

TOWER OCCUPANCY AGREEMENT

THIS TOWER OCCUPANCY LICENSE AGREEMENT (“Agreement”), entered into on this ___ day of March, 2019, by and between Village of Pecatonica, Pecatonica, IL 61063 (“Lessor”) and Computer Dynamics of NWIL, L.L.C. located at 451 West South St., Freeport, IL 61032 (“Lessee”) sometimes referred to collectively as the “Parties” or individually as “Party”.

WHEREAS, the Lessee proposes to furnish communications services, specifically wireless internet service, and desires to place and maintain aerial antennas, cables, wires, and other equipment (“Equipment”); and

WHEREAS, the Lessee is in the business of constructing, maintaining and operating, at retail, wireless telecommunications networks; and

WHEREAS, Lessor is willing to permit, provided it has determined the water tower is structurally safe for the purposed uses stated herein, and subject to the terms and conditions set forth herein, is willing to permit attachment of the Lessee’s equipment to certain Lessor owned water tower, (“Tower”); and

WHEREAS, Lessee will pay the sum per month as determined in the following table in exchange for the siting of equipment on tower for the life of this Agreement. Payments are to be monthly on the Commencement Date.

Number of customers	Monthly rent
0 – 51	\$200
51 – 100	\$300
101-200	\$400
201+	\$500

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the Parties do hereby mutually covenant and agree as follows:

1. DEFINITIONS

The following definitions shall apply generally to the provisions of this Use Agreement:

1. Computer Dynamics of NWIL, L.L.C, a company organized and existing under the laws of the State of Illinois “Lessee”.
2. Village of Pecatonica, “Lessor”.
3. Commencement Date. The date the Lessee begins placement of its equipment.
4. Demised Premises. “Tower”.

5. Equipment. Lessee's aerial antennas, cables, wires, and other equipment to be placed on and at the base of Tower.
6. Facilities. Tower and Electrical outlets.
7. Installation Date: The date that the first antenna is installed by Lessee pursuant to this Use Agreement.
8. Laws. Any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the Lessor or other governmental agency having joint or several jurisdiction over the Parties or the subject matter of this Use Agreement, in effect either as of the Effective Date or at any time during the presence of Lessee's equipment on Lessor's facilities.
9. Customer. A customer is defined as a person or entity that is receiving service directly (last hop) from the Pecatonica Water Tower and is paying money to Lessee for the service.
10. Person. An individual, a corporation, a limited company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust, or any other form of business entity or association.
11. Provision. Any agreement, clause, condition, covenant, qualification, restriction, reservation, term, or other stipulation in this Use Agreement that defines or otherwise controls, establishes, or limits the performance required or permitted by any party to this Use Agreement. All Provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.
12. Work. Any design, construction, installation, testing, operation, maintenance, repairs, replacement or alterations undertaken by Lessee on the Demised Premises.

2. SCOPE OF AGREEMENT

1. Recitals Incorporated.

The recitals set forth above are substantive, and are incorporated herein by reference as though fully set forth.

2. Rights of Parties; No Interference from Equipment Not Now on Site.

The Lessee's rights and privileges shall be subject to the rights and privileges of others upon whom Lessor has conferred contractual rights, or privileges to use its facilities prior to the execution of this Agreement, or predecessors to this Agreement. The rights of any parties to which Lessor confers facility occupancy rights after the Lessee, however, shall be subject to the rights of the Lessee set forth in this Agreement. Any rights not given to the Lessee are reserved to the Lessor.

3. Authorization.

Subject to the provisions of this Agreement, Lessor grants to the Lessee and the Lessee accepts from Lessor license to occupy, place, operate, maintain, remove, reattach, reinstall, relocate and replace its equipment on and within Lessor's facilities, IE Tower area. Lessor reserves the right to continue to use the Tower as per its intended use. Specifically, Lessee shall have the right to use space on the Tower, to mount an antenna(s) and related equipment and to mount a locker that houses power supply equipment. Lessee shall install its antenna(s), related equipment and locker subject to the approval of Lessor. Lessee shall be entitled to install antenna arrays on Lessor Tower. Subject to the provisions of this Agreement, Lessee shall have 24-hour access to the antenna(s) and equipment locker at each location. No use of Lessor facilities, however extended, or payment of fees or charges required under this Agreement, shall create or vest in the Lessee any ownership of property rights in such towers. The Lessee's rights herein shall remain those of a Lessee. In addition, subject to the uniform application of Lessor governing ordinances, and all other provisions of this Agreement, Lessee shall have the right to draw electricity from Lessor for the operation of the equipment from the power source associated with each such attachment.

Prior to installation of Lessee's equipment on the Tower, Lessee shall submit a detailed site plan for review and approval by the Lessor's engineer and Public Works Director. Lessee shall reimburse the Lessor for engineering costs incurred by Lessor for review of said site plan.

4. Assignment.

The Lessee may not assign its rights under this Agreement to any other entity without Lessor prior written consent.

5. Facility Removal.

Upon termination of this Agreement in its entirety, for any reason, the Lessee, at the request of Lessor, shall remove at the Lessee's expense, the appropriate portion of its equipment from Lessor facilities. The maximum time limit for the Lessee to remove its equipment from the Lessor facilities shall be sixty (60) days. Upon removal of Lessee's equipment Lessee will return area to its condition prior to equipment installation.

6. Term.

The initial term of Lease shall be five (5) years. Thereafter, the Lease will automatically renew for a term of three (3) years ("renewal term") unless

timely notice of intent not to renew, as provided herein, is given. In no event shall there be more than five (5) renewal terms.

1. Lessee can terminate contract with sixty (60) days written notice to Lessor.

2. Lessor can terminate contract with sixty (60) days written notice to Lessee.

3. PLACING, TRANSFERRING OR REARRANGING EQUIPMENT

1. Modifications and Cost Allocation.

1. The parties agree that if a Tower to which the Lessee has previously made an attachment is to be modified or replaced due to the requirements of another Tower occupant on the tower, including Lessor, except when such modification is for the purpose of performing routine maintenance or to respond to an emergency situation, Lessor shall provide the Lessee with notice of the proposed modification so that the Lessee can determine whether it wishes to add to or modify its existing attachment in connection with the proposed modification. In the event the Lessee decides to add to or modify its existing attachment in connection with the proposed modification, the Lessee shall give notice to Lessor of its intent within ten (10) days.

a. In the event that a Tower is modified as a result of the requirements of Lessor, the Lessee shall conform its equipment to the new Lessor requirements, at Lessee's sole cost, prior to the renewal of the then current term of this Agreement. However, the Parties agree that Lessor shall apply to the Lessee only such specifications, standards, and practices as are uniformly applied to all parties attached to the facilities.

b. In the event that a Tower is modified as a result of the requirements of any Lessee, the costs of modification (including, but not limited to, the cost of rearranging or replacing the attachments of other joint-users who do not take part in the modification) shall be borne by the Lessee.

2. Tower Maintenance.

1. Should Lessor replace any facility because of (i) deterioration or (ii) the requirements of public authorities or property owners, and should the Lessee desire to occupy the facility, in addition to being obligated to transfer its attachments to the new facility at its own expense, the Lessee shall reimburse Lessor only for the cost of any increment of Tower height or strength provided specifically for the Lessee's sole requirements over and above the Tower height and strength required by Lessor. If the deterioration is brought on by the Lessee, then the Lessee will pay for necessary repair or replacement cost.

a. The Lessee, at its own expense and risk and by the terms of this Agreement, shall place, transfer, and rearrange its own attachments on Lessor Tower and place guys to sustain any unbalanced loads caused by its own attachments. The Lessee at all times shall perform such work promptly and in such manner as not to interfere with the service of Lessor or by other Tower occupants.

b. In the event Lessor determines, in Lessor's reasonable judgment, that a particular condition or situation is an emergency, Lessor may arrange to relocate, replace, remove, renew or disconnect the Lessee's equipment and transfer them to substituted towers or perform any other work in connection with the Lessee's equipment that may be required during the emergency. Lessor shall also endeavor to provide the Lessee with the best practicable notice of the situation so that Lessor and the Lessee, if possible, may coordinate their responses to the emergency. If notice is impossible during the emergency situation, Lessor shall notify the Lessee of any emergency and any relocation, replacement or removal affecting the Lessee's attachments as soon as reasonably practicable.

c. The Lessee shall have access to Lessor maintenance duct to perform maintenance work and emergency repairs.

3. Continuous Operation.

The Lessee expressly agrees that Lessor facilities are to continue in normal operation during the Lessee's performance of any construction or maintenance, and that the Lessee is to provide and use all protective equipment necessary for the protection of the Lessee's employees and

equipment and to guard against interferences with normal operation of Lessor facilities.

4. Non-Interference with Facilities, Equipment and Signals.

1. The Lessee at all times shall ensure that its agents, servants, employees, and contractors neither take nor attempt to take any action whatsoever as to Lessor facilities, except as permitted under this Agreement; and shall neither take nor attempt to take any action whatsoever that would interfere with or cause damage to Lessor Facilities upon which Lessee's equipment is located, or, subject to the following paragraph, interfere with the services or signals of any of Lessor's equipment. The Lessee shall also ensure that its agents, servants, employees, and contractors neither take nor attempt to take any action whatsoever that would interfere with or cause damage to any equipment, services or signals of any other telecommunications providers and carriers, or users or occupants of any of Lessor's facilities, as legally exist on the Commencement Date of this Agreement, or as may be lawfully permitted by Lessor thereafter.

2. Except as expressly stated herein to the contrary, Lessor shall at all times ensure that its agents, servants, employees, and contractors neither take nor attempt to take any action whatsoever that would interfere with or cause damage to the Lessee's equipment, or interfere with the services or signals of any of Lessee's equipment existing, installed and operating as permitted under this Agreement, or any extension or renewal thereof. Lessor agrees to require the inclusion of the same prohibition on damage or interference with Lessee's Equipment, services and signals as that state above in all agreements and franchises Lessor may enter into after the Commencement Date with other telecommunications providers and carriers, or users or occupants of any of Lessor Facilities.

3. Lessee shall exercise its best efforts to cooperate with any other Lessee so as not to interfere with the services or signals of any other Lessee, as provided in Section 2.2 of this Agreement.

4. Each party shall exercise reasonable precautions to avoid damage to the equipment of the other. Lessee forever releases and discharges Lessor, its officials, agents or employees from all claims, demands, damages, actions or causes of action which arise out of any claim regarding Lessor negligent interference with Lessee's equipment, services or signals, including any claims of interference by any other Lessee that may be permitted by Lessor to use its

facilities. Lessee's sole remedy for any interference with its equipment, services or signals shall be termination.

5. If Lessee's Equipment causes interference with preexisting communication facilities, Lessee shall take all measures reasonably necessary to correct and eliminate the interference. If the interference adversely effects emergency communications of Lessor, Lessee shall immediately cease operating its facility until the interference has been eliminated. If the interference cannot be eliminated within ninety (90) days, the Lessor may terminate this License and Agreement.

4. ABANDONMENT OF EQUIPMENT AND REMOVAL OF EQUIPMENT

1. Notice.

The Lessee, at any time, may remove all of its equipment from any tower(s) of Lessor, and shall give Lessor sixty (60) days prior to such removal. Notwithstanding the removal of equipment by the Lessee, the Lessee shall pay to Lessor Five Hundred Dollars (\$500.00) which is representative of the inconvenience to the Lessor.

2. Tower Abandonment.

If Lessor desires at any time to abandon any tower(s), it shall give the Lessee notice in writing to that effect at least sixty (60) days prior to the date on which Lessor abandons such tower. If Lessor acquires a tower as a replacement for the abandoned tower, Lessor shall provide Lessee the right to relocate its facilities on the replacement tower on terms consistent with those contained herein. If Lessee declines to relocate to the replacement tower, the Lessee shall have no further obligation to Lessor under this Agreement with respect to such Facilities or Equipment.

5. LIABILITY

1. Indemnity and Allocation of Liability.

When any liability is incurred by either or both of the Parties hereto for damages for injuries to the employees or for injury to the property of either Party, or for injuries to other persons or their property, arising out of the joint use of facilities under this Agreement, or due to the proximity of the facilities of the Parties covered by this Agreement, the liability for such damages, as between the Parties hereto, shall be as follows:

- a. The Parties shall exercise reasonable care to avoid damage to the equipment of each other and to the equipment of other joint-users

on Lessor facilities and, except as otherwise provided in this Section 5, Lessee hereby assumes all responsibility for any and all loss for damage caused by either Party to the Lessee's equipment unless Lessor's actions were willful and wanton, and Lessee hereby assumes all responsibility for any and all loss for damage caused by Lessee to equipment of Lessor.

- b. Each Party shall be liable for all damages for such injuries to third persons or third person's property caused solely by its negligence or solely by its failure to comply, at any time, with the practices herein provided.
- c. In the event such injuries are proximately caused by the concurrent negligence of both Parties hereto, Lessee shall be liable for such damages in the same proportion that the damages caused by the negligence of the respective party bears to the total damages.
- d. Where, on account of injuries of the character described in the preceding paragraphs of this Section, either Party hereto shall be required to make any payment to its injured employees or to the relatives or representatives in conformity with: (1) the provisions of any Workers' Compensation Act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident arising out of and in the course of the employment, whether based on negligence on the part of the employer or not, or (2) any plan for employees' disability benefits or death benefits now established or hereafter adopted by the parties hereto or either of them, such payments shall be construed to be damages within the terms of the preceding paragraphs of this Section.
- e. All claims for damages arising hereunder that are asserted against or affect both Parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in any case under the provisions of paragraph (b) of this Section where the claimant desires to settle any such claim upon terms acceptable to one of the Parties hereto but not to the other, the Party to which said terms are acceptable, at its election, may pay to the other Party the share of the expense which such settlement would involve, and thereupon such other Party shall be bound to protect the Party making such payment from all further liability and expense on account of such claim.
- f. The Lessee shall indemnify and save Lessor, its elected and appointed officers, employees, agents, successors and assigns, harmless from and against all liability including but not limited to all costs, reasonable attorneys' fees, disbursements, and other proper charges and expenditures that Lessor may incur, solely as a result of

the Lessee's negligence or breach of the terms of this Agreement, or the willful or grossly negligent acts of the Lessee, its employees, agents, servants or independent contractors (other than Lessor), while in the course of their employment or in the performance of their contract which causes damages to third parties or to the property of third parties, except for such damages that are the result of interferences or interruptions in electric, gas, telecommunications, or service, which are proximately caused by such acts, omissions or breaches. The agreement to indemnify and save harmless Lessor is conditioned on the following:

- i. Lessor shall give reasonable notice in writing to the Lessee of such a claim; and
- ii. The Lessee shall have the sole control of the defense of any action on such a claim, and all negotiations for the settlement or compromise of the same; and
- iii. Should any situation become, or in the Lessee's opinion be likely to become, the subject of any such claim or action, Lessor shall permit the Lessee, at the option and expense of the Lessee, to take such reasonable action as may be appropriate under the circumstances to avoid such claim, or to effectuate the settlement thereof; and
- iv. The Lessee shall have no liability to Lessor hereunder for any damages caused by Lessor, its agents, servants, employees, or independent contractors (other than the Lessee).
- v. In the event of a claim being defended by Lessee, Lessee will provide Lessor with all documents pertaining to the claim and its defense, provided claim has Lessor owned property involved in said claim. Lessor reserves the right to defend said claim if Lessor believes Lessee is not acting with the best interest of the Lessor.

2. Consequential Damages.

Notwithstanding the above, neither Party shall be liable to the other for any indirect, special or consequential damages, including, but not limited to, loss of profits or revenues, interruption of customer service or interference with business operations.

3. Settlement.

In the event the Lessee compromises or settles such a claim with a third party, the Lessee shall obtain a release of all claims arising out of that particular incident against Lessor, in addition to any release in favor of the Lessee.

4. Insurance.

For the term of this Agreement, Lessee shall maintain insurance with a carrier acceptable to the Lessor, insuring Lessee while performing construction, service, or maintenance for the following types and in stated minimum amounts:

Liability Insurance:	\$1,000,000 per person
	\$2,000,000 per occurrence
Property Damage:	\$1,000,000 per occurrence
Workers Compensation:	As required by statute

Prior to commencing any work on the facility, Lessee shall furnish Lessor with a Certificate of Insurance and give notice of termination of coverage. Lessee agrees that all applicable insurance policies name the Lessor as an additional insured.

6. TERMINATION AND DEFAULTS

1. Default.

- a. If the Lessee shall default in any material obligation under this Agreement, Lessor, in addition to all other legal and equitable remedies that it may pursue or obtain or have, may:
 - i. Require the obligation be fulfilled, in which event, in each such instance, the Lessee shall be obligated to reimburse Lessor for the cost thereof; or
 - ii. If the obligation cannot be remedied pursuant to Section 6.1.(a)i. above, Lessor may terminate the Lessee's use of particular Towers covered by this Agreement; or

- iii. Lessor may, at its option, terminate this Agreement in its entirety.
- b. Any such termination shall be effective by written notice from Lessor to the Lessee, and termination shall be effective at such time as shall be stated in the notice.
- c. Prior to exercising any remedy or terminating this Agreement, Lessor shall provide notice to the Lessee and an opportunity to cure within sixty (60) days, or within such time frame as is reasonable to effect cure which cannot be completed within sixty (60) days. If the Lessee cures the default during this time, the Lessee's only liability shall be to reimburse Lessor for the costs of a default, including reasonable attorneys' fees incurred by Lessor, and Lessor may not terminate this Agreement.

7. MISCELLANEOUS PROVISIONS

1. Conduct of the Parties.

The parties agree to conduct themselves reasonably and in good faith in implementing the terms of this Agreement.

2. Lessor's Right to Inspect Customer List.

Upon reasonable notice to Lessee, Lessor shall have the right to inspect Lessee's list of customers receiving service from Lessor's Tower for the sole purpose of verifying same.

3. Survival.

The obligations of the parties under this License and Agreement, to the extent that they arose while the Agreement was in effect and remained unfulfilled at the time of termination, shall survive both the termination of this Agreement and/or the termination of any permit or license granted hereunder. Any such termination shall not release either Party from any liabilities, claims, or obligations arising hereunder including, but not limited to, indemnities which may have accrued or are accruing prior to or at the time of termination.

4. Waiver.

Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

5. Entire Agreement.

This Agreement embodies the entire Agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements between the Parties hereto for attachment of the Lessee's Equipment to Lessor Tower and provided, however, that this Agreement shall not relieve either Party from any liability, obligation, charge or bill which arose or may arise under any previous agreement.

6. Notice.

1. Any notice hereunder may be given only in writing, by certified or registered, return receipt requested, United States mail, postage prepaid or reliable overnight courier addressed to the Parties as follows:

If given to Lessor, addressed to: Village of Pecatonica
Attn: Village Clerk
405 Main Street
P.O. Box 730
Pecatonica, IL 61063

With copy to: Douglas R. Henry
Barrick, Switzer, Long, Balsley
& Van Evera, LLP
6833 Stalter Drive
Rockford, IL 61108

And by fax or telephone to numbers provided by Lessor.

If given to the Lessee, addressed to: Computer Dynamics of NWIL, L.L.C.
451 West South St.
Freeport, IL 61032

And by fax or telephone to numbers provided by Lessee.

2. Any notice so given shall conclusively be deemed to have been served on the next business day following its deposit in the United States mail. Either Party may designate in writing from time to time substitute addresses or persons in connection with required notices in compliance with this paragraph.

7. Compliance with Laws and Regulations.

Each Party shall comply with all federal, state and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement. The Lessee shall place and maintain its Equipment in Pecatonica, IL in safe condition and in thorough repair.

8. Remedies.

Subject to the provisions of Section 5.4 of this Agreement, each party shall have the right to seek equitable relief to the extent necessary to prevent the other party from failing to perform its obligations under this Agreement. It is both Parties intent that, for purposes of Lessee's enforcement of the non-interference provisions of this Agreement, Lessee shall be a third-party beneficiary of any license or similar agreements entered into by Lessor after the date of this License and Agreement, with any others contemplated under Section 2.2 of this Agreement.

9. Applicable Law.

This Agreement shall in all respects be subject to and construed in accordance with and governed by the laws of the United States and the State of Illinois. Jurisdiction and venue shall only be proper in Winnebago County, Illinois.

10. Severability.

Except as otherwise provided herein, the invalidity or unenforceability of any particular provision, or part thereof, of this Agreement shall not affect the other provisions, and this Agreement shall continue in all respects as if such invalid or unenforceable provision had not been contained herein; provided however, this entire Agreement shall terminate if the invalidity or unenforceability of any such provision or part thereof serves to undermine the fundamental concept or essential purpose of this Agreement.

11. Force Majeure.

Neither Lessor nor the Lessee shall be liable for any delay or failure in performance of any part of this Agreement if due to a cause beyond its control and without its fault or negligence including, without limitations, acts of nature, acts of civil or military authority, governmental regulations, embargoes, work stoppages of employees other than those of the Parties, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services

of other persons or transportation facilities, or acts or omissions of transportation carriers.

12. Execution of Agreement.

This Agreement shall be signed last by Lessor.

13. Counterparts.

For convenience, this Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of such counterparts when taken together shall constitute but one and the same document which shall be sufficiently evidenced by any such counterpart.

14. Authorizations.

The Lessee's authorized representatives who have executed this Agreement warrant that they have been lawfully authorized by the Lessee's Members and their Operating Agreement to execute this Agreement on its behalf. Lessor hereby warrants that it has been lawfully authorized to execute this Agreement. The Lessee and Lessor shall deliver, upon request, to each other at the respective time such entities cause their authorized agents to affix their signature hereto copies of all articles of incorporation, bylaws, resolutions, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective parties.

IN WITNESS WHEREOF, the parties hereto have their respective officers who are duly authorized to execute this Agreement below.

Lessor

LESSEE

By: William Smull, President
Its: Village of Pecatonica

By: Scott Piehn, Manager
Its: Computer Dynamics of NWIL, L.L.C.