



**COMMITTEE OF THE WHOLE MEETING
MONDAY, FEBRUARY 6, 2017
NORTH AURORA VILLAGE HALL - 25 E. STATE ST.
(Immediately following the Village Board Meeting)**

AGENDA

CALL TO ORDER

ROLL CALL

AUDIENCE COMMENTS

TRUSTEE COMMENTS

DISCUSSION

1. Cell Tower Lease Agreement
2. Teska Riverfront Park Concept

EXECUTIVE SESSION

1. Property Acquisition I
2. Property Acquisition II

ADJOURN

Initials 

Memorandum



To: Steve Bosco, Village Administrator
From: David Hansen, Administrative Intern
Date: 1-11-17
Re: AT&T Lease Amendment for Princeton Water Tower

The Village's current cell tower lease agreement with AT&T is due to expire on July 31, 2018. AT&T has approached the Village to amend the current Princeton Water Tower lease agreement in regards to extending the term and adjusting the rent. In order to stay consistent, staff reviewed the other cellular leases the Village currently has with Sprint, Verizon, and T-Mobile to determine the lease agreement made with AT&T.

After further analysis, staff proposed an initial term of 5 years with three consecutive 5 year renewals which would bring the total possible duration of the agreement to 20 years. Staff also proposed AT&T a base rent that would increase in the first year by 3.5% to \$4,673.58 and would go up 3.5% on an annual basis. AT&T has agreed to match the extension and rent provided in the most recent lease agreement amendment.

In comparison, the original agreement had an initial term of 10 years with two, 5 year extensions for a total duration of 20 years. The rent was increased 4% annually. The new rent increase of 3.5% a year is in line with other cell lease agreements that average 4%. However, because of the longevity of AT&T utilizing the Princeton Water Tower, their base rent is high compared to all, but one other agreement. The 3.5% annual increase will keep AT&T close to the other cellular companies utilizing the water towers.

Attached is a redline copy of the third amendment to the Princeton Water Tower Lease agreement between the Village of North Aurora and AT&T. Also attached is a copy of the original agreement.

Cell Site No.: IL0470
Cell Site Name: North Aurora
Fixed Asset No.: 10005325
Market: IL/WI
Address: 600 Princeton Drive

THIRD AMENDMENT TO SITE AGREEMENT NO. 470

THIS THIRD AMENDMENT TO SITE AGREEMENT NO. 470 ("Third Amendment"), dated as of the latter of the signature dates below (the "Effective Date"), is by and between the Village of North Aurora, an Illinois municipal corporation, having a mailing address of 25 East State Street, North Aurora, IL 60542 (hereinafter referred to as "Landlord"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive NE, Atlanta, GA 30324 (hereinafter referred to as "Tenant").

WHEREAS, Landlord and Tenant entered into a Site Agreement No. 470 dated April 27, 1998, as amended by First Amendment to Site Agreement dated May 18, 2011, and as further amended by Second Amendment to Water Tower Lease Agreement dated December 20, 2013 (hereinafter, collectively, the "Agreement"), whereby Landlord leased to Tenant certain Premises, therein described, that are a portion of the property ("Property") located at 600 Princeton Drive, North Aurora, IL; and

WHEREAS, the term of the Agreement will expire on July 31, 2018, and the parties mutually desire to renew the Agreement, memorialize such renewal period and modify the Agreement in certain other respects, all on the terms and conditions contained herein; and

WHEREAS, Landlord and Tenant desire to amend the Agreement to extend the term of the Agreement; and

WHEREAS, Landlord and Tenant desire to amend the Agreement to adjust the Rent (as defined below) in conjunction with the modifications to the Agreement contained herein; and

WHEREAS, Landlord and Tenant desire to amend the Agreement to modify the notice section thereof; and

WHEREAS, Landlord and Tenant, in their mutual interest, wish to amend the Agreement as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree that the recitals set forth above are incorporated herein as if set forth in their entirety and further agree as follows:

1. **Extension of Term.** The term of the Agreement shall be extended to provide that the Agreement has a new initial term of five (5) years ("New Initial Term") commencing on August 1, 2018 ("New Term Commencement Date"). As of the New Term Commencement Date, the term provided in the Agreement and any extensions thereof, as applicable, shall be void and of no further force and consequence. The Agreement will automatically renew, commencing on the expiration of the New Initial Term, for up to three (3) separate consecutive additional periods of five (5) years each (each such five (5) year additional period is hereinafter referred to as an

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"Additional Extension Term" and each such Additional Extension Term shall be considered an ~~Extension~~"Extended Term" under the Agreement), upon the same terms and conditions of the Agreement, as amended herein, without further action by Tenant unless Tenant notifies Landlord in writing of Tenant's intention not to renew the Agreement at least sixty (60) days prior to the expiration of the New Initial Term or the then current Additional Extension Term. The New Initial Term, the Additional Extension Term are collectively referred to as the Term ("Term").

2. **Rent.** Commencing on August 1, 2018, the current rent payable under the Agreement shall be Four Thousand Six Hundred Seventy-Three and 58/100 Dollars (\$4,673.58) per month (the "Rent"), and shall continue during the Term, subject to adjustment as provided herein. Section 3.2 of the Agreement shall be amended to provide that Rent shall be adjusted as follows: in year two (2) of the New Initial Term and each year thereafter, including throughout any Additional Extension Term exercised, the monthly Rent will increase by three and one-half percent (3.5%) over the Rent paid during the previous year.

3. **Rental Stream Offer.** If at any time after the date of this Third Amendment, Landlord receives a bona fide written offer from a third party seeking an assignment or transfer of the Rent payments associated with the Agreement ("Rental Stream Offer"), Landlord shall immediately furnish Tenant with a copy of the Rental Stream Offer. Tenant shall have the right within ninety (90) days after it receives such copy to match the Rental Stream Offer and agree in writing to match the terms of the Rental Stream Offer. Such writing shall be in the form of a contract substantially similar to the Rental Stream Offer. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the ninety (90) day period, Landlord may assign the right to receive Rent payments pursuant to the Rental Stream Offer, subject to the terms of the Agreement. If Landlord attempts to assign or transfer Rent payments without complying with this section, the assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under the Agreement and reserves the right to hold payments due under the Agreement until Landlord complies with this section.

4. **Charges.** All charges payable under the Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subparagraph shall survive the termination or expiration of the Agreement.

5. **Acknowledgement.** Landlord acknowledges that: 1) this Third Amendment is entered into of the Landlord's free will and volition; 2) Landlord has read and understands this Third Amendment and the underlying Agreement and, prior to execution of this Third Amendment, was free to consult with counsel of its choosing regarding Landlord's decision to enter into this Third Amendment and to have counsel review the terms and conditions of this Third Amendment; 3) Landlord has been advised and is informed that should Landlord not enter into this Third Amendment, the underlying Agreement between Landlord and Tenant, including any termination or non-renewal provision therein, would remain in full force and effect.

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6. **Notices.** Section 31 of the Agreement is hereby deleted in its entirety and replaced with the following:

“(a) **NOTICES.** All notices, requests, demands and communications hereunder will 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 or returned undelivered. Notices will be addressed to the parties as follows:

If to Tenant:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: IL0470
Cell Site Name: North Aurora (IL); Fixed Asset No.: 10005325
575 Morosgo Drive NE
Atlanta, GA 30324

With a required copy of the notice sent to the address above to AT&T Legal at:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site #: IL0470
Cell Site Name: North Aurora (IL); Fixed Asset No: 10005325
208 S. Akard Street
Dallas, Texas, 75202-4206

A copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

And as to Landlord:

Village of North Aurora
25 East State Street
North Aurora, IL 60542

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

(b) In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord will send the below documents to Tenant. In the event Tenant does not receive such appropriate documents, Tenant shall not be responsible for any failure to pay the current landlord

- (i) New deed to Property
- (ii) New W-9
- (iii) New Payment Direction Form
- (iv) Full contact information for new Landlord including all phone numbers.”

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Cell Site No.: IL0470
Cell Site Name: North Aurora
Fixed Asset No.: 10005325
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Address: 600 Princeton Drive

~~Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein."~~

7. **First Amendment to Memorandum of Site Agreement No. 470.** Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable First Amendment to Memorandum of Site Agreement No. 470 substantially in the form of the Attachment 1. Either party may record this memorandum at any time, in its absolute discretion.

8. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this Third Amendment, the terms of this Third Amendment shall control. Except as expressly set forth in this Third Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this Third Amendment.

9. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

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Cell Site No.: IL0470
Cell Site Name: North Aurora
Fixed Asset No.: 10005325
Market: IL/WI
Address: 600 Princeton Drive

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute this Third Amendment on the dates set forth below.

LANDLORD:
Village of North Aurora,
an Illinois municipal corporation

TENANT:
New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]

STATE OF _____)
) SS.
COUNTY OF _____)

DATED: _____.

(Signature of Notary)

My appointment expires: _____

Cell Site No.: IL0470
Cell Site Name: North Aurora
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Market: IL/WI
Address: 600 Princeton Drive

TENANT ACKNOWLEDGEMENT

STATE OF _____)
) SS.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that he/she signed this
instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged
it as the _____ of AT&T Mobility Corporation, the
Manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company, to be
the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

Notary Seal

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary Public in and for the State of _____

My appointment expires: _____

Cell Site No.: IL0470
Cell Site Name: North Aurora
Fixed Asset No.: 10005325
Market: IL/WI
Address: 600 Princeton Drive

Attachment 1

First Amendment to Memorandum of Site Agreement No. 470

**THIS DOCUMENT PREPARED BY,
and
WHEN RECORDED RETURN TO:**

Michael Frauncces, President
(858) 799-7850
Md7, LLC
10590 W. Ocean Air Drive, Suite 300
San Diego, CA 92130

Parcel #: 15-04-351-002

SPACE ABOVE FOR RECORDER'S USE

Re: Cell Site #: IL0470
Cell Site Name: North Aurora (IL)
Fixed Asset Number: 10005325
State: IL
County: Kane

First Amendment to Memorandum of Site Agreement No. 470

This First Amendment to Memorandum of Site Agreement No. 470 is entered into on this ____ day of _____, 20____, by and between the Village of North Aurora, an Illinois municipal corporation, having a mailing address of 25 East State Street, North Aurora, IL 60542 ("Lessor" or "Landlord") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive NE, Atlanta, GA 30324, as successor-in-interest to Southwestern Bell Mobile Systems, Inc. ("Lessee" or "Tenant").

1. Landlord and Tenant (or Tenant's predecessor-in-interest) entered into a certain Site Agreement No. 470 dated April 27, 1998, as amended by that certain First Amendment to Site Agreement dated May 18, 2011, as amended by Second Amendment to Water Tower Lease Agreement dated December 20, 2013, and as further amended by that certain Third Amendment to Site Agreement No. 470 dated _____, 20____ (collectively, the "Agreement") for the purpose of installing, operating and maintaining a communications facility and other improvements. A Memorandum of Site Agreement No. 470 reflecting the Agreement was recorded on August 16, 1999, as Document No. 1999K079663, in the public records of Kane County, State of Illinois.
2. The parties have agreed that the Agreement shall be extended and has a new initial term of five (5) years ("New Initial Term"), commencing on August 1, 2018, subject to the provisions of the Agreement.

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3. The parties have further agreed that, following the New Initial Term, to add three (3) successive periods of five (5) years each upon the same terms and conditions of the Agreement. The Agreement will be automatically renewed unless Tenant notifies Landlord in writing of Tenant's intention not to renew the Agreement at least sixty (60) days prior to the expiration of the then existing term.
4. The portion of the land being leased to Tenant (the "Premises") is described in Exhibit 1 annexed hereto.
5. This First Amendment to Memorandum of Site Agreement No. 470 is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this First Amendment to Memorandum of Site Agreement No. 470 and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

[NO MORE TEXT ON THIS PAGE - SIGNATURES TO FOLLOW ON NEXT PAGE]

Cell Site No.: IL0470
Cell Site Name: North Aurora
Fixed Asset No.: 10005325
Market: IL/WI
Address: 600 Princeton Drive

IN WITNESS WHEREOF, the parties have executed this First Amendment to Memorandum of Site Agreement No. 470 as of the day and year first above written.

LANDLORD:
Village of North Aurora,
an Illinois municipal corporation

TENANT:
New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

[ACKNOWLEDGEMENTS APPEAR ON NEXT PAGE]

Cell Site No.: IL0470
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LANDLORD ACKNOWLEDGEMENT

[illegible]

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of the Village of North Aurora, an Illinois municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

Notary Seal

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of

My appointment expires: _____

Cell Site No.: IL0470
Cell Site Name: North Aurora
Fixed Asset No.: 10005325
Market: IL/WI
Address: 600 Princeton Drive

TENANT ACKNOWLEDGEMENT

STATE OF _____)
) SS.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that he/she signed this
instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged
it as the _____ of AT&T Mobility Corporation, the Manager of **New
Cingular Wireless PCS, LLC, a Delaware limited liability company**, to be the free and
voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

Notary Seal

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of

My appointment expires: _____

Cell Site No.: IL0470
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Exhibit 1 to First Amendment to Memorandum of Site Agreement No. 470

Legal Description

Street Address: 600 Princeton Drive, North Aurora, IL 60542

Parcel #: 15-04-351-002

That certain Premises consisting of certain space on Landlord's Water Tower located on Landlord's real property described below (the "Property") as well as certain ground space at the base of the Water Tower of approximately 42' x 32' (and access and utility easements) on a portion of the real property and which Property is described in more detail as follows:

THAT PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION FOUR, TOWNSHIP THIRTY-EIGHT NORTH, RANGE EIGHT, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF COMMONWEALTH EDISON COMPANY'S TRANSMISSION RIGHT-OF-WAY WITH THE WEST LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION FOUR; THENCE SOUTH 15°-11'-05" EAST, BEING AN ASSUMED BEARING ON THE SOUTHERLY LINE OF COMMONWEALTH EDISON COMPANY'S TRANSMISSION RIGHT-OF-WAY, A DISTANCE OF 100.22 FT.; THENCE SOUTH 00°-68'-67" WEST, PARALLEL WITH THE WEST LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION FOUR, A DISTANCE OF 89.60 FT. TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 00°-68'-67" WEST ON SAID PARALLEL LINE, A DISTANCE OF 44.0 FT.; THENCE NORTH 89°-01'-03" WEST, PERPENDICULAR TO THE LAST DESCRIBED PARALLEL LINE, A DISTANCE OF 32.0 FT.; THENCE NORTH 00°-68'-67" EAST, PARALLEL WITH THE WEST LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION FOUR, A DISTANCE OF 44.0 FT.; THENCE SOUTH 89°-01'-03" EAST PERPENDICULAR TO THE LAST DESCRIBED COURSE, A DISTANCE OF 32.0 FT. TO THE POINT OF BEGINNING, ALL IN KANE COUNTY, ILLINOIS.

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SITE AGREEMENT NO. 470

This Agreement is made and entered into as of this 27th day of April, 1998 by and between the **VILLAGE OF NORTH AURORA**, an Illinois municipal corporation ("Landlord"), and **SOUTHWESTERN BELL MOBILE SYSTEMS, INC. d/b/a CELLULAR ONE - CHICAGO**, a corporation dually organized and existing under the laws of the State of Delaware and the Commonwealth of Virginia ("Tenant").

BACKGROUND

A. Landlord is the owner of a parcel of land located in the Village of North Aurora, Kane County, Illinois legally described on the attached Exhibit "A" (the "Owned Premises"), upon which a municipal water tower owned by Landlord (the "Water Tower") is located.

B. Tenant desires to lease certain space at the top of the Water Tower (the "Dome Space"), and certain space measuring forty-four (42) feet by thirty-two (32) feet at the base of the Water Tower (the "Ground Space") (hereafter, the Dome Space and the Ground Space shall be referred to as the "Premises"), all as more particularly described and depicted on the attached Exhibit "B."

C. In connection with the conduct of Tenant's wireless communications business, Tenant desires to use the Premises for Tenant's installation, operation and maintenance of Tenant's cellular transmit and receive equipment consisting of (but not limited to) nine (9) cellular panel antennas, connecting cables, transmission wires and other ancillary equipment (collectively, the "Antenna Facility").

C. Landlord is willing to lease the Premises to Tenant for such purpose subject to the terms and conditions of this Agreement.

D. All references herein to the "Tower Ordinance" refer to the Village of North Aurora Ordinance No. 97-6, being an *Ordinance Amending Article III and Article VI of the Zoning Ordinance of the Code of Ordinances Establishing Antenna and Tower Siting Regulations for the Village of North Aurora, Illinois* and any amendments thereto.

AGREEMENT

In consideration of the mutual covenants and agreements of the parties, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

1 Premises; Antenna Facility.

1.1 Landlord leases to Tenant and Tenant leases from Landlord the Premises described and depicted on Exhibit "B" attached hereto and made a part of this Agreement. Tenant represents and warrants that Tenant's construction and installation of its Antenna Facility on the Premises will at all times be in conformance with the Tower Ordinance.

1.2 Within ninety (90) days following the execution of this Agreement by all parties, Tenant shall provide Landlord with its architect's drawings (the "Plans") describing the exact proposed placement of Tenant's equipment on the Dome Space. Landlord shall have a period of time (not to exceed sixty (60) days) in which to approve the Plans, or to provide Tenant with specific reasons as to why the Plans are not approved. The parties will cooperate with one another and with Sprintcom, Inc. ("Sprintcom") to ensure the satisfactory placement of the Antenna Facility on the Premises and elsewhere on the Water Tower as required.

2. Commencement Date; Term; Termination.

2.1 This Agreement has been executed as of the 27th day of April, 1998 (hereinafter referred to as the "Execution Date"). However, the Term of this Agreement shall not be deemed to have commenced until Tenant has notified Landlord, in writing, that Tenant has received the last of the necessary environmental studies and reports, and the local, state and federal approvals, licenses and permits so as to permit Tenant's construction of the Antenna Facility (such approvals, licenses and permits hereinafter collectively called "the Approvals"), or six (6) months from the date of the parties' execution of this Agreement (provided however, that such six (6) month period may be extended by two (2) additional months if Tenant notifies Landlord in writing that the results of certain environmental reports obtained by Tenant require Tenant to submit to the Federal Communications Commission an Environmental Assessment as required by 47 CFR § 1.1307, Subpart I, entitled *Procedures for Implementing the National Environmental Policy Act*, whichever shall first occur (the "Commencement Date"). Notwithstanding the foregoing, in the event Tenant, Landlord and Sprintcom are unable to agree upon the location of the Ground Space (as hereinbefore described) to Tenant's satisfaction, Tenant may notify Landlord in writing of its intention to terminate this Agreement before the Commencement Date, and Tenant shall have no further obligations to Landlord, including any obligation to pay Rent or any other sums of money to Landlord. ..

2.2 The initial term of this Agreement shall begin on the Commencement Date and shall expire on midnight on the day immediately preceding the tenth (10th) anniversary of the Commencement Date (the "Initial Term"). Tenant may automatically extend this Agreement on the same terms for two (2) additional periods of five (5) years each (the "Extended Terms") unless Tenant gives Landlord written notice of Tenant's termination of the Agreement within ninety (90) days preceding the expiration of the Initial Term or the first Extended Term.

3. Rent.

3.1 In connection with Tenant's lease of the Premises from Landlord, Tenant agrees to pay Rent to Landlord in the amount of Fifteen Hundred Dollars (\$1,500) per month. Tenant's payments of Rent shall commence on the Commencement Date and shall continue to be due and payable thereafter, in advance, on the first day of each month throughout the Initial Term and any Extended Term(s).

3.2 Rent shall be increased on each anniversary of the Commencement Date by an amount equal to four (4%) percent of the previous year's rent.

3.3. If any payment of Rent is not received by Landlord within ten (10) days after Tenant's receipt of notice from Landlord that any such monthly payment has not been timely received, Tenant shall pay Landlord a late payment charge equal to five percent (5%) of the amount then due, and such sum shall be due and payable together with the next monthly payment of Rent. In addition, any amounts not paid when due shall bear cumulative interest at the rate of two percent (2%) per month until paid.

3.4 At such time as Tenant tenders a fully executed original of this Agreement to Landlord, Tenant will pay to Landlord the sum of Three Thousand Dollars (\$3,000.00), which amount Landlord may apply in payment of expenses incurred by Landlord in connection with this Agreement. Such expenses include, but are not limited to Landlord's reasonable attorney's fees and expenses and Landlord's consultants' fees (hereafter, "Landlord's Expenses"). Within thirty (30) days following the Commencement Date, Landlord shall submit a detailed invoice or invoices to Tenant in connection with Landlord's Expenses, and if the amount of such invoice(s) exceeds the sum of Three Thousand Dollars (\$3,000.00), Tenant agrees to reimburse Landlord for such additional Expenses up to an amount of Two Thousand Dollars (\$2,000.00). Tenant will remit payment of any sums due Landlord within thirty (30) days after Tenant's receipt of Landlord's invoice(s).

3.5 Except in the event of an uncured default by Tenant, if this Agreement is terminated by either party at any time other than on the last day of a month, Rent shall be prorated as of the date of such termination, and any and all unearned Rent shall be refunded to Tenant except as may otherwise be provided elsewhere in this Agreement.

3.6. The Rent and any other consideration to be paid or provided by Tenant to Landlord under this Agreement shall be paid or provided without set-off or deduction.

4. Use of Premises.

4.1. Tenant shall use the Premises for the installation, operation, and maintenance of its Antenna Facility in connection with Tenant's conduct of its wireless communications business, and uses incidental thereto and for no other purpose.

4.2. Tenant shall, at its expense, comply with all present and future federal, state and local laws, ordinances, rules and regulations (including laws and ordinances relating to health, radio frequency emissions, other radiation and safety) in connection with the use, operation, maintenance, construction and/or installation of the Antenna Facility and/or the Premises. If requested by Tenant in writing, Landlord agrees to cooperate with Tenant in obtaining, at Tenant's expense (including reimbursement of Landlord's reasonable attorney and administrative fees), any federal licenses and permits that may be required by Tenant for Tenant's use of the Premises as described in this Agreement.

4.3. Tenant agrees that all of its installation and construction work described in this Agreement in connection with its Antenna Facility shall be completed promptly in a neat, workmanlike manner, consistent with good engineering practices and in compliance with all applicable codes and regulations. All costs of such installation and construction, including, but

not limited to, the cost of extending Landlord's electrical service to Tenant's equipment (if required), shall be paid by the Tenant.

- 4.4 (a) Within no more than thirty (30) days following the termination or earlier expiration of this Agreement, Tenant shall remove its Antenna Facility from the Water Tower and within the Equipment Shelter (as hereinafter described), and shall convey all of its ownership interest in and to the Equipment Shelter to Landlord. Such removal shall be done in a careful and workmanlike manner and without interference or damage to any other equipment, structures or other users' operations on the Owned Premises, including the Water Tower.
- (b) Upon removal of Tenant's Antenna Facility as provided above, Tenant shall restore the affected area of the Premises to at least as good a condition as existed prior to Tenant's installation of its Antenna Facility, normal wear and tear and losses or casualty beyond Tenant's control excepted.
- (c) All costs and expenses of removal and restoration as described herein shall be borne by Tenant, and Tenant shall hold Landlord harmless from any portion thereof.
- (d) When Tenant performs any work on the Premises, Tenant shall, at its expense, remove any obstructions from the Premises and restore the Premises to as good a condition as existed prior to the work being performed, unless otherwise directed by Landlord.

5. **Construction Standards.** Tenant shall construct a one-story building having external dimensions of approximately twelve (12) feet by twenty-eight (28) feet (the "Equipment Shelter") on the Ground Space in compliance with the Tower Ordinance and without the attachment of any construction liens. The Plans for both the Equipment Shelter and the Antenna Facility are attached hereto as Exhibit "C." Tenant undertakes full and complete responsibility at all times hereafter for the expenses and quality of construction of Tenant's Antenna Facility and other improvements in compliance with all applicable federal, state and local laws, regulations and codes, and any other requirements of governmental authorities having jurisdiction over such construction, including but not limited to, compliance with acts affecting construction of public buildings and service areas used by public employees, and Tenant agrees to remedy or correct any deficiencies with such compliance. All of such construction and installation shall be performed pursuant to the applicable permitting process by authorized and licensed personnel. Tenant's construction and installation work shall proceed without interference or disruption by or from Landlord or any other users of the Premises, and Tenant shall be responsible for all permitting costs. Prior to Landlord's issuance of permits under its jurisdiction or control, Tenant shall insure that its contractor has obtained and provided Landlord with evidence of the insurance required under Section 22 below. Landlord reserves the right to require Tenant to paint the Antenna Facility to be installed on the Dome Space or elsewhere on the Water Tower in a manner consistent with the

color of the Water Tower, or to otherwise use its best efforts to shield the Antenna Facility from view.

6. Installation of Equipment.

6.1. Tenant's installation of its Antenna Facility shall be in accordance with the Plans, which Plans shall have been approved by Landlord. Any damage to the Water Tower or any portion of the Owned Premises caused by Tenant or Tenant's contractors shall be repaired or replaced immediately at Tenant's expense to Landlord's sole satisfaction. In connection with the installation and operation of the Antenna Facility, Tenant shall not make any penetrations of the Dome without Landlord's prior written consent (unless Landlord is deemed to have given its consent by providing its approval of the Plans submitted to Landlord by Tenant). Any penetration of the Dome that may be required in order for Tenant to install its Antenna Facility shall be subject to Landlord's prior approval and shall be undertaken only under the supervision of Landlord's engineer or other designated agent. Tenant shall pay all reasonable costs and expenses in connection with Tenant's penetration of the Dome.

6.3. The Plans shall designate the exact location where its Antenna Facility will be located on the Dome, and the survey to be provided by Tenant shall spot the location of the Equipment Building to be constructed on the Ground Space. Within thirty (30) days following Tenant's completion of its installation and construction of the Antenna Facility on the Premises, and if the Plans previously submitted by Tenant and approved by Landlord do not adequately depict the actual location of Tenant's equipment comprising the Antenna Facility, Tenant shall provide Landlord with as-built drawings of the Antenna Facility.

7. **Landlord's Use of Tenant's Towers.** In the event Tenant has erected and owns other telecommunications towers ("Tower(s)") within the municipal limits of the Village of North Aurora, Kane County, Illinois, or within one and one-half miles of the municipal limits thereof, and provided that Tenant has the contractual right to do so, Tenant shall allow Landlord, at no cost to Tenant, to locate, place and operate Landlord's communications facilities (antennas, transmitters, receivers, and support equipment) on any or all of such towers, provided however, that in Tenant's sole opinion it is technically feasible to do so, and that such use of the Tower(s) by Landlord does not interfere with Tenant's use of such Tower(s). A list of all of Tenant's Towers located within the municipal limits of the Village of North Aurora, Kane County, Illinois or within one and one-half miles of the municipal limits thereof is attached to this Agreement as Exhibit "D." In the event Landlord desires to install Landlord's communication facilities on any of Tenant's Towers, the following conditions shall apply:

(i) The installation of Landlord's communications facilities shall be performed by Tenant's contractors at Landlord's expense.

(ii) Landlord and Tenant shall at all times operate, keep and maintain at their respective cost and expense, their respective communications facilities on such Tower(s) in conformance with all applicable federal regulations, rules and operating procedures.

(iii) In the event any of Landlord's communications facilities causes interference with Tenant's communications facilities on any Tower, within ten (10) days following Tenant's notice to Landlord of such interference, Landlord shall remedy or eliminate such interference. If Landlord is unable to do so, Landlord shall be required to remove its communications facilities from such tower or towers.

(iv) In the event any of Tenant's communications equipment causes interference with Landlord's communications equipment on any Tower, within ten (10) days following Tenant's receipt of notice from Landlord of such interference, Tenant shall remedy or eliminate such interference. If Tenant is unable to do so, Landlord shall be required to remove its communications facilities from such tower or towers.

8. Equipment Upgrade, Replacement and Relocation.

A. Tenant may upgrade or replace any of the equipment comprising its Antenna Facility on the Dome Space or within the Equipment Shelter without the prior written approval of Landlord, provided that such upgraded or replacement equipment is substantially in accordance with the equipment described and depicted on the Plans. Any change in the location or type of equipment comprising Tenant's Antenna Facility on the Dome Space or elsewhere on the Water Tower must be approved in writing by Landlord. In such event, Tenant shall submit to Landlord detailed drawings depicting such equipment changes or relocation (the "Supplemental Plans") thirty (30) days' prior to any such proposed relocation or change of equipment, and Landlord shall have a period of time, not to exceed thirty (30) days in which to approve the Supplemental Plans, or to notify Tenant that such Supplemental Plans have not been approved. Landlord agrees not to unreasonably withhold, delay or condition its approval of Tenant's Supplemental Plans.

B. If at any time Tenant desires to install additional antennas or other equipment on the Water Tower (the "Additional Antenna Facility"), Tenant shall notify Landlord in writing, and the parties will negotiate the terms and conditions, including additional Rent, to be agreed upon by the parties in connection with Tenant's installation of such Additional Antenna Facility, and this Agreement will be amended accordingly.

9. Maintenance.

9.1 Tenant shall, at its own expense, maintain the Premises and the Antenna Facility in a safe condition, in good repair and in a manner reasonably suitable to Landlord so as not to conflict unreasonably with Landlord's or Landlord's permitted users' use of the Water Tower or other portions of the Owned Premises.

9.2 Tenant shall have sole responsibility for the maintenance, repair, and security of the Premises, including the Antenna Facility and any and all of Tenant's personal property

located on the Premises, and shall keep the same in good repair and condition at all times while this Agreement is in effect.

9.3 Tenant shall keep the Premises free of debris and anything of a dangerous, noxious or offensive nature which would create a hazard or undue vibration, heat, noise or interference.

9.4 In the event Landlord or any other lessee or licensee of Landlord undertakes any painting, construction or other alterations on the Water Tower, upon the provision of thirty (30) days' advance written notice to Tenant, Tenant shall take reasonable measures at Tenant's cost to protect Tenant's Antenna Facility and all of its other property and equipment from paint and debris fallout which may occur during any such painting, construction or alteration process.

9.5 If Landlord reasonably determines that it is necessary and advisable to alter the height of the Water Tower to enhance the effectiveness of the Water Tower, Landlord shall provide Tenant with as much advance notice of such anticipated action as possible (which in no event shall be less than one hundred and eighty (180) days), and in the event of such occurrence, Tenant shall have the option of terminating this Agreement if Tenant determines, in Tenant's sole opinion, that such alteration of the Water Tower is detrimental to Tenant's operations as permitted under this Agreement. Upon such termination by Tenant, all of Tenant's obligations to Landlord under this Agreement shall terminate and be of no further effect. If Tenant agrees to such action, it is understood and agreed that this Agreement shall remain in full force and effect during the applicable Extended Term, and Landlord shall cooperate with Tenant in connection with the raising of the Water Tower to allow Tenant to protect, modify and/or to temporarily relocate its Antenna Facility elsewhere on the Owned Premises. However, in no event shall Landlord raise the Water Tower during the Initial Term of this Agreement. Further, in no event shall Landlord be liable or responsible for Tenant's costs in connection with the protection, modification, and/or moving of Tenant's Antenna Facility if Landlord alters the height of the Water Tower at any time during the Extended Term(s) of this Agreement, except that Tenant shall be entitled to an abatement of rent for any period of time in which Tenant is unable to operate its Antenna Facility as a result of such action on the part of Landlord.

10. Tenant's Rights of Access to the Premises.

10.1 Tenant shall have access to the Equipment Shelter at all times without notice to Landlord.

10.2 Following the completion of Tenant's installation of its Antenna Facility, Tenant shall have access to the Water Tower for general maintenance and repair of the equipment comprising the Antenna Facility upon twenty-four (24) hours' notice to the Superintendent of Water or such other person that may be designated by Landlord. However, in the event of an emergency which requires Tenant to have immediate access to its Antenna Facility on the Water Tower, Tenant will telephone the Superintendent of Water and/or the Village Police Department and Landlord will permit Tenant to have access to the Water Tower within not

more than three (3) hours following such telephone call from Tenant. Landlord shall have the right to have its Superintendent of Water, or other designee, accompany Tenant whenever it accesses the Water Tower; however, Tenant shall not be assessed any charge or cost for the services of such agent of Landlord.

10.3 Landlord shall be granted access to the Equipment Shelter at reasonable times upon advance notice to Tenant to examine and inspect the Equipment Shelter for safety reasons or to ensure that the Tenant's covenants are being met. Tenant shall have the right to have a representative of Tenant accompany Landlord at such times.

11. **Co-Location.** Tenant acknowledges that Landlord has the right to lease space on the Water Tower to others, and it is acknowledged by the parties that Landlord has entered into an agreement with Sprint whereby Sprint shall be permitted to install its antenna facility on the Water Tower and to place its equipment cabinets on an agreed upon location at the base of the Water Tower. If at any time while this Agreement is in effect, Landlord desires to lease space on the Water Tower and/or elsewhere on the Owned Premises to another provider of telecommunications services in order to comply with the terms of the Tower Ordinance, Landlord shall notify Tenant in writing of such proposed transaction and shall provide Tenant with detailed plans and drawings depicting such other provider's proposed installation of equipment on the Water Tower and on the Owned Premises. If, based upon Tenant's review of such plans and drawings (and if required, a structural analysis of the Water Tower to be performed by Tenant at Landlord's expense), Tenant determines that such proposed lease of space by Landlord to such other provider will have an adverse effect on Tenant's operations as permitted under this Agreement, Landlord agrees that Landlord will not lease space on the Water Tower or the Owned Premises to such other telecommunications provider. Notwithstanding the foregoing, in no event will Landlord agree to lease space to a provider of telecommunications services if such provider transmits or broadcasts radio, television or other communications signals which interfere with Tenant's operations at the radio frequencies listed below, or for any other use which interferes with or materially impairs, restricts or limits Tenant's cellular telecommunications operations or Tenant's use of the Premises as contemplated by this Agreement. The range of radio frequencies used by Tenant are the following: 869.040 MHZ through 879.990 MHZ; 890.010 MHZ through 891.480 MHZ; 824.040 MHZ through 836.990 MHZ and 845.010 MHZ through 846.480.

12. **Utilities.** If permitted by the servicing utility, Tenant shall at its expense separately meter charges for the consumption of electricity and other utilities associated with its use of the Premises, and shall timely pay all costs associated therewith. If such separate metering is not permitted, Tenant shall, at its sole cost and expense, install submeter(s) at the Premises to measure Tenant's usage of utilities in connection with the operation of Tenant's Antenna Facility. The parties acknowledge and agree that in the event of submetering, Landlord shall be billed by the servicing utility for all utilities used at the Premises by either Landlord or Tenant, and that Tenant is required to pay the cost of Tenant's utility consumption. Initially, Tenant's estimated cost of electricity shall be Six Hundred Dollars (\$600.00) per year payable in equal monthly installments of Fifty Dollars (\$50.00), which sum shall be remitted to Landlord with the payment of Rent. The submeter shall be read annually on the anniversary of the Commencement Date to

determine Tenant's actual usage of utility service for the prior year. In the event that the actual cost of electricity used by Tenant exceeds the amounts paid by Tenant to Landlord for the prior year, Tenant shall pay the difference to Landlord within thirty (30) days following Tenant's receipt of an invoice therefor. In the event that the actual cost of electricity used by Tenant is less than the payment made by Tenant, Landlord shall refund such overpaid amount to Tenant. The annual cost of electricity shall be computed at the current public utility rate. After each annual reading of the submetered cost of Tenant's utility usage, the estimated monthly installment payments made by Tenant in addition to Rent shall be adjusted to an amount equal to one-twelfth (1/2th) of the annual cost of utility usage for the prior year.

13. **License Fees.** Tenant shall pay, as they become due and payable, all fees, charges, taxes and expenses required for licenses and/or permits required for or occasioned by Tenant's use of the Premises as required by Landlord's current and unmodified Tower Ordinance.

14. **Approvals; Compliance with Laws.** Tenant's use of the Premises is contingent upon its obtaining satisfactory environmental reports, and all certificates, permits, zoning, and other approvals that may be required by any federal, state or local authority including the requirements of the Tower Ordinance. Tenant shall erect, maintain and operate its Antenna Facility in accordance with standards, statutes, ordinances, rules and regulations presently in effect, or that may hereafter be issued by the Federal Communications Commission or any other governing agency.

15. **Interference.**

15.1 Tenant's installation, operation, and maintenance of its Antenna Facility on the Premises shall not damage or interfere in any way with Landlord's operations on the Owned Premises or the rights of other pre-existing tenants on the Owned Premises. At all times while this Agreement is in effect, Landlord reserves the right to take any reasonable action it deems necessary, upon not less than thirty (30) days' advance written notice to Tenant, to repair, maintain, alter or improve the Water Tower and Landlord agrees to use its best efforts to ensure that any such repair, maintenance, alteration or improvements made to the Water Tower will not interfere with Tenant's operation of its Antenna Facility.

15.2 Landlord does not guarantee that there will be no interference with Tenant's operations of its Antenna Facility; however, Landlord agrees to use its best efforts to ensure that any interference caused by Landlord or a lessee, licensee or invitee of Landlord will be remedied or eliminated as soon as possible after Tenant's notification to Landlord of any such interference. Tenant acknowledges and understands that Landlord's Tower Ordinance requires co-location of other carriers' telecommunications facilities on Landlord's Owned Premises under certain circumstances. Therefore, pursuant to the provisions contained in section 11 above, Tenant agrees to reasonably cooperate with Landlord and/or such other telecommunications provider or providers that Landlord permits to use the Water Tower for purposes of operating antenna facilities. Landlord shall not use or permit others to use the Owned Premises (including the Water Tower) if such use interferes with or materially impairs,

restricts or limits Tenant's cellular communications operations as permitted under this Agreement. In the event any prospective tenant requests permission to place any type of antenna or other transmit and receive radio equipment on the Water Tower, the provisions contained in paragraph 11 shall govern Landlord's grant of permission to such prospective tenant.

15.3 Tenant's use of the Premises and its operation of the Antenna Facility on the Premises shall not interfere with Sprint's use and operation of its communication facilities on the Water Tower.. If Tenant's Antenna Facility causes interference to Sprint's equipment on the Water Tower, Tenant shall take all measures reasonably necessary to correct and eliminate the interference. If the interference cannot be eliminated in a reasonable time, Tenant shall immediately cease operating its Antenna Facility until the interference has been eliminated.

16. **Default and Remedies.**

16.1 **By Tenant.** In the event of default under this Lease Agreement by Tenant, Landlord shall be entitled to remedies as shall then be provided by law except that Landlord shall not be entitled to distraint any personal property of Tenant located on the Premises; and provided that prior to, and as a condition precedent to, the exercise of any remedy, Landlord shall give to Tenant written notice of the nature of the default and Tenant shall have thirty (30) days (or, if the default cannot be cured within thirty (30) days, a longer period as shall be necessary to cure the default, acting with due diligence), after receipt of the notice within which to cure the default, during which period no remedy shall be pursued. If Tenant fails to cure a default, in addition to any other remedies available to Landlord, Landlord may elect to commence eviction proceedings against Tenant provided, however, Tenant shall be permitted a six-month stay after its receipt of a notice of eviction at 110% of the then current monthly rent to find an alternate site. It shall be a default if Tenant:

- i. Does not pay the Rent or any other sums due and owing Landlord when due in accordance with the terms of this Agreement;
- ii. Fails to perform any other covenant or condition of this Agreement;
- iii. Abandons or vacates the Premises; or
- iv. Becomes insolvent or is adjudicated as bankrupt or makes any assignment for the benefit of creditors.

16.2 **By Landlord.** If Landlord defaults in any of its obligations under this Lease, in addition to any remedies available at law or equity, Tenant may perform Landlord's obligation and may offset from the rent or any other amounts next payable Tenant's costs and expenses of doing so. Notwithstanding anything to the contrary contained in this Agreement, Tenant may defer payment of Rent including the first rent payment, during any period in which Landlord is in default in any of its obligations under this Agreement, or has failed to provide or execute or

cause to be provided or executed (a) any document reasonably necessary for Tenant's use of the Premises in the manner contemplated, (b) any required Agreement, or (c) any document reasonably necessary to obtain any title insurance or other necessary or desirable insurance or consent. Notwithstanding the foregoing, in the event of a default by Landlord under this Agreement, Tenant shall give to Landlord written notice of the default specifying the nature of the default and Landlord shall have thirty (30) days (or, if the default cannot be cured within thirty (30) days, a longer period as shall be necessary to cure the default, acting with due diligence), after the receipt of the notice within which to cure the default. If Landlord fails to cure a default, in addition to any other remedies available to Tenant, Tenant may elect to cancel this Agreement.

16.3 Prevailing Party. If any suit or action shall be brought to enforce or declare any of the terms of this Agreement, to terminate this Agreement, to recover possession of the Premises or to recover any rent or damages sustained as a result of a default in the performance of any obligations under this Agreement or a breach of any of the representations and warranties herein contained, the party not prevailing in such suit or action shall be liable to the prevailing party for the prevailing party's costs and expenses, including, without limitation, court costs, reasonable attorney's fees and expert witnesses' fees, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered.

16.4 Tenant agrees to post a bond, letter of credit or other surety prior to the issuance of the Building Permit in an amount sufficient to cover the expense of removal of the Antenna Facility in the event of abandonment by Tenant, which bond, letter of credit or other surety shall be in the amount of \$20,000.00.

17. Optional Termination. After this Agreement has been in full force and effect for not less than sixty (60) months, the Agreement may be terminated upon ninety (90) days' advance written notice

(a) by Tenant if

(i) Tenant is unable to obtain or maintain any license, permit or other governmental approval necessary for the construction and/or operation of the intended Antenna Facility or Tenant's business prior to the Commencement Date with no further liability except as may be specified elsewhere in this Agreement; or

(ii) the Premises are no longer usable or necessary for the conduct of Tenant's business.

(b) by Landlord if

(i) Landlord reasonably determines in its sole discretion that the Dome or Water Tower is structurally unsound or otherwise not suitable for Tenant's use, including but not limited to consideration of age of the structure, damage or destruction of all or part of

the Water Tower from any source, or factors relating to the condition of the Dome and/or Water Tower; or

(ii) If at any time it is determined by a court or other agency having final jurisdiction over such matters that the electrical emissions, operation or maintenance of Tenant's Antenna Facility at the Premises actually poses a safety or health hazard (as defined by such court or other agency) or violates applicable laws or ordinances; or

(iii) Tenant loses its license to provide cellular service for any reason, including, but not limited to, non-renewal, expiration, or cancellation of its Federal Communications Commission license.

Upon termination of this Agreement for any reason, Tenant shall, at Tenant's sole cost and expense, remove the equipment comprising its Antenna Facility and all other property or equipment owned by Tenant located on the Water Tower and within the Equipment Shelter (it being agreed that the Equipment Shelter shall become Landlord's sole property), and shall repair any damage to the Premises caused by such equipment, normal wear and tear and losses or casualty beyond Tenant's control excepted.

18. Liquidated Damages: Termination. Any notice of termination given by one party to the other pursuant to Section 17 shall be so given in writing by prepaid United States certified mail, return receipt requested, and shall be effective upon the party's receipt of such notice. All Rent paid to Landlord by Tenant prior to said termination date shall be retained by Landlord. However, if Landlord terminates the Agreement for any reason other than as described above in section 17(b)(iii), Landlord shall refund any unearned Rent to Tenant. Upon termination by either party, this Agreement shall become null and void and the parties shall have no further obligations to each other; except that in the event of Tenant's termination under Section 17(a)(ii), rental payments to Landlord shall continue to be made by Tenant for a period of six (6) months following Tenant's notice of termination.

19. Alteration, Damage or Destruction. If the Water Tower or any portion thereof is altered, destroyed or damaged so as to materially hinder Tenant's effective use of Tenant's Antenna Facility through no fault or negligence of Tenant, Tenant may elect to terminate this Agreement upon thirty (30) days' written notice to Landlord. In such event, Tenant shall promptly remove the Antenna Facility from the Premises and shall restore the Premises to the same condition as existed prior to this Agreement, normal wear and tear and losses or casualty beyond Tenant's control excepted. This Agreement (and Tenant's obligation to pay Rent) shall terminate upon Tenant's removal of its Antenna Facility from the Premises, and in the event Tenant has prepaid Rent to Landlord, Tenant shall be entitled to the reimbursement of such Rent. Landlord shall have no obligation to repair any damage to any portion of the Premises.

20. Condemnation. In the event the Premises are taken by eminent domain, this Agreement shall terminate as of the date Tenant is required to remove its Antenna Facility

from the Premises. In the event a portion of the Premises is taken by eminent domain, either party shall have the right to terminate this Agreement as of the date of such taking, by giving thirty (30) days' written notice to the other party. In the event of any taking under the power of eminent domain, Tenant shall not be entitled to any portion of the reward paid for the taking and Landlord shall receive the full amount of such award. Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant on account of any and all damage to Tenant's business and any costs or expenses incurred by Tenant in moving or removing its equipment, personal property, Antenna Facility, and other leasehold improvements from the Premises. Tenant hereby expressly waives any right or claim to any portion of the Landlord's recovery except to the extent that the Landlord's recovery includes any compensation which is separately attributable to the damage to the Tenant's business and any costs or expenses incurred by the Tenant in moving or removing its equipment, personal property, Antenna Facilities, and leasehold improvements, and to the extent Tenant is precluded from such recovery from the condemning authority. NOTWITHSTANDING THE FOREGOING, FOR THE TERM AND ANY EXTENDED TERMS OF THIS AGREEMENT, LANDLORD AGREES NOT TO EXERCISE ITS RIGHT OF EMINENT DOMAIN WITH RESPECT TO THE PREMISES.

21. Indemnity and Insurance.

21.1. Disclaimer of Liability: Landlord shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Tenant's construction, maintenance, repair, use, operation, condition or dismantling of the Equipment Shelter or Tenant's Antenna Facility, unless such injury or damage is caused by Landlord's negligence or willful misconduct.

21.2. **Tenant's Indemnification:** Tenant shall, at its sole cost and expense, indemnify and hold harmless Landlord and all associated, affiliated, allied and subsidiary entities of Landlord, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against:

(i) Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of Tenant, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of

the Premises or Tenant's failure to comply with any federal, state or local statute, ordinance or regulation;

(ii) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), which are imposed upon, incurred by or asserted against the Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to Tenant, its contractors or subcontractors, for the installation, construction, operation, maintenance or use of the Premises, and upon the written request of Landlord, Tenant shall cause such claim or lien covering Landlord's property to be discharged or bonded within thirty (30) days following such request.

(iii) Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any financing or securities offering by Tenant or its affiliates for violations of the common law or any laws, statutes, regulations of the State of Illinois or the United States, including those of the Federal Securities and Exchange Commission.

Tenant's obligation to indemnify Indemnitees under this Agreement shall not extend to claims, losses, and other matters covered hereunder that are caused or contributed to by the negligence of one or more Indemnitees.

21.3 Landlord's Indemnification. Landlord hereby agrees to indemnify, defend and hold Tenant harmless from any act, omission or negligence of Landlord, its contractors, licensees, agents, servants, employees or invitees and against any claim of liability or loss from personal injury or property damage in connection with the Landlord's use of the Owned Premises or resulting from or arising out of the use and occupancy of the Leased Premises by Landlord or its other tenants, excepting, however, such claims or damages as may be due to or caused by the acts of the Tenant or its agents, and except as otherwise provided in this Agreement;

21.4. Assumption of Risk: Tenant undertakes and assumes for its officers, agents, affiliates, contractors and subcontractors and employees (collectively "Tenant" for the purpose of this section), all risk of dangerous conditions, if any, on or about the Premises, and Tenant hereby agrees to indemnify and hold Indemnitees harmless from and against any claim asserted or liability imposed upon the Indemnitees for personal injury or property damage to any person (other than from Indemnitees' gross negligence) arising out of Tenant's installation, operation, maintenance, condition or use of the Premises, or Tenant's Antenna Facility or Tenant's failure to comply with any federal, state or local statute, ordinance or regulation.

21.5. Defense of Indemnitees: In the event any action or proceeding shall be brought against Indemnitees by reason of any matter for which Indemnitees are indemnified hereunder, Tenant shall, upon notice from any of the Indemnitees, at Tenant's sole cost and expense, resist and defend the same with legal counsel mutually selected by Tenant and Landlord; provided however, that Tenant shall not admit liability in any such matter on behalf of the Indemnitees without the written consent of Landlord, and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Tenant.

21.6 Notice, Cooperation and Expenses: Landlord shall give Tenant prompt notice of its knowledge any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section 21. Nothing herein shall be deemed to prevent Landlord from cooperating with Tenant and participating in the defense of any litigation by Landlord's own counsel, at Landlord's expense. However, if Tenant is adjudicated to be at fault in connection with any action, suit or other proceeding brought against Landlord through no fault of Landlord, Tenant shall pay all expenses incurred by Landlord in response to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as reasonable attorney fees and the actual expenses of Landlord's agents, employees or expert witnesses, and disbursements and liabilities assumed by Landlord in connection with such suits, actions or proceedings but shall not include attorneys' fees for services that are unnecessarily duplicative of services provided to Landlord by Tenant.

22. Insurance:

22.1 Tenant shall procure and maintain for the duration of this Agreement, the following insurance:

- A. Broad Form Comprehensive General Liability Coverage; and
- B. Workers' Compensation Insurance as required by statute and employer's liability insurance.

Tenant shall maintain limits to no less than:

- A. General liability: \$5,000,000 combined single limit per occurrence or bodily injury, personal injury and property damage;
- B. Workers' compensation and employer's liability. Workers' compensation limits as required by statute and employer's liability limits of \$1,000,000 per accident and \$1,000,000 per disease; and
- C. Umbrella coverage of not less than \$9,000,000.

Landlord, its officers, officials, employees, agents, successors and assigns are to be covered as additional insured parties with respect to liability arising out of the property owned, occupied or used by Tenant and/or arising out of activities performed by or on

behalf of Tenant, including those performed by independent contractors hired by Tenant or its or their subcontractors. The coverage shall contain no special limitation on the scope of the protection afforded to Landlord, its officials, employees, agents, assigns or successors. Tenant's insurance coverage shall be primary insurance. Any insurance or self insurance maintained by the Landlord shall be in excess of the tenancy insurance and shall not contribute with it.

22.2 Each insurance policy required by this agreement shall be provided by insurance companies licensed to do business in Illinois, and shall not be suspended, voided, canceled, reduced in coverage or limits except after thirty (30) days following written notice sent to Landlord by certified mail, return receipt requested.

22.3 Tenant shall furnish the Landlord with a certificate evidencing such insurance before Tenant receives a building permit or permits in compliance with the Commencement Date, and on each renewal date of such insurance.

22.4 Under no circumstances shall Landlord be deemed to have waived any of the insurance requirements of this Agreement by any action or omission including, but not limited to:

- i. Allowing any work to commence by or on behalf of Tenant before Landlord is in receipt of the certificate(s) of insurance;
- ii. Failing to review any certificate(s) of insurance received; or

Tenant agrees that the obligation to provide the insurance required under this Agreement is solely its responsibility and it is a requirement which cannot be waived by any action, inaction, or omission by Landlord.

22.5 **Evidence of Insurance:** Certificates of insurance for each insurance policy required to be obtained by Tenant in compliance with this paragraph shall be filed and maintained with Landlord annually during the term of the Agreement. Tenant shall immediately advise Landlord of any claim or litigation that may result in liability to Landlord. All certificates and endorsements are to be received by Landlord before Tenant is issued a building permit.

22.6 **Cancellation of Policies of Insurance:** All insurance policies maintained pursuant to this Agreement shall provide as follows:

"At least thirty (30) days' prior written notice shall be given to Landlord by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the parties named in this paragraph of the Agreement."

22.7 **Insurance Companies:** All insurance shall be effective under valid and enforceable policies, insured by insurers licensed to do business by the State of Illinois or surplus

line carriers on the State of Illinois Insurance Commissioner's approved list of companies qualified to do business in the State of Illinois. All insurance carriers and surplus line carriers shall be rated A- or better by A.M. Best Company, or the highest available rating.

22.8 Deductibles: All insurance policies secured by Tenant may be written with deductibles. Tenant agrees to indemnify and save harmless Landlord, the Indemnitees and Additional Insureds from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Agreement.

22.9 Contractors: Tenant shall require that each and every one of its contractors and their subcontractors who perform work on the Premises carry, in full force and effect, workers' compensation, comprehensive public liability and automobile liability insurance coverages of the type which Tenant is required to obtain under the terms of this paragraph with appropriate limits of insurance.

22.10 Review of Limits: Twice during each term of this Agreement, or once every thirty (30) months whichever is sooner, the Parties may in good faith review the insurance coverages to be carried by Tenant. If Landlord determines that higher limits of coverage are necessary to protect the interests of Landlord or the Additional Insureds, Tenant shall be so notified, and the Parties shall mutually agree upon the additional limits of insurance to be provided at the Tenant's sole cost and expense.

23. Environmental Matters.

23.1 "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

23.2 Tenant represents and warrants that its use of the Premises herein will not generate any hazardous substance, and it will not store or dispose on the Premises nor transport to or over the Premises any hazardous substance.

23.3 Neither Landlord nor, to the best knowledge of Landlord, any other person, has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, or under or at the Premises or any party thereof nor has any part thereof ever been used by Landlord, or to the best knowledge of the Landlord, by any other person, either as a permanent or temporary dump site or storage site for any Hazardous Material.

23.4 Tenant indemnifies Landlord and agrees to hold Landlord harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by or asserted against Landlord for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage,

spillage, discharge, emission, discharging or release from the Premises or into or upon any land, the atmosphere, or any watercourse, body of water or wetland, of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under Applicable Environmental Laws) caused by or in the control of Tenant.

23.5 Landlord indemnifies Tenant and agrees to hold Tenant harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by or asserted against Tenant for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises or into or upon any land, the atmosphere, or any watercourse, body of water or wetland, of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under Applicable Environmental Laws) caused by or in the control of Landlord, and/or its predecessors, or originating from causes existent on or before the date of this Agreement, in, upon or beneath the premises.

23.6 The provisions of and undertakings and indemnifications set out in this Section 24 shall survive the termination of this Agreement.

24. **Holding Over.** Any holding over after the expiration of the term hereof, with the consent of Landlord, shall be construed to be a tenancy from month to month at two times the rents herein specified (prorated on a monthly basis) and shall otherwise be for the term and on the conditions herein specified, so far as applicable.

25. **Subordination to Mortgage.** Any mortgage now or subsequently placed upon any property of which the Premises are a part shall be deemed to be prior in time and senior to the rights of Tenant under this Agreement. Tenant subordinates all of its interest in the leasehold estate created by this Agreement to the lien of any such mortgage. Tenant shall, at Landlord's request, execute any additional documents necessary to indicate this subordination. Landlord agrees to obtain from any mortgagee, lender or collateral assignee holding any mortgage, lien or other encumbrance in the premises a non-disturbance agreement reasonably satisfactory to Tenant. If Landlord fails to obtain such a non-disturbance agreement from any present or future mortgagees or lenders, Tenant may terminate this Agreement.

26. **Quiet Enjoyment.** Landlord covenants and agrees that upon payment by Tenant of the rental under this Agreement and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises, the rights, the privileges granted for the term demised without hindrance or interference by Landlord or any other person except as specifically allowed in this Agreement and as may be provided in Landlord's Tower Ordinance.

27. **Casualty.** In the event the Water Tower is destroyed or damaged in whole or in part by casualty during the term of this Agreement then, at either party's option (exercised by written notice to the other party), this Agreement may be terminated as of the date of the event, or at any time within ninety (90) days thereafter, and no further rent shall be due. In the event

Tenant has prepaid rent to Landlord, Tenant shall be entitled to a refund of any unearned rent as of the date that written notice is given.

28 Landlord's Representation. In order to induce Tenant to enter into this Agreement, Landlord covenants, represents and warrants, as of the date of this Agreement and throughout its term, as follows:

- a. Landlord is the owner of the Owned Premises in fee simple and has full authority to execute, deliver and perform this Agreement;
- b. Landlord has not received any actual or constructive notice of any condemnation or eminent domain proceedings or other negotiations with respect to the Owned Premises.
- c. Landlord has not performed and has not caused to be performed any work on the Water Tower during the six months preceding the date of this Agreement which could give rise to any mechanic's or materialmen's liens. There are no unrecorded easements or agreements affecting the Owned Premises.

29 Acceptance of Premises. By taking possession of the Premises, Tenant accepts the Premises in the condition existing as of the Commencement Date. Landlord makes no representation or warranty with respect to the condition of the Premises except as otherwise stated herein, and except for latent defects, Landlord shall not be liable for any defects in the Premises.

30. Estoppel Certificate. Tenant shall, at any time and from time to time upon not less than fourteen (14) business days' prior written request by Landlord, deliver to Landlord a statement in writing certifying that (a) the Agreement is unmodified and in full force (or if there have been modifications, that the Agreement is in full force as modified and identify the modifications); (b) the dates to which rent and other charges have been paid; (c) so far as the person making the certificate knows, neither Landlord nor Tenant is in default under any provisions of the Agreement; and (d) such other matters as Landlord may reasonably request.

31. Notices. 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 Landlord, to:

**Village Administrator
Village of North Aurora
25 E. State Street
North Aurora, IL 60542**

With a copy to:

**Kevin G. Drendel
Drendel Tatnall
A Professional Corporation
P.O. Box 1808
Batavia, IL 60510-6808**

If to Tenant, to:

**Southwestern Bell Mobile Systems, Inc.
d/b/a Cellular One - Chicago
930 National Parkway
Schaumburg, IL 60173
Attention: Vice President Network Operations**

With a copy to:

**Southwestern Bell Mobile Systems, Inc.
d/b/a Cellular One - Chicago
930 National Parkway
Schaumburg, IL 60173
Attention: Legal Department**

32. Assignment.

a. Except to an affiliate or a successor-in-interest of Tenant's business, Tenant may not assign this Agreement or sublet the Premises without the prior written consent of Landlord.

b. Nothing in this Agreement shall preclude Landlord from leasing other space on the Owned Premises (exclusive of the Premises) to any person or entity which may be in competition with Tenant, or any other party.

33. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

34. Non-Waiver. Failure of Landlord to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but Landlord shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Tenant to Landlord after a breach of this Agreement shall not be deemed a waiver of such breach unless expressly set forth in writing.

35. Taxes.

35.1 Within ninety (90) days following Tenant's completion of the installation of its equipment on the Premises, Tenant and Landlord shall cooperate in the preparation and filing of the appropriate Petition for Tax Division with the Kane County, Illinois Tax Assessor for the purpose of designating the Ground Space as a separate tax parcel. Until such time as the tax division is effective and a separate tax bill is issued for the Ground Space, Tenant shall be responsible either to pay real estate directly, or to reimburse Landlord in connection with the payment of any real estate or other similar taxes directly relating to Tenant's lease of the Ground Space, including assessments as a result of improvements made by Tenant. At the request of either party, the other shall provide evidence of payment of such taxes. Said payment of taxes shall be made before the due date thereof provided that Landlord submits all

tax bill(s) and notices of assessment to Tenant at least thirty (30) days prior to the due date thereof. Tenant's obligation to pay taxes relating to the Ground Space shall survive the termination of this Agreement, including any and all extensions thereof.

35.2 Tenant shall indemnify Landlord from any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against Tenant in relation to the taxes owed or assessed on the Ground Space, and if applicable, the Dome Space.

35.3 If the methods of taxation in effect at the Commencement Date of the Agreement are altered by the taxing body having jurisdiction so that in lieu of or as a substitute for any portion of the property taxes and special assessments now imposed on property there is imposed a tax upon or against the rentals payable by Tenant to Landlord, Tenant shall pay those amounts in the same manner as provided for the payment of real and personal property taxes.

35.4 Tenant shall have the right to protest all taxes, assessments, charges, and impositions levied against its personal property, any improvements on the Ground Space and/or the Dome Space, or Tenant's leasehold interest in the Premises, and Landlord agrees to join in such protest, if required by law, and to permit Tenant to proceed with the protest in Landlord's name, provided that all expenses in any way relating to the protest are borne by Tenant. If Landlord initiates an action to protest taxes or other assessments, Tenant may join in such action provided that Tenant pay its own expenses of so participating. Landlord shall, within thirty (30) days of receipt of notice of any increase in taxes, assessments or other changes related to the Ground Space, or, if applicable, the Dome Space, send a copy of such notice to Tenant by certified mail, return receipt requested.

36. Cooperation.

36.1 Landlord agrees to cooperate with Tenant in any efforts by Tenant to secure any governmental permits necessary to use the Premises as contemplated in this Agreement, and to join in any application or other document reasonably requested by Tenant within ten (10) days of Tenant's written request.

36.2 Each party shall provide to the other party a telephone number which will be answered by a representative of such party twenty-four (24) hours a day for use only in the event of an emergency. Each party agrees to notify the other party if there is a change in the emergency telephone number.

37. **Entire Understanding / No Oral Modification.** All prior understandings and agreements between the parties are merged into this Agreement, and this Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

38. **Miscellaneous Documentation.**

38.1 Landlord agrees to furnish Tenant with certified copy of Landlord's resolutions authorizing execution of this Agreement.

38.2 Landlord acknowledges receipt from Tenant of an Affidavit regarding delinquent taxes in the form attached as Exhibit "E" in compliance with Section 11-42.1-1 of the Illinois Municipal Code.

39. **Agreement Memorandum.** Simultaneous with the execution of this Agreement, the parties have executed a Memorandum of Agreement. Tenant may record the Memorandum of Agreement. If Tenant's survey requires a correction to the legal description rider attached to the Memorandum of Agreement, the parties shall execute an Amendment to the Agreement.

40. **Miscellaneous.**

40.1 Landlord and Tenant represent that each, respectively, has full right, power, and authority to execute this Agreement.

40.2 This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Agreement must be in writing and executed by both parties.

40.3 This Agreement shall be construed in accordance with the laws of the State of Illinois.

40.4 If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

40.5 *All terms herein are subject to the Local Governmental and Governmental Employee's Tort Immunity Act, 745 ILCS 10-1-101 et. seq.*

This Agreement was executed as of the date first set forth above.

LANDLORD:

VILLAGE OF NORTH AURORA

By: _____

Its Mayor

Its Clerk



TENANT:

**SOUTHWESTERN BELL MOBILE
BELL MOBILE SYSTEMS, INC.
d/b/a CELLULAR ONE-CHICAGO**

By: _____

**DANE F. ERSHEN, Vice President
Network Operations**

By: _____

**PETE RITCHER, Vice President
Finance**

EXHIBIT A

LEGAL DESCRIPTION OF OWNED PREMISES

EXHIBIT B
SURVEY

EXHIBIT C
ARCHITECT'S DRAWINGS

EXHIBIT D

CELL SITE FACILITIES OWNED BY TENANT IN NORTH AURORA

STATE OF ILLINOIS)) SS
COUNTY OF COOK)

I, the undersigned affiant, being first duly sworn on oath, do hereby depose and say that I am the Chief Financial Officer for Southwestern Bell Mobile Systems, Inc. d/b/a CELLULAR ONE-Chicago ("Company") and that I am authorized to make the following representations on behalf of Company pursuant to Section 11-42.1-1 of the Illinois Municipal Code (P.A. 86-1039):

☒ Company is not delinquent in the payment of any tax administered by the Illinois Department of Revenue.

☐ Company is delinquent in the payment of a tax or taxes administered by the Department of Revenue, but is contesting its liability for such tax or taxes or the amount of such tax or taxes in accordance with the procedures established by the appropriate Revenue Act.

☐ Company is delinquent in the payment of a tax or taxes administered by the Department of Revenue and (1) has entered into an agreement with the Department of Revenue for the payment of all such taxes that are due, and (2) is in compliance with such agreement.

☐ Company is not delinquent in the payment of any tax administered by the Illinois Department of Revenue.

**Southwestern Bell Mobile Systems,
Inc. d/b/a CELLULAR ONE-Chicago**

Subscribed and sworn this 20th day of April, 1998, before me a notary public in and for the State of Illinois and County of Cook, who hereby certifies under official seal that I am duly authorized by the laws of said state to administer oaths in said county.

Melissa A. Fitzgerald
Notary Public

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