

**LEASE AGREEMENT BETWEEN THE CITY OF NAPERVILLE
T-MOBILE CENTRAL LLC, A DELAWARE LIMITED LIABILITY COMPANY.**

THIS LEASE AGREEMENT ("Lease") is entered into as of the date of the last signature on this Lease ("Effective Date"), between the City of Naperville, an Illinois Municipal Corporation, with offices at 400 South Eagle Street, Naperville, Illinois 60566 (hereinafter referred to as the "City") and T-Mobile Central LLC, a Delaware, limited liability company, registered to do business in the State of Illinois, with offices at 12920 SE 38th Street, Bellevue, WA 98006 (hereinafter referred to as the "Tenant").

RECITALS

WHEREAS, the City owns property situated at the 1301 Clyde Drive, Naperville, Illinois, which is legally described on Exhibit "A," attached hereto and incorporated herein by reference ("Property"); and

WHEREAS, the Tenant has determined that 1301 Clyde Drive, Naperville, Illinois is a suitable location for an antenna facility providing communications services and has proposed that the City enter into a lease agreement; and

WHEREAS, the parties have determined that it is in their mutual best interest to clarify their rights and responsibilities with respect to the Tenant's lease of space and collocation of its facilities at 1301 Clyde Drive, Naperville, Illinois.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the parties agree that:

DEFINITIONS:

For the purposes of this Lease, the following words and phrases shall have the specified meanings as follows:

ALTERATIONS: Any alteration, additions, installations, substitutes or improvements to the Facilities or Demised Premises, as specified in Section 8 of this Lease.

COMMENCEMENT DATE: The date Tenant begins construction of its Facilities on the Tower.

DEMISED PREMISES: The exclusive use and occupancy of the vertical space between the approximate heights of one hundred eighty-five (185') and one hundred seventy-five feet (175') on the tower (as more particularly described on **Exhibit A** attached hereto and incorporated herein by reference). The exclusive use and occupancy of an area within the Shelter, which is to be constructed, which area consists of approximately 268 square feet within such Shelter,

adjacent to the base of the Tower (as more particularly described on **Exhibit B** attached hereto and incorporated herein by reference), all as specified in Section 2.0 of this Lease.

FACILITIES:	The Tenant's facilities, including (without limitation) up to three (3) equipment cabinets; up to twelve (12) radios; and up to twelve (12) antennas; associated cabling, fixtures and equipment; and other personal property, which shall be maintained and repaired by the Tenant at its sole expense, all as specified in Section 7.0 of this Lease.
INITIAL TERM:	The first five (5) years of the Lease commencing on the Commencement Date.
RENEWAL TERM:	One of the four (4) 5-year Renewal Terms.
LEASE:	All of the terms, provisions, and exhibits contained within or attached to this Lease.
CITY:	The City of Naperville, an Illinois Municipal Corporation.
RENT ABATEMENT:	Fifty percent (50%) of Tenant's actual expenses to purchase the component parts and build the Tower. \$1,500 of the monthly Rent will be abated each month until Tenant recoups that cost.
SHELTER:	An approximately 1,140 square foot equipment shelter to be designed, permitted and built by Tenant and owned and operated by the City of Naperville for Tenant and two (2) future tenants.
SHELTER REIMBURSEMENT:	Any future Tenant who leases space in the Shelter will pay Tenant for one third (1/3) of the costs to design and build.
TENANT:	T-Mobile Central LLC, a Delaware, limited liability company
TOWER:	The approximately one hundred one hundred and ninety two foot (192') Tower to be situated at the 1301 Clyde Drive Naperville, Illinois, to be installed by Tenant and owned and operated by the City of Naperville.

WORK: Any design, construction, installation, testing, operation, maintenance, repairs, replacement or alterations undertaken by the Tenant related to the Facilities on the Demised Premises, as specified in Section 7.0 of this Lease.

1.0 RECITALS INCORPORATED. The foregoing recitals are substantive and are hereby incorporated by reference in this Section 1.0 as though fully set forth.

2.0 LEASED PROPERTY.

2.1 The City shall lease to the Tenant the Demised Premises, together with ingress and egress thereto, which Demised Premises shall be defined to include:

- 2.1.a The exclusive use and occupancy of the vertical space between the approximate heights of one hundred eighty-five (185') and one hundred seventy-five feet (175') on the Tower to be installed by Tenant pursuant to the terms set forth herein at 1301 Clyde Drive, Naperville, Illinois.
- 2.1.b The exclusive use and occupancy of an area within a Shelter that is to be constructed by Tenant pursuant to the terms set forth herein, which area consists of approximately 268 square feet, adjacent to the base of the Tower. Said area is described and depicted as "Equipment Area" on Exhibit "B," which is attached hereto and incorporated herein by reference.
- 2.1.c This grant shall include the right to run transmission and power cables between the Tenant's transmitting and receiving equipment in the Shelter and antennae located on the Tower.
- 2.1.d This grant shall include all necessary access to the appropriate source of electric, telephone and other utilities, in the discretion of Tenant.

2.2 The Demised Premises are and shall remain the City's sole property, and the Tenant shall have only the privilege of use of the part thereof provided in this Lease.

2.3 The Tenant agrees to use the Demised Premises only for lawful mobile telecommunications purposes and related site preparation, improvements and maintenance purposes in accordance with all applicable federal, state, or local rules and regulations.

3.0 TERM OF LEASE.

3.1 The Initial Term of this Lease shall be five (5) years commencing on the Commencement Date, provided the Tenant is not then in default under this Lease beyond any period allowed hereby for cure.

3.2 The term of this Lease shall also be subject to the provisions of Section 13 hereof.

3.3 At the end of the Initial Term, provided the Tenant is not then in default under this Lease beyond any period allowed hereby for cure, this Lease shall automatically renew for up to four (4) additional five (5) year periods, each five(5) year period is a Renewal Term, provided, however, that Tenant may elect not to renew by providing notice of such election prior to the expiration of the then current Initial Term or Renewal Term.

4.0 RENT.

4.1 All rent payments pursuant to this Lease shall be payable in advance.

4.2 Beginning on the Commencement Date, and on the fifth day of every month thereafter, the Tenant shall pay to the City as rent for the Demised Premises, the sum of Four Thousand Two Hundred and zero/100 Dollars (\$4,200.00) per month ("Rent"), for the entire Initial Term. Notwithstanding the foregoing, the first payment of Rent will be due within thirty (30) days following the Commencement Date.

4.2a Rent for any portion of a month at the beginning or at the end of the Initial Term or Renewal Term shall be prorated.

4.2b Remittances for Rent should be directed to the City's Finance Director, or by electronic payment. City agrees to make reasonable efforts to accept electronic payment of rent and the provision of any associated documentation.

4.3.c The Rent due for each Renewal Term shall be increased on the first day of each Renewal Term by fifteen percent (15%) of the monthly installment of Rent payable during the previous Initial Term or Renewal Term.

5.0 TOWER CONSTRUCTION; RENT ABATEMENT.

5.1 Tenant agrees to design, permit, construct and install the Tower pursuant to the construction plans approved by City and attached hereto as Exhibit B. Promptly following installation, Tenant shall transfer the Tower to the City pursuant to a bill of sale substantially in the form attached hereto as Exhibit C, which shall convey the Tower to the City. As additional consideration for the conveyance of the Tower to City, the City agrees to abate the Rent in the amount of One Thousand Five Hundred and zero/100 Dollars (\$1,500.00) per month until fifty percent (50%) of the Actual Tower Expenses are recouped. The "Actual Tower Expenses" are defined as the actual costs and expenses incurred by Tenant to construct and install the Tower. As of the Effective Date of this Lease, the estimated Tower expenses to construct and install the Tower are Two Hundred and Ten thousand zero/100 Dollars (\$210,000.00) ("Estimated Tower Expenses"). Once the Tower is constructed, Tenant shall provide City with an invoice describing the total, Actual Tower Expenses, which may be more or less than the Estimated Tower Expenses. Once fifty percent (50%) of the Actual Tower Expenses are recouped by Tenant through Rent abatement, the Rent

abatement will cease, and Rent will continue at the rate as described in sections 3 and 4 herein.

6.0 SHELTER REIMBURSEMENT

6.1 Tenant agrees to design, permit, construct and install a multicarrier shelter pursuant to the construction plans approved by City and shown in Exhibit B ("Shelter"). Promptly following installation, Tenant shall deed the Shelter to the City pursuant to a bill of sale substantially in the form attached hereto as Exhibit D. As additional consideration for the conveyance of the Shelter to City, if the City leases any space inside the Shelter to a third-party lessee, the City agrees to require such lessee to , pay Tenant a one-time fee equal to thirty-three percent (33%) for its one third (1/3) share in the total actual costs and expenses, permit, construct and install the Shelter ("Actual Shelter Expenses") prior to commencing use of the Shelter. Tenant will provide a detailed cost breakdown to the City of the Actual Shelter Expenses following installation of the Shelter. A check for such share of Actual Shelter Expenses by such third-party lessee of the Shelter space will be mailed to Tenant at the address listed in section 26 herein within sixty (60) days of installation of equipment by such user.

7.0 TENANT'S FACILITIES.

7.1 The City shall, at all times during the term of this Lease or any extension or renewal thereof, be the sole and exclusive owner of the Demised Premises including the real property upon which the Shelter is situated and the Tower, subject to Tenant's lease rights set forth herein.

7.2 Except as otherwise provided in this Lease, the Facilities shall consist of (without limitation) up to three (3) equipment cabinets; up to twelve (12) radios; and twelve (12) antennas; associated cabling, fixtures and equipment; and other personal property, which shall be maintained and repaired by the Tenant at its sole expense.

7.3 The Tenant may remove its Facilities in accordance with the provisions of Section 20 of this Lease.

8.0 ANY WORK ON THE DEMISED PREMISES.

8.1 Following the construction of the Tower and Shelter, Tenant may install the Facilities in the Shelter and on the Tower as described in Exhibit B.

8.2 Following the initial installation of the Facilities on the Tower described on Exhibit B, in the event Tenant desires to perform modification Work to its Facilities on the Tower that will increase Tower loading, then at its sole cost and expense, the Tenant shall provide to the City an evaluation of the effect of the proposed modification Work on the structural integrity of the Tower.

8.2.a Such evaluation shall be conducted by an individual or company reasonably acceptable to the City.

8.2.b If the evaluation determines that the Tenant's modification Work would cause the structural integrity of the Tower to fail or otherwise have a deleterious effect on the Tower, then Tenant will not be allowed to perform the proposed Work. Tenant may thereafter revise the proposed modification Work or terminate the Lease on sixty (60) days written notice to City. Termination of the Lease will result in waiver of any unrealized shelter reimbursement in section 6 and any rental abatement in section 5 to the extent that Tenant has not recouped fifty percent (50%) of the Actual Tower Expenses on the termination date.

8.3 At its sole cost and expense and upon City's request, the Tenant shall also provide in writing to the City, and RF MPE compliance analysis which will contain frequency information for each of its antennas, the Effective Radiated Power (ERP) for each antenna, and the area around each antenna which is considered unsafe for personnel to be nearby.

8.4 Following the installation of the Facilities on the Tower described on Exhibit B, before any future Work relating to Tenant's installation on the Tower begins, the Tenant shall submit a complete set of Tenant's plans for construction on the Tower to the City for review and approval, such approval not to be unreasonably withheld, conditioned or delayed, and pay such reasonable fees and costs associated with reviewing said plans as the City may require..

8.4.a The City shall review such plans within its normal timeframe for reviewing such plans;

8.4.b Prior to the receipt of a permit, , the Tenant shall not begin any Work on its antennae and support systems anywhere on the Tower.

8.4.c Notwithstanding the foregoing, Tenant reserves any and all rights and remedies available under Sec. 6409(a) of the Spectrum Act of 2012.

8.5 The Tenant shall be solely responsible for the expenses and quality of the Work and shall comply with all code requirements and regulations of governmental agencies having jurisdiction over the Work including, but not limited to, regulations effecting the construction of public buildings and service areas used by public employees, FCC rules and regulations, and the "Radio Frequency Protection Guides" published by the American National Standards Institute. The Tenant shall remedy or correct any deficiencies with such compliance.

8.6 The Tenant shall, at its sole cost and expense, secure any other permits required for any Work on the Demised Premises, and all work shall be conducted by authorized and licensed personnel and performed in compliance with local and state requirements for construction activities upon public property. In conjunction with the construction of the Tower and Shelter, the Tenant shall be required to submit a Petition for Development Approval to the City requesting approval of (1) a conditional use to permit a private utility facility in the R1A (Low Density Single-Family Residence) District pursuant to Section 6-6A-3 (R1A District: Conditional Uses) and Section 6-13-10:5 (Regulations for Wireless Communications Facilities: Conditional Uses), (2) a variance to reduce the

required setback pursuant to Section 6-13-10:5 (Regulations for Wireless Communications Facilities: Setbacks), and (3) a variance to increase the permitted height pursuant to 6-13-10:5.1.1 (Regulations for Wireless Communications Facilities: Conditional Uses) (together known as the “1301 Clyde Entitlements”). Approval of the 1301 Clyde Entitlements is subject to review and approval by the City Council. In conjunction with the Petition for Development Approval, the Tenant shall also be required to submit final engineering plans for review and approval by the City staff. Upon approval of the 1301 Clyde Entitlements, the final engineering plans, and provision of surety in a form approved by the City attorney, a site construction permit will be issued to the Tenant. If Tenant is unable to obtain such permits identified as (1) to (3) above, Tenant may terminate this Agreement, without further liability, on written notice to City.

8.7 Notwithstanding any other provisions of this Lease, Tenant shall not make any alteration, additions, installations, substitutes or improvements (hereinafter collectively referred to as “Alterations”) to the Facilities on the Tower before the City has approved Alterations pursuant to subsections 8.2, 8.3, and 8.4 above, except in cases of emergency where like equipment is being replaced by like-kind, like-for-less or similar equipment with notice being given to City. Tenant may perform modifications to the Facilities located in the Shelter at any time so long as such modifications do not exceed the leased space within such Shelter.

8.8 All Work shall be completed in a “first class” workmanlike manner, by contractors approved by the City, such approval not to be unreasonably withheld, conditioned or delayed, according to plans and specifications previously approved by the City.

8.9 All Work shall be done in compliance with all applicable laws, regulations and rules of any government agency with jurisdiction, and with all regulations of the Board of Fire Underwriters, Factory Mutual Engineering, or any other similar insurance body or bodies.

8.10 Tenant shall be solely responsible for the effect of any of its Work on the Tower’s structure or systems, notwithstanding that City has consented to the Work.

8.11 Tenant shall repair any damage by reason of faulty Work or damage to the Tower caused by Tenant or its contractors. Tenant shall have thirty (30) days to repair such damage following written notice or telephonic notice. In the event City provides telephonic notice, such telephonic notice shall be promptly followed up with written notice. If emergency repairs or maintenance are required as a result of the faulty Work or damage resulting in the risk of immediate harm, then repair work may be performed after the City provides notice to Tenant’s network operations center by contacting them at 877-611-5868 and noctransportvendormaintenance@t-mobile.com and costs for emergency repairs or maintenance will be charged back to Tenant. Immediately following performance of repairs or maintenance by City, City must notify Tenant by written notice, describing the actions taken by City due to the emergency.

8.12 Upon completion of any Work, Tenant shall provide City with a complete set of “as built” plans within sixty (60) days.

8.13 All Work shall proceed with minimum interference or disruption to the City's current operation of the Tower facilities or its concurrent use by the City or other tenants.

8.14 After any Work is completed, if Tenant damaged the Demised Premises during such Work, Tenant shall, at its own expense, make all repairs necessary as required, restoring the remainder of the Demised Premises and the surrounding areas to the condition which existed prior to the Tenant's Work.

8.15 Tenant shall keep the Demised Premises and its interest therein free of any liens or claims of liens and shall discharge any such liens within thirty (30) days after receipt of written notice of their filling.

8.16 As a condition of issuance of any permit, the Tenant or its agents or contractors shall provide any payment, performance and lien indemnity bond required by City.

8.17 To the fullest extent permitted by law, Tenant shall indemnify, defend and hold City harmless from and against any and all liens or claim for liens for material or labor by reason of any work done or material furnished by or to Tenant in connection with any Work undertaken at any time by Tenant in or upon the Tower or Shelter.

9.0 FACILITIES OPERATION AND MAINTENANCE.

9.1 After twenty-one (21) calendar days' written notice to the City, the Tenant may from time to time replace any of its Facilities with new or different items with the same or different specifications so long as such installation causes no "interference" as that term is defined in Section 11 hereof, and complies with Section 8 of this Lease, all applicable laws, ordinances, and codes. The Tenant will bear the cost of any electric service upgrades required to serve the new or different items.

9.2 The Tenant may, at its sole cost and expense, connect to the existing electrical service provided by the City at the property.

9.3 City confirms that electrical service is available for Tenant's immediate connection at the site of the Demised Premises. The City does not guarantee the service is of adequate size or voltage class to serve the Tenant's needs.

9.4 The Tenant shall pay for the electricity it uses in its operation at the rates adopted by the City or the servicing utility for similar customers.

9.5 The City shall, at its sole expense, maintain and repair the Tower and Shelter in good, safe, and habitable condition. The Tenant shall, at its sole cost and expense, repair any damage to the Tower and Shelter which results from the Tenant's or its agents' acts.

9.6 If either party in any way disturbs, interrupts or interferes with the utility service of the other party or any of the other occupants of the City's Tower or Shelter, the party causing the interference shall, upon receipt of written notice and at its sole expense, promptly provide for complete repair and restoration of the utility service.

9.7 The City shall use its best efforts to secure the Demised Premises from access by unauthorized persons but shall have no responsibility for the safety or security of the Tenant's property on the Demised Premises.

10.0 ACCESS.

10.1 The Tenant shall have unrestricted twenty-four (24) hour, seven (7) days a week access to the Demised Premises, in accordance with the City's established practices, for the purpose of routine or emergency maintenance and repairs of its installation. The Tenant shall provide the City with a list of any maintenance agencies whose personnel have authorized access to the Demised Premises.

10.2 The Tenant shall notify the City concerning major or extensive maintenance or repair of the Facilities on the Tower or in the Shelter.

10.3 Such notice shall be received by the City at least seven (7) days before the Tenant begins any major or extensive maintenance or repair work to its Facilities on the Tower except in an emergency, in which case, Tenant shall provide as much advance notice as reasonable under the circumstances.

10.4 The parties shall cooperate to determine a mutually convenient schedule for major or extensive maintenance or repairs to any Facilities on the Tower or Shelter.

11.0 NONINTERFERENCE.

11.1 The Tenant shall have the exclusive use and occupancy of the vertical space between the approximate heights of one hundred eighty-five (185') and one hundred seventy five feet (175') on the Tower.

11.2 If the City proposes to grant additional licenses or leases of space on the Tower for any purpose, and an intermodulation study determines the proposed use to be incompatible with the Tenant's activity, the City shall not grant such additional licenses or leases during the term of this Lease.

11.3 The Tenant's interest shall be paramount to any interest acquired by any subsequent user of the Tower, and the City shall require any subsequent user of the Tower to abate any objectionable interference, as that term is defined in subsection 11.5 hereof, for which the subsequent user may be responsible. Tenant shall have the right to exercise all legal and equitable rights and remedies to end the interference, including the right to terminate this Lease.

11.4 Subject to 11.3 above, neither party to this Lease shall erect or allow to be erected on the Shelter or Tower any structure which will constitute an objectionable interference with the proper operation of the equipment of any of the occupants of the Shelter or Tower.

11.5 An objectionable interference shall exist if:

- 11.5.a An authorized representative of the Federal Communications Commission makes that determination; or
- 11.5.b Any of the occupants of the Tower reasonably determine that a condition exists which constitutes a broadcast interference within the meaning of the recommended practices of the Electronics Industries Association (EIA) and the rules and regulations of the FCC then in effect.

11.6 If, at any time, any of the conditions described in Subsections 11.5.a or 11.5.b exist, the party causing the interference shall:

- 11.6.a Immediately discontinue the interfering activity (subject to intermittent testing to confirm the interference is resolved) or immediately repair any malfunctioning equipment; and
- 11.6.b Make every reasonable effort to either correct the interfering aspect of the new activity or malfunction of an existing activity, or remove or cause it to be removed from the Property.

12.0 HAZARDOUS SUBSTANCES.

12.1 If any change in the law requires permits or licenses for Tenant's permitted uses, then Tenant shall notify City immediately, obtain such permit or license within such time limits allowed by law, and provide City with copies of such permits or licenses within five (5) days of receipt thereof.

12.2 The Tenant shall not use, generate, store or dispose of any Hazardous Material on, under, about or within the Demised Premises or anywhere on the City's property in violation of or as would give rise to liability under any law or regulation.

12.3 The City represents and warrants that to the best of its knowledge, neither the City nor any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Demised Premises in violation of any law or regulation.

12.4 The City shall not, and shall not permit any third party to use, generate, store or dispose of any Hazardous Material on, under, about or within the Demised Premises in violation of any law or regulation.

12.5 As used in this paragraph, "Hazardous Material" shall mean any waste, material, substance or mixture of materials or substances which are toxic, flammable, corrosive, explosive, carcinogenic or radioactive including, but not limited to, any substance or material which is designated a hazardous material pursuant to the "Hazardous Materials Transportation Act" (49 U.S.C.A., sections 1801 *et seq.*) in a quantity and form which may pose a substantial present or potential hazard to human

health, property or the environment when improperly released, treated, stored, transported, disposed of, or otherwise managed.

13.0 BINDING EFFECT OF LEASE.

13.1 This Lease shall be a covenant running with the land, and shall be binding upon all successors in ownership interest, or other assigns, grantees and trustees of whatever nature.

13.2 Should any of the provisions under this Lease be incompatible with the terms of any subsequent lease including or affecting the Demised Premises, the terms and provisions of this Lease shall control.

13.3 Either party hereto may record a memorandum of this Lease with the DuPage County Recorder of Deeds.

14.0 INSURANCE.

14.1 At all times during the effective period of this Lease or any extension thereof, the Tenant shall procure and maintain in full force and effect insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Tenant's operation and use of the Demised Premises. The cost of such insurance shall be borne by the Tenant.

14.2 Said required insurance policies shall be maintained in following Minimum Limits:

14.2.a Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$3,000,000 per occurrence and \$6,000,000 general aggregate.

14.2.b Commercial Automobile Liability: Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than \$1,000,000 per accident for bodily injury and property damage.

Workers' Compensation and Employer's Liability as required by the State of Illinois with statutory limits

14.2.c Tenant may use excess liability coverage to meet insurance limits.

14.3 Said required policies shall include the following Special Endorsements:

- 14.3.a City shall be included as an additional insured on all commercial general and commercial automobile liability policies including umbrella or excess policies. Such insurance shall be primary as to Tenant's Facilities and Tenant's own actions or misdeeds.
- 14.3.b City shall be given thirty (30) days' prior written notice in the event of any cancellation of any of the insurance policies, in whole in part, or if adverse, policy coverages or limits are changed. Notice shall be given to City at the email address provided herein.
- 14.3c Waiver of Subrogation: To the extent allowed by law the Commercial General Liability Insurance and Commercial Automobile Liability Insurance will be endorsed to include a waiver of subrogation in favor of the City.

14.4 All insurance policies required hereunder shall be issued by companies authorized to do business in the state of Illinois that hold a current Policy holder Alphabetic Category Rating of not less than "A" and Financial Size Category Rating of not less than "VIII" according to the latest edition of Best's Key Rating Guide.

14.5 Tenant shall provide City with a Certificate of Insurance evidencing compliance with this Section.

15.0 TENANT'S USE OF THE DEMISED PREMISES - INCREASED RISKS TO CITY.

15.1 The Tenant shall not use or permit the Demised Premises to be used in any manner which would render the City's insurance thereon void or the insurance risks to be more hazardous.

15.2 If the Tenant's use of the Demised Premises does make the insurance risks more hazardous, then without prejudice to any other remedy the City may have for such a breach of this Lease, Tenant shall pay to City on demand and reasonable proof, the amount by which City's insurance premiums are increased as a result of such use.

15.3 Tenant shall not use or occupy the Demised Premises or permit the Demised Premises to be used or occupied contrary to any statute, rule, order, ordinance, requirement or regulation applicable thereto, or in any manner which would cause structural injury to the Tower or would constitute a public or private nuisance or waste.

16.0 ASSIGNMENT

16.1 Tenant shall have the right to assign, sublease or otherwise transfer this Lease without City consent to any person or business entity which is a parent, subsidiary or affiliate of Tenant, controls or is controlled by or under common control with Tenant, is merged or consolidated with Tenant or purchases more than fifty percent (50%) of either

ownership interest in Tenant or the assets of Tenant in the “Metropolitan Trading Area” or “Basic Trading Area” (as those terms are defined by the FCC) in which the leased Property is located. Tenant shall provide written notice of Tenant’s assignment of this Lease within thirty (30) days following such assignment. Upon such assignment, Tenant shall be relieved of all liabilities and obligations hereunder and City shall look solely to the assignee for performance under this Lease and all obligations hereunder. Any other assignment, sublease or transfer of this Lease will require the consent of City, such consent not to be unreasonably withheld, conditioned or delayed.

16.2 City may assign this Lease only to a successor owner of the Property upon written notice to Tenant, subject to the assignee assuming all of City’s obligations in this Lease and providing Tenant will written verification of such sale or transfer of the Property. Until Tenant receives required information and documents, Tenant shall not be responsible for any failure to make payments under this Lease and reserves the right to hold payments due under this Lease.

17.0 TENANT’S FINANCING ARRANGEMENTS.

17.1 City hereby waives any lien right it may have concerning the Tenant’s Facilities which are deemed Tenant’s personal property and not fixtures, and Tenant has the right to remove its Facilities at any time subject to the provisions of Section 20 of this Lease.

18.0 DEFAULT; CURE; AND REMEDIES.

18.1 In addition to any other remedies which may be available to the City at law or in equity, upon thirty (30) days’ prior written notice to Tenant, the City may terminate this Lease, and the Tenant’s rights under this Lease if:

- 18.1.a The Tenant shall be in default of the payment of the Rent, and such default shall continue for thirty (30) days after written notice thereof is given to the Tenant by the City; or
- 18.1.b If the Tenant shall default in the performance of any other of the Tenant’s material obligations contained in this Lease and such default shall continue for thirty (30) days after written notice thereof is given to Tenant by the City. If a non-monetary default cannot reasonably be cured within a 30-day period, this Lease may not be terminated if Tenant commences action to cure the default within the 30-day period and proceeds with due diligence to fully cure the default and such cure is completed within 15 days of commencement

18.2 In the event the City shall be in default of the performance of any of its material obligations under this Lease or takes any action in violation of the terms and conditions of this Lease which impairs Tenant’s exercise of its rights under this Lease or Tenant’s use of the Demised Premises in accordance with this Lease, and such default or action shall continue in effect for thirty (30) days after written notice thereof is received

by City, then in addition to any other remedies at law or in equity which may be available to Tenant, upon thirty (30) days' prior written notice to City, the Tenant may terminate this Lease. If a non-monetary default cannot reasonably be cured within a 30-day period, this Lease may not be terminated if City commences action to cure the default within the 30-day period and proceeds with due diligence to fully cure the default.

18.3 Intentionally omitted.

18.4 Intentionally omitted.

19.0 INDEMNIFICATION.

19.1 Except claims arising from City's, its employees', agents' or contractors' intentional misconduct, to the fullest extent permitted by law, Tenant, at its sole expense, shall defend, indemnify and hold harmless City and its officials, officers, agents, employees, invitees, licensees, Tenants, and contractors (with counsel reasonably satisfactory to City) from and against costs, claims, action liability or damages to the extent arising from:

- 19.1.a Tenant's use and occupancy of the Demised Premises or any activity done or permitted by Tenant in, on or about the Demised Premises or any activity done or permitted by Tenant as one of its obligations under this Lease;
- 19.1.b Negligent, tortious, or illegal act or omission of Tenant, its agents, employees, invitees, licensees, or contractors except where caused by the intentional acts or omissions of the City, its employees, agents or contractors.

19.2 City shall not be liable to Tenant or any other person or entity for any damages arising from any action or omission of any other tenant, licensee or tenant of space on the Tower or adjacent to the base of the Tower.

19.3 In no event shall either party be liable for any consequential, special, indirect, or punitive damages or causes of loss, whether arising from breach of strict liability, contract, tort, or otherwise, and regardless of whether or not such party was advised of, or should have known, the possibility of such damages.

20.0 TERMINATION.

20.1 This Lease may be terminated without further liability on thirty (30) days' prior written notice as follows:

- 20.1.a In accordance with the provisions of Section 18 or this Section;

- 20.1.b By Tenant for any reason or for no reason, provided written notice of early termination is delivered no later than thirty (30) days prior to the Commencement Date; or
- 20.1.c By Tenant if it does not obtain or maintain any license, permit or other approval necessary for the construction of the Tower or Shelter or the construction and operation of the Facilities, provided that Tenant shall use commercially reasonable efforts to obtain and maintain said licenses, permits and other necessary approvals; or
- 20.1.d By Tenant if it is unable to occupy and use the Demised Premises due to an action by the FCC, including, without limitation, a “take back” of channels or change in frequencies; or
- 20.1.e By Tenant if it determines that the Demised Premises are not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference, provided that if Tenant terminates this Lease under this subsection 20.1.e. for economic reasons, Tenant shall pay City an amount equal to what Tenant’s Rent would have been according to the terms of Section 4.0 of this Lease for the immediately succeeding eight (8) month period had the Tenant not terminated the Lease.
- 20.1.f Nothing in this Section shall be construed to relieve Tenant of its obligation to remove its Facilities from the Demised Premises in accordance with Section 21 of this Lease.

20.2 Intentionally omitted.

20.3 Within thirty (90) days following the expiration of, or earlier termination of this Lease, subject to this paragraph Section 21 below, the Tenant shall return the Demised Premises to City in as good condition as the Demised Premises are at the time this Lease is executed, reasonable use, the effects of time and casualty loss not caused by Tenant excepted.

20.4 Subject to the provisions of Section 20.3, and Section 21, the Tenant may terminate this Lease for any or no reason upon giving the City thirty (30) days' written notice of its intent to terminate the Lease and vacate the Demised Premises.

20.5 Either party may terminate this Lease upon giving the other party thirty (30) days' notice that the Demised Premises have been destroyed or damaged in such a way as to interfere with or interrupt the Tenant’s wireless communications activities, and the City has elected not to repair or restore the Demised Premises. If necessary to maintain service, Tenant shall have the right to locate a temporary antenna facility, (e.g. a cell-on-wheels) on the Property, including all utilities associated with the use of the temporary

antenna facility. City shall cooperate with the placement of the temporary facility at a mutually acceptable location.

20.6 If the City makes an election pursuant to subsection 20.5 hereof, the Tenant shall have the right to reconstruct the facility or to locate a temporary antenna facility, (e.g. a cell-on-wheels) on the Property, including all utilities associated with the use of the temporary antenna facility at a mutually acceptable location until such time Tenant is able to locate a replacement site off-property, in which case this Lease shall remain in full force and effect. If Tenant elects to reconstruct the facility, City shall continue to own said newly constructed facilities free and clear of any liens or claims. Rent will abate for such a period that Tenant is not commercially operational at the Demised Premises. In the event Tenant installs a temporary facility, Rent will continue to remain due and owing during the operation of any temporary facility by Tenant. If Tenant elects to install a temporary antenna facility, Tenant may thereafter terminate the Lease at any time on thirty (30) days' notice to City.

21.0 REMOVAL OF FACILITIES.

21.1 Intentionally omitted.

21.2 Upon the expiration of this Lease, or its earlier termination or cancellation for *any reason*, before Tenant removes any of the Tenant's Facilities from the Demised Premises for any reason, that party shall provide, to the City, cash or cash equivalent in the amount of Fifteen Thousand and zero/100 Dollars (\$15,000.00) to be held by the City as security to assure that none of the other equipment on the Tower is damaged and that there is no damage to the Demised Premises or the City's adjacent property.

21.3 After the security deposit is delivered to the City, the Tenant shall remove all its remaining Facilities from the Demised Premises.

21.4 The Tenant shall have up to ninety (90) days after the effective date of the expiration, termination, or cancellation within which to remove its Facilities and personal property from the Demised Premises.

21.5 After any removal of the Tenant's Facilities, the Tenant shall, at the direction of the City, restore the Demised Premises to the conditions which existed before the Tenant's use of the property, reasonable wear and tear excepted.

21.6 After the Tenant's Facilities is removed, the City shall inspect the Tower to determine whether any of the other Facilities on the Tower is damaged or whether there is any damage to the Demised Premises or the City's adjacent property. The balance of the deposit shall be returned to the posting party after the City deducts for any damage incurred.

21.7 Any of the Tenant's property that is not removed within ninety (90) days after the termination of this Lease may be removed and stored by the City at the Tenant's sole cost and expense for a period not to exceed an additional ninety (90) days. After that time, the City may dispose of such property.

22.0 EMINENT DOMAIN.

22.1 In the event that the Demised Premises are the subject of a court judgment of eminent domain of some governmental authority which interferes with or permanently interrupts the Tenant's wireless communications activities, the Tenant may either share in any monetary award or judgment to the extent of its leasehold interest or elect to terminate this Lease as of the date of such governmental interference.

22.2 If the Tenant determines to terminate this Lease, it shall give notice of such intent to the City no more than forty-five (45) days following such governmental interference.

23.0 TAXES.

23.1 The City shall take all steps required to maintain the tax-exempt status of the Demised Premises.

23.2 , The City shall notify the DuPage County Supervisor of Assessments of the Tenant's rights and interest created by this Lease within thirty (30) days after the parties' execution of this Lease.

23.3 The Tenant shall be solely responsible for any tax assessment resulting from its leasehold interest in the Demised Premises.

23.4 The City shall immediately forward to the Tenant by certified mail, return receipt requested, at the address listed in Section 26 of this Lease, a copy of any notice of increase in taxes, assessments or other charges received from the local assessor within fifteen (15) days of City's receipt of such assessment, for which Tenant is liable in whole or in part.

23.5 The Tenant shall be solely responsible for and shall timely pay all personal property taxes levied and assessed against it or its personal property.

23.6 The Tenant shall have the right to contest all taxes, assessments, charges, and impositions, and the City agrees to join in such contest, if required by law, and to permit the Tenant to proceed with the contest in the City's name, provided that the expense of the contest is borne by Tenant.

23.7 If the City initiates an action to contest taxes or other items, the Tenant may join in such action provided that Tenant pays its own expenses.

24.0 ACCEPTANCE OF PREMISES BY TENANT.

24.1 The taking of possession of the Demised Premises by the Tenant shall be conclusive evidence against the Tenant that the Demised Premises are in good and satisfactory condition when possession of the same is taken, latent hidden defects excepted.

24.2 Except as provided in this Lease, upon payment by the Tenant of the rental due under this Lease, and upon the observance and performance of all the covenants, terms and conditions on the Tenant's part, the Tenant shall peaceably and quietly hold and enjoy the Demised Premises, the rights, and privileges granted for the term demised without hindrance or interference by the City or any other person and the City shall perform all of its obligations under this Lease.

25.0 WAIVER.

No waiver or any breach of any one or more of the conditions or covenants of this Lease by the City or by the Tenant shall be deemed to imply or constitute a waiver of any succeeding or other breach under this Lease.

26.0 AMENDMENT OR MODIFICATION.

26.1 All prior understandings and Leases between the parties are merged into this Lease, and this Lease may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

26.2 This Lease shall not be binding until executed by both City and the Tenant.

27.0 NOTICES.

27.1 All notices required to be given under the terms of this Lease shall be given by certified or registered mail, return receipt requested, or reliable overnight courier addressed to the parties as follows:

For the City:
City Manager
City of Naperville
Post Office Box 3020
Naperville, IL 60566-7020

with a copy to:

City Attorney
City of Naperville
400 S. Eagle Street
Naperville, IL 60540

For the Tenant:
T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: Lease Compliance/Site ID: CH95363A

27.2 Either party may designate in writing from time-to-time substitute addresses or persons in connection with required notices.

28.0 WARRANTIES.

28.1 City hereby represents and warrants to the Tenant that City has the authority to grant this Lease and rights being provided to Tenant under this Lease. City acknowledges that Tenant is relying upon the foregoing representation in entering into this Lease and in expending money in connection therewith.

28.2 Notwithstanding the foregoing, in the event the use of the Demised Premises is prevented by law, ordinance, government regulation, injunction or court order, Tenant's sole and exclusive remedy shall be limited to the termination of this Lease, and in such event City shall not be liable for any damages incurred by Tenant as a result of the termination of this Lease as to the Demised Premises.

28.3 Tenant hereby represents to City that Tenant has the full right and authority to enter into and perform this Lease and to install, operate and maintain the Facilities.

29.0 SURVIVAL OF TERMS.

The survival of the terms, conditions and provisions of this Lease shall survive expiration of this Lease or its earlier termination or cancellation for any reason.

30.0 CHOICE OF LAW AND VENUE.

30.1 The laws of the state of Illinois shall apply to both the interpretation and performance of the terms of this document.

30.2 In construing this Lease, section headings shall be disregarded.

30.3 In the event that any provisions of this Lease are legally unenforceable, the other provisions shall remain in full force and effect.

30.4 Venue for any action arising out of the terms or conditions of this Lease shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

THE PARTIES TO THIS LEASE by their signatures acknowledge that this Lease was negotiated by both parties, each of whom was represented by counsel; therefore, this Lease shall be construed according to the fair meaning of its terms, and not against either party, and the parties intend to be bound by its terms.

**CITY
CITY OF NAPERVILLE**

**TENANT
T-MOBILE CENTRAL LLC**

By: _____
Doug Krieger
City Manager
Date:

By: _____
Name:
Title:
Date:

Attest
By: _____
Dawn Portner
City Clerk

EXHIBIT A
DESCRIPTION OF PROPERTY

This exhibit is attached to and incorporated into that certain Lease dated as of the date of the last signature to the Lease by and between **T-Mobile Central LLC**, a Delaware limited liability company as Tenant, and **THE CITY OF NAPERVILLE**, an Illinois municipal corporation, as City, and references the location and/or legal description of the property subject to the Lease.

All of that real property situated in the City of Naperville County of DuPage State of Illinois described as follows:

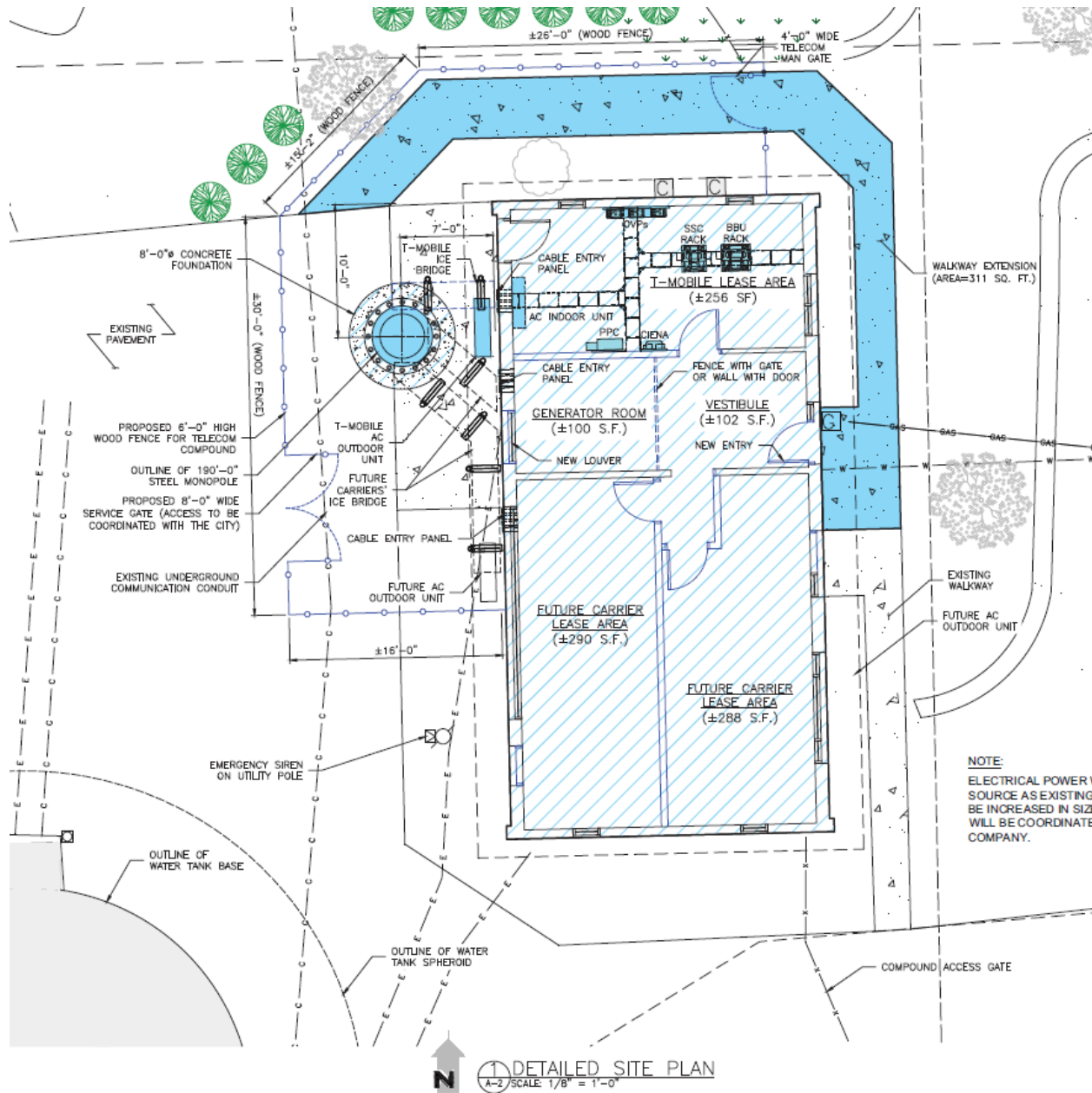
INSERT LEGAL DESCRIPTION & PIN

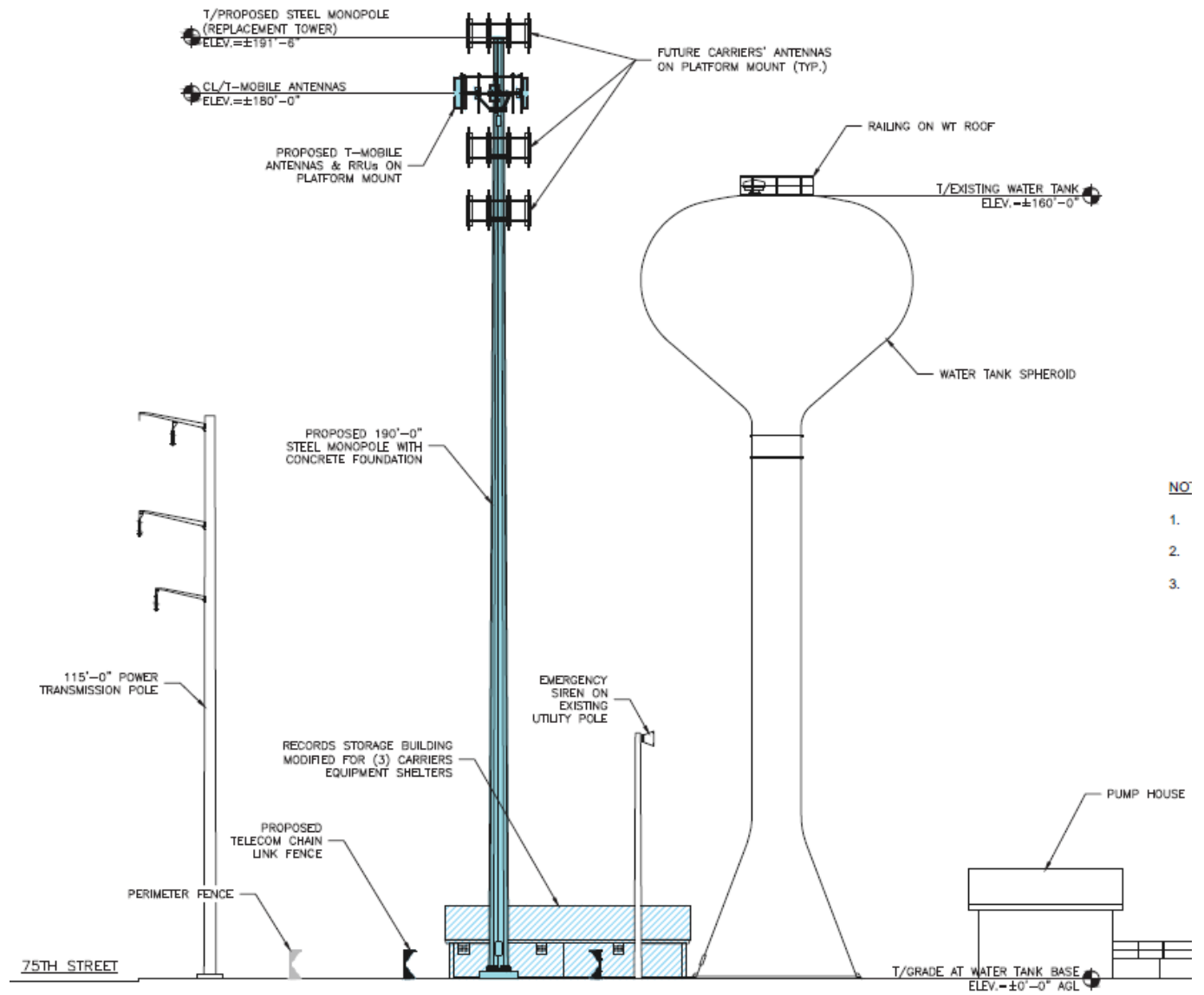
PIN: **08-30-400-002**

THAT PART OF SECTION 30, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF OLYMPIC TERRACE UNIT NO. 1, A SUBDIVISION OF PART OF SECTION 19, AND 30, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED AS DOCUMENT NUMBER 968050 AND RUNNING THENCE SOUTH ALONG THE EAST LINE OF SAID OLYMPIC TERRACE UNIT NO. 1 EXTENDED SOUTH 1,146.87 FEET; THENCE NORTH 87 DEGREES 4 MINUTES, 32 SECONDS EAST, 709.72 FEET TO THE PLACE OF BEGINNING THENCE CONTINUING NORTH 87 DEGREES, 4 MINUTES, 32 SECONDS EAST, 200 FEET THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, 270 FEET; THENCE SOUTH 87 DEGREES, 4 MINUTES, 32 SECONDS WEST, 200 FEET; THENCE NORTH 270 FEET TO THE PLACE OF BEGINNING, ALL IN DUPAGE COUNTY, ILLINOIS

EXHIBIT B LOCATION OF DEMISED PREMISES AND FACILITIES

This exhibit is attached to and incorporated into that certain Lease dated as of the date of the last signature to the Lease, by and between **T-Mobile Central LLC**, a Delaware limited liability company as Tenant, and **THE CITY OF NAPERVILLE**, an Illinois municipal corporation, as City, and references the location of the Premises and Facilities within the Property to be utilized by Tenant pursuant to the Lease.





NO
 1.
 2.
 3.

① WEST ELEVATION (FACING EAST)
 (A-3) SCALE: 1" = 25'

EXHIBIT C

FORM OF TOWER BILL OF SALE

This exhibit is attached to and incorporated into that certain Lease dated as of the date of the last signature to the Lease by and between **T-Mobile Central LLC**, a Delaware limited liability company as Tenant, and **THE CITY OF NAPERVILLE**, an Illinois municipal corporation, as City, and references the form of form of the Tower bill of sale as referenced in the Lease.

[to be attached]

EXHIBIT D

FORM OF SHELTER BILL OF SALE

This exhibit is attached to and incorporated into that certain Lease dated as of the date of the last signature to the Lease by and between **T-Mobile Central LLC**, a Delaware limited liability company as Tenant, and **THE CITY OF NAPERVILLE**, an Illinois municipal corporation, as City, and references the form of the Shelter bill of sale as referenced in the Lease.

[to be attached]