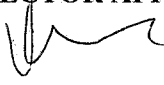


**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: 04/23/2018**

<b>AGENDA ITEM:</b>	
Amendment to Site Lease Option with T-Mobile West Tower LLC	
<b>PREPARED BY:</b>	<b>DIRECTOR APPROVAL:</b>
Kari Chennault, Asst. Public Works Director	
<b>DEPARTMENT:</b>	
Public Works	
<b>ATTACHMENTS:</b>	
2 original copies of the Amendment	
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>
40100362.325000	varies
<b>SUMMARY:</b>	

The City of Marysville entered into a lease with Delaware Corporation (the original tenant) on October 8, 1998. T-Mobile West Tower LLC is the current tenant as the ultimate successor in interest to the original tenant. The lease is for operating an existing communication tower located on the southwest corner of the City's Sunnyside Treatment Plant parcel. All available extensions identified in the initial lease have been exercised and the current lease expires December 27, 2018. New terms have been negotiated and are identified in an amendment to the original site lease.

Items of note, the amendment is proposing to increase the base rent to \$2,700/month effective 12/1/18, which is more than a 50% rent increase. The tenant is expecting to receive \$1,950/month from a sublease and the City will receive a 30% revenue share, \$585/month after the colocation. On 12/1/18 the City would receive an additional \$927/month for another colocation and a 2.75% annual escalation. The total rent will start with \$4,212/month or \$50,552/year with the proposed Amendment.

<b>RECOMMENDED ACTION:</b> Staff is requesting councilmembers authorize the Mayor to sign and execute the First Amendment to Site Lease With Option with T-Mobile West Tower LLC.
--

**FIRST AMENDMENT TO  
SITE LEASE WITH OPTION**

THIS FIRST AMENDMENT TO SITE LEASE WITH OPTION (this "First Amendment") is entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between the CITY OF MARYSVILLE, with a mailing address of 80 Columbia Avenue, Marysville, Washington 98270-5130 ("Landlord") and T-MOBILE WEST TOWER LLC, a Delaware limited liability company, by and through CCTMO LLC, a Delaware limited liability company, its attorney in fact, with a mailing address of 2000 Corporate Drive, Canonsburg, Pennsylvania 15317 (collectively, "Tenant").

**RECITALS**

WHEREAS, Landlord and Western PCS III Corporation, a Delaware corporation ("Original Tenant") entered into a Site Lease with Option dated October 8, 1998 (the "Lease") whereby Original Tenant leased certain real property, together with access and utility easements, located in Snohomish County, Washington from Landlord (the "Premises"), all located within certain real property owned by Landlord (the "Property"); and

WHEREAS, T-Mobile West Tower LLC is currently the tenant under the Lease as ultimate successor in interest to the Original Tenant; and

WHEREAS, the Premises may be used for the purpose of constructing, maintaining and operating a communications facility, including tower structures, equipment shelters, cabinets, meter boards, utilities, antennas, equipment, any related improvements and structures and uses incidental thereto; and

WHEREAS, the Lease had an initial term that commenced on December 28, 1998, and expired on December 27, 2003. The Lease provides for three (3) extensions of five (5) years each, all of which were exercised by Tenant. According to the Lease, the final extension expires on December 27, 2018; and

WHEREAS, Landlord and Tenant desire to amend the Lease on the terms and conditions contained herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Landlord and Tenant agree as follows:

1. Recitals; Defined Terms. The parties acknowledge the accuracy of the foregoing recitals. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Lease.

2. Term. The first sentence of Section 5 of the Lease, and only that sentence, is hereby deleted and the following is inserted in its place:

Subject to Tenant's compliance with the terms of this Lease during the initial lease period and any renewal thereof, Tenant shall have the right to extend this Lease for six (6) additional, five-year terms (each a "Renewal Term").

Landlord and Tenant hereby acknowledge that Tenant has exercised the first three (3) Renewal Terms, leaving a balance of three (3) Renewal Terms, with the final Renewal Term expiring on December 27, 2033.

3. Rent. On December 1, 2018, the monthly Rent shall increase to Two Thousand Seven Hundred and No/100 Dollars (\$2,700.00). Following such increase, the monthly Rent shall continue to adjust pursuant to the terms of the Lease. This Rent increase replaces and is in lieu of the regular Rent increase scheduled to occur pursuant to the Lease in December 2018.

4. Conditional Signing Bonus. Tenant will pay to Landlord a one-time amount of Five Thousand and 00/100 Dollars (\$5,000.00) for the full execution of this First Amendment ("Conditional Signing Bonus"). Tenant will pay to Landlord the Conditional Signing Bonus within sixty (60) days of Landlord's execution of this First Amendment. In the event that this First Amendment (and any applicable memorandum) is not fully executed by both Landlord and Tenant for any reason, Tenant shall have no obligation to pay the Conditional Signing Bonus to Landlord.

5. Sprint. Landlord hereby approves any material changes to the Antenna Facility associated with Sprint's co-location on the Premises, to the extent such approval is required by Section 7(a) of the Lease. Tenant shall pay Landlord thirty percent (30%) of the revenue received from Sprint as required by Section 2 of the Addendum to the Lease, however, Landlord agrees not to enter into a separate ground lease with Sprint in connection with Sprint's co-location in the existing Premises.

6. Fence. Tenant shall replace the north access gate with a fence within sixty (60) days following full execution of this First Amendment.

7. Survey. Exhibit B-1 attached hereto hereby replaces Exhibit B to the Lease.

8. Termination. Commencing on December 27, 2018, Landlord shall have the right to terminate the Lease upon twenty-four (24) months' written notice to Tenant in the event Landlord determines in good faith that the Premises is needed by Landlord for public purposes.

9. Eminent Domain. If Landlord receives written or other notice of a proposed taking by eminent domain of any part of the parcel of land upon which the Premises is situated, Landlord will notify Tenant of the proposed taking within five (5) days of receiving said notice and Tenant will have the option to: (i) declare the Lease null and void and thereafter neither party will have any liability or obligation hereunder; or (ii) remain in possession of that portion of the Premises that will not be taken, in which event there shall be an equitable adjustment in Rent on account of the portion of the Premises so taken. With either option, Tenant shall have the right to contest the taking and directly pursue an award.

10. Ratification.

a) Landlord and Tenant agree that Tenant is the current tenant under the Lease, the Lease is in full force and effect, as amended herein, and the Lease contains the entire agreement between Landlord and Tenant with respect to the Premises.

b) Landlord agrees that any and all actions or inactions that have occurred or should have occurred prior to the date of this First Amendment are approved and ratified and that no breaches or defaults exist as of the date of this First Amendment.

c) Landlord represents and warrants that Landlord is duly authorized and has the full power, right and authority to enter into this First Amendment and to perform all of its obligations under the Lease as amended.

d) Landlord acknowledges that the Premises, as defined, shall include any portion of Landlord's property on which communications facilities or other Tenant improvements exist on the date of this First Amendment.

11. Notices. Tenant's notice addresses as stated in Section 12 of the Lease are amended as follows:

IF TO TENANT, TO:

T-Mobile West Tower LLC  
c/o Crown Castle USA Inc.  
Attn: Legal – Real Estate Dept.  
2000 Corporate Drive  
Canonsburg, PA 15317

12. IRS Form W-9. Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this First Amendment and at such other times as may be reasonably requested by Tenant. In the event the Premises is transferred, the succeeding landlord shall have a duty at the time of such transfer to provide Tenant with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in the Rent to the new landlord. Landlord's failure to provide the IRS Form W-9 within thirty (30) days after Tenant's request shall be considered a default and Tenant may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from Rent payments.

13. Remainder of Lease Unaffected. The parties hereto acknowledge that except as expressly modified hereby, the Lease remains unmodified and in full force and effect. In the event of any conflict or inconsistency between the terms of this First Amendment and the Lease, the terms of this First Amendment shall control. The terms, covenants and provisions of this First Amendment shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of Landlord and Tenant. This First Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

*[Execution Pages Follow]*



This First Amendment is executed by Tenant as of the date first written above.

**TENANT:**  
T-MOBILE WEST TOWER LLC,  
a Delaware limited liability company

By: CCTMO LLC,  
a Delaware limited liability company  
Its: Attorney in Fact


By:   
Print Name: Lisa A. Sedgwick  
Title: RET Manager

**State of Texas**

**County of** Harris

Before me, Veronica N. Odom, a Notary Public, on this day personally appeared Lisa Sedgwick, RET Manager of **CCTMO LLC**, a Delaware limited liability company, as Attorney in Fact for **T-MOBILE WEST TOWER LLC**, known to me (or proved to me on the oath of \_\_\_\_\_ or through driver's license, state id card, resident id card, military id card, or passport) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she/he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 3 day of April, 2018.



(Personalized Seal)

Notary Public's Signature

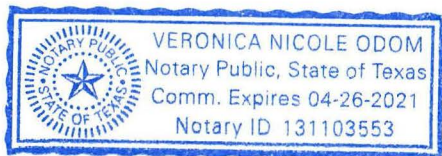


Exhibit B-1

Premises

**Tower Lease  
Legal Description**

A portion of Lot 1, Short Plat No. 07004, auditor's file no. 200803205001, records of Snohomish County, Washington, located in the Northeast Quarter of the Northwest Quarter of Section 2, Township 29 North, Range 5 East, Willamette Meridian, Snohomish County, Washington, more particularly described as follows:

Commencing at the northwest corner of the Northwest Quarter of Section 2, Township 29 North, Range 5 East, Willamette Meridian, from which the northeast corner of the Northwest Quarter of said Section 2, bears South 89°21'46" East, a distance of 2625.07 feet, as shown on said Snohomish County Short Plat No. 07004, auditor's file no. 200803205001, records of Snohomish County, Washington;

thence South 60°24'24" East, a distance of 1688.74 feet to the Point of Beginning;

thence North 00°27'20" East, a distance of 29.58 feet;

thence North 43°17'31" East, a distance of 12.96 feet;

thence North 89°07'25" East, a distance of 32.77 feet;

thence South 01°50'18" West, a distance of 40.29 feet;

thence North 88°55'54" West, a distance of 40.60 feet to the Point of Beginning;

Containing 1,585 square feet or 0.04 acres, more or less.

**SUBJECT TO:**

Existing rights-of-way and easements of record and or appearing on said above described parcel.



**Access & Utility Easement  
Legal Description**

A strip of land 20 feet wide across a portion of Lot 1, Short Plat No. 07004, auditor's file no. 200803205001, records of Snohomish County, Washington, located in the Northeast Quarter of the Northwest Quarter of Section 2, Township 29 North, Range 5 East, Willamette Meridian, Snohomish County, Washington, being 10 feet on each side of the following described centerline, more particularly described as follows:

Commencing at the northwest corner of the Northwest Quarter of Section 2, Township 29 North, Range 5 East, Willamette Meridian, from which the northeast corner of the Northwest Quarter of said Section 2, bears South 89°21'46" East, a distance of 2625.07 feet, as shown on said Snohomish County Short Plat No. 07004, auditor's file no. 200803205001, records of Snohomish County, Washington;

thence South 60°24'24" East, a distance of 1688.74 feet;

thence South 88°55'54" East, a distance of 28.59 feet to the Point of Beginning;

thence South 01°04'06" West, a distance of 6.90 feet;

thence South 31°27'21" West, a distance of 26.11 feet;

thence South 88°49'34" West, a distance of 126.78 feet to the Point of Terminus;

Lengthening and shortening the side lines of said strip so as to terminate on the south line of the tower lease and the easterly right-of-way line of Black Hill Road (71st Avenue NE).

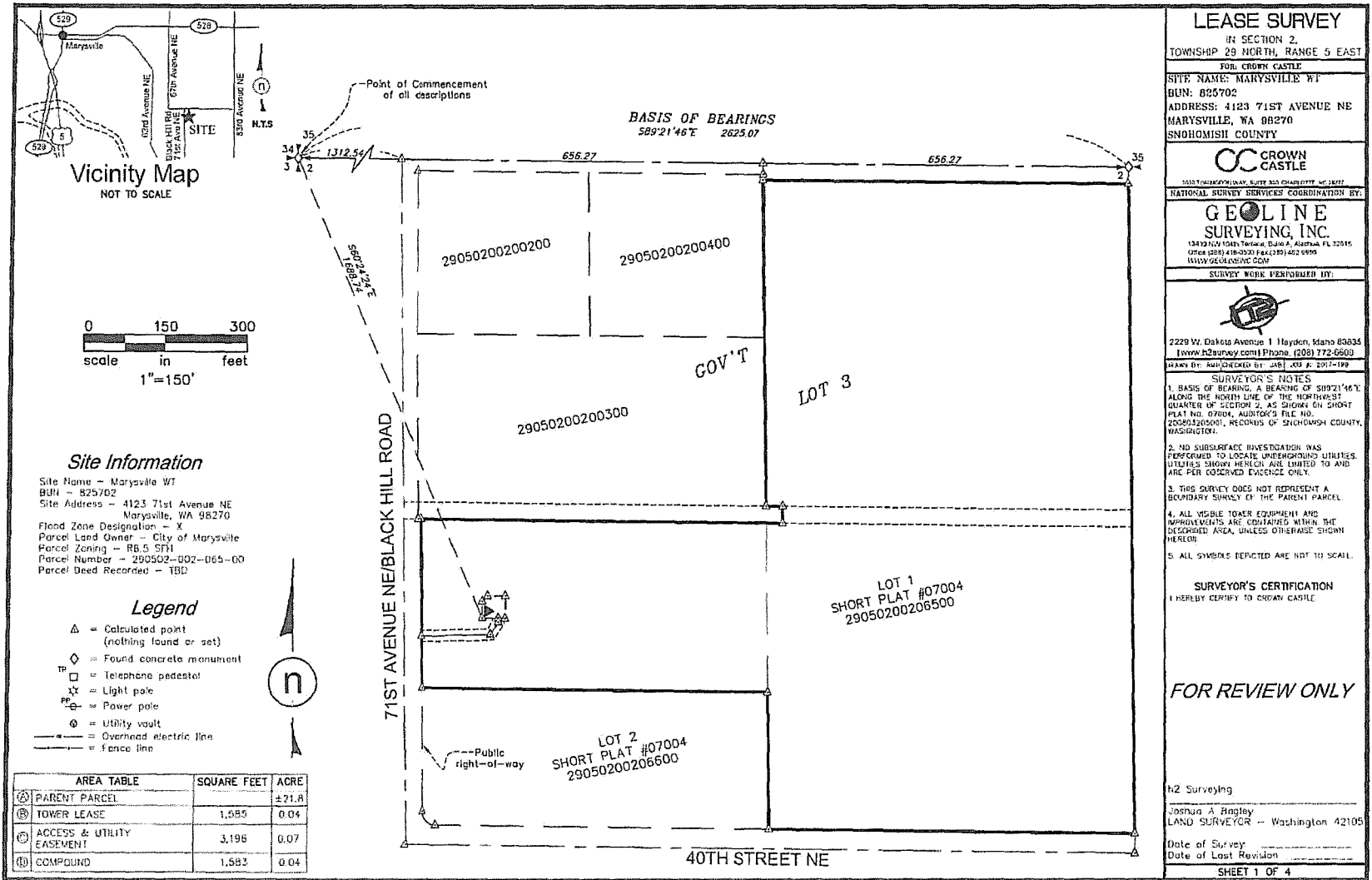
Containing 3,196 square feet or 0.07 acres, more or less.

**SUBJECT TO:**

Existing rights-of-way and easements of record and or appearing on said above described parcel.

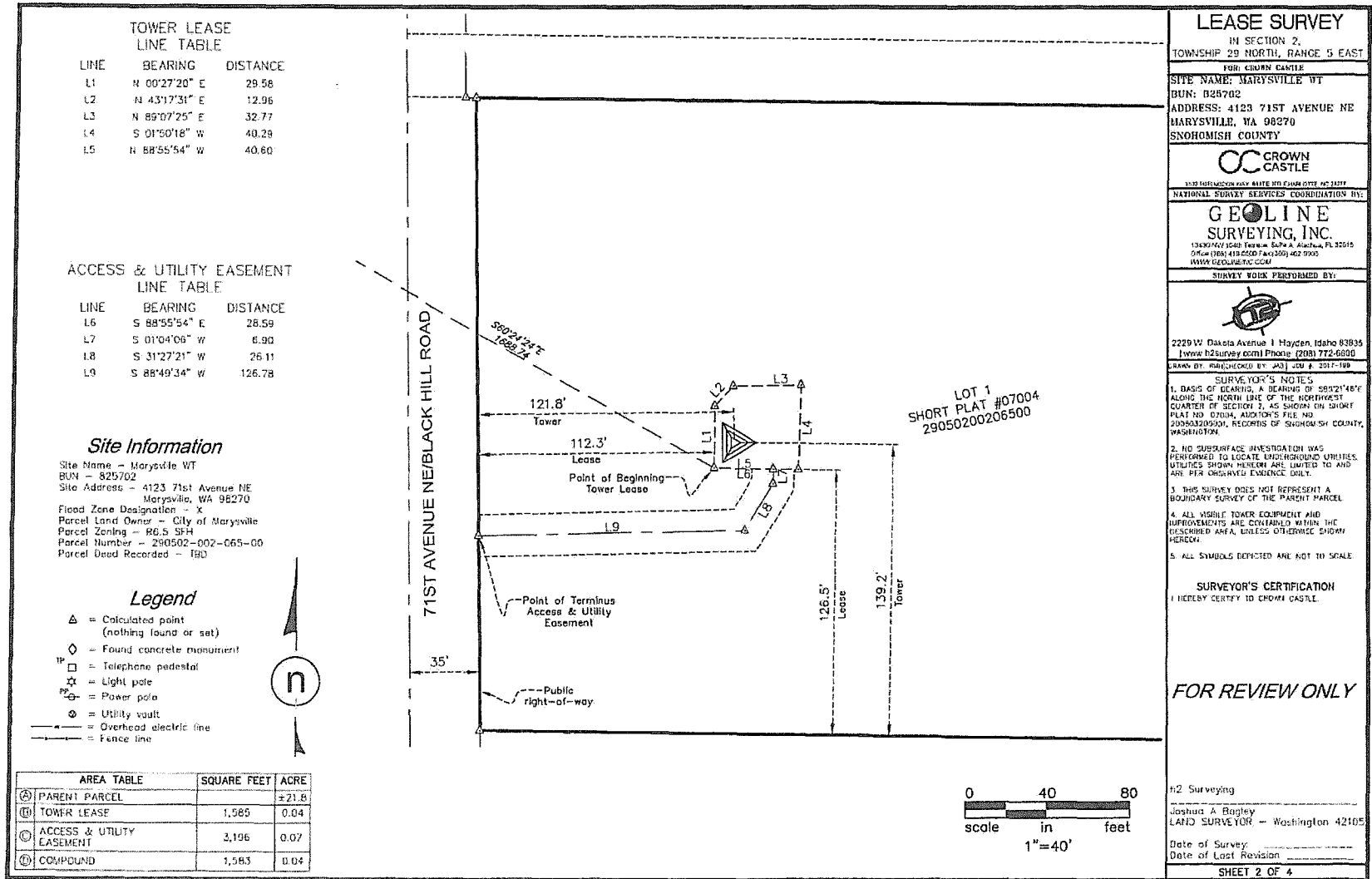
Site Name: Marysville WT  
 Business Unit #: 825702

9



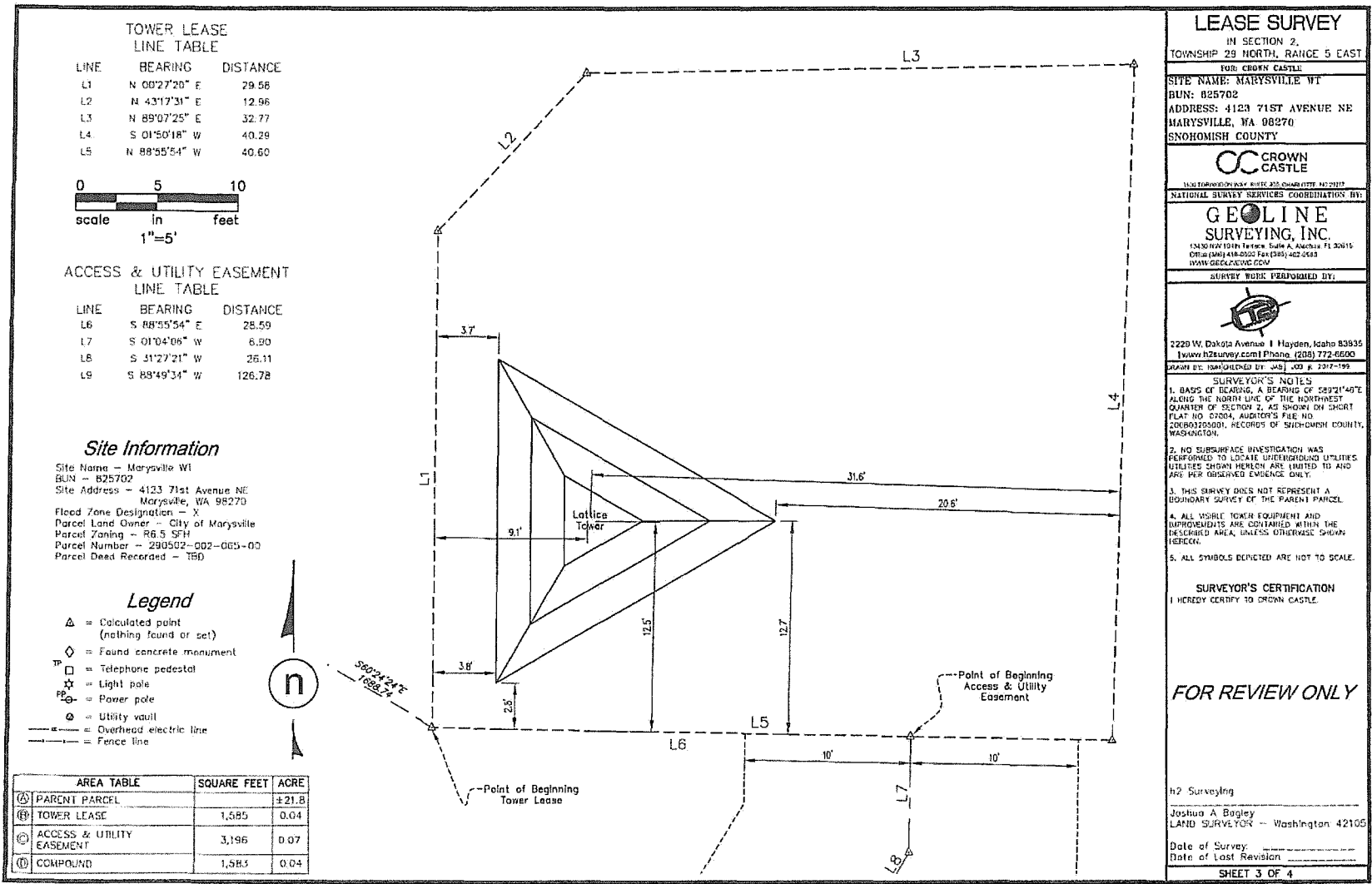
Site Name: Marysville WT  
 Business Unit #: 825702

10



Site Name: Marysville WT  
 Business Unit #: 825702

11



**Tower Lease Legal Description**  
*(As Surveyed)*

A portion of Lot 1, Short Plot No. 07004, auditor's file no. 200803205001, records of Snohomish County, Washington, located in the Northeast Quarter of the Northwest Quarter of Section 2, Township 29 North, Range 5 East, Willamette Meridian, Snohomish County, Washington, more particularly described as follows:

Commencing at the northwest corner of the Northwest Quarter of Section 2, Township 29 North, Range 5 East, Willamette Meridian, from which the northeast corner of the Northwest Quarter of said Section 2, bears South 89°21'46" East, a distance of 2625.07 feet, as shown on said Snohomish County Short Plot No. 07004, auditor's file no. 200803205001, records of Snohomish County, Washington;

thence South 60°24'24" East, a distance of 1688.74 feet to the Point of Beginning;

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thence North 43°17'31" East, a distance of 12.96 feet;

thence North 89°07'25" East, a distance of 32.77 feet;

thence South 01°50'18" West, a distance of 40.29 feet;

thence North 88°55'54" West, a distance of 40.60 feet to the Point of Beginning;

Containing 1,585 square feet or 0.04 acres, more or less.

**SUBJECT TO:**  
 Existing rights-of-way and easements of record and or appearing on said above described parcel.

**Access & Utility Easement Legal Description**  
*(As Surveyed)*

A strip of land 20 feet wide across a portion of Lot 1, Short Plot No. 07004, auditor's file no. 200803205001, records of Snohomish County, Washington, located in the Northeast Quarter of the Northwest Quarter of Section 2, Township 29 North, Range 5 East, Willamette Meridian, Snohomish County, Washington, being 10 feet on each side of the following described centerline, more particularly described as follows:

Commencing at the northwest corner of the Northwest Quarter of Section 2, Township 29 North, Range 5 East, Willamette Meridian, from which the northeast corner of the Northwest Quarter of said Section 2, bears South 89°21'46" East, a distance of 2625.07 feet, as shown on said Snohomish County Short Plot No. 07004, auditor's file no. 200803205001, records of Snohomish County, Washington;

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thence South 88°49'34" West, a distance of 126.78 feet to the Point of Terminus;

Lengthening and shortening the side lines of said strip so as to terminate on the south line of the tower lease and the easterly right-of-way line of Black Hill Road (71st Avenue NE).

Containing 3,196 square feet or 0.07 acres, more or less.

**SUBJECT TO:**  
 Existing rights-of-way and easements of record and or appearing on said above described parcel.

**LEASE SURVEY**

IN SECTION 2,  
 TOWNSHIP 29 NORTH, RANGE 5 EAST

FOR: CROWN CASTLE

SITE NAME: MARYSVILLE, WA

BUN: 025702

ADDRESS: 4123 71ST AVENUE NE

MARYSVILLE, WA 98270

SNOHOMISH COUNTY



2020 FOLEY/USON MAY STATE REG. EXAMINER #232277

NATIONAL SURVEY SERVICES COORDINATION BY:

**GEOLINE**  
 SURVEYING, INC.

1940 MAY 14th TERRACE, SUITE A, ALBUQUERQUE, NM 87102  
 (505) 426-4100 FAX (505) 426-5064  
 WWW.GEOLINE.SURV.COM

SURVEY WORK PERFORMED BY:



2226 W Dakota Avenue | Hayden, Idaho 83835

www.h2survey.com | Phone: (208) 772-6600

EXAMINER BY: MARYSVILLE, WA | JOB # 2017-109

**SURVEYOR'S NOTES**

1. BASIS OF BEARING: A BEARING OF 58°21'46" ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 2, AS SHOWN ON SHORT PLAT NO. 07004, AUDITOR'S FILE NO. 200803205001, RECORDS OF SNOHOMISH COUNTY, WASHINGTON.
2. NO SUBSURFACE INVESTIGATION WAS PERFORMED TO LOCATE UNDERGROUND UTILITIES SHOWN HEREON ARE LIMITED TO AND ARE PER OBSERVED EVIDENCE ONLY.
3. THIS SURVEY DOES NOT REPRESENT A BOUNDARY SURVEY OF THE PARENT PARCEL.
4. ALL VISIBLE TOWER EQUIPMENT AND INFRASTRUCTURE ARE CONTAINED WITHIN THE DESCRIBED AREA, UNLESS OTHERWISE SHOWN HEREON.
5. ALL SYMBOLS DEPICTED ARE NOT TO SCALE.

**SURVEYOR'S CERTIFICATION**

I HEREBY CERTIFY TO CROWN CASTLE

**FOR REVIEW ONLY**

h2 Surveying

Joshua A Bagley  
 LAND SURVEYOR - Washington 42105

Date of Survey: \_\_\_\_\_

Date of Last Revision: \_\_\_\_\_

SHEET 4 OF 4

**WHEN RECORDED RETURN TO:**

Prepared by:  
Parker Legal Group, PC  
600 West Broadway, Suite 700  
San Diego, California 92101

Space above this line for Recorder's Use

**Prior recorded document(s) in Snohomish County, Washington:  
Recorded on February 10, 1999, at #9902100360**

**A.P.N. 290502-002-065-00**

**Abbreviated Legal:** PTN SECTION 2, TOWNSHIP 29 NORTH, RANGE 5 EAST, WM

**MEMORANDUM OF FIRST AMENDMENT TO  
SITE LEASE WITH OPTION**

This Memorandum of First Amendment to Site Lease with Option is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between the CITY OF MARYSVILLE, with a mailing address of 80 Columbia Avenue, Marysville, Washington 98270-5130 ("Landlord") and T-MOBILE WEST TOWER LLC, a Delaware limited liability company, by and through CCTMO LLC, a Delaware limited liability company, its attorney in fact, with a mailing address of 2000 Corporate Drive, Canonsburg, Pennsylvania 15317 (collectively, "Tenant").

1. Landlord and Western PCS III Corporation, a Delaware corporation ("Original Tenant") entered into a Site Lease with Option dated October 8, 1998 (the "Lease") whereby Original Tenant leased certain real property, together with access and utility easements, located in Snohomish County, Washington from Landlord (the "Premises"), all located within certain real property owned by Landlord (the "Property"). The Property, of which the Premises is a part, is more particularly described on Exhibit A attached hereto.

2. T-Mobile West Tower LLC is currently the tenant under the Lease as ultimate successor in interest to the Original Tenant.

3. The Premises may be used for the purpose of constructing, maintaining and operating a communications facility, including tower structures, equipment shelters, cabinets, meter boards, utilities, antennas, equipment, any related improvements and structures and uses incidental thereto.

4. The Lease had an initial term that commenced on December 28, 1998, and expired on December 27, 2003. The Lease provides for three (3) extensions of five (5) years each, all of which were exercised by Tenant (each extension is referred to as a "Renewal Term"). According to the Lease, the final Renewal Term expires on December 27, 2018.

5. Landlord and Tenant have entered into a First Amendment to Site Lease with Option (the "First Amendment"), of which this is a Memorandum, providing for three (3) additional Renewal Terms of five (5) years each. Pursuant to the First Amendment, the final Renewal Term expires on December 27, 2033.

6. In the event of any inconsistency between this Memorandum and the First Amendment, the First Amendment shall control.

7. The terms, covenants and provisions of the First Amendment shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of Landlord and Tenant.

8. This Memorandum does not contain the social security number of any person.

9. A copy of the First Amendment is on file with Landlord and Tenant.

*[Execution Pages Follow]*





**TENANT:**  
T-MOBILE WEST TOWER LLC,  
a Delaware limited liability company

By: CCTMO LLC,  
a Delaware limited liability company  
Its: Attorney in Fact

By:   
Print Name: Lisa A. Sedgwick  
Title: RET Manager

State of Texas

County of Harris

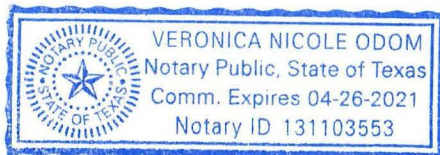
Before me, Veronica N. Odom, a Notary Public, on this day personally appeared Lisa Sedgwick, RET Manager of **CCTMO LLC**, a Delaware limited liability company, as Attorney in Fact for **T-MOBILE WEST TOWER LLC**, known to me (or proved to me on the oath of \_\_\_\_\_ or through driver's license, state id card, resident id card, military id card, or passport) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she/he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 3 day of April, 2018



(Personalized Seal)

Notary Public's Signature



**EXHIBIT A**  
**(Legal Description of the Property)**

SOUTH HALF OF LOT 3 IN SECTION 2, TOWNSHIP 29 NORTH, RANGE 5, EWM, LESS COUNTY ROAD, AND LESS NORTH 30 FEET OF WEST 686.12 FEET THEREOF AND LESS THE EAST 15 FEET OF WEST 30 FEET THEREOF FOR ROADS; SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON