

## LEASE AGREEMENT

THIS LEASE AGREEMENT (“*Agreement*”) is made as of the Effective Date by and between Grantor (as identified in Section 1.2) and Cell Company A, a Delaware limited liability company (“*Grantee*”).

**WHEREAS**, Grantor owns certain real property located the County of Marion, in the State of Indiana, that is more particularly described or depicted in attached **Exhibit 1** (the “*Property*”); and

**WHEREAS**, Grantee desires to obtain from Grantor the right to use (i) a certain portion of the Property of approximately 2500 square feet (the “*Tower Compound*”) for cell communications and related communication purposes and (ii) an appurtenant, limited, temporary, non-exclusive (the “*Access and Utility Easement*”) over certain portions of the Property to access the Tower Compound (the Tower Compound and the Access and Utility Easement being more particularly described on **Exhibit 2**, depicted on the survey attached as **Exhibit 3**, and collectively referred to hereinafter as the “*Premises*”).

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree:

**1. BUSINESS TERMS AND INFORMATION.** For purposes of this Agreement, in addition to the defined terms elsewhere in this Agreement, including the recitals above, the following capitalized terms or information have the meanings set forth in this Section 1:

1.1 *Grantee’s Notice Address*: Cell Company A  
Road  
Suite  
City, State Zip

1.2 *Grantor*: MSD of Wayne Township, an Indiana public school corporation

1.3 *Grantor’s Notice Address*: MSD of Wayne Township

1.4 *Communications Facility*: The radio and communications towers, transmitting and receiving equipment, antennas, dishes, mounting structures, buildings, optional backup generators and any other ancillary equipment related thereto.

1.5 *Testing Period*: That certain period of time, consisting of the Initial Testing Period and any effective Testing Period Renewal Term, that occurs on the Effective Date of the Agreement and during which Grantee may investigate the feasibility of constructing and operating a wireless telecommunications facility on the Premises as further provided in Section 2.

1.6 *Initial Testing Period*: A period of one year, commencing on the Effective Date.

1.7 *Testing Period Renewal Term*: A period of one year, commencing on the day after the expiration of the Initial Testing Period (as further provided in Section 2.3).

1.8 *Testing Period Consideration*: The sum to be paid by Grantee to Grantor for the Testing Period, which is the sum of \$\_\_\_\_\_.

1.9 *Term*: The term of the Agreement granted by Grantor to Grantee pursuant to this Agreement, which consists of the Initial Term and any effective Renewal Term.

1.10 **Commencement Date:** The first day of the possessory leasehold under this Agreement, which is the date that Grantee begins visible construction at the Premises (inclusive of site preparation) consistent with the terms of this Agreement.

1.11 **Initial Term:** The term commencing on the Commencement Date and continuing through the last day of the \_\_\_\_\_ full calendar month after the Rent Accrual Commencement Date.

1.12 **Renewal Term:** As provided in Section 3, each of the \_\_\_\_\_ ( ) successive periods of \_\_\_\_\_ years each, with the first Renewal Term commencing upon the expiration of the Initial Term and each subsequent Renewal Term commencing upon the expiration of the immediately preceding Renewal Term.

1.13 **Rent Accrual Commencement Date:** Provided the Commencement Date occurs between the 1<sup>st</sup> and the 15<sup>th</sup> day of a calendar month, then the Rent Accrual Commencement Date is retroactive to the first day of the calendar month in which the Commencement Date occurs; and otherwise, the Rent Accrual Commencement Date is the first day of the calendar month immediately following the Commencement Date.

**1.14 Rent:** Immediately prior to start of construction or the Commencement Date, Grantee shall pay Grantor a one-time payment of \_\_\_\_\_ dollars (\$ ). The annual amount of rent beginning on the Rent Accrual Commencement Date and during the first year of the Agreement is \$\_\_\_\_\_, and payable in equal monthly payments of \$\_\_\_\_\_ with \_\_\_\_\_% revenue share of future co-locators. In each subsequent year of Term of the Agreement the Rent shall increase by \_\_\_\_\_% over the previous year's annual amount of rent.

## 2. RIGHT TO LEASE / TESTING PERIOD.

2.1 Grantor during the Term grants to Grantee the limited, temporary right to obtain a lease of the Tower Compound and the Access and Utility Easement, which limited, temporary easement is to install and maintain utility services to and serving the Tower Compound and unrestricted vehicular and pedestrian ingress and egress access from a public right-of-way serving the Property to the Tower Compound.

2.2 During the Testing Period and in exchange for Grantee's payment to Grantor of the Testing Period Consideration within 30 days of the Effective Date, Grantee and its agents, employees, engineers, surveyors and other representatives have the limited, temporary right to enter upon the Property only (i) to inspect and examine the Premises; (ii) to conduct and perform soil borings, drainage testing, material sampling, and other geological or engineering tests or studies of the Premises and the Property (collectively, the "**Tests**"); (iii) to apply for and obtain licenses, permits, approvals, or other relief required or deemed necessary or appropriate by governmental entities for Grantee's use of the Premises including, applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"); (iv) to initiate, order and/or schedule utilities; and (v) otherwise to do those things on or off the Premises that, in the sole discretion, opinion or judgment of Grantee, are necessary or desirable to determine the physical condition of the Premises, the environmental history of the Premises, Grantor's title to the Property and the feasibility or suitability of the Premises for Grantee's use of the Premises for a Communications Facility, all at Grantee's sole expense. Grantee will not be liable to Grantor or any

third party on account of any pre-existing defect or condition occurring before the Effective Date on or with respect to the Property, regardless of whether such defect or condition is disclosed by Grantee's inspection. At the conclusion of the Testing Period, to the extent Grantee may alter or damage the Property as a result of its or its agents', employees', engineers', surveyors' and other representatives' activities on the Property during the Testing Period, Grantee will restore the Property to its condition as it existed at the Effective Date, wear and tear from weather or natural events and casualty not caused by Grantee excepted. Subject to the foregoing, Grantee shall indemnify, defend and hold Grantor harmless from and against any and all injury, loss, damage or claims arising directly out of or as a result of Grantee or its agents, employees, engineers, surveyors and other representatives conducting the Tests and their entry onto the Property during the Testing Period.

2.3 Grantee may extend the Testing Period for the Testing Period Renewal Term upon written notification to Grantor given prior to the expiration of the Initial Testing Period and another payment of the Testing Period Consideration.

2.4 During the Testing Period, Grantee may commence the Initial Term by commencing visible construction of the Communications Facility at the Premises. Grantee shall notify Grantor in writing of the commencement of the Initial Term within 15 days of the Commencement Date. Immediately upon Grantee commencing visible construction as aforesaid, without further act or deed, the Testing Period will terminate, the Initial Term commences and Grantor leases the Premises to Grantee subject to the terms and conditions of this Agreement. If Grantee does not commence visible

construction of the Communications Facility at the Premises prior to the expiration of the Testing Period, this Agreement will terminate and the parties will have no further liability to each other except for the indemnity and obligations imposed by Grantee under Section 2.

2.5 During the Testing Period, Grantee reserves the right (i) to revise the legal description of the Tower Compound and the Access and Utility Easement to conform same to a survey of the Premises to be procured by Grantee from an Indiana licensed surveyor and attach such revised legal description as Exhibit 2 to this Agreement and (ii) to procure a survey of the Premises by an Indiana licensed surveyor if a survey or depiction of the Premises is not, at the execution of this Agreement, attached as Exhibit 3. Upon completion of such survey and revision of the aforesaid legal descriptions based thereupon, (i) the revised legal descriptions of the Tower Compound and the Access and Utility Easement will be attached to this Agreement as Exhibit 2 and made a part hereof (superseding any prior Exhibit 2), the survey will be attached to this Agreement as Exhibit 3 and made a part hereof (superseding any prior Exhibit 3), and Grantee shall promptly provide to Grantor notice of and copies of the revised legal descriptions of the Tower Compound and the Access and Utility Easement and of the survey. However, such legal survey shall only serve to outline the area of Grantee's Permitted Use during the Term and shall not be binding on any landowners even if the process outlined under Indiana law (i.e. Ind. Code 36-2-12) is strictly followed.

**3. TERM.** The term of the leasehold granted by Grantor to Grantee hereunder commences on the Commencement Date, which Grantee shall confirm in writing to Grantor as provided in Section 2.4, and continues through the Term. Assuming compliance with all terms and conditions of this Agreement and timely payment of Rent along with any other amounts owed to Grantor, Grantee shall have the option to extend the term of this Agreement for each of the Renewal Terms. Each Renewal Term will commence automatically, without further act or deed, unless Grantee delivers written notice to Grantor of Grantee's intent not to renew the Term for the next available Renewal Term, such notice to be delivered not less than 30 days prior to the end of the then-current term (i.e., the Initial Term or the then-effective Renewal Term). The total Term shall not exceed thirty (30) years and Permitted Use ceases at the end of the 30th year of this Agreement. Grantee shall be responsible for paying Grantor six (6) months of Rent in the event the Agreement is terminated by Grantee for any reason before the end of the Term. Grantee is not allowed to terminate the Agreement during Initial Term unless there is a material breach of this Agreement by Grantor which is not remedied during the Cure Period.

**4. RENT.** Grantee shall pay Rent to Grantor accruing and beginning as of the Rent Commencement Date. The Rent is payable in

advance, on or before the 5<sup>th</sup> day of each calendar month. Interest shall be assessed and owed at the rate of eight percent (8%) per annum on any unpaid amount not received by Grantor by the 5<sup>th</sup> day of each calendar month. Payments will be made via electronic funds transfer directly to Grantor's bank account unless otherwise directed by Grantor. Rent will be equitably prorated for any partial calendar month. Notwithstanding the foregoing, Grantee will tender to Grantor the initial Rent payment within 30 days after the Commencement Date.

## **5. TAXES AND CHARGES.**

5.1 Grantee shall pay any taxes assessed by a governmental entity on, or any portion of such taxes directly attributable to, the Communications Facility. Grantor shall pay prior to delinquency all real property taxes and all other fees and assessments owed by Grantor to a governmental entity and attributable to the Property and Premises. Grantee shall reimburse Grantor for any increase in real property taxes levied against the Premises which are directly attributable to the presence or operation of the Communications Facility on the Premises (but not, however, taxes attributable to periods prior to the Effective Date such as roll-back or greenbelt assessments) if and only if Grantor furnishes proof of such increase to Grantee within 2 months of Grantor's first written official assessment and notice of such increase from the governmental entity. If Grantor fails to pay prior to delinquency any taxes which are a lien against the Premises, Grantee shall have the right, but not the obligation, to pay such taxes and deduct the full amount of the taxes and any interest and penalties thereof paid by Grantee on Grantor's behalf from future installments of Rent.

5.2 Grantor shall pay or appeal promptly, when due, any other amounts or sums due and owing with respect to its ownership and operation of the Property, including, judgments, liens, mortgage payments and other similar encumbrances. If Grantor fails to make any appeal or payment required of it under this Agreement required to assure that Grantee is not disturbed in its possession of the Tower Compound, such as the payment or appeal of real estate taxes and assessments, or breaches any other obligation or covenant under this Agreement, Grantee may (without obligation), after providing 10 business days' prior written notice to Grantor, make such payment or perform such obligation on behalf of Grantor. Grantor shall pay or reimburse Grantee for the full amount of any costs or expenses so incurred by Grantee (including any attorneys' fees incurred in connection with Grantee performing such obligation) with interest at the statutory rate thereon assessed by the governmental entity, or at Grantee's election, may be offset against the Rent.

## **6. USE.**

6.1 During the Term, Grantee may use the Premises for the erection, operation and maintenance of a Communications Facility (the “*Permitted Use*”). Grantee may make improvements, alterations and modifications to the Premises after receiving Government Approvals and as are deemed appropriate by Grantee consistent with the Permitted Use and the requirements of this Agreement, including the right to clear the Premises of any vegetation, undergrowth or other obstructions which, in Grantee’s sole opinion, interferes with the Permitted Use. Grantee shall have the exclusive right to install upon the Tower Compound communications towers, buildings, equipment, antennas, dishes, fencing, and other accessories related thereto, and to alter, supplement, and/or modify same as may be necessary or desirable in Grantee’s sole judgment, but subject to Government Approvals and compliance with all applicable laws, statutes, rules and regulations of any jurisdictions.

6.2 During the Term, Grantor further grants Grantee (i) after ten (10) business days’ notice to Grantor, the limited, temporary right on the Property to clear dead trees, undergrowth or other obstructions and to trim, cut and keep trimmed and cut all tree limbs, which in either case may interfere with or fall upon the Communications Facility or the Premises; (ii) to use the Access and Utility Easement when reasonably required for the construction, installation, maintenance, and operation of the Communications Facility and the access thereto.

6.3 Grantor acknowledges that Grantee is in the business of subleasing all or portions of the Tower Compound and the Communications Facility to its tenants, licensees or customers pursuant to separately negotiated subleases or licenses entered into between Grantee and such grantee, licensee or customer. Grantee may enter into any sublease or license without the consent of Grantor, provided that, notwithstanding the terms of that certain sublease or license, Grantee shall remain liable for all of the terms and conditions of this Agreement and Grantee shall fulfill each covenant contained herein. Grantee shall remain liable for and hereby indemnifies and shall protect and defend Grantor from and against all costs, damages or liability (including reasonable attorneys’ fees) resulting from any act or omission of such subtenant or licensee and/or to the extent such act or omission is contrary to or inconsistent with the terms of this Agreement.

6.4 During the Term, Grantee and its customers, lessees, licensees, employees, agents, invitees, contractors, successors and assigns shall have the access to the Premises 7 days a week, 24 hours a day as granted by Grantor under this Agreement. Grantee shall have the exclusive right to sublease or grant licenses to use the Communications Facility or portions thereof, but no such sublease or license shall relieve or release Grantee from its obligations under this Agreement. If at any time during the term of this Agreement, the Federal Aviation Administration, Federal Communications Commission or other governmental agency changes, amends or modifies

its regulations and requirements, issues new regulations or requirements, or otherwise takes any action, the result of which reasonably inhibits Grantee’s use of the Premises or any portion of the Communications Facility for the Permitted Use, or if technological changes render the Permitted Use of the Premises obsolete or impractical, or if Grantee otherwise determines, in its sole and absolute discretion, with or without cause, that the Premises is no longer suitable or desirable for the Permitted Use, Grantee shall have the right to terminate this Agreement upon written notice to Grantor and effective on the earlier of the date set forth in the notice of termination or 30 days after the date of deemed receipt of such notice by Grantor.

6.5 Grantor hereby authorizes Grantee and its employees, representatives, agents and consultants to prepare, execute, submit, file and present on behalf of Grantor building, permitting, zoning or land-use applications with the appropriate local, state and/or federal agencies necessary to obtain land use changes, special exceptions, zoning variances, conditional use permits, special use permits, administrative permits, construction permits, operation permits and/or building permits when consistent with the Permitted Use. At no additional cost to Grantee and for a maximum of ten (10) hours, Grantor’s employees shall cooperate during regular business hours, with Grantee in any effort by Grantee to obtain certificates, permits, licenses and other approvals that may be required by any governmental authorities and agrees to execute any necessary applications, consents or other documents as may be reasonably necessary for Grantee to apply for and obtain the proper zoning approvals required to use and maintain the Premises and the Communications Facility. Grantor and Grantee shall not do or permit anything that will interfere with or negate any special use permit or approval pertaining to the Premises or cause any portion of the Communications Facility located on the Premises to be in nonconformance with applicable local, state, or federal laws. After ten (10) hours of Grantor’s time, Grantee shall reimburse Grantor the amount of wages paid to its employees while they were assisting Grantee.

6.6 It is intended that the legal description of the Premises accurately reflect an “as-built” survey of the location of the Tower Compound, the communications tower located thereon, and the Access and Utility Easement. Accordingly if any part of such tower, buildings, roadways, utilities, guy wires or anchors related to the Communications Facility located on the Premises is located within one (1) foot beyond the legal description of the Premises, the Parties may agree to extend the Agreement to provide that the Premises includes the existing location of any such improvements as part of the Premises demised in the Agreement to the extent that such improvements are located on real property owned by Grantor, and Exhibit 2 and Exhibit 3 to this Agreement shall be modified to reflect the “as-built” locations of the Tower Compound and the Access and Utility Easement. However, the area of the Tower Compounds shall never exceed 2500 square feet.

**7. ACCESS AND UTILITIES.** During the Term, Grantor for itself, its successors and assigns, hereby grants to Grantee, its customers, lessees, licensees, employees, agents, invitees, contractors, successors and assigns, as an appurtenance to the Tower Compound, the Access and Utility Easement for ingress and egress for the benefit of and access to the Tower Compound as well as for the construction, installation, operation and maintenance of underground electric, gas and other utility facilities, with the right to reconstruct, improve, add to, enlarge, change, remove and replace such facilities, over, across and through the Access and Utility Easement for the benefit of and access to the Tower Compound, subject to the terms and conditions herein set forth. The rights granted to Grantee herein include the right to partially assign its rights hereunder to any public or private utility company or authority to facilitate the uses contemplated herein, and all other rights and privileges reasonably necessary for Grantee's safe and efficient use and enjoyment of the Access and Utility Easement for the Permitted Use. Grantee shall pay all expenses, costs, fees, charges, and Utilities associated in any way with operating the Tower Compound.

**8. EQUIPMENT, FIXTURES AND SIGNS.** All improvements, equipment or other property attached to or otherwise brought onto the Premises shall at all times be the personal property of Grantee and/or its customers, tenants and licensees. Grantee and its customers, tenants and licensees shall have the right to erect, install, maintain, and operate on the Premises such equipment, structures, fixtures, signs, and personal property as Grantee may deem necessary or appropriate, and such property shall not be deemed to be part of the Premises, but shall remain the property of Grantee or its customers, tenants and licensees. At any time during the Term and within a reasonable time after the expiration or earlier termination of the Term, Grantee and its customers, tenants and licensees shall after ten (10) business days' notice to Grantor have the right, to remove their equipment, structures, fixtures, signs, and personal property from the Premises.

Upon expiration or termination of this Agreement, Grantee and its customers, tenants and licensees must within thirty (30) days remove all improvements, equipment, structure, fixtures, and other property from the Premises, and then within sixty (60) days of Agreement termination restore the Premises to the condition they were in prior to Grantee's use of the Premises, wear and tear due weather and natural events excepted.

**9. ASSIGNMENT.** Grantee may assign this Agreement to any person or entity able to meet all Grantee's commitments under this Agreement at any time without the prior written consent of Grantor. After two years following delivery by Grantee to Grantor of an instrument of assumption by an assignee that assumes all of the obligations of Grantee under this Agreement, Grantee will be relieved of all liability hereunder thereafter accruing. Grantor may assign this Agreement, in whole or

in part, to any person or entity (i) who or which acquires fee title to the Premises, and/or (ii) who or which agrees to be subject to and bound by all provisions of this Agreement. Except for the foregoing, assignment of this Agreement by Grantor to any person or entity not affiliated or associated with Grantor must be approved by Grantee, in Grantee's sole discretion which shall not be unreasonably withheld or delayed.

**10. COVENANTS, WARRANTIES AND REPRESENTATIONS.** Grantor and Grantee based upon information and belief represent the following:

10.1 Grantor is the lessee of the Premises, free and clear of all liens and encumbrances except as to those disclosed in the title policy procured by Grantee, which are recorded with government authorities, or may have been disclosed to Grantee in writing prior to the execution of this Agreement; that it after following applicable laws has the right to let the Premises for the Term set out herein; and that Grantee, on paying the Rent and performing its obligations hereunder, shall peaceably and quietly hold and enjoy the Premises for the Term.

10.2 Grantor has complied with, and will continue to comply with, all environmental, health, and safety laws with respect to the Premises other than those which arise after the Effective Date or out of Grantee's use of the Tower Compound for a Communications Facility (which compliance obligation is to be borne by Grantee), and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against Grantor or regarding the Premises alleging any failure to so comply. Following the Effective Date, Grantee will comply with, and will continue to comply with, all environmental, health, and safety laws with respect to the Premises other than those which arise out of Grantor's use of the area outside the Tower Compound (which compliance obligation is to be borne by Grantor), and Grantee will take immediate steps to avoid any action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice to be filed or commenced against Grantor, Grantee, or regarding the Premises alleging any failure by Grantee to so comply. Without limiting the generality of the preceding sentence, at the commencement of the Term, Grantor and the Premises are in compliance with all environmental, health, and safety laws; no asbestos-containing thermal insulation or products containing PCB, formaldehyde, chlordane, or heptachlor or other hazardous materials have been placed on or in the Premises by Grantor or, to the knowledge of Grantor, by any prior owner or user of the Premises; and to the knowledge of Grantor, there has been no release of or contamination by hazardous materials on the Premises. Following the Effective Date, Grantee and its customers', lessees', licensees', employees', agents', invitees', contractors', successors' and assigns' use of the Premises will be in compliance with all environmental, health, and safety laws; no asbestos-containing thermal insulation or products containing PCB, formaldehyde, chlordane, or

heptachlor or other hazardous materials will be placed on or in the Premises by Grantee or its customers, lessees, licensees, employees, agents, invitees, contractors, successors and assigns; and there will be no release of or contamination by hazardous materials on the Premises by Grantee or its customers, lessees, licensees, employees, agents, invitees, contractors, successors and assigns.

10.3 All utilities in place upon the commencement of the Term and serving the Property enter through adjoining public streets or, if they pass through an adjoining private tract, do so in accordance with valid public easements. All utilities are installed and operating and all installation and connection charges assessed against Grantor have been paid in full.

10.4 Grantor has no knowledge of any fact or condition that could result in the termination or reduction of the current access from the Premises to existing highways and roads or to utility services serving the Premises.

10.5 With respect to the Premises, except as are disclosed in the title policy procured by Grantee, recorded with government authorities or disclosed by Grantor in writing to Grantee prior to the execution hereof, (i) there currently exist no licenses, sublicenses, or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the of Tower Compound; (ii) there are no outstanding options or rights of first refusal to purchase the Premises or any portion thereof or interest therein; and (iii) there are no parties (other than Grantor) in possession of the Premises.

**11. HOLD OVER TENANCY.** Should Grantee or any assignee, sublessee or licensee of Grantee hold over the Premises or any part thereof after the expiration of the Term, such holdover shall constitute and be construed as a tenancy from month-to-month only at the then fair market rental value of the property, but otherwise upon the same terms and conditions.

**12. INDEMNITIES.** Each of Grantee and its customers, lessees, licensees, employees, agents, invitees, contractors, successors and assigns agree to indemnify, defend and hold harmless Grantor, its associates or other affiliates, successors, assigns, officers, directors, shareholders, agents, board members, students, parents, neighbors, and employees (each, an "***Indemnified Persons***"), from and against all claims and liabilities (including reasonable attorneys' and fees court costs) asserted by a third party against an Indemnified Person caused by or arising out of (i) such indemnifying party's breach of any of its obligations, covenants, or warranties contained herein, or (ii) such indemnifying party's negligent or acts or omissions with regard to the Agreement. However, in the event of an Indemnified Person's contributory negligence or other fault, the Indemnified Person shall not be indemnified hereunder to the extent that the Indemnified Person's negligence or other fault caused such claim or liability.

## **13. WAIVERS.**

**13.1** Grantor during the Term hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Communications Facility or any portion thereof or any equipment located upon the Tower Compound, regardless of whether such Communications Facility or equipment is deemed real or personal property under applicable laws.

**13.2 EACH OF GRANTOR AND GRANTEE WAIVES ANY AND ALL CLAIMS AGAINST THE OTHER FOR ANY LOSS, COST, DAMAGE, EXPENSE, INJURY OR OTHER LIABILITY WHICH IS IN THE NATURE OF INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES AND WHICH IS SUFFERED OR INCURRED AS THE RESULT OF, ARISE OUT OF, OR ARE IN ANY WAY CONNECTED TO THE PERFORMANCE OF THE OBLIGATIONS OF A PARTY UNDER THIS AGREEMENT.**

## **14. INSURANCE.**

14.1 Grantee, and its customers, lessees, licensees, employees, agents, invitees, contractors, successors and assigns shall insure against property damage and bodily injury arising by reason of occurrences on or about the Property in the amount of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate. The insurance coverage provided for herein may be maintained pursuant to master policies of insurance covering other Communications Facility locations of Grantee and its affiliates. Grantee shall maintain all insurance policies required of it to be maintained by governmental entities and under this Agreement with responsible insurance companies, authorized to do business in the state where the Premises are located, and which policies will include a provision for cancellation only upon 10 days' prior written notice to Grantor. Grantee shall evidence such insurance coverage by delivering to Grantor, if requested, a copy of all such policies or, at Grantee's option, certificates in lieu thereof issued by the insurance companies underwriting such risks.

14.2 Grantor shall carry, at no cost to Grantee, the coverage and limits under its current general liability insurance and property casualty insurance appropriate for Grantor's improvements on the Property and in such amounts to cause the replacement / restoration of the Property (excluding Grantee's improvements and personal property) in the event of casualty. Grantee and its customers, lessees, licensees, employees, agents, invitees, contractors, successors and assigns shall carry, at no cost to Grantor, the coverage and limits under their current general liability insurance and property casualty insurance appropriate for Grantee's improvements on the Premises and in such amounts to cause the replacement / restoration of the Premises (excluding Grantor's improvements and personal property) in the event of casualty.

14.3 Grantee and its customers, lessees, licensees, employees, agents, invitees, contractors, successors and assigns release Grantor and its respective officers, directors, board members, students, parents, neighbors, and employees and agents from any claims for any injury to any person or any property damage caused by, or that result from, risks insured against under any property or casualty insurance policies carried such insured party and in force at the time of any such injury or damage to the extent that such release and waiver does not invalidate any insurance policy held by such insured party.

**15. INTERFERENCE.** During the Term, Grantor, its successors and assigns will not grant any ground lease, license, easement or other rights with respect to the Premises or any land within ten (10) feet adjacent to the Premises (i) that would interfere with the Permitted Use; or (b) if such lease, license, easement or other right would detrimentally impact Grantee's Communications Facility or Grantee's use thereof.

**16. [DELETED].**

**17. SECURITY.** The parties recognize and agree that Grantee shall have the right and duty to safeguard and protect its Communications Facility located upon or within the Premises. Consequently, Grantee shall, at its expense, to construct such enclosures and/or fences as Grantee reasonably determines to be necessary to secure the Communications Facility, including the tower(s), building(s), guy anchors, and related improvements situated upon the Premises. Grantee may also undertake any other appropriate means to restrict access to its Communications Facility. The parties recognize and agree that Grantor shall have the right to safeguard and protect the area outside the Premises. Consequently, Grantor shall, at its expense, not be restricted from making any modification, improvement, or construction to the area outside the Premises as Grantor reasonably determines to be necessary to secure its Property.

**18. FORCE MAJEURE.** The time for performance by Grantor or Grantee of any term, provision, or covenant of this Agreement is to be deemed extended by time lost due to delays resulting from acts of God, strikes, civil riots, floods, material or labor restrictions by governmental authority, and any other cause not within the anticipation or control of Grantor or Grantee, as the case may be.

**19. CONDEMNATION.** Notwithstanding any provision of the Agreement to the contrary, in the event of condemnation of the Premises or any portion thereof, Grantor and Grantee shall be entitled to separate awards with respect to the Premises, in the amount determined by the court conducting such condemnation proceedings based upon Grantor's and Grantee's respective interests in the Premises. If a separate condemnation award is not determined by such court, Grantor shall permit Grantee to participate in the allocation and distribution of the award. In no event shall the condemnation award to Grantor exceed the unimproved value of the Premises, without

taking into account the improvements located thereon, and in no event shall the Agreement be terminated or modified (other than an equitable abatement or adjustment of Rent) due to a condemnation without the prior written consent of Grantee.

**20. DEFAULT.** Should Grantor or Grantee fail to perform any of its respective covenants or obligations imposed upon it or breach any of its respective representations or warranties under this Agreement (a "**Non-Performing Party**"), then the other party shall give the Non-Performing Party written notice of such breach or failure, at which time the Non-Performing Party shall be in default under this Agreement; provided, however, to the extent such default does not create a hazard to public safety, does not create a danger to persons or Grantor's property, and is susceptible of being cured or remedied, the Non-Performing Party shall have the Cure Period to remedy such breach or failure prior to the Non-Performing Party being in default under this Agreement. For purposes hereof, the "**Cure Period**" is a period 30 days, measured from the date of the Non-Performing Party's receipt of such notice of breach or failure; provided, if such breach or failure cannot reasonably be cured within such 30-day period and the Non-Performing Party proceeds promptly after the receipt of such notice of such breach or failure to commence to remedy same and pursue curing such breach or failure with due diligence, Cure Period is extended for such period of time as may be necessary to complete such curing, not to exceed 60 days from the Non-Performing Party's receipt of such written notice of such breach or failure or such longer period of time as agreed by the other party. Upon a default by the Non-Performing Party that is not susceptible of being cured or if it is susceptible of being cured, that is not cured within the Cure Period will give rise to the other party being able to assert against the Non-Performing Party any remedies available at law or in equity, including the right to terminate this Agreement, subject to Section 13.2. Notwithstanding the foregoing, should a Non-Performing Party fail to perform any of its obligations imposed upon it under this Agreement or applicable laws and irreparable and immediate harm may befall the other party as a result of such failure, the other party may pursue injunctive relief or other legal remedies immediately without the passage of the Cure Period.

**21. ATTORNEY'S FEES.** If any legal proceeding between Grantor and Grantee arise from, out of or based on this Agreement, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorney's fees and legal expense disbursements, incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorney's fees and legal expense disbursements shall be included in and be taxed to the unsuccessful party as a part of such judgment.

## 22. SUBORDINATION AND GRANTEE'S LENDER.

22.1 This Agreement is subordinate to all deeds of trust, mortgages and ground leases or easements now or hereafter encumbering the Property, Premises or Grantor's interest therein (collectively, "**Encumbrances**" and each, an "**Encumbrance**") provided Grantor, and other tenants (i) are bound by the terms of the Agreement; (ii) agree not to disturb or disrespect Grantee's use or possession of the Premises or Grantee's other rights granted under this Agreement in the event of a foreclosure of such Encumbrance so long as Grantee is not in default hereunder beyond any applicable cure period; and (iii) agree not to join Grantee as party defendant in any such foreclosure proceeding taken by it unless otherwise required by applicable law. With regard to any Encumbrance, Grantor covenants and agrees that, upon the request of and preparation of all necessary documents by Grantee, it shall use its best efforts to cause the beneficial holder of such Encumbrance to execute a customary subordination, non-disturbance and attornment agreement with regard to this Agreement. In addition, each of Grantor and Grantee will, within 10 days after the request of the other party, execute and deliver to the other party, an estoppel letter as to such factual matters relating to the Agreement as are reasonably requested by such other party, its lender or prospective successor-in-interest.

22.2 Grantor consents to the granting by Grantee of a lien and security interest in Grantee's interest in the Agreement and all of Grantee's personal property and fixtures attached to the Premises, and furthermore consents to the exercise by Grantee's lender ("**Grantee's Lender**") of its rights of foreclosure with respect to its lien and security interest in Grantee's interest in Grantee's personal property and fixtures. Upon receipt of a valid judgment against Grantee, Grantor agrees to recognize Grantee's Lender as the Grantee under this Agreement upon any such exercise by Grantee's Lender of its rights of foreclosure. Grantor hereby (i) agrees that any lien or security interest in favor of Grantor which arises by law or pursuant to the Agreement is subordinate to the lien and security interest of Grantee's Lender in the collateral securing all indebtedness at any time owed by Grantee to Grantee's Lender (the "**Collateral**"), and (ii) furthermore agrees that upon an event of default under the loan documents between Grantee and Grantee's Lender or the Agreement, Grantee's Lender shall be fully entitled to exercise its rights against the Collateral prior to the exercise by Grantor of any rights which it may have therein, including after ten (10) business days' notice to Grantor, entry upon the Premises and removal of the Collateral free and clear of Grantor's lien and security interest. At the conclusion of the removal and to the extent Grantee's Lender may alter or damage the Property as a result of its or its agents', employees', engineers', surveyors' and other representatives' activities on the Property during the removal, Grantee's Lender will remain responsible for restore the Property to its condition as it existed at the Effective Date, reasonable

wear and tear from weather or natural events and casualty not caused by Grantee excepted.

22.3 To the extent that Grantee or Grantee's Lender has given notice to Grantor of Grantee's Lender's security interest in the Agreement and other Collateral and an address to which Grantor is to provide notices to Grantee's Lender, (i) Grantor agrees to mail Grantee's Lender written notice of any breach, failure or default of the terms of the Agreement within 15 days after knowledge of the occurrence thereof, at such address as is specified to Grantor by Grantee's Lender; (ii) Grantor agrees that no default under the Agreement is deemed to have occurred unless notice of such breach, failure or default is also given to Grantee's Lender and any applicable cure period has passed; and (iii) in the event of any such breach, failure or default under the terms of the Agreement, Grantee's Lender shall have the right, to the same extent, for the same period and with the same effect, as Grantee, plus an additional 30 days after any applicable cure period to cure or correct any such breach, failure or default (whether the same shall consist of the failure to pay rent or the failure to perform), and Grantor agrees to accept such payment or performance on the part of Grantee's Lender as though the same had been made or performed by Grantee. Grantor agrees that it shall not exercise its right to terminate the Agreement or any of its other rights under the Agreement upon breach or default of the terms of the Agreement without so affording Grantee's Lender the foregoing notice and periods to cure any default or breach under the Agreement. In the case of termination of this Agreement for any reason or if this Agreement is rejected or disaffirmed pursuant to any bankruptcy, insolvency or other law affecting creditor's rights, (i) Grantor shall give prompt notice thereof to Grantee's Lender consistent with this Section 22.3; and (ii) on written request of Grantee's Lender made any time within 30 days after the giving of such notice by Grantor and after complying with any processed mandated under Indiana law (e.g. Ind. Code § 36-1-11, Grantor shall promptly execute and deliver an amendment to this Agreement allow the lease of the Premises to Grantee's Lender or its designee or nominee for the remainder of the Term (as if this Agreement were not terminated, rejected or disaffirmed) upon all the covenants, conditions, limitations and agreements contained herein (including options to extend the Term) except for such provisions which must be modified to reflect such termination, rejection or disaffirmance and the passage of time, provided that Grantee's Lender (A) shall pay to Grantor, simultaneously with the delivery of such new easement, all unpaid rent due under this Agreement up to and including the date of the commencement of the term of such new lease and all reasonable expenses, including reasonable attorneys' fees and disbursements and court costs, incurred by Grantor in connection with the default by Grantee, the termination of this Agreement and the preparation of the new easement, and (B) shall cure all defaults existing under this Agreement which are susceptible to being cured by Grantee's Lender promptly

and with due diligence after the delivery of such new easement. Notwithstanding anything to the contrary contained herein, provided Grantee's Lender shall have otherwise complied with the provisions of this Section 22.3, Grantee's Lender shall have no obligation to cure any defaults which are not susceptible to being cured by such Lender (for example, the bankruptcy of Grantee). For so long as Grantee's Lender shall have the right to enter into an amended lease with Grantor pursuant to this Section 22.3, Grantor shall not enter into a new lease of the Premises with any person or entity other than Grantee's Lender without the prior written consent of Grantee's Lender.

22.4 The provisions of Section 22.3 shall survive the termination, rejection or disaffirmance of this Agreement and will continue in full force and effect thereafter to the same extent as if Section 22.3 was a separate and independent contract made among Grantor, Grantee and Grantee's Lender and, from the effective date of such termination, rejection or disaffirmance of this Agreement to the date of execution and delivery of such new easement, Grantee's Lender may use and enjoy the leasehold estate created by this Agreement without hindrance until termination by Grantor. The aforesaid agreement of Grantor to enter into an amended lease with Grantee's Lender is deemed a separate agreement between Grantor and Grantee's Lender, separate and apart from this Agreement as well as a part of this Agreement and is unaffected by the rejection of this Agreement in any bankruptcy proceeding by any party.

22.5 Upon the execution and delivery of an amended lease under Section 22.3, all sublicenses which theretofore have been assigned to, or made by, Grantor with respect to the Communications Facility shall be assigned and transferred, without recourse, by Grantor to the grantee named in such new sublicense or a third-party manager capable of administering such sublicense. Between the date of termination of this Agreement and the date of execution of the new lease, if a Lender shall have requested an amended lease as provided in Section 22.3 and payment of all amounts due Grantor under the Agreement, Grantor shall not cancel any sublicense or accept any cancellation, termination or surrender thereof (unless such termination shall be effected as a matter of law on the termination of this Agreement) without the consent of Grantee's Lender.

22.6 If Grantor has been given notice of Grantee's Lender as provided in Section 22.3, (i) this Agreement shall not be modified or amended by the parties hereto, or terminated or surrendered by Grantee, nor shall Grantor accept any such termination or surrender of this Agreement by Grantee, without the prior written consent of Grantee's Lender and (ii) Grantor shall not have the right to terminate this Agreement in the event of a casualty or condemnation without the prior written consent of Grantee's Lender.

22.7 The provisions of this Section 22 are for the benefit of Grantee's Lender and may be relied upon and

shall be enforceable by Grantee's Lender as if Grantee's Lender were a party to this Agreement. Notwithstanding the foregoing, Grantor acknowledges that nothing contained herein is deemed or to be construed to obligate Grantee's Lender to take any action hereunder or to perform or discharge any obligation, duty or liability of Grantee under this Agreement.

22.8 Grantee acknowledges that nothing contained herein is deemed or to be construed to obligate Grantor to take any action hereunder or to perform or discharge any new or additional obligation, duty or liability of Grantor under this Agreement.

**23. NOTICES.** All notices under this Agreement shall be in writing either personally delivered (with receipt for delivery); mailed via United States certified mail, return receipt requested; or transmitted by overnight courier for next business day delivery to the notice addresses of Grantor and Grantee set forth in Section 1. Notices will be deemed to have been given upon either receipt. The parties each reserve the right to modify or change their notice addresses set forth in Section 1 by providing notice to the other party as otherwise provided in this section, with such new notice address being effective 15 days after receipt by the other party.

#### **24. MISCELLANEOUS.**

24.1 Each party hereto warrants and represents that it has the necessary power and authority to enter into and perform its respective obligations under this Agreement.

24.2 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.

24.3 All attached exhibits are hereby incorporated by this reference as if fully set forth herein.

24.4 Failure of party to insist on strict performance of any of the conditions or provisions of this Agreement or failure to exercise any of a party's rights hereunder, shall not waive such rights.

24.5 This Agreement is to be governed by and construed in accordance with Indiana law, the laws of the state in which the Premises are located.

24.6 This Agreement, the notice to bidders, instructions to bidders, and Grantee bid submission constitutes the entire Agreement and understanding of the parties and supersedes all offers, negotiations and other lease agreements with regard to the Premises or the subject matter hereof. There are no representations or understandings of any kind not set forth herein. Any amendment to this Agreement must be in writing and executed by both parties.

24.7 This Agreement is an appurtenance of and runs with the Premises and is binding upon and inures to the

benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

24.8 A short-form memorandum of this Agreement substantially in the form as depicted in Exhibit 4 attached hereto may be recorded at Grantor or Grantee's option and at the expense of Grantee.

24.9 This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Any counterpart delivered by facsimile, pdf, commercially available electronic e-signature software or other electronic means shall have the same import and effect as original or manually signed counterparts and shall be valid, enforceable and binding for the purposes of this Agreement

24.10 The pronouns of any gender shall include the other gender, and either the singular or the plural shall include the other, as the context requires. "Include" and "including" and their derivatives are to be construed as illustrative but not limiting. References in this Agreement to sections refer to those sections of this Agreement unless the context expressly requires otherwise. Headings of sections are for convenience only and are not to be considered in construing the meaning of the contents of such sections.

24.11 Grantee shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. Grantee certifies by entering into this Agreement that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments or reports to the State of Indiana. Grantee warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by any governmental entity within the State of Indiana, and agrees that it will immediately notify Grantor of any such actions. Grantee warrants that Grantee and its subcontractors, if any, shall obtain and maintain all required permits, licenses, certifications, accreditations, registrations, and approvals. Grantee and any principals of Grantee certify that they have and will comply with the requirements found in Ind. Code 5-22-3-7. Grantee certifies by entering into this Agreement that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State of Indiana.

24.12 Grantee hereby covenants and agrees to conduct adequate background checks on any personnel who will be present on the Property and make a good faith effort to provide and maintain a drug-free workplace.

24.13 When Grantor makes a written determination that funds are not appropriated or otherwise

available to support continuation of performance of this Agreement, this Agreement shall be canceled. A determination by Grantor that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

24.14 Grantee is an independent entity under this Agreement. No part of this Agreement shall be construed to represent the creation of an employment, agency, partnership, association, affiliation, or joint venture agreement between the parties. Grantee shall provide all necessary unemployment and workers' compensation insurance to its workers.

24.15 Pursuant to the Indiana Civil Rights Law, federal Civil Rights Act of 1964, ADEA, and ADA, Grantee covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Grantee certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

24.16 Grantor will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law.

24.17 The undersigned attests, subject to the penalties for perjury, that the undersigned is the properly authorized representative, agent, member or officer of Grantee. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of Grantee, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof.

**EXHIBIT 4**

**MEMORANDUM OF AGREEMENT**

**[TO BE CONFORMED TO PROVISIONS OF AGREEMENT WHEN FULLY NEGOTIATED]  
[FORM ONLY]**

**Prepared by and return to:**

**Site Name:**

**Site Number:**

**MEMORANDUM OF LEASE AGREEMENT**

This Memorandum of Lease is a summary of and evidences the existence of a Lease Agreement (“*Agreement*”) dated as of \_\_\_\_\_ between MSD of Wayne Township, an Indiana public school corporation (“*Grantor*”), whose address is \_\_\_\_\_ and **Cell Company A**, a Delaware limited liability company, whose mailing address is \_\_\_\_\_ (“*Grantee*”), with regard to that certain real property (the “*Premises*”) as described on Exhibit 1 attached hereto, which Premises are located upon a tract of real property owned by Grantor and more particularly described on Exhibit 2 attached hereto (the “*Property*”). The leasehold on the Premises commences on the date Grantee begins visible construction at the Premises (the “*Commencement Date*”), which Commencement Date is to be confirmed in writing from Grantee to Grantor, but shall occur no later than 2 years after the Effective Date of the Agreement.

Grantor ratifies, restates and confirms the Agreement leases to Grantee (i) that certain portion of the Property of approximately 2500 square feet (the “*Tower Compound*”) for cell communications and related communication purposes as more particularly described in the Agreement and (ii) an appurtenant, limited, temporary, non-exclusive easement (the “*Access and Utility Easement*”) over certain portions of the Property to access the Tower Compound (the Tower Compound and the Access and Utility Easement being more particularly described on Exhibit 1.

The Agreement provides for the lease by Grantor to Grantee of the Premises for an initial term of \_\_\_\_\_ years, commencing on the Commencement Date, with \_\_\_\_\_ renewal options of an additional \_\_\_\_\_ years each, for a maximum term (including renewal terms) of \_\_\_\_\_ years. The Agreement further provides for the following:

1. The Agreement restricts Grantor’s ability to utilize or allow the utilization of its property adjacent to the Premises for the construction, operation and/or maintenance of communications towers and related facilities not owned or operated by Grantor for educational purposes.
  2. The Access and Utility Easement is a limited, temporary, non-exclusive grant of an easement from Grantor to Grantee between a public right of way abutting the Property, for the purpose of ingress and egress for the benefit of, and access to, the Tower Compound, as well as for the construction, installation, operation and maintenance of underground electric, gas and other utility facilities, with the right to reconstruct, improve, add to, enlarge, change, remove and replace such facilities located on the Premises.
-

3. The Tower Compound may be used exclusively by Grantee for all legal purposes, including erecting, installing, operating and maintaining radio and communications towers, buildings, and related equipment, and accessing the same from a public right-of-way.

4. Grantee is entitled, without the consent of Grantor, to sublease and/or sublicense the Premises, or portions thereof, including any communications tower located thereon.