

## **NET PROFITS AGREEMENT**

This Net Profits Agreement (the “**Agreement**”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2023 (the “**Effective Date**”) by and between City of Manitowoc, Wisconsin (the “**Site Owner**”) and Wireless Propco, LLC, a Delaware limited liability company (hereinafter, “**Wireless Propco**”). All references hereafter to Site Owner and Wireless Propco shall include their respective predecessors-in-interest, successors-in-interest, representatives, lessees, licensees, and assigns. At times, Site Owner and Wireless Propco are at times referred to individually as the “**Party**”, and collectively as the “**Parties**”.

### **RECITALS**

**WHEREAS**, Site Owner is the owner of that certain property located at 736 Revere Drive, Manitowoc, WI 54220 (the “**Property**”); and

**WHEREAS**, the Property is subject to certain existing leases (the “**Existing Agreement**”) and may become subject to Additional Agreements (as hereafter defined) that require the lessees or licensees thereunder to pay rents, license payments, escalations and any other amounts (such amounts, collectively the **Rent**); and

**WHEREAS**, as of \_\_\_\_\_, 2023 the Parties entered into a Wireless Communication Easement and Assignment Agreement (the “**Easement Agreement**”) pursuant to which Site Owner granted Wireless Propco certain easements in the Property (the “**Easement**”) and assigned Wireless Propco the Existing Agreement; and

**WHEREAS**, the Easement Agreement grants Wireless Propco the right to lease, license, transfer or assign, in whole or in part or permit the use of the Easement to third parties and/or customers of Wireless Propco (collectively, “**Customers**”) and grants Wireless Propco the right to any and all Rent through the stated term of the Easement Agreement; and

**WHEREAS**, the Parties agree that “**New Customers**” means Customers other than tenants under the Existing Agreement, their successors, assigns or other parties claiming rights there through; and

**WHEREAS**, the Parties agree that “**Scheduled Rent**” means the Rent due, at any point in time, in accordance with the provisions of the Existing Agreement as of the Effective Date. Scheduled Rent shall begin on the Effective Date and continue through the stated term of the Existing Agreement. For purposes of determining Scheduled Rent, the Existing Agreement is deemed to remain in full force and effect throughout the stated term of the Easement Agreement; and

**WHEREAS**, the Parties agree that the “**Wireless Propco Rent**” means the cumulative amount of Scheduled Rent due to Wireless Propco from the Effective Date through the date on which the amount is calculated (the “**Date of Determination**”); and

**WHEREAS**, the Parties recognize that in the future, Wireless Propco may enter into leases, licenses or other agreements with New Customers which will demise portions of the Easement beyond the boundaries of the premises demised in the Existing Agreement, (the “**Additional Agreements**”) resulting in Wireless Propco receiving any rent above and beyond the Scheduled Rent (the “**Additional Agreements Excess Revenue**”); and

**WHEREAS**, Wireless Propco has agreed to pay Site Owner fifty percent (50%) of Additional Agreements Excess Revenue, if any, as set forth below; and

**NOW, THEREFORE**, for and in consideration of the sum of Ten and 00/Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which Site Owner does hereby acknowledge and grant Wireless Propco full discharge and acquittance therefor, Site Owner and Wireless Propco agree to the following:

1. **Stipulation and Acknowledgement**. The Parties stipulate, acknowledge, and agree that this Agreement: (i) does not constitute an “executory contract” under Section 365 of the United States Bankruptcy Code, 11 U.S.C. § 365, and (ii) is non-executory in nature and therefore is not subject to rejection under Section 365 of the United States Bankruptcy Code, 11 U.S.C. § 365. The Parties stipulate, acknowledge, and agree that this Agreement does not impose any continuing obligations on the Site Owner whatsoever.
2. **Acknowledgement Concerning Effect of Easements**. The Parties acknowledge and agree that, the Easement Agreement and the easements created therein are real property rights granted to Wireless Propco under the Easement Agreement, and only Wireless Propco is entitled to collect and receive Rent from the Existing Agreement and Additional Agreements.
3. **Additional Agreements Excess Revenue**. Notwithstanding the acknowledgement contained in Section 2 above, Wireless Propco shall pay to Site Owner, on a monthly basis, fifty percent (50%) of all Additional Agreements Excess Revenue, if any, from any Rent received above and beyond the Scheduled Rent from the Customers (the “**Net Profits Payment**”). Wireless Propco shall remit the Net Profits Payment to Site Owner on the fifteenth (15<sup>th</sup>) day or first business day thereafter of each month throughout the term hereof, based on the amount of the Additional Agreements Excess Revenue, if any, actually received by Wireless Propco during the preceding month, less (i) any reasonable costs and expenses actually incurred by Wireless Propco due to the failure of Site Owner to comply with its obligations under the Easement Agreement and any amounts due to Wireless Propco (including, without limitation, any reimbursement or offset) under the Easement Agreement; and (ii) any reasonable collection costs, reasonable attorney’s fees and court costs actually incurred by Wireless Propco in litigating the terms of any Customer agreement.
4. **Wireless Propco Rent**. Throughout the term of this Agreement, Wireless Propco is entitled to receive the amount of Wireless Propco Rent as determined in accordance with the provisions of this Agreement. The Parties intend that if at any time during the term hereof the Rent actually received by Wireless Propco is less than the Scheduled Rent, then

Wireless Propco shall retain all Rent until such time as Wireless Propco has received the full amount of Wireless Propco Rent which would then be due to Wireless Propco as of the Date of Determination. The obligation of Wireless Propco to pay any amounts to Site Owner pursuant to this Agreement is expressly subject to the condition that at any point in time throughout the term of this Agreement, Wireless Propco shall have received the full amount of the Wireless Propco Rent due to Wireless Propco as of the Date of Determination.

5. **Termination.** This Agreement shall terminate and the payment and other obligations of Wireless Propco hereunder shall immediately cease and be of no effect upon termination of Wireless Propco's interest in the Property for any reason.

6. **Default.**

- a. In the event of a monetary default ("**Default**") hereunder by Wireless Propco, Site Owner shall provide Wireless Propco with written notice of the Default, and Wireless Propco shall have fifteen (15) days from its actual receipt of such notice to cure the same. If Wireless Propco fails to cure the Default within the foregoing grace period, then Site Owner's only remedies for a breach of this Agreement shall be specific performance or recovery of the amount of Site Owner's actual damages for such breach of this Agreement; provided however that Wireless Propco shall not be liable or responsible to Site Owner for lost profits or any other damages which are indirect, consequential, exemplary or punitive. Further, Site Owner is not entitled to terminate the Easement Agreement or terminate the easements created under such agreement for any reason whatsoever (including any breach of this Agreement or the Easement Agreement).
- b. In the event of any dispute (including any dispute over an alleged Default) or non-monetary default arising out of this Agreement, the following dispute resolution process shall be followed:
  - i. Upon a Party's written notice of dispute to the other Party, an authorized representative of Site Owner and Wireless Propco shall through a good faith negotiation, attempt to settle a written resolution within thirty (30) days; and
  - ii. If such negotiation attempts fail, the dispute shall be submitted by the Parties to a mutually agreed upon arbitration for a binding and final arbitration decision in accordance with the rules of the American Arbitration Association ("**AAA**") and using the Federal Rules of Evidence and Civil Procedure. In the event the Parties are unable to mutually agree to an arbitrator, each Party shall select their own arbitrator, and such arbitrators shall thereafter mutually agree on a third arbitrator, and the majority decision by all such arbitrators shall be final and binding on the Parties. Each Party shall pay one-half of all arbitrator professional fees and the prevailing Party, in any proceedings under this Section 6 shall be entitled to

recover all costs incurred in connection therewith, including reasonable legal fees.

7. **Severability.** The Parties agree that if any term of this Agreement is found to be void or invalid, such provision shall be fully severable herefrom, and such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect, and this Agreement shall be reformed and construed as if such invalid provision had never been contained herein, and if possible such provision shall be reformed to the maximum extent permitted under applicable law to render same valid, operative and enforceable to reflect the intent of the Parties as expressed herein.
8. **Absence of Certain Representations or Warranties.** Site Owner acknowledges that Wireless Propco has not made any representations or warranties to Site Owner concerning the amount of Additional Agreements Excess Revenue, if any, to which Site Owner may be entitled to receive pursuant to the Agreement, and Wireless Propco hereby disclaims all such representations and warranties.
9. **Receipt of Certain Funds by Site Owner.** In the event Site Owner receives any revenues or checks due to Wireless Propco pursuant to the Existing Agreement or otherwise with respect to the Easement, Site Owner shall promptly deliver such funds and/or endorse such checks to Wireless Propco for distribution pursuant to the terms hereof.
10. **Assignment; Secured Parties.** Wireless Propco has the unrestricted right to assign, mortgage or grant a security interest in all of Wireless Propco's interest in and to this Agreement, and may assign this Agreement to any such assignees, mortgagees or holders of security interests, including their successors and assigns (the "**Secured Party**" or collectively, the "**Secured Parties**"). Site Owner agrees to notify Wireless Propco and Secured Parties (provided Wireless Propco has given Site Owner written notice and contact information of Secured Parties) simultaneously of any default by Wireless Propco and give the Secured Parties the same right to cure any default. If any Secured Party shall succeed to Wireless Propco's interest under this Agreement, such Secured Party shall have no liability for any defaults of Wireless Propco accruing prior to the date that such Secured Party succeeds to such interest. Site Owner will enter into modifications to this Agreement reasonably requested by any Secured Party provided that such modifications do not materially increase the obligations or decrease the rights of Site Owner hereunder. Site Owner shall have the right to assign or grant a security interest in this Agreement, provided that Wireless Propco shall not be bound by any such assignment or security interest, unless Wireless Propco receives notice of such assignment or security interest, together with the correct notice address of such assignee or grantee. All payments made by Wireless Propco to Site Owner prior to receipt of the foregoing notice shall be deemed to satisfy the payment obligations of Wireless Propco hereunder.
11. **Estoppel Certificate.** At any time during the term hereof, each Party shall have the right to request from the other a statement certifying: (i) that this Agreement is unmodified and in full force and effect (or if there have been modifications, stating the modifications and that the modified Agreement is in full force and effect), (ii) whether or not, to the best

knowledge of the responding Party, the requesting Party is in default in performance of any of its obligations under this Agreement, and if so, specifying each such default, (iii) that there are no amounts due to the responding Party from the requesting Party, and (iv) any other information reasonably requested concerning this Agreement (the “**Estoppel Certificate**”). In the event the responding Party fails to dispute the Estoppel Certificate by delivery to the requesting Party of a notice specifying the nature and circumstances of any matter in the Estoppel Certificate that is disputed by the responding Party within ten (10) business days of receipt of the Estoppel Certificate, then all matters specified in the Estoppel Certificate shall be deemed true and correct, and the Estoppel Certificate shall thereafter be binding on the Parties, Secured Party or any Party designated by the requesting Party, and all of such parties may thereafter rely on the Estoppel Certificate as a conclusive statement of fact by the responding Party as to the matters set forth therein.

12. **Right of First Refusal.** In the event Site Owner receives a bona fide offer from any third party seeking to acquire all or part of the rights and payments due Site Owner hereunder, whether directly or indirectly (the “**Offer**”), Wireless Propco shall have the right of first refusal to match the Offer on the same terms and conditions as specified therein. Upon receipt of an Offer, Site Owner shall forward same to Wireless Propco, and Wireless Propco shall have thirty (30) days to elect whether to accept the Offer and to proceed to closing on the same terms and conditions set forth therein. If Wireless Propco fails to accept the Offer within the aforesaid thirty (30) day period, Site Owner shall have the right to proceed to closing with the acquirer specified in the Offer, pursuant to the terms thereof. The foregoing right of first refusal shall apply to the first and any subsequent Offer received by Wireless Propco and/or its successors and assigns.
13. **Audit.** Site Owner shall have the right to conduct an audit of Wireless Propco’s books and records pertaining to the rental income from the Easement and any amounts to be paid to Site Owner hereunder, upon at least thirty (30) days prior written notice to Wireless Propco delivered on or before December 31 of the calendar year following the calendar year for which the audit is to be conducted. In the event that Site Owner fails to deliver a request for an audit to Wireless Propco on or before December 31 of any year, all accountings, statements and payments delivered by Wireless Propco to Site Owner for the immediately preceding calendar year shall be deemed accurate and binding on the Parties, and Site Owner shall thereafter have no right whatsoever to dispute same. Site Owner shall bear all reasonable costs of the audit, including without limitation, reasonable copying costs.
14. **Notices.** All notices, requests, demands, and communications hereunder must be in writing and be given by first class certified or registered mail, return receipt requested or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused and/or returned undelivered. Notices will be addressed to the Parties to the addresses set forth on the signature page, respectively. Either Party may hereto change the place of receipt of notice to it by thirty (30) prior written notice to the other, as provided herein.
15. **No Joint Venture or Partnership.** Neither Party shall be or hold itself out to be the agent of the other Party, and neither Party shall have the authority to bind or commit the other

Party. Neither Party shall be empowered to accept legal process on behalf of the other Party. Nothing contained in this Agreement shall be deemed to create a partnership or joint venture between the Parties.

16. **General Terms and Conditions.**

- a. The Parties agree that the Recitals and prefatory phrases and paragraphs set forth above are hereby incorporated in full and made a part of this Agreement.
- b. This Agreement and the Easement Agreement constitute the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement, and supersedes all offers, negotiations and any other written or verbal agreements.
- c. Any amendments to this Agreement must be in writing and executed by both Parties.
- d. This Agreement is governed by the laws of the State in which the Property is located.
- e. The section headings of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict the terms of this Agreement.
- f. Site Owner acknowledges that Wireless Propco has not provided any legal or tax advice to Site Owner in connection with the execution of this instrument.
- g. This Agreement may be executed in any number of counterparts, each of which shall when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

***[REMAINDER OF PAGE INTENTIONALLY BLANK]***

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first written above.

**WITNESSES:**

**“SITE OWNER”:**

\_\_\_\_\_  
Name: \_\_\_\_\_

**City of Manitowoc, Wisconsin**

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: 900 Quay Street

City: Manitowoc

State: Wisconsin

Zip: 54220

State of Wisconsin

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_  
as \_\_\_\_\_ of City of Manitowoc, Wisconsin.

\_\_\_\_\_  
Signature of Notarial Officer  
(Seal, if any)

\_\_\_\_\_  
Title (and Rank)

My commission expires: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first written above.

WITNESSES:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**“WIRELESS PROPCO”:**

**WIRELESS PROPCO, LLC**, a Delaware  
limited liability company

By: \_\_\_\_\_  
Name: Carlos Melendez  
Title: Authorized Representative

Address: 44 South Broadway, Suite 601  
City: White Plains  
State: NY  
Zip: 10601  
Tel: (646) 452-5455  
Fax: (301) 360-0635

STATE OF NEW YORK )  
 ) ss.  
COUNTY OF WESTCHESTER )

On the \_\_\_\_ day of \_\_\_\_\_ the year of 2023, before me, the undersigned, a Notary Public in and for said state, personally appeared Carlos Melendez, Authorized Representative of Wireless Propco, LLC, a Delaware limited liability company, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the individual or the entity upon behalf of which the individual acted, executed the instrument.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Commission Number: \_\_\_\_\_