

**VILLAGE OF DOWNERS GROVE**  
**REPORT FOR THE VILLAGE COUNCIL MEETING**  
**FEBRUARY 7, 2012 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
First Amendment and Restatement to License Agreement with Sprintcom, Inc.	✓ Resolution Ordinance Motion Discussion Only	Enza Petrarca Village Attorney

**SYNOPSIS**

A resolution has been prepared authorizing approval of a First Amendment and Restatement to License Agreement with Sprintcom, Inc. to maintain and operate an antenna on Village Property located at 1037 Summit.

**STRATEGIC PLAN ALIGNMENT**

The goals for 2011 to 2018 identified *Steward of Financial and Environmental Sustainability*.

**FISCAL IMPACT**

The proposed agreement is for an additional two (2) five year terms, which would begin upon the end of their existing license agreement. Approval of the proposed agreement beginning November 1, 2013 would result in the Village collecting \$4,000 in monthly license fees until December 31, 2023, with a four percent increase in each year thereafter.

**RECOMMENDATION**

Approval on the February 7, 2012 consent agenda.

**BACKGROUND**

Sprintcom, Inc. is a provider of digital communications in the Chicagoland area. In 1998 (see Resolution 98-58, attached), the Village Council approved a license agreement with Sprint for the installation, maintenance and operation of antenna on Village property located at 1037 Summit. This existing agreement is due to expire October 31, 2013. In June 2011, Sprintcom contacted the Village concerning its desire to renew the antenna agreement well in advance of the expiration of its current agreement. This first amendment provides for the extension to the term of the agreement and revises the compensation, tax payment and subletting provisions of the existing agreement.

The proposed first amendment will add two additional five (5) year terms, commencing upon the end of the current lease (11/1/13) and would conclude on December 31, 2023. Approval of the proposed agreement beginning November 1, 2013 would result in the Village collecting \$4,000 in monthly license fees until December 31, 2020, with a four percent increase in each year thereafter. The Village will again have the option of renewing the license agreement for two additional five-year terms at the conclusion of the first amendment.

**ATTACHMENTS**

Resolution  
 Agreement  
 Resolution 98-58 and Agreement

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING EXECUTION OF A FIRST AMENDMENT  
AND RESTATEMENT TO LICENSE AGREEMENT**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois as follows:

1. That the form and substance of a certain Agreement (“Agreement”), between the between the Village of Downers Grove (“Village”) and Sprintcom, Inc. (“Licensee”) for a first amendment to license agreement for the maintenance and operation of antenna equipment on Village property located at 1037 Summit Street, Downers Grove, IL, as set forth in the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provision of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_  
Village Clerk

**FIRST AMENDMENT & RESTATEMENT  
TO LICENSE AGREEMENT**

THIS FIRST AMENDMENT & RESTATEMENT TO LICENSE AGREEMENT ("First Amendment"), dated as of the later of the signature dates below, is by and between the **VILLAGE OF DOWNERS GROVE**, an Illinois municipal corporation, having a mailing address of 801 Burlington Avenue, Downers Grove, Illinois 60515 (hereinafter referred to as "Village") and **SPRINTCOM, INC.**, a Kansas corporation, having a mailing address of 6391 Sprint Parkway, Overland Park, KS 66251-2650 (hereinafter referred to as "Licensee").

WHEREAS, Village and Licensee entered into a License Agreement entitled "LICENSE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND SPRITCOM, INC. TO INSTALL, MAINTAIN AND OPERATE ANTENNA EQUIPMENT ON VILLAGE PROPERTY" dated October 19, 1998 (along with Resolution 98-58), copies of which are attached hereto, whereby Village leased to Licensee certain Premises, therein described, that are a portion of the Property located at 1037 Summit Street, Downers Grove, Illinois (the "Agreement"); and

WHEREAS, Village and Licensee desire to amend the Agreement to provide that the term of the Agreement shall be restated, extended and to confirm compensation amounts and tax payment responsibility; and

WHEREAS, Village and Licensee also desire to amend the Agreement to provide that any notice or communication shall be sent to the Landlord at its current address and to Licensee at its current address.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Village and Licensee agree as follows:

1. "Section 4. Construction, Installation and Maintenance", paragraph (h) of the Agreement is stricken and amended as follows:

h. Licensee shall be entitled to access their equipment Monday through Friday, 7:00am to 3:30pm CST, by contacting the Village Building Services Department at 630/434-5551. If access is required after business hours, on weekends, on a holiday or in the event of an emergency, Licensee shall contact the Village Operations Center at 630/434-5706 or 630/434-5707.

2. "Section 6. Term." of the Agreement is stricken and amended as follows:

"Section 6. TERM:" of the Agreement is amended to extend the term of the current Agreement. With this First Amendment, the Agreement shall be automatically renewed for two (2) additional, approximately five (5) year renewal terms as follows:

The initial renewal term will commence on November 1, 2013 and shall end December 31, 2013. Thereafter, and as part and parcel of the initial renewal term, one additional five (5) year period shall automatically commence January 1<sup>st</sup> and terminating on December 31, 2018. The second renewal term of this First Amendment shall automatically commence January 1, 2019 and shall end December 31, 2023, the final expiration date. Automatic renewal as provided herein will only cease upon at least one hundred and twenty (120) days written notice of non-renewal in advance of the commencement of the second renewal term by one party to the other or until the final expiration date, which ever is sooner. Landlord agrees not to terminate this Agreement simply as a method to re-negotiate the terms contained herein.

After January 1, 2019, Licensee may request the Village to enter into negotiations toward renewing or extending this Agreement. Any renewal or extension shall be according to terms that are mutually agreeable and the Village shall not be bound to accept any particular terms or to renew any or all of the rights granted by this Agreement.

3. The second, third and fourth sentences of "Section 7. Compensation." of the Agreement are stricken and amended as follows:

Section 7. COMPENSATION:

a. Beginning on November 1, 2013, Licensee shall pay to the Village a license fee of \$4,000.00 per month each month of 2013. **Thereafter, effective on the first day of January in each subsequent year during the term of the Agreement, the monthly license fee shall increase in an amount equal to the fee for the preceding year multiplied by 4%.** The monthly fee shall be paid to the Village of Downers Grove, Village Hall, 801 Burlington Avenue, Downers Grove, IL 60515 each month by the 10<sup>th</sup> of the month.

4. "Section 12. Taxes." of the Agreement is stricken and amended as follows:

"Section 12. TAXES:" Licensee is solely responsible for payment of taxes on the leasehold (PIN # 09-08-320-024). Licensee is solely responsible to determine the taxes owed and to comply with the DuPage County payment procedures. Licensee shall reimburse the Village for any personal or real property taxes which are assessed as a result of Licensee's Improvements and directly attributable to its use of the Property under the terms of this First Amendment to the Agreement. Licensee shall have the right, at its own expense and without expense to the Village, to contest by appropriate proceedings, conducted with due diligence and in good faith, the validity of the amount of taxes or reassessment as applicable to the Licensed Premises or the Licensee Improvements. In the event that the Village becomes aware of any tax delinquency and that delinquency is not cured by the Licensee thirty (30) days from the date the Village sends written notice, the Village shall have the right to remove any of Licensee's equipment and terminate this First Amendment to the Agreement.

5. "Section 16. Assignment" of the Agreement is stricken and amended as follows:

Section 16. ASSIGNMENT AND SUBLEASING:

This Agreement may not be assigned or transferred without the express written consent of the Village, which shall not be unreasonably withheld, conditioned or delayed. The Village agrees to respond to any such request within thirty (30) days from receipt of the request. Any assignment or transfer without such written consent shall, at the option of the Village, be deemed to be void and of no effect. Provided, however, this Agreement may be assigned or transferred to Licensee's parent or subsidiary, successor legal entity or other affiliate of Licensee without the Village's written consent as long as the Village is given written notice of the assignment or transfer within thirty (30) days thereof.

The Village must approve any sublease to any entity that is not Licensee's parent or subsidiary, successor legal entity or other affiliate of Licensee and the Village shall be entitled to fifty percent (50%) of any such sublease in addition to the rental fee as described in Section 7(a), above. Approvals shall not be unreasonably withheld, conditioned or delayed.

6. "Section 21. NOTICES:" of the Agreement is amended to indicate the current addresses of each party:

*To Village:*

Village Manager  
Village of Downers Grove  
801 Burlington Avenue  
Downers Grove, IL 60515  
630.434-5500

*With Copy to:*

Village Attorney  
Village of Downers Grove  
801 Burlington Avenue  
Downers Grove, IL 60515  
630.434-5541

*To Licensee:*

SprintCom, Inc.  
Sprint/Nextel Property Services  
Site ID: CH03XC691-A  
Mailstop KSOPHT0101-Z2650  
6391 Sprint Parkway  
Overland Park, KS 66251-2650

*With Copy to:*

Sprint/Nextel Law Department  
Attn: Real Estate Attorney  
Site ID: CH03XC691-A  
Mailstop KSOPHT0101-Z2020

6391 Sprint Parkway  
Overland Park, KS 66251-2020

7. Except as amended herein, all terms, conditions, provisions, covenants and agreements contained in the Agreement shall be reinstated and shall remain in full force and effect in their entirety. In the event of a conflict between this First Amendment and the Agreement, the First Amendment shall control. Each reference in the Agreement to itself shall be deemed also to refer to this First Amendment.

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

**VILLAGE OF DOWNERS GROVE**

**SPRINTCOM, INC.**

By: \_\_\_\_\_  
Village Manager

By: *Nathan Olson*  
Nathan Olson, Authorized Representative

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

Date: 1/31/2012

Attest: \_\_\_\_\_  
April Holden, Village Clerk

Subscribed and sworn to before me this  
31<sup>st</sup> day of January, 2012  
*Hazel D. Mauro*  
Notary Public

1\mw\agr.12\Sprint-Summit<sup>st</sup>Amd-final



RESOLUTION NO. 98-58

**A RESOLUTION AUTHORIZING EXECUTION OF A LICENSE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND SPRINTCOM, INC. TO INSTALL, MAINTAIN AND OPERATE ANTENNA EQUIPMENT ON VILLAGE PROPERTY LOCATED AT 1037 SUMMIT STREET**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain License Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and SprintCom, Inc. for the installation, maintenance and operation of SprintCom antenna equipment on Village property located at 1037 Summit Street, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, are hereby approved.

2. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreements.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

  
\_\_\_\_\_  
Mayor

Passed: October 19, 1998

Attest:   
\_\_\_\_\_  
Village Clerk

**LICENSE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS  
GROVE AND SPRINTCOM, INC. TO INSTALL, MAINTAIN  
AND OPERATE ANTENNA EQUIPMENT ON VILLAGE PROPERTY**

**WITNESSETH**

WHEREAS, the Village of Downers Grove (hereinafter referred to as the "Village") is an Illinois municipal corporation and a home rule unit, pursuant to the laws of the State of Illinois; and

WHEREAS, the Village is the owner of certain real estate located at 1037 Summit, Downers Grove, Illinois, upon which is located a Village water tower known as the Summit Tower (hereinafter referred to as the "Tower"); and

WHEREAS, SprintCom, Inc., a Kansas Corporation (hereinafter referred to as the "Licensee") has requested permission to install communications antennae and related equipment (hereinafter referred to as the "Antenna") on the top of the Tower (the "Tower Space") and certain related equipment in cabinets on the ground (the "Ground Space"); and

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions, the Village and the Licensee agree as follows:

1. **CONTRACT DOCUMENTS:** The provisions set forth in the preamble and the following exhibits are incorporated into and made a part of this Agreement by reference:

a. Exhibit 1 - Site map of the Property titled "LS-1 Land Survey," dated 6/2, 1998, and approved by the Village on 10/19, 1998, showing the Tower Space and the Ground Space, together with the areas on the Property licensed to Licensee to provide access and utility service to the Ground Space (collectively the "Licensed Premises") which includes location of any proposed underground utilities necessary for operation of the Antenna.

b. Exhibit 2 - Plans and specifications titled "A-1 Equipment Plan," dated 6/3, 1998, and approved by the Village on 10/19, 1998, for the Antenna and any cables or utility lines to be installed on the Licensed Premises and the equipment cabinets to be installed on the Licensed Premises and used for housing of the related Antenna equipment (collectively the "Licensee Improvements").

2. **GRANT OF LICENSE:** The Village hereby grants to the Licensee the license, right, permission and authority to install, operate and maintain the Licensed Improvements upon the terms and conditions hereinafter specified. The license shall not terminate upon the sale, assignment or transfer of the property, but shall run with the land.

3. **SPECIFICATIONS:** The Licensee shall comply with the following specifications:



a. In general: During the term of this agreement, there shall be no variations, modifications, or upgrades from the plans and specifications of Exhibits 1 and 2 without the prior written approval of the Village, which shall not be unreasonably withheld, conditioned or delayed.

b. Antenna: The Antenna shall be for the operation of radio frequency: receive 1865-1870 & 1885-1990; transmit 1945-1950 & 1965-1970. The Antenna shall be installed, attached to the Tower, and maintained in conformance with Exhibit 2 and any applicable state or federal requirements. The Antenna shall be located more than ten (10) feet from any existing antenna equipment and shall not exceed sixty (60) inches in height.

4. **CONSTRUCTION, INSTALLATION AND MAINTENANCE**: The Licensee may install, repair, maintain, or replace the Antenna, subject to the following conditions:

a. Licensee shall obtain all required permits and authorizations from the Village, in accordance with the applicable ordinances, prior to commencing any work under this agreement. Such work shall comply with applicable codes and regulations and shall be conducted in a workmanlike manner.

b. Licensee shall obtain all necessary approvals from any regulatory authorities for the operation of the Licensee Improvements. Further, the Licensee shall comply with all applicable laws and regulations of such regulatory authorities including, but not limited to, the Federal Communications Commission.

c. Licensee shall relocate and reconstruct the water main facility located at Summit Street and Main Street subject to the Village's approval of the plans and specifications submitted in connection therewith, prior to commencing any work under this agreement.

d. All costs connected with the installation, maintenance, repair, use and removal of the Licensee Improvements shall be the responsibility of the Licensee.

e. The Licensee shall not take any action or allow any action to be done which may impair the use of or damage the Tower.

f. The Licensee may not interfere with the use by the Village, its officers, agents and employees, of the Tower or the property on which it is located.

g. Except for emergency situations, the Village shall provide reasonable advance notice to Licensee when it conducts any Tower repair or maintenance work that affects the Antenna or function of the Antenna or any of the Licensee Improvements.

h. Licensee shall be entitled to access the equipment located on the Ground Space

twenty-four (24) hours a day, seven days a week. Licensee shall provide Village reasonable advance notice when access to the Tower Space is needed. Keys to the Tower can only be obtained between the hours of 8:00 a.m. and 4:00 p.m. from the Village Operations Center, or in the event of an emergency after hours, by calling (630) 434-5706 or 5707.

i. The Licensee shall maintain the Licensed Premises in good repair, and in a clean and sightly condition.

j. Upon termination of this Agreement by either party, the Licensee shall, within thirty (30) days and at its expense, remove the Licensee Improvements and restore the Licensed Premises to substantially its original condition, reasonable wear and tear and casualty loss excepted.

k. If Licensee abandons its use of the Antenna, Licensee shall, within thirty (30) days of receipt of written notice from the Village notifying the Licensee of such abandonment and at its expense, remove the Licensee Improvements and restore the Licensed Premises to substantially its original condition. Licensee Improvements will be presumed abandoned if it is not operated for a period of one month or more. If the Licensee Improvements are not removed within thirty (30) days, the Village may remove the Licensee Improvements and the Licensee shall reimburse the Village for the costs of such removal.

5. **NON-INTERFERENCE WITH VILLAGE OPERATIONS:** Neither this license nor the Licensee Improvements shall interfere or obstruct the functioning of the Village's operations and services. Licensee warrants that the Licensee Improvements shall be constructed, installed, maintained and operated in such a manner as to not interfere or obstruct any radio or electronic equipment or signals of the Village's radio and data systems. In the event such interference occurs, and the interference cannot be eliminated by Licensee after reasonable efforts, the Village may terminate this Agreement. Provided after notice to Licensee, the Village may immediately terminate this Agreement, or require that operation of the Antenna or any of the Licensee Improvements be immediately ceased where it determines that the Antenna or the Licensee Improvements present an immediate and serious danger to the public health, welfare or safety due to interference with the operation of the Village's radio and data systems.

6. **TERM:**

(a) Unless extended pursuant to Paragraph 5(b), this License shall have an Initial Term beginning November 1, 1998 or upon receipt of a building permit, whichever occurs first (the "Commencement Date") and ending October 31, 2003, and two (2) five-year Extension Terms beginning November 1, 2003, and November 1, 2008, respectively. The first Extension Term beginning November 1, 2003 shall automatically commence. The second Extension Term beginning November 1, 2008, shall automatically commence unless either party provides the other party with written notice of its election not to renew the License at least one hundred and twenty (120) days prior to the expiration of the current term.

(b) After June 1, 2013, Licensee may request the Village to enter into negotiations towards renewing or extending this Agreement beyond October 31, 2013. Such renewal or extension shall be according to terms that are mutually agreeable and the Village shall not be bound to accept any particular terms or to renew any or all of the rights granted by this Agreement.

7. **COMPENSATION:** Beginning on the Commencement Date, Licensee shall pay to the Village a license fee of \$2,250.00 per month for the first year of the Agreement. Thereafter, effective on each annual anniversary of the Commencement Date, the monthly license fee shall increase in an amount equal to the fee for the preceding year multiplied by 1.04 (104%). The amount shall be prorated for any fractional month at the beginning or at the end of a term. The fee shall be paid to the Village of Downers Grove, Village Hall, 801 Burlington Avenue, Downers Grove, IL 60515.

8. **TERMINATION:** This Agreement may be terminated as follows:

(a) After the Commencement Date, Licensee may terminate this Agreement at any time upon sixty (60) days written notice to the Village without further liability if Licensee does not obtain all permits or other approvals required from any governmental authority or any easements required from any third party to operate the PCS system, or if any such approval is canceled, expires or is withdrawn or terminated, or if Licensor fails to have proper ownership of the site or authority to enter into this Agreement, or if Licensee, for any other reason, in its sole discretion, determines that it will be unable to use the Property, however, if Licensee terminates this Agreement without cause, it shall pay the Village a termination penalty equal to three months of the current rental amount.

(b) In the event either party fails to comply with the terms of this Agreement such party shall be considered in default and the non-defaulting party may serve written notice of its intent to terminate the Agreement and the license. Except where the public health or safety is threatened, the notice shall give the defaulting party not less than thirty (30) days to correct such non-compliance. In the event the default is not corrected within thirty (30) days of such notice, the non-defaulting party may terminate this Agreement by serving a written notice of termination. Notwithstanding the preceding, if any default cannot be cured within thirty (30) days and the defaulting party has diligently commenced and continues to take reasonable action necessary to cure the default, the defaulting party shall be entitled to an extended reasonable period of time in order to complete the cure.

(c) In the event the Tower is destroyed or substantially damaged, this agreement shall be considered terminated.

9. **TOWER REPAIR/MAINTENANCE:** Upon receiving thirty (30) days notice from the Village that it intends to repair or perform maintenance to the Tower, Licensee shall, at its own expense and in such manner as the Village shall reasonably request, immediately remove, relocate, change or alter the position of the Antenna. During the term of this Agreement, the Tower may be refurbished and/or painted. Refurbishment and/or painting will take several months to complete (approximately five to eight months). Prior to beginning refurbishment

and/or painting, Licensee understands that its Antenna shall be removed from the Tower upon notice from the Village and that the Antenna shall not be reinstalled until the refurbishment and/or painting is completed and the Village has approved such reinstallation. During such period, Licensee may, at its sole cost and expense, install the Antenna on a temporary telephone pole outside the shrouded area of the tower in a location approved by the Village. However, such temporary arrangement shall not interfere with the refurbishment and/or painting of the tower or with other Village operations on the site. The Village shall not be responsible for any costs of removal, relocation, and reinstallation of the Antenna as a result of the refurbishment and/or painting.

10. **RESTORATION:** When the Licensee does any work on or affecting the Licensed Premises, it shall, at its own expense, restore the Licensed Premises to as good a condition as existed before the work was undertaken, unless otherwise directed by the Village. If the Licensee fails to restore the Licensed Premises, the Village may, after communications with the Licensee and after affording the Licensee a reasonable opportunity to correct the situation, restore the Licensed Premises and remove any obstruction therefrom. No such prior written notice shall be required in the event that the Village determines that an emergency situation exists. The Licensee shall pay the Village for any reasonable costs of such restoration within thirty (30) days after receiving a bill from the Village for such work.

11. **UTILITIES:** Licensee shall be responsible for obtaining adequate utilities for operation of the Licensee Improvements including electricity from any source available on the Property as long as the electricity for the Licensee Improvements are separately metered. Any utilities to be installed must be underground and the location approved by the Village. Licensee shall pay for the electricity or any other utility it consumes in its operations at the rate charged by the servicing utility company and the Village shall not be liable for such charges.

12. **TAXES:** Licensee shall either pay, or reimburse the Village, for any personal or real property taxes which are assessed as a result of the Licensee Improvements and use of the Licensed Premises under the terms of this Agreement. The Village shall provide to Licensee all assessment notices or tax bills received by the Village from any applicable taxing authority, within thirty (30) days after the Village's receipt of the same, but in no event later than fifteen (15) days prior to the deadline date for the filing of any objection or protest thereto. Licensee shall have the right, at its own expense and without expense to the Village, to contest by appropriate proceedings, conducted with due diligence and in good faith, the validity of the amount of any taxes or reassessment as applicable to the Licensed Premises or the Licensee Improvements.

13. **INDEMNIFICATION:**

(a) Licensee shall indemnify, become responsible for and save harmless the Village, its boards, committees, commissions, officers, agents and employees from any and all liability arising out of the existence of this Agreement; the installation, existence, maintenance or repair of the Licensee Improvements; or any act or omission of Licensee, its officers, agents and employees.

(b) The Village shall indemnify, become responsible for and save harmless Licensee, its officers, agents and employees from any and all liability arising out of the Village's ownership and use of the Property or any act or omission of the Village, its officers, agents and employees.

(c) For purposes of this Agreement, the term "liability" includes, but is not limited to: actual or claimed loss or damage to property or injury to or death of persons; actual or claimed responsibility for such loss, damage, injury or death; and any and all judgments, decrees, costs and expenses of every sort and kind of incident to such loss, damage, injury, death or responsibility, including, but not limited to, court costs, fines and attorney's fees.

14. **INSURANCE:** At all times while this Agreement remains in effect, and in recognition of the indemnification provided in the foregoing Paragraph 13, the Licensee shall, at its own cost and expense, maintain a program of third party liability insurance and/or self-insurance to protect the Village, its officers, employees and agents from any liability for bodily injury, death, and property damage occasioned by the activities of the Licensee under this Agreement, as follows:

(a) *During the Term of the Agreement.* Licensee shall procure, pay for and maintain in full force and effect during the entire term of the Agreement (i) worker's compensation insurance as required by law and which insures against worker's compensation claims arising out of Licensee's activities on the Tower; (ii) fire and casualty insurance covering the Licensee Improvements in an amount not less than one hundred percent (100%) of their actual replacement cost; and (iii) commercial general liability insurance, including broad form property damage insurance, for bodily injuries and property damage, in amounts not less than one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) in the aggregate covering bodily injuries or property damage occurring on the Tower.

(b) *During Construction/Installation.* During construction/installation, Licensee's contractor shall also maintain and provide Village with evidence of each of the insurance coverages specified in subparagraph (a) and in the amounts so specified. In addition, the contractor shall provide builder's risk insurance on an "all risks" basis for one hundred percent (100%) of the insurable value of all construction work in place or in progress from time to time, insuring the project, including materials in storage and while in transit, against loss or damage by fire or other casualty, with extended coverage, vandalism and malicious mischief coverage, bearing a replacement cost agreed amount endorsement.

(c) *Policies.* The policy or policies of insurance required by subparagraphs (a) and (b) shall be underwritten by a company or companies authorized to do business in the State of Illinois, shall be reasonably satisfactory to Village, shall name Village as an additional insured and shall be delivered to the Village, together with evidence of the payment of the premiums, therefore, prior to the

commencement of the term of this Lease. Licensee or, where applicable, Licensee's contractors shall furnish Village with a written notice of any cancellation, reduction or modification of insurance required under this Section.

(d) *Village's Insurance*. The Village shall be solely responsible for maintaining its own fire and casualty insurance covering all of the Village's improvements, fixtures and personal property located on the Property.

15. **LIENS**: Licensee agrees that it will not permit or suffer any lien to be put upon or arise or accrue against the Property in favor of any person or persons, individual or corporate, furnishing either labor or material in any work herein proposed, and the Licensee further covenants and agrees to hold the Village and its property free from any and all liens, or rights or claim of lien, which may or might arise or accrue under or be based upon any mechanic's lien law of the State of Illinois. If any such lien or claim for lien is filed or recorded against the Property, the Village shall give Licensee notice thereof and demand that Licensee remove the same, or post adequate security to insure the removal of the same following the resolution of any dispute between Licensee and the lienholder, within thirty (30) days after such notice. Nothing in this provision shall restrict Licensee from granting a security interest in all or any part of the Licensee Improvements and to file of record UCC financing statement and/or fixture filings to perfect the same.

16. **ASSIGNMENT**: Licensee shall have the rights to sublicense or assign all or any part of its rights under this Agreement to any of its subsidiaries and affiliates or to any subsidiary or affiliate of Sprint Corporation (the "Permitted Assignees") without consent of the Village provided that the Village is given notice of the sublicense or assignment within 14 days thereof. Except as set forth in the preceding sentence, this Agreement may not be assigned or transferred without the express written consent of the Village, which shall not be unreasonably withheld, conditioned or delayed. Any assignment or transfer (other than to a Permitted Assignee) without such written consent shall, at the option of the Village, be deemed to be void and of no effect.

17. **HAZARDOUS SUBSTANCES**:

(a) The Village represents and warrants that it has no knowledge of any hazardous substance existing on the Property in violation of any applicable federal, state or local law, regulation or ordinance. The Village further agrees to hold Licensee harmless from and indemnify Licensee against any damage, loss or expense or liability resulting from the existence on the Property of any such hazardous substance, including all attorney's fees and consultant fees, costs and penalties, incurred as a result thereof, unless caused by Licensee or any of its employees or agents.

(b) Licensee represents and warrants that its use of the Licensed Premises will not generate any hazardous substance, and that it will not store or dispose on the Licensed Premises, nor transport to or over the Licensed Premises, any hazardous substance in violation of any applicable federal, state or local law, regulation or ordinance. Licensee further agrees to hold the Village harmless from and against and indemnify the Village against any release of

such hazardous substance and any damage, loss, or expense or liability resulting from such release, including attorney's fees and consultant fees, costs and penalties, incurred as a result thereof, which was caused by Licensee or any of its employees or agents.

(c) "Hazardous substance" as used herein shall mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic materials, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or ordinance presently in effect or promulgated in the future.

18. **COST OF ENFORCEMENT:** The prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Agreement shall be entitled to receive its reasonable attorney's fees and other reasonable enforcement costs and expenses from the non-prevailing party.

19. **INVALIDITY:** If any section, paragraph, clause or provision of this Agreement shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Agreement.

20. **FORCE MAJEURE:** Neither party shall be deemed in violation of this Agreement for the delay in performance or failure to perform in whole or in part its obligations under this Agreement due to strike, war or act of war (whether an actual declaration is made or not), insurrection, riot, act of public enemy, fire, flood or other act of God or by other events to the extent that such events are caused by circumstances beyond such party's control.

21. **NOTICES:** Unless otherwise specified herein, all notices under this agreement shall be made in writing and delivered to:

Village Manager  
Village of Downers Grove  
Civic Center  
801 Burlington Avenue  
Downers Grove, IL 60515-4776

SprintCom, Inc.  
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