

**ORDINANCE NO. 3140-19**

**AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA, AUTHORIZING THE LEASE OF CITY-OWNED PROPERTY LOCATED AT 2525 CADY WAY PURSUANT TO THE TOWER LEASE WITH OPTION AS AMENDED BY THE FIRST AMENDMENT ATTACHED HERETO AS EXHIBIT "A"; PROVIDING FOR CONFLICTS AND AN EFFECTIVE DATE.**

**WHEREAS**, Section 2.11 of the Charter of the City of Winter Park, Florida ("City"), authorizes the City Commission, by ordinance to lease or authorize by administrative action the lease of any lands of the City; and

**WHEREAS**, the City owns fee simple title to real property identified as the "Property" in that certain Tower Lease with Option with T-Mobile South LLC referenced below, a portion of which Property is leased to T-Mobile South LLC as the "Premises"; and

**WHEREAS**, the City Commission deems it advisable and in the best interest of the public and citizens of the City to lease the Premises to T-Mobile South LLC pursuant to the terms of the Tower Lease with Option as amended by this First Amendment attached hereto as Exhibit "A" ("Amended Lease").

**NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER PARK:**

**SECTION 1.** The recitals stated hereinabove are incorporated herein by reference and are made fully a part of this Ordinance.

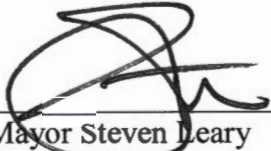
**SECTION 2.** The City Commission of the City of Winter Park hereby approves the Amended Lease, the terms and conditions of which are set forth in Exhibit "A" attached hereto, and which may be further negotiated by the City Manager and City Attorney and executed between the parties. This Ordinance is not intended to be a final acceptance to lease the Premises as such acceptance is subject to the negotiation and execution of a lease amendment in a form acceptable to the City Manager and City Attorney.

**SECTION 3.** This Ordinance shall constitute the authorization by the City Commission pursuant to Section 2.11 of the Charter of the City of Winter Park, Florida, for the lease of the Premises. The City Commission of the City of Winter Park hereby authorizes the City Manager and City Attorney to further negotiate lease, and authorizes the Mayor or City Manager to execute such lease amendment and other required documents on behalf of the City as may be required to effectuate the lease of the Premises.

**SECTION 4. CONFLICTS.** All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

**SECTION 5. EFFECTIVE DATE.** This Ordinance shall become effective immediately upon its passage and adoption.

**ADOPTED** at a regular meeting of the City Commission of the City of Winter Park, Florida, held in City Hall, Winter Park, on this 25th day of February, 2019.

  
\_\_\_\_\_  
Mayor Steven Leary

ATTEST:

  
\_\_\_\_\_  
City Clerk, Cynthia S. Bonham

**FIRST AMENDMENT TO TOWER LEASE WITH OPTION**

**THIS FIRST AMENDMENT TO TOWER LEASE WITH OPTION** (the "First Amendment") is made and entered into effective as of the \_\_\_ day of \_\_\_\_\_, 201\_\_, by and between **CITY OF WINTER PARK**, a Florida municipal corporation ("Landlord") and **T-MOBILE SOUTH LLC**, a Delaware limited liability company ("Tenant").

**WHEREAS**, on December 9, 2008, Landlord and Tenant entered into that certain Tower Lease With Option (the "Lease") regarding the use of the Premises, as defined in the Lease; and

**WHEREAS**, on December 17, 2009, Tenant exercised Tenant's option to lease the Premises; and

**WHEREAS**, the current term of the Lease has ended and the parties wish to amend the Rent and the Renewal Terms of the Lease; and

**WHEREAS**, Landlord and Tenant agree to amend the Lease pursuant to the terms and conditions contained herein.

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. New Initial Term and Renewal Terms. The Premises are hereby leased to the Tenant with a new initial five (5) year term commencing on the First Amendment date of April 1<sup>st</sup>, and ending on the last day of the first five (5) years after the First Amendment Effective Date ("New Initial Term"). Provided Tenant is not in default or breach of this First Amendment or Lease, Tenant shall have the right to extend the New Initial Term for Three (3) additional, successive five-year terms (each five (5) year period is a "Renewal Term") on the same terms and conditions set forth in the Lease as amended by this First Amendment. Provided the Tenant is not in default or breach of this First Amendment or Lease, the Lease, as amended, shall automatically renew for each successive Renewal Term unless Tenant notifies Landlord, in writing, of Tenant's intention not to renew the Lease, as amended, at least thirty (30) days prior to the expiration of any Renewal Term. If Tenant remains in possession of the Premises after the expiration of any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of the Lease, as amended.

3. Rent.

a. Starting on April 1<sup>st</sup>, 2019, the Rent shall be Two Thousand Six Hundred Dollars (\$2,600.00) per month.



b. Rent shall be increased on the first day of each year during the New Initial Term beginning April 1<sup>st</sup>, 2020 and each year of each Renewal Term by an amount equal to three percent (3%) over the Rent for the immediately preceding year.

4. Notices. All notices, invoices, bills, demands, statements, and requests ("Notice") required or permitted to be given hereunder shall be in writing and shall be deemed to have been properly given or served as of (i) the date of personal delivery with acknowledgment of receipt; (ii) the first business day after the date delivered to a reputable overnight courier service providing proof of delivery; or (iii) the date of delivery if sent by facsimile transmission or electronic mail with a hard copy sent on the same day by a reputable overnight courier service providing proof of delivery. The initial address of the Landlord and Tenant is set forth below:

If to Tenant:

T-Mobile USA, Inc.  
12920 SE 38<sup>th</sup> Street  
Bellevue, WA 98006  
Attention: Lease Compliance / Site Number: \_\_\_\_\_  
Email: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

If to City:

City of Winter Park, Florida  
Attention: \_\_\_\_\_  
401 Park Avenue South  
Winter Park, Florida 32789  
Email: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

Any party shall have the right from time to time and at any time, upon at least three (3) days' prior written notice delivered pursuant to the terms hereof, to change its respective address and to specify any other address within the United States of America, provided said new address is not a post office box.

5. Memorandum of Lease. Neither Landlord nor Tenant shall record any memorandum of lease, this First Amendment, or the Lease in the public records of Orange County, Florida.

6. No Further Changes/Miscellaneous. The foregoing terms and conditions are hereby incorporated into the Lease. Except as set forth in this First Amendment, the Lease in its original form shall have full force and effect. Capitalized terms used in this First Amendment shall have the same meaning as set forth in the Lease. In the event of any conflict or ambiguity between the Lease and this First Amendment, this First Amendment controls. This First Amendment may be executed in one or more counterparts, the aggregate of which shall constitute a single document

and any signatures delivered by facsimile or electronic mail shall constitute originals. Landlord and Tenant represent and warrant that they each have the right, power and authority to enter into and perform their respective obligations under this First Amendment and this First Amendment shall be binding upon and inure to the benefit of the Landlord and Tenant, and their respective heirs, beneficiaries, successors and assigns. This First Amendment shall have no force or effect unless and until approved by the City Commission of the City of Winter Park.

**IN WITNESS WHEREOF**, the parties have set their hands and seals as of the date set forth above.

**LANDLORD:**

**CITY OF WINTER PARK**, a Florida municipal corporation

By: \_\_\_\_\_  
Steve Leary, Mayor

Date: \_\_\_\_\_

**TENANT:**

**T-MOBILE SOUTH LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_