

Village of Gilberts

Village Hall: 87 Galligan Road, Gilberts, Illinois 60136

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www.villageofgilberts.com

VILLAGE BOARD MEETING AGENDA

Tuesday, September 3, 2019 - 7:00 p.m. - Village Hall Board Room

ORDER OF BUSINESS

1. CALL TO ORDER / PLEDGE OF ALLEGIANCE

2. ROLL CALL / ESTABLISH QUORUM

3. PUBLIC COMMENT*

Intended for public comment on issues not otherwise on this agenda, those comments offered when individual issues are discussed.

4. CONSENT AGENDA

- A. A Motion to approve Minutes from the August 20, 2019 Village Board Meeting
- B. A Motion to approve Bills & Payroll dated September 3, 2019
- C. A Motion to approve Ordinance 12-2019, an Ordinance Approving a Special Use Permit and Variations to the Gilberts Unified Development Ordinance for Community Self Storage
- D. A Motion to approve Resolution 19-2019, a Resolution Approving a Water Tower Lease Agreement with New Cingular Wireless PCS, LLC (AT&T)

5. ITEMS FOR APPROVAL

6. ITEMS FOR DISCUSSION

7. STAFF REPORTS

8. TRUSTEES' REPORTS

9. PRESIDENTS' REPORT

10. EXECUTIVE SESSION*

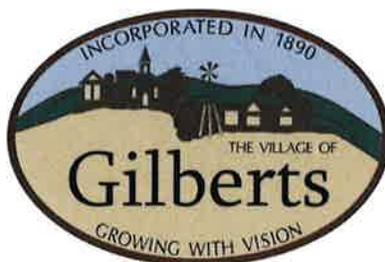
11. ADJOURNMENT

***Executive Session Information**

A portion of the meeting will be closed to the Public, effective immediately as Permitted by 5 ILCS 120/2(c)(1) to discuss the appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the Village, and as permitted by 5 ILCS 120/2 (c)(11) to discuss litigation against, affecting, or on behalf of the Village which has been filed and is pending in a court or administrative tribunal of which is imminent and as permitted by 5 ILCS 120/2(c)(21) to review and approve closed session minutes and as permitted by 5 ILCS 120/2(c) 2 Collective negotiating matters.

***Public Comment Policy**

Anyone indicating a desire to speak during Public Comments portion of the Village Board Meeting will be acknowledged by the Village President. All remarks are to be addressed to the Village President and Board of Trustees as a whole, not to any specific person(s). To ensure that everyone who wishes to speak has the opportunity to do so, please limit your comments to five minutes. Additional time may be granted at the discretion of the Village President. If you have written comments, please provide a copy to the Village President. If there are a number of individuals present to speak on the same topic, please designate a spokesperson that can summarize the issue. During Public Comments, the Village President, Trustees and Staff will listen to comments and will not engage in discussion. The Village President or Trustees may ask questions to better understand your concern, suggestion or request. Please direct any personnel concerns to the Village Administrator before or after the meeting. The Village of Gilberts complies with the Americans Disabilities Act (ADA). For accessibility Assistance, please contact the Village Clerk at the Village Hall, telephone number is 847-428-2861. Assistive services will be provided upon request.



**MINUTES FOR VILLAGE OF GILBERTS
BOARD OF TRUSTEES MEETING
Village Hall: 87 Galligan Road, Gilberts, IL 60136
Meeting Minutes
Tuesday, August 20, 2019**

1. CALL TO ORDER / PLEDGE OF ALLEGIANCE

President Zirk called the meeting to order at 7:00 p.m. He proceeded to lead those present in the Pledge of Allegiance.

2. ROLL CALL / ESTABLISH QUORUM

Village Clerk Courtney Baker called the roll. Roll call: Members present: Trustees Kojzarek, Corbett, Allen, Zambetti, Farrell, and President Zirk. Trustee Hacker was absent. Others present: Village Administrator Brian Bourdeau and Finance Director Taunya Fischer. For members of the audience, please see the attached copy of the sign-in sheet.

3. PUBLIC COMMENT

Dan Pace – Mr. Pace approached the Board and inquired as to why there is verbiage of “not to exceed \$25,000” in the resolution for the roof replacement. Administrator Bourdeau advised Mr. Pace that it is because the State grant that was awarded to the Village for the roof replacement was for an amount not to exceed \$25,000.00. President Zirk also explained that, while the Village has a quote for \$16,857 to repair the roof, if the contractors begin work and find any other issues with the roof, the remaining difference of the \$25,000 could be used to pay for those unforeseen costs.

4. CONSENT AGENDA

- A. A Motion to approve Minutes from the August 6, 2019 Village Board Meeting
- B. A Motion to approve Minutes from the August 13, 2019 Committee of the Whole Meeting
- C. A Motion to approve Bills & Payroll dated August 20, 2019
- D. A Motion to approve the July 2019 Treasurer’s Report
- E. A Motion to approve Resolution 16-2019, a Resolution Waiving Competitive Bidding and Authorizing an Agreement with C3 Construction for the Replacement of the Village Hall Roof in an Amount not to Exceed \$25,000
- F. A Motion to approve Resolution 17-2019, a Resolution Authorizing the Purchase of an Electrical Breaker Assembly from New Castle Electric in an Amount not to exceed \$10,788
- G. A Motion to approve Resolution 18-2019, a Resolution Authorizing a Reduction in the Letter of Credit (LC 1960) for Neighborhood 2A-1 of the Conservancy

President Zirk asked if any of the board members had any consent agenda items they wished to remove for separate consideration. After hearing none, asked for a motion to approve.

A Motion was made by Trustee Farrell and seconded by Trustee Allen to Approve Consent Agenda Items 4A-G as presented. Roll call vote: Trustees Corbett, Allen, Zambetti, Farrell, and Kojzarek voted Aye. 0-nays, 0-abstained. Motion carried.

5. ITEMS FOR APPROVAL

There were no items for approval at this time.

6. ITEMS FOR DISCUSSION

A. Presentation and Discussion of the Plan Commission Recommendation Related to a Special Use Permit Request from Community Self Storage – Administrator Bourdeau advised the Board that At the August 14, 2019 Plan Commission meeting, the Plan Commission held a public hearing to consider a request for a special use permit and related variances to the Village of Gilberts UDO for Community Self Storage for the purposes of expanding their existing self-storage business located off West End Drive. Upon conclusion of the public hearing, the Plan Commission unanimously recommended the Village Board considering granting the special use permit and related variances, conditioned on approval of final engineering by the Village's engineer. The variances that are being requested by the applicant include ones that relate to the exterior façades of the building. Another variance being requested is to allow Community Self Storage to keep their existing sign that has since been legal non-conforming up until now.

The Board offered no questions or concerns at this time. President Zirk advised Staff to bring back the necessary ordinances to be approved at the next Board meeting.

7. STAFF REPORTS

Administrator Bourdeau

- The new double doors have been hung on the exterior doorway leading to the board room at Village Hall. There are a few minor items left to be completed.
- The fountain at Memorial Park pond has been installed and is currently functioning.
- The spreading of new mulch throughout the Memorial Park playground was completed this week. Town Center Park will be re-mulched next week.
- Public Works continues work on the annual crack sealing program throughout the Village. The focus this year is primarily the area north of Route 72 and if there is crack sealing material left over, Public Works will tend to the areas south of Route 72.
- Trustee Zambetti asked Administrator Bourdeau to address the landscaping concerns at Waitcus Park. Administrator Bourdeau stated that he will speak to the Public Works Department tomorrow to have this addressed as soon as possible.
- The signed toll way crossing permit applications are now ready to be picked up by Troy Mertz.

8. TRUSTEE REPORTS

There were no trustee reports at this time.

9. PRESIDENT'S REPORT

President Zirk had nothing to report at this time.

10. ADJOURNMENT

There being no further public business to discuss, a **Motion was made by Trustee Allen and seconded by Trustee Corbett to adjourn from the public meeting at 7:15 p.m.** Voice vote carried unanimously.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Courtney Baker".

Courtney Baker
Village Clerk

Inv Ref#	Vendor	Inv Date	Due Date	Inv Amt	Amt Due	Status	Jrnalized
28224	ALTERNATE POWER INDUSTRIES INC	02/21/2019	09/03/2019	5,575.00	5,575.00	Open	N
28225	ALTERNATE POWER INDUSTRIES INC	02/22/2019	09/03/2019	1,394.01	1,394.01	Open	N
	Total for vendor ALTPW01 - ALTERNATE POWER INDUSTRIES INC:			6,969.01	6,969.01		
28240	AT&T U-VERSE	08/14/2019	09/03/2019	56.40	56.40	Open	N
28148	B&F CONSTRUCTION CODE SVC, INC	08/15/2019	09/03/2019	90.00	90.00	Open	N
28149	B&F CONSTRUCTION CODE SVC, INC	08/15/2019	09/03/2019	1,410.00	1,410.00	Open	N
	Total for vendor B&F001 - B&F CONSTRUCTION CODE SVC, INC:			1,500.00	1,500.00		
28204	B&K POWER EQUIPMENT INC	08/26/2019	09/03/2019	38.85	38.85	Open	N
28231	BENCHMARK SALES & SERVICE	07/18/2019	09/03/2019	1,850.00	1,850.00	Open	N
28211	BENEFIT PLANNING CONSULTANTS,	08/13/2019	09/03/2019	100.00	100.00	Open	N
28171	BLAIN'S FARM & FLEET	08/21/2019	09/03/2019	5.68	5.68	Open	N
28142	CALL ONE	08/15/2019	09/03/2019	1,554.26	1,554.26	Open	N
28151	CANTEEN REFRESHMENT SERVICES	08/02/2019	09/03/2019	90.41	90.41	Open	N
28152	CANTEEN REFRESHMENT SERVICES	08/05/2019	09/03/2019	50.18	50.18	Open	N
	Total for vendor EMBCOF - CANTEEN REFRESHMENT SERVICES:			140.59	140.59		
28216	CASH	08/23/2019	09/03/2019	84.33	84.33	Open	N
28165	CENTEGRA PRIMARY CARE, LLC	08/13/2019	09/03/2019	130.00	130.00	Open	N
28228	CLARKE ENVIRONMENTAL MOSQUITO	06/28/2019	09/03/2019	1,951.85	1,951.85	Open	N
28229	CLARKE ENVIRONMENTAL MOSQUITO	08/01/2019	09/03/2019	1,951.85	1,951.85	Open	N
28230	CLARKE ENVIRONMENTAL MOSQUITO	08/06/2019	09/03/2019	1,951.85	1,951.85	Open	N
	Total for vendor CLARKE02 - CLARKE ENVIRONMENTAL MOSQUITO:			5,855.55	5,855.55		
28143	COMMONWEALTH EDISON	08/12/2019	09/03/2019	42.27	42.27	Open	N
28144	COMMONWEALTH EDISON	08/12/2019	09/03/2019	488.22	488.22	Open	N
28147	COMMONWEALTH EDISON	08/12/2019	09/03/2019	28.69	28.69	Open	N
28203	COMMONWEALTH EDISON	08/15/2019	09/03/2019	32.10	32.10	Open	N
28205	COMMONWEALTH EDISON	08/15/2019	09/03/2019	7.46	7.46	Open	N
28206	COMMONWEALTH EDISON	08/15/2019	09/03/2019	239.40	239.40	Open	N
28207	COMMONWEALTH EDISON	08/15/2019	09/03/2019	35.15	35.15	Open	N
28218	COMMONWEALTH EDISON	08/20/2019	09/03/2019	16.94	16.94	Open	N
28241	COMMONWEALTH EDISON	08/23/2019	09/03/2019	53.65	53.65	Open	N
28254	COMMONWEALTH EDISON	08/12/2019	09/03/2019	28.69	28.69	Open	N
	Total for vendor COM003 - COMMONWEALTH EDISON:			972.57	972.57		
28198	CONSTELLATION NEWENERGY, INC.	08/14/2019	09/03/2019	186.66	186.66	Open	N
28199	CONSTELLATION NEWENERGY, INC.	08/14/2019	09/03/2019	127.55	127.55	Open	N
28200	CONSTELLATION NEWENERGY, INC.	08/16/2019	09/03/2019	110.37	110.37	Open	N
28201	CONSTELLATION NEWENERGY, INC.	08/16/2019	09/03/2019	125.35	125.35	Open	N
28202	CONSTELLATION NEWENERGY, INC.	08/16/2019	09/03/2019	42.55	42.55	Open	N
28209	CONSTELLATION NEWENERGY, INC.	08/13/2019	09/03/2019	176.62	176.62	Open	N
28210	CONSTELLATION NEWENERGY, INC.	08/13/2019	09/03/2019	101.70	101.70	Open	N
28223	CONSTELLATION NEWENERGY, INC.	08/21/2019	09/03/2019	261.02	261.02	Open	N
	Total for vendor CONSTELL - CONSTELLATION NEWENERGY, INC.:			1,131.82	1,131.82		

Inv Ref#	Vendor	Inv Date	Due Date	Inv Amt	Amt Due	Status	Jrnalized
28232	CURRENT TECHNOLOGIES, INC.	08/29/2019	09/03/2019	455.84	455.84	Open	N
28167	DISCOUNT TIRE	08/23/2019	09/03/2019	40.00	40.00	Open	N
28161	DREAM POOLS	08/16/2019	09/03/2019	296.62	296.62	Open	N
28193	DUNDEE FORD	08/15/2019	09/03/2019	45.02	45.02	Open	N
28214	DYNEGY ENERGY SERVICES	08/26/2019	09/03/2019	16,063.26	16,063.26	Open	N
28150	ELGIN PAPER COMPANY	08/12/2019	09/03/2019	94.37	94.37	Open	N
28169	GALLS INC.	08/07/2019	09/03/2019	127.99	127.99	Open	N
28219	ILLINOIS EPA	08/27/2019	09/03/2019	16,495.41	16,495.41	Open	N
28233	IPBC - INTERGOVERNMENTAL PERSONNE	09/01/2019	09/03/2019	27,079.73	27,079.73	Open	N
28188	MCMMASTER-CARR SUPPLY COMPANY	08/14/2019	09/03/2019	61.12	61.12	Open	N
28255	MEADE	08/22/2019	09/03/2019	1,249.60	1,249.60	Open	N
28158	MENARDS - CARPENTERSVILLE	08/19/2019	09/03/2019	47.93	47.93	Open	N
28159	MENARDS - CARPENTERSVILLE	08/19/2019	09/03/2019	32.88	32.88	Open	N
28208	MENARDS - CARPENTERSVILLE	08/20/2019	09/03/2019	166.11	166.11	Open	N
28239	MENARDS - CARPENTERSVILLE	08/27/2019	09/03/2019	8.49	8.49	Open	N
28253	MENARDS - CARPENTERSVILLE	08/30/2019	09/03/2019	86.15	86.15	Open	N
	Total for vendor MEN002 - MENARDS - CARPENTERSVILLE:			341.56	341.56		
28238	MENARDS - ELGIN	08/27/2019	09/03/2019	49.99	49.99	Open	N
28191	N.I.M.C.A.	08/22/2019	09/03/2019	110.00	110.00	Open	N
28170	NAPA AUTO PARTS	08/21/2019	09/03/2019	22.20	22.20	Open	N
28194	NAPA AUTO PARTS	08/14/2019	09/03/2019	34.76	34.76	Open	N
	Total for vendor NAPA01 - NAPA AUTO PARTS:			56.96	56.96		
28215	NICOR	08/22/2019	09/03/2019	115.83	115.83	Open	N
28217	NICOR	08/19/2019	09/03/2019	105.46	105.46	Open	N
28220	NICOR	08/22/2019	09/03/2019	36.38	36.38	Open	N
28221	NICOR	08/21/2019	09/03/2019	34.81	34.81	Open	N
28222	NICOR	08/21/2019	09/03/2019	36.38	36.38	Open	N
	Total for vendor NIG001 - NICOR:			328.86	328.86		
28164	PACES AUTO SERVICE	08/16/2019	09/03/2019	680.75	680.75	Open	N
28196	PACES AUTO SERVICE	08/15/2019	09/03/2019	564.95	564.95	Open	N
	Total for vendor PAC001 - PACES AUTO SERVICE:			1,245.70	1,245.70		
28197	PADDOCK PUBLICATIONS	08/10/2019	09/03/2019	128.80	128.80	Open	N
28146	PDC LABORATORIES, INC	08/20/2019	09/03/2019	15.00	15.00	Open	N
28189	PDC LABORATORIES, INC	08/20/2019	09/03/2019	112.50	112.50	Open	N
28195	PDC LABORATORIES, INC	08/21/2019	09/03/2019	555.00	555.00	Open	N
	Total for vendor PDCLAB - PDC LABORATORIES, INC:			682.50	682.50		
28213	RENEE REID	08/26/2019	09/03/2019	32.00	32.00	Open	N
28242	RICHARD SPINKER	08/31/2019	09/03/2019	315.00	315.00	Open	N
28243	RICHARD SPINKER	08/31/2019	09/03/2019	140.00	140.00	Open	N
28244	RICHARD SPINKER	08/31/2019	09/03/2019	140.00	140.00	Open	N
	Total for vendor SCUFF01 - RICHARD SPINKER:			595.00	595.00		

Inv Ref#	Vendor	Inv Date	Due Date	Inv Amt	Amt Due	Status	Jrnlized
28172	ROBINSON ENGINEERING, LTD.	08/14/2019	09/03/2019	43.00	43.00	Open	N
28173	ROBINSON ENGINEERING, LTD.	08/14/2019	09/03/2019	3,291.00	3,291.00	Open	N
28174	ROBINSON ENGINEERING, LTD.	08/14/2019	09/03/2019	273.75	273.75	Open	N
28175	ROBINSON ENGINEERING, LTD.	08/14/2019	09/03/2019	9,606.00	9,606.00	Open	N
28176	ROBINSON ENGINEERING, LTD.	08/14/2019	09/03/2019	166.00	166.00	Open	N
28177	ROBINSON ENGINEERING, LTD.	08/14/2019	09/03/2019	166.00	166.00	Open	N
28178	ROBINSON ENGINEERING, LTD.	08/14/2019	09/03/2019	274.00	274.00	Open	N
28179	ROBINSON ENGINEERING, LTD.	08/14/2019	09/03/2019	360.00	360.00	Open	N
28180	ROBINSON ENGINEERING, LTD.	08/14/2019	09/03/2019	274.00	274.00	Open	N
28181	ROBINSON ENGINEERING, LTD.	08/14/2019	09/03/2019	274.00	274.00	Open	N
28182	ROBINSON ENGINEERING, LTD.	08/14/2019	09/03/2019	274.00	274.00	Open	N
28183	ROBINSON ENGINEERING, LTD.	08/14/2019	09/03/2019	274.00	274.00	Open	N
28184	ROBINSON ENGINEERING, LTD.	08/14/2019	09/03/2019	274.00	274.00	Open	N
28185	ROBINSON ENGINEERING, LTD.	08/14/2019	09/03/2019	2,663.50	2,663.50	Open	N
28186	ROBINSON ENGINEERING, LTD.	08/14/2019	09/03/2019	516.00	516.00	Open	N
28187	ROBINSON ENGINEERING, LTD.	08/14/2019	09/03/2019	186.00	186.00	Open	N
28256	ROBINSON ENGINEERING, LTD.	08/14/2019	09/03/2019	1,378.00	1,378.00	Open	N
Total for vendor ROBINSON - ROBINSON ENGINEERING, LTD.:				20,293.25	20,293.25		
28163	SHERWIN INDUSTRIES, INC.	08/19/2019	09/03/2019	8,128.33	8,128.33	Open	N
28247	SHERWIN INDUSTRIES, INC.	08/26/2019	09/03/2019	3,291.41	3,291.41	Open	N
28251	SHERWIN INDUSTRIES, INC.	08/26/2019	09/03/2019	384.70	384.70	Open	N
Total for vendor SHERWIN - SHERWIN INDUSTRIES, INC.:				11,804.44	11,804.44		
28154	STAPLES ADVANTAGE	08/10/2019	09/03/2019	60.13	60.13	Open	N
28155	STEINER ELECTRIC CO	08/15/2019	09/03/2019	(301.49)	(301.49)	Open	N
28153	SUBURBAN LABORATORIES	08/19/2019	09/03/2019	123.00	123.00	Open	N
28160	SUBURBAN LABORATORIES	08/15/2019	09/03/2019	254.00	254.00	Open	N
28168	SUBURBAN LABORATORIES	08/23/2019	09/03/2019	123.00	123.00	Open	N
28190	SUBURBAN LABORATORIES	08/20/2019	09/03/2019	123.00	123.00	Open	N
28192	SUBURBAN LABORATORIES	08/21/2019	09/03/2019	716.00	716.00	Open	N
28234	SUBURBAN LABORATORIES	08/26/2019	09/03/2019	123.00	123.00	Open	N
28236	SUBURBAN LABORATORIES	08/27/2019	09/03/2019	123.00	123.00	Open	N
28246	SUBURBAN LABORATORIES	08/28/2019	09/03/2019	123.00	123.00	Open	N
28252	SUBURBAN LABORATORIES	08/29/2019	09/03/2019	43.00	43.00	Open	N
Total for vendor SUBLAB01 - SUBURBAN LABORATORIES:				1,751.00	1,751.00		
28212	SUNSHINE FARM II	08/26/2019	09/03/2019	550.00	550.00	Open	N
28248	THE BUG MAN, INC	08/29/2019	09/03/2019	40.00	40.00	Open	N
28249	THE BUG MAN, INC	08/29/2019	09/03/2019	45.00	45.00	Open	N
28250	THE BUG MAN, INC	08/29/2019	09/03/2019	34.00	34.00	Open	N
Total for vendor BUGMAN - THE BUG MAN, INC:				119.00	119.00		
28245	THE EMBLEM AUTHORITY	08/27/2019	09/03/2019	259.00	259.00	Open	N
28227	UNION NATIONAL BANK OF ELGIN	08/28/2019	09/03/2019	3,510.54	3,510.54	Open	N
28145	USA BLUEBOOK	08/16/2019	09/03/2019	194.60	194.60	Open	N
28235	USA BLUEBOOK	08/23/2019	09/03/2019	78.94	78.94	Open	N

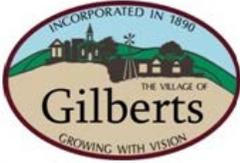
Inv Ref#	Vendor	Inv Date	Due Date	Inv Amt	Amt Due	Status	Jrnalized
28237	USA BLUEBOOK	08/26/2019	09/03/2019	1,092.84	1,092.84	Open	N
	Total for vendor USABLU - USA BLUEBOOK:			1,366.38	1,366.38		
28226	VERIZON WIRELESS	08/16/2019	09/03/2019	266.07	266.07	Open	N
28156	WRIGHT EXPRESS FSC	08/06/2019	09/03/2019	660.61	660.61	Open	N
28157	WRIGHT EXPRESS FSC	08/07/2019	09/03/2019	4,111.02	4,111.02	Open	N
	Total for vendor EXXON01 - WRIGHT EXPRESS FSC:			4,771.63	4,771.63		
# of Invoices:	112	# Due:	112	130,720.83	130,720.83		
# of Credit Memos:	1	# Due:	1	(301.49)	(301.49)		
Net of Invoices and Credit Memos:				130,419.34	130,419.34		

--- TOTALS BY FUND ---

01 - GENERAL FUND 74,920.84
 20 - WATER SYSTEM 47,521.20
 31 - PERFORMANCE BOND 7,977.30

--- TOTALS BY DEPT/ACTIVITY ---

00 - GENERAL FUND 35,057.03
 01 - ADMINISTRATIVE 15,103.41
 02 - POLICE 6,090.88
 03 - PUBLIC WORKS 20,931.18
 04 - BUILDING 4,551.67
 06 - PARKS 1,163.97
 10 - WATER SYSTEMS 27,204.77
 20 - WASTEWATER SYSTEMS 20,316.43



Village of Gilberts
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To: Village President and Board of Trustees
From: Brian Bourdeau, Village Administrator
Date: August 20, 2019 Village Board Meeting
Re: Item 4.C: A Motion to Approve Ordinance 12-2019, an Ordinance Approving A Special Use Permit and Variations to the Gilberts Unified Development Ordinance for Community Self Storage

***** Based on the discussion at the August 20, 2019 Village Board Meeting, attached for consideration is the Ordinance to approve a Special Use Permit request from Community Self Storage. The Ordinance does require final engineering approval prior to the commencement of any work. *****

At the August 14, 2019 Plan Commission meeting, the Plan Commission held a public hearing to consider a request for a special use permit and related variances to the Village of Gilberts Unified Development Ordinance (UDO) for Community Self Storage for the purposes of expanding their existing mini-warehouse (self-storage) business located off West End Drive. Upon conclusion of the public hearing, the Plan Commission unanimously recommended the Village Board considering granting the special use permit and related variances, conditioned on approval of final engineering by the Village's engineer.

This item is included for presentation and discussion. An Ordinance is currently being drafted which incorporates the Plan Commissions findings of fact and recommendation. Should the Board be amenable the special use permit and variances, staff would bring forth the Ordinance for consideration at the next regular Village Board meeting.

VILLAGE OF GILBERTS

**AN ORDINANCE APPROVING
A SPECIAL USE PERMIT AND VARIATIONS TO THE GILBERTS UNIFIED
DEVELOPMENT ORDINANCE FOR COMMUNITY SELF STORAGE**

(95 West End Drive and 58 Center Drive)

WHEREAS, Kyle and Jennifer Zange (“*Owners*”), the owners of the property located at 95 West End Drive, Gilberts, Illinois 60136, and the contract purchasers of the property located at 58 Center Drive, Gilberts, Illinois 60136, which properties are more specifically described on **Exhibit A** (collectively, the “*Property*”), desire to expand their existing mini-warehouse facility on the Property; and

WHEREAS, the Property is currently zoned in the I-1 General Industrial District, which allows for mini-warehouses as a special use; and

WHEREAS, the Owners currently rent outdoor parking spaces for vehicle and boat storage, and desire to expand the number of available parking spaces for outdoor storage use; and

WHEREAS, the outdoor storage of vehicles and boats is similar and compatible to other uses that are allowed as a special use in the I-1 General Industrial District, and is therefore permitted as a special use; and

WHEREAS, the Owners have filed an application for a special use permit to expand the existing mini-warehouse operation and to increase the number of spaces available for outdoor storage of vehicles and boats; and

WHEREAS, the Owners have also filed an application for variances from the following sections of the Gilberts Unified Development Ordinance (“*UDO*”): (1) a variance from Section 10-6-4(D)(1) of the UDO to allow metal exterior finish on the exterior walls of the mini-warehouse buildings facing Center Drive; (2) a variance from Section 10-6-4(D)(2) to allow for 100% of the square foot area of each non-road facing façade of the mini-warehouse buildings to be constructed of metal exterior finish; and (3) a variance from Section 10-9-2(M)(3)(b) to allow for a directory sign for a single occupant complex; and

WHEREAS, the Gilberts Plan Commission/Zoning Board of Appeals held a public hearing and reviewed the Owner’s request on August 14, 2019, and at the conclusion of the public hearing voted to recommend approval of the special use permit and variances to allow for the Owners to expand the existing mini-warehouse and outdoor storage operations on the Property, subject to certain conditions; and

WHEREAS, the Village Board makes the following findings of fact in reference to the application for approval of the special use permit to allow for the expansion of the mini-warehouse and outdoor storage operations on the Property:

1. The proposed special use complies with all provisions of the applicable district

regulations, excluding the requested variances.

2. The proposed special use will not be unreasonably detrimental to the value of other property in the neighborhood in which it is to be located or to the public welfare at large. The mini-warehouse and outdoor storage operation has existed on the Property for some time, and the Owners are just expanding the existing operations on to an adjacent parcel of vacant land that is wholly surrounded by other existing industrial uses. Further, the mini-warehouse and outdoor storage operations are set back from major thoroughfares in the Village and are not immediately visible from Route 72.
3. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. The mini-warehouse and outdoor storage operation have existed on the Property for some time, and the Owners are just expanding the existing operations on to an adjacent parcel of vacant land that is wholly surrounded by other industrial uses. As the mini-warehouse and outdoor storage operation already exist, the proposed special use will not dominate the immediate neighborhood. Additionally, the Owners will provide screening and landscaping for the mini-warehouse and outdoor storage operations to eliminate any adverse visual impact on the immediate neighborhood. Further, the adjoining properties are all zoned in the I-1 General Industrial District, so the expansion of the existing mini-warehouse and outdoor storage operation will not prevent development and use of neighboring property in accordance with the I-1 District's regulations.
4. Adequate utility, drainage, and other necessary facilities have been or will be provided. The existing mini-warehouse operation is already connected to the Village's water and sanitary sewer system. Further, the Owners will be required to provide necessary stormwater management facilities for the Property as determined by the Village's engineer.
5. The proposed special use, where such developments and uses are deemed consistent with good planning practice, can be operated in a manner that is not detrimental to the permitted developments and uses in the district, can be developed and operated in a manner that is visually compatible with the permitted uses in the surrounding area; shall conform to the applicable regulations of the district; and is deemed essential or desirable to preserve and promote the public health, safety, and general welfare of the Village. The mini-warehouse and outdoor storage operation have existed on the Property for some time, and the Owners are just expanding the existing operations on to an adjacent parcel of vacant land that is wholly surrounded by other industrial uses. The proposed special use is visually compatible with the permitted industrial uses that wholly surround the Property, and will be screened to eliminate any adverse visual impacts on the immediate neighborhood. The proposed special use will also conform to the applicable regulations of the I-1 District, excluding the Owner's requested variances. Further, the expansion of a long-standing business in the

Village is desirable for the promotion of public health, safety, and the general welfare of the Village, especially because the proposed mini-warehouse expansion will not front any major thoroughfare in the Village. Given that the Property is set back from Route 72, and wholly surrounded by other industrial uses, the expansion of the existing mini-warehouse and outdoor storage operation on the Property is consistent with good planning practice.

WHEREAS, based on the findings of fact detailed above, the Village Board has determined that the Owner's request meets the standards of both state statute and the UDO for approval of the special use permit for the Property, subject to the conditions set forth in this Ordinance; and

WHEREAS, the Village Board makes the following findings of fact in reference to the Owner's application for approval of the Variances for the Property:

- a. The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that district;
- b. The extraordinary or exceptional conditions of the property requiring the request for the Variances were not caused by the Owners;
- c. The proposed Variances will alleviate a peculiar, exceptional or undue hardship, as distinguished from a mere inconvenience or pecuniary hardship, as the Variances will allow the Owners to construct the new min-warehouse buildings with an exterior finish that is consistent with the Owner's existing mini-warehouses on the Property;
- d. The denial of the proposed Variances will deprive the Owners of the use permitted to be made by the owners of property in the immediate area;
- e. The proposed Variances will result in structures that are appropriate to and compatible with the character and scale of structures in the area in which the Variances are being requested, as the proposed mini-warehouse buildings are set back from any major thoroughfare and will be effectively screened from other adjoining properties, and the Variances will allow for the expanded mini-warehouse buildings to have an exterior finish consistent with the existing mini-warehouse buildings on the Property; and
- f. There is no other means other than the requested Variations by which the alleged hardship or difficulty can be avoided or remedied to a degree sufficient to permit a reasonable use of the subject property.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES of the Village of Gilberts, Kane County, Illinois as follows:

Section 1. **Recitals.** The recitals are incorporated into this Section 1 as if fully set forth.

Section 2. **Special Use Permit.** Subject to the conditions set forth in Section 4 of this Ordinance, the Village Board of Trustees hereby approves a special use permit pursuant to

Section 10-6-3 of the UDO to allow for the Owners to expand the existing mini-warehouse operation and increase the number of spaces for outdoor storage of vehicles and boats on the Property.

Section 2. Variations. Subject to the conditions set forth in Section 4 of this Ordinance, the Village Board of Trustees hereby approves the following variances for the Property:

- (1) A variance from Section 10-6-4(D)(1) of the UDO to allow metal exterior finish on the exterior walls of the mini-warehouse buildings facing Center Drive;
- (2) A variance from Section 10-6-4(D)(2) to allow for 100% of the square foot area of each non-road facing façade of the mini-warehouse buildings to be constructed of metal exterior finish; and
- (3) A variance from Section 10-9-2(M)(3)(b) to allow for a directory sign for a single occupant complex.

Section 4. Conditions. The approvals granted pursuant to Section 2 and 3 of this Ordinance are conditioned upon and limited by the following conditions, the violation of any of which shall, in the discretion of the President and Board of Trustees, be grounds for the repeal and revocation of the approvals granted by this Ordinance in accordance with applicable law. In addition, any violation of this Ordinance will be deemed a violation of the UDO and subject the Owners to enforcement proceedings accordingly.

- A. **No Authorization of Work; Final Engineering Plans.** This Ordinance does not authorize commencement of any work on the Property. Except as otherwise specifically provided in writing in advance by the Village, no work of any kind may be commenced on the Property pursuant to the approvals granted in this Ordinance unless and until all conditions of this Ordinance precedent to that work have been fulfilled and after all permits, approvals, and other authorizations for the work have been properly applied for, paid for, and granted in accordance with applicable law, including, without limitation, approval of final engineering plans and issuance of required permits.
- B. **Compliance with Laws.** The UDO, the Building Code, and all other applicable Village ordinances and regulations shall continue to apply to the Property, and the development and use of the Property must comply with all laws and regulations of all other federal, state, and local governments and agencies having jurisdiction.

Section 5. Severability. In the event a court of competent jurisdiction finds this Ordinance or any provision hereof to be invalid or unenforceable as applied, such finding shall not affect the validity of the remaining provisions of this ordinance and the application thereof to the greatest extent permitted by law.

Section 6. Repeal and Saving Clause. All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions, or cause of action which shall have accrued to the Village of Gilberts prior to the effective date of this Ordinance.

Section 7. Effective Date. Upon its passage and approval according to law, this Ordinance shall, by authority of the Board of Trustees, be published in pamphlet form.

ADOPTED THIS _____ DAY OF _____, 2019, pursuant to roll call vote as follows:

	Ayes	Nays	Absent	Abstain
Trustee Dan Corbett	_____	_____	_____	_____
Trustee Elissa Kojzarek	_____	_____	_____	_____
Trustee Nancy Farrell	_____	_____	_____	_____
Trustee Jeanne Allen	_____	_____	_____	_____
Trustee Lou Hacker	_____	_____	_____	_____
Trustee Guy Zambetti	_____	_____	_____	_____
President Rick Zirk	_____	_____	_____	_____

APPROVED THIS _____ DAY OF _____, 2019

Village President, Rick Zirk

(SEAL)

ATTEST: _____
Village Clerk, Courtney Baker

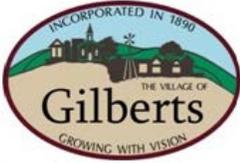
Published: _____

Exhibit A

Description of the Property

Common Address: 58 Center Drive, Gilberts, IL 60136
 95 West End Drive, Gilberts, IL 60136

PINs: 02-24-300-043
 02-24-300-095
 02-24-300-096



Village of Gilberts
Village Hall
87 Galligan Road, Gilberts, Illinois 60136
Ph. 847-428-2861 Fax: 847-428-2955
www.villageofgilberts.com

To: Village President and Board of Trustees
From: Brian Bourdeau, Village Administrator
Date: September 3, 2019 Village Board Meeting
Re: Item 4.D: A Motion to Approve Resolution 19-2019, A Resolution Approving a Water Tower Lease Agreement with New Cingular Wireless PCS, LLC (AT&T)

Proposed Cellular Lease Agreement – Update for Village Board Meeting

Based on direction from the August 13, 2019 Committee of the Whole, Village staff continued discussions with AT&T regarding a timeframe on the commencement date. The Village and AT&T have come to the following agreement and made the following highlighted changes to the contract:

Section 18.2 By Landlord. Landlord may terminate this Lease if (i) there is a written determination by a qualified engineer (using appropriate instruments which are properly calibrated) that the power density levels emitted from Tenant's equipment located on the Property exceed the FCC maximum permissible exposure level limitation which pertain to the general public and as is specified in the applicable FCC regulations regarding uncontrolled areas, (ii) the Tenant is unable to bring its equipment into compliance with such standard within sixty (60) days after receipt of a written copy of Landlord's engineering findings; or if Tenant abandons the leased Premises for a period of twelve (12) consecutive months and **(iii) if Tenant fails to obtain a building permit as of June 30, 2020.**

Section 1.7 Commencement Date. **Ninety (90) days after Tenant's receipt of a building permit.**

Based discussions with AT&T, a construction timeline will be established upon the receipt of a building permit. Therefore, AT&T requested to have the commencement date be the month after the start of construction. However, the Village requested a firm timeline for a commencement date not subject to potentially changing project timelines. The language in Section 1.7 seeks to accomplish this and ensure that there is a firm commencement date after the receipt of a permit.

If you have any questions or concerns, please feel free to contact me. Included below is a summary of the information on this item from the Committee of the Whole for reference.

August 13, 2019 – Committee of the Whole Summary

The Village was approached by AT&T with an interest in leasing space on the Indian Trails Water Tower for the placement of cellular antennas. AT&T desires to place a total of six antennas atop the Indian Trails Water Tower, along with a cable run down the interior of the tank to a screened ground enclosure containing an equipment cabinet and generator.

Over the past several weeks, staff, the Village attorney and representatives of AT&T have discussed the proposed terms of the agreement. The agreement is now presented to the Board for review and feedback. A general outline of the lease terms are included below. A copy of the proposed agreement and engineering plans is included as part of your packet.

1. Initial term of 5 years with 4 automatic renewals of 5 years each for a total term of 25 years
2. Initial rent of \$31,200 annually, paid in monthly installments of \$2,600. The rent shall increase annually by 2.0% over the previous year. An outline of the total annual payments for the initial lease term are outlined below:

Year 1	\$31,200.00	\$2,600.00
Year 2	\$31,824.00	\$2,652.00
Year 3	\$32,460.48	\$2,705.04
Year 4	\$33,109.69	\$2,759.14
Year 5	\$33,771.88	\$2,814.32

While the antennas are proposed for placement on the water tower they are not related to the provision or delivery of water or sewer services, making the lease revenue eligible to be placed in the General Fund (account 01-00-3480 Antenna Rental), unless otherwise directed by the Board.

3. The proposed lease provides for the reimbursement of legal and professional costs, including the draining of the water tower if necessary.
4. Prior to the installation of any equipment all plans must be reviewed and approved by the Village's engineer.
5. The lease provides for the necessary indemnifications and insurance coverage from AT&T.
6. The proposed agreement does protect the Village's ability to conduct work on and maintain the water tower with appropriate notice to AT&T.

In addition to staff, a representative from Mastec, AT&T's consultant, will be present to answer any questions regarding the proposed lease and equipment. Should the Board find the agreement acceptable, staff would look for direction to place it on an upcoming agenda for approval.

VILLAGE OF GILBERTS

A RESOLUTION APPROVING A WATER TOWER LEASE AGREEMENT WITH NEW CINGULAR WIRELESS PCS, LLC (AT&T)

WHEREAS, the New Cingular Wireless, PCS, LLC (“AT&T”) desires to erect, install, maintain and operate certain radio communication equipment on the Indian Trails Water Tower owned by the Village and otherwise operated as part of its water supply and distribution system, together with additional equipment on the ground beneath the tower in support of its communications equipment; and

WHEREAS, AT&T has proposed a certain written lease, setting forth the terms and conditions under which it might occupy space on and beneath the tower, and specifically identifying the space to be occupied, and the Village has agreed to grant unto Licensee a non-exclusive license to install, maintain and operate radio communication equipment upon the premises pursuant to the terms and conditions of this Agreement; and

WHEREAS, the Village and AT&T have negotiated the terms and provision of a lease for such portion of the premises, and have committed such terms and provision to a written Water Tower Lease Agreement, attached as Exhibit A (“Agreement”).

THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF GILBERTS, ILLINOIS, as follows:

Section 1. Recitals. The recitals set forth above are hereby incorporated into and made a part of this Resolution as though set forth in this Section 1.

Section 2. Approval; Authorization. The Village Board of Trustees hereby approves the Agreement and authorizes the Village Administrator to execute the Agreement and such other documents as are necessary.

Section 3. Effective Date. This Resolution shall be in full force and effect after its approval in the manner provided by law.

PASSED BY VOTE OF THE BOARD OF TRUSTEES of the Village of Gilberts, Kane County, Illinois, this ____ day of _____ 2019.

	<u>Ayes</u>	<u>Nays</u>	<u>Absent</u>	<u>Abstain</u>
Trustee Dan Corbett	_____	_____	_____	_____
Trustee Elissa Kojzarek	_____	_____	_____	_____
Trustee Nancy Farrell	_____	_____	_____	_____
Trustee Jeanne Allen	_____	_____	_____	_____
Trustee Lou Hacker	_____	_____	_____	_____

Resolution No. 19-2019

Trustee Guy Zambetti _____
President Rick Zirk _____

APPROVED THIS _____ DAY OF _____, 2019

Village President, Rick Zirk

(SEAL)

ATTEST: _____
Village Clerk, Courtney Baker

Market: MIDWEST – ILLINOIS / WISCONSIN
Cell Site Number: IL4865
Cell Site Name: Gilberts
Fixed Asset Number: 14632233

WATER TOWER LEASE AGREEMENT

THIS WATER TOWER LEASE AGREEMENT (the "Lease"), made this _____ day of _____ 2019, between The Village of Gilberts, an Illinois municipal corporation, with an address as stated in Paragraph 1.1, (hereinafter designated "Landlord"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, with its principal address as stated in Paragraph 1.5 (hereinafter designated "Tenant"). The Landlord and Tenant are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

1: Lease Summary

- | | | |
|-----|--|---|
| 1.1 | Landlord and Contact Person | With a copy to: |
| | Brian Bourdeau,
Village Administrator
Village of Gilberts
87 Galligan Road
Gilberts, IL 60136 | New Cingular Wireless PCS, LLC
Attn.: Legal Dept – Network Operations
Re: Cell Site #: IL4865
Cell Site Name:
Fixed Asset #: 14632233
208 S. Akard Street
Dallas, TX 75202-4206 |
| 1.2 | Taxpayer ID. | |
| 1.3 | Tenant. | 1.6 Property Identification Number |
| | New Cingular Wireless PCS, LLC | 1.7 Commencement Date. Ninety (90) days after Tenant’s receipt of a building permit. |
| 1.4 | Tenant’s Contact Person. | 1.8 Initial Term. Five (5) years. |
| 1.5 | Tenant’s Address | 1.9 Initial Rent. \$31,200 annually, \$2,600 monthly |
| | Attn: Network Real Estate Administration
Re: Cell Site #: IL4865
Cell Site Name:
Fixed Asset #: 14632233
1025 Lenox Park Blvd NE
3rd Floor
Atlanta, GA 30319 | 1.10 Renewal Terms. This Lease will automatically renew for four (4) additional five (5) year term(s). |
| | With written notice to: | 1.11 Property. Landlord is the owner of a parcel of land, 03-19-351-007 located in Gilberts, IL 60136 (the “Property”). The Property is more particularly described in Exhibit A annexed hereto. |

1.12 Premises. Landlord hereby leases to and Tenant leases from Landlord, that part of the Water Tower located on the Property required for operation and maintenance of Tenant's Equipment, as defined herein below, and such parcels of real estate on the Property, measuring 17' x 25' (425') (the "Leased Area"), and all access, utility easements, and landscaping easements, if any, (collectively, the "Premises") as depicted on Exhibit B annexed hereto.

1.13 Lease. This Water Tower Lease Agreement including Exhibits A, B and C, and D

2: Term and Rent

2.1 **Initially.** The term of this Lease shall be for five (5) years and terminating on the fifth anniversary of the Commencement Date (the “Initial Term”), unless otherwise terminated as provided in Paragraph 18.

2.2 **Option to Extend.** The term of this Lease shall be automatically renewable for four (4) additional terms of five (5) years (“Renewal Terms”) each following the original term at the annual rent stated below and otherwise upon the same terms and conditions stated in this Lease. If Tenant desires not to extend any subsequent term of this Lease it shall give Landlord written notice of its intention not to extend the term at least sixty (60) days prior to the expiration of the then current term whereupon the Lease shall be deemed canceled upon the expiration of the then current term. If Tenant shall remain in possession of the Premises at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy, terminable upon thirty (30) days written notice, with rent increased to 125% and otherwise under the same terms and conditions of this Lease.

2.3 **Rent Increases/Payment Bonds.**

(a) The rent for this Lease is equal to \$2,600.00 month. Annually, the rent shall increase on each anniversary of the Commencement Date by 2.0% over the rent of the previous year.

(b) On or before the Commencement Date, Tenant shall deposit with Landlord the sum of \$1,000.00 (the “Security Deposit”). Said Security Deposit shall be held by Landlord as security for the faithful performance by Tenant of the terms, covenants and conditions of this Lease. If Tenant defaults under this Lease, which default is not cured by Tenant as provided in Paragraph 13, Landlord may use, apply or retain all or a part of this Security Deposit to compensate Landlord for any actual loss, damage or expense incurred or suffered by Landlord by reason of Tenant’s default, as defined in Section 13. If the Security Deposit is invaded by Landlord in accordance with this paragraph, Tenant shall restore the Security Deposit within forty-five (45) days after the notice and demand from Landlord. Landlord shall return the Security Deposit to Tenant or Tenant’s assignee within forty-five (45) days after the date of expiration or termination of this Lease. Nothing herein shall be construed to limit the scope of Tenant’s liability for defaults to the balance of the security deposit then on deposit.

(c) In order to further assure Landlord that the Tenant’s improvements will be properly removed, and the Premises returned to Landlord in accordance with this Lease, Tenant shall deposit with Landlord on or prior to the Commencement Date a surety bond in the amount of Ten Thousand Dollars (\$10,000.00) as security for its obligation to remove its equipment and improvements and restore the Premises at the termination of this Lease as provided in Section 18.3. Landlord shall be the named obligee on the bond. At the end of the Term of this Lease, if Tenant has not removed all improvements on the Premises and restored same to the condition required in this Lease within ninety (90) days of the expiration or earlier termination of this Lease., then upon thirty (30) days prior written notice to Tenant, Landlord may draw on the bond to remove the

improvements and restore the Premises as necessary. Nothing contained herein shall be construed to limit Landlord's damages to the amount of the bond if it is forced to removed Tenant's improvements and/or restore the Premises.

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

3: Reimbursement of Costs.

Tenant agrees to reimburse Landlord for any and all legal and professional fees, including engineering fees, associated with this Agreement in an amount not to exceed Three Thousand No/100 Dollars (3,000.00) so long as a valid W-9 is provided to Tenant. Tenant shall reimburse Landlord for all costs arising from draining the Water Tower resulting from preparing the Water Tower for Tenant's equipment in an amount not to exceed Two Thousand No/100 Dollars (2,000.00) so long as a valid W-9 and sufficiently detailed invoice of such fees are provided to Tenant. The total amount for reimbursement costs as specified in this Section 3 shall not exceed Five Thousand No/100 Dollars (\$5,000.00).

4: Methods of Payment.

4.1 **First Rent Payment.** Not later than twenty-one (21) business days after the Commencement Date, Tenant shall pay Landlord rent for the first month of the Term.

4.2 **Subsequent Monthly Rent Payments.** Effective with the first (1st) day of the second (2nd) month of the Term (after the First Rent Payment) rent shall be payable monthly in advance on the first (1st) day of each calendar month. Rent for any fractional month at the beginning or at the end of the Term shall be prorated. Rent payments made after the tenth (10th) day of the month shall be considered late (hereinafter "Late Payments"). All Late Payments shall be subject to a processing fee in an amount not to exceed ten percent (10%) per annum

4.3 **Location for Payment.** All rent shall be paid to Landlord at the Address set forth above or to another person, firm or place which the Landlord may from time to time designate in writing at least forty- five (45) days in advance of a rent payment date.

5: Use of Property.

Tenant may use the Property for its own lawful telecommunications purposes and related site preparation, improvements and maintenance purposes in strict accordance with the plans attached hereto as Exhibit C, local rules and governmental regulations, and such use shall not interfere with Landlord's use of the Property (i.e., if Tenant is making improvements to the Property, Tenant cannot place equipment or materials in such a manner as to block Landlord's access or affect the operation of the water tower). Landlord agrees to cooperate with Tenant, at Tenant's expense, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Tenant's intended use of the Premises.

Tenant's use of the Premises (see Plans Exhibit C) shall be exclusive, subject to the co-location of other carriers.

Tenant does not object to and will make reasonable efforts, at no cost to Tenant, to allow co-location of other wireless telecommunication companies on the water tower, outside of the Premises, provided that such installation does not cause radio frequency or other interference with Tenant's Facilities, use or operations. No collocation or sublease of the Premises shall be permitted unless the collocator or subtenant first executes a ground lease agreement with Landlord.

6: Tenant's Installation.

6.1 Improvements. Tenant has the right to erect, maintain and operate on the Premises communications facilities, antenna structure, antennas, electronic equipment, air conditioned equipment shelter, back-up power generator, other personal property, warning signs to make individuals aware of risks, fixtures, cables, transmission lines, utilities lines and any other appurtenant improvements ("Tenant's Facilities"), given Tenant first shall obtain a building permit from the Village of Gilberts prior to any construction activities conducted by Tenant. Tenant may from time to time replace any of these items with new or different items with the substantially similar specifications so long as their installation is otherwise in compliance with this Lease and applicable laws, ordinances and codes. Tenant's installation shall not interfere with Landlord's use of the Property. Tenant may also use the Premises for emergency 911 communication services, at no additional cost to Tenant or Landlord. Landlord and Tenant agree that any portion of the Premises that may be conceptually described on Exhibit B will not be deemed to limit Tenant's use of the Leased Area or Tenant's Facilities. In the event Tenant desires to modify or upgrade the Leased Area and/or Tenant's Facilities, in a manner that requires an additional portion of the Property (the "Additional Premises") for such modification or upgrade, Landlord agrees use good faith efforts to negotiate and execute an amendment with the Tenant for the Additional Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises by the amount equivalent to the then-current per square foot rental rate charged by Landlord to Tenant times the square footage of the Additional Premises. If an amendment is executed to secure Additional Premises, Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant. Within thirty (30) days from the date of completion of any construction activity (or as soon as possible thereafter weather conditions permit), whether upon installation or later maintenance, repair and replacement, Tenant shall restore or cause to be restored to the reasonable satisfaction of Landlord, the Premises and any other affected areas of the Property, including without limitation any and all landscaping, as nearly as may be, to the same condition that existed immediately prior to the commencement of such activities by Tenant, reasonable wear and tear or damage by casualty not caused by the Tenant excepted.

If Tenant desires to make any interior or exterior improvements which vary from plans attached hereto as Exhibit C, the plans for such improvements shall be submitted to and are subject to Landlord's approval, such approval not to be unreasonably withheld, conditioned delayed, or denied. As used in this paragraph, improvements do not include the replacement of existing equipment with new or similar equipment.

6.2 **Compliance with Law.** Tenant undertakes full and complete responsibility at all times hereafter for the expenses of, and quality of, installation of Tenant's Facilities and compliance with all code requirements and regulations of governmental authorities having jurisdiction over the construction, maintenance and repair of Tenant's Facilities, including but not limited to compliance with laws or regulations effecting construction of public buildings and service areas used by public employees, and Tenant agrees to promptly remedy or correct any deficiencies with such compliance. The installation shall be processed pursuant to permit and conducted by authorized and licensed personnel. The construction work shall proceed without interference or disruption, or minimization of same, to the current operations of the Landlord.

6.3 **Lien-Free Work.** Tenant shall (a) pay prior to delinquency all costs and expenses of work done or caused to be done by Tenant in the Premises; (b) keep the title to the Property and every part thereof free and clear of any lien or encumbrance in respect of such work; and (c) indemnify and hold harmless Landlord against any claim, loss, cost, demand (including reasonable legal fees), whether in respect of liens or otherwise, to the extent directly arising out of the supply of material, services, or labor for such work. Tenant shall immediately notify Landlord of any lien, claim of lien, or other action of which Tenant has constructive or actual knowledge and which affects the title to the Property or any part thereof, and shall cause the same to be removed within thirty (30) days after notice (or such additional time as Landlord may consent to in writing), either by paying and discharging such lien or by posting a bond or such other security as may be reasonably satisfactory to the Landlord. If Tenant shall fail to remove same within with said time period; Landlord may take such action as Landlord deems necessary to remove the same and the entire cost thereof shall be due and payable by Tenant to Landlord as additional rent and shall be due and payable in full no later than 30 days from receipt of the invoice for such costs.

6.4 **Drawings; Approval.** Prior to the application for any building permit for installation or replacement of Tenant's Facilities, Tenant shall submit Tenant's construction and antenna drawings to Landlord to approve the construction and antenna installations. Landlord shall review such drawings within twenty (20) working days of receipt of plans. If Landlord does not request changes within such 20-day period, approval shall be deemed given. Such approval shall be deemed conceptual and programmatic only and shall not relate to structural or other building code compliance. Nothing in this paragraph shall be deemed to be a substitute for or waive or reduce applicable regulatory reviews, inspections and approvals.

6.5 **Workmanlike Construction.** Tenant agrees that all work performed under this agreement shall be completed in a neat, workmanlike manner consistent with good engineering practices. All costs for the installation, maintenance and repair of Tenant's Facilities, including, but not limited to, the cost of extending electrical service to Tenant's equipment, will be paid by the Tenant. Tenant shall maintain the Premises in a clean and orderly manner.

6.6 **Title to Various Items.** Landlord shall, at all times, be the sole and exclusive owner of the Property. The Tenant shall at all times be the sole and exclusive owner of Tenant's Facilities. All of Tenant's Facilities shall remain Tenant's personal property and are not fixtures.

6.7 **Utilities.** Tenant shall pay for the electricity it consumes in its operations at a rate charged by the servicing utility company. Tenant shall have the right to draw electricity, by separate meter or by submeter, and other utilities from the existing utilities on the Property or obtain separate utility service from any provider that will provide service to the Property (including a standby power generator for Tenant's exclusive use). Landlord agrees to sign such documents or easements as may be required by said provider to provide such service to the Premises, including the grant to Tenant or to the provider at no cost to the Tenant, of an easement in, over across or through the Land as required by such servicing utility company to provide utility services as provided herein.

6.8 **Landlord Maintenance.** The Landlord reserves the right to perform, at its sole expense, structural repairs, maintenance or cosmetic maintenance, including painting, on its Water Tower structure or the Property. Landlord shall give Tenant at least one hundred twenty (120) days' prior written notice of the intended work. Tenant shall, at Tenant's cost and expense, temporarily relocate and continue to operate its antennas, or otherwise to secure the Antenna Facilities generally, to protect them from damage and to allow Tenant's continued operation. Tenant will be permitted to install a reasonably necessary temporary facility on the Property to keep its Antenna Facilities operational, provided it complies with the non-disturbance provisions of this Agreement. Any repairs or maintenance will be conducted by Landlord as diligently and expeditiously as possible.

7: Taxes.

Tenant shall be solely responsible for and shall timely pay all personal property taxes levied and assessed against it or its personal property. Tenant shall not be responsible for any real estate, special assessments or similar taxes relating to the Property except to the extent permitted by statute for the value of Tenant's leasehold estate,

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 real property taxes and special assessments now imposed on the real 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 property taxes. In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice no later than thirty (30) days after the date of such notice of assessment. If Landlord does not provide such notice or notices to Tenant in a timely manner and Tenant's rights with respect to such taxes are prejudiced by the delay, Landlord shall reimburse Tenant for any increased costs directly resulting from the delay and Landlord shall be responsible for payment of the tax or assessment set forth in the notice, and Landlord shall not have the right to reimbursement of such amount from Tenant. For any tax amount for which Tenant is responsible under this Agreement, Tenant shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as permitted by law.

8: Indemnification.

Landlord and Tenant each agree to indemnify and hold harmless the other party from and against any and all claims, damages, cost and expenses, including reasonable attorney fees, to the extent caused by or arising out of any acts or omissions in the operations or activities on the Property for which the indemnifying party, or the employees, agents, contractors, licensees, tenants and/or subtenants of the indemnifying party, may be held liable under the laws of the State of Illinois, or a breach of any obligation of the indemnifying party under this Lease, specifically including Tenant's obligation to provide Landlord with notice of any lapse in insurance coverages required by Article 9 hereof. If Tenant fails to provide the notice required by Section 9.4 hereof, and any required insurance lapses, the indemnification obligations of this Article 8 shall include losses incurred by Landlord for Tenant's failure to provide the required notice. Notwithstanding the foregoing, this indemnification shall not extend to indirect, special, incidental or consequential damages, including, without limitation, loss of profits, income or business opportunities to the indemnified party or anyone claiming through the indemnified party. The indemnifying party's obligations under this section are contingent upon its receiving written notice within sixty (60) days of any event giving rise to an obligation to indemnifying the other party. Notwithstanding anything to the contrary in this Lease, the parties hereby confirm that the provisions of this section shall survive the expiration or termination of this Lease. Not in limitation of the foregoing, Tenant agrees to pay for any costs incurred by the Landlord, including but not limited to attorneys' fees, experts' fees, and other related costs associated with administrative hearings or litigation in the event any suit is filed or claim made by a third party regarding the manner of use and possession of the Leased Premises authorized by this Agreement. Except for the indemnity obligations set forth in this Lease, and otherwise notwithstanding anything to the contrary in this Lease, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability. Additionally, neither party shall be required to indemnify the other for negligence or willful misconduct of such party, or its employees, contractors or agents.

9. Insurance.

9.1 **Types; Limits.** During the term of the Lease, Tenant shall 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:

(a) Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with limits of One Million Dollars (\$1,000,000) for each accident and for each disease and policy limit.

(b) Commercial general liability insurance with limits of Two Million Dollars (\$2,000,000) for each occurrence, and Two Million Dollars (\$2,000,000.00) in the aggregate, of bodily injury, personal injury and property damage. The policy shall provide contractual liability insurance, 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.

(c) Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Tenant, its employees and agents, with coverage for bodily injury and property damage to comply with the provisions of state law with limits of Two Million Dollars (\$2,000,000) as the combined single limit for each occurrence for bodily injury and property damage.

(d) Umbrella/Excess insurance providing coverage over the commercial general liability and automobile liability coverage required herein, with limits, on an occurrence basis and in the aggregate, of Five Million Dollars (\$5,000,000.00).

(e) 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 Tenant's Facilities. Upon completion of the installation of the Tenant's Facilities, Tenant shall substitute for the foregoing insurance policies of fire, extended coverage and vandalism and malicious mischief insurance on the Tenant's property. The amount of insurance at all times shall be representative of the insurable values installed or constructed. Tenant may self-insure these risks.

(f) All policies other than those for Worker's Compensation shall be written on an occurrence and not a claims-made basis.

(f) 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.

(g) Notwithstanding the forgoing, Tenant may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. In the event Tenant elects to self-insure its obligation under this Agreement to include Landlord as an additional insured, the following conditions apply: (i) Landlord shall promptly and no later than thirty (30) days after notice thereof provide Tenant with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Tenant with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) Landlord shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Tenant; and (iii) Landlord shall fully cooperate with Tenant in the defense of the claim, demand, lawsuit, or the like.

9.2 **Additional Insureds.** All policies, except for property, employer's liability, and worker's compensation policies, shall include Landlord and 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 primary, non-contributory additional insureds (herein referred to as the "Additional Insureds") as respects this Lease. Landlord's additional insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Tenant, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Landlord, its employees, agents or independent

contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Landlord, its employees, agents or independent contractors; and, (iii) not exceed Tenant's indemnification obligation under this Agreement, if any. The foregoing insurance coverages shall also contain a severability-of-interests clause.

9.3 **Evidence of Insurance.** Certificates of insurance for each insurance policy and all related endorsements (upon request) required to be obtained by Tenant in compliance with this paragraph shall be filed and maintained with Landlord upon Landlord's request, no more than annually, during the term of the Lease. Tenant shall immediately advise Landlord of any claim or litigation that may result in liability to Landlord.

9.4. **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 Tenant if any cancellation or non-renewal of any required coverage is not replaced."

9.5 **Insurance Companies.** All insurance shall be effected under valid and enforceable policies, insured by insurers eligible to do business by the State of Illinois or surplus line carriers on the State of Illinois Insurance Commissioner's approved list of companies eligible 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.

9.6. **Deductibles.** If any of the foregoing insurance policies are written with deductibles or retentions, Tenant agrees to indemnify and save harmless Landlord and Additional Insureds from and against the payment of any deductible or retention and from the payment of any premium on any insurance policy required to be furnished by this Lease.

9.7. **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 coverage of the type which Tenant is required to obtain under the terms of this paragraph with reasonable and prudent limits of insurance in accordance with the work to be performed and in line with industry custom and practice. In the event Tenant elects not to require such insurance from its contractors, Tenant's insurance provided hereunder shall also contain a waiver of subrogation as such coverage relates to claims arising from contractors and subcontractors acts or omissions.

9.8. **Review of Limits.** Once during each Renewal Term, Landlord and Tenant shall mutually determine whether to make any increases in Tenant's insurance policy limits, in accordance with generally accepted industry standards, for all insurance to be carried by Tenant as set forth in this Article. In the event Landlord and Tenant cannot mutually agree upon the amount of said insurance increases, then Tenant agrees that all insurance policy limits as set forth in this section shall be adjusted for increases in the applicable Chicago-Naperville-Elgin cost of living index.

9.9 **Non-Waiver.** Under no circumstances shall the Landlord be deemed to have waived any of the insurance requirements of this Lease by: (A) allowing any work to commence before receipt of certificates of insurance or additional insured endorsements; (B) by failing to

review any certificates or documents received; or (C) by failing to advise the Tenant that any certificate of insurance fails to contain all of the required insurance provisions or is otherwise deficient in any manner. The Tenant agrees that the obligation to provide the insurance required by these documents is solely Tenant's responsibility and that Tenant's obligations cannot be waived by any act or omission of the Landlord.

10. Landlord's Representations.

In order to induce Tenant to enter into this Lease, Landlord covenants, represents and warrants, as of the date of this Lease and throughout its Term, as follows:

10.1 **Authority.** Landlord is solvent and the owner of the Property in fee simple. Landlord has full authority to execute, deliver, and perform this Lease and is not in default of any mortgage affecting this Property.

10.2 **No Condemnation.** Landlord has received no actual or constructive notice of any condemnation or eminent domain proceedings or negotiations for the purchase of the Property, or any part, instead of condemnation.

10.3 **No Unrecorded Liens.** Landlord has not performed and has not caused to be performed any work on the Property during the six months preceding the date of this Lease which could give rise to any mechanic's or materialmen's liens. There are no unrecorded easements or agreements affecting the Property.

10.4 **Maintenance.** Landlord will maintain and repair the Property and access thereto, the water tower, and all areas of the Premises where Tenant does not have exclusive control, as required by, and in compliance with, applicable law.

11: Easements.

11.1 **Granted.** For the Term and Renewal Terms of this Lease, Landlord grants to Tenant, and its agents, employees, contractors, guests and invitees, a non-exclusive right and easement for pedestrian and vehicular ingress and egress across that portion of the Property described in Exhibit "B", which easement includes the right to install and operate transmission cables from the equipment shelter or cabinet and communication lines from the Property's main entry point to the equipment shelter or cabinet. Tenant and its authorized representatives shall have the right of ingress and egress to and from the Premises twenty-four (24) hours a day, seven (7) days a week, at no charge, on foot or motor vehicle, including trucks, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes under or along a twelve (12') foot wide non-exclusive easement extending from the nearest public right of way to the demised Premises. Notwithstanding the preceding sentence, all non-emergency work capable of being scheduled in advance shall only occur between 8:00 a.m. and 6:00 p.m.; only emergency repairs may be conducted between 6:00 p.m. and 8:00 a.m. All utilities for Tenant's Facilities will be constructed or installed so as to be underground. Any installation activity shall be coordinated with Landlord so as not to disrupt Landlord's activities. To the extent practicable, all easements herein described shall be parallel and coterminous so as to cause the least interference with the Landlord's use of the Property.

11.2 **Modifications.** If subsequent to the date of this Lease it is reasonably determined by Tenant that any access or utility easement obtained does not or no longer adequately serves the Premises and Tenant's use thereof, Landlord agrees to cooperate with Tenant to relocate such easements where practical at Tenant's sole cost and expense. In the event the Landlord is unable to relocate any of the necessary easements, then at Tenant's option this Lease may be terminated upon thirty (30) days prior written notice to Landlord. Notwithstanding anything to the contrary contained herein, Tenant shall be required to restore the location of the prior easement to its original condition, reasonable wear and tear excepted. If such prior easement was used by parties other than Tenant, Tenant and such parties shall share pro-rata in the costs to restore.

12: Assignment.

Tenant may not assign, sublease or otherwise transfer all or any part of its interest in the Lease or in the Property without the prior written consent of Landlord; provided, however, that Tenant may assign or sublet its interest without consent to its parent company, any subsidiary or affiliate of it or its parent company, or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets, or to Tenant's parent, affiliates or subsidiaries, subject to any financing entity's interest, if any, in this Lease as set forth in Paragraph 27 below, upon written notice to Landlord, subject to the assignee assuming all of Tenant's obligations herein.

Notwithstanding anything to the contrary contained in this Lease, Tenant may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Lease to any financing entity, or agent on behalf of any financing entity to whom Tenant (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes, or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

Landlord may assign this Lease upon written notice to Tenant, subject to the assignee assuming all of Landlord's obligations herein, including but not limited to, those set forth in Section 27 below. Upon assignment by either Tenant or Landlord such party shall be relieved of all future performance, liabilities, and obligations under this Lease.

13: Defaults.

13.1 **By Tenant.** In the event of default under this Lease by Tenant, Landlord shall be entitled to remedies as shall then be provided by law; and provided that prior to, and as a condition precedent to, the exercise of any remedy, Landlord shall give to Tenant written notice of default to Tenant and the nature of the default and Tenant shall have thirty (30) days (or, if the default cannot be cured within thirty (30) days, a longer period as shall be necessary to cure the default, acting with due diligence), after receipt of the notice within which to cure the default, during which period no remedy shall be pursued. If Tenant fails to cure a default, in addition to any other remedies available to Landlord, the Landlord may, upon expiration of the Removal Period, elect to commence eviction proceedings provided, however, Tenant shall be permitted a 90 day stay from receipt of a notice of eviction at 110% of the then current monthly rent to find an alternative site.

13.2 By Landlord. If Landlord defaults in any of its obligations under this Lease, Tenant may perform Landlord's obligation and may offset from the rent or any other amounts next payable Tenant's costs and expenses of doing so. Notwithstanding the foregoing, in the event of a default under this Lease, Tenant shall give to Landlord written notice of the default specifying the nature of the default and Landlord shall have thirty (30) days (or, if the default cannot be cured within thirty (30) days, a longer period as shall be necessary to cure the default, acting with due diligence), after the receipt of the notice within which to cure the default, during which time no remedy may be pursued or implemented. If Landlord fails to cure a default, in addition to any other remedies available to Tenant under law and equity, the Tenant may elect to (i) terminate this Lease, or to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant. The sum of any available remedy to Tenant shall not in any event exceed the total amount of rent due and payable under this Lease.

14: Condemnation.

In the event of condemnation, Landlord will provide timely notice of the proceeding to the Tenant. Tenant's share of any condemnation award or proceeds from sale in lieu of condemnation shall be limited to compensation for Tenant's leasehold interest, antennae, improvements, transmission lines, loss of business and equipment, and Tenant's costs of relocation. Tenant shall not receive any part or portion of condemnation award or sales proceeds relating to compensation for Property owned by the Landlord.

15: Casualty.

Landlord will provide timely notice to Tenant of any casualty or other harm affecting the Property. In the event of damage by fire or other casualty to the Tower or Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt TENANT's operations at the Premises for more than forty-five (45) days, then TENANT may, within sixty (60) days following such fire or other casualty, provided LANDLORD has not completed the restoration required to permit TENANT to resume its operation at the Premises, terminate this Lease upon fifteen (15) days prior written notice to LANDLORD. Any such notice of termination shall cause this Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Lease and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Lease. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which TENANT's use of the Premises is impaired. In the event of any casualty or other harm affecting the Property and/or Tenant's Facilities, Landlord agrees to cooperate with and assist Tenant, in good faith, to place temporary transmission and reception facilities on the Property, if reasonable under the circumstances of such casualty or other harm, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent.

16: Quiet Enjoyment.

Landlord covenants and agrees that upon payment by the Tenant of the rental under this Lease and upon the observance and performance of the covenants, terms and conditions on

Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Property, the rights, and privileges granted for the term demised without hindrance or interference by Landlord or any other person and Landlord shall perform all of its obligations under this Lease.

17: Subordination, Non-Disturbance and Attornment.

Tenant shall enter into recordable subordination, non-disturbance and attornment agreements with the holders of any mortgage, trust deed, installment sale contract or other financing instrument dated after the date of this Lease, on Tenant's commercially reasonable form.

18: Termination.

18.1 By Tenant. In addition to termination as a result of action or inaction pursuant to other parts of this Lease, Tenant may terminate this Lease: (a) at any time for any reason upon sixty (60) days written notice to Landlord and payment of twelve (12) months rental, or (b) immediately, without payment of any rent not yet due following written notice to Landlord of either (i) Tenant's inability to secure necessary zoning and/or Tenant has lost, been denied or failed to satisfy any necessary authorization to use the Property as contemplated in this Lease, or (ii) if Tenant 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, (iii) if Tenant determines that the Premises are not appropriate for its operations for technological reasons, including, without limitation, signal interference. Economic hardship shall not be grounds for termination for cause.

18.2 By Landlord. Landlord may terminate this Lease if (i) there is a written determination by a qualified engineer (using appropriate instruments which are properly calibrated) that the power density levels emitted from Tenant's equipment located on the Property exceed the FCC maximum permissible exposure level limitation which pertain to the general public and as is specified in the applicable FCC regulations regarding uncontrolled areas, (ii) the Tenant is unable to bring its equipment into compliance with such standard within sixty (60) days after receipt of a written copy of Landlord's engineering findings; or if Tenant abandons the leased Premises for a period of twelve (12) consecutive months and (iii) if Tenant fails to obtain a building permit as of June 30, 2020.

In the event the Landlord determines, in its sole discretion, to decommission and remove the water tower, the Landlord reserves the right to require Tenant, at Tenant's expense, to remove Tenant's Facilities and relocate Tenant's Facilities to a new location owned by the Landlord as mutually agreed to by the Parties. If the Parties cannot agree on a substitute location for Tenant's Facilities within 90 days after notice to Tenant of Landlord's intent to remove the water tower, the Lease shall terminate as provided herein.

18.3 Removal of Equipment. Upon the expiration of this Lease, or its earlier termination or cancellation for any reason, Tenant shall at its sole expense remove from the Property all of its antennae, antenna structures, transmitting and receiving equipment, transmitting lines, and other personal property, fixtures and other improvements. Tenant shall

have up to ninety (90) days after the effective date of the expiration, termination, cancellation to complete removal of all items (the "Removal Period"). If Tenant requires any of the ninety (90) day period after the effective date for the removal, Tenant shall pay Landlord the then current monthly rent in advance for each ninety (90) day period or portion thereof Tenant requires to complete the removal. Tenant shall be required to remove only its communications equipment, including radio cabinets, antennas, connecting cables, and other personal property.

19: Cooperation.

Landlord agrees to cooperate with Tenant in any efforts by Tenant to secure any governmental permits necessary to use the Property 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. At any time after the date of this Lease or the Commencement Date, either party shall execute or cause to be executed any documents, or take or cause to be taken any actions, reasonably necessary to carry out the intent of this Lease.

20: Lease Construction.

This Lease shall be construed in accordance with the laws of the State of Illinois. In the event that any provisions of this Lease are legally unenforceable, the other provisions shall remain in effect. This Lease has been prepared by both parties and shall not be construed under the rule of construction whereby a document is construed against the author thereof.

21: Entire Binding 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. Presentation of this Lease shall not constitute an offer unless the Lease has been signed by Tenant, and this Lease shall not be binding until executed by both Landlord and Tenant and approved in the manner required by law.

22: Successors.

Subject to the provisions regarding assignment, this Lease shall be binding upon, and inure to the benefit of, the successors-in-interest and permitted assigns or subtenants of the parties and any grantee of Landlord.

23: Notices.

All notices, requests and other writings required under this Lease (including any notices of termination rights) must be in writing and shall be deemed validly given upon the earlier of (i) upon receipt if sent by next-business-day delivery via a nationally recognized overnight courier to the addresses set forth below or (ii) the second business day after the date posted if sent by certified mail, return receipt requested, addressed to the other party with copies as set out in the Landlord's Address and Tenant's Address (or any other address within the United States that the party to be notified may have designated to the sender by like notice).

24: Performance.

Time is of the essence in this Lease.

25: Broadcast Interference.

25.1 **Definition.** As used in this Lease, “interference” with a broadcasting activity means:

(a) Interference within the meaning of the provisions of the recommended practices of the Electronics Industries Association (EIA) and the rules and regulations of the Federal Communications Commission (FCC) then in effect, or

(b) A material impairment of the quality of either sound or picture signals on a broadcasting activity as may be defined by the FCC at any hour during the period of operation of activity, as compared with that which would be obtained if no other broadcaster were broadcasting from the Property or had any equipment on the Property.

25.2 Interference.

(a) Tenant shall operate Tenant’s Facilities in a manner that shall not cause physical, mechanical, radio frequency or signal interference to Landlord and other tenants or licensees of the Property, provided that their installation predates the execution of this Lease and as long as those existing tenants or licensees continue to operate within their respective frequencies and in accordance with all applicable laws and regulations. All operations by Tenant shall be in compliance with all Federal Communication Commission (“FCC”) requirements.

(b) Subsequent to the installation of the Tenant’s Facilities, Landlord shall not permit itself, its tenants or licensees to install new equipment on the Property if such equipment is likely to cause physical, mechanical, radio frequency or signal interference with Tenant’s operations. Such interference shall be deemed a material breach by Landlord. In the event interference occurs, Landlord agrees to take all reasonable steps necessary to eliminate such interference in a reasonable time period, including providing notice to other tenants, lessees or licenses suspected of causing interference to Tenant’s Facilities or Tenant’s operations within 24 hours following Landlord’s receipt of notification from Tenant of such interference.. Landlord shall have the right to install equipment that is in compliance with all FCC standards and regulations. Notwithstanding anything herein to the contrary, Landlord specifically reserves the right to install and co-locate public safety equipment on the Property for the purpose of improving police and fire dispatch services and such equipment shall enjoy absolute priority with respect to interference, provided that such equipment is operating within its FCC-licensed spectrum.

(c) Should Landlord claim interference with their existing uses due to Tenant’s Facilities, Tenant shall, at its sole cost and expense, cooperate with Landlord to determine

if Tenant's Facilities are the source of such claimed interference. Such cooperation shall include but not be limited to inter-modulation studies. Should it be determined by such studies that such interference is directly attributable to the operations of the Tenant's Facilities on the Property, Tenant, at its sole cost and expense, shall use its best efforts in taking measures to modify the Tenant's Facilities in order to mitigate such interference to Landlord's reasonable satisfaction.

(d) Tenant's equipment may not cause any interference to the operation of any public safety equipment such as police, fire department and 9-1-1 dispatch, as long as such equipment is operating within applicable legal guidelines and requirements. In the event Landlord's emergency radio systems cause interference to Tenant's Facilities, Landlord will work with and assist Tenant, in good faith, to eliminate such interference and to avoid such interference in the future. If interference cannot be avoided, Landlord agrees to help Tenant, in good faith, secure a reasonably acceptable alternate location on Landlord's property that is suitable for Tenant's use and acceptable to Landlord if such interference occurs. In the event, despite using good faith efforts, the interference cannot be cured and no alternate location can be secured, Tenant may terminate this Lease.

26: Environmental Matters.

26.1 **Definition.** For purposes of this Lease:

(a) "Applicable Environmental Laws" includes the Comprehensive Environmental Response, Compensation, and Liability Act, any so called "Super-fund" or "Super-lien" law, or any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

(b) "Hazardous Material" includes any hazardous, toxic or dangerous waste, substance or material as that term is defined in Applicable Environmental Laws.

26.2 **No Hazardous Material.** Neither the Landlord nor, to the best knowledge of Landlord, any other person has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under or at the Property or any part thereof nor any part thereof has ever been used by the Landlord, or to the best knowledge of the Landlord, by any other person either as a permanent or temporary dump site or storage site for any Hazardous Material. Landlord and Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property. In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental, health or safety condition or matter relating to the Property, that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, then Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to Landlord.

26.3 **Indemnity.** Each party agrees to defend, indemnify and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the indemnitee may suffer or incur due to the existence or discovery of any Hazardous Material on the Property or the migration of any Hazardous Material to other properties or the release of any Hazardous Material into the environment, that relate to or arise directly from the indemnitor's activities on the Property. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority.

26.4 **Survival.** The provisions of and undertakings and indemnification set out in this Section shall survive the termination of this Lease.

27. Waiver of Landlord's Lien.

(a) Landlord waives any lien rights it may have concerning the Tenant's Facilities which are deemed Tenant's personal property and not fixtures, and Tenant has the right to remove the same at any time without Landlord's consent.

(b) Landlord acknowledges that Tenant may enter into a financing arrangement including promissory notes and financial and security agreement for the financing of the Tenant's Facilities (the "Collateral") with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, Landlord (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

28. Memorandum of Agreement

Landlord acknowledges that a Memorandum of Agreement will be recorded by Tenant in the official records of the County where the Property is located, in the form attached hereto as Exhibit D.

29. Attorneys' Fees

The prevailing party in any litigation or other legal proceedings arising under this Lease (including any appeals and any insolvency actions) shall be entitled to reimbursement from the non-prevailing party for reasonable attorneys' fees and expenses.

30. Waiver of Jury Trial

Each party, to the extent permitted by law, knowingly, voluntarily and intentionally waives its right to a trial by jury in any action or proceeding under any theory of liability arising out of or in any way connected with this agreement or the transactions it contemplates.

31. Further Acts

Upon request, Landlord will cause to be promptly and duly taken, executed, acknowledged and delivered all such reasonable and customary further acts, documents, and assurances as Tenant may request from time to time in order to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all transactions and permitted use contemplated by this Agreement.

AGREED as of the later of the two dates below:

LANDLORD

Village of Gilberts,
an Illinois Municipal corporation

TENANT

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

By: AT&T Mobility Corporation
Its: Manager

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Tax ID:

TENANT ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____, 20__, before me personally appeared _____, and acknowledged under oath that he/she is the _____ of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, a Delaware limited liability company the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tenant.

Notary Public: _____
My Commission Expires: _____

LANDLORD ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____, 20__ before me, personally appeared _____, who acknowledged under oath, that he/she is the person/officer named in the within instrument, and that he/she executed the same in his/her stated capacity as the voluntary act and deed of the Landlord for the purposes therein contained.

Notary Public: _____
My Commission Expires: _____

EXHIBIT "A"

DESCRIPTION OF THE PROPERTY

Exhibit "A" to the Lease dated _____, 2019, between the Village of Gilberts, an Illinois municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company as Tenant.

The Property is described and/or depicted as follows:

Common address:

EXHIBIT "B"

DESCRIPTION OF PREMISES

Exhibit "B" to the Lease dated _____, 2019, between the Village of Gilberts, an Illinois municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company as Tenant.

The Premises are described and/or depicted as attached hereto.

[Per Section 11.1, this Exhibit needs to include easements granted to Tenant.]
To be entered at a later date.

EXHIBIT “C”

PLANS

Exhibit “C” to the Lease dated _____, 2019, between the Village of Gilberts, an Illinois municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company as Tenant.

To be inserted at a later date following Village's approval.

EXHIBIT D

MEMORANDUM OF LEASE

[FOLLOWS ON NEXT PAGE]

**MEMORANDUM
OF
LEASE**

This Memorandum of Lease is entered into on this _____ day of _____, 20____, by and between The Village of Gilberts, an Illinois municipal corporation, with an address as stated in Paragraph 1.1, (hereinafter designated "Landlord"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 (hereinafter designated "Landlord").

1. Landlord and Tenant entered into a certain Water Tower Lease Agreement (“**Agreement**”) on the _____ day of _____, 20____, for the purpose of installing, operating and maintaining a Leased Area and other improvements. All of the foregoing is set forth in the Agreement.
2. The initial lease term will be five (5) years commencing on the Effective Date of the Agreement, with six (4) successive automatic five (5) year options to renew.
3. The portion of the land being leased to Tenant and associated easements are described in **Exhibit 1** annexed hereto.
4. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

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

LANDLORD:

The Village of Gilberts,
an Illinois municipal corporation

TENANT:

New Cingular Wireless PCS, LLC
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name:
Its:
Date:

By: _____
Print Name:
Its:
Date:

[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

to the Memorandum of Lease dated _____, 20____, by and between Village of Gilberts, an Illinois municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

The Premises are described and/or depicted as follows: