

Hamilton County Board of County Commissioners

Recessed Meeting from May 18, 2016

May 25, 2016

AGENDA

ROLL CALL

INVOCATION - **Commissioner Turner-Smedley**

PLEDGE TO THE FLAG - **Commissioner Turner-Smedley**

- Res. No. 516-13B A Resolution approving the entering into a lease agreement between the Hamilton County Board of Education and Tower Assets Newco IX, LLC, of certain real property owned by the Hamilton County Board of Education for the erection of a cell tower, and authorizing the execution of said lease.
- Res. No. 516-47 A Resolution approving the transferring of \$5,000.00 in discretionary bond funds as allotted to County Commission District Five to County Commission District Eight, and the transferring of a like amount in general fund discretionary travel funds as allotted to County Commission District Eight to County Commission District Five.

ANNOUNCEMENTS

DELEGATIONS ON MATTERS OTHER THAN ZONING

Any invocation that may be offered before the official start of the Commission meeting shall be the voluntary offering of a private citizen, to and for the benefit of the Commission. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Commission and do not necessarily represent the religious beliefs or views of the Commission in part or as a whole. No member of the community is required to attend or participate in the invocation and such decision will have no impact on their right to actively participate in the business of the Commission.



Hamilton County Board of Commissioners RESOLUTION

No. 516-13B
Formally
Resolution No.
516-13A, 516- 13
and 416-28

A RESOLUTION APPROVING THE ENTERING INTO A LEASE AGREEMENT BETWEEN THE HAMILTON COUNTY BOARD OF EDUCATION AND TOWER ASSETS NEWCO IX, LLC, OF CERTAIN REAL PROPERTY OWNED BY THE HAMILTON COUNTY BOARD OF EDUCATION FOR THE ERECTION OF A CELL TOWER, AND AUTHORIZING THE EXECUTION OF SAID LEASE.

WHEREAS, Tower Assets Newco IX, LLC, ("Tower") has offered to enter into an agreement with the Hamilton County Board of Education ("School Board") for the lease of a tract of land at the East Ridge High School for the erection of a cellular telephone tower over a twenty-five (25) year initial period; and,

WHEREAS, according to the proposed lease, the School Board shall receive a one-time cash donation from Tower in the amount of Ten Thousand Dollars (\$10,000.00), plus base rent of One Thousand Five Hundred Dollars (\$1,500.00) per month and thirty-five percent (35%) of additional gross collected revenue Lessee receives from each wireless broadband telecommunications carrier, whose equipment is installed on the tower after the second installed Carrier per month; and,

WHEREAS, the School Board is inclined to accept said proposal, but final approval is required by this county legislative body pursuant to the provisions of Tennessee Code Annotated Section 7-51-904(b); and,

WHEREAS, this county legislative body feels that the approval of said rental relationship would be in the best interest of the citizens of Hamilton County.

NOW, THEREFORE, BE IT RESOLVED BY THIS COUNTY LEGISLATIVE BODY IN SESSION ASSEMBLED:

That the attached agreement as negotiated between Hamilton County Board of Education and Tower Assets Newco, IX, LLC, for the lease of certain real property owned by the Hamilton County Board of Education located at the East Ridge High School be approved, and the appropriate representative of the Hamilton County Board of Education is hereby authorized to execute said lease.

BE IT FURTHER RESOLVED THAT THIS RESOLUTION TAKE EFFECT FROM AND AFTER ITS PASSAGE, THE PUBLIC WELFARE REQUIRING IT.

CERTIFICATION OF ACTION

Approved:

Rejected:

County Clerk

Approved:

Vetoed:

County Mayor

May 25, 2016

Date

LEASE AGREEMENT

Between

Hamilton County Department of Education

And

TOWER ASSETS NEWCO IX LLC

Dated as of _____

LEASE AGREEMENT
(For Telecommunications Facility at East Ridge High School)

This LEASE AGREEMENT ("Agreement") is made this the 24th day of May 2007, by and between the Hamilton County Board of Education, ("The Board") a political subdivision of the State of Tennessee, having an address of 3074 Hickory Valley Road, Chattanooga, TN., 37421, and TOWER ASSETS NEWCO IX LLC, having an address of 4091 Viscount Ave., Memphis, Tennessee 38118 ("Lessee").

RECITALS

A. The Board is the owner of a certain parcel of real property located in Hamilton County, Tennessee, more particularly described in Exhibit "A" (the "Property"), which is the site of East Ridge High School located at 4320 Bennett Road, East Ridge, TN 37412 (the "School"); and

B. The Lessee desires to construct a wireless communications tower on a portion of the Property; and

C. The Board finds that the Lessee's use of the Property would benefit the community as a whole by enhancing wireless communication throughout the area; so therefore,

D. The Board agrees to lease to Lessee approximately _____ square feet of the Property to build certain facilities and install a tower on the Premises (the "Premises" or "Leased Premises") depicted on the Site Plan attached as Exhibit "B" (the "Site Plan") and for the construction, installation, operation, maintenance and repair of a telecommunications facility and related services as referenced in Section 3.1(a).

1. THE BOARD'S REPRESENTATIONS AND WARRANTIES

1.1. As an inducement for Lessee to enter into and be bound by the terms of this Agreement, the Board represents and warrants to Lessee and Lessee's successors and assigns that:

(a) The Board has good and marketable title to the Property free and clear of all liens, leases and encumbrances other than those liens and encumbrances of record.

(b) The Board has the authority to enter into and be bound by the terms of this Agreement.

more than one foot below grade. The Board grants Lessee the right to clear all trees, undergrowth or other obstructions and to trim, cut, and keep trimmed and cut all tree limbs that may interfere with or fall upon Lessee's tower or Lessee's other improvements, communications equipment or Premises rights. All debris resulting from said tree clearing is to be disposed of by Lessee. The Board grants Lessee a non-exclusive right of movement in, over, across and through other real property owned by the Board as reasonably required for construction, installation, maintenance, and operation of the Tower Facilities. In the event that a tower to be constructed by Lessee on the Property is a guyed tower, the Board also grants Lessee an easement over the Board's real property during the Initial Term and any Renewal Term of this Agreement for any guy wires and guy wire anchors, including any security, access, maintenance and repair thereto.

(b) Lessee shall have the right to install utilities (including telco and fiber), at Lessee's expense, and to improve present utilities on the Property (including, but not limited to, the installation of emergency power generators). Lessee shall have the right to place utilities on (or to bring utilities across or under) the Property to service the Tower Facilities. In the event that utilities necessary to serve the equipment of Lessee or the equipment of Lessee's licensee(s) or sublessee(s) cannot be located within the Property for ingress and egress, the Board agrees to cooperate with Lessee and to act reasonably in allowing the location of utilities on other real property owned by the Board without requiring additional compensation from Lessee or Lessee's licensee(s) or sublessee(s). The Board shall, upon Lessee's request, execute a separate written easement for the utility company providing the service or Lessee in a form that may be filed of record evidencing this right; and

(c) The Board acknowledges and agrees that, in order to make the Premises useable by Lessee, Lessee shall need to construct certain improvements on, upon and across the Property. Specifically, Lessee may need to grade or to improve the Premises and may need to park vehicles (including heavy equipment) upon portions of the Property adjoining the Premises for a reasonable period of time for the construction of Lessee's improvements or subsequently as licensee(s) or sublessee(s) install equipment on the Tower Facilities for which the Board hereby grants to Lessee a temporary construction easement on the Property. Lessee and the Board agree to work cooperatively and in good faith in order to minimize any disruption to the Board of the use of the Property and in order to permit Lessee or its licensee(s) or sublessee(s) ("Carriers") to install the Tower Facilities in an expeditious and commercially reasonable manner. Lessee shall limit reasonable and unreasonable interference to the Board's use of the Property and further agrees to return the Property in substantially the same condition after construction is completed; and

(d) The Board represents and warrants to Lessee that Lessee shall at all times during this Agreement enjoy ingress, egress, and access from the Property to an open and improved public road that presently exists and that the public road shall be adequate to service the Tower Facilities. If no such public road exists or if such existing

Board Initial: _____
Lessee Initial: *LD*

public road ceases to exist in the future, the Board will grant an appropriate easement to Lessee, Lessee's licensee(s) and sublessee(s) and assigns so that Lessee may, at its own expense, construct and maintain a suitable private access drive to the Property and the Tower Facilities. To the degree that such access is across other property owned by the Board, the Board shall execute an easement evidencing this right, and the Board shall maintain access to the easement in a free and open condition so that no interference is caused to Lessee by other Lessees, licensees, invitees or agents of the Board that may utilize the Property. Notwithstanding the provisions of this subsection (d), however, it is understood and agreed by and between the parties that Lessee has made arrangements with _____ to access the Leased Premises through _____'s property and, as such, Lessee does not anticipate that it or its sublessees and assigns shall need access to the Leased Premises across the Board's Property.

3. PURPOSE OF LEASED PREMISES

3.1 Use of Leased Premises

(a) Lessee may use the Premises for the transmission and receipt of wireless communication signals in any and all frequencies and the construction and maintenance of tower, antennas or buildings and related facilities and activities ("Intended Use"). The Board agrees to cooperate with Lessee in obtaining, at Lessee's expense, all licenses and permits required for Lessee's use of the Leased Property (the "Governmental Approvals"). Lessee may construct additional improvements, demolish and reconstruct improvements, or restore, replace and/or reconfigure improvements at any time during the Initial Term or any Renewal Term of this Agreement pursuant to restrictions set forth in Section 6.

(b) Lessee shall use the Premises solely for construction, operation and leasing of the Tower Facilities as provided herein. The Board makes no representation or warranty whether such use is permitted by any laws or regulations applicable to the Premises, and Lessee is solely responsible for determining whether such use is permitted, and for securing all necessary licenses, permits and approvals therefore.

(c) Notwithstanding any other provision of this Agreement, the Lessee acknowledges the absolute primacy of the Board's use of the Property as a public high school, and that Lessee's rights under this Agreement (and, accordingly, the Carrier's rights under the Carrier Subleases) are subject and subordinate to the Board's use and operation of the Property. Accordingly, in exercising its rights under this Agreement, Lessee shall use its best efforts to avoid any adverse construction, operation or other impacts on the Property and the Board's use and operation thereof, whether such impacts arise from activities conducted on or off the Property.

be no expressed or implied obligation for Lessee to do so. If any such Carrier's right of use expires or terminates for any reason and payment to Lessee of rental, license or similar payments ceases, Lessee shall no longer be obligated to pay the Additional Rent for such Carrier. Lessee may elect to pay Additional Rent electronically or by direct deposit methods (i.e. ACH). If such method is elected by Lessee, then the Board shall provide Lessee, at Lessee's request, the necessary account information to facilitate such direct deposit or electronic payment to the Board.

(d) Base Rent shall increase by 2% for each year for the life of the Agreement, said increase to be effective upon each anniversary date.

(e) The Board shall have the right to audit Lessee's books and records specifically regarding the tower site upon reasonable notice, said audit shall be done in a manner to not disrupt the normal day-to-day operations of Lessee.

5.1.1 Cash Donation: As additional consideration, Lessee shall make a one-time cash donation to the School of Ten Thousand and 00/100 (\$10,000.00) DOLLARS within 30 days of this Agreement becoming final.

5.1.2 Cell Tower Space: As further consideration, Lessee shall make available to the School, at no cost to the School or to the Board, such space on the Tower Facilities as School may desire for operation of its own wireless uses; provided however, such use shall be subject to availability and if a Carrier requires such space, then the School or the Board shall relocate its equipment. In addition, the School or the Board shall pay for its own utilities.

5.2. Net Payments. The Board shall receive the Base Rent or Percentage Rent and all other payments provided for hereunder free and clear of any and all deductions, abatements, setoffs, impositions, taxes, liens, charges or expenses of any nature whatsoever.

5.3. Delinquent Interest. All late payments due to the Board from Lessee shall bear interest at the rate of one and one-half percent (1-1/2%) per month from the date due until payment is received by the Board.

5.4 Intentionally deleted.

5.5. Licenses and Permits. Lessee shall be responsible for obtaining all certificates, licenses, permits and other consents and approvals that may be required by any federal, state or local authorities for the use of the Premises or Property, installation of the improvements and the conduct of its business ("Approvals"). The Board shall reasonably cooperate with Lessee but at no expense to the Board, in Lessee's efforts to obtain the Approvals.

5.6. Taxes. (a) Any ad valorem taxes or other special assessment taxes attributable to the Property during the Initial Term and any Renewal Terms of the

Agreement shall be paid by the Board. The Board shall pay when due all real property taxes and all other fees and assessments attributable to the Property including, but not limited to, any tax attributable to any increase in property value of the Property resulting from the increased cash flow of this Agreement.

(b) Lessee shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the Tower Facilities or Leased Property.

5.7. Security Deposit. In lieu of any security deposit otherwise required by the Board, Lessee shall provide a letter of credit from a local financial institution in terms satisfactory to the Board sufficient to satisfy any damages the Board might incur should Lessee breach any terms of this Agreement. Lessee shall provide updated letters of credit as frequently as the Board may deem necessary.

6. CONSTRUCTION AND MAINTENANCE

6.1. Maintenance and Repairs. Lessee shall, at Lessee's expense, keep and maintain the Premises in a commercially reasonable condition and repair during the term of this Agreement. Lessee agrees to maintain the Tower Facilities and all Communications Equipment in proper operating condition and within industry accepted safety standards. All installations and operations in connection with this Agreement by Lessee must be in compliance with all federal, state, and local laws, codes and regulations, including but not limited to local zoning requirements, and will adhere to reasonable technical standards developed by the Board as amended from time to time. The Board assumes no responsibility for the licensing, operation and/or maintenance of the Communications Equipment.

6.2. Board Approval. All Lessee's improvements and modifications, repairs and maintenance of the improvements shall be constructed, placed and made in a first-class workmanlike manner, in accordance with plans, specifications and schedules reviewed and approved in advance at least fourteen (14) days and in writing by the Board, and shall be coordinated with the Board and conducted so as not to create an unsafe or dangerous condition, or unduly interfere with the conduct of any other activities on the Property. The Board's approval of Lessee's plans, specifications and schedules shall not be unreasonably conditioned, delayed or withheld. The Board's approval shall not be required for the maintenance and repair of improvements and equipment or modifications and replacements that do not materially change the type, appearance, size, weight and function of the improvements and equipment. In no event will the Board be required to consent to any installation or other work by Lessee, which would adversely physically affect any part of the Premises or would, in the Board's reasonable judgment, adversely affect proper functioning of any mechanical, electrical, sanitary or other systems of the Premises. Any required approval by the Board set forth herein shall not be applicable to sublessee's antenna, equipment, cabinets or other improvements placed on the Premises or Tower Facilities.

6.3. Construction Liens. Any worker, material or mechanic's lien filed against the Board, the School and/or the Property, for work claimed to have been done for, or materials claimed to have been furnished to Lessee, shall be discharged by Lessee by bond, or otherwise, within twenty (20) days after the filing thereof, at Lessee's sole cost and expense.

6.4. Personal Property. Lessee shall make proper arrangements for receiving, handling, storage and installation of its equipment and other personal property. The Board shall not be liable for any loss, damage or injury to properties of any kind that are shipped or otherwise delivered or stored on the Property or stored in or on the Premises. The Board shall assume no responsibility for losses suffered by Lessee, or its agents, employees or invitees, which are occasioned by theft or the disappearance of equipment or other personal property, unless such loss, damage or injury is solely and directly caused by the negligence of a Board employee acting in the course and scope of his or her duties.

6.5. Equipment Marking. Lessee shall use reasonable efforts to identify the Communications Equipment with permanently marked, weather proof tags at the following locations: (i) each antenna (attached to one of the antenna brackets); (ii) at the transmission line building entry point; and (iii) at the interior wall feed or through any other transmission line exit point. In addition, all Lessee's telephone blocks, demarks, and cables shall be clearly identified with Lessee's name.

6.6 Intentionally deleted.

6.7. Unlawful Use. Lessee will not disturb other occupants of the Property or Premises by making any undue or unseemly noise, or otherwise; allow its signal to unreasonably interfere with or degrade the signals or transmissions sent to or by any other Lessee in or about the Premises; do anything which is illegal or unlawful, or which will be dangerous to life or limb, or will increase any insurance rate upon the Premises, Property or School; or disrupt, damage or interfere with any School system or the electronic, computer or communication system of the Board or any Lessee or occupant of the School. If Lessee at any time uses any Communications Equipment that creates an electromagnetic field, frequency or radiation which causes, or may cause, harm, to any person, or if it causes, or may cause, interference with or the degradation of communications received or sent by any other Lessee or party in the School or elsewhere, then the Board shall have the right to require Lessee to immediately cease the use of the Communications Equipment causing such harm and, at Lessee's cost, promptly and appropriately insulate the Communications Equipment (including, but not limited to, cables) or take such other steps as are reasonably necessary and acceptable to Lessee to prevent the emission or escape of excessive electromagnetic fields, frequency or radiation.

6.8. Right of Entry. In the event of an emergency situation which poses an immediate threat of substantial harm or damage to persons and/or property on the

or for the dissolution of Lessee are instituted against Lessee, or a receiver or trustee is appointed for all or substantially all of Lessee's property, and the proceeding is not dismissed or the receivership or trusteeship is not vacated within sixty (60) days after institution or appointment.

8.2. Remedies for Default: In the case of any event of default, the Board shall have the following remedies, together with any additional rights and remedies that may be available at law or in equity:

(a). Give Lessee written notice of its intention to terminate this Agreement on the date of the notice or on any later date specified in the notice, and, on the date specified in the notice, Lessee's right to possession of the Leased Premises, and Tower Facilities will cease and this Agreement will be terminated as if the date fixed in the notice were the end of the term of this Agreement. If this Agreement is terminated, Lessee will remain liable to the Board for damages in an amount equal to the rent and other sums that would have been owing by Lessee under this Agreement for the balance of the term if this Agreement had not been terminated, less the net proceeds, if any, of any reletting of the Leased Premises by the Board subsequent to the termination, after deducting all the Board's expenses in connection with reletting. The Board will be entitled to collect damages from Lessee monthly on the days on which the rent and other amounts would have been payable under this Agreement if this Agreement had not been terminated, and the Board will be entitled to receive damages from Lessee on each such day. Alternatively, at the option of the Board, if this Agreement is terminated, the Board will be entitled to recover from Lessee:

- (1) the worth at the time of award of the unpaid rent which had been earned at the time of termination; plus
- (2) any other amount necessary to compensate the Board for all the detriment proximately caused by Lessee's failure to perform its obligations under this Agreement or which in the ordinary course of things would be likely to result from the failure.

The "worth at the time of award" of the amount referred to in clause (1) is computed by allowing interest at the highest rate permitted by law.

(b). Following notice, re-enter and take possession of the Leased Premises or any part thereof; repossess the Leased Premises as of the Board's former estate; expel the Lessee from the Leased Premises and those claiming through or under Lessee; and remove the effects of both or either, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenants or conditions. If the Board elects to re-enter or if the Board takes possession of the Leased Premises pursuant to legal proceedings or pursuant to any notice provided by law, the Board may, from time to time, without

terminating this Agreement, relet the Leased Premises or any part of the Leased Premises, either alone or in conjunction with other portions of the Property, in the Board's or Lessee's name but for the account of Lessee, for the term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Agreement) and on such terms and conditions (which may include concessions or free rent, and the alteration and repair of the Leased Premises) as the Board, in its subjective discretion, may determine. The Board may collect and receive the rents for the Leased Premises. The Board will not be responsible or liable for any failure to relet the Leased Premises, or any part of the Leased Premises, or for any failure to collect any rent due upon the reletting. No re-entry or taking possession of the Leased Premises by the Board will be construed as an election on the Board's part to terminate this Agreement unless a written notice of termination is given to Lessee. No notice from the Board under this Agreement or under a forcible entry and detainer statute or similar law will constitute an election by the Board to terminate this Agreement unless the notice specifically says so. The Board reserves the right following any re-entry or reletting, or both, to exercise its right to terminate this Agreement by giving Lessee written notice, and in that event the Agreement will terminate as specified in the notice. If the Board elects to take possession of the Leased Premises without terminating this Agreement, Lessee will pay the Board the rent and other sums which would be payable under this Agreement if the repossession had not occurred, less the net proceeds, if any, of any reletting of the Leased Premises after deducting all of the Board's expenses incurred in connection with the reletting, including without limitation all repossession costs, brokerage commissions, legal expenses, tenant concessions, attorneys' fees, expenses of employees, alteration, remodeling and repair costs, and expenses of preparation for the reletting. If, in connection with any reletting, the new Agreement term extends beyond the existing term, or the premises covered by the reletting include areas that are not part of the Leased Premises, a fair apportionment of the rent received from the reletting and the expenses incurred in connection with the reletting will be made in determining the net proceeds received from reletting. In addition, in determining the net proceeds from reletting, any rent concessions will be apportioned over the term of the new agreement. Lessee will pay the amounts to the Board monthly on the days on which the rent and all other amounts owing under this Agreement would have been payable if possession had not been retaken, and the Board will be entitled to receive the rent and other amounts from Lessee on each such day.

(c). If the Board files an action to enforce any agreement contained in this Agreement or for breach of any covenant or condition, Lessee shall pay the Board's reasonable attorney's fees for the services of the Board's attorney in the action and court costs, all fees to be fixed by the court, provided the Board prevails in such action.

(d). The foregoing notwithstanding, in the event of any such default by Lessee hereunder, such shall not provide the Board the right to attach, utilize, distrain upon or otherwise take possession of any equipment located within the Tower Facilities

owned by any Carrier, and such shall at all times be free from any claim by the Board hereunder.

8.3. Force Majeure. The Board's or Lessee's failure to perform any term or condition of this Agreement as a result of *force majeure* conditions beyond its control such as, but not limited to, war, fires, flood, Acts of God, governmental restrictions, power failures, or damage or destruction, shall not be deemed a breach of this Agreement.

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

(a) By either party upon a default in accordance with the provisions of Section 8.1; or

(b) Upon 30 days written notice by Lessee to the Board if Lessee is unable to obtain or maintain, through no fault of Lessee, any license, permit or other Governmental Approval necessary to the construction and operation of the Tower Facilities or Lessee's business; or

(c) By Lessee, upon 30 days written notice to the Board, plus a termination fee equal to six months rent, if Lessee, in its sole discretion, determines that Lessee will be unable to use the Leased Premises for Lessee's Intended Use or for economic reasons.

8.5 Effect of Termination. Upon termination of this Agreement for any reason, including normal expiration of the Term, all improvements, personal property and equipment shall be removed within a reasonable time after termination. Any improvements not removed within such time shall be deemed abandoned by Lessee and shall become property of the Board.

9. INSURANCE

9.1. Lessee Insurance. Lessee agrees to obtain and maintain a general liability insurance policy regarding its occupancy and use of the Tower Facilities under this Agreement, including the realty, the fixtures and equipment, in an amount satisfactory to the Board's Risk Management Office and to name the Board as the primary insured party under the terms of this insurance policy. Said policy of general liability insurance shall provide a combined single limit of not less than \$1,000,000.

10. ENVIRONMENTAL COMPLIANCE

10.1. Environmental Indemnity.

(a). Lessee, its Lessees, successors, and assigns shall indemnify, defend, reimburse and hold harmless the Board from and against any and all

environmental damages arising from the presence of hazardous materials upon, about or beneath the Property or Premises arising in any manner whatsoever out of Lessee's use of the Property or Premises in violation of any environmental laws. Notwithstanding the obligation of Lessee to indemnify the Board, Lessee shall, upon demand of the Board, and at Lessee's sole cost and expense, promptly take all actions to remediate the Property and Premises which are required by any federal, state or local governmental agency or political subdivision or which are reasonably necessary to mitigate environmental damages or to allow full economic use of the Property, which remediation is necessitated from the presence upon, about or beneath the Property of hazardous materials attributed to the action of the Lessee. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Property and Premises, the preparation of any feasibility studies, reports or remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or actions necessary to restore the Property to the condition existing prior to the introduction of hazardous materials upon, about or beneath the Property notwithstanding any lesser standard of remediation allowable under applicable law or governmental policies.

(b) The Board, to the best of its knowledge, represents that there are no hazardous materials currently upon, about or beneath the Property or Premises.

11. COMMUNICATION

11. 1. Notice. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addresses:

If to the Board, to:

Hamilton County Board of Education
Attention: _____

3074 Hickory Valley Road
Chattanooga, Tennessee, 37421
Business Telephone: 423-209-8400

If to Lessee, to: TOWER ASSETS NWECA IX LLC
4091 Viscount Ave.
Memphis, Tennessee 38118

Attention: Site Lease Administrator
Telephone: 901-794-9494
Facsimile: 901-366-5736

Board Initial: _____
Lessee Initial: _____

(j). All lawsuits arising out of this agreement shall be litigated and decided in the State Courts of Hamilton County, Tennessee and pursuant to the laws of Tennessee, and both parties expressly waive their right to file any action in or remove any action to United States District Court.

[Acknowledgements on following pages]

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Board Initial: _____
Lessee Initial: _____

IN WITNESS WHEREOF, the Board and Lessee have executed this Agreement as of the date first written above.

SUPERINTENDENT:

By: Kirk Kelly

Print: Kirk Kelly

Title: Superintendent

Date: 3-18-16

STATE OF Tennessee
COUNTY OF Hamilton

On this 18 day of March, 2016 before me personally appeared Kirk Kelly and _____ to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that he executed the same as a free act and deed.

Gayle Patterson
Notary Public

My commission expires: 4-20-2016

Board Initial: /
Lessee Initial: /

CHAIRMAN:

By: [Signature]

Print: Jonathan Welch

Title: Board Chairman

Date: 3-18-16

STATE OF Tennessee
COUNTY OF Hamilton

On this 18 day of March, 2016 before me personally appeared Jonathan Welch and _____ to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that he executed the same as a free act and deed.

[Signature: Gayle Patterson]
Notary Public

My commission expires: 4-20-2016

Lessee: TOWER ASSETS NEWCO IX LLC

By: [Signature]

Print: William Orgel

Title: President

Date: March 11, 2016

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, a Notary Public of the State and County aforesaid, personally appeared William Orgel, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be President of TOWER ASSETS NEWCO IX LLC, the within named bargainer, a limited liability company, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the William Orgel as such President.

WITNESS my hand and seal, this 11 day of March, 2016.

[Signature]
Notary Public

My commission expires: 7-28-16



Exhibit "A"

Page 20 of 19

Board Initial: [Signature]
Lessee Initial: [Signature]

Leased Property

(To be replaced by survey upon completion)

Board Initial: /
Lessee Initial: *AK*

Exhibit "B"

Leased Premises

(To be replaced by survey upon completion)

Board Initial: _____
Lessee Initial: _____

Exhibit "C"

COMMENCEMENT DATE AGREEMENT

THIS COMMENCEMENT DATE AGREEMENT ("Agreement") is made this _____ day of _____, 20__, by and between _____ ("Landlord") and _____, ("Tenant").

WITNESSETH:

WHEREAS, by that certain Lease Agreement dated _____, as evidenced by that certain Memorandum of Option and Agreement dated _____ and recorded in Book _____, Page _____ in the _____ Office of _____ County, _____ ("Agreement"), Landlord leased to Tenant certain real property more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Commencement Date, as that term is defined in the Agreement, has been determined and the parties desire to set forth such date in writing in order to avoid any uncertainty in the future regarding the Commencement Date and the term of the Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Landlord and Tenant agree as follows:

1. The Commencement Date shall be _____.
2. Except as modified herein, all terms and conditions of the Lease shall continue in full force and effect.

Board Initial: _____
Lessee Initial: 

IN WITNESS WHEREOF, Board and Lessee have caused this Agreement to be signed and sealed as of the day and year first above written.

SUPERINTENDENT

Kevin Kelly

CHAIRMAN:

[Signature]

LESSEE:

By: [Signature]

STATE OF Tennessee
COUNTY OF Shelby

On this 11 day of March, 2016 before me personally appeared William Orjel, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

[Signature]
Notary Public

Printed Name: Adam Slovis

Commission Expires: 7-28-18



Board Initial: [Signature]
Lessee Initial: [Signature]



Hamilton County Board of Commissioners

RESOLUTION

No. 516-47

A RESOLUTION APPROVING THE TRANSFERING OF \$5,000.00 IN DISCRETIONARY BOND FUNDS AS ALLOTTED TO COUNTY COMMISSION DISTRICT FIVE TO COUNTY COMMISSION DISTRICT EIGHT, AND THE TRANSFERRING OF A LIKE AMOUNT IN GENERAL FUND DISCRETIONARY TRAVEL FUNDS AS ALLOTTED TO COUNTY COMMISSION DISTRICT EIGHT TO COUNTY COMMISSION DISTRICT FIVE.

WHEREAS, by adoption of the 2015-2016 fiscal year budget, this county legislative body has appropriated certain funds for expenditure within each of the nine (9) County Commission Districts in the form of capital expenditures by the issuance of bonds (“Discretionary Bond Funds”), and Hamilton County (“County”) creates and maintains a separate expenditure within said bond fund budget known as “discretionary bond funds”, from which each County Commissioner may make appropriations within their respective District or otherwise; and

WHEREAS, recent guidance as received from the Office of the Comptroller for the State of Tennessee has questioned the County’s past practices of using General Fund Discretionary Funds for use on behalf of the Hamilton County Department of Education, thereby prohibiting this county legislative body’s past practice of expending General Fund discretionary funds on Department of Education related projects; and

WHEREAS, Eighth District County Commissioner Tim Boyd desires to appropriate \$5,000.00 for the purchase of an acoustic sound system panel for the Chattanooga Center for Creative Arts, but has insufficient Discretionary Bond funds available to finance said project in addition to other commitments previously made; and

WHEREAS, it is permissible to spend bond funds on school related capital projects that meet the numerous procedures and requirements related to the

expenditure of bond funds; and

WHEREAS, Fifth District County Commissioner Greg Beck has in excess of \$5,000.00 within his allotted Discretionary Bond funds (for District Five) which he is willing to transfer to County Commission District Eight for the purpose of purchasing said sound panels, in exchange for a like amount of General Fund Discretionary Funds being transferred in the County’s said budget from District Eight’s General Fund discretionary funds to District Five’s General Fund discretionary fund allocation; and

WHEREAS, said budgetary readjustment is within the best interests of the citizens of Hamilton County.

NOW, THEREFORE, BE IT RESOLVED BY THIS COUNTY LEGISLATIVE BODY:

That of those funds allocated to County Commission District Five and designated as “discretionary bond funds”, in the amount of Five Thousand Dollars (\$5,000.00), shall be reallocated to County Commission District Eight discretionary bond funds; and in like manner, Five Thousand Dollars (\$5,000.00) presently allotted to County Commission District Eight as “General Fund discretionary funds” be reallocated to County Commission District Five’s General Fund Travel discretionary account for further allocation as said County Commissioner may direct.

BE IT FUTHER RESOLVED THAT THIS RESOLUTION TAKE EFFECT FROM AND AFTER ITS PASSAGE, THE PUBLIC WELFARE REQUIRING IT.

CERTIFICATION OF ACTION

Approved:

Rejected:

County Clerk

Approved:

Vetoed:

County Mayor

May 25, 2016

Date