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2025-532446
09/25/2024 10:29 AM
TOTAL FEE: \$5.00
BY: MA
PG #: 15
RECORDED AS PRESENTED

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
GINA PIMENTEL
RECORDER

FILED

Sep 24 2024 EP
PEGGY HOLINGA-KATONA
LAKE COUNTY AUDITOR

Prepared by and Return to:

Attorney, Emily Lacy, Land Management
Site No. 304551
Site Name: Gary West
c/o American Tower
10 Presidential Way
Woburn, MA 01801

Prior Recorded Lease Reference:

Document No: 2002-044307
State of Indiana
County of Lake
And Document No.
2016-044145

(Recorder's Use Above this Line)

STATE OF Indiana

Assessor's Parcel No.: 45-08-06-177-003.000-004

COUNTY OF Lake

EASEMENT AND ASSIGNMENT AGREEMENT

This Easement Agreement ("**Agreement**") dated as of 09/25/2024 (the "**Effective Date**"), by and between **A.R.E. Incorporated, an Indiana corporation, d/b/a Wayne's ("Grantor")** and **American Tower Asset Sub II, LLC, a Delaware limited liability company ("Grantee")**.

BACKGROUND

Grantor is the owner of the real property described in **Exhibit "A"** attached hereto and by this reference made a part hereof (the "**Premises**"). Grantor desires to grant to Grantee certain easement rights with respect to the Premises, as more particularly described below, and subject to the terms and conditions of this Agreement.

AGREEMENTS

For and in consideration of the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- Grant of Easements.** Grantor, for itself and its heirs, personal representatives, successors and assigns, hereby grants, bargains, sells, transfers and conveys to Grantee, its successors and/or assigns: (i) a perpetual, exclusive easement (the "**Exclusive Easement**") in and to that portion of the Premises more particularly described on **Exhibit "B"** attached hereto and by this reference made a part hereof (the "**Exclusive Easement Area**"); and (ii) a perpetual, non-exclusive easement (the "**Access and Utility Easement**"; the Exclusive Easement and Access and Utility Easement, collectively, the "**Easements**") in and to that portion of the Premises more particularly described on **Exhibit "C"** attached hereto and by this reference made a part hereof (the "**Access and Utility Easement Area**"; the Access and Utility Easement Area and Exclusive Easement Area, collectively, the "**Easement Areas**"). The Easement Areas shall be used for the purposes set forth herein and shall expressly include that portion of the Premises upon which any of Grantee's fixtures, structures, equipment or other personal property are located as of the date of this Agreement.
- Private Easement.** Nothing in this Agreement shall be deemed to be a dedication of any portion of the Easement Areas for public use. All rights, easements and interests herein created are private and do not constitute a grant for public use or benefit.

Site No: 304551
Site Name: Gary West

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3. Successors Bound. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, personal representatives, lessees, successors and assigns. It is the intention of the parties hereto that all of the various rights, obligations, restrictions and easements created in this Agreement shall run with the affected lands and shall inure to the benefit of and be binding upon all future owners and lessees of the affected lands and all persons claiming any interest under them.

4. Duration. The duration of this Agreement and the Easements granted herein (the "**Term**") shall be perpetual, unless Grantee provides written, recordable notice of Grantee's intent to terminate this Agreement and the Easements described herein, in which event this Agreement, the Easements, and all obligations of Grantee hereunder shall terminate upon Grantee's recordation of any such notice. For the avoidance of doubt, Grantee may, in its sole and absolute discretion, unilaterally terminate this Agreement, the Easements, and all of Grantee's obligations hereunder without the approval of or consent of Grantor as provided in the immediately preceding sentence. Notwithstanding anything to the contrary contained herein, within 180 days of the termination of the Agreement as provided in this section, Grantee shall remove all of its communications equipment and other personal property from the Exclusive Easement Area, including the removal of any foundation to six (6) inches below grade, but not including underground utilities, if any, and shall restore, subject to the condemnation provisions set forth herein, the Exclusive Easement Area to its original condition, reasonable wear and tear and casualty excepted. In the event Grantee, or its successors, abandons its use of the Easements, then Grantor, or its successors, may terminate this Agreement and the Easements conveyed herein by providing legally sufficient evidence of such abandonment and following such termination all right and title to the land constituting the Easement Areas shall revert back to Grantor. Abandonment shall be deemed to have occurred if neither Grantee nor any of its affiliates, customers, tenants, subtenants, employees or agents, use the Easement Areas in any manner (such use shall be construed broadly to include, but not be limited to, use of the tower for the broadcast and receipt of telecommunications signals, maintenance of the tower or the equipment located on the Exclusive Easement Area, or maintenance and/or upkeep of the Exclusive Easement Area) for a consecutive period of five (5) years, and, following the expiration of such five (5) year period, do not respond within forty-five (45) days of Grantee's receipt of written notice from Grantor asserting such abandonment.

5. Easement Consideration. Grantor hereby acknowledges the receipt, contemporaneous with the execution hereof, of adequate and sufficient consideration paid to Grantor pursuant to the terms of that certain Option Agreement to Purchase Communications Easement (the "**Option Agreement**"). Grantor and Grantee hereby declare that there may be additional payments due to Grantor by Grantee pursuant to the terms of the Option Agreement. The provisions in this Agreement should not be used in interpreting the applicable provisions in the Option Agreement that specifically survived Closing (as defined in the Option Agreement) with respect to consideration owed to Grantor by Grantee. Notwithstanding anything to the contrary in this Agreement, with the exception of any consideration that may still be owed pursuant to the Option Agreement, there shall be no other consideration owed to Grantor by Grantee under this Agreement.

6. Use of Easement Areas.

a. Exclusive Easement. The Exclusive Easement Area may be used by Grantee and any of its affiliates, customers, tenants, subtenants, lessees, licensees, successors, and/or assigns together with any of the employees, contractors, consultants, and/or agents of the foregoing (collectively, the "**Permitted Parties**") for the purposes of installing, constructing, maintaining, operating, modifying, repairing and/or replacing improvements, equipment, structures, fixtures, antennae and other personal property as Grantee may deem necessary or appropriate, which may be located on or in the Exclusive Easement Area from time to time, for the facilitation of communications and other related uses. Any such property, including any equipment, structures, fixtures and other personal property currently on or in the Exclusive Easement Area, shall not be deemed to be part of the Premises, but instead shall remain the property of Grantee or the applicable Permitted Parties. At any time during the Term and at any time within 180 days after the termination of this Agreement, Grantee and/or any applicable Permitted Parties may remove their equipment, structures, fixtures and other personal property from the Easement Areas. Grantee may make, without the consent or approval of Grantor, any improvements, alterations or modifications to the Exclusive Easement Area as are deemed appropriate by Grantee, in its sole and absolute discretion. Grantee shall have the unrestricted and exclusive right, exercisable without the consent or approval of Grantor, to lease, sublease, license, or sublicense any portion of the Exclusive Easement Area, but no such lease, sublease or license shall relieve or release Grantee from its obligations under this Agreement. Grantor shall not have the right to use the Exclusive Easement Area for any reason and shall not disturb Grantee's nor any Permitted Parties' right to use the Exclusive Easement Area in any manner. Grantee may, at Grantee's sole and exclusive option, construct

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a fence around all or any part of the Exclusive Easement Area and shall have the right to prohibit anyone, including Grantor, from entry into such Exclusive Easement Area.

b. **Access and Utility Easement.** The Access and Utility Easement shall be used by Grantee and the Permitted Parties for pedestrian and vehicular (including trucks) ingress and egress to and from the Exclusive Easement Area at all times during the Term on a seven (7) days per week, twenty-four (24) hours per day basis. Grantee shall have the non-exclusive right to construct, reconstruct, add, install, improve, enlarge, operate, maintain and remove overhead and underground utilities, including, without limitation, electric, fiber, water, gas, sewer, telephone, and data transmission lines (including wires, poles, guys, cables, conduits and appurtenant equipment) in, on, or under the Access and Utility Easement Area in order to connect the same to utility lines located in a publicly dedicated right of way. Notwithstanding the foregoing, Grantor shall not in any manner prevent, disturb, and/or limit access to the Access and Utility Easement Area or use of the Access and Utility Easement by Grantee or any of the Permitted Parties, and Grantor shall not utilize the Access and Utility Easement Area in any manner that interferes with Grantee's or any of the Permitted Parties' use of such area as expressly provided herein. In the event the Access and Utility Easement Area cannot, does not, or will not fully accommodate the access and utility needs of the Grantee during the Term, or if it is reasonably determined by Grantor or Grantee that any utilities that currently serve the Exclusive Easement Area are not encompassed within the description of the Access and Utility Easement Area as set forth herein, Grantor and Grantee agree to amend the description of the Access and Utility Easement Area provided herein to include the description of such areas and/or to relocate the Access and Utility Easement, for no additional consideration, and to create a revised legal description for the Access and Utility Easement Area that will reflect such relocation. The Access and Utility Easement and the rights granted herein with respect to the same shall be assignable by Grantee to any public or private utility company to further effect this provision without the consent or approval of Grantor.

7. **Non-Compete.** During the Term, Grantor shall not sell, transfer, grant, convey, lease, and/or license by deed, easement, lease, license or other legal instrument, an interest in and to, or the right to use or occupy any portion of the Premises or Grantor's contiguous, adjacent, adjoining or surrounding property to any person or entity directly or indirectly engaged in the business of owning, acquiring, operating, managing, investing in or leasing wireless telecommunications infrastructure (any such person or entity, a "Third Party Competitor"), without the prior written consent of Grantee, which may be withheld, conditioned, and/or delayed in Grantee's sole, reasonable discretion.

8. **Assignment.** Grantee may assign this Agreement, in whole or in part, to any person or entity at any time without the prior written consent or approval of, or notice to, Grantor, including, but not limited to, an affiliate of Grantee. If any such assignee agrees to assume all of the obligations of Grantee under this Agreement, then Grantee will be relieved of all of its obligations, duties and liabilities hereunder.

9. **Covenants; Representations; Warranties.**

a. Grantor hereby represents and warrants to Grantee the following: (i) Grantor is the owner in fee simple of the Easement Areas, free and clear of all liens and encumbrances; (ii) Grantor has the full authority and power to enter into and perform its obligations under this Agreement, and, to the extent applicable, the person or persons executing this Agreement on behalf of Grantor have the authority to enter into and deliver this Agreement on behalf of Grantor; (iii) to the best of Grantor's knowledge, there is no condemnation proceeding pending or threatened against all or any portion of the Premises; (iv) no claim, litigation, proceeding, or investigation is pending or, to the best of Grantor's knowledge, threatened against Grantor or all or any portion of the Premises that could affect Grantee's use of the Easement Areas as contemplated herein; (v) Grantor has not filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors or suffered the appointment of a receiver to take possession of substantially all of its assets; (vi) to the best of Grantor's knowledge, the Premises is in compliance with all applicable laws, ordinances and regulations, including those governing Hazardous Materials (as defined below); (vii) to the best of Grantor's knowledge, there is no proceeding pending or threatened to change the zoning status of the Premises; (viii) Grantor is not indebted to any party, including, without limitation, any local or state or the federal government for which a lien or claim of lien has been or could be asserted against all or any portion of the Premises; (ix) there are no leases, written or oral, affecting all or any portion of the Easement Areas, except for any agreements entered into between Grantee or its affiliates and third parties and/or the Current Agreement(s) (as defined below); (x) the Easement Areas do not constitute or form a part of Grantor's homestead, or, in the event that the Easement Areas are located upon homestead property, then Grantor's spouse (if applicable) shall join in the execution of this Agreement; (xi) Grantor has paid all taxes, assessments, charges, fees, levies, impositions and other amounts relating to the Premises due and payable prior to the Effective Date; and (xii) Grantee shall

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peaceably and quietly hold, exercise, and enjoy the Easements during the Term without any hindrance, molestation or ejection by any party whomsoever.

b. During the Term, Grantor shall pay when due all real property, personal property, and other taxes, fees and assessments attributable to the Premises, including the Easement Areas. Grantee hereby agrees to reimburse Grantor for any personal property taxes in addition to any increase in real property taxes levied against the Premises, to the extent both are directly attributable to Grantee's improvements on the Easements (but not, however, taxes or other assessments attributable to periods prior to the date of this Agreement); provided, however, that Grantor must furnish written documentation (the substance and form of which shall be reasonably satisfactory to Grantee) of such personal property taxes or real property tax increase to Grantee along with proof of payment of same by Grantor. Anything to the contrary notwithstanding, Grantee shall not be obligated to reimburse Grantor for any applicable taxes unless Grantor requests such reimbursement within one (1) year after the date such taxes became due. Grantor shall submit requests for reimbursement in writing to: *American Tower Corporation, Attn: Landlord Relations, 10 Presidential Way, Woburn, MA 01801* unless otherwise directed by Grantee from time to time. Subject to the requirements set forth in this Section, Grantee shall make such reimbursement payment within forty-five (45) days of receipt of a written reimbursement request from Grantor. Grantee shall pay applicable personal property taxes directly to the local taxing authority to the extent such taxes are billed and sent directly by the taxing authority to Grantee. If Grantor fails to pay when due any taxes affecting the Premises as required herein, Grantee shall have the right, but not the obligation, to pay such taxes on Grantor's behalf and: (i) deduct the full amount of any such taxes paid by Grantee on Grantor's behalf from any future payments required to be made by Grantee to Grantor hereunder; (ii) and demand reimbursement from Grantor, which reimbursement payment Grantor shall make within ten (10) days of such demand by Grantee; and/or (iii) collect from Grantor any such tax payments made by Grantee on Grantor's behalf by any lawful means.

c. Without Grantee's prior written consent, which consent may be withheld or conditioned in Grantee's sole and absolute discretion, Grantor shall not (i) cause any portion of the Easement Areas to be legally or otherwise subdivided from any master tract of which it is currently a part, or (ii) cause any portion of the Easement Areas to be separately assessed for tax purposes.

d. Grantor shall not suffer, grant, create, transfer, or convey (or cause to be suffered, granted, created, transferred, or conveyed) any claim, lien, encumbrance, easement, interest, restriction or other charge or exception to title to the Easement Areas or any other portion of the Premises that would adversely affect Grantee's use of the Easement Areas as contemplated herein.

e. Grantor shall not, and shall not permit any third party to use, generate, store, or dispose of any Hazardous Materials on, under, about, or within the Premises in violation of any Environmental Laws (as defined below). As used herein, "**Hazardous Materials**" shall mean any: contaminants, oils, asbestos, PCBs, hazardous substances, or wastes as defined by federal, state, or local environmental laws, regulations, or administrative orders or other materials the removal of which are required or the maintenance of which are prohibited or regulated by any federal, state, or local governmental authorities having jurisdiction over all or any portion of the Premises. As used herein, "**Environmental Laws**" shall mean any laws, regulations, ordinances, and/or administrative orders applicable to all or any portion of the Premises, which govern Hazardous Materials.

f. Grantee shall not, and shall not permit any third party to use, generate, store, or dispose of any Hazardous Materials on, under, about, or within the Easement Areas in violation of any Environmental Laws.

g. Grantee shall and hereby does indemnify and hold Grantor harmless from all demands, claims, actions, causes of action, assessments, expenses, costs, damages, losses, and liabilities (including reasonable attorney's fees and costs) actually incurred, asserted, and/or suffered (collectively, the "**Losses**"), whether to persons or property, arising directly from Grantee's use of the Easements and the use of the Easements by Grantee's employees, agents, contractors, guests, licensees, or invitees; provided, in all events, the aforementioned indemnification shall not apply if and to the extent that the Losses relate to, or arise as the result of, the negligence, gross negligence, or willful misconduct of Grantor or any of Grantor's employees, agents, contractors, and/or invitees. Grantor shall and hereby does indemnify and hold Grantee harmless from all Losses, whether to persons or property, arising directly from Grantor's use of the Premises and the use of the Premises by Grantor's employees, agents, contractors, guests, licensees, or invitees; provided, in all events, the aforementioned indemnification shall not apply if and to the extent that the Losses relate to, or arise as the result of, the

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negligence, gross negligence, or willful misconduct of Grantee or any of Grantee's employees, agents, contractors, and/or invitees.

h. The representations, warranties, covenants, agreements, and indemnities contained in this section shall survive the execution and delivery of this Agreement indefinitely.

10. **Non-Disturbance.** During the Term, Grantor will not improve or alter the Premises or grant, convey, transfer, or otherwise enter into any other easement, ground lease, lease, license, or similar agreement or contract with respect to any portion of the Premises if the same would interfere with, disturb, limit, or impair Grantee's permitted use of the Easement Areas. Grantor hereby acknowledges that Grantee and the Permitted Parties are currently utilizing the Exclusive Easement Area for the purpose of transmitting and receiving communication signals, including, but not limited to, wireless telecommunications signals. Grantor and Grantee recognize and acknowledge that Grantee's use of the Easement Areas set forth in this Agreement would be materially frustrated if the communications signals were blocked or otherwise interfered with, or if access and/or utilities to and from the Exclusive Easement Area were inhibited, even if temporarily. 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 necessary to comply with the terms and provisions of this Section. Grantee shall have the express right, among others, to seek an injunction to prevent any of the activities prohibited by this Section.

11. **Grantee's Securitization Rights; Estoppel.** Grantor hereby consents to the granting by Grantee of one or more leasehold mortgages, collateral assignments, liens, and/or other security interests (collectively, a "Security Interest") in Grantee's interest in this Agreement and all of Grantee's property and fixtures attached to and lying within the Exclusive Easement Area and further consents to the exercise by Grantee's mortgagee ("Grantee's Mortgagee") of its rights to exercise its remedies, including without limitation foreclosure, with respect to any such Security Interest. Grantor shall recognize the holder of any such Security Interest of which Grantor is given prior written notice (any such holder, a "Holder") as "Grantee" hereunder in the event a Holder succeeds to the interest of Grantee hereunder by the exercise of such remedies. Grantor further agrees to execute a written estoppel certificate within thirty (30) days of written request of the same by Grantee or Holder.

12. **Notices.** All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth below:

To Grantee: American Tower Asset Sub II, LLC
c/o American Tower
10 Presidential Way
Woburn, MA 01801

To Grantor: A.R.E. Incorporated d/b/a Wayne's
4010 W. 4th Ave.
Gary, IN 46406

With copy to: American Tower Asset Sub II, LLC
c/o American Tower
116 Huntington Avenue
Boston, MA 02116
Attn: Legal Department

Grantor or Grantee, by thirty (30) days prior written notice to the other in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.

13. **Force Majeure.** The time for performance by Grantor or Grantee of any term, provision, or covenant of this Agreement shall automatically be deemed extended by time lost due to delays resulting from strikes, civil riots, floods, 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.

14. **Miscellaneous.** This Agreement shall be recorded at the sole expense of Grantee and shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Premises is situated,

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without regard to the conflicts of laws provisions of such State or Commonwealth. The captions and headings herein 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, scope or intent of this Agreement. This Agreement and any other documents executed in connection herewith, 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 expressly set forth herein. Grantee has not provided any legal or tax advice to Grantor in connection with the execution of this Agreement. This Agreement may not be modified, amended, altered or changed in any respect except by written agreement that is signed by each of the parties hereto.

15. Cumulative Remedies. Except as otherwise expressly provided herein, each and every one of the rights, benefits and remedies provided to Grantor or Grantee in this Agreement, or in 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 Grantor or Grantee.

16. Counterparts. This Agreement may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though Grantor and Grantee are not signatories to the original or the same counterpart.

17. Severability. Should any part or provision of this Agreement be rendered or declared invalid by a court of competent jurisdiction, such invalidation of such part or provision shall not invalidate the remaining portions of the Agreement, and they shall remain in full force and effect and this Agreement shall be construed as if such part or 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 parties shall execute a reasonably acceptable ground lease between Grantor, as landlord, and Grantee, as tenant (with the Exclusive 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 herein. The parties agree that no additional consideration shall be paid to Grantor for entering into such a lease and said lease must (a) expressly provide that Grantee shall not be required to obtain the consent of Grantor to enter into any sublease or license of any portion of the leased premises or to permit sublessees or licensees to utilize the non-exclusive easement for access and utilities, (b) be for a term of ninety-nine (99) years, or as long as permitted by applicable law.

18. Government Approvals/Applications. Grantor hereby covenants and agrees that (a) neither Grantor nor any affiliate of Grantor shall at any time oppose in any manner (whether at a formal hearing, in written documentation, or otherwise) any zoning, land use or building permit application of Grantee and (b) Grantor shall promptly cooperate with Grantee in making application for and/or otherwise obtaining all licenses, permits, and any other necessary approvals that may be required for Grantee's intended use of the Easement Areas.

19. Assignment of Ground Lease. Grantor hereby assigns to Grantee all of Grantor's beneficial rights, title and interest in, to and under all of the existing leases, licenses and other agreements for use or occupancy of the Easements, including, but not limited to, those agreements listed on Exhibit "D" attached hereto (the "**Current Agreement**" or "**Current Agreements**"), including without limitation, the right to receive any and all rents and other monies payable to Grantor thereunder and including during any and all extensions thereof ("**Contract Revenues**"). Grantor hereby represents and warrants that as of the Effective Date there are no leases, license or other agreements pertaining to the Premises other than the Current Agreement(s). Notwithstanding the foregoing assignment to Grantee, Grantor agrees that Grantor remains the fee owner of the Premises and Grantor remains obligated to comply with all obligations of the lessor or Grantor under the Current Agreement(s), as same may be extended or renewed, which relate to the ownership, maintenance, operation and use of the Premises. Such obligations are hereby expressly excluded from the foregoing assignment. Grantor hereby acknowledges that as of the Effective Date none of the constructed pursuant to the Current Agreement(s) encroach outside the Premises. Grantor hereby certifies to Grantee that to the best of Grantor's knowledge the Current Agreement(s) is in full force and effect, that Grantor is not in default or breach of any of its obligations under the Current Agreement(s), that Grantor has received no notices alleging a default under the Current Agreement(s), and that as of the date hereof the lessee under the Current Agreement(s) has no claim against Grantor. Grantor agrees to indemnify and hold Grantee harmless from and against all loss, cost, damage, and expense, including, without limitation,

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reasonable attorney fees, arising out of any act, omission, or default by Grantor under the Current Agreement(s) that occurred prior to the Effective Date.

20. Further Acts; Attorney-in-Fact. Grantor, at Grantee's sole cost and expense, shall cooperate with Grantee in executing any documents necessary to protect Grantee's rights under this Agreement or Grantee's use of the Easements and to take such action as Grantee may be reasonably required to effect the intent of this Agreement. Grantor hereby irrevocably appoints Grantee as Grantor attorney-in-fact coupled with an interest to prepare, execute, deliver, and submit land-use, building permit and zoning applications related to Grantee's permitted use of the Easement Areas, on behalf of Grantor, to federal, state and local governmental authorities.

21. Survey. Grantee may elect, at Grantee's expense, to cause a boundary, as-built or similar survey of all or any portion of the Easement Areas (the "Survey") to be prepared by a surveyor duly licensed under the laws of the state in which the Premises is located. Grantor further agrees that, Grantee may elect, in Grantee's sole and absolute discretion, to replace Exhibit B and Exhibit C with a revised Exhibit B and Exhibit C depicting and/or describing the Exclusive Easement Area and Access and Utility Easement Area, as applicable, in accordance with the Survey prepared at Grantee's election.

22. Waiver. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL GRANTOR OR GRANTEE BE LIABLE TO THE OTHER FOR, AND GRANTOR AND GRANTEE HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, THE RIGHT TO RECOVER INCIDENTAL, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE OR LOSS OR BUSINESS OPPORTUNITY), PUNITIVE, EXEMPLARY, AND SIMILAR DAMAGES.

23. Condemnation. In the event Grantor receives notification of any condemnation proceeding affecting the Easement Areas, or any portion thereof, Grantor shall provide notice of the proceeding to Grantee within forty-eight (48) hours. If a condemning authority takes all of the Easement Areas, or any portion thereof, Grantee shall be entitled to pursue Grantee's own award in the condemnation proceeds, which for Grantee will include, where applicable, the value of its communications facility, moving expenses, consideration paid to Grantor for the Easements, and business dislocation expenses.

[END OF DOCUMENT – SIGNATURE PAGES AND EXHIBITS TO FOLLOW]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year set forth below.

GRANTOR:

2 WITNESSES

A.R.E. Incorporated, an Indiana corporation, d/b/a
Wayne's

Signature: _____

Print Name: Kevin M. Itczak

Title: President

Date: 7-11-19

Signature: _____

Print Name: _____

Signature: _____

Print Name: _____

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of IN

County of Lake

On this 11 day of July, 2019, before me, the undersigned Notary Public, personally appeared Kevin M. Itczak, 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 which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Kimberly K Gray
Notary Public

Print Name: Kimberly K Gray

My commission expires: 8-28-2021



[SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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GRANTOR:

2 WITNESSES

A.R.E. Incorporated, an Indiana corporation, d/b/a
Wayne's

Signature: Irene A. Itczak
Print Name: Irene A. Itczak
Title: Secretary
Date: 7-11-19

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of IN

County of Lake

On this 11 day of July, 2019, before me, the undersigned Notary Public, personally appeared Irene A. Itczak, 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 which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Kimberly K Gray
Notary Public
Print Name: Kimberly K Gray
My commission expires: 8-28-2021



[SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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GRANTEE:

2 WITNESSES

American Tower Asset Sub II, LLC
a Delaware limited liability company

Signature: *Carol Maxime*
Print Name: Carol Maxime
Title: Senior Counsel, US Tower
Date: 10/9/19

Signature: *Susana Piatto*
Print Name: Susana Piatto
Signature: *Anton DiBerto*
Print Name: Anton DiBerto

WITNESS AND ACKNOWLEDGEMENT

Commonwealth of Massachusetts

County of Middlesex

On this the 9 day of October 2019, before me, the undersigned Notary Public, personally appeared Carol Maxime personally known to me (or 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 which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]
Notary Public

My Commission Expires: _____

(Seal)

Attachments:

- Exhibit "A" – Premises
- Exhibit "B" – Exclusive Easement Area
- Exhibit "C" – Access and Utility Easement Area
- Exhibit "D" – Current Agreement(s)



RICHARD P. PALERMO
Notary Public
Commonwealth of Massachusetts
My Commission Expires
May 25, 2023

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Exhibit "A"
The Premises

This Exhibit A may be replaced by descriptions and/or depictions from an As-Built Survey conducted by Grantee at Grantee's option that depict and/or describe the Premises

A fractional part of the North Half of Section 5, Township 36 North, Range 8 West of the Second Principal Meridian in Gary, Lake County, Indiana, described as follows:

All that part of said Section bounded on the South by the North line of United States Highway 12; on the North by the South line of a 60 foot strip of land conveyed by Jerome Realty Corporation to Chicago South Shore and South Bend Railroad by Warranty Deed dated November 20, 1946 and recorded in Deed Record 768 Page 112, in the Office of the Recorder of Lake County, Indiana; on the East by a line at right angles to the center line of United States Highway 12 at a distance of 2,052.8 feet West of the intersection of said center line of United States Highway 12 with the center line of Industrial Highway as the same was opened by the Board of Public Works of the City of Gary by Confirmatory Resolution #3153 adopted April 17, 1922, in Miscellaneous Record 120 Page 193, in the Office of the Recorder of Lake County, Indiana and on the West by a line parallel with and 200 feet West of the aforesaid East Boundary Line, in Lake County, Indiana.

Being situated in Lake County, Indiana; known as Parcel ID Number 45-08-06-177-003.000-004
(Alternate APN: 001254000320028)

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EXHIBIT "B"
Exclusive Easement Area

This Exhibit B may be replaced with descriptions and/or depictions from an As-Built Survey conducted by Grantee at Grantee's option that depict and/or describe the Exclusive Easement Area, and if applicable, guy wire and guy anchor easements

THAT PART OF THE NORTH HALF OF SECTION SIX, TOWNSHIP THIRTY-SIX NORTH, RANGE EIGHT, WEST OF THE SECOND PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF A 60.0 FT. STRIP OF LAND CONVEYED BY JEROME REALTY CORPORATION TO CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, BY WARRANTY DEED DATED NOVEMBER 20, 1946 AND RECORDED IN DEED RECORD 768, PAGE 112 IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA, WITH A LINE MEASURED AT RIGHT ANGLES TO THE CENTER LINE OF U.S. HIGHWAY 12 AT A DISTANCE OF 2,052.80 FEET WEST OF THE INTERSECTION OF SAID CENTER LINE OF U.S. HIGHWAY 12 WITH THE CENTER LINE OF INDUSTRIAL HIGHWAY; THENCE SOUTH 89° 42' 24" WEST ON THE SOUTH LINE OF SAID 60.0 FOOT STRIP OF LAND, A DISTANCE OF 10.00 FEET; THENCE SOUTH 00° 00' 00" WEST ON A LINE PARALLEL WITH THE AFOREMENTIONED PERPENDICULAR LINE, A DISTANCE OF 10 FEET TO THE **POINT OF BEGINNING**; THENCE CONTINUE SOUTH 0°00'00" WEST A DISTANCE OF 50.00 FEET, THENCE SOUTH 89°42'24" WEST A DISTANCE OF 75.00 FEET; THENCE NORTH 0°00'00" EAST A DISTANCE OF 50.00 FEET, THENCE NORTH 89°42'24"E A DISTANCE OF 75.00 FEET TO THE **POINT OF BEGINNING**.

SAID AREA CONTAINS 3,750 SQUARE FEET OR 0.086 ACRES.

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EXHIBIT "C"
Access and Utility Easement Area

This Exhibit C may be replaced with descriptions and/or depictions from an As-Built Survey conducted by Grantee at Grantee's option that depict and/or describe the Access and Utilities Easement Area

All existing utility and access easements from Exclusive Easement Area to a public right of way including but not limited to:

THAT PART OF THE NORTH HALF OF SECTION SIX, TOWNSHIP THIRTY SIX NORTH, RANGE 8, WEST OF THE SECOND PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF A 60.00 FEET STRIP OF LAND CONVEYED BY JEROME REALTY CORPORATION TO CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, BY WARRANTY DEED DATED NOVEMBER 26, 1946 AND RECORDED IN DEED RECORD 768, PAGE 112 IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA, WITH A LINE MEASURED AT RIGHT ANGLES TO THE CENTER LINE OF U.S. HIGHWAY 12 AT DISTANCE OF 2,052.80 FEET WEST OF THE INTERSECTION OF SAID CENTERLINE OF U.S. HIGHWAY 12 WITH THE CENTER LINE OF INDUSTRIAL HIGHWAY; THENCE SOUTH 89°42'24" WEST ON THE SOUTH LINE OF SAID 60.00 FEET STRIP OF LAND, A DISTANCE OF 10.00 FEET; THENCE SOUTH 00°00'00" WEST ON A LINE PARALLEL WITH THE AFOREMENTIONED PERPENDICULAR LINE, A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 00°00'00" WEST A DISTANCE OF 30.00 FEET; THENCE SOUTH 39°50'16" WEST A DISTANCE OF 74.65 FEET TO A POINT OF CURVE; THENCE SOUTHWESTERLY 47.00 FEET ON A CURVED LINE CONCAVE TO THE EAST, HAVING A RADIUS OF 30.00 FEET AND A CHORD DISTANCE OF 42.34 FEET AND A CHORD BEARING OF SOUTH 05°02'53" EAST; THENCE SOUTH 49°56'02" EAST A DISTANCE OF 65.46 FEET; THENCE SOUTH 00°00'00" WEST A DISTANCE OF 225.16 FEET TO THE NORTH LINE OF U.S. HIGHWAY 12; THENCE SOUTH 90°00'00" WEST ON THE NORTH LINE OF U.S. HIGHWAY 12 A DISTANCE OF 15.00 FEET; THENCE NORTH 00°00'00" EAST A DISTANCE OF 217.68 FEET; THENCE NORTH 49°56'02" WEST A DISTANCE OF 58.47 FEET TO A POINT OF CURVE; THENCE NORTHWESTERLY 70.50 FEET ON A CURVED LINE CONCAVE TO THE EAST HAVING A RADIUS OF 45.00 FEET AND A CHORD DISTANCE OF 63.51 FEET AND A CHORD BEARING OF NORTH 05°02'53" WEST; THENCE NORTH 39°50'16" EAST A DISTANCE OF 69.21 FEET; THENCE NORTH 00°00'00" EAST A DISTANCE OF 24.99 FEET; THENCE NORTH 89°42'24" EAST A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING, ALL IN LAKE COUNTY, INDIANA.


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EXHIBIT "O"
Current Agreement(s)

That certain Site Agreement No. 477 dated July 22, 1996 by and between Herbert W. Tice and Vera Tice, husband and wife, as Lessor, and Southwestern Bell Mobile Systems, Inc. d/b/a Cellular One – Chicago, a Delaware and Virginia corporation, as General Partner of Gary Cellular Telephone Company, a general partnership, as Lessee; as amended by that certain First Amendment to the Site Agreement No. 477 dated April 16, 2002 by and between A.R.E. Incorporated, an Indiana corporation d/b/a Wayne's, as Lessor, as successor-in-interest to Herbert W. Tice and Vera Tice, husband and wife, and Gary Cellular Tower Holdings, LLC, a Delaware limited liability company, as Lessee, as successor-in-interest to Southwestern Bell Mobile Systems, Inc., d/b/a Cellular One-Chicago, a Delaware and Virginia corporation, as General Partner of Gary Cellular Telephone Company, a general partnership, as evidenced by that certain Memorandum of Ground Lease dated April 24, 2002, by and between A.R.E. Incorporated, an Indiana corporation, successor-in-interest to Herbert W. Tice and Vera Tice, husband and wife, as Lessor and Gary Cellular Tower Holdings, LLC, a Delaware limited liability company, successor-in-interest to Southwestern Bell Mobile Systems, Inc., a Delaware corporation, as Lessee, recorded in the public records of Lake County, Indiana at Instrument No. 2002-044307; as amended by that certain Second Amendment to Site Agreement dated July 20, 2006, by and between A.R.E. Incorporated, an Indiana corporation d/b/a Wayne's, as Lessor and Gary Cellular Tower Holdings LLC, as Lessee, as evidenced by that certain Memorandum of Lease dated July 20, 2006, by and between A.R.E. Incorporated, an Indiana corporation d/b/a Wayne's, as Lessor and Gary Cellular Tower Holdings LLC, as Lessee, recorded in the public records of Lake County, Indiana; as amended by that certain Third Amendment to Site Agreement dated June 6, 2016, by and between A.R.E. Incorporated, an Indiana corporation, d/b/a Wayne's, as Landlord and SBC Tower Holdings LLC, a Delaware limited liability company, as Tenant, as evidenced by that certain Memorandum of Lease dated June 6, 2016, by and between A.R.E. Incorporated, an Indiana corporation, d/b/a Wayne's, as Landlord and SBC Tower Holdings LLC, a Delaware limited liability company, as Tenant, recorded in the public records of Lake County, Indiana at 2016-044145.

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This document was prepared by Emily Laey and I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.

Signature: 

Affiant: Emily Laey, Esq.

Property of Lake County Recorder