

**TOWNSHIP OF LONG HILL
CELL TOWER LEASE AGREEMENT**

This Agreement made this ____ day of _____, 2023 between the Township of Long Hill, a municipal corporation of the State of New Jersey, with its principal offices located at 915 Valley Road, Gillette, New Jersey, 07933 ("LESSOR") and _____ ("LESSEE"). The LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

1. PREMISES. LESSOR hereby leases to LESSEE a portion of that certain parcel of property (the entirety of LESSOR'S property is referred to hereinafter as the Property), on the Township's Warren Avenue Department of Public Works site, also known as part of lot 6 in block 10411, together with the nonexclusive right (the "Rights of Way") for ingress and egress, seven (7) days a week twenty-four (24) hours a day, on foot or motor vehicle, for the construction and operation of a ground facility in support of a wireless communications facility. (hereinafter collectively referred to as the "Premises") being substantially as described herein in Exhibit "A" attached hereto and made a part hereof.

2. TERM; RENTAL. This Agreement shall be effective as of the date of execution by both Parties, provided, however, the initial term shall be for five (5) years and shall commence on the Commencement Date (as hereinafter defined) at which time rental payments shall commence and be due at a total annual rental of _____ Dollars (\$ _____) to be paid in equal monthly installments on the first day of the month, in advance, to the Township Clerk, or to such other person, firm or place as LESSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with Paragraph 23 below. The Agreement shall commence on the date of execution of this Agreement.

3. EXTENSIONS. This Agreement shall automatically be extended for five (5) additional five (5) year terms unless LESSEE terminates it at the end of the then current term by giving LESSOR written notice of the intent to terminate at least six (6) months prior to the end of the then current term.

4. EXTENSION RENTALS. The annual rental for the first (1st) year of the first five (5) year and each year of each extension term shall be increased by five (5%) over the prior year's annual rent.

5. TAXES. LESSEE shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property which LESSOR demonstrates is the result of LESSEE'S use of the Premises and/or the installation, maintenance, and operation of the LESSEE'S improvements, and any sales tax imposed on the rent (except to the extent that LESSEE is or may become exempt from the payment of sales tax in the jurisdiction in

which the Property is located), including any increase in real estate taxes at the Property which LESSOR demonstrates arises from the LESSEE'S improvements and/or LESSEE'S use of the Premises. LESSOR and LESSEE shall each be responsible for the payment of any taxes, levies, assessments and other charges imposed including franchise and similar taxes imposed upon the business conducted by LESSOR or LESSEE at the Property. Notwithstanding the foregoing, LESSEE shall not have the obligation to pay any tax, assessment, or charge that LESSEE is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed provided that no lien attaches to the Property. Nothing in this Paragraph shall be construed as making LESSEE liable for any portion of LESSOR'S income taxes in connection with any Property or otherwise. Except as set forth in this Paragraph, LESSOR shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property and shall do so prior to the imposition of any lien on the Property.

LESSEE shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which LESSEE is wholly or partly responsible for payment. LESSOR shall reasonably cooperate with LESSEE at LESSEE'S expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document. In the event that as a result of any appeal or challenge by LESSEE, there is a reduction, credit or repayment received by the LESSOR for any taxes previously paid by LESSEE, LESSOR agrees to promptly reimburse to LESSEE the amount of said reduction, credit or repayment. In the event that LESSEE does not have the standing rights to pursue a good faith and reasonable dispute of any taxes under this paragraph, LESSOR will pursue such dispute at LESSEE'S sole cost and expense upon written request of LESSEE.

6. **USE; GOVERNMENTAL APPROVALS.** LESSEE shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. All improvements, equipment, antennas and conduits shall be at LESSEE'S expense. It is understood and agreed that LESSEE'S ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities. LESSOR shall cooperate with LESSEE in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by LESSEE. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority, LESSEE shall have the right to terminate this Agreement. Notice of LESSEE'S exercise of its right to terminate shall be given to LESSOR in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by LESSEE, or upon such later date as designated by LESSEE. All rentals paid to said termination date shall be retained by LESSOR. Upon such termination, this Agreement shall be of no further force or

effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder. Otherwise, the LESSEE shall have no further obligations for the payment of rent to LESSOR.

7. COST OF MAINTENANCE, REPAIR, AND RESTORATION OF THE PREMISES. Each Tenant shall pay its Pro Rata Share of the reasonable costs and expenses of maintaining and repairing the Improvements, including the monopole owned by the Township, except if the need for repair arises from the negligence of a tenant or its employees, agents or representatives, in which case the repairs shall be the responsibility and the cost of the negligent party or in proportion to the comparative negligence of each party. The Township and each Tenant shall, at its own expense, maintain and repair its own Equipment, including its own antenna array on the monopole structure. The Township and each Tenant shall further be responsible, at its own cost and expense, for any changes and/or modifications to the Improvements and its own Equipment that said party may require for itself.

8. INDEMNIFICATION. Subject to Paragraph 10 below, each Party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents.

9. INSURANCE. LESSEE shall not occupy the premises or commence work at the Property until it has obtained all of the insurance described below nor shall the LESSEE allow any of its contractors or subcontractors to commence work until identical insurance coverages have been obtained by the contractor/subcontractor and have been approved by the Township. LESSEE and each contractor/subcontractor shall furnish the Township with certificates of insurance from insurance companies authorized to do business in this state and acceptable to the Township. Each such certificate of insurance shall identify the coverages provided and shall provide that such insurance shall not be changed or canceled without giving ten (10) days prior written notice to the Township by certified mail, return receipt requested. The policies of insurance are to be from a company licensed to sell such insurance in the State of New Jersey and the company is to have an A.M. Best's rating of A-VIII or better. Specific reference to the contract shall be made in all policies of insurance. Such insurance shall be considered primary to any other available insurance company. The following coverages are mandatory in the amounts indicated:

<u>Type of Insurance</u>	<u>Policy Limits</u>
Comprehensive General Liability (including products/comp. operations)	
Per Occurrence	\$1,000,000
Aggregate	\$2,000,000
Workers' Compensation	Statutory

Employer's Liability	\$500,000/\$500,000/\$500,000
Business Auto Liability	\$1,000,000 CSL

Endorsement CG 25 03 11 85 shall apply - Aggregate Limits of Insurance (per project)

10. LIMITATION OF LIABILITY. Except for indemnification pursuant to Paragraphs ____ and ____, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of teleology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

11. INTERFERENCE. LESSEE agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of LESSOR or other lessees of the Property which existed on the Property prior to the date this Agreement is executed by the Parties. In the event any after-installed LESSEE'S equipment causes such interference, and after LESSOR has notified LESSEE in writing of such interference, LESSEE will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at LESSEE'S option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will LESSOR be entitled to terminate this Agreement or relocate the equipment as long as LESSEE is making a good faith effort to remedy the interference issue. LESSOR agrees that LESSOR and/or any other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of LESSEE. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

12. REMOVAL AT END OF TERM. LESSEE shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of the Agreement, remove its building(s), antenna structure(s), equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. LESSOR agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of LESSEE shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws (as defined in Paragraph 33 below). If such time for removal causes LESSEE to remain on the Premises after termination of this Agreement, LESSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the

building, antenna structure, fixtures and all personal property are completed.

13. **HOLDOVER.** LESSEE has no right to retain possession of the Premises or any part thereof beyond the expiration of that removal period set forth in Paragraph ___ herein, unless the Parties are negotiating a new lease or lease extension in good faith. In the event that the Parties are not in the process of negotiating a new lease or lease extension in good faith, LESSEE holds over in violation of Paragraph ___ and this Paragraph 12, then the rent then in effect payable from and after the time of the expiration or earlier removal period set forth in Paragraph 14 shall equal to the rent applicable during the month immediately preceding such expiration or earlier termination.

14. **QUIET ENJOYMENT.** LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises.

15. **TITLE.** LESSOR represents and warrants to LESSEE as of the execution date of this Agreement, and covenants during the Term that LESSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. LESSOR further covenants during the Term that there are no liens, judgments or impediments of title on the Property, or affecting LESSOR'S title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Premises by LESSEE as set forth above.

16. **BID DOCUMENTS.** *The terms of the Notice to Bidders and the Instructions to Bidders are incorporated herein by reference.*

17. **INTEGRATION.** It is agreed and understood that this Agreement contains all agreements, promises and understandings between LESSOR and LESSEE and that no verbal or oral agreements, promises or understandings shall be binding upon either LESSOR or LESSEE in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties or in a written acknowledgment in the case provided in Paragraph 3. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

19. **GOVERNING LAW.** This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the Laws of the State of New Jersey. Legal actions by either party may only be brought in the Superior Court of New Jersey, Morris County.

20. **ASSIGNMENT.** This Agreement may be sold, assigned or transferred by the

LESSEE without any approval or consent of the LESSOR to the LESSEE'S principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of LESSEE'S assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the LESSOR, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of LESSEE or transfer upon partnership or corporate dissolution of LESSEE shall constitute an assignment hereunder.

21. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR: Township Clerk
Township of Long Hill
915 Valley Road
Gillette, New Jersey 07933

LESSEE:

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

22. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.

23. RECORDING. Neither Party shall record this lease agreement.

24. DEFAULT.

a. In the event there is a breach by LESSEE with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, LESSOR shall give LESSEE written notice of such breach. After receipt of such written notice, LESSEE shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided LESSEE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSEE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSOR may not maintain any action or effect any remedies for

default against LESSEE unless and until LESSEE has failed to cure the breach within the time periods provided in this Paragraph.

b. In the event there is a breach by LESSOR with respect to any of the provisions of this Agreement or its obligations under it, LESSEE shall give LESSOR written notice of such breach. After receipt of such written notice, LESSOR shall have thirty (30) days in which to cure any such breach, provided LESSOR shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSOR commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSEE may not maintain any action or effect any remedies for default against LESSOR unless and until LESSOR has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if LESSOR fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by LESSOR if the failure to perform such an obligation interferes with LESSEE'S ability to conduct its business on the Property; provided, however, that if the nature of LESSOR'S obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

25. REMEDIES. Upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Premises are located; provided, however, each Party shall use reasonable efforts to mitigate its damages in connection with a default by LESSEE. If LESSEE so performs any of LESSOR'S obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by LESSEE shall immediately be owing by LESSOR to LESSEE, and LESSOR shall pay to LESSEE upon demand the full undisputed amount thereof.

26. ENVIRONMENTAL.

a. LESSOR will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene

conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Property, unless such conditions or concerns are caused by LESSEE.

b. LESSOR shall hold LESSEE harmless and indemnify LESSEE from and assume all duties, responsibility and liability at LESSOR's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, unless such non-compliance results from conditions caused by LESSEE; and

c. any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Property or activities conducted thereon, unless such environmental conditions are caused by LESSEE, in which case, Lessee shall hold Lessor harmless and indemnify LESSEE from and assume all duties, responsibility and liability at LESSEE'S sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions.

27. SUBMISSION OF AGREEMENT/PARTIAL INVALIDITY/AUTHORITY. The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement by the Parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

28. APPLICABLE LAWS. During the Term, LESSOR shall maintain the Property in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes,

and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "Laws"). LESSEE shall, in respect to the condition of the Premises and at LESSEE'S sole cost and expense, comply with (a) all Laws relating solely to LESSEE'S specific and unique nature of use of the Premises (other than general office use); and (b) all building codes requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises.

29. SURVIVAL. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

30. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

Attest:

TOWNSHIP OF LONG HILL (LESSOR)

Megan Phillips, Clerk

By: _____
Scott Lavender, Mayor

Attest/Witness:

LESSEE
