

**AMENDED AND RESTATED FIRST AMENDMENT
TO WATER TOWER LEASE AGREEMENT**

THIS AMENDED AND RESTATED FIRST AMENDMENT TO WATER TOWER LEASE AGREEMENT (“**First Amendment**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is by and between **The City of Hudson, Ohio**, with its principal offices located at 1140 Terex Road, Hudson, Ohio 44236 (hereinafter referred to as “**Landlord**”), and **Cellco Partnership d/b/a Verizon Wireless**, successor by merger to New Par d/b/a Verizon Wireless, with its principal places of business located at One Verizon Way, 4AW100, Basking Ridge, New Jersey 07920 (hereinafter referred to as “**Tenant**”) (each a “**Party**”, collectively, the “**Parties**”).

WHEREAS, Landlord and Tenant’s predecessor-in-interest entered into a Water Tower Lease Agreement dated April 20, 1999 (hereinafter, the “**Lease**”), whereby Landlord leased to Tenant certain Leased Premises, therein described, that are a portion of the real estate and Tower, as therein described, located at 85 Milford Drive, Hudson, OH 44236; and

WHEREAS, the term of the Lease expired in 2019, and the parties mutually desire to amend and restate the Lease, memorialize such renewal period and modify the Lease in certain other respects, all on the terms and conditions contained herein; and

WHEREAS, Landlord and Tenant desire to amend the Lease to extend the term of the Lease; and

WHEREAS, Landlord and Tenant desire to amend the Lease to adjust the Rent (as defined below) in conjunction with the modifications to the Lease contained herein; and

WHEREAS, Landlord and Tenant desire to amend the Lease to modify the notice paragraph thereof; and

WHEREAS, Landlord and Tenant desire to amend the Lease to modify the indemnification obligations between the parties; and

WHEREAS, due to the nature of the Tower portion of the Leased Premises as a key component of the City of Hudson’s public water and utility infrastructure, Landlord and Tenant desire to amend the Lease to permit Landlord to review all employees, agents, subcontractors, consultants, vendors, and independent contractors of Tenant prior to their access to the Tower or the Leased Premises; and

WHEREAS, due to Landlord’s need to periodically paint, refurbish, or otherwise maintain the Tower, Landlord and Tenant desire to amend the Lease to add a paragraph relative to Landlord and Tenant’s obligations and responsibilities before, during, and after a period where Landlord paints, refurbishes, or otherwise maintains the Tower; and

WHEREAS, Tenant has continued to pay rent under the terms of the Lease consistent with the holdover provisions contained therein; and

WHEREAS, Landlord and Tenant, in their mutual interest, wish to amend the Lease as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree that the recitals set forth above are incorporated herein as if set forth in their entirety and further agree as follows:

1. **Extension of Term.** The term of the Lease shall be renewed and extended to provide that the Lease has a new initial term of five (5) years ("**New Initial Term**") commencing on November 1, 2019 ("**New Term Commencement Date**"). As of the New Term Commencement Date, the existing Term and any extensions thereof, as applicable, shall be void and of no further force or consequence. The Lease will automatically renew, commencing on the expiration of the New Initial Term, for up to three (3) separate consecutive additional periods of five (5) years each (each such five (5) year additional period is hereinafter referred to as an "**Additional Renewal Term**" and each such Additional Renewal Term shall be considered a Renewal Term under the Lease), upon the same terms and conditions of the Lease, as amended herein, without further action by Tenant unless either party notifies the other party in writing of its intention not to renew the Lease at least sixty (60) days prior to the expiration of the New Initial Term or the then current Additional Renewal Term. The New Initial Term and any the Additional Renewal Terms are collectively referred to as the Term ("**Term**").

2. **Rent.** Commencing on November 1, 2019, the current Rent payable under the Lease shall be **Twenty-Eight Thousand Dollars (\$28,000.00)** per year (the "**Rent**"), and shall continue during the Term, subject to adjustment as provided herein. Section 6 of the Lease shall be amended to provide that Rent shall be adjusted as follows: commencing on November 1, 2020, and each year thereafter, the annual Rent will increase by two percent (2.0%) over the Rent paid for the immediately preceding year. Tenant shall pay Landlord each year's Rent annually and all in advance on the annual anniversary of the New Term Commencement Date.

3. **Charges.** All charges payable under the Lease such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord and shall not be payable by Tenant. The foregoing shall not apply to Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of the Lease.

4. **Acknowledgement.** Landlord acknowledges that: 1) this First Amendment is entered into of the Landlord's free will and volition and 2) Landlord has read and understands this First Amendment and the underlying Lease and, prior to execution of this First Amendment, was free to consult with counsel of its choosing regarding Landlord's decision to enter into this First Amendment and to have counsel review the terms and conditions of this First Amendment.

5. **Landlord's Access Requirements.** Section 8 of the Lease is hereby deleted in its entirety and replaced with the following:

“Tenant agrees and acknowledges that the Tower portion (as is described and defined in the Lease) of the Leased Premises constitutes a sensitive site that is critical to Landlord’s public infrastructure and public water supply. Tenant agrees that access to and/or proximity to the City of Hudson’s public water supply shall be controlled and regulated by Landlord. Therefore, if Tenant needs to access the Tower, then the Landlord shall have the right to approve or deny access for all persons Tenant intends to deploy to the Tower. No later than fourteen (14) calendar days prior to Tenant’s desired date of access to the Tower Tenant shall provide Landlord with: (1) a detailed description of the work Tenant intends to engage in on the Tower (“Tower Work”); (2) a list of all persons Tenant intends to deploy to the Tower to perform Tower Work; and (3) background reports for each person Tenant intends to deploy to the Tower to perform the Tower Work. Landlord shall have the right to reasonably refuse access to the Tower to any person who Landlord reasonably determines may pose a threat to the City’s public water system and/or utility infrastructure.

No later than fourteen (14) calendar days prior to Tenant’s desired date of access to the ground-based portion of the Leased Premises, Tenant shall provide Landlord with: (1) a detailed description of the work Tenant intends to engage in at the ground-based portion of the Leased Premises and (2) a list of all persons Tenant intends to deploy to the Leased Premises.”

6. **Notices.** Section 10 of the Lease is hereby deleted in its entirety and replaced with the following:

“NOTICES. All notices, requests, and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Tenant:

Cellco Partnership
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

And as to Landlord:

City of Hudson, Ohio
Attn: City Solicitor
1140 Terex Road
Hudson, OH 44236

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.”

7. **Liability and Indemnity.** Section 11 of the Lease is hereby deleted in its entirety and replaced with the following:

“Tenant agrees to indemnify and save the Landlord harmless from all claims (including costs, expenses, and attorney’s fees of defending against such claims) arising or alleged to arise from any negligence, acts, and/or omissions of Tenant or Tenant’s officers, agents, employees or contractors arising out of Tenant’s use or occupancy of the Leased Premises and/or Tower. The obligations, covenants, terms and provisions of this Section 11 shall survive the termination of this Lease for four (4) years.”

8. **Environmental Indemnification.** Section 12 of the Lease is hereby deleted in its entirety and replaced with the following:

“Tenant shall defend, indemnify, and hold harmless Landlord from and against any and all losses, expenses (including reasonable legal expenses) of whatever kind and nature resulting from any accident, occurrence or condition caused by the release by Tenant, or any party acting on the behalf of, at the direction of or in control of Tenant of any toxic or hazardous substance or waste in, on, under, about or affecting the Leased Premises and/or Tower which results in any injury or death of any person or damage to any property or which requires the removal or treatment of such hazardous or toxic substance or waste or any other remedial action or fine under the terms of any properly constituted law, regulation, rule or directive of any Federal, state or local governmental authority. Tenant shall not transport any toxic or hazardous substance or waste onto the Leased Premises and/or Tower without giving prior notice to and obtaining the prior written consent of Landlord.

The provisions of this Section 12 shall survive the termination or expiration of this Lease and surrender of the Leased Premises by Tenant.”

9. Tenant covenants and agrees that in the event Landlord determines to paint, refurbish, or otherwise maintain the Tower and/or the Leased Premises and Landlord determines Tenant’s Communications Equipment interferes with such painting, refurbishing, or maintenance of the Tower or other portions of the Leased Premises:

- a. Tenant shall be responsible, at no cost to Landlord, for complete removal and relocation of all Communications Equipment which Landlord determines shall be removed from the Tower or Leased Premises in order to paint, refurbish, or otherwise maintain the Tower or the Leased Premises. Notwithstanding the foregoing, and subject to state, local, and federal regulations regarding the placement and/or operation of Tenant’s temporary Communications Equipment, Landlord agrees to provide to Tenant ground space for the temporary relocation of Tenant’s Communications Equipment and which land may be at or near the Leased

Premises in the location depicted in Exhibit "1" attached hereto; and Landlord agrees not to charge Tenant any additional rent for such ground space.

- b. Tenant shall be responsible for any lost revenue, profits, or damages to Tenant as a result of any temporary relocation of its Communications Equipment.
- c. Landlord shall not have any liability for and shall not incur any obligations for any negative impacts upon the performance, reception, and transmission of the Communications Equipment which may occur during the time of its temporary relocation from the Tower.
- d. Landlord shall give Tenant seventy-five (75) days prior written notice of such need to relocate Tenant's Communication Equipment, unless it is for emergency purposes, and in that event as much prior notice to Tenant shall be given as is reasonably possible. Landlord will provide as much notice as is reasonably practicable to Tenant to allow for Tenant to deploy a temporary facility near the Leased Premises so that Tenant does not lose signal during the relocation period.

10. First Amendment to Memorandum of Water Tower Lease Agreement. Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable First Amendment to Memorandum of Water Tower Lease Agreement. Either party may record this memorandum at any time, in its absolute discretion.

11. Other Terms and Conditions Remain. In the event of any inconsistencies between the Lease and this First Amendment, the terms of this First Amendment shall control. Except as expressly set forth in this First Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the Lease to itself shall be deemed also to refer to this First Amendment.

12. Capitalized Terms. All capitalized terms used but not defined herein shall have the same meanings as defined in the Lease.

[NO MORE TEXT ON THIS PAGE - SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute this First Amendment on the dates set forth below.

LANDLORD:
The City of Hudson, Ohio

TENANT:
Cellco Partnership d/b/a Verizon Wireless

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Approved as to Form:

Matthew J. Vazzana, Esq.
City Solicitor
City of Hudson, Ohio

[ACKNOWLEDGEMENTS APPEAR ON THE NEXT TWO PAGES]

LANDLORD ACKNOWLEDGEMENT

STATE OF OHIO)
) SS:
COUNTY OF SUMMIT)

This is an acknowledgement clause. No oath or affirmation was administered to the signer.

Before me, a Notary Public, in and for said County and State, personally appeared **Jane Howington**, the **City Manager** of the **City of Hudson, Ohio** who states that she is duly authorized to execute the foregoing instrument, and that she acknowledges her signature to be her free act and deed on behalf of the **City of Hudson, Ohio**.

IN TESTIMONY WHEREOF, I have set my hand and official seal at _____,
Ohio, this _____ day of _____, 2020.

NOTARY PUBLIC

Print Name: _____

My Commission Expires: _____

