

8/27/2009

70-R-09

A RESOLUTION

**Authorizing the City Manager to Execute an
Amendment to the South Standpipe Lease Agreement
Between the City and Sprintcom, Inc.**

WHEREAS, on October 28, 1997, the City entered into the South Standpipe Lease Agreement with Sprintcom, Inc., for the use of the South Evanston Water Tank located at 640 Hartrey Avenue in connection with the provision of mobile communications services; and

WHEREAS, Sprintcom, Inc., desires to execute an Amendment to the South Standpipe Lease Agreement ("Amendment No. 1") to allow the installation of three new microwave dishes at the south standpipe site as depicted in Exhibit A attached hereto and incorporated herein; and

WHEREAS, the Amendment increases the rent paid to the City by Sprintcom, Inc., by three thousand six hundred dollars (\$3,600.00) annually and allows for a five percent (5%) increase in the base rent level per year thereafter; and

WHEREAS, the term of the Amendment expires on the same date specified in the South Standpipe Lease Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF
THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:**

SECTION 1: That, contingent upon Sprintcom, Inc., obtaining a valid City building permit, the City Manager is hereby authorized to sign, and the City Clerk hereby authorized to attest to, Amendment #1 to the South Standpipe Lease Agreement

("Amendment No. 1") marked as Exhibit A and attached hereto and incorporated herein. The original South Standpipe Lease Agreement is marked as Exhibit B and attached hereto and incorporated herein.

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional conditions of the Agreement as may be determined to be in the best interests of the City.

SECTION 3: That this Resolution 70-R-09 shall be in full force and effect from and after its passage and approval in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: September 29, 2009

EXHIBIT A

**Amendment #1 to the South Standpipe Lease Agreement
Between the City and Sprintcom, Inc.**

AMENDMENT NO. 1 TO SOUTH STANDPIPE LEASE AGREEMENT

This Amendment No. 1 to South Standpipe Lease Agreement ("Amendment"), effective as of the date last signed below ("**Effective Date**"), amends a certain South Standpipe Lease Agreement between SPRINTCOM, INC., ("**Lessee**") and the City of Evanston, an Illinois municipal corporation ("**Lessor**"), dated October 28, 1997 (the "**Agreement**").

BACKGROUND

WHEREAS, Lessee desires to allow its affiliates or joint venture partners to use some portion of Site for the deployment of advanced wireless services. At the time of this Amendment, the proposed design calls for the installation of two (2) dishes and three panel antennas to be installed.

Lessee and Lessor therefore desire to modify the provisions of the Agreement as provided below.

AGREEMENT

For good and valuable consideration the receipt and sufficiency of which is acknowledged, Lessor and Lessee agree as follows:

1. **Modification to the Lessee Facilities.** Exhibit B-1 of the Agreement is amended to include the revised Exhibit B-2, consisting of lease drawings labeled LE-1 through LE-5, a copy of which is attached and made a part hereof. Upon full execution of this Amendment, Lessee is permitted to do all work necessary to prepare, maintain and alter the Premises to install, modify or otherwise relocate the Lessee Facilities, all as more fully described and contemplated in Exhibit B-2.
2. **Expiration or Termination of Sublease.** If Lessee's sublessee or sublicensee (i) does not install, construct or add equipment to the Premises, or (ii) installs equipment, but later removes the equipment, then upon written notice to Lessor, Lessee may terminate this Amendment. After terminating the Amendment, the terms and conditions of the Agreement as they existed immediately prior to the Effective Date of this Amendment shall be deemed ratified, and shall continue in full force and effect. Rent shall revert to the amount in effect immediately prior to the Effective Date of this Amendment, plus any rental increases, including annual escalators or rent increases due to other site modifications made by Lessee, which occurred during the period of time between the Effective Date of this Amendment and the termination date of this Amendment.
3. **Modification to Rent.** In consideration for the revisions contemplated by this Amendment, effective upon the first day of the month following the date the facilities are modified, the monthly rent will be increased by \$100.00 per microwave dish or panel antenna. It is hereby noted that the current lease agreement with Sprint requires the rent to be paid annually (on October 28th of each year). Therefore the proposed annual rent will increase \$1,200 per antenna per year. It is also noted that the Rent Increase amount is subject to the 5% annual increase as per the prime lease. In the event the new microwave dishes are not installed by October 28, 2009, then the rent for the antennas shall be calculated at \$100/month effective upon the first day of the month following the date the facilities are modified for the first year they are installed.

hsx

4. **Lessee's Notice Address.** Lessee's notice address in Section 21(e) of the Agreement is hereby deleted in its entirety and replaced with the following:

Sprint/Nextel Property Services
Mailstop KSOPHT0101-Z2650
6391 Sprint Parkway
Overland Park, Kansas 66251-2650

With a mandatory copy to: Sprint/Nextel Law Department
Mailstop KSOPHT0101-Z2020
6391 Sprint Parkway
Overland Park, Kansas 66251-2020
Attn.: Real Estate Attorney"

5. **General Terms and Conditions.**

(a) All capitalized terms used in this 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 Amendment, the terms and conditions herein will control. Except as set forth below, all provisions of the Agreement are ratified and remain unchanged and in full force and effect.

(c) This Amendment may be executed in duplicate counterparts, each of which will be deemed an original.

(d) Each of the parties represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Amendment.

SIGNATURES ON FOLLOWING PAGE

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

Lessor:

City of Evanston, an Illinois municipal corporation

Lessee:

SPRINTCOM, INC.,
a Kansas Corporation

By: Wally Bobkiewicz

Name: WALLY BOBKIEWICZ

Title: CITY MANAGER

Date: 10-1-09

By: Holly S. Castellanos

Name: Holly S. Castellanos

Title: Manager, Real Estate

Date: 8/28/09

Exhibit A-1

PIN: 10-24-310-033-0000

LAND PARCEL DESCRIPTION

SOUTH EVANSTON WATER TANK

640 HARTREY AVENUE

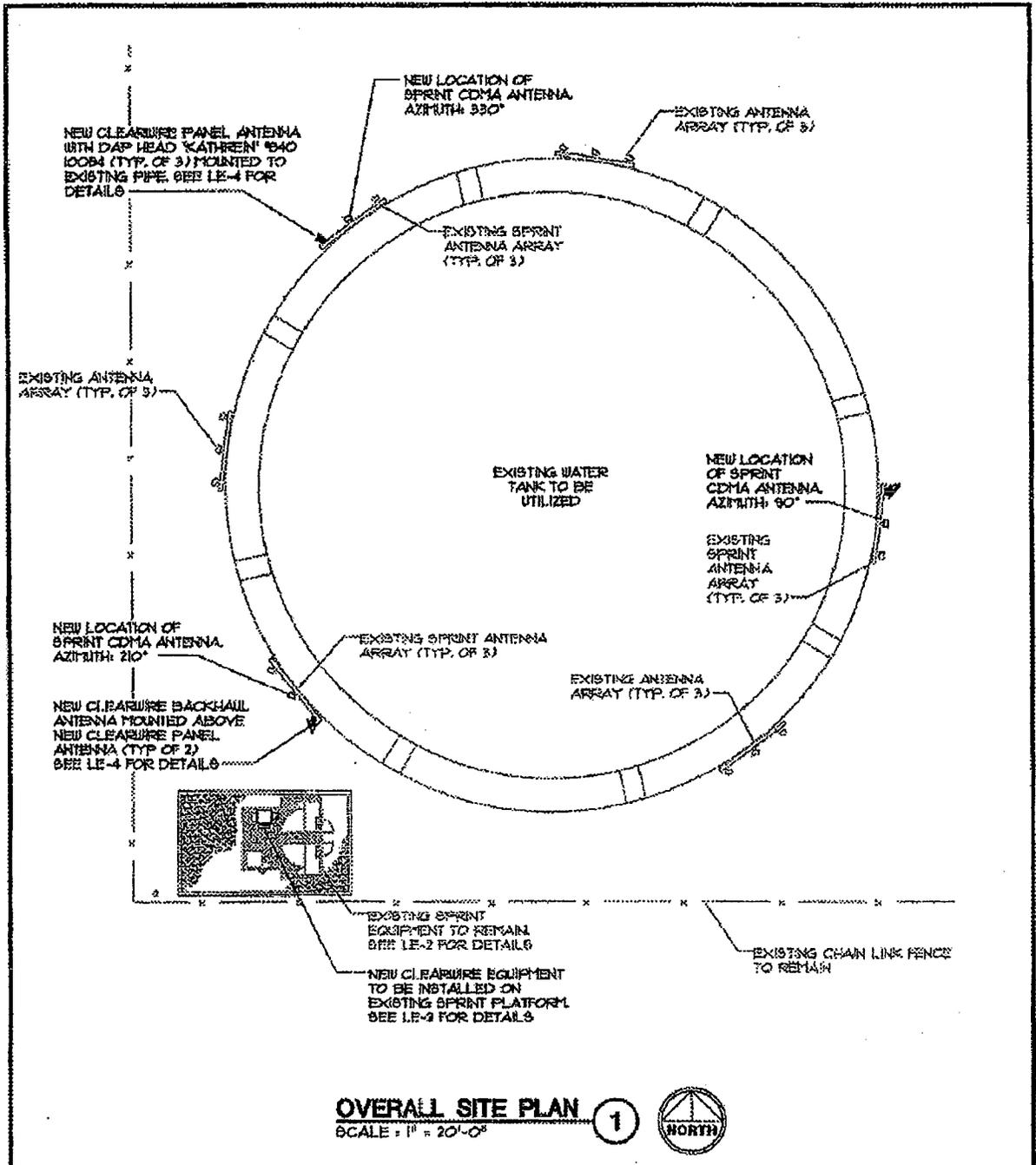
THAT PART OF THE SOUTH HALF OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13 DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF CLEVELAND STREET WITH THE WEST RIGHT-OF-WAY LINE OF HARTREY AVENUE; THENCE SOUTH ALONG THE WEST RIGHT-OF-WAY LINE OF HARTREY AVENUE TO THE NORTHEAST CORNER OF LOT "IP" IN MACTAGGART AND NEWTON'S SUBDIVISION; THENCE WEST ALONG THE NORTH LINE OF SAID MACTAGGART AND NEWTON'S SUBDIVISION 300.0 FEET; THENCE NORTH AT RIGHT ANGLE TO THE LAST DESCRIBED COURSE 100.0 FEET; THENCE EAST 16.5 FEET TO THE EAST RIGHT-OF-WAY LINE OF PITNER AVENUE; THENCE NORTH ALONG SAID EAST RIGHT-OF-WAY LINE OF PITNER AVENUE TO A POINT WHICH IS 233.0 FEET SOUTH OF THE CENTERLINE OF CLEVELAND STREET; THENCE EAST TO A POINT 200.0 FEET WEST OF THE WEST RIGHT-OF-WAY LINE OF HARTREY AVENUE; THENCE NORTH ALONG A LINE PARALLEL TO THE WEST RIGHT-OF-WAY LINE OF HARTREY AVENUE TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF CLEVELAND STREET WHICH IS 200.0 FEET WEST OF THE WEST RIGHT-OF-WAY LINE OF HARTREY AVENUE; THENCE EAST 200.0 FEET TO THE POINT OF BEGINNING, ALL EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

WLF
WLF

Exhibit B-2

Lease Exhibit Drawings labeled LE-1 through LE-5

hse

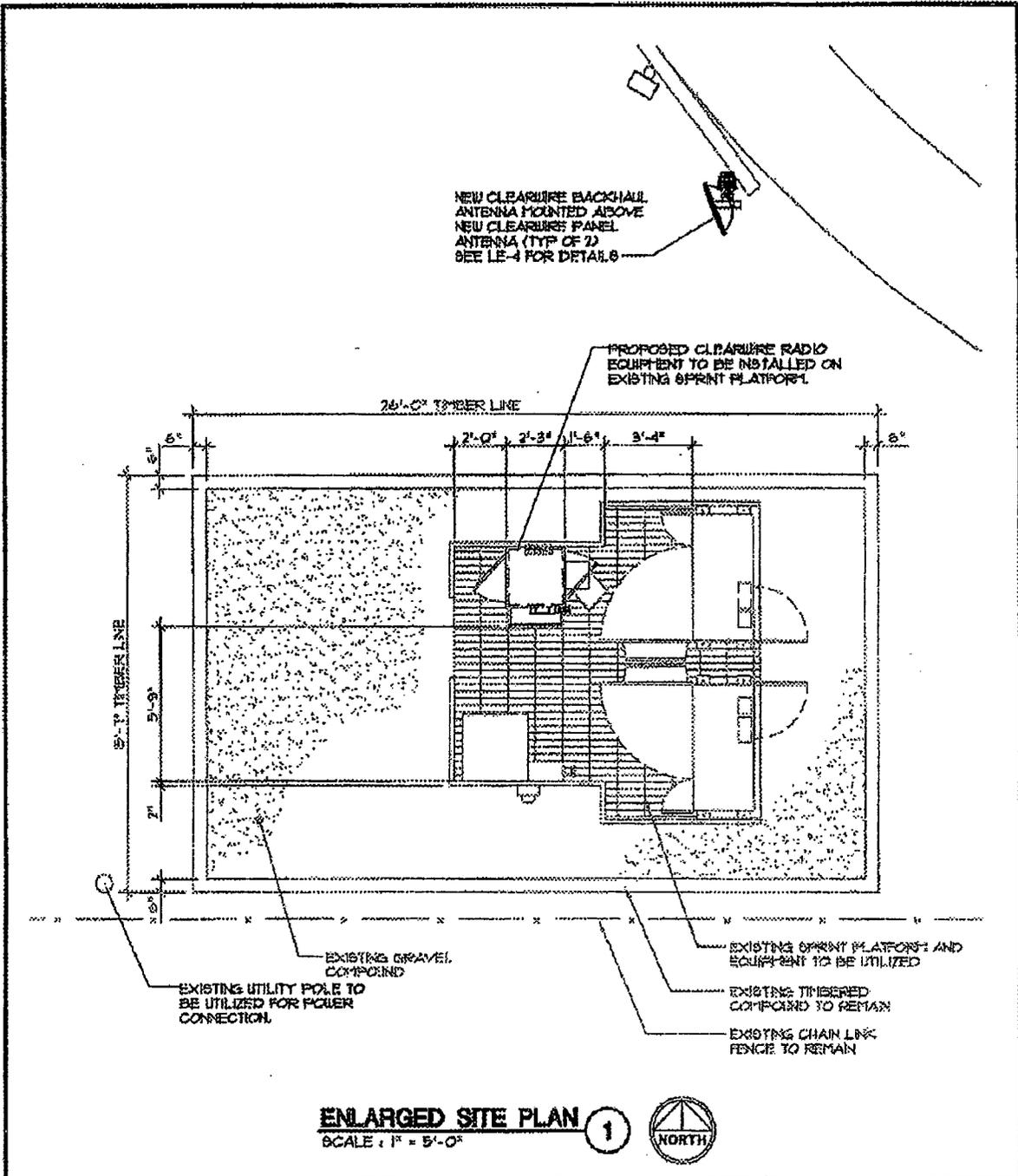


OVERALL SITE PLAN ①
SCALE: 1" = 20'-0"



	<p>W-T COMMUNICATION DESIGN GROUP, LLC. WIRELESS INFRASTRUCTURE</p> <p>2525 Princeton Avenue Bellevue, WA 98005, Phone: 206-222-8222 Fax: 206-222-4222, POC: 206-222-2833 ext 114 www.wirelessinfrastructure.com</p> <p>IL License No: 084-001108 Reg: 0000026</p> <p><small>© PROPERTY OF W-T COMMUNICATION DESIGN GROUP, LLC.</small></p>	<p>clearwire wireless broadband</p> <p>4400 CARLSON POINT KIRKLAND, WA 98049</p>	<p>SITE NAME: CHO3XC276 CLEARWIRE SITE ID: IL-CHI0336</p> <p>630 MARTINEY EVANSTON, IL 60201</p> <p>PROJECT NUMBER: T090301 DATE: 4/28/09 DRAWN BY: BK</p>
<p>LEASE EXHIBIT</p>		<p>LE-1</p>	

Handwritten signature

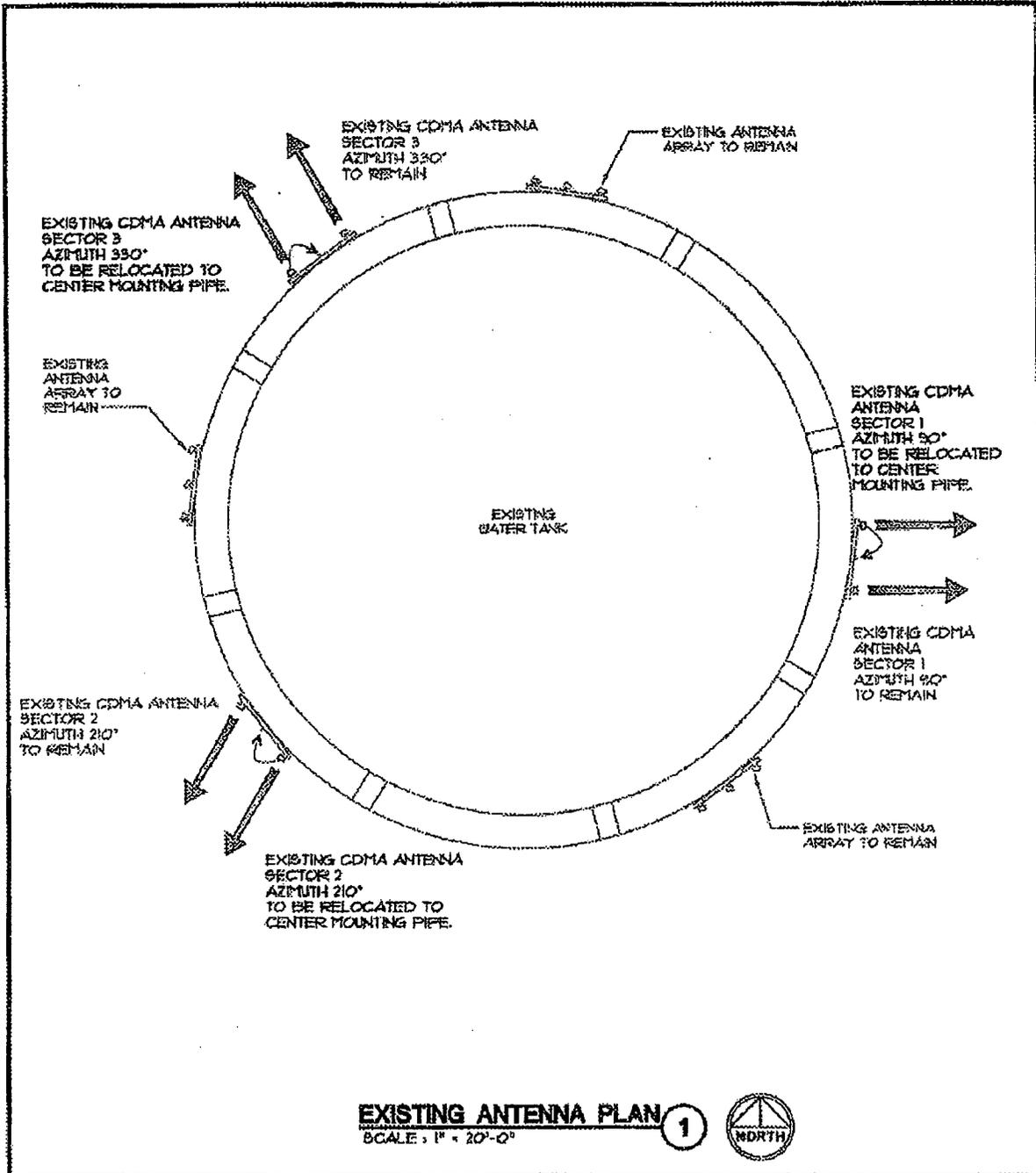


ENLARGED SITE PLAN 1
 SCALE: 1" = 5'-0"



	W-T COMMUNICATION DESIGN GROUP, LLC. WIRELESS INFRASTRUCTURE <small>2816 Pleasant Garden Highway, Everett, WA 98203 PH: (425) 399-8533 FAX: (425) 399-8444 www.wttdesign.com</small> <small>U. State No. 184-021120 Exp. 6/30/10</small>	 wireless broadband <small>4400 CARILLON POINT KIRKLAND, WA 98033</small>	SITE NAME: CHO3XC275 CLEARWIRE SITE ID: IL-CHI0336 <small>640 HARTREY EVANSTON, IL 60201</small>
	<small>PROJECT NUMBER: T090301 DATE: 4/29/09 LEASE NO: BK</small>		LEASE EXHIBIT

hxc



EXISTING ANTENNA PLAN 1
 SCALE: 1" = 20'-0"



WT

W-T COMMUNICATION DESIGN GROUP, LLC.
 WIRELESS INFRASTRUCTURE

2075 PULASKI AVENUE
 NORTON, ILLINOIS 60132
 PHONE: (708) 403-8333 FAX: (708) 253-0444
 WWW.WTCDG.COM

IL License No. 186-021108 Exp. 04/30/12

COPYRIGHT © 2009 BY COMMUNICATION DESIGN GROUP, LLC.

clearwire
 wireless broadband

4400 CARILLON POINT
 KIRKLAND, WA 98039

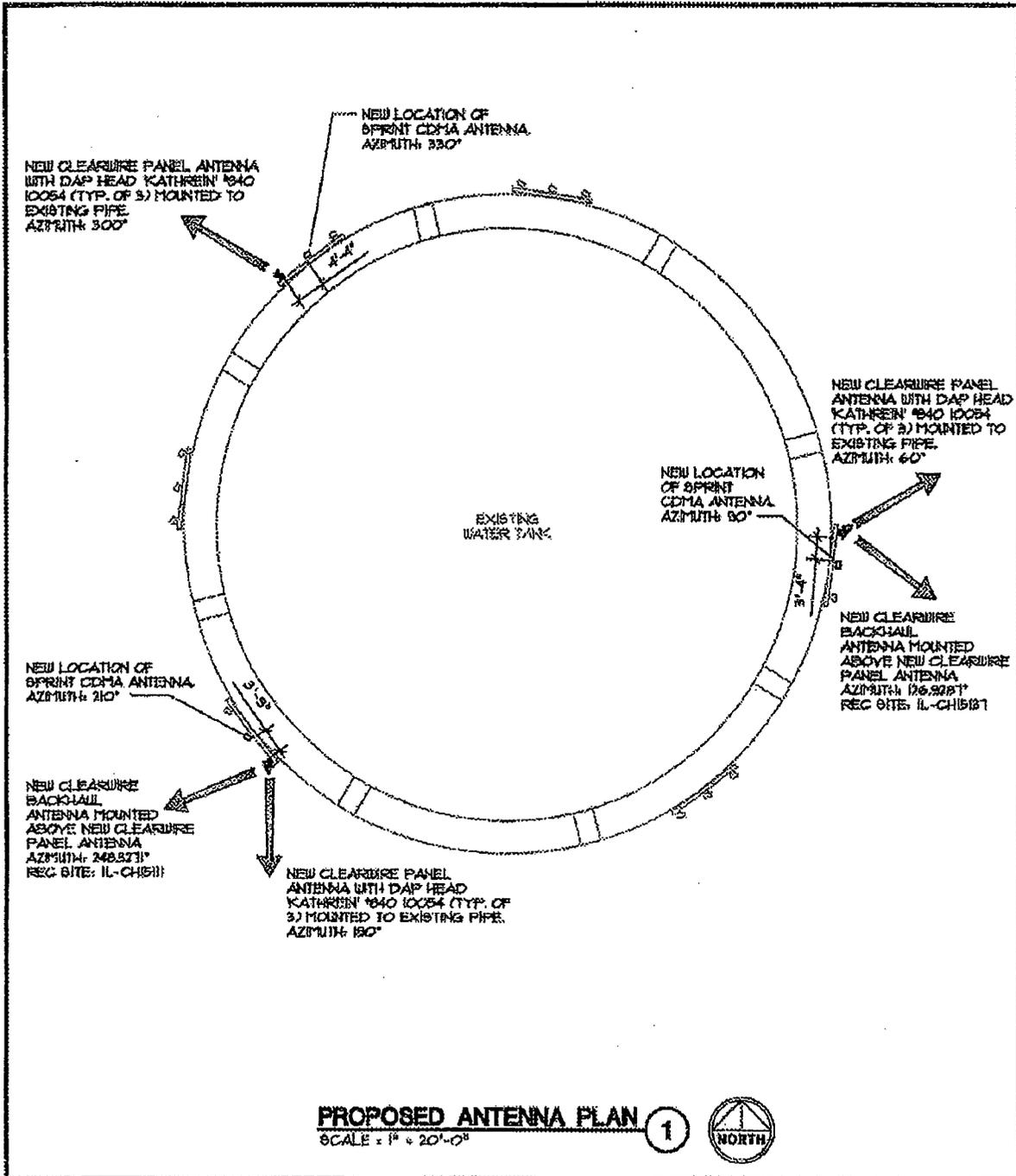
SITE NAME: CH03XC275
 CLEARWIRE SITE ID: IL-C-110336

640 HARTREY
 EVANSTON, IL 60201

PROJECT NUMBER: T09G301 DATE: 4/28/09 DRAWN BY: BK

LEASE EXHIBIT LE-3

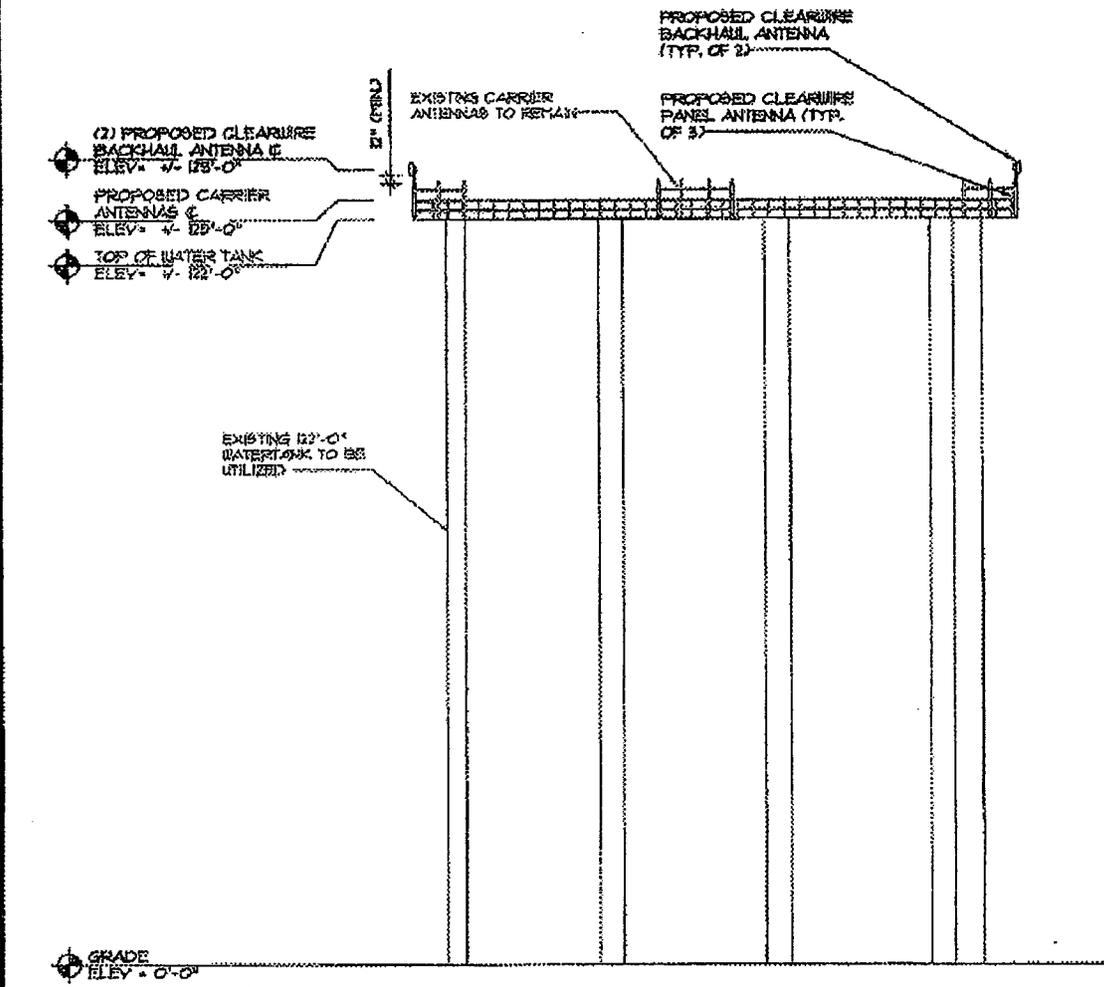
Handwritten signature



	W-T COMMUNICATION DESIGN GROUP, LLC. WIRELESS INFRASTRUCTURE 2575 Pacific Avenue Kirkland, WA 98033 PH: (206) 201-0203 FAX: (206) 201-0444 www.wtcdesign.com L. License No: 194 (03) 501 Exp: 04/2005		SITE NAME: CHO3XC275 CLEARWIRE SITE ID: IL-CHI0336	
	640 HARTREY EVANSTON, IL 60201		PROJECT NUMBER: T080301 DATE: 4/28/09 DRAWN BY: BK	LEASE EXHIBIT LE-4

hva

NOTE:
SEE STRUCTURAL REPORT FOR ANY
ADDITIONAL INFORMATION REGARDING
MODIFICATION AND ADDITIONS TO TOWER. NO
WORK SHALL START WITHOUT THE APPROVED
STRUCTURAL ANALYSIS BY OTHERS.



TOWER ELEVATION ①
SCALE: 1" = 25'-0"

	W-T COMMUNICATION DESIGN GROUP, L.L.C. WIRELESS INFRASTRUCTURE 2074 Franklin Avenue Evanston, Illinois 60201 PH: (847) 848-0000 FAX: (847) 848-0044 www.wtgroup.com E-License No: 184-001185 Exp: 04/30/07		SITE NAME: CHO3XC275 CLEARWIRE SITE ID: IL-CHI0336		
	4400 CARILLON POINT KIRKLAND, WA 98030		849 HARTNEY EVANSTON, IL 60201 PROJECT NUMBER: T090301 DATE: 4/29/08 DRAWN BY: BK		
COPYRIGHT © 2007 W-T COMMUNICATION DESIGN GROUP, L.L.C.			LEASE EXHIBIT		LE-5

EXHIBIT B

**South Standpipe Lease Agreement
Between the City and Sprintcom, Inc.**

**SOUTH STANDPIPE
LEASE AGREEMENT**

This Lease Agreement ("Agreement") is entered into this 28TH day of OCTOBER, 1997, between SPRINTCOM, INC., a Kansas Corporation ("LESSEE"), and the City of Evanston, an Illinois municipal corporation ("LESSOR").

In consideration of the mutual covenants contained herein and for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Premises.** Lessor is the owner of a parcel of land (the "Land") and the water tank which is located on said parcel, as described in Exhibit "A" attached hereto. Subject to the terms and conditions contained in this Agreement, Lessor hereby leases to Lessee and Lessee leases from Lessor, a certain portion of the Land and water tank (the "Premises") as described in Exhibit B-1 attached hereto. The term "Premises" does not include "Lessee Facilities" which are personal property and which are defined in Paragraph 6 hereof.

2. **Use.** The Premises may be used by Lessee in connection with the provision of mobile communications services, including without limitation, the transmission and the reception of radio communication signals on various frequencies, and for the construction, maintenance and operation of necessary facilities, including nine (9) panel antennas mounted on the water tank, concealing shield, base station, and space required for cable runs to connect Lessee's equipment and antennas. Lessor agrees to cooperate with Lessee, at Lessee's expense, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Lessee's intended use of the Premises.

3. **Tests and Construction.**

(a) Lessee shall have the right, with proper notice, following the full execution of this Agreement to enter upon the Land during normal working hours from 7:00 A.M. to 3:30 P.M., Monday through Friday, for the purpose of making necessary engineering surveys and inspections and other reasonably necessary tests ("Tests"), if needed, and for the purpose of constructing the Lessee Facilities (as defined in Paragraph 6(a) below) and installing the Site Equipment (as defined in Paragraph 9(a) below) (collectively "Construction"). At least five business days prior to any Tests or Construction, Lessee will provide Lessor with a certificate of insurance naming Lessor as an additional insured and evidencing liability insurance in the amounts set forth in Paragraph 13 and a Liability Waiver/Indemnification as set forth in Paragraph 14 of this agreement. In any proposed Tests or construction, Lessee will notify Lessor of any proposed Tests or Construction, and will coordinate the scheduling of same with Lessor as well as cooperate with Lessor so as to minimize any interference with the business operations currently conducted by Lessor on the Land.

(b) Sprintcom will white metal blast interior of pilaster, to be used as cable carrier, to Steel Structures Paint Council specification SP-10 with a: Prime coat of Tnemec Series 65-1212 Chicago Grey Poxiprimer or Series 160-1212 Chicago Grey Tnemec - Fasprime within 12 hours maximum open time - this coating to be applied at a dry film thickness of 2.0 mils per coat. Intermediate coat to be Tnemec Series 66 Hi Build Epoxoline or Series 61 Tnemec Fascur in a color that contrasts with the color of the finish coat. This coating shall be applied at a dry film thickness of 2.0 mils. Finish Coat - Apply one complete coat of "Beige" Tnemec Series 74 Endura-Shield III. This coating shall be applied at a dry film thickness of 2.0 mils per coat.

4. **Term.** The term of this Agreement shall be ten (10) years commencing on the date of execution of this Lease Agreement ("Commencement Date") and terminating on the tenth anniversary of the Commencement Date (the "Term") unless otherwise terminated as provided in Paragraph 11. Lessor and Lessee agree to execute a document evidencing such Commencement Date. Lessee shall have the right to extend the Term for Four (4) successive five (5) year periods (the "Renewal Terms") on the same terms and conditions as set forth herein, plus the additional payment set forth in Section 5 (e) below. This Agreement shall be extended for each successive Renewal Term unless Lessor or Lessee notifies the other not less than sixty (60) days prior to the respective expiration date of Lessor's or Lessee's intention not to extend such Term or Renewal Term.

5. **Rent; Maintenance; Call Out Fees.**

(a) Within 30 days of the Commencement Date and on each anniversary thereafter annually in advance, Lessee shall pay to Lessor as rent, the sum of Eighteen Thousand Nine Hundred and 00/100 Dollars (\$18,900.00) per year ("Rent"). Rent shall be payable to Lessor at City of Evanston, Attention: Finance Director, 2100 Ridge Avenue, Evanston, Illinois 60201.

(b) On each annual anniversary of the Commencement Date, Lessee shall pay the then current Rent, increased by an amount equal to five percent (5%) of the Rent for the previous year.

(c) If this Agreement is terminated by Lessee prior to its expiration, annual rent and maintenance fees already paid shall be forfeited to the Lessor.

(d) For Lessee's access, for any reason, at hours other than 7:00 A.M. to 3:30 P.M., Monday through Friday, Lessee shall compensate Lessor at the Call out rate, per employee call out, in the current Union Contract at the scale for Master Mechanic. Lessee shall reimburse Lessor for said call out rate within 21 days after being invoiced therefore. Lessee's failure to pay said invoices may, at Lessor's option, constitute an event of default. All costs related to emergency calls other than normal working hours must be reimbursed to the Water & Sewer Division of the City of Evanston.

(e) Lessee shall pay the Lessor Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) upon each five (5) year contract signing (for tank maintenance and painting charges), but Lessee shall not be limited to this financial responsibility if additional charges are incurred by the Lessor that are attributable to the Lessee's actions or equipment. In the event of such additional charges, Lessee shall pay same within 30 days of the date of Lessor's invoice.

6. **Improvements; Liability; Utilities; Access.**

(a) Lessee has the right to erect, maintain and operate on the Premises wireless communications facilities, including nine (9) panel antennas mounted on the water tank, concealing shield, base station, utility lines, and space required for cable runs to connect Lessee's equipment and antennas thereto ("Lessee Facilities"). In connection therewith, Lessee has the right to do all work necessary to prepare, maintain and alter the Premises for Lessee's business operations and to install transmission lines connecting the antennas to the transmitters and receivers. All of Lessee's construction and installation work shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Title to the Lessee Facilities shall be held by Lessee. All of Lessee's Facilities shall remain Lessee's personal property and are not fixtures.

Lessee has the right to remove all Lessee Facilities at its sole expense on or before the expiration or earlier termination of the Term or any Renewal Term; provided, Lessee repairs any damage to the Premises caused by such removal and Lessee restores the Premises to their original condition at Lessee's sole cost and expense excluding normal wear and tear and loss by casualty or other reasons reasonably beyond Lessee's control. Upon termination of this Agreement, Lessee shall not be required to remove any foundation more than ten (10) feet below ground level. At the termination of the Lease, Lessor, in its sole discretion, may accept any portion of the Lessee Facilities that Lessee desires to donate to the Lessor.

The "Lessee Facilities" shall be constructed in accordance with the Site Plan, attached hereto and made a part hereof as Exhibit C.

(b) Lessee shall be required to have a separate underground electric supply. Lessee shall, at its own expense, obtain electrical service from any utility company that provides electric service to the Premises. Lessee shall install a separate meter and main breaker. Lessee shall pay for the electricity it consumes in its operations. Lessee has the right to install new utilities (including a standby power generator for Lessee's exclusive use at a location on the Premises acceptable to both parties). Lessee also has the right to bring underground utilities across the Land in order to service the Premises. The location of the underground utility lines shall be as required by Lessee and the applicable utility company. Lessee shall pay all of the Lessor's costs related to said easements, for the restoration of the Land to its condition prior to the installation of the utility lines, (excluding, however, normal wear and tear and loss by casualty or other reasons reasonably beyond Lessee's control) and attorney's fees to a maximum of four (4) hours at the billable rate in effect at the time the service is rendered, however, said limit shall not apply in the event of litigation between the Lessor and Lessee on any of the terms of this lease.

The antenna must be mounted on a rail with appropriate brackets. The antenna must be painted the color of the water tank. Separate grounding for the antenna is required. All services required for the antenna must be underground. All cables are to be routed up the pilaster and mounted on the railing. Lessee's equipment is to be placed on a concrete pad (screw anchor foundation is acceptable).

(c) Lessor shall provide to Lessee, Lessee's employees, agents and subcontractors access over the Land to the Premises. Lessee is responsible for locking the gates when leaving the site.

7. Interference.

(a) Lessee shall operate the Lessee Facilities in a manner that will not cause interference to Lessor and other lessees of the Lessor. All operations by Lessee shall be lawful and in compliance with all Federal Communications Commission ("FCC") requirements. Lessee, prior to the execution of this lease, shall have made itself aware of the Lessor's and other of Lessor's Lessees' existing use of the airwaves and represents that its operations will not interfere with their uses.

8. **Taxes.** Lessee shall pay all applicable personal property, use or occupational taxes. Further, Lessee shall timely pay any and all applicable real property taxes directly attributable to the for-profit use of the Premises and as assessed by the governing taxing authority upon its determination of the exact size and location of the Premises. As a condition of Lessee's obligation to pay such real property taxes, Lessor shall provide to Lessee a copy of the tax assessment from the taxing authority indicating such taxes are due to the for-profit use of the Premises. Lessee's obligation to pay any taxes associated with this Agreement shall terminate when Lessee has paid all such taxes assessed against the Premises for the period of time Lessee has the right, pursuant to this Lease, to occupy the Premises. Lessee and its agents shall have the right to challenge and contest the amount and validity, in whole or in part, of any real estate taxes levied (or of any assessed valuation which forms the basis of real estate taxes levied or to be levied) for which Lessee is responsible under this Paragraph or applicable law. Such challenge or contest may take place by whatever means are legally available or established from time to time by the relevant authorities, but Lessee shall exercise reasonable diligence in all proceedings in connection therewith.

9. **Equipment.**

(a) Lessee shall provide all transmitters and receivers and all related electronic equipment ("Site Equipment") required for the installation and operation of Lessee's system. The Site Equipment is and shall remain the sole property of the Lessee and may be removed from the Premises at any time by the Lessee. Lessee shall remove all Site Equipment from the Premises at Lessee's expense upon the termination of this Agreement.

(b) Lessee shall provide all of the equipment and labor necessary to the installation of Lessee's system including the antennas, associated lines, isolation equipment and electrical terminals. The equipment provided by Lessee shall remain the sole personal property of Lessee and shall not be deemed fixtures.

(c) Lessee shall, at its sole cost and expense, maintain and repair its Site Equipment.

(d) Any change to the design of the antenna equipment or configuration must have prior Lessor approval.

10. **Liens.** Lessee agrees that no liens shall be placed on Lessor's property or funds in connection with Lessee's obligations hereunder. Lessor shall satisfy liens which are placed or threatened and shall have its remedy against the person(s) asserting the liens.

11. **Termination.** This Agreement may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, provided that the grace period for any monetary default is ten (10) days from receipt of notice; or (ii) by Lessee for any reason or for no reason, provided Lessee delivers written notice of early termination to Lessor no later than thirty (30) days prior to the Commencement Date; or (iii) by Lessee if it does not obtain or maintain any license, permit or other approval necessary to the construction and operation of Lessee Facilities; or (iv) by Lessee if Lessee is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation a take back of channels or change in frequencies; or (v) by lessee if Lessee determines that the Premises are not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference, provided if Lessee terminates this Agreement pursuant to clause (v) above, Lessee shall pay to Lessor, upon the effective date of termination, a termination fee equal to six (6) months of the Rent then in effect; (vi) by Lessor, if use of a water tank is no longer needed for, or in connection with Lessor's water services (in such event, Lessor is under no obligation to retain the tank or to provide a location from which Lessee can conduct its activities); (vii) by Lessor, if in Lessor's sole

judgement, Lessee's operations unreasonably interfere with Lessor's use of the airwaves for Public Safety Communications, if said interference remains uncorrected after three (3) business days after written notice thereof, or any extensions granted by Lessor, given the potential for interference with the provisions of police and fire services to the citizens of Evanston, the City may terminate with 24 hours notice to Lessee. If this agreement is terminated by Lessor as a result of such interference, annual rent and maintenance fees already paid shall be forfeited to the Lessor.

12. Termination in the Event of Casualty or Condemnation.

(a) In the event of any damage, or destruction to the Premises or any part thereof, which renders the Premises unusable or inoperable, Lessor or Lessee shall have the right, but not the obligation, to terminate this Agreement and all of its duties and obligations herein by giving written notice to the other within thirty (30) days after such damage or destruction.

(b) If Lessee does not terminate this Agreement: (1) the Rent payable herein shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises; and (2) Lessee recognizes that the Premises are a City-owned water tank and that the decision to rebuild in the event of a casualty must be solely that of the City; (3) if the Lessee does rebuild, the design, plans, and location of the water tank are exclusively the City's decision; (4) that the City may relocate the water tank without any liability or obligation whatsoever to Lessee; (5) that the City is under no obligation to provide a location in lieu of the existing water tank from which lessee can operate its antenna and/or provide its services.

(c) In the event of condemnation, unless Lessee is allowed by the condemning authority to continue its operations on the Premises, this Agreement shall terminate as of the date title to the Land vests in the condemning authority or Lessee is required to cease its operations, whichever is earlier. Lessee shall be entitled to share in the proceeds of any condemnation award, and Lessee's share shall be limited to the value of any Lessee Facilities which are transferred to the condemning authority, moving expenses, prepaid Rent and business dislocation expenses.

13. Insurance.

(a) Lessee, at Lessee's sole cost or expense, shall procure and maintain on the Premises and on Lessee's Site Equipment, bodily injury and property damage insurance with a combined single limit of at least One Million and 00/100 Dollars (\$1,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against all liability of Lessee, its employees, and agents arising out of or in connection with Lessee's use of the Premises, all as provided for herein. Lessee shall obtain said insurance from a company with a Best's rating of A, Class VI or better. Lessor shall be named as a primary, non-contributory, additional insured on Lessee's policy. Lessee shall provide to Lessor a certificate of insurance evidencing the coverage required by this paragraph.

(b) All insurance required under this Agreement shall:

- (1) Be issued as a primary policy; and
- (2) Contain an endorsement requiring thirty (30) days written notice from the insurance company to both parties before cancellation or change in the coverage, scope, or amount of any policy. Each certificate of the policy shall be deposited with Lessor's Safety/Risk Administrator within thirty (30) days of the Commencement Date and, on renewal of the policy, not less than thirty (30) days before expiration of the term of the policy.

14. **Liability Waiver/Indemnification**. In consideration of the rights and privileges granted to Lessee hereunder, Lessee hereby fully releases and discharges the City of Evanston, its officers, agents and employees from any and all claims from injuries, including death, damages or loss, which may arise or which may be alleged to have arisen out of, or in connection with the granting of this Agreement.

Lessee further agrees to indemnify and hold harmless and defend the City of Evanston, its officers, agents and employees from any and all claims resulting from injuries, including death, damages and losses, including, but not limited to the general public, which may arise or may be alleged to have arisen out of, or in connection with this Agreement.

15. **Assignment**. Neither Lessor nor Lessee may assign or otherwise transfer all or any part of its interest in this Agreement or in the Premises without the prior written consent of the other party, such consent not to be unreasonably withheld; provided, however, that Lessor or Lessee may assign its interest to its parent company, any subsidiary or affiliate or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets.

16. **Premises**. Lessee shall maintain the Premises and operate its facilities thereon in a manner as will best enable it to fulfill its service requirements, and in accordance with the specifications herein mentioned. Lessee shall maintain the Premises and Lessee Facilities thereon in accordance with all applicable local, state and federal laws.

17. **Warranty of Title and Quiet Enjoyment**.

(a) Lessor warrants that: (i) Lessor owns the Land in fee simple and has rights of access thereto; (ii) Lessor has full right to make this Agreement; and (iii) Lessor covenants and agrees with Lessee that upon Lessee paying the Rent and observing and performing all the terms, covenants and conditions on Lessee's part to be observed and performed, Lessee may peacefully and quietly enjoy the Premises; subject, nevertheless, to the terms and conditions of this Agreement. Lessor is prepared to document its interest in the Real Estate.

(b) Lessor warrants that its making of this Agreement and its performance thereof will not violate any laws, ordinances, restrictive covenants, or the provision of any mortgage, lease, or other agreements under which Lessor is bound and which restricts the Lessor in any way with respect to the use or disposition of the Land.

18. Repairs.

(a) Except as otherwise provided in the Lease, Lessee shall not be required to make any repairs to the Premises or Land unless such repairs shall be necessitated by reason of the default or neglect of Lessee, its agents, servants and employees.

(b) Lessee understands that the City must repair and maintain the Premises. During such times, the City may need to interrupt Lessee's operations or such activities may inadvertently result in interruption. To the best of the City's ability, it will provide Lessee with advance notice of its repair/maintenance activities and will attempt to minimize such interruption. In no event, whether related to repair or maintenance, or to any other cause, will the City be liable to Lessee in damages, whether consequential or otherwise, and Lessee will indemnify the City of any judgements, fees, or costs incurred by the City as a result of the granting of this Agreement.

19. Lessor's Environmental Indemnity. Lessor warrants that the Land has not been used for the generation, storage treatment or disposal of hazardous substances or hazardous wastes. In addition, Lessor warrants that no hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyl's (PCBs) petroleum or other fuels (including crude oil or any fraction or derivative thereof) or underground storage tanks (collectively "Environmental Hazards") are located on or about the Land. For purposes of this Agreement, the term "hazardous substances" shall be as defined in the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. Section 9601 et seq.) (CERCLA), and any regulation promulgated pursuant thereto. The term "hazardous wastes" shall be as defined in the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) (RCRA), and any regulations promulgated pursuant thereto. The term "pollutants" shall be as defined in the Clean Water Act (33 U.S.C. Section 1251 et seq.), and any regulations promulgated pursuant thereto.

In connection therewith, Lessor agrees to indemnify and hold harmless Lessee, Lessee's successors and assigns and Lessee's present and future officers, directors, employees and agents (collectively, Indemnities) from any and all penalties, fines, forfeitures, demands, damages, losses, claims, causes of action, suits, judgements, and costs and expenses incidental thereto (including cost of defense, settlement, reasonable attorney's fees, reasonable consultant and/or expert witness fees), which Indemnities may hereinafter suffer, incur, be responsible for, or disburse as a result of:

- (1) any governmental action, order, directive, administrative proceeding or ruling;
- (2) personal or bodily injuries (including death) or damage (including loss of use) to any sites (public or private);

- (3) clean up, remediation, investigation or monitoring of any pollution or contamination of or adverse effects on human health or the environment; or
- (4) any violation or alleged violation of laws, statutes, or ordinances, orders, rules or regulations of any governmental entity or agency.

(collectively "Environmental Liabilities") directly or indirectly caused by or arising out of any Environmental Hazards existing on or about the Premises, except to the extent that any such existence is caused solely by Lessee's activities on the Premises.

20. **Lessee's Environmental Indemnity.** Lessee warrants that the Premises will not be used for the generation, storage, treatment or disposal of hazardous substances or hazardous wastes. In addition, Lessee warrants that no hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs) petroleum or other fuels (including crude oil or any fraction or derivative thereof) or underground storage tanks (collectively "Environmental Hazards") will be located on or about the Premises. For purposes of this Agreement, the term "hazardous substances" shall be as defined in the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. Section 9601 et seq.) (CERCLA), and any regulation promulgated pursuant thereto. The term "hazardous wastes" shall be as defined in the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) (RCRA), and any regulations promulgated pursuant thereto. The term "pollutants" shall be as defined in the Clean Water Act (33 U.S.C. Section 1251 et seq.), and any regulations promulgated pursuant thereto.

Lessee shall not bring to, transport across or dispose of any hazardous substances on the Premises or Property, except for fuel for Lessee's emergency power system. Lessee's use of such fuel shall comply with all applicable laws, ordinances, and regulations governing its use. Lessee agrees to indemnify and hold harmless, Lessor from any and all claims which may arise from Lessee's breach of the provisions of this paragraph.

In connection therewith, Lessee agrees to indemnify and hold harmless Lessor, Lessor's successors and assigns and Lessor's present and future officers, directors, employees and agents (collectively, "Lessor Indemnities") from any and all penalties, fines, forfeitures, demands, damages, losses, claims, causes of action, suits, judgements, and costs and expenses incidental thereto (including cost of defense, settle, reasonable attorney's fees, reasonable consultant and/or expert witness fees), which Lessor Indemnities may hereinafter suffer, incur, be responsible for, or disburse as a result of:

- (1) any governmental action, order, directive, administrative proceeding or ruling;
- (2) personal or bodily injuries (including death) or damage (including loss of use) to any sites (public or private);
- (3) clean up, remediation, investigation or monitoring of any pollution or contamination of or adverse effects on human health or the environment; or

with copy to: Sprintcom, Inc.
4900 Main Street - 12th Floor
Kansas City, MO 64112
Attention: Associate General Counsel

Lessor or Lessee may from time to time designate any other address for this purpose by written notice to the other party.

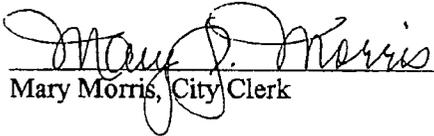
(f) This Agreement shall be governed by the laws of the State of Illinois, with any litigation hereunder to be in Cook County, Illinois.

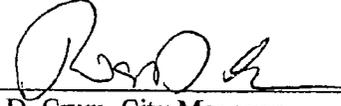
(g) The parties shall cooperate in executing any documents (including, but not limited to, an Estoppel Certificate, a Memorandum of Agreement in the form annexed hereto as Exhibit B-2 and a Non-Disturbance and Attornment Agreement) necessary to protect Lessee's rights herein or Lessee's use of the Premises. Lessor acknowledges that a Memorandum of Agreement will be recorded by Lessee in the Official Records of the County where the Land is located. Upon the expiration or earlier termination of this Agreement, Lessee agrees to record an agreement evidencing the termination of Lessee's interest in the Premises and to do so at its cost within 60 days of expiration/termination, and to provide a stamped copy of same to Lessor's Law Department.

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

ATTEST:

CITY OF EVANSTON


Mary Morris, City Clerk

By: 
Roger D. Crum, City Manager

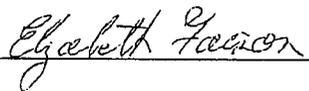
Date: 10-28-97

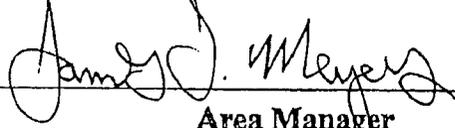
Date: 10/28/97

Tax ID# 36-6005870

ATTEST:

SPRINTCOM, INC., a Kansas Corporation


Elizabeth Gannon

By: 
Area Manager

Date: 10/23/97

Date: 10/23/97

EXHIBIT A

LAND PARCEL DESCRIPTION

SOUTH EVANSTON WATER TANK

640 HARTREY AVENUE

THAT PART OF THE SOUTH HALF OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 13 DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF CLEVELAND STREET WITH THE WEST RIGHT-OF-WAY LINE OF HARTREY AVENUE; THENCE SOUTH ALONG THE WEST RIGHT-OF-WAY LINE OF HARTREY AVENUE TO THE NORTHEAST CORNER OF LOT "H" IN MACTAGGART AND NEWTON'S SUBDIVISION; THENCE WEST ALONG THE NORTH LINE OF SAID MACTAGGART AND NEWTON'S SUBDIVISION 300.0 FEET; THENCE NORTH AT RIGHT ANGLE TO THE LAST DESCRIBED COURSE 100.0 FEET; THENCE EAST 16.5 FEET TO THE EAST RIGHT-OF-WAY LINE OF PITNER AVENUE; THENCE NORTH ALONG SAID EAST RIGHT-OF-WAY LINE OF PITNER AVENUE TO A POINT WHICH IS 233.0 FEET SOUTH OF THE CENTERLINE OF CLEVELAND STREET; THENCE EAST TO A POINT 200.0 FEET WEST OF THE WEST RIGHT-OF-WAY LINE OF HARTREY AVENUE; THENCE NORTH ALONG A LINE PARALLEL TO THE WEST RIGHT-OF-WAY LINE OF HARTREY AVENUE TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF CLEVELAND STREET WHICH IS 200.0 FEET WEST OF THE WEST RIGHT-OF-WAY LINE OF HARTREY AVENUE; THENCE EAST 200.0 FEET TO THE POINT OF BEGINNING, ALL EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

SITE SKETCH - REGION 2

SEARCH AREA - 275A

N.T.S.

Exhibit B-1

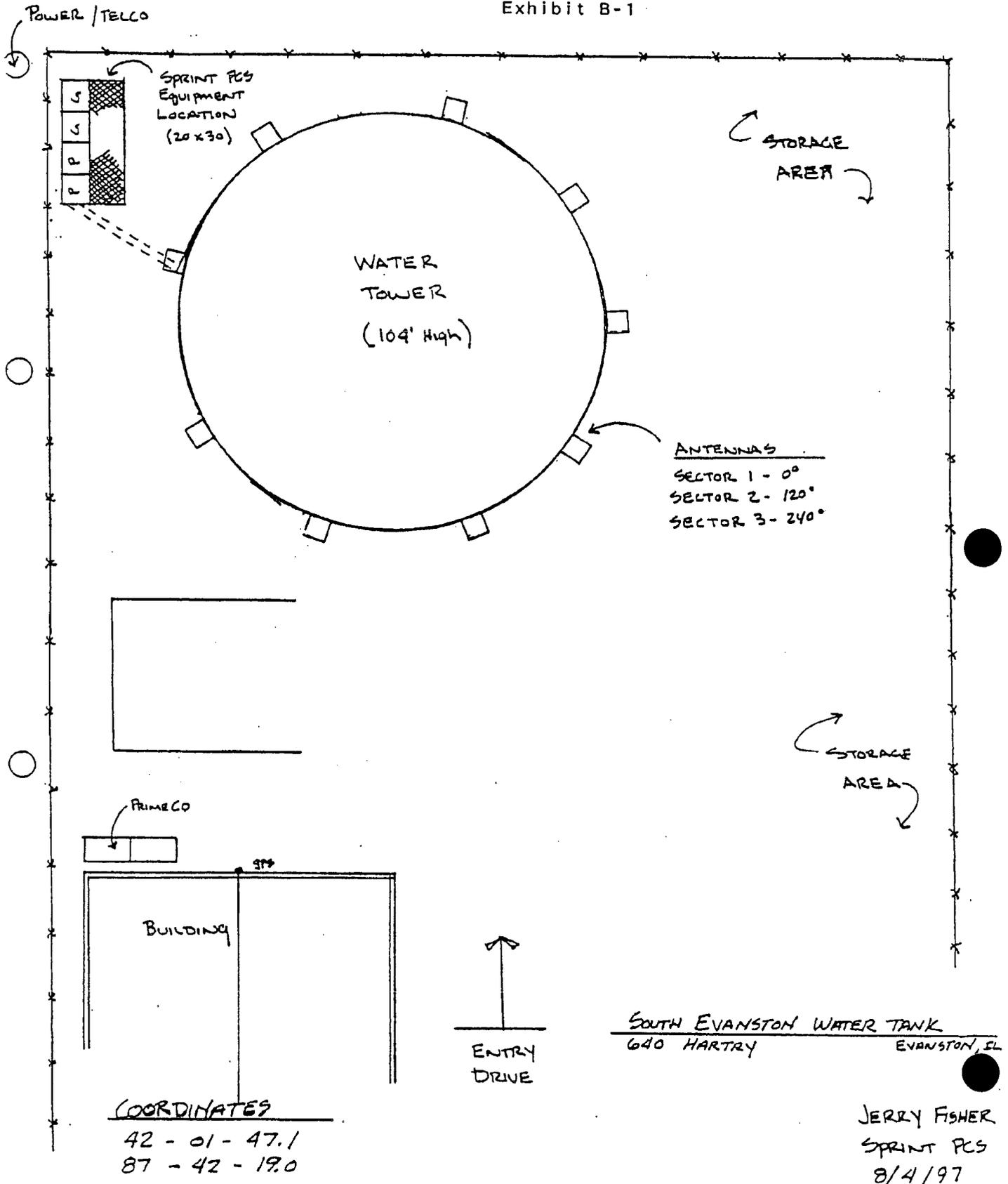


EXHIBIT B-2

MEMORANDUM OF AGREEMENT

Page 1 of 2

This Memorandum of Agreement is entered into on this 28TH day of OCTOBER, 1997, by and between the City of Evanston, an Illinois municipal corporation, with an office at 2100 Ridge Avenue, Evanston, Illinois 60201 (herein referred to as "Lessor") and SPRINTCOM, a Kansas Corporation, with an office at 9801 Higgins Road, Suite 370, Rosemont, Illinois 60018 (hereinafter referred to as "Lessee").

1. Lessor and Lessee entered into a Lease Agreement ("Agreement") on the 28TH day of OCTOBER, 1997, for the purpose of installing, operating and maintaining a radio communications facility and other improvements at the South Standpipe Site, 640 Hartrey Avenue, Evanston, Illinois 60202. All of the foregoing are set forth in the Agreement.
2. The term of the Agreement is for ten (10) years commencing on OCTOBER 28, 1997 and ending on OCTOBER 28, 2007, with four (4) successive five (5) year options to renew.
3. The Water tank which is the subject of the Agreement is described in Exhibit A annexed hereto. The portion of the water tank being leased to Lessee (the "Premises") is described in Exhibit B-1 attached hereto.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the day and year first above written.

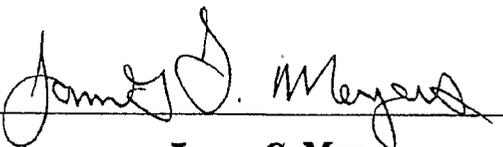
LESSOR:

LESSEE:

CITY OF EVANSTON

SPRINTCOM, Inc., a Kansas Corporation

By: 

By: 

Name: Roger D. Crum

Name: James G. Meyers

Title: City Manager

Title: Area Manager

Date: 10-28-97

Date: 10/23/97

EXHIBIT B-2

MEMORANDUM OF AGREEMENT

Page 2 of 2

STATE OF ILLINOIS

COUNTY OF COOK

On October 28, 1997, before me, Mary P. Morris, Notary Public, personally appeared Roger D. Crum, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Mary P. Morris
Notary Public

(SEAL)

My commission expires: _____



STATE OF Illinois

COUNTY OF Cook

On October 23rd, before me, Elizabeth Faison, Notary Public, personally appeared James G. Meyers, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Elizabeth Faison
Notary Public

(SEAL)

My commission expires: _____

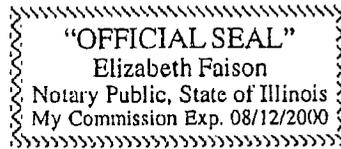


EXHIBIT C

Lessor shall have the right to approve the construction of the improvements to be made by Lessee prior to installation, which approval shall not be unreasonably withheld or delayed. Lessee shall provide Lessor with a copy of the construction drawings for Lessor's approval. Lessor shall have ten (10) days thereafter to approve, disapprove or comment on the drawings.