

RESOLUTION NO. 16-2019

A RESOLUTION BY THE COUNCIL OF THE CITY OF NEW PHILADELPHIA, TUSCARAWAS COUNTY, OHIO, to ratify and approve the lease contract for cell tower construction between the City of New Philadelphia, Ohio and TowerCo LLC 2013 a Delaware Limited Liability Company, a copy of which is attached hereto and incorporated herein by reference as if fully rewritten, AND DECLARING AN EMERGENCY.

WHEREAS; the City of New Philadelphia desires to contract for the purposes of cell tower construction and to benefit financially from the same; and

WHEREAS; the Mayor of the City of New Philadelphia, Ohio has negotiated a contract with TowerCo LLC 2013 a Delaware Limited Liability Company for said purposes; and

WHEREAS: The Council of the City of New Philadelphia, Ohio desires to ratify and approve said contract.

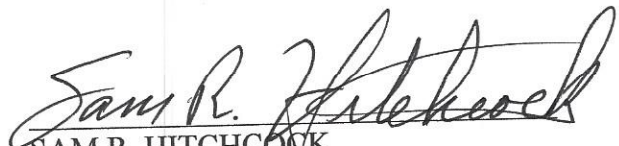
NOW THEREFORE, BE IT RESOLVED BY THE CITY OF NEW PHILADELPHIA, OHIO, AS FOLLOWS:

SECTION 1. The Council of the City of New Philadelphia, Ohio does hereby ratify and approve the lease contract between the City of New Philadelphia, Ohio and TowerCo LLC 2013 a Delaware Limited Liability Company, a copy of which is attached hereto and incorporated herein by reference as if fully rewritten.

SECTION 2. This Resolution is hereby declared to be an emergency measure and its immediate passage is necessary in order to preserve, protect and maintain the health, safety and welfare of the citizens of the City of New Philadelphia;

SECTION 3. This Resolution shall take effect and be in force immediately upon its passage and approval.

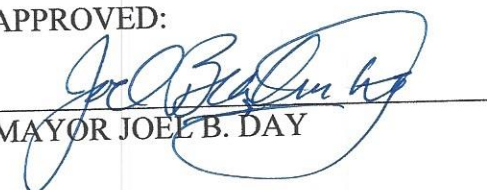
PASSED: Aug 26, 2019

  
SAM R. HITCHCOCK  
PRESIDENT OF COUNCIL

ATTEST:

  
JULIE COURTRIGHT  
CLERK OF COUNCIL

APPROVED:

  
MAYOR JOEL B. DAY

SPONSORED BY: SAFETY HEALTH AND SERVICES COMMITTEE

June 5, 2018

City of New Philadelphia  
Attn: Ron McAbier, Service Director  
150 East High Avenue  
New Philadelphia, OH 44663

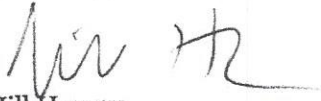
Re: TowerCo ID.: OH0392 (New Philadelphia PD)  
Option and Ground Lease Agreement and Memorandum of Lease

Dear Mr. McAbier:

Enclosed please find a fully executed original of the Option and Ground Lease Agreement and Memorandum of Lease executed by the City of New Philadelphia and TowerCo. We will also send you a recorded copy of the Memorandum of Lease once it gets recorded.

Thank you for your cooperation in this matter and please contact TowerCo with any questions.

Sincerely,



Jill Harvey  
Paralegal  
JHarvey@towerco.com



TowerCo

Enclosure

5000 Valleystone Dr.  
Suite 200  
Cary, NC 27519

550.9ppa

919.469.5559

URFCU

919.469.5530

FXK

info@towerco.com

GNRHL

towerco.com

webstco



## OPTION AND GROUND LEASE AGREEMENT

THIS OPTION AND GROUND LEASE AGREEMENT ("Lease") is made this 5<sup>th</sup> day of June, 2018, by and between CITY OF NEW PHILADELPHIA, OHIO, an Ohio municipal corporation ("Optionor") and TOWERCO 2013 LLC, a Delaware limited liability company ("Optionee").

### I. OPTION TO LEASE

1. Grant of Option. Optionor is the owner of a parcel or parcels of real property located in the county of Tuscarawas, State of Ohio, as more particularly described in Exhibit A annexed hereto (the "Parent Parcel"). For good and valuable consideration and the mutual promises herein set forth, Optionor hereby gives and grants unto Optionee and its assigns, an exclusive and irrevocable option ("Option") to lease a certain portion or portions of the Parent Parcel (the "Property"), together with easements for ingress, egress and utilities for the duration of this Lease (collectively, the "Easement"). The Property together with the Easement is collectively the "Premises" and are more particularly described and/or depicted on Exhibit B attached hereto. Optionor agrees and acknowledges that Optionee may at Optionee's sole cost and expense have a metes and bounds survey prepared of the Premises and that the legal description of the Premises as shown on the survey shall thereafter become the legal description of the Premises. Any assignment of this Option that is entered into by Optionor or Optionee shall be subject to the provisions of this Lease. Optionee may assign this Lease without the consent of Optionor.

2. Option Initial Term. The initial term of this Option shall be for eighteen (18) months from the date this Option is executed by Optionee ("Option Initial Term").

3. Consideration for Option. Consideration for the Option Initial Term granted hereunder shall be One Thousand and No/100 Dollars (\$1,000.00) ("Option Consideration"). Payment of the Option Consideration by Optionee to Optionor shall be credited in full to the first year's Rent payment due Optionor if this Option is exercised by Optionee.

4. Optionor's Representations and Warranties. As an inducement for Optionee to enter into and be bound by the terms of this Option, Optionor represents and warrants to Optionee and Optionee's successors and assigns that Optionor (i) has good and marketable title to the Premises, (ii) has the authority to enter into and be bound by the terms of this Option, (iii) to the best of Optionor's knowledge, there are no pending or threatened lawsuits, administrative actions (including bankruptcy or insolvency proceedings) suits, claims or causes of action against Optionor or which may otherwise affect the Premises; and (iv) the Premises are not presently subject to an option, lease, agreement or other contract which may adversely affect Optionor's ability to fulfill its obligations under this Option. Optionor covenants and agrees that it shall not grant an option or enter into any contract which will adversely affect Optionee's Intended Use (as defined in Paragraph 9 below) of the Premises until this Option expires or is terminated by Optionee.

The representations and warranties of Optionor shall survive the exercise of the Option and the termination or expiration of the term of this Lease.

5. Taxes. Optionor shall pay any ad valorem taxes or other special assessment taxes attributable to the Premises during the Option.

6. Inspections and Investigations. Optionor hereby grants to Optionee, its officers, agents, employees and independent contractors the right and privilege to enter upon the Premises at any time after the date of this Option, to perform or cause to be performed test borings of the soil, environmental audits,



engineering studies and to conduct a survey of the Premises. Optionor shall provide Optionee with any necessary keys or access codes to the Premises if needed for ingress and egress, and Optionee shall not unreasonably interfere with Optionor's use of the Premises in conducting these activities.

7. Further Acts. Optionor shall cooperate with Optionee in executing any documents necessary to protect Optionee's rights under this Option or Optionee's use of the Premises and to take such action as Optionee may reasonably require to effect the intent of this Option. Optionor hereby irrevocably appoints Optionee or Optionee's agent as Optionor's agent to file applications on behalf of Optionor with federal, state and local governmental authorities which applications relate to Optionee's intended use of the Premises including but not limited to land use and zoning applications.

## II. LEASE AGREEMENT

8. Exercise of Option. Upon the tender of written notice of Optionee's intent to exercise the Option, the terms of this Lease applying to the lease of the Premises shall govern the relationship of the parties and this Lease shall thereafter be referred to as the "Lease," Optionor shall thereafter be referred to as Lessor and Optionee shall thereafter be referred to as Lessee. The date of the written notice to exercise the Option shall constitute the commencement date of the Lease ("Commencement Date").

9. Use. The Premises may be used by Lessee and Lessee's tenants and licensees for the transmission and receipt of wireless communication signals in any and all frequencies, the construction, maintenance, operation, subleasing and licensing of towers, antennas, and buildings, and related facilities and activities, and for any other uses which are incidental thereto ("Intended Use"). Lessee and its sublessees and licensees shall have access to the Premises twenty-four (24) hours a day, seven (7) days a week. Lessor agrees to cooperate with Lessee in obtaining, at Lessee's expense, all licenses and permits required for Lessee's use of the Premises (the "Governmental Approvals"). Lessor further agrees to cooperate with Lessee in executing and delivering any documents requested by Lessee to obtain Government Approvals necessary for its Intended Use. In the event that Lessee's Intended Use of the Premises is actually or constructively prohibited then, in addition any other remedies available to Lessee, Lessee shall have the option to terminate this Lease with notice to Lessor.

10. Initial Term. The term of this Lease shall be ten (10) years commencing on the Commencement Date and terminating on the tenth (10<sup>th</sup>) anniversary of the Commencement Date ("Initial Term").

11. Renewal Terms. Lessee shall have the right to extend this Lease for four (4) additional five (5) year terms ("Renewal Terms"). Each Renewal Term shall be on the same terms and conditions as set forth in this Lease except that Rent shall increase as provided in Paragraph 12. This Lease shall automatically be renewed for each successive Renewal Term unless Lessee notifies Lessor in writing of Lessee's intention not to renew the Lease at least thirty (30) days prior to the expiration of the Initial Term or the Renewal Term which is then in effect.

12. Consideration. During the Initial Term, Lessee shall pay Lessor the monthly sum of Eight Hundred and No/100 Dollars (\$800.00) ("Rent"). Rent shall be payable by a paper check on the first day of each month in advance to Lessor at Lessor's address as specified in Paragraph 23 below. In year one (1) of the Initial Term, and each year thereafter, including throughout any Renewal Terms, the monthly Rent will increase by two percent (2%) over the Rent paid during the previous year. Lessee shall be entitled to withhold payment of the Rent until such time as Lessor executes and delivers a completed W-9 form to Lessee setting forth Lessor's federal tax identification number. Lessor acknowledges that the foregoing is a reasonable requirement in order to allow Lessee to comply with its legal requirements. If this Lease is terminated at a time other than on the anniversary of the Commencement Date, Rent shall



be prorated as of the date of termination and all Rent paid in advance of the termination date shall be refunded to Lessee. In the event that Lessee makes an overpayment of Rent or any other fee or charges to Lessor during the Initial Term or any Renewal Term of this Lease, Lessee may, but shall not be obligated to, treat any such overpayment as prepaid Rent and apply such amount as a credit against any future Rent, fee, or sum due to the Lessor. Lessor agrees to accept payment via electronic funds.

13. Improvements; Utilities; Access.

(a) Lessee shall have the right, at Lessee's sole cost and expense, to erect and maintain on the Premises all improvements, personal property and facilities necessary or desired for its Intended Use (collectively the "Improvements"). The Improvements shall remain the exclusive property of the Lessee throughout the term, upon and after the termination of this Lease. Lessee may construct, alter, demolish, reconstruct, restore, replace, supplement, modify and reconfigure the Improvements at any time during the Initial Term or any Renewal Term of this Lease.

Lessee shall remove all of the above-ground portions of the Improvements not later than one hundred eighty (180) days following any termination of this Lease. Lessor grants Lessee the right to clear all trees, undergrowth, or other obstructions and to trim, cut, and keep trimmed and cut all tree limbs which may interfere with or fall upon the Improvements or Premises. Lessor grants Lessee a non-exclusive easement in, over, across and through other real property owned by Lessor as reasonably required for construction, installation, maintenance, and operation of the Improvements.

(b) Lessee shall have the right to install power, telecommunications, cables, conduit, and any other utilities, including cabinets, vaults and improvements directly related to such utilities, on the Premises, at Lessee's expense, and to improve present utilities on the Premises (including but not limited to the installation of emergency power generators). Lessee shall have the right to permanently place utilities on (or to bring utilities across or under) the Premises and the Improvements. In the event that utilities necessary to serve the equipment of Lessee or the equipment of Lessee's licensee(s) or sublessee(s) cannot be located within the Premises, Lessor agrees to cooperate with Lessee and to act reasonably in allowing the location of utilities on the Parent Parcel or other real property owned by Lessor without requiring additional compensation from Lessee or Lessee's licensee(s) or sublessee(s). Lessor shall, upon Lessee's request, execute within fifteen (15) days a separate written easement to the utility company providing the service or Lessee in a form which may be filed of record evidencing this right.

(c) Lessor grants to Lessee, its officers, agents, employees, sublessees, licensees and their independent contractors, the right and privilege to enter upon the Premises and the Parent Tract, to perform or cause to be performed test borings of the soil, environmental audits, engineering studies and to conduct a survey of the Premises and all or part of the Parent Tract. Lessor grants Lessee and its sublessees and licensees a license to use such portion of Lessor's property contiguous to the Premises on a temporary basis as reasonably required during the Term or any Renewal Term of this Lease for the construction, installation, maintenance or removal of the Improvements, including access for construction machinery and equipment, storage of construction materials and equipment and staging areas.

(d) Lessor represents and warrants to Lessee that Lessee shall at all times during this Lease enjoy ingress, egress and access from the Premises twenty-four (24) hours a day, seven (7) days a week to an open and improved public road which presently exists and which shall be adequate to service the Premises and the Improvements. If no such public road exists or ceases to exist in the future, Lessor will grant an exclusive easement to Lessee, Lessee's sublessees and assigns so that Lessee may, at its own expense, construct a suitable private access drive to the Premises and the Improvements. To the degree such access is across other property owned by Lessor, Lessor shall execute an easement within fifteen (15) days of evidencing this right and Lessor shall maintain access to the Easement in a free and open



condition so that no interference is caused to Lessee by other lessees, licensees, invitees or agents of the Lessor which may utilize the Easement.

14. Lessor's Representations and Warranties. As an inducement for Lessee to enter into and be bound by the terms of this Lease, Lessor represents and warrants to Lessee and Lessee's successors and assigns that Lessor (i) has good and marketable title to the Premises, (ii) has the authority to enter into and be bound by the terms of this Lease, (iii) to the best of Lessor's knowledge, there are no pending or threatened lawsuits, administrative actions (including bankruptcy or insolvency proceedings), suits, claims or causes of action against Lessor or which may otherwise affect the Premises, and (iv) the Premises are not presently subject to an option, lease, agreement or other contract which may adversely affect Lessor's ability to fulfill its obligations under this Lease. Lessor covenants and agrees that it shall not grant an option or enter into any contract which will adversely affect Lessee's Intended Use (as defined in paragraph 2 above) of the Premises until this Lease expires or is terminated by Lessee. The representations and warranties of Lessor shall survive the termination or expiration of the term of this Lease.

15. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability upon written notice as follows:

(a) By either party upon a default of any covenant or term hereof by the other party which default is not cured within sixty (60) days of receipt of written notice of default (without, however, limiting any other rights available to the parties pursuant to any other provisions hereof); provided, that if the defaulting party commences good faith efforts to cure the default within such period the cure period may be extended upon mutual agreement, in writing, of the parties hereto;

(b) Upon thirty (30) days' written notice by Lessee to Lessor if (i) Lessee is unable to obtain or maintain any license, permit or other Governmental Approval necessary for the construction and operation of the Improvements or Lessee's business, or (ii) Lessee's Intended Use of the Premises is actually or constructively interfered with; or

(c) By Lessee for any reason upon written notice from Lessee to Lessor.

16. Subleases. Lessee at its sole discretion shall have the right, without the consent of or notice to Lessor, to license, sublease or otherwise allow the occupancy of all or a portion of the Premises and the Improvements. If Lessee licenses or subleases a portion of the Premises to a third party for the purpose of sending and receiving telecommunications signals (each such grant a "Sublease") then Lessee agrees to pay to Lessor, as additional rent, an amount equal to Two Hundred and No/100 Dollars (\$200.00) per month ("Co-Location Rent") under the following conditions: (i) Lessee shall only be required to pay the Co-Location Rent where the Sublease is with a major wireless carrier (such as Verizon, AT&T, Sprint or T-Mobile); and (ii) Lessee shall not be required to pay Lessor the Co-Location Rent for the first or initial Sublease ("Anchor Tenant"). In the event the Anchor Tenant vacates the Premises, Lessee shall have the right to substitute the Anchor Tenant with an existing sublessee or licensee who shall become the new Anchor Tenant. The Co-Location Rent for each such Sublease shall commence beginning on the first day of the month following the commencement date of each Sublease and continue through the term of that respective Sublease. That portion of the Rent attributable to the Co-Location Rent shall terminate on the date each Sublease terminates or expires, whichever is earlier, and Rent thereafter shall be reduced by an amount equal to the Co-Location Rent for each such Sublease as of the date of such expiration or termination. Lessee shall have no obligation to pay that portion of the Rent attributable to the Co-Location Rent for each Sublease unless Lessee actually receives the rent payment due under each respective Sublease. Lessee shall have sole discretion as to whether, and on what terms, to enter into, amend or terminate any such Sublease, and there shall be no express or implied obligation of



Lessee to do so nor is Lessor a third party beneficiary of any Sublease. Lessee's licensee(s) and sublessee(s) shall be entitled to modify the tower and Improvements, and erect and install additional improvements and personal property on the Premises and Improvements, including but not limited to antennas, dishes, cabling, utilities, emergency or back up power, generators, and equipment shelters. Lessee's licensee(s) and sublessee(s) shall be entitled to all rights of ingress and egress to the Premises, the right to install utilities on the Premises and the right to use the Premises for the Intended Use as if said licensee or sublessee were the Lessee under this Lease.

17. Taxes. Lessee shall pay any property taxes assessed on the Improvements. Lessor agrees to provide to Lessee a copy of any notice, assessment or billing relating to any real or personal property taxes for which Lessee is responsible under this Lease within thirty (30) days of receipt of same by Lessor. Lessee shall have the right, at its sole option, and at its sole cost and expense, to appeal, challenge or seek modification of any real or personal property tax assessment or billing for which Lessee is wholly or partly responsible for payment under this Lease. .

18. Damage or Destruction. If the Premises or the Improvements are destroyed or damaged so as to hinder the effective use of the Improvements in Lessee's judgment, Lessee may elect to terminate this Lease as of the date of the damage or destruction by so notifying the Lessor.

19. Condemnation. If a condemning authority takes all of the Premises, or a portion sufficient in Lessee's determination, to render the Premises in the opinion of Lessee unsuitable for the use which Lessee was then making of the Premises, this Lease shall terminate the earlier of (i) the date title vests in the condemning authority or (ii) the date the condemning authority takes possession of the Premises or a portion of it. Lessor and Lessee shall share in the condemnation proceeds in proportion to the values of their respective interests in the Premises (which for Lessee shall include, where applicable, the value of its Improvements, moving expenses, prepaid rent, lost business, goodwill, and business relocation expenses).

20. Insurance. Lessee, at Lessee's sole cost and expense, shall procure and maintain on the Premises and on the Improvements, bodily injury and property damage insurance with a combined single limit of at least One Million and 00/100 Dollars (\$1,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against liability of Lessee, its employees and agents arising out of or in connection with Lessee's use of the Premises and Improvements. .

21. Interference. Lessor shall not, nor shall Lessor permit its lessees, licensees, invitees or agents, to use any portion of the Parent Parcel or adjacent real property owned or controlled by Lessor in any way which interferes with Lessee's Intended Use of the Premises. Such interference shall be deemed a material breach of this Lease by Lessor and Lessor shall have the responsibility to immediately terminate such interference. In the event such interference is not immediately rectified, Lessor acknowledges that continuing interference will cause irreparable injury to Lessee, and Lessee shall have the right, in addition to any other rights that it may have at law or in equity, to bring an action to enjoin such interference or to terminate this Lease with notice to Lessor.

22. Environmental Compliance. Lessor represents, warrants and agrees (i) that neither Lessor nor, to Lessor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any contaminants, oils, asbestos, PCBs, hazardous substances or wastes as defined by federal, state or local environmental laws, regulations or administrative orders or other materials the removal of which is required or the maintenance of which is prohibited, regulated or penalized by any federal, state or local government authority ("Hazardous Materials") on, under, about or within the Parent Parcel and/or Easement in violation of any law or regulation, and (ii) that Lessor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Materials on,



under, about or within the Parent Parcel and/or Easement in violation of any law or regulation. Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises in violation of any law or regulation. This Lease shall at the option of Lessee terminate and be of no further force or effect if Hazardous Materials are discovered to exist on the Parent Parcel and/or Easement through no fault of Lessee after Lessee takes possession of the Premises and Lessee shall be entitled to a refund of all the consideration paid in advance to Lessor under this Lease.

23. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or via a nationally recognized overnight delivery service to the following addresses or to such other addresses as may be specified in writing at any time during the term of this Lease:

If to Lessor, to:

City of New Philadelphia  
150 East High Avenue  
New Philadelphia, OH 44663  
Attention: Ron McAbier (Service Director)  
Phone: 330-364-449  
Email: rmcabier@newphilaoh.com

If to Lessee, to:

TowerCo 2013 LLC  
5000 Valleystone Drive, Suite 200  
Cary, North Carolina 27519  
Attention: Property Management  
Site ID#: OH0392

24. Quiet Enjoyment. Lessor covenants that it shall comply with all applicable laws, regulations and requirements related to the Premises and that Lessee shall have the quiet enjoyment of the Premises during the term of this Lease. Lessor shall indemnify Lessee from and against any loss, cost, expense or damage including attorneys' fees associated with a breach of the foregoing covenants. In the event that Lessor fails to keep the Premises free and clear of any liens and encumbrances, Lessee shall have the right but not the obligation to satisfy such lien or encumbrance and deduct the full amount paid by Lessee on Lessor's behalf from future installments of Rent. Lessor agrees to indemnify and hold harmless Lessee from any and all claims and/or notices of non-compliance brought against Lessor for any breach by Lessor of this warranty, and Lessor agrees to allow Lessee to continue to quietly enjoy the use of Lessor's Premises while Lessor remedies any such non-compliance. Should Lessee's use of the Premises become compromised due to any breach of the warranty and covenants contained in this paragraph, Lessor acknowledges that Lessee shall be substantially harmed and Lessee will seek to recover from Lessor any damages Lessee may sustain.

25. Occurrence of Lessor Default. The covenants, representations and conditions in this Lease are mutual and dependent. Upon the occurrence of any breach or nonperformance of any representation, warranty, covenant, agreement or undertaking made by Lessor in this Lease ("Default"), Lessee shall have the option to pursue any one or more of the following remedies without notice or demand: (a) Lessee, may, at its sole election, terminate the Lease; (b) Lessee, may, without being obligated and without waiving the Default, cure the Default, whereupon Lessor shall pay to Lessee, upon demand, all costs, expenses, and disbursements incurred by Lessee to cure the Default. Lessee shall be permitted to offset said costs, expenses and disbursements incurred by Lessee against Rent or any other amounts due or becoming due by Lessee to Lessor under this Lease; or (c) Lessee shall be entitled to



pursue any and all other rights or remedies available at law or equity, including specific performance of this Lease, with respect to Lessor's default.

26. Assignment. Lessee may assign this Lease without the consent of or notice to Lessor. From and after the date this Lease has been sold, assigned or transferred by Lessee to a third party agreeing to be subject to the terms hereof, Lessee shall immediately be released from any and all liability under this Lease, including the payment of any rental or other sums due, without any further action. Additionally, Lessee may mortgage or grant a security interest in this Lease and the Improvements, and may assign this Lease and the Improvements to any such mortgagees or holders of security interests including their successors and assigns (hereinafter collectively referred to as "Secured Parties"). If requested, Lessor shall execute such consent to leasehold financing as may reasonably be required by Secured Parties. Lessor agrees to notify Lessee and Lessee's Secured Parties simultaneously of any default by Lessee and to give Secured Parties the same right to cure any default as Lessee except that the cure period for any Secured Party shall not be less than ten (10) days after the receipt of the default notice. If a termination, disaffirmance or rejection of the Lease pursuant to any laws (including any bankruptcy or insolvency laws) by Lessee shall occur, or if Lessor shall terminate this Lease for any reason, Lessor will give to the Secured Parties prompt notice thereof and Lessor will give the Secured Parties the right to enter upon the Premises during a thirty (30)-day period commencing upon the Secured Party's receipt of such notice for the purpose of removing any Improvements. Lessor acknowledges that the Secured Parties shall be third-party beneficiaries of this Lease.

27. Successors and Assigns. This Lease shall run with the Premises and shall be binding upon and inure to the benefit of the parties, their respective heirs, successors, personal representatives and assigns.

28. Liability and Indemnity. Lessee shall indemnify and hold Lessor harmless from all claims (including reasonable attorneys' fees, costs and expenses of defending against such claims) arising from the negligence or willful misconduct of Lessee or Lessee's agents or employees in or about the Premises. Lessor shall indemnify and hold Lessee harmless from all claims (including reasonable attorneys' fees, costs and expenses of defending against such claims) arising from the negligence or willful misconduct of Lessor or Lessor's agents, employees, lessees, invitees, contractors or other tenants occurring in or about the Parent Parcel. The duties described herein survive termination of this Lease.

29. Right of First Refusal; Sale of the Premises. If Lessor elects to grant to a third party by easement, or other legal instrument, an interest in and to any portion of the Premises for any purpose relating to operating and maintaining communications facilities or the management thereof, with or without an assignment of this agreement to such third party (including but not limited to assignments of rental streams associated with this Lease), Lessee shall have the right of first refusal to meet any bona fide offer of assignment, or any other transfer on the same terms and conditions as such offer. Lessor shall immediately provide the Lessee with a copy of the bona fide offer together with a notice describing the offer in sufficient detail. If Lessee fails to accept such bona fide offer within thirty (30) days after receipt of the foregoing, Lessor may sell or grant the easement or interest in the Premises in accordance with the terms of such bona fide offer.

30. Miscellaneous.

(a) The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

(b) Each party agrees to furnish to the other, within ten (10) days after request, such truthful estoppel information as the other may reasonably request.

(c) This Lease constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Lease, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to said Lease must be in writing and executed by the parties.

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

(e) This Lease shall be construed in accordance with the laws of the state in which the Premises is situated.

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

(g) Upon request of Lessee, Lessor shall promptly execute and deliver to Lessee such documents as Lessee requests to evidence Lessee's rights in the Premises, including a memorandum of option and a memorandum of lease and/or amendments thereto. Lessee may file such documents of record in the property records in the county in which the Premises are located.

(h) Lessee may obtain title insurance on its interest in the Premises and Easement, and Lessor shall cooperate by executing documentation required by the title insurance company. In the event the Premises is encumbered by a mortgage or deed of trust, Lessor agrees to obtain and furnish, within thirty (30) days written request by Lessee, a non-disturbance agreement to the effect that Lessee and Lessee's sublessees or licensees will not be disturbed in the occupancy of the Premises by any foreclosure; provided that the rights and interests of Lessee under this Lease shall be subject and subordinate to such mortgage or deed of trust.

(i) This Lease may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by the each of the parties, it being understood that all parties need not sign the same counterpart and that scanned or electronically reproduced copies of this Lease shall have the same force and effect as originals.

(j) Lessor will not, during the term of this Lease together with any extensions thereof, enter into any other lease, license, or other agreement for a similar purpose as set forth herein, on or adjacent to the Property.

(k) In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Lease, such party shall not unreasonably condition, delay or withhold its approval or consent.

**[SIGNATURES BEGIN ON NEXT PAGE]**









EXHIBIT A

DESCRIPTION OF PARENT PARCEL

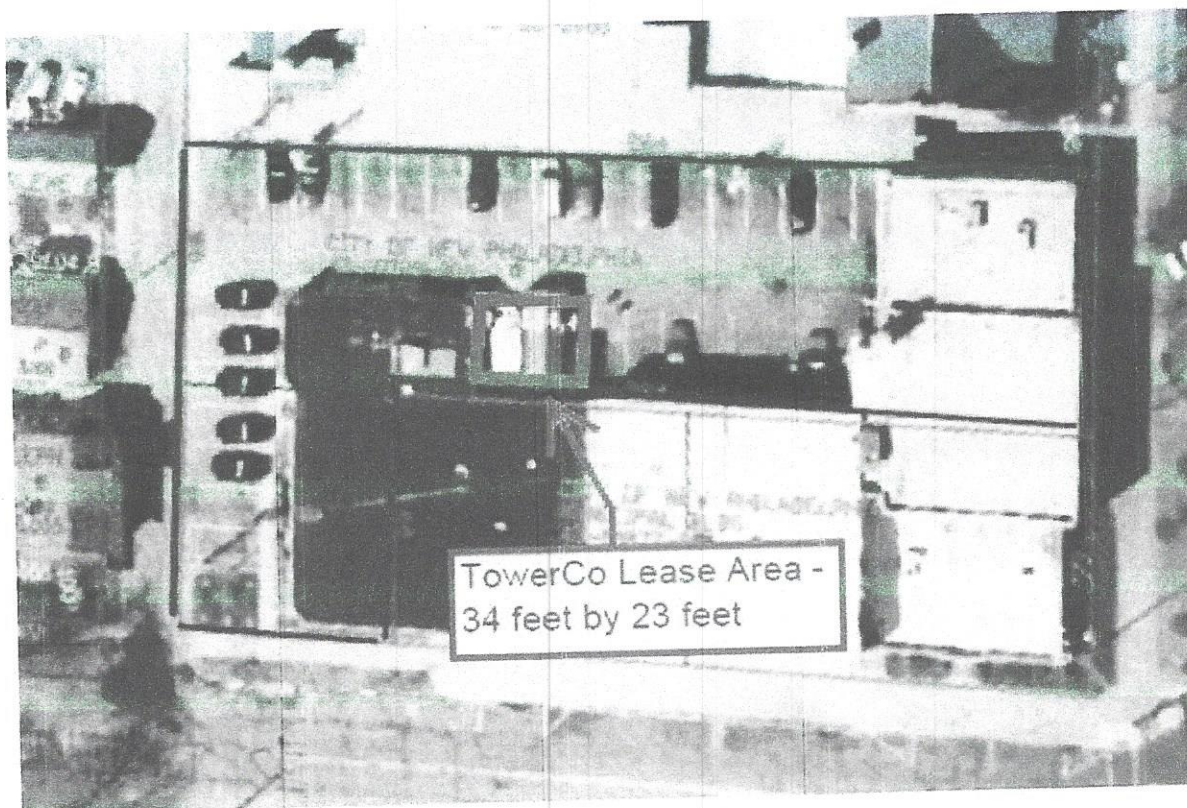
The Parent Parcel is described and/or depicted as follows:

Tax Parcel 43-07189  
166 East High Street, New Philadelphia, Tuscarawas County, OH 44663  
As Recorded in The Tuscarawas Recorder of Deeds Office in Deed Book 222, Page 472

## EXHIBIT B

### DESCRIPTION OR DEPICTION OF PREMISES

An approximately 34' x 23' tract of land, together with easements for ingress, egress and utilities described or depicted as follows:



**Note:** At Lessee's option, Lessee may replace this Exhibit with an exhibit setting forth the legal description of the Premises, or an as-built drawing depicting the site. Any visual or textual representation of the Improvements and facilities is illustrative only, and does not limit the rights of Lessee as provided for in the Lease. Without limiting the generality of the foregoing:

1. The Premises may be setback from the boundaries of Lessor's property as required by the applicable governmental authorities.
2. The access road's width may be modified as required by governmental authorities, including police and fire departments.
3. The locations of any access and utility easements are illustrative only. Actual locations may be determined by Lessee and/or the servicing utility company in compliance with local laws and regulations.