

**Deed of Lease – Tapawingo/Frederick Street Water Tower**  
**411-413 Tapawingo Street, SW, Vienna, VA 22180**  
**T-Mobile Northeast, LLC**

THIS DEED OF LEASE ("Lease") is dated this 16<sup>th</sup> day of December, 2009, by and between the TOWN OF VIENNA, a municipal corporation ("Town") and T-Mobile Northeast LLC, a Delaware limited liability company, having an office at 12050 Baltimore Avenue, Beltsville, Maryland 20705 ("T-Mobile" or "Lessee").

WHEREAS Town is the owner of the property known as the Tapawingo/Frederick Street Water Tower, 411-413 Tapawingo Road, SW, Vienna, VA 22180, Fairfax County Tax Map Number 0384-08-0407.

WHEREAS Lessee wishes to lease certain space within the Property for the placement of Lessee's equipment cabinets, installation of a security fence and space on the Town's water tank for the placement of telecommunications antennas.

NOW THEREFORE, in consideration of the rent to be paid by the Lessee to Town, the parties agree as follows:

1. The Premises.

(a) Town leases to Lessee portions of the Property consisting of (i) a space of approximately 240 (12' x 20') square feet for the placement of equipment cabinets; and (ii) space on the water tower and such temporary licenses in the form of non-exclusive easements for ingress to and egress to and from the antennas and equipment cabinets over the driveway lot to the equipment cabinets and water tower; and the temporary non-exclusive utility easements for electric and telecommunications facilities as more particularly described on Exhibit "A" and dated and Exhibit "B" attached and incorporated by reference ("Premises"). Exhibit "A" is entitled "Zoning Drawings" and is dated July 31, 2009, by ALLPRO Consulting Group, Inc. Exhibit "B" consists of photo-simulations of the electric and telecommunication facilities as submitted and approved by the Board of Zoning Appeals. *MJS.*

(b) Prior to the Commencement Date (as defined in this Lease), Lessee and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property and specifically the Premises during business hours (7:00 AM-3:30 PM Monday through Friday) to inspect, examine, conduct soil borings, drainage tests, material sampling, and other geological or engineering tests or studies of the Property, to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at lessee's sole discretion for its use of the Premises to include without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively referred as "Governmental Approvals"), and otherwise to do those things consistent with engineering standards on the Property that determine the feasibility or suitability of the Property for the Lessee's Permitted Use, all at Lessee's expense. Lessee shall be liable for damages to any Town Property damaged as a result of Lessee's activity. Lessee will not be liable to Town or any third party on account of any pre-existing defect or condition on or with respect to the Property,

whether or not such defect or condition is disclosed by Lessee's inspection. Upon the Town demand, Lessee shall restore the relevant portions of the Property to its condition prior to Lessee's use, reasonable wear and tear expected.

2. Commencement and Ending Date of Term. The Lease term will be five (5) years ("Term"), commencing upon the Commencement Date. The Commencement Date shall be the date the Lessee commences construction or installation of its equipment on the Property. However, if Lessee fails to commence construction or installation within 180 days following the date of execution of the lease by the Mayor, the lease shall not commence and shall be deemed void. Additionally, If Lessee fails to commence construction or installation within 180 days following the date of execution of the lease by the Mayor, Lessee shall pay to the Town a processing fee of \$2,000.00. The Term will terminate on the fifth annual anniversary of the Commencement date; however, the Lease shall be automatically renewed for an additional five (5) years unless either party provides written notice of its intent to not renew the Lease at least sixty (60) days prior to the end of the Lease term. In no event shall the lease term exceed forty (40) years unless renewed by appropriate action by the Town Council.

3. Rent.

- (a) Commencing on the Commencement Date, Lessee shall pay to the Town monthly rental for the Premises in the amount of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00), exclusive of electricity which Lessee shall pay by sub-meter. The first month's rent shall be paid on the Commencement Date, and after that paid in advance on the first day of each month. Lessee shall pay a prorated monthly rental for any partial month during which the Lease is in effect.
- (b) The Initial Rent shall be for all facilities and shown on Lessee's approved building plans with the exception that Lessee shall initially install only one telecommunication antenna per sector ("antenna set"). Should Lessee wish to add antennas per sector, the monthly rent shall be increased Two Hundred Fifty and 00/100 (\$250.00) per antenna set.
- (c) In addition to the Initial Rent described above, Lessee shall also pay to the Town within thirty (30) days after Commencement of the Lease, a "Capital Contribution Fee" in the amount of Fifty Thousand Dollars (\$50,000.00). This Capital Contribution Fee is in lieu of other site improvements waived by the Town.
- (d) If this Lease is terminated prior to expiration, rent shall be prorated to the date of termination.
- (e) Beginning with the second year of the Term, and for each year thereafter, the monthly rent will be increased by three percent (3%) over the previous year's rent.

4. Use of Premises.

(a) Lessee may use the Premise solely for installing, operating, repair, replacing and maintaining the wireless communications equipment shown on Exhibits "A" and "B" ("Equipment"), which will form part of a telecommunications system licensed by the Federal Communications Commission, and for activities reasonably related thereto. Any wireless communications equipment installed on the water tower shall be limited to wireless antennas specifically identified in the Exhibits and approved by the Town. Additionally, all visible equipment installed on the water tower shall be painted to match the color of the water tower. Town reserves the right to utilize remaining area of the Property as it so desires.

(b) Town also grants to Lessee a temporary license in the form of a non-exclusive easement, as shown on Exhibit "A", over so much of the Property and the Premises as is reasonably necessary and as reasonably determined by the Town for installation and maintenance of requisite wires, cables, conduits and pipes for utilities, for the installation, operation and maintenance of the Equipment, and for activities reasonably related thereto, including ingress and egress. This installation shall be performed in a workmanlike manner with minimal disruption to the Town, Town facilities, Town property, existing tenants and adjoining property owners. These utility and ingress and egress easements shall expire or terminate with the expiration or termination, by whatever means, of this Lease.

(c) Lessee's use of the Premises and Property shall meet noise attenuation standards as set forth in §10-20.1, Vienna Town Code (1962), as amended, and as may be amended from time to time, with necessary changes, and incorporated by reference. Furthermore, Lessee acknowledges and agrees to implement sound attenuation measures as may be required by Town to mitigate noise associated with Lessee's Equipment.

(d) In the event the Town needs to perform maintenance or repair work to the water tower and/or its supporting infrastructure, Lessee agrees to relocate their facilities temporarily or permanently if requested in writing by the Town. Except in the case of an emergency the Town will provide thirty (30) days notice of any routine maintenance or repair work. In the event such maintenance or repair work will permanently prevent Lessee to operate its Equipment, this Lease may be terminated.

(e) Lessee agrees to have a designated local representative with authority to address questions or concerns of the Town with respect to Lessee's Equipment. Such local representative must respond within 48-hours to any Town inquiry.

5. Interference.

(a) Lessee shall install and operate its Equipment in a manner which shall not cause technical interference to Town or other lessees with tenancies pre-dating that of the Lessee's, and shall comply with all federal, state and local regulations governing the installation and operation of the Equipment. Lessee and Town shall consult on the location of any future equipment.

(b) In the event the Town's use of the Property causes material interference that cannot be corrected within sixty (60) days following written notification to the Town, Lessee may terminate this Lease.

(c) Town will provide Lessee with a list of all existing and future radio frequency user(s) (and their frequencies) on the Property to allow Lessee to evaluate the potential for interference. Lessee warrants that its use of the Premises will not interfere with existing radio frequency user(s) on the Property as long as the existing frequency user(s) operate and continue to operate and continue to operate within their frequencies, and in accordance with all applicable laws and regulations.

(d) Town retains the right to enter into similar agreements in the future and may have entered into agreements in the past similar to this Agreement, and is required by those agreements to advise Lessee as follows: (1) Lessee's Equipment shall be the type and frequency which will not cause material interference to the equipment of any prior lessee of the Property, and (2) Lessee has reviewed the existing facilities on the Property and is satisfied that these facilities will not cause interference with the Lessee's use of the Equipment. Town agrees to give subsequent lessees the same notice as given to Lessee immediately above.

(e) The Town does not warrant that radio frequencies used presently or in the future by the Town for its own use will not cause interference with Lessee's facilities. Such interference shall not be grounds to terminate this Lease.

(f) The primary purpose of the Tapwingo/Frederick Street Water Tank is delivery of potable water to water system customers and any disruption, interference, degradation, or reduction of this service or conflict with water system regulatory requirements or national waterworks standards and practices is prohibited and grounds to immediately terminate this lease.

6. Permits and Approvals. Upon request and in addition to its obligations under the Marking and Lighting Requirements Section of this Lease, Town shall cooperate with Lessee in obtaining, at Lessee's expense, all license, permits and other approvals required for Lessee's use of the Premises and operation of the Equipment. This Lease is conditioned upon Lessee's obtaining, prior to the commencement date of this Lease, all licenses, permits and other approvals required by and federal, state or local authority, including approvals by the Vienna Town Council, Planning Commission, Board of Zoning Appeals and Board of Architectural Review, which will permit Lessee's use of the Premises as stated in paragraph 4, and operation of the Equipment. Additionally, Lessee agrees to provide at least once a year a report certifying its Equipment complies with all state and federal limits on electromagnetic frequency emission outputs.

7. Improvements Liability, Utilities, Access.

(a) At Lessee's expense and with minimal disruption to Town and its lessee, Lessee may install, erect, maintain, repair, replace and operate the Equipment and supporting structures on the Premises. Lessee may complete all work necessary to prepare, maintain and alter the

Premises for the operation of the Equipment, including but not limited to installation of underground (but not aerial) transmission lines, as shown on Exhibits "A" and "B". The site contains numerous underground water mains, vaults, and control system conduit. Lessee shall ensure any and all underground utilities are marked, shown on plans, and excavations hand dug in their vicinity. Lessee shall ensure all Town underground facilities are marked, and will have them marked by a marking contractor at their expense or shall pay the cost of marking with the Town's marking contractor. Lessee shall follow all requirements of underground utility protection laws and regulations. Lessee shall fully restore to its prior condition any portion of the Property or Premises disturbed by Lessee, reasonable wear and tear excepted.

Notwithstanding its affixation to the Premises, title to the Equipment and all associated structures, underground transmission lines, cables, wires and conduits shall remain with the Lessee and no financing document relating to the Premise shall affect Town's title to the Property or Premises. Lessee shall remove all the Equipment and associated property at its sole expense, within 30 days of the expiration or earlier termination of the Lease and shall make any necessary repairs to the Premises, normal wear and tear excepted, caused by such removal.

(b) At Lessee's expense, Lessee may upgrade the present telephone and electrical service or install new telephone and electrical service on the Premises, including but not limited to a portable standby power generator for Lessee's exclusive use only during emergency conditions when normal electrical power to the Premises is interrupted. Lessee may also bring telephone and electrical power underground across the Property in order to service the Premises, as shown on Exhibit "A". Any enhancements, upgrades or alterations of these utilities are subject to review and approval by the Town, such approval not to be unreasonably withheld, conditioned or delayed. Town shall, upon Lessee's request, execute requisite documents evidencing Lessee's temporary license in the form of utility easement rights. The utility easement rights shall expire or terminate with the expiration or termination, by whatever means of this Lease.

(c) For the Term of this lease, Town shall provide to Lessee, Lessee's employees, agents, independent contractors and subcontractors access as shown on Exhibit "A" over the Property to the Premises 24 hours a day, 7 days a week at no additional charge to Lessee, for the purpose consistent with this Lease, except as provided in Paragraph 1. Except in the case of an emergency, access shall be requested 24-hours in advance through the Town's Water-Sewer Superintendent.

(d) Lessee is subject to reasonable operating restrictions and limitations determined by the Town or Vienna Town Code and Zoning Ordinance and other applicable laws, which shall be provided to Lessee, at Lessee's cost (such cost to be reasonable), in a timely manner.

(e) Engineering drawings and plans for any proposed conduit, brackets, antenna, or other telecommunications facilities shall be certified by a qualified professional engineer licensed in Virginia. Drilling, welding, or other disruption to the water tank is prohibited. Full access to the ladder and catwalk shall be maintained. At completion of installation, Lessee shall provide as-built drawings and inspection report prepared by a third-party engineering inspection firm certifying the work.

8. Loss and Damage. Save for the negligent acts or omissions of Town, its agents, employees or contractors, Town shall not be liable for any damage to property of Lessee located on the Premises or for loss or damage to any property of Lessee or of others by theft or otherwise. Town shall not be liable for any injury, death, or damage to any persons or property resulting from fire, explosion, steam, electricity, water, rain, snow or leaks from any part of the Property or from the street or sub-surface or from any other place or by dampness. Town shall not be liable for any such damage caused by third persons or caused by operations in construction of any private or public work. Save for negligent acts or omissions or willful or wrongful acts or omissions of Town, its agents, employees or contractors, Town shall not be liable for any latent defect in the Premises or in the building of which they form a part, other than as set forth herein.

9. Waiver of Town's Lien. Town waives any landlord's lien rights it may have concerning Lessee's Equipment which is deemed Lessee's personal property and Lessee reserves the right to remove the same at any time without Town's consent as a landlord.

10. Notification of Hazard. Lessee and Town shall give immediate notice to the other in case of fire, accident, or defect in the Premises or in any property comprising the Premises.

11. Termination.

(a) This Lease may be terminated by either party, providing thirty days' prior written notice, upon default of any term of this lease by the other party, which is not cured within thirty days of receipt of written notice ("Cure Period"). Upon default and failure by the defaulting party to cure the default within the Cure Period, the non-defaulting party may terminate this Lease and exercise and other remedies it may have under this Lease or at law or equity. No such failure shall be deemed to exist if the defaulting party has commenced to cure the default within such time, provided that such efforts are prosecuted to completion with reasonable diligence.

(b) This Lease may be terminated by Lessee, without further liability, upon providing ninety days' prior notice:

(1) if, after the Commencement Date of the Lease an application by Lessee for a permit, license or conditional use permit approval (including, but not limited to, the Governmental Approvals) is rejected, or upon cancellation, expiration or lapse of a permit, license or approval necessary for the use of the Premises and operation of the Equipment; or

(2) if Lessee determines, due to technological reasons, the Premises are no longer suitable for its purpose.

(c) This Lease may be terminated by Lessee without further liability, upon providing thirty days' prior notice if the Premises or Equipment are destroyed or damaged beyond reasonable repair. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction.

(d) This Lease may be terminated by Town as provided in this paragraph 11. Upon Lessee's default and the expiration of the applicable cure period, Town may, with or without entry or other action, at once terminate this Lease, and upon such termination shall be entitled to recover possession of the Premises and Property and such damages as Town may then have or may in the future suffer as a result of the default and termination.

(e) Lessee shall pay to Town all of Town's reasonable costs, charges and expenses, including reasonable attorney's fees and the fees of other agents retained by Town, incurred in enforcing Lessee's obligations under this lease.

(f) Town and Lessee shall have all the rights and remedies accorded by law and equity, including specifically the right to injunctive relief for the enforcement of all terms of this lease. All disputes arising under this Lease shall be resolved in a Virginia Court of competent jurisdiction.

12. Insurance and Indemnity. Lessee shall procure, maintain and pay for a public liability policy, with limits of One Million Dollars for bodily injury, One Million Dollars for property damage, Two Million Dollars aggregate, with a certificate of insurance to be furnished to Town within thirty days of written request. Such policy shall provide that termination or cancellations will not occur without at least thirty days prior written notice to Town. Lessee further agrees to name the Town of Vienna as an additional insured on the Comprehensive General Liability insurance. Lessee shall hold harmless and indemnify Town, its officers, officials, and employees, against claims, legal actions, suits or proceedings, and Town's reasonable expenses (including attorney's fees) incurred in this regard to the extent directly resulting from the Lessee's operations under this Lease. Notwithstanding anything to the contrary contained herein, this indemnification shall not apply to liability for damages arising out of bodily injury to persons, or damage to property, caused by or resulting from, the negligence of Town, its agents, or employees.

13. Environmental. Lessee represents and warrants that its use of the Premise will not generate any hazardous substance and Lessee will not store or dispose on the Premise nor transport to or over the Premises any hazardous substance other than in containers or forms permitted by law. "Hazardous Substances" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic wastes, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environment laws, regulations or rules presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time. This indemnification and hold harmless provision established in this paragraph shall not extend to Hazardous Substances present on the Premises prior to the Commencement of this Lease.

Town represents that the Property is not a Superfund site and that the Town has never been notified by any public entity of an environmental issue related to the Property.

Lessee shall notify Town immediately in the event of its discovery of any Hazardous Substances at, upon, or within the Premises or of the receipt of any written notice by any

applicable government authority alleging the disposal of Hazardous Substance which may have occurred on the Premises.

Lessee represents warrants and agrees to conduct its activities on the Premises in compliance with all applicable Environmental Laws. Lessee will not use, generate, release, manufacture, refine, produce, store, or dispose of any Hazardous Substance on, under, or about the Premises, except for the use of the sealed batteries for emergency back-up, any fire suppression system and small quantities of cleaning products ordinarily used by businesses, and the use of which by Lessee complies with all applicable laws. Lessee agrees to defend, indemnify, and hold harmless Town from and against any and all liabilities, damages, losses, costs, assessments, penalties, fines, expenses and fees, including reasonable legal fees, that Town may suffer due to the existence or discovery of Hazardous Substance on the Property, or their release into the environment that are directly caused by Lessee's use of the Premises. The provisions of this section will survive the expiration or termination of this Agreement. This indemnification and hold harmless provision shall survive the termination or expiration of this Lease.

14. Maintenance; Utilities.

(a) Lessee will at Lessee's expense, keep and maintain the Premise in good condition, reasonable wear and tear and damage from the elements excepted. Town will use reasonable efforts to maintain and repair the Property and access thereto, in good and tenantable condition, subject to reasonable wear and tear and damage from all the elements.

(b) Lessee will be solely responsible, and promptly pay, for all utility charges for electricity, telephone service or any other service used or consumed by Lessee on the Premises. Town will cooperate with any utility company requesting a temporary license in the form of an easement under and across the Property in order for the utility company to provide service to the Lessee.

15. Condemnation.

(a) If a condemning authority takes all of the Property, or a portion sufficient, in Lessee's reasonable determination, to render the Premises unsuitable for Lessee's use, this Lease shall terminate as of the date the title vests in the condemning authority. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of power shall be deemed a condemnation.

(b) Lessee may claim and recover (if allowed by law) from the condemning authority an award for Lessee's moving expenses, business dislocation damages, the value of Lessee's personal property comprising the Premises, and the unamortized costs of leasehold improvement paid for by Lessee.

16. Title and Quiet Enjoyment. Town warrants that Town holds good and marketable title to the Property, and that provided Lessee has made rental payments, Lessee shall have quiet enjoyment of the Premises.



17. Marking and Lighting Requirements. The Property complies with all tower or building marketing and lighting regulations promulgated by the Federal Aviation Administration or the Federal Communications Commission, as applicable. Lessee shall be responsible for compliance with such regulations if marking or lighting is required solely due to the addition of the Equipment.

18. Notices. All notices, under this Lease shall be in writing and shall be validly given if sent by certified mail, return receipt requested, as follows (or any other address that the party to be notified may designate by like notice to the sender):

If to Town:

Town Manager  
Town of Vienna  
127 Center Street, South  
Vienna, VA 22180

If to Lessee:

T-Mobile USA, Inc. WTS.  
Attn: ~~PCS Lease Administrator~~ Legal Dept.  
1290 SE 38<sup>th</sup> Street  
Bellevue, WA 98006

With Copy to:

Director of Public Works  
Town of Vienna  
127 Center Street, South  
Vienna, VA 22180

With Copy to:

T-Mobile Northeast, LLC  
Attn: Lease Administration Manager  
4 Sylvan Way  
Parsippany, NJ 07054

19. Assignment and Subletting. Lessee may not sublet this Lease without approval of Town, such approval not be unreasonably withheld, conditioned, or delayed. This prohibition against subletting shall be construed to include a prohibition against any subletting by operation of law. Lessee may, upon notice, assign or transfer its rights and obligations arising under this Lease to any parent, subsidiary, affiliate, or to any corporation, partnership or other entity which (i) is controlled by, controlling or under common control with Lessee, or (ii) shall merge or consolidate with or into Lessee, or (iii) shall succeed to all or substantially all the assets, property, and business of Lessee.

20. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties, their respective successors and assign. This Lease shall be assignable to a successor entity that succeeds to all or substantially all of the assets, property and business of Lessee or acquires Lessee's FCC license to operate within the District of Columbia basic trading area.

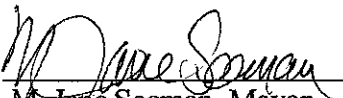
21. Effect of Waiver. No Waiver of any breach of any term of this Lease shall be a waiver of any succeeding breach.

22. Choice of Law. This Lease shall be governed by the laws of the Commonwealth of Virginia.

ATTEST:

LESSOR: TOWN OF VIENNA, VIRGINIA



  
TOWN CLERK

By:   
M. Jane Seeman, Mayor

APPROVED AS TO FORM:

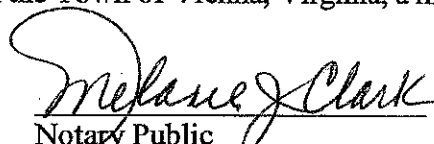
  
TOWN ATTORNEY

LESSEE: T-Mobile Northeast, LLC

By:   
Date 12-14/09   
VP, Sales & Operations

COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX:

The Foregoing instrument was acknowledged before me this 14<sup>th</sup> day of Dec., 2009 by M. Jane Seeman, Mayor of the Town of Vienna, Virginia, a municipal corporation, on behalf of the corporation.

  
Notary Public  
My Commission Expires 6/30/13

c:SDB/Telecom/DeedofLeaseWITapawingoT-Mobile11609

