

ORDINANCE NO. 24-089

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A FIRST AMENDMENT TO COMMUNICATIONS SITE OPTION AND LAND LEASE AGREEMENT WITH OHIO 2 SKYTREE MPL TOWER HOLDINGS, LLC RELATING TO THE MILAN ROAD CELL TOWER; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, the City of Sandusky originally entered into a Communications Site Option and Land Lease Agreement with Ohio RSA 2 Limited Partnership (d.b.a. ALLTEL) on May 10, 2004, for the purposes of constructing and operating a wireless cell tower with a maximum lease length of twenty (20) years which at the time was critical to providing enhanced telecommunications service to the City of Sandusky's residents and businesses and it was constructed on an underutilized portion of existing City owned property and this lease expires on May 9, 2024; and

WHEREAS, in 2015, the City was approached by Lessee about entering into a second Land Lease Agreement at the site for an additional 1,010 square feet of land (adjacent to the existing wireless cell tower) for purposes of constructing a collocated communications facility; and

WHEREAS, the City Commission authorized a Land Lease Agreement with New Par d.b.a. Verizon Wireless relating to the Milan Road Cell Tower by Ordinance No. 15-075, passed on May 26, 2015, which resulted in Verizon Wireless being added to the tower and this lease expires on May 9, 2024; and

WHEREAS, this proposed First Amendment to Communications Site Option and Land Lease Agreement with Ohio 2 Skytree MPL Tower Holdings, LLC provides the Lessee an option to extend for four (4) additional five (5) year renewal periods beginning on May 10, 2024; and

WHEREAS, the City will receive \$10,000.00 upon execution of the Amendment and \$1,840.00 monthly, with a rent escalation of 15% at the start of each renewal period, and any collocation with a sublessee will result in an extra \$150.00 per month for each collocation; and

WHEREAS, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to execute the Amendment prior to the expiration of the existing agreement on May 9, 2024; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of Municipal Departments, including the Department of Public Works, of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio, finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take

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immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. The City Manager is authorized and directed to enter into a First Amendment to Communications Site Option and Land Lease Agreement with Ohio 2 Skytree MPL Tower Holdings, LLC relating to the Milan Road Cell Tower, a copy of which is marked Exhibit "1" and is attached to this Ordinance and is specifically incorporated as if fully rewritten herein together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with the objectives and requirements of this Ordinance and with carrying out the City's public purposes.

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.



RICHARD R. BRADY
PRESIDENT OF THE CITY COMMISSION



ATTEST:

CATHLEEN A. MYERS
CLERK OF THE CITY COMMISSION

Passed: April 22, 2024

FIRST AMENDMENT TO COMMUNICATIONS SITE OPTION AND LAND LEASE AGREEMENT

THIS FIRST AMENDMENT TO COMMUNICATIONS SITE OPTION AND LAND LEASE AGREEMENT (this "**Amendment**"), dated as of this ____ day of _____, 20__ (the "**Effective Date**"), by and between **City of Sandusky, Ohio** (the "**Owner**"), and **Ohio 2 Skytree MPL Tower Holdings, LLC** (the "**Tenant**"), recites and provides:

RECITALS

WHEREAS, Owner is the owner of certain real property located in Erie County, Ohio, as more particularly described on **Exhibit A** (the "**Owner's Property**").

WHEREAS, Tenant, by way of assignment, is the tenant under that certain Communications Site Option and Land Lease Agreement by and between Owner and Ohio RSA 2 Limited Partnership, d/b/a ALLTEL, a Delaware Partnership, dated as of May 10, 2004 (as previously assigned and as further amended herein, the "**Lease**"). (the "**First Amendment**" and together with the Original Lease, as assigned and as further amended herein, collectively, the "**Lease**").

WHEREAS, Owner leases to Tenant a portion of the Owner's Property, as more particularly described on **Exhibit B** (the "**Premises**").

WHEREAS, Tenant owns, operates, and maintains one or more wireless communications towers, equipment, shelters, and other associated improvements on the Premises ("**Improvements**").

WHEREAS, Owner and Tenant now desire to amend the Lease as more particularly provided below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

1. Defined Terms; Recitals. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Lease. The recitals set forth here and above are true and correct in all respects and are incorporated herein by reference.

2. Amendment Fee. Simultaneous with execution of this Amendment and as a condition to its effectiveness, Tenant shall pay an amendment fee of Ten Thousand and No/100 Dollars (\$10,00.00) to Owner.

3. Renewal Terms. The Lease is set to expire on May 9, 2024 (the "**Expiration Date**"). Immediately following the Expiration Date, Tenant shall have the option to extend the

Lease for Four (4) additional Five (5) year renewal periods (each a “**Renewal Term**”). Each such Renewal Term shall be deemed automatically exercised by Tenant unless Tenant provides written notice to Owner of non-renewal at least sixty (60) days prior to expiration of the then current term.

4. Rent. Commencing on the first day of the first Renewal Term, the Rent shall be One Thousand Eight Hundred and Forty and No/100 Dollars (\$1,840.00), paid monthly, in advance, to Owner’s address set forth in Section 14.

5. Rent Adjustments. Rent shall adjust on the first day of each Renewal Term and each Renewal Term thereafter, as applicable, by Fifteen percent (15%) over the prior term’s Rent amount.

6. Right of First Refusal. In the event that Owner determines to sell, transfer, license or otherwise convey any interest, whether fee simple interest, easement interest, leasehold, or otherwise, and whether direct or indirect by way of transfer of ownership interests in Owner if Owner is an entity, which interest underlies or affects any or all of the Premises (the “**ROFR Property**”) to any third-party, Owner shall offer Tenant a right of first refusal to purchase or acquire the Premises (or such larger portion of Owner’s property that encompasses the Premises, if applicable) or such interest proposed to be conveyed. Owner shall provide a copy of any offer to purchase, or any executed purchase agreement or letter of intent (“**Offer**”), to Tenant which copy shall include, at a minimum, the purchase or acquisition price, proposed closing date, and financing terms (collectively, “**Minimum Terms**”). Within thirty (30) days of receipt of such Offer, Tenant shall provide written notice to Owner of Tenant’s election to purchase the ROFR Property on the same Minimum Terms; provided, the closing date shall be no sooner than sixty (60) days after Tenant’s purchase election notice. In such event, Owner agrees to sell the ROFR Property to Tenant subject to Tenant’s payment of the purchase price and compliance with a purchase and sale agreement to be negotiated in good faith between Owner and Tenant. If Tenant provides written notice that it does not elect to exercise its rights of first refusal to purchase the ROFR Property, or if Tenant does not provide notice of its election within the thirty (30) day period, Tenant shall be deemed to have waived such right of first refusal only with respect to the specific Offer presented (and any subsequent Offers shall again be subject to Tenant’s continuing right of first refusal hereunder), and Owner shall be permitted to consummate the sale of the ROFR Property in accordance with the strict terms of the Offer (“**Permitted Sale**”). If Owner does not consummate the Permitted Sale within ninety (90) days of the date of Tenant’s waiver of its rights of first refusal, such Offer shall be deemed to have lapsed.

7. Termination. Tenant shall use commercially reasonable efforts to locate and maintain subtenants on the Improvements. In addition to any other termination right of Tenant in the Lease, Tenant may terminate the Lease in the event that Tenant is unable to locate or maintain any subtenants on the Improvements for a period of three (3) consecutive months, effective after the Tenant provides the Owner with six (6) months’ notice of the Tenant’s election to terminate.

8. Subleases and Licenses. Section 12 of the lease is amended to add the following: Tenant shall have the exclusive right to sublease or grant licenses to use the Improvements or any other towers, structures, equipment, or ground space on the Premises, without Owner’s consent. provided Tenant notifies Owner in writing within sixty (60) days of entering into such sublease or

license Upon request Tenant shall provide redacted copies of any applicable sublease to the Owner, for the purpose of confirming relevant financial terms (b) Tenant shall continue to pay One Hundred and Fifty Dollars (\$150.00) for each additional sublessee or licensee, who executes a sublease or license agreement with the Tenant for the Communications Facility, beginning with the second subtenant. ("additional rent"). . The additional rent will begin the month immediately following receipt of payment by Tenant from the sublease. (iii) The additional rent will cease if there is only one sublease on the site

9. Exclusive Use. In addition to any other use rights granted by the Lease, Tenant shall have the exclusive right to use and sublease the Premises for purposes of constructing, maintaining, and operating wireless communication infrastructure. Owner shall not grant any right to a third-party which would affect all or part of the Premises in any way that competes, interferes, or conflicts with this exclusive use by Tenant.

10. Owner Mortgage. In the event the Owner's Property is encumbered by a mortgage or deed of trust or other security instrument of any kind (a "**Owner Mortgage**"), Owner, within fifteen (15) days following Tenant's request or immediately prior to the creation of any encumbrance created after the date this agreement is fully executed, will obtain from the holder of each such Owner Mortgage a fully-executed subordination, non-disturbance and attornment agreement (a "**SNDA**") in recordable form, which shall be prepared or approved by Tenant. The holder of every such Owner Mortgage shall, in the SNDA, agree that in the event of a foreclosure, or conveyance in lieu of foreclosure of Tenant's interest in the Premises, such Owner Mortgage holder shall recognize and confirm the validity and existence of the Lease, as amended, and Tenant shall have the right to continue its use and occupancy of the Premises in accordance with the provisions of the Lease, as amended, provided Tenant is not in default of the Lease beyond applicable notice and cure periods.

11. Tenant Mortgage. Owner consents to the granting by Tenant of a lien and security interest in Tenant's interest in this Lease and all of Tenant's personal property and fixtures attached to the Owner's Property, and furthermore consents to the exercise by Tenant's lender of its rights of foreclosure with respect to its lien and security interest. Owner agrees to recognize Tenant's Lender as Tenant hereunder upon any such exercise by Lender of its rights of foreclosure.

12. Memorandum of Lease. Tenant shall be permitted to record a Memorandum of Lease, or Memorandum of Amendment of Lease, as applicable ("**MOL**"), in the form attached as **Exhibit C**, reflecting the terms of the Lease as modified by this Amendment, and Owner shall promptly execute such MOL at Tenant's request.

13. Survey of Premises. If an accurate, surveyed legal description of the Premises has not been incorporated into the Lease, Tenant may conduct an updated survey of the Premises, at Tenant's sole cost and expense, to be used to replace any such erroneous legal descriptions, drawings, depictions, or site plans, previously attached as attachments, exhibits, schedules, or other supplements to the Lease, upon reasonable approve of the Owner, which approval shall not be unreasonably withheld, conditional, or delayed. Such surveyed legal descriptions shall serve as the "Premises" under the Lease, shall supersede any other descriptions of the Premises in the Lease,

shall be attached by Tenant through an additional "Premises Addendum" to the Lease at a later time, and may be done within five (5) years of the Effective Date.

14. Notices. All notices under the Lease shall be delivered by Federal Express, or US certified mail return receipt requested, and addressed to:

If to Tenant:

Ohio 2 Skytree MPL Tower Holdings, LLC
c/o New Cingular Wireless PCS, LLC
Attention: Network Real Estate Administration
Re: Cell Site #: US-OH-5005; Cell Site Name: Downtown Sandusky East
Fixed Asset No: _____
575 Morosgo Drive
13-F West Tower
Atlanta, GA 30324

with a copy to:

VB-S1 Assets, LLC
c/o Vertical Bridge REIT, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, Florida 33487
Attention: General Counsel
Ref: US-OH-5005

If to Owner:

City of Sandusky, Ohio
240 Columbus Avenue
Sandusky, Ohio 44870
Email: jorzech@cityofsandusky.com
Phone: 419.627.5909

15. Estoppels. The Owner and Tenant shall, within ten (10) business days of the request of the other Party provide an estoppel certificate as to any matters reasonably requested by the other Party.

16. Hold Harmless. Tenant agrees to defend, indemnify and hold harmless Owner and its officials, employees, representatives and agents, from and against any and all claims, costs (including reasonable attorney fees) and liabilities arising from Tenant's use or occupancy of the premises, or from Tenant's performance or failure to perform under the Lease, or from the presence of any hazardous materials brought onto the Premises by Tenant or Tenant's agents, employees, licenses, invitees, or contractors. The Owner shall not be obligated to defend, indemnify, and hold harmless the Tenant whatsoever.

17. Representations of Owner. Owner warrants and represents that: (i) it is the owner in fee simple of the Premises; (ii) it alone has full right to lease the Premises on the terms of the Lease, as amended; and (iii) it has the full authorization and authority to execute this Amendment.

18. Counterparts/Digital Signatures. This Amendment may be executed in counterparts with the same effect as if both parties hereto had executed the same document. Both counterparts shall be construed together and shall constitute a single document. Delivery of a copy of this Amendment bearing an original signature by facsimile transmission, by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature. For the purposes of this section, “original signature” means or refers to a signature that has not been mechanically or electronically reproduced.

Ratification. Except as amended and modified herein, the Lease is ratified and confirmed in all respects and shall continue in full force and effect. In the event of any conflict between the terms of the Lease and this Amendment, the terms of this Amendment shall govern and supersede those set forth in the Lease.

[The remainder of this page is intentionally blank; signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the Effective Date.

OWNER:

City of Sandusky, Ohio

By: _____

Name: _____

Title: _____

EXHIBIT "1"

[Owner's Signature Page to Amendment]

TENANT:

Ohio 2 Skytree MPL Tower Holdings, LLC

By: VB-S1 Assets, LLC

Its: Attorney-in-Fact

By: _____

Name: Alex Gellman

Title: Chief Executive Officer

EXHIBIT "1"

[Tenant's Signature Page to Amendment]

Exhibit A

Description of the Owner's Property (Parent Parcel)

[INSERT LEGAL DESCRIPTION OF THE OWNER'S PROPERTY FROM TITLE
COMMITMENT]

EXHIBIT "1"

Exhibit B

Legal Description of the Premises

[INSERT LEGAL DESCRIPTION OF THE PREMISES FROM FINAL SURVEY]

EXHIBIT "1"

Exhibit C

Form of Memorandum of Lease

[SEE ATTACHED]

EXHIBIT "1"

(Above 3" Space for Recorder's Use Only)

Upon Recording Return to:

Vertical Bridge REIT, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, Florida 33487
Attn: General Counsel

Site Name: Sandusky Downtown East
Site Number: US-OH-5005

**FIRST MEMORANDUM OF AMENDMENT TO COMMUNICATIONS SITE OPTION AND
LAND LEASE AGREEMENT**

This First Memorandum of Amendment to Communications Site Option and Land Lease Agreement ("**Memorandum**") evidences a Communications Site Option and Land Lease Agreement, dated May 10, 2004 (the "**Lease**") by and between **City of Sandusky, Ohio**, whose address is 222 Meigs St, Sandusky, Ohio 44879 ("**Landlord**"), and **Ohio 2 Skytree MPL Tower Holdings, LLC**, by its attorney-in-fact **VB-S1 Assets, LLC**, a Delaware limited liability company, whose mailing address is 750 Park of Commerce Drive, Suite 200, Boca Raton, Florida 33487 ("**Tenant**").

WHEREAS, Landlord owns certain real property (the "**Property**") described on **Exhibit A-1** attached hereto.

WHEREAS, pursuant to the Lease, Landlord leases to Tenant a portion of the Property (the "**Premises**") described on **Exhibit A-2** (and together with **Exhibit A-1**, collectively, **Exhibit A**).

WHEREAS, the Lease commenced on September 1, 2004, for an initial term of Five (5) years, with Three (3) renewal terms of Five (5) years each, and the Lease was amended to add Four (4) additional Five (5) year renewal terms.

WHEREAS, the Lease, as amended, further provides as follows:

1. The Premises may be used exclusively by Tenant for certain purposes, including without limitation, erecting, installing, operating, reconstructing, and maintaining certain radio and communications towers, buildings, and equipment.

2. Tenant is entitled to sublease and/or sublicense the Premises, including any communications tower located thereon.

Site Name: Sandusky Downtown East
Site Number: US-OH-5005

3. Under certain circumstances, Tenant has a *right of first refusal* to acquire the Premises from Landlord.

4. This Memorandum is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Lease. In the event of a conflict between the provisions of this Memorandum and the provisions of the Lease, the provisions of the Lease shall control. The Lease shall be binding upon and inure to the benefit of Landlord and Tenant and shall inure to the benefit of their respective heirs, successors, and assigns, subject to the provisions of the Lease.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK, SIGNATURES BEGIN
ON NEXT PAGE]

EXHIBIT "1"

IN WITNESS WHEREOF, the parties hereto have executed this MEMORANDUM as of the date last signed by a party hereto.

WITNESSES:

LANDLORD:

City of Sandusky, Ohio

Name: _____

By: _____

Name: _____

Title: _____

Name: _____

Date: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____
_____, 20_____ by _____ (name of signatory), _____
_____ (title of signatory) of City of Sandusky, Ohio, a Chartered Municipality of the State
of Ohio, on behalf of the company.

Notary Public

Print Name: _____

My Commission Expires: _____

[Tenant's Signature Page to Memorandum]

WITNESSES:

Name: _____

Name: _____

TENANT:

Ohio 2 Skytree MPL Tower Holdings, LLC
By: VB-S1 Assets, LLC,
a Delaware limited liability company
Its: Attorney-in-Fact

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

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this _____
_____, 20_____ by _____ (name of signatory), _____
_____ (title of signatory) of VB-S1 Assets, LLC, a Delaware limited liability company,
on behalf of the company.

Notary Public

Print Name: _____

My Commission Expires: _____

EXHIBIT A
(TO MEMORANDUM OF LEASE)

EXHIBIT A-1
The Property

[INSERT LEGAL DESCRIPTION OF THE PROPERTY FROM TITLE COMMITMENT]

EXHIBIT A-2
The Premises

[INSERT LEGAL DESCRIPTION OF THE PREMISES FROM FINAL SURVEY]

EXHIBIT A-1