

STATE OF NORTH CAROLINA  
ORANGE COUNTY

### **ENCROACHMENT AND LEASE AGREEMENT**

This Encroachment and Lease Agreement ("Agreement"), made as of the date of the last signature below, by and between T-Mobile South LLC, a Delaware limited liability company ("Licensee"), and the Town of Chapel Hill, a municipal corporation under the laws of North Carolina ("Town").

WHEREAS, Licensee desires to continue to encroach on the Town property, located at 2516/2700 Homestead Road, Chapel Hill, North Carolina, known as the Northern Community Park on Homestead Road as shown on the Site Plan attached hereto as Exhibit A (the "Site"), for the maintenance and operation of Licensee's existing wireless communications system on an existing Duke Energy Corporation transmission tower and the right to install and maintain associated utility wires, cables, conduits, and pipes under a 10 foot wide easement from the nearest utility connection;

WHEREAS, Town owns and maintains the property at said location;

WHEREAS, Town and Licensee's affiliate, SprintCom, Inc., had a previous Encroachment and Lease Agreement for the Site ("Prior Agreement"), which is expired on September 20, 2023 and since which time Licensee has remained on the Site, with Town's permission, under the terms of the Prior Agreement; and

WHEREAS, Town and Licensee desire to enter into a new Agreement for the Site.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, Town grants to Licensee a license to encroach upon the Town property at the location described above to construct, install, erect, and maintain the above described encroachment in generally the location shown on Exhibit A, together with the right of ingress and egress within said area whenever the same is necessary for the purpose of inspecting, maintaining and/or repairing said encroachment.

This Agreement is subject to, and conditioned upon, the following covenants and provisions.

This Agreement shall be binding upon Town and Licensee and their respective successors in interest or title.

1. Licensee, and its successors in interest and title, shall be responsible for construction, reconstruction, maintenance and repair of the above-described encroachment, at Licensee's expense.
2. Licensee shall comply with any applicable Town ordinances, regulations and policies regarding construction and maintenance of said encroachment.
3. Licensee, and its successors in interest or title, agree to defend, indemnify, and hold Town of Chapel Hill and its employees and agents free and harmless from and against any and all damages, settlements, charges, professional fees or other liabilities of every kind arising out of or relating to any and all claims, actions and proceedings in connection with or arising directly out of the construction, installation, maintenance, or erection upon the Town property authorized by the Agreement excepting, however, such liabilities and losses as may be due to or caused by the acts or omissions of Town or its employees or agents.
4. Town may, upon 180 days' written notice by the Town Manager, or as otherwise required by the terms of the Franchise Ordinance, require relocation or removal of all or a portion of said encroachment at Licensee's expense, or at the expense of Licensee's successors in interest or title, to allow for necessary public purposes, and upon said relocation or removal of this license and encroachment and lease agreement shall thereupon terminate and cease.

5. Licensee, and Licensee's successors in interest and title, agree to prudently maintain its facility in accordance with applicable law, so as to not adversely affect the public health, safety or welfare.
6. Additional parties are prohibited from attaching to or using Licensee's equipment without the explicit written permission of the Town; provided, however, use of Licensee's equipment shall not apply to any third party that has or will enter into a mobile virtual network operating agreement or an agreement with Licensee for roaming services.
7. Initial Term and Rental. This Agreement shall be for an Initial term of five (5) years and eight days, beginning September 21, 2023 and ending September 30, 2028, at an annual rental of Thirty-Seven Thousand Three Hundred Ninety-One and 11/100 Dollars (\$37,391.11) (with a three percent annual increase beginning in the second year and each year thereafter) to be paid in advance to Town annually during the term; provided, however, that if the Franchise Ordinance (as defined herein) is terminated or revoked, Licensee shall have no further obligation to pay any rental or other amounts due under this Agreement after the date of such termination or revocation. The first payment, which shall be due no later than 30 days from the date of this Agreement, shall include the period September 21, 2023 through September 30, 2024 in the sum of Thirty-Seven Thousand Three Hundred Ninety-One and 11/100 Dollars (\$37,391.11)..
8. Extension of Term. Licensee shall have the option to extend the term of this Agreement for one (1) additional consecutive five (5) year period. The option for an extended term shall be deemed automatically exercised without notice by Licensee to Town, unless Licensee gives Town written notice of its intention not to exercise any such option, in which case the term of this Agreement shall expire at the end of the then current term. All references herein to the term of this Agreement shall include the term as it is extended as provided in this Agreement.  
It is expressly understood that all rights granted to Licensee under this Agreement are irrevocable until this Agreement expires or sooner terminates as herein provided.
9. Governmental Approvals. This Agreement is subject to Licensee's obtaining and maintaining in effect all certificates, permits, licenses and other approvals required by governmental authorities for its use of the property. If at any time during the term of this agreement, Licensee is unable to use the property for a communications facility in the manner intended by Licensee due to imposed governmental conditions or requirements, or any necessary certificate, permit, license or approval is rejected or any previously issued certificate, permit, license or approval is canceled, expires, lapses, or is otherwise withdrawn or terminated by the applicable governmental authority, or soil boring tests or radio frequency propagation tests are found to be unsatisfactory so that Licensee, in its sole discretion will be unable to use the property for a communications facility in the manner intended by the Licensee, Licensee shall have the right to terminate this Agreement by written notice to the Town and all rentals paid to the Town prior to the termination date shall be retained by the Town. Upon such termination, this Agreement shall become null and void and the Town and Licensee shall have no further obligations to each other under this Agreement other than Licensee's obligation to remove its property as hereinafter provided.
10. Termination. Either party may terminate this Agreement at any time by giving the other party thirty (30) days written notice of termination prior to the end of the term as described herein.
11. Removal of Improvements. Title to all improvements and equipment constructed or installed by Licensee on the property shall remain in Licensee, and all improvements and equipment constructed by Licensee shall always be and remain the property of Licensee, regardless of whether such improvements or equipment are attached or affixed to the property. Licensee, upon termination of this Agreement, shall, within a reasonable period not to exceed sixty (60) days from the date of such termination, remove all improvements, fixtures and personal property constructed or installed on the property by Licensee.

Notwithstanding the preceding sentence, in the event Town revokes Licensee's franchise pursuant to the Franchise Ordinance, Licensee shall have a period of one hundred eighty (180) days from receipt of written notice of revocation in which to complete such removal and restoration and, if Licensee fails to so remove its equipment within such time period, Town shall have the right to remove such equipment and to draw funds from the letter of credit or call upon the guarantee required under the Franchise Ordinance to cover its costs. Notwithstanding the foregoing, Town may require the removal of said equipment in such a shorter period as Town may determine, in the event the Town Manager determines said removal is necessary for public safety purposes. In such event, Town will provide as much advance written notice as is reasonably feasible to Licensee.

12. **Restoration of Site.** Licensee, upon termination of this Agreement, shall, within a reasonable period not to exceed sixty (60) days from the date of such termination, or one hundred eighty (180) days from date of involuntary franchise termination, restore the property to its original above grade condition, reasonable wear and tear and loss by casualty excepted. Licensee shall notify Town of its intent and schedule to remove its equipment.
13. **Scope of Project.** Licensee shall maintain the existing array-style wireless communications transmitting device at the top of an existing 97-foot Duke Energy Corporation-owned electric transmission tower (Line index number IE1968, tower number 8) as described on Exhibit A. Under no circumstances will the transmitting equipment, antennas, wires, lightning rods, or any other devices attached to the tower exceed 107 feet above ground level, without the written permission of the Town Manager. All necessary equipment shall be located either on or within the existing electric transmission tower. Licensee agrees to landscape the area around the tower and fence in a manner that is acceptable to the Town Manager.
14. **Maintenance.** The Licensee agrees to maintain the condition of the equipment and landscape materials in a reasonable condition and to repair or replace any portion of the equipment or landscaping that is dangerous or would appear to any reasonable person to be in need of repair.
15. **Damage to Town Facilities.** In the event that Licensee damages Town Property while constructing or maintaining the equipment and/or utility lines, Licensee agrees to restore Town property to its original condition that existed just prior to damage, if possible. If restoration of Town property to such condition is not feasible, Licensee agrees to restore the Town property to the fullest extent possible and to pay the difference in the value of the property before and after the damage occurred. The value shall be determined by negotiation between Licensee and Town. If Licensee and Town cannot agree to the value of the loss, an independent appraiser acceptable to both parties may be hired to determine the value of the loss of the damaged property. In this case, Licensee shall pay all of the costs associated with hiring an independent appraiser. In the event that vegetation is destroyed or damaged by Licensee, Licensee shall replace trees or shrubs with similar plant material of a like species and size. Licensee agrees to warrant all replacement vegetation for a minimum of two years.
16. **Use.** Licensee shall use the Property for the purpose of constructing, maintaining and operating a communications facility and uses incidental thereto, which facility may consist of such equipment as is necessary to house telecommunications equipment.
17. **Hazardous Substances.** Licensee, by entering this Agreement, assumes no responsibility or liability for the presence of hazardous substances on, under or around the property, as long as the hazardous substances were not generated, stored, disposed of, or transported to, on, under or around the property by Licensee or its employees, agents or contractors. Town, by entering this Agreement, assumes no responsibility or liability for the presence of hazardous substances on, under or around the property generated, stored, disposed of or transported to, on, under or around the property by Licensee or its employees, agents or contractors or otherwise resulting from Licensee's use of the property. For purposes of this Agreement, "hazardous substances" shall mean (i) any substance, which contains gasoline, diesel fuel or other petroleum hydrocarbons, (ii) any substance which is flammable, radioactive, corrosive or carcinogenic,

(iii) any substance the presence of which on the property causes or threaten to cause a nuisance or health hazard affecting human health, the environment, the property or property adjacent thereto, or (iv) any substance the presence of which on the property requires investigation or remediation under any hazardous substance law, as the same may hereafter be amended. "Hazardous Substance Law" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sec.9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et Beg.; the Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq; the Clean Water Act 33 U.S.C. Sec.1251 et seq.; the Clean Air Act, 42 U.S.C. Sec.7401 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sec. 136 et seq.; the Toxic Substances Control Act, 15 U.S.C. Sec.2601 et seq.; the Emergency Planning and Community Right to Know Act (SARA Title III) 42 U.S.C. Sec.I1001 et seq.; and any applicable state law or regulation.

18. Franchise Ordinance. In connection with this Agreement, Town has granted to Licensee a franchise to operate a personal communications service in the Town of Chapel Hill; the terms and conditions of which have been accepted by Licensee. Town and the Licensee agree that this Agreement shall automatically terminate upon termination of the Franchise Ordinance.
19. Opportunity to Cure. If Licensee shall fail to pay any rental or other amounts payable under this Agreement when due, or if Licensee should fail to perform any other covenants, terms or conditions of this Agreement, prior to exercising any rights or remedies against Licensee on account thereof, Town shall first provide Licensee with written notice of the failure and provide Licensee with a ten ( 10) day period to cure such failure if the failure is a failure to pay rental or other money under this Agreement, or a thirty (30) day period to cure such failure if the failure is a failure to perform any other covenant, term or condition of this Agreement. If the failure is not a failure to pay rental or any other sum of money hereunder but is not capable of being cured within a thirty (30) day period, Licensee shall be afforded a reasonable period of time to cure the failure provided that Licensee promptly commences curing the failure after the notice and prosecutes the cure to completion with due diligence. In the event of a default hereunder that is not cured within applicable cure periods, or in the event the Town elects to revoke Licensee's franchise pursuant to the Franchise Ordinance, Town may terminate this Agreement upon one hundred twenty (120) days prior written notice to Licensee.
20. Notices. All notices hereunder must be in writing and shall be deemed validly given on the date when deposited in the United States mail, by certified mail, return receipt requested, addressed as follows (or to any other address that the party to be notified may have designated to the other party by like notice at least ten (10) days prior thereto):

Licensee: T-Mobile USA, Inc.  
12920 SE 38<sup>th</sup> Street  
Bellevue, WA 98006  
Attention: Lease Compliance/5RA0856A

Town: Chapel Hill Parks & Recreation Department  
200 Plant Road  
Chapel Hill, North Carolina 27514  
Attention: Director of Parks & Recreation

The parties may substitute recipient's names and addresses by giving notice as provided hereunder. Rejection or refusal to accept delivery of any notice, or the inability to deliver any notice because of a changed address, of which no notice was given, shall be deemed to be receipt of such notice.

21. Licensee shall have the right to assign, sublease or otherwise transfer this Agreement, upon written notice to Landlord, to (a) any entity controlling, controlled by or under common control with Licensee; (b) any entity acquiring substantially all of the assets of Licensee; or (c) any successor entity in a merger,

acquisition or consolidation involving Licensee.

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IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals the day and year first above written.

TOWN OF CHAPEL HILL

\_\_\_\_\_  
Town Manager

ATTEST:

Town Clerk

Town Seal

Town Clerk attests date this the \_\_\_\_ day of \_\_\_\_\_, 2023.

Approved as to Form and Authorization

\_\_\_\_\_  
Town Attorney

LICENSEE:  
T-Mobile South LLC

By: \_\_\_\_\_  
Name:  
Title:  
Date: \_\_\_\_\_

**Exhibit “A”**  
**Site Plan**