balico, Kuehne, Valstad, Ward, McDonald

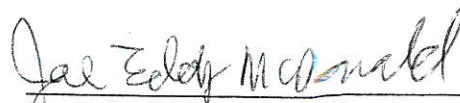
NOES: None

ABSENT: None

ATTEST:



Dorcen Mathews, City Clerk

  
Joe Eddy McDonald, Mayor



# SITE LEASE TRANSMITTAL

Site Number: BA 21693  
 Site Name: Hercules Tower Farm  
 Market: Bay Area

Date Turned In: \_\_\_\_\_

Site Acquisition Coordinator: KAREN LIENERT

<u>Attached please find:</u> 3 Landlord-signed leases 1 Landlord-signed/notarized memorandums <input type="checkbox"/> Owner Authorization Agreement <input type="checkbox"/> Landlord-signed W-9 <input type="checkbox"/> Authorization to sign lease (if applicable)	<u>Market Information</u> Market Entity Name: T-Mobile West Corporation Type of Entity: corporation Market address: 2380 Bisso Lane Concord, CA 94520 Director Name: Martin Vernon Director Title: Director, Northern California Engineering and Ops
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**NOTE: Enter a space (" ") into any fields which do not apply**

<u>Landlord Information</u> Landlord Name: The City of Hercules Landlord Entity: a municipal corporation <small>(i.e. individual, corporation, LLC, etc.)</small> Mailing Address: 111 Civic Drive Hercules, CA 94547 Phone Number: (510) 799-8208 Fax Number:		2nd Landlord Name  Additional Mailing Address (if any): ↓ Mailing Address:  Phone Number: Fax Number
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<u>Site Information</u> Site Address: 998 Turquoise Drive Hercules, CA 94547 Square Footage: 400 square feet  Parcel Number: 407-062-014	<u>Option Terms</u> Option Amount: \$1,000.00 = one thousand dollars Option Term: twelve (12) months Option Renewal \$1,000.00 = one thousand dollars Amt: Option Renewal twelve (12) months Term:
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<u>Lease Terms</u> Payee Name: The City of Hercules Rent Amount: \$2,500.00 = two thousand five hundred dollars Rent Frequency: Monthly Rent Increase: 3% = three percent (increase over preceding year) Lease Term: five (5) years Renewal Terms: five (5) additional five-year terms Cancel Terms: sixty (60) days prior Insurance: One Million (\$1,000,000.00)
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**Instructions:** The preamble and section 12 and signature blocks and Addendum and exhibits and MOL are unprotected. Be sure to check these carefully and format properly – make corrections. **BE CAREFUL!**

**Comments** (no non-standard terms)

Approved by:			
_____ Real Estate Manager	_____ Date	_____ General Manager/Director	_____ Date
_____ Legal Department	_____ Date	_____ Vice President (if applicable)	_____ Date

# SITE LEASE WITH OPTION

THIS SITE LEASE WITH OPTION (this "Lease") is by and between The City of Hercules, a municipal corporation ("Landlord") and T-Mobile West Corporation, a Delaware corporation ("Tenant").

## 1. Option to Lease.

(a) In consideration of the payment of one thousand and no/100 dollars (\$1,000.00) (the "Option Fee") by Tenant to Landlord, Landlord hereby grants to Tenant an option to lease the use of a portion of the real property described in the attached Exhibit A (the "Property"), on the terms and conditions set forth herein (the "Option"). The Option shall be for an initial term of twelve (12) months, commencing on the Effective Date (as defined below) (the "Option Period"). The Option Period may be extended by Tenant for an additional twelve (12) months upon written notice to Landlord and payment of the sum of one thousand and no/100 dollars (\$1,000.00) ("Additional Option Fee") at any time prior to the end of the Option Period.

(b) During the Option Period and any extension thereof, and during the term of this Lease, Landlord agrees to cooperate with Tenant in obtaining, at Tenant's expense, all licenses and permits or authorizations required for Tenant's use of the Premises (as defined below) from all applicable government and/or regulatory entities (including, without limitation, zoning and land use authorities, and the Federal Communications Commission ("FCC") ("Governmental Approvals"), including all land use and zoning permit applications, and Landlord agrees to cooperate with and to allow Tenant, at no cost to Landlord, to obtain a title report, zoning approvals and variances, land-use permits, and Landlord expressly grants to Tenant a right of access to the Property to perform surveys, soils tests, and other engineering procedures or environmental investigations on the Property necessary to determine that Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system design, operations and Governmental Approvals. Notwithstanding the foregoing, Tenant may not change the zoning classification of the Property without first obtaining Landlord's written consent. During the Option Period and any extension thereof, Landlord agrees that it will not interfere with Tenant's efforts to secure other licenses and permits or authorizations that relate to other property. During the Option Period and any extension thereof, Tenant may exercise the Option by so notifying Landlord in writing, at Landlord's address in accordance with Section 12 hereof.

(c) If Tenant exercises the Option, then, subject to the following terms and conditions, Landlord hereby leases to Tenant the use of that portion of the Property sufficient for placement of the Antenna Facilities (as defined below), together with all necessary space and easements for access and utilities, as generally described and depicted in the attached Exhibit B (collectively referred to hereinafter as the "Premises"). The Premises, located at 998 Turquoise Drive, Hercules, CA 94547, comprises approximately 400 square feet.

2. Term. The initial term of this Lease shall be five (5) years commencing on the date of the exercise of the Option (the "Commencement Date"), and terminating at midnight on the last day of the month of the initial term (the "Initial Term").

3. Renewal. Tenant shall have the right to extend this Lease for five (5) additional and successive five-year terms (each a "Renewal Term") on the same terms and conditions as set forth herein. This Lease shall automatically renew for each successive Renewal Term unless Tenant notifies Landlord, in writing, of Tenant's intention not to renew this Lease, at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term. If Tenant shall remain in possession of the Premises at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease.

## 4. Rent.

(a) From and after the Commencement Date, Tenant shall pay Landlord or designee, as rent, two thousand five hundred and no/100 dollars (\$2,500.00) per month ("Rent"). The first payment of Rent shall be due within twenty (20) days following the Commencement Date and shall be prorated based on the days remaining in the month following the Commencement Date, and thereafter Rent will be payable monthly in advance by the fifth day of each month to Landlord at the address specified in Section 12 below. If this Lease is terminated for any reason (other than a default by Tenant) at a time other than on the last day of a month, Rent shall be prorated as of the date of termination and all prepaid Rent shall be immediately refunded to Tenant. Landlord, its successors, assigns and/or designee, if any, will submit to Tenant any documents required by Tenant in connection with the payment of Rent, including, without limitation, an IRS Form W-9. Notwithstanding anything to the contrary, if Tenant installs the Tower (as defined below), monthly Rent shall fully abate ("Rent Abatement") until Tenant has recouped all of its costs for the materials, labor, contractors and other items associated with the Tower purchase and installation ("Tower Costs"). The preliminary estimate for the Tower Costs is \$133,220 and no/100 dollars (\$133,220.00), but such estimate is subject to modification until the Tower installation is completed.

(b) Upon each anniversary of the commencement date hereunder, Rent will be increased over the monthly or annual installment of Rent payable during the preceding year by three percent (3%).

5. Permitted Use. The Premises may be used by Tenant for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, removal or replacement of related facilities, including, without limitation, tower and base, antennas, microwave dishes, equipment shelters and/or cabinets and related activities.

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 equipment installed prior in time to Tenant's installation. 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. Improvements; Utilities; Access.

(a) Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities necessary to operate its communications system, including, without limitation, radio transmitting and receiving antennas, microwave dishes and base, equipment shelters and/or cabinets and related cables and utility lines and a location based system, including, without limitation, antenna(s), coaxial cable, base units, location based systems, and other associated equipment (collectively, the "Antenna Facilities"). Tenant shall have the right to alter, replace, expand, enhance and upgrade the Antenna Facilities at any time during the term of this Lease. Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances, and shall discharge or bond any mechanic's lien filed or recorded. Landlord acknowledges that it shall not interfere with any aspects of construction, including, without limitation, attempting to direct construction personnel as to the location of or method of installation of the Antenna Facilities and the Easements (as defined below) ("Construction Interference"). Landlord further acknowledges that it will be responsible for any costs and damages (including, fines and penalties) that are directly attributable to Landlord's Construction Interference. The Antenna Facilities shall remain the exclusive property of Tenant and shall not be considered fixtures. Tenant shall have the right to remove the Antenna Facilities at any time during and upon the expiration or termination of this Lease.

(b) Tenant, at its expense, may use any and all appropriate means of restricting access to the Antenna Facilities, including, without limitation, the construction of a fence.

(c) Tenant shall, at Tenant's expense, keep and maintain the Antenna Facilities now or hereafter located on the Property in commercially reasonable condition and repair during the term of this Lease, normal wear and tear and casualty excepted. Upon termination or expiration of this Lease, the Premises shall be returned to Landlord in good, usable condition, normal wear and tear and casualty excepted.

(d) Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Property (including, but not limited to, the installation of emergency power generators). Landlord agrees to use reasonable efforts in assisting Tenant to acquire necessary utility service. Tenant shall, wherever practicable, install separate meters for utilities used on the Property by Tenant. Landlord shall diligently correct any variation, interruption or failure of utility service.

(e) As partial consideration for Rent paid under this Lease, Landlord hereby grants Tenant an easement in, under and across the Property for ingress, egress, utilities and access (including access for the purposes described in Section 1) to the Premises adequate to install and maintain utilities, which include, but are not limited to, the installation of power and telephone service cable, and to service the Premises and the Antenna Facilities at all times during the Initial Term of this Lease and any Renewal Term (collectively, the "Easements"). The Easements provided hereunder shall have the same term as this Lease.

(f) Tenant shall have 24-hours-a-day, 7-days-a-week access to the Premises ("Access") at all times during the Initial Term of this Lease and any Renewal Term at no additional charge to the Tenant. In the event Landlord, its employees or agents impede or deny Access to Tenant, its employees or agents, Tenant shall, without waiving any other rights that it may have at law or in equity, deduct from Rent amounts due under this Lease an amount equal to five hundred and no/100 dollars (\$500.00) per day for each day that Access is impeded or denied.

(g) In consideration for the Rent Abatement, on or after the Commencement Date, Tenant shall install a tower on the Property structurally capable of supporting Tenant's antennas and other ancillary equipment, including at least one other carrier's antennas (the "Tower"). Upon completion of installation of the Tower, title and ownership of the Tower shall automatically, without need for execution of further documentation transfer to Landlord in its "AS IS" and "WHERE IS" condition without warranty or representation of any kind. Following such transfer, Landlord will be solely responsible for the ongoing maintenance and upkeep of the Tower and Tenant shall have no further responsibility in relation thereto.

#### 8. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability as follows:

(a) upon thirty (30) days' written notice by Landlord if Tenant fails to cure a default for payment of amounts due under this Lease within that thirty (30) day period;

(b) immediately if Tenant notifies Landlord of unacceptable results of any title report, environmental or soil tests prior to Tenant's installation of the Antenna Facilities on the Premises, or if Tenant is unable to obtain, maintain, or otherwise forfeits or cancels any license (including, without limitation, an FCC license), permit or any Governmental Approval necessary to the installation and/or operation of the Antenna Facilities or Tenant's business;

(c) upon thirty (30) days' written notice by Tenant if the Property or the Antenna Facilities are, or become unacceptable under Tenant's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong;

(d) immediately upon written notice by Tenant if the Premises or the Antenna Facilities are destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the



parties shall cease as of the date of the damage or destruction, and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then all Rent shall abate until the Premises and/or the Antenna Facilities are restored to the condition existing immediately prior to such damage or destruction; or

(e) at the time title to the Property transfers to a condemning authority, pursuant to a taking of all or a portion of the Property sufficient in Tenant's determination to render the Premises unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation; or

(f) upon thirty (30) days written notice by Tenant if Tenant determines that the Property or Antenna Facilities are inappropriate or unnecessary for Tenant's operations due to economic reasons.

9. Default and Right to Cure. Notwithstanding anything contained herein to the contrary and without waiving any other rights granted to it at law or in equity, each party shall have the right, but not the obligation, to terminate this Lease on written notice pursuant to Section 12 hereof, to take effect immediately, if the other party (i) fails to perform any covenant for a period of thirty (30) days after receipt of written notice thereof to cure.

10. Taxes. Landlord shall pay when due all real property taxes for the Property, including the Premises. In the event that Landlord fails to pay any such real property taxes or other fees and assessments, Tenant shall have the right, but not the obligation, to pay such owed amounts and deduct them from Rent amounts due under this Lease. Notwithstanding the foregoing, Tenant shall pay any personal property tax, real property tax or any other tax or fee which are directly attributable to the presence or installation of the Tenant's Antenna Facilities, only for so long as this Lease has not expired of its own terms or is not terminated by either party. Landlord hereby grants to Tenant the right to challenge, whether in a Court, Administrative Proceeding, or other venue, on behalf of Landlord and/or Tenant, any personal property or real property tax assessments that may affect Tenant. If Landlord receives notice of any personal property or real property tax assessment against the Landlord, which may affect Tenant and is directly attributable to Tenant's installation, Landlord shall provide timely notice of the assessment to Tenant sufficient to allow Tenant to consent to or challenge such assessment. Further, Landlord shall provide to Tenant 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. Insurance and Subrogation and Indemnification.

(a) Tenant shall procure and maintain throughout the duration of this Lease a commercial general liability policy with limits of at least \$1,000,000 for bodily injury; \$1,000,000 for property damage and \$2,000,000 aggregate, covering Tenant's use of the Premises and operation of the Antenna Facilities, with a certificate of insurance to be furnished to Landlord within thirty (30) days of Tenant's receipt of Landlord's written request. Such policy of insurance shall provide that cancellation will not occur without at least thirty (30) days prior written notice to Landlord except that only ten (10) days prior notice shall be required in the event of cancellation due to a failure to pay premiums. Furthermore, such policy shall:

- (i) include as additional insureds City of Hercules, and their respective directors, officers, employee and agents;
- (ii) contain a cross-liability endorsement; and
- (iii) shall be primary as to Tenant's negligence, and any insurance carried by Landlords shall be non-contributing.

(b) Tenant shall also maintain standard form property insurance ("All Risk" coverage) equal to the full replacement cost covering all of Tenant's improvement, alterations, equipment and other personal property of Tenant on or about the Premises or the Property.

(c) Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other. To the extent loss or damage is not covered by their first party property insurance policies, Landlord and Tenant 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 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 Lease. 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 of any event giving rise to an obligation to indemnifying the other party and (ii) the indemnified party's granting it the right to control the defense and settlement of the same. Notwithstanding anything to the contrary in this Lease, the parties hereby confirm that the provisions of this section shall survive the expiration or termination of this Lease. Tenant shall not be responsible to Landlord, or any third-party, for any claims, costs or damages (including, fines and penalties) attributable to any pre-existing violations of applicable codes, statutes or other regulations governing the Property, including the Premises.



12. Notices. 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, to:**

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

**With a copy to:**

Attn: Legal Dept.

**And with a copy to:**

T-Mobile West Corporation  
2380 Bisso Lane  
Concord, CA 94520  
Attn: Lease Administration Manager

**With a copy to:**

Attn: Legal Dept.

**If to Landlord, to:**

The City of Hercules  
111 Civic Drive  
Hercules, CA 94547

**Send Rent payments to:**

The City of Hercules  
111 Civic Drive  
Hercules, CA 94547

13. Quiet Enjoyment, Title and Authority. Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute this Lease; (ii) it has good and unencumbered title to the Property free and clear of any liens or mortgages, except those disclosed to Tenant and which will not interfere with Tenant's rights to or use of the Premises; and (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord. Landlord covenants that at all times during the term of this Lease, Tenant's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

14. Environmental Laws. Landlord represents that it has no knowledge of any substance, chemical or waste (collectively, "Hazardous Substance") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Landlord and Tenant shall not introduce or use any Hazardous Substance on the Property in violation of any applicable law. Landlord shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, all spills or other releases of any Hazardous Substance not caused solely by Tenant, that have occurred or which may occur on the Property. Each party agrees to defend, indemnify and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability (collectively, "Claims") including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the indemnitee may suffer or incur due to the existence or discovery of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment (collectively, "Actions"), that relate to or arise from the indemnitor's activities on the Property. Landlord agrees to defend, indemnify and hold Tenant harmless from Claims resulting from Actions on the Property not caused by Landlord or Tenant prior to and during the Initial Term and any Renewal Term of this Lease. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This Section 14 shall survive the termination or expiration of this Lease.

15. Assignment and Subleasing. Tenant may, upon written notice to Landlord, assign or transfer (by sublease or otherwise) its rights arising under this Lease to any corporation, partnership or other entity which (i) is controlled by, controlling or under common control with Tenant, (ii) shall merge or consolidate with or into Tenant, (iii) shall succeed to all or substantially all the assets, property and business of Tenant, or (iv) is an affiliate or subsidiary or other party as may be required in connection with any offering, merger, acquisition, recognized security exchange or financing. Under all other circumstances, such assignment or transfer shall require Landlord's written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Upon such assignment, Tenant shall be relieved of all responsibility for all liabilities and obligations hereunder. Tenant may sublease the Premises, upon written notice to Landlord.

Additionally, Tenant may, upon notice to Landlord, collaterally assign or grant a security interest in this Lease and the Antenna Facilities, and may assign this Lease and the Antenna Facilities to any mortgagees or holders of security interests, including their successors or assigns (collectively "Secured Parties"). In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by such Secured Parties

16. Successors and Assigns. This Lease and the Easements granted herein shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

17. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities or any portion thereof, which shall be deemed personal property for the purposes of this Lease, whether or not the same is deemed real or



personal property under applicable laws, and Landlord gives Tenant and Secured Parties the right to remove all or any portion of the same from time to time, whether before or after a default under this Lease, in Tenant's and/or Secured Parties' sole discretion and without Landlord's consent.

18. Miscellaneous.

(a) The prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

(b) Each party agrees to furnish to the other, within twenty (20) days after request, such truthful estoppel information as the other may reasonably request.

(c) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

(d) Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease in substantially the form attached hereto as Exhibit C) necessary to protect its rights or use of the Premises. The Memorandum of Lease may be recorded in place of this Lease by either party. In the event the Property is encumbered by a mortgage or deed of trust, Landlord agrees, upon request of Tenant, to obtain and furnish to Tenant a non-disturbance and attornment agreement for each such mortgage or deed of trust, in a form reasonably acceptable to Tenant. Tenant may obtain title insurance on its interest in the Premises. Landlord agrees to execute such documents as the title company may require in connection therewith.

(e) This Lease shall be construed in accordance with the laws of the state in which the Property is located.

(f) If any term of this Lease is found to be void or invalid, such finding shall not affect the remaining terms of this Lease, which shall continue in full force and effect. The parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable. Any questions of particular interpretation shall not be interpreted against the draftsman, but rather in accordance with the fair meaning thereof. No provision of this Lease will be deemed waived by either party unless expressly waived in writing signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.

(g) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their individual or representative capacity as indicated.

(h) This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(i) All Exhibits referred to herein and any Addenda are incorporated herein for all purposes. The parties understand and acknowledge that Exhibit A (the legal description of the Property) and Exhibit B (the Premises location within the Property), may be attached to this Lease and the Memorandum of Lease, in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, Exhibits A, and/or B, as the case may be, which may have been attached hereto in preliminary form, may be replaced by Tenant with such final, more complete exhibit(s). The terms of all Exhibits are incorporated herein for all purposes.

(j) If Landlord is represented by any broker or any other leasing agent, Landlord is responsible for all commission fee or other payment to such agent, and agrees to indemnify and hold Tenant harmless from all claims by such broker or anyone claiming through such broker. If Tenant is represented by any broker or any other leasing agent, Tenant is responsible for all commission fee or other payment to such agent, and agrees to indemnify and hold Landlord harmless from all claims by such broker or anyone claiming through such broker.

The effective date of this Lease is the date of execution by the last party to sign (the "Effective Date").



LANDLORD: The City of Hercules

By: 

Printed Name:

NELSON E. OLIVA

Title:

CITY MANAGER

Date:

LANDLORD:

By: 

Printed Name:

NELSON E. OLIVA

Title:

CITY MANAGER

Date:

TENANT:

T-Mobile West Corporation

By: 

Printed Name:

Christopher Eldridge  
Director of Regional Dev.

Title:

Date:

10.15.09

T-Mobile Legal Approval

EXHIBIT A  
Legal Description

The Property is legally described as follows:

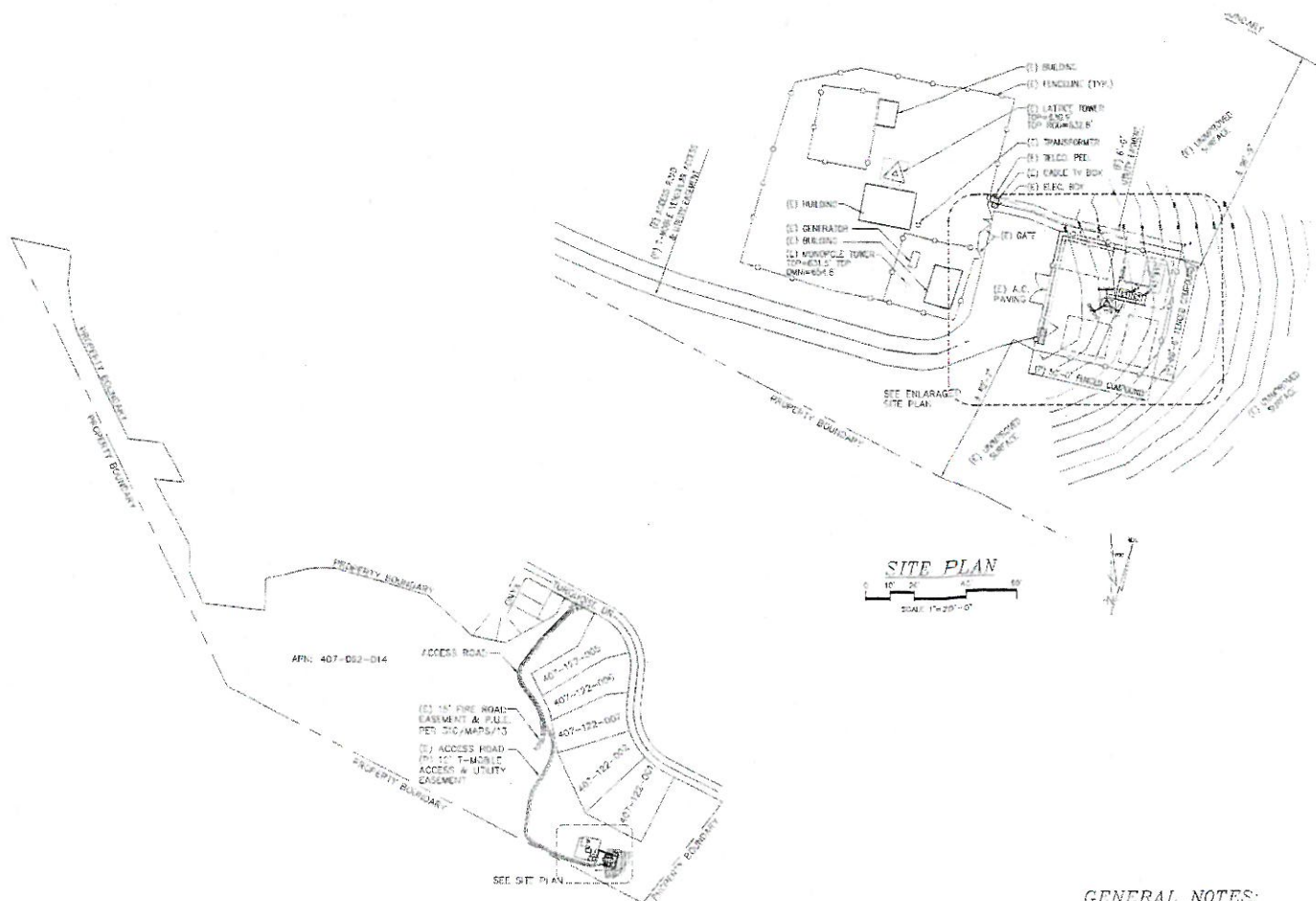
THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA, CITY OF HERCULES, AND IS DESCRIBED AS FOLLOWS:

LOT C OF SUBDIVISION 6583, FILED DECEMBER 30, 1986, IN MAP BOOK 310, PAGE 12, CONTRA COSTA COUNTY RECORDS.

A.P.N. 407-062-014

## EXHIBIT B

The location of the Premises within the Property (together with access and utilities) is more particularly described and depicted as follows:



### GENERAL NOTES:

However, it is expressly agreed and understood by and between the Landlord and Tenant that the exact and precise location of the Tenant's Antenna Facilities are subject to review and approval by the planning and/or zoning Boards having jurisdiction over the "Premises". Therefore, it is expressly agreed and understood by and between Landlord and Tenant that the precise location of the Premises as shown on Exhibit "B" may be modified by the Tenant in order to comply with and obtain necessary planning and/or zoning approvals, and any and all other approvals necessary for Tenant's intended use of the property. The Premises as described herein may therefore be modified by the Tenant to reflect the final engineering design. An amended Exhibit "B" (if necessary) will be provided by the Tenant and attached to the lease in place of the existing Exhibit "B", a copy of which will be provided to the Landlord for review prior to being incorporated into the lease.

**RESOLUTION NO. 09-133**

**AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AND A MEMORANDUM OF LEASE WITH T-MOBILE FOR THE CONSTRUCTION OF A PROPOSED CELL SITE ON TURQUOISE DRIVE, HERCULES**

**WHEREAS**, T-Mobile has submitted a request to install antennas on City property located on Turquoise Drive; and

**WHEREAS**, T-Mobile is reserving the right to exercise its option to lease any time during the first year and, for a second \$1,000 option payment, any time during the second year. The term of the lease commences upon exercise of the option; and

**WHEREAS**, the business terms of this lease are as follows: 1) T- Mobile will front the construction of a 50 ft. by 50 ft. staging area east of the existing cell site and a 40 ft. high tower. This tower will be 70 ft. to accommodate additional carriers on the same tower; 2) the proposed monthly rent under this lease is \$2,500.00; 3) the City will reimburse T-Mobile the cost of construction by waving the monthly rent of the lease until it is paid off. We anticipate the payback period to be between five and six years; 4) the initial term of this Lease is five years commencing on the date of the exercise of the Option; 5) Tenant shall have the right to extend this Lease for four additional terms and successive five-year terms (each a "Renewal Term") on the same terms and conditions as set forth herein; and

**WHEREAS**, the potential revenue at built out at this site is anticipated to be approximately \$120,000.00 annually.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Hercules as follows:

1. The City Council hereby authorizes the City Manager To Execute A Lease And A Memorandum Of Lease With T-Mobile For Their Proposed Cell Site On Turquoise In Hercules.

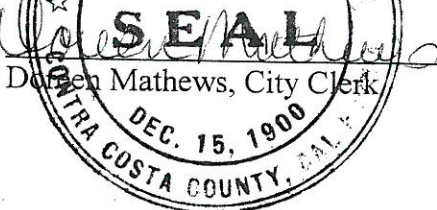
The foregoing Resolution was duly and regularly adopted at a meeting of the City Council of the City of Hercules held on the 8<sup>th</sup> day of September 2009 by the following vote of the Council:

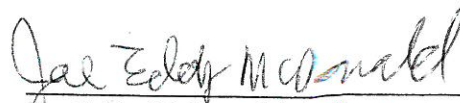
AYES: Balico, Kuehne, Valstad, Ward, McDonald

NOES: None

ABSENT: None

ATTEST:



  
Joe Eddy McDonald, Mayor



# SITE LEASE TRANSMITTAL

Site Number: BA 21693  
 Site Name: Hercules Tower Farm  
 Market: Bay Area

Date Turned In: \_\_\_\_\_

Site Acquisition Coordinator: KAREN LIENERT

<u>Attached please find:</u> 3 Landlord-signed leases 1 Landlord-signed/notarized memorandums <input type="checkbox"/> Owner Authorization Agreement <input type="checkbox"/> Landlord-signed W-9 <input type="checkbox"/> Authorization to sign lease (if applicable)	<u>Market Information</u> Market Entity Name: T-Mobile West Corporation Type of Entity: corporation Market address: 2380 Bisso Lane Concord, CA 94520 Director Name: Martin Vernon Director Title: Director, Northern California Engineering and Ops
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**NOTE: Enter a space (" ") into any fields which do not apply**

<u>Landlord Information</u> Landlord Name: The City of Hercules Landlord Entity: a municipal corporation <small>(i.e. individual, corporation, LLC, etc.)</small> Mailing Address: 111 Civic Drive Hercules, CA 94547 Phone Number: (510) 799-8208 Fax Number:		2nd Landlord Name  Additional Mailing Address (if any): ↓ Mailing Address:  Phone Number: Fax Number
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<u>Site Information</u> Site Address: 998 Turquoise Drive Hercules, CA 94547 Square Footage: 400 square feet  Parcel Number: 407-062-014	<u>Option Terms</u> Option Amount: \$1,000.00 = one thousand dollars Option Term: twelve (12) months Option Renewal \$1,000.00 = one thousand dollars Amt: Option Renewal twelve (12) months Term:
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<u>Lease Terms</u> Payee Name: The City of Hercules Rent Amount: \$2,500.00 = two thousand five hundred dollars Rent Frequency: Monthly Rent Increase: 3% = three percent (increase over preceding year) Lease Term: five (5) years Renewal Terms: five (5) additional five-year terms Cancel Terms: sixty (60) days prior Insurance: One Million (\$1,000,000.00)
--

**Instructions:** The preamble and section 12 and signature blocks and Addendum and exhibits and MOL are unprotected. Be sure to check these carefully and format properly – make corrections. **BE CAREFUL!**

**Comments** (no non-standard terms)

Approved by:			
_____ Real Estate Manager	_____ Date	_____ General Manager/Director	_____ Date
_____ Legal Department	_____ Date	_____ Vice President (if applicable)	_____ Date

# SITE LEASE WITH OPTION

THIS SITE LEASE WITH OPTION (this "Lease") is by and between The City of Hercules, a municipal corporation ("Landlord") and T-Mobile West Corporation, a Delaware corporation ("Tenant").

## 1. Option to Lease.

(a) In consideration of the payment of one thousand and no/100 dollars (\$1,000.00) (the "Option Fee") by Tenant to Landlord, Landlord hereby grants to Tenant an option to lease the use of a portion of the real property described in the attached Exhibit A (the "Property"), on the terms and conditions set forth herein (the "Option"). The Option shall be for an initial term of twelve (12) months, commencing on the Effective Date (as defined below) (the "Option Period"). The Option Period may be extended by Tenant for an additional twelve (12) months upon written notice to Landlord and payment of the sum of one thousand and no/100 dollars (\$1,000.00) ("Additional Option Fee") at any time prior to the end of the Option Period.

(b) During the Option Period and any extension thereof, and during the term of this Lease, Landlord agrees to cooperate with Tenant in obtaining, at Tenant's expense, all licenses and permits or authorizations required for Tenant's use of the Premises (as defined below) from all applicable government and/or regulatory entities (including, without limitation, zoning and land use authorities, and the Federal Communications Commission ("FCC") ("Governmental Approvals"), including all land use and zoning permit applications, and Landlord agrees to cooperate with and to allow Tenant, at no cost to Landlord, to obtain a title report, zoning approvals and variances, land-use permits, and Landlord expressly grants to Tenant a right of access to the Property to perform surveys, soils tests, and other engineering procedures or environmental investigations on the Property necessary to determine that Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system design, operations and Governmental Approvals. Notwithstanding the foregoing, Tenant may not change the zoning classification of the Property without first obtaining Landlord's written consent. During the Option Period and any extension thereof, Landlord agrees that it will not interfere with Tenant's efforts to secure other licenses and permits or authorizations that relate to other property. During the Option Period and any extension thereof, Tenant may exercise the Option by so notifying Landlord in writing, at Landlord's address in accordance with Section 12 hereof.

(c) If Tenant exercises the Option, then, subject to the following terms and conditions, Landlord hereby leases to Tenant the use of that portion of the Property sufficient for placement of the Antenna Facilities (as defined below), together with all necessary space and easements for access and utilities, as generally described and depicted in the attached Exhibit B (collectively referred to hereinafter as the "Premises"). The Premises, located at 998 Turquoise Drive, Hercules, CA 94547, comprises approximately 400 square feet.

2. Term. The initial term of this Lease shall be five (5) years commencing on the date of the exercise of the Option (the "Commencement Date"), and terminating at midnight on the last day of the month of the initial term (the "Initial Term").

3. Renewal. Tenant shall have the right to extend this Lease for five (5) additional and successive five-year terms (each a "Renewal Term") on the same terms and conditions as set forth herein. This Lease shall automatically renew for each successive Renewal Term unless Tenant notifies Landlord, in writing, of Tenant's intention not to renew this Lease, at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term. If Tenant shall remain in possession of the Premises at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease.

## 4. Rent.

(a) From and after the Commencement Date, Tenant shall pay Landlord or designee, as rent, two thousand five hundred and no/100 dollars (\$2,500.00) per month ("Rent"). The first payment of Rent shall be due within twenty (20) days following the Commencement Date and shall be prorated based on the days remaining in the month following the Commencement Date, and thereafter Rent will be payable monthly in advance by the fifth day of each month to Landlord at the address specified in Section 12 below. If this Lease is terminated for any reason (other than a default by Tenant) at a time other than on the last day of a month, Rent shall be prorated as of the date of termination and all prepaid Rent shall be immediately refunded to Tenant. Landlord, its successors, assigns and/or designee, if any, will submit to Tenant any documents required by Tenant in connection with the payment of Rent, including, without limitation, an IRS Form W-9. Notwithstanding anything to the contrary, if Tenant installs the Tower (as defined below), monthly Rent shall fully abate ("Rent Abatement") until Tenant has recouped all of its costs for the materials, labor, contractors and other items associated with the Tower purchase and installation ("Tower Costs"). The preliminary estimate for the Tower Costs is \$133,220 and no/100 dollars (\$133,220.00), but such estimate is subject to modification until the Tower installation is completed.

(b) Upon each anniversary of the commencement date hereunder, Rent will be increased over the monthly or annual installment of Rent payable during the preceding year by three percent (3%).

5. Permitted Use. The Premises may be used by Tenant for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, removal or replacement of related facilities, including, without limitation, tower and base, antennas, microwave dishes, equipment shelters and/or cabinets and related activities.

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 equipment installed prior in time to Tenant's installation. 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. Improvements; Utilities; Access.

(a) Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities necessary to operate its communications system, including, without limitation, radio transmitting and receiving antennas, microwave dishes and base, equipment shelters and/or cabinets and related cables and utility lines and a location based system, including, without limitation, antenna(s), coaxial cable, base units, location based systems, and other associated equipment (collectively, the "Antenna Facilities"). Tenant shall have the right to alter, replace, expand, enhance and upgrade the Antenna Facilities at any time during the term of this Lease. Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances, and shall discharge or bond any mechanic's lien filed or recorded. Landlord acknowledges that it shall not interfere with any aspects of construction, including, without limitation, attempting to direct construction personnel as to the location of or method of installation of the Antenna Facilities and the Easements (as defined below) ("Construction Interference"). Landlord further acknowledges that it will be responsible for any costs and damages (including, fines and penalties) that are directly attributable to Landlord's Construction Interference. The Antenna Facilities shall remain the exclusive property of Tenant and shall not be considered fixtures. Tenant shall have the right to remove the Antenna Facilities at any time during and upon the expiration or termination of this Lease.

(b) Tenant, at its expense, may use any and all appropriate means of restricting access to the Antenna Facilities, including, without limitation, the construction of a fence.

(c) Tenant shall, at Tenant's expense, keep and maintain the Antenna Facilities now or hereafter located on the Property in commercially reasonable condition and repair during the term of this Lease, normal wear and tear and casualty excepted. Upon termination or expiration of this Lease, the Premises shall be returned to Landlord in good, usable condition, normal wear and tear and casualty excepted.

(d) Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Property (including, but not limited to, the installation of emergency power generators). Landlord agrees to use reasonable efforts in assisting Tenant to acquire necessary utility service. Tenant shall, wherever practicable, install separate meters for utilities used on the Property by Tenant. Landlord shall diligently correct any variation, interruption or failure of utility service.

(e) As partial consideration for Rent paid under this Lease, Landlord hereby grants Tenant an easement in, under and across the Property for ingress, egress, utilities and access (including access for the purposes described in Section 1) to the Premises adequate to install and maintain utilities, which include, but are not limited to, the installation of power and telephone service cable, and to service the Premises and the Antenna Facilities at all times during the Initial Term of this Lease and any Renewal Term (collectively, the "Easements"). The Easements provided hereunder shall have the same term as this Lease.

(f) Tenant shall have 24-hours-a-day, 7-days-a-week access to the Premises ("Access") at all times during the Initial Term of this Lease and any Renewal Term at no additional charge to the Tenant. In the event Landlord, its employees or agents impede or deny Access to Tenant, its employees or agents, Tenant shall, without waiving any other rights that it may have at law or in equity, deduct from Rent amounts due under this Lease an amount equal to five hundred and no/100 dollars (\$500.00) per day for each day that Access is impeded or denied.

(g) In consideration for the Rent Abatement, on or after the Commencement Date, Tenant shall install a tower on the Property structurally capable of supporting Tenant's antennas and other ancillary equipment, including at least one other carrier's antennas (the "Tower"). Upon completion of installation of the Tower, title and ownership of the Tower shall automatically, without need for execution of further documentation transfer to Landlord in its "AS IS" and "WHERE IS" condition without warranty or representation of any kind. Following such transfer, Landlord will be solely responsible for the ongoing maintenance and upkeep of the Tower and Tenant shall have no further responsibility in relation thereto.

#### 8. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability as follows:

(a) upon thirty (30) days' written notice by Landlord if Tenant fails to cure a default for payment of amounts due under this Lease within that thirty (30) day period;

(b) immediately if Tenant notifies Landlord of unacceptable results of any title report, environmental or soil tests prior to Tenant's installation of the Antenna Facilities on the Premises, or if Tenant is unable to obtain, maintain, or otherwise forfeits or cancels any license (including, without limitation, an FCC license), permit or any Governmental Approval necessary to the installation and/or operation of the Antenna Facilities or Tenant's business;

(c) upon thirty (30) days' written notice by Tenant if the Property or the Antenna Facilities are, or become unacceptable under Tenant's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong;

(d) immediately upon written notice by Tenant if the Premises or the Antenna Facilities are destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the



parties shall cease as of the date of the damage or destruction, and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then all Rent shall abate until the Premises and/or the Antenna Facilities are restored to the condition existing immediately prior to such damage or destruction; or

(e) at the time title to the Property transfers to a condemning authority, pursuant to a taking of all or a portion of the Property sufficient in Tenant's determination to render the Premises unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation; or

(f) upon thirty (30) days written notice by Tenant if Tenant determines that the Property or Antenna Facilities are inappropriate or unnecessary for Tenant's operations due to economic reasons.

9. Default and Right to Cure. Notwithstanding anything contained herein to the contrary and without waiving any other rights granted to it at law or in equity, each party shall have the right, but not the obligation, to terminate this Lease on written notice pursuant to Section 12 hereof, to take effect immediately, if the other party (i) fails to perform any covenant for a period of thirty (30) days after receipt of written notice thereof to cure.

10. Taxes. Landlord shall pay when due all real property taxes for the Property, including the Premises. In the event that Landlord fails to pay any such real property taxes or other fees and assessments, Tenant shall have the right, but not the obligation, to pay such owed amounts and deduct them from Rent amounts due under this Lease. Notwithstanding the foregoing, Tenant shall pay any personal property tax, real property tax or any other tax or fee which are directly attributable to the presence or installation of the Tenant's Antenna Facilities, only for so long as this Lease has not expired of its own terms or is not terminated by either party. Landlord hereby grants to Tenant the right to challenge, whether in a Court, Administrative Proceeding, or other venue, on behalf of Landlord and/or Tenant, any personal property or real property tax assessments that may affect Tenant. If Landlord receives notice of any personal property or real property tax assessment against the Landlord, which may affect Tenant and is directly attributable to Tenant's installation, Landlord shall provide timely notice of the assessment to Tenant sufficient to allow Tenant to consent to or challenge such assessment. Further, Landlord shall provide to Tenant 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. Insurance and Subrogation and Indemnification.

(a) Tenant shall procure and maintain throughout the duration of this Lease a commercial general liability policy with limits of at least \$1,000,000 for bodily injury; \$1,000,000 for property damage and \$2,000,000 aggregate, covering Tenant's use of the Premises and operation of the Antenna Facilities, with a certificate of insurance to be furnished to Landlord within thirty (30) days of Tenant's receipt of Landlord's written request. Such policy of insurance shall provide that cancellation will not occur without at least thirty (30) days prior written notice to Landlord except that only ten (10) days prior notice shall be required in the event of cancellation due to a failure to pay premiums. Furthermore, such policy shall:

- (i) include as additional insureds City of Hercules, and their respective directors, officers, employee and agents;
- (ii) contain a cross-liability endorsement; and
- (iii) shall be primary as to Tenant's negligence, and any insurance carried by Landlords shall be non-contributing.

(b) Tenant shall also maintain standard form property insurance ("All Risk" coverage) equal to the full replacement cost covering all of Tenant's improvement, alterations, equipment and other personal property of Tenant on or about the Premises or the Property.

(c) Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other. To the extent loss or damage is not covered by their first party property insurance policies, Landlord and Tenant 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 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 Lease. 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 of any event giving rise to an obligation to indemnifying the other party and (ii) the indemnified party's granting it the right to control the defense and settlement of the same. Notwithstanding anything to the contrary in this Lease, the parties hereby confirm that the provisions of this section shall survive the expiration or termination of this Lease. Tenant shall not be responsible to Landlord, or any third-party, for any claims, costs or damages (including, fines and penalties) attributable to any pre-existing violations of applicable codes, statutes or other regulations governing the Property, including the Premises.



12. Notices. 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, to:**

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

**With a copy to:**

Attn: Legal Dept.

**And with a copy to:**

T-Mobile West Corporation  
2380 Bisso Lane  
Concord, CA 94520  
Attn: Lease Administration Manager

**With a copy to:**

Attn: Legal Dept.

**If to Landlord, to:**

The City of Hercules  
111 Civic Drive  
Hercules, CA 94547

**Send Rent payments to:**

The City of Hercules  
111 Civic Drive  
Hercules, CA 94547

13. Quiet Enjoyment, Title and Authority. Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute this Lease; (ii) it has good and unencumbered title to the Property free and clear of any liens or mortgages, except those disclosed to Tenant and which will not interfere with Tenant's rights to or use of the Premises; and (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord. Landlord covenants that at all times during the term of this Lease, Tenant's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

14. Environmental Laws. Landlord represents that it has no knowledge of any substance, chemical or waste (collectively, "Hazardous Substance") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Landlord and Tenant shall not introduce or use any Hazardous Substance on the Property in violation of any applicable law. Landlord shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, all spills or other releases of any Hazardous Substance not caused solely by Tenant, that have occurred or which may occur on the Property. Each party agrees to defend, indemnify and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability (collectively, "Claims") including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the indemnitee may suffer or incur due to the existence or discovery of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment (collectively, "Actions"), that relate to or arise from the indemnitor's activities on the Property. Landlord agrees to defend, indemnify and hold Tenant harmless from Claims resulting from Actions on the Property not caused by Landlord or Tenant prior to and during the Initial Term and any Renewal Term of this Lease. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This Section 14 shall survive the termination or expiration of this Lease.

15. Assignment and Subleasing. Tenant may, upon written notice to Landlord, assign or transfer (by sublease or otherwise) its rights arising under this Lease to any corporation, partnership or other entity which (i) is controlled by, controlling or under common control with Tenant, (ii) shall merge or consolidate with or into Tenant, (iii) shall succeed to all or substantially all the assets, property and business of Tenant, or (iv) is an affiliate or subsidiary or other party as may be required in connection with any offering, merger, acquisition, recognized security exchange or financing. Under all other circumstances, such assignment or transfer shall require Landlord's written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Upon such assignment, Tenant shall be relieved of all responsibility for all liabilities and obligations hereunder. Tenant may sublease the Premises, upon written notice to Landlord.

Additionally, Tenant may, upon notice to Landlord, collaterally assign or grant a security interest in this Lease and the Antenna Facilities, and may assign this Lease and the Antenna Facilities to any mortgagees or holders of security interests, including their successors or assigns (collectively "Secured Parties"). In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by such Secured Parties

16. Successors and Assigns. This Lease and the Easements granted herein shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

17. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities or any portion thereof, which shall be deemed personal property for the purposes of this Lease, whether or not the same is deemed real or



personal property under applicable laws, and Landlord gives Tenant and Secured Parties the right to remove all or any portion of the same from time to time, whether before or after a default under this Lease, in Tenant's and/or Secured Parties' sole discretion and without Landlord's consent.

18. Miscellaneous.

(a) The prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

(b) Each party agrees to furnish to the other, within twenty (20) days after request, such truthful estoppel information as the other may reasonably request.

(c) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

(d) Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease in substantially the form attached hereto as Exhibit C) necessary to protect its rights or use of the Premises. The Memorandum of Lease may be recorded in place of this Lease by either party. In the event the Property is encumbered by a mortgage or deed of trust, Landlord agrees, upon request of Tenant, to obtain and furnish to Tenant a non-disturbance and attornment agreement for each such mortgage or deed of trust, in a form reasonably acceptable to Tenant. Tenant may obtain title insurance on its interest in the Premises. Landlord agrees to execute such documents as the title company may require in connection therewith.

(e) This Lease shall be construed in accordance with the laws of the state in which the Property is located.

(f) If any term of this Lease is found to be void or invalid, such finding shall not affect the remaining terms of this Lease, which shall continue in full force and effect. The parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable. Any questions of particular interpretation shall not be interpreted against the draftsman, but rather in accordance with the fair meaning thereof. No provision of this Lease will be deemed waived by either party unless expressly waived in writing signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.

(g) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their individual or representative capacity as indicated.

(h) This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(i) All Exhibits referred to herein and any Addenda are incorporated herein for all purposes. The parties understand and acknowledge that Exhibit A (the legal description of the Property) and Exhibit B (the Premises location within the Property), may be attached to this Lease and the Memorandum of Lease, in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, Exhibits A, and/or B, as the case may be, which may have been attached hereto in preliminary form, may be replaced by Tenant with such final, more complete exhibit(s). The terms of all Exhibits are incorporated herein for all purposes.

(j) If Landlord is represented by any broker or any other leasing agent, Landlord is responsible for all commission fee or other payment to such agent, and agrees to indemnify and hold Tenant harmless from all claims by such broker or anyone claiming through such broker. If Tenant is represented by any broker or any other leasing agent, Tenant is responsible for all commission fee or other payment to such agent, and agrees to indemnify and hold Landlord harmless from all claims by such broker or anyone claiming through such broker.

The effective date of this Lease is the date of execution by the last party to sign (the "Effective Date").

LANDLORD: The City of Hercules

By: 

Printed Name:

NELSON E. OLIVA

Title:

CITY MANAGER

Date:

LANDLORD:

By: 

Printed Name:

NELSON E. OLIVA

Title:

CITY MANAGER

Date:

TENANT:

T-Mobile West Corporation

By: 

Printed Name:

Christopher Eldridge  
Director of Regional Dev.

Title:

Date:

10.15.09

T-Mobile Legal Approval

EXHIBIT A  
Legal Description

The Property is legally described as follows:

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA, CITY OF HERCULES, AND IS DESCRIBED AS FOLLOWS:

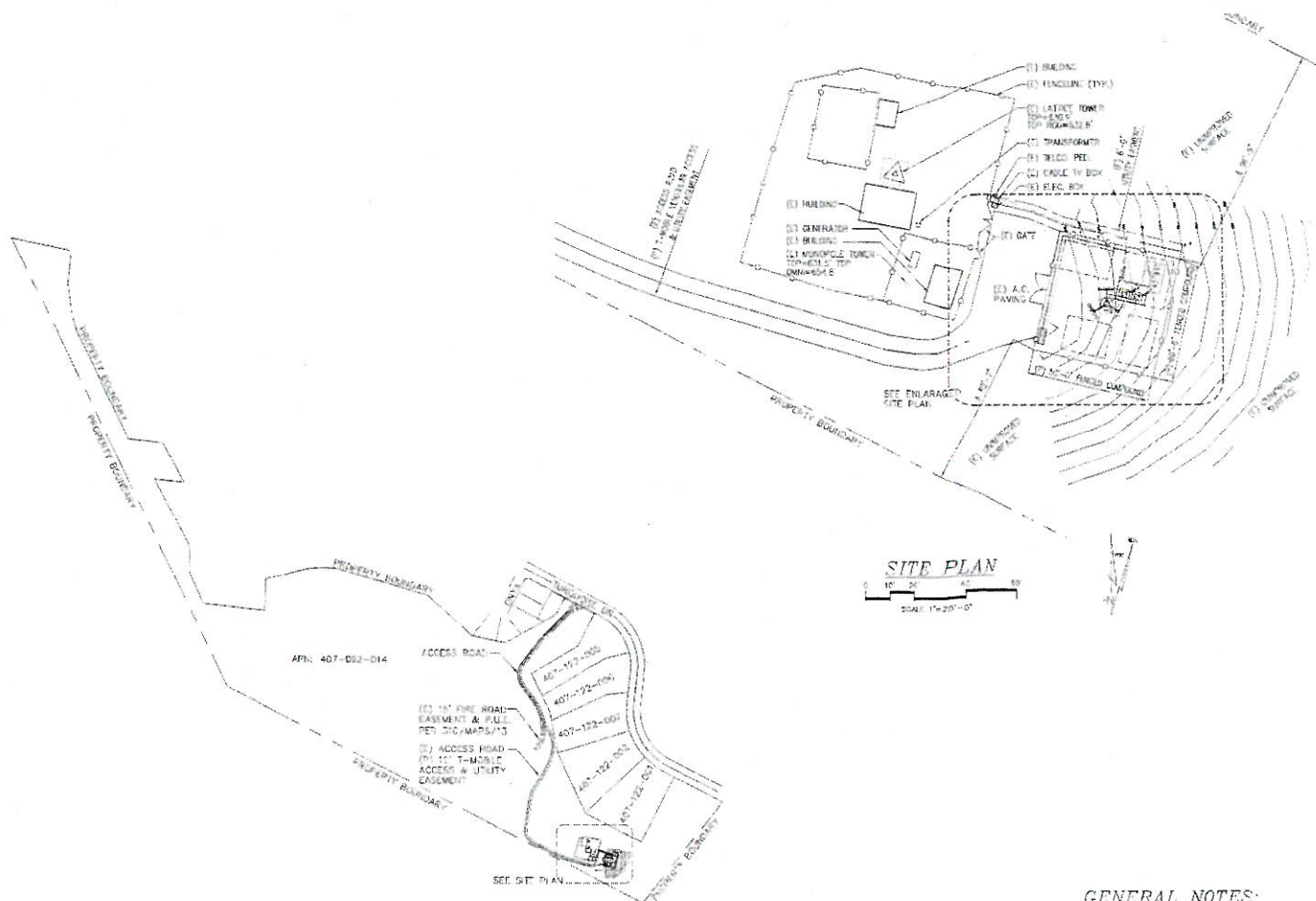
LOT C OF SUBDIVISION 6583, FILED DECEMBER 30, 1986, IN MAP BOOK 310, PAGE 12, CONTRA COSTA COUNTY RECORDS.

A.P.N. 407-062-014



## EXHIBIT B

The location of the Premises within the Property (together with access and utilities) is more particularly described and depicted as follows:



### GENERAL NOTES:

However, it is expressly agreed and understood by and between the Landlord and Tenant that the exact and precise location of the Tenant's Antenna Facilities are subject to review and approval by the planning and/or zoning Boards having jurisdiction over the "Premises". Therefore, it is expressly agreed and understood by and between Landlord and Tenant that the precise location of the Premises as shown on Exhibit "B" may be modified by the Tenant in order to comply with and obtain necessary planning and/or zoning approvals, and any and all other approvals necessary for Tenant's intended use of the property. The Premises as described herein may therefore be modified by the Tenant to reflect the final engineering design. An amended Exhibit "B" (if necessary) will be provided by the Tenant and attached to the lease in place of the existing Exhibit "B", a copy of which will be provided to the Landlord for review prior to being incorporated into the lease.