



**COMMITTEE OF THE WHOLE MEETING  
MONDAY, MARCH 5, 2018  
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. Sprint Lease Agreement

**EXECUTIVE SESSION**

**ADJOURN**

Initials

SB

# Memorandum



**To:** Steve Bosco, Village Administrator

**From:** David Hansen, Administrative Intern

**Date:** 3-1-18

**Re:** Sprint Lease Amendment for Princeton Water Tower

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The Village's current cell tower lease agreement with Sprint is set to expire on June 30, 2018. Sprint 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 with the market, staff reviewed the Village's other cellular leases that are currently with AT&T, T-Mobile, and Verizon. Using these lease agreements, the Village determined the appropriate changes for the lease agreement made with Sprint.

After further analysis, staff is proposing an initial term of five years with three consecutive five year extensions which would bring the total possible duration of the agreement to 20 years. In an effort to keep the contract in line with other municipalities and the village's current lease agreements, staff is proposing keeping the base rent of \$5,810.95 for the first five years. After the five year term ends, the rent will increase 3.5% on an annual basis.

In comparison, the original agreement had an initial term of five years with three, five year extensions for a total duration of 20 years. The original agreement's rent had an annual increase of 4%. The new lease agreement's rent would have an annual increase of 3.5% which would commence after the first five year term concludes. The proposed 3.5% annual increase is in line with the other cell lease agreements which collectively average 4%.

Attached is a draft of the fourth amendment to the Princeton Water Tower Lease agreement between the Village of North Aurora and Sprint. Also attached is a copy of the original agreement.

### AMENDMENT NO. 4 TO LEASE AGREEMENT

This Amendment No.4 to Lease Agreement (this "Fourth Amendment"), effective as of the date last signed below ("Fourth Amendment Effective Date"), amends a certain Lease Agreement dated February 23, 1998 (the "Lease Agreement"), between SprintCom, Inc., a Kansas corporation ("Tenant"), and Village of North Aurora ("Landlord"), as amended by Lease Amendment No. 1 dated January 22, 2007 ("First Amendment"), as amended by Amendment No. 2 to Lease Agreement dated October 19, 2009 ("Second Amendment"), and as amended by Amendment No. 3 to Lease Agreement dated June 26, 2014 ("Third Amendment") (collectively, the "Agreement").

#### BACKGROUND

WHEREAS, the Agreement is set to expire on June 30, 2018, and Tenant and Landlord desire to extend the term of the Agreement.

WHEREAS, Tenant and Landlord desire to modify certain provisions of the Agreement as provided below.

#### AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, Landlord and Tenant agree as follows:

1. **Term.** The current term of the Agreement will expire on June 30, 2018. Notwithstanding anything to the contrary in the Agreement, commencing on July 1, 2018, the term of the Agreement is sixty (60) months ("New Initial Term"). The Agreement will be automatically renewed for three (3) additional terms of sixty (60) months each (each a "New Extended Term"). Each New Extended Term will be deemed automatically exercised without any action by either party unless Tenant gives written notice of its decision not to exercise any options to Landlord before expiration of the then current term. All references in the Agreement to Extended Terms shall include the New Initial Term and the New Extended Term(s).

2. **Modification to Rent.** Notwithstanding anything set forth in Section 3 of the Lease Agreement, Section 2 of the First Amendment and Section 2 of the Third Amendment to the contrary, the Base Rent (and additional rent, as amended), shall be paid in equal monthly installments of Four Thousand Nine Hundred Eighty-Nine and 80/100 Dollars (\$4,989.80).

Notwithstanding anything set forth in Section 3 of the Second Amendment, the increased rent shall be paid in equal monthly installments of Eight Hundred Twenty-One and 15/100 Dollars (\$821.15) ("Second Amendment Rent").

Starting on the first day of the New Initial Term and on the first day of every month thereafter, Tenant will pay the Base Rent and Second Amendment Rent in advance in equal monthly installments of Five Thousand Eight Hundred Ten and 95/100 Dollars (\$5,810.95), and shall continue during the term (collectively "Rent"). Commencing on July 1, 2023, the Rent will be increased annually by three and one-half percent (3.5%) of the then current Rent.

Landlord shall provide or cause to provide to Tenant an IRS-approved W-9 form setting forth the tax identification number of Landlord or of the person or entity to whom payment is to be made payable as directed in writing by Landlord.

3. **Termination.** Section 18(b) of the Lease Agreement is hereby deleted in its entirety and replaced with the following:

"(b) by Tenant, if Tenant determines that the Premises is not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference, or the communications systems to

which the belong become unacceptable under its design or engineering specifications, subject to the liquidated damages specified in Section 19 below;”

4. **Notice Address.** The notice addresses in Section 28 of the Lease Agreement or referenced therein for the party or parties listed below are hereby deleted in their entirety and replaced with the following:

“To Landlord: Village of North Aurora  
25 E. State Street  
North Aurora, IL 60542

To Tenant: Sprint Property Services  
Sprint Site ID: CH03XC605  
Mailstop KSOPHT0101-Z2650  
6391 Sprint Parkway  
Overland Park, Kansas 66251-2650

With a mandatory copy to: Sprint Law Department  
Sprint Site ID: CH03XC605  
Attn.: Real Estate Attorney  
Mailstop KSOPHT0101-Z2020  
6391 Sprint Parkway  
Overland Park, Kansas 66251-2020”

5. **General Terms and Conditions.**

- a. All capitalized terms used in this Fourth Amendment, unless otherwise defined herein, will have the same meaning as the terms contained in the Agreement.
- b. In case of any inconsistencies between the terms and conditions contained in the Agreement and the terms and conditions contained in this Fourth Amendment, the terms and conditions herein will control. Except as set forth herein, all provisions of the Agreement are ratified and remain unchanged and in full force and effect.
- c. This Fourth Amendment may be executed in duplicate counterparts, each of which will be deemed an original.
- d. Each of the parties represents and warrants that it has the right, power, legal capacity and authority to enter into and perform its respective obligations under this Fourth Amendment.
- e. Landlord agrees to execute concurrently with this Fourth Amendment a recordable Memorandum of Amendment attached to this Fourth Amendment as Attachment 1, which Memorandum of Amendment Tenant may record at its own expense in the real property records where the Leased Premises is located.

The parties have executed this Fourth Amendment as of the Fourth Amendment Effective Date.

**Landlord:**  
**Village of North Aurora**

**Tenant:**  
**SprintCom, Inc., a Kansas corporation**

By: \_\_\_\_\_  
**(please use blue ink)**

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

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

Date: \_\_\_\_\_, 201\_\_\_\_  
**(Date must be completed)**

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

Printed Name: Silvia J. Lin

Title: Manager, Real Estate

Date: \_\_\_\_\_, 201\_\_\_\_  
**(Date must be completed)**

**Attachment 1**

(Memorandum of Amendment)

**see attached**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

Sprint Contracts & Performance  
Mailstop KSOPHT0101-Z2650  
6391 Sprint Parkway  
Overland Park, Kansas 66251-2650

[space above this line for Recorder's use]

**MEMORANDUM OF AMENDMENT NO. 4 TO LEASE AGREEMENT**

THIS MEMORANDUM OF AMENDMENT NO. 4 TO LEASE AGREEMENT ("Amended Memorandum"), by and between Village of North Aurora ("Landlord") and SprintCom, Inc., a Kansas corporation, ("Tenant"), evidences the Lease Agreement made and entered into between Landlord and Tenant dated February 23, 1998, as may have been previously amended (collectively, the "Agreement") has been amended by written agreement between the parties (the "Fourth Amendment"). The term "Agreement" hereinafter refers to and includes the Amendment.

The Agreement provides in part that Landlord leases to Tenant certain real property owned by Landlord and located at 600 Princeton, City of North Aurora, County of Kane, State of Illinois ("Premises") for the purpose of installing, operating and maintaining a communications facility and other improvements. The Premises is legally described in Exhibit A attached hereto. The portion of the Premises leased to Tenant together with non-exclusive utility and access easements (the "Leased Premises") is further described in the Agreement.

The new term of Tenant's lease and tenancy under the Agreement, as amended by the Amendment, is sixty (60) months, commencing on July 1, 2018, and is subject to three (3) renewal terms of sixty (60) months each that may be exercised by Tenant.

IN WITNESS WHEREOF, the parties have executed this Amended Memorandum as of the day and year indicated below.

**Landlord:**  
**Village of North Aurora**

**Tenant:**  
**SprintCom, Inc., a Kansas corporation**

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

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

(please use blue ink)

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

Printed Name: Silvia J. Lin

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

Title: Manager, Real Estate

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**LANDLORD NOTARY BLOCK: (please use blue ink)**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was (choose one)  attested or  acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by  \_\_\_\_\_, as \_\_\_\_\_ of **Village of North Aurora.**

(AFFIX NOTARIAL SEAL)

\_\_\_\_\_  
(OFFICIAL NOTARY SIGNATURE)  
NOTARY PUBLIC STATE OF

My commission expires:

\_\_\_\_\_  
(PRINTED, TYPED OR STAMPED NAME OF  
NOTARY)

COMMISSION NUMBER:

**TENANT NOTARY BLOCK:**

STATE OF KANSAS )  
 ) ss.  
COUNTY OF JOHNSON )

Acknowledgment by Corporation  
Pursuant to Uniform Acknowledgment Act

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by \_\_\_\_\_ on behalf of SprintCom, Inc., a Kansas corporation.

(AFFIX NOTARIAL SEAL)

\_\_\_\_\_  
(OFFICIAL NOTARY SIGNATURE)  
NOTARY PUBLIC STATE OF

My commission expires:

\_\_\_\_\_  
(PRINTED, TYPED OR STAMPED NAME OF NOTARY)

**EXHIBIT A**  
**TO MEMORANDUM OF NO. 4 AMENDMENT TO LEASE AGREEMENT**

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 4-38-8 OF THE THIRD PRINCIPAL MERIDIAN, COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER THENCE SOUTH ALONG THE WEST LINE OF SAID SECTION 4 175.02 FEET FOR A POINT OF BEGINNING; THENCE CONTINUING SOUTH ALONG SAID WEST LINE, 207.58 FEET; THENCE EASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, 100.00 FEET; THENCE NORTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE 200.00 FEET TO A POINT IN THE SOUTHERLY RIGHT OF WAY LINE OF THE COMMONWEALTH EDISON COMPANY PROPERTY; THENCE NORTHWESTERLY 100.29 FEET TO THE POINT OF BEGINNING, ALL IN KANE COUNTY, ILLINOIS.



## LEASE AGREEMENT

THIS LEASE AGREEMENT entered into as of this 23<sup>rd</sup> day of February 1998, by and between the VILLAGE OF NORTH AURORA, ("Landlord") and SPRINTCOM, INC., a Kansas Corporation, with its principal Illinois office located at 9801 West Higgins Road, Suite 370, Rosemont, Illinois 60018 ("Tenant").

### BACKGROUND

A. Landlord is the owner in fee simple of a parcel of land located in the Village of North Aurora, Kane County, Illinois legally described on the attached Exhibit "A" (the "Premises"), on which a municipal water tower (the "Water Tower") is located. The Water Tower is located on the Premises south of Princeton Street.

B. Tenant desires to lease space on the top of the Water Tower described below for the installation and operation of certain Antenna facilities, which may include directional Antenna, connecting cables and appurtenances (collectively, "Antenna Facilities") for use in connection with its communications business.

C. Accordingly, the parties are entering into this Lease on the terms and conditions set forth below.

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, attached hereto as Exhibit "B" and any amendments thereto.

### AGREEMENT

In consideration of their mutual covenants, the parties agree as follows:

1. Leased Premises. Landlord leases to Tenant and Tenant leases from Landlord a portion of the Premises, consisting of space on the ground (the "Land") for a Base Station and on the top ("Dome") of the Water Tower, for the Tenant's Antenna Facilities as shown on the Site Plan attached as Exhibit "C". Tenant intends to locate its Antenna Facilities, as described more fully on the attached Exhibit "D" and a Base Station to be placed and constructed in conformance with the Tower Ordinance. Tenant may not add additional equipment and/or Antenna facilities from that shown on Exhibit "D" without the prior written approval of the Landlord, which shall not be arbitrarily withheld, conditioned or delayed. Notwithstanding any provision of this Agreement to the contrary, upon Landlord's prior written consent which shall not unreasonably be withheld, conditioned, or delayed, Tenant shall have the right to: (a) make additions, alternations or improvements to Tenant's equipment housed within the Base Station; and (b) replace any or all of its equipment installed on or about the Dome with replacement

equipment of a substantially similar kind, which is reinstalled in substantially the same place and position, and is of substantially the same size and weight as the replaced equipment.

2. **Term.** This Lease has been executed this 23<sup>rd</sup> day of February, 1998, (hereinafter referred to as "The Execution Date", but Tenant be obligated to commence payment of the full rental amount due hereunder on the earlier of (a) July 1, 1998; (b) commencement of construction on the site; or (c) upon receipt of building permit ("Commencement Date"); and the term of this Lease shall end on midnight on the last day of the month in which the fifth (5th) anniversary of the Commencement Date occurs (hereinafter referred to as "The Initial Term").

Tenant may extend the Lease, on the same terms, for three (3) "additional terms" of five (5) years each, (hereinafter "Extended Terms") automatically, unless Tenant gives Landlord written notice within ninety (90) days of the end of the Initial Term or any Extended Terms stating Tenant will not extend further.

3. **Rent.**

a. Tenant shall pay Landlord as monthly rent for the Premises the sum of Fifteen Hundred (\$1,500) Dollars ("Base Rent"). The Tenant shall pay Landlord Base Rent for the first month on the Commencement Date. Tenant shall pay Landlord Base Rent monthly in advance on the first day of each month following the Commencement Date thereafter. Base Rent shall be increased annually as described hereafter.

b. Tenant shall pay Landlord a late payment charge equal to five percent (5%) of the late payment for any payment not paid when due. Any amounts not paid when due shall bear interest until paid at the rate of two percent (2%) per month.

c. As permitted in Section 4, if any additional Antenna Array is installed by Tenant, beyond the initial Antenna Array described in Section 4a. and illustrated in Exhibit "D", Tenant shall pay an additional annual fee of Seven Hundred Fifty Dollars (\$750.00) which shall increase annually under the same terms provided in this Lease (hereinafter referred to as "Additional Rent").

d. Upon execution of this Lease by Tenant, Tenant shall reimburse Landlord for its reasonable costs and expenses, including any engineering and legal fees incurred by Landlord in connection with the negotiation of this Lease, in an amount not to exceed Five Thousand Dollars (\$5,000.00).

e. The Base Rent shall be increased annually effective as of each anniversary of the Commencement Date by four (4%) percent of the previous years rent.

f. If this Lease is terminated at a time other than on the last day of the month, Rent shall be prorated as of the date of termination and, in the event of termination for any reason other than nonpayment of Rent, all prepaid Rents shall be refunded to the Tenant, except as otherwise provided herein.

g. Base Rent and Additional Rent and all other considerations to be paid or provided by Tenant to Landlord shall constitute Rent and shall be paid or provided without offset, except as provided in Section 17b, below.

4. Use of Premises.

a. Tenant shall use the Premises for the installation, operation, and maintenance of its Antenna Facilities for the transmission, reception and operation of a communications system and uses incidental thereto and for no other uses. Landlord may permit others to use other portions of the Water Tower. Tenant may erect and operate one (1) PCS or cellular transmission/reception antenna array consisting of nine (9) antenna panels and may expand to a maximum of two (2) such antenna arrays, but only based upon Tenant having provided to Landlord, at Tenant's expense, a certified evaluation indicating that the additional antenna array will not interfere with existing antenna or proposed antenna, and the Dome can structurally support the additional antenna array.

b. 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 Facilities and/or the Premises. Landlord agrees to cooperate reasonably with Tenant in obtaining, at Tenant's expense (including reimbursement of Landlord's reasonable attorney and administrative fees), any federal licenses and permits required for or substantially required by Tenant's use of the Premises.

c. (1) The Tenant shall remove its Antenna Facilities from the Premises upon termination of the Lease. Such removal shall be done in a workmanlike and careful manner and without interference or damage to any other equipment, structures or operations on the Premises, including use of the Premises by Landlord or any of Landlord's assignees or lessees. If, however, Tenant requests permission not to remove all or a portion of the improvements, and Landlord consents to such non-removal, title to the affected improvements shall thereupon transfer to Landlord and the same thereafter shall be the sole and entire property of Landlord, and Tenant shall be relieved of its duty to otherwise remove same.

(2) Upon removal of the improvements (or portions thereof) as provided above in sub-paragraph (1), Tenant shall restore the affected area of the Premises to the reasonable satisfaction of Landlord ordinary wear and tear excepted.

(3) All costs and expenses for the removal and restoration to be performed by Tenant pursuant to subparts (1) and (2) above shall be borne by Tenant, and Tenant shall hold Landlord harmless from any portion thereof.

d. Tenant agrees that all installations and constructions described in this Lease 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 the installation, including, but not limited, the cost of extending of Landlord's electrical service to Tenant's equipment, shall be paid by the Tenant.

e. When the Tenant does any work on the Premises, it shall, at its own expense, remove any obstructions therefrom and restore the Premises to as good a condition as existed before the work was undertaken, unless other directed by Landlord.

5. **Construction Standards** Tenant shall be allowed to construct a one-story building (Base Station) in compliance with the Landlord's Tower Ordinance which shall be located on The Land adjacent to the Water Tower on the Premises. The plans for both the building and the Antenna Facilities are attached hereto as Exhibits "C" and "D". Tenant undertakes full and complete responsibility at all times hereafter for the expenses of, and quality of, construction and compliance with all applicable Federal, State and Local laws, regulations, and codes, code requirements and regulations of governmental authorities having jurisdiction over the 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. The construction shall be processed pursuant to permit and conducted by authorized and licensed personnel and shall be performed in compliance with Local and State requirements for construction activities upon public property. If construction work shall proceed with our interference or disruption by or from Landlord or any other authorized users of the Premises, upon the expiration or termination of this Lease, at Landlord's option, Tenant shall convey all of its right, title and interest in and to the building to Landlord. Tenant shall be responsible for all permit costs. Prior to the issuance of building permits, Tenant's contractor shall maintain and provide Landlord with evidence of each of the insurance coverages specified in Section 22 of this Lease, in the amounts so specified. The Antenna Facilities and the Base Station shall be installed on the Premises in a good and workmanlike manner without the attachment of any construction liens. Landlord reserves the right to require Tenant to paint the Antenna Facilities in a manner consistent with the color of the Water Tower or to otherwise reasonably shield the Antenna Facilities from view.

6. **Installation of Equipment.**

a. Tenant shall have the right, at its sole cost and expense, to install, operate and maintain on the Premises, in accordance with good engineering practices and with all applicable FCC rules and regulations, its Antenna Facilities as described on Exhibit "D".

b. Tenant's installation of all such Antenna Facilities shall be done according to plans approved by Landlord, which approval shall not be arbitrarily withheld, conditioned or delayed. Any damage done to the Land, the Water Tower or the Dome during installation and/or during operations shall be repaired or replaced immediately at Tenant's expense and to Landlord's reasonable satisfaction. In connection with the installation and operation of the Antenna

Facilities, Tenant shall not make any penetrations of the Dome without Landlord's prior written consent, which shall not be arbitrarily withheld, conditioned or delayed. All Dome penetrations that may be permitted by Landlord shall be undertaken only under the supervision of Landlord's engineer or other designated agent. Tenant shall pay all costs and expenses in relation to maintaining the integrity of Landlord's Water Tower in connection with Tenant's installation and operations of the Antenna Facilities.

c. The Tenant shall complete the installation of the Antenna Facilities and Base Station as approved by the Village within ninety (90) days after the Commencement Date. The Tenant shall provide Landlord with as-built drawings of the Antenna Facilities and the Base Station installed on the Premises, which show the actual location of all equipment and improvements consistent with Exhibits "C" and "D", within thirty (30) days after completion of construction. Said drawings shall be accompanied by a complete and detailed inventory of all equipment, personal property, and Antenna Facilities.

7. **Landlord's Right to Use.** Tenant shall allow Landlord, at no cost to Landlord, to locate, place and use Landlord's communications facilities (antennas, transmitters, receivers, and support equipment) on any of Tenant's mounting brackets or other facilities installed on the Water Tower which are capable of accommodating Landlord's additional antennas or related facilities without interfering with Tenant's Antenna Facilities and without eliminating Tenant's right to expand its Antenna Facilities as permitted in Section 4, above. Tenant shall cooperate with Landlord in connection with locating and placing Landlord's antennas and other facilities on Tenant's Antenna Facilities on the Water Tower, at no expense to Tenant.

8. **Equipment Upgrade.** Tenant may update or replace the Antenna Facilities from time to time with the prior written approval of the Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed, provided that the replacement facilities installed on the Dome are not greater in number or size than the existing facilities. Any change in their location on the Water Tower shall be approved in writing by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. If the upgrade involves additional equipment installed on the Dome, or a change in location on the Water Tower. Tenant shall submit to Landlord a detailed proposal for any such replacement facilities and any supplemental materials as may be requested, for Landlord's evaluation and approval.

9. **Maintenance.**

a. Tenant shall, at its own expense, maintain its Base Station and Antenna Facilities attached to the Dome in a safe condition, in good repair and in a manner suitable to Landlord so as not to conflict with the use of or other leasing of the Water Tower by Landlord and so as not to interfere with the use of the Dome, the Water Tower, related facilities or other equipment of other tenants.

b. Tenant shall have sole responsibility for the maintenance, repair, and security of its equipment, personal property, Antenna Facilities, and leasehold improvements, and shall keep the same in good repair and condition during the Lease term.

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

d. In the event the Landlord or any other tenant undertakes painting, construction or other alterations on the Water Tower, Tenant shall take reasonable measures at Tenant's cost to cover Tenant's equipment, personal property or Antenna Facilities and protect such from paint and debris fallout which may occur during the painting, construction or alteration process.

e. If the Landlord determines that it is necessary and advisable to raise the height of the Water Tower for municipal purposes, the Landlord shall give the Tenant ninety (90) days written notice prior to the commencement of the construction to raise the Water Tower and, the Landlord shall coordinate the raising of the Water Tower to allow the Tenant to protect, modify and/or move its Antenna Facilities as required by the raising of the Water Tower. However, in no event shall the Landlord raise the Water Tower within the initial five (5) year term of this Lease or the first subsequent five (5) year Extended Term if the Lease is not terminated at the end of the Initial Term. However, in no event shall the Landlord be liable or responsible for the costs to the Tenant for the protection, modification, and/or moving of the antenna and Antenna Facilities.

10. Premises Access.

a. Tenant shall have access to the Premises and the Water Tower by means reasonably designated by Landlord, subject to notice requirements to Landlord in 10b, below.

b. Tenant shall have access to the Base Station at all times without notice to the Landlord. Tenant shall have access to the Water Tower only upon twenty-four (24) hour notice to the Superintendent of Water, except in emergencies, in which case notice shall be given as soon as practicable to the Superintendent of Water and/or the Village Police Department. The Landlord shall have the right to have its Superintendent of Water, or designee, to accompany Tenant whenever Tenant accesses the Water Tower.

c. Landlord shall be allowed and granted access to the Water Tower for general maintenance and repair purposes. Whenever the Landlord inspects the Water Tower for safety reasons or to insure that the Tenants covenants are being met, the Landlord shall be accompanied by the representative of the Tenant.

11. Co-Location. The Tenant understands that the Tenant will be co-locating on the Water Tower with another telecommunications provider as required by the Landlord's Tower Ordinance, if feasible, pursuant to the terms of the Landlord's Tower Ordinance.

12. **Utilities.** If permitted by the servicing electric 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 not permitted to separately meter electricity, Tenant at its sole cost and expense, shall install an electric submeter at the Premises to measure Tenant's usage of electricity in connection with its Antenna Facilities. The parties acknowledge and agree that in the event of submetering, Landlord shall be billed by the servicing utility for all electricity used at the Premises by either Landlord or Tenant and that Tenant shall pay the estimated cost of electricity used by Tenant at the Premises to Landlord monthly in advance as a payment in addition to the Base Rent. 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) each together with the payment of Rent. The parties shall read Tenant's submeter annually on the anniversary of the Commencement Date to determine Tenant's actual usage of electricity for the prior year. In the event that the actual cost of electricity used by Tenant exceeds the annual advance estimated payment made by Tenant for the prior year, Tenant shall pay the difference to Landlord within thirty (30) days. In the event that the actual cost of electricity used by Tenant is less than the total annual advance estimated payment made by Tenant, Tenant shall not be entitled to, and Landlord shall not be required to pay, the difference 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 electricity usage, the estimated monthly installment payments made by Tenant in addition to its Rent shall be adjusted to an amount equal to one-twelfth (1/12th) of the annual electricity cost 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 the Landlord's Tower Ordinance.

14. **Testing; Approvals; Compliance with Laws.**

a. Tenant's use of the Premises is contingent upon its obtaining all certificates, permits, zoning, and other approvals that may be required by any federal, state or local authority including the Tower Ordinance. Tenant shall erect, maintain and operate its Antenna Facilities in accordance with site standards, statutes, ordinances, rules and regulations now in effect or that may be issued hereafter by the Federal Communications Commission or any other governing bodies.

b. Tenant may conduct such tests and investigations on the Water Tower and the Premises as it deems necessary in order to determine if the Dome and the Premises are suitable for Tenant's use.

15. **Interference.**

a. Tenant's installation, operation, and maintenance of its Antenna Facilities shall not damage or interfere in any way with Landlord's operations or related repair and maintenance

activities or with such activities of other existing tenants. Tenant agrees to cease all such actions which materially interfere with Landlord's use of the Water Tower immediately upon actual notice of such interference, provided however, in such case, Tenant shall have the right to terminate the Lease without further liability, except for payments of amounts due at the time the Lease is terminated. Landlord, at all times during this Lease, reserves the right to take any action it deems necessary, upon written notice, in its sole discretion, to repair, maintain, alter or improve the Premises in connection with its operations as may be necessary, including leasing parts of the Water Tower to others provided that such activities and additional tenants shall not disturb or interfere with Tenant's rights hereunder and Tenant's ability to operate its Antenna Facilities at all times, except that Tenant shall reasonably cooperate with any other prior or subsequent Tenants as required by the Landlord's Tower Ordinance, attached hereto as Exhibit "B".

b. Before approving the placement of Antenna Facilities, Tenant shall provide to Landlord, at Tenant's expense, an interference study indicating whether Tenant's intended use will interfere with any existing communications facilities on the Water Tower and an engineering study indicating whether the Dome is able to structurally support the Tenant's Antenna Facilities without prejudice to the Landlord's primary use of the Water Tower.

c. Landlord does not guarantee to Tenant subsequent noninterference with Tenant's communications operations, provided, however, that in the event any other party except a governmental unit, office or agency of the Village of North Aurora requests a lease and/or permission to place any type of additional Antenna or transmission facility on the Water Tower, the procedures of Subsection d. below, shall govern to determine whether such Antenna or transmission facility will interfere with Tenant's transmission operations.

d. If Landlord receives any such request, Landlord shall submit or cause to be submitted, a proposal complete with all technical specifications reasonably requested by Tenant to Tenant for review for noninterference; however, Landlord shall not be required to provide Tenant with any specifications or information reasonably claimed to be of a proprietary nature by the third party in good faith. The third party shall be responsible for the reasonable cost of preparing the technical specifications for its proposed transmission facility. Tenant shall have thirty (30) days following receipt of said proposal to make any objections thereto, and failure to make any objection within said thirty (30) day period shall be deemed consent by Tenant to the installation of the antenna or transmission facilities pursuant to said proposal. If Tenant gives notice of objection due to interference during such thirty (30) day period and Tenant's objections are verified by Landlord to be valid, then Landlord shall not proceed with such proposal unless Landlord modifies the proposal in a manner determined to Tenant's reasonable satisfaction, to substantially reduce the interference. In that case, Landlord may proceed with the proposal. A governmental unit of the Village of North Aurora may be allowed to place Antenna or other communications facilities on the Water Tower regardless of potential or actual interference with Tenant's use, provided however, if Tenant's use of the Premises is materially affected, Tenant may terminate the Lease.



e. Tenant's use of the Land and operation of its Antenna Facilities shall not interfere with the use and operation of other communication facilities on the Water Tower which pre-existed Tenant's Antenna Facilities. If Tenant's Antenna Facilities cause interference with preexisting Antenna Facilities, 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 facility until the interference has been eliminated. If the interference cannot be eliminated within ninety (90) days, Landlord may terminate this Lease. In all cases, the most recent Tenant Antenna Facilities shall be responsible for curing any interference caused by the installation and/or operation of its antenna or other telecommunication devices on the Water Tower.

16. **Default and Remedies.** In the event of a default that is not timely cured, Landlord may terminate this Lease upon written notice to the Tenant and/or exercise any other right it may have under this Lease or by operation of law.

a. It shall be a default if Tenant defaults in the payment or provision of Rent or any other sums to Landlord when due, and does not cure such default within thirty (30) days after written notice to Landlord; or if Tenant defaults in the performance of any other covenant or condition of this Lease and does not cure such other default within thirty (30) days after written notice from Landlord specifying the default complained of (provided that Tenant should be entitled to a reasonable extended period of time in the event Tenant has in good faith commenced and continues to take all necessary action to cure the default but is unable to do so within thirty (30) days, provided Tenant continues to pay the current Rent when due); or if Tenant abandons or vacates the Premises; or if Tenant is adjudicated as bankrupt or makes any assignment for the benefit of creditors; or if Tenant becomes insolvent.

b. In the event of a default, Landlord shall have the right, at its option, in addition to and not exclusive of any other remedy Landlord may have by operation of law, without any further demand or notice, to re-enter the Premises and eject all persons therefrom, and either (i) declare this Lease at an end, in which event Tenant shall immediately remove the Antenna Facilities (and proceed as set forth in paragraph 4(c)) and pay Landlord a sum of money equal to the total of (A) the amount of the unpaid rent accrued through the date of termination; (B) the amount by which the unpaid rent reserved for the balance of the then current term exceeds the amount of such rental loss that the Tenant proves could be reasonably avoided (net of the costs of such reletting); and (C) any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under the Lease, or (ii) without terminating this Lease, relet the Premises, or any part thereof, for the account of Tenant upon such terms and conditions as Landlord may deem advisable, and any monies received from such reletting shall be applied first to the expenses of such reletting and collection, including reasonable attorneys' fees, any real estate commissions paid, and thereafter toward payment of all sums due or to become due to Landlord hereunder, and if a sufficient sum shall not be thus realized to pay such sums and other charges, Tenant shall pay Landlord any deficiency monthly, for the balance of the then current term, notwithstanding that Landlord may have received rental

in excess of the rental stipulated in this Lease in previous or subsequent months, and Landlord may bring an action therefor as such monthly deficiency shall arise.

c. No re-entry and taking of possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease, regardless of the extent of renovations and alterations made by Landlord, unless a written notice of such intention is given to Tenant by Landlord. Notwithstanding any reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

d. If suit shall be brought by Landlord for recovery of possession of the Premises, for the recovery of any rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant, the Tenant shall pay to the Landlord all expenses incurred therefor, including reasonable attorney fees.

17. Cure of Defaults.

a. In the event of any default of this Lease by Tenant, the Landlord may at any time, after written notice, cure the default for the account of and at the expense of the Tenant. If Landlord is compelled to pay or elects to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorney fees in instituting, prosecuting or defending any action to enforce the Landlord's rights under this Agreement, the sums so paid by Landlord, with all interest, costs and damages shall be deemed to be Additional Rent and shall be due from the Tenant to Landlord on the first day of the month following the incurring of the respective expenses. The Tenant shall post a letter of credit within thirty (30) days of the execution of this Lease in a sufficient amount to cover the expense for removal of Antenna Facilities in the event of abandonment or termination (as defined in Section 6(r) and Section 7(c) of the Tower Ordinance) of this Lease Agreement by default or otherwise, in an amount of Twenty Thousand Dollars (\$20,000.00).

b. In the event of any default of this Lease by Landlord, Tenant may at any time, after notice, cure the default for the account of and at the expense of Landlord. If Tenant is compelled to pay or elects to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorney fees in instituting, prosecuting or defending any action to enforce Tenant's rights under this Agreement, the sums so paid by Tenant, with all interest, costs and damages may be deducted or offset by Tenant against the Base Rent payable on the first day of the month or months following the incurring of the respective expenses.

18. Optional Termination.

In addition to the termination rights set forth in other provisions of this Agreement, this Lease may be terminated upon written notice:

(a) by Tenant pursuant to Section 2 of this Lease, if 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 Facilities or Tenants' business prior to the Commencement Date with no further liability except as specified in Section 2 of this Lease; or

(b) by Tenant if, due to uncorrectable interference in technology which renders the Premises no longer usable or necessary in Tenant's business, and upon presentation of documented proof to the Landlord thereof, subject to the liquidated damages specified in Section 19 below.

(c) by Landlord if, it determines, in its sole discretion and for any reason, to discontinue use of and to dismantle the Water Tower, provided, that Tenant at its option shall be permitted to continue its occupancy and use of the Premises until not less than thirty (30) days prior to the scheduled demolition date of the Water Tower, unless the Tenant's continued use of the Premises would create a compelling health, safety or welfare issue; or

(d) by Landlord if, it determines that the Dome/Water Tower is structurally unsound due to the age of the structure, damage or destruction of all or part of the Water Tower from any source, or other factors relating to the safe condition of the Dome and/or Water Tower, or compelling health, safety or welfare reasons, provided that there are no alternative solutions, but to require the removal of the Antenna Facilities; or

(e) by either party, if Tenant loses its license to provide cellular service for any reason, including, but not limited to, non-renewal, expiration, or cancellation of its license, provided that termination by Tenant pursuant to this subsection shall be subject to liquidated damages as specified in Section 19 below.

Upon termination of this Lease for any reason, Tenant shall remove its equipment, personal property, Antenna Facilities, and leasehold improvements from the Premises on or before the date of termination, and shall repair any damage to the Premises caused by such equipment, normal wear and tear excepted; all at Tenant's sole cost and expense. Any such property or facilities which are not removed by the end of Lease term shall become the property of Landlord.

19. **Liquidated Damages; Termination.** Notice of termination pursuant to Section 18 shall be given in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice. All rentals paid for the Lease of the Premises prior to said termination date shall be retained by Landlord. Upon such termination, this Lease shall become null and void and the parties shall have no further obligations to each other, except for termination by Tenant pursuant to Sections 18b and 18e in which case rental payments to the Landlord shall continue as liquidated damages for the remainder of the Lease term, not to exceed an amount equivalent to one year's rent.

20. **Alteration, Damage or Destruction.** If the Water Tower or any portion thereof is altered, destroyed or damaged so as to materially hinder effective use of the Antenna Facilities through no fault or negligence of Tenant, Tenant may elect to terminate this Lease upon providing thirty (30) days' notice to Landlord. In such event, Tenant shall promptly remove the Antenna Facilities from the Premises and shall restore the Premises to the same condition as existed prior to this Lease, reasonable wear and tear. This Lease (and Tenant's obligation to pay rent) shall terminate upon Tenant's fulfillment of the obligations set forth in the preceding sentence, at which termination Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. Landlord shall have no obligation to repair any damage to any portion of the Premises.

21. **Condemnation.** In the event the Premises are taken by eminent domain, this Lease shall terminate as of the date title to the Premises vests in the condemning authority. In event a portion of the Premises is taken by eminent domain, such that Tenant's Antenna Facilities may no longer be supported and operated, Tenant shall have the right to terminate this Lease as of said date of title transfer, by giving thirty (30) days written notice to the Landlord. 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 (except as set forth below) and the Landlord shall receive full amount of such award. Tenant shall hereby expressly waive any right or claim to any portion thereof based on the fee of the Premises. 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 the diminution in value of Tenant's leasehold estate or any and all damage to Tenant's business and any costs or expenses incurred by Tenant in moving/removing its equipment, personal property, Antenna Facilities, and leasehold improvements.

22. **Indemnity and Insurance.**

a. **Disclaimer of Liability.** Landlord shall not at any time be liable for injury or damage occurring to any person or property arising out of Tenant's construction, maintenance, repair, use, operation, condition or dismantling of the Premises or Tenant's Antenna Facilities, unless caused by the negligent and intentional acts or omissions of Landlord or its agents or employees.

b. **Tenant's Indemnification.** Unless caused by the negligent or intentional acts or omissions of Landlord or its agents or employees, 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 Antenna Facilities or the 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 or Tenant's Antenna Facilities, 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, or regulations of the State of Illinois or United States, including those of the Federal Securities and Exchange Commission, whether by Tenant or otherwise.

iv. Tenant's obligation to indemnify indemnitees under this Lease shall extend to claims, losses, and other matters covered hereunder that are contributed to by the negligence of one or more indemnitees.

c. 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 inherent dangerous conditions, if any, on or about the Premises, and, unless caused by the negligent and intentional acts or omissions of Landlord or its employees or agents, Tenant hereby agrees to indemnify and hold harmless the Indemnitees against and from any claim asserted or liability imposed upon the Indemnitees for personal injury or property damage to any person (other than from Indemnitee's gross negligence) arising out of the Tenant's installation, operation, maintenance, condition or use of the Premises or Tenant's Antenna Facilities or Tenant's failure to comply with any federal, state or local statute, ordinance or regulation.

d. **Defense of Indemnities.** In the event any action or proceeding shall be brought against the Indemnities by reason of any matter for which the Indemnities are indemnified hereunder, Tenant shall, upon notice from any of the Indemnities, at Tenant's sole cost and expense, resist and defend the same with legal counsel selected by Tenant; provided however, that Tenant shall not admit liability in any such matter on behalf of the Indemnities without the written consent of Landlord and provided further that Indemnities 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.

e. **Notice, Cooperation and Expenses.** Landlord shall give Tenant prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this paragraph. 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. 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 attorney fees and shall also include the reasonable value of any services rendered by the Landlord's attorney, 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 Landlord by Tenant.

If Tenant requests Landlord to assist it in such defense then Tenant shall pay all expenses incurred by Landlord in response thereto, including defending itself with regard to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the costs of any services rendered by the Landlord's attorney, 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.

f. **Landlord's Indemnification.** Unless caused by the negligent or intentional acts or omissions of Tenant or its agents or employees, Landlord shall at its sole cost and expense, indemnify, defend and hold harmless Tenant and all of its shareholders, directors, officers, agents, employees and affiliates (the "Tenant Indemnities") from and against any and all claims, demands, costs, expenses or liabilities (including, but not limited to, reasonable attorney fees and expenses of attorneys, expert witnesses and consultants) incurred by Tenant or relating to or arising out of Landlord's ownership of the Premises, Landlord's breach of this Lease or the negligent and intentional acts or omissions of Landlord, its employees and agents. Landlord shall be obligated to indemnify and defend the Tenant Indemnities to the same extent as set forth in subsections d. and e. above, with respect to Tenant.

g. **Insurance.** During the term of the Lease, Tenant shall (unless optional as set forth below) maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

- i. Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum One Hundred Thousand Dollars (\$100,000) for each accident.
- ii. Comprehensive commercial general liability insurance with minimum limits of Five Million Dollars (\$5,000,000) as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall provide blanket contractual liability insurance for all written contracts, and shall include coverage for products and completed operations liability, independent contractor's liability, coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.
- iii. Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Tenant, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of state law with minimum limits of Two Million Dollars (\$2,000,000) as the combined single limit occurrence for bodily injury, and property damage;
- iv. At the start of and during the period of any construction, builders all risk insurance, together with an installation floater or equivalent property coverage covering cables, materials, machinery and supplies of any nature whatsoever which are to be used in or incidental to the installation of the Antenna Facilities. Upon completion of the installation of the Antenna Facilities, Tenant shall substitute for the foregoing insurance policies of fire, extended coverage and vandalism and malicious mischief insurance on the Antenna Facilities. The amount of insurance at all times shall be representative of the insurable values installed or constructed.
- v. At Tenant's option, Business interruption insurance coverage in an amount sufficient to cover such loss of revenues, for the period of time which it would take, under normal circumstances, to repair or replace that part(s) of the Antenna Facilities which is damaged and caused the loss of revenue.
- vi. All policies other than those for Worker's Compensation shall be written on an occurrence and not on a claims made basis.
- vii. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

h. **Named Insureds.** All policies, except for business interruption and worker's compensation policies, shall specifically name Landlord, including generally all associated, affiliated, allied and subsidiary entities of Landlord, now existing or hereafter created, and their respective officers, boards, commissions, employees, agents and contractors, as their respective interests may appear as additional insureds (herein referred to as the "Additional Insureds"). Each policy which is to be endorsed to add Additional Insureds hereunder, shall contain cross-liability wording, as follows:

"In the event of a claim being made hereunder by one insured for which another is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

i. **Evidence of Insurance.** Certificates of insurance for each insurance policy required to be obtained by Tenant in compliance with this paragraph, along with written evidence of payment of required premiums shall be filed and maintained with Landlord annually during the term of the Lease. Tenant shall immediately advise Landlord of any claim or litigation that may result in liability to Landlord.

j. **Cancellation of Policies of Insurance.** All insurance policies maintained pursuant to this Lease shall contain the following endorsement:

"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 Lease."

k. **Insurance Companies.** All insurance shall be effected 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.

l. **Deductibles.** All insurance policies may be written with deductibles, not to exceed \$50,000 unless approved in advance by Landlord. Tenant agrees to indemnify and save harmless Landlord, the Indemnities 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 Lease.

m. **Contractors.** Tenant shall require that each and every one of its contractors and their subcontractors who perform work on the Premises to 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.

n. **Review of Limits.** At Landlord's option, no more than twice during each term of this Lease, the parties shall mutually and 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. If the parties are unable to reach an agreement on the modification of the limits of the insurance, the parties shall mutually agree upon a person in the insurance industry within thirty (30) days from the written request of either party to determine what are the standard limits for insurance of the type specified in substantially similar circumstances.

23. **Hazardous Substance Indemnification.** 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. Landlord represents that it has no knowledge of the existence of any hazardous substance on, in, or under the Premises. Tenant further agrees to hold Landlord harmless from and indemnify Landlord against any release of any such hazardous substance caused by Tenant or its employees or agents and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof. Landlord agrees to hold the Tenant harmless from and indemnify and defend the Tenant Indemnitees against any release of hazardous substances and any damage, loss, liability or expense (to the same extent set forth in the general indemnify and defense provisions of Section 22f, above), including but not limited to reasonable attorney's fees, incurred as a result thereof, except to the extent caused by the negligent or intentional acts or omissions of Tenant or its employees or agents. "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.

24. **Holding Over.** Any holding over after the expiration of the term hereof, with the consent of the Landlord, shall be construed to be a tenancy from month to month at one and one-half (1.5) times the Base Rent 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 the Tenant under this Lease. Tenant shall subordinate all of its interest in the leasehold estate created by this Lease to the lien of any such mortgage. Tenant shall, at

Landlord's request, execute any additional documents necessary to indicate this subordination, provided that such documents contain reasonable non-disturbance provisions.

26. **Acceptance of Premises.** Landlord represents that the Water Tower and the Premises are in compliance with all applicable federal, state and local building, environmental and other applicable statutes, laws, regulations, codes and orders. By taking possession of the Premises, Tenant accepts the Premises in the condition existing as of the Commencement Date. Except as set forth in this Section, Landlord makes no representation or warranty with respect to the condition of the Premises and Landlord shall not be liable for any latent or patent defect in the Premises.

27. **Estoppel Certificate.** Tenant shall, at any time and from time to time upon not less than ten (10) days prior request by Landlord, deliver to Landlord a statement in writing certifying that (a) the Lease is unmodified and in full force (or if there have been modifications, that the Lease 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, Landlord is not in default under any provisions of the Lease (or if a default exists, specifying the nature of the default); and (d) such other matters as Landlord may reasonably request.

28. **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, Illinois 60542

With a copy to:

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

If to Tenant, to:

With a copy to:

29. **Assignment.**

a. Tenant may not assign this Lease or sublet the Premises without the prior written consent of Landlord at any time, except to an affiliate or successor of interest, but such assignment or sublease shall be effective as to Landlord until written consent thereof is provided from Landlord.

b. Nothing in this Lease shall preclude Landlord from leasing other space for communications equipment to any person or entity which may be in competition with Tenant, or any other party.

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

31. 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.

32. Taxes.

a. Tenant shall pay all real and personal property taxes (or payments in lieu of taxes) and assessments for the Antenna Facilities, if any, which become due and payable during the term of this Lease improvements on the Leased Premises, or Tenant's leasehold interest in the Leased Premises. All such payments shall be made, and evidence of all such payments shall be provided Landlord, at least ten (10) days prior to the delinquency date of the payment. Tenant shall pay all taxes on its personal property on the Premises.

b. 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 Premises.

c. If the methods of taxation in effect at the Commencement Date of the Lease are altered 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.

33. Cooperation.

a. Landlord agrees to cooperate with Tenant in any efforts by Tenant to secure any governmental permits necessary to use the Leased Premises as contemplated in this Lease, and

to join in any application or other document reasonably requested by Tenant within ten (10) days of Tenant's written request.

b. 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.

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

35. Miscellaneous Documentation.

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

b. 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.

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

37. Miscellaneous.

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

b. This Lease 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 Lease must be in writing and executed by both parties.

c. This Lease shall be construed in accordance with the laws of the State of Illinois.

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

e. The parties shall execute and Tenant shall record a memorandum of this Lease which shall contain the initial term, Tenant's renewal options and such other basic provisions as Tenant may reasonably request.

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

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

LANDLORD:

VILLAGE OF NORTH AURORA



By: Mark Ruff

Its Mayor

By: Barbara Erickson

Its Clerk

TENANT:

James D. Meyers

By: James G. Meyers

Title: Area Manager

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**Amendment No. 1  
to PCS Site Agreement**

**Site Name: N. Aurora**

**Site ID: 605A**

This is an Amendment No. 1 to the PCS Site Agreement ("Agreement") by and between Village of North Aurora ("Owners") and SprintCom, Inc., a Kansas corporation ("SprintCom"), dated August 27, 1997. Should any term or obligation under Agreement be contrary, this Amendment No. 1 shall prevail.

1. Any and all references throughout the Agreement to the Dome shall be construed to mean the six (6) panel antenna on the Dome of the water tower and the three (3) panel antenna on the base of the water tower.
2. SprintCom shall have the right to erect a temporary structure for the antennas, to be located on Owners property, should Landlord raise the height of the water tower pursuant to paragraph 9(e) of the Agreement.

SPRINTCOM, INC.  
a Kansas corporation

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

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

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

OWNERS

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

Its: \_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF OWNED PREMISES**

EXHIBIT "A"

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 4-38-8 OF THE THIRD PRINCIPAL MERIDIAN, COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER THENCE SOUTH ALONG THE WEST LINE OF SAID SECTION 4 175.02 FEET FOR A POINT OF BEGINNING; THENCE CONTINUING SOUTH ALONG SAID WEST LINE, 207.58 FEET; THENCE EASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, 100.00 FEET; THENCE NORTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE 200.00 FEET TO A POINT IN THE SOUTHERLY RIGHT OF WAY LINE OF THE COMMONWEALTH EDISON COMPANY PROPERTY; THENCE NORTHWESTERLY 100.29 FEET TO THE POINT OF BEGINNING, ALL IN KANE COUNTY, ILLINOIS.



**EXHIBIT "B"**

**THE VILLAGE TOWER ORDINANCE**  
**(SEE ATTACHED PAGES)**