

FIRST AMENDMENT TO CITY OF SAN DIEGO LEASE AGREEMENT

THIS FIRST AMENDMENT TO CITY OF SAN DIEGO LEASE AGREEMENT ("Amendment") is made by and between AMERICAN TOWERS, INC., a Delaware corporation (California Secretary of State Corporation No. C1990232, "LESSEE"), and THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), to be effective as of the date of execution by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. AMERICAN TOWER, L.P., a Delaware limited partnership ("ORIGINAL LESSEE"), and CITY entered into to that certain CITY OF SAN DIEGO LEASE AGREEMENT (the "Lease") filed in the Office of the San Diego City Clerk on December 5, 2005, as Document No. RR-301101, attached hereto as **Exhibit A: Lease**, under which ORIGINAL LESSEE leased from CITY that certain real property known as a portion of "Mount Woodson," and more particularly described in the Lease (the "Premises").
- B. ORIGINAL LESSEE assigned its rights and obligations under the Lease to AMERICAN TOWERS, INC., a Delaware corporation (California Secretary of State Corporation No. C1990232, "LESSEE") pursuant to that certain CALIFORNIA ASSIGNMENT AND ASSUMPTION OF LEASE, Mt. Woodson, CA – 8009,8636, 8064, 8136, 8137, 8138 (the "Assignment") dated November 19, 2007, by and between ORIGINAL LESSEE and LESSEE.
- C. LESSEE wants to sublease a portion of the Premises to MEDIAFLO USA, INC., a Delaware corporation ("MEDIAFLO").
- D. Lease section 4.2, Assignment, Subletting and Licensing, requires that any sublease of any part of the Premises must have the prior written consent of CITY'S City Manager (currently deemed to mean "the Mayor or his/her designee," pursuant to Article XV of the San Diego City Charter).
- E. Under Lease section 4.2, Assignment, Subletting and Licensing, the City Manager may, as a condition to granting CITY'S consent to a sublease, require that the Lease be revised to comply with current, standard CITY lease requirements.
- F. Under Lease section 5.2(b)(2), Insurance to be Carried by LESSEE; Modification, CITY, at its discretion, may require the revision of amounts and coverage at any time during the term of the Lease by giving LESSEE 60 days prior written notice.
- G. This Amendment is made in consideration of CITY'S consent to LESSEE'S proposed sublease to MEDIFLO.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. Insurance. Lease section 5.2, Insurance to be Carried by LESSEE, shall be deleted and replaced with the following, to be effective sixty (60) days from the Effective Date of this Amendment:

5.2 Insurance to be Carried by LESSEE. LESSEE shall deliver to CITY current certificates of insurance for:

- 1) Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000);
- 2) Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated on the Premises. Coverage shall be written on ISO form CA 00 01 12 90, or a substitute form providing equivalent liability coverage; and
- 3) Workers' Compensation Insurance, as required by the laws of the State of California for all of LESSEE'S employees who are subject to this Lease, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000).

5.2.1 Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in LESSEE'S Commercial General Liability policy and Automobile Liability policy.

5.2.2 Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department.

5.2.3 Qualified Insurer(s). All insurance required by the terms of this Lease must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.

- 5.2.4 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 5.2.5 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Lease.
- 5.2.6 Modification. To assure protection from and against the kind and extent of risk existing on the Premises, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY'S reasonable re-evaluation of risk levels related to LESSEE'S use of the Premises.
- 5.2.7 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 5.2.8 Failure to Comply. Notwithstanding any other provision of this Lease to the contrary, if LESSEE'S failure or refusal to obtain or maintain insurance as required by this Lease, or failure to provide proof of insurance, shall be a default of this Lease.
- 5.2.9 Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all insurable property on the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver to CITY a certificate of such insurance.
2. Hazardous/Toxic Waste. Lease section 6.11, Hazardous/Toxic Waste, shall be deleted and replaced with the following:
- 6.11 Hazardous Substances. LESSEE shall not allow the installation or release of hazardous substances in, on, under, or from the Premises by LESSEE, its officers, employees, invitees, guests, agents, or contractors ("LESSEE Parties"). LESSEE Parties shall not store, utilize, or sell any hazardous substance on the Premises without CITY'S prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging,

injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Permit.

- 6.11.1 Remediation. If any release of a hazardous substance occurs as a result of LESSEE'S use, development, or maintenance of the Premises ("LESSEE'S Operations"), LESSEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
- 6.11.2 Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S Operations, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- 6.11.3 Notice of Release. If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or within the Premises, LESSEE shall give written notice to CITY within three (3) business days after receipt of such knowledge or cause for belief. If LESSEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, LESSEE shall notify CITY by the most immediate means available and immediately upon receipt of such knowledge or belief and shall take all actions necessary to minimize the danger. LESSEE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private lawsuits related to the Premises.
- 6.11.4 Environmental Assessment. Upon reasonable cause to believe that LESSEE'S Operations resulted in a hazardous substance being released on or from the Premises, CITY may cause an environmental assessment of the Premises to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by LESSEE'S Operations and in what quantities. If any such hazardous substances exist in quantities greater than allowed by municipal, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, CITY may cause,

the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and LESSEE shall pay all costs and expenses therefor. If the environmental assessment conclusively establishes that LESSEE'S Operations did not result in a hazardous substance being released on or from the Premises, CITY shall reimburse LESSEE for the cost of the assessment.

3. San Diego's Strong Mayor Form of Governance. The Lease shall be amended by adding section 7.20, as follows:

7.20 San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Lease shall be deemed to refer to "the Mayor or his/her designee." This provision became effective January 1, 2006, and shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.

4. No Other Changes. All other terms and conditions of the Lease shall remain in full force and effect.

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5. Authority. Each individual executing this Amendment on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Amendment on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Amendment is binding upon such person or entity in accordance with its terms. Each person executing this Amendment on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Amendment is executed to be effective as of the Effective Date.

Date: _____

AMERICAN TOWERS, INC., a Delaware corporation
(California Secretary of State Corporation No.
C1990232)

BY: _____

Name: JASON D. HIRSCH

Title: Vice President, Land Management

Date: 1/7/08

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: _____

Name: James F. Barwick, CCIM

Title: Director, Real Estate Assets

APPROVED AS TO FORM AND LEGALITY:

Date: 1/11/08

MICHAEL J. AGUIRRE, City Attorney

BY: _____

Name: BROCK LADEWIG

Title: CHIEF DEPUTY CITY ATTORNEY

EXHIBIT A: Lease