

## FIRST AMENDMENT TO LEASE

**THIS FIRST AMENDMENT TO LEASE** (“Amendment”) is made and entered into as of June \_\_, 2021 (“Effective Date”) by and between **PORT OF LOS ANGELES** (“Tenant”) and **SANTA CATALINA ISLAND CONSERVANCY** (“Landlord”), with reference to the following facts:

A. Tenant is the current Tenant, and Landlord is the current Landlord, under that certain Communications Site Lease-Mt. Black Jack, dated May 9, 2018 (the “Lease”), for certain space on a communications tower located on top of Black Jack Mountain, Santa Catalina Island, as more particularly described in said Lease (the “Leased Space”).

B. The Term of the Lease is scheduled to expire on October 1, 2021 (“Current Termination Date”).

C. Tenant has requested to extend the Term of the Lease for a period of 3 years from the Current Termination Date.

D. Additionally, Landlord recently entered into a new Ground Lease and a new Sublease with Los Angeles County for the Site upon which the Lease Premises are a part, which such new Ground Lease and Sublease provide, among other things, for the construction of new communications tower on the Site, and the removal of the existing communications tower upon which Tenant’s current equipment resides.

E. Landlord and Tenant now desire to amend the Lease to extend the Term, provide for Tenant’s relocation to the new communications tower, if applicable, and such other matters contained herein, all upon the terms and conditions herein set forth.

**NOW, THEREFORE**, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **Defined Terms.** Capitalized terms not otherwise defined herein shall have the meanings set forth in the Lease **except** to the extent and in the circumstances to the contrary expressly set forth in this Amendment.

2. **Recitals.** The Recitals on the first page of the Lease are hereby deleted in their entirety and the following is hereby inserted in their place:

“Los Angeles County (“County”) and Landlord have entered into that certain ground lease agreement dated as of November 1, 2021 (“Ground Lease”) for certain properties on top of Mt Black Jack, Santa Catalina Island, having Assessor’s Parcel Number 7480-041-002 (“Site”) and incorporated herein by reference. The Ground Lease provides that the County shall develop a communications site on the property and operate the existing communications tower (“Existing Tower”), ancillary building (“Building”) and facilities, and build a new communications tower (“New Tower”, which with the Existing Tower sometimes being collectively referred to herein as the “Towers”) and additional facilities thereon as a

part of the County's communication network. Pursuant to that certain Sublease by and between County and Landlord dated as of the same date as the Ground Lease ("Sublease") incorporated herein by reference, Landlord has the right to lease certain space on the Tower and in the Building for its own purposes and to third party licensees and subtenants ("TPL's") for the purpose of using the Site for communications purposes operations. This Communications Site Lease ("Lease") is for that purpose and is consistent with the provisions of the Ground Lease and Sublease."

Additionally, from and after the date hereof, wherever in the Lease the terms (a) "Tower" is used, it shall now be deemed to refer to the Existing Tower as defined in said Recitals, and (b) "Master Lease" is used, it shall now be deemed to refer to the "Ground Lease."

**3. Term.** The Term of the Lease, as set forth in Section 2 of the Lease, is hereby amended to provide that such Term shall now expire on September 31, 2024, unless sooner terminated as provided in the Lease.

**4. Rent.** Section 3 of the Lease is hereby amended to provided that Rent shall increase by 5% to \$4,630.50 per month commencing October 1, 2021. On October 1, 2022, the then Rent shall further increase by 5% to \$4,862.03 per month, and on October 1, 2023, the then Rent shall further increase by 5% to \$5,105.13 per month.

**5. Insurance.** Section 6 of the Lease is hereby amended by the deletion of the phrase "Tenant shall at its expense, maintain insurance reasonably satisfactory to Landlord but in no event less than:" at the beginning of Section 6 and by the insertion of the following in its place:

"Tenant shall at its expense, maintain the following insurance reasonably satisfactory to Landlord in the forms and amount and terms set forth below, and in the event that the Ground Lease or the Sublease provide any additional or changed coverages with respect to any TPL, Tenant agrees to provide the same. All insurance required to be maintained by Tenant hereunder shall name Landlord, the County and the Los Angeles Regional Interoperable Communications System Joint Powers Authority ("LA-RICS"), as additional insureds."

**6. Tenant Operational Frequencies.** Section 11 of the Lease is hereby amended to provide that Tenant may continue to transmit and receive on those frequencies currently set forth in the Lease and as set forth in that certain Communications Sites Technical Data Questionnaire dated \_\_\_\_\_ ("Current Questionnaire"), which such Current Questionnaire Tenant agrees to update from time to time upon request therefore from Landlord or County and provided, further, that prior to any migration by Tenant from the Existing Tower to the New Tower, as provided herein below, Tenant shall only be permitted to transmit and receive on those frequencies set forth in the Current Questionnaire or in any subsequent Questionnaire submitted by Tenant and approved by Landlord or County.

7. **Removal of Tenant's Equipment.** Section 24 of the Lease is hereby amended by the deletion of the phrase "within one hundred twenty (120) days" therein and by the insertion of the phrase "within thirty (30) days" in its place.

8. **Notices.** Section 29 of the Lease is hereby deleted in its entirety, and the following is hereby inserted in its place:

"Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, sent by facsimile or e-mail transmission or delivered via a nationally-recognized overnight courier service with charges billed to the sending party, and shall be deemed received upon the earlier of: (a) if delivered personally or via overnight courier, the date of delivery or first attempted delivery to the address of the person to receive such notice, (b) if mailed, upon the date of receipt or first attempted delivery as disclosed on the return receipt, (c) if sent by facsimile or e-mail transmission, upon the date of receipt as disclosed by the transmission record provided a duplicate of such notice is sent by any other method permitted hereunder within one (1) business day following the date of such transmission; otherwise, any notice sent by facsimile or e-mail transmission shall be effective upon the actual date of receipt by the addressee. Notices shall be directed as follows (or to such other address or to such other person as any party shall designate in writing, such address may be changed by written notice given to the other party in accordance with this Section):

To Landlord: Santa Catalina Island Conservancy  
PO Box 2739,  
Avalon, CA 90704  
Attention: Tony Budrovich, Chief Executive Officer  
Email: TBudrovich@catalinaconservancy.org

And

Santa Catalina Island Conservancy  
320 Golden Shore #220  
Long Beach, CA 90802  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

To Tenant: Port of Los Angeles  
425 South Palos Verdes Street  
San Pedro, California 90731  
Attention: Port Police

9. **Relocation.** Section 36 of the Lease is hereby deleted in its entirety and by the insertion of the following in its place:

“Landlord shall have the right, at its option, upon at least three (3) months prior written notice to Tenant, to relocate Tenant’s communications facility and equipment to other locations on the Towers, and to substitute for the Site other space, provided that any substitute space is compatible for Tenant’s operations in Tenant’s sole, but reasonable, discretion. Tenant shall pay the expenses reasonably incurred by Tenant in connection with such relocation.”

10. **Additional Terms.** The following is hereby added and incorporated into to the Lease as Section 40 thereof:

“40. **Additional Terms.** In addition to all other terms and conditions hereunder, and to comply with all obligations imposed by the County pursuant to the Ground Lease and the Sublease, Tenant agrees to the following, and in the event of any conflict or inconsistency with the terms of this Section 40 and the other terms of this Lease, the terms of this Section 40 shall control to the extent of such inconsistency:

- A. Tenant acknowledges that the Existing Tower must be removed after completion of the New Tower, which completion is in the sole discretion of the County. Provided that Tenant is not in default under any term of this Lease, Tenant shall have the right to continued use of the Existing Tower throughout the Term hereof, but subject to the terms of this Lease. If Tenant desires space on the New Tower, and this Lease is still in effect when the New Tower is fully operational, and provided Tenant has not defaulted hereunder, and there then exists no default hereunder by Tenant, Tenant shall be given a commercially reasonable “Migration Period” of the lesser of the then remaining Term of this Lease or 24 months to negotiate a new agreement to sublease space on the New Tower, purchase new equipment, install equipment onto the New Tower, and remove equipment from the Existing Tower. Landlord agrees to cooperate in good faith with Tenant regarding the scheduling and process of removing equipment from the Existing Tower and installing equipment on the New Tower. Tenant shall be responsible for all costs of removing or disposing of its equipment remaining on the Existing Tower after expiration of the Migration Period, if applicable, and all costs to: (1) purchase its own new equipment; (2) install its own equipment on the New Tower; and (3) remove its own equipment from the Existing Tower, or New Tower, as applicable. If Tenant does not wish to migrate to the New Tower, or if Tenant and Landlord are unable to negotiate a new agreement to sublease space on the New Tower prior to the expiration of the Term.
- B. Tenant agrees to provide Landlord and County a new Technical Questionnaire in connection with any proposed migration by Tenant from

the Existing Tower to the New Tower. Any equipment to be installed on the New Tower must be installed in its then assigned tower space on the New Tower as determined by Landlord in its sole and absolute discretion

C. Tenant expressly agrees that it shall:

1. Comply with and abide by all reasonable and applicable rules, regulations and directions of Landlord (or County) which have been, or are, provided in writing to Tenant from time to time.
2. At all times Tenant shall, if required, hold a valid FCC license for the Permitted Use and all of its activities at the Site and shall comply with all applicable County codes and ordinances and all State and Federal laws, and, in the course thereof, obtain and keep in effect all required permits and leases required to engage in the Permitted Use and all of its Activities on the Site.
3. Conduct the Permitted Use and all of its activities in a courteous and non-profane manner, operate without interfering with the normal and customary use of the Site by County or Landlord, other site users or the public, and remove any agent, servant or employee who fails to conduct Permitted Use or any activities in the manner heretofore described.
4. Assume the risk of loss, damage or destruction to any and all fixtures and personal property belonging to Tenant are installed or placed within the Site, unless such loss, damage or destruction was caused by the gross negligent or willful act or omission of the Landlord, its agents, employees or contractors.
5. Tenant is required to deposit with Landlord concurrently herewith an amount of \$2,000, which such amount is to held and used as a reserve against a penalty payable by Landlord to County for County's correction of Tenant's violations of installation standards and approval conditions, including but not limited to misplaced antennas on the tower(s) without corrective action by Tenant and causing County to remove and correct the misplaced antennas. Such amount is non-refundable to Tenant and shall not limit in any manner whatsoever Tenant's obligations, costs or expenses to reimburse Landlord or County for any violations of installation standards and approval conditions, corrective action taken or other such damages arising from Tenant's actions or failure to act. In the event that Landlord is required to use any portion of such amount to reimburse itself or County, Tenant shall, within 3 business days after request therefor, repay and replace such amount so used, such that at all times, Landlord is holding a \$2,000 reserve.

6. Repair or replace any and all properties owned by County lost, damaged, or destroyed directly or indirectly arising out of Tenant's activities on the Site unless arising from any grossly negligent act or intentional misconduct by Landlord or County.
7. Upon expiration, cancellation, or other termination of this Lease, Tenant shall remove, at no cost to Landlord or County, any and all equipment, personal property and improvements of Tenant, and restore the Towers or Sublease Area to its condition prior to the execution of this Lease, reasonable wear and tear and damage or destruction by the acts of God beyond the control of Tenant excepted.
8. Tenant shall follow best engineering and installation practices and observe generally accepted industry or original equipment manufacturer (OEM) standards in the design and implementation of each communications system(s) that belong to Tenant in the areas of radio system design and installation, combining/multi-coupling and filtering, equipment cabling and grounding and equipment maintenance, such as American National Standards Institute (ANSI), Telecommunications Industry Association (TIA), Institute of Electrical and Electronics Engineers (IEEE) or any other national or industry acceptable standards and applicable codes, prior to the commencement date of this Sublease. Tenant shall provide any change or update to its current practices and standards thereafter annually as per the Declaration.
9. Landlord is not liable to Tenant for any engineering, operational or maintenance problem originated from Tenant's, or any other user's equipment used or spaces occupied by Tenant.
10. Tenant shall provide Landlord and County a new and updated Declaration from time to time, upon request, to confirm and certify that Tenant's equipment will be installed and used as exactly stated in the Technical Questionnaire, with full compliance to County's conditions for site utilization, applicable codes, ordinances, regulations and laws, without adversely impacting existing site users or exceeding the design limits of the infrastructure of County's Facilities and tower and outdoor cable tray built by County's other sublicensee at the site, LA-RICS; provided, however, that minor deviances from the Technical Questionnaire shall be permitted with written notification from County and provided they do not materially adversely impact existing site users or said design limits.
11. Landlord and County shall have the right but not the obligation to audit or inspect Tenant's equipment installations at any time. If an

equipment installation is not in accordance with County's approval and conditions, than Tenant needs to, and shall, take corrective actions within 30 days of Tenant's receipt of written notification from County or Landlord.

12. **Tenant agrees to indemnify, defend, save and hold harmless Landlord, COUNTY and LA-RICS and their agents, officers, and employees from and against any and all liability, expense (including, without limitation, defense costs and legal fees), and claims for damages of any nature whatsoever, including, without limitation, bodily injury, death, personal injury, or property damage arising from or connected with Tenant's operations, equipment and services performed or located on the Sublease Area, including without limitation any Workers' Compensation suit or any services performed by Tenant contractors or other agents.."**

11. **No Defaults.** Tenant hereby agrees and acknowledges for Landlord's benefit that, as of the date hereof: (a) Tenant is not in default under the Lease; (b) Landlord has fulfilled all of its duties and obligations under the Lease; (c) there is no breach by Landlord, which with the giving of notice or the passage of time or both, would become a default by Landlord under the Lease, and (d) there are no offsets, charges, liens, credits, claims, offsets and/or defenses against any "rent" payable under the Lease or to the enforcement of the terms, covenant and conditions of the Lease.

12. **Interpretation and Effect.** Except as specifically modified herein, all terms, provisions, conditions, representations, warranties and covenants of the Lease are hereby agreed, confirmed, ratified, and remain unmodified and in full force and effect as of the date of this Amendment. In the event of any conflict between the terms and provisions of this Amendment and the terms and provisions of the Lease, the terms and provisions of this Amendment shall prevail.

13. **Counterparts.** This Amendment may be executed in several counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument. A signature of a party to this Amendment sent by facsimile, pdf or other electronic transmission shall be deemed to constitute an original and fully effective signature of such party.

14. **Effective Date; Binding Effect.** This Amendment shall become effective on the date first above written.

15. **Captions.** The captions or headings in this Amendment are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections hereof.

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IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

**LANDLORD:**

**SANTA CATALINA ISLAND CONSERVANCY**

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

**TENANT:**

**PORT OF LOS ANGELES**

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

APPROVED AS TO FORM AND LEGALITY

*Aug 26* 20 *21*

MICHAEL N. FEUER, City Attorney

By: *Janna Siddle*

Assistant City Attorney

*Janna Siddle for Minah Park*