

3
4 **A RESOLUTION APPROVING THE SALE**
5 **OF CERTAIN TELECOMMUNICATION**
6 **EASEMENTS AND ASSIGNMENT**
7 **AGREEMENTS FOR THE CITY OF FORT**
8 **WAYNE, INDIANA THROUGH ITS BOARD**
9 **OF PUBLIC WORKS**

10 **WHEREAS**, the City of Fort Wayne, Indiana, by its Board of
11 Public Works/Division of City Utilities desires to sell five (5) cell site easements
12 and assignment agreements for wireless communication sites, specifically
13 described in "Exhibit "A," attached hereto and made a part hereof, to Landmark
14 Infrastructure Holding Company, LLC; and

15 **WHEREAS**, the sale price for the five (5) cell site easements and
16 assignment agreements for wireless communications sites is TWO MILLION,
17 THREE HUNDRED FIFTEEN THOUSAND AND 00/100 DOLLARS -
18 (\$2,315,000.00); and

19 **WHEREAS**, the term of the sale of the telecommunication
20 easements and assignment agreements is thirty-seven (37) years (June 28,
21 2053); and

22 **WHEREAS**, the five (5) cell site easements and assignment
23 agreements are located on three (3) City Utilities water towers; Aboite Water
24 Tower, 9810 Bronco Drive, Fort Wayne, Indiana, 46804; Covington Water
25 Tower, 14501 Covington Road, Fort Wayne, Indiana 46814; and Dupont Water
26 Tower, 14501 Covington Road, Fort Wayne, Indiana 46814; and Dupont Water
27 Tower, 14501 Covington Road, Fort Wayne, Indiana 46814; and Dupont Water
28 Tower, 14501 Covington Road, Fort Wayne, Indiana 46814; and Dupont Water
29 Tower, 14501 Covington Road, Fort Wayne, Indiana 46814; and Dupont Water
30 Tower, 14501 Covington Road, Fort Wayne, Indiana 46814; and Dupont Water

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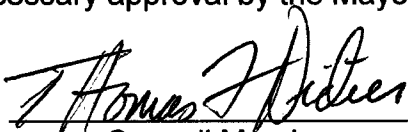
Tower, 1016 Dupont Road, Fort Wayne, Indiana, 46825; and

WHEREAS, Sec. 37-25 of the City of Fort Wayne Code of Ordinances, requires the Common Council approval of any purchase or conveyance of real estate by the City.

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

SECTION 1. The sale of five (5) cell site easements and assignment agreements for wireless communication sites, is hereby approved and agreed to. The appropriate officials of the City are hereby authorized to execute all documents necessary to accomplish said purchase.

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



Council Member

APPROVED AS TO FORM AND LEGALITY



Carol Helton, City Attorney

A RESOLUTION APPROVING THE SALE OF CERTAIN TELECOMMUNICATION EASEMENTS AND ASSIGNMENT AGREEMENTS FOR THE CITY OF FORT WAYNE, INDIANA THROUGH ITS BOARD OF PUBLIC WORKS

WHEREAS, the City of Fort Wayne, Indiana, by its Board of Public Works/Division of City Utilities desires to sell five (5) cell site easements and assignment agreements for wireless communication sites, specifically described in "Exhibit "A," attached hereto and made a part hereof, to Landmark Infrastructure Holding Company, LLC; and

WHEREAS, the sale price for the five (5) cell site easements and assignment agreements for wireless communications sites is TWO MILLION, THREE HUNDRED FIFTEEN THOUSAND AND 00/100 DOLLARS – (\$2,315,000.00); and

WHEREAS, the term of the sale of the telecommunication easements and assignment agreements is forty-seven (47) years (June 28, 2053); and

WHEREAS, the five (5) cell site easements and assignment agreements are located on three (3) City Utilities water towers; Aboite Water Tower, 9810 Bronco Drive, Fort Wayne, Indiana, 46804; Covington Water Tower, 14501 Covington Road, Fort Wayne, Indiana 46814; and Dupont Water

Memo

Date: February 18, 2016
To: Common Council Members
From: Ben Groeneweg, City Utilities Engineering
Re: **Telecommunication Easement Purchase and Assignment Agreement
Resolution Number: 103-2-17-16-1**

Council Districts #2 and #4

City Utilities is proposing to sell five cell site easements and assignments agreements for wireless communication sites for a 47-year period to an investor for a lump sum of \$2,315,000.

Implication of not being approved:

- There is a risk of losing rent revenue if current wireless tenants do not renew their leases. All five tenants are cellular phone service providers and there is a risk that they could be acquired by other companies and /or their technology may become obsolete.
- There is an immediate funding need for capital projects. One hundred percent of the money received will fund capital projects.

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

The sale of assignment of rents was advertised on 10/06/2015 and 10/13/2015 in the Journal Gazette and News Sentinel.

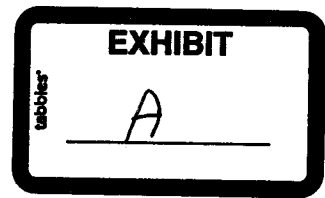
City Utilities recommends, and the Board of Public Works has approved, the sale of the wireless communication site assignment of rents to Landmark Infrastructure Holding Company, LLC for \$2,315,000. The proposal from Landmark was the highest of four proposals and they agreed to the City's terms and conditions. The proposals ranged from \$2,102,500 to \$2,315,000. The term of the agreement is approximately 47 years (June 28, 2053).

All five cell sites are located on three of City Utilities water towers (all of which are former Aqua Indiana water towers).

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

Council Introduction Date: February 23, 2016

CC: BOW
Matthew Wirtz
Diane Brown
File



**A RESOLUTION OF THE BOARD OF PUBLIC WORKS
OF THE CITY OF FORT WAYNE, INDIANA,
AUTHORIZING TELECOMMUNICATION EASEMENT PURCHASE
AND ASSIGNMENT AGREEMENT**

RESOLUTION NUMBER 103-2-17-16-1

WHEREAS, the City of Fort Wayne, Indiana (hereinafter referred to as the "City"), owns certain real property and the water towers located thereon located at 9810 Bronco Drive, Fort Wayne, Indiana, 46804 (hereinafter referred to as the "Aboite Water Tower" location), 14501 Covington Road, Fort Wayne, Indiana, 46814 (hereinafter referred to as the "Covington Water Tower" location), and 1016 Dupont Road, Fort Wayne, Indiana, 46825 (hereinafter referred to as the "Dupont Water Tower" location), all three (3) locations being described more particularly in Exhibit "A", attached hereto and made a part of this Resolution by this reference; and

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

WHEREAS, Landmark Infrastructure Holding Company, LLC (hereinafter referred to as "Landmark") wishes to purchase the City's telecommunication easements; and

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

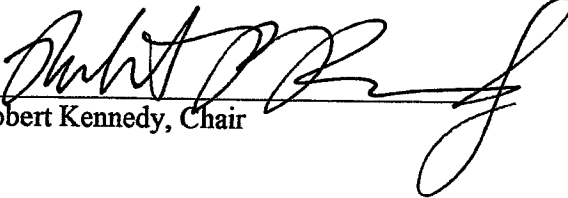
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

1. That the Board of Public Works of the City of Fort Wayne, Indiana (hereinafter referred to as the "Board") approves the sale of the Telecommunications Easements and Assignment Agreements between the City and Landmark.
2. That the Board approves the Telecommunication Easement Purchase And Assignment Agreement agreements between the City and Landmark.
3. That the Board hereby authorizes Benjamin Groeneweg, Engineer VI: Utility Asset Management and Engineering Services, to sign in the name of and on behalf of the Board, the three (3) Telecommunication Easement Purchase And Assignment Agreement agreements between the City and Landmark, and the three (3) Telecommunication Easement Agreement agreements between the City and Landmark and all ancillary closing documents.

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


APPROVED this 17th day of February, 2016.

BOARD OF PUBLIC WORKS

By: 
Robert Kennedy, Chair

By: Absent
Kumar Menon, Member

By: 
Mike Avila, Member

Attest: 
Lyndsey L. Richards, Clerk

Public Hearing Date, if applicable _____

Read the first time in full and on motion by Councilman _____

Read the second time by title and referred to the _____

Committee. Read the third time in full and on motion by Councilman _____

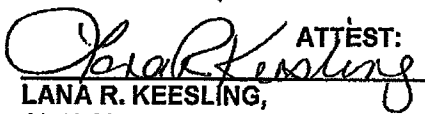
_____ placed on passage by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	_____	_____	_____	_____
ARP	_____	_____	_____	_____
BARRANDA	_____	_____	_____	_____
CRAWFORD	_____	_____	_____	_____
DIDIER	_____	_____	_____	_____
ENSLEY	_____	_____	_____	_____
FREISTOFFER	_____	_____	_____	_____
HINES	_____	_____	_____	_____
JEHL	_____	_____	_____	_____
PADDOCK	_____	_____	_____	_____

DATED: _____


LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as
(ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) ORDINANCE
(RESOLUTION) NO. _____ on the _____ day of
_____, 2016


ATTEST:
LANA R. KEESLING,
CITY CLERK


PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____ day

of _____, 2016, at the hour of _____ O'clock _____ E.S.T.


LANA R. KEESLING, CITY CLERK

Approved and signed by me this _____ day of _____

2016, at the hour of _____ O'clock _____ E.S.T.

THOMAS C. HENRY, MAYOR

TELECOMMUNICATION EASEMENT PURCHASE AND ASSIGNMENT AGREEMENT

This Telecommunication Easement Purchase and Assignment Agreement is made effective as of the Effective Date, by Landmark Infrastructure Holding Company LLC, a Delaware limited liability company, and the City of Fort Wayne, an Indiana municipal corporation, by and through its Board of Public Works.

RECITALS

- A. All capitalized terms used in these recitals shall have the meanings given them in Section 1.
- B. Seller owns the Water Tower and the Real Estate commonly known as the Aboite Water Tower and located at 9810 Bronco Road, Fort Wayne, Indiana 46814.
- C. Seller leases portions of the Water Tower and the Real Estate for telecommunications purposes pursuant to the Cell Antenna License Agreements.
- D. Seller wishes to sell, and Buyer wishes to buy, an assignment of the Cell Antenna License Agreements and the Easements, under the terms and conditions in this Agreement.

AGREEMENT

In consideration of the mutual covenants and promises made in this Agreement, and the payments to be made under it, the receipt and sufficiency of which consideration is acknowledged by the parties, it is agreed as follows:

1. **DEFINITIONS.** The following capitalized words and phrases shall have the meanings stated, unless the context clearly indicates that a different meaning is intended:

1.1 **"Agreement"**. This Telecommunication Easement Purchase and Assignment Agreement.

1.2 **"Buyer"**. Landmark Infrastructure Holding Company LLC a Delaware limited liability company.

1.3 **"Buyer's Intended Use"**. The transmission and reception of wireless telecommunication signals and the construction, maintenance, repair, replacement, improvement, operation and removal of telecommunications facilities, including antennas, antenna support brackets, shelters, fences, gates, cabling, wiring and related facilities but not including towers.

1.4 **"Cell Antenna License Agreements"**. Collectively, the following agreements: (i) The Standard License Agreement dated May 11, 2005 between Omipoint Holdings, Inc., a Delaware corporation, as Licensee and Utility Center, Inc., a Corporation, as

Licensors, currently held by Seller; and (ii) Tower Attachment License Agreement dated as of September 24, 2002 between Utility Center, Inc., an Indiana corporation as licensor and AT&T Wireless PCS, LLC, a Delaware limited liability Company, d/b/a AT&T Wireless, Licensee as evidenced by Memorandum of License dated September 4, 2002 and recorded with the Allen County, Indiana, Recorder's Office on June 17, 2003 as Document Number 203060273; as amended by Amendment No. 1 to Site Agreement dated August 16, 2008 between the same parties and by the Black & Veatch engineering drawings for such license, project number 129027, dated October 5, 2015.

1.5 **"Closing"**. The closing and the sale of the Real Estate under this Agreement.

1.6 **"Closing Date"**. The date of Closing as provided in Section 10.2.

1.7 **"Easements"**. Collectively, the Easements set forth in the Easement Agreement.

1.8 **"Easement Agreement"**. The Telecommunication Easement Agreement attached to this Agreement as Exhibit "B".

1.9 **"Effective Date"**. The effective date of this Agreement, which is the date this Agreement is fully executed.

1.10 **"Event of Default"**. The following each shall constitute an Event of Default for purposes of this Agreement:

1.10.1 The making of any false or inaccurate representation in this Agreement; or

1.10.2 The breach of any warranty made in this Agreement.

1.10.3 The failure to observe or comply with any non-monetary provision or covenant in this Agreement, and such default is not cured to the reasonable satisfaction of the non-defaulting party within thirty (30) days of the date Notice of such default is given, which Notice shall specify with reasonable particularity the basis for the default claimed. For monetary defaults, the cure period shall be fifteen (15) days from the date of Notice of such default.

1.10.4 Notwithstanding anything herein to the contrary, if the required cure of the noticed default cannot reasonably be completed by the defaulting party within such 30-day period, the defaulting party's failure to perform shall not constitute an Event of Default so long as the defaulting party undertakes to cure the failure promptly and diligently and continuously pursues the cure thereof to completion. In the event that the defaulting party fails to cure such default within the cure period, the non-defaulting party shall be entitled to exercise any rights permitted by applicable law.

1.11 ***“License Rights”***. The rights to be assigned to Buyer under the Cell Antenna License Agreements, as set forth in the Easement Agreement.

1.12 ***“Initial Purchase Price”***. The initial purchase price for the Easements and the License Rights as stated in Section 3.

1.13 ***“Inspection”***. A site inspection of, or other activity permitted to be made on, the Real Estate under Section 5.1.

1.14 ***“Inspection Consultant”***. A person or company who performs an inspection or investigation of the Real Estate pursuant to Section 5.1.

1.15 ***“Inspection Period”***. The time period prescribed in Section 5.1 for Buyer to conduct Inspections and other due diligence under this Agreement

1.16 ***“Notice”***. Any notice, designation, consent, approval, offer, acceptance, statement, request, or other communication required or allowed under this Agreement.

1.17 ***“Permitted Title Exceptions”***. The following items with respect to the Title Commitment and Title Policy:

1.17.1 Real estate taxes not payable at the time of the date of Closing;

1.17.2 Easements, restrictions, and limitations of record and zoning ordinances which, in Buyer’s sole opinion, would not interfere with Buyer’s Intended Use of the Real Estate; and

1.17.3 Exceptions accepted by Buyer under Section 6.3.2.1.

1.18 ***“Real Estate”***. The parcel of real estate owned by Seller commonly known as 9810 Bronco Road, Fort Wayne, Indiana 46814, containing approximately 13.027 acres that is legally described in Exhibit “A” to this Agreement.

1.19 ***“Resolution”***. A resolution signed by the City Council of the City of Fort Wayne, authorizing Benjamin Groeneweg, Engineer VI: Utility Asset Management and Engineering Services, to execute the Easement Agreement, and ancillary transaction documents, on behalf of the Board of Public Works, City of Fort Wayne

1.20 ***“Seller”***. City of Fort Wayne, an Indiana municipal corporation, by and through its Board of Public Works.

1.21 ***“Survey”***. The survey of the Easements prepared by prepared by an Indiana registered land surveyor approved by Seller. The Survey shall be certified to Seller, Buyer, Buyer’s lender, and the Title Company as of a current date, contain a legal description of

the Real Estate, show the boundaries of the Real Estate, all plotable easements, including without limitation the Easements, rights-of-way, improvements, drives, sidewalks, and encroachments affecting or benefiting the Easements, and include the following Table A items: 1, 2, 3, 4, 6(a), 7(a), 8, 9, 11(b), 13, 14, 16, 17, 18, and 19(a). The Survey legal descriptions shall be used in the Title Commitment, the Title Policy, and the Easement Agreement.

1.22 **“Title Commitment”**. The owner’s title insurance commitment for the Easements to be delivered under Section 6.1.

1.23 **“Title Company”**. Linear Title and Closing.

1.24 **“Title Policy”**. The owner’s title insurance policy for the Easements to be delivered by Seller under Section 6.4.

1.25 **“Water Tower”**. The water tower owned by Seller located on the Real Estate.

2. **PURCHASE AND SALE OF EASEMENTS AND LICENSE RIGHTS**. Buyer shall purchase from Seller, and Seller shall sell to Buyer, the Easements and the License Rights for the Initial Purchase Price, subject to the terms and conditions stated in this Agreement.

3. **INITIAL PURCHASE PRICE**. The Initial Purchase Price for the Easements and the License Rights shall be \$856,000, due at Closing, along with additional consideration as described in the Easement Agreement.

4. **MANNER OF PAYMENT**. At Closing, Buyer shall pay Seller the Initial Purchase Price in cash or other same day funds, less all credits due Buyer under this Agreement.

5. **INSPECTION PERIOD AND OTHER DUE DILIGENCE**.

5.1 **Inspections**.

5.1.1 Through and including April 30, 2016 (the “Inspection Period”), Buyer, at Buyer’s sole cost and expense, may conduct all Inspections of the Real Estate that Buyer believes are necessary or suitable for Buyer’s Intended Use. The Inspections may include, without limitation, inspections, testing, or other investigations of the following matters:

5.1.1.1 Suitability for Buyer’s Intended Use.

5.1.1.2 Availability of all utility services to serve the Easements.

5.1.1.3 Perform any and all due diligence relating to the Cell Tower License Agreements, the License Rights, the Easements, and the Real Estate.

5.1.2 Inspections may be performed by Buyer, Buyer’s agents or designees, and Inspection Consultants and their representatives, all of whom shall have reasonable access to the Real Estate at reasonable times to perform Inspections.

5.1.3 Seller agrees to fully cooperate with, and provide all information and documentation requested by, Inspection Consultants in connection with Inspections, including without limitation, the execution of documents necessary for Inspections.

5.1.4 If Buyer fails to timely conduct any investigation permitted under Section 5.1, Buyer shall be deemed to waive the right to do so.

5.1.5 Seller shall have no financial responsibility for the Inspections.

5.1.6 Buyer shall cause the Real Estate to be restored to the same condition as it existed before the Inspections.

5.1.7 Buyer shall indemnify and hold Seller harmless against all claims lawsuits, damages, costs, and expenses related to, or arising out of, the Inspections.

6. ***EVIDENCE OF TITLE AND SURVEY.***

6.1 ***Delivery of Title Commitment.*** Within 20 days after the Effective Date, Buyer, at Buyer's expense shall obtain and deliver a copy to Seller the Title Commitment (and deliver a copy thereof to Seller) issued by the Title Company together with legible copies of all covenants, conditions, easements, and restrictions referred to as exceptions in the Title Commitment. The Title Commitment shall show title to the Easements vested in Seller, with no exceptions other than the Permitted Title Exceptions. If other exceptions exist, Section 6.3 shall apply. Any additional title evidence shall be at the expense of Buyer, provided, however, that the cost of additional title evidence necessitated by the acts or omissions of Seller shall be borne by Seller. Seller shall provide the Title Company with all documentation in Seller's possession pertaining to the Easements. The legal description of the Easements shall be the same in the Title Commitment and in the Survey. Buyer may request the Title Company to update the Title Commitment so that it is current as of the time of Closing.

6.2 ***Survey.*** Within 20 days after the Effective Date, Buyer, at Buyer's expense, shall obtain the Survey and deliver a copy of the Survey to Seller. Buyer also shall be entitled to have the Survey recertified, at Buyer's expense, to Buyer's assignee and Buyer's lender, and so that the Survey is current as of Closing.

6.3 ***Title Objections.***

6.3.1 Buyer shall give Notice to Seller at least 30 days prior to the expiration of the Inspection Period, describing with reasonable particularity each exception disclosed by the Title Commitment or title defect disclosed by the Survey to which Buyer objects, and the basis for each objection. Seller then shall have 30 days to remove the exceptions or cure the Survey defects to which Buyer reasonably objects, to insure against loss or damage that may be sustained by Buyer because of them, in a manner reasonably acceptable to Buyer, or to reach some other accommodation or extension of time acceptable to Buyer.

6.3.2 If Seller is unable to cause the defects in the Survey and Title Commitment to be resolved in accordance with Section 6.3.1, Seller shall give Notice to Buyer of such fact. Buyer then shall have 10 days to give Notice to Seller that Buyer:

6.3.2.1 Accepts the Title Commitment and Survey in their respective conditions as of the date Seller gives Notice under Section 6.3.2; or

6.3.2.2 Desires to terminate this Agreement because Buyer does not accept the condition of the Title Commitment or the Survey.

6.3.3 Prior to Closing (but without any specific date or time period), Buyer may obtain updates of the Title Commitment and the Survey. If Buyer does so, Buyer then shall have the same rights, and Seller shall have the same obligations, regarding matters of title and survey stated in Sections 6.3.1 and 6.3.2. The time periods for Seller to cure defects and give Notice stated in Sections 6.3.1 and 6.3.2 also shall apply to this Section 6.3.3.

6.4 **Title Policy.** Promptly after Closing, the Title Company shall furnish the Title Policy to Buyer in the amount of the Initial Purchase Price, consistent with the Title Commitment and all requirements stated in Section 6.1. Buyer shall pay the premiums for the Title Policy delivered to Buyer under this Section 6.4.

7. **RISK OF LOSS.** Seller shall bear the risk of loss to the Easements until Closing. Buyer shall bear the risk of loss to the Easements after Closing.

8. **PRE-CLOSING OBLIGATIONS.** Between the Effective Date and the Closing Date, Seller shall not:

8.1 Make any alterations to any part of the Easements or Cell Antenna License Agreements (except to comply with requirements of law or this Agreement);

8.2 Enter into a lease for any portion of the Easements; or

8.3 Enter into any agreement or take any action that is outside the normal scope of maintaining and operating the Easements or the Licenses, or would bind or encumber the Easements or Licenses after Closing (except as is otherwise permitted under this Agreement).

9. **POSSESSION.** Seller shall deliver possession of the Easements to Buyer at Closing.

10. **CONDITIONS OF CLOSING, CLOSING DATE, AND OTHER CLOSING MATTERS.**

10.1 **Conditions of Closing.** Buyer's obligation to proceed to Closing shall be expressly conditioned on the performance or satisfaction of all of the following items and conditions on or before April 30, 2106:

10.1.1 The representations and warranties made by Seller in Section 11 are correct as of the Closing Date, with the same force and effect as if such representations and warranties were made at such time.

10.1.2 Buyer is satisfied with the marketability and condition of the Easements and all Inspections.

10.1.3 Buyer is satisfied with the condition of title to the Easements, and is satisfied with the Survey, within the timeframes specified in Section 6.

10.1.4 Buyer receives a copy of the executed Resolution.

10.1.5 Successful acquisition of any consent or waivers required from tenant under the Cell Antenna License Agreements or third-party holding such right.

10.1.6 All other requirements under this Agreement are satisfied or completed before Closing.

10.2 ***Closing Date.***

10.2.1 The Closing Date shall be specified by Buyer in a Notice given to Seller, which Closing Date shall be two business days after receipt of the signed Resolution and other documents required under Section 10.4.1 by Buyer, but in no event shall the Closing Date be later than May 15, 2016, unless the parties mutually agree in writing to an extension of the Closing Date to complete other requirements necessary to comply with the provisions in this Agreement.

10.2.2 If Closing does not occur on or before May 15, 2016, and the Closing Date is not extended in accordance with Section 10.2.1, this Agreement shall terminate, and, so long as Seller is not in default under this Agreement, Seller shall be entitled to retain the Earnest Money, and the parties shall have no further obligations to each other.

10.3 ***Closing Location.*** The Closing shall take place on the Closing Date, at a location and in a manner mutually agreed upon by Buyer and Seller.

10.4 ***Closing Documents and Other Closing Items.***

10.4.1 ***Seller's Documents.*** At or before Closing, Seller shall execute and deliver to Buyer the following documents, all of which shall be consistent with the forms described, or such other forms as are reasonably acceptable to the parties' respective legal counsel:

10.4.1.1 The Easement Agreement.

10.4.1.2 A Closing Affidavit and Representations in the form approved by the Title Company and by Buyer's legal counsel.

10.6.2.1 One half of the closing fee or escrow fee charged by the Title Company to close the transaction contemplated by this Agreement, if any;

10.6.2.2 The premiums for the Title Commitment and the Title Policy for owner's coverage as provided in Sections 6.1 and 6.4;

10.6.2.3 The cost of the Survey;

10.6.2.4 All costs and expenses incurred by Buyer in connection with Buyer's financing, including any additional premium payable to the Title Company for the simultaneous issuance of a lender's title policy;

10.6.2.5 All other costs and expenses required to be paid by Buyer under this Agreement; and

10.6.2.6 Buyer's attorney fees.

10.7 CLOSING ADJUSTMENTS. At Closing, the following adjustments or credits shall be made or given by Seller to Buyer:

10.7.1 **Taxes.** Seller represents that there are no taxes levied against the Real Estate or the Easements. Accordingly, no tax proration is necessary for Closing.

10.7.2 **Other Closing Adjustments.** Other closing adjustments reasonable and customary for like transactions also shall be made at Closing.

11. SELLER'S REPRESENTATIONS AND WARRANTIES. Seller makes the following representations and warranties to Buyer, each of which shall survive the execution of this Agreement:

11.1 **Authorization and Absence of Defaults.** The execution, delivery to Buyer, and performance by Seller of Seller's obligations under this Agreement do not and will not:

11.1.1 Violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award presently in effect having applicability to Seller;

11.1.2 Result in a material breach of or constitute a material default under any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Seller is a party, or by which Seller or Seller's property may be bound or affected; or

11.1.3 Result in or require the creation or imposition of any lien on any of Seller's property or revenues, other than liens granted to Buyer.

11.2 **Title to Easements.** Seller presently has, and will have at Closing, marketable title to the Easements, free and clear of all liens, physical and financial encumbrances, leases, covenants, conditions, restrictions, rights-of-way, easements,

encroachments, and other matters affecting title, except for the Permitted Title Exceptions, including the Cell Antenna License Agreements.

11.3 ***Cell Antenna License Agreement Estoppel.*** The condition of the Cell Antenna License Agreements are as follows:

11.3.1 The Cell Antenna License Agreements are in full force and effect and unmodified, and Buyer has been provided with a full and complete copy thereof;

11.3.2 Seller has not delivered to any tenant under the Cell Antenna License Agreements a notice of breach or default of tenant's obligations thereunder.

11.3.3 No tenant under the Cell Antenna License Agreements has delivered to Seller a notice of breach or default of Seller's obligations thereunder, or a rent reduction request relating to such Cell Antenna License Agreement.

11.3.4 Seller has not received notice of intent or desire to terminate from any tenant under the Cell Antenna License Agreements.

11.3.5 No tenant under the Cell Antenna License Agreements has a claim of setoff thereunder, or otherwise against rents or charges due or to become due thereunder.

11.4 ***Validity and Enforceability.*** This Agreement constitutes a legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with the respective terms of this Agreement.

11.5 ***No Litigation.*** There are no actions, suits, or proceedings pending, threatened, or reasonably anticipated, affecting the Easements, in any court or federal, state, municipal, or other governmental department, commission, board, bureau, agency, or non-government arbitration board or commission.

11.6 ***Accuracy of Representations and Warranties.*** No representation or warranty made by Seller in this Agreement contains, to the best of Seller's knowledge, any untrue statement of a material fact known to Seller, or omits to state a material fact known to Seller necessary in order to make the statements contained in this Agreement not misleading.

12. ***BUYER'S REPRESENTATIONS AND WARRANTIES.*** Buyer makes the following representations and warranties to Seller, each of which shall survive the execution of this Agreement:

12.1 ***Authorization and Absence of Defaults.*** The execution, delivery to Seller, and performance by Buyer of Buyer's obligations under this Agreement have been duly authorized by all necessary business entity or governmental action, and do not and will not:

12.1.1 Violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award presently in effect having applicability to Buyer;

12.1.2 Result in a material breach of or constitute a material default under any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Buyer is a party, or by which Buyer or Buyer's property may be bound or affected; or

12.1.3 Result in or require the creation or imposition of any lien on any of Buyer's property or revenue, other than liens granted to Seller.

12.2 **Validity and Enforceability.** This Agreement constitutes a legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with the respective terms of this Agreement, except as enforcement may be limited by applicable bankruptcy, insolvency, rearrangement, moratorium, liquidation, conservatorship, reorganization, or similar debtor relief laws affecting the rights of creditors generally from time to time in effect.

12.3 **No Litigation.** There are no actions, suits, or proceedings pending or, to the knowledge of Buyer, threatened against or affecting Buyer before any court or governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, which, if determined adversely to Buyer, would draw into question the validity, authorization, or enforceability of this Agreement, or could have a material adverse effect on the financial condition, properties, or operations of Buyer.

12.4 **Accuracy of Representations and Warranties.** No representation or warranty made by Buyer in this Agreement contains any untrue statement of a material fact known to Buyer, or omits to state a material fact known to Buyer necessary in order to make the statements contained in this Agreement not misleading.

13. **BROKER'S FEES.** Each party represents to the other party that no person or entity is entitled to any brokerage commission, finder's fee, except pursuant to a separate agreement with such party (which party shall be solely liable for such fee), or any other like payment in connection with any transaction contemplated by this Agreement by reason of the action of any party.

14. **WITHDRAWAL OF EASEMENTS FROM MARKETPLACE.** Upon full execution of this Agreement, Seller shall deal exclusively with Buyer, and shall not consider, accept, or solicit any other offer from any other party to purchase or lease the Easements or any part of them, unless and until this Agreement is properly terminated by a party having the right to do so under the provisions of this Agreement.

15. **TERMINATION OF AGREEMENT.** If a party wishes to terminate the rights and obligations under this Agreement with respect to the purchase and sale of the Easements, the party shall give Notice to the other party of the desire to terminate this Agreement, stating with reasonable detail each basis for termination. The termination shall become effective on the fifth day after the date Notice is given, unless, on or before that date, either of the following occurs:

15.1 The defect or default stated in the Notice is cured; or

15.2 The party having the option to terminate gives Notice to the other party of either a waiver of the condition or contingency upon which such option is based, or an extension of the time within which such condition or contingency is to be performed or satisfied.

16. NOTICES.

16.1 **Written Notice.** Each Notice required or allowed under this Agreement shall be in writing. Any action required or allowed under this Agreement that is a term within the definition of "Notice" under Section 1.18, also shall be in writing.

16.2 **Place of Notice.** Notice to a party shall be given at the party's address identified in this Section 16.2, or at such other address as a party may designate in a Notice to the other party:

If to Buyer: Board of Public Works
City of Fort Wayne
Attn: Director of City Utilities
200 East Berry Street, Suite 240
Fort Wayne, IN 46802
Fax: _____
Email: Ben.Groeneweg@cityoffortwayne.org

with a copy to: Scott M. Federoff, Esq.
Carson Boxberger LLP
301 W. Jefferson Blvd., Suite 200
Fort Wayne, IN, 46802
Fax: 260.423.4329
Email: sfederoff@carsonboxberger.com

and a copy to: Lindsey Jackson
City Attorney
200 East Berry Street, Suite 430
Fort Wayne, IN 46802
Fax: _____
Email: Lindsey.Jackson@cityoffortwayne.org

If to Seller: Landmark Infrastructure Holding Company, LLC
c/o Landmark Dividend LLC
P.O. Box 3429
2141 Rosecrans Ave., Suite 2100
El Segundo, CA 90245
Attn: Legal Department
Fax: _____
Email: _____

16.3 **Manner of Giving Notice.** Notice shall be deemed given when:

16.3.1 Personal service of the Notice is made on the party to be notified (but the party need not be at the address designated under Section 16.2);

16.3.2 The Notice is mailed to the party to be notified by means of certified or registered U.S. mail, return receipt requested, postage prepaid;

16.3.3 The Notice is sent to the party to be notified by express courier such as "Federal Express" or such other similar carrier guaranteeing next day delivery; or

16.3.4 A copy of the Notice is sent to the party by email or facsimile transmission, to the applicable email address or facsimile number designated in Section 16.2, provided the original Notice is sent by first class U.S. mail, postage prepaid, to the party the same day as the email or facsimile is sent.

16.4 **Refusal to Accept Notice.** Refusal by a party to accept a Notice shall not affect the giving of the Notice.

17. **REMEDIES.**

17.1 If an Event of Default by Seller occurs, Buyer may seek the following remedies, which shall be cumulative and are not mutually exclusive:

17.1.1 All legal and equitable remedies available (including without limitation, specific performance of this Agreement);

17.1.2 Termination of this Agreement; and

17.1.3 The reasonable attorney fees, expenses and costs incurred by Buyer in connection with an Event of Default by Seller.

17.2 If an Event of Default by Buyer occurs, Seller may seek the following remedies, which shall be cumulative and are not mutually exclusive:

17.2.1 All legal and equitable remedies available;

17.2.2 Termination of this Agreement; and

17.2.3 The reasonable attorney fees, expenses and costs incurred by Seller in connection with an Event of Default by Buyer.

17.3 The parties agree that it may be impossible to measure in money the damages which will accrue to Buyer by reason of a failure by Seller to perform any of Seller's obligations under this Agreement. Therefore, if Buyer institutes any action or proceeding against Seller to specifically enforce the provisions of this Agreement, Seller shall be deemed to waive the claim or defense that Buyer has an adequate remedy at law.

17.4 The failure to enforce a breach of this Agreement shall not be construed as a waiver of the right to enforce such breach at a later time or to enforce any other breach.

17.5 If a party consists of more than one person, each person who is a party shall be jointly and severally liable for such party's defaults.

18. **CONDEMNATION.** If a condemnation, eminent domain, or similar proceeding is commenced against all or any portion of the Easements, Buyer may either: (i) terminate this Agreement; or (ii) proceed to Closing, in which event Seller shall assign to Buyer at Closing the right to receive and settle the award, but only with regard to the Easements, in any such proceeding (and Seller shall not settle any such award without Buyer's prior written approval), less any reasonable expenses incurred by Seller in connection with such proceeding.

19. **AUTHORITY TO SIGN.** Each person signing this Agreement in a representative capacity on behalf of a party warrants and represents to each other party that:

19.1 The person executing this Agreement has the actual authority and power to so sign, and to bind the person's respective principal to the provisions of this Agreement; and

19.2 All corporate or other entity action necessary for the making of this Agreement has been duly taken.

20. **EXECUTION BY DIGITAL MEANS.** The parties agree that this Agreement may be transmitted digitally by them for execution by email or facsimile transmission. The parties intend that the original or digital signatures of the parties on this Agreement shall be binding on them.

21. **MISCELLANEOUS.**

21.1 **Binding Agreement.** This Agreement shall run with the land, and shall bind and inure to the benefit of the parties and their respective legal representatives, heirs, successors, and assigns.

21.2 **Invalid Provision/Severability.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions of it, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

21.3 **Amendments.** No amendments, modifications, alterations, or additions to this Agreement shall be binding unless made in writing and signed by the parties.

21.4 **Assignment.** Buyer may assign or grant a security interest in and to this Agreement, or the rights and obligations under it, without Seller's prior consent, to any entity in which Buyer or Buyer's principals have an interest, are under common control or ownership

with, or to any lender or financier of Grantee's. Buyer shall give Notice to Seller of the identity of any such assignee.

21.5 **Gender.** Whenever reasonably necessary, pronouns of any gender shall be deemed synonymous, as shall singular and plural pronouns.

21.6 **Governing Law.** This Agreement shall be governed in all respects whether as to validity, construction, capacity, performance, or otherwise by the laws of the State of Indiana.

21.7 **Rule of Construction.** The judicial rule of construction requiring or allowing a document to be construed to the detriment or against the interests of the document's maker or drafter shall not apply to this Agreement.

21.8 **Headings.** The section headings in this Agreement are included solely for convenience, and shall in no event affect or be used in connection with the interpretation of this Agreement.

21.9 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but together the counterparts shall constitute one and the same document.

21.10 **Entire Agreement.** This Agreement constitutes the entire agreement of the parties, all prior negotiations and agreements, whether written or oral, having been merged into this Agreement.

21.11 **Time of Essence.** Time is of the essence in this Agreement.

21.12 **Computation of Time.** In computing a time period prescribed in this Agreement, the day of the act or event shall not be counted. All subsequent days, including intervening weekend days and holidays, shall be counted in the period. The last day of the period so computed is to be included unless it is a weekend day or a legal holiday under Indiana law, in which case the period is to be extended to the next day that is not a weekend day or legal holiday.

21.13 **Recitals.** All recitals set forth at the outset of this Agreement are incorporated by reference in it and are true.

21.14 **No Recording.** This Agreement may not be recorded without the prior written consent of both parties.

21.15 **Review by Counsel.** Each party has had the opportunity to have this Agreement reviewed by independent counsel before signing it.

21.16 *Survival.* The representations and warranties of the parties contained in this Agreement, and the provisions in Section 10.6.3 and Section 11.7 shall survive termination of this Agreement for one year, and shall not be merged into the deed to be delivered by Seller to Buyer.

This Agreement has been signed by the parties as of the Effective Date.

[SIGNATURE PAGES FOLLOW.]

SELLER:

**City of Fort Wayne,
an Indiana municipal corporation,
by and through its Board of Public Works**


Dated: February __, 2016

**By: _____
Benjamin Groeneweg,
Engineer VI: Utility Asset Management and
Engineering Services, Authorized signatory
on behalf of the Fort Wayne Board of Public
Works, per the attached resolution**

Accepted by Buyer this ___ day of February, 2016.

BUYER:

**Landmark Infrastructure Holding Company, LLC,
a Delaware limited liability company**

By: 

Dan Parsons, Authorized Signatory

Exhibit "A"
Legal Description of the Real Estate

Part of the Southeast Quarter of Section 15, Township 30 North, Range 11 East, Allen County, Indiana, being more particularly described as follows, to-wit:

Beginning at the Center of said Section 15, being marked by a stone, also being the Northeast corner of the plat of the Coves at Westlakes, Section II, as recorded in Plat Cabinet E, page 18, in the Office of the Recorder of Allen County, Indiana; thence South 00 degrees 13 minutes 45 seconds West (plat bearing and uses as the basis of all bearings in this description), on and along the West line of said Southeast Quarter and the East line of the plat of the Coves at Westlakes, Section II, a distance of 430.77 feet to a #5 rebar at the point of intersection of said line with the North line of the plat of Aspen Village, Section II, as recorded in Plat Record 39, pages 92-96, in the Office of said Recorder; thence South 89 degrees 17 minutes 58 seconds East, on and along the North line of the plat of Aspen Village, Section II, a distance of 1042.09 feet to the Northeast corner thereof; also being the Northwest corner of the plat of Aspen Village, Section I, as recorded in Plat Record 39, pages 14-17, in the Office of said Recorder; thence North 89 degrees 54 minutes 56 seconds East, on and along the North line of the plat of Aspen Village, Section I, a distance of 278.00 feet to the Northeast corner thereof, being a point on the West line of the plat of Aboite Meadows, Section "C", Block 5, as recorded in Plat Record 37, pages 85-87, in the Office of said Recorder; thence North 00 degrees 28 minutes 02 seconds East, on and along the West line of the plat of Aboite Meadows, Section "C", Block 5, a distance of 425.36 feet to the Northwest corner thereof, being a South corner of the plat of Emerald Lake at Covington, as recorded in Plat Record 48, page 156, in the Office of said Recorder; thence North 89 degrees 13 minutes 49 seconds West, on and along the South line of the plat of Emerald Lake at Covington, a distance of 1321.88 feet to the point of beginning, containing 13.027 acres of land.

Exhibit "B"
Easement Agreement

[Attach Easement Agreement here.]

Prepared by:

Landmark Infrastructure Holding Company LLC
c/o Landmark Dividend LLC
P.O. Box 3429
El Segundo, CA 90245
TC: 154560-4
Attn: Legal Department

Return after recording to:

LINEAR TITLE & CLOSING, LTD.
Attn: Commercial Division
127 John Clarke Road, First Floor
Ocean Technology Plaza
Middletown, RI 02842
LMD-478443-P

Telecommunication Easement Agreement

Aboite Water Tower

This Telecommunication Easement Agreement ("***Agreement***") entered into this ____ day of ____, 2016 ("***Effective Date***") by and between the **City of Fort Wayne**, an Indiana municipal corporation whose address is 200 East Berry Street, Suite 240, Fort Wayne, Indiana 46802 **by and through its Board of Public Works ("*Grantor*" or "*City*") and Landmark Infrastructure Holding Company LLC**, a Delaware limited liability company whose address is 2141 Rosecrans Avenue, Suite 2100, El Segundo, California 90245 ("***Grantee***"). All references hereinafter to "**Grantor**" shall include its successors and assigns as owner(s) of the Property (as defined below). All references hereinafter to "**Grantee**" shall include its successors and permitted assigns. Grantor and Grantee referenced herein individually as a "**Party**" and collectively as the "**Parties**".

Recitals

Whereas Grantor is the owner of that water tower ("**Water Tower**") and the real property of approximately thirteen (13) acres on which the Water Tower is located ("**Land**") (Water Tower and Land hereinafter collectively "**Property**") commonly known as the Aboite Water Tower and located at 9810 Bronco Road, City of Fort Wayne, County of Allen and State of Indiana, 46814 as more particularly described on **Exhibit A** attached hereto; and

Whereas, Grantor currently leases certain portions of the Property for wireless services pursuant to the agreements listed on **Exhibit B** attached hereto ("**Assigned Agreements**", with all references herein to the terms or conditions of the Assigned Agreements meaning to their terms or conditions on the Effective Date unless expressly stated "as from time to time in effect"); and

Whereas the Grantor and the Grantee are entering into this Agreement pursuant to a Purchase and Sale of Telecom Easement and Assignment Agreement between them relating to this Water Tower (there being concurrent transactions relating to three separate water towers) of even date herewith ("**Purchase and Sale Agreement**");

Now, Therefore, in consideration for the payment agreed in the Purchase and Sale Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee do hereby agree as follows:

1. Grant of Easement. Grantor hereby grants, bargains, sells transfers and conveys to Grantee:
 - a. A limited exclusive easement to those areas (i) on the exterior of the Water Tower as attachment points for antennas ("**Attachment Area Easement**"), (ii) on the Land for equipment shelters and related ground based equipment, and (iii) above the Land for the ice bridge connecting the ground based equipment to the Water Tower ((ii) and (iii) collectively the "**Equipment Area Easement**"), that are leased by Grantor pursuant to the Assigned Agreements (collectively the "**Communications Easement**") for the transmission and reception of wireless telecommunication signals and the construction, maintenance, repair, replacement, improvement, operation and removal of telecommunications facilities, including antennas, antenna support brackets, shelters, fences, gates, cabling, wiring and related facilities but not including towers (collectively, the "**Facilities**") and any ancillary activities and uses specifically related thereto (collectively, the "**Permitted Use**") including, but not limited to those necessary for Grantee to comply with the obligations if any, that it will assume under the Assigned Agreements together with the right as set forth in Section 7 to enter the Property and access the Easements (as defined below).
 - i. Without Grantor's prior written consent, and subject to the terms and conditions of the Assigned Agreements for so long as they are in effect (a) only antennas, cables, wiring and related small, lightweight antenna-mounted electronics are allowed on the Water Tower, (b) the height of any Facilities installed after the Effective Date shall not exceed the height of the Facilities located on or near the top of the Water Tower as of the

Effective Date, and (c) the height of any Facilities located on the side of the Water Tower tank shall not exceed the height of the top of such tank.

- ii. The Communications Easement hereby granted herein is exclusive only to the extent that it grants rights (a) regarding the transmission and reception of wireless communication signals (or any replacement technology) and the installation and operation of Facilities and ancillary uses relating thereto (b) for those areas on the Water Tower and Land being leased under the Assigned Agreements on the Effective Date. Grantor and its present and future tenants and occupants of the Property have the right to place, maintain, and operate improvements on portions of the Property other than the Communications Easement area, provided such uses do not interfere with the then existing rights of Grantee, Grantee's tenants or Customers, including but not limited to for:
 - 1. Public safety communications, remote meter reading or SCADA (supervisory control and data acquisition) by Grantor or others, and
 - 2. Leases or licenses by Grantor to wireless telecommunications providers who may compete with Customers, and
 - 3. Other improvements using frequencies licensed to the user by the Federal Communications Commission ("*FCC*") or allowed by the FCC for unlicensed use;

- b. A non-exclusive easement (the "*Access and Utility Easement*") in, to, under and over the portion of the Property as set forth in the Assigned Agreements (and if not so set forth, as in place on the Effective Date or otherwise reasonably specified by Grantor):
 - i. for ingress and egress between the Equipment Area Easement and public roads, and for the installation, repair, replacement, improvement, maintenance, operation and removal of utilities providing services to the Communications Easement and the Facilities; and

 - ii. from where the ice bridge attaches to the Water Tower thence to the Attachment Area Easement (such as by means of interior shafts conduits or other space inside and on the Water Tower hereinafter reasonably designated by Grantor) necessary to install cables, wiring, and related items necessary to operate the Facilities, and for access to the Attachment Area Easement for installation, maintenance, repair, replacement and the like.

 - iii. Subject to the Assigned Agreements, the Access and Utility Easement or portions thereof may be relocated upon mutual consent of the Parties, not to be unreasonably withheld.

- c. The Communications Easement and the Access and Utility Easement are collectively referred to herein as the “**Easements**” and are described with more particularity on Exhibit C.
2. Assignment. Grantor hereby transfers and assigns to Grantee, as of the Effective Date, all of Grantor’s right, title and interest in, to and under the Assigned Agreements, including without limitation, all rents, security deposits, and other monies due Grantor (except for reimbursements due Grantor for taxes, utilities or other services as set forth below, which are expressly reserved herein by Grantor) specified therein; provided however, that Grantor shall retain and continue to faithfully perform and discharge the following obligations as licensor or lessor under and as set forth in the Assigned Agreements: access, approving changes in Customers, approving changes in Facilities (or synonyms or comparable terms for same, as used in the Assigned Agreements) quiet enjoyment, non-interference, cooperation, payment of taxes (if any, municipal property being exempt from tax under Indiana law), including but not limited to real estate and property taxes assessed on the Water Tower, repair and maintenance of the Water Tower, and Grantee shall assume all other obligations; and further provided that Grantor shall retain and continue to faithfully perform and discharge the following rights as licensor or lessor under and as set forth in the Assigned Agreements: interference, approving changes in Customers and approving changes (or synonyms or comparable terms for same, as used in the Assigned Agreements) in Facilities. Except as otherwise as set forth herein, Grantor is not responsible for the terms of the Assigned Agreements or inconsistencies, if any, between the Assigned Agreements and agreements between Grantor and Grantee. The Parties intend that this Agreement serve as an assignment and transfer to Grantee of all rents due Grantor after the Effective Date pursuant to the Assigned Agreements, but not as an assignment of any payments for taxes, utilities or other non-rent charges due Grantor from licensees or lessees under the Assigned Agreements. Grantee assumes and agrees to perform the obligations and liabilities of Grantor under the Assigned Agreements to the extent that such obligations and liabilities (i) are not the retained responsibility of Grantor pursuant to the terms of this Agreement (which include the obligations as set forth above retained by the Grantor), and (ii) accrue on or after the Effective Date.
3. Use of Easements. In the event of the expiration or termination either or both of the Assigned Agreements, Grantee shall have the right to lease, license, transfer or assign (the “**Replacement Agreements**”), in whole or in part, or permit the use of the Easements and/or its rights under this Agreement for the balance of the Term (as defined below) to third parties and their affiliates, lessees, agents, contractors, invitees and employees (collectively, together with the tenant under the Assigned Agreements, “**Customer(s)**”) on non-monetary terms that are substantially similar to those set forth in the License Agreement dated March 18, 2015 between Grantor as Licensor and SprintCom, Inc., a Kansas Corporation, as Licensee (which License Agreement relates to Grantor’s DuPont water tower, and which Grantee is concurrently purchasing with documents substantially similar to this Agreement and Purchase and Sale Agreement). The Replacement Agreements shall not be in conflict with this Agreement or still-existing Assigned Agreement and shall not expand the liability or obligations of the Grantor beyond its liabilities or obligations under the Assigned Agreements. All Customers shall be bound by the terms and conditions of this Agreement. In particular, all Customers shall be communications services providers; and shall be liable

directly to Grantor for violations of this Agreement. Notwithstanding anything to the contrary as set forth herein, except for emergencies, if Grantor desires to enforce any rights or remedies of lessor under the Assigned Agreements or Replacement Agreements with respect to obligations as set forth therein, then Grantor shall deliver to Grantee a written notice of a default by a Customer (a "*Lessee Default Notice*") which Grantor believes to exist under the Assigned Agreements or Replacement Agreements, identifying which of the foregoing obligations under the Assigned Agreements or Replacement Agreements are in default by a Customer, and describing in reasonable detail the manner and time in which the default by the Customer occurred or arose. Grantee may elect, in its sole and absolute discretion, but shall not be required, by delivery of written notice to Grantor within thirty (30) calendar days after receipt of the Lessee Default Notice, to enforce the rights and remedies of lessor under the Assigned Agreements or Replacement Agreements against Customers with respect to such default. If Grantee delivers such notice, then Grantee shall have the exclusive right to enforce the rights and remedies of lessor under the Assigned Agreements or Replacement Agreements with respect to such default, and shall diligently pursue the enforcement thereof to the extent commercially reasonable. If Grantee does not deliver such notice, then Grantor may enforce the rights and remedies of lessor under the Assigned Agreements or Replacement Agreements against Customers with respect to such default, provided that Grantor shall not enforce any right or remedy against a lessee or Customer other than for compensatory damages and/or specific performance. Customers shall have the financial, legal and technical qualifications necessary to comply with this Agreement and applicable law, including all licenses from the Federal Communications Commission or successor agency needed for the operation of telecommunications equipment on the Property in full compliance with applicable law. Upon request, Grantee shall provide Grantor with documentation evidencing the preceding.

4. Duration. The duration of the Easements granted herein ("*Term*") shall be until June 28, 2053, provided, however, that at any time during the Term, Grantee may provide to Grantor (or the successor owner(s) of the Property) written, recordable notice of Grantee's intent to terminate this Agreement, in which event this Agreement and all obligations of Grantee hereunder, except those related to removal of Facilities contained in Section 6(b), shall terminate upon Grantor's receipt of written notice of termination pursuant to Section 15 hereof, but any obligations that accrued prior to the termination date shall not be affected. In the event that the use of the Easements is abandoned (as described in this Section 4) by Grantee or its successors, then Grantor may terminate the Easements as set forth below. Following such termination, all right and title to the Property with respect to the Easements granted herein, the Assigned Agreements and any Replacement Agreements shall revert back to Grantor or the successor owner(s) of the Property. Abandonment shall be deemed to have occurred if neither Grantee nor any of its Customers utilize (such use shall be construed broadly to include, but not be limited to, use of the property for the transmission and reception of telecommunications signals, maintenance of the Facilities, and maintenance and/or upkeep of the Easements) the Easements in any manner for a consecutive period of thirty-six (36) months. In the event of abandonment or termination as set forth herein, Grantee shall, at Grantor's request, execute and record any and all instruments and/or documents reasonably required to show of public record the termination of the Easements. If Grantee fails to execute and record such instruments and/or documents within thirty (30)

days of Grantor's request, then Grantor may execute and record such instruments and/or documents on Grantee's behalf. Notwithstanding the foregoing, nothing herein shall be deemed to be a grant of a power of attorney, revocable or otherwise, by Grantee to Grantor for the execution and recordation of such documents reflecting a public record of the termination of the Easements and any interests transferred hereunder.

5. Easement Consideration. Grantor hereby acknowledges the receipt, contemporaneous with the recording of this Agreement, of the agreed-upon *Initial Purchase Price* (payable under and as defined in the Purchase and Sale Agreement (as defined above) between the Parties for this transaction).

- a. As additional consideration ("*Additional Consideration*") Grantee shall pay Grantor as to each of the Assigned Agreements an amount equal to seventy-five percent (75%) of the increase in rent which Grantee receives from Customers from Replacement Agreements or otherwise after the earlier of the termination of such Assigned Agreements or the expiration date currently set forth in such Assigned Agreement. The increase shall be computed compared to the rent then scheduled under the Assigned Agreement.
- b. Additional Consideration shall be paid to Grantor monthly, within thirty (30) days from the receipt of such consideration by Grantee or its affiliates during the prior calendar month. "Paid to Grantor" means received by Grantor.
- c. Any Additional Consideration not paid by the due date shall be assessed a 5% late fee and shall bear interest at 2% per month or (if less) at the highest rate then allowed by law.
- d. Additional Consideration shall be paid to Grantor at such address, or by such electronic means, as it may from time to time specify.
- e. No more than once per calendar year, upon request, Grantee shall provide all ledgers, books of account, other documents or electronic equivalents of the preceding needed for Grantor to audit such payments. The preceding items shall be provided to the auditor at the auditor's normal place of business or at such location in Allen County, Indiana as Grantor may specify, and Grantor shall cooperate with Grantor in any such audit.

6. Improvements; Utilities.

- a. Grantee acknowledges that the Property and Water Tower are part of a public water system which provides potable water to thousands of persons, both inside and outside the City, as well as the location for public safety and public utility communications systems, and that the safety and security of the public water system and such communications systems is at all times paramount in interpreting and applying this Agreement and this Section 6 in particular. The provisions of this Section 6.a. supersede any contrary provisions of this Agreement.

- b. Except as otherwise provided in an Assigned Agreement for so long as it is in effect, Grantee and its Customers may at their discretion and expense, construct (or replace) improvements in, to, under and over the Easements in accordance with this Agreement, including in particular subsections 6(e)-(h) below, all of which improvements shall be deemed part of the Facilities. The Facilities shall not be considered or deemed fixtures and shall remain the personal property of Grantee and its Customers, as applicable, and shall be removable at any time at the discretion of Grantee and its Customers and Grantor shall possess no right, title or interest therein, including without limitation, pursuant to any statutory landlord's lien, if applicable. At the expiration or earlier termination of this Agreement, Grantee shall remove or cause to be removed all Facilities installed by it or its Customers on the Property. Except as otherwise required by the Assigned Agreements, in the event any utilities necessary to serve the Facilities cannot be installed within the Easements, Grantor agrees to cooperate (at no cost to Grantor) with Grantee in granting Grantee the right to locate such utilities on the Property at locations reasonably acceptable to Grantor; provided that Grantee or its Customers shall pay the costs and fees charged by the utilities for same, and any reasonable costs related thereto actually incurred by Grantor; provided, further, Grantor shall not require the payment of any other fees or compensation to Grantor. Grantor shall, upon Grantee's request, execute and record a separate easement agreement in form and substance reasonably satisfactory to Grantor with Grantee or the utility company providing the utility service to reflect such easement. At Grantee's sole expense, Grantor will cooperate with Grantee to apply for and obtain any and all licenses, permits, consents or approvals which may be required in connection with the use of the Easements by Grantee or Customers and as necessary to comply with applicable laws, statutes or regulations, provided that no such application, licenses, permits, consents or approvals shall impose any obligation on Grantor or the Property that is not acceptable to Grantor.
- c. Except as otherwise provided in the Assigned Agreements for so long as it is in effect, Grantee and Customers at their expense shall repair any and all damage caused or contributed to by the installation, construction, operation, maintenance, upgrade, repair or removal of the Facilities (or at Grantor's option reimburse Grantor for the reasonable cost and expense of such repair). Except as set forth in the Assigned Agreements, Grantee and Customers hereby indemnify Grantor with respect to any damage or loss to property or personal injury resulting from the installation, construction, operation, maintenance, upgrade, repair or removal of the Facilities.
- d. Grantee and Customers shall continue to obtain electric service directly from the area electric utility (not from or through Grantor) which shall be paid for by Grantee or Customers.

- e. Except as otherwise provided in an Assigned Agreement for so long as it is in effect, prior to the installation of or any change in Facilities by Grantee or Grantee's Customer, Grantee shall submit or cause to be submitted plans and specifications to Grantor with respect to such Facilities for Grantor's approval, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, unless otherwise provided in an Assigned Agreement for so long as it is in effect, Grantor may withhold its consent to any proposed installation or change that Grantor reasonably determines would materially and adversely affect the (A) Water Tower's structure or systems, or (B) the matters described in Subsection 6.a above. In addition, unless otherwise provided in an Assigned Agreement for so long as it is in effect, Grantor may withhold or condition its approval if the work shown on the plans and specifications will unduly affect or increase the cost of the maintenance, repair or operation of the Water Tower or Property or impair Grantor or its tenants' quiet use or enjoyment of same; or if the work, plans and specifications do not comply with all building and safety codes, applicable national standards, such as ANSI/TIA 222-G (the Structural Standards for Steel Antenna Towers and Antenna Supporting Structures safety code) and later revisions thereto, public water system industry standards (such as those of the American Water Works Association) or sound engineering practice, all without regard to any Federal law, rule, decision or regulation, including Sections 6003 and 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, which preempts, restricts or impairs the application or enforcement the preceding. No review or approval of plans or specifications by Grantor shall ever be construed as representing or implying that such plans or specifications will, if followed, result in a properly designed installation or that such standards comply with pertinent law, building and safety codes, applicable national standards, sound engineering practice or this Agreement.
- f. The "plans and specifications" referred to in subsection (e) shall include: (i) engineering drawings showing the Facilities both as they then exist and with the proposed changes, signed and sealed by a registered professional engineer licensed in Indiana, (ii) a structural analysis signed and sealed by a registered professional engineer licensed in Indiana; (iii) detailed welding procedures, such as to minimize the risk of any burn through of portions of the Water Tank holding water; (iv) if any of the changes may affect the Water Tank shell or its coating, the recommendations of a water tower engineering firm acceptable to Grantor regarding same, and (v) specifications for the treatment, painting or coating of the Facilities and areas worked on so as to match the existing tank color and minimize corrosion.
- g. Except as otherwise provided in an Assigned Agreement for so long as it is in effect, if Grantor so requests, before commencement of any work or delivery of any materials to the Property or the Water Tower, Grantee or its Customer shall furnish to Grantor for its reasonable approval: architectural plans and specifications, names and addresses of all contractors, contracts, all necessary

permits and licenses, certificates of insurance and instruments of indemnification against any and all claims, costs, expenses, damages and liabilities which may arise in connection with such work, all in such form and amount as may be reasonably satisfactory to Grantor. Grantee or its Customers agree to hold Grantor and its agents and employees forever harmless against all claims and liabilities of every kind, nature and description which may arise out of or in any way be connected with such work. Grantee or its Customers shall pay the cost of all such work. All such work shall: (i) be done in compliance with all applicable legal and governmental requirements, ordinances and rules, and all requirements of applicable insurance companies; (ii) be done in a good and workmanlike manner and with the use of good grades of materials including fire protection grades equivalent with those of the Water Tower; (iii) not adversely affect the structural integrity or the mechanical, electrical, communications, plumbing, sanitary or other systems of the Water Tower or exceed applicable design load limits; (iv) not entail cutting or boring into any structural portion of the Water Tower, except with Grantor's prior written consent, which consent may be granted or withheld in Grantor's sole discretion; and (v) not entail welding on the those portions of the Water Tower which are designed to hold or conduct water, except with Grantor's prior written consent, which consent may be granted or withheld in Grantor's sole discretion.

- h. Upon completion of any work referenced above, Grantee or its Customer shall (i) furnish Grantor with contractors' affidavits and final waivers of lien covering all labor, services and materials expended, (ii) reimburse Grantor for the reasonable cost of an inspection by engineers of Grantor's choosing of the work for compliance with the plans, specifications and procedures for such work, (iii) pay (or reimburse Grantor for) the cost of any needed remedial work and reinspection, and (iv) provide Grantor with as-built engineering drawings of the work showing the actual location of all Facilities, equipment and improvements signed and sealed by a registered professional engineer licensed in Indiana.

7. Access. Except as set forth in the Assigned Agreements as of the Effective Date, Grantee and Customers shall have twenty-four (24) hour per day, seven (7) day per week non-exclusive pedestrian and vehicular access to and over the Property, from an open and improved public road to the Easements for the installation, maintenance and operation of the Facilities and any utilities serving the Facilities ("**Access**") as is set forth below:

- a. Access to the interior and exterior (sides, roof, skirt) of the Water Tower is only allowed when accompanied by an authorized City representative. Only the City will have a key (or similar device) for access to the Water Tower - - Grantee, Customers and their employees, agents, and subcontractors will not.
- b. Access by Grantee, Customers and their employees, agents, and subcontractors for all scheduled work shall only be on days and at times when the main administrative offices of the City of Fort Wayne are open for business, with two (2) business days advance notice to Grantor and with a Grantor representative

accompanying Grantee, Customers or their employees, agents, and subcontractors (if Grantor so requires).

- c. Only emergency work may be done by Grantee, Customers and their employees, agents, and subcontractors on days or at times other than those set forth in (b). Access for such emergency work shall only be with advance notice to Grantor at Grantor's 24-hour security or emergency number, and with a Grantor representative accompanying Grantee (if Grantor so requires).
- d. Access shall be exercised in accordance with Grantor's security procedures as from time to time in effect, including promptly reimbursing Grantor for all costs of a City representative accompanying the person(s) granted access, including callout time and charges, overtime for employees and the like; shall be in compliance with all applicable laws; shall not materially interfere with Grantor's operations; and shall be exercised with reasonable care.
- e. Grantee acknowledges that in the event it, Customers, or their employees, agents or subcontractors obtains Access to the Property in violation of the preceding provisions that Grantor and the public could incur significant damage and that such violation shall be a default under this Agreement entitling Grantor to obtain immediate injunctive relief or bar future access by Grantee or Customers until Grantor is provided reasonable assurances of compliance with this Section.

8. Covenants and Agreements of Grantor.

- a. Grantor represents and warrants that it is the owner in fee simple of the Property, free and clear of all liens and encumbrances (except for the Assigned Agreements, items of record or matters that have been approved or deemed approved by Grantee), and that it has the right to grant the Easements and assign the Assigned Agreements. Grantor further represents and warrants that Grantee shall peaceably and quietly hold and enjoy the Easements during the Term without any hindrance, molestation or ejection by any Party claiming through Grantor, subject to the terms of this Agreement.
- b. During the Term, Grantor shall pay when due all real property taxes and all other taxes, fees and assessments, if any, attributable to the Property (collectively, "***Real Property Taxes***"). If Grantor fails to pay before delinquency the Real Property Taxes, Grantee shall have the right but not the obligation to pay such taxes after first having given Grantor no less than ten (10) days' notice before any such payment by Grantee, and thereafter demand payment from Grantor, which payment Grantor shall make within ten (10) days of such demand by Grantee, with interest at ten percent (10%) per annum from the date of Grantee's notice until fully paid.

- c. Grantor shall use commercially reasonable efforts to ensure that utilities are available to the Water Tower (subject to interruptions outside Grantor's control and Force Majeure (as defined below)).
- d. Grantor shall use commercially reasonable efforts to maintain the Water Tower and the Property at all times in good condition (subject to casualty damage, economic obsolescence, matters outside Grantor's control and Force Majeure) and (subject to Section 8(c) below) in material compliance with all applicable laws, statutes and regulations, except that Grantor is excused from complying with burdensome changes in laws, statutes, regulations or other legal requirements affecting the Water Tower unless Grantee pays its proportionate share of the cost of compliance, based on the square footage of the Communications Easement divided by the square footage of rentable space on the Water Tower.
- e. Grantor shall not grant, create, or suffer any claim, lien, encumbrance, easement, restriction or other charge or exception to title to the Property that would materially adversely affect Grantee's use of the Easements.

9. Covenants and Agreements of Grantee. Grantee acknowledges that it and its Customers shall use the Property only for the Permitted Use. In connection with its use pursuant to this Agreement, Grantee agrees that it will:

- a. Comply with all local, state and federal laws, ordinances, rules, regulations, standards and other requirements applicable to Grantor, Grantee and/or to the operations of Grantee and its Customer(s), including, without limitation, those relating to zoning, health, safety and protection of the environment, and Hazardous Materials. As used in this Agreement, "Hazardous Materials" shall include any and all ignitable, explosive, corrosive, toxic, reactive or radioactive materials, hazardous wastes, hazardous substances, petroleum products or substances containing petroleum hydrocarbons, and other substances that are dangerous or harmful to human health or the environment, including without limitation: (1) any substances defined as or included within the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances," "hazardous pollutants" or "toxic pollutants," in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act or the Clean Water Act, or any amendments thereto, or any regulations promulgated thereunder; (2) any "PCBs" or "PCB items" (as defined in 40 C.F.R. §761.3); or (3) any "asbestos" (as defined in 40 C.F.R. §763.63).
- b. Following the expiration or termination of either the Assigned Agreements or Replacement Agreements, maintain, or cause Customers to maintain, the Communications Easement and the Facilities at all times in good condition (subject to casualty damage, matters outside Grantee's control and Force Majeure) and in compliance with all applicable laws, statutes and regulations.

- c. Be responsible for ensuring that the Facilities and Easements comply with all applicable laws and regulations, including real estate laws and regulations, and indemnify Grantor for any non-compliance with such laws and regulations.
- d. Both maintain itself, and cause all Customers to obtain and maintain, a policy of commercial general liability insurance naming Grantor as an additional insured, with liability limits of not less Two Million Dollars (\$2 million dollars) per occurrence/Five Million Dollars (\$5 million dollars) aggregate for bodily injury or death or persons and property damage liability. Such insurance shall be on an occurrence and not a claims made basis, with no self-insured retention, from a carrier rated at least "A minus" by A.M. Best Company (or comparable rating from successor rating agency), with ten (10) days prior written notice to Grantor required prior to any termination of such policy, and which limits may be satisfied by a combination of underlying (basic) policy plus umbrella and/or excess coverage limits. Grantee may satisfy these requirements by obtaining the appropriate endorsement(s) to any master policy(ies) of liability insurance Grantee may maintain. Grantor may increase the insurance amount annually, but not by more than the preceding amount increased by the rate of inflation. Upon its execution of this Agreement, Grantee shall deliver to Grantor a certificate of insurance evidencing the coverage required by this subsection (d), and thereafter within fifteen (15) days upon request by Grantor. Notwithstanding the foregoing, Grantor shall not settle or any insurance claim relating to the Easements without Grantee's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.
- e. Following expiration or termination of the Assigned Agreements or Replacement Agreements, pay, or cause Customers to pay (i) all Real Property Taxes or other taxes, fees or assessments levied against or attributable to the Facilities from and after the Effective Date, and (ii) any increase in Real Property Taxes or other taxes, fees or assessments levied against the Property which are directly attributable to Grantee's or its Customer's use of the Easements or the Property (but not, however, taxes, fees or assessments attributable to periods prior to the Effective Date). In the event Grantor furnishes reasonable proof of such increase to Grantee, that such increase in taxes, fees or assessments is attributable to the Customer's use or equipment, then Grantor shall be reimbursed by such Customer directly. If the Customer does not reimburse Grantor within forty-five (45) days of Grantor's notice, Grantor may enforce its rights and remedies pursuant to Section 3 of this Agreement.
- f. In addition, and not in limitation of subsections (a) and (c) above, in the event of the expiration or termination of any of the Assigned Agreements or Replacement Agreements, operate and maintain the Facilities, and cause Customers to operate and maintain the Facilities, in compliance with all applicable laws, ordinances, rules, regulations and other requirements relating to telecommunication facilities,

including those laws, ordinances, rules, regulations and other requirements relating to radio frequency emissions by such facilities.

- g. Except as expressly set forth herein, accept the Easements and the Property in their "As-Is, Where-Is" condition.

10. Non-Disturbance.

- a. During the Term, subject to Section 6 and other applicable provisions of this Agreement, Grantor shall not prevent or materially impair: Grantee's, Customers' or utilities' access to the Easements; or the transmission of telecommunications signals to and from the Easements. In the event any of the foregoing has occurred, Grantee shall promptly notify Grantor in writing, and provide reasonable detail of any alleged disturbance, as well as any requested action. Grantor, for itself, its successors and assigns, hereby agrees to use its best efforts to prevent the occurrence of any of the foregoing, and shall promptly undertake any remedial action reasonably necessary to do so. Notwithstanding the foregoing, Grantee acknowledges that, from to time, in connection with repairs, maintenance, destruction, dismantling, removal or replacement of the tank or other portions of the Water Tower, Grantee's access to the Easements may be limited, and the transmission of telecommunications signals to and/or from the Easements may be impaired. Grantor shall provide prior reasonable notice to Grantee (except in the event of emergency), and shall take reasonable actions to minimize any such disruption to Grantee's access to the Easements or any impairment of the transmission of telecommunications signals, which shall include including allowing Grantee or its Customers at their expense to relocate their Facilities to a mutually agreeable location elsewhere in or on the Water Tower, or installing and operating temporary cell towers (such as so-called cell towers on wheels) at a mutually agreeable location, such as on the Land. If the circumstances require a permanent relocation of the Facilities, then they shall be relocated by Grantee or its Customers at their expense to a mutually agreeable new location, such as on the Land, and this Agreement amended accordingly.
- b. During the Term, Grantee and Customers shall not prevent or materially impair: Grantor's, its tenants or utilities access to non-exclusive portions of the Easements; or prevent or materially impair the transmission of telecommunications signals to and from portions of the Property other than the Communications Easement. In the event any of the foregoing has occurred, Grantor shall promptly notify Grantee in writing, and provide reasonable detail of any alleged disturbance, as well as any requested action. Grantee, for itself, its Customers, successors and assigns, hereby agrees to use its best efforts to prevent the occurrence of any of the foregoing, and shall promptly undertake any remedial action reasonably necessary to do so. In the event Grantee fails to promptly undertake remedial action, Grantor shall have the express right to seek an injunction to prevent any of the activity prohibited by this Section or require

Customers to shut down interfering communications equipment (except for short tests to help remove the interference) until the interference is removed.

11. Grantor Covenants with respect to Assigned Agreements. As of the Effective Date, Grantor represents, warrants and agrees that (i) it has delivered to Grantee true, correct and complete copies of the Assigned Agreements and any amendments or modifications thereto, (ii) to the best of Grantor's knowledge, Customers under the Assigned Agreements are not in material default of any of its obligations thereunder, (iii) Customers under the Assigned Agreements have not provided written notice of (A) any intent not to exercise a right of renewal or extension of the term, or (B) any exercise, or any intent to exercise any early termination available under the Assigned Agreements, (C) any notice of default of Grantor's obligations under the Assigned Agreements, and (iv) Customers under the Assigned Agreements have not requested or been granted a reduction in rental amount or fees or escalator due under the Assigned Agreements, except as specifically set forth in the documents provided to Grantee. From and after the Effective Date, except as allowed under this Agreement, Grantor shall not without the prior written consent of Grantee, amend or modify the Assigned Agreements in any respect or exercise any rights granted by Grantor to Grantee under this Agreement, including without limitation the right to exercise remedies under the Assigned Agreements. Except as specifically set forth in this Agreement, Grantor shall comply with all obligations of lessor/licensor under the Assigned Agreements which relate to the use, ownership, and operation of the Property and shall not take any action that may result in a default under the Assigned Agreements. In the event of any alleged default caused by Grantor, Grantor shall take all reasonable actions to cure any actual default.

12. Grantee Covenants with Respect to Assigned Agreements. From and after the Effective Date, Grantee shall not, without the prior written consent of Grantor (which shall not be unreasonably withheld or conditioned), amend or modify the Assigned Agreements in any manner which would have the effect of increasing or extending the obligations or liabilities of Grantor or successor owner(s) of the Property, potentially affect the potable water system or extend the term of such agreements beyond either (a) the maximum term provided in an Assigned Agreement as it exists on the Effective Date, or (b) the expiration or termination of this Agreement. Within thirty (30) days of entering into any amendment or modification of an Assigned Agreement, whether or not Grantor's consent is required, Grantee shall use reasonable efforts to provide to Grantor true, correct and complete copies thereof, but Grantor acknowledges that the failure of Grantee to provide such copies will not constitute a default under this Agreement. Grantee acknowledges that any and all amendments or modifications to the Assigned Agreements shall require compliance with this Agreement to the extent applicable (for example, any construction or replacement of Facilities shall comply with the requirements of Section 6 above).

13. Grantee Covenants with respect to Replacement Agreements. From and after the Effective Date, Grantee may enter into Replacement Agreements with Customers as set forth in Section 3 above. Grantee agrees that such agreements and amendments and modifications of them shall not, without the prior written consent of Grantor (which shall not be unreasonably withheld or conditioned), increase or extend the obligations or liabilities of Grantor (or successor owner(s) of the Property) or have a term or duration extending beyond the expiration of this

Agreement or potentially affect the potable water system. Within thirty (30) days of entering into any Replacement Agreement with a Customer (or an amendment thereto), whether or not Grantor's consent is required, Grantee shall use reasonable efforts to provide to Grantor a true, correct and complete copy thereof, but Grantor acknowledges that the failure of Grantee to provide such copies will not constitute a default under this Agreement. All Customers shall acknowledge they are bound by the terms and conditions of this Agreement to the extent applicable (for example, any construction or replacement of Facilities shall comply with the requirements of Section 6 above).

14. Default; Remedies.

- a. In the event of Grantee's default under this Agreement, Grantor shall provide Grantee with written notice specifying in reasonable detail the nature of such default, and Grantee shall promptly take such actions as are reasonably necessary to cure such default. In the event Grantee does not commence such cure within sixty (60) days after receipt of such notice and diligently complete the cure, Grantor may pursue any or all remedies available at law and in equity, including, but not limited to, monetary damages and injunctive relief.
- b. In the event of Grantor's default under this Agreement, Grantee shall provide Grantor with written notice specifying in reasonable detail the nature of such default, and Grantor shall promptly take such actions as are reasonably necessary to cure such default. In the event Grantor does not commence such cure within sixty (60) days after receipt of such notice and diligently complete the cure, Grantee may pursue any or all remedies available at law and in equity, including, but not limited to, monetary damages and injunctive relief.

15. Notices. All notices required to be given under this Agreement, unless otherwise stated, shall be in writing and delivered in person or by a national overnight delivery service (and shall be effective when received, when refused or when the same cannot be delivered) to the appropriate Party at the address set forth below (or at such other address designated in writing pursuant to the terms hereof):

To Grantor: Board of Public Works
City of Fort Wayne
Attn: Director of City Utilities
200 East Berry Street
Suite 240
Fort Wayne, Indiana 46802

With a copy (which does not satisfy the notice requirement) to:

City Attorney
200 East Berry Street
Suite 430
Fort Wayne, Indiana 46802

To Grantee: Landmark Infrastructure Holding Company, LLC
c/o Landmark Dividend LLC
P. O. Box 3429
2141 Rosecrans Ave., Suite 2100
El Segundo, CA 90245
Attn: Legal Dept.

16. Indemnity. Grantor (if and to the extent allowed by law) and Grantee shall each indemnify, defend and hold the other harmless against any and all costs (including reasonable attorney's fees), damages, and claims of liability or loss arising (a) out of the breach of any representation, warranty or covenant of such indemnifying Party set forth herein, and (b) out of the use and/or occupancy of the Property and the Easements by the indemnifying Party, but excluding in each instance any claims to the extent arising from the negligence or intentional misconduct of the indemnified Party. Grantee acknowledges that the foregoing indemnity by Grantor does not include any costs, damages, or claims of liability or loss arising out of any action, negligence or intentional misconduct of any third party, including, without limitation, any tenant(s) of the Property. Grantee further acknowledges that the foregoing indemnity by Grantee does include any costs, damages, or claims of liability or loss arising out of any action, negligence or intentional misconduct of any Customer of Grantee.

17. Environmental Representations.

- a. Grantor Environmental Representation. Grantor represents that to the actual knowledge of its City Engineer without investigation that it has no knowledge of any substance, chemical or waste (collectively "**Hazardous Substance**") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Grantor shall not introduce or use (or permit the use of) any Hazardous Substance on the Property in violation of any applicable federal, state or local environmental laws. Grantor shall be responsible for (and shall promptly conduct any investigation and remediation as required by any applicable environmental laws) all spills or other releases of any Hazardous Substance caused by Grantor, that have occurred or which may occur on the Property.
- b. Grantee Environmental Representations. Grantee shall not introduce or use, and in all Replacement Agreements shall bar Customers from introducing or using, any Hazardous Substance on the Property or the Easement in violation of any applicable federal, state or local environmental laws. Notwithstanding the foregoing, Grantee shall not be responsible for any Hazardous Substances arising or present on or before the Effective Date. The liability of Grantee for any claims with respect to any Hazardous Substances at the Property or the Easement shall be limited to contamination by a release of a Hazardous Substance by Grantee or a Customer after the Effective Date, and in violation of any applicable federal, state or local environmental laws.

- c. Mutual Indemnification. Each Party (Grantor, if and to the extent allowed by Indiana law) agrees to defend, indemnify, and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to damages, costs, expenses, assessments, penalties, fines, cleanup, remedial, removal or restoration work required by any governmental authority, losses, judgments and reasonable attorneys' fees that the indemnified Party may suffer or incur due to the existence or discovery of any Hazardous Substance on the Property caused by the other party. This indemnification shall also apply to the migration of any Hazardous Substance to other properties, and the release of any Hazardous Substance into the environment that relate to or arise from the indemnitor's activities on the Property. Grantor agrees to defend, indemnify, protect and hold Grantee harmless from claims resulting from actions on the Property not caused by Grantee prior to, and during the Term of, this Agreement. This indemnification shall survive the termination or expiration of this Agreement.

18. Estoppel. Within 15 days after either Grantor's or Grantee's written request, the other Party shall execute and deliver to the requesting Party a statement (i) certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and whether any options granted to Grantee pursuant to the provisions of this Agreement have been exercised, (ii) certifying that there are no sums due from Grantee (or, if there are sums due, the amount(s) due), (iii) stating whether or not, to the actual knowledge of the certifying Party, the other Party is in default in performance of any of its obligations under this Agreement, and whether the certifying Party is in default to the certifying Party's actual knowledge, and, if so, specifying each such default of which the certifying Party may have knowledge, and (iv) certifying such other facts as the requesting Party reasonably requests, it being intended that any such statement delivered pursuant hereto may be relied upon by others with whom the Party requesting such certificate may be dealing and their respective successors and/or assigns. Notwithstanding the foregoing, neither Party shall be required to sign any certificate that (i) expands, alters or otherwise amends the certifying Party's obligations hereunder; or (ii) diminishes, alters or otherwise amends the certifying Party's rights hereunder. The estoppel certificate from Grantee shall also identify any amendments or modifications of the Assigned Agreements and any Replacement Agreements with a Customer (or an amendment thereto), whether or not Grantor's consent is required, and shall attach true, correct and complete copies of all such documents, subject to any confidentiality agreements between Grantee and any Customer. In the event of any such confidentiality agreement with a Customer, Grantee shall use reasonable efforts to obtain such consent, and shall provide to Grantor such information regarding the amendment, modification or agreement as Grantee can, consistent with the confidentiality agreement.

19. Force Majeure. The time for performance by Grantor or Grantee of any term, provision, or covenant of this Agreement shall be deemed extended by time lost due to delays resulting from strikes, civil riots, floods, earthquakes, labor or supply shortages, material or labor restrictions by governmental authority, litigation, injunctions, and any other cause not within the control of Grantor or Grantee, as the case may be, and not the fault of the Party delayed in

performing work or doing acts, and where reasonable measures by such Party could not have avoided or mitigated the effects of such acts.

20. Recording. This Agreement shall be recorded at Grantee's expense. Upon such recording, Grantee shall promptly provide a true, correct and complete copy thereof to Grantor.

21. Run With Land. The easement, covenants and rights contained in this Agreement are not personal to Grantor but are appurtenant to and shall run with the land and shall be binding upon and shall inure to the benefit of all present and future owner(s) of the Property and their successors in title or interest and their permitted assigns.

22. Assignment. In addition to security assignments permitted by Section 13, Grantee may, without the written consent of Grantor, assign this Agreement, but only in its entirety and not in part, to: (i) an entity controlled by, controlling or under common control with Grantee so long as such entity has reasonably sufficient assets and liquidity to enable it to perform all of Grantee's duties, obligations and liabilities arising under this Agreement for its duration; or (ii) the Customer under an Assigned Agreement or Replacement Agreement so long as such entity has reasonably sufficient assets and liquidity to enable it to perform all of Grantee's duties, obligations and liabilities arising under this Agreement for its duration; (iii) a company publicly traded on the NYSE or NASDAQ so long as such entity has reasonably sufficient assets and liquidity to enable it to perform all of Grantee's duties, obligations and liabilities arising under this Agreement for its duration; or (iv) otherwise upon written consent from Grantor, which consent shall not be unreasonably withheld, conditioned or delayed. As to all assignments under (i) both (A) the assignee shall step into the shoes of the assignor and be responsible for all claims and defaults related to this Agreement or the Facilities whether arising prior to or after the assignment, and (B) the assignor shall not be released from liability for claims and defaults related to this Agreement or the Facilities whether arising prior to or after the assignment unless a written release is obtained from Grantor, such release not to be unreasonably withheld. For all other assignments under (ii) through (iv) the assignee shall step into the shoes of the assignor and be responsible for all claims and defaults related to this Agreement or the Facilities which arise prior to or after the assignment, and assignor shall have no further obligations thereunder.

23. Mechanic's Liens. The Property being public property, Grantee and its Customers shall never permit or allow a mechanics' or materialmen's lien, however described, to be filed against the Property or any portion thereof.

24. Lease and License. Unless specifically indicated to the contrary, for the purposes of this Agreement, the term "lease" shall have the same meaning as "license", "lessor" shall have the same meaning as "licensor", and "lessee" or "tenant" shall have the same meaning as "licensee".

25. Governing Law, Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana including the police powers of the State and its political subdivisions but without regard to its conflict of laws provisions, and venue for any suit or claim related to this Agreement shall be the courts for Allen County, Indiana, and both Parties agree not to object to venue being laid in such forum on the grounds of forum nonconveniens or any other legal theory.

26. Captions and Headings. The captions and headings in this Agreement are for convenience and shall not be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of or the scope or intent of this Agreement.

27. Cumulative Remedies. Except as otherwise expressly provided herein, each and every one of the rights, benefits and remedies provided to Grantor or Grantee by this Agreement, or by any instrument or documents executed pursuant to this Agreement, are cumulative and shall not be exclusive of any other of said rights, remedies and benefits allowed by law or equity to Grantee.

28. Counterparts. This Agreement may be executed in one or more counterparts, and by the different Parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

29. Severability. If any provision of this Agreement is deemed unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid or shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if such provision had been so limited or as if such provision had not been included herein, as the case may be. Additionally, if any laws, rules or regulations promulgated by any state, county or local jurisdiction, including without limitation those concerning zoning, subdivision or land use, or should any court of competent jurisdiction, make the sale of the Easements herein either void or voidable, Grantor agrees that upon the written request of Grantee, the grant of the Easements shall convert to a lease between Grantor, as lessor, and Grantee, as lessee, (with the Communications Easement area being the leased premises therein, and the Access and Utility Easement area remaining a non-exclusive easement for access and utility purposes) for uses consistent with those set forth in Section 3 hereof, and containing other terms and conditions acceptable to both Parties; provided if the preceding occurs that Grantee shall not be required to obtain the consent of Grantor to enter into any sublease or license of any portion of the Communications Easement or to permit sublessees or licensees to utilize the Access and Utility Easement; nor shall Grantor be entitled to any additional consideration in connection with such subleases and licenses; and provided that that the delivery of the consideration paid by Grantee to Grantor for the Easements at the execution of this Agreement shall constitute payment for such lease for the duration of the Term as described in paragraph 4 herein, or as long as permitted by applicable law, in either case no longer than the expiration of the Term.

30. Entire Understanding and Amendment. This Agreement and the Purchase and Sale Agreement entered into by and between Grantor and Grantee, and the closing documents executed in connection therewith, constitute the entire understanding between the Parties with regard to the subject matter hereof and there are no representations, inducements, conditions, or other provisions other than those expressed herein. This Agreement may not be modified, amended, altered or changed in any respect except by written agreement and signed by each of the Parties hereto.

31. Certified Copy. The Parties agree that a certified recorded copy of this Agreement shall be deemed an original and may be introduced or submitted in any action or proceeding as

competent evidence of the execution, terms and existence hereof notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original executed counterpart of this Agreement first be proven.

32. Warranties Disclaimed. GRANTOR DISCLAIMS ALL WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, AS TO THE PROPERTY AND EASEMENTS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS DISCLAIMER CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. GRANTEE ACCEPTS THE EASEMENTS AND PROPERTY "AS IS."

33. Oil, Gas, Minerals, Wind, Solar, Efficiency. Grantor retains all present and future rights to water, oil, gas, minerals, wind energy and solar energy on, about or related to the Easements and Property. Grantee shall not claim to the contrary. All equipment on the Easements which uses electricity shall carry the energy star rating whenever possible.

34. Waiver of Jury Trial. Each Party, to the extent permitted by law, knowingly, voluntarily and intentionally waives its right to a trial by jury in any action or proceeding under any theory of liability arising out of or in any way connected with this Agreement or the transactions it contemplates.

35. Treatment in Bankruptcy. The Parties to this Agreement hereby expressly agree and acknowledge that it is the intention of both Parties that in the event that during the Term of this Agreement Grantee shall become a debtor in any voluntary or involuntary bankruptcy proceeding under the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.* (the "Code"), this Agreement shall be treated as an "unexpired lease of nonresidential real property" for purposes of Section 365 of the Code, 11 U.S.C. § 365, and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said Section 365.

36. Condemnation. If all or a material portion of the Water Tower is permanently taken or condemned by any competent authority for any public use or purpose (including a deed given in lieu of condemnation), and the taking renders the rooftop of the Water Tower substantially unusable for the Permitted Use, this Agreement shall terminate as of the date title vests in the condemning authority. The Parties will each be entitled to pursue their own separate awards in condemnation proceedings. Notwithstanding the foregoing, Grantor shall not settle or compromise any condemnation award affecting the Easements, and Grantee shall not settle or compromise any condemnation award relating to the Water Tower or the Property beyond the Easements, without the other's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.

37. Reserved Rights. As set forth on Exhibit D, the rights set forth there are reserved to Grantor, notwithstanding any other provision of this Agreement.

[Signatures Appear on Following Pages]

IN WITNESS WHEREOF, the Parties hereto have executed this Telecommunication Easement Agreement as of the Effective Date.

GRANTOR:

CITY OF FORT WAYNE

an Indiana municipal corporation

By and through its Board of Public Works

By: _____

Name: Benjamin Groeneweg

Title: Engineer VI: Utility Asset Management & Engineering Services

Authorized signatory on behalf of the Fort Wayne Board of Public Works, per the Resolution attached as Exhibit E

Date: February _____, 2016

Acknowledgment

STATE OF INDIANA)
) ss:
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this ____ day of _____, 2016, personally appeared before the within named Ben Groeneweg by me personally known, who being by me duly sworn said that he is an Engineer VI: Utility Asset Management & Engineering Services of the Board of Public Works, City of Fort Wayne, and that he signed said instrument on behalf of the Board of Public Works, City of Fort Wayne with full authority so to do and acknowledge said instrument to be the voluntary act and deed of said City for the uses and purposes therein set forth.

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

Signature: _____
Notary Public

Printed Name: _____

My Commission Expires: _____

{Seal}

Resident of _____ County, Indiana

Exhibit A
Property Description

Part of the Southeast Quarter of Section 15, Township 30 North, Range 11 East, Allen County, Indiana, being more particularly described as follows, to-wit:

Beginning at the Center of said Section 15, being marked by a stone, also being the Northeast corner of the plat of the Coves at Westlakes, Section II, as recorded in Plat Cabinet E, page 18, in the Office of the Recorder of Allen County, Indiana; thence South 00 degrees 13 minutes 45 seconds West (plat bearing and uses as the basis of all bearings in this description), on and along the West line of said Southeast Quarter and the East line of the plat of the Coves at Westlakes, Section II, a distance of 430.77 feet to a #5 rebar at the point of intersection of said line with the North line of the plat of Aspen Village, Section II, as recorded in Plat Record 39, pages 92-96, in the Office of said Recorder; thence South 89 degrees 17 minutes 58 seconds East, on and along the North line of the plat of Aspen Village, Section II, a distance of 1042.09 feet to the Northeast corner thereof; also being the Northwest corner of the plat of Aspen Village, Section I, as recorded in Plat Record 39, pages 14-17, in the Office of said Recorder; thence North 89 degrees 54 minutes 56 seconds East, on and along the North line of the plat of Aspen Village, Section I, a distance of 278.00 feet to the Northeast corner thereof, being a point on the West line of the plat of Aboite Meadows, Section "C", Block 5, as recorded in Plat Record 37, pages 85-87, in the Office of said Recorder; thence North 00 degrees 28 minutes 02 seconds East, on and along the West line of the plat of Aboite Meadows, Section "C", Block 5, a distance of 425.36 feet to the Northwest corner thereof, being a South corner of the plat of Emerald Lake at Covington, as recorded in Plat Record 48, page 156, in the Office of said Recorder; thence North 89 degrees 13 minutes 49 seconds West, on and along the South line of the plat of Emerald Lake at Covington, a distance of 1321.88 feet to the point of beginning, containing 13.027 acres of land.

Exhibit B
Assigned Agreements

1. Standard License Agreement dated May 11, 2005 between Omipoint Holdings, Inc., a Delaware corporation, as Licensee and Utility Center, Inc., a Corporation, as Licensor - - referred to herein as "*T-Mobile Aboite Lease*".

2. Tower Attachment License Agreement dated as of September 24, 2002 between Utility Center, Inc., an Indiana corporation as licensor and AT&T Wireless PCS, LLC, a Delaware limited liability Company, d/b/a AT&T Wireless, Licensee as evidenced by Memorandum of License dated September 4, 2002 and recorded with the Allen County, Indiana, Recorder's Office on June 17, 2003 as Document Number 203060273; as amended by Amendment No. 1 to Site Agreement dated August 16, 2008 between the same parties and by the Black & Veatch engineering drawings for such license, project number 129027, dated October 5, 2015, comprising 12 pages - - referred to herein as "*AT&T Aboite Lease*".

Exhibit C
Description of Communications Easement

The Communications Easement consists of all of the following:

1. For the T-Mobile Aboite Lease the Communications Easement consists of:

(a) on the Land, the Equipment Area Easement being the space depicted as “Exclusive Easement #2” on the As-Built Survey of the Aboite Tower attached as Exhibit F and legally described in the attached Exhibit G, and also the “Non-Exclusive Access and Utility Easement” as depicted on such survey and legally described in the attached Exhibit G, and

(b) on the Water Tower such space for the Attachment Area Easement and Access and Utility Easement:

(i) as is shown on the as-built engineering drawings for T-Mobile Site No. MW065060A from GDP Group, GDP Job # 2014747.04, signed and sealed February 26, 2014, and updated on June 21, 2014 to show the as built installation, consisting of 14 pages, plus

(ii) such additional space, if any, as may be added by the lessee under the terms of and in conformance with the terms of such lease and this Agreement as they exist on the Effective Date.

2. For the AT&T Aboite Lease the Communications Easement consists of:

(a) on the Land, the Equipment Area Easement being the space depicted as “Exclusive Easement #1” on the As-Built Survey of the Aboite Tower attached as Exhibit F and legally described in the attached Exhibit G, and also the “Non-Exclusive Access and Utility Easement” as depicted on such survey and legally described in the attached Exhibit G, and

(b) on the Water Tower such space for the Attachment Area Easement and Access and Utility Easement:

(i) as is shown on Exhibit C to the AT&T Aboite Lease for the equipment described on Exhibit B to such lease, being the Magtech Services, Inc. engineering drawings for site number 931-006-064-A-01 for such lease dated June 20, 2002 comprising 14 pages; as amended by Exhibits B-1 and C-1 to Amendment No. 1 to Site Agreement dated August 16, 2008 with Exhibit C-1 being Magtech Midwest, Inc. engineering drawings for site number GRANMIU2717 dated August 12, 2008 comprising 11 pages; and further amended as set forth in the Black & Veatch engineering drawings for such lease, project number 129027, dated October 5, 2015 comprising 12 pages; plus

(ii) such additional space, if any, as may be added by the lessee under the terms of and in conformance with the terms of such lease and this Agreement as they exist on the Effective Date.

Exhibit D

Reserved Rights

Notwithstanding anything to the contrary contained therein, the Agreement is subject to the following provisions:

1. Grantor operates the Water Tower for the provision of potable drinking water for the citizens of Fort Wayne, Indiana. Regardless of the terms and provisions set forth in the Agreement, Grantor reserves the following rights and privileges, and Grantee agrees to same:

(a) Grantor retains the right to maintain security in and around the Water Tower commensurate with industry standards for municipal water supplies;

(b) Grantor retains the right to maintain the Water Tower and its associated equipment and systems in accordance with industry standards for municipal water supplies and all legal requirements, and actions taken by Grantor in furtherance of such maintenance of the Water Tower and associated equipment and systems shall not constitute a default under the terms and conditions of the Agreement.

(c) Grantor at all times retains the right to act as it deems necessary with regard to the Water Tower and its associated equipment and systems to protect and secure the public health, safety and welfare, to counteract public or utility emergencies, and to react to catastrophic events, extremes of weather, riots, labor strife and acts of God or war, and such acts by Grantor shall not constitute a default under the terms and conditions of this Agreement.

2. Notwithstanding anything contained in the Agreement, Grantor shall at all times retain the right to approve all Replacement Agreements, the Customers thereunder, and any changes in Customers under a Replacement Agreement or an Assigned Agreement (except as Grantor may have agreed otherwise in an Assigned Agreement) (collectively "Replacement Customers"). If Grantee identifies a proposed Replacement Customer or a proposed Replacement Agreement, Grantee shall provide written notice to Grantor of such proposed Replacement Customer and/or any proposed Replacement Agreement and Grantor shall have a period of thirty (30) days within which to either accept or reject the proposed Replacement Customer and/or proposed Replacement Agreement. Grantor may accept or reject said proposed Replacement Customer or proposed Replacement Agreement in its sole and unmitigated discretion.

3. Notwithstanding anything else contained in the Agreement, Grantor shall have the right to terminate the Agreement, upon one hundred thirty-five (135) days prior written notice ("Termination Notice"), subject to the following terms and conditions:

(a) Provided that Grantor is not otherwise in material default of the terms and conditions of the Agreement, Grantor shall prepare and send to Grantee a Termination Notice which identifies and describes, in Grantor's determination, existing defects making the Water Tower structurally unsound and in the interest of the public health,

safety and welfare, should be demolished and removed; (collectively "Grantor Termination Rights").

(b) The Termination Notice shall also identify an independent qualified engineer that Grantor wishes to engage to perform a structural analysis of the Water Tower deemed by Grantor to be structurally unsound. Within thirty (30) days of receiving the Termination Notice, Grantee shall approve or reject the engineer identified by Grantor. Grantee may only reject the proposed engineer, if the engineer's training, experience, and background is of a commercial standard that is less than the objectively reasonable standard for engineers of the locale. Grantee's failure to respond to the Termination Notice within thirty (30) days of receiving the Termination Notice shall be deemed an acceptance of the proposed engineer.

(c) Within the Termination Notice period described in Section 3(a), the selected engineer shall provide a report detailing the findings and structural analysis of the identified Water Tower ("Engineer Report").

(d) In the event the Engineer Report concludes that the identified Water Tower is structurally unsound and should be demolished or removed, Grantor shall use commercially reasonable efforts to relocate any Customers displaced by the exercise of the Grantor Termination Rights, to real property owned or controlled by Grantor ("Customer Relocation"). Upon successful Customer Relocation the Parties shall amend the Easements to add the new location for the Customer, with appropriate access and utility easements, and it is understood and agreed that Grantee shall be entitled to demand, receive, and collect rents payable by the relocated Customer, in accordance with, and for the term of, the Agreement. In the event the Engineer Report concludes that the identified Water Tower is structurally unsound and should be demolished or removed, and Customer Relocation is not feasible, or not capable of being accomplished through the use of commercially reasonable efforts, then Grantor shall be entitled to terminate the Agreement without penalty.

(e) In the event the Engineer Report concludes that the identified Water Tower is structurally sound, and there exists no risk or threat to public safety through continued use of the identified Water Tower, then Grantor shall not be entitled to exercise the Grantor Termination Rights, and the Agreement shall remain in full force and effect.

4. Notwithstanding anything else that may be contained in the Agreement to the contrary, Grantor shall not be liable for the payment of the rent under either the Assigned Agreements or Replacement Agreements and the same shall not constitute an obligation of Grantor. Grantee agrees to look solely to the Assigned Agreements and Replacement Agreements for the monies it is to receive under the transactions contemplated by the Agreement.

Exhibit E

City Resolution Authorizing Signing of Agreement

[attach resolution]

**A RESOLUTION OF THE BOARD OF PUBLIC WORKS
OF THE CITY OF FORT WAYNE, INDIANA,
AUTHORIZING TELECOMMUNICATION EASEMENT PURCHASE
AND ASSIGNMENT AGREEMENT**

RESOLUTION NUMBER 103-2-17-16-1

WHEREAS, the City of Fort Wayne, Indiana (hereinafter referred to as the "City"), owns certain real property and the water towers located thereon located at 9810 Bronco Drive, Fort Wayne, Indiana, 46804 (hereinafter referred to as the "Aboite Water Tower" location), 14501 Covington Road, Fort Wayne, Indiana, 46814 (hereinafter referred to as the "Covington Water Tower" location), and 1016 Dupont Road, Fort Wayne, Indiana, 46825 (hereinafter referred to as the "Dupont Water Tower" location), all three (3) locations being described more particularly in Exhibit "A", attached hereto and made a part of this Resolution by this reference; and

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

WHEREAS, Landmark Infrastructure Holding Company, LLC (hereinafter referred to as "Landmark") wishes to purchase the City's telecommunication easements; and

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

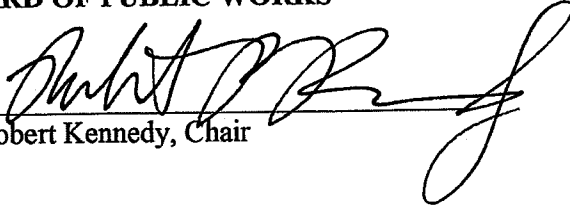
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

1. That the Board of Public Works of the City of Fort Wayne, Indiana (hereinafter referred to as the "Board") approves the sale of the Telecommunications Easements and Assignment Agreements between the City and Landmark.
2. That the Board approves the Telecommunication Easement Purchase And Assignment Agreement agreements between the City and Landmark.
3. That the Board hereby authorizes Benjamin Groeneweg, Engineer VI: Utility Asset Management and Engineering Services, to sign in the name of and on behalf of the Board, the three (3) Telecommunication Easement Purchase And Assignment Agreement agreements between the City and Landmark, and the three (3) Telecommunication Easement Agreement agreements between the City and Landmark and all ancillary closing documents.

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

APPROVED this 17th day of February, 2016.

BOARD OF PUBLIC WORKS

By: 
Robert Kennedy, Chair

By: Absent
Kumar Menon, Member

By: 
Mike Avila, Member

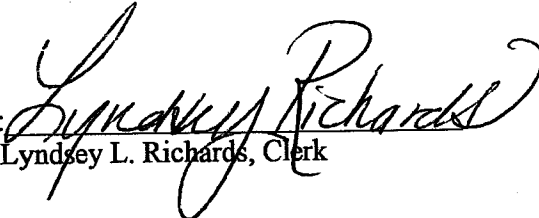
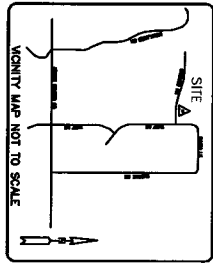
Attest: 
Lyndsey L. Richards, Clerk

Exhibit F

As-Built Survey of Aboite Tower

As-Built Survey of site at 9810 Bronco Drive, Fort Wayne, Indiana, by Global Land Solutions,
Job # 15281S, dated 12/14/15, consisting of 4 pages

[See Attached]

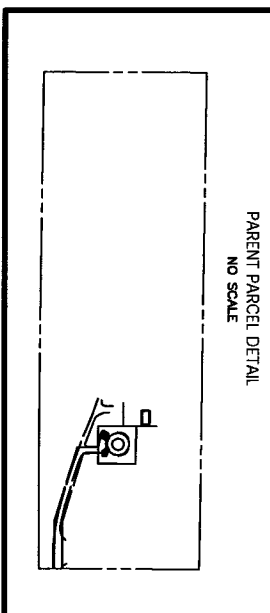
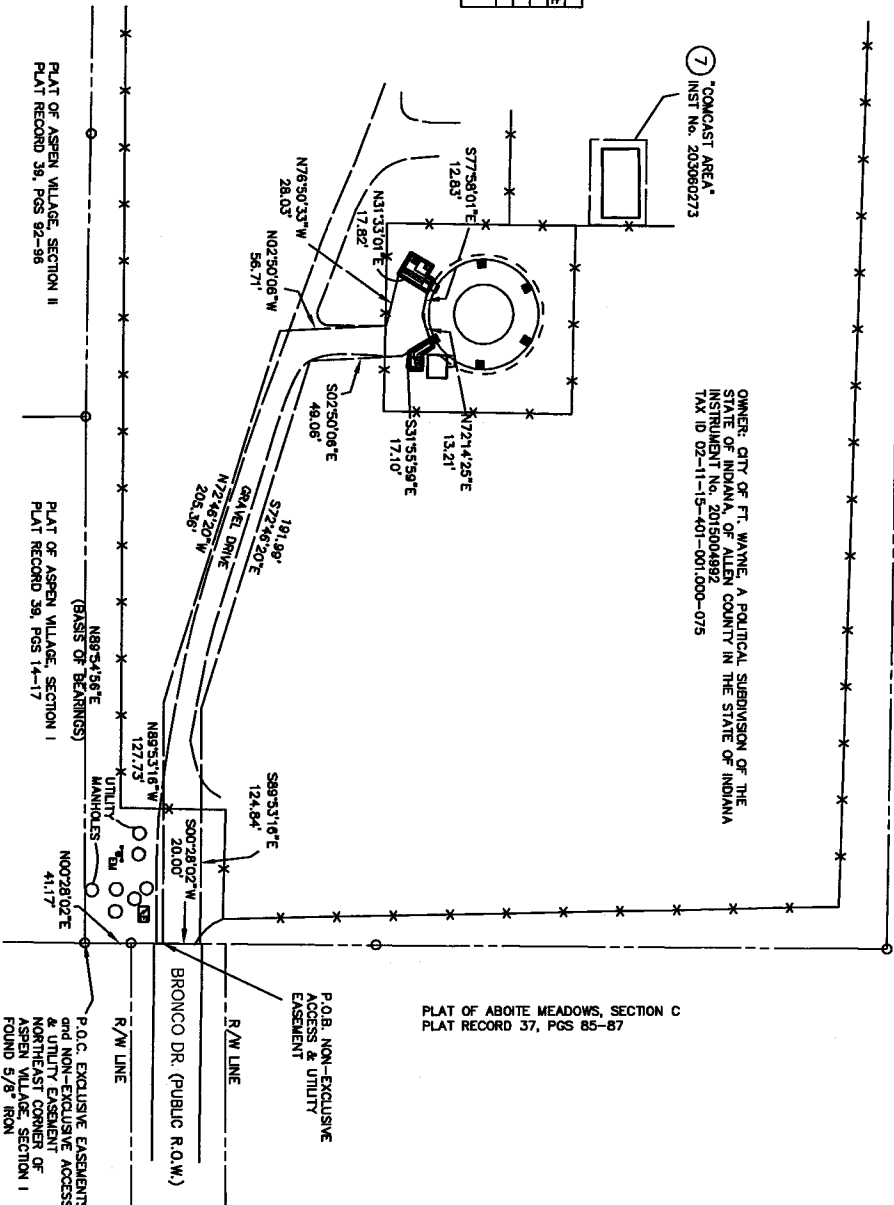
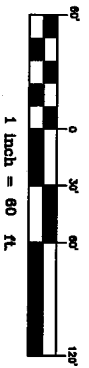


ZONING: N/A
 FLOOD NOTE: SUBJECT PROPERTY IS NOT FLOODED WITHIN A DESIGNATED FLOOD ZONE AREA.

LEGEND

- FOUND 5/8" IRON
- SET 5/8" IRON
- P.O.B.
- POINT OF BEGINNING
- P.O.C.
- RIGHT OF WAY
- R/W
- POWER POLE
- ELECTRIC TRANSFORMER BOX
- ELECTRIC METER
- TELEPHONE PEDESTAL
- CABLE TV PEDESTAL
- OVERHEAD ELECTRIC
- FENCE

AREA TABLE	SQUARE FEET	ACRE
① PARENT PARCEL	567,441±	13.03±
② TOWER COMPOUND	3,315	0.08
③ EXCLUSIVE EASEMENT #1	205	0.01
④ EXCLUSIVE EASEMENT #2	100	0.01
⑤ NON-EXCLUSIVE ACCESS & UTILITY EASEMENT	4,010	0.18



AS-BUILT SURVEY
 IN SECTION 15,
 TOWNSHIP 30 NORTH, RANGE 11 EAST

FOR LANDMARK DIVIDEND

LANDMARK DIVIDEND
 1701 E. WINDY ME. SUITE 400
 F. SHERBO, IL 60064

GEOLINE SURVEYING, INC.
 13400 NW 10th Terrace, Suite A, Alhambra, FL 32815
 (407) 886-8830
 WWW.GEOLINE.COM

Global Land
 Surveyors that work for you.
 5005 12 Mile Road NE, Redmond,
 WA 98073
 (800) 806-8836
 www.globaland.com

Surveyed & Plotted by: *[Signature]*
 Checked by: *[Signature]*

SURVEYOR'S NOTES

1. BASE OF BEARING, N89°54'56"E, ALONG THE NORTH LINE OF ASPEN VILLAGE, SECTION 1.
2. NO SURFACE INVESTIGATION WAS PERFORMED TO LOCATE UNDERGROUND UTILITIES. ANY SUCH UTILITIES ARE LIMITED TO AND ARE NOT OBSERVED THEREON.
3. THIS SURVEY DOES NOT REPRESENT A BOUNDARY SURVEY OF THE PARENT PARCEL.
4. ALL VISIBLE TOWER EQUIPMENT AND IMPROVEMENTS ARE CONTAINED WITHIN THE DESCRIBED AREA.

SURVEYOR'S CERTIFICATION

I, **JAY M. SCHWAB**, LAND SURVEYOR, LICENSE NO. 204400050, STATE OF INDIANA, DO HEREBY CERTIFY THAT I AM THE SURVEYOR OF THE ABOVE DESCRIBED SURVEY AND THAT I AM A MEMBER IN GOOD STANDING WITH THE NATIONAL BOARD OF SURVEYING AND MAPPING INSURANCE COMPANY.

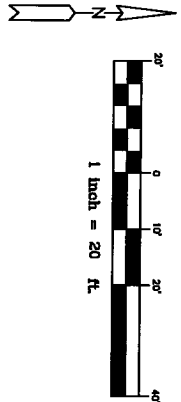
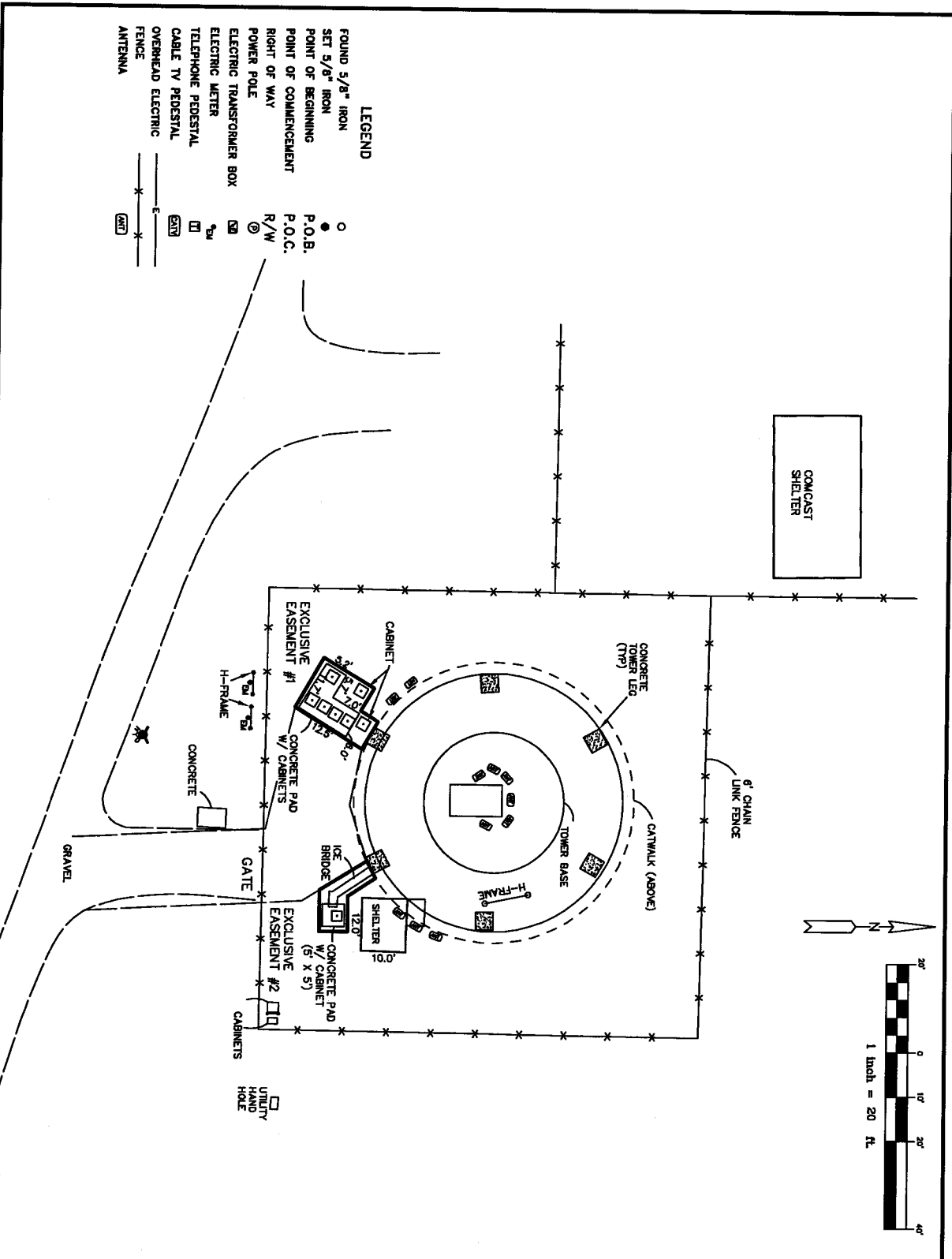
Date: 12/14/15

STATE OF INDIANA
 REGISTERED
 LAND SURVEYOR

JAY M. SCHWAB
 No. 204400050

DATE: 12/14/15

SHEET 1 OF 4



AS-BUILT SURVEY

IN SECTION 15,
TOWNSHIP 30 NORTH, RANGE 11 EAST

FOR LANDMARK DIVIDEND

SITE/CITY OF FT. WAYNE
SITE NO.: TC154662 & TC154663
ADDRESS: 9810 BRONCO DR
FORT WAYNE, IN 46804
ALLEN COUNTY

**LANDMARK
DIVIDEND**

NATIONAL SURVEY SERVICES CORPORATION ET AL

**GEOLINE
SURVEYING, INC.**

1430 HWY 1001 Terrace, Suite A, Auburn, FL 32815
Phone: (813) 882-8888
Fax: (813) 882-8889
www.geolines.com

Global Land

12000 NW 10th Avenue, Suite 100, Fort Lauderdale, FL 33322
Phone: (954) 583-8888
Fax: (954) 583-8889
www.globalandsurvey.com

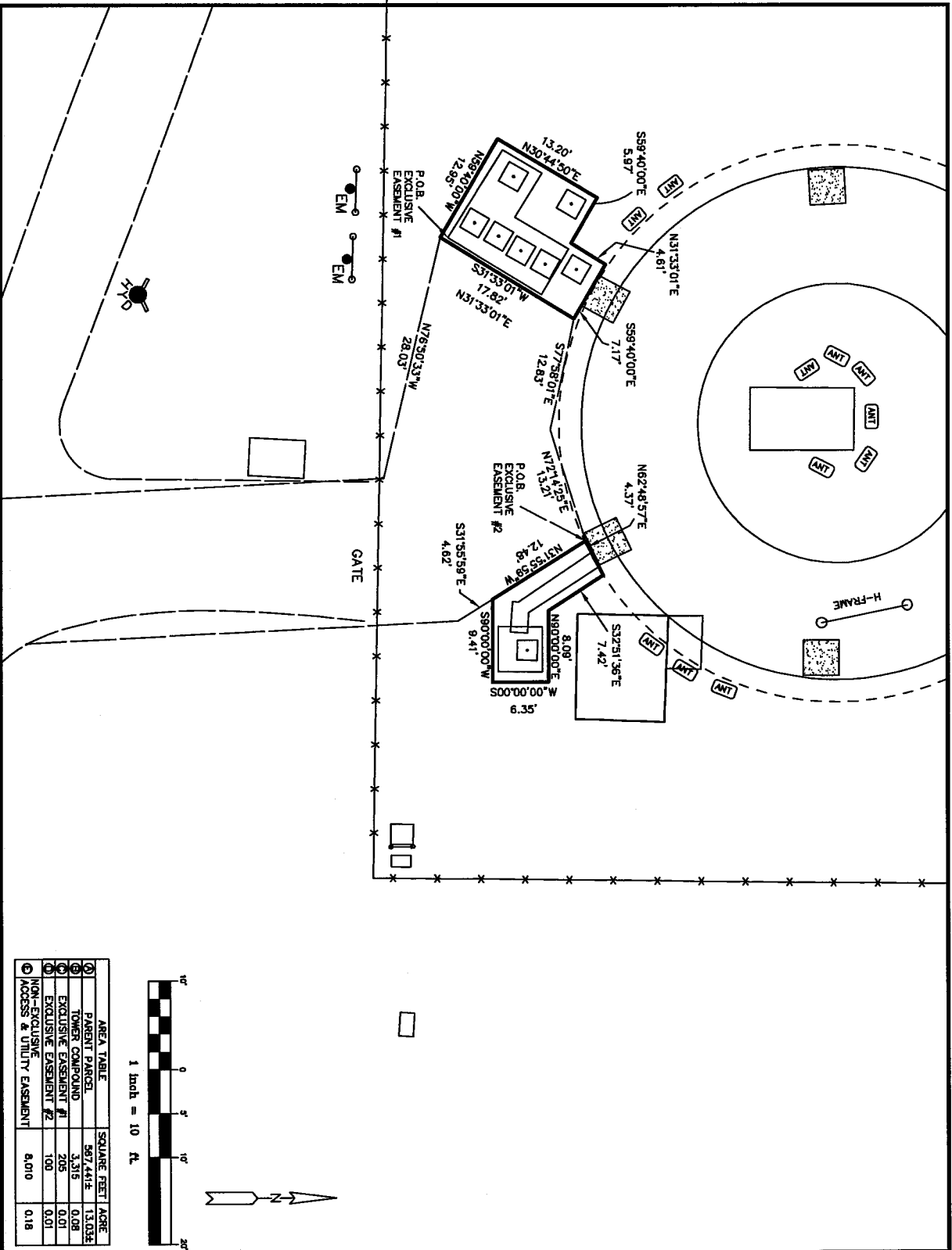
DATE: 12/14/15
JOB # 152815

SURVEYOR'S NOTES
1. BASIS OF BEARING, N89°34'29"E ALONG THE NORTH LINE OF ASPEN HILLS, SECTION 1.
2. NO SUBSURFACE INVESTIGATION WAS PERFORMED TO LOCATE UNDERGROUND UTILITIES. ANY UTILITIES ENCOUNTERED WERE IDENTIFIED AND ARE PER OBSERVED EVIDENCE ONLY.
3. THIS SURVEY DOES NOT REPRESENT A BOUNDARY SURVEY OF THE FRONT PARCEL.
4. ALL VISIBLE TOWER EQUIPMENT AND THE DESCRIBED MARKS.

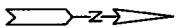
SURVEYOR'S CERTIFICATION
I, HEREBY CERTIFY TO LANDMARK SURVEYING, INC. THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I AM A LICENSED SURVEYOR IN THE STATE OF INDIANA.

Jay M. Schwandt
JAY M. SCHWANDT, P.S., L.S.
AND SURVEYOR - MICHAEL #497874
Date: 12/14/15
Revision: #





AREA TABLE	SQUARE FEET	ACRE
① PARENT PARCEL	967,441±	13.03±
② TOWER COMPOUND	3,315	0.08
③ EXCLUSIVE EASEMENT #1	205	0.01
④ EXCLUSIVE EASEMENT #2	100	0.01
⑤ NON-EXCLUSIVE ACCESS & UTILITY EASEMENT	8,010	0.18



AS-BUILT SURVEY
IN SECTION 15,
TOWNSHIP 30 NORTH, RANGE 11 EAST

THE LANDMARK DIVIDEND
SITE: MATTHEW DIMMER COMPANY, INC.
SITE NO.: TC154682 & TC154683
ADDRESS: 9810 BRONCO DR
PORT WYOMING, IN 46904
ALLEN COUNTY

LANDMARK DIVIDEND
700 E. MAIN ST., SUITE 400
MARIETTA, GA 30060

GLOBAL SURVEYING, INC.
12420 NW 104th Terrace, Suite A, Aurora, FL 32815
Office: (386) 118-0207 Fax: (386) 462-9966
WWW.GEOLINE.COM

Global Land SURVEYING, INC.
Solutions that work for you.
5045 12 Mile Road NE, Redwood, MN 55067
(800) 964-6634
www.globalandsurveying.com
Serving The Great Lakes Region

Drawn by: [Name] Job #: 12818
Checked by: [Name]
SURVEYOR'S NOTES
1. BASIS OF BEARING: N89°47'26"E ALONG THE NORTH LINE OF ASPEN VALLEY, SECTION 1.
2. NO SUBSURFACE INVESTIGATION WAS PERFORMED TO LOCATE UNDERGROUND UTILITIES. UTILITIES SHOWN HEREIN ARE LIMITED TO AND ARE PER OBSERVED EVIDENCE ONLY.
3. THIS SURVEY DOES NOT REPRESENT A BOUNDARY SURVEY OF THE PARENT PARCEL.
4. ALL VISIBLE TOWER EQUIPMENT AND IMPROVEMENTS ARE CONTAINED WITHIN THE DESCRIBED AREA.

SURVEYOR'S CERTIFICATION
HEREBY CERTIFY TO LANDMARK DIVIDEND THAT I AM A LICENSED SURVEYOR IN THE STATE OF INDIANA AND THAT I AM A MEMBER IN GOOD STANDING WITH THE NATIONAL BOARD OF SURVEYING AND MAPPING, INC. AND THE NATIONAL ASSOCIATION OF SURVEYORS.
DATE: 12/14/15
SURVEYOR: JAY M. SCHWANDT, REGISTERED PROFESSIONAL LAND SURVEYOR - INDIANA #27974

STATE OF INDIANA
REGISTERED PROFESSIONAL LAND SURVEYOR
JAY M. SCHWANDT
No. 20400050
20400050
STATE OF INDIANA
LAND SURVEYOR

SHEET 3 OF 4

EXCLUSIVE EASEMENT #1 DESCRIPTION (CREATED BY THIS OFFICE):

Part of the Southeast Quarter of Section 15, Township 30 North, Range 11 East, Allen County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of Aspen Village, Section 1, as recorded in Plat Record 39, Pages 14-17, Allen County Records; thence N00°28'02"E 41.17 feet; thence N89°53'16"W 127.73 feet; thence N72°46'20"W 205.36 feet; thence N02°50'06"W 56.71 feet; thence N76°50'33"W 28.03 feet to the Point of Beginning of this description; thence N59°40'00"W 12.95 feet; thence N30°44'50"E 13.20 feet; thence S59°40'00"E 5.97 feet; thence N31°33'01"E 4.61 feet; thence S59°40'00"E 7.17 feet; thence S31°33'01"W 17.82 feet to the Point of Beginning. Containing 205 square feet (0.01 Acres) of land, more or less.

EXCLUSIVE EASEMENT #2 DESCRIPTION (CREATED BY THIS OFFICE):

Part of the Southeast Quarter of Section 15, Township 30 North, Range 11 East, Allen County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of Aspen Village, Section 1, as recorded in Plat Record 39, Pages 14-17, Allen County Records; thence N00°28'02"E 41.17 feet; thence N89°53'16"W 127.73 feet; thence N72°46'20"W 205.36 feet; thence N02°50'06"W 56.71 feet; thence N76°50'33"W 28.03 feet; thence N31°33'01"E 17.82 feet; thence S77°58'01"E 12.83 feet; thence N72°42'25"E 13.21 feet to the Point of Beginning of this description; thence N62°48'57"E 4.37 feet; thence S32°51'36"E 7.42 feet; thence N90°00'00"E 8.09 feet; thence S00°00'00"W 6.35 feet; thence S90°00'00"W 9.41 feet; thence N31°55'59"W 12.48 feet to the Point of Beginning. Containing 100 square feet (0.01 Acres) of land, more or less.

NON-EXCLUSIVE ACCESS & UTILITY EASEMENT DESCRIPTION (CREATED BY THIS OFFICE):

Part of the Southeast Quarter of Section 15, Township 30 North, Range 11 East, Allen County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of Aspen Village, Section 1, as recorded in Plat Record 39, Pages 14-17, Allen County Records; thence N00°28'02"E 41.17 feet; thence N89°53'16"W 127.73 feet; thence N72°46'20"W 205.36 feet; thence N02°50'06"W 56.71 feet; thence N76°50'33"W 28.03 feet; thence N31°33'01"E 17.82 feet; thence S77°58'01"E 12.83 feet; thence N72°42'25"E 13.21 feet; thence S31°55'59"E 17.10 feet; thence S02°50'06"E 49.06 feet; thence S72°46'20"E 191.99 feet; thence S89°53'16"E 124.84 feet; thence S00°28'02"W 200.00 feet to the Point of Beginning. Containing 8,010 square feet (0.18 Acres) of land, more or less.

AREA TABLE	SQUARE FEET	ACRE
① PARENT PARCEL	567,441±	13.03±
② TOWER COMPOUND	3,315	0.08
③ EXCLUSIVE EASEMENT #1	205	0.01
④ EXCLUSIVE EASEMENT #2	100	0.01
⑤ NON-EXCLUSIVE ACCESS & UTILITY EASEMENT	8,010	0.18

AS-BUILT SURVEY

N SECTION 15,
TOWNSHIP 30 NORTH, RANGE 11 EAST
MIDLAND TOWER
SITE NO: TC164562 & TC164563
PORT MAYNE, IN 46804
ALLEN COUNTY

**LANDMARK
DIVIDEND**
THE E NUMBER OF THE SAME IS
RECORDED IN BOOK
NATIONAL SURVEY SERVICES COORDINATION BY:

**GOOLINE
SURVEYING, INC.**
1340 NW 10th Street, Suite A, Anchorage, AK 99516
(907) 506-4835
www.gooline.com

Global Land
Solutions that work for you.
5085 12 Mile Road NE, Redford, MI 48065
(907) 506-4835
www.globalandsurvey.com

SURVEYOR'S NOTES
1. BASES OF BEARING, VERTICES ALONG THE NORTH LINE OF ASPEN VILLAGE, SECTION 1,
2. NO SURFACE INVESTIGATION WAS PERFORMED TO LOCATE UNDERGROUND UTILITIES ARE HEREBY RESERVED EVIDENCE ONLY.
3. THIS SURVEY DOES NOT REPRESENT A BOUNDARY SURVEY OF THE PARENT PARCEL.
4. ALL VISIBLE TOWER EQUIPMENT AND IMPROVEMENTS ARE CONTAINED WITHIN THE DESCRIBED AREA.

SURVEYOR'S CERTIFICATION
I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT I AM THE LICENSED SURVEYOR OF THE STATE OF INDIANA AND THAT I AM A MEMBER OF THE NATIONAL SURVEYING BOARD.

DATE: 12/14/15
BY: [Signature]
SURVEYOR: MICHAEL #19174

STATE OF INDIANA
REGISTERED LAND SURVEYOR
No. 20400050
JAY M. SCHWANDT
DATE: 12/14/15

Exhibit G

**Legal Descriptions of those Portions of the
Aboite Tower
Communications Easement that are Located on the Land**

EXCLUSIVE EASEMENT #1 DESCRIPTION:

Part of the Southeast Quarter of Section 15, Township 30 North, Range 11 East, Allen County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of Aspen Village, Section 1, as recorded in Plat Record 39, Pages 14-17, Allen County Records; thence N00°28'02"E 41.17 feet; thence N89°53'16"W 127.73 feet; thence N72°46'20"W 205.36 feet; thence N02°50'06"W 56.71 feet; thence N76°50'33"W 28.03 feet to the Point of Beginning of this description; thence N59°40'00"W 12.95 feet; thence N30°44'50"E 13.20 feet; thence S59°40'00"E 5.97 feet; thence N31°33'01"E 4.61 feet; thence S59°40'00"E 7.17 feet; thence S31°33'01"W 17.82 feet to the Point of Beginning. Containing 205 square feet (0.01 Acres) of land, more or less.

EXCLUSIVE EASEMENT #2 DESCRIPTION:

Part of the Southeast Quarter of Section 15, Township 30 North, Range 11 East, Allen County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of Aspen Village, Section 1, as recorded in Plat Record 39, Pages 14-17, Allen County Records; thence N00°28'02"E 41.17 feet; thence N89°53'16"W 127.73 feet; thence N72°46'20"W 205.36 feet; thence N02°50'06"W 56.71 feet; thence N76°50'33"W 28.03 feet; thence N31°33'01"E 17.82 feet; thence S77°58'01"E 12.83 feet; thence N72°14'25"E 13.21 feet to the Point of Beginning of this description; thence N62°48'57"E 4.37 feet; thence S32°51'36"E 7.42 feet; thence N90°00'00"E 8.09 feet; thence S00°00'00"W 6.35 feet; thence S90°00'00"W 9.41 feet; thence N31°55'59"W 12.48 feet to the Point of Beginning. Containing 100 square feet (0.01 Acres) of land, more or less.

NON-EXCLUSIVE ACCESS & UTILITY EASEMENT DESCRIPTION:

Part of the Southeast Quarter of Section 15, Township 30 North, Range 11 East, Allen County, Indiana, being more particularly described as follows:

Commencing at the Northeast corner of Aspen Village, Section 1, as recorded in Plat Record 39, Pages 14-17, Allen County Records; thence N00°28'02"E 41.17 feet; thence N89°53'16"W 127.73 feet; thence N72°46'20"W 205.36 feet; thence N02°50'06"W 56.71 feet; thence N76°50'33"W 28.03 feet; thence N31°33'01"E 17.82 feet; thence S77°58'01"E 12.83 feet; thence N72°14'25"E 13.21 feet; thence S31°55'59"E 17.10 feet; thence S02°50'06"E 49.06 feet; thence S72°46'20"E 191.99 feet; thence S89°53'16"E

124.84 feet; thence S00°28'02"W20.00 feet to the Point of Beginning. Containing 8,010 square feet (0.18 Acres) of land, more or less.

TELECOMMUNICATION EASEMENT PURCHASE AND ASSIGNMENT AGREEMENT

This Telecommunication Easement Purchase and Assignment Agreement is made effective as of the Effective Date, by Landmark Infrastructure Holding Company LLC, a Delaware limited liability company, and the City of Fort Wayne, an Indiana municipal corporation, by and through its Board of Public Works.

RECITALS

- A. All capitalized terms used in these recitals shall have the meanings given them in Section 1.
- B. Seller owns the Water Tower and the Real Estate commonly known as the Covington Water Tower and located at 14501 Covington Road, Fort Wayne, Indiana 46814.
- C. Seller leases portions of the Water Tower and the Real Estate for telecommunications purposes pursuant to the Cell Antenna License Agreements.
- D. Seller wishes to sell, and Buyer wishes to buy, an assignment of the Cell Antenna License Agreements and the Easements, under the terms and conditions in this Agreement.

AGREEMENT

In consideration of the mutual covenants and promises made in this Agreement, and the payments to be made under it, the receipt and sufficiency of which consideration is acknowledged by the parties, it is agreed as follows:

1. **DEFINITIONS.** The following capitalized words and phrases shall have the meanings stated, unless the context clearly indicates that a different meaning is intended:

1.1 **"Agreement"**. This Telecommunication Easement Purchase and Assignment Agreement.

1.2 **"Buyer"**. Landmark Infrastructure Holding Company LLC a Delaware limited liability company.

1.3 **"Buyer's Intended Use"**. The transmission and reception of wireless telecommunication signals and the construction, maintenance, repair, replacement, improvement, operation and removal of telecommunications facilities, including antennas, antenna support brackets, shelters, fences, gates, cabling, wiring and related facilities but not including towers.

1.4 **"Cell Antenna License Agreements"**. Collectively, the following agreements: (i) Tower Attachment License Agreement dated as of June 30, 2003 by and between Chicago 20Mhz, LLC, a Delaware limited liability company doing business as U. S. Cellular, as

Licensee and Utility Center, Inc., an Indiana Corporation, as Licensor; as affected by: an Owner's Negotiated Site Acceptance and Release dated May 30, 2014 between Utility Center, Inc. an Indiana Corporation as Owner and United States Cellular Operating Company of Chicago, LLC, a Delaware limited liability company as successor in interest to Chicago 20 Mhz LLC doing business as U.S. Cellular; an Assignment and Assumption of Tower Attachment License Agreement dated March 3, 2015 between Chicago 20 Mhz, LLC, a Delaware limited liability company as Assignor and SprintCom, Inc., a Kansas Corporation, as Assignee; the W-T Communication and Design Group, LLC engineering drawings for Sprint signed and sealed June 17, 2015, project number T131987, comprising 33 pages; and (ii) License Agreement dated March 1, 2011 between Utility Center, Inc. as licensor and New Cingular Wireless PCS, LLC, a Delaware limited liability company as licensee as evidenced by Memorandum of License Agreement dated March 1, 2011 and recorded August 10, 2011 as Document Number 2011035603; as amended by the Apex Engineers, Inc. engineering drawings for such license, job number NS15-400, signed and sealed October 30, 2015, comprising 8 pages.

1.5 **"Closing"**. The closing and the sale of the Real Estate under this Agreement.

1.6 **"Closing Date"**. The date of Closing as provided in Section 10.2.

1.7 **"Easements"**. Collectively, the Easements set forth in the Easement Agreement.

1.8 **"Easement Agreement"**. The Telecommunication Easement Agreement attached to this Agreement as Exhibit "B".

1.9 **"Effective Date"**. The effective date of this Agreement, which is the date this Agreement is fully executed.

1.10 **"Event of Default"**. The following each shall constitute an Event of Default for purposes of this Agreement:

1.10.1 The making of any false or inaccurate representation in this Agreement; or

1.10.2 The breach of any warranty made in this Agreement.

1.10.3 The failure to observe or comply with any non-monetary provision or covenant in this Agreement, and such default is not cured to the reasonable satisfaction of the non-defaulting party within thirty (30) days of the date Notice of such default is given, which Notice shall specify with reasonable particularity the basis for the default claimed. For monetary defaults, the cure period shall be fifteen (15) days from the date of Notice of such default.

1.10.4 Notwithstanding anything herein to the contrary, if the required cure of the noticed default cannot reasonably be completed by the defaulting party within such 30-day period, the defaulting party's failure to perform shall not constitute an Event of Default so long as the defaulting party undertakes to cure the failure promptly and diligently and continuously pursues the cure thereof to completion. In the event that the defaulting party fails to cure such default within the cure period, the non-defaulting party shall be entitled to exercise any rights permitted by applicable law.

1.11 **"License Rights"**. The rights to be assigned to Buyer under the Cell Antenna License Agreements, as set forth in the Easement Agreement.

1.12 **"Initial Purchase Price"**. The initial purchase price for the Easements and the License Rights as stated in Section 3.

1.13 **"Inspection"**. A site inspection of, or other activity permitted to be made on, the Real Estate under Section 5.1.

1.14 **"Inspection Consultant"**. A person or company who performs an inspection or investigation of the Real Estate pursuant to Section 5.1.

1.15 **"Inspection Period"**. The time period prescribed in Section 5.1 for Buyer to conduct Inspections and other due diligence under this Agreement

1.16 **"Notice"**. Any notice, designation, consent, approval, offer, acceptance, statement, request, or other communication required or allowed under this Agreement.

1.17 **"Permitted Title Exceptions"**. The following items with respect to the Title Commitment and Title Policy:

1.17.1 Real estate taxes not payable at the time of the date of Closing;

1.17.2 Easements, restrictions, and limitations of record and zoning ordinances which, in Buyer's sole opinion, would not interfere with Buyer's Intended Use of the Real Estate; and

1.17.3 Exceptions accepted by Buyer under Section 6.3.2.1.

1.18 **"Real Estate"**. The parcel of real estate owned by Seller commonly known as 14501 Covington Road, Fort Wayne, Indiana 46814, containing approximately 2.62 acres that is legally described in Exhibit "A" to this Agreement.

1.19 **"Resolution"**. A resolution signed by the City Council of the City of Fort Wayne, authorizing Benjamin Groeneweg, Engineer VI: Utility Asset Management and Engineering Services, to execute the Easement Agreement, and ancillary transaction documents, on behalf of the Board of Public Works, City of Fort Wayne

1.20 **“Seller”**. City of Fort Wayne, an Indiana municipal corporation, by and through its Board of Public Works.

1.21 **“Survey”**. The survey of the Easements prepared by prepared by an Indiana registered land surveyor approved by Seller. The Survey shall be certified to Seller, Buyer, Buyer’s lender, and the Title Company as of a current date, contain a legal description of the Real Estate, show the boundaries of the Real Estate, all plotable easements, including without limitation the Easements, rights-of-way, improvements, drives, sidewalks, and encroachments affecting or benefiting the Easements, and include the following Table A items: 1, 2, 3, 4, 6(a), 7(a), 8, 9, 11(b), 13, 14, 16, 17, 18, and 19(a). The Survey legal descriptions shall be used in the Title Commitment, the Title Policy, and the Easement Agreement.

1.22 **“Title Commitment”**. The owner’s title insurance commitment for the Easements to be delivered under Section 6.1.

1.23 **“Title Company”**. Linear Title and Closing.

1.24 **“Title Policy”**. The owner’s title insurance policy for the Easements to be delivered by Seller under Section 6.4.

1.25 **“Water Tower”**. The water tower owned by Seller located on the Real Estate.

2. **PURCHASE AND SALE OF EASEMENTS AND LICENSE RIGHTS**. Buyer shall purchase from Seller, and Seller shall sell to Buyer, the Easements and the License Rights for the Initial Purchase Price, subject to the terms and conditions stated in this Agreement.

3. **INITIAL PURCHASE PRICE**. The Initial Purchase Price for the Easements and the License Rights shall be \$931,000, due at Closing, along with additional consideration as described in the Easement Agreement.

4. **MANNER OF PAYMENT**. At Closing, Buyer shall pay Seller the Initial Purchase Price in cash or other same day funds, less all credits due Buyer under this Agreement.

5. **INSPECTION PERIOD AND OTHER DUE DILIGENCE**.

5.1 **Inspections**.

5.1.1 Through and including April 30, 2016 (the “Inspection Period”), Buyer, at Buyer’s sole cost and expense, may conduct all Inspections of the Real Estate that Buyer believes are necessary or suitable for Buyer’s Intended Use. The Inspections may include, without limitation, inspections, testing, or other investigations of the following matters:

5.1.1.1 Suitability for Buyer’s Intended Use.

5.1.1.2 Availability of all utility services to serve the Easements.

5.1.1.3 Perform any and all due diligence relating to the Cell Tower License Agreements, the License Rights, the Easements, and the Real Estate.

5.1.2 Inspections may be performed by Buyer, Buyer's agents or designees, and Inspection Consultants and their representatives, all of whom shall have reasonable access to the Real Estate at reasonable times to perform Inspections.

5.1.3 Seller agrees to fully cooperate with, and provide all information and documentation requested by, Inspection Consultants in connection with Inspections, including without limitation, the execution of documents necessary for Inspections.

5.1.4 If Buyer fails to timely conduct any investigation permitted under Section 5.1, Buyer shall be deemed to waive the right to do so.

5.1.5 Seller shall have no financial responsibility for the Inspections.

5.1.6 Buyer shall cause the Real Estate to be restored to the same condition as it existed before the Inspections.

5.1.7 Buyer shall indemnify and hold Seller harmless against all claims lawsuits, damages, costs, and expenses related to, or arising out of, the Inspections.

6. ***EVIDENCE OF TITLE AND SURVEY.***

6.1 ***Delivery of Title Commitment.*** Within 20 days after the Effective Date, Buyer, at Buyer's expense shall obtain and deliver a copy to Seller the Title Commitment (and deliver a copy thereof to Seller) issued by the Title Company together with legible copies of all covenants, conditions, easements, and restrictions referred to as exceptions in the Title Commitment. The Title Commitment shall show title to the Easements vested in Seller, with no exceptions other than the Permitted Title Exceptions. If other exceptions exist, Section 6.3 shall apply. Any additional title evidence shall be at the expense of Buyer, provided, however, that the cost of additional title evidence necessitated by the acts or omissions of Seller shall be borne by Seller. Seller shall provide the Title Company with all documentation in Seller's possession pertaining to the Easements. The legal description of the Easements shall be the same in the Title Commitment and in the Survey. Buyer may request the Title Company to update the Title Commitment so that it is current as of the time of Closing.

6.2 ***Survey.*** Within 20 days after the Effective Date, Buyer, at Buyer's expense, shall obtain the Survey and deliver a copy of the Survey to Seller. Buyer also shall be entitled to have the Survey recertified, at Buyer's expense, to Buyer's assignee and Buyer's lender, and so that the Survey is current as of Closing.

6.3 ***Title Objections.***

6.3.1 Buyer shall give Notice to Seller at least 30 days prior to the expiration of the Inspection Period, describing with reasonable particularity each exception

disclosed by the Title Commitment or title defect disclosed by the Survey to which Buyer objects, and the basis for each objection. Seller then shall have 30 days to remove the exceptions or cure the Survey defects to which Buyer reasonably objects, to insure against loss or damage that may be sustained by Buyer because of them, in a manner reasonably acceptable to Buyer, or to reach some other accommodation or extension of time acceptable to Buyer.

6.3.2 If Seller is unable to cause the defects in the Survey and Title Commitment to be resolved in accordance with Section 6.3.1, Seller shall give Notice to Buyer of such fact. Buyer then shall have 10 days to give Notice to Seller that Buyer:

6.3.2.1 Accepts the Title Commitment and Survey in their respective conditions as of the date Seller gives Notice under Section 6.3.2; or

6.3.2.2 Desires to terminate this Agreement because Buyer does not accept the condition of the Title Commitment or the Survey.

6.3.3 Prior to Closing (but without any specific date or time period), Buyer may obtain updates of the Title Commitment and the Survey. If Buyer does so, Buyer then shall have the same rights, and Seller shall have the same obligations, regarding matters of title and survey stated in Sections 6.3.1 and 6.3.2. The time periods for Seller to cure defects and give Notice stated in Sections 6.3.1 and 6.3.2 also shall apply to this Section 6.3.3.

6.4 **Title Policy.** Promptly after Closing, the Title Company shall furnish the Title Policy to Buyer in the amount of the Initial Purchase Price, consistent with the Title Commitment and all requirements stated in Section 6.1. Buyer shall pay the premiums for the Title Policy delivered to Buyer under this Section 6.4.

7. **RISK OF LOSS.** Seller shall bear the risk of loss to the Easements until Closing. Buyer shall bear the risk of loss to the Easements after Closing.

8. **PRE-CLOSING OBLIGATIONS.** Between the Effective Date and the Closing Date, Seller shall not:

8.1 Make any alterations to any part of the Easements or Cell Antenna License Agreements (except to comply with requirements of law or this Agreement);

8.2 Enter into a lease for any portion of the Easements; or

8.3 Enter into any agreement or take any action that is outside the normal scope of maintaining and operating the Easements or the Licenses, or would bind or encumber the Easements or Licenses after Closing (except as is otherwise permitted under this Agreement).

9. **POSSESSION.** Seller shall deliver possession of the Easements to Buyer at Closing.

10. **CONDITIONS OF CLOSING, CLOSING DATE, AND OTHER CLOSING MATTERS.**

10.1 **Conditions of Closing.** Buyer's obligation to proceed to Closing shall be expressly conditioned on the performance or satisfaction of all of the following items and conditions on or before April 30, 2106:

10.1.1 The representations and warranties made by Seller in Section 11 are correct as of the Closing Date, with the same force and effect as if such representations and warranties were made at such time.

10.1.2 Buyer is satisfied with the marketability and condition of the Easements and all Inspections.

10.1.3 Buyer is satisfied with the condition of title to the Easements, and is satisfied with the Survey, within the timeframes specified in Section 6.

10.1.4 Buyer receives a copy of the executed Resolution.

10.1.5 Successful acquisition of any consent or waivers required from tenant under the Cell Antenna License Agreements or third-party holding such right.

10.1.6 All other requirements under this Agreement are satisfied or completed before Closing.

10.2 **Closing Date.**

10.2.1 The Closing Date shall be specified by Buyer in a Notice given to Seller, which Closing Date shall be two business days after receipt of the signed Resolution and other documents required under Section 10.4.1 by Buyer, but in no event shall the Closing Date be later than May 15, 2016, unless the parties mutually agree in writing to an extension of the Closing Date to complete other requirements necessary to comply with the provisions in this Agreement.

10.2.2 If Closing does not occur on or before May 15, 2016, and the Closing Date is not extended in accordance with Section 10.2.1, this Agreement shall terminate, and, so long as Seller is not in default under this Agreement, Seller shall be entitled to retain the Earnest Money, and the parties shall have no further obligations to each other.

10.3 **Closing Location.** The Closing shall take place on the Closing Date, at a location and in a manner mutually agreed upon by Buyer and Seller.

10.4 **Closing Documents and Other Closing Items.**

10.4.1 **Seller's Documents.** At or before Closing, Seller shall execute and deliver to Buyer the following documents, all of which shall be consistent with the forms described, or such other forms as are reasonably acceptable to the parties' respective legal counsel:

10.4.1.1 The Easement Agreement.

10.4.1.2 A Closing Affidavit and Representations in the form approved by the Title Company and by Buyer's legal counsel.

10.4.1.3 All other documentation which reasonably may be required by the Title Company in order to insure Buyer with good and marketable title to the Insured Easements.

10.4.1.4 A completed Indiana Disclosure of Sales Information form.

10.4.1.5 A completed Certification of Non-foreign Status in a form which complies with applicable provisions of the Internal Revenue Code, as amended, and related regulations

10.4.1.6 Fully executed tenant payment direction letters directing the licensees under the Cell Antenna License Agreements to pay rent to Buyer

10.4.1.7 A Vendor Disclosure Statement in the standard form required by the City of Fort Wayne, Indiana.

10.4.1.8 Such other documents as are necessary to consummate the transaction contemplated by this Agreement.

10.4.2 **Buyer's Documents.** On or before Closing, Buyer shall execute and deliver to Seller such documents as are reasonably deemed necessary by Seller or the Title Company to consummate the transaction contemplated by this Agreement.

10.5 **Failure to Satisfy Conditions.** If in Buyer's sole opinion any condition described in Section 10.1 cannot be performed or satisfied, Buyer may terminate this Agreement. Notwithstanding anything contained in this Section 10 to the contrary, Buyer may waive any condition described in Section 10.1 at any time prior to termination, and proceed to Closing.

10.6 **Closing Expenses.** The following costs and expenses shall be paid by the respective parties at or in connection with Closing:

10.6.1 **Seller's Expenses.** Seller shall pay:

10.6.1.1 One half of the closing fee or escrow fee charged by the Title Company to close the transaction contemplated by this Agreement, if any;

10.6.1.2 The costs of recording the satisfaction of any unreleased mortgage on the Easements, and any other document necessary to make title to the Easements marketable;

10.6.1.3 All other costs and expenses required to be paid by Seller under this Agreement; and

10.6.1.4 Seller's attorney fees.

10.6.2 **Buyer's Expenses.** Buyer shall pay:

10.6.2.1 One half of the closing fee or escrow fee charged by the Title Company to close the transaction contemplated by this Agreement, if any;

10.6.2.2 The premiums for the Title Commitment and the Title Policy for owner's coverage as provided in Sections 6.1 and 6.4;

10.6.2.3 The cost of the Survey;

10.6.2.4 All costs and expenses incurred by Buyer in connection with Buyer's financing, including any additional premium payable to the Title Company for the simultaneous issuance of a lender's title policy;

10.6.2.5 All other costs and expenses required to be paid by Buyer under this Agreement; and

10.6.2.6 Buyer's attorney fees.

10.7 **CLOSING ADJUSTMENTS.** At Closing, the following adjustments or credits shall be made or given by Seller to Buyer:

10.7.1 **Taxes.** Seller represents that there are no taxes levied against the Real Estate or the Easements. Accordingly, no tax proration is necessary for Closing.

10.7.2 **Other Closing Adjustments.** Other closing adjustments reasonable and customary for like transactions also shall be made at Closing.

11. **SELLER'S REPRESENTATIONS AND WARRANTIES.** Seller makes the following representations and warranties to Buyer, each of which shall survive the execution of this Agreement:

11.1 **Authorization and Absence of Defaults.** The execution, delivery to Buyer, and performance by Seller of Seller's obligations under this Agreement do not and will not:

11.1.1 Violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award presently in effect having applicability to Seller;

11.1.2 Result in a material breach of or constitute a material default under any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Seller is a party, or by which Seller or Seller's property may be bound or affected; or

11.1.3 Result in or require the creation or imposition of any lien on any of Seller's property or revenues, other than liens granted to Buyer.

11.2 **Title to Easements.** Seller presently has, and will have at Closing, marketable title to the Easements, free and clear of all liens, physical and financial encumbrances, leases, covenants, conditions, restrictions, rights-of-way, easements, encroachments, and other matters affecting title, except for the Permitted Title Exceptions, including the Cell Antenna License Agreements.

11.3 **Cell Antenna License Agreements Estoppel.** The condition of the Cell Antenna License Agreements are as follows:

11.3.1 The Cell Antenna License Agreements are in full force and effect and unmodified, and Buyer has been provided with a full and complete copy thereof;

11.3.2 Seller has not delivered to any tenant under the Cell Antenna License Agreements a notice of breach or default of tenant's obligations thereunder.

11.3.3 No tenant under the Cell Antenna License Agreements has delivered to Seller a notice of breach or default of Seller's obligations thereunder, or a rent reduction request relating to such Cell Antenna License Agreement.

11.3.4 Seller has not received notice of intent or desire to terminate from any tenant under the Cell Antenna License Agreements.

11.3.5 No tenant under the Cell Antenna License Agreements has a claim of setoff thereunder, or otherwise against rents or charges due or to become due thereunder.

11.4 **Validity and Enforceability.** This Agreement constitutes a legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with the respective terms of this Agreement.

11.5 **No Litigation.** There are no actions, suits, or proceedings pending, threatened, or reasonably anticipated, affecting the Easements, in any court or federal, state, municipal, or other governmental department, commission, board, bureau, agency, or non-government arbitration board or commission.

11.6 **Accuracy of Representations and Warranties.** No representation or warranty made by Seller in this Agreement contains, to the best of Seller's knowledge, any untrue statement of a material fact known to Seller, or omits to state a material fact known to Seller necessary in order to make the statements contained in this Agreement not misleading.

12. **BUYER'S REPRESENTATIONS AND WARRANTIES.** Buyer makes the following representations and warranties to Seller, each of which shall survive the execution of this Agreement:

12.1 **Authorization and Absence of Defaults.** The execution, delivery to Seller, and performance by Buyer of Buyer's obligations under this Agreement have been duly authorized by all necessary business entity or governmental action, and do not and will not:

12.1.1 Violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award presently in effect having applicability to Buyer;

12.1.2 Result in a material breach of or constitute a material default under any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Buyer is a party, or by which Buyer or Buyer's property may be bound or affected; or

12.1.3 Result in or require the creation or imposition of any lien on any of Buyer's property or revenue, other than liens granted to Seller.

12.2 **Validity and Enforceability.** This Agreement constitutes a legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with the respective terms of this Agreement, except as enforcement may be limited by applicable bankruptcy, insolvency, rearrangement, moratorium, liquidation, conservatorship, reorganization, or similar debtor relief laws affecting the rights of creditors generally from time to time in effect.

12.3 **No Litigation.** There are no actions, suits, or proceedings pending or, to the knowledge of Buyer, threatened against or affecting Buyer before any court or governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, which, if determined adversely to Buyer, would draw into question the validity, authorization, or enforceability of this Agreement, or could have a material adverse effect on the financial condition, properties, or operations of Buyer.

12.4 **Accuracy of Representations and Warranties.** No representation or warranty made by Buyer in this Agreement contains any untrue statement of a material fact known to Buyer, or omits to state a material fact known to Buyer necessary in order to make the statements contained in this Agreement not misleading.

13. **BROKER'S FEES.** Each party represents to the other party that no person or entity is entitled to any brokerage commission, finder's fee, except pursuant to a separate agreement with such party (which party shall be solely liable for such fee), or any other like payment in connection with any transaction contemplated by this Agreement by reason of the action of any party.

14. **WITHDRAWAL OF EASEMENTS FROM MARKETPLACE.** Upon full execution of this Agreement, Seller shall deal exclusively with Buyer, and shall not consider, accept, or solicit any other offer from any other party to purchase or lease the Easements or any part of them, unless and until this Agreement is properly terminated by a party having the right to do so under the provisions of this Agreement.

15. **TERMINATION OF AGREEMENT.** If a party wishes to terminate the rights and obligations under this Agreement with respect to the purchase and sale of the Easements, the party shall give Notice to the other party of the desire to terminate this Agreement, stating with reasonable detail each basis for termination. The termination shall become effective on the fifth day after the date Notice is given, unless, on or before that date, either of the following occurs:

15.1 The defect or default stated in the Notice is cured; or

15.2 The party having the option to terminate gives Notice to the other party of either a waiver of the condition or contingency upon which such option is based, or an extension of the time within which such condition or contingency is to be performed or satisfied.

16. NOTICES.

16.1 *Written Notice.* Each Notice required or allowed under this Agreement shall be in writing. Any action required or allowed under this Agreement that is a term within the definition of "Notice" under Section 1.18, also shall be in writing.

16.2 *Place of Notice.* Notice to a party shall be given at the party's address identified in this Section 16.2, or at such other address as a party may designate in a Notice to the other party:

If to Buyer: Board of Public Works
City of Fort Wayne
Attn: Director of City Utilities
200 East Berry Street, Suite 240
Fort Wayne, IN 46802
Fax: _____
Email: Ben.Groeneweg@cityoffortwayne.org

with a copy to: Scott M. Federoff, Esq.
Carson Boxberger LLP
301 W. Jefferson Blvd., Suite 200
Fort Wayne, IN, 46802
Fax: 260.423.4329
Email: sfederoff@carsonboxberger.com

and a copy to: Lindsey Jackson
City Attorney
200 East Berry Street, Suite 430
Fort Wayne, IN 46802
Fax: _____
Email: Lindsey.Jackson@cityoffortwayne.org

If to Seller: Landmark Infrastructure Holding Company, LLC
c/o Landmark Dividend LLC
P.O. Box 3429
2141 Rosecrans Ave., Suite 2100
El Segundo, CA 90245
Attn: Legal Department
Fax: _____
Email: _____

16.3 ***Manner of Giving Notice.*** Notice shall be deemed given when:

16.3.1 Personal service of the Notice is made on the party to be notified (but the party need not be at the address designated under Section 16.2);

16.3.2 The Notice is mailed to the party to be notified by means of certified or registered U.S. mail, return receipt requested, postage prepaid;

16.3.3 The Notice is sent to the party to be notified by express courier such as "Federal Express" or such other similar carrier guaranteeing next day delivery; or

16.3.4 A copy of the Notice is sent to the party by email or facsimile transmission, to the applicable email address or facsimile number designated in Section 16.2, provided the original Notice is sent by first class U.S. mail, postage prepaid, to the party the same day as the email or facsimile is sent.

16.4 ***Refusal to Accept Notice.*** Refusal by a party to accept a Notice shall not affect the giving of the Notice.

17. ***REMEDIES.***

17.1 If an Event of Default by Seller occurs, Buyer may seek the following remedies, which shall be cumulative and are not mutually exclusive:

17.1.1 All legal and equitable remedies available (including without limitation, specific performance of this Agreement);

17.1.2 Termination of this Agreement; and

17.1.3 The reasonable attorney fees, expenses and costs incurred by Buyer in connection with an Event of Default by Seller.

17.2 If an Event of Default by Buyer occurs, Seller may seek the following remedies, which shall be cumulative and are not mutually exclusive:

17.2.1 All legal and equitable remedies available;

17.2.2 Termination of this Agreement; and

17.2.3 The reasonable attorney fees, expenses and costs incurred by Seller in connection with an Event of Default by Buyer.

17.3 The parties agree that it may be impossible to measure in money the damages which will accrue to Buyer by reason of a failure by Seller to perform any of Seller's obligations under this Agreement. Therefore, if Buyer institutes any action or proceeding against

Seller to specifically enforce the provisions of this Agreement, Seller shall be deemed to waive the claim or defense that Buyer has an adequate remedy at law.

17.4 The failure to enforce a breach of this Agreement shall not be construed as a waiver of the right to enforce such breach at a later time or to enforce any other breach.

17.5 If a party consists of more than one person, each person who is a party shall be jointly and severally liable for such party's defaults.

18. **CONDEMNATION.** If a condemnation, eminent domain, or similar proceeding is commenced against all or any portion of the Easements, Buyer may either: (i) terminate this Agreement; or (ii) proceed to Closing, in which event Seller shall assign to Buyer at Closing the right to receive and settle the award, but only with regard to the Easements, in any such proceeding (and Seller shall not settle any such award without Buyer's prior written approval), less any reasonable expenses incurred by Seller in connection with such proceeding.

19. **AUTHORITY TO SIGN.** Each person signing this Agreement in a representative capacity on behalf of a party warrants and represents to each other party that:

19.1 The person executing this Agreement has the actual authority and power to so sign, and to bind the person's respective principal to the provisions of this Agreement; and

19.2 All corporate or other entity action necessary for the making of this Agreement has been duly taken.

20. **EXECUTION BY DIGITAL MEANS.** The parties agree that this Agreement may be transmitted digitally by them for execution by email or facsimile transmission. The parties intend that the original or digital signatures of the parties on this Agreement shall be binding on them.

21. MISCELLANEOUS.

21.1 **Binding Agreement.** This Agreement shall run with the land, and shall bind and inure to the benefit of the parties and their respective legal representatives, heirs, successors, and assigns.

21.2 **Invalid Provision/Severability.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions of it, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

21.3 **Amendments.** No amendments, modifications, alterations, or additions to this Agreement shall be binding unless made in writing and signed by the parties.

21.4 **Assignment.** Buyer may assign or grant a security interest in and to this Agreement, or the rights and obligations under it, without Seller's prior consent, to any entity in which Buyer or Buyer's principals have an interest, are under common control or ownership with, or to any lender or financier of Grantee's. Buyer shall give Notice to Seller of the identity of any such assignee.

21.5 **Gender.** Whenever reasonably necessary, pronouns of any gender shall be deemed synonymous, as shall singular and plural pronouns.

21.6 **Governing Law.** This Agreement shall be governed in all respects whether as to validity, construction, capacity, performance, or otherwise by the laws of the State of Indiana.

21.7 **Rule of Construction.** The judicial rule of construction requiring or allowing a document to be construed to the detriment or against the interests of the document's maker or drafter shall not apply to this Agreement.

21.8 **Headings.** The section headings in this Agreement are included solely for convenience, and shall in no event affect or be used in connection with the interpretation of this Agreement.

21.9 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but together the counterparts shall constitute one and the same document.

21.10 **Entire Agreement.** This Agreement constitutes the entire agreement of the parties, all prior negotiations and agreements, whether written or oral, having been merged into this Agreement.

21.11 **Time of Essence.** Time is of the essence in this Agreement.

21.12 **Computation of Time.** In computing a time period prescribed in this Agreement, the day of the act or event shall not be counted. All subsequent days, including intervening weekend days and holidays, shall be counted in the period. The last day of the period so computed is to be included unless it is a weekend day or a legal holiday under Indiana law, in which case the period is to be extended to the next day that is not a weekend day or legal holiday.

21.13 **Recitals.** All recitals set forth at the outset of this Agreement are incorporated by reference in it and are true.

21.14 **No Recording.** This Agreement may not be recorded without the prior written consent of both parties.

21.15 **Review by Counsel.** Each party has had the opportunity to have this Agreement reviewed by independent counsel before signing it.

21.16 *Survival.* The representations and warranties of the parties contained in this Agreement, and the provisions in Section 10.6.3 and Section 11.7 shall survive termination of this Agreement for one year, and shall not be merged into the deed to be delivered by Seller to Buyer.

This Agreement has been signed by the parties as of the Effective Date.

[SIGNATURE PAGES FOLLOW.]

SELLER:

City of Fort Wayne,
an Indiana municipal corporation,
by and through its Board of Public Works

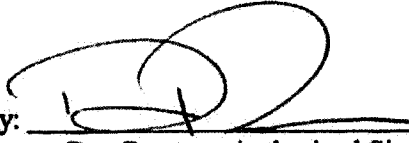
Dated: February __, 2016

By: _____
Benjamin Groeneweg,
Engineer VI: Utility Asset Management and
Engineering Services, Authorized signatory
on behalf of the Fort Wayne Board of Public
Works, per the attached resolution

Accepted by Buyer this ___ day of February, 2016.

BUYER:

**Landmark Infrastructure Holding Company, LLC,
a Delaware limited liability company**

By: 

Dan Parsons, Authorized Signatory

Exhibit "A"
Legal Description of the Real Estate

Part of the East half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, in Allen County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of the East half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, Allen County, Indiana; thence South along the West line of the East Half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, a distance of 1100.0 feet to the true point of beginning; thence continuing South along said West line, a distance of 1541.04 feet to the Southwest corner of the East Half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East; thence East with a deflection angle to the left of 91 degrees 22 minutes 20 seconds along the South line of the East Half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, a distance of 440.0 feet; thence North with a deflection angle to the left of 88 degrees 37 minutes 40 seconds and parallel to the West line of the East Half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, a distance of 198.0 feet; thence West with a deflection angle to the left of 91 degrees 22 minutes 20 seconds and parallel to the South line of the East Half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, a distance of 420.0 feet; thence North with a deflection angle to the right of 91 degrees 22 minutes 20 seconds parallel to and 20.0 feet East of the West line of the East Half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, a distance of 1343.08 feet; thence West with a deflection angle to the left of 91 degrees 29 minutes 30 seconds and parallel to the North line of the East Half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, a distance of 20.0 feet to the Point of Beginning, containing 2.62 acres.

**Exhibit “B”
Easement Agreement**

[Attach Easement Agreement here.]

Prepared by:

Landmark Infrastructure Holding Company LLC
c/o Landmark Dividend LLC
P.O. Box 3429
El Segundo, CA 90245
TC: 154560-4
Attn: Legal Department

Return after recording to:

LINEAR TITLE & CLOSING, LTD.
Attn: Commercial Division
127 John Clarke Road, First Floor
Ocean Technology Plaza
Middletown, RI 02842
LMD-478443-P

Telecommunication Easement Agreement

Covington Water Tower

This Telecommunication Easement Agreement ("***Agreement***") entered into this ____ day of ____, 2016 ("***Effective Date***") by and between the **City of Fort Wayne**, an Indiana municipal corporation whose address is 200 East Berry Street, Suite 240, Fort Wayne, Indiana 46802 by and through its **Board of Public Works** ("***Grantor***" or "***City***") and **Landmark Infrastructure Holding Company LLC**, a Delaware limited liability company whose address is 2141 Rosecrans Avenue, Suite 2100, El Segundo, California 90245 ("***Grantee***"). All references hereinafter to "***Grantor***" shall include its successors and assigns as owner(s) of the Property (as defined below). All references hereinafter to "***Grantee***" shall include its successors and permitted assigns. Grantor and Grantee referenced herein individually as a "***Party***" and collectively as the "***Parties***".

Recitals

Whereas Grantor is the owner of that water tower ("**Water Tower**") and the real property of approximately two and six hundred fourteen thousandths (2.614) acres on which the Water Tower is located ("**Land**") (Water Tower and Land hereinafter collectively "**Property**") commonly known as the Covington Water Tower and located at 14,501 Covington Road (sometimes referred to as 14,489 Covington Road), City of Fort Wayne, County of Allen and State of Indiana, 46804 as more particularly described on **Exhibit A** attached hereto; and

Whereas, Grantor currently leases certain portions of the Property for wireless services pursuant to the agreements listed on **Exhibit B** attached hereto ("**Assigned Agreements**", with all references herein to the terms or conditions of the Assigned Agreements meaning to their terms or conditions on the Effective Date unless expressly stated "as from time to time in effect"); and

Whereas the Grantor and the Grantee are entering into this Agreement pursuant to a Purchase and Sale of Telecom Easement and Assignment Agreement between them relating to this Water Tower (there being concurrent transactions relating to three separate water towers) of even date herewith ("**Purchase and Sale Agreement**");

Now, Therefore, in consideration for the payment agreed in the Purchase and Sale Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee do hereby agree as follows:

1. **Grant of Easement.** Grantor hereby grants, bargains, sells transfers and conveys to Grantee:
 - a. A limited exclusive easement to those areas (i) on the exterior of the Water Tower as attachment points for antennas ("**Attachment Area Easement**"), (ii) on the Land for equipment shelters and related ground based equipment, and (iii) above the Land for the ice bridge connecting the ground based equipment to the Water Tower ((ii) and (iii) collectively the "**Equipment Area Easement**"), that are leased by Grantor pursuant to the Assigned Agreements (collectively the "**Communications Easement**") for the transmission and reception of wireless telecommunication signals and the construction, maintenance, repair, replacement, improvement, operation and removal of telecommunications facilities, including antennas, antenna support brackets, shelters, fences, gates, cabling, wiring and related facilities but not including towers (collectively, the "**Facilities**") and any ancillary activities and uses specifically related thereto (collectively, the "**Permitted Use**") including, but not limited to those necessary for Grantee to comply with the obligations if any, that it will assume under the Assigned Agreements together with the right as set forth in Section 7 to enter the Property and access the Easements (as defined below).
 - i. Without Grantor's prior written consent, and subject to the terms and conditions of the Assigned Agreements for so long as they are in effect (a) only antennas, cables, wiring and related small, lightweight antenna-mounted electronics are allowed on the Water Tower, (b) the height of any Facilities installed after the Effective Date shall not exceed the height of the Facilities located on or near the top of the Water Tower as of the

Effective Date, and (c) the height of any Facilities located on the side of the Water Tower tank shall not exceed the height of the top of such tank.

ii. The Communications Easement hereby granted herein is exclusive only to the extent that it grants rights (a) regarding the transmission and reception of wireless communication signals (or any replacement technology) and the installation and operation of Facilities and ancillary uses relating thereto (b) for those areas on the Water Tower and Land being leased under the Assigned Agreements on the Effective Date. Grantor and its present and future tenants and occupants of the Property have the right to place, maintain, and operate improvements on portions of the Property other than the Communications Easement area, provided such uses do not interfere with the then existing rights of Grantee, Grantee's tenants or Customers, including but not limited to for:

1. Public safety communications, remote meter reading or SCADA (supervisory control and data acquisition) by Grantor or others, and
2. Leases or licenses by Grantor to wireless telecommunications providers who may compete with Customers, and
3. Other improvements using frequencies licensed to the user by the Federal Communications Commission ("*FCC*") or allowed by the FCC for unlicensed use;

b. A non-exclusive easement (the "*Access and Utility Easement*") in, to, under and over the portion of the Property as set forth in the Assigned Agreements (and if not so set forth, as in place on the Effective Date or otherwise reasonably specified by Grantor):

- i. for ingress and egress between the Equipment Area Easement and public roads, and for the installation, repair, replacement, improvement, maintenance, operation and removal of utilities providing services to the Communications Easement and the Facilities; and
- ii. from where the ice bridge attaches to the Water Tower thence to the Attachment Area Easement (such as by means of interior shafts conduits or other space inside and on the Water Tower hereinafter reasonably designated by Grantor) necessary to install cables, wiring, and related items necessary to operate the Facilities, and for access to the Attachment Area Easement for installation, maintenance, repair, replacement and the like.
- iii. Subject to the Assigned Agreements, the Access and Utility Easement or portions thereof may be relocated upon mutual consent of the Parties, not to be unreasonably withheld.

- c. The Communications Easement and the Access and Utility Easement are collectively referred to herein as the “*Easements*” and are described with more particularity on Exhibit C.
2. Assignment. Grantor hereby transfers and assigns to Grantee, as of the Effective Date, all of Grantor’s right, title and interest in, to and under the Assigned Agreements, including without limitation, all rents, security deposits, and other monies due Grantor (except for reimbursements due Grantor for taxes, utilities or other services as set forth below, which are expressly reserved herein by Grantor) specified therein; provided however, that Grantor shall retain and continue to faithfully perform and discharge the following obligations as licensor or lessor under and as set forth in the Assigned Agreements: access, approving changes in Customers, approving changes in Facilities (or synonyms or comparable terms for same, as used in the Assigned Agreements), quiet enjoyment, non-interference, cooperation, payment of taxes (if any, municipal property being exempt from tax under Indiana law), including but not limited to real estate and property taxes assessed on the Water Tower, repair and maintenance of the Water Tower, and Grantee shall assume all other obligations; and further provided that Grantor shall retain and continue to faithfully perform and discharge the following rights as licensor or lessor under and as set forth in the Assigned Agreements: interference, approving changes in Customers and approving changes (or synonyms or comparable terms for same, as used in the Assigned Agreements) in Facilities. Except as otherwise as set forth herein, Grantor is not responsible for the terms of the Assigned Agreements or inconsistencies, if any, between the Assigned Agreements and agreements between Grantor and Grantee. The Parties intend that this Agreement serve as an assignment and transfer to Grantee of all rents due Grantor after the Effective Date pursuant to the Assigned Agreements, but not as an assignment of any payments for taxes, utilities or other non-rent charges due Grantor from licensees or lessees under the Assigned Agreements. Grantee assumes and agrees to perform the obligations and liabilities of Grantor under the Assigned Agreements to the extent that such obligations and liabilities (i) are not the retained responsibility of Grantor pursuant to the terms of this Agreement (which include the obligations as set forth above retained by the Grantor), and (ii) accrue on or after the Effective Date.
3. Use of Easements. In the event of the expiration or termination either or both of the Assigned Agreements, Grantee shall have the right to lease, license, transfer or assign (the “*Replacement Agreements*”), in whole or in part, or permit the use of the Easements and/or its rights under this Agreement for the balance of the Term (as defined below) to third parties and their affiliates, lessees, agents, contractors, invitees and employees (collectively, together with the tenant under the Assigned Agreements, “*Customer(s)*”) on non-monetary terms that are substantially similar to those set forth in the License Agreement dated March 18, 2015 between Grantor as Licensor and SprintCom, Inc., a Kansas Corporation, as Licensee (which License Agreement relates to Grantor's DuPont water tower, and which Grantee is concurrently purchasing with documents substantially similar to this Agreement and Purchase and Sale Agreement). The Replacement Agreements shall not be in conflict with this Agreement or still-existing Assigned Agreement and shall not expand the liability or obligations of the Grantor beyond its liabilities or obligations under the Assigned Agreements. All Customers shall be bound by the terms and conditions of this Agreement. In particular, all Customers shall be communications services providers; and shall be liable

Recitals

Whereas Grantor is the owner of that water tower ("**Water Tower**") and the real property of approximately two and six hundred fourteen thousandths (2.614) acres on which the Water Tower is located ("**Land**") (Water Tower and Land hereinafter collectively "**Property**") commonly known as the Covington Water Tower and located at 14,501 Covington Road (sometimes referred to as 14,489 Covington Road), City of Fort Wayne, County of Allen and State of Indiana, 46804 as more particularly described on **Exhibit A** attached hereto; and

Whereas, Grantor currently leases certain portions of the Property for wireless services pursuant to the agreements listed on **Exhibit B** attached hereto ("**Assigned Agreements**", with all references herein to the terms or conditions of the Assigned Agreements meaning to their terms or conditions on the Effective Date unless expressly stated "as from time to time in effect"); and

Whereas the Grantor and the Grantee are entering into this Agreement pursuant to a Purchase and Sale of Telecom Easement and Assignment Agreement between them relating to this Water Tower (there being concurrent transactions relating to three separate water towers) of even date herewith ("**Purchase and Sale Agreement**");

Now, Therefore, in consideration for the payment agreed in the Purchase and Sale Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee do hereby agree as follows:

1. **Grant of Easement.** Grantor hereby grants, bargains, sells transfers and conveys to Grantee:

a. A limited exclusive easement to those areas (i) on the exterior of the Water Tower as attachment points for antennas ("**Attachment Area Easement**"), (ii) on the Land for equipment shelters and related ground based equipment, and (iii) above the Land for the ice bridge connecting the ground based equipment to the Water Tower ((ii) and (iii) collectively the "**Equipment Area Easement**"), that are leased by Grantor pursuant to the Assigned Agreements (collectively the "**Communications Easement**") for the transmission and reception of wireless telecommunication signals and the construction, maintenance, repair, replacement, improvement, operation and removal of telecommunications facilities, including antennas, antenna support brackets, shelters, fences, gates, cabling, wiring and related facilities but not including towers (collectively, the "**Facilities**") and any ancillary activities and uses specifically related thereto (collectively, the "**Permitted Use**") including, but not limited to those necessary for Grantee to comply with the obligations if any, that it will assume under the Assigned Agreements together with the right as set forth in Section 7 to enter the Property and access the Easements (as defined below).

i. Without Grantor's prior written consent, and subject to the terms and conditions of the Assigned Agreements for so long as they are in effect (a) only antennas, cables, wiring and related small, lightweight antenna-mounted electronics are allowed on the Water Tower, (b) the height of any Facilities installed after the Effective Date shall not exceed the height of the Facilities located on or near the top of the Water Tower as of the

Effective Date, and (c) the height of any Facilities located on the side of the Water Tower tank shall not exceed the height of the top of such tank.

- ii. The Communications Easement hereby granted herein is exclusive only to the extent that it grants rights (a) regarding the transmission and reception of wireless communication signals (or any replacement technology) and the installation and operation of Facilities and ancillary uses relating thereto (b) for those areas on the Water Tower and Land being leased under the Assigned Agreements on the Effective Date. Grantor and its present and future tenants and occupants of the Property have the right to place, maintain, and operate improvements on portions of the Property other than the Communications Easement area, provided such uses do not interfere with the then existing rights of Grantee, Grantee's tenants or Customers, including but not limited to for:
 - 1. Public safety communications, remote meter reading or SCADA (supervisory control and data acquisition) by Grantor or others, and
 - 2. Leases or licenses by Grantor to wireless telecommunications providers who may compete with Customers, and
 - 3. Other improvements using frequencies licensed to the user by the Federal Communications Commission ("*FCC*") or allowed by the FCC for unlicensed use;

- b. A non-exclusive easement (the "*Access and Utility Easement*") in, to, under and over the portion of the Property as set forth in the Assigned Agreements (and if not so set forth, as in place on the Effective Date or otherwise reasonably specified by Grantor):
 - i. for ingress and egress between the Equipment Area Easement and public roads, and for the installation, repair, replacement, improvement, maintenance, operation and removal of utilities providing services to the Communications Easement and the Facilities; and

 - ii. from where the ice bridge attaches to the Water Tower thence to the Attachment Area Easement (such as by means of interior shafts conduits or other space inside and on the Water Tower hereinafter reasonably designated by Grantor) necessary to install cables, wiring, and related items necessary to operate the Facilities, and for access to the Attachment Area Easement for installation, maintenance, repair, replacement and the like.

 - iii. Subject to the Assigned Agreements, the Access and Utility Easement or portions thereof may be relocated upon mutual consent of the Parties, not to be unreasonably withheld.

- c. The Communications Easement and the Access and Utility Easement are collectively referred to herein as the “*Easements*” and are described with more particularity on Exhibit C.
2. Assignment. Grantor hereby transfers and assigns to Grantee, as of the Effective Date, all of Grantor’s right, title and interest in, to and under the Assigned Agreements, including without limitation, all rents, security deposits, and other monies due Grantor (except for reimbursements due Grantor for taxes, utilities or other services as set forth below, which are expressly reserved herein by Grantor) specified therein; provided however, that Grantor shall retain and continue to faithfully perform and discharge the following obligations as licensor or lessor under and as set forth in the Assigned Agreements: access, approving changes in Customers, approving changes in Facilities (or synonyms or comparable terms for same, as used in the Assigned Agreements), quiet enjoyment, non-interference, cooperation, payment of taxes (if any, municipal property being exempt from tax under Indiana law), including but not limited to real estate and property taxes assessed on the Water Tower, repair and maintenance of the Water Tower, and Grantee shall assume all other obligations; and further provided that Grantor shall retain and continue to faithfully perform and discharge the following rights as licensor or lessor under and as set forth in the Assigned Agreements: interference, approving changes in Customers and approving changes (or synonyms or comparable terms for same, as used in the Assigned Agreements) in Facilities. Except as otherwise as set forth herein, Grantor is not responsible for the terms of the Assigned Agreements or inconsistencies, if any, between the Assigned Agreements and agreements between Grantor and Grantee. The Parties intend that this Agreement serve as an assignment and transfer to Grantee of all rents due Grantor after the Effective Date pursuant to the Assigned Agreements, but not as an assignment of any payments for taxes, utilities or other non-rent charges due Grantor from licensees or lessees under the Assigned Agreements. Grantee assumes and agrees to perform the obligations and liabilities of Grantor under the Assigned Agreements to the extent that such obligations and liabilities (i) are not the retained responsibility of Grantor pursuant to the terms of this Agreement (which include the obligations as set forth above retained by the Grantor), and (ii) accrue on or after the Effective Date.
3. Use of Easements. In the event of the expiration or termination either or both of the Assigned Agreements, Grantee shall have the right to lease, license, transfer or assign (the “*Replacement Agreements*”), in whole or in part, or permit the use of the Easements and/or its rights under this Agreement for the balance of the Term (as defined below) to third parties and their affiliates, lessees, agents, contractors, invitees and employees (collectively, together with the tenant under the Assigned Agreements, “*Customer(s)*”) on non-monetary terms that are substantially similar to those set forth in the License Agreement dated March 18, 2015 between Grantor as Licensor and SprintCom, Inc., a Kansas Corporation, as Licensee (which License Agreement relates to Grantor’s DuPont water tower, and which Grantee is concurrently purchasing with documents substantially similar to this Agreement and Purchase and Sale Agreement). The Replacement Agreements shall not be in conflict with this Agreement or still-existing Assigned Agreement and shall not expand the liability or obligations of the Grantor beyond its liabilities or obligations under the Assigned Agreements. All Customers shall be bound by the terms and conditions of this Agreement. In particular, all Customers shall be communications services providers; and shall be liable

directly to Grantor for violations of this Agreement. Notwithstanding anything to the contrary as set forth herein, except for emergencies, if Grantor desires to enforce any rights or remedies of lessor under the Assigned Agreements or Replacement Agreements with respect to obligations as set forth therein, then Grantor shall deliver to Grantee a written notice of a default by a Customer (a "*Lessee Default Notice*") which Grantor believes to exist under the Assigned Agreements or Replacement Agreements, identifying which of the foregoing obligations under the Assigned Agreements or Replacement Agreements are in default by a Customer, and describing in reasonable detail the manner and time in which the default by the Customer occurred or arose. Grantee may elect, in its sole and absolute discretion, but shall not be required, by delivery of written notice to Grantor within thirty (30) calendar days after receipt of the Lessee Default Notice, to enforce the rights and remedies of lessor under the Assigned Agreements or Replacement Agreements against Customers with respect to such default. If Grantee delivers such notice, then Grantee shall have the exclusive right to enforce the rights and remedies of lessor under the Assigned Agreements or Replacement Agreements with respect to such default, and shall diligently pursue the enforcement thereof to the extent commercially reasonable. If Grantee does not deliver such notice, then Grantor may enforce the rights and remedies of lessor under the Assigned Agreements or Replacement Agreements against Customers with respect to such default, provided that Grantor shall not enforce any right or remedy against a lessee or Customer other than for compensatory damages and/or specific performance. Customers shall have the financial, legal and technical qualifications necessary to comply with this Agreement and applicable law, including all licenses from the Federal Communications Commission or successor agency needed for the operation of telecommunications equipment on the Property in full compliance with applicable law. Upon request, Grantee shall provide Grantor with documentation evidencing the preceding.

4. Duration. The duration of the Easements granted herein ("*Term*") shall be until June 28, 2053, provided, however, that at any time during the Term, Grantee may provide to Grantor (or the successor owner(s) of the Property) written, recordable notice of Grantee's intent to terminate this Agreement, in which event this Agreement and all obligations of Grantee hereunder, except those related to removal of Facilities contained in Section 6(b), shall terminate upon Grantor's receipt of written notice of termination pursuant to Section 15 hereof, but any obligations that accrued prior to the termination date shall not be affected. In the event that the use of the Easements is abandoned (as described in this Section 4) by Grantee or its successors, then Grantor may terminate the Easements as set forth below. Following such termination, all right and title to the Property with respect to the Easements granted herein, the Assigned Agreements and any Replacement Agreements shall revert back to Grantor or the successor owner(s) of the Property. Abandonment shall be deemed to have occurred if neither Grantee nor any of its Customers utilize (such use shall be construed broadly to include, but not be limited to, use of the property for the transmission and reception of telecommunications signals, maintenance of the Facilities, and maintenance and/or upkeep of the Easements) the Easements in any manner for a consecutive period of thirty-six (36) months. In the event of abandonment or termination as set forth herein, Grantee shall, at Grantor's request, execute and record any and all instruments and/or documents reasonably required to show of public record the termination of the Easements. If Grantee fails to execute and record such instruments and/or documents within thirty (30)

days of Grantor's request, then Grantor may execute and record such instruments and/or documents on Grantee's behalf. Notwithstanding the foregoing, nothing herein shall be deemed to be a grant of a power of attorney, revocable or otherwise, by Grantee to Grantor for the execution and recordation of such documents reflecting a public record of the termination of the Easements and any interests transferred hereunder.

5. Easement Consideration. Grantor hereby acknowledges the receipt, contemporaneous with the recording of this Agreement, of the agreed-upon **Initial Purchase Price** (payable under and as defined in the Purchase and Sale Agreement (as defined above) between the Parties for this transaction).

- a. As additional consideration ("**Additional Consideration**") Grantee shall pay Grantor as to each of the Assigned Agreements an amount equal to seventy-five percent (75%) of the increase in rent which Grantee receives from Customers from Replacement Agreements or otherwise after the earlier of the termination of such Assigned Agreements or the expiration date currently set forth in such Assigned Agreement. The increase shall be computed compared to the rent then scheduled under the Assigned Agreement.
- b. Additional Consideration shall be paid to Grantor monthly, within thirty (30) days from the receipt of such consideration by Grantee or its affiliates during the prior calendar month. "Paid to Grantor" means received by Grantor.
- c. Any Additional Consideration not paid by the due date shall be assessed a 5% late fee and shall bear interest at 2% per month or (if less) at the highest rate then allowed by law.
- d. Additional Consideration shall be paid to Grantor at such address, or by such electronic means, as it may from time to time specify.
- e. No more than once per calendar year, upon request, Grantee shall provide all ledgers, books of account, other documents or electronic equivalents of the preceding needed for Grantor to audit such payments. The preceding items shall be provided to the auditor at the auditor's normal place of business or at such location in Allen County, Indiana as Grantor may specify, and Grantor shall cooperate with Grantor in any such audit.

6. Improvements; Utilities.

- a. Grantee acknowledges that the Property and Water Tower are part of a public water system which provides potable water to thousands of persons, both inside and outside the City, as well as the location for public safety and public utility communications systems, and that the safety and security of the public water system and such communications systems is at all times paramount in interpreting and applying this Agreement and this Section 6 in particular. The provisions of this Section 6.a. supersede any contrary provisions of this Agreement.

- b. Except as otherwise provided in an Assigned Agreement for so long as it is in effect, Grantee and its Customers may at their discretion and expense, construct (or replace) improvements in, to, under and over the Easements in accordance with this Agreement, including in particular subsections 6(e)-(h) below, all of which improvements shall be deemed part of the Facilities. The Facilities shall not be considered or deemed fixtures and shall remain the personal property of Grantee and its Customers, as applicable, and shall be removable at any time at the discretion of Grantee and its Customers and Grantor shall possess no right, title or interest therein, including without limitation, pursuant to any statutory landlord's lien, if applicable. At the expiration or earlier termination of this Agreement, Grantee shall remove or cause to be removed all Facilities installed by it or its Customers on the Property. Except as otherwise required by the Assigned Agreements, in the event any utilities necessary to serve the Facilities cannot be installed within the Easements, Grantor agrees to cooperate (at no cost to Grantor) with Grantee in granting Grantee the right to locate such utilities on the Property at locations reasonably acceptable to Grantor; provided that Grantee or its Customers shall pay the costs and fees charged by the utilities for same, and any reasonable costs related thereto actually incurred by Grantor; provided, further, Grantor shall not require the payment of any other fees or compensation to Grantor. Grantor shall, upon Grantee's request, execute and record a separate easement agreement in form and substance reasonably satisfactory to Grantor with Grantee or the utility company providing the utility service to reflect such easement. At Grantee's sole expense, Grantor will cooperate with Grantee to apply for and obtain any and all licenses, permits, consents or approvals which may be required in connection with the use of the Easements by Grantee or Customers and as necessary to comply with applicable laws, statutes or regulations, provided that no such application, licenses, permits, consents or approvals shall impose any obligation on Grantor or the Property that is not acceptable to Grantor.
- c. Except as otherwise provided in the Assigned Agreements for so long as it is in effect, Grantee and Customers at their expense shall repair any and all damage caused or contributed to by the installation, construction, operation, maintenance, upgrade, repair or removal of the Facilities (or at Grantor's option reimburse Grantor for the reasonable cost and expense of such repair). Except as set forth in the Assigned Agreements, Grantee and Customers hereby indemnify Grantor with respect to any damage or loss to property or personal injury resulting from the installation, construction, operation, maintenance, upgrade, repair or removal of the Facilities.
- d. Grantee and Customers shall continue to obtain electric service directly from the area electric utility (not from or through Grantor) which shall be paid for by Grantee or Customers.

- e. Except as otherwise provided in an Assigned Agreement for so long as it is in effect, prior to the installation of or any change in Facilities by Grantee or Grantee's Customer, Grantee shall submit or cause to be submitted plans and specifications to Grantor with respect to such Facilities for Grantor's approval, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, unless otherwise provided in an Assigned Agreement for so long as it is in effect, Grantor may withhold its consent to any proposed installation or change that Grantor reasonably determines would materially and adversely affect the (A) Water Tower's structure or systems, or (B) the matters described in Subsection 6.a above. In addition, unless otherwise provided in an Assigned Agreement for so long as it is in effect, Grantor may withhold or condition its approval if the work shown on the plans and specifications will unduly affect or increase the cost of the maintenance, repair or operation of the Water Tower or Property or impair Grantor or its tenants' quiet use or enjoyment of same; or if the work, plans and specifications do not comply with all building and safety codes, applicable national standards, such as ANSI/TIA 222-G (the Structural Standards for Steel Antenna Towers and Antenna Supporting Structures safety code) and later revisions thereto, public water system industry standards (such as those of the American Water Works Association) or sound engineering practice, all without regard to any Federal law, rule, decision or regulation, including Sections 6003 and 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, which preempts, restricts or impairs the application or enforcement the preceding. No review or approval of plans or specifications by Grantor shall ever be construed as representing or implying that such plans or specifications will, if followed, result in a properly designed installation or that such standards comply with pertinent law, building and safety codes, applicable national standards, sound engineering practice or this Agreement.
- f. The "plans and specifications" referred to in subsection (e) shall include: (i) engineering drawings showing the Facilities both as they then exist and with the proposed changes, signed and sealed by a registered professional engineer licensed in Indiana, (ii) a structural analysis signed and sealed by a registered professional engineer licensed in Indiana; (iii) detailed welding procedures, such as to minimize the risk of any burn through of portions of the Water Tank holding water; (iv) if any of the changes may affect the Water Tank shell or its coating, the recommendations of a water tower engineering firm acceptable to Grantor regarding same, and (v) specifications for the treatment, painting or coating of the Facilities and areas worked on so as to match the existing tank color and minimize corrosion.
- g. Except as otherwise provided in an Assigned Agreement for so long as it is in effect, if Grantor so requests, before commencement of any work or delivery of any materials to the Property or the Water Tower, Grantee or its Customer shall furnish to Grantor for its reasonable approval: architectural plans and specifications, names and addresses of all contractors, contracts, all necessary

permits and licenses, certificates of insurance and instruments of indemnification against any and all claims, costs, expenses, damages and liabilities which may arise in connection with such work, all in such form and amount as may be reasonably satisfactory to Grantor. Grantee or its Customers agree to hold Grantor and its agents and employees forever harmless against all claims and liabilities of every kind, nature and description which may arise out of or in any way be connected with such work. Grantee or its Customers shall pay the cost of all such work. All such work shall: (i) be done in compliance with all applicable legal and governmental requirements, ordinances and rules, and all requirements of applicable insurance companies; (ii) be done in a good and workmanlike manner and with the use of good grades of materials including fire protection grades equivalent with those of the Water Tower; (iii) not adversely affect the structural integrity or the mechanical, electrical, communications, plumbing, sanitary or other systems of the Water Tower or exceed applicable design load limits; (iv) not entail cutting or boring into any structural portion of the Water Tower, except with Grantor's prior written consent, which consent may be granted or withheld in Grantor's sole discretion; and (v) not entail welding on the those portions of the Water Tower which are designed to hold or conduct water, except with Grantor's prior written consent, which consent may be granted or withheld in Grantor's sole discretion.

- h. Upon completion of any work referenced above, Grantee or its Customer shall (i) furnish Grantor with contractors' affidavits and final waivers of lien covering all labor, services and materials expended, (ii) reimburse Grantor for the reasonable cost of an inspection by engineers of Grantor's choosing of the work for compliance with the plans, specifications and procedures for such work, (iii) pay (or reimburse Grantor for) the cost of any needed remedial work and reinspection, and (iv) provide Grantor with as-built engineering drawings of the work showing the actual location of all Facilities, equipment and improvements signed and sealed by a registered professional engineer licensed in Indiana.

7. Access. Except as set forth in the Assigned Agreements as of the Effective Date, Grantee and Customers shall have twenty-four (24) hour per day, seven (7) day per week non-exclusive pedestrian and vehicular access to and over the Property, from an open and improved public road to the Easements for the installation, maintenance and operation of the Facilities and any utilities serving the Facilities ("Access") as is set forth below:

- a. Access to the interior and exterior (sides, roof, skirt) of the Water Tower is only allowed when accompanied by an authorized City representative. Only the City will have a key (or similar device) for access to the Water Tower - - Grantee, Customers and their employees, agents, and subcontractors will not.
- b. Access by Grantee, Customers and their employees, agents, and subcontractors for all scheduled work shall only be on days and at times when the main administrative offices of the City of Fort Wayne are open for business, with two (2) business days advance notice to Grantor and with a Grantor representative

accompanying Grantee, Customers or their employees, agents, and subcontractors (if Grantor so requires).

- c. Only emergency work may be done by Grantee, Customers and their employees, agents, and subcontractors on days or at times other than those set forth in (b). Access for such emergency work shall only be with advance notice to Grantor at Grantor's 24-hour security or emergency number, and with a Grantor representative accompanying Grantee (if Grantor so requires).
- d. Access shall be exercised in accordance with Grantor's security procedures as from time to time in effect, including promptly reimbursing Grantor for all costs of a City representative accompanying the person(s) granted access, including callout time and charges, overtime for employees and the like; shall be in compliance with all applicable laws; shall not materially interfere with Grantor's operations; and shall be exercised with reasonable care.
- e. Grantee acknowledges that in the event it, Customers, or their employees, agents or subcontractors obtains Access to the Property in violation of the preceding provisions that Grantor and the public could incur significant damage and that such violation shall be a default under this Agreement entitling Grantor to obtain immediate injunctive relief or bar future access by Grantee or Customers until Grantor is provided reasonable assurances of compliance with this Section.

8. Covenants and Agreements of Grantor.

- a. Grantor represents and warrants that it is the owner in fee simple of the Property, free and clear of all liens and encumbrances (except for the Assigned Agreements, items of record or matters that have been approved or deemed approved by Grantee), and that it has the right to grant the Easements and assign the Assigned Agreements. Grantor further represents and warrants that Grantee shall peaceably and quietly hold and enjoy the Easements during the Term without any hindrance, molestation or ejection by any Party claiming through Grantor, subject to the terms of this Agreement.
- b. During the Term, Grantor shall pay when due all real property taxes and all other taxes, fees and assessments, if any, attributable to the Property (collectively, "**Real Property Taxes**"). If Grantor fails to pay before delinquency the Real Property Taxes, Grantee shall have the right but not the obligation to pay such taxes after first having given Grantor no less than ten (10) days' notice before any such payment by Grantee, and thereafter demand payment from Grantor, which payment Grantor shall make within ten (10) days of such demand by Grantee, with interest at ten percent (10%) per annum from the date of Grantee's notice until fully paid.

- c. Grantor shall use commercially reasonable efforts to ensure that utilities are available to the Water Tower (subject to interruptions outside Grantor's control and Force Majeure (as defined below)).
- d. Grantor shall use commercially reasonable efforts to maintain the Water Tower and the Property at all times in good condition (subject to casualty damage, economic obsolescence, matters outside Grantor's control and Force Majeure) and (subject to Section 8(c) below) in material compliance with all applicable laws, statutes and regulations, except that Grantor is excused from complying with burdensome changes in laws, statutes, regulations or other legal requirements affecting the Water Tower unless Grantee pays its proportionate share of the cost of compliance, based on the square footage of the Communications Easement divided by the square footage of rentable space on the Water Tower.
- e. Grantor shall not grant, create, or suffer any claim, lien, encumbrance, easement, restriction or other charge or exception to title to the Property that would materially adversely affect Grantee's use of the Easements.

9. Covenants and Agreements of Grantee. Grantee acknowledges that it and its Customers shall use the Property only for the Permitted Use. In connection with its use pursuant to this Agreement, Grantee agrees that it will:

- a. Comply with all local, state and federal laws, ordinances, rules, regulations, standards and other requirements applicable to Grantor, Grantee and/or to the operations of Grantee and its Customer(s), including, without limitation, those relating to zoning, health, safety and protection of the environment, and Hazardous Materials. As used in this Agreement, "Hazardous Materials" shall include any and all ignitable, explosive, corrosive, toxic, reactive or radioactive materials, hazardous wastes, hazardous substances, petroleum products or substances containing petroleum hydrocarbons, and other substances that are dangerous or harmful to human health or the environment, including without limitation: (1) any substances defined as or included within the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances," "hazardous pollutants" or "toxic pollutants," in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act or the Clean Water Act, or any amendments thereto, or any regulations promulgated thereunder; (2) any "PCBs" or "PCB items" (as defined in 40 C.F.R. §761.3); or (3) any "asbestos" (as defined in 40 C.F.R. §763.63).
- b. Following the expiration or termination of either the Assigned Agreements or Replacement Agreements, maintain, or cause Customers to maintain, the Communications Easement and the Facilities at all times in good condition (subject to casualty damage, matters outside Grantee's control and Force Majeure) and in compliance with all applicable laws, statutes and regulations.

- c. Be responsible for ensuring that the Facilities and Easements comply with all applicable laws and regulations, including real estate laws and regulations, and indemnify Grantor for any non-compliance with such laws and regulations.
- d. Both maintain itself, and cause all Customers to obtain and maintain, a policy of commercial general liability insurance naming Grantor as an additional insured, with liability limits of not less Two Million Dollars (\$2 million dollars) per occurrence/Five Million Dollars (\$5 million dollars) aggregate for bodily injury or death or persons and property damage liability. Such insurance shall be on an occurrence and not a claims made basis, with no self-insured retention, from a carrier rated at least "A minus" by A.M. Best Company (or comparable rating from successor rating agency), with ten (10) days prior written notice to Grantor required prior to any termination of such policy, and which limits may be satisfied by a combination of underlying (basic) policy plus umbrella and/or excess coverage limits. Grantee may satisfy these requirements by obtaining the appropriate endorsement(s) to any master policy(ies) of liability insurance Grantee may maintain. Grantor may increase the insurance amount annually, but not by more than the preceding amount increased by the rate of inflation. Upon its execution of this Agreement, Grantee shall deliver to Grantor a certificate of insurance evidencing the coverage required by this subsection (d), and thereafter within fifteen (15) days upon request by Grantor. Notwithstanding the foregoing, Grantor shall not settle or any insurance claim relating to the Easements without Grantee's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.
- e. Following expiration or termination of the Assigned Agreements or Replacement Agreements, pay, or cause Customers to pay (i) all Real Property Taxes or other taxes, fees or assessments levied against or attributable to the Facilities from and after the Effective Date, and (ii) any increase in Real Property Taxes or other taxes, fees or assessments levied against the Property which are directly attributable to Grantee's or its Customer's use of the Easements or the Property (but not, however, taxes, fees or assessments attributable to periods prior to the Effective Date). In the event Grantor furnishes reasonable proof of such increase to Grantee, that such increase in taxes, fees or assessments is attributable to the Customer's use or equipment, then Grantor shall be reimbursed by such Customer directly. If the Customer does not reimburse Grantor within forty-five (45) days of Grantor's notice, Grantor may enforce its rights and remedies pursuant to Section 3 of this Agreement.
- f. In addition, and not in limitation of subsections (a) and (c) above, in the event of the expiration or termination of any of the Assigned Agreements or Replacement Agreements, operate and maintain the Facilities, and cause Customers to operate and maintain the Facilities, in compliance with all applicable laws, ordinances, rules, regulations and other requirements relating to telecommunication facilities,

including those laws, ordinances, rules, regulations and other requirements relating to radio frequency emissions by such facilities.

- g. Except as expressly set forth herein, accept the Easements and the Property in their "As-Is, Where-Is" condition.

10. Non-Disturbance.

- a. During the Term, subject to Section 6 and other applicable provisions of this Agreement, Grantor shall not prevent or materially impair: Grantee's, Customers' or utilities' access to the Easements; or the transmission of telecommunications signals to and from the Easements. In the event any of the foregoing has occurred, Grantee shall promptly notify Grantor in writing, and provide reasonable detail of any alleged disturbance, as well as any requested action. Grantor, for itself, its successors and assigns, hereby agrees to use its best efforts to prevent the occurrence of any of the foregoing, and shall promptly undertake any remedial action reasonably necessary to do so. Notwithstanding the foregoing, Grantee acknowledges that, from to time, in connection with repairs, maintenance, destruction, dismantling, removal or replacement of the tank or other portions of the Water Tower, Grantee's access to the Easements may be limited, and the transmission of telecommunications signals to and/or from the Easements may be impaired. Grantor shall provide prior reasonable notice to Grantee (except in the event of emergency), and shall take reasonable actions to minimize any such disruption to Grantee's access to the Easements or any impairment of the transmission of telecommunications signals, which shall include including allowing Grantee or its Customers at their expense to relocate their Facilities to a mutually agreeable location elsewhere in or on the Water Tower, or installing and operating temporary cell towers (such as so-called cell towers on wheels) at a mutually agreeable location, such as on the Land. If the circumstances require a permanent relocation of the Facilities, then they shall be relocated by Grantee or its Customers at their expense to a mutually agreeable new location, such as on the Land, and this Agreement amended accordingly.
- b. During the Term, Grantee and Customers shall not prevent or materially impair: Grantor's, its tenants or utilities access to non-exclusive portions of the Easements; or prevent or materially impair the transmission of telecommunications signals to and from portions of the Property other than the Communications Easement. In the event any of the foregoing has occurred, Grantor shall promptly notify Grantee in writing, and provide reasonable detail of any alleged disturbance, as well as any requested action. Grantee, for itself, its Customers, successors and assigns, hereby agrees to use its best efforts to prevent the occurrence of any of the foregoing, and shall promptly undertake any remedial action reasonably necessary to do so. In the event Grantee fails to promptly undertake remedial action, Grantor shall have the express right to seek an injunction to prevent any of the activity prohibited by this Section or require

Customers to shut down interfering communications equipment (except for short tests to help remove the interference) until the interference is removed.

11. Grantor Covenants with respect to Assigned Agreements. As of the Effective Date, Grantor represents, warrants and agrees that (i) it has delivered to Grantee true, correct and complete copies of the Assigned Agreements and any amendments or modifications thereto, (ii) to the best of Grantor's knowledge, Customers under the Assigned Agreements are not in material default of any of its obligations thereunder, (iii) Customers under the Assigned Agreements have not provided written notice of (A) any intent not to exercise a right of renewal or extension of the term, or (B) any exercise, or any intent to exercise any early termination available under the Assigned Agreements, (C) any notice of default of Grantor's obligations under the Assigned Agreements, and (iv) Customers under the Assigned Agreements have not requested or been granted a reduction in rental amount or fees or escalator due under the Assigned Agreements, except as specifically set forth in the documents provided to Grantee. From and after the Effective Date, except as allowed under this Agreement, Grantor shall not without the prior written consent of Grantee, amend or modify the Assigned Agreements in any respect or exercise any rights granted by Grantor to Grantee under this Agreement, including without limitation the right to exercise remedies under the Assigned Agreements. Except as specifically set forth in this Agreement, Grantor shall comply with all obligations of lessor/licensor under the Assigned Agreements which relate to the use, ownership, and operation of the Property and shall not take any action that may result in a default under the Assigned Agreements. In the event of any alleged default caused by Grantor, Grantor shall take all reasonable actions to cure any actual default.

12. Grantee Covenants with Respect to Assigned Agreements. From and after the Effective Date, Grantee shall not, without the prior written consent of Grantor (which shall not be unreasonably withheld or conditioned), amend or modify the Assigned Agreements in any manner which would have the effect of increasing or extending the obligations or liabilities of Grantor or successor owner(s) of the Property, potentially affect the potable water system or extend the term of such agreements beyond either (a) the maximum term provided in an Assigned Agreement as it exists on the Effective Date, or (b) the expiration or termination of this Agreement. Within thirty (30) days of entering into any amendment or modification of an Assigned Agreement, whether or not Grantor's consent is required, Grantee shall use reasonable efforts to provide to Grantor true, correct and complete copies thereof, but Grantor acknowledges that the failure of Grantee to provide such copies will not constitute a default under this Agreement. Grantee acknowledges that any and all amendments or modifications to the Assigned Agreements shall require compliance with this Agreement to the extent applicable (for example, any construction or replacement of Facilities shall comply with the requirements of Section 6 above).

13. Grantee Covenants with respect to Replacement Agreements. From and after the Effective Date, Grantee may enter into Replacement Agreements with Customers as set forth in Section 3 above. Grantee agrees that such agreements and amendments and modifications of them shall not, without the prior written consent of Grantor (which shall not be unreasonably withheld or conditioned), increase or extend the obligations or liabilities of Grantor (or successor owner(s) of the Property) or have a term or duration extending beyond the expiration of this

Agreement or potentially affect the potable water system. Within thirty (30) days of entering into any Replacement Agreement with a Customer (or an amendment thereto), whether or not Grantor's consent is required, Grantee shall use reasonable efforts to provide to Grantor a true, correct and complete copy thereof, but Grantor acknowledges that the failure of Grantee to provide such copies will not constitute a default under this Agreement. All Customers shall acknowledge they are bound by the terms and conditions of this Agreement to the extent applicable (for example, any construction or replacement of Facilities shall comply with the requirements of Section 6 above).

14. Default; Remedies.

- a. In the event of Grantee's default under this Agreement, Grantor shall provide Grantee with written notice specifying in reasonable detail the nature of such default, and Grantee shall promptly take such actions as are reasonably necessary to cure such default. In the event Grantee does not commence such cure within sixty (60) days after receipt of such notice and diligently complete the cure, Grantor may pursue any or all remedies available at law and in equity, including, but not limited to, monetary damages and injunctive relief.
- b. In the event of Grantor's default under this Agreement, Grantee shall provide Grantor with written notice specifying in reasonable detail the nature of such default, and Grantor shall promptly take such actions as are reasonably necessary to cure such default. In the event Grantor does not commence such cure within sixty (60) days after receipt of such notice and diligently complete the cure, Grantee may pursue any or all remedies available at law and in equity, including, but not limited to, monetary damages and injunctive relief.

15. Notices. All notices required to be given under this Agreement, unless otherwise stated, shall be in writing and delivered in person or by a national overnight delivery service (and shall be effective when received, when refused or when the same cannot be delivered) to the appropriate Party at the address set forth below (or at such other address designated in writing pursuant to the terms hereof):

To Grantor: Board of Public Works
City of Fort Wayne
Attn: Director of City Utilities
200 East Berry Street
Suite 240
Fort Wayne, Indiana 46802

With a copy (which does not satisfy the notice requirement) to:

City Attorney
200 East Berry Street
Suite 430
Fort Wayne, Indiana 46802

To Grantee: Landmark Infrastructure Holding Company, LLC
c/o Landmark Dividend LLC
P. O. Box 3429
2141 Rosecrans Ave., Suite 2100
El Segundo, CA 90245
Attn: Legal Dept.

16. Indemnity. Grantor (if and to the extent allowed by law) and Grantee shall each indemnify, defend and hold the other harmless against any and all costs (including reasonable attorney's fees), damages, and claims of liability or loss arising (a) out of the breach of any representation, warranty or covenant of such indemnifying Party set forth herein, and (b) out of the use and/or occupancy of the Property and the Easements by the indemnifying Party, but excluding in each instance any claims to the extent arising from the negligence or intentional misconduct of the indemnified Party. Grantee acknowledges that the foregoing indemnity by Grantor does not include any costs, damages, or claims of liability or loss arising out of any action, negligence or intentional misconduct of any third party, including, without limitation, any tenant(s) of the Property. Grantee further acknowledges that the foregoing indemnity by Grantee does include any costs, damages, or claims of liability or loss arising out of any action, negligence or intentional misconduct of any Customer of Grantee.

17. Environmental Representations.

- a. Grantor Environmental Representation. Grantor represents that to the actual knowledge of its City Engineer without investigation that it has no knowledge of any substance, chemical or waste (collectively "**Hazardous Substance**") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Grantor shall not introduce or use (or permit the use of) any Hazardous Substance on the Property in violation of any applicable federal, state or local environmental laws. Grantor shall be responsible for (and shall promptly conduct any investigation and remediation as required by any applicable environmental laws) all spills or other releases of any Hazardous Substance caused by Grantor, that have occurred or which may occur on the Property.
- b. Grantee Environmental Representations. Grantee shall not introduce or use, and in all Replacement Agreements shall bar Customers from introducing or using, any Hazardous Substance on the Property or the Easement in violation of any applicable federal, state or local environmental laws. Notwithstanding the foregoing, Grantee shall not be responsible for any Hazardous Substances arising or present on or before the Effective Date. The liability of Grantee for any claims with respect to any Hazardous Substances at the Property or the Easement shall be limited to contamination by a release of a Hazardous Substance by Grantee or a Customer after the Effective Date, and in violation of any applicable federal, state or local environmental laws.

- c. Mutual Indemnification. Each Party (Grantor, if and to the extent allowed by Indiana law) agrees to defend, indemnify, and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to damages, costs, expenses, assessments, penalties, fines, cleanup, remedial, removal or restoration work required by any governmental authority, losses, judgments and reasonable attorneys' fees that the indemnified Party may suffer or incur due to the existence or discovery of any Hazardous Substance on the Property caused by the other party. This indemnification shall also apply to the migration of any Hazardous Substance to other properties, and the release of any Hazardous Substance into the environment that relate to or arise from the indemnitor's activities on the Property. Grantor agrees to defend, indemnify, protect and hold Grantee harmless from claims resulting from actions on the Property not caused by Grantee prior to, and during the Term of, this Agreement. This indemnification shall survive the termination or expiration of this Agreement.

18. Estoppel. Within 15 days after either Grantor's or Grantee's written request, the other Party shall execute and deliver to the requesting Party a statement (i) certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and whether any options granted to Grantee pursuant to the provisions of this Agreement have been exercised, (ii) certifying that there are no sums due from Grantee (or, if there are sums due, the amount(s) due), (iii) stating whether or not, to the actual knowledge of the certifying Party, the other Party is in default in performance of any of its obligations under this Agreement, and whether the certifying Party is in default to the certifying Party's actual knowledge, and, if so, specifying each such default of which the certifying Party may have knowledge, and (iv) certifying such other facts as the requesting Party reasonably requests, it being intended that any such statement delivered pursuant hereto may be relied upon by others with whom the Party requesting such certificate may be dealing and their respective successors and/or assigns. Notwithstanding the foregoing, neither Party shall be required to sign any certificate that (i) expands, alters or otherwise amends the certifying Party's obligations hereunder; or (ii) diminishes, alters or otherwise amends the certifying Party's rights hereunder. The estoppel certificate from Grantee shall also identify any amendments or modifications of the Assigned Agreements and any Replacement Agreements with a Customer (or an amendment thereto), whether or not Grantor's consent is required, and shall attach true, correct and complete copies of all such documents, subject to any confidentiality agreements between Grantee and any Customer. In the event of any such confidentiality agreement with a Customer, Grantee shall use reasonable efforts to obtain such consent, and shall provide to Grantor such information regarding the amendment, modification or agreement as Grantee can, consistent with the confidentiality agreement.

19. Force Majeure. The time for performance by Grantor or Grantee of any term, provision, or covenant of this Agreement shall be deemed extended by time lost due to delays resulting from strikes, civil riots, floods, earthquakes, labor or supply shortages, material or labor restrictions by governmental authority, litigation, injunctions, and any other cause not within the control of Grantor or Grantee, as the case may be, and not the fault of the Party delayed in

performing work or doing acts, and where reasonable measures by such Party could not have avoided or mitigated the effects of such acts.

20. Recording. This Agreement shall be recorded at Grantee's expense. Upon such recording, Grantee shall promptly provide a true, correct and complete copy thereof to Grantor.

21. Run With Land. The easement, covenants and rights contained in this Agreement are not personal to Grantor but are appurtenant to and shall run with the land and shall be binding upon and shall inure to the benefit of all present and future owner(s) of the Property and their successors in title or interest and their permitted assigns.

22. Assignment. In addition to security assignments permitted by Section 13, Grantee may, without the written consent of Grantor, assign this Agreement, but only in its entirety and not in part, to: (i) an entity controlled by, controlling or under common control with Grantee so long as such entity has reasonably sufficient assets and liquidity to enable it to perform all of Grantee's duties, obligations and liabilities arising under this Agreement for its duration; or (ii) the Customer under an Assigned Agreement or Replacement Agreement so long as such entity has reasonably sufficient assets and liquidity to enable it to perform all of Grantee's duties, obligations and liabilities arising under this Agreement for its duration; (iii) a company publicly traded on the NYSE or NASDAQ so long as such entity has reasonably sufficient assets and liquidity to enable it to perform all of Grantee's duties, obligations and liabilities arising under this Agreement for its duration; or (iv) otherwise upon written consent from Grantor, which consent shall not be unreasonably withheld, conditioned or delayed. As to all assignments under (i) both (A) the assignee shall step into the shoes of the assignor and be responsible for all claims and defaults related to this Agreement or the Facilities whether arising prior to or after the assignment, and (B) the assignor shall not be released from liability for claims and defaults related to this Agreement or the Facilities whether arising prior to or after the assignment unless a written release is obtained from Grantor, such release not to be unreasonably withheld. For all other assignments under (ii) through (iv) the assignee shall step into the shoes of the assignor and be responsible for all claims and defaults related to this Agreement or the Facilities which arise prior to or after the assignment, and assignor shall have no further obligations thereunder.

23. Mechanic's Liens. The Property being public property, Grantee and its Customers shall never permit or allow a mechanics' or materialmen's lien, however described, to be filed against the Property or any portion thereof.

24. Lease and License. Unless specifically indicated to the contrary, for the purposes of this Agreement, the term "lease" shall have the same meaning as "license", "lessor" shall have the same meaning as "licensor", and "lessee" or "tenant" shall have the same meaning as "licensee".

25. Governing Law, Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana including the police powers of the State and its political subdivisions but without regard to its conflict of laws provisions, and venue for any suit or claim related to this Agreement shall be the courts for Allen County, Indiana, and both Parties agree not to object to venue being laid in such forum on the grounds of forum nonconveniens or any other legal theory.

26. Captions and Headings. The captions and headings in this Agreement are for convenience and shall not be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of or the scope or intent of this Agreement.
27. Cumulative Remedies. Except as otherwise expressly provided herein, each and every one of the rights, benefits and remedies provided to Grantor or Grantee by this Agreement, or by any instrument or documents executed pursuant to this Agreement, are cumulative and shall not be exclusive of any other of said rights, remedies and benefits allowed by law or equity to Grantee.
28. Counterparts. This Agreement may be executed in one or more counterparts, and by the different Parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.
29. Severability. If any provision of this Agreement is deemed unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid or shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if such provision had been so limited or as if such provision had not been included herein, as the case may be. Additionally, if any laws, rules or regulations promulgated by any state, county or local jurisdiction, including without limitation those concerning zoning, subdivision or land use, or should any court of competent jurisdiction, make the sale of the Easements herein either void or voidable, Grantor agrees that upon the written request of Grantee, the grant of the Easements shall convert to a lease between Grantor, as lessor, and Grantee, as lessee, (with the Communications Easement area being the leased premises therein, and the Access and Utility Easement area remaining a non-exclusive easement for access and utility purposes) for uses consistent with those set forth in Section 3 hereof, and containing other terms and conditions acceptable to both Parties; provided if the preceding occurs that Grantee shall not be required to obtain the consent of Grantor to enter into any sublease or license of any portion of the Communications Easement or to permit sublessees or licensees to utilize the Access and Utility Easement; nor shall Grantor be entitled to any additional consideration in connection with such subleases and licenses; and provided that that the delivery of the consideration paid by Grantee to Grantor for the Easements at the execution of this Agreement shall constitute payment for such lease for the duration of the Term as described in paragraph 4 herein, or as long as permitted by applicable law, in either case no longer than the expiration of the Term.
30. Entire Understanding and Amendment. This Agreement and the Purchase and Sale Agreement entered into by and between Grantor and Grantee, and the closing documents executed in connection therewith, constitute the entire understanding between the Parties with regard to the subject matter hereof and there are no representations, inducements, conditions, or other provisions other than those expressed herein. This Agreement may not be modified, amended, altered or changed in any respect except by written agreement and signed by each of the Parties hereto.
31. Certified Copy. The Parties agree that a certified recorded copy of this Agreement shall be deemed an original and may be introduced or submitted in any action or proceeding as

competent evidence of the execution, terms and existence hereof notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original executed counterpart of this Agreement first be proven.

32. Warranties Disclaimed. GRANTOR DISCLAIMS ALL WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, AS TO THE PROPERTY AND EASEMENTS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS DISCLAIMER CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. GRANTEE ACCEPTS THE EASEMENTS AND PROPERTY "AS IS."

33. Oil, Gas, Minerals, Wind, Solar, Efficiency. Grantor retains all present and future rights to water, oil, gas, minerals, wind energy and solar energy on, about or related to the Easements and Property. Grantee shall not claim to the contrary. All equipment on the Easements which uses electricity shall carry the energy star rating whenever possible.

34. Waiver of Jury Trial. Each Party, to the extent permitted by law, knowingly, voluntarily and intentionally waives its right to a trial by jury in any action or proceeding under any theory of liability arising out of or in any way connected with this Agreement or the transactions it contemplates.

35. Treatment in Bankruptcy. The Parties to this Agreement hereby expressly agree and acknowledge that it is the intention of both Parties that in the event that during the Term of this Agreement Grantee shall become a debtor in any voluntary or involuntary bankruptcy proceeding under the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.* (the "Code"), this Agreement shall be treated as an "unexpired lease of nonresidential real property" for purposes of Section 365 of the Code, 11 U.S.C. § 365, and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said Section 365.

36. Condemnation. If all or a material portion of the Water Tower is permanently taken or condemned by any competent authority for any public use or purpose (including a deed given in lieu of condemnation), and the taking renders the rooftop of the Water Tower substantially unusable for the Permitted Use, this Agreement shall terminate as of the date title vests in the condemning authority. The Parties will each be entitled to pursue their own separate awards in condemnation proceedings. Notwithstanding the foregoing, Grantor shall not settle or compromise any condemnation award affecting the Easements, and Grantee shall not settle or compromise any condemnation award relating to the Water Tower or the Property beyond the Easements, without the other's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.

37. Reserved Rights. As set forth on Exhibit D, the rights set forth there are reserved to Grantor, notwithstanding any other provision of this Agreement.

[Signatures Appear on Following Pages]

IN WITNESS WHEREOF, the Parties hereto have executed this Telecommunication Easement Agreement as of the Effective Date.

GRANTOR:

CITY OF FORT WAYNE
an Indiana municipal corporation
By and through its Board of Public Works

By: _____

Name: Benjamin Groeneweg
Title: Engineer VI: Utility Asset Management & Engineering Services
Authorized signatory on behalf of the Fort Wayne Board of Public Works, per the Resolution attached as Exhibit E

Date: February _____, 2016

Acknowledgment

STATE OF INDIANA)
) ss:
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this ____ day of _____, 2016, personally appeared before the within named Ben Groeneweg by me personally known, who being by me duly sworn said that he is an Engineer VI: Utility Asset Management & Engineering Services of the Board of Public Works, City of Fort Wayne, and that he signed said instrument on behalf of the Board of Public Works, City of Fort Wayne with full authority so to do and acknowledge said instrument to be the voluntary act and deed of said City for the uses and purposes therein set forth.

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

Signature: _____
Notary Public

Printed Name: _____

My Commission Expires: _____

Resident of _____ County, Indiana

{Seal}

Exhibit A
Property Description

Part of the East half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, in Allen County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of the East half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, Allen County, Indiana; thence South along the West line of the East Half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, a distance of 1100.0 feet to the true point of beginning; thence continuing South along said West line, a distance of 1541.04 feet to the Southwest corner of the East Half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East; thence East with a deflection angle to the left of 91 degrees 22 minutes 20 seconds along the South line of the East Half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, a distance of 440.0 feet; thence North with a deflection angle to the left of 88 degrees 37 minutes 40 seconds and parallel to the West line of the East Half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, a distance of 198.0 feet; thence West with a deflection angle to the left of 91 degrees 22 minutes 20 seconds and parallel to the South line of the East Half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, a distance of 420.0 feet; thence North with a deflection angle to the right of 91 degrees 22 minutes 20 seconds parallel to and 20.0 feet East of the West line of the East Half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, a distance of 1343.08 feet; thence West with a deflection angle to the left of 91 degrees 29 minutes 30 seconds and parallel to the North line of the East Half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, a distance of 20.0 feet to the Point of Beginning, containing 2.62 acres.

Exhibit B
Assigned Agreements

1. Tower Attachment License Agreement dated as of June 30, 2003 by and between Chicago 20Mhz, LLC, a Delaware limited liability company doing business as U. S. Cellular, as Licensee and Utility Center, Inc., an Indiana Corporation, as Licensor; as affected by: an Owner's Negotiated Site Acceptance and Release dated May 30, 2014 between Utility Center, Inc. an Indiana Corporation as Owner and United States Cellular Operating Company of Chicago, LLC, a Delaware limited liability company as successor in interest to Chicago 20 Mhz LLC doing business as U.S. Cellular; an Assignment and Assumption of Tower Attachment License Agreement dated March 3, 2015 between Chicago 20 Mhz, LLC, a Delaware limited liability company as Assignor and SprintCom, Inc., a Kansas Corporation, as Assignee; the W-T Communication and Design Group, LLC engineering drawings for Sprint signed and sealed June 17, 2015, project number T131987, comprising 33 pages - - referred to herein as "*Sprint Covington Lease*".

2. License Agreement dated March 1, 2011 between Utility Center, Inc. as licensor and New Cingular Wireless PCS, LLC, a Delaware limited liability company as licensee as evidenced by Memorandum of License Agreement dated March 1, 2011 and recorded August 10, 2011 as Document Number 2011035603; as amended by the Apex Engineers, Inc. engineering drawings for such license, job number NS15-400, signed and sealed October 30, 2015, comprising 8 pages - - referred to herein as "*AT&T Covington Lease*".

Exhibit C
Description of Communications Easement

The Communications Easement consists of all of the following:

1. For the Sprint Covington Lease the Communications Easement consists of:

- (a) on the Land, the Equipment Area Easement being the space depicted as “Exclusive Easement #2” on the As-Built Survey of the Covington Tower attached as Exhibit F and legally described in the attached Exhibit G, and also the “Non-Exclusive Access and Utility Easement” as depicted on such survey and legally described in the attached Exhibit G, and

- (b) on the Water Tower such space for the Attachment Area Easement and Access and Utility Easement:

- (i) as is shown on the engineering drawings for Sprint Site No. CH51XC004 by W-T Communication and Design Group, LLC, signed and sealed June 17, 2015, project number T131987 comprising 33 pages, plus

- (ii) such additional space, if any, as may be added by the lessee under the terms of and in conformance with the terms of such lease and this Agreement as they exist on the Effective Date.

2. For the AT&T Covington Lease the Communications Easement consists of:

- (a) on the Land, the Equipment Area Easement being the space depicted as “Exclusive Easement #1” on the As-Built Survey of the Covington Tower attached as Exhibit F and legally described in the attached Exhibit G, and also the “Non-Exclusive Access and Utility Easement” as depicted on such survey and legally described in the attached Exhibit G, and

- (b) on the Water Tower such space for the Attachment Area Easement and Access and Utility Easement:

- (i) as is shown on the plans attached as Exhibit B to the AT&T Covington Lease for the equipment described on Exhibit B to such lease; as amended by the Apex Engineers, Inc. engineering drawings for such lease, job number NS15-400, signed and sealed October 30, 2015, comprising 8 pages; by the Dixon Engineering, Inc. structural drawings, Project No. 14-45-22-15 dated December 22, 2015, comprising 3 pages; and by the Dixon Engineering, Inc. structural analysis for AT&T site GRANMI2625 dated January 8, 2016 comprising 5 pages, plus

- (ii) such additional space, if any, as may be added by the lessee under the terms of and in conformance with the terms of such lease and this Agreement as they exist on the Effective Date.

Exhibit D

Reserved Rights

Notwithstanding anything to the contrary contained therein, the Agreement is subject to the following provisions:

1. Grantor operates the Water Tower for the provision of potable drinking water for the citizens of Fort Wayne, Indiana. Regardless of the terms and provisions set forth in the Agreement, Grantor reserves the following rights and privileges, and Grantee agrees to same:

(a) Grantor retains the right to maintain security in and around the Water Tower commensurate with industry standards for municipal water supplies;

(b) Grantor retains the right to maintain the Water Tower and its associated equipment and systems in accordance with industry standards for municipal water supplies and all legal requirements, and actions taken by Grantor in furtherance of such maintenance of the Water Tower and associated equipment and systems shall not constitute a default under the terms and conditions of the Agreement.

(c) Grantor at all times retains the right to act as it deems necessary with regard to the Water Tower and its associated equipment and systems to protect and secure the public health, safety and welfare, to counteract public or utility emergencies, and to react to catastrophic events, extremes of weather, riots, labor strife and acts of God or war, and such acts by Grantor shall not constitute a default under the terms and conditions of this Agreement.

2. Notwithstanding anything contained in the Agreement, Grantor shall at all times retain the right to approve all Replacement Agreements, the Customers thereunder, and any changes in Customers under a Replacement Agreement or an Assigned Agreement (except as Grantor may have agreed otherwise in an Assigned Agreement) (collectively "Replacement Customers"). If Grantee identifies a proposed Replacement Customer or a proposed Replacement Agreement, Grantee shall provide written notice to Grantor of such proposed Replacement Customer and/or any proposed Replacement Agreement and Grantor shall have a period of thirty (30) days within which to either accept or reject the proposed Replacement Customer and/or proposed Replacement Agreement. Grantor may accept or reject said proposed Replacement Customer or proposed Replacement Agreement in its sole and unmitigated discretion.

3. Notwithstanding anything else contained in the Agreement, Grantor shall have the right to terminate the Agreement, upon one hundred thirty-five (135) days prior written notice ("Termination Notice"), subject to the following terms and conditions:

(a) Provided that Grantor is not otherwise in material default of the terms and conditions of the Agreement, Grantor shall prepare and send to Grantee a Termination Notice which identifies and describes, in Grantor's determination, existing defects making the Water Tower structurally unsound and in the interest of the public health,

safety and welfare, should be demolished and removed; (collectively "Grantor Termination Rights").

(b) The Termination Notice shall also identify an independent qualified engineer that Grantor wishes to engage to perform a structural analysis of the Water Tower deemed by Grantor to be structurally unsound. Within thirty (30) days of receiving the Termination Notice, Grantee shall approve or reject the engineer identified by Grantor. Grantee may only reject the proposed engineer, if the engineer's training, experience, and background is of a commercial standard that is less than the objectively reasonable standard for engineers of the locale. Grantee's failure to respond to the Termination Notice within thirty (30) days of receiving the Termination Notice shall be deemed an acceptance of the proposed engineer.

(c) Within the Termination Notice period described in Section 3(a), the selected engineer shall provide a report detailing the findings and structural analysis of the identified Water Tower ("Engineer Report").

(d) In the event the Engineer Report concludes that the identified Water Tower is structurally unsound and should be demolished or removed, Grantor shall use commercially reasonable efforts to relocate any Customers displaced by the exercise of the Grantor Termination Rights, to real property owned or controlled by Grantor ("Customer Relocation"). Upon successful Customer Relocation the Parties shall amend the Easements to add the new location for the Customer, with appropriate access and utility easements, and it is understood and agreed that Grantee shall be entitled to demand, receive, and collect rents payable by the relocated Customer, in accordance with, and for the term of, the Agreement. In the event the Engineer Report concludes that the identified Water Tower is structurally unsound and should be demolished or removed, and Customer Relocation is not feasible, or not capable of being accomplished through the use of commercially reasonable efforts, then Grantor shall be entitled to terminate the Agreement without penalty.

(e) In the event the Engineer Report concludes that the identified Water Tower is structurally sound, and there exists no risk or threat to public safety through continued use of the identified Water Tower, then Grantor shall not be entitled to exercise the Grantor Termination Rights, and the Agreement shall remain in full force and effect.

4. Notwithstanding anything else that may be contained in the Agreement to the contrary, Grantor shall not be liable for the payment of the rent under either the Assigned Agreements or Replacement Agreements and the same shall not constitute an obligation of Grantor. Grantee agrees to look solely to the Assigned Agreements and Replacement Agreements for the monies it is to receive under the transactions contemplated by the Agreement.

Exhibit E

City Resolution Authorizing Signing of Agreement

[attach resolution]

**A RESOLUTION OF THE BOARD OF PUBLIC WORKS
OF THE CITY OF FORT WAYNE, INDIANA,
AUTHORIZING TELECOMMUNICATION EASEMENT PURCHASE
AND ASSIGNMENT AGREEMENT**

RESOLUTION NUMBER 103-2-17-16-1

WHEREAS, the City of Fort Wayne, Indiana (hereinafter referred to as the "City"), owns certain real property and the water towers located thereon located at 9810 Bronco Drive, Fort Wayne, Indiana, 46804 (hereinafter referred to as the "Aboite Water Tower" location), 14501 Covington Road, Fort Wayne, Indiana, 46814 (hereinafter referred to as the "Covington Water Tower" location), and 1016 Dupont Road, Fort Wayne, Indiana, 46825 (hereinafter referred to as the "Dupont Water Tower" location), all three (3) locations being described more particularly in Exhibit "A", attached hereto and made a part of this Resolution by this reference; and

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

WHEREAS, Landmark Infrastructure Holding Company, LLC (hereinafter referred to as "Landmark") wishes to purchase the City's telecommunication easements; and

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

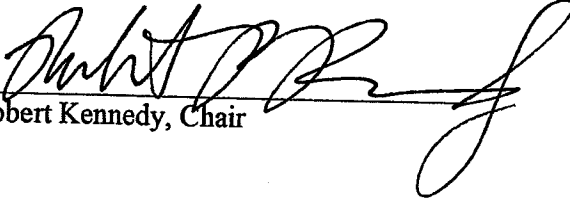
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

1. That the Board of Public Works of the City of Fort Wayne, Indiana (hereinafter referred to as the "Board") approves the sale of the Telecommunications Easements and Assignment Agreements between the City and Landmark.
2. That the Board approves the Telecommunication Easement Purchase And Assignment Agreement agreements between the City and Landmark.
3. That the Board hereby authorizes Benjamin Groeneweg, Engineer VI: Utility Asset Management and Engineering Services, to sign in the name of and on behalf of the Board, the three (3) Telecommunication Easement Purchase And Assignment Agreement agreements between the City and Landmark, and the three (3) Telecommunication Easement Agreement agreements between the City and Landmark and all ancillary closing documents.

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

APPROVED this 17th day of February, 2016.

BOARD OF PUBLIC WORKS

By: 
Robert Kennedy, Chair

By: Absent
Kumar Menon, Member

By: 
Mike Avila, Member

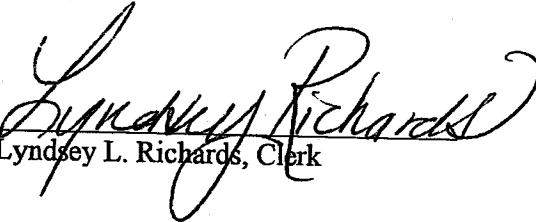
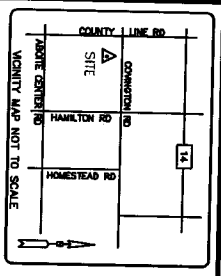
Attest: 
Lyndsey L. Richards, Clerk

Exhibit F

As-Built Survey of Covington Tower

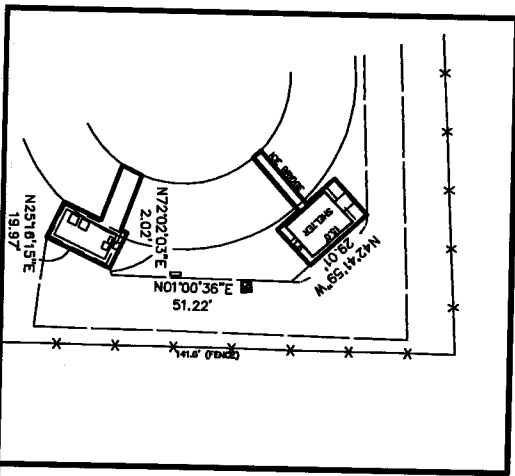
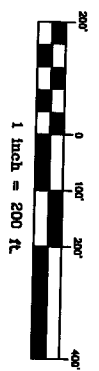
As-Built Survey of site at 14,501 Covington Road, Fort Wayne, Indiana, by Global Land Solutions, Job # 15280S, dated 12/14/15, consisting of 3 pages

[See Attached]



ZONING: N/A
 FLOOD NOTE: SUBJECT PROPERTY IS NOT LOCATED WITHIN A DESIGNATED FLOOD ZONE AREA.

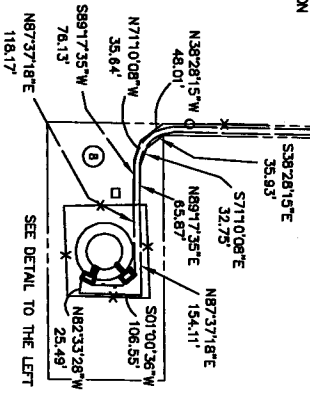
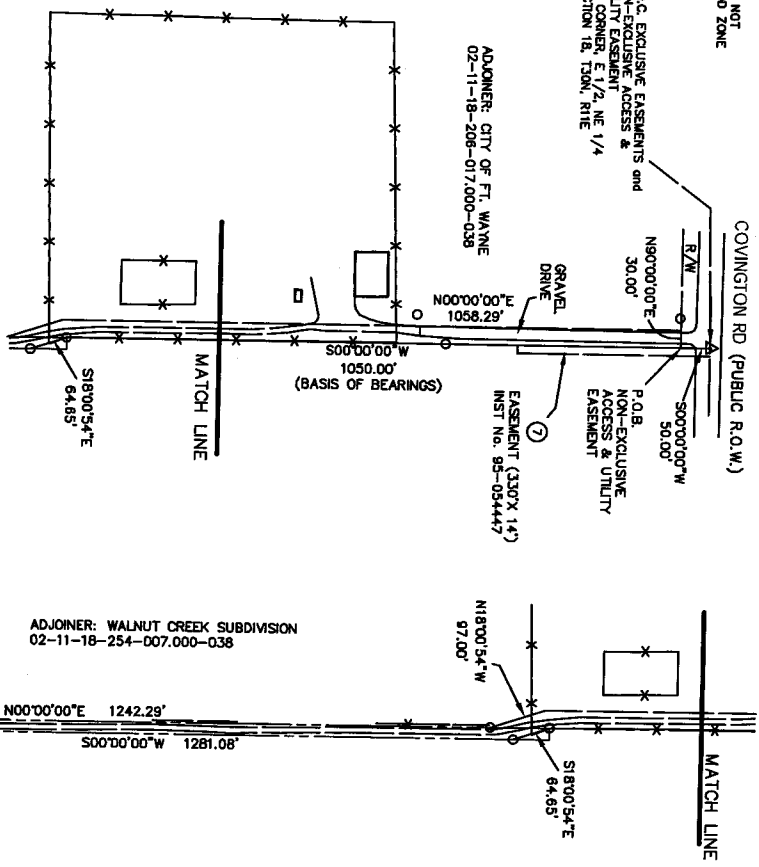
- LEGEND**
- FOUND 5/8" IRON SET 5/8" IRON POINT OF BEGINNING
 - P.O.B.
 - P.O.C.
 - R/W
 - ⊕ ELECTRIC TRANSFORMER BOX
 - ⊕ ELECTRIC METER
 - ⊕ TELEPHONE PEDESTAL
 - ⊕ CABLE TV PEDESTAL
 - ⊕ OVERHEAD ELECTRIC
 - ⊕ FENCE



AREA TABLE

AREA	SQUARE FEET	ACRE
PARENT PARCEL	113,948.2	2.622
TOWER COMPOUND	21,882	0.05
EXCLUSIVE EASEMENT #1	58	0.01
EXCLUSIVE EASEMENT #1	299	0.01
NON-EXCLUSIVE ACCESS & UTILITY EASEMENT	64,570	1.48

OWNER: CITY OF FT. WAYNE, INDIANA, A POLITICAL SUBDIVISION
 INSTRUMENT No. 2015004992
 PARCEL ID: 02-11-18-276-001.000-038



AS-BUILT SURVEY

IN SECTION 18,
 TOWNSHIP 30 NORTH, RANGE 11 EAST
 FOR LANDMARK DIVIDEND
 SURVEYOR: CITY OF FORT WAYNE
 SITE NO.: TC104560 & TC104561
 ADDRESS: 14501 COVINGTON RD
 FORT WAYNE, IN 46814
 ALLEN COUNTY

LANDMARK DIVIDEND
 170 E. MAIN ST. SUITE 500
 FORT WAYNE, IN 46802
 NATIONAL SURVEY SERVICES CORPORATION ETC.
 1400 N. UNIVERSITY BLVD. SUITE 100
 FORT WAYNE, IN 46804
 (800) 806-6838
 (260) 446-4555
 www.geolineinc.com

Global Land
 Solutions that work for you.
 6005 E. Hilltop Ave., Indianapolis, IN 46210
 (800) 806-6838
 www.globalandsurvey.com
 Surveying the Great Lakes Region
 TRAINING: SURVEYING, GIS & 3D MODELS

- SURVEYOR'S NOTES**
1. BASE OF BEARING, S070°0'0"W ALONG THE WEST LINE OF THE DIST 1/2 OF THE NE 1/4 OF SECTION 18.
 2. NO DISBURSIVE INVESTIGATION WAS PERFORMED TO DETERMINE IF UTILITIES UTILITIES SHOWN HEREON ARE LIMITED TO AND ARE PER OBSERVED EVIDENCE ONLY.
 3. THIS SURVEY DOES NOT REPRESENT A BOUNDARY SURVEY OF THE PARENT PARCEL.
 4. ALL VISIBLE TOWER EQUIPMENT AND IMPROVEMENTS ARE CONTAINED WITHIN THE DESCRIBED AREA.

SURVEYOR'S CERTIFICATION
 I HEREBY CERTIFY TO LANDMARK INFRASTRUCTURE HOLDING COMPANY LLC, A1&T WIRELESS PCS, LLC AND FORTY NATIONAL TITLE INSURANCE COMPANY.
 Date: 12/14/15
 Surveyor: #

ALLEN COUNTY, INDIANA
 JAY M. SCHWABAND
 No. 20400050
 STATE OF INDIANA
 LAND SURVEYOR
 SHEET 1 OF 3

Exhibit G

**Legal Descriptions of those Portions of the
Covington Tower
Communications Easement that are Located on the Land**

EXCLUSIVE EASEMENT #1 DESCRIPTION:

Part of the East half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, in Allen County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of the East half of the Northeast Quarter of said Section 18; thence S00°00'00"W 50.00 feet to a point on the Southerly Right-of-Way line of Covington Road; thence continuing S00°00'00"W 1050.00 feet; thence S18°00'54"E 64.65 feet; thence S00°00'00"W 1281.08 feet; thence S38°28'15"E 35.93 feet; thence S71°10'08"E 32.75 feet; thence N89°17'35"E 65.87 feet; thence N87°37'18"E 154.11 feet; thence S36°29'31"W 34.85 feet to the Point of Beginning of this description; thence S46°27'35"W 13.74 feet; thence N42°41'59"W 7.98 feet; thence S48°14'21"W 19.86 feet; thence N44°55'47"W 3.04 feet; thence N48°14'21"E 19.98 feet; thence N42°41'59"W 10.75 feet; thence N46°27'35"E 13.74 feet; thence S42°41'59"E 21.76 feet to the Point of Beginning. Containing 359 square feet (0.01 Acres) of land, more or less.

EXCLUSIVE EASEMENT #2 DESCRIPTION :

Part of the East half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, in Allen County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of the East half of the Northeast Quarter of said Section 18; thence S00°00'00"W 50.00 feet to a point on the Southerly Right-of-Way line of Covington Road; thence continuing S00°00'00"W 1050.00 feet; thence S18°00'54"E 64.65 feet; thence S00°00'00"W 1281.08 feet; thence S38°28'15"E 35.93 feet; thence S71°10'08"E 32.75 feet; thence N89°17'35"E 65.87 feet; thence N87°37'18"E 154.11 feet; thence S01°00'36"W 106.55 feet; thence N82°33'28"W 25.49 feet to the Point of Beginning of this description; thence N64°51'07"W 11.24 feet; thence N25°16'15"E 11.67 feet; thence N70°01'47"W 16.61 feet; thence N25°16'15"E 6.33 feet; thence S70°01'47"E 16.61 feet; thence N25°16'15"E 1.96 feet; thence S64°51'07"E 11.24 feet; thence S25°16'15"W 19.97 feet to the Point of Beginning. Containing 329 square feet (0.01 Acres) of land, more or less.

NON-EXCLUSIVE ACCESS & UTILITY EASEMENT DESCRIPTION:

Part of the East half of the Northeast Quarter of Section 18, Township 30 North, Range 11 East, in Allen County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of the East half of the Northeast Quarter of said Section 18; thence S00°00'00"W 50.00 feet to a point on the Southerly Right-of-Way line

of Covington Road and the Point of Beginning of this description; thence continuing S00°00'00"W 1050.00 feet; thence S18°00'54"E 64.65 feet; thence S00°00'00"W 1281.08 feet; thence S38°28'15"E 35.93 feet; thence S71°10'08"E 32.75 feet; thence N89°17'35"E 65.87 feet; thence N87°37'18"E 154.11 feet; thence S01°00'36"W 106.55 feet; thence N82°33'28"W 25.49 feet; thence N25°16'15"E 19.97 feet; thence N72°02'03"E 2.02 feet; thence N01°00'36"E 51.22 feet; thence N42°41'59"W 29.01 feet; thence N87°37'18"E 118.17 feet; thence S89°17'35"W 76.13 feet; thence N71°10'08"W 35.64 feet; thence N38°28'15"W 48.01 feet; thence N00°00'00"E 1242.29 feet; thence N18°00'54"W 97.00 feet; thence N00°00'00"E 1058.29 feet to said Southerly Right-of-Way line; thence N90°00'00"E 30.00 feet along said Right-of-Way line to the Point of Beginning. Containing 64,570 square feet (1.48 Acres) of land, more or less.

TELECOMMUNICATION EASEMENT PURCHASE AND ASSIGNMENT AGREEMENT

This Telecommunication Easement Purchase and Assignment Agreement is made effective as of the Effective Date, by Landmark Infrastructure Holding Company LLC, a Delaware limited liability company, and the City of Fort Wayne, an Indiana municipal corporation, by and through its Board of Public Works.

RECITALS

- A. All capitalized terms used in these recitals shall have the meanings given them in Section 1.
- B. Seller owns the Water Tower and the Real Estate commonly known as the Dupont Water Tower and located at 1016 East Dupont Road, Fort Wayne, Indiana 46825.
- C. Seller leases a portion of the Water Tower and the Real Estate for telecommunications purposes pursuant to the Cell Antenna License Agreement.
- D. Seller wishes to sell, and Buyer wishes to buy, an assignment of the Cell Antenna License Agreement and the Easements, under the terms and conditions in this Agreement.

AGREEMENT

In consideration of the mutual covenants and promises made in this Agreement, and the payments to be made under it, the receipt and sufficiency of which consideration is acknowledged by the parties, it is agreed as follows:

1. **DEFINITIONS.** The following capitalized words and phrases shall have the meanings stated, unless the context clearly indicates that a different meaning is intended:

1.1 **"Agreement"**. This Telecommunication Easement Purchase and Assignment Agreement.

1.2 **"Buyer"**. Landmark Infrastructure Holding Company LLC a Delaware limited liability company.

1.3 **"Buyer's Intended Use"**. The transmission and reception of wireless telecommunication signals and the construction, maintenance, repair, replacement, improvement, operation and removal of telecommunications facilities, including antennas, antenna support brackets, shelters, fences, gates, cabling, wiring and related facilities but not including towers.

1.4 **"Cell Antenna License Agreement"**. The following agreement License Agreement entered into and effective March 18, 2015 by and between the Board of Public

Works, City of Fort Wayne, Indiana as Licensor and SprintCom, Inc., a Kansas corporation as Licensee.

1.5 **“Closing”**. The closing and the sale of the Real Estate under this Agreement.

1.6 **“Closing Date”**. The date of Closing as provided in Section 10.2.

1.7 **“Easements”**. Collectively, the Easements set forth in the Easement Agreement.

1.8 **“Easement Agreement”**. The Telecommunication Easement Agreement attached to this Agreement as Exhibit “B”.

1.9 **“Effective Date”**. The effective date of this Agreement, which is the date this Agreement is fully executed.

1.10 **“Event of Default”**. The following each shall constitute an Event of Default for purposes of this Agreement:

1.10.1 The making of any false or inaccurate representation in this Agreement; or

1.10.2 The breach of any warranty made in this Agreement.

1.10.3 The failure to observe or comply with any non-monetary provision or covenant in this Agreement, and such default is not cured to the reasonable satisfaction of the non-defaulting party within thirty (30) days of the date Notice of such default is given, which Notice shall specify with reasonable particularity the basis for the default claimed. For monetary defaults, the cure period shall be fifteen (15) days from the date of Notice of such default.

1.10.4 Notwithstanding anything herein to the contrary, if the required cure of the noticed default cannot reasonably be completed by the defaulting party within such 30-day period, the defaulting party’s failure to perform shall not constitute an Event of Default so long as the defaulting party undertakes to cure the failure promptly and diligently and continuously pursues the cure thereof to completion. In the event that the defaulting party fails to cure such default within the cure period, the non-defaulting party shall be entitled to exercise any rights permitted by applicable law.

1.11 **“License Rights”**. The rights to be assigned to Buyer under the Cell Antenna License Agreement, as set forth in the Easement Agreement.

1.12 **“Initial Purchase Price”**. The initial purchase price for the Easements and the License Rights as stated in Section 3.

1.13 ***“Inspection”***. A site inspection of, or other activity permitted to be made on, the Real Estate under Section 5.1.

1.14 ***“Inspection Consultant”***. A person or company who performs an inspection or investigation of the Real Estate pursuant to Section 5.1.

1.15 ***“Inspection Period”***. The time period prescribed in Section 5.1 for Buyer to conduct Inspections and other due diligence under this Agreement

1.16 ***“Notice”***. Any notice, designation, consent, approval, offer, acceptance, statement, request, or other communication required or allowed under this Agreement.

1.17 ***“Permitted Title Exceptions”***. The following items with respect to the Title Commitment and Title Policy:

1.17.1 Real estate taxes not payable at the time of the date of Closing;

1.17.2 Easements, restrictions, and limitations of record and zoning ordinances which, in Buyer’s sole opinion, would not interfere with Buyer’s Intended Use of the Real Estate; and

1.17.3 Exceptions accepted by Buyer under Section 6.3.2.1.

1.18 ***“Real Estate”***. The parcel of real estate owned by Seller commonly known as 1016 East Dupont Road, Fort Wayne, Indiana 46825, containing approximately 0.44 acres that is legally described in Exhibit “A” to this Agreement.

1.19 ***“Resolution”***. A resolution signed by the City Council of the City of Fort Wayne, authorizing Benjamin Groeneweg, Engineer VI: Utility Asset Management and Engineering Services, to execute the Easement Agreement, and ancillary transaction documents, on behalf of the Board of Public Works, City of Fort Wayne

1.20 ***“Seller”***. City of Fort Wayne, an Indiana municipal corporation, by and through its Board of Public Works.

1.21 ***“Survey”***. The survey of the Easements prepared by prepared by an Indiana registered land surveyor approved by Seller. The Survey shall be certified to Seller, Buyer, Buyer’s lender, and the Title Company as of a current date, contain a legal description of the Real Estate, show the boundaries of the Real Estate, all plotable easements, including without limitation the Easements, rights-of-way, improvements, drives, sidewalks, and encroachments affecting or benefiting the Easements, and include the following Table A items: 1, 2, 3, 4, 6(a), 7(a), 8, 9, 11(b), 13, 14, 16, 17, 18, and 19(a). The Survey legal descriptions shall be used in the Title Commitment, the Title Policy, and the Easement Agreement.

1.22 **“Title Commitment”**. The owner’s title insurance commitment for the Easements to be delivered under Section 6.1.

1.23 **“Title Company”**. Linear Title and Closing.

1.24 **“Title Policy”**. The owner’s title insurance policy for the Easements to be delivered by Seller under Section 6.4.

1.25 **“Water Tower”**. The water tower owned by Seller located on the Real Estate.

2. **PURCHASE AND SALE OF EASEMENTS AND LICENSE RIGHTS**. Buyer shall purchase from Seller, and Seller shall sell to Buyer, the Easements and the License Rights for the Initial Purchase Price, subject to the terms and conditions stated in this Agreement.

3. **INITIAL PURCHASE PRICE**. The Initial Purchase Price for the Easements and the License Rights shall be \$528,000, due at Closing, along with additional consideration as described in the Easement Agreement.

4. **MANNER OF PAYMENT**. At Closing, Buyer shall pay Seller the Initial Purchase Price in cash or other same day funds, less all credits due Buyer under this Agreement.

5. **INSPECTION PERIOD AND OTHER DUE DILIGENCE**.

5.1 **Inspections**.

5.1.1 Through and including April 30, 2016 (the “Inspection Period”), Buyer, at Buyer’s sole cost and expense, may conduct all Inspections of the Real Estate that Buyer believes are necessary or suitable for Buyer’s Intended Use. The Inspections may include, without limitation, inspections, testing, or other investigations of the following matters:

5.1.1.1 Suitability for Buyer’s Intended Use.

5.1.1.2 Availability of all utility services to serve the Easements.

5.1.1.3 Perform any and all due diligence relating to the Cell Tower License Agreement, the License Rights, the Easements, and the Real Estate.

5.1.2 Inspections may be performed by Buyer, Buyer’s agents or designees, and Inspection Consultants and their representatives, all of whom shall have reasonable access to the Real Estate at reasonable times to perform Inspections.

5.1.3 Seller agrees to fully cooperate with, and provide all information and documentation requested by, Inspection Consultants in connection with Inspections, including without limitation, the execution of documents necessary for Inspections.

5.1.4 If Buyer fails to timely conduct any investigation permitted under Section 5.1, Buyer shall be deemed to waive the right to do so.

5.1.5 Seller shall have no financial responsibility for the Inspections.

5.1.6 Buyer shall cause the Real Estate to be restored to the same condition as it existed before the Inspections.

5.1.7 Buyer shall indemnify and hold Seller harmless against all claims lawsuits, damages, costs, and expenses related to, or arising out of, the Inspections.

6. ***EVIDENCE OF TITLE AND SURVEY.***

6.1 ***Delivery of Title Commitment.*** Within 20 days after the Effective Date, Buyer, at Buyer's expense shall obtain and deliver a copy to Seller the Title Commitment (and deliver a copy thereof to Seller) issued by the Title Company together with legible copies of all covenants, conditions, easements, and restrictions referred to as exceptions in the Title Commitment. The Title Commitment shall show title to the Easements vested in Seller, with no exceptions other than the Permitted Title Exceptions. If other exceptions exist, Section 6.3 shall apply. Any additional title evidence shall be at the expense of Buyer, provided, however, that the cost of additional title evidence necessitated by the acts or omissions of Seller shall be borne by Seller. Seller shall provide the Title Company with all documentation in Seller's possession pertaining to the Easements. The legal description of the Easements shall be the same in the Title Commitment and in the Survey. Buyer may request the Title Company to update the Title Commitment so that it is current as of the time of Closing.

6.2 ***Survey.*** Within 20 days after the Effective Date, Buyer, at Buyer's expense, shall obtain the Survey and deliver a copy of the Survey to Seller. Buyer also shall be entitled to have the Survey recertified, at Buyer's expense, to Buyer's assignee and Buyer's lender, and so that the Survey is current as of Closing.

6.3 ***Title Objections.***

6.3.1 Buyer shall give Notice to Seller at least 30 days prior to the expiration of the Inspection Period, describing with reasonable particularity each exception disclosed by the Title Commitment or title defect disclosed by the Survey to which Buyer objects, and the basis for each objection. Seller then shall have 30 days to remove the exceptions or cure the Survey defects to which Buyer reasonably objects, to insure against loss or damage that may be sustained by Buyer because of them, in a manner reasonably acceptable to Buyer, or to reach some other accommodation or extension of time acceptable to Buyer.

6.3.2 If Seller is unable to cause the defects in the Survey and Title Commitment to be resolved in accordance with Section 6.3.1, Seller shall give Notice to Buyer of such fact. Buyer then shall have 10 days to give Notice to Seller that Buyer:

6.3.2.1 Accepts the Title Commitment and Survey in their respective conditions as of the date Seller gives Notice under Section 6.3.2; or

6.3.2.2 Desires to terminate this Agreement because Buyer does not accept the condition of the Title Commitment or the Survey.

6.3.3 Prior to Closing (but without any specific date or time period), Buyer may obtain updates of the Title Commitment and the Survey. If Buyer does so, Buyer then shall have the same rights, and Seller shall have the same obligations, regarding matters of title and survey stated in Sections 6.3.1 and 6.3.2. The time periods for Seller to cure defects and give Notice stated in Sections 6.3.1 and 6.3.2 also shall apply to this Section 6.3.3.

6.4 **Title Policy.** Promptly after Closing, the Title Company shall furnish the Title Policy to Buyer in the amount of the Initial Purchase Price, consistent with the Title Commitment and all requirements stated in Section 6.1. Buyer shall pay the premiums for the Title Policy delivered to Buyer under this Section 6.4.

7. **RISK OF LOSS.** Seller shall bear the risk of loss to the Easements until Closing. Buyer shall bear the risk of loss to the Easements after Closing.

8. **PRE-CLOSING OBLIGATIONS.** Between the Effective Date and the Closing Date, Seller shall not:

8.1 Make any alterations to any part of the Easements or Cell Antenna License Agreement (except to comply with requirements of law or this Agreement);

8.2 Enter into a lease for any portion of the Easements; or

8.3 Enter into any agreement or take any action that is outside the normal scope of maintaining and operating the Easements or the Licenses, or would bind or encumber the Easements or Licenses after Closing (except as is otherwise permitted under this Agreement).

9. **POSSESSION.** Seller shall deliver possession of the Easements to Buyer at Closing.

10. **CONDITIONS OF CLOSING, CLOSING DATE, AND OTHER CLOSING MATTERS.**

10.1 **Conditions of Closing.** Buyer's obligation to proceed to Closing shall be expressly conditioned on the performance or satisfaction of all of the following items and conditions on or before April 30, 2106:

10.1.1 The representations and warranties made by Seller in Section 11 are correct as of the Closing Date, with the same force and effect as if such representations and warranties were made at such time.

10.1.2 Buyer is satisfied with the marketability and condition of the Easements and all Inspections.

10.1.3 Buyer is satisfied with the condition of title to the Easements, and is satisfied with the Survey, within the timeframes specified in Section 6.

10.1.4 Buyer receives a copy of the executed Resolution.

10.1.5 Successful acquisition of any consent or waivers required from tenant under the Cell Antenna License Agreement or third-party holding such right.

10.1.6 All other requirements under this Agreement are satisfied or completed before Closing.

10.2 *Closing Date.*

10.2.1 The Closing Date shall be specified by Buyer in a Notice given to Seller, which Closing Date shall be two business days after receipt of the signed Resolution and other documents required under Section 10.4.1 by Buyer, but in no event shall the Closing Date be later than May 15, 2016, unless the parties mutually agree in writing to an extension of the Closing Date to complete other requirements necessary to comply with the provisions in this Agreement.

10.2.2 If Closing does not occur on or before May 15, 2016, and the Closing Date is not extended in accordance with Section 10.2.1, this Agreement shall terminate, and, so long as Seller is not in default under this Agreement, Seller shall be entitled to retain the Earnest Money, and the parties shall have no further obligations to each other.

10.3 *Closing Location.* The Closing shall take place on the Closing Date, at a location and in a manner mutually agreed upon by Buyer and Seller.

10.4 *Closing Documents and Other Closing Items.*

10.4.1 *Seller's Documents.* At or before Closing, Seller shall execute and deliver to Buyer the following documents, all of which shall be consistent with the forms described, or such other forms as are reasonably acceptable to the parties' respective legal counsel:

10.4.1.1 The Easement Agreement.

10.4.1.2 A Closing Affidavit and Representations in the form approved by the Title Company and by Buyer's legal counsel.

10.4.1.3 All other documentation which reasonably may be required by the Title Company in order to insure Buyer with good and marketable title to the Insured Easements.

10.4.1.4 A completed Indiana Disclosure of Sales Information form.

10.4.1.5 A completed Certification of Non-foreign Status in a form which complies with applicable provisions of the Internal Revenue Code, as amended, and related regulations

10.4.1.6 Fully executed tenant payment direction letters directing the licensee under the Cell Antenna License Agreement to pay rent to Buyer

10.4.1.7 A Vendor Disclosure Statement in the standard form required by the City of Fort Wayne, Indiana.

10.4.1.8 Such other documents as are necessary to consummate the transaction contemplated by this Agreement.

10.4.2 **Buyer's Documents.** On or before Closing, Buyer shall execute and deliver to Seller such documents as are reasonably deemed necessary by Seller or the Title Company to consummate the transaction contemplated by this Agreement.

10.5 **Failure to Satisfy Conditions.** If in Buyer's sole opinion any condition described in Section 10.1 cannot be performed or satisfied, Buyer may terminate this Agreement. Notwithstanding anything contained in this Section 10 to the contrary, Buyer may waive any condition described in Section 10.1 at any time prior to termination, and proceed to Closing.

10.6 **Closing Expenses.** The following costs and expenses shall be paid by the respective parties at or in connection with Closing:

10.6.1 **Seller's Expenses.** Seller shall pay:

10.6.1.1 One half of the closing fee or escrow fee charged by the Title Company to close the transaction contemplated by this Agreement, if any;

10.6.1.2 The costs of recording the satisfaction of any unreleased mortgage on the Easements, and any other document necessary to make title to the Easements marketable;

10.6.1.3 All other costs and expenses required to be paid by Seller under this Agreement; and

10.6.1.4 Seller's attorney fees.

10.6.2 **Buyer's Expenses.** Buyer shall pay:

10.6.2.1 One half of the closing fee or escrow fee charged by the Title Company to close the transaction contemplated by this Agreement, if any;

10.6.2.2 The premiums for the Title Commitment and the Title Policy for owner's coverage as provided in Sections 6.1 and 6.4;

10.6.2.3 The cost of the Survey;

10.6.2.4 All costs and expenses incurred by Buyer in connection with Buyer's financing, including any additional premium payable to the Title Company for the simultaneous issuance of a lender's title policy;

10.6.2.5 All other costs and expenses required to be paid by Buyer under this Agreement; and

10.6.2.6 Buyer's attorney fees.

10.7 CLOSING ADJUSTMENTS. At Closing, the following adjustments or credits shall be made or given by Seller to Buyer:

10.7.1 **Taxes.** Seller represents that there are no taxes levied against the Real Estate or the Easements. Accordingly, no tax proration is necessary for Closing.

10.7.2 **Other Closing Adjustments.** Other closing adjustments reasonable and customary for like transactions also shall be made at Closing.

11. SELLER'S REPRESENTATIONS AND WARRANTIES. Seller makes the following representations and warranties to Buyer, each of which shall survive the execution of this Agreement:

11.1 **Authorization and Absence of Defaults.** The execution, delivery to Buyer, and performance by Seller of Seller's obligations under this Agreement do not and will not:

11.1.1 Violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award presently in effect having applicability to Seller;

11.1.2 Result in a material breach of or constitute a material default under any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Seller is a party, or by which Seller or Seller's property may be bound or affected; or

11.1.3 Result in or require the creation or imposition of any lien on any of Seller's property or revenues, other than liens granted to Buyer.

11.2 **Title to Easements.** Seller presently has, and will have at Closing, marketable title to the Easements, free and clear of all liens, physical and financial encumbrances, leases, covenants, conditions, restrictions, rights-of-way, easements, encroachments, and other matters affecting title, except for the Permitted Title Exceptions, including the Cell Antenna License Agreement.

11.3 **Cell Antenna License Agreement Estoppel.** The condition of the Cell Antenna License Agreement are as follows:

11.3.1 The Cell Antenna License Agreement is in full force and effect and unmodified, and Buyer has been provided with a full and complete copy thereof;

11.3.2 Seller has not delivered to any tenant under the Cell Antenna License Agreement a notice of breach or default of tenant's obligations thereunder.

11.3.3 No tenant under the Cell Antenna License Agreement has delivered to Seller a notice of breach or default of Seller's obligations thereunder, or a rent reduction request relating to such Cell Antenna License Agreement.

11.3.4 Seller has not received notice of intent or desire to terminate from any tenant under the Cell Antenna License Agreement.

11.3.5 No tenant under the Cell Antenna License Agreement has a claim of setoff thereunder, or otherwise against rents or charges due or to become due thereunder.

11.4 **Validity and Enforceability.** This Agreement constitutes a legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with the respective terms of this Agreement.

11.5 **No Litigation.** There are no actions, suits, or proceedings pending, threatened, or reasonably anticipated, affecting the Easements, in any court or federal, state, municipal, or other governmental department, commission, board, bureau, agency, or non-government arbitration board or commission.

11.6 **Accuracy of Representations and Warranties.** No representation or warranty made by Seller in this Agreement contains, to the best of Seller's knowledge, any untrue statement of a material fact known to Seller, or omits to state a material fact known to Seller necessary in order to make the statements contained in this Agreement not misleading.

12. **BUYER'S REPRESENTATIONS AND WARRANTIES.** Buyer makes the following representations and warranties to Seller, each of which shall survive the execution of this Agreement:

12.1 **Authorization and Absence of Defaults.** The execution, delivery to Seller, and performance by Buyer of Buyer's obligations under this Agreement have been duly authorized by all necessary business entity or governmental action, and do not and will not:

12.1.1 Violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award presently in effect having applicability to Buyer;

12.1.2 Result in a material breach of or constitute a material default under any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Buyer is a party, or by which Buyer or Buyer's property may be bound or affected; or

12.1.3 Result in or require the creation or imposition of any lien on any of Buyer's property or revenue, other than liens granted to Seller.

12.2 **Validity and Enforceability.** This Agreement constitutes a legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with the respective terms of this Agreement, except as enforcement may be limited by applicable bankruptcy, insolvency, rearrangement, moratorium, liquidation, conservatorship, reorganization, or similar debtor relief laws affecting the rights of creditors generally from time to time in effect.

12.3 **No Litigation.** There are no actions, suits, or proceedings pending or, to the knowledge of Buyer, threatened against or affecting Buyer before any court or governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, which, if determined adversely to Buyer, would draw into question the validity, authorization, or enforceability of this Agreement, or could have a material adverse effect on the financial condition, properties, or operations of Buyer.

12.4 **Accuracy of Representations and Warranties.** No representation or warranty made by Buyer in this Agreement contains any untrue statement of a material fact known to Buyer, or omits to state a material fact known to Buyer necessary in order to make the statements contained in this Agreement not misleading.

13. **BROKER'S FEES.** Each party represents to the other party that no person or entity is entitled to any brokerage commission, finder's fee, except pursuant to a separate agreement with such party (which party shall be solely liable for such fee), or any other like payment in connection with any transaction contemplated by this Agreement by reason of the action of any party.

14. **WITHDRAWAL OF EASEMENTS FROM MARKETPLACE.** Upon full execution of this Agreement, Seller shall deal exclusively with Buyer, and shall not consider, accept, or solicit any other offer from any other party to purchase or lease the Easements or any part of them, unless and until this Agreement is properly terminated by a party having the right to do so under the provisions of this Agreement.

15. **TERMINATION OF AGREEMENT.** If a party wishes to terminate the rights and obligations under this Agreement with respect to the purchase and sale of the Easements, the party shall give Notice to the other party of the desire to terminate this Agreement, stating with reasonable detail each basis for termination. The termination shall become effective on the fifth day after the date Notice is given, unless, on or before that date, either of the following occurs:

15.1 The defect or default stated in the Notice is cured; or

15.2 The party having the option to terminate gives Notice to the other party of either a waiver of the condition or contingency upon which such option is based, or an extension of the time within which such condition or contingency is to be performed or satisfied.

16. **NOTICES.**

16.1 **Written Notice.** Each Notice required or allowed under this Agreement shall be in writing. Any action required or allowed under this Agreement that is a term within the definition of "Notice" under Section 1.18, also shall be in writing.

16.2 **Place of Notice.** Notice to a party shall be given at the party's address identified in this Section 16.2, or at such other address as a party may designate in a Notice to the other party:

If to Buyer: Board of Public Works
City of Fort Wayne
Attn: Director of City Utilities
200 East Berry Street, Suite 240
Fort Wayne, IN 46802
Fax: _____
Email: Ben.Groeneweg@cityoffortwayne.org

with a copy to: Scott M. Federoff, Esq.
Carson Boxberger LLP
301 W. Jefferson Blvd., Suite 200
Fort Wayne, IN, 46802
Fax: 260.423.4329
Email: sfederoff@carsonboxberger.com

and a copy to: Lindsey Jackson
City Attorney
200 East Berry Street, Suite 430
Fort Wayne, IN 46802
Fax: _____
Email: Lindsey.Jackson@cityoffortwayne.org

If to Seller: Landmark Infrastructure Holding Company, LLC
c/o Landmark Dividend LLC
P.O. Box 3429
2141 Rosecrans Ave., Suite 2100
El Segundo, CA 90245
Attn: Legal Department
Fax: _____
Email: _____

16.3 **Manner of Giving Notice.** Notice shall be deemed given when:

16.3.1 Personal service of the Notice is made on the party to be notified (but the party need not be at the address designated under Section 16.2);

16.3.2 The Notice is mailed to the party to be notified by means of certified or registered U.S. mail, return receipt requested, postage prepaid;

16.3.3 The Notice is sent to the party to be notified by express courier such as "Federal Express" or such other similar carrier guaranteeing next day delivery; or

16.3.4 A copy of the Notice is sent to the party by email or facsimile transmission, to the applicable email address or facsimile number designated in Section 16.2, provided the original Notice is sent by first class U.S. mail, postage prepaid, to the party the same day as the email or facsimile is sent.

16.4 **Refusal to Accept Notice.** Refusal by a party to accept a Notice shall not affect the giving of the Notice.

17. **REMEDIES.**

17.1 If an Event of Default by Seller occurs, Buyer may seek the following remedies, which shall be cumulative and are not mutually exclusive:

17.1.1 All legal and equitable remedies available (including without limitation, specific performance of this Agreement);

17.1.2 Termination of this Agreement; and

17.1.3 The reasonable attorney fees, expenses and costs incurred by Buyer in connection with an Event of Default by Seller.

17.2 If an Event of Default by Buyer occurs, Seller may seek the following remedies, which shall be cumulative and are not mutually exclusive:

17.2.1 All legal and equitable remedies available;

17.2.2 Termination of this Agreement; and

17.2.3 The reasonable attorney fees, expenses and costs incurred by Seller in connection with an Event of Default by Buyer.

17.3 The parties agree that it may be impossible to measure in money the damages which will accrue to Buyer by reason of a failure by Seller to perform any of Seller's obligations under this Agreement. Therefore, if Buyer institutes any action or proceeding against Seller to specifically enforce the provisions of this Agreement, Seller shall be deemed to waive the claim or defense that Buyer has an adequate remedy at law.

17.4 The failure to enforce a breach of this Agreement shall not be construed as a waiver of the right to enforce such breach at a later time or to enforce any other breach.

17.5 If a party consists of more than one person, each person who is a party shall be jointly and severally liable for such party's defaults.

18. **CONDEMNATION.** If a condemnation, eminent domain, or similar proceeding is commenced against all or any portion of the Easements, Buyer may either: (i) terminate this Agreement; or (ii) proceed to Closing, in which event Seller shall assign to Buyer at Closing the right to receive and settle the award, but only with regard to the Easements, in any such proceeding (and Seller shall not settle any such award without Buyer's prior written approval), less any reasonable expenses incurred by Seller in connection with such proceeding.

19. **AUTHORITY TO SIGN.** Each person signing this Agreement in a representative capacity on behalf of a party warrants and represents to each other party that:

19.1 The person executing this Agreement has the actual authority and power to so sign, and to bind the person's respective principal to the provisions of this Agreement; and

19.2 All corporate or other entity action necessary for the making of this Agreement has been duly taken.

20. **EXECUTION BY DIGITAL MEANS.** The parties agree that this Agreement may be transmitted digitally by them for execution by email or facsimile transmission. The parties intend that the original or digital signatures of the parties on this Agreement shall be binding on them.

21. MISCELLANEOUS.

21.1 **Binding Agreement.** This Agreement shall run with the land, and shall bind and inure to the benefit of the parties and their respective legal representatives, heirs, successors, and assigns.

21.2 **Invalid Provision/Severability.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions of it, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

21.3 **Amendments.** No amendments, modifications, alterations, or additions to this Agreement shall be binding unless made in writing and signed by the parties.

21.4 **Assignment.** Buyer may assign or grant a security interest in and to this Agreement, or the rights and obligations under it, without Seller's prior consent, to any entity in which Buyer or Buyer's principals have an interest, are under common control or ownership with, or to any lender or financier of Grantee's. Buyer shall give Notice to Seller of the identity of any such assignee.

21.5 **Gender.** Whenever reasonably necessary, pronouns of any gender shall be deemed synonymous, as shall singular and plural pronouns.

21.6 **Governing Law.** This Agreement shall be governed in all respects whether as to validity, construction, capacity, performance, or otherwise by the laws of the State of Indiana.

21.7 **Rule of Construction.** The judicial rule of construction requiring or allowing a document to be construed to the detriment or against the interests of the document's maker or drafter shall not apply to this Agreement.

21.8 **Headings.** The section headings in this Agreement are included solely for convenience, and shall in no event affect or be used in connection with the interpretation of this Agreement.

21.9 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but together the counterparts shall constitute one and the same document.

21.10 **Entire Agreement.** This Agreement constitutes the entire agreement of the parties, all prior negotiations and agreements, whether written or oral, having been merged into this Agreement.

21.11 **Time of Essence.** Time is of the essence in this Agreement.

21.12 **Computation of Time.** In computing a time period prescribed in this Agreement, the day of the act or event shall not be counted. All subsequent days, including intervening weekend days and holidays, shall be counted in the period. The last day of the period so computed is to be included unless it is a weekend day or a legal holiday under Indiana law, in which case the period is to be extended to the next day that is not a weekend day or legal holiday.

21.13 **Recitals.** All recitals set forth at the outset of this Agreement are incorporated by reference in it and are true.

21.14 **No Recording.** This Agreement may not be recorded without the prior written consent of both parties.

21.15 **Review by Counsel.** Each party has had the opportunity to have this Agreement reviewed by independent counsel before signing it.

21.16 **Survival.** The representations and warranties of the parties contained in this Agreement, and the provisions in Section 10.6.3 and Section 11.7 shall survive termination of this Agreement for one year, and shall not be merged into the deed to be delivered by Seller to Buyer.

This Agreement has been signed by the parties as of the Effective Date.

[SIGNATURE PAGES FOLLOW.]

SELLER:

City of Fort Wayne,
an Indiana municipal corporation,
by and through its Board of Public Works

Dated: February __, 2016

By: _____
Benjamin Groeneweg,
Engineer VI: Utility Asset Management and
Engineering Services, Authorized signatory
on behalf of the Fort Wayne Board of Public
Works, per the attached resolution

Accepted by Buyer this ___ day of February, 2016.

BUYER:

**Landmark Infrastructure Holding Company, LLC,
a Delaware limited liability company**


By: 
_____ **Dan Parsons, Authorized Signatory**

Exhibit "A"
Legal Description of the Real Estate

Part of the Northeast Quarter of Section 1, Township 31 North, Range 12 East, Allen County, Indiana, more particularly described as follows:

Beginning at the Northwest corner of the Northeast Quarter of Section 1, Township 31 North, Range 12 East, Allen County, Indiana; thence Easterly along the North line of the NE 1/4 of Sec. 1-31-12 a distance of 100.0 feet; thence Southerly with a deflection angle to the right of 89 degrees 24 minutes and parallel to the West line of the NE 1/4 of Section 1-31-12 a distance of 190 feet; thence Westerly with a deflection angle to the right of 90 degrees 36 minutes and parallel, to the North line of Section 1-31-12 a distance of 100.0 feet to a point on the West line of the NE 1/4 of Section 1-31-12; thence Northerly with a deflection angle to the right of 89 degrees 24 minutes and along the West line of the NE 1/4 of Section 1-31-12 a distance of 190 feet to the point of beginning, containing 0.44 acres of land, more or less.

Exhibit "B"
Easement Agreement

[Attach Easement Agreement here.]

Prepared by:

Landmark Infrastructure Holding Company LLC
c/o Landmark Dividend LLC
P.O. Box 3429
El Segundo, CA 90245
TC: 154560-4
Attn: Legal Department

Return after recording to:

LINEAR TITLE & CLOSING, LTD.
Attn: Commercial Division
127 John Clarke Road, First Floor
Ocean Technology Plaza
Middletown, RI 02842
LMD-478443-P

Telecommunication Easement Agreement

Dupont Water Tower

This Telecommunication Easement Agreement ("***Agreement***") entered into this ____ day of ____, 2016 ("***Effective Date***") by and between the **City of Fort Wayne**, an Indiana municipal corporation whose address is 200 East Berry Street, Suite 240, Fort Wayne, Indiana 46802 **by and through its Board of Public Works** ("***Grantor***" or "***City***") and **Landmark Infrastructure Holding Company LLC**, a Delaware limited liability company whose address is 2141 Rosecrans Avenue, Suite 2100, El Segundo, California 90245 ("***Grantee***"). All references hereinafter to "Grantor" shall include its successors and assigns as owner(s) of the Property (as defined below). All references hereinafter to "Grantee" shall include its successors and permitted assigns. Grantor and Grantee referenced herein individually as a "***Party***" and collectively as the "***Parties***".

Recitals

Whereas, Grantor is the owner of that water tower ("**Water Tower**") and the real property of approximately forty-four hundredths (0.44) of an acre on which the Water Tower is located ("**Land**") (Water Tower and Land hereinafter collectively "**Property**") commonly known as the Dupont Water Tower and located at 1016 Dupont Road (sometimes referred to as East Dupont Road), City of Fort Wayne, County of Allen and State of Indiana, 46825 as more particularly described on **Exhibit A** attached hereto; and

Whereas, Grantor currently leases certain portions of the Property for wireless services pursuant to the agreements listed on **Exhibit B** attached hereto ("**Assigned Agreement**", with all references herein to the terms or conditions of the Assigned Agreement meaning to their terms or conditions on the Effective Date unless expressly stated "as from time to time in effect"); and

Whereas, Grantor has previously entered into the agreement described on **Exhibit H** attached hereto ("**Prior Agreement**") relating to certain wireless lease(s) on the Property described therein, which agreement and lease(s) are not part of and are unaffected by this transaction; and

Whereas, the Grantor and the Grantee are entering into this Agreement pursuant to a Purchase and Sale of Telecom Easement and Assignment Agreement between them relating to this Water Tower (there being concurrent transactions relating to three separate water towers) of even date herewith ("**Purchase and Sale Agreement**");

Now, Therefore, in consideration for the payment agreed in the Purchase and Sale Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee do hereby agree as follows:

1. **Grant of Easement.** Grantor hereby grants, bargains, sells transfers and conveys to Grantee:
 - a. A limited exclusive easement to those areas (i) on the exterior of the Water Tower as attachment points for antennas ("**Attachment Area Easement**"), (ii) on the Land for equipment shelters and related ground based equipment, and (iii) above the Land for the ice bridge connecting the ground based equipment to the Water Tower ((ii) and (iii) collectively the "**Equipment Area Easement**"), that are leased by Grantor pursuant to the Assigned Agreement (collectively the "**Communications Easement**") for the transmission and reception of wireless telecommunication signals and the construction, maintenance, repair, replacement, improvement, operation and removal of telecommunications facilities, including antennas, antenna support brackets, shelters, fences, gates, cabling, wiring and related facilities but not including towers (collectively, the "**Facilities**") and any ancillary activities and uses specifically related thereto (collectively, the "**Permitted Use**") including, but not limited to those necessary for Grantee to comply with the obligations if any, that it will assume under the Assigned Agreement together with the right as set forth in Section 7 to enter the Property and access the Easements (as defined below).
 - i. Without Grantor's prior written consent, and subject to the terms and conditions of the Assigned Agreement for so long as it is in effect (a) only

antennas, cables, wiring and related small, lightweight antenna-mounted electronics are allowed on the Water Tower, (b) the height of any Facilities installed after the Effective Date shall not exceed the height of the Facilities located on or near the top of the Water Tower as of the Effective Date, and (c) the height of any Facilities located on the side of the Water Tower tank shall not exceed the height of the top of such tank.

ii. The Communications Easement hereby granted herein is exclusive only to the extent that it grants rights (a) regarding the transmission and reception of wireless communication signals (or any replacement technology) and the installation and operation of Facilities and ancillary uses relating thereto (b) for those areas on the Water Tower and Land being leased under the Assigned Agreement on the Effective Date. Grantor and its present and future tenants and occupants of the Property have the right to place, maintain, and operate improvements on portions of the Property other than the Communications Easement area, provided such uses do not interfere with the then existing rights of Grantee, Grantee's tenants or Customers, including but not limited to for:

1. Public safety communications, remote meter reading or SCADA (supervisory control and data acquisition) by Grantor or others, and
2. Leases or licenses by Grantor to wireless telecommunications providers who may compete with Customers, and
3. Other improvements using frequencies licensed to the user by the Federal Communications Commission ("*FCC*") or allowed by the FCC for unlicensed use;

b. A non-exclusive easement (the "*Access and Utility Easement*") in, to, under and over the portion of the Property as set forth in the Assigned Agreement (and if not so set forth, as in place on the Effective Date or otherwise reasonably specified by Grantor):

- i. for ingress and egress between the Equipment Area Easement and public roads, and for the installation, repair, replacement, improvement, maintenance, operation and removal of utilities providing services to the Communications Easement and the Facilities; and
- ii. from where the ice bridge attaches to the Water Tower thence to the Attachment Area Easement (such as by means of interior shafts conduits or other space inside and on the Water Tower hereinafter reasonably designated by Grantor) necessary to install cables, wiring, and related items necessary to operate the Facilities, and for access to the Attachment Area Easement for installation, maintenance, repair, replacement and the like.

- iii. Subject to the Assigned Agreement, the Access and Utility Easement or portions thereof may be relocated upon mutual consent of the Parties, not to be unreasonably withheld.
 - c. The Communications Easement and the Access and Utility Easement are collectively referred to herein as the “*Easements*” and are described with more particularity on Exhibit C.
 - d. This Agreement is subordinate to the Prior Agreement and lease(s) described therein, does not affect Grantor's duties, responsibilities or options under such Agreement and lease(s), does not affect the rights granted thereunder, and does not affect the use of the Easements and Property pursuant to such agreement and lease(s). Grantee shall use commercially reasonable efforts to assist, enable or allow Grantor to discharge its duties, responsibilities or options under such agreement and lease(s).
2. Assignment. Grantor hereby transfers and assigns to Grantee, as of the Effective Date, all of Grantor’s right, title and interest in, to and under the Assigned Agreement, including without limitation, all rents, security deposits, and other monies due Grantor (except for reimbursements due Grantor for taxes, utilities or other services as set forth below, which are expressly reserved herein by Grantor) specified therein; provided however, that Grantor shall retain and continue to faithfully perform and discharge the following obligations as licensor or lessor under and as set forth in the Assigned Agreement: access, approving changes in Customers, approving changes in Facilities (or synonyms or comparable terms for same, as used in the Assigned Agreement, quiet enjoyment, non-interference, cooperation, payment of taxes (if any, municipal property being exempt from tax under Indiana law), including but not limited to real estate and property taxes assessed on the Water Tower, repair and maintenance of the Water Tower, and Grantee shall assume all other obligations; and further provided that Grantor shall retain and continue to faithfully perform and discharge the following rights as licensor or lessor under and as set forth in the Assigned Agreement: interference, approving changes in Customers and approving changes (or synonyms or comparable terms for same, as used in the Assigned Agreement) in Facilities. Except as otherwise as set forth herein, Grantor is not responsible for the terms of the Assigned Agreement or inconsistencies, if any, between the Assigned Agreement and agreements between Grantor and Grantee. The Parties intend that this Agreement serve as an assignment and transfer to Grantee of all rents due Grantor after the Effective Date pursuant to the Assigned Agreement, but not as an assignment of any payments for taxes, utilities or other non-rent charges due Grantor from licensees or lessees under the Assigned Agreement. Grantee assumes and agrees to perform the obligations and liabilities of Grantor under the Assigned Agreement to the extent that such obligations and liabilities (i) are not the retained responsibility of Grantor pursuant to the terms of this Agreement (which include the obligations as set forth above retained by the Grantor), and (ii) accrue on or after the Effective Date.
3. Use of Easements. In the event of the expiration or termination of the Assigned Agreement, Grantee shall have the right to lease, license, transfer or assign (the “*Replacement Agreements*”), in whole or in part, or permit the use of the Easements and/or its rights under

this Agreement for the balance of the Term (as defined below) to third parties and their affiliates, lessees, agents, contractors, invitees and employees (collectively, together with the tenant under the Assigned Agreement, "*Customer(s)*") on non-monetary terms that are substantially similar to those set forth in the Assigned Agreement. The Replacement Agreements shall not be in conflict with this Agreement and shall not expand the liability or obligations of the Grantor beyond its liabilities or obligations under the Assigned Agreement. All Customers shall be bound by the terms and conditions of this Agreement. In particular, all Customers shall be communications services providers; and shall be liable directly to Grantor for violations of this Agreement. Notwithstanding anything to the contrary as set forth herein, except for emergencies, if Grantor desires to enforce any rights or remedies of lessor under the Assigned Agreement or Replacement Agreements with respect to obligations as set forth therein, then Grantor shall deliver to Grantee a written notice of a default by a Customer (a "*Lessee Default Notice*") which Grantor believes to exist under the Assigned Agreement or Replacement Agreements, identifying which of the foregoing obligations under the Assigned Agreement or Replacement Agreements are in default by a Customer, and describing in reasonable detail the manner and time in which the default by the Customer occurred or arose. Grantee may elect, in its sole and absolute discretion, but shall not be required, by delivery of written notice to Grantor within thirty (30) calendar days after receipt of the Lessee Default Notice, to enforce the rights and remedies of lessor under the Assigned Agreement or Replacement Agreements against Customers with respect to such default. If Grantee delivers such notice, then Grantee shall have the exclusive right to enforce the rights and remedies of lessor under the Assigned Agreement or Replacement Agreements with respect to such default, and shall diligently pursue the enforcement thereof to the extent commercially reasonable. If Grantee does not deliver such notice, then Grantor may enforce the rights and remedies of lessor under the Assigned Agreement or Replacement Agreements against Customers with respect to such default, provided that Grantor shall not enforce any right or remedy against a lessee or Customer other than for compensatory damages and/or specific performance. Customers shall have the financial, legal and technical qualifications necessary to comply with this Agreement and applicable law, including all licenses from the Federal Communications Commission or successor agency needed for the operation of telecommunications equipment on the Property in full compliance with applicable law. Upon request, Grantee shall provide Grantor with documentation evidencing the preceding.

4. Duration. The duration of the Easements granted herein ("*Term*") shall be until June 28, 2053, provided, however, that at any time during the Term, Grantee may provide to Grantor (or the successor owner(s) of the Property) written, recordable notice of Grantee's intent to terminate this Agreement, in which event this Agreement and all obligations of Grantee hereunder, except those related to removal of Facilities contained in Section 6(b), shall terminate upon Grantor's receipt of written notice of termination pursuant to Section 15 hereof, but any obligations that accrued prior to the termination date shall not be affected. In the event that the use of the Easements is abandoned (as described in this Section 4) by Grantee or its successors, then Grantor may terminate the Easements as set forth below. Following such termination, all right and title to the Property with respect to the Easements granted herein, the Assigned Agreement and any Replacement Agreements shall revert back to Grantor or the successor owner(s) of the Property. Abandonment shall be deemed to have

occurred if neither Grantee nor any of its Customers utilize (such use shall be construed broadly to include, but not be limited to, use of the property for the transmission and reception of telecommunications signals, maintenance of the Facilities, and maintenance and/or upkeep of the Easements) the Easements in any manner for a consecutive period of thirty-six (36) months. In the event of abandonment or termination as set forth herein, Grantee shall, at Grantor's request, execute and record any and all instruments and/or documents reasonably required to show of public record the termination of the Easements. If Grantee fails to execute and record such instruments and/or documents within thirty (30) days of Grantor's request, then Grantor may execute and record such instruments and/or documents on Grantee's behalf. Notwithstanding the foregoing, nothing herein shall be deemed to be a grant of a power of attorney, revocable or otherwise, by Grantee to Grantor for the execution and recordation of such documents reflecting a public record of the termination of the Easements and any interests transferred hereunder.

5. Easement Consideration. Grantor hereby acknowledges the receipt, contemporaneous with the recording of this Agreement, of the agreed-upon *Initial Purchase Price* (payable under and as defined in the Purchase and Sale Agreement (as defined above) between the Parties for this transaction).
- a. As additional consideration ("*Additional Consideration*") Grantee shall pay Grantor as to the Assigned Agreement an amount equal to seventy-five percent (75%) of the increase in rent which Grantee receives from Customers from Replacement Agreements or otherwise after the earlier of the termination of such Assigned Agreement or the expiration date currently set forth in such Assigned Agreement. The increase shall be computed compared to the rent then scheduled under the Assigned Agreement.
 - b. Additional Consideration shall be paid to Grantor monthly, within thirty (30) days from the receipt of such consideration by Grantee or its affiliates during the prior calendar month. "Paid to Grantor" means received by Grantor.
 - c. Any Additional Consideration not paid by the due date shall be assessed a 5% late fee and shall bear interest at 2% per month or (if less) at the highest rate then allowed by law.
 - d. Additional Consideration shall be paid to Grantor at such address, or by such electronic means, as it may from time to time specify.
 - e. No more than once per calendar year, upon request, Grantee shall provide all ledgers, books of account, other documents or electronic equivalents of the preceding needed for Grantor to audit such payments. The preceding items shall be provided to the auditor at the auditor's normal place of business or at such location in Allen County, Indiana as Grantor may specify, and Grantor shall cooperate with Grantor in any such audit.

6. Improvements; Utilities.

- a. Grantee acknowledges that the Property and Water Tower are part of a public water system which provides potable water to thousands of persons, both inside and outside the City, as well as the location for public safety and public utility communications systems, and that the safety and security of the public water system and such communications systems is at all times paramount in interpreting and applying this Agreement and this Section 6 in particular. The provisions of this Section 6.a. supersede any contrary provisions of this Agreement.
- b. Except as otherwise provided in an Assigned Agreement for so long as it is in effect, Grantee and its Customers may at their discretion and expense, construct (or replace) improvements in, to, under and over the Easements in accordance with this Agreement, including in particular subsections 6(e)-(h) below, all of which improvements shall be deemed part of the Facilities. The Facilities shall not be considered or deemed fixtures and shall remain the personal property of Grantee and its Customers, as applicable, and shall be removable at any time at the discretion of Grantee and its Customers and Grantor shall possess no right, title or interest therein, including without limitation, pursuant to any statutory landlord's lien, if applicable. At the expiration or earlier termination of this Agreement, Grantee shall remove or cause to be removed all Facilities installed by it or its Customers on the Property. Except as otherwise required by the Assigned Agreement, in the event any utilities necessary to serve the Facilities cannot be installed within the Easements, Grantor agrees to cooperate (at no cost to Grantor) with Grantee in granting Grantee the right to locate such utilities on the Property at locations reasonably acceptable to Grantor; provided that Grantee or its Customers shall pay the costs and fees charged by the utilities for same, and any reasonable costs related thereto actually incurred by Grantor; provided, further, Grantor shall not require the payment of any other fees or compensation to Grantor. Grantor shall, upon Grantee's request, execute and record a separate easement agreement in form and substance reasonably satisfactory to Grantor with Grantee or the utility company providing the utility service to reflect such easement. At Grantee's sole expense, Grantor will cooperate with Grantee to apply for and obtain any and all licenses, permits, consents or approvals which may be required in connection with the use of the Easements by Grantee or Customers and as necessary to comply with applicable laws, statutes or regulations, provided that no such application, licenses, permits, consents or approvals shall impose any obligation on Grantor or the Property that is not acceptable to Grantor.
- c. Except as otherwise provided in the Assigned Agreement for so long as it is in effect, Grantee and Customers at their expense shall repair any and all damage caused or contributed to by the installation, construction, operation, maintenance, upgrade, repair or removal of the Facilities (or at Grantor's option reimburse Grantor for the reasonable cost and expense of such repair). Except as set forth in the Assigned Agreement, Grantee and Customers hereby indemnify Grantor with

respect to any damage or loss to property or personal injury resulting from the installation, construction, operation, maintenance, upgrade, repair or removal of the Facilities.

- d. Grantee and Customers shall continue to obtain electric service directly from the area electric utility (not from or through Grantor) which shall be paid for by Grantee or Customers.
- e. Except as otherwise provided in an Assigned Agreement for so long as it is in effect, prior to the installation of or any change in Facilities by Grantee or Grantee's Customer, Grantee shall submit or cause to be submitted plans and specifications to Grantor with respect to such Facilities for Grantor's approval, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, unless otherwise provided in an Assigned Agreement for so long as it is in effect, Grantor may withhold its consent to any proposed installation or change that Grantor reasonably determines would materially and adversely affect the (A) Water Tower's structure or systems, or (B) the matters described in Subsection 6.a above. In addition, unless otherwise provided in an Assigned Agreement for so long as it is in effect, Grantor may withhold or condition its approval if the work shown on the plans and specifications will unduly affect or increase the cost of the maintenance, repair or operation of the Water Tower or Property or impair Grantor or its tenants' quiet use or enjoyment of same; or if the work, plans and specifications do not comply with all building and safety codes, applicable national standards, such as ANSI/TIA 222-G (the Structural Standards for Steel Antenna Towers and Antenna Supporting Structures safety code) and later revisions thereto, public water system industry standards (such as those of the American Water Works Association) or sound engineering practice, all without regard to any Federal law, rule, decision or regulation, including Sections 6003 and 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, which preempts, restricts or impairs the application or enforcement the preceding. No review or approval of plans or specifications by Grantor shall ever be construed as representing or implying that such plans or specifications will, if followed, result in a properly designed installation or that such standards comply with pertinent law, building and safety codes, applicable national standards, sound engineering practice or this Agreement.
- f. The "plans and specifications" referred to in subsection (e) shall include: (i) engineering drawings showing the Facilities both as they then exist and with the proposed changes, signed and sealed by a registered professional engineer licensed in Indiana, (ii) a structural analysis signed and sealed by a registered professional engineer licensed in Indiana; (iii) detailed welding procedures, such as to minimize the risk of any burn through of portions of the Water Tank holding water; (iv) if any of the changes may affect the Water Tank shell or its coating, the recommendations of a water tower engineering firm acceptable to Grantor regarding same, and (v) specifications for the treatment, painting or coating of the

Facilities and areas worked on so as to match the existing tank color and minimize corrosion.

- g. Except as otherwise provided in an Assigned Agreement for so long as it is in effect, if Grantor so requests, before commencement of any work or delivery of any materials to the Property or the Water Tower, Grantee or its Customer shall furnish to Grantor for its reasonable approval: architectural plans and specifications, names and addresses of all contractors, contracts, all necessary permits and licenses, certificates of insurance and instruments of indemnification against any and all claims, costs, expenses, damages and liabilities which may arise in connection with such work, all in such form and amount as may be reasonably satisfactory to Grantor. Grantee or its Customers agree to hold Grantor and its agents and employees forever harmless against all claims and liabilities of every kind, nature and description which may arise out of or in any way be connected with such work. Grantee or its Customers shall pay the cost of all such work. All such work shall: (i) be done in compliance with all applicable legal and governmental requirements, ordinances and rules, and all requirements of applicable insurance companies; (ii) be done in a good and workmanlike manner and with the use of good grades of materials including fire protection grades equivalent with those of the Water Tower; (iii) not adversely affect the structural integrity or the mechanical, electrical, communications, plumbing, sanitary or other systems of the Water Tower or exceed applicable design load limits; (iv) not entail cutting or boring into any structural portion of the Water Tower, except with Grantor's prior written consent, which consent may be granted or withheld in Grantor's sole discretion; and (v) not entail welding on the those portions of the Water Tower which are designed to hold or conduct water, except with Grantor's prior written consent, which consent may be granted or withheld in Grantor's sole discretion.
- h. Upon completion of any work referenced above, Grantee or its Customer shall (i) furnish Grantor with contractors' affidavits and final waivers of lien covering all labor, services and materials expended, (ii) reimburse Grantor for the reasonable cost of an inspection by engineers of Grantor's choosing of the work for compliance with the plans, specifications and procedures for such work, (iii) pay (or reimburse Grantor for) the cost of any needed remedial work and reinspection, and (iv) provide Grantor with as-built engineering drawings of the work showing the actual location of all Facilities, equipment and improvements signed and sealed by a registered professional engineer licensed in Indiana.

7. Access. Except as set forth in the Assigned Agreement as of the Effective Date, Grantee and Customers shall have twenty-four (24) hour per day, seven (7) day per week non-exclusive pedestrian and vehicular access to and over the Property, from an open and improved public road to the Easements for the installation, maintenance and operation of the Facilities and any utilities serving the Facilities ("Access") as is set forth below:

- a. Access to the interior and exterior (sides, roof, skirt) of the Water Tower is only allowed when accompanied by an authorized City representative. Only the City

will have a key (or similar device) for access to the Water Tower - - Grantee, Customers and their employees, agents, and subcontractors will not.

- b. Access by Grantee, Customers and their employees, agents, and subcontractors for all scheduled work shall only be on days and at times when the main administrative offices of the City of Fort Wayne are open for business, with two (2) business days advance notice to Grantor and with a Grantor representative accompanying Grantee, Customers or their employees, agents, and subcontractors (if Grantor so requires).
- c. Only emergency work may be done by Grantee, Customers and their employees, agents, and subcontractors on days or at times other than those set forth in (b). Access for such emergency work shall only be with advance notice to Grantor at Grantor's 24-hour security or emergency number, and with a Grantor representative accompanying Grantee (if Grantor so requires).
- d. Access shall be exercised in accordance with Grantor's security procedures as from time to time in effect, including promptly reimbursing Grantor for all costs of a City representative accompanying the person(s) granted access, including callout time and charges, overtime for employees and the like; shall be in compliance with all applicable laws; shall not materially interfere with Grantor's operations; and shall be exercised with reasonable care.
- e. Grantee acknowledges that in the event it, Customers, or their employees, agents or subcontractors obtains Access to the Property in violation of the preceding provisions that Grantor and the public could incur significant damage and that such violation shall be a default under this Agreement entitling Grantor to obtain immediate injunctive relief or bar future access by Grantee or Customers until Grantor is provided reasonable assurances of compliance with this Section.

8. Covenants and Agreements of Grantor.

- a. Grantor represents and warrants that it is the owner in fee simple of the Property, free and clear of all liens and encumbrances (except for the Assigned Agreement, items of record or matters that have been approved or deemed approved by Grantee), and that it has the right to grant the Easements and assign the Assigned Agreement. Grantor further represents and warrants that Grantee shall peaceably and quietly hold and enjoy the Easements during the Term without any hindrance, molestation or ejection by any Party claiming through Grantor, subject to the terms of this Agreement.
- b. During the Term, Grantor shall pay when due all real property taxes and all other taxes, fees and assessments, if any, attributable to the Property (collectively, "**Real Property Taxes**"). If Grantor fails to pay before delinquency the Real Property Taxes, Grantee shall have the right but not the obligation to pay such taxes after first having given Grantor no less than ten (10) days' notice before any such payment by Grantee, and thereafter demand payment from Grantor, which

payment Grantor shall make within ten (10) days of such demand by Grantee, with interest at ten percent (10%) per annum from the date of Grantee's notice until fully paid.

- c. Grantor shall use commercially reasonable efforts to ensure that utilities are available to the Water Tower (subject to interruptions outside Grantor's control and Force Majeure (as defined below)).
- d. Grantor shall use commercially reasonable efforts to maintain the Water Tower and the Property at all times in good condition (subject to casualty damage, economic obsolescence, matters outside Grantor's control and Force Majeure) and (subject to Section 8(c) below) in material compliance with all applicable laws, statutes and regulations, except that Grantor is excused from complying with burdensome changes in laws, statutes, regulations or other legal requirements affecting the Water Tower unless Grantee pays its proportionate share of the cost of compliance, based on the square footage of the Communications Easement divided by the square footage of rentable space on the Water Tower.
- e. Grantor shall not grant, create, or suffer any claim, lien, encumbrance, easement, restriction or other charge or exception to title to the Property that would materially adversely affect Grantee's use of the Easements.

9. Covenants and Agreements of Grantee. Grantee acknowledges that it and its Customers shall use the Property only for the Permitted Use. In connection with its use pursuant to this Agreement, Grantee agrees that it will:

- a. Comply with all local, state and federal laws, ordinances, rules, regulations, standards and other requirements applicable to Grantor, Grantee and/or to the operations of Grantee and its Customer(s), including, without limitation, those relating to zoning, health, safety and protection of the environment, and Hazardous Materials. As used in this Agreement, "Hazardous Materials" shall include any and all ignitable, explosive, corrosive, toxic, reactive or radioactive materials, hazardous wastes, hazardous substances, petroleum products or substances containing petroleum hydrocarbons, and other substances that are dangerous or harmful to human health or the environment, including without limitation: (1) any substances defined as or included within the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances," "hazardous pollutants" or "toxic pollutants," in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act or the Clean Water Act, or any amendments thereto, or any regulations promulgated thereunder; (2) any "PCBs" or "PCB items" (as defined in 40 C.F.R. §761.3); or (3) any "asbestos" (as defined in 40 C.F.R. §763.63).

- b. Following the expiration or termination of either the Assigned Agreement or Replacement Agreements, maintain, or cause Customers to maintain, the Communications Easement and the Facilities at all times in good condition (subject to casualty damage, matters outside Grantee's control and Force Majeure) and in compliance with all applicable laws, statutes and regulations.
- c. Be responsible for ensuring that the Facilities and Easements comply with all applicable laws and regulations, including real estate laws and regulations, and indemnify Grantor for any non-compliance with such laws and regulations.
- d. Both maintain itself, and cause all Customers to obtain and maintain, a policy of commercial general liability insurance naming Grantor as an additional insured, with liability limits of not less Two Million Dollars (\$2 million dollars) per occurrence/Five Million Dollars (\$5 million dollars) aggregate for bodily injury or death or persons and property damage liability. Such insurance shall be on an occurrence and not a claims made basis, with no self-insured retention, from a carrier rated at least "A minus" by A.M. Best Company (or comparable rating from successor rating agency), with ten (10) days prior written notice to Grantor required prior to any termination of such policy, and which limits may be satisfied by a combination of underlying (basic) policy plus umbrella and/or excess coverage limits. Grantee may satisfy these requirements by obtaining the appropriate endorsement(s) to any master policy(ies) of liability insurance Grantee may maintain. Grantor may increase the insurance amount annually, but not by more than the preceding amount increased by the rate of inflation. Upon its execution of this Agreement, Grantee shall deliver to Grantor a certificate of insurance evidencing the coverage required by this subsection (d), and thereafter within fifteen (15) days upon request by Grantor. Notwithstanding the foregoing, Grantor shall not settle or any insurance claim relating to the Easements without Grantee's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.
- e. Following expiration or termination of the Assigned Agreement or Replacement Agreements, pay, or cause Customers to pay (i) all Real Property Taxes or other taxes, fees or assessments levied against or attributable to the Facilities from and after the Effective Date, and (ii) any increase in Real Property Taxes or other taxes, fees or assessments levied against the Property which are directly attributable to Grantee's or its Customer's use of the Easements or the Property (but not, however, taxes, fees or assessments attributable to periods prior to the Effective Date). In the event Grantor furnishes reasonable proof of such increase to Grantee, that such increase in taxes, fees or assessments is attributable to the Customer's use or equipment, then Grantor shall be reimbursed by such Customer directly. If the Customer does not reimburse Grantor within forty-five (45) days of Grantor's notice, Grantor may enforce its rights and remedies pursuant to Section 3 of this Agreement.

- f. In addition, and not in limitation of subsections (a) and (c) above, in the event of the expiration or termination of any of the Assigned Agreement or Replacement Agreements, operate and maintain the Facilities, and cause Customers to operate and maintain the Facilities, in compliance with all applicable laws, ordinances, rules, regulations and other requirements relating to telecommunication facilities, including those laws, ordinances, rules, regulations and other requirements relating to radio frequency emissions by such facilities.
- g. Except as expressly set forth herein, accept the Easements and the Property in their "As-Is, Where-Is" condition.

10. Non-Disturbance.

- a. During the Term, subject to Section 6 and other applicable provisions of this Agreement, Grantor shall not prevent or materially impair: Grantee's, Customers' or utilities' access to the Easements; or the transmission of telecommunications signals to and from the Easements. In the event any of the foregoing has occurred, Grantee shall promptly notify Grantor in writing, and provide reasonable detail of any alleged disturbance, as well as any requested action. Grantor, for itself, its successors and assigns, hereby agrees to use its best efforts to prevent the occurrence of any of the foregoing, and shall promptly undertake any remedial action reasonably necessary to do so. Notwithstanding the foregoing, Grantee acknowledges that, from to time, in connection with repairs, maintenance, destruction, dismantling, removal or replacement of the tank or other portions of the Water Tower, Grantee's access to the Easements may be limited, and the transmission of telecommunications signals to and/or from the Easements may be impaired. Grantor shall provide prior reasonable notice to Grantee (except in the event of emergency), and shall take reasonable actions to minimize any such disruption to Grantee's access to the Easements or any impairment of the transmission of telecommunications signals, which shall include including allowing Grantee or its Customers at their expense to relocate their Facilities to a mutually agreeable location elsewhere in or on the Water Tower, or installing and operating temporary cell towers (such as so-called cell towers on wheels) at a mutually agreeable location, such as on the Land. If the circumstances require a permanent relocation of the Facilities, then they shall be relocated by Grantee or its Customers at their expense to a mutually agreeable new location, such as on the Land, and this Agreement amended accordingly.
- b. During the Term, Grantee and Customers shall not prevent or materially impair: Grantor's, its tenants or utilities access to non-exclusive portions of the Easements; or prevent or materially impair the transmission of telecommunications signals to and from portions of the Property other than the Communications Easement. In the event any of the foregoing has occurred, Grantor shall promptly notify Grantee in writing, and provide reasonable detail of any alleged disturbance, as well as any requested action. Grantee, for itself, its Customers, successors and assigns, hereby agrees to use its best efforts to prevent

the occurrence of any of the foregoing, and shall promptly undertake any remedial action reasonably necessary to do so. In the event Grantee fails to promptly undertake remedial action, Grantor shall have the express right to seek an injunction to prevent any of the activity prohibited by this Section or require Customers to shut down interfering communications equipment (except for short tests to help remove the interference) until the interference is removed.

11. Grantor Covenants with respect to Assigned Agreement. As of the Effective Date, Grantor represents, warrants and agrees that (i) it has delivered to Grantee true, correct and complete copies of the Assigned Agreement and any amendments or modifications thereto, (ii) to the best of Grantor's knowledge, Customers under the Assigned Agreement are not in material default of any of its obligations thereunder, (iii) Customers under the Assigned Agreement have not provided written notice of (A) any intent not to exercise a right of renewal or extension of the term, or (B) any exercise, or any intent to exercise any early termination available under the Assigned Agreement, (C) any notice of default of Grantor's obligations under the Assigned Agreement, and (iv) Customers under the Assigned Agreement have not requested or been granted a reduction in rental amount or fees or escalator due under the Assigned Agreement, except as specifically set forth in the documents provided to Grantee. From and after the Effective Date, except as allowed under this Agreement, Grantor shall not without the prior written consent of Grantee, amend or modify the Assigned Agreement in any respect or exercise any rights granted by Grantor to Grantee under this Agreement, including without limitation the right to exercise remedies under the Assigned Agreement. Except as specifically set forth in this Agreement, Grantor shall comply with all obligations of lessor/licensor under the Assigned Agreement which relate to the use, ownership, and operation of the Property and shall not take any action that may result in a default under the Assigned Agreement. In the event of any alleged default caused by Grantor, Grantor shall take all reasonable actions to cure any actual default.

12. Grantee Covenants with Respect to Assigned Agreement. From and after the Effective Date, Grantee shall not, without the prior written consent of Grantor (which shall not be unreasonably withheld or conditioned), amend or modify the Assigned Agreement in any manner which would have the effect of increasing or extending the obligations or liabilities of Grantor or successor owner(s) of the Property, potentially affect the potable water system or extend the term of such agreements beyond either (a) the maximum term provided in an Assigned Agreement as it exists on the Effective Date, or (b) the expiration or termination of this Agreement. Within thirty (30) days of entering into any amendment or modification of an Assigned Agreement, whether or not Grantor's consent is required, Grantee shall use reasonable efforts to provide to Grantor true, correct and complete copies thereof, but Grantor acknowledges that the failure of Grantee to provide such copies will not constitute a default under this Agreement. Grantee acknowledges that any and all amendments or modifications to the Assigned Agreement shall require compliance with this Agreement to the extent applicable (for example, any construction or replacement of Facilities shall comply with the requirements of Section 6 above).

13. Grantee Covenants with respect to Replacement Agreements. From and after the Effective Date, Grantee may enter into Replacement Agreements with Customers as set forth in Section 3 above. Grantee agrees that such agreements and amendments and modifications of

them shall not, without the prior written consent of Grantor (which shall not be unreasonably withheld or conditioned), increase or extend the obligations or liabilities of Grantor (or successor owner(s) of the Property) or have a term or duration extending beyond the expiration of this Agreement or potentially affect the potable water system. Within thirty (30) days of entering into any Replacement Agreement with a Customer (or an amendment thereto), whether or not Grantor's consent is required, Grantee shall use reasonable efforts to provide to Grantor a true, correct and complete copy thereof, but Grantor acknowledges that the failure of Grantee to provide such copies will not constitute a default under this Agreement. All Customers shall acknowledge they are bound by the terms and conditions of this Agreement to the extent applicable (for example, any construction or replacement of Facilities shall comply with the requirements of Section 6 above).

14. Default; Remedies.

- a. In the event of Grantee's default under this Agreement, Grantor shall provide Grantee with written notice specifying in reasonable detail the nature of such default, and Grantee shall promptly take such actions as are reasonably necessary to cure such default. In the event Grantee does not commence such cure within sixty (60) days after receipt of such notice and diligently complete the cure, Grantor may pursue any or all remedies available at law and in equity, including, but not limited to, monetary damages and injunctive relief.
- b. In the event of Grantor's default under this Agreement, Grantee shall provide Grantor with written notice specifying in reasonable detail the nature of such default, and Grantor shall promptly take such actions as are reasonably necessary to cure such default. In the event Grantor does not commence such cure within sixty (60) days after receipt of such notice and diligently complete the cure, Grantee may pursue any or all remedies available at law and in equity, including, but not limited to, monetary damages and injunctive relief.

15. Notices. All notices required to be given under this Agreement, unless otherwise stated, shall be in writing and delivered in person or by a national overnight delivery service (and shall be effective when received, when refused or when the same cannot be delivered) to the appropriate Party at the address set forth below (or at such other address designated in writing pursuant to the terms hereof):

To Grantor: Board of Public Works
City of Fort Wayne
Attn: Director of City Utilities
200 East Berry Street
Suite 240
Fort Wayne, Indiana 46802

With a copy (which does not satisfy the notice requirement) to:

City Attorney
200 East Berry Street
Suite 430
Fort Wayne, Indiana 46802

To Grantee: Landmark Infrastructure Holding Company, LLC
c/o Landmark Dividend LLC
P. O. Box 3429
2141 Rosecrans Ave., Suite 2100
El Segundo, CA 90245
Attn: Legal Dept.

16. Indemnity. Grantor (if and to the extent allowed by law) and Grantee shall each indemnify, defend and hold the other harmless against any and all costs (including reasonable attorney's fees), damages, and claims of liability or loss arising (a) out of the breach of any representation, warranty or covenant of such indemnifying Party set forth herein, and (b) out of the use and/or occupancy of the Property and the Easements by the indemnifying Party, but excluding in each instance any claims to the extent arising from the negligence or intentional misconduct of the indemnified Party. Grantee acknowledges that the foregoing indemnity by Grantor does not include any costs, damages, or claims of liability or loss arising out of any action, negligence or intentional misconduct of any third party, including, without limitation, any tenant(s) of the Property. Grantee further acknowledges that the foregoing indemnity by Grantee does include any costs, damages, or claims of liability or loss arising out of any action, negligence or intentional misconduct of any Customer of Grantee.

17. Environmental Representations.

- a. Grantor Environmental Representation. Grantor represents that to the actual knowledge of its City Engineer without investigation that it has no knowledge of any substance, chemical or waste (collectively "*Hazardous Substance*") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Grantor shall not introduce or use (or permit the use of) any Hazardous Substance on the Property in violation of any applicable federal, state or local environmental laws. Grantor shall be responsible for (and shall promptly conduct any investigation and remediation as required by any applicable environmental laws) all spills or other releases of any Hazardous Substance caused by Grantor, that have occurred or which may occur on the Property.
- b. Grantee Environmental Representations. Grantee shall not introduce or use, and in all Replacement Agreements shall bar Customers from introducing or using, any Hazardous Substance on the Property or the Easement in violation of any applicable federal, state or local environmental laws. Notwithstanding the foregoing, Grantee shall not be responsible for any Hazardous Substances arising

or present on or before the Effective Date. The liability of Grantee for any claims with respect to any Hazardous Substances at the Property or the Easement shall be limited to contamination by a release of a Hazardous Substance by Grantee or a Customer after the Effective Date, and in violation of any applicable federal, state or local environmental laws.

- c. Mutual Indemnification. Each Party (Grantor, if and to the extent allowed by Indiana law) agrees to defend, indemnify, and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to damages, costs, expenses, assessments, penalties, fines, cleanup, remedial, removal or restoration work required by any governmental authority, losses, judgments and reasonable attorneys' fees that the indemnified Party may suffer or incur due to the existence or discovery of any Hazardous Substance on the Property caused by the other party. This indemnification shall also apply to the migration of any Hazardous Substance to other properties, and the release of any Hazardous Substance into the environment that relate to or arise from the indemnitor's activities on the Property. Grantor agrees to defend, indemnify, protect and hold Grantee harmless from claims resulting from actions on the Property not caused by Grantee prior to, and during the Term of, this Agreement. This indemnification shall survive the termination or expiration of this Agreement.

18. Estoppel. Within 15 days after either Grantor's or Grantee's written request, the other Party shall execute and deliver to the requesting Party a statement (i) certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and whether any options granted to Grantee pursuant to the provisions of this Agreement have been exercised, (ii) certifying that there are no sums due from Grantee (or, if there are sums due, the amount(s) due), (iii) stating whether or not, to the actual knowledge of the certifying Party, the other Party is in default in performance of any of its obligations under this Agreement, and whether the certifying Party is in default to the certifying Party's actual knowledge, and, if so, specifying each such default of which the certifying Party may have knowledge, and (iv) certifying such other facts as the requesting Party reasonably requests, it being intended that any such statement delivered pursuant hereto may be relied upon by others with whom the Party requesting such certificate may be dealing and their respective successors and/or assigns. Notwithstanding the foregoing, neither Party shall be required to sign any certificate that (i) expands, alters or otherwise amends the certifying Party's obligations hereunder; or (ii) diminishes, alters or otherwise amends the certifying Party's rights hereunder. The estoppel certificate from Grantee shall also identify any amendments or modifications of the Assigned Agreement and any Replacement Agreements with a Customer (or an amendment thereto), whether or not Grantor's consent is required, and shall attach true, correct and complete copies of all such documents, subject to any confidentiality agreements between Grantee and any Customer. In the event of any such confidentiality agreement with a Customer, Grantee shall use reasonable efforts to obtain such consent, and shall provide to Grantor such information regarding the amendment, modification or agreement as Grantee can, consistent with the confidentiality agreement.

19. Force Majeure. The time for performance by Grantor or Grantee of any term, provision, or covenant of this Agreement shall be deemed extended by time lost due to delays resulting from strikes, civil riots, floods, earthquakes, labor or supply shortages, material or labor restrictions by governmental authority, litigation, injunctions, and any other cause not within the control of Grantor or Grantee, as the case may be, and not the fault of the Party delayed in performing work or doing acts, and where reasonable measures by such Party could not have avoided or mitigated the effects of such acts.

20. Recording. This Agreement shall be recorded at Grantee's expense. Upon such recording, Grantee shall promptly provide a true, correct and complete copy thereof to Grantor.

21. Run With Land. The easement, covenants and rights contained in this Agreement are not personal to Grantor but are appurtenant to and shall run with the land and shall be binding upon and shall inure to the benefit of all present and future owner(s) of the Property and their successors in title or interest and their permitted assigns.

22. Assignment. In addition to security assignments permitted by Section 13, Grantee may, without the written consent of Grantor, assign this Agreement, but only in its entirety and not in part, to: (i) an entity controlled by, controlling or under common control with Grantee so long as such entity has reasonably sufficient assets and liquidity to enable it to perform all of Grantee's duties, obligations and liabilities arising under this Agreement for its duration; or (ii) the Customer under an Assigned Agreement or Replacement Agreement so long as such entity has reasonably sufficient assets and liquidity to enable it to perform all of Grantee's duties, obligations and liabilities arising under this Agreement for its duration; (iii) a company publicly traded on the NYSE or NASDAQ so long as such entity has reasonably sufficient assets and liquidity to enable it to perform all of Grantee's duties, obligations and liabilities arising under this Agreement for its duration; or (iv) otherwise upon written consent from Grantor, which consent shall not be unreasonably withheld, conditioned or delayed. As to all assignments under (i) both (A) the assignee shall step into the shoes of the assignor and be responsible for all claims and defaults related to this Agreement or the Facilities whether arising prior to or after the assignment, and (B) the assignor shall not be released from liability for claims and defaults related to this Agreement or the Facilities whether arising prior to or after the assignment unless a written release is obtained from Grantor, such release not to be unreasonably withheld. For all other assignments under (ii) through (iv) the assignee shall step into the shoes of the assignor and be responsible for all claims and defaults related to this Agreement or the Facilities which arise prior to or after the assignment, and assignor shall have no further obligations thereunder.

23. Mechanic's Liens. The Property being public property, Grantee and its Customers shall never permit or allow a mechanics' or materialmen's lien, however described, to be filed against the Property or any portion thereof.

24. Lease and License. Unless specifically indicated to the contrary, for the purposes of this Agreement, the term "lease" shall have the same meaning as "license", "lessor" shall have the same meaning as "licensor", and "lessee" or "tenant" shall have the same meaning as "licensee".

25. Governing Law, Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana including the police powers of the State and its political subdivisions but without regard to its conflict of laws provisions, and venue for any suit or claim related to this Agreement shall be the courts for Allen County, Indiana, and both Parties agree not to object to venue being laid in such forum on the grounds of forum nonconveniens or any other legal theory.

26. Captions and Headings. The captions and headings in this Agreement are for convenience and shall not be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of or the scope or intent of this Agreement.

27. Cumulative Remedies. Except as otherwise expressly provided herein, each and every one of the rights, benefits and remedies provided to Grantor or Grantee by this Agreement, or by any instrument or documents executed pursuant to this Agreement, are cumulative and shall not be exclusive of any other of said rights, remedies and benefits allowed by law or equity to Grantee.

28. Counterparts. This Agreement may be executed in one or more counterparts, and by the different Parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

29. Severability. If any provision of this Agreement is deemed unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid or shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if such provision had been so limited or as if such provision had not been included herein, as the case may be. Additionally, if any laws, rules or regulations promulgated by any state, county or local jurisdiction, including without limitation those concerning zoning, subdivision or land use, or should any court of competent jurisdiction, make the sale of the Easements herein either void or voidable, Grantor agrees that upon the written request of Grantee, the grant of the Easements shall convert to a lease between Grantor, as lessor, and Grantee, as lessee, (with the Communications Easement area being the leased premises therein, and the Access and Utility Easement area remaining a non-exclusive easement for access and utility purposes) for uses consistent with those set forth in Section 3 hereof, and containing other terms and conditions acceptable to both Parties; provided if the preceding occurs that Grantee shall not be required to obtain the consent of Grantor to enter into any sublease or license of any portion of the Communications Easement or to permit sublessees or licensees to utilize the Access and Utility Easement; nor shall Grantor be entitled to any additional consideration in connection with such subleases and licenses; and provided that that the delivery of the consideration paid by Grantee to Grantor for the Easements at the execution of this Agreement shall constitute payment for such lease for the duration of the Term as described in paragraph 4 herein, or as long as permitted by applicable law, in either case no longer than the expiration of the Term.

30. Entire Understanding and Amendment. This Agreement and the Purchase and Sale Agreement entered into by and between Grantor and Grantee, and the closing documents executed in connection therewith, constitute the entire understanding between the Parties with regard to the subject matter hereof and there are no representations, inducements, conditions, or

other provisions other than those expressed herein. This Agreement may not be modified, amended, altered or changed in any respect except by written agreement and signed by each of the Parties hereto.

31. Certified Copy. The Parties agree that a certified recorded copy of this Agreement shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence hereof notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original executed counterpart of this Agreement first be proven.

32. Warranties Disclaimed. GRANTOR DISCLAIMS ALL WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, AS TO THE PROPERTY AND EASEMENTS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS DISCLAIMER CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. GRANTEE ACCEPTS THE EASEMENTS AND PROPERTY "AS IS."

33. Oil, Gas, Minerals, Wind, Solar, Efficiency. Grantor retains all present and future rights to water, oil, gas, minerals, wind energy and solar energy on, about or related to the Easements and Property. Grantee shall not claim to the contrary. All equipment on the Easements which uses electricity shall carry the energy star rating whenever possible.

34. Waiver of Jury Trial. Each Party, to the extent permitted by law, knowingly, voluntarily and intentionally waives its right to a trial by jury in any action or proceeding under any theory of liability arising out of or in any way connected with this Agreement or the transactions it contemplates.

35. Treatment in Bankruptcy. The Parties to this Agreement hereby expressly agree and acknowledge that it is the intention of both Parties that in the event that during the Term of this Agreement Grantee shall become a debtor in any voluntary or involuntary bankruptcy proceeding under the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.* (the "Code"), this Agreement shall be treated as an "unexpired lease of nonresidential real property" for purposes of Section 365 of the Code, 11 U.S.C. § 365, and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said Section 365.

36. Condemnation. If all or a material portion of the Water Tower is permanently taken or condemned by any competent authority for any public use or purpose (including a deed given in lieu of condemnation), and the taking renders the rooftop of the Water Tower substantially unusable for the Permitted Use, this Agreement shall terminate as of the date title vests in the condemning authority. The Parties will each be entitled to pursue their own separate awards in condemnation proceedings. Notwithstanding the foregoing, Grantor shall not settle or compromise any condemnation award affecting the Easements, and Grantee shall not settle or compromise any condemnation award relating to the Water Tower or the Property beyond the Easements, without the other's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.

37. Reserved Rights. As set forth on Exhibit D, the rights set forth there are reserved to Grantor, notwithstanding any other provision of this Agreement.

[Signatures Appear on Following Pages]

IN WITNESS WHEREOF, the Parties hereto have executed this Telecommunication Easement Agreement as of the Effective Date.

GRANTOR:

CITY OF FORT WAYNE

an Indiana municipal corporation

By and through its Board of Public Works

By: _____

Name: Benjamin Groeneweg

Title: Engineer VI: Utility Asset Management & Engineering Services

Authorized signatory on behalf of the Fort Wayne Board of Public Works, per the Resolution attached as Exhibit E

Date: February _____, 2016

Acknowledgment

STATE OF INDIANA)
) ss:
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this ____ day of _____, 2016, personally appeared before the within named Ben Groeneweg by me personally known, who being by me duly sworn said that he is an Engineer VI: Utility Asset Management & Engineering Services of the Board of Public Works, City of Fort Wayne, and that he signed said instrument on behalf of the Board of Public Works, City of Fort Wayne with full authority so to do and acknowledge said instrument to be the voluntary act and deed of said City for the uses and purposes therein set forth.

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

Signature: _____
Notary Public

Printed Name: _____

My Commission Expires: _____

{Seal}

Resident of _____ County, Indiana

Exhibit A
Property Description

Part of the Northeast Quarter of Section 1, Township 31 North, Range 12 East, Allen County, Indiana, more particularly described as follows:

Beginning at the Northwest corner of the Northeast Quarter of Section 1, Township 31 North, Range 12 East, Allen County, Indiana; thence Easterly along the North line of the NE 1/4 of Sec. 1-31-12 a distance of 100.0 feet; thence Southerly with a deflection angle to the right of 89 degrees 24 minutes and parallel to the West line of the NE 1/4 of Section 1-31-12 a distance of 190 feet; thence Westerly with a deflection angle to the right of 90 degrees 36 minutes and parallel, to the North line of Section 1-31-12 a distance of 100.0 feet to a point on the West line of the NE 1/4 of Section 1-31-12; thence Northerly with a deflection angle to the right of 89 degrees 24 minutes and along the West line of the NE 1/4 of Section 1-31-12 a distance of 190 feet to the point of beginning, containing 0.44 acres of land, more or less.

Exhibit B
Assigned Agreement

1. License Agreement entered into and effective March 18, 2015 by and between the Board of Public Works, City of Fort Wayne, Indiana as Licensor and SprintCom, Inc., a Kansas corporation as Licensee - - referred to herein as "*Sprint Dupont Lease*".

Exhibit C
Description of Communications Easement

The Communications Easement consists of all of the following:

1. For the Sprint Dupont Lease the Communications Easement consists of:

(a) on the Land, the Equipment Area Easement being the space depicted as “Exclusive Easement” on the As-Built Survey of the Dupont Tower attached as Exhibit F and legally described in the attached Exhibit G, and also the “Non-Exclusive Access and Utility Easement” as depicted on such survey and legally described in the attached Exhibit G, and

(b) on the Water Tower such space for the Attachment Area Easement and Access and Utility Easement:

(i) as is shown on the engineering drawings for Sprint Site Cascade CH51XC384, Site No. 884384 by First Group Engineering, signed and sealed February 5, 2015, comprising 28 pages; and the Dixon Engineering, Inc. Water Tower Installation Analysis for Sprint Site # CH15XC384, dated March 5, 2015, comprising 11 pages, such documents being referenced in and/or attached to such lease, plus

(ii) such additional space, if any, as may be added by the lessee under the terms of and in conformance with the terms of such lease and this Agreement as they exist on the Effective Date.

Exhibit D

Reserved Rights

Notwithstanding anything to the contrary contained therein, the Agreement is subject to the following provisions:

1. Grantor operates the Water Tower for the provision of potable drinking water for the citizens of Fort Wayne, Indiana. Regardless of the terms and provisions set forth in the Agreement, Grantor reserves the following rights and privileges, and Grantee agrees to same:

(a) Grantor retains the right to maintain security in and around the Water Tower commensurate with industry standards for municipal water supplies;

(b) Grantor retains the right to maintain the Water Tower and its associated equipment and systems in accordance with industry standards for municipal water supplies and all legal requirements, and actions taken by Grantor in furtherance of such maintenance of the Water Tower and associated equipment and systems shall not constitute a default under the terms and conditions of the Agreement.

(c) Grantor at all times retains the right to act as it deems necessary with regard to the Water Tower and its associated equipment and systems to protect and secure the public health, safety and welfare, to counteract public or utility emergencies, and to react to catastrophic events, extremes of weather, riots, labor strife and acts of God or war, and such acts by Grantor shall not constitute a default under the terms and conditions of this Agreement.

2. Notwithstanding anything contained in the Agreement, Grantor shall at all times retain the right to approve all Replacement Agreements, the Customers thereunder, and any changes in Customers under a Replacement Agreement or an Assigned Agreement (except as Grantor may have agreed otherwise in an Assigned Agreement) (collectively "Replacement Customers"). If Grantee identifies a proposed Replacement Customer or a proposed Replacement Agreement, Grantee shall provide written notice to Grantor of such proposed Replacement Customer and/or any proposed Replacement Agreement and Grantor shall have a period of thirty (30) days within which to either accept or reject the proposed Replacement Customer and/or proposed Replacement Agreement. Grantor may accept or reject said proposed Replacement Customer or proposed Replacement Agreement in its sole and unmitigated discretion.

3. Notwithstanding anything else contained in the Agreement, Grantor shall have the right to terminate the Agreement, upon one hundred thirty-five (135) days prior written notice ("Termination Notice"), subject to the following terms and conditions:

(a) Provided that Grantor is not otherwise in material default of the terms and conditions of the Agreement, Grantor shall prepare and send to Grantee a Termination Notice which identifies and describes, in Grantor's determination, existing defects making the Water Tower structurally unsound and in the interest of the public health,

safety and welfare, should be demolished and removed; (collectively "Grantor Termination Rights").

(b) The Termination Notice shall also identify an independent qualified engineer that Grantor wishes to engage to perform a structural analysis of the Water Tower deemed by Grantor to be structurally unsound. Within thirty (30) days of receiving the Termination Notice, Grantee shall approve or reject the engineer identified by Grantor. Grantee may only reject the proposed engineer, if the engineer's training, experience, and background is of a commercial standard that is less than the objectively reasonable standard for engineers of the locale. Grantee's failure to respond to the Termination Notice within thirty (30) days of receiving the Termination Notice shall be deemed an acceptance of the proposed engineer.

(c) Within the Termination Notice period described in Section 3(a), the selected engineer shall provide a report detailing the findings and structural analysis of the identified Water Tower ("Engineer Report").

(d) In the event the Engineer Report concludes that the identified Water Tower is structurally unsound and should be demolished or removed, Grantor shall use commercially reasonable efforts to relocate any Customers displaced by the exercise of the Grantor Termination Rights, to real property owned or controlled by Grantor ("Customer Relocation"). Upon successful Customer Relocation the Parties shall amend the Easements to add the new location for the Customer, with appropriate access and utility easements, and it is understood and agreed that Grantee shall be entitled to demand, receive, and collect rents payable by the relocated Customer, in accordance with, and for the term of, the Agreement. In the event the Engineer Report concludes that the identified Water Tower is structurally unsound and should be demolished or removed, and Customer Relocation is not feasible, or not capable of being accomplished through the use of commercially reasonable efforts, then Grantor shall be entitled to terminate the Agreement without penalty.

(e) In the event the Engineer Report concludes that the identified Water Tower is structurally sound, and there exists no risk or threat to public safety through continued use of the identified Water Tower, then Grantor shall not be entitled to exercise the Grantor Termination Rights, and the Agreement shall remain in full force and effect.

4. Notwithstanding anything else that may be contained in the Agreement to the contrary, Grantor shall not be liable for the payment of the rent under either the Assigned Agreement or Replacement Agreements and the same shall not constitute an obligation of Grantor. Grantee agrees to look solely to the Assigned Agreement and Replacement Agreements for the monies it is to receive under the transactions contemplated by the Agreement.

Exhibit E

City Resolution Authorizing Signing of Agreement

[attach resolution]

**A RESOLUTION OF THE BOARD OF PUBLIC WORKS
OF THE CITY OF FORT WAYNE, INDIANA,
AUTHORIZING TELECOMMUNICATION EASEMENT PURCHASE
AND ASSIGNMENT AGREEMENT**

RESOLUTION NUMBER 103-2-17-16-1

WHEREAS, the City of Fort Wayne, Indiana (hereinafter referred to as the "City"), owns certain real property and the water towers located thereon located at 9810 Bronco Drive, Fort Wayne, Indiana, 46804 (hereinafter referred to as the "Aboite Water Tower" location), 14501 Covington Road, Fort Wayne, Indiana, 46814 (hereinafter referred to as the "Covington Water Tower" location), and 1016 Dupont Road, Fort Wayne, Indiana, 46825 (hereinafter referred to as the "Dupont Water Tower" location), all three (3) locations being described more particularly in Exhibit "A", attached hereto and made a part of this Resolution by this reference; and

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

WHEREAS, Landmark Infrastructure Holding Company, LLC (hereinafter referred to as "Landmark") wishes to purchase the City's telecommunication easements; and

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

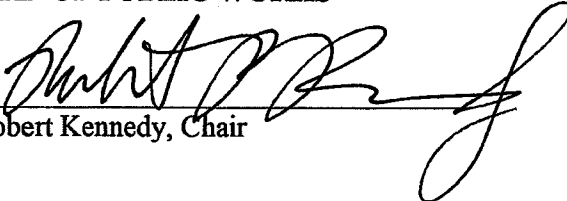
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

1. That the Board of Public Works of the City of Fort Wayne, Indiana (hereinafter referred to as the "Board") approves the sale of the Telecommunications Easements and Assignment Agreements between the City and Landmark.
2. That the Board approves the Telecommunication Easement Purchase And Assignment Agreement agreements between the City and Landmark.
3. That the Board hereby authorizes Benjamin Groeneweg, Engineer VI: Utility Asset Management and Engineering Services, to sign in the name of and on behalf of the Board, the three (3) Telecommunication Easement Purchase And Assignment Agreement agreements between the City and Landmark, and the three (3) Telecommunication Easement Agreement agreements between the City and Landmark and all ancillary closing documents.

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

APPROVED this 17th day of February, 2016.

BOARD OF PUBLIC WORKS

By: 
Robert Kennedy, Chair

By: Absent
Kumar Menon, Member

By: 
Mike Avila, Member

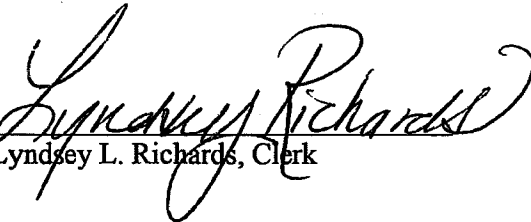
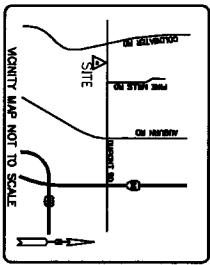
Attest: 
Lyndsey L. Richards, Clerk

Exhibit F

As-Built Survey of Dupont Tower

As-Built Survey of site at 1016 Dupont Road, Fort Wayne, Indiana,
by Global Land Solutions, Job # 15182S, dated 12/10/15, consisting of 2 pages

[See Attached]

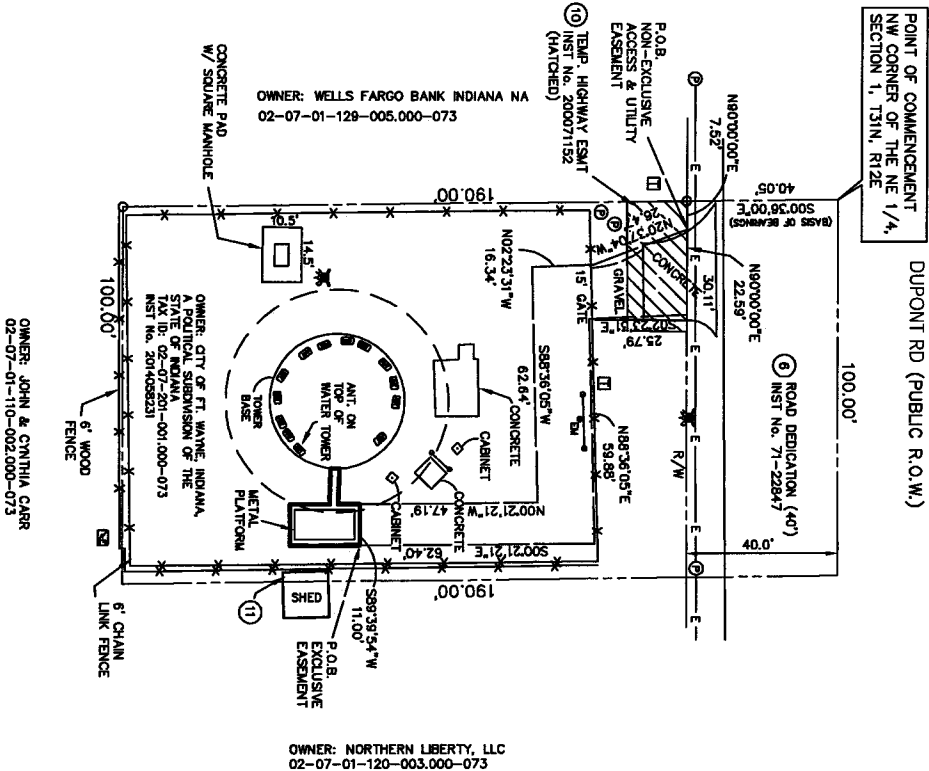
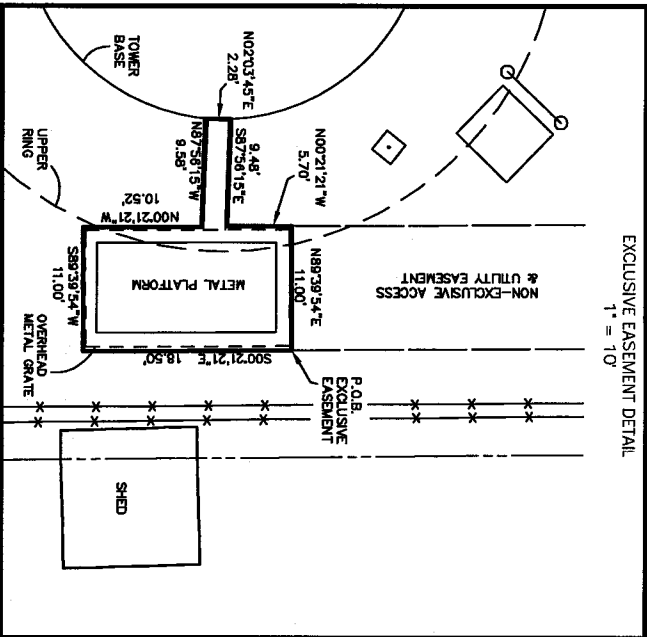
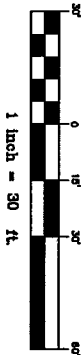


LEGEND

- FOUND 5/8" IRON SET 5/8" IRON
- POINT OF BEGINNING
- POINT OF COMMENCEMENT
- RIGHT OF WAY
- POWER POLE
- ELECTRIC TRANSFORMER BOX
- ELECTRIC METER
- TELEPHONE PEDESTAL
- CABLE TV PEDESTAL
- OVERHEAD ELECTRIC
- FENCE

ZONING: N/A
 FLOOD NOTE: SUBJECT PROPERTY IS NOT FLOODED WITHIN A DESIGNATED FLOOD ZONE AREA.

AREA TABLE	SQUARE FEET	ACRE
① PARENT PARCEL	18,993	0.444
② EXCLUSIVE EASEMENT	223	0.01
③ NON-EXCLUSIVE EASEMENT	2,103	0.05



AS-BUILT SURVEY

IN SECTION 1,
 TOWNSHIP 31 NORTH, RANGE 12 EAST
 FORT WAYNE, INDIANA
 FORT WAYNE, IN 46823
 ALLEN COUNTY

LANDMARK
 DIVIDEND
 1701 E. MAIN ST. SUITE 400
 FORT WAYNE, IN 46802

GEOLINE
 SURVEYING, INC.
 14340 N. STATE ST. SUITE 100
 FORT WAYNE, IN 46825
 (317) 434-1111
 WWW.GEOLINE.COM

Global Land
 SOLUTIONS THAT WORK FOR YOU.
 5045 12 Milepark 4851
 FORT WAYNE, IN 46825
 (800) 606-6835
 WWW.GLOBALLAND.COM

1. BASE OF BEARING 58°36'05\"/>
2. NO SURFACE INVESTIGATION WAS PERFORMED TO LOCATE UNDERGROUND UTILITIES OR OBSTRUCTIONS. THE RESULTS OF THIS SURVEY ARE PER OBSERVED EVIDENCE ONLY.
3. THIS SURVEY DOES NOT REPRESENT A BOUNDARY SURVEY OF THE PARENT PARCEL.
4. ALL VISIBLE TOWER EQUIPMENT AND INSTRUMENTS ARE CONTAINED WITHIN THE DESCRIBED AREA.

SURVEYOR'S CERTIFICATION
 I HEREBY CERTIFY TO LANDMARK SURVEYING, INC. THAT THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE NATIONAL TITLE INSURANCE COMPANY.

Global Land
 JAMES SCHWANDT, P.E., J.D.
 LICENSED SURVEYOR
 No. 204000560
 STATE OF INDIANA
 LAND SURVEYOR
 Date: 12/10/15

STATE OF INDIANA
 LAND SURVEYOR
 JAMES SCHWANDT
 No. 204000560
 STATE OF INDIANA
 LAND SURVEYOR
 SHEET 1 OF 2

EXCLUSIVE EASEMENT DESCRIPTION (AS CREATED BY THIS OFFICE):

Part of the Northeast Quarter of Section 1, Township 31 North, Range 12 East, Allen County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of the Northeast 1/4 of said Section 1; thence S00°36'00"E 40.05 feet along the West line of the Parent Parcel to a point on the Southerly Right-of-Way line of Dupont Avenue; thence N00°00'00"E 30.11 feet along said Right-of-Way line; thence S02°23'31"E 25.79 feet; thence N88°36'05"E 59.88 feet; thence S00°21'21"E 62.40 feet; to the Point of Beginning of this description; thence continuing S00°21'21"E 18.50 feet; thence S89°39'54"W 11.00 feet; thence N00°21'21"W 10.52 feet; thence N87°56'15"W 9.58 feet; thence N02°03'45"E 2.28 feet; thence S87°56'15"E 9.48 feet; thence N00°21'21"W 5.70 feet; thence N89°39'54"E 11.00 feet to the Point of Beginning. Containing 225 square feet (0.01 Acres) of land, more or less.

NON-EXCLUSIVE ACCESS & UTILITY EASEMENT DESCRIPTION (AS CREATED BY THIS OFFICE):

Part of the Northeast Quarter of Section 1, Township 31 North, Range 12 East, Allen County, Indiana, more particularly described as follows:

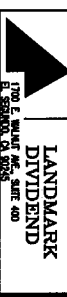
Commencing at the Northwest corner of the Northeast 1/4 of said Section 1; thence S00°36'00"E 40.05 feet along the West line of the Parent Parcel to a point on the Southerly Right-of-Way line of Dupont Avenue; thence N00°00'00"E 7.52 feet along said Right-of-Way line to the Point of Beginning of this description; thence continuing N90°00'00"E 22.59 feet; thence S02°23'31"E 25.79 feet; thence N88°36'05"E 59.88 feet; thence S00°21'21"E 62.40 feet; thence S89°39'54"W 11.00 feet; thence N00°21'21"W 47.19 feet; thence S88°36'05"W 62.64 feet; thence N02°23'31"W 16.34 feet; thence N02°37'04"W 26.47 feet to the Point of Beginning. Containing 2,103 square feet (0.05 Acres) of land, more or less.

AREA TABLE	SQUARE FEET	ACRE
① PARENT PARCEL	18,998.2	0.444
② EXCLUSIVE EASEMENT	225	0.01
③ NON-EXCLUSIVE ACCESS & UTILITY EASEMENT	2,103	0.05

AS-BUILT SURVEY

IN SECTION 1,
TOWNSHIP 31 NORTH, RANGE 12 EAST

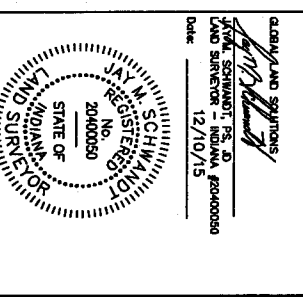
FOR LANDMARK DIVIDEND
SITE NO. TCI104604
ADDRESS 1016 DUPONT RD
PORT WYNETE, IN 46686
ALLEN COUNTY



GEOLINE
SURVEYING, INC.
1340 NW 10th Avenue, Suite A, Altamira, FL 32015
WWW.GEOLINE.COM

SUBREYOR'S NOTES
1. BASE OF BEARING, S00°36'00"E ALONG THE W. LINE OF THE NE 1/4 OF SECTION 1.
2. NO SUBSURFACE INVESTIGATION WAS PERFORMED TO LOCATE UNDERGROUND UTILITIES. ALL UTILITIES WERE ASSUMED TO AND ARE PER OBSERVED EVIDENCE ONLY.
3. THIS SURVEY DOES NOT REPRESENT A BOUNDARY SURVEY OF THE PARENT PARCEL.
4. ALL VISIBLE TOWER EQUIPMENT AND IMPROVEMENTS ARE CONTAINED WITHIN THE DESCRIBED AREA.

SURVEYOR'S CERTIFICATION
I HEREBY CERTIFY TO LANDMARK INFRASTRUCTURE HOLDING COMPANY LLC, SPURIT/VALETTE, AND FIDELITY NATIONAL, TITLE INSURANCE COMPANY.
Clayton and Spillings
CLAYTON AND SPILLINGS
1000 S. STATE ST., 8
INDIANAPOLIS, INDIANA 462040000
Date: 12/10/15



- ⑧ SCHEDULE B SECTION 11 EXCEPTIONS REVIEWED FROM FIDELITY NATIONAL, TITLE INSURANCE COMPANY COMMITMENT NO. LUD-478456-P EFFECTIVE DATE NOVEMBER 16, 2015.
- ⑨ ITEMS 1 THROUGH 5, NOT SURVEY RELATED.
- ⑩ DEED OF DEDICATION BETWEEN ROBERT C. MERRAMAN AND YERNA O. MERRAMAN, HUSBAND AND WIFE, AND THE COUNTY OF ALLEN, STATE OF INDIANA, DATED NOVEMBER 3, 1971, RECORDED NOVEMBER 23, 1971, AS INSTRUMENT NO. 71-22847, BOOKS AND PAGES AS SHOWN HEREON.
- ⑪ ITEMS 7-9 ARE NOT SURVEY RELATED AND CONTAIN NO FLOTTABLE INFORMATION. TEMPORARY HIGHWAY EASEMENT GRANT BETWEEN UTILITY CENTER, INC., AN INDIANA CORPORATION AND THE BOARD OF COMMISSIONERS OF THE COUNTY OF ALLEN, DATED FEBRUARY 3, 1971, RECORDED NOVEMBER 23, 1971, AS INSTRUMENT NO. 71-22847, ALLEN COUNTY, INDIANA, BOOKS AND PAGES AS SHOWN HEREON.
- ⑫ DOCUMENT STATES THE EASEMENT IS TERMINATED UPON COMPLETION OF THE PROJECT.
- ⑬ EASEMENT AGREEMENT BETWEEN OAKMONT DEVELOPMENT CO. LLC AND THE CITY OF PORT WYNETE, IN ALLEN COUNTY, INDIANA, BOOKS AND PAGES AS SHOWN HEREON.
- ⑭ RESOLUTION NUMBER 94-12-12-07 DATED DECEMBER 12, 2007 RECORDED FEBRUARY 12, 2008 AS INSTRUMENT NO. 2010006312, IN ALLEN COUNTY, INDIANA.

Exhibit G

**Legal Descriptions of those Portions of the
Dupont Tower
Communications Easement that are Located on the Land**

EXCLUSIVE EASEMENT DESCRIPTION:

Part of the Northeast Quarter of Section 1, Township 31 North, Range 12 East, Allen County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of the Northeast 1/4 of said Section 1; thence S00°36'00"E 40.05 feet along the West line of the Parent Parcel to a point on the Southerly Right-of-Way line of Dupont Avenue; thence N90°00'00"E 30.11 feet along said Right-of-Way line; thence S02°23'31"E 25.79 feet; thence N88°36'05"E 59.88 feet; thence S00°21'21"E 62.40 feet; to the Point of Beginning of this description; thence continuing S00°21'21"E 18.50 feet; thence S89°39'54"W 11.00 feet; thence N00°21'21"W 10.52 feet; thence N87°56'15"W 9.58 feet; thence N02°03'45"E 2.28 feet; thence S87°56'15"E 9.48 feet; thence N00°21'21"W 5.70 feet; thence N89°39'54"E 11.00 feet to the Point of Beginning. Containing 225 square feet (0.01 Acres) of land, more or less.

to the Point of Beginning. Containing 329 square feet (0.01 Acres) of land, more or less.

NON-EXCLUSIVE ACCESS & UTILITY EASEMENT DESCRIPTION:

Part of the Northeast Quarter of Section 1, Township 31 North, Range 12 East, Allen County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of the Northeast 1/4 of said Section 1; thence S00°36'00"E 40.05 feet along the West line of the Parent Parcel to a point on the Southerly Right-of-Way line of Dupont Avenue; thence N90°00'00"E 7.52 feet along said Right-of-Way line to the Point of Beginning of this description; thence continuing N90°00'00"E 22.59 feet; thence S02°23'31"E 25.79 feet; thence N88°36'05"E 59.88 feet; thence S00°21'21"E 62.40 feet; thence S89°39'54"W 11.00 feet; thence N00°21'21"W 47.19 feet; thence S88°36'05"W 62.64 feet; thence N02°23'31"W 16.34 feet; thence N20°37'04"W 26.47 feet to the Point of Beginning. Containing 2,103 square feet (0.05 Acres) of land, more or less

Exhibit H

Prior Agreement

Amended and Restated Assignment of Lease Rents and Successor Lease Rents by and between Board of Public Works, City of Fort Wayne and AP Wireless Investments I, LLC, a Delaware limited liability company, dated June 28, 2013 and recorded in part with the Allen County, Indiana, Recorder's Office on July 10, 2013 as Document Number 2013038555.

Vendor Disclosure

FWCU

Landmark Infrastructure Holding Company LLC,
a wholly owned subsidiary of Landmark Dividend LLC
(Vendor Name)

VENDOR DISCLOSURE STATEMENT RELATING TO:

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

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

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$50,000 or more. Vendors shall disclose their financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration for a contract awarded by the City. This Disclosure Statement must be completed and submitted together with the Vendor's contract, bid, proposal or offer.

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

Section 1: Disclosure of Financial Interest in Vendor

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

- (i) Equity ownership exceeding 5%
- (ii) Distributable income share exceeding 5%
- (iii) Not Applicable (If N/A, go to Section 2)

Name: Landmark Dividend LLC Name: _____
 2141 Rosecrans Avenue, Ste. 2100
 Address: El Segundo, CA 90245 Address: _____

b. For each individual listed in Section 1a. show his/her type of equity ownership:

sole proprietorship stock
 partnership interest units (LLC)
 other explain) _____

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

RFQ #3954

Name: Landmark Dividend LLC 100 %
Name: _____ %

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

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

- a. City employment, currently or in the previous 3 years, including contractual employment for services: Yes ___ No X

- b. City employment of "Member of Immediate Family" (defined herein as: spouse, parent, child or sibling) including contractual employment for services in the previous 3 years:
Yes ___ No X

- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years: Yes ___ No X

- c. Relationship to Member of Immediate Family holding appointive City office currently or in the previous 3 years:
Yes ___ No X

Section 3: DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

- a. Does Vendor have current contracts (including leases) with the City?
Yes ___ No X

RFQ #3954

If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact below (attach additional pages as necessary).

N/A

b. Does Vendor have **pending** contracts (including leases), bids, proposals, or other pending procurement relationship with the City?

Yes ___ No X

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

N/A

c. Does vendor have any existing employees that are also employed by the City of Fort Wayne?

Yes ___ No X

If "Yes", provide the employee's name, current position held at vendor, and employment payment terms (hourly, salaried, commissioned, etc.).

Name / Position / Payment Terms: N/A

Name / Position / Payment Terms: N/A

Name / Position / Payment Terms: N/A

d. Does vendor's representative, agent, broker, dealer or distributor (if applicable) have any existing employees that are also employed by the City of Fort Wayne? For each instance, please provide the name of the representative, agent, broker, dealer or distributor; the name of the City employee, and the payment terms (hourly, salaried, commissioned, etc.).

e.

Company	/	Name	/	Payment	/	Terms:
N/A						

Company	/	Name	/	Payment	/	Terms:
N/A						

Section 4: CERTIFICATION OF DISCLOSURES


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

- a. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, been debarred, suspended, proposed for debarment declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. No officer or director of Vendor (or its parent) or individual listed in Section 1a. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offense;
- c. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, had one or more public transactions (federal, state or local) terminated for cause or default;
- d. No officer or director of Vendor (or its parent) or individual listed in Section 1a. has, within the five (5) year period preceding the date of this Disclosure Statement, been convicted, adjudged guilty, or found liable in any criminal or civil action instituted by the City, the federal or state government or any other unit of local government; and
- e. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers, directors, or individuals listed in Section 1a. is barred from contracting with any unit of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same elements as the offense of bid-rigging or bid-rotating
- f. Pursuant to IC 5-22-16.5, Vendor hereby certifies they do NOT provide \$20 million dollars or more in goods or services to the energy sector of Iran. Vendor also certifies it is not a financial institution that extends \$20 million dollars or more in credit that will provide goods or services to the energy sector of Iran or extends \$20 million dollars or more in credit to a person identified on the list as a person engaging in investment activities in Iran.

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

<p>Landmark Infrastructure Holding Company LLC, a wholly owned subsidiary of Landmark Dividend LLC</p> <hr/> <p>(Name of Vendor)</p>	<p>2141 Rosecrans Avenue, Ste. 2100 El Segundo, CA 90245</p> <hr/> <p>Address (310) 464-3172</p> <hr/> <p>Telephone jbobek@landmarkdividend.com</p> <hr/> <p>E-Mail Address</p>
--	---

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

Name (Printed) DAN PARSONS Title EVP OPERATIONS
 Signature  Date 10/8/15

RFQ #3954

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

Non-Collusion Affidavit

The undersigned bidder or agent, being duly sworn on oath, says that he/she has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding.

He/She further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee gift, commission or thing of value on account of such sale.


OATH AND AFFIRMATION

I HEREBY AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FACTS AND INFORMATION CONTAINED IN THE FOREGOING BID ARE TRUE AND CORRECT.

Dated this 29th day of October, 2015

Landmark Infrastructure Holding Company LLC,
a wholly owned subsidiary of Landmark Dividend LLC
(Name of Organization)

Dan Parsons, Authorized Signatory
(Title of Person Signing)


(Signature)

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)

) ss

See attached

COUNTY OF LOS ANGELES)

Before me, a Notary Public personally appeared the above named and swore that the statements contained in the foregoing document are true and correct.

Subscribed and sworn to me this _____ day of _____, _____.

Notary Public Signature

My Commission Expires: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of LOS ANGELES)
On 10-29-2015 before me, Nanette Carey
Date Here Insert Name and Title of the Officer
personally appeared DAN PARSONS
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

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

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

- a. City employment, currently or in the previous 3 years, including contractual employment for services:
Yes _____ No X

- b. City employment of "Member of Immediate Family" (defined herein as: spouse, parent, child or sibling) including contractual employment for services in the previous 3 years:
Yes _____ No X

- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years:
Yes _____ No X

- c. Relationship to Member of Immediate Family holding appointive City office currently or in the previous 3 years:
Yes _____ No X

Section 3: DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

- a. Does Vendor have current contracts (including leases) with the City? Yes _____ No X

If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact below (attach additional pages as necessary).

N/A

b. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes _____ No X

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

_____ N/A _____

c. Does vendor have any existing employees that are also employed by the City of Fort Wayne?

Yes _____ No X

If "Yes", provide the employee's name, current position held at vendor, and employment payment terms (hourly, salaried, commissioned, etc.).

Name / Position / Payment Terms:

_____ N/A _____

Name / Position / Payment Terms:

_____ N/A _____

Name / Position / Payment Terms:

_____ N/A _____

d. Does vendor's representative, agent, broker, dealer or distributor (if applicable) have any existing employees that are also employed by the City of Fort Wayne? For each instance, please provide the name of the representative, agent, broker, dealer or distributor; the name of the City employee, and the payment terms (hourly, salaried, commissioned, etc.).

Company / Name / Payment Terms: _____ N/A _____

Company / Name / Payment Terms: _____ N/A _____

Section 4: CERTIFICATION OF DISCLOSURES

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

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

- d. No officer or director of Vendor (or its parent) or individual listed in Section 1a. has, within the five (5) year period preceding the date of this Disclosure Statement, been convicted, adjudged guilty, or found liable in any criminal or civil action instituted by the City, the federal or state government or any other unit of local government; and
- e. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers, directors, or individuals listed in Section 1a. is barred from contracting with any unit of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same elements as the offense of bid-rigging or bid-rotating
- f. Pursuant to IC 5-22-16.5, Vendor hereby certifies they do NOT provide \$20 million dollars or more in goods or services to the energy sector of Iran. Vendor also certifies it is not a financial institution that extends \$20 million dollars or more in credit that will provide goods or services to the energy sector of Iran or extends \$20 million dollars or more in credit to a person identified on the list as a person engaging in investment activities in Iran.

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

Landmark Infrastructure Holding Company LLC,
a wholly owned subsidiary of Landmark Dividend LLC


2141 Rosecrans Avenue Suite 2100
El Segundo, CA 90245

(Name of Vendor)

Address
(310) 464-3172

Telephone
bbobek@landmarkdividend.com
E-Mail Address

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

Name (Printed) DAN PARSONS Title COO
Signature  Date 2/18/16

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

BILL NO. R-16-02-19 (AS AMENDED)

REPORT OF COMMITTEE ON REGULATIONS

March 1, 2016

*Tom Didier, Chair
Tom Freistroffer, Co-Chair
All Council Members*

A RESOLUTION APPROVING THE SALE OF CERTAIN TELECOMMUNICATION EASEMENTS AND ASSIGNMENT AGREEMENTS FOR THE CITY OF FORT WAYNE, INDIANA THROUGH ITS BOARD OF PUBLIC WORKS

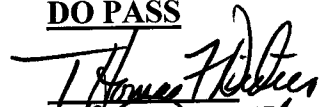

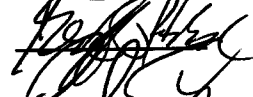

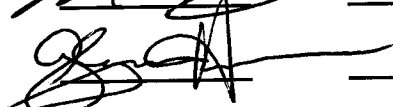
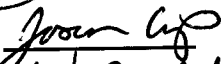
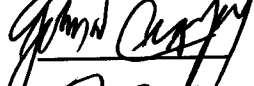

COMMITTEE ON REGULATIONS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance

DO PASS

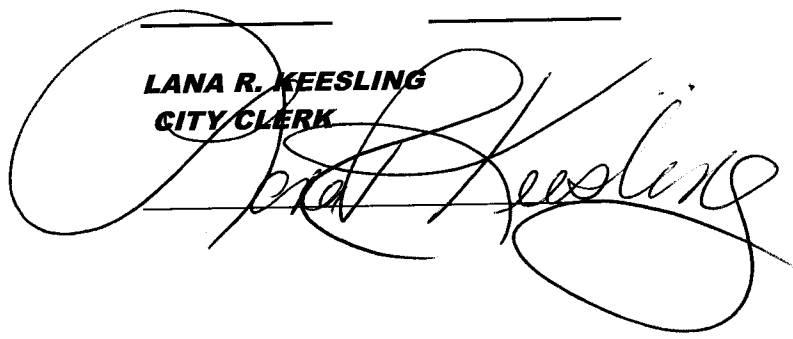
DO NOT PASS

ABSTAIN

NO REC

	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____

**LANA R. KEESLING
CITY CLERK**



Public Hearing Date, if applicable N/A
 Read the first time in full and on motion by Councilman Tom Didier
 Read the second time by title and referred to the Regulations committee
 Read the third time in full and on motion by Councilman Tom Didier
 placed on its passage by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
TOTAL VOTES	<u>7</u>			<u>2</u>
ARP	<u>✓</u>			
BARRANDA	<u>✓</u>			
CRAWFORD	<u>✓</u>			
DIDIER	<u>✓</u>			
ENSLEY				<u>✓</u>
FREISTROFFER	<u>✓</u>			
HINES				<u>✓</u>
JEHL	<u>✓</u>			
PADDOCK	<u>✓</u>			

DATED: 03/08/16


 LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(ANNEXATION)~~ ~~(APPROPRIATION)~~ ~~(GENERAL)~~ ~~(SPECIAL)~~ ~~(ZONING)~~ ~~(ORDINANCE)~~ ~~(RESOLUTION)~~ NO. R-16-02-19 on the eight day of March, 2016

ATTEST:

 LANA R. KEESLING,
 CITY CLERK


 PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 9th day of March, 2016, at the hour of 3:00 o'clock PM EST


 LANA R. KEESLING, CITY CLERK

Approved and signed by me this 10TH day of MARCH 2016, at the hour of 9:30 o'clock AM EST.


 THOMAS C. HENRY, MAYOR