

BILL NO. S-13-04-05

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving MEMORANDUM OF UNDERSTANDING FOR LEASE AND MARKETING OF WIRELESS COMMUNICATION SITES AND ANTENNA SITE MARKETING AND SERVICE AGREEMENTS - RESOLUTION NUMBER: 100-3-27-13-1 between AP WIRELESS INVESTMENTS I, LLC and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the MEMORANDUM OF UNDERSTANDING FOR LEASE AND MARKETING OF WIRELESS COMMUNICATION SITES AND ANTENNA SITE MARKETING AND SERVICE AGREEMENTS - RESOLUTION NUMBER: 100-3-27-13-1 by and between AP WIRELESS INVESTMENTS I, LLC and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

sale of four (4) assignments of rents for wireless communication sites for a fifty (50) year period and Antenna Site Marketing and Service Agreement for five (5) years:

involving a total cost of ONE MILLION, THREE HUNDRED TEN THOUSAND AND 00/100 DOLLARS - (\$1,310,000.00). A copy said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

Memo

Date: April 2, 2013
To: Common Council Members
From: Ben Groeneweg, Program Manager, City Utilities Engineering
Re: **Lease and Marketing of Wireless Communication Sites**
Resolution Number: 100-3-27-13-1

Council Districts #2 and #3

City Utilities is proposing to sell four assignments of rents for wireless communication sites for a 50-year period to an investor that will provide antenna site marketing and contract negotiation services to help secure additional tenants for the City of Fort Wayne.

Implication of not being approved:

- There is a risk of losing rent revenue if current wireless tenants do not renew their leases. All four tenants are cellular phone service providers and there is a risk that they could be acquired by other companies and /or their technology may become obsolete.
- Managing wireless communication sites is not a core business for City Utilities. There is a cost both to the lost opportunities of securing additional tenants and managing existing tenant contracts.
- There is an immediate funding need for capital projects. One hundred percent of the money received will fund capital projects.

If Prior Approval is being Requested, Justify: Not required for this contract

The sale of assignment of rents was advertised on 12/17/2012 and 12/24/2012 in the Journal Gazette and News Sentinel.

City Utilities recommends, and the Board of Public Works has approved, the sale of the wireless communication site assignment of rents to AP Wireless Investments I, LLC for \$1,310,000. The proposal from AP Wireless Investments was the highest responsive proposal. The second highest proposal was for \$525,000 from Unison Site Management, LLC, which was 60% less than AP Wireless Investments. The term of the assignment of rents will be for 50 years.

The Antenna Site Marketing and Service Agreement from AP Wireless Investment was the most attractive with a fee of 20% of future rents secured by the services. Unison Site Management had the second most attractive option with a fee of 25% of future rents secured by the service. The agreement is for 5 years.

The revenue of said sale will fund capital projects in the water utility.

Council Introduction Date: April 9, 2013

CC: BOW
Matthew Wirtz
Diane Brown
File

(FWCU)

AP WIRELESS INFRASTRUCTURE PARTNERS, LLC
(Vendor Name)

VENDOR DISCLOSURE STATEMENT RELATING TO:

- 1. FINANCIAL INTERESTS;**
- 2. POTENTIAL CONFLICTS OF INTERESTS;**
- 3. CURRENT AND PENDING CONTRACTS OR PROCUREMENTS**

Vendors desiring to enter into certain contracts with the (FWCU) shall disclose their financial interests, potential conflicts of interest and current and pending contract or procurement information as set forth below.

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$25,000 or more. Vendors shall disclose the financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration of an award of contract by the City. This Disclosure Statement must be completed and submitted together with Vendor's contract, bid, proposal, or offer.

A publicly traded entity may submit its current 10K disclosure filing in satisfaction of the disclosure requirements set forth in Sections 1 and 2 below.

Section 1. Disclosure of Financial Interest in Vendor

- a. If any individuals have either of the following financial interests in Vendor (or its parent), please check all that apply and provide their names and addresses (attach additional pages as necessary):

(i) Equity ownership exceeding 5% ☐

(ii) Distributable income share exceeding 5% ☐

(iii) Not Applicable (If N/A, go to Section 2) (N/A)

Name: _____

Name: _____

Address: _____

Address: _____

- b. For each individual listed in Section 1a, show his/her type of equity ownership: sole proprietorship ☐ stock ☐ partnership interest ☐ units (LLC) ☐ other (explain) _____

- c. For each individual listed in Section 1a, show the percentage of ownership interest in Vendor (or its parent): ownership interest: _____%.

Section 2. Disclosure of Potential Conflicts of Interest (not applicable for vendors who file a 10K)

RFP: # 3605

For each individual listed in Section 1a, check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes", please describe using space under applicable subsection (attach additional pages as necessary):

- | | | |
|---|------------------------------|--|
| a. City employment, currently or in the previous 3 years, including contractual employment for services. | Yes ☐ | No ☒ |
| b. City employment of "Member of Immediate Family" (defined herein as: spouse, parent, child or sibling) including contractual employment for services in the previous 3 years. | Yes ☐ | No ☒ |
| c. Relationship to Member of Immediate Family holding <u>elective</u> City office currently or in the previous 3 years. | Yes ☐ | No ☒ |
| d. Relationship to Member of Immediate Family holding <u>appointive</u> City office currently or in the previous 3 years | Yes ☐ | No ☒ |

Section 3. DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

- | | | |
|--|------------------------------|--|
| a. Does Vendor have <u>current</u> contracts (including leases) with the City? | Yes ☐ | No ☒ |
| b. If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact using space below (attach additional pages as necessary). | | |
| c. Does Vendor have <u>pending</u> contracts (including leases), bids, proposals, or other pending procurement relationship with the City? | Yes ☐ | No ☒ |

If "Yes", identify each pending matter with descriptive information including bid or project number, contract date and City contact using space below (attach additional pages as necessary).

Section 4. CERTIFICATION OF DISCLOSURES

In connection with the disclosures contained in Sections 1, 2 and 3 Vendor hereby certifies that, except as described in attached Schedule A:

- | |
|---|
| a. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, been debarred, suspended, proposed for debarment declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government; |
| b. No officer or director of Vendor (or its parent) or individual listed in Section 1a. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offense; |
| c. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, had one or more public transactions (federal, state or local) terminated for cause or default; |
| d. No officer or director of Vendor (or its parent) or individual listed in Section 1a. has, within the five (5) year period preceding the date of this Disclosure Statement, been convicted, adjudged guilty, or found liable in any criminal or civil action instituted by the City, the federal or state government or any other unit of local government; and |

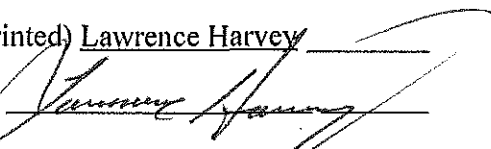
RFP: # 3605

- e. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers, directors, or individuals listed in Section 1a. is barred from contracting with any unit of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same elements as the offense of bid-rigging or bid-rotating.
- f. Pursuant to IC 5-22-16.5, Vendor hereby certifies they do NOT provide \$20 million dollars or more in goods or services to the energy sector of Iran. Vendor also certifies it is not a financial institution that extends \$20 million dollars or more in credit that will provide goods or services to the energy sector of Iran or extends \$20 million dollars or more in credit to a person identified on the list as a person engaging in investment activities in Iran.

The disclosures contained Sections 1, 2 and 3 and the foregoing Certifications are submitted by

<u>AP Wireless Infrastructure Partners, LLC</u>	<u>9373 Towne Centre Drive, Suite 200, San Diego, CA 92121</u>
(Name of Vendor)	(Address)
	<u>(858) 228-4228</u>
	(Telephone)
	<u>lharvey@apwip.com</u>
	(E-Mail Address)

The individual authorized to sign on behalf of Vendor represents that he/she: (a) is fully informed regarding the matters pertaining to Vendor and its business; (b) has adequate knowledge to make the above representations and disclosures concerning Vendor; and (c) certifies that the foregoing representations and disclosures are true and accurate to the best of his/her knowledge and belief.

Name (Printed) <u>Lawrence Harvey</u>	Title <u>VP Acquisitions and Site Development</u>
Signature 	Date <u>December 18, 2012</u>

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM WITH YOUR DOCUMENTATION MAY RESULT IN YOUR CONTRACT, OFFER, BID OR PROPOSAL BEING DISQUALIFIED FROM CONSIDERATION.



MEMORANDUM OF UNDERSTANDING

This is an Memorandum of Understanding ("Memorandum") made pursuant to RFP-3605 by and between BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE with an address of 200 E. Berry Street, Suite 240, City of Fort Wayne, State of Indiana ("Ft. WAYNE"), and AP WIRELESS INVESTMENTS I, LLC, a Delaware limited liability company ("APWI1"). All references hereafter to "APWI1" and "Ft. WAYNE" shall include their respective heirs, successors, personal representatives, lessees, licensees and assigns (APWI1 and Ft. WAYNE, collectively, "Parties").

APWI1 does hereby offer to purchase from Ft. WAYNE an assignment of rents for certain wireless communications site license(s) and lease(s) ("Offer"), respecting, relating, or appurtenant to certain real properties located at: 7602 Bass Road, City of Fort Wayne, State of Indiana ("West Side"); 13323 Coldwater Road, City of Fort Wayne, State of Indiana ("Coldwater"); and 1016 Dupont Road, City of Fort Wayne, State of Indiana ("Dupont") (collectively "Property").

Specifically, and in exchange for the Assignment Price (as set forth below), APWI1 offers to purchase from Ft. WAYNE the following:

- A. An assignment of Ft. WAYNE's beneficial rights ("Rents") in that certain LICENSE AGREEMENT dated August 16, 2006 ("T-MOBILE-1"); and that certain TOWER ATTACHMENT LICENSE AGREEMENT dated June 30, 2003 ("US CELLULAR-1"); and that certain STANDARD LEASE AGREEMENT dated May 5, 1998 ("T-MOBILE-2"); and that certain TOWER ATTACHMENT LICENSE AGREEMENT dated November 18, 2004 ("US CELLULAR-2") (collectively "Tenants") by and between Tenants and the CITY OF FORT WAYNE, INDIANA, a Municipal Corporation, ("Landlord"); as assigned and amended ("Leases"), including without limitation, all Rents and other monies due the Ft. WAYNE specified therein (collectively "Assignment"). This Offer is based on the following Lease economics:

	Wireless Carrier(s):	Current Rent:		Escalation:		Date of Next Escalation:
		Amount:	Frequency:	Amount:	Frequency:	
Lease Economics:	1) T-MOBILE-1	\$24,840.00	Annually	15.0%	Term	12/04/2016
	2) US CELLULAR-1	\$2,326.99	Monthly	5.0%	Annually	06/30/2013
	3) T-MOBILE-2	\$12,696.00	Annually	15.0%	Term	08/01/2013
	4) US CELLULAR-2	\$2,205.93	Monthly	CPI + ½%	Annually	01/01/2013

- B. With the exception of all mortgages, deeds of trust, and similar liens against the Property, which APWI1 will require Ft. WAYNE to obtain a Non Disturbance and Attornment Agreement, APWI1 shall accept the Assignment subject to easements, rights-of-way, and restrictions of record, if any, and any other matter that would be revealed by an accurate survey or inspection of the premises.

Terms and Conditions:	1) APWI1 will accept the Assignment on an "AS IS, WHERE IS" basis, for the assignment price payable in full in cash, or other good funds at closing ("Assignment Price");
	2) The Assignment term shall be fifty (50) years;
	3) At APWI1's cost, APWI1 shall obtain a Title Commitment, Title Report, and a Policy of Title Insurance covering the Property from Fidelity National Title Group, Commercial Lender-Search-Franchise Services, 7130 Glen Forest Drive, Suite 300, Richmond, VA 23226 ("Fidelity");
	4) Closing shall be facilitated through escrow with Fidelity. APWI1 shall be responsible for all closing costs which shall include, but are not limited to, closing fees, transfer taxes, documentary stamps, and recordation fees;
	5) Closing shall be held no later than forty five (45) days after Ft. WAYNE accepts APWI1's Offer to Purchase. If the said 45 th day shall fall on Saturday, Sunday, or a holiday, closing shall be held on the first business day thereafter. Ft. WAYNE and APWI1 agree that time is of the essence of this Offer, and the date of closing may be extended only by written agreement between the parties;
	6) Ft. WAYNE shall have until April 30, 2013 to accept this Offer by signing and returning same to APWI1;
	7) This Offer may be executed in two or more identical counterparts and shall inure to the benefit of and be binding on the parties hereto, their respective heirs, representatives, successors, and assigns;
	8) APWI1 and Ft. WAYNE shall execute an <i>Assignment of Lease Rents and Successor Lease Rents</i> agreement attached hereto as Exhibit "A-1" to memorialize this transaction. All terms stated herein shall be incorporated into the final expression of the parties;
	9) If the Property is subject to a mortgage, APWI1 will require that the mortgagee bank sign a Non Disturbance and Attornment Agreement ("NDA"). If an NDA cannot be obtained, APWI1 may re-evaluate the Transaction which may reduce the purchase price;
	10) APWI1 and Ft. WAYNE shall enter into an <i>Antenna Site Marketing and Services Agreement</i> in substantially the same form as the agreement attached hereto as Exhibit "A-2" whereby APWI1 shall agree to market the Property and share with Ft. WAYNE eighty percent (80.0%) of the future rents derived from new or additional tenants;

Terms and Conditions Continued:	11) Ft. WAYNE shall be entitled to one hundred percent (100.0%) of any rent increases obtained as a result of renegotiation of the existing lease(s) at expiration and/or earlier termination; and
	12) Ft. WAYNE shall retain the right to install radio and collector communication on the tower(s) for its own systems;
	13) It is understood by the Parties that RFP-3605 is not for the purchase of easement(s) or license(s), but solely for the assignment of rents.

ASSIGNMENT PRICE:

West Side Price:	** \$315,000.00
Coldwater Price:	** \$460,000.00
Dupont Price:	** \$535,000.00
* Total NET Purchase Price:	** \$1,310,000.00

** The Assignment Price may be pro-rated at closing based on Interim monthly, quarterly, or annual rent payments and a rent redirection period of up to two (2) months.*

Ft. WAYNE will retain rent checks for pro-rated and redirected periods.

*** This Net Assignment Price amount is conditioned on structuring the proposed transaction as a tax-exempt municipal financing.*

To the extent that the terms contained in this Memorandum represent an offer by APWI1 to purchase the Lease, the terms herein shall expire on 04/30/2013.

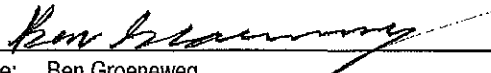
ACKNOWLEDGED AND AGREED this 29 day of March, 2013 ("Effective Date")

Ft. WAYNE:

APWI1:

BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE:

AP WIRELESS INVESTMENTS I, LLC:

By: 
 Name: Ben Groeneweg
 Title: Program Manager, Utility Asset Management & Sustainability
 Authorized signatory on behalf of the Fort Wayne Board of Public Works, per the attached resolution

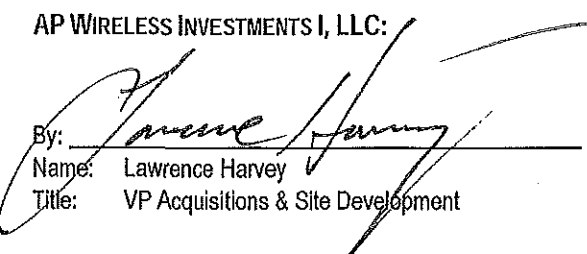
By: 
 Name: Lawrence Harvey
 Title: VP Acquisitions & Site Development



EXHIBIT "A-1"

Assignment of Lease Rents and Successor Lease Rents

EXHIBIT "A-1"

ASSIGNMENT OF LEASE RENTS AND SUCCESSOR LEASE RENTS

THIS ASSIGNMENT OF LEASE RENTS AND SUCCESSOR LEASE RENTS ("Agreement") is made as of the ____ day of _____, 2013 ("Effective Date"), by and between BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE, whose address is 200 East Berry Street, Suite 240, Fort Wayne, Indiana 46802 ("Landlord") and AP WIRELESS INVESTMENTS I, LLC, a Delaware limited liability company ("APWII"). All references hereafter to "APWII" and "Landlord" shall include their respective heirs, successors, personal representatives, lessees, licensees and assigns.

WHEREAS, Landlord, as lessor, and _____, as lessee ("Tenant"), are parties to that certain lease agreement dated _____, a copy of which is attached hereto as Exhibit A (the "Lease") covering site _____ and with respect to the premises (the "Premises") therein described. Landlord's right, title and interest in all monies payable by Tenant (whether described as base rent, additional rent, holdover rent, fees, charges, interest, or otherwise but not including payments in respect of real property taxes and assessments, insurance maintenance charges or utilities) under the Lease or by Successor Tenant (as defined below) under any Successor Lease (as defined below) (the "Rents") shall be referred to herein as the "Landlord's Interest". Lessor is the owner of the land and improvements, on which the Premises are located in the County of _____, State of _____, commonly known as _____ (the "Property").

WHEREAS, Landlord wishes to assign and APWII wishes to receive Landlord's Interest, together with all other rights and interests as described herein for the Assignment Term.

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment; Assignment Amount; Payment.

- (a) Subject to the rights of the Tenant under the Lease or Successor Tenant under a Successor Lease, Landlord hereby irrevocably and unconditionally assigns to APWII all of Landlord's beneficial rights, title and interests in the Rents described therein for the period commencing on the date hereof and ending on _____ (the "Assignment Term"), with no representations or warranties of any kind other than those provided herein.
- (b) APWII shall pay to Landlord, the amount of \$ _____ ("Assignment Amount") in payment of the assignment of Rents and the other rights and interests granted by Landlord to APWII as described herein. The Assignment Amount shall be in full payment of the rights granted by Landlord to APWII and Landlord shall not be entitled to any other compensation or payments of any kind under this Agreement or otherwise in connection with the Rents assignment or other rights granted to APWII under this Agreement or under any other documents executed in connection herewith.
- (c) Landlord promises to pay to the order of APWII, at the times and in the manner provided herein, a principal sum equal to the Assignment Amount, plus interest thereon at the rate of _____ percent (____%) per annum (the "Stated Interest Rate"). Principal shall be payable in monthly installments in the amounts (the "Monthly Principal Amounts") set forth on Exhibit B. All interest shall be calculated on the basis of twelve 30-day months and the actual number of days elapsed.
- (d) On or prior to the 10th calendar day of each calendar month commencing with the first calendar month after the date hereof, Landlord shall apply the Monthly Servicing Collections (as defined below) for the immediately preceding calendar month to Landlord's obligations hereunder in the following order: first, to unpaid late charges, default interest and similar charges then due from Tenant under the Lease or Successor Tenant under a Successor Lease, and to any unpaid fees, charges and expenses then due from Landlord to APWII hereunder; second, the excess, if any, to accrued but unpaid interest at the Stated Interest Rate through and including the final day of the immediately preceding calendar month; third, the excess, if any, to the Monthly Principal Amount set forth on Exhibit B with respect to the immediately preceding calendar month; and fourth, the excess, if any, to the Landlord, such excess to be accrued and paid in a lump sum within 90 days after the end of each calendar year. "Monthly Servicing Collections" shall mean, for each calendar month, the Rents received in the Servicing Account (as defined below) in respect of the Lease or Successor Lease during such calendar month.
- (e) Landlord may prepay the Assignment Amount in full, but not in part, provided that Landlord delivers unequivocal and irrevocable written notice thereof to APWII not less than 30 calendar days prior thereto, specifying the prepayment date, and pays to APWII on the date so specified, by wire transfer of immediately available funds denominated in U.S. dollars, an amount equal to the sum of (a) the remaining unpaid

EXHIBIT "A-1"

Assignment Amount, (b) all accrued but unpaid interest, (c) other charges due under any of the Assignment Documents and (d) a fee in an amount equal to five percent (5.0%) of the remaining unpaid Assignment Amount.

2. Assignment Absolute. This Agreement shall be a present, absolute and unconditional assignment, and shall, immediately upon execution, give APWII the right to collect all Rents. Landlord hereby irrevocably appoints APWII as its true and lawful attorney-in-fact, with full power of substitution, to demand and collect Rents and to exercise the other rights and remedies of lessor under the Lease or Successor Lease, as provided for under this Agreement[, which power is coupled with an interest].
3. Rights Assigned to APWII.
 - (a) During the Assignment Term, APWII is hereby appointed as Landlord's attorney-in-fact with full power of substitution to demand and collect Rents and to exercise all rights and remedies of Landlord under the Lease or a Successor Lease granted to APWII under this Agreement[, which power and right is coupled with an interest]. Landlord covenants and agrees that Landlord remains the fee owner of the Property and Land and Landlord is not assigning and shall continue to comply with all obligations of the lessor under the Lease or a Successor Lease.
 - (b) Without limiting the generality of the foregoing, upon the occurrence of an Event of Default (as defined below), APWII shall be assigned the following rights and remedies under the Lease or a Successor Lease, which rights are limited only by applicable law and by the terms of this Agreement and the terms of the Lease or a Successor Lease, which rights and remedies APWII may, in its sole discretion, elect to exercise in whole or in part, but with no obligation to do so:
 - (i) to collect and receive Rents due or to become due and payable with respect to the use, occupancy or enjoyment of the Premises (provided that payments in respect of real property taxes and assessments, insurance maintenance charges or utilities shall, if and to the extent payable to Landlord by Tenant under the Lease or Successor Lease, may be paid directly by Tenant or Successor Tenant to Landlord);
 - (ii) to modify, amend or waive the Lease or Successor Lease provisions in effect during the Assignment Term modifying the Rents payment obligation under the Lease or a Successor Lease (including granting Rents concessions to the Tenant or Successor Tenant, whether in respect of amount, timing or frequency), the Tenant's or Successor Tenant's termination rights under the Lease or a Successor Lease, and the Tenant's or Successor Tenant's use rights under the Lease or a Successor Lease. Provided however, APWII may not expand the rights of Tenant under the Lease or Successor Lease under a Successor Lease;
 - (iii) to terminate the Lease or a Successor Lease or to allow Tenant or Successor Tenant to terminate the Lease or a Successor Lease, in either case, for any reason;
 - (iv) to continue the Lease or a Successor Lease in effect after Tenant's or Successor Tenant's breach, in APWII's sole discretion;
 - (v) to extend or renew the term of the Lease or a Successor Lease from time to time (but not beyond the end of the Assignment Term) or to decline to do so;
 - (vi) to grant any consent or approval under the Lease or a Successor Lease or to decline to do so, to the extent that any such consent or approval might decrease, or affect the timing or collectability of, any Rents actually paid or payable by Tenant or Successor Tenant;
 - (vii) to accept or decline an abandonment of the Premises or property installed thereon;
 - (viii) to release, revoke or re-assign any rights it may have hereunder to Landlord;
 - (ix) to exercise all of Landlord's rights and remedies under the Lease or a Successor Lease as they pertain to the collection of Rents or sums due under the Lease or a Successor Lease in such manner and in such order or combination as APWII deems appropriate in its reasonable discretion;
 - (x) to commence, defend and compromise any action or proceeding relating to the Tenant's, Successor Tenant's, or Landlord's obligations under the Lease or a Successor Lease to the extent that any of the foregoing might decrease, or affect the timing or collectability of, any Rents actually paid or payable

EXHIBIT "A-1"

by Tenant or Successor Tenant and to retain or direct counsel of its choosing in any such action or proceeding;

- (xi) to file, pursue, defend or compromise any claim or adversary proceeding in bankruptcy, insolvency or similar proceeding relating to Tenant's or Successor Tenant's obligations under the Lease or a Successor Lease;
 - (xii) to consent to, or decline to consent to, an assignment or sublease of Tenant's or Successor Tenant's interests in this Lease, Successor Lease, or the Premises to the extent that any such consent might decrease, or affect the timing or collectability of, any Rents actually paid or payable by Tenant or Successor Tenant;
 - (xiii) to protect and defend its rights in the Premises (including the Landlord's rights in the Premises conveyed to APWII hereunder), or to require that the Landlord protect and defend such rights;
 - (xiv) subject to the provisions of Section 4 below, to exercise any other right or take or refuse to take any other action that Landlord would otherwise be permitted to exercise under the Lease or a Successor Lease or by any applicable federal, state, municipal and local laws, rules, ordinances, regulations and permits (collectively, "Law(s)") with respect to Tenant's or Successor Tenant's obligations under the Lease or a Successor Lease or tenancy of the Premises.
- (c) During the Assignment Term, Landlord shall not, other than to the extent required herein, including to the extent required to perform its obligations under the Lease or a Successor Lease as set forth in Section 4 below, or upon the written consent or direction of APWII, exercise any right or remedy of Landlord under the Lease, Successor Lease, or by Law to the extent that the exercise of any such right or remedy might decrease, or affect the timing or collectability of, any Rents actually paid or payable by Tenant or Successor Tenant. During the Assignment Term, Landlord shall take such actions as may be reasonably requested by APWII for such purpose.
- (d) [If and to the extent that any security deposit or other deposit (whether in the form of cash, letter of credit or other security) has been made by Tenant or Successor Tenant under the Lease or a Successor Lease (collectively, "Deposits"), (i) Landlord hereby assigns all of its rights, title and interests in the Deposits to APWII as of the Effective Date; (ii) if Landlord has not already done so, Landlord shall cause such Deposits to be promptly transferred to APWII; (iii) APWII shall hold and apply such Deposits during the Assignment Term in accordance with the Lease or a Successor Lease; and (iv) if the Lease or a Successor Lease is not sooner terminated or expired, APWII shall transfer any remaining Deposits back to Landlord upon the expiration of the Assignment Term.]
- (e) From and after the Effective Date, Landlord shall not, other than to the extent required herein or requested in writing by APWII, exercise or enjoy any of the beneficial rights or remedies of lessor under the Lease or a Successor Lease to the extent that the exercise of any such rights or remedies might decrease, or affect the timing or collectability of, any Rents actually paid or payable by Tenant or Successor Tenant.
- (f) [Notwithstanding anything to the contrary within, to the extent that the Lease requires any assignee of Landlord's rights to assume all obligations of Landlord under the Lease, then (i) Landlord also transfers and assigns to APWII, as of the Effective Date, any and all of its obligations in, to and under the Lease, (ii) APWII assumes, recognizes and is responsible for all such obligations, and (iii) Landlord shall cooperate with APWII to facilitate APWII's fulfillment of all such obligations, and Landlord shall indemnify, defend and hold harmless APWII for any performance of APWII of such obligations that reasonably relate to the Property outside of the Premises.]
4. Landlord's Ongoing Obligations. The parties hereby acknowledge that by this Agreement, APWII has not assumed any of the obligations, duties or liabilities of Landlord under the Lease or a Successor Lease. Nothing contained herein, and no action or forbearance or exercise of the rights and remedies of Landlord under the Lease or a Successor Lease on the part of APWII as permitted by this Agreement, shall constitute or be construed as an assumption by APWII of any obligation of Landlord under the Lease or a Successor Lease whether arising before, on or after the Effective Date. APWII shall not have any liability or obligation with respect to the care, management or repair of the Premises or any land adjacent thereto, or any improvements thereon, or for any injury or damage sustained by any person in, on, under or about the Property, including the Premises. During the Assignment Term, Landlord shall continue to pay, fulfill or perform fully, faithfully and timely, each and every condition, covenant, obligation and duty required of Landlord under the Lease, Successor Lease, or by Law, other than those assigned herein, whether arising prior to, on or after the Effective Date. Without limiting the generality of the foregoing, Landlord shall:

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- (a) not suffer or allow any breach, default or event of default by Landlord to occur under the Lease or a Successor Lease;
- (b) not take any action, or fail to take action, for the purpose of, or with the effect of, terminating the Lease or a Successor Lease or inducing or causing Tenant or Successor Tenant to exercise, or not to exercise, a right to renew or extend the Lease or a Successor Lease;
- (c) not perform or discharge any obligation or liability of Landlord under the Lease or a Successor Lease in a manner that would: (i) hinder, delay or otherwise adversely affect APWII's receipt and collection of Rents or the exercise by APWII of any of its other rights or remedies under the Lease or a Successor Lease granted to APWII under this Agreement; or (ii) give rise to any offset or deduction by Tenant or Successor Tenant, or the withholding by Tenant or Successor Tenant of Rents for any cause or reason whatsoever, or the assertion of any such right by Tenant or Successor Tenant;
- (d) keep and ensure that the Property and the Premises remain in compliance with all Laws;
- (e) not terminate or accept a surrender or termination of the Lease or a Successor Lease;
- (f) at Landlord's sole cost and expense, appear in and defend any action growing out of or in any manner connected with the Lease or a Successor Lease or the obligations or liabilities of the Landlord thereunder;
- (g) not transfer, pledge, convey, hypothecate, create a security interest or lien upon the Premises, Property or the Lease or a Successor Lease which in any way is superior to or that jeopardizes in any manner or respect APWII's assignment or interest conveyed under this Agreement;
- (h) promptly pay (or ensure payment of) any and all real property, personal property and/or other taxes, levies, interests or assessments that may become due and owing relating to the Property, the Premises and any improvements located thereon;
- (i) operate and maintain the Property, Premises and any improvements thereon only in good order and repair in the ordinary course of business and refrain from entering into any agreements, contracts, services or other activities that would conflict with, frustrate or fail to comply with the terms and conditions of the Lease or a Successor Lease, this Agreement or any assignments or agreements entered into between the Landlord and APWII;
- (j) comply with all obligations, duties and liabilities as Landlord under the Lease or a Successor Lease, and satisfy all such obligations in good faith and with due diligence;
- (k) promptly forward to APWII any written notice or communication by, to or from Landlord and any tenant, government authority, taxing authority, service provider, lender, mortgagee or otherwise which may affect the Lease or a Successor Lease or any existing or future lease or other agreement at or upon the Property or Premises or which notice may affect or relate to the Property or Premises or the operation or function thereof in any manner or respect; and
- (l) name APWII, its stockholders, members, partners, affiliates or lenders as additional named insureds under any and all property, casualty and liability insurance policies relating to the Property, the Premises or improvements or the leases or easements thereon.

Without the express prior written consent of APWII, during the Assignment Term, Landlord shall not, and shall have no authority to, amend, modify, extend or renew the Lease or a Successor Lease, or waive any default thereunder, or declare or assert the extension, renewal, termination or expiration thereof. APWII may give or withhold its consent, in its sole and absolute discretion, to the extent that such consent might decrease, or affect the timing or collectability of, any Rents actually paid or payable by Tenant or Successor Tenant.

Notwithstanding any term or provision to the contrary provided elsewhere herein, at any time, and from time to time, Landlord shall, if APWII is not permitted to do so directly by local law, as and when requested by APWII, at APWII's sole cost and expense, use commercially reasonable efforts to cause Tenant or Successor Tenant to fulfill or perform any condition, covenant and obligation of the Lease or a Successor Lease to be fulfilled or performed by Tenant or Successor Tenant, including, specifically, the payment of Rents directly to (or otherwise at the direction of) APWII.

If Landlord has failed, after reasonable notice and opportunity to perform any covenant, obligation or duty which Landlord is bound to perform under the Lease or a Successor Lease or any other agreement or the Law relating to the Lease or a Successor Lease, then APWII may, but without any obligation to do so, from time to time and at

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any time, without releasing the Landlord from any obligation herein or under the Lease, perform such covenant, obligation or duty, and Landlord within thirty (30) days of receipt of an invoice therefor shall reimburse APWII all reasonable costs and expenses incurred by APWII in connection therewith, including attorneys' fees.

5. Servicing By APWII.

- (a) As additional security for the payment and performance by Landlord of its obligations hereunder, Landlord hereby appoints APWII as its exclusive servicer under the Lease or Successor Lease with respect to all rights and remedies relating to the period commencing on the Effective Date and ending on the date that all amounts payable by Landlord hereunder have been paid in full. During such period and in such capacity, APWII shall have the sole and exclusive right to (i) receive and collect Rents payable with respect to the Assignment Term (provided that payments in respect of real property taxes and assessments shall, to the extent payable to the lessor under the Lease or Successor Lease, be paid by Tenant or Successor Tenant to Landlord); (ii) enforce all of the lessor's rights and remedies under the Lease or Successor Lease and applicable law at such time, in such manner and in such order or combination as APWII deems appropriate in APWII's sole and absolute discretion; (iii) commence, defend and compromise any action or proceeding relating to Tenant's obligations under the Lease and to retain and direct counsel of its choosing in any such action or proceeding; (iv) file, pursue, defend and compromise any claim or adversary proceeding in any bankruptcy, insolvency or similar proceeding relating to Tenant's or Successor Tenant's obligations under the Lease or Successor Lease; (v) decline a surrender or abandonment of the Premises by Tenant or Successor Tenant; (vi) continue the Lease or Successor Lease in effect after Tenant's or Successor Tenant's breach; (vii) extend or renew the term of the Lease or Successor Lease from time to time (but not beyond the last day of the Assignment Term), or decline to do so; (viii) collect and receive any holdover rent, (ix) grant or withhold consent to any assignment or sublease by Tenant or Successor Tenant under the Lease or Successor Lease; and (x) take any other action which the lessor is permitted to take under the Lease or Successor Lease or under applicable law with respect to Tenant's or Successor Tenant's obligations under the Lease or Successor Lease or tenancy of the Premises. APWII shall have the right from time to time to appoint any other person as successor servicer hereunder. Neither APWII nor any successor servicer appointed by APWII shall have any liability to Landlord except for actual damages, if any, resulting from the gross negligence or willful misconduct of APWII or such successor servicer, respectively.
- (b) Nothing contained herein, and no action or forbearance on the part of APWII, shall constitute or be construed as an assumption by APWII of any obligation or liability of Landlord under the Lease or Successor Lease or in respect of the Premises, whether arising or accruing prior to, on or after the Effective Date. Without limiting the generality of the foregoing, neither the collection of Rents by APWII, the enforcement of the lessor's rights and remedies under the Lease or Successor Lease nor the taking of any action which the lessor is permitted to take under the Lease or Successor Lease, or any combination of the foregoing, shall constitute or be construed as an assumption by APWII of any obligation or liability of Landlord under the Lease or Successor Lease or in respect of the Premises. APWII shall not have any liability or obligation with respect to the care, management or repair of the Premises or any land adjacent thereto, or any improvements thereon, or for any injury or damage sustained by any Person in, on, under or about the Premises.

6. Servicing Account; Notice to Tenant.

- (a) On or prior to the date hereof, APWII has established a deposit account (the "Servicing Account") standing in the name of APWII at _____ ("Bank"). All sums deposited in the Servicing Account shall be the property of APWII, and may be commingled with other sums collected by or property of APWII. APWII shall have the exclusive right to direct Bank regarding the disposition of any and all sums now or hereafter deposited in the Servicing Account. APWII shall have the right from time to time to change the financial institution at which the Servicing Account is maintained.
- (b) Landlord shall execute and furnish to APWII a notice (the "Tenant Notification Letter") in the form of Exhibit C attached hereto. Within three calendar days of the Effective Date, Landlord shall deliver an original or copy of the Tenant Notification Letter to Tenant. Landlord shall be responsible for taking such other action as is necessary or appropriate to cause Tenant to pay and deliver all Rents directly to the Servicing Account. APWII may elect also to deliver an original or copy of the Tenant Notification Letter to Tenant at such time or times after the Effective Date that APWII deems appropriate. After the Effective Date, Landlord shall notify APWII by facsimile transmission within 1 calendar day of Landlord's receipt of any payment in respect of Rents other than to the Servicing Account, and Landlord shall forward such payment to the Servicing Account within 1 business day (i) by reputable overnight courier service which provides package tracking services (if such payment was received by Landlord by check or other negotiable instrument; provided Landlord shall endorse such negotiable instrument in favor of APWII prior to forwarding it to the Servicing Account) or (ii) by wire transfer (if such payment was received by Landlord in

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any other form). If Landlord fails or refuses to forward any such payment to the Servicing Account within the time and in the manner provided herein, then, in addition to the right to receive such payment and its other rights and remedies hereunder, Assignee shall be entitled to receive a processing fee equal to the greater of (i) five hundred dollars and 00/100 (\$500.00) and (ii) fifteen percent (15.0%) of such payment.

7. Successor Lease.

(a) Upon the expiration of the term of the Lease (including without limitation any expiration resulting from an election by Tenant not to exercise a right to renew or extend the Lease or the failure, whether inadvertent or otherwise, to exercise any such right) or upon the termination of the Lease for any reason (including without limitation any termination resulting from (x) a default or breach by Tenant, (y) a rejection or deemed rejection of the Lease in bankruptcy), Landlord shall promptly and in good faith use its best efforts to negotiate and execute a lease (a "Successor Lease") between Landlord and a new tenant (a "Successor Tenant").

(b) Landlord shall obtain from APWII written consent to negotiate and execute a Successor Lease between Landlord and Successor Tenant. APWII may give or withhold its consent, in its sole and absolute discretion, to the foregoing to the extent that the foregoing might decrease, or affect the timing or collectability of, any Rents payable by the tenant of a Successor Lease. In the case of refusal of such consent, Landlord shall promptly and in good faith use its best efforts to negotiate and execute a Successor Lease between Landlord and another Successor Tenant.

8. Cooperation by Landlord. From time to time hereafter, (a) Landlord shall promptly furnish to APWII such information (including documents and records in Landlord's possession, custody or control) regarding property owner's ownership of the Premises, the Lease or a Successor Lease, the Premises and Tenant as APWII reasonably requests; (b) Landlord shall provide access to the Premises (to the extent not prohibited by the Lease or a Successor Lease) for the purpose of APWII's inspection of the Premises and improvements thereon, and such other purposes as APWII reasonably deems appropriate; and (c) Landlord shall promptly execute any confirmatory or related documents, easements, agreements or applications relating to the Property, Premises, improvements or installations thereon to the extent that the same are necessary, required or advisable and/or requested by the Tenant or Successor Tenant, any governmental authority or APWII, its stockholders, members, partners, affiliates or lenders. Landlord shall deliver to APWII a copy of any written communication that Landlord delivers to Tenant or Successor Tenant at the same time and in the same manner that such communication is delivered by Landlord to Tenant or Successor Tenant. Landlord shall promptly deliver to APWII a copy of any written communication that Landlord receives from Tenant or Successor Tenant or any other person relating to the Lease, a Successor Lease, or the Premises. Landlord shall keep APWII reasonably informed of any other communications between Landlord, on the one hand, and Tenant or Successor Tenant, on the other hand, and of any other notices or communications from any other entity, trust, association or individual (each, a "Person") that relates to the Lease, a Successor Lease, or the Premises.

9. Improvements. Landlord agrees that all antennas, telecommunications equipment, alterations and other improvements brought or made to the Premises (collectively, the "Improvements") by Tenant or Successor Tenant shall be and remain Tenant's or Successor Tenant's personal property irrespective of whether all or any portion thereof is deemed to be real property under applicable law. Landlord waives any and all rights it may have, including any rights it may have in its capacity as Landlord under the Lease or a Successor Lease to assert any liens, encumbrances or adverse claims, statutory or otherwise, related to or in connection with the Improvements or any portion thereof. Tenant or Successor Tenant, in its sole discretion, may remove the Improvements or any portion thereof at any time during the term of the Lease or a Successor Lease, without notice to Landlord and without Landlord's consent.]

10. Impositions. Landlord shall pay and perform in a timely manner all mortgages that are liens against the Premises. Landlord shall pay or cause to be paid, prior to delinquency, all taxes, real property taxes, charges and other obligations ("Impositions") that are or could become liens against the Premises, whether existing as of the date hereof or hereafter created or imposed, and APWII shall have no obligation or liability therefor. Without limiting the generality of the foregoing, except to the extent taxes and assessments are the obligation of Tenant or Successor Tenant under the Lease or a Successor Lease, Landlord shall be solely responsible for payment of all taxes and assessments now or hereafter levied, assessed or imposed upon the Premises, or imposed in connection with the execution, delivery, performance or recordation of this Agreement, including without limitation any sales, income, documentary or other transfer taxes. APWII may from time to time as APWII deems appropriate file, record, serve and/or deliver a request for notice of default, deficiency or sale upon any Person to whom an Imposition is payable.

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11. Events of Default. The following events are each an "Event of Default" under this Agreement:

- (a) Landlord has failed to perform or observe, or cause to be performed or observed, any covenant, condition or agreement contained in the Assignment Documents (as defined below), and any such failure shall have continued for a period of ten (10) days after written notice of such failure; or
- (b) Landlord has failed to perform or observe, or cause to be performed or observed, any covenant, condition or agreement contained in the Lease or Successor Lease, and any such failure shall have continued for a period of ten (10) days after written notice of such failure; or
- (c) Any representation or warranty made by Landlord in any of the Assignment Documents is untrue or misleading as of the date hereof; or
- (d) Landlord has (i) applied for, or consented in writing to, the appointment of a receiver, trustee or liquidator; or (ii) filed a voluntary petition seeking relief under the Bankruptcy Code, or is unable, or admits in writing Landlord's inability to pay its debts as they become due; or (iii) made a general assignment for the benefit of creditors; or (iv) filed a petition or an answer seeking reorganization or an arrangement or a readjustment of debt with creditors, apply for, take advantage, permit or suffer to exist the commencement of any insolvency, bankruptcy, suspension of payments, reorganization, debt arrangement, liquidation, dissolution or similar event, under the law of the United States or of any state in which Landlord is a resident; or (v) filed an answer admitting the material allegations of a petition filed against Landlord in any such bankruptcy, reorganization or insolvency case or proceeding, or (vi) taken any action authorizing, or in furtherance of, any of the foregoing; or
- (e) Either (i) an involuntary case is commenced against Landlord under the Bankruptcy Code and the petition is not contested within ten (10) days or is not dismissed within sixty (60) days after the commencement of the case or (ii) an order, judgment or decree shall be entered by any court of competent jurisdiction on the application of a creditor adjudicating Landlord bankrupt or insolvent, or appointing a receiver, trustee or liquidator of Landlord or of all or substantially all of the assets of Landlord and the order, judgment or decree shall continue unstayed and in effect for a period of sixty (60) days or shall not be discharged within ten (10) days after the expiration of any stay of such order, judgment, or decree; or
- (f) The Lease or Successor Lease or any of the Assignment Documents have been determined by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, or Landlord has asserted in writing that the Lease or Successor Lease or this Agreement are or may be invalid or unenforceable, in whole or in part.

12. APWII's Remedies.

- (a) If any Imposition, or any installment thereof, is not paid within the time hereinabove specified, and if such Imposition is or could become senior in right of payment or foreclosure to this Agreement, then APWII shall have the right, but not the obligation, from time to time and at any time, in addition to its other rights under this Agreement and applicable law, to pay and/or discharge such Imposition, together with any penalty and interest thereon, and Landlord shall reimburse APWII therefor immediately upon payment by APWII thereof. If APWII so elects by written notice to Landlord, then the amount reimbursable by Landlord to APWII shall constitute a lien upon Landlord's right, title and interest in the land upon which the Premises are located, and such lien may be foreclosed privately or judicially if and to the extent permitted by applicable law. If and to the extent permitted by applicable law, APWII shall be subrogated to the rights of the Person to whom the Imposition was due, and such lien shall have such priority and benefit from such other rights and remedies, including foreclosure, as were formerly available to such Person with respect to the Imposition.
- (b) If APWII determines in its reasonable discretion that Landlord has failed, after reasonable notice and opportunity, to perform any covenant, obligation or duty which Landlord is bound to perform under the Lease, a Successor Lease or any other agreement or applicable law relating to the Lease, a Successor Lease or the Premises, then APWII shall have the right, but not the obligation, from time to time and at any time, to perform such covenant, obligation or duty, and Landlord shall, within thirty (30) days of receipt of an invoice therefor, reimburse APWII for all costs and expenses incurred by APWII in connection therewith, together with an administrative fee, in an amount not less than two hundred fifty dollars and 00/100 (\$250.00), as reasonably determined by APWII.
- (c) Upon the occurrence and during the continuance of an Event of Default, APWII may, at its option and without notice or demand of any kind, and without regard to the adequacy of security for payment of the Assignment Amount, exercise any or all of the following remedies:

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- (i) Collect or continue to collect the Rents and any other sums owing under the Lease or Successor Lease, either by itself or through a receiver;
 - (ii) In Landlord's or APWII's name, institute any legal or equitable action which APWII, in its sole discretion, deems desirable to collect any or all of the Rents; and
 - (iii) Perform any or all obligations of Landlord under the Lease or Successor Lease or this Agreement and take such actions as APWII deems appropriate to protect its security, including, without limitation: (A) appearing in any action or proceeding affecting the Lease or Successor Lease or the Premises; (B) executing new leases and modifying, terminating or canceling the Lease or Successor Lease; (C) collecting, modifying and compromising any Rents payable under the Lease or Successor Lease; and (D) enforcing the Lease or Successor Lease, including, if necessary, evicting the Tenant or Successor Tenant.
- (d) Landlord shall not be personally liable for the repayment of the Assignment Amount or for the payment of interest. The foregoing shall not be construed as prohibiting or impairing the exercise by APWII of any remedy under the Assignment Documents or applicable law, including the right to commence an action or proceeding, or enter a judgment against Landlord, so long as the exercise of any such remedy does not extend to execution against any property of Landlord other than the security furnished under the Assignment Documents. Landlord shall be personally liable for all other covenants made by Landlord under this Agreement and any other agreement between Landlord and APWII, or by Landlord in favor of APWII (collectively, the "Assignment Documents"), and for all representations and warranties made by Landlord in the Assignment Documents. Without limiting the generality of the foregoing, if an Event of Default occurs and if such Event of Default causes or contributes to a decrease in payments to the Servicing Account in respect of Rents, then, in addition to APWII's other rights and remedies hereunder and under applicable law, Landlord shall be personally liable to APWII in an amount equal to such decrease. The foregoing remedies are in addition to any remedies afforded APWII under any other of the Assignment Documents or in law or equity, by statute or otherwise, all of which rights and remedies are reserved by APWII. All of the remedies of APWII shall be cumulative and may be exercised at APWII's option concurrently or successively and the exercise or beginning of exercise by APWII of any such remedies shall not preclude the simultaneous or subsequent exercise of the same remedy or any other remedy available to APWII. No failure or delay on the part of APWII to exercise any remedy shall operate as a waiver thereof.
- (e) In addition to its other rights and remedies under this Agreement and applicable law, APWII may enforce this Agreement by specific performance, injunction, appointment of a receiver and any other equitable rights and remedies available under applicable law, it being acknowledged by Landlord that money damages may not be an adequate remedy for the harm caused to APWII by a breach or default by Landlord under this Agreement, and Landlord waives the posting of a bond in connection therewith.
13. Representations. Landlord hereby represents and warrants to APWII, as of the date hereof, that:
- (a) The Lease, this Agreement and all other documents executed by Landlord in connection therewith constitute the legal, valid and binding obligation of Landlord, enforceable against Landlord in accordance with their terms.
 - (b) To the best of Landlord's knowledge and belief, there are no uncured defaults on the part of Tenant or Landlord under the Lease and there is no circumstance, event, condition or state of facts which, by the passage of time or the giving of notice or both, could constitute or result in such a default.
 - (c) To the best of Landlord's knowledge and belief, Tenant has no existing defenses, offsets, credits, charges, liens or claims under the Lease or otherwise against the Landlord or any other party in connection with the Premises.
 - (d) Tenant (i) does not have any option or preferential right to purchase the Premises or terminate the Lease, except as expressly stated in the Lease, and (ii) does not have any right, title or interest with respect to the Premises other than as tenant under the Lease.
 - (e) The execution, delivery and performance by Landlord of the Lease, this Agreement and such other documents does not and will not violate or conflict with any provision of Landlord's organizational documents (if Landlord is an organization) or of any agreement to which Landlord is a party or by which Landlord or the Premises is bound and will not violate or conflict with any law, rule, regulation, judgment, order or decree to which Landlord is subject.

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- (f) Any permits, licenses, consents, approvals and other authorizations which are required to be obtained in connection with Landlord's execution, delivery or performance of the Lease, this Agreement and such other documents have been obtained and are and will remain in full force and effect.
 - (g) There is no pending or threatened action, suit or proceeding that, if determined against Landlord, would adversely affect Landlord's ability to enter into the Lease, this Agreement or such other documents or to perform its obligations hereunder or thereunder.
 - (h) A true, correct, and complete copy of the Lease (including all amendments, modifications, supplements, waivers, renewals and extensions thereof) and of each memorandum of lease, memorandum of commencement, non-disturbance agreement, estoppel certificate, assignment, sublease and other instrument or agreement executed by Landlord or Tenant in connection therewith or relating thereto, together with all amendments or supplements thereof (if any) is attached hereto as Exhibit A.
 - (i) Landlord owns one hundred percent (100.0%) of the fee title to the Premises, subject to no lien, encumbrance or exception other than those, if any, disclosed in the preliminary title report referred to on Exhibit D. Landlord owns one hundred percent (100.0%) of the lessor's right, title and interest in and to the Lease, subject to no lien, encumbrance or exception other than those, if any, disclosed on the preliminary title report referred to on Exhibit D. Except as disclosed on the preliminary title report referred to on Exhibit D, Landlord has not previously deeded, granted, assigned, mortgaged, pledged, hypothecated, alienated or otherwise transferred any of its right, title and interest in and to the Lease or in and to the Premises to any other Person.
 - (j) Landlord has received no indication, written or otherwise, from Tenant or any other party that Tenant intends to terminate the Lease prior to the expiration of the Lease term.
 - (k) The execution, delivery and performance of this Agreement is supported by a duly adopted municipal resolution.
 - (l) The current monthly rent is \$_____ and is being paid by _____.
14. Environmental Covenants and Indemnity. Landlord represents that it has not permitted or engaged in the use of, and has no knowledge of, any substance, chemical or waste (collectively "Substance") located on, under or about the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Landlord will not introduce or use, nor permit Tenant or Successor Tenant to introduce or use, any such Substance on, under or about the Property in violation of any applicable law or regulation. No underground storage tanks for petroleum or any other Substance, or underground piping or conduits, are or have previously been located on the Property, and no asbestos-containing insulation or products containing PCB or other Substances have been placed anywhere on the Property by Landlord or, to Landlord's knowledge, by any prior owner or user of the Property. Landlord shall defend, indemnify, protect and hold APWII harmless from and against all claims, costs, fines, judgments and liabilities, including attorney's fees and costs, arising out of or in connection with the presence, storage, use or disposal of any Substance on, under or about the Property caused by the acts, omissions or negligence of the indemnifying party and their respective agents, contractors and employees. The foregoing indemnity shall survive any termination of this Agreement.
15. [General Indemnity]. In addition to the Environmental Indemnity set forth above, Landlord and APWII shall each indemnify, defend and hold the other harmless against any and all costs (including reasonable attorney's fees) and claims of liability or loss arising (i) due to the breach of any representation, warranty or covenant of such indemnifying party set forth herein; and (ii) out of the use and/or occupancy of the Property and Premises by the indemnifying party. This indemnity shall not apply to any claims to the extent they arise from the gross negligence or intentional misconduct of the indemnified party. Notwithstanding the foregoing, or any provision to the contrary set forth herein, APWII shall have no liability or obligation whatsoever to maintain or repair the areas upon which the Premises are located.]
16. Memorandum. On or prior to the Effective Date, Landlord shall deliver to APWII two originals of a Memorandum of Assignment of Lease Rents and Successor Lease Rents in the form of Exhibit E attached hereto (the "Memorandum"), duly executed by Landlord and otherwise in recordable form. APWII may elect to file in such place or places as APWII deems appropriate one or more financing and continuation statements under the Uniform Commercial Code naming Landlord as debtor and the Rents and the proceeds thereof as collateral, and Landlord agrees that this Agreement shall constitute a pledge and security agreement with respect to such collateral and that APWII shall have a perfected security interest in such collateral.
17. Assignment; Secured Parties. APWII has the unrestricted right to assign or grant a security interest in all of APWII's interest in and to this Agreement, and may assign this Agreement to any such assignees or holders of

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security interests, including their successors and assigns ("Secured Party" or, collectively, "Secured Parties"). Landlord agrees to notify APWII and Secured Parties simultaneously of any default by APWII and give APWII and Secured Parties the same right to cure and cure period for any default as granted to Landlord. If a termination, disaffirmation or rejection of this Agreement by APWII shall occur, pursuant to any laws (including any bankruptcy or insolvency laws), or if Landlord shall terminate this Agreement for any reason, Landlord will notify Secured Parties promptly and Landlord shall enter into a new agreement with any such Secured Party upon the same terms of this Agreement, without requiring the payment of any additional fees. If any Secured Party shall succeed to APWII's interest under this Agreement, such Secured Party shall have no liability for any defaults of APWII accruing prior to the date that such Secured Party succeeds to such interest. Landlord will enter into modifications of this Agreement reasonably requested by any Secured Party. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Lease and/or the Premises or any portion thereof.

18. Casualty and Eminent Domain. Landlord shall promptly notify APWII of any casualty to the Premises or the exercise of any power of eminent domain, or threat thereof, relating to the Premises, or any portion thereof. APWII shall be entitled to receive any insurance proceeds or condemnation award attributable to the value of the lessor's interest, only up to and not to exceed the amount of the Assignment Amount paid herein, under the Lease or a Successor Lease for the period commencing on the Effective Date and ending on the last day of the Assignment Term. Landlord shall not settle or compromise any insurance claim or condemnation award relating to the Premises except upon 30 days prior written notice to APWII.
19. Further Assurances. The parties shall, from time to time, upon the written request of the other party, promptly execute and deliver such certificates, instruments and documents and take such other actions as may be appropriate to effectuate or evidence the terms and conditions of this Agreement or to enforce all rights and remedies hereunder or under the Lease or a Successor Lease.
20. Dispute Resolution.
 - (a) If APWII fails to perform any of its obligations under this Agreement, Landlord agrees to notify APWII and any Secured Parties in writing of any default by APWII, and to give APWII and/or any Secured Parties the right to cure any default within a period of not less than sixty (60) days from APWII's receipt of the written default notice. If APWII or any Secured Parties shall fail to cure any default in accordance with this Section, Landlord agrees that its sole remedy for such default shall be to utilize the process set forth herein, and that any and all damages for which Landlord may be compensated are limited to the actual damages of Landlord, and shall in no event exceed the amount of consideration paid by APWII for this Agreement. In the event that any dispute or claim arises that could impair the use or possession of the Facilities by APWII or its tenants, APWII shall have the right to seek injunctive relief, without the necessity of posting a bond. In no event will a Secured Party have any obligation to cure a default by APWII.
 - (b) Except as set forth in Section 17(a), in the event of any dispute arising out of this Agreement, the following dispute resolution process shall be followed: (1) upon a party's written notice of dispute to the other party, an authorized representative of the Landlord and APWII shall, through a good faith negotiation, attempt to settle a written resolution within thirty (30) days and (2) if such negotiation attempts fail, the dispute shall be submitted by the parties to a mutually agreed upon arbitrator for a binding and final arbitration decision in accordance with the rules of the American Arbitration Association ("AAA") and using the Federal Rules of Evidence and Civil Procedure. In the event the parties are unable to mutually agree on an arbitrator, each party shall select their own arbitrator, and each such arbitrator shall thereafter mutually agree on a third arbitrator; and the majority decision by all such arbitrators shall be final and binding on the parties. The prevailing party shall be entitled to recover all costs incurred in connection with the arbitration, including legal fees, and each party shall pay one-half of all arbitrator professional fees.
21. Notices. Any notice required or permitted to be given hereunder shall be in writing and shall be served by personal delivery, by facsimile transmission or by Federal Express or another reputable overnight courier service, addressed to the party to be notified. If there is any dispute regarding the actual receipt of notice, the party giving such notice shall bear the burden of providing reasonably satisfactory evidence of such delivery or receipt. For the purposes of the foregoing, the addresses of the parties shall be as set forth below their names on the signature page hereof.
22. Entire Agreement. This Agreement, and the instruments and agreements referred to herein, constitute the entire agreement between Landlord and APWII with respect to the subject matter hereof. Without limiting the generality of the foregoing, Landlord acknowledges that it has not received or relied upon any advice of APWII or its representatives regarding the tax effect or attributes of the transactions contemplated hereby.

EXHIBIT "A-1"

23. Counterparts. This Agreement may be executed in counterparts each of which, when taken together, shall constitute a single agreement.
24. Amendments, Etc. This Agreement may be amended, modified or terminated only by a writing signed by the party against whom it is to be enforced. No act or course of dealing shall be deemed to constitute an amendment, modification or termination hereof.
25. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. The obligations of Landlord hereunder, including the obligation to deliver any security deposit to APWII pursuant to Section 2(c) hereof, shall burden the land upon which the Premises are located, and shall run with such land. APWII may from time to time sell, convey, assign, pledge, encumber, hypothecate, securitize or otherwise transfer some or all of APWII's right, title and interest in and to this Agreement and/or the documents executed and delivered in connection herewith and therewith without notice to or consent of Landlord. Upon request by APWII, Landlord shall in writing acknowledge a proposed or completed transfer by APWII and confirm that Landlord's consent thereto is not required.
26. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer any rights or benefits on any Person other than Landlord and APWII, and their permitted successors and assigns.
27. Governing Law.
- (a) TO THE MAXIMUM EXTENT PERMITTED BY THE LAW OF THE STATE IN WHICH THE PREMISES ARE LOCATED, THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF [DELAWARE/NEW YORK], WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THEREOF. THIS AGREEMENT SHALL OTHERWISE BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.
- (b) EACH PARTY WAIVES ANY RIGHT TO A JURY TRIAL IN ANY ACTION OR PROCEEDING TO ENFORCE OR INTERPRET THIS AGREEMENT.
28. Attorney's Fees. In any action or proceeding brought to enforce or interpret this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney's fees and costs, and of its other expenses, costs and losses, including internal and administrative costs and losses associated with any breach of default of this Agreement. All damages or other sums payable by one party to another hereunder shall bear interest from the date incurred or payable until paid at a rate equal to the lesser of (a) ten percent (10.0%) per annum or (b) the highest rate permitted by applicable law.
29. Severability. If any provision of this Agreement is invalid, illegal or unenforceable in any respect, such provision shall only be ineffective to the extent of such invalidity, illegality or unenforceability, and the remaining provisions shall remain in full force and effect so long as the economic and legal substance of the transactions contemplated hereby, taken as a whole, are not affected thereby in a materially adverse manner with respect to either party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES ON FOLLOWING PAGES]

EXHIBIT "A-1"

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have caused this Agreement to be duly executed as of the date first written above.

Landlord:

BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE

By: _____
 Name: Benjamin Groeneweg
 Title: Program Manager: Utility Asset Management and
 Sustainability
 Authorized signatory on behalf of the Fort Wayne
 Board of Public Works, per the attached resolution

Address: 200 East Berry Street, Suite 240

City: Fort Wayne

State: Indiana

Zip: 46802-2736

Tel: (260) 427-1365

Fax: (260) 427-8572

STATE OF INDIANA }
COUNTY OF ALLEN } SS

BEFORE ME, a Notary Public, in and for said County and State, this ____ day of _____, 2013, personally appeared the within named Ben Groeneweg by me personally known, who being by me duly sworn said that he is the Program Manager: Utility Asset Management and Sustainability of the BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE, and that he signed said instrument on behalf of the BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE with full authority so to do and acknowledge said instrument to be in the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Notary Public

Printed Name of Notary

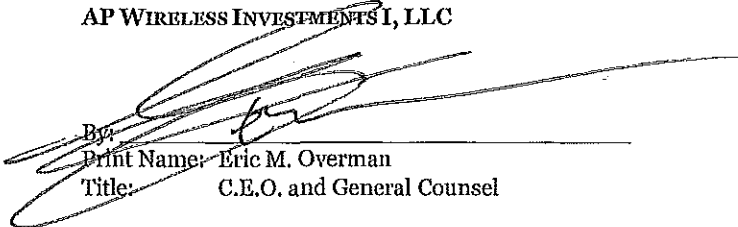
My commission expires:

Resident of _____ County

EXHIBIT "A-1"

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

AP WIRELESS INVESTMENTS I, LLC

By: 

Print Name: Eric M. Overman

Title: C.E.O. and General Counsel

Address: 9373 Towne Centre Drive, Suite 200

City: San Diego

State: California

Zip: 92121

Tel: (646) 912-8058

Fax: (203) 549-0930

STATE OF _____ }

COUNTY OF _____ }

On _____, 20____ before me, _____,

(Name of Notary Public and Title)

Personally appeared Eric M. Overman personally known to me (or proved to me the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (seal)

EXHIBIT "A-1"

EXHIBIT A

THE LEASE AND ALL AMENDMENTS

[ATTACHED]

EXHIBIT "A-1"

EXHIBIT B

AMORTIZATION SCHEDULE

EXHIBIT "A-1"

EXHIBIT C

TENANT NOTIFICATION LETTER

[Carrier Name and Address]

Re: _____

Dear Sir/Madam:

After the date hereof, except for payments in respect of real property taxes and assessments, any amounts payable by you to Landlord under the Lease should be made payable to "AP WIRELESS INVESTMENTS I, LLC," subject to any further instructions you may hereafter receive from AP WIRELESS INVESTMENTS I, LLC, and should be delivered to AP WIRELESS INVESTMENTS I, LLC at _____. Payments in respect of real property taxes and assessments should, to the extent payable by you to the landlord under the Lease, be paid by you to the undersigned.

The undersigned will continue to own the premises, and has retained the obligations and liabilities of the landlord under the Lease. Any future communications regarding any amounts payable by you to Landlord under the Lease should be made as directed by AP WIRELESS INVESTMENTS I, LLC. If you have any questions about the foregoing, please contact _____ at (____) _____.

Sincerely,

By: _____

Name:

Title:

EXHIBIT "A-1"

EXHIBIT D

LIENS AND ENCUMBRANCES

EXHIBIT "A-1"

EXHIBIT E

MEMORANDUM

RECORDING REQUESTED BY AND

WHEN RECORDED MAIL TO:

AP WIRELESS INVESTMENTS I, LLC
5522 Main Street
Stratford, CT 06614

Attn: Eric M. Overman

MEMORANDUM OF ASSIGNMENT OF LEASE RENTS AND SUCCESSOR LEASE RENTS

This Memorandum of Assignment of Lease Rents and Successor Lease Rents (this "Memorandum") is made as of the ____ day of _____, 2013 by and between BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE ("Landlord"), and AP WIRELESS INVESTMENTS I, LLC, a Delaware limited liability company ("APWII").

A. Landlord, as lessor, and _____, as lessee ("Tenant"), are parties to that certain lease agreement dated _____, _____ between Landlord and Tenant (the "Lease") covering Site _____ and premises commonly known as _____ and as further described in Exhibit A hereto (the "Premises").

B. Landlord and APWII are parties to an Assignment of Lease Rents and Successor Lease Rents dated as of _____, _____ (the "Agreement"), pursuant to which Landlord has, among other things, assigned to APWII its right, title and interest in all monies payable under the Lease and any Successor Lease (whether described as base rent, additional rent, holdover rent, fees, charges, interest, or otherwise) (the "Rents"). The parties hereto desire to execute this Memorandum to provide constructive notice of the existence of the Lease and the Agreement, and of APWII's rights under the Agreement.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto acknowledge and/or agree as follows:

Landlord has assigned and hereby does sell and assign all of its right, title and interest in and to the Rents to APWII, on the terms and subject to the conditions set forth in the Agreement. The Successor Lease is for a term commencing upon the expiration or termination of the Lease and ending on _____, _____. Landlord has retained all of Landlord's obligations and liabilities under the Lease or a Successor Lease. The term of the assignment of the Lease, and of a Successor Lease, is subject to extension on the terms and conditions set forth in the Agreement.

EXHIBIT "A-1"

The terms and conditions of the Lease and the Agreement are hereby incorporated herein by reference as if set forth herein in full. Copies of the Lease and the Agreement are maintained by APWII at the address of APWII above, and are available to interested parties upon request. This Memorandum has been duly executed by the undersigned as of the date first written above.

Landlord:

BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE

By: _____
Name: Benjamin Groeneweg
Title: Program Manager: Utility Asset Management and
Sustainability
Authorized signatory on behalf of the Fort Wayne
Board of Public Works, per the attached resolution

STATE OF INDIANA }
 } SS
COUNTY OF ALLEN }

BEFORE ME, a Notary Public, in and for said County and State, this ____ day of _____, 2013, personally appeared the within named Ben Groeneweg by me personally known, who being by me duly sworn said that he is the Program Manager: Utility Asset Management and Sustainability of the BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE, and that he signed said instrument on behalf of the BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE with full authority so to do and acknowledge said instrument to be in the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Notary Public

Printed Name of Notary

My commission expires:

Resident of _____ County

EXHIBIT "A-1"

Assignment of Lease Rents and Successor Lease Rents made as of _____, _____ by and between
AP WIRELESS INVESTMENTS I, LLC, a Delaware limited liability company, and _____

AP WIRELESS INVESTMENTS I, LLC

By: 
Print Name: Eric M. Overman
Title: C.E.O. and General Counsel

Address: 9373 Towne Centre Drive, Suite 200
City: San Diego
State: California
Zip: 92121

STATE OF California }
COUNTY OF San Diego }

On March 25, 2013 before me, Ann K. Margeson, Notary Public
(Name of Notary Public and Title)

Personally appeared Eric M. Overman personally known to me (or proved to me the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

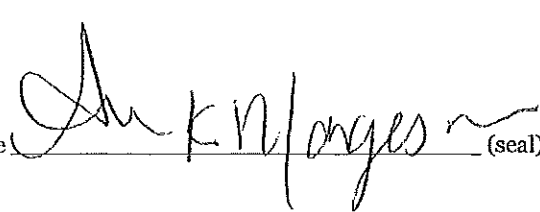
Signature:  (seal)



EXHIBIT "A-1"

EXHIBIT F

LEGAL DESCRIPTION OF PROPERTY

Property Description:

[LEGAL DESCRIPTION]



EXHIBIT "A-2"

Antenna Site Marketing and Services Agreement

EXHIBIT "A-2"

Antenna Site Marketing and Services Agreement

This Antenna Site Marketing and Services Agreement (this "Agreement") is made and entered into as of this ____ day of _____, 2013, by and between BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE ("Site Owner") and AP WIRELESS INVESTMENTS I, LLC (hereinafter "APWII").

BACKGROUND:

- A. The Site Owner is of the opinion that APWII has the necessary qualifications, experience, and abilities to provide marketing and consulting services in connection with the marketing of the property located at _____ (the "Property") belonging to the Site Owner.
- B. APWII is agreeable to providing such services to the Site Owner, on the terms and conditions as set out in this Agreement.

IN CONSIDERATION OF the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the parties to this Agreement agree as follows:

- 1. **Engagement:** The Site Owner hereby agrees to engage APWII to provide the Site Owner with services consisting of marketing the Property to prospective companies looking to place antennas and build wireless communications infrastructure (known as "New Site Users"), and such other services as the Site Owner and APWII may agree upon from time to time (the "Services"), and APWII hereby agrees to provide these Services to the Site Owner.
- 2. **Term of Agreement:** The term of this Agreement will begin on the date of this Agreement and will remain in full force and effect for a period of five (5) years, with the said term being capable of extension by mutual written agreement of the parties.
- 3. **Performance:** Both parties agree to do everything necessary to ensure that the terms of this Agreement take effect.
- 4. **Compensation:** For the Services provided by APWII under this Agreement, the Site Owner will pay to APWII compensation in the following manner: Upon contract signature with a new site user (outside the agreed upon Easement area), APWII will be paid an amount of _____ percent (____%) of the contract license fee, for as long as the contract remains in existence, payable on the 10th day of each month.
- 5. **Assignment:** This Agreement is a personal one, being entered into in reliance upon and in consideration of the personal skill and qualifications of APWII. APWII will not voluntarily or by operation of law assign or otherwise transfer the obligations incurred pursuant to the terms of this Agreement without the prior written consent of the Site Owner.
- 6. **Capacity/Independent Contractor:** It is expressly agreed that APWII is acting as an independent contractor and not as an employee in providing the Services hereunder. APWII and the Site Owner acknowledge that this Agreement does not create a partnership or joint venture between them.
- 7. **Modification of Agreement:** Any amendment or modification of this Agreement or additional obligation assumed by either party in connection with this Agreement will only be binding if evidenced in writing signed by each party or an authorized representative of each party.

EXHIBIT "A-2"

Antenna Site Marketing and Services Agreement

8. **Entire Agreement:** It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressed in it.
9. **Severability:** In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of the Agreement.
10. **Governing Law:** It is the intention of the parties to this Agreement that this Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of _____, without regard to the jurisdiction in which any action or special proceeding may be instituted.

IN WITNESS WHEREOF the parties have duly executed this Antenna Site Marketing and Services Agreement on the dates written below.

Site Owner:

APWII

BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE

AP WIRELESS INVESTMENTS I, LLC

By: _____

Name: Benjamin Groeneweg

Its: Program Manager: Utility Asset Management
and Sustainability
Authorized signatory on behalf of the Fort
Wayne, Board of Public Works, per the attached
resolution

Date: _____

Address: 200 East Berry Street, Suite 240

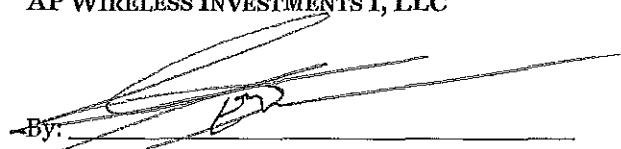
City: Fort Wayne

State: Indiana

Zip: 46802-2736

Tel: (260) 427-1365

Fax: (260) 427-8572

By:  _____

Name: Eric M. Overman

Its: C.E.O. and General Counsel

Date: 3/25/2013

Address: 9373 Towne Centre Drive, Suite 200

City: San Diego

State: California

Zip: 92121

Tel: (646) 912-8058

Fax: (203) 549-0930

**A RESOLUTION OF THE BOARD OF PUBLIC WORKS
OF THE CITY OF FORT WAYNE, INDIANA,
AUTHORIZING MARKETING AGREEMENTS
AND THE ASSIGNMENT OF LEASE RENTS AND SUCCESSOR LEASE RENTS**

RESOLUTION NUMBER 100-3-27-13-1

WHEREAS, the City of Fort Wayne, Indiana (hereinafter referred to as the "City"), owns certain real property and the water towers located thereon located at 7602 Bass Road, Fort Wayne, Indiana, 46804 (hereinafter referred to as the "West Side" location), 13323 Coldwater Road, Fort Wayne, Indiana, 46845 (hereinafter referred to as the "Coldwater" location), and 1016 Dupont Road, Fort Wayne, Indiana, 46825 (hereinafter referred to as the "Dupont" location), all three (3) locations being described more particularly in Exhibit "A", attached hereto and made a part of this Resolution by this reference; and

WHEREAS, the City as Lessor, currently leases space on the water towers at the above mentioned locations to certain wireless communication companies and carriers (hereinafter referred to as the "Existing Leases"); and

WHEREAS, AP Wireless Investment I, LLC (hereinafter referred to as "APW") wishes to purchase the City's rights to collect rents and/or lease payments as delineated in the Existing Leases; and

WHEREAS, the City wishes to sell and assign the City's rights to collect rents and/or lease payments from the Existing Leases to APW; and

WHEREAS, the City-owned water towers located at the West Side, Coldwater, and Dupont locations all have extra space on top of the water towers that could facilitate more wireless communications antennae; and

WHEREAS, APW has agreed to pay the City for APW's right to market said extra space to wireless communications companies and carriers; and

WHEREAS, the City wishes to allow APW to market said extra space in exchange for financial consideration.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

1. That the Board of Public Works of the City of Fort Wayne, Indiana (hereinafter referred to as the "Board") approves the Assignment of Lease Rents and Successor Lease Rents agreements between the City and APW.
2. That the Board approves the Antenna Site Marketing and Services Agreement agreements between the City and APW.

3. That the Board approves the Memorandum of Understanding agreements between the City and APW.
4. That the Board hereby authorizes Benjamin Groeneweg, Program Manager of Utility Asset Management and Sustainability with Fort Wayne City Utilities Engineering, to sign in the name of and on behalf of the Board, the three (3) Assignment of Lease Rents and Successor Lease Rents agreements between the City and APW, the three (3) Antenna Site Marketing and Services Agreement agreements between the City and APW, and the three (3) Memorandum of Understanding agreements between the City and APW.

This Resolution shall be in full force and effect from and after its adoption by the Board of Public Works of the City of Fort Wayne, Indiana.

APPROVED this 27th day of March, 2013.

BOARD OF PUBLIC WORKS

By: _____

Robert Kennedy, Chair

By: _____

Kumar Menon, Member

By: _____

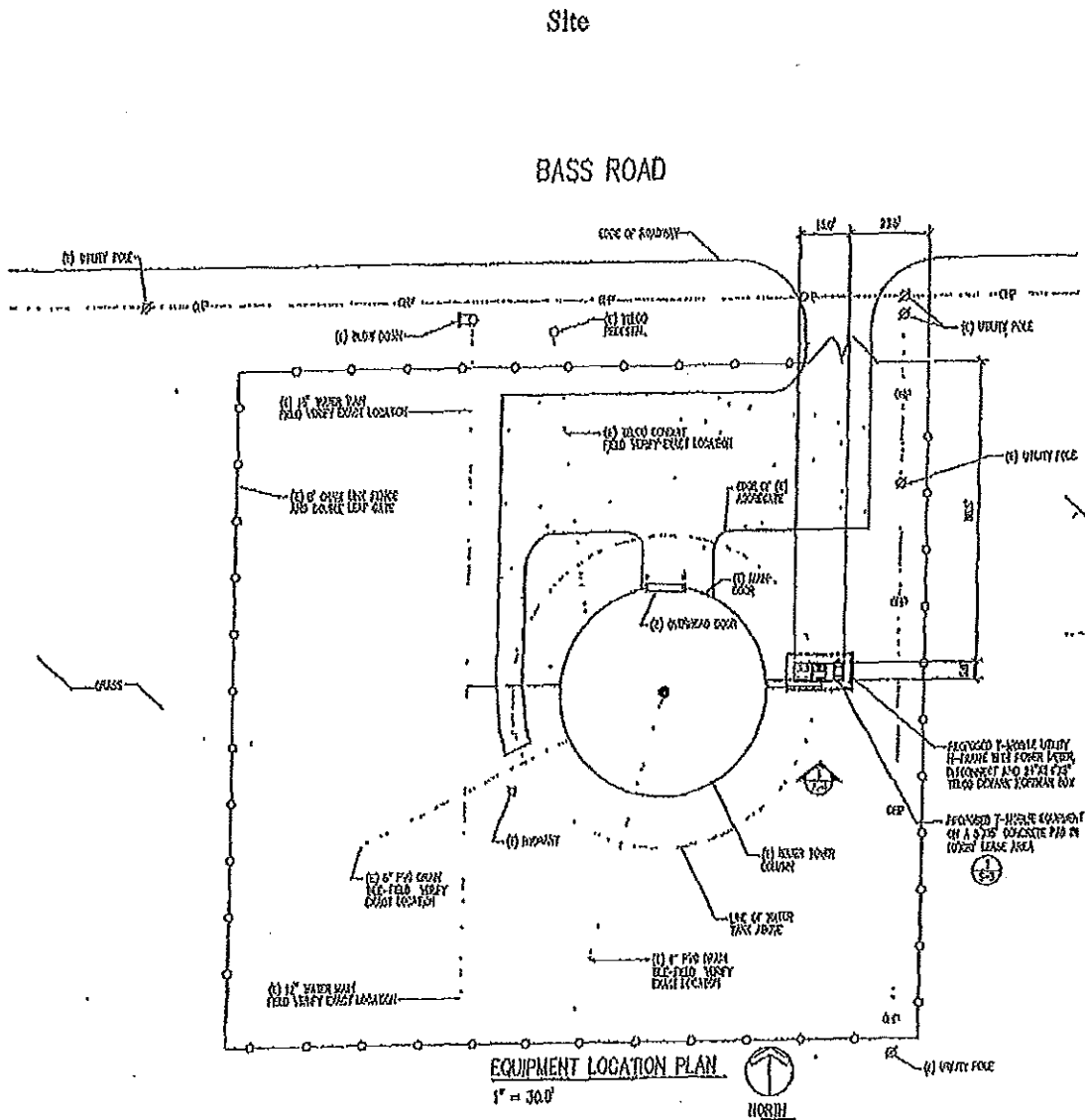
Mike Avila, Member

Attest: _____

Victoria Edwards, Clerk

EXHIBIT "A" Page 1

"West Side" Location



Part of the West 206.5 feet of
the East 1,699.75 feet of the
North 208.7 feet of the Northwest
Quarter of Section 1, Aboite Township.

EXHIBIT "A" Page 2
"Coldwater" Location

Parcel I:

A parcel of land located in the Northeast One-Quarter of Section 28, Township 32 North, Range 12 East, Allen County, Indiana, and more particularly described as follows:

Commencing at the Northeast corner of Section 28, Township 32 North, Range 12 East as marked by a P.K. nail found; thence South 00°10'21" East (bearing basis for description) along the East line of the Northeast One-Quarter of said Section 28, a distance of 260.0 feet (dead) to the Southeast corner of a tract of land owned by Irving Ready Mix in Deed Record 489, page 413; thence North 89°48'10" West and parallel to the North line of said Northeast One-Quarter, and along the South line of said Irving Ready Mix parcel, a distance of 187.40 feet to a 5/8 inch diameter iron pin set at the Point of Beginning.

Beginning at the above described point; thence South 00°11'50" West, a distance of 212.27 feet to a 5/8 inch diameter iron pin set; thence North 89°48'10" West and parallel to said North line, a distance of 210.0 feet to a 5/8 inch diameter iron pin set; thence North 00°11'50" East, a distance of 212.27 feet to a 5/8 inch diameter iron pin on the South line of said Irving Ready Mix parcel; thence South 89°48'10" East along said North line, a distance of 210.0 feet to the Point of Beginning, containing 1.02 acre of land, more or less.

Parcel II:

A non-exclusive easement for the purpose of ingress and egress, for the benefit of Parcel I as created by Corporate Warranty Deed dated July 27, 2001 and recorded July 31, 2001 as Document Number 201052860 over and across the following described real estate in Allen County:

A twenty (20) foot ingress and egress easement, lying ten (10) feet on both sides of the following described centerline:

Commencing at the Northeast corner of Section 28, Township 32, Range 12 East, in Allen County, Indiana, as marked by a P.K. nail found; thence South 00°10'21" East (bearing basis for description) along the East line of said Section 28, a distance of 260.1 feet; thence North 89°48'10" West, a distance of 187.40 feet; thence South 00°11'50" West, a distance of 56.00 feet to the point of beginning; thence South 89°48'10" East, a distance of 147.76 feet to the point of terminus of said easement.



EXHIBIT "A" Page 3

"Dupont" Location

THIS FORM HAS BEEN APPROVED BY THE INDIANA STATE BAR ASSOCIATION FOR USE BY LAWYERS ONLY. THE EXECUTION OF A FORM OF THIS NATURE, FILLING IN BLANK SPACES, STATING THE PROVISIONS AND MATTER OF SPECIAL CLAUSES, CONSTITUTE THE PRACTICE OF LAW AND SHOULD BE DONE BY A LAWYER.

Mail tax bills to:
Utility Development Corporation
c/o Utility Center
927 S. Harrison
Fort Wayne, Ind. 46802

WARRANTY DEED 77-033213

This Indenture witnesses that

ROBERT G. WERKMAN and VERNA O. JACKSON
(WERKMAN), husband and wife, and each
over the age of eighteen (18) years,

of Allen County in the State of Indiana

Convey and Warranty to UTILITY DEVELOPMENT CORPORATION, an Indiana Corporation,

of Allen County in the State of Indiana

for and in consideration of \$2.00 and other good and valuable consideration, the receipt whereof is hereby acknowledged, the following Real Estate in Allen County in the State of Indiana, to wit:

Part of the Northeast Quarter of Section 1, Township 31 North, Range 12 East, Allen County, Indiana, more particularly described as follows: Beginning at the Northeast corner of the Northeast Quarter of Section 1, Township 31 North, Range 12 East, Allen County, Indiana; thence Easterly along the North line of the NE 1/4 of Sec. 1-31-12 a distance of 100 feet; thence Southerly with a deflection angle to the right of 89 deg. 24 min. and parallel to the West line of the NE 1/4 of Sec. 1-31-12 a distance of 120 feet; thence Westerly with a deflection angle to the right of 90 deg. 36 min. and parallel to the North line of Sec. 1-31-12 a distance of 100 feet to a point on the West line of the NE 1/4 of Sec. 1-31-12; thence Northerly with a deflection angle to the right of 89 deg. 24 min. and along the West line of the NE 1/4 of Sec. 1-31-12 a distance of 120 feet to the point of beginning, containing 0.44 acres of land, and subject to road rights of way and easements.

subject to real estate taxes due and payable in the year 1979, and thereafter.

subject to all easements, restrictions, conditions and limitations of record as well as all applicable zoning ordinances.

State of Indiana, Allen County, Ind.

Before me, the undersigned, a Notary Public in and for said County and State, this 10th day of November 1977 personally appeared:

Robert G. Werkman and Verna O. Jackson
(Werkman), husband and wife, and each
over the age of eighteen (18) years.

And acknowledged the execution of the foregoing deed, in witness whereof, I have hereunto subscribed my name and affixed my seal this 10th day of November 1977.

Robert W. Haller
Notary Public
ROBERT W. HALLER

Dated this 10th day of November 1977

Robert G. Werkman
ROBERT G. WERKMAN

Verna O. Jackson
VERNA O. JACKSON (WERKMAN)

DULY ENTERED FOR TAXATION

NOV 14 1977

James H. Voth
AUDITOR OF ALLEN COUNTY

This instrument prepared by: Robert W. Haller

INSTRUMENT # 11607

ALMT to: Lawrence B. Shine
200 Strauss Bldg.

COPYRIGHT THE ALLEN COUNTY INDIANA BAR ASSOCIATION, 1977

Antenna Site Marketing and Services Agreement

This Antenna Site Marketing and Services Agreement (this "Agreement") is made and entered into as of this 29 day of March, 2013, by and between BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE ("Site Owner") and AP WIRELESS INVESTMENTS I, LLC (hereinafter "APWII").

BACKGROUND:

- A. The Site Owner is of the opinion that APWII has the necessary qualifications, experience, and abilities to provide marketing and consulting services in connection with the marketing of the property located at 1016 Dupont Rd., Road, Fort Wayne, IN 46825 (the "Property") belonging to the Site Owner.
- B. APWII is agreeable to providing such services to the Site Owner, on the terms and conditions as set out in this Agreement.

IN CONSIDERATION OF the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the parties to this Agreement agree as follows:

1. **Engagement:** The Site Owner hereby agrees to engage APWII to provide the Site Owner with services consisting of marketing the Property to prospective companies looking to place antennas and build wireless communications infrastructure (known as "New Site Users"), and such other services as the Site Owner and APWII may agree upon from time to time (the "Services"), and APWII hereby agrees to provide these Services to the Site Owner.
2. **Term of Agreement:** The term of this Agreement will begin on the date of this Agreement and will remain in full force and effect for a period of five (5) years, with the said term being capable of extension by mutual written agreement of the parties.
3. **Performance:** Both parties agree to do everything necessary to ensure that the terms of this Agreement take effect.
4. **Compensation:** For the Services provided by APWII under this Agreement, the Site Owner will pay to APWII compensation in the following manner: Upon contract signature with a new site user (outside the agreed upon Easement area), APWII will be paid an amount of twenty percent (20%) of the contract license fee, for as long as the contract remains in existence, payable on the 10th day of each month.
5. **Assignment:** This Agreement is a personal one, being entered into in reliance upon and in consideration of the personal skill and qualifications of APWII. APWII will not voluntarily or by operation of law assign or otherwise transfer the obligations incurred pursuant to the terms of this Agreement without the prior written consent of the Site Owner.
6. **Capacity/Independent Contractor:** It is expressly agreed that APWII is acting as an independent contractor and not as an employee in providing the Services hereunder. APWII and the Site Owner acknowledge that this Agreement does not create a partnership or joint venture between them.
7. **Modification of Agreement:** Any amendment or modification of this Agreement or additional obligation assumed by either party in connection with this Agreement will only be binding if evidenced in writing signed by each party or an authorized representative of each party.

Antenna Site Marketing and Services Agreement

8. **Entire Agreement:** It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressed in it.
9. **Severability:** In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of the Agreement.
10. **Governing Law:** It is the intention of the parties to this Agreement that this Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Indiana, without regard to the jurisdiction in which any action or special proceeding may be instituted.

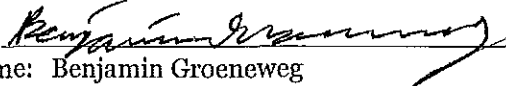
IN WITNESS WHEREOF the parties have duly executed this Antenna Site Marketing and Services Agreement on the dates written below.

Site Owner:

APWII

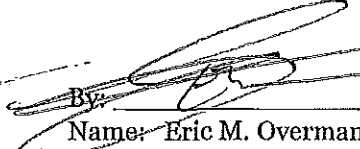
BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE

AP WIRELESS INVESTMENTS I, LLC

By: 

Name: Benjamin Groeneweg

Its: Program Manager: Utility Asset Management
and Sustainability
Authorized signatory on behalf of the Fort
Wayne, Board of Public Works, per the attached
resolution

By: 

Name: Eric M. Overman

Its: C.E.O. and General Counsel

Date:

3/29/2013

Date:

3-25-13

Address: 200 East Berry Street, Suite 240

City: Fort Wayne

State: Indiana

Zip: 46802-2736

Tel: (260) 427-1365

Fax: (260) 427-8572

Address: 9373 Towne Centre Drive, Suite 200

City: San Diego

State: California

Zip: 92121

Tel: (646) 912-8058

Fax: (203) 549-0930

**A RESOLUTION OF THE BOARD OF PUBLIC WORKS
OF THE CITY OF FORT WAYNE, INDIANA,
AUTHORIZING MARKETING AGREEMENTS
AND THE ASSIGNMENT OF LEASE RENTS AND SUCCESSOR LEASE RENTS**

RESOLUTION NUMBER 100-3-27-13-1

WHEREAS, the City of Fort Wayne, Indiana (hereinafter referred to as the "City"), owns certain real property and the water towers located thereon located at 7602 Bass Road, Fort Wayne, Indiana, 46804 (hereinafter referred to as the "West Side" location), 13323 Coldwater Road, Fort Wayne, Indiana, 46845 (hereinafter referred to as the "Coldwater" location), and 1016 Dupont Road, Fort Wayne, Indiana, 46825 (hereinafter referred to as the "Dupont" location), all three (3) locations being described more particularly in Exhibit "A", attached hereto and made a part of this Resolution by this reference; and

WHEREAS, the City as Lessor, currently leases space on the water towers at the above mentioned locations to certain wireless communication companies and carriers (hereinafter referred to as the "Existing Leases"); and

WHEREAS, AP Wireless Investment I, LLC (hereinafter referred to as "APW") wishes to purchase the City's rights to collect rents and/or lease payments as delineated in the Existing Leases; and

WHEREAS, the City wishes to sell and assign the City's rights to collect rents and/or lease payments from the Existing Leases to APW; and

WHEREAS, the City-owned water towers located at the West Side, Coldwater, and Dupont locations all have extra space on top of the water towers that could facilitate more wireless communications antennae; and

WHEREAS, APW has agreed to pay the City for APW's right to market said extra space to wireless communications companies and carriers; and

WHEREAS, the City wishes to allow APW to market said extra space in exchange for financial consideration.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

1. That the Board of Public Works of the City of Fort Wayne, Indiana (hereinafter referred to as the "Board") approves the Assignment of Lease Rents and Successor Lease Rents agreements between the City and APW.
2. That the Board approves the Antenna Site Marketing and Services Agreement agreements between the City and APW.

3. That the Board approves the Memorandum of Understanding agreements between the City and APW.
4. That the Board hereby authorizes Benjamin Groeneweg, Program Manager of Utility Asset Management and Sustainability with Fort Wayne City Utilities Engineering, to sign in the name of and on behalf of the Board, the three (3) Assignment of Lease Rents and Successor Lease Rents agreements between the City and APW, the three (3) Antenna Site Marketing and Services Agreement agreements between the City and APW, and the three (3) Memorandum of Understanding agreements between the City and APW.

This Resolution shall be in full force and effect from and after its adoption by the Board of Public Works of the City of Fort Wayne, Indiana.

APPROVED this 27th day of March, 2013.

BOARD OF PUBLIC WORKS

By: _____

Robert Kennedy, Chair

By: _____

Kumar Menon, Member

By: _____

Mike Avila, Member

Attest: _____

Victoria Edwards, Clerk

Part of the West 206.5 feet of
the East 1,699.75 feet of the
North 208.7 feet of the Northwest
Quarter of Section 1, Aboite Township.

EXHIBIT "A" Page 2
"Coldwater" Location

Parcel I:

A parcel of land located in the Northeast One-Quarter of Section 28, Township 32 North, Range 12 East, Allen County, Indiana, and more particularly described as follows:

Commencing at the Northeast corner of Section 28, Township 32 North, Range 12 East as marked by a P.K. nail found; thence South 00°10'21" East (bearing basis for description) along the East line of the Northeast One-Quarter of said Section 28, a distance of 260.0 feet (deed) to the Southeast corner of a tract of land owned by Irving Ready Mix in Deed Record 489, page 413; thence North 89°48'10" West and parallel to the North line of said Northeast One-Quarter, and along the South line of said Irving Ready Mix parcel, a distance of 187.40 feet to a 5/8 inch diameter iron pin set at the Point of Beginning.

Beginning at the above described point; thence South 00°11'50" West, a distance of 212.27 feet to a 5/8 inch diameter iron pin set; thence North 89°48'10" West and parallel to said North line, a distance of 210.0 feet to a 5/8 inch diameter iron pin set; thence North 00°11'50" East, a distance of 212.27 feet to a 5/8 inch diameter iron pin on the South line of said Irving Ready Mix parcel; thence South 89°48'10" East along said North line, a distance of 210.0 feet to the Point of Beginning, containing 1.02 acre of land, more or less.

Parcel II:

A non-exclusive easement for the purpose of ingress and egress, for the benefit of Parcel I as created by Corporate Warranty Deed dated July 27, 2001 and recorded July 31, 2001 as Document Number 201052860 over and across the following described real estate in Allen County:

A twenty (20) foot ingress and egress easement, lying ten (10) feet on both sides of the following described centerline:

Commencing at the Northeast corner of Section 28, Township 32, Range 12 East, in Allen County, Indiana, as marked by a P.K. nail found; thence South 00°10'21" East (bearing basis for description) along the East line of said Section 28, a distance of 260.1 feet; thence North 89°48'10" West, a distance of 187.40 feet; thence South 00°11'50" West, a distance of 56.00 feet to the point of beginning; thence South 89°48'10" East, a distance of 147.76 feet to the point of terminus of said easement.



EXHIBIT "A" Page 3

"Dupont" Location

THIS FORM HAS BEEN APPROVED BY THE INDIANA STATE BAR ASSOCIATION FOR USE BY LAWYERS ONLY. THE EXECUTION OF A FORM OF THIS KIND, BEING IN BLANK SPACE, TAKING OUT PROVISIONS AND INCLUSION OF SPECIAL CLAUSES, CONSTITUTES THE PRACTICE OF LAW AND SHOULD BE DONE BY A LAWYER.

Mail tax bills to:
Utility Development Corporation
c/o Utility Center
927 S. Harrison
Fort Wayne, Ind. 46802

WARRANTY DEED 77-033218

This Indenture witnesseth that ROBERT C. HERKMAN and Verna O. JACKSON (HERKMAN), husband and wife, and each over the age of eighteen (18) years,

of Allen County in the State of Indiana

Convey and warrant to UTILITY DEVELOPMENT CORPORATION, an Indiana Corporation,

of Allen County in the State of Indiana
for and in consideration of \$2.00 and other good and valuable consideration,
the receipt whereof is hereby acknowledged, the following Real Estate in Allen County
in the State of Indiana, to wit:

Part of the Northeast Quarter of Section 1, Township 31 North, Range 12 East, Allen County, Indiana, more particularly described as follows: Beginning at the Northwest corner of the Northeast Quarter of Section 1, Township 31 North, Range 12 East, Allen County, Indiana; thence Easterly along the North line of the NE 1/4 of Sec. 1-31-12 a distance of 100 feet; thence Southerly with a deflection angle to the right of 89 degs. 24 min. and parallel to the West line of the NE 1/4 of Sec. 1-31-12 a distance of 190 feet; thence Westerly with a deflection angle to the right of 90 degs. 36 min. and parallel to the North line of Sec. 1-31-12 a distance of 100 feet to a point on the West line of the NE 1/4 of Sec. 1-31-12; thence Northerly with a deflection angle to the right of 89 degs. 24 min. and along the West line of the NE 1/4 of Sec. 1-31-12 a distance of 190 feet to the point of beginning, containing 0.44 acres of land, and subject to road rights of way and easements.

subject to real estate taxes due and payable in the year 1979, and hereafter.

subject to all easements, restrictions, conditions and limitations of record as well as all applicable zoning ordinances.

State of Indiana, Allen County, Ind.
Before me, the undersigned, a Notary Public in and for said County and State, this 10th day of November 1977
personally appeared:

Robert C. Herkman and Verna O. Jackson (Herkman), husband and wife, and each over the age of eighteen (18) years.

Dated this 10th day of November, 1977

Robert C. Herkman
ROBERT C. HERKMAN

Verna O. Jackson
VERNA O. JACKSON (HERKMAN)

DULY ENTERED FOR TAXATION

NOV-14-1977

James H. Hallett
AUDITOR OF ALLEN COUNTY

And acknowledged the execution of the foregoing deed, in witness whereof, I this Notary Public, my name and official seal, this 10th day of November 1977.

Robert W. Hallett
ROBERT W. HALLETT

This Indenture prepared by: Robert W. Hallett

Attorney at Law

INSTRUMENT IS 11602

MAILED: Lawrence H. Shine
200 Strauss Bldg.

COMPLIES WITH ALLEN COUNTY BOARD OF ASSOCIATION FOR 1977

ASSIGNMENT OF LEASE RENTS AND SUCCESSOR LEASE RENTS

THIS ASSIGNMENT OF LEASE RENTS AND SUCCESSOR LEASE RENTS ("Agreement") is made as of the 29 day of March, 2013 ("Effective Date"), by and between BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE, whose address is 200 East Berry Street, Suite 240, Fort Wayne, Indiana 46802 ("Landlord") and AP Wireless Investments I, LLC, a Delaware limited liability company ("APWII"). All references hereafter to "APWII" and "Landlord" shall include their respective heirs, successors, personal representatives, lessees, licensees and assigns.

WHEREAS, Landlord, as lessor, successor in interest to Utility Center, Inc., an Indiana corporation, and Omnipont Communications Midwest Operations, LLC, a Delaware limited liability company, as lessee ("T-Mobile"), are parties to that certain lease agreement ("T-Mobile Lease") dated May 5, 1998, and whereas Landlord, as lessor, successor in interest to Utility Center, Inc. dba Aqua Indiana, Inc., an Indiana corporation, and United States Cellular Operating Company of Chicago, LLC, a Delaware LLC, as lessee ("US Cellular"), are parties to that certain lease agreement ("US Cellular Lease") dated May 5, 1998;

T-Mobile and US Cellular shall collectively, be referred to as ("Tenant"), and the T-Mobile Lease and US Cellular Lease shall be collectively be referred to as the ("Lease"), a copy of which is attached hereto as Exhibit A covering the premises (the "Premises") therein described, Landlord's right, title and interest in all monies payable by Tenant (whether described as base rent, additional rent, holdover rent, fees, charges, interest, or otherwise but not including payments in respect of real property taxes and assessments, insurance maintenance charges or utilities) under the Lease or by Successor Tenant (as defined below) under any Successor Lease (as defined below) (the "Rents") shall be referred to herein as the "Landlord's Interest". Landlord is the owner of the land and improvements, on which the Premises are located in the County of Allen, State of Indiana, commonly known as 1016 Dupont Road, Fort Wayne, IN 46825 (the "Property").

WHEREAS, Landlord wishes to assign and APWII wishes to receive Landlord's Interest, together with all other rights and interests as described herein for the Assignment Term.

WHEREAS, Landlord and APWII wish to incorporate the Rider to Memorandum of Understanding ("Rider") attached hereto as Exhibit "G", and hereby incorporate the terms of the Rider as though fully set forth herein.

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment; Assignment Amount; Payment.

- (a) Subject to the rights of the Tenant under the Lease or Successor Tenant under a Successor Lease, Landlord hereby irrevocably and unconditionally assigns to APWII all of Landlord's beneficial rights, title and interests in the Rents described therein for the period commencing on the date hereof and ending on May 1, 2063 (the "Assignment Term"), with no representations or warranties of any kind other than those provided herein.
- (b) APWII shall pay to Landlord, the amount of \$535,000.00 ("Assignment Amount") in payment of the assignment of Rents and the other rights and interests granted by Landlord to APWII as described herein. The Assignment Amount shall be in full payment of the rights granted by Landlord to APWII and Landlord shall not be entitled to any other compensation or payments of any kind under this Agreement or otherwise in connection with the Rents assignment or other rights granted to APWII under this Agreement or under any other documents executed in connection herewith.
- (c) Landlord promises to pay to the order of APWII, at the times and in the manner provided herein, a principal sum equal to the Assignment Amount, plus interest thereon at the rate of seven and twenty-three hundredths percent (7.23%) per annum (the "Stated Interest Rate"). Principal shall be payable in monthly installments in the amounts (the "Monthly Principal Amounts") set forth on Exhibit B. All interest shall be calculated on the basis of twelve 30-day months and the actual number of days elapsed.
- (d) On or prior to the 10th calendar day of each calendar month commencing with the first calendar month after the date hereof, Landlord shall apply the Monthly Servicing Collections (as defined below) for the immediately preceding calendar month to Landlord's obligations hereunder in the following order: first, to unpaid late charges, default interest and similar charges then due from Tenant under the Lease or Successor Tenant under a Successor Lease, and to any unpaid fees, charges and expenses then due from Landlord to APWII hereunder; second, the excess, if any, to accrued but unpaid interest at the Stated Interest Rate through and including the final day of the immediately preceding calendar month; third, the excess, if any, to

the Monthly Principal Amount set forth on Exhibit B with respect to the immediately preceding calendar month; and fourth, the excess, if any, to the Landlord, such excess to be accrued and paid in a lump sum within 90 days after the end of each calendar year. "Monthly Servicing Collections" shall mean, for each calendar month, the Rents received in the Servicing Account (as defined below) in respect of the Lease or Successor Lease during such calendar month.

- (e) Landlord may prepay the Assignment Amount in full, but not in part, provided that Landlord delivers unequivocal and irrevocable written notice thereof to APWII not less than 30 calendar days prior thereto, specifying the prepayment date, and pays to APWII on the date so specified, by wire transfer of immediately available funds denominated in U.S. dollars, an amount equal to the sum of (a) the remaining unpaid Assignment Amount, (b) all accrued but unpaid interest, (c) other charges due under any of the Assignment Documents and (d) a fee in an amount equal to five percent (5.0%) of the remaining unpaid Assignment Amount.
2. Assignment Absolute. This Agreement shall be a present, absolute and unconditional assignment, and shall, immediately upon execution, give APWII the right to collect all Rents. Landlord hereby irrevocably appoints APWII as its true and lawful attorney-in-fact, with full power of substitution, to demand and collect Rents and to exercise the other rights and remedies of lessor under the Lease or Successor Lease, as provided for under this Agreement[, which power is coupled with an interest].
3. Rights Assigned to APWII.
- (a) During the Assignment Term, APWII is hereby appointed as Landlord's attorney-in-fact with full power of substitution to demand and collect Rents and to exercise all rights and remedies of Landlord under the Lease or a Successor Lease granted to APWII under this Agreement[, which power and right is coupled with an interest]. Landlord covenants and agrees that Landlord remains the fee owner of the Property and Land and Landlord is not assigning and shall continue to comply with all obligations of the lessor under the Lease or a Successor Lease.
 - (b) Without limiting the generality of the foregoing, upon the occurrence of an Event of Default (as defined below), APWII shall be assigned the following rights and remedies under the Lease or a Successor Lease, which rights are limited only by applicable law and by the terms of this Agreement and the terms of the Lease or a Successor Lease, which rights and remedies APWII may, in its sole discretion, elect to exercise in whole or in part, but with no obligation to do so:
 - (i) to collect and receive Rents due or to become due and payable with respect to the use, occupancy or enjoyment of the Premises (provided that payments in respect of real property taxes and assessments, insurance maintenance charges or utilities shall, if and to the extent payable to Landlord by Tenant under the Lease or Successor Tenant under a Successor Lease, may be paid directly by Tenant or Successor Tenant to Landlord);
 - (ii) to modify, amend or waive the Lease or Successor Lease provisions in effect during the Assignment Term modifying the Rents payment obligation under the Lease or a Successor Lease (including granting Rents concessions to the Tenant or Successor Tenant, whether in respect of amount, timing or frequency), the Tenant's or Successor Tenant's termination rights under the Lease or a Successor Lease, and the Tenant's or Successor Tenant's use rights under the Lease or a Successor Lease. Provided however, APWII may not expand the rights of Tenant under the Lease or Successor Tenant under a Successor Lease;
 - (iii) to terminate the Lease or a Successor Lease or to allow Tenant or Successor Tenant to terminate the Lease or a Successor Lease, in either case, for any reason;
 - (iv) to continue the Lease or a Successor Lease in effect after Tenant's or Successor Tenant's breach, in APWII's sole discretion;
 - (v) to extend or renew the term of the Lease or a Successor Lease from time to time (but not beyond the end of the Assignment Term) or to decline to do so;
 - (vi) to grant any consent or approval under the Lease or a Successor Lease or to decline to do so, to the extent that any such consent or approval might decrease, or affect the timing or collectability of, any Rents actually paid or payable by Tenant or Successor Tenant;
 - (vii) to accept or decline an abandonment of the Premises or property installed thereon;

- (viii) to release, revoke or re-assign any rights it may have hereunder to Landlord;
 - (ix) to exercise all of Landlord's rights and remedies under the Lease or a Successor Lease as they pertain to the collection of Rents or sums due under the Lease or a Successor Lease in such manner and in such order or combination as APWII deems appropriate in its reasonable discretion;
 - (x) to commence, defend and compromise any action or proceeding relating to the Tenant's, Successor Tenant's, or Landlord's obligations under the Lease or a Successor Lease to the extent that any of the foregoing might decrease, or affect the timing or collectability of, any Rents actually paid or payable by Tenant or Successor Tenant and to retain or direct counsel of its choosing in any such action or proceeding;
 - (xi) to file, pursue, defend or compromise any claim or adversary proceeding in bankruptcy, insolvency or similar proceeding relating to Tenant's or Successor Tenant's obligations under the Lease or a Successor Lease;
 - (xii) to consent to, or decline to consent to, an assignment or sublease of Tenant's or Successor Tenant's interests in this Lease, Successor Lease, or the Premises to the extent that any such consent might decrease, or affect the timing or collectability of, any Rents actually paid or payable by Tenant or Successor Tenant;
 - (xiii) to protect and defend its rights in the Premises (including the Landlord's rights in the Premises conveyed to APWII hereunder), or to require that the Landlord protect and defend such rights;
 - (xiv) subject to the provisions of Section 4 below, to exercise any other right or take or refuse to take any other action that Landlord would otherwise be permitted to exercise under the Lease or a Successor Lease or by any applicable federal, state, municipal and local laws, rules, ordinances, regulations and permits (collectively, "Law(s)") with respect to Tenant's or Successor Tenant's obligations under the Lease or a Successor Lease or tenancy of the Premises.
- (c) During the Assignment Term, Landlord shall not, other than to the extent required herein, including to the extent required to perform its obligations under the Lease or a Successor Lease as set forth in Section 4 below, or upon the written consent or direction of APWII, exercise any right or remedy of Landlord under the Lease, Successor Lease, or by Law to the extent that the exercise of any such right or remedy might decrease, or affect the timing or collectability of, any Rents actually paid or payable by Tenant or Successor Tenant. During the Assignment Term, Landlord shall take such actions as may be reasonably requested by APWII for such purpose.
- (d) If and to the extent that any security deposit or other deposit (whether in the form of cash, letter of credit or other security) has been made by Tenant or Successor Tenant under the Lease or a Successor Lease (collectively, "Deposits"), (i) Landlord hereby assigns all of its rights, title and interests in the Deposits to APWII as of the Effective Date; (ii) if Landlord has not already done so, Landlord shall cause such Deposits to be promptly transferred to APWII; (iii) APWII shall hold and apply such Deposits during the Assignment Term in accordance with the Lease or a Successor Lease; and (iv) if the Lease or a Successor Lease is not sooner terminated or expired, APWII shall transfer any remaining Deposits back to Landlord upon the expiration of the Assignment Term.
- (e) From and after the Effective Date, Landlord shall not, other than to the extent required herein or requested in writing by APWII, exercise or enjoy any of the beneficial rights or remedies of lessor under the Lease or a Successor Lease to the extent that the exercise of any such rights or remedies might decrease, or affect the timing or collectability of, any Rents actually paid or payable by Tenant or Successor Tenant.
- (f) Notwithstanding anything to the contrary within, to the extent that the Lease requires any assignee of Landlord's rights to assume all obligations of Landlord under the Lease, then (i) Landlord also transfers and assigns to APWII, as of the Effective Date, any and all of its obligations in, to and under the Lease, (ii) APWII assumes, recognizes and is responsible for all such obligations, and (iii) Landlord shall cooperate with APWII to facilitate APWII's fulfillment of all such obligations, and Landlord shall indemnify, defend and hold harmless APWII for any performance of APWII of such obligations that reasonably relate to the Property outside of the Premises.
4. Landlord's Ongoing Obligations. The parties hereby acknowledge that by this Agreement, APWII has not assumed any of the obligations, duties or liabilities of Landlord under the Lease or a Successor Lease. Nothing contained herein, and no action or forbearance or exercise of the rights and remedies of Landlord under the Lease or a Successor Lease on the part of APWII as permitted by this Agreement, shall constitute or be construed

as an assumption by APWII of any obligation of Landlord under the Lease or a Successor Lease whether arising before, on or after the Effective Date. APWII shall not have any liability or obligation with respect to the care, management or repair of the Premises or any land adjacent thereto, or any improvements thereon, or for any injury or damage sustained by any person in, on, under or about the Property, including the Premises. During the Assignment Term, Landlord shall continue to pay, fulfill or perform fully, faithfully and timely, each and every condition, covenant, obligation and duty required of Landlord under the Lease, Successor Lease, or by Law, other than those assigned herein, whether arising prior to, on or after the Effective Date. Without limiting the generality of the foregoing, Landlord shall:

- (a) not suffer or allow any breach, default or event of default by Landlord to occur under the Lease or a Successor Lease;
- (b) not take any action, or fail to take action, for the purpose of, or with the effect of, terminating the Lease or a Successor Lease or inducing or causing Tenant or Successor Tenant to exercise, or not to exercise, a right to renew or extend the Lease or a Successor Lease;
- (c) not perform or discharge any obligation or liability of Landlord under the Lease or a Successor Lease in a manner that would: (i) hinder, delay or otherwise adversely affect APWII's receipt and collection of Rents or the exercise by APWII of any of its other rights or remedies under the Lease or a Successor Lease granted to APWII under this Agreement; or (ii) give rise to any offset or deduction by Tenant or Successor Tenant, or the withholding by Tenant or Successor Tenant of Rents for any cause or reason whatsoever, or the assertion of any such right by Tenant or Successor Tenant;
- (d) keep and ensure that the Property and the Premises remain in compliance with all Laws;
- (e) not terminate or accept a surrender or termination of the Lease or a Successor Lease;
- (f) at Landlord's sole cost and expense, appear in and defend any action growing out of or in any manner connected with the Lease or a Successor Lease or the obligations or liabilities of the Landlord thereunder;
- (g) not transfer, pledge, convey, hypothecate, create a security interest or lien upon the Premises, Property or the Lease or a Successor Lease which in any way is superior to or that jeopardizes in any manner or respect APWII's assignment or interest conveyed under this Agreement;
- (h) promptly pay (or ensure payment of) any and all real property, personal property and/or other taxes, levies, interests or assessments that may become due and owing relating to the Property, the Premises and any improvements located thereon;
- (i) operate and maintain the Property, Premises and any improvements thereon only in good order and repair in the ordinary course of business and refrain from entering into any agreements, contracts, services or other activities that would conflict with, frustrate or fail to comply with the terms and conditions of the Lease or a Successor Lease, this Agreement or any assignments or agreements entered into between the Landlord and APWII;
- (j) comply with all obligations, duties and liabilities as Landlord under the Lease or a Successor Lease, and satisfy all such obligations in good faith and with due diligence;
- (k) promptly forward to APWII any written notice or communication by, to or from Landlord and any tenant, government authority, taxing authority, service provider, lender, mortgagee or otherwise which may affect the Lease or a Successor Lease or any existing or future lease or other agreement at or upon the Property or Premises or which notice may affect or relate to the Property or Premises or the operation or function thereof in any manner or respect; and
- (l) name APWII, its stockholders, members, partners, affiliates or lenders as additional named insureds under any and all property, casualty and liability insurance policies relating to the Property, the Premises or improvements or the leases or easements thereon.

Without the express prior written consent of APWII, during the Assignment Term, Landlord shall not, and shall have no authority to, amend, modify, extend or renew the Lease or a Successor Lease, or waive any default thereunder, or declare or assert the extension, renewal, termination or expiration thereof. APWII may give or withhold its consent, in its sole and absolute discretion, to the extent that such consent might decrease, or affect the timing or collectability of, any Rents actually paid or payable by Tenant or Successor Tenant.

Notwithstanding any term or provision to the contrary provided elsewhere herein, at any time, and from time to time, Landlord shall, if APWII is not permitted to do so directly by local law, as and when requested by APWII, at APWII's sole cost and expense, use commercially reasonable efforts to cause Tenant or Successor Tenant to fulfill or perform any condition, covenant and obligation of the Lease or a Successor Lease to be fulfilled or performed by Tenant or Successor Tenant, including, specifically, the payment of Rents directly to (or otherwise at the direction of) APWII.

If Landlord has failed, after reasonable notice and opportunity to perform any covenant, obligation or duty which Landlord is bound to perform under the Lease or a Successor Lease or any other agreement or the Law relating to the Lease or a Successor Lease, then APWII may, but without any obligation to do so, from time to time and at any time, without releasing the Landlord from any obligation herein or under the Lease, perform such covenant, obligation or duty, and Landlord within thirty (30) days of receipt of an invoice therefor shall reimburse APWII all reasonable costs and expenses incurred by APWII in connection therewith, including attorneys' fees.

5. Servicing By APWII.

- (a) As additional security for the payment and performance by Landlord of its obligations hereunder, Landlord hereby appoints APWII as its exclusive servicer under the Lease or Successor Lease with respect to all rights and remedies relating to the period commencing on the Effective Date and ending on the date that all amounts payable by Landlord hereunder have been paid in full. During such period and in such capacity, APWII shall have the sole and exclusive right to (i) receive and collect Rents payable with respect to the Assignment Term (provided that payments in respect of real property taxes and assessments shall, to the extent payable to the lessor under the Lease or Successor Lease, be paid by Tenant or Successor Tenant to Landlord); (ii) enforce all of the lessor's rights and remedies under the Lease or Successor Lease and applicable law at such time, in such manner and in such order or combination as APWII deems appropriate in APWII's sole and absolute discretion; (iii) commence, defend and compromise any action or proceeding relating to Tenant's obligations under the Lease and to retain and direct counsel of its choosing in any such action or proceeding; (iv) file, pursue, defend and compromise any claim or adversary proceeding in any bankruptcy, insolvency or similar proceeding relating to Tenant's or Successor Tenant's obligations under the Lease or Successor Lease; (v) decline a surrender or abandonment of the Premises by Tenant or Successor Tenant; (vi) continue the Lease or Successor in effect after Tenant's or Successor Tenant's breach; (vii) extend or renew the term of the Lease or Successor Lease from time to time (but not beyond the last day of the Assignment Term), or decline to do so; (viii) collect and receive any holdover rent, (ix) grant or withhold consent to any assignment or sublease by Tenant or Successor Tenant under the Lease or Successor Lease; and (x) take any other action which the lessor is permitted to take under the Lease or Successor Lease or under applicable law with respect to Tenant's or Successor Tenant's obligations under the Lease or Successor Lease or tenancy of the Premises. APWII shall have the right from time to time to appoint any other person as successor servicer hereunder. Neither APWII nor any successor servicer appointed by APWII shall have any liability to Landlord except for actual damages, if any, resulting from the gross negligence or willful misconduct of APWII or such successor servicer, respectively.
- (b) Nothing contained herein, and no action or forbearance on the part of APWII, shall constitute or be construed as an assumption by APWII of any obligation or liability of Landlord under the Lease or Successor Lease or in respect of the Premises, whether arising or accruing prior to, on or after the Effective Date. Without limiting the generality of the foregoing, neither the collection of Rents by APWII, the enforcement of the lessor's rights and remedies under the Lease or Successor Lease nor the taking of any action which the lessor is permitted to take under the Lease or Successor Lease, or any combination of the foregoing, shall constitute or be construed as an assumption by APWII of any obligation or liability of Landlord under the Lease or Successor Lease or in respect of the Premises. APWII shall not have any liability or obligation with respect to the care, management or repair of the Premises or any land adjacent thereto, or any improvements thereon, or for any injury or damage sustained by any Person in, on, under or about the Premises.

6. Servicing Account: Notice to Tenant.

- (a) On or prior to the date hereof, APWII has established a deposit account (the "Servicing Account") standing in the name of APWII at PNC Bank ("Bank"). All sums deposited in the Servicing Account shall be the property of APWII, and may be commingled with other sums collected by or property of APWII. APWII shall have the exclusive right to direct Bank regarding the disposition of any and all sums now or hereafter deposited in the Servicing Account. APWII shall have the right from time to time to change the financial institution at which the Servicing Account is maintained.
- (b) Landlord shall execute and furnish to APWII a notice (the "Tenant Notification Letter") in the form of Exhibit C attached hereto. Within three calendar days of the Effective Date, Landlord shall deliver an

original or copy of the Tenant Notification Letter to Tenant. Landlord shall be responsible for taking such other action as is necessary or appropriate to cause Tenant to pay and deliver all Rents directly to the Servicing Account. APWII may elect also to deliver an original or copy of the Tenant Notification Letter to Tenant at such time or times after the Effective Date that APWII deems appropriate. After the Effective Date, Landlord shall notify APWII by facsimile transmission within 1 calendar day of Landlord's receipt of any payment in respect of Rents other than to the Servicing Account, and Landlord shall forward such payment to the Servicing Account within 1 business day (i) by reputable overnight courier service which provides package tracking services (if such payment was received by Landlord by check or other negotiable instrument; provided Landlord shall endorse such negotiable instrument in favor of APWII prior to forwarding it to the Servicing Account) or (ii) by wire transfer (if such payment was received by Landlord in any other form). If Landlord fails or refuses to forward any such payment to the Servicing Account within the time and in the manner provided herein, then, in addition to the right to receive such payment and its other rights and remedies hereunder, Assignee shall be entitled to receive a processing fee equal to the greater of (i) five hundred dollars and 00/100 (\$500.00) and (ii) fifteen percent (15.0%) of such payment.

7. Successor Lease.

- (a) Upon the expiration of the term of the Lease (including without limitation any expiration resulting from an election by Tenant not to exercise a right to renew or extend the Lease or the failure, whether inadvertent or otherwise, to exercise any such right) or upon the termination of the Lease for any reason (including without limitation any termination resulting from (x) a default or breach by Tenant, (y) a rejection or deemed rejection of the Lease in bankruptcy), Landlord shall promptly and in good faith use its best efforts to negotiate and execute a lease (a "Successor Lease") between Landlord and a new tenant (a "Successor Tenant").
- (b) Landlord shall obtain from APWII written consent to negotiate and execute a Successor Lease between Landlord and Successor Tenant. APWII may give or withhold its consent, in its sole and absolute discretion, to the foregoing to the extent that the foregoing might decrease, or affect the timing or collectability of, any Rents payable by the tenant of a Successor Lease. In the case of refusal of such consent, Landlord shall promptly and in good faith use its best efforts to negotiate and execute a Successor Lease between Landlord and another Successor Tenant.

- 8. Cooperation by Landlord. From time to time hereafter, (a) Landlord shall promptly furnish to APWII such information (including documents and records in Landlord's possession, custody or control) regarding property owner's ownership of the Premises, the Lease or a Successor Lease, the Premises and Tenant as APWII reasonably requests; (b) Landlord shall provide access to the Premises (to the extent not prohibited by the Lease or a Successor Lease) for the purpose of APWII's inspection of the Premises and improvements thereon, and such other purposes as APWII reasonably deems appropriate; and (c) Landlord shall promptly execute any confirmatory or related documents, easements, agreements or applications relating to the Property, Premises, improvements or installations thereon to the extent that the same are necessary, required or advisable and/or requested by the Tenant or Successor Tenant, any governmental authority or APWII, its stockholders, members, partners, affiliates or lenders. Landlord shall deliver to APWII a copy of any written communication that Landlord delivers to Tenant or Successor Tenant at the same time and in the same manner that such communication is delivered by Landlord to Tenant or Successor Tenant. Landlord shall promptly deliver to APWII a copy of any written communication that Landlord receives from Tenant or Successor Tenant or any other person relating to the Lease, a Successor Lease, or the Premises. Landlord shall keep APWII reasonably informed of any other communications between Landlord, on the one hand, and Tenant or Successor Tenant, on the other hand, and of any other notices or communications from any other entity, trust, association or individual (each, a "Person") that relates to the Lease, a Successor Lease, or the Premises.
- 9. Improvements. Landlord agrees that all antennas, telecommunications equipment, alterations and other improvements brought or made to the Premises (collectively, the "Improvements") by Tenant or Successor Tenant shall be and remain Tenant's or Successor Tenant's personal property irrespective of whether all or any portion thereof is deemed to be real property under applicable law. Landlord waives any and all rights it may have, including any rights it may have in its capacity as Landlord under the Lease or a Successor Lease to assert any liens, encumbrances or adverse claims, statutory or otherwise, related to or in connection with the Improvements or any portion thereof. Tenant or Successor Tenant, in its sole discretion, may remove the Improvements or any portion thereof at any time during the term of the Lease or a Successor Lease, without notice to Landlord and without Landlord's consent.
- 10. Impositions. Landlord shall pay and perform in a timely manner all mortgages that are liens against the Premises. Landlord shall pay or cause to be paid, prior to delinquency, all taxes, real property taxes, charges and other obligations ("Impositions") that are or could become liens against the Premises, whether existing as of the date hereof or hereafter created or imposed, and APWII shall have no obligation or liability therefor. Without

limiting the generality of the foregoing, except to the extent taxes and assessments are the obligation of Tenant or Successor Tenant under the Lease or a Successor Lease, Landlord shall be solely responsible for payment of all taxes and assessments now or hereafter levied, assessed or imposed upon the Premises, or imposed in connection with the execution, delivery, performance or recordation of this Agreement, including without limitation any sales, income, documentary or other transfer taxes. APWII may from time to time as APWII deems appropriate file, record, serve and/or deliver a request for notice of default, deficiency or sale upon any Person to whom an Imposition is payable.

11. Events of Default. The following events are each an "Event of Default" under this Agreement:

- (a) Landlord has failed to perform or observe, or cause to be performed or observed, any covenant, condition or agreement contained in the Assignment Documents (as defined below), and any such failure shall have continued for a period of ten (10) days after written notice of such failure; or
- (b) Landlord has failed to perform or observe, or cause to be performed or observed, any covenant, condition or agreement contained in the Lease or Successor Lease, and any such failure shall have continued for a period of ten (10) days after written notice of such failure; or
- (c) Any representation or warranty made by Landlord in any of the Assignment Documents is untrue or misleading as of the date hereof; or
- (d) Landlord has (i) applied for, or consented in writing to, the appointment of a receiver, trustee or liquidator; or (ii) filed a voluntary petition seeking relief under the Bankruptcy Code, or is unable, or admits in writing Landlord's inability to pay its debts as they become due; or (iii) made a general assignment for the benefit of creditors; or (iv) filed a petition or an answer seeking reorganization or an arrangement or a readjustment of debt with creditors, apply for, take advantage, permit or suffer to exist the commencement of any insolvency, bankruptcy, suspension of payments, reorganization, debt arrangement, liquidation, dissolution or similar event, under the law of the United States or of any state in which Landlord is a resident; or (v) filed an answer admitting the material allegations of a petition filed against Landlord in any such bankruptcy, reorganization or insolvency case or proceeding, or (vi) taken any action authorizing, or in furtherance of, any of the foregoing; or
- (e) Either (i) an involuntary case is commenced against Landlord under the Bankruptcy Code and the petition is not contested within ten (10) days or is not dismissed within sixty (60) days after the commencement of the case or (ii) an order, judgment or decree shall be entered by any court of competent jurisdiction on the application of a creditor adjudicating Landlord bankrupt or insolvent, or appointing a receiver, trustee or liquidator of Landlord or of all or substantially all of the assets of Landlord and the order, judgment or decree shall continue unstayed and in effect for a period of sixty (60) days or shall not be discharged within ten (10) days after the expiration of any stay of such order, judgment, or decree; or
- (f) The Lease or Successor Lease or any of the Assignment Documents have been determined by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, or Landlord has asserted in writing that the Lease or Successor Lease or this Agreement are or may be invalid or unenforceable, in whole or in part.

12. APWII's Remedies.

- (a) If any Imposition, or any installment thereof, is not paid within the time hereinabove specified, and if such Imposition is or could become senior in right of payment or foreclosure to this Agreement, then APWII shall have the right, but not the obligation, from time to time and at any time, in addition to its other rights under this Agreement and applicable law, to pay and/or discharge such Imposition, together with any penalty and interest thereon, and Landlord shall reimburse APWII therefor immediately upon payment by APWII thereof. If APWII so elects by written notice to Landlord, then the amount reimbursable by Landlord to APWII shall constitute a lien upon Landlord's right, title and interest in the land upon which the Premises are located, and such lien may be foreclosed privately or judicially if and to the extent permitted by applicable law. If and to the extent permitted by applicable law, APWII shall be subrogated to the rights of the Person to whom the Imposition was due, and such lien shall have such priority and benefit from such other rights and remedies, including foreclosure, as were formerly available to such Person with respect to the Imposition.

- (b) If APWII determines in its reasonable discretion that Landlord has failed, after reasonable notice and opportunity, to perform any covenant, obligation or duty which Landlord is bound to perform under the Lease, a Successor Lease or any other agreement or applicable law relating to the Lease, a Successor Lease or the Premises, then APWII shall have the right, but not the obligation, from time to time and at any time, to perform such covenant, obligation or duty, and Landlord shall, within thirty (30) days of receipt of an invoice therefor, reimburse APWII for all costs and expenses incurred by APWII in connection therewith, together with an administrative fee, in an amount not less than two hundred fifty dollars and 00/100 (\$250.00), as reasonably determined by APWII.
 - (c) Upon the occurrence and during the continuance of an Event of Default, APWII may, at its option and without notice or demand of any kind, and without regard to the adequacy of security for payment of the Assignment Amount, exercise any or all of the following remedies:
 - (i) Collect or continue to collect the Rents and any other sums owing under the Lease or Successor Lease, either by itself or through a receiver;
 - (ii) In Landlord's or APWII's name, institute any legal or equitable action which APWII, in its sole discretion, deems desirable to collect any or all of the Rents; and
 - (iii) Perform any or all obligations of Landlord under the Lease or Successor Lease or this Agreement and take such actions as APWII deems appropriate to protect its security, including, without limitation: (A) appearing in any action or proceeding affecting the Lease or Successor Lease or the Premises; (B) executing new leases and modifying, terminating or canceling the Lease or Successor Lease; (C) collecting, modifying and compromising any Rents payable under the Lease or Successor Lease; and (D) enforcing the Lease or Successor Lease, including, if necessary, evicting the Tenant or Successor Tenant.
 - (d) Landlord shall not be personally liable for the repayment of the Assignment Amount or for the payment of interest. The foregoing shall not be construed as prohibiting or impairing the exercise by APWII of any remedy under the Assignment Documents or applicable law, including the right to commence an action or proceeding, or enter a judgment against Landlord, so long as the exercise of any such remedy does not extend to execution against any property of Landlord other than the security furnished under the Assignment Documents. Landlord shall be personally liable for all other covenants made by Landlord under this Agreement and any other agreement between Landlord and APWII, or by Landlord in favor of APWII (collectively, the "Assignment Documents"), and for all representations and warranties made by Landlord in the Assignment Documents. Without limiting the generality of the foregoing, if an Event of Default occurs and if such Event of Default causes or contributes to a decrease in payments to the Servicing Account in respect of Rents, then, in addition to APWII's other rights and remedies hereunder and under applicable law, Landlord shall be personally liable to APWII in an amount equal to such decrease. The foregoing remedies are in addition to any remedies afforded APWII under any other of the Assignment Documents or in law or equity, by statute or otherwise, all of which rights and remedies are reserved by APWII. All of the remedies of APWII shall be cumulative and may be exercised at APWII's option concurrently or successively and the exercise or beginning of exercise by APWII of any such remedies shall not preclude the simultaneous or subsequent exercise of the same remedy or any other remedy available to APWII. No failure or delay on the part of APWII to exercise any remedy shall operate as a waiver thereof.
 - (e) In addition to its other rights and remedies under this Agreement and applicable law, APWII may enforce this Agreement by specific performance, injunction, appointment of a receiver and any other equitable rights and remedies available under applicable law, it being acknowledged by Landlord that money damages may not be an adequate remedy for the harm caused to APWII by a breach or default by Landlord under this Agreement, and Landlord waives the posting of a bond in connection therewith.
13. Representations. Landlord hereby represents and warrants to APWII, as of the date hereof, that:
- (a) The Lease, this Agreement and all other documents executed by Landlord in connection therewith constitute the legal, valid and binding obligation of Landlord, enforceable against Landlord in accordance with their terms.
 - (b) To the best of Landlord's knowledge and belief, there are no uncured defaults on the part of Tenant or Landlord under the Lease and there is no circumstance, event, condition or state of facts which, by the passage of time or the giving of notice or both, could constitute or result in such a default.

- (c) To the best of Landlord's knowledge and belief, Tenant has no existing defenses, offsets, credits, charges, liens or claims under the Lease or otherwise against the Landlord or any other party in connection with the Premises.
 - (d) Tenant (i) does not have any option or preferential right to purchase the Premises or terminate the Lease, except as expressly stated in the Lease, and (ii) does not have any right, title or interest with respect to the Premises other than as tenant under the Lease.
 - (e) The execution, delivery and performance by Landlord of the Lease, this Agreement and such other documents does not and will not violate or conflict with any provision of Landlord's organizational documents (if Landlord is an organization) or of any agreement to which Landlord is a party or by which Landlord or the Premises is bound and will not violate or conflict with any law, rule, regulation, judgment, order or decree to which Landlord is subject.
 - (f) Any permits, licenses, consents, approvals and other authorizations which are required to be obtained in connection with Landlord's execution, delivery or performance of the Lease, this Agreement and such other documents have been obtained and are and will remain in full force and effect.
 - (g) There is no pending or threatened action, suit or proceeding that, if determined against Landlord, would adversely affect Landlord's ability to enter into the Lease, this Agreement or such other documents or to perform its obligations hereunder or thereunder.
 - (h) A true, correct, and complete copy of the Lease (including all amendments, modifications, supplements, waivers, renewals and extensions thereof) and of each memorandum of lease, memorandum of commencement, non-disturbance agreement, estoppel certificate, assignment, sublease and other instrument or agreement executed by Landlord or Tenant in connection therewith or relating thereto, together with all amendments or supplements thereof (if any) is attached hereto as Exhibit A.
 - (i) Landlord owns one hundred percent (100.0%) of the fee title to the Premises, subject to no lien, encumbrance or exception other than those, if any, disclosed in the preliminary title report referred to on Exhibit D. Landlord owns one hundred percent (100.0%) of the lessor's right, title and interest in and to the Lease, subject to no lien, encumbrance or exception other than those, if any, disclosed on the preliminary title report referred to on Exhibit D. Except as disclosed on the preliminary title report referred to on Exhibit D, Landlord has not previously deeded, granted, assigned, mortgaged, pledged, hypothecated, alienated or otherwise transferred any of its right, title and interest in and to the Lease or in and to the Premises to any other Person.
 - (j) Landlord has received no indication, written or otherwise, from Tenant or any other party that Tenant intends to terminate the Lease prior to the expiration of the Lease term.
 - (k) The execution, delivery and performance of this Agreement is supported by a duly adopted municipal resolution.
 - (l) The current monthly rent is \$3,263.93; \$1,058.00 is being paid by T-Mobile, and \$2,205.93 is being paid by US Cellular.
14. Environmental Covenants and Indemnity. Landlord represents that it has not permitted or engaged in the use of, and has no knowledge of, any substance, chemical or waste (collectively "Substance") located on, under or about the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Landlord will not introduce or use, nor permit Tenant or Successor Tenant to introduce or use, any such Substance on, under or about the Property in violation of any applicable law or regulation. No underground storage tanks for petroleum or any other Substance, or underground piping or conduits, are or have previously been located on the Property, and no asbestos-containing insulation or products containing PCB or other Substances have been placed anywhere on the Property by Landlord or, to Landlord's knowledge, by any prior owner or user of the Property. Landlord shall defend, indemnify, protect and hold APWII harmless from and against all claims, costs, fines, judgments and liabilities, including attorney's fees and costs, arising out of or in connection with the presence, storage, use or disposal of any Substance on, under or about the Property caused by the acts, omissions or negligence of the indemnifying party and their respective agents, contractors and employees. The foregoing indemnity shall survive any termination of this Agreement.
15. General Indemnity. In addition to the Environmental Indemnity set forth above, Landlord and APWII shall each indemnify, defend and hold the other harmless against any and all costs (including reasonable attorney's fees)

and claims of liability or loss arising (i) due to the breach of any representation, warranty or covenant of such indemnifying party set forth herein; and (ii) out of the use and/or occupancy of the Property and Premises by the indemnifying party. This indemnity shall not apply to any claims to the extent they arise from the gross negligence or intentional misconduct of the indemnified party. Notwithstanding the foregoing, or any provision to the contrary set forth herein, APWII shall have no liability or obligation whatsoever to maintain or repair the areas upon which the Premises are located.

16. Memorandum. On or prior to the Effective Date, Landlord shall deliver to APWII two originals of a Memorandum of Assignment of Lease Rents and Successor Lease Rents in the form of Exhibit E attached hereto (the "Memorandum"), duly executed by Landlord and otherwise in recordable form. APWII may elect to file in such place or places as APWII deems appropriate one or more financing and continuation statements under the Uniform Commercial Code naming Landlord as debtor and the Rents and the proceeds thereof as collateral, and Landlord agrees that this Agreement shall constitute a pledge and security agreement with respect to such collateral and that APWII shall have a perfected security interest in such collateral.
17. Assignment; Secured Parties. APWII has the unrestricted right to assign or grant a security interest in all of APWII's interest in and to this Agreement, and may assign this Agreement to any such assignees or holders of security interests, including their successors and assigns ("Secured Party" or, collectively, "Secured Parties"). Landlord agrees to notify APWII and Secured Parties simultaneously of any default by APWII and give APWII and Secured Parties the same right to cure and cure period for any default as granted to Landlord. If a termination, disaffirmation or rejection of this Agreement by APWII shall occur, pursuant to any laws (including any bankruptcy or insolvency laws), or if Landlord shall terminate this Agreement for any reason, Landlord will notify Secured Parties promptly and Landlord shall enter into a new agreement with any such Secured Party upon the same terms of this Agreement, without requiring the payment of any additional fees. If any Secured Party shall succeed to APWII's interest under this Agreement, such Secured Party shall have no liability for any defaults of APWII accruing prior to the date that such Secured Party succeeds to such interest. Landlord will enter into modifications of this Agreement reasonably requested by any Secured Party. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Lease and/or the Premises or any portion thereof.
18. Casualty and Eminent Domain. Landlord shall promptly notify APWII of any casualty to the Premises or the exercise of any power of eminent domain, or threat thereof, relating to the Premises, or any portion thereof. APWII shall be entitled to receive any insurance proceeds or condemnation award attributable to the value of the lessor's interest, only up to and not to exceed the amount of the Assignment Amount paid herein, under the Lease or a Successor Lease for the period commencing on the Effective Date and ending on the last day of the Assignment Term. Landlord shall not settle or compromise any insurance claim or condemnation award relating to the Premises except upon 30 days prior written notice to APWII.
19. Further Assurances. The parties shall, from time to time, upon the written request of the other party, promptly execute and deliver such certificates, instruments and documents and take such other actions as may be appropriate to effectuate or evidence the terms and conditions of this Agreement or to enforce all rights and remedies hereunder or under the Lease or a Successor Lease.
20. Dispute Resolution.
 - (a) If APWII fails to perform any of its obligations under this Agreement, Landlord agrees to notify APWII and any Secured Parties in writing of any default by APWII, and to give APWII and/or any Secured Parties the right to cure any default within a period of not less than sixty (60) days from APWII's receipt of the written default notice. If APWII or any Secured Parties shall fail to cure any default in accordance with this Section, Landlord agrees that its sole remedy for such default shall be to utilize the process set forth herein, and that any and all damages for which Landlord may be compensated are limited to the actual damages of Landlord, and shall in no event exceed the amount of consideration paid by APWII for this Agreement. In the event that any dispute or claim arises that could impair the use or possession of the Facilities by APWII or its tenants, APWII shall have the right to seek injunctive relief, without the necessity of posting a bond. In no event will a Secured Party have any obligation to cure a default by APWII.
 - (b) Except as set forth in Section 17(a), in the event of any dispute arising out of this Agreement, the following dispute resolution process shall be followed: (1) upon a party's written notice of dispute to the other party, an authorized representative of the Landlord and APWII shall, through a good faith negotiation, attempt to settle a written resolution within thirty (30) days and (2) if such negotiation attempts fail, the dispute shall be submitted by the parties to a mutually agreed upon arbitrator for a binding and final arbitration decision in accordance with the rules of the American Arbitration Association ("AAA") and using the Federal Rules of Evidence and Civil Procedure. In the event the parties are unable to mutually agree to an arbitrator, each party shall select their own arbitrator, and each such arbitrator shall thereafter mutually agree on a third

arbitrator, and the majority decision by all such arbitrators shall be final and binding on the parties. The prevailing party shall be entitled to recover all costs incurred in connection with the arbitration, including legal fees, and each party shall pay one-half of all arbitrator professional fees.

21. Notices. Any notice required or permitted to be given hereunder shall be in writing and shall be served by personal delivery, by facsimile transmission or by Federal Express or another reputable overnight courier service, addressed to the party to be notified. If there is any dispute regarding the actual receipt of notice, the party giving such notice shall bear the burden of providing reasonably satisfactory evidence of such delivery or receipt. For the purposes of the foregoing, the addresses of the parties shall be as set forth below their names on the signature page hereof.
22. Entire Agreement. This Agreement, and the instruments and agreements referred to herein, constitute the entire agreement between Landlord and APWII with respect to the subject matter hereof. Without limiting the generality of the foregoing, Landlord acknowledges that it has not received or relied upon any advice of APWII or its representatives regarding the tax effect or attributes of the transactions contemplated hereby.
23. Counterparts. This Agreement may be executed in counterparts each of which, when taken together, shall constitute a single agreement.
24. Amendments, Etc. This Agreement may be amended, modified or terminated only by a writing signed by the party against whom it is to be enforced. No act or course of dealing shall be deemed to constitute an amendment, modification or termination hereof.
25. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. The obligations of Landlord hereunder, including the obligation to deliver any security deposit to APWII pursuant to Section 2(c) hereof, shall burden the land upon which the Premises are located, and shall run with such land. APWII may from time to time sell, convey, assign, pledge, encumber, hypothecate, securitize or otherwise transfer some or all of APWII's right, title and interest in and to this Agreement and/or the documents executed and delivered in connection herewith and therewith without notice to or consent of Landlord. Upon request by APWII, Landlord shall in writing acknowledge a proposed or completed transfer by APWII and confirm that Landlord's consent thereto is not required.
26. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer any rights or benefits on any Person other than Landlord and APWII, and their permitted successors and assigns.
27. Governing Law.
 - (a) TO THE MAXIMUM EXTENT PERMITTED BY THE LAW OF THE STATE IN WHICH THE PREMISES ARE LOCATED, THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF [DELAWARE/NEW YORK], WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THEREOF. THIS AGREEMENT SHALL OTHERWISE BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.
 - (b) EACH PARTY WAIVES ANY RIGHT TO A JURY TRIAL IN ANY ACTION OR PROCEEDING TO ENFORCE OR INTERPRET THIS AGREEMENT.
28. Attorney's Fees. In any action or proceeding brought to enforce or interpret this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney's fees and costs, and of its other expenses, costs and losses, including internal and administrative costs and losses associated with any breach of default of this Agreement. All damages or other sums payable by one party to another hereunder shall bear interest from the date incurred or payable until paid at a rate equal to the lesser of (a) ten percent (10.0%) per annum or (b) the highest rate permitted by applicable law.
29. Severability. If any provision of this Agreement is invalid, illegal or unenforceable in any respect, such provision shall only be ineffective to the extent of such invalidity, illegality or unenforceability, and the remaining provisions shall remain in full force and effect so long as the economic and legal substance of the transactions contemplated hereby, taken as a whole, are not affected thereby in a materially adverse manner with respect to either party.

DUPONT

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have caused this Agreement to be duly executed as of the date first written above.

Landlord:

BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE

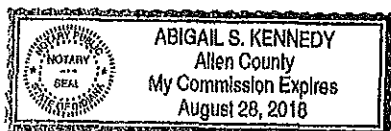
By: *Benjamin Groeneweg*
Name: Benjamin Groeneweg
Title: Program Manager: Utility Asset Management and Sustainability
Authorized signatory on behalf of the Fort Wayne Board of Public Works, per the attached resolution

Address: 200 East Berry Street, Suite 240
City: Fort Wayne
State: Indiana
Zip: 46802-2736
Tel: (260) 427-1365
Fax: (260) 427-8572

STATE OF INDIANA }
 } SS
COUNTY OF ALLEN }

BEFORE ME, a Notary Public, in and for said County and State, this 21st day of March, 2013, personally appeared the within named Ben Groeneweg by me personally known, who being by me duly sworn said that he is the Program Manager: Utility Asset Management and Sustainability of the BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE, and that he signed said instrument on behalf of the BOARD OF PUBLIC WORKS, CITY OF FORT WAYNE with full authority so to do and acknowledge said instrument to be in the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.



Abigail S. Kennedy
Notary Public
Abigail S. Kennedy
Printed Name of Notary

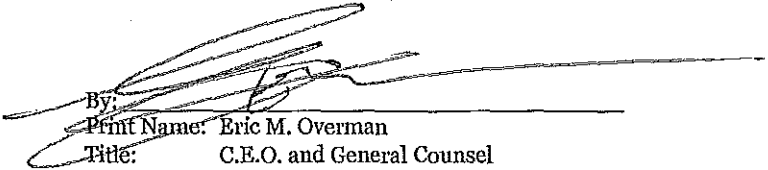
My commission expires:

August 28, 2018
Resident of Allen County

DUPONT

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

AP WIRELESS INVESTMENTS I, LLC

By: 
Print Name: Eric M. Overman
Title: C.E.O. and General Counsel

Address: 9373 Towne Centre Drive, Suite 200
City: San Diego
State: California
Zip: 92121
Tel: (646) 912-8058
Fax: (203) 549-0930

STATE OF CALIFORNIA}

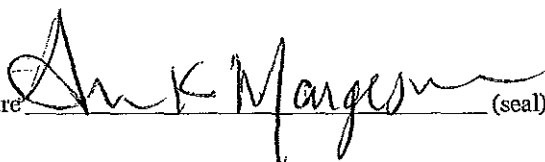
COUNTY OF SAN DIEGO}

On March 25, 2013 before me, Ann K. Margeson, Notary Public
(Name of Notary Public and Title)

Personally appeared ERIC M. OVERMAN who proved to me the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (seal)



DUPONT

EXHIBIT A
THE LEASE AND ALL AMENDMENTS
[ATTACHED]

STANDARD LEASE AGREEMENT

ORIGINAL

This Standard Lease Agreement ("Agreement") is by and between OMNIPONT COMMUNICATIONS MIDWEST OPERATIONS, LLC, a Delaware limited liability company, having a principal place of business at 16 Wing Drive, Cedar Knolls, NJ 07927 ("Lessee") and Utility Center, Inc., a Corporation, having a principal place of business at 2200 West Cook Road, Fort Wayne, IN 46818 ("Lessor").

WHEREAS, Lessor is the owner of property having a street address of 1016 Dupont Road, Fort Wayne, IN 46818 located in the Township of Washington, County of Allen, Indiana, and hereafter referred to as the "Property". The Property is more fully described on Exhibit "A" attached hereto and made a part of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Lease. Lessor agrees to lease to Lessee approximately Four Hundred (400) square feet of space, more fully described in Exhibit "B", and such space on the existing building or structure, if any, as shown on Exhibit "B" and as required, for Lessee's Installation (as defined below) (such space being hereinafter collectively referred to as the "Premises"). None of Lessee's Installation shall be located in or on, nor shall Lessee have any right of access to, any communications equipment shelter located on the Property. Lessor shall maintain the Premises (exclusive of Lessee's Installation and any fenced area around the Installation) so as not to interfere with Lessee's use of the Premises and rights under this Agreement.

2. Use of Premises.

(a) Lessee agrees to use the Premises for the installation, operation and maintenance of a wireless communications facility, including, without limitation, installation of Lessee's radio equipment cabinets, associated antennas, mounting equipment, telephone, electric and radio cables and other transmission lines, and other related equipment and a multi-user pole or tower, as applicable (collectively, the "Installation"). Lessee's Installation, whether attached to or otherwise brought onto the Premises, shall at all times remain personal property and shall not be considered fixtures, and at Lessee's option may be removed by Lessee at any time during the Term hereof or any Renewal Terms (as defined below). Upon expiration or termination of this Agreement, Lessee agrees to repair any damage to the Premises caused by Lessee and restore the Premises to its condition on the Commencement Date (as defined below), ordinary wear and tear, damage from the elements, and casualty beyond Lessee's control excepted. In connection with the Installation, Lessee shall have the right, at its sole cost and expense, to obtain electrical and telephone service directly from the servicing utility company, including the right to install a separate meter and main breaker, where required. Lessee shall be responsible for the electricity it consumes for its operations at the normal rate charged by the servicing utility company. Lessor agrees that if an easement is required to obtain and maintain utility services, an acceptable location will be agreed to by Lessor and the servicing utility company and Lessor shall grant such easement in writing to the servicing utility company.

[Handwritten signature] *[Handwritten signature]*

(b) Lessee shall have the right to use whatever measures it deems reasonably appropriate to install the Installation on the Premises, provided that it is in compliance with all Approvals (defined below) and all applicable laws and regulations. Lessor agrees to cooperate with Lessee in making application for and obtaining, at Lessee's expense, any local, state, federal licenses, permits and any other approvals (the "Approvals") which may be required for the Installation and Lessee's use of the Premises. Lessee shall employ due diligence to obtain Approvals in a timely manner. If, however, Lessee is denied or is unable to obtain a required Approval, Lessee shall have the exclusive right to terminate this Agreement in its sole discretion, and no further liabilities under this Agreement shall remain in force or effect, including but not limited to the payment of Rent (as defined below).

(c) Lessee shall have the right, at Lessee's sole cost and expense, to run transmission lines from the equipment area to the antenna locations and to run power and telephone service from the main feed to the communications equipment. Further, Lessee agrees to perform all improvements in a good and workmanlike manner.

(d) Lessor agrees to provide twenty-four (24) hours, seven (7) days a week access to the Premises without charge to Lessee, Lessee's employees or any subcontractors or agents, which access shall remain unimpeded throughout the Term and any Renewal Term of this Agreement. Lessor agrees that if requested by Lessee it will (i) provide Lessee with any key or keys necessary to access the Premises, and (ii) permit Lessee, at its own cost and expense, to install a lockbox for Lessee's sole use at the Premises that will contain any access keys necessary for Lessee's purposes.

3. **Site Testing; Reports.** Lessee, at its option, following full execution of this Agreement, but prior to Lessee's installation of the Installation on the Premises, may perform or prepare, or cause to be performed or prepared, (a) engineering surveys, title reports and structural analysis reports for any existing support structure on which Lessee will locate its Installation, and (b) any other testing or order any other reports which may be required in order for Lessee to occupy the Premises as more fully described in Paragraph 2 (a), (b) and (c) above. Any adverse test results or reports will entitle Lessee to terminate this Agreement in its sole discretion, and no further liabilities under this Agreement shall remain in force or effect, including but not limited to the payment of Rent.

4. **Interference.**

(a) Lessee agrees not to exceed cumulative emissions limits or to cause interference to the radio frequency communication operations of Lessor, Lessor's tenants, or anyone holding an agreement with Lessor to operate on the Property if such equipment is installed and properly operating prior to the execution of this Agreement.

(b) After the execution of this Agreement, Lessor shall not install or permit the installation of any structure or broadcasting or other communications equipment which exceeds cumulative emissions limits or interferes with, alters or restricts the operations of Lessee. Such interference or excess emissions shall be deemed a material breach of this Agreement by Lessor. Should such interference or excess emissions occur, Lessor shall promptly take all necessary action, at no cost to Lessee, to eliminate the cause of said interference or excess

emissions, including, if necessary removing or causing to be removed the equipment causing said interference or excess emissions.

(c) Lessee shall operate its Installation in compliance with all Federal Communications Commission ("FCC") regulations.

5. **Term.** The initial term of this Agreement shall be for a period of five (5) years ("Term") commencing upon the earlier of (a) six (6) months after the Effective Date or (b) the date Lessee is in receipt of a building permit to begin construction of the Installation (the "Commencement Date"), and shall terminate on the fifth anniversary of the Commencement Date, unless sooner terminated in accordance with this Agreement. Lessee shall have the right to renew the Agreement for four (4) successive five (5) year periods (each a "Renewal Term"), upon the same terms and conditions in effect during the Term. This Agreement shall automatically renew for each successive Renewal Term unless Lessee provides written notice to Lessor of its intention not to renew at least thirty (30) days prior to the expiration of the Term or any Renewal Term.
6. **Rent.** Lessee agrees to pay to Lessor as annual rent the sum of Nine Thousand Six Hundred and No/100 Dollars (\$9600.00) ("Rent") payable in equal monthly installments on the first day of each calendar month during the Term and any Renewal Term, except that the first payment of Rent shall be made within ten business days following the Commencement Date. In the event the Commencement Date does not fall on the first day of a month, the first and last monthly payment of Rent shall be prorated accordingly. Rent payments shall be payable to Lessor at the address set forth above or at such other address as Lessor shall notify Lessee in accordance with Paragraph 15. Rent shall increase on the first day of each Renewal Term by an amount equal to fifteen percent (15%) of the Rent for the preceding Term or Renewal Term, as the case may be.
7. **Taxes.** Lessee shall pay any personal property taxes, use and occupancy taxes, and any increases in real property taxes directly attributable to Lessee's improvements to the Premises or Lessee's use and occupancy of the Premises and the Installation. Lessor shall provide evidence of such assessment within a timely manner. Lessor shall pay all real property taxes.
8. **Insurance; Waiver of Subrogation.**
 - (a) Lessee, at its sole cost and expense, shall provide and maintain, during the Term of this Agreement and any Renewal Terms, commercial general liability insurance with combined single limit coverage of One Million Dollars (\$1,000,000). Lessee shall name Lessor as an additional insured on Lessee's insurance policy and provide Lessor with an insurance certificate prior to the Commencement Date. In addition, Lessee shall maintain worker's compensation insurance as required by applicable state law.
 - (b) Lessee and Lessor release each other from any claims for damage to the Property or to Lessee's Installation covered and provided for in its own insurance policies carried by any of the parties which are in full force at the time of such claim and contain a clause to the effect that such release does not effect the policy or the insured's right to recovery thereunder. Lessee and Lessor shall instruct their respective insurance companies to waive any and all right

of recovery by way of subrogation against the other in connection with any damage covered by said insurance policies.

9. **Indemnification.** Lessor and Lessee each agree to indemnify and hold harmless the other party from and against any and all claims, damages, costs and expenses, including reasonable attorney fees, to the extent caused by or arising out of (a) the negligent acts or omissions or willful misconduct in the operations or activities on the Property by the indemnifying party or the employees, agents, contractors, licensees, tenants and/or subtenants of the indemnifying party, or (b) a breach of any obligation of the indemnifying party under this Agreement, or (c) environmental conditions, unless caused by the indemnified party or its employees, agents, tenants (other than the indemnifying party), contractors, subcontractors or representatives, and, with respect to Lessor's indemnification, any such conditions which are pre-existing Lessee's right to use and occupy the Premises. Notwithstanding the foregoing, this indemnification shall not extend to indirect, special, incidental or consequential damages, including, without limitation, loss of profits, income or business opportunities to the indemnified party or anyone claiming through the indemnified party. The indemnifying party's obligations under this section are contingent upon (i) its receiving prompt written notice of any event giving rise to an obligation to indemnify the other party and (ii) the indemnified party's granting it the right to control the defense and settlement of the same. Notwithstanding anything to the contrary in this Agreement, the parties hereby confirm that the provisions of this section shall survive the expiration or termination of this Agreement.
10. **Right to Lease and Warranty of Title.** Lessor represents and warrants that: (a) Lessor has the sufficient right, title and interest in the Property to enter into this Agreement and to grant Lessee its rights hereunder; (b) Lessor has not entered into any agreement with any third party which would require such party's consent hereto or preclude or limit Lessor's performance of its obligations under this Agreement; (c) Lessor owns the Property in fee simple and has the right to grant access to and use of the Premises; and (d) Lessor shall provide to Lessee quiet and peaceful enjoyment and possession of the Premises.
11. **Termination.** Lessee may terminate this Agreement for the following reasons, without further liability, on prior written notice to Lessor which shall become effective thirty (30) days after the date notice is mailed: (a) changes in local, state or federal laws or regulations which adversely affect Lessee's ability to operate; (b) an FCC ruling or regulation which is beyond the control of Lessee and which renders the Premises unsuitable; (c) Lessee's determination (after pursuing commercially reasonable solutions) that the Premises are not appropriate for its operations for technical reasons, including but not limited to signal interference; (d) subsequent changes in system design which render the Premises unsuitable for Lessee's wireless communication operations; and (e) Lessee's inability to obtain or maintain any required Approval for the construction and operation of its Installation, including where the inability is caused by engineering surveys or structural reports.
12. **Assignment.** Lessee shall have the right to assign or transfer its rights under this Agreement, to any person or business entity which is licensed by the FCC to operate a wireless communications business, is a parent, subsidiary or affiliate of Lessee, controls or is controlled by or under common control with Lessee, is merged or consolidated with Lessee or purchases more than fifty percent (50%) ownership interest in or assets of Lessee to which the applicable agreement relates; provided, however, that such assignee must provide Lessor with audited

financial statements indicating its ability to meet Lessee's obligations under this Agreement. In all other instances, Lessee shall obtain Lessor's prior written consent for assignment. Upon any permitted assignment, so long as Lessee's assignee has assumed all of Lessee's obligations under this Agreement, Lessee shall be relieved of all future obligations under this Agreement.

13. **Default.** No event of default (a "Default") shall be deemed to have occurred hereunder unless either party, after notice from the other party in accordance with Paragraph 15 (a) fails to pay any monetary obligation when due and does not cure such failure within ten (10) days after such notice or (b) commits a material breach of its non-monetary obligations under this Agreement and fails within thirty (30) days after such notice thereof to cure or commence curing the breach and continuously and diligently pursue such cure to its completion in not more than sixty (60) days after such notice. Upon the occurrence of a Default as set forth in the preceding sentence, the non-defaulting party shall have, in addition to all other rights and remedies available at law or in equity, the right to terminate this Agreement after ten (10) days notice to the other party in accordance with Paragraph 15, provided the Default is not cured within said ten-day period.
14. **Collateral Assignment.** Lessor hereby (a) consents to the collateral assignment and granting of a security interest from time to time in favor of any holder of indebtedness borrowed by Lessee ("Lender"), whether now or hereafter existing, in and to the Installation and Lessee's right, title and interest in, to and under this Agreement; (b) agrees to simultaneously provide Lender with a copy of any notice of default under the Agreement sent to Lessee and allow Lender the opportunity to remedy or cure any default as provided for in the Agreement; and (c) agrees to recognize Lender as Lessee under this Agreement upon the written election of Lender so long as any existing default has been cured as provided hereunder. Lessor hereby further agrees to permit Lender to inspect or remove from the Property any of the collateral in which Lender has been granted a security interest by Lessee in accordance with any security documents granted in favor of Lender, provided, however, such removal is in accordance with subparagraph 2(a) of this Agreement.
15. **Notices.** Unless otherwise provided herein, any notice or demand required to be given herein shall be given by certified or registered mail, return receipt requested or reliable overnight courier to the address of Lessee and Lessor as set forth above, and if to Lessee, with a copy to Omnipoint Communications, 2421 Production Drive, Suite 201, Indianapolis, IN 46241, Attention: General Manager; and Saul, Ewing, Remick & Saul LLP, Centre Square West, 1500 Market St., Philadelphia, PA 19102, Attention: Nancy S. Cleveland, Esq. Lessee and Lessor may designate a change of notice address by giving written notice to the other party.
16. **Destruction or Condemnation.** If the Premises are damaged or destroyed by casualty or condemned such that Lessee is unable to operate its Installation, then at any time after such occurrence, but prior to restoration of the Premises, Lessee and/or Lessor may elect to terminate this Agreement as of the date of the damage, destruction or condemnation. If Lessee and Lessor choose not to terminate this Agreement, the Rent shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises.
17. **Amendment.** No amendment or modification to any provision of this Agreement shall be valid unless made in writing and agreed to and signed by Lessor and Lessee.

18. **Memorandum of Lease Agreement.** Lessor acknowledges and gives Lessee the right to file a Memorandum of Lease Agreement in the form attached hereto as Exhibit "C" in the county office where the Property is located. Should the Property be encumbered by any mortgage or deed of trust, Lessor shall make a good faith effort to obtain from mortgagees or trustees existing on the Effective Date, and shall obtain from subsequent mortgagees or trustees, a non-disturbance and attornment agreement in favor of Lessee. In connection with any such non-disturbance and attornment agreement, Lessee shall agree to subordinate its interest under this Agreement to the interest of such mortgagee or trustee.

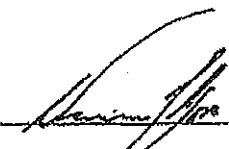
19. **Miscellaneous Lease Provisions.**

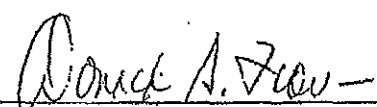
- (a) This Agreement shall be governed by the laws of the state in which the Property is located.
- (b) This Agreement, constituting the entire agreement and understanding between the parties, shall be binding on and inure to the benefit of the successors, transferees in title, and permitted assignees of the respective parties.
- (c) Consent or approval of Lessor, where required, shall not be unreasonably withheld, delayed or denied.
- (d) If any provision of this Agreement is deemed invalid or nonenforceable, the remainder of this Agreement shall remain in force and to the fullest extent as permitted by law.
- (e) The "Effective Date" of this Agreement shall be the date on which this Agreement has been fully executed by and becomes binding on all of the parties hereto.
- (f) Neither party, without the written consent of the other, shall disclose to any third party any of the terms or conditions of this Agreement, or any information provided during negotiation of this Agreement, other than as disclosed by recording of the Memorandum of Lease Agreement or as required by final order of a court of competent jurisdiction.
- (g) Exhibits "A", "B" and "C" attached hereto, as well as addenda and riders identified below, are made a material part of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

LESSOR:
UTILITY CENTER, INC.
an Indiana Corporation

LESSEE:
OMNIPPOINT COMMUNICATIONS MIDWEST
OPERATIONS, LLC
a Delaware limited liability company

By: 

By: 

Name: Vernon Gore

Name: Donald A. Florence

Title: Chief Executive Officer

Title: Technical Director

Date: 5/1/98

Date: 5/5/98

Tax ID No.: 35-1333925

Tax ID No.: 52-2062526

EXHIBIT "A"

DESCRIPTION OF PROPERTY

Forming a part of the Agreement by and between **UTILITY CENTER, INC.**, as Lessor, and **OMNIPONT COMMUNICATIONS MIDWEST OPERATIONS, LLC**, as Lessee.

The Property is described and/or depicted as follows:

Site Address: 2408 W. Dupont Road, Fort Wayne, IN 46825

THIS DEED WAS NOT APPROVED BY THE INDIANA STATE BAR ASSOCIATION FOR USE BY LAWYERS ONLY. THE SIGNATURE OF A FORMER OF INDIVIDUAL, PERSON OR FIRM, REMAINS OUT PROVISIONS AND LIMITATION OF SPECIAL CLAIMS, CONSTITUTE THE PRACTICE OF LAW AND SHOULD BE DONE BY A LAWYER.

Mail tax bills to:

Utility Development Corporation
c/o Utility Center
927 S. Harrison
Fort Wayne, Ind. 46802

WARRANTY DEED 77-033218

This document witnesses that **ROBERT C. WERKMAN** and **VERNA O. JACKSON** (WERKMAN), husband and wife, and each over the age of eighteen (18) years,

of Allen County in the State of Indiana

Convey and warrant to **UTILITY DEVELOPMENT CORPORATION**, an Indiana Corporation,

of Allen County in the State of Indiana

for and in consideration of \$2.00 and other good and valuable consideration, the receipt whereof is hereby acknowledged, the following Real Estate in Allen County in the State of Indiana, to wit:

Part of the Northeast Quarter of Section 1, Township 31 North, Range 12 East, Allen County, Indiana, more particularly described as follows: Beginning at the Northwest corner of the Northeast Quarter of Section 1, Township 31 North, Range 12 East, Allen County, Indiana; thence Easterly along the North line of the NE 1/4 of Sec. 1-31-12 a distance of 100 feet; thence Southerly with a deflection angle to the right of 89 deg. 24 min. and parallel to the West line of the NE 1/4 of Sec. 1-31-12 a distance of 190 feet; thence Westerly with a deflection angle to the right of 90 deg. 36 min. and parallel to the North line of Sec. 1-31-12 a distance of 100 feet to a point on the West line of the NE 1/4 of Sec. 1-31-12; thence Northerly with a deflection angle to the right of 89 deg. 24 min. and along the West line of the NE 1/4 of Sec. 1-31-12 a distance of 190 feet to the point of beginning, containing 0.44 acres of land, and subject to road rights of way and easements.

Subject to real estate taxes due and payable in the year 1979, and thereafter.

Subject to all easements, restrictions, conditions and limitations of record as well as all applicable zoning ordinances.

State of Indiana, Allen County, ss)
Before me, the undersigned, a Notary Public in and for said County and State, this 10th day of November 1977 personally appeared:

Robert C. Werkman and Verna O. Jackson (Werkman), husband and wife, and each over the age of eighteen (18) years.

And acknowledged the execution of the foregoing deed, in witness whereof, I have hereunto subscribed my name and affixed my official seal this 10th day of November 1977.

Robert A. Haller
Notary Public

Dated this 10th day of November 1977

Robert C. Werkman
Notary Public

Verna O. Jackson (Werkman)
Notary Public

ONLY ENTERED FOR TAXATION

NOV 14 1977

James H. Updegrave
Recorder of Allen County

This instrument prepared by Robert A. Haller

Attorney at Law

MAK TO: Lawrence E. Shino
200 Strauss Blvd.
Fort Wayne, Ind.

INSTRUMENT K

11607

CERTIFICATE THE ALLEN COUNTY RECORDS HAVE BEEN ASSIGNED TO THE

15.8
CMT

EXHIBIT "B"

DESCRIPTION OF PREMISES

Forming a part of the Agreement by and between _____, as Lessor, and
OMNIPOINT COMMUNICATIONS MIDWEST OPERATIONS, LLC, as Lessee.

The Premises is described and/or depicted as follows:

*To be determined by engineering drawings and approved by Lessor. Such approval not to be
unreasonably withheld. The aforementioned documents to be made part of this Agreement.*

EXHIBIT "C"

MEMORANDUM OF LEASE AGREEMENT

This Memorandum of Lease Agreement is entered into by and between **Utility Center, Inc.**, a Indiana Corporation, with an office at 2200 West Cook Road, Fort Wayne, IN 46818 ("Lessor") and **OMNIPOINT COMMUNICATIONS MIDWEST OPERATIONS, LLC**, a Delaware limited liability company with an office at 2421 Production Drive, Suite 201, Indianapolis, IN 46241 ("Lessee").

1. Lessor and Lessee entered into a Standard Lease Agreement ("Agreement") for the purpose of installing, operating and maintaining a wireless communications facility and other improvements. All of the foregoing are set forth in the Agreement.
2. The term of the Agreement is five (5) years commencing on the date Lessee obtains a building permit for construction on the Premises and ending on _____, with four (4) successive five (5) year options to renew.
3. The Property which is the subject of the Agreement is described in Exhibit "A" annexed hereto. The portion of the Property being leased to Lessee ("Premises") is described in Exhibit "B" annexed hereto.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease Agreement as of the dates written below.

LESSOR:

LESSEE:

**OMNIPOINT COMMUNICATIONS MIDWEST
OPERATIONS, LLC**
a Delaware Limited Liability Company

By: _____

By: _____

Name: Vernon Gore

Name: Donald A. Florence

Title: Chief Executive Officer

Title: Technical Director

Date: _____

5/1/98

Date: _____

ACKNOWLEDGMENT

STATE OF INDIANA)
)
COUNTY OF ALLEN)

I, the undersigned, a Notary Public in and for said State and County, do certify that
VERNON J. GORE personally appeared before me this day and acknowledged
the due execution of the foregoing instrument.

WITNESS my hand and official seal this the 1ST day of MAY, 1998.

My commission expires:

7/19/00

Mary K. Teter
Notary Public MARY K. TETER

ACKNOWLEDGMENT

STATE OF INDIANA)
)
COUNTY OF Marion)

I, a Notary Public of Marion County, State of Indiana, certify that
Donald A. Florence personally came before me this day and that he is
Technical Director of Omnipoint Communications Midwest Operations, LLC, a limited
liability company, and that, by authority duly given and as the act of the limited liability company, the
foregoing instrument was signed in its name by its Technical Director.

WITNESS my hand and official seal this the 5th day of May, 1998.

My commission expires:

Sept. 14, 1998

Charles L. Zull
Notary Public

Market:
Cell Site No:
Address:

FSA 1 Great Lakes
931-006-064 A-01

TOWER ATTACHMENT LICENSE AGREEMENT

THIS TOWER ATTACHMENT LICENSE AGREEMENT ("Agreement") dated as of October __, 2004 (the "Effective Date"), is by and between UTILITY CENTER, INC. dba Aqua Indiana, Inc. an Indiana corporation ("Licensor"), and United States Cellular Operating Company of Chicago, LLC, a Delaware LLC, having a mailing address of P.O. Box 31339, Chicago, Illinois 60631 ("Licensee").

Recitals:

WHEREAS, Licensor is the owner of a water tower ("Tower") that is located on the real property described on Exhibit A hereto ("Property"); and

WHEREAS, Licensee is in the business of providing communication services; and

WHEREAS, Licensee desires to obtain Licensor's permission to mount certain communications-related equipment on the Tower; and

WHEREAS, Licensor desires to grant such permission to Licensee:

NOW, THEREFORE, in consideration of the terms and mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

1. **License.** Licensor hereby grants Licensee, and Licensee hereby accepts, a license to construct, install, use, maintain and repair the antennas, dishes, cabling and related equipment, including any shelters and/or cabinets to house such equipment, described in Exhibit B hereto ("Equipment") on the Tower and the Property in the locations shown on Exhibit C hereto for the purpose of transmitting and receiving radio communication signals. The license granted hereunder is for a non-exclusive and shared use of the Tower and Property as provided herein.

(a) **Standards and Compliance with Laws.** All Equipment installed or caused to be installed and other work performed or caused to be performed by Licensee on the Tower or the Property shall be installed and performed in a good and workmanlike manner. All of Licensee's construction, installations and operations in connection with this Agreement shall comply with all applicable federal, state and local laws, regulations, ordinances, orders and permits, including but not limited to those of the Federal Communications Commission ("FCC"), including the applicable regulations governing Radio Frequency Radiation exposure, and the Federal Aviation Administration ("FAA"). Licensee shall be responsible for obtaining all government approvals, licenses and permits required for Licensee's use of the Tower.

(b) **Modifications to Equipment.** Licensee shall obtain Licensor's written consent prior to changing the type, location, size or use of the Equipment from that shown on Exhibits B and Exhibit C hereto and elsewhere in this Agreement; provided, however, that such consent shall not be unreasonably conditioned, delayed or withheld. Except as otherwise provided herein, Licensor may not require the removal or relocation of the Equipment during the Initial Term (as herein defined) or any Renewal Term (as herein defined) of this Agreement. Notwithstanding the foregoing, Licensee may make changes within its shelter and/or cabinets located on the Property without Licensor's consent or approval.

(c) Personal Property. All Equipment installed and maintained by Licensee, whether fixed on or attached to the Tower or the Property, shall not be considered fixtures and shall remain the personal property of Licensee without regard to whether such personal property is described on Exhibit B hereto.

(d) Structural Analysis. Licensee, following full execution of this Agreement, but prior to Licensee's installation of the Equipment, shall cause to be performed and prepared, at Licensee's expense, a non-invasive structural analysis report constructed by a mutually agreeable engineering firm for the Tower and Licensee's proposed installation. Such report shall be delivered to Licenser promptly after it is completed, and in no event later than ninety (90) days after the Effective Date. Any adverse test results or reports will entitle either Licenser or Licensee to terminate this Agreement within thirty (30) days of receipt of such results or reports, in which case no further liabilities under this Agreement shall remain in force or effect.

(e) Plans. Prior to Licensee's installation of the Equipment, Licensee shall supply Licenser with plans and specifications relating thereto (collectively, the "Plans") for review and approval by Licenser. Licenser's approval shall not be unreasonably withheld, conditioned or delayed, and in no event delayed beyond fifteen (15) days after Licenser's receipt of the Plans. The Plans shall be deemed approved by Licenser after Licenser's (i) written acceptance of the Plans, (ii) failure to respond in writing to Licensee's proposed Plans within fifteen (15) days after receipt thereof or (iii) failure to provide a written response within ten (10) days after receipt of Plans revised by Licensee after comment from Licenser in accordance with this Paragraph. After approval, the Plans shall be deemed incorporated into this Agreement. If Licenser does not approve the Plans, then Licensee shall provide Licenser with revised Plans not later than thirty (30) days thereafter, such revisions being subject to the terms of this Paragraph. In the event Licenser does not approve the Plans upon a second submission by Licensee, either Licenser or Licensee may terminate this Agreement. Licenser shall not knowingly permit any person or entity to copy or utilize the Plans for any purpose other than as provided in this Agreement, and shall return the Plans to Licensee promptly upon request. In the event that the Equipment will be attached to the Tower shell or the coating of the Tower shell, Licensee shall retain and bear the cost of a water tank consultant, the identity of which is subject to Licenser's approval, prior to submitting any plans or specifications involving activities which may affect the Tower shell or the coating of the Tower shell.

(f) Installation. Licensee shall be responsible for all site work, and shall provide all labor and materials, required for the installation, operation, maintenance and modification of the Equipment.

2. Access. Licenser hereby grants Licensee reasonable access to the Tower and Property (i) during normal business hours (defined as Monday through Friday, 8:00 a.m. to 5:00 p.m.) for the purpose of installing and maintaining the Equipment, and (ii) on a 24-hour basis for emergency maintenance of the Equipment. Licensee shall provide Licenser no less than 48 hours prior to notice of its need to access the Tower or Property, except in the case of emergencies, in which case notice shall be provided as early as possible prior to accessing the Tower and Property.

3. Licensee's Acknowledgement. Licenser makes no warranty as to title or suitability of the Property or Tower for the use contemplated herein. Prior to the installation and operation of Equipment on the Property and Tower, Licensee shall be solely responsible for

determining that the Property is acceptable to Licensee "AS IS" and in its present condition based on the foregoing examination and inspection.

4. Term.

(a) Initial Term. The initial term of this Agreement ("Initial Term") shall commence on the Effective Date and shall end ten (10) years after Effective Date.

(b) Renewal Terms. The parties may extend the Initial Term of this Agreement for four (4) additional period(s) of five (5) years each ("Renewal Terms"), provided Licensee is not in default under this Agreement. Each Renewal Term shall be on the same terms and conditions as set forth in this Agreement, except that the License Fee (as defined below) shall increase as provided in Paragraph 5(b). This Agreement shall automatically be renewed for each successive Renewal Term unless either party notifies the other of its intention not to renew this Agreement for any reason, with or without cause at least six (6) months prior to the expiration of the Initial Term or the Renewal Term which is then in effect.

5. License Fee.

(a) Initial License Fee. From and after the earlier of (i) the Effective Date; (ii) the date on which Licensee commences construction pursuant to this agreement; (iii) three months after signing the Signing Date of this Agreement (such earlier date being referred to herein as the "Rent Commencement Date"), Licensee shall pay to Licenser as a license fee hereunder the sum of One Thousand Eighteen Hundred and 00/100 dollars (\$1800.00) per month ("License Fee"), payable on the fifth (5th) day of each and every calendar month during the Initial Term (commencing on the Rent Commencement Date) and each Renewal Term. The License Fee for any period that is less than one (1) month shall be prorated based on the number of days in the month. The first monthly installment of the License Fee shall be due and payable on the Rent Commencement Date.

(b) License Fee Increases. On January 1st of each year during the Initial Term and each Renewal Term (commencing on January 1, 2005), the License Fee shall be increased by the CPI plus ½ percent over that in effect immediately prior to such date.

(c) Late Payment. Any payment not made when due shall bear compound interest at the lesser of (i) the rate of one and one-half percent (1 1/2%) per month or (ii) the highest rate permitted by applicable law on the amount due from the original due date through and including the date of payment.

6. Utilities. Licensee shall be solely responsible for and promptly pay all charges for electricity and any other utilities used or consumed by Licensee on the Property. If necessary, Licensee shall install and maintain, at Licensee's expense, a separate utility meter and pay the utility provider directly for the utilities it consumes. Notwithstanding the above, if Licenser has installed and maintains its own meter on the Property, Licensee's meter may be a sub-meter to Licenser's meter, in which case Licensee shall reimburse Licenser directly for the direct cost of Licensee's usage of such utilities.

7. Licenser's Duty to Maintain the Tower. Licenser shall maintain the Tower and the Property, including the Tower lighting systems, if any, in a proper operating and safe condition and shall comply with all laws, rules and regulations to which the Property and Tower are subject. However, it shall be Licensee's responsibility to maintain its equipment in a proper

operating and safe condition and shall comply with all laws, rules and regulations, including, but not limited to the rules and regulations of the FCC and FAA and all applicable codes and regulations of the city, county and state concerned. The cost of painting and repairing the Tower shall be borne by Licensor unless the damage to the Tower is caused by Licensee, in which case Licensee shall repair such damage or, at Licensor's option, Licensee shall reimburse Licensor for Licensor's costs and expenses incurred in such repair.

8. Taxes. Any taxes, including but not limited to real estate and property taxes, assessed on the Tower or Property shall be paid by Licensor, except that Licensee shall pay any taxes levied on the Equipment. Licensee shall pay as an additional license fee any increase in real property taxes levied against Licensor which is directly attributable to the Equipment or Licensee's use of the Tower or Property, and Licensor agrees to furnish proof of such increase to Licensee.

9. Other Studies. During the thirty (30) day period immediately following the Effective Date, Licensee shall have the right, at its expense, to conduct the following studies:

(a) Licensee may have radio frequency engineering and other engineering analysis performed; and

(b) Licensee may conduct radio frequency propagation studies on and in the vicinity of the Tower and Property.

In the event that any defects are shown by such analyses or studies, which in the reasonable opinion of Licensee may adversely affect Licensee's use of the Tower or Property, Licensee shall have the right to terminate this Agreement immediately upon written notice to Licensor so long as such notice is delivered within sixty (60) days after the Effective Date. In the event of such termination, no further liabilities under this Agreement shall remain in force or effect.

10. Termination. Except as otherwise provided herein, this Agreement may be terminated, without any penalty or further liability (other than in the event of termination pursuant to Paragraph 10(a) or 10(f)), upon written notice as follows:

(a) By either party upon a default of any covenant or term hereof by the other party which default is not cured within thirty (30) days of receipt of written notice of default, or ten (10) days in the event of a payment default, (without, however, limiting any other rights available to the parties pursuant to other provisions hereof);

(b) By either party in accordance with Paragraph 1(d) or 1(e);

(c) By Licensee in accordance with Paragraph 9;

(d) By Licensor upon ten (10) days' advance written notice by Licensor if Licensee's activities on the Tower or Property pose a risk to human health or the environment;

(e) By Licensor upon one hundred and thirty five (135) days' advance written notice to Licensee in the event Licensor decides to dismantle, destroy, rehabilitate, or abandon the Tower; provided that if Licensee, through diligent pursuance of relocation, will be unable to relocate the Equipment to another tower within such one hundred and thirty five (135) day period, then Licensee shall, within thirty (30) days of Licensor's issuance of such notice, provide Licensee with written notice of the additional time required for relocation (which shall not exceed

ninety (90) additional days), and this Agreement shall terminate at the end of such additional time period;

(f) By Licenser in accordance with Paragraph 14(a); or

(g) By Licenser or Licensee immediately in the event of damage to or destruction of the Property or Tower as described in Paragraph 16.

11. Liability Insurance. During the Initial Term and all Renewal Terms, Licensee shall maintain, at its own expense, insurance covering claims for public liability, personal injury, death and property damage under a policy of general liability insurance, with limits of not less than one million dollars (\$1,000,000.00) per person and two million dollars (\$2,000,000.00) per occurrence and property damage insurance of not less than one million dollars (\$1,000,000.00). Such insurance policy shall insure against liabilities arising out of or in connection with Licensee's use of the Tower subject to the standard exceptions found in the general liability insurance policy. Licensee shall furnish a certificate of insurance to Licenser within thirty (30) days of the Effective Date. Such policy shall provide that Licenser will be given thirty (30) days' notice of any cancellation or reduction in coverage.

12. Mechanic's Lien. Licensee shall not permit any mechanic's or other liens against the Tower or Property or any part thereof or Licenser's interest therein by reason of work, labor services, or materials supplied or claimed to have been supplied to or for Licensee. No such attempted lien, even if filed or recorded, shall be valid against the Tower or Property or Licenser's interest therein. If, however, any such lien shall at any time be filed against the Tower or Property or Licenser's interest as a result of Licensee's activities, Licensee shall immediately cause the same to be discharged of record and shall indemnify and hold Licenser harmless from any liability, demands, claims, damages, causes of action, cost and expense of any nature whatsoever (including reasonable attorneys' fees) arising from or in any way related to such mechanic's lien. This indemnity shall survive the expiration or earlier termination of this Agreement.

13. Repairs and Maintenance of Tower. Licenser reserves the right to perform repairs and maintenance on the Tower and the Property, both structural and cosmetic, at whatever intervals may be required to assure the integrity and longevity of the Tower and the Property; provided, however, that Licenser shall use commercially reasonable efforts to provide Licensee with reasonable advance notification of the intended repairs and maintenance if such repairs and maintenance could impact the operation of the Equipment. Licensee shall cooperate with Licenser by temporarily relocating, if necessary, the Equipment to other locations on the Property or the Tower during the repainting, repair or maintenance of the Tower by Licenser or its designees. Licenser shall coordinate any such painting, repair or maintenance of or to the Tower and the activities conducted in preparation therefor to avoid damage to the Equipment, and to minimize both the extent and the duration of any inconvenience to Licensee and the operation of the Equipment. Subject to Licenser's prior approval (which shall not be unreasonably withheld, conditioned or delayed), Licensee shall be permitted to install any type of temporary facility necessary to keep the Equipment operational during any such repairs and maintenance. With respect to any repairs and maintenance performed by or on behalf of Licenser, Licenser shall perform, or have performed, such repairs and maintenance as diligently and expeditiously as possible. Notwithstanding the foregoing, Licensee shall be solely responsible for the protection of the Equipment during any painting, repair or maintenance activities, and Licenser shall not be liable to Licensee for any damage to the Equipment which results from Licensee's failure to do so.

14. Interference.

(a) Licensee agrees to install Equipment, including any modification thereto, of types and radio frequencies which will not cause interference to communications operations conducted from the Property or the Tower. Licensee also covenants that the Equipment will not cause interference with the television, radio, telephone and other communications reception of residents or businesses located in the general vicinity of the Tower. In the event the Equipment or any modification thereto causes such interference with Licensor, other current occupants of the Property or their successors or assigns (including those identified on Exhibit D hereto) or residents located in the general vicinity of the Tower, Licensee will take all steps necessary to correct and eliminate the interference. If such interference cannot be eliminated within forty-eight (48) hours after receipt by Licensee of notice from Licensor of the existence of interference, Licensee shall temporarily disconnect the electric power and shut down the Equipment (except for intermittent operation for the purpose of testing, after performing maintenance, repair, modification, replacement, or other action taken for the purpose of correcting such interference) until such interference is corrected. If such interference is not corrected within fifteen (15) days after receipt by Licensee of notice from Licensor of the existence of interference, this Agreement shall then terminate, and Licensee agrees to then remove the Equipment from the Tower and Property and repair any damage to the Tower and Property to substantially the same condition as existed on the Effective Date, reasonable wear and tear excepted.

(b) In the event that Licensor enters into any lease or license agreement in the future with others for the Property or the Tower, then Licensor agrees to require such lessee or licensee to install equipment of types and radio frequencies that will not cause interference to Licensee's communications operations being conducted from the Tower. This Paragraph 14(b) shall not apply to the existing occupants identified on Exhibit D hereto.

(c) At no time shall Licensee interfere with any of Licensor's other operations on or about the Tower or Property.

15. Notices. All notices contemplated to be served herein, upon either Licensor or Licensee, shall be in writing and (a) deposited in the United States Mail, postage prepaid, (b) sent by certified mail, return receipt requested, (c) hand delivered or (d) sent by facsimile as follows:

Licensor: Utility Center, Inc.
 dba Aqua Indiana, Inc.
 2200 West Cook Road
 Fort Wayne, Indiana 46845
 Attention: Regional Manager
 Telephone: 260-489-1502
 Fax: 260-489-3913

With a copy to (which copy, by itself, shall not satisfy the notice requirement hereunder):

Attention: Assistant General Counsel
762 West Lancaster Avenue
Bryn Mawr, Pennsylvania 19010
Telephone: 610.645.1068
Facsimile: 610.520.9127

Licensee: United States Cellular Operating Company of Chicago, LLC
8410 West Bryn Mawr Avenue, Suite 700
Chicago, IL 60631
Attention: Real Estate
Telephone: 773-864-3150

With a copy to (which copy, by itself, shall not satisfy the notice requirement hereunder):

United States Cellular Operating Company of Chicago, LLC
One Pierce Place, suite 100
Itasca, IL 60143
Attention: Regional Operations Manager
Telephone: 630-773-1600
Fax: 630-773-2684

Any such notice shall be deemed delivered when received. Any party may change its address information by notifying the other party as provided herein.

16. Destruction of Premises. If the Property or the Tower are destroyed or damaged so as to hinder the effective use of the Property or Tower, either party may elect to terminate this Agreement as of the date of the damage or destruction by so notifying the other party.

17. Assignment. Licensee may not assign this Agreement without the prior written consent of Licensor, which consent shall not be unreasonably withheld. Notwithstanding the foregoing and provided that Licensee is not in default under this License Agreement, Licensee, with notice to Licensor, may assign this License Agreement, (whether by absolute assignment or collateral assignment), to (i) any affiliate of Licensee, (ii) any partnership, venture or new corporation formed by Licensee, or (iii) to any party controlling, controlled by or under common control with Licensee. Any attempted assignment, sale or transfer of Licensee's rights under this License Agreement in violation of this section shall render this License Agreement null and void.

18. Removal. If a termination, disaffirmance or rejection of this Agreement pursuant to any law (including any bankruptcy or insolvency laws) shall occur, or if either party shall terminate this Agreement for any reason, or if this Agreement expires, Licensee shall have a thirty (30) day period during which it shall remove the Equipment from the Tower and Property and repair any damage to the Tower or Property caused by such removal which is reasonably

necessary to restore the Tower and Property to substantially the same condition as existed on the Effective Date, reasonable wear and tear excepted, subject to obtaining Licensor's consent as to the date and time of such activity (all of which shall be at Licensee's cost and expense). The requirements of this Paragraph 18 shall survive any termination of this Agreement. During the Initial Term and any Renewal Terms, Licensee shall maintain, at its own expense, a removal bond in an amount agreed upon by Licensor and sufficient to cover all costs and expenses associated with the Removal of the Equipment and the restoration of the Property. Licensee shall furnish the removal bond prior to the Effective Date, and on January 1 on each year thereafter.

19. Indemnification. Licensee shall defend and indemnify and hold Licensor harmless from and against any claim, lawsuit, loss, damage, or injury arising out of Licensee's use of the Equipment or caused by, or on behalf of, or through the fault of the Licensee, or resulting from Licensee's use of the Premises or its presence at the Site. Licensor shall defend and indemnify and hold Licensee harmless from and against any loss, damage, or injury caused by, or on behalf of, or through the fault of the Licensor, or resulting from Licensor's use of the Premises or its presence at the Site. The requirements of this Paragraph 19 shall survive any termination of this Agreement. Without limiting the generality of the foregoing, Licensor and Licensee shall each be responsible for the safety of their respective employees, agents and representatives conducting its activities at the Tower and Property, and each shall indemnify and hold the other harmless from any claims arising out of damage to personal property or bodily injury or death resulting therefrom.

20. Limitation of Liability. Licensor shall not be liable to Licensee or any other person or entity for any damage to the Equipment, or for any interruption in the use or operation of the Equipment, except if caused solely by the gross negligence or intentional misconduct of Licensor. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY OTHER PERSON OR ENTITY FOR ANY LOSS OF ANTICIPATORY PROFITS OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. The requirements of this Paragraph 20 shall survive any termination of this Agreement.

21. Memorandum of License. On the Effective Date, Licensor and Licensee shall execute and deliver, and Licensee shall record at its expense, that certain Memorandum of License in the form of Exhibit E hereto.

22. Miscellaneous.

(a) This Agreement constitutes the entire agreement and understanding of Licensor and Licensee with respect to the subject matter hereof, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind other than as set forth herein. Any amendments to this Agreement must be in writing and executed by Licensor and Licensee.

(b) If either Licensor or Licensee is represented by a real estate broker in this transaction, that party shall be fully responsible for any fees due such broker and shall hold the other party harmless from any claims for commission by such broker.

(c) This Agreement shall be construed in accordance with the laws of the State of Indiana, without regard to its conflicts of law provisions.

(d) If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

(e) Licenser shall cooperate with Licensee's efforts to evaluate the Tower (as permitted herein) and to comply with governmental regulations affecting Licensee's use of the Tower by providing information about the Tower, the Tower's location and prior filings made by Licenser with governmental agencies.

(f) Nothing herein shall be construed to grant to Licensee any real property interest in the Property, including without limitation any leasehold or fee interest.

(g) In any action between Licenser and Licensee seeking enforcement or interpretation of any of the provisions of this Agreement, the prevailing party shall be awarded, in addition to any damages, injunctive or other relief, its reasonable costs and expenses, including reasonable attorneys' fees.

(h) This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument, and shall become effective when one or more counterparts have been signed by each of the parties, it being understood that all parties need not sign the same counterpart. Signatures on this Agreement transmitted by facsimile shall be deemed to be originals for all purposes of this Agreement.

[Signatures appear on next page]

IN WITNESS WHEREOF, Licensor and Licensee, intending to be legally bound hereby,
have executed this Agreement as of the date and year first above written.

LICENSOR:

UTILITY CENTER, INC.

By: [Signature]
Printed Name: William L. G. Epler
Title: VICE PRESIDENT

LICENSEE:

**United States Cellular Operating Company of
Chicago, LLC, a Delaware LLC,**

By: [Signature]
Printed Name: ALICEM GARNADOU
Title: VICE PRESIDENT

Exhibit A

Property Description

See attached Deed dated November 10th, 1977, bearing I. D. # 77-033218
and attached Plat Map # 77-33218

THIS FORM HAS BEEN APPROVED BY THE INDIANA STATE BAR ASSOCIATION FOR USE BY LAWYERS ONLY. THE SELECTION OF A FORM OF INSTRUMENT, FILING IN BLANK SPACES, STRIKING OUT PROVISIONS AND INSERTION OF SPECIAL CLAUSES, CONSTITUTES THE PRACTICE OF LAW AND SHOULD BE DONE BY A LAWYER.

Mail tax bills to:
Utility Development Corporation
c/o Utility Center
927 S. Harrison
Fort Wayne, Ind. 46802

WARRANTY DEED 77-033218

This Indenture witnesseth that ROBERT C. WERKMAN and VERNA O. JACKSON (WERKMAN), husband and wife, and each over the age of eighteen (18) years,

of Allen County in the State of Indiana

Convey and warrant to UTILITY DEVELOPMENT, CORPORATION, an Indiana Corporation,

of Allen County in the State of Indiana

for and in consideration of \$2.00 and other good and valuable consideration, the receipt whereof is hereby acknowledged, the following Real Estate in Allen County in the State of Indiana, to wit:

Part of the Northeast Quarter of Section 1, Township 31 North, Range 12 East, Allen County, Indiana, more particularly described as follows: Beginning at the Northwest corner of the Northeast Quarter of Section 1, Township 31 North, Range 12 East, Allen County, Indiana; thence Easterly along the North line of the NE 1/4 of Sec. 1-31-12 a distance of 100 feet; thence Southerly with a deflection angle to the right of 89 deg. 24 min. and parallel to the West line of the NE 1/4 of Sec. 1-31-12 a distance of 190 feet; thence Westerly with a deflection angle to the right of 90 deg. 36 min. and parallel to the North line of Sec. 1-31-12 a distance of 100 feet to a point on the West line of the NE 1/4 of Sec. 1-31-12; thence Northerly with a deflection angle to the right of 89 deg. 24 min. and along the West line of the NE 1/4 of Sec. 1-31-12 a distance of 190 feet to the point of beginning, containing 0.44 acres of land, and subject to road rights of way and easements.

Subject to real estate taxes due and payable in the year 1979, and thereafter.

Subject to all easements, restrictions, conditions and limitations of record as well as all applicable zoning ordinances.

State of Indiana, Allen County, ss:

Before me, the undersigned, a Notary Public in and for said County and State, this 10th day of November 1977 personally appeared:

Robert C. Werkman and Verna O. Jackson (Werkman), husband and wife, and each over the age of eighteen (18) years.

And acknowledged the execution of the foregoing deed, in witness whereof, I have hereunto subscribed my name and affixed my official seal, my commission expires May 2, 1978.

Robert W. Haller
Notary Public

Dated this 10th day of November 1977

Robert C. Werkman
ROBERT C. WERKMAN

Verna O. Jackson (Werkman)
VERNA O. JACKSON (WERKMAN)

DULY ENTERED FOR TAXATION

NOV-14-1977

James H. Vabellner
AUDITOR OF ALLEN COUNTY

This instrument prepared by Robert W. Haller

Attorney at Law

INSTRUMENT K 11607

Mail to: Lawrence E. Shine
200 Straus Bldg.

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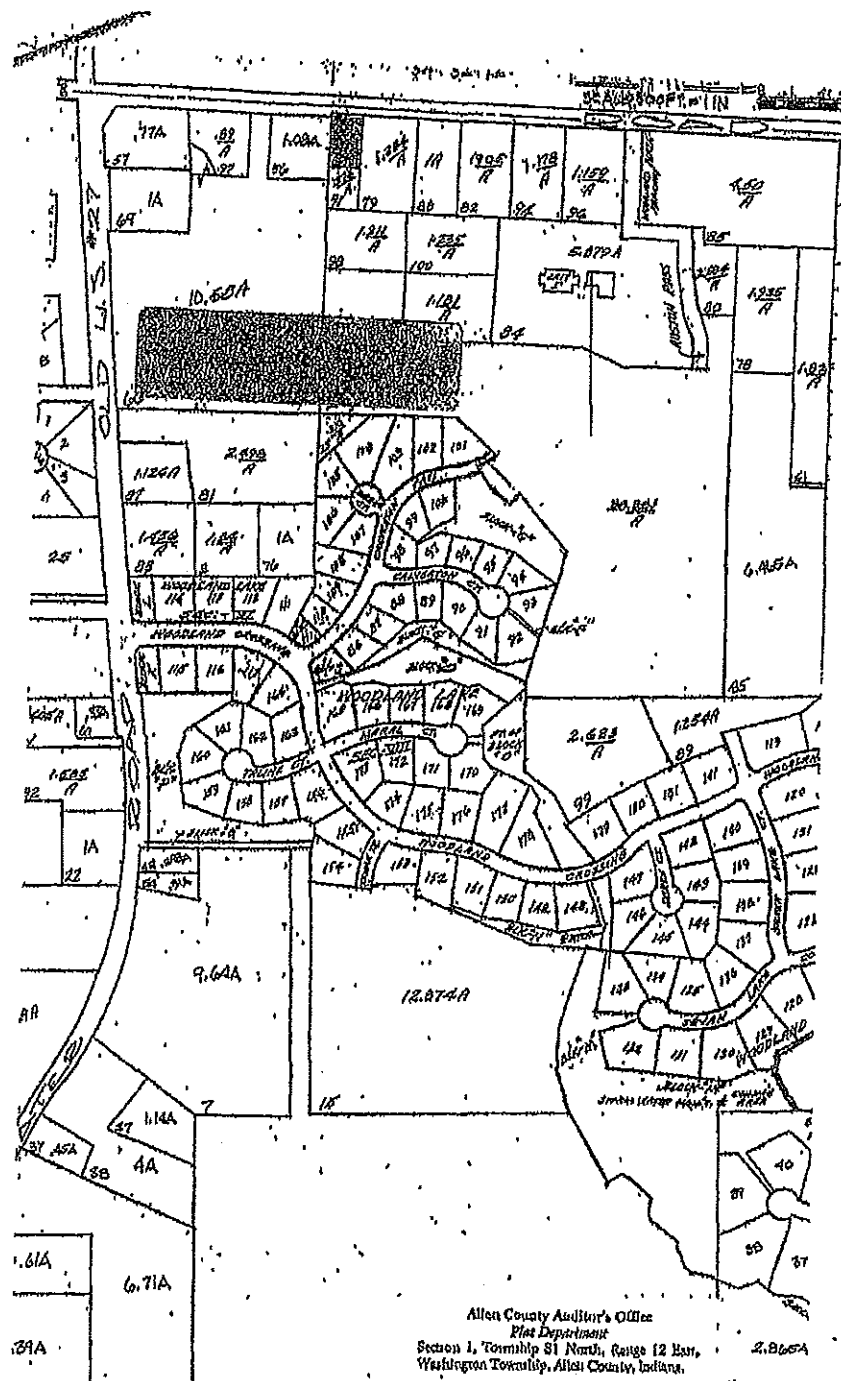


Exhibit B

Licensee's Equipment

Quantity	Item
Nine (9)	Antenna, Andrew Model UMWD-06516-XDH
Nine (9)	Coax Cable, 1&5/8"
One (1)	11' 6" x 19" 6' CellXion Prefabricated Communications Shelter