

T-MOBILE CENTRAL LLC
SITE USE/LEASE AGREEMENT

7TH

This Site Use/Lease Agreement (this "**Lease**") is entered into this day of AUGUST, 2006 ("**Execution Date**"), between the **City of Broken Arrow**, an Oklahoma municipal corporation, 220 South First Street, Broken Arrow, OK 74012 ("**Lessor**"), and **T-Mobile Central LLC**, a Delaware Limited Liability Company ("**Lessee**"), 4533 Enterprise Dr., Oklahoma City, OK 74128.

1. **Premises.**

a. Subject to the following terms and conditions, Lessor leases to Lessee a portion of the real property (the "**Property**") described in the attached **Exhibit A**. Lessee's use of the Property shall be limited to that portion of the Property, together with easements for access and utilities, described and depicted in attached **Exhibit B** (collectively referred to hereinafter as the "**Premises**").

b. The Premises, located in the City of Broken Arrow, County of Tulsa, State of Oklahoma, comprise approximately four hundred (400) square feet.

2. **Term.** The initial term of this Lease shall be Five (5) years, commencing upon the earlier of (i) the first (1st) day of the month in which Lessee commences construction of the Antenna Facilities (hereinafter defined), or (ii) the first (1st) day of the month following the ninetieth (90th) day after execution of this Lease (the "**Commencement Date**"), and terminating upon expiration of the entire term at Midnight on the last day of the first full month following the Commencement Date.

3. **Permitted Use.** The Premises may be used by Lessee only for permitted uses, which are (i) the transmission and reception of communications signals, (ii) the construction, alteration, maintenance repair, replacement and relocation of related facilities, towers, antennas, equipment and buildings, and (iii) activities related to any of the foregoing. Lessee will maintain the Premises in good condition, reasonable wear and tear excepted. Lessor will maintain the property, excluding the Premises, in good condition, reasonable wear and tear excepted. Lessee shall obtain (prior to or after the Commencement Date), at Lessee's expense, all licenses and permits or authorizations required for Lessee's use of the Premises from all applicable government and/or regulatory entities (the "**Governmental Approvals**") and may (prior to or after the Commencement Date) obtain a title report, perform surveys, soils tests, and other engineering procedures or environmental investigations on, under and over the Property, necessary to determine that Lessee's use of the Premises will be compatible with Lessee's engineering specifications, system, design, operations and Governmental Approvals. Lessor agrees to reasonably cooperate with Lessee (at no cost to Lessor), where required, to perform such procedures or obtain Governmental Approvals. Lessor agrees that Lessee shall have the right to immediately terminate this Lease without any penalty or liability if Lessee shall not have obtained all Governmental Approvals on or before the Commencement Date specified in paragraph 2 above, provided that Lessee shall have the right, without obligation, to appeal any denial and the contingency date for obtaining Governmental Approvals shall be extended until such time as a final decision is rendered and is not the subject of any further appeal made or defended by Lessee. Lessor agrees that Lessee shall have the right to terminate this Lease without

any penalty or liability if Lessee notifies Lessor of unacceptable results of any radio test, title report or of the survey or soils tests. Lessor also agrees that if, based on the result of any environmental investigation or inquiry, Lessee determines that the condition of the Property is unsatisfactory or if Lessee believes that leasing or continued leasing of the Premises would expose Lessee to undue risks of government action or intervention or third-party liability, Lessee may, without any penalty or liability, immediately terminate this Lease. Upon such termination, this Lease shall become null and void and all the parties shall have no further obligations, including the payment of money, to each other.

4. Rent.

a. Starting on the Commencement Date, Lessee shall pay Lessor, as rent, the sum of one thousand one hundred dollars and no/100 (\$1100.00) monthly ("**Rent**"). Lessee shall have the option to pay the Rent in either monthly or annual installments. Once Lessee makes its option of either monthly or annual installment payments, then Lessee shall not change its payment schedule until the next anniversary of the Commencement Date. Should Lessee choose to make monthly installments, the Rent shall be due on the first day of each month after the Commencement Date. Should Lessee choose to make annual installments, the Rent shall be due on or before the Commencement Date, and shall thereafter be due on or before each anniversary date of the Commencement Date, in advance, to Lessor, at Lessor's address specified in paragraph 13 below.

b. If the Commencement Date should be other than the first day of a calendar month (if Lessee elects to make monthly payments), Rent shall be prorated to the end of that calendar month. If this Lease is terminated at a time other than on the last day of a month or the last day of a Lease year, as applicable, the Rent shall be prorated as of the date of termination for any reason other than a default by Lessee, and all prepaid Rents shall be refunded to Lessee.

5. Renewal.

a. Lessee shall have the right to extend this Lease for four (4) additional, five-year terms ("**Renewal Term**"). Each Renewal Term shall be on the same terms and conditions as set forth herein except that Rent shall be increased after each term by fifteen percent (15%) of the Rent applicable in the immediately preceding five-year term.

b. This Lease shall automatically renew for each successive Renewal Term unless Lessee shall notify Lessor, in writing, of Lessee's intention not to renew this Lease, at least 60 days prior to the expiration of the term or any Renewal Term.

c. If Lessee 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.

6. **Interference.** Lessee shall not use the Premises in any way that interferes with the use of the Property by Lessor, or tenants or licensees of Lessor with rights to the Property prior in time to Lessee's (subject to Lessee's rights under this Lease, including non-interference). Similarly, Lessor shall not use, nor shall Lessor permit its tenants, licensees, employees, invitees or agents, to use any portion of Lessor's properties in any way that interferes with the operations of Lessee.

The interfering party shall, upon notice from the other, be responsible for ceasing said interference, and such interference shall be deemed a material breach. 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 action to enjoin such interference or to terminate this Lease immediately upon notice.

7. **Improvements; Utilities; Access.**

a. Lessee shall have the right, at its expense, to erect and maintain on the Premises, improvements, personal property, facilities and any number of radio transmitting and receiving antennas and electronic equipment shelters (collectively the "**Antenna Facilities**"). Lessor approves the location of such buildings and other improvements as shown on attached **Exhibit C**. Lessee shall submit the construction plans and specifications for the Antenna Facilities to Lessor for Lessor's approval which approval shall not be unreasonably withheld or delayed; however, if Lessor has not responded to Lessee within ten (10) days of receipt of such plans and specification, the plans and specifications shall be deemed approved by Lessor. Lessee shall have the right to replace or upgrade the Antenna Facilities at any time during the term of this Lease. Lessee shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. The Antenna Facilities shall remain the exclusive property of Lessee. Lessee shall have the right to remove the Antenna Facilities upon the termination of this Lease.

b. Lessee shall pay any additional utilities charges due to Lessee's use of the Premises. Lessee shall have the right to install utilities, at Lessee's expense, and to improve the present utilities on the Premises (including, but not limited to the installation of emergency power generators). Lessor hereby grants an easement to permanently place any utilities on, or to bring utilities across, the Property in order to service the Premises and the Antenna Facilities as shown on **Exhibit B**. Lessee shall obtain approval from Lessor's Communications Systems Manager prior to the installation of any proposed emergency power generator(s), however at no time shall Lessee ever install a propane fired generator.

c. As partial consideration for rent paid under this Lease, Lessor hereby grants Lessee an easement as shown on **Exhibit B ("Easement")** for ingress, egress, and access (including access as described in paragraph 1) to the Premises adequate to service the Premises and the Antenna Facilities at all times during the term of this Lease or any Renewal Term. Upon notice, Lessor shall have the right, at Lessor's sole expense, to relocate Lessee's Easement, provided such new location shall not materially interfere with Lessee's operations. Any Easement provided hereunder shall have the same term as this Lease.

d. Lessor represents and warrants that the Premises are now and shall continue in the future to be operated, managed and maintained in compliance with all applicable Federal, State and local laws and regulations.

e. Lessee shall have 24-hours-a-day, 7-days-a-week access to the Premises at all times during the term of this Lease and any Renewal Term.

f. Any facility, tower, antenna, equipment or building that is not being used for the transmission and/or reception of communications signals for a continuous period of twelve (12) months shall be considered abandoned. Lessee shall remove same at its expense within ninety (90) days of receipt of notice from Lessor. If Lessee fails to remove said abandoned facility, tower, antenna, equipment or building after the expiration of ninety (90) days' notice, then same shall be considered a public nuisance and shall be removable by Lessor through the nuisance abatement procedures of the Broken Arrow Code.

g. Lessee shall provide written notice to Lessor that Lessee intends to use the tower for microwave or any other communications equipment on the Lessor's Tower.

8. **Default.** Any of the following occurrences, conditions or acts shall be deemed a "Default" under this Lease:

a. if Lessee fails to pay amounts due under this Lease within fifteen (15) days of its receipt of written notice that such payments are overdue;

b. if either party fails to observe or perform its obligations under this Lease and does not cure such failure within thirty (30) days from its receipt of written notice of breach; or such longer period as may be required to diligently complete a cure commenced within the 30-day period.

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

a. by either party upon thirty (30) days written notice in the event of a Default (as defined above) after the applicable cure periods;

b. upon ninety (90) days written notice by Lessee if Lessee is unable to obtain, maintain, or otherwise forfeits or cancels any license, permit or Governmental Approval necessary to the construction and/or operation of the Antenna Facilities or Lessee's business;

c. upon ninety (90) days written notice by Lessee if the Premises are or become unacceptable under Lessee's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong;

d. immediately upon written notice if the Premises or the Antenna Facilities are destroyed or damaged so as in Lessee'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 Lessee shall be entitled to the reimbursements of any Rent prepaid by Lessee. If Lessee elects to continue this Lease, then all Rent shall abate until the Premises and/or Antenna Facilities are restored to the condition existing immediately prior to such damage or destruction;

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 Lessee's determination to render the Premises unsuitable for Lessee's use. Lessor and Lessee shall each be entitled to pursue their own separate awards with respect to such taking. Sale of all or part of the Premises to a purchaser with

power of eminent domain in the fact of the exercise of the power shall be treated as a taking by condemnation.

f. Lessee shall have the right to terminate this Lease without cause by giving written notice to Lessor and paying Lessor the amount of Five Thousand Dollars (\$5,000.00) at the time of termination as liquidated damages.

10. **Taxes.** Lessee shall pay any personal property taxes assessed on or any portion of such taxes attributable to, the Antenna Facilities. Lessor shall pay, when due, all real property taxes and all other fees and assessments attributable to the Premises. However, Lessee shall pay, as additional Rent, any increase in real property taxes levied against the Premises (excluding any additional taxes that relate to the period prior to the Commencement Date) which is directly attributable to Lessee's use of the Premises, and Lessor agrees to furnish proof of such increase to Lessee.

11. **Insurance and Subrogation.**

a. Lessee will provide Commercial General Liability Insurance in an aggregate amount of \$1,000,000.00 and name Lessor as an additional insured on the policy or policies. Lessee may satisfy this requirement by obtaining an appropriate endorsement to any master policy of liability insurance Lessee may maintain.

b. Lessee hereby releases Lessor from liability and waives all right of recovery against Lessor for any loss or damage covered by Lessee's first party property insurance policies for all perils insured hereunder. In the event of such insured loss, Lessee's insurance company shall not have a subrogated claim against Lessor.

c. Lessee shall not commence construction of Antenna Facilities until each of its contractors and subcontractors obtain insurance in no less than or in terms no more restrictive than the following: General Liability Insurance covering all premises and activities. The applicable limit of liability shall not be less than One Million Dollars (\$1,000,000.00) per occurrence, One Million Dollars (\$1,000,000.00) annual aggregate; Worker's Compensation Insurance Coverage in compliance with the Worker's Compensation Laws of the State of Oklahoma; and Comprehensive Automobile Liability Insurance applicable to all owned, hired and non-owned vehicles in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.

d. Lessee shall provide a copy of the Certificates of Insurance to the Lessor's Safety and Risk Manager prior to commencing construction of Antenna Facilities and shall submit a copy of the yearly renewals of such Certificates of Insurance.

12. **Hold Harmless.**

a. Lessee agrees to indemnify, defend and hold Lessor harmless from and against injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorney's fees and court costs) arising from the installation, use, maintenance, repair or removal of the Antenna Facilities or the breach of this Lease.

b. Lessor shall be liable to Lessee against any and all injury, loss, damage or liability (or any claims in respect to the foregoing), costs or expenses (including reasonable attorney's fees and court costs) arising from any act, omission or negligence of Lessor or its employees or agents, occurring in or about the Property or Premises, or the breach of this Lease, except to the extent attributable to the negligent or intentional acts or omission of Lessee, its employees, agents or independent contractors and only to the extent allowed or limited by law under the Governmental Tort Claims Act, Title 51 O.S. 2001 § 151, *et seq.*

13. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to Lessor, to:

City of Broken Arrow
City Manager
220 South First Street
Broken Arrow, Oklahoma 74012

If to Lessee, to:

T-Mobile USA, Inc.
12920 SE 38th St.
Bellevue, WA 98006
Attn: PCS Lease Administrator
With a Copy to: Attn: Legal Department

With a Copy to:

T-Mobile Central LLC
4533 Enterprise Drive
Oklahoma City, OK 73128
Attn: Lease Administrator

14. **Quiet Enjoyment, Title and Authority.**

a. Lessor covenants and warrants to Lessee that Lessor has full right, power and authority to execute this Lease; it has good and unencumbered title to the Property free and clear of any liens or mortgages, except those disclosed to Lessee that will not interfere with Lessee's rights to or use of the Premises; and 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 Lessor.

b. Lessor covenants that at all times during the term of this Lease, Lessee's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Lessee is not in Default beyond any applicable grace or cure period.

c. If Premises are encumbered by a deed of trust, mortgage or other security interest, Lessor will use its best efforts to provide promptly to Lessee a non-disturbance agreement, duly executed by the holder of such security interest. No foreclosure of any such deed of trust, mortgage or other security contract, or deed granted in lieu thereof, shall result in a termination of this Lease or Lessee's rights granted herein.

15. **Environmental Laws.**

a. Lessee represents, warrants and agrees that it will conduct its activities on the Property in compliance with all applicable Environmental Laws. Lessor represents, warrants and agrees that 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 substance as of the Execution Date of this Lease.

b. Lessor shall be responsible for, and shall promptly conduct any investigation and remediation as required by any Environmental Laws or common law, of all spills or other releases of hazardous substances, not caused solely by Lessee, which have occurred or which may occur on the Property.

c. Lessee agrees to defend, indemnify and hold Lessor harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney's fees that Lessor may suffer due to the existence or discovery of any hazardous substances on the Property or the migration of any hazardous substances to other properties or released into the environment arising solely from Lessee's activities on the Property.

d. Lessor agrees that it will assume any and all liability regarding any and all claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney's fees that Lessee may suffer due to the existence or discovery of any Hazardous Substance on the Property or the migration of any hazardous substance to other properties or discharges into the environment, which relate to or arise solely from Lessor's activities during this Lease, except for any claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and attorney's fees attributable to Lessee's, its employee's, agent's or independent contractor's activities on the Property. This assumption of liability is limited to the extent provided in the Oklahoma Governmental Tort Claims Act, Title 51 O.S. 2001 § 151, *et seq.* or any other federal or state laws.

e. The indemnification in section c. above specifically includes costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority.

16. **Assignment and Subleasing.**

a. Lessee may assign this Lease to any person controlling, controlled by, or under common control with Lessee, or any person or entity that, after first receiving FCC or state regulatory agency approvals, acquires Lessee's radio communications business and assumes all obligations of Lessee under this Lease. Upon such assignment, Lessee shall be relieved of all liabilities and obligations hereunder and Lessor shall look solely to the assignee for performance under this Lease and all obligations hereunder. Lessee may sublet this Lease, upon notice to Lessor, only if such sublease is subject to the provisions of this Lease. However, all sublessees shall be required to negotiate directly with Lessor regarding the leasing of ground space. The subleased ground space shall be located outside the Premises herein and all rental payments for

such ground space leased from Lessor shall be paid directly to Lessor. Lessor retains the right to approve all other assignments of this Lease, which approval will not be unreasonably withheld or delayed.

b. Additionally, Lessee may, upon notice to Lessor, mortgage or grant a security interest in this Lease and the Antenna Facilities, and may assign this Lease and the Antenna Facilities to any such Mortgagees or holders of security interests including their successors or assigns (hereinafter collectively referred to as "**Mortgagees**"), provided such Mortgagees agree to be bound by the terms and provisions of this Lease. In such event, Lessor shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. Lessor agrees to notify Lessee and Lessee's Mortgagees simultaneously of any default by Lessee and to give Mortgagees the same right to cure any default as Lessee except that the cure period for any Mortgagee shall not be less than ten (10) days after receipt of the Default notice.

17. **Successors and Assigns.** This Lease shall run with the Property, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

18. **Waiver of Lessor's Lien.** Lessor 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, regardless of whether or not same is deemed real or personal property under applicable laws, and Lessor gives Lessee the right to remove all or any portion of same from time to time in Lessee's sole discretion and without Lessor's consent.

19. **Confidentiality.**

a. Pursuant to this Lease, Lessor will receive Lessee's confidential materials. Such Lessee's Confidential Materials (hereinafter defined) may be of a non-public, confidential or proprietary nature and this paragraph 19 pertains to maintaining the confidentiality of such information and materials. The phrase "Lessee's Confidential Materials" shall include all information and materials furnished by Lessee or its officers, directors, employees, agents or attorneys in connection with this Lease, whether furnished before or after the date hereof, and regardless of the manner in which such information or materials are obtained by or delivered to Lessor.

b. Lessor agrees that Lessee's Confidential Materials shall be kept strictly confidential by Lessor and its officers, directors, employees, agents, consultants, accountants, attorneys and any other party in any way related to Lessor. Lessor further agrees that Lessee's Confidential Materials are being delivered to Lessor solely for the purposes set forth in this Lease.

c. Lessor hereby acknowledges that it is aware that money damages may not be a sufficient remedy for a violation or threatened violation of this paragraph 19 and that Lessee may be entitled to specific performance or other equitable relief for any such violation or threatened violation. Lessor shall be responsible for any violation or threatened violation of this provision by

any of its representatives or by or through any other party receiving Lessee's Confidential Materials from or through Lessor.

d. All agreements contained in Section 19. Confidentiality, paragraphs a, b, and c, are subject to Title 510. S. 2001 § 24A.1, *et seq.*

20. **Rights upon sale.** Should Lessor, at any time during the term of this Lease, decide to sell all or any part of the Property to a purchaser other than Lessee, such sale shall be under and subject to this Lease and Lessee's rights hereunder, and any sale by Lessor of the portion of this Property underlying the right-of-way herein granted shall be under and subject to the right of Lessee in and to such right-of-way.

21. **Miscellaneous.**

a. The substantially 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 thirty (30) 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 that are not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

d. If either party is represented by a real estate broker in this transaction, that party shall be fully responsible for any fee due such broker, and shall hold the other party harmless from any claims for commission by such broker.

e. Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease in the form attached hereto as **Exhibit D**) necessary to protect its rights or use of the Premises. Either party may record the Memorandum of Lease in place of this Lease.

f. This Lease shall be construed in accordance with the laws of the State of Oklahoma. Exclusive original jurisdiction for any action relating to this Lease shall be solely in the United States District Court for the Northern District of Oklahoma or in the District Court of Tulsa County, where the Property is located.

g. The provisions of this Lease are severable and if, for any reason, any one or more of the provisions contained in the Lease shall be held invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision of this Lease and this Lease shall remain in effect and be construed as if the invalid, illegal or unenforceable provision had never been contained in the Lease.

h. Neither party shall be held responsible for any delay or failure in performance under this Lease to the extent that such delay or failure is caused by circumstances beyond the control of such party, including without limitation, acts of God, fire, flood, explosion, war, acts or

omissions or carriers or other similar conditions. If a Force Majeure condition occurs, the party whose performance is affected shall notify the other party immediately and shall resume performance as soon as reasonably possible.

i. The captions in this Lease are for reference only and shall not limit the meaning of the provisions of this Lease. The exhibits referred to herein and attached to this Lease are incorporated into this Lease and made a part hereof.

[Signature Page to Follow]

IN WITNESS WHEREOF, said parties have caused this Lease to be duly executed as of the date first above written.

Approved as to Form:

April D. Parnell
Assistant City Attorney

City of Broken Arrow,
an Oklahoma municipal corporation

By James Twombly
Printed Name: James Twombly
City Manager

Date: August 7, 2006

Attested:

Diana C. Laguarda
City Clerk [Seal]



Tax I.D. Number 73-6005109

T-Mobile Central LLC
a Delaware Limited Liability Company

By Steve Thornhill
Printed Name: Steve Thornhill
Its: General Manager

Date: JUL 17 2006

VERIFICATION

State of Oklahoma)
) ss.
County of Oklahoma)

The foregoing instrument was acknowledged before me this 17 day of July, 2006, by Steve Thornhill, on behalf of said **Limited Liability Company**. He is personally known to me.



[Signature]
(OFFICIAL NOTARY SIGNATURE)
NOTARY PUBLIC—STATE OF Oklahoma

My commission expires:

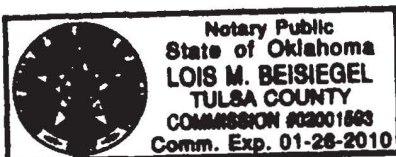
My Commission Expires Feb. 19, 2009

George Wyrick
(PRINTED, TYPED OR STAMPED NAME OF NOTARY)

State of OK)
) ss.
County of TULSA)

The foregoing instrument was acknowledged before me this 7 day of August, 2006, by Dan Wacker, on behalf of said Municipal Corporation. He is personally known to me.

(AFFIX NOTARIAL SEAL)



[Signature]
(OFFICIAL NOTARY SIGNATURE)
NOTARY PUBLIC—STATE OF OKLAHOMA

My commission expires:

(PRINTED, TYPED OR STAMPED NAME OF NOTARY)