

**AN ORDINANCE APPROVING A LEASE AGREEMENT BETWEEN THE VILLAGE OF CHATHAM AND AMICA WIRELESS PHONE SERVICE, INC.**

**WHEREAS**, the Village of Chatham has negotiated a lease agreement with Amica Wireless Phone Service, Inc. pertaining to lease of portions of the water tower for cellular phone antennas, a copy of which agreement is attached hereto;

**NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF CHATHAM, SANGAMON COUNTY, ILLINOIS AS FOLLOWS:**

**SECTION 1:** The lease agreement attached hereto by and between the Village of Chatham, Illinois and Amica Wireless Phone Service, Inc., is hereby approved, subject to Amica providing the exhibits to the lease agreement and approval of those exhibits by the Village Administrator.

**SECTION 2:** Upon the happening of the conditions in Section 1, the Village President is directed to execute the lease agreement on behalf of the Village, and the proper officers of the Village are authorized and directed to carry out said agreement according to its terms.

**SECTION 3:** This Ordinance is effective immediately.

PASSED this 28 day of September, 1999.

Linda Keister  
VILLAGE PRESIDENT

Attest:

Richard A. Hays  
Village Clerk

AYES: 6

NAYS: 0

PASSED: 9/28/79

APPROVED: 9/28/79

ABSENT: 0

**ORDINANCE CERTIFICATE**

STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF SANGAMON        )

I, the undersigned, do hereby certify that I am the duly qualified and acting Village Clerk of the Village of Chatham, Sangamon County, Illinois.

I do further certify that the ordinance attached hereto is a full, true, and exact copy of Ordinance No. 99-\_\_\_, adopted by the President and Board of Trustees of the Village of Chatham on the \_\_\_\_\_ day of \_\_\_\_\_, 1999, said Ordinance being entitled:

**AN ORDINANCE APPROVING A LEASE AGREEMENT BETWEEN THE VILLAGE OF CHATHAM AND AMICA WIRELESS PHONE SERVICE, INC.**

I do further certify that prior to the making of this certificate, the Ordinance was spread at length upon the permanent records of said Village, where it now appears and remains.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Village of Chatham this \_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
Village Clerk

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*This space for Recorder of Deeds*

### SITE LEASE

THIS SITE LEASE ("Lease") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1999 by and between the Village of Chatham, an Illinois Municipal Corporation ("Lessor") and AMICA WIRELESS PHONE SERVICE, INC., an Illinois Corporation ("Lessee") whose address is 327 S. College Street, Suite 382, Iowa City, Iowa 52240.

WHEREAS, Lessor is the owner of certain real property including building(s) as more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference ("Property"); and

WHEREAS, Lessor and Lessee desire to provide terms for a lease of the Property so as to permit Lessee to install and maintain its communication facilities, as more specifically set forth below.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein expressed, Lessor and Lessee agree as follows:

1. Lease. Lessor does hereby grant and convey unto Lessee, its successors, assigns, and agents a lease of the Property for the Permitted Use as set forth in paragraph two below.

2. Permitted Use. The location on Lessor's Property which Lessee is occupying and installing its facilities shall be referred to as the "Site", as more particularly described in Exhibit "B" attached hereto and made a part hereof by this reference,

(a) Lessee shall have the right, at its expense, to install, construct, reconstruct and maintain on the Site communication facilities including, without limitation, radio and other communication and transmitting and receiving antennas, support mounts, cables, electric

power lines, telephone lines, equipment, equipment storage structures and other improvements relating thereto (collectively the "Communication Facilities"). Lessee shall have the right to modify, supplement, replace, upgrade or relocate the Communication Facilities on the Property at any time during the term of the Agreement so long as said relocation, replacement or upgrade is made for the purpose of improving the operation of its Communication Facilities, with prior written consent of Lessor, which shall not be unreasonably withheld.

(b) Lessee shall be entitled to reasonable access to the Site 24 hours a day, seven days per week, and shall have all additional rights of access, ingress and egress to and from the Site, provided however, except in the case of an emergency, Lessee shall notify Lessor in advance of Lessee's proposed construction, maintenance or repair activities to be performed on the Site in order to coordinate said activities with Lessor's operations.

(c) Lessee shall pay any incremental additional utility charges to the Site incurred as a result of Lessee's Permitted Use. Lessee shall have a right, at its expense, to install or improve utilities within or on the Property to service this Site.

3. Term. This Agreement shall be for an initial term of five years ("Agreement Term") commencing upon (a) satisfaction of all "Conditions Precedent", as set forth in paragraph 6, below, and the later to occur of (b)(1) the date of issuance of a building permit authorizing Lessee to construct the Communication Facilities on the Property, or (b)(2) the date on which construction of the Communication Facility actually commences (the "Commencement Date"). Lessee shall have a right to renew the Agreement Term four additional terms at five year terms each (each being a "Renewal Term"). Term will automatically renew unless Lessee, within thirty (30) days of the expiration of the initial Agreement Term or any Renewal Term, notifies Lessor by written notice, return receipt requested, of Lessee's intent not to renew the term.

4. Rent.

(a) Each month during the initial Agreement Term Lessee shall pay \_\_\_\_\_ dollars (\$) ("Lease Payment") to Lessor as Rent. Said rent shall be payable in advance to Lessor on or before the fifth day of each calendar month. Each additional Lease Renewal Term shall be paid as follows:

Renewal Term 1 - Year 6 -10	\$ _____ /Month
Renewal Term 2 - Year 11-15	\$ _____ /Month
Renewal Term 3 - Year 16 -20	\$ _____ /Month

(b) Lessee shall pay, as additional rent, any increase in real property taxes levied

against the site, which are directly attributable to Lessee's use of the site, and Lessor agrees to furnish proof of such increase to Lessee.

5. Due Diligence. Lessee, its agents, engineers, or contractors shall have the right to enter upon Lessor's Property to inspect, examine, sample and conduct all engineering tests or studies of the Site, to apply for and obtain all licenses and permits required for the Lessee's Permitted Use from all applicable governmental or regulatory entities, and otherwise do those things on the Site that, in the opinion of Lessee, are necessary to determine the physical condition of the Site, Lessor's title to the Site and the feasibility or suitability of the Site for Lessee's Permitted Use, all at Lessee's expense. Lessee shall not be liable to Lessor or any third party on account of any pro-existing defect or condition on or with respect to the Site, whether or not such defect or condition is disclosed by Lessee's inspection, although Lessee shall be responsible for any damage, loss or destruction to the Site as a result of the actions of its employees, representatives or agents during the due diligence activities.

6. Conditions Precedent. Lessor agrees that the effectiveness of this Agreement is conditioned upon satisfaction of the following conditions: (a) Lessee's determination (in its sole discretion) that the Property is suitable for Lessee's intended use from both an economic and technical engineering basis; and (b) Lessee's receipt of any and all governmental licenses, permits, approvals, authorization or other relief required or deemed necessary or appropriate by Lessee for its use of the Property; and (c) completion of a title search, at Lessee's expense, and receipt by Lessee of any agreements of subordination or non-disturbance, as may be reasonably requested by Lessee. Lessor agrees, at no expense to the Lessor, to cooperate with Lessee, in making application for and obtaining all licenses, permits and any and all necessary approvals and authorizations that may be required in connection with Lessee's intended use of the Property. If the conditions set forth above are not satisfied, then Lessee shall have the right, without any further obligation, to terminate this Agreement upon delivery of written notice to the Lessor.

7. Interference.

(a) Lessee shall not use the Site in any way that interferes with the existing use by: (i) Lessor or (ii) tenants or licensees of Lessor holding rights to such Site on the date of this Lease ("Existing Tenants"). Lessee has reviewed its plans with Ameritech Cellular to ensure that Lessee shall not generate broadcast interference (as defined in paragraph 7A) with respect to Ameritech's existing equipment at the Site, and has secured the approval of Ameritech Cellular with respect thereto.

(b) Lessor warrants to Lessee the use and quiet enjoyment of the Site. Lessor agrees that it shall not use, nor shall it permit its tenants, Lessees, employees, invitees or agents to use, any portion of the Property in any way which would interfere with the

operation of Lessee, provided that continued use by Lessor or Existing Tenants in the same manner as existed at the time the Lease was executed shall not constitute interference with Lessee's operations.

#### 7A Broadcast Interference

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 Leased Property or had any equipment on the Leased Property.

Removal. Tenant shall take reasonable actions to prevent and promptly remove any interference with broadcast activities of Landlord or other tenants of Landlord caused by Tenant's use of the Leased Property. Landlord shall take reasonable actions to prevent and promptly remove or cause to be removed any interference with Tenant's broadcast activities caused by Landlord or Landlord's lessees, licensees, invitees or agents. From and after the date of this Lease and until termination of the Lease, Landlord shall not enter into any agreement to install or permit to be installed, any telecommunications equipment unless Tenant determines in its judgment, following receipt of prior written notice from Landlord regarding any such installation, that such installation will not cause interference with Tenant's broadcast activities or limit Tenant's intended use of the Leased Property. Tenant's rights on the Leased Property shall be superior in rights to all subsequent communications tenants but subject to the rights of prior communications tenants.

#### 8. Environmental Matters.

(a) Lessee shall not introduce or use any Hazardous Materials in violation of any federal, state or local law or regulation on the Property. Lessee will be solely responsible for and will defend, indemnify and hold Lessor, its agents, and employees harmless from and against any and all direct claims, costs, and liabilities, including reasonable attorneys fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with the Lessee's use of Hazardous Materials.

(b) Lessor will be solely responsible for and will defend, indemnify, and hold Lessee, its agents, and employees harmless from and against any and all direct claims, costs, and

liabilities, including reasonable attorneys fees and costs, arising out of or in connection with the removal, cleanup, or restoration of the property with respect to Hazardous Materials from any and all sources other than those Hazardous Materials introduced to the property by Lessee.

(c) "Hazardous Materials" means asbestos or any hazardous substance, waste or materials as defined in any federal, state, or local environmental or safety law or regulation including, but not limited to, CERCLA.

(d) The obligations of this section eight shall survive the expiration or other termination of this Agreement.

9. **Insurance/Indemnification Eminent Domain**, Lessee shall maintain at its own expense commercial general liability insurance covering its own actions and providing for a limit of not less than \$1,000,000.00 single limits, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons and for damages to or destruction of property, including the loss of use thereof. Lessor shall be named as an additional insured under the terms of said insurance and Lessee shall provide Lessor with proof of insurance upon Lessor's request. Coverage shall include independent contractor's protection, premises-operations, products/completed operations and contractual liability with respect to the liability assumed by Lessee hereunder. Lessor and Lessee shall look solely to insurance for loss due to any damage which is covered by insurance and neither party's insurance company shall be subrogated to a claim against the other party. In the event Lessee is self insured, Lessee shall supply Lessor with a certificate of self-insurance which complies with the policy limitations set forth above. Each party shall indemnify and defend the other against loss from their negligent acts and the negligent acts of their employees, agents, licensees, and invitees. The parties shall share in a condemnation award in proportion to their interest in the Property taken.

10. Assignment and Subleasing.

(a) Upon Lessor's written consent, which shall not be unreasonably withheld, Lessee may assign this Lease, in part or in whole, including its right to renew, to any person or business entity which is licensed by the Federal Communications Commission.

(b) Lessee may sublet and assign this Lease, or portion thereof, and its other rights hereunder to any person or business entity which is a parent, subsidiary or affiliate of Lessee without Lessor's consent.

(c) Upon notification to Lessor of any assignment, Lessee shall be relieved of all



performance, liabilities and obligations under this Lease which arise subsequent to the date of the assignment.

11. Termination. This Lease may be terminated as follows:

(a) by Lessor if Lessee fails to cure a default for payment of amounts due hereunder within thirty (30) days after Lessee's receipt of written notice of default from Lessor.

(b) by the non-defaulting party if the other party defaults (other than a default described in Section 11(a) above) and fails to cure such default within sixty (60) days after written notice of such default is received by the defaulting party from the non-defaulting party; provided, however, that if such default is capable of being cured, the Lease may not be terminated so long as the defaulting party commences appropriate curative action within such sixty (60) day period and thereafter diligently prosecutes such cure to completion as promptly as possible;

(c) by Lessee upon sixty (60) days prior written notice.

12. Successors and Assigns. This Agreement shall run with the Property and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

13. Representation and Warranties. Each party covenants and warrants to the other that (i) it has full right, power and authority to execute this Lease and has the power to grant all rights hereunder; (ii) its execution and performance of this Agreement will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease or other agreement binding on said party; and (iii) the execution and delivery of this Agreement, and the performance of its obligations hereunder, have been duly authorized by all necessary personnel or corporate officers and do not violate any provisions of law or the party's certificate of incorporation or bylaws or any other arrangement, provision of law or court order or decree,

14. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered, or mailed by certified mail, return receipt requested, to the following addresses. Notice to be given when received. Lessee and Lessor have the right to change their address by giving written notice, if to Lessor, to:

Village of Chatham  
Attn: Village Administrator  
116 E. Mulberry

Chatham, IL 62629

If to Lessee, to:

Amica Wireless Phone Service, Inc.  
327 E. College Street, Suite 381  
Iowa City, IA 52240  
Attention: Clay Bodnarek, General Manager

With a copy to:

Meardon, Sueppel, Downer & Hayes, PLC  
122 South Linn Street  
Iowa City, IA 52240  
Attention: Timothy J. Krumm

15. Miscellaneous.

(a) This Lease shall constitute the entire agreement and understanding of the parties with respect to the Property that is the subject matter thereof and supercedes all offers, negotiations and other agreements with respect thereto. There are no representations or understandings of any kind not set forth herein. Any amendment to this Agreement must be in writing and executed by both parties.

(b) Either party hereto that is represented in this transaction by a broker, agent or commission salesperson (a "Representative") shall be fully and exclusively responsible for the payment of any fee, commission or other compensation owing to such Representative, and shall indemnify and hold the other party harmless from and against any claim to a fee, commission or other compensation asserted by such Representative, including reasonable attorneys fees and costs incurred in defending such claim,

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

(d) By executing this Agreement, the parties are not establishing any joint undertaking, joint venture or partnership, Each party shall be deemed an independent contractor and shall act solely for its own account.

16. Additional Terms and Conditions. The parties agree to the following additional terms and conditions, which shall prevail over any provisions to the contrary contained elsewhere in this Lease:

(a) Termination in the Event of Declaration of Invalidity: While the parties believe

that this Lease does not violate the statutes or common law of the State of Illinois, they recognize that this Lease is not explicitly permitted in the Illinois Municipal Code for a non-home rule municipality; nor has the legality of agreements such as this been upheld by the courts of Illinois. Therefore, the parties agree that either party hereto may terminate this Lease upon sixty (60) days written notice in the event of a final, unappealable decision by a court of the State of Illinois holding that this Lease or similar agreements are improper under Illinois law or within sixty (60) days of the effective date of a statute which would invalidate this Lease. In the event of termination under this section, Tenant may within the sixty (60) days period, seek a declaration by a court of competent jurisdiction that this Lease is valid, and this Lease shall continue during the pendency of such litigation. In the event of a termination under this section, Tenant shall promptly remove its equipment from the premises, and neither party shall further liable to the other.

(b) Damages. This Lease may be enforced by any appropriate action available at law or in equity, but only in an action brought in a court of competent jurisdiction in Sangamon County, Illinois. Except as stated in section 8 of this Lease pertaining to Environmental matters, and in Section 9 pertaining to Indemnity, damages recoverable by one party against the other in any litigation brought under this Lease shall be limited to actual property damage, to rents due, and to return of rents paid. In no event shall either party be liable to the other for consequential or punitive damages or for lost profits.

The parties have entered into this Lease as of the date first stated above.

LESSOR:

Village of Chatham, Illinois

By: \_\_\_\_\_  
Village President

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

Federal Tax I.D. or Social Security No. \_\_\_\_\_

LESSEE:

Amica Wireless Phone Service, Inc.

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

\_\_\_\_\_  
Print Name and Title