

It is expected that a Quorum of the Personnel Committee, Board of Public Works, and Common Council will be attending this meeting: (although it is not expected that any official action of any of those bodies will be taken)

**CITY OF MENASHA  
ADMINISTRATION COMMITTEE  
Third Floor Council Chambers  
140 Main Street, Menasha  
April 1, 2013  
6:30 PM  
or immediately following Common Council  
AGENDA**

A. CALL TO ORDER

B. ROLL CALL/EXCUSED ABSENCES

C. MINUTES TO APPROVE

1. [Administration Committee, 3/18/13](#)

D. COMMUNICATIONS

1. [Arthur J. Gallagher Risk Management Services, Inc to CA/HRD Captain, 3/20/13; Equipment Breakdown Insurance Policy Endorsement](#)

E. DISCUSSION/ACTION ITEMS

1. [Due Process Hearing – The Bar on Lake Park, LLC, Barry J. Sias, Agent, d/b/a Sliders, 890 Lake Park Road, Menasha](#)
2. [Due Process Hearing – Vertigo 1894, LLC, Dan Pamentor, Agent, d/b/a Vertigo, 167 Main Street, Menasha](#)
3. [O-1-13 An Ordinance Repealing Section 7-2-20 to 7-2-26 of the Code of Ordinances \(Operators' License\)](#)
4. [Listing Agreement with Grubb/Ellis-Pfefferle for 901 Airport Road, Menasha](#)
5. [Tower and Ground Space Lease Agreement between City of Menasha and Airadigm Communications, Inc](#)

F. ADJOURNMENT

"Menasha is committed to its diverse population. Our Non-English speaking population and those with disabilities are invited to contact the Menasha City Clerk at 967-3603 24-hours in advance of the meeting for the City to arrange special accommodations."

CITY OF MENASHA  
ADMINISTRATION COMMITTEE  
Third Floor Council Chambers  
140 Main Street, Menasha  
March 18, 2013  
MINUTES

A. CALL TO ORDER

Meeting called to order by Chairman Klein at 7:20 p.m.

B. ROLL CALL/EXCUSED ABSENCES

PRESENT: Aldermen Benner, Klein, Taylor, Sevenich, Krueger, Zelinski, Englebert

EXCUSED: Alderman Langdon

ALSO PRESENT: Mayor Merkes, CA/HRD Captain, PC Styka, DPW Radtke, CDD Keil,  
PRD Tungate, Dpty Treasurer Sassman, Clerk Galeazzi

C. MINUTES TO APPROVE

1. [Administration Committee, 3/4/13](#)

Moved by Ald. Englebert, seconded by Ald. Krueger to approve minutes.

Motion carried on voice vote.

D. DISCUSSION/ACTION ITEMS

1. [R-3-13 Resolution to Apply for Matching Grant Funds for the Gilbert Site Through the Wisconsin Department of Natural Resources](#)

PRD Tungate explained the Resolution is required to apply for a matching grant from the Department of Natural Resources. Funds will be used for economic redevelopment and public recreation on the Gilbert site.

General discussion ensued on the grant process and wording of the resolution.

Moved by Ald. Sevenich, seconded by Ald. Krueger to remove City employee Brian Tungate as the authorized person to act on the behalf of the City of Menasha and change the last sentence of the resolution to "Take necessary action to undertake, direct and complete the approved Project necessary under the terms of the grant".

Motion carried on roll call 7-0.

Moved by Ald. Sevenich, seconded by Ald. Krueger to recommend to Common Council R-3-13 Resolution to Apply for Matching Grant Funds for the Gilbert Site through the Wisconsin Department of Natural Resources as amended.

Motion carried on roll call 7-0.

E. ADJOURNMENT

Moved by Ald. Krueger, seconded by Ald. Benner to adjourn at 7:33 p.m.

Motion carried on voice vote.

Respectfully submitted by Deborah A. Galeazzi, WCMC, City Clerk



Arthur J. Gallagher Risk Management Services, Inc. \_\_\_\_\_

March 20, 2013

PAMELA CAPTAIN  
CITY OF MENASHA  
140 MAIN STREET  
MENASHA WI 54952-3151

Re: Equipment Breakdown Policy No: BAJ-BME1-7415P537-TCT-13  
Policy Effective: 3/1/2013 to 3/1/2014  
Endorsement Number: 0001

Pamela, enclosed you will find an endorsement that is effective March 1, 2013. Please review the endorsement to be certain it is correct and then attach it to your policy so that your records of policy coverage are accurate and up-to-date.

The purpose of this endorsement is to amend the policy according to the Statement of Values received. This policy change results in return premium of \$400.

Thank you for choosing our office for your insurance needs. We appreciate this opportunity to serve you. If you have any questions or comments about this change, please contact us.

A handwritten signature in black ink that reads "Linda Franz". The signature is written in a cursive, flowing style.

Linda Franz, CISR  
Customer Service Representative

Enclosure

Appleton Center, Suite 416  
100 W. Lawrence Street, 4th Floor  
Appleton, WI 54911  
Main 920.734.1468  
Fax 920.734.3637  
www.ajg.com



One Tower Square, Hartford, Connecticut 06183

CHANGE ENDORSEMENT

Named Insured:  
CITY OF MENASHA

Policy Number: BAJ-BME1-7415P537-TCT-13  
Policy Effective Date: 03/01/13  
Issue Date: 03/12/13  
Return Premium \$ 400

INSURING COMPANY:  
THE TRAVELERS INDEMNITY COMPANY OF CONNECTICUT

Effective from 03/01/13 at the time of day the policy becomes effective.

THIS INSURANCE IS AMENDED AS FOLLOWS:

IT IS HEREBY UNDERSTOOD AND AGREED THAT UPDATED VALUES HAVE BEEN RECEIVED AND THE POLICY LIMITS ARE AMENDED AS FOLLOWS:

TOTAL LIMIT PER BREAKDOWN: \$38,695,772  
PROPERTY DAMAGE: \$38,695,772

THE FOLLOWING LOCATION IS DELETED:

LOCATION #12:  
1197 APPLETON ROAD  
MENASHA, WI 54952

THE OCCUPANCY DESCRIPTIONS ARE AMENDED ON THE FOLLOWING LOCATIONS:

430 FIRST STREET, MENASHA, WI 54952  
OCCUPANCY: POLICY DEPT/FIRE DEPT/PITO

955 PLANK ROAD, MENASHA, WI 54952  
OCCUPANCY: CITY GARAGE/RECYCLING FACILITY/SALT STORAGE SHED

440 FIRST STREET, MENASHA, WI 54952  
OCCUPANCY: PUBLIC LIBRARY/PITO

640 KEYES STREET, MENASHA, WI 54952  
OCCUPANCY: MEMORIAL BUILDING/PITO

KONEMAC & 3RD STREETS, MENASHA, WI 54952  
OCCUPANCY: JEFFERSON PARK/PAVILION/STORAGE/PITO

116 MAIN STREET, MENASHA, WI 54952

NAME AND ADDRESS OF AGENT OR BROKER:  
A J GALLAGHER RMS (CFG00)  
17035 W WISCONSIN AVE STE 135  
BROOKFIELD, WI 53005

COUNTERSIGNED BY:

\_\_\_\_\_  
Authorized Representative

DATE: \_\_\_\_\_

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OFFICE: MILWAUKEE



CHANGE ENDORSEMENT

Policy Number: BAJ-BME1-7415P537-TCT-13

Policy Effective Date: 03/01/13

Issue Date: 03/12/13

OCCUPANCY: SENIOR CITIZENS CENTER/PITO

HIGHWAY 41 & D, MENASHA, WI 54956  
OCCUPANCY: REST HAVEN CEMETARY/PITO

CENTER STREET, MENASHA, WI 54952  
OCCUPANCY: CITY MARINA/PITO

FOX & BUTTE DE MORTS STREETS, MENASHA, WI 54952  
OCCUPANCY: SHEPERDS PARK COMFORT STATION/PITO

7TH & DEPERE STREETS, MENASHA, WI 54952  
OCCUPANCY: HART PARK/PITO

IDA & VISGRO STREETS, MENASHA, WI 54952  
OCCUPANCY: CLOVIS GROVE SHELTER/PITO

NORTH END OF IDA STREET, MENASHA, WI 54952  
OCCUPANCY: KOSLO PARK CONCESSION/MAINTENANCE SHED/PITO

CLEVELAND & KEYES STREETS, MENASHA, WI 54952  
OCCUPANCY: SMITH PARK/PITO

1108 PROVENCE TERRACE, MENASHA, WI 54952  
OCCUPANCY: FIRE STATION #36



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OFFICE: MILWAUKEE 115  
PRODUCER NAME: A J GALLAGHER RMS

CFG00

CITY OF MENASHA,  
a Wisconsin Municipal Corporation,  
140 Main Street  
Menasha, WI 54952  
Plaintiff,

vs.

NOTICE OF HEARING

The Bar on Lake Park, LLC  
Barry J. Sias, Agent  
890 Lake Park Road  
Menasha, WI 54952  
Defendant.

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PLEASE TAKE NOTICE that pursuant to City of Menasha Code of Ordinances, SEC. 7-2-19, a hearing will be held by the City of Menasha, through its Administration Committee, to consider revocation of your Reserve Class B Intoxicating Liquor and Fermented Malt Beverage license. A copy of the reasons for the recommendation to revoke your license is attached and served upon you.

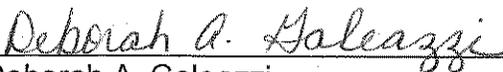
DATE: April 1, 2013

TIME: 6:30 p.m.

LOCATION: City of Menasha  
City Hall Council Chambers (3<sup>rd</sup> Floor)  
140 Main Street  
Menasha, Wisconsin

YOU ARE FURTHER NOTIFIED, that at the hearing you have the right to provide any relevant information to the Administration Committee for its consideration. You also may be represented by counsel, at your own expense, if you wish.

Dated this 28<sup>th</sup> day of March, 2013 at Menasha, Wisconsin.

  
\_\_\_\_\_  
Deborah A. Galeazzi  
City Clerk  
City of Menasha  
140 Main Street  
Menasha, WI 54952

STATE OF WISCONSIN

CITY OF MENASHA

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CITY OF MENASHA,  
a Wisconsin Municipal Corporation,  
140 Main Street  
Menasha, WI 54952

Plaintiff,

vs.

REASON FOR REVOCATION

The Bar on Lake Park, LLC  
Barry J. Sias, Agent  
890 Lake Park Road  
Menasha, WI 54952

Defendant.

---

The City Clerk recommends revocation of Reserve Class B Intoxicating Liquor and Fermented Malt Beverage license for violation of Section 7-2-18(b) of the City Code, not operating for 150 days of the 2012-2013 licensing year.

Dated this 28<sup>th</sup> day of March, 2013.

  
\_\_\_\_\_  
Deborah A. Galeazzi  
City Clerk  
City of Menasha  
140 Main Street  
Menasha, Wisconsin 54952

**SEC. 7-2-18 REVOCATION AND SUSPENSION OF LICENSES; NON-RENEWAL.**

- (a) **PROCEDURE.** Whenever the holder of any license under this Chapter violates any portion of this Chapter or Title 11, Chapter 5, of this Code of Ordinances, proceedings for the revocation of such license may be instituted in the manner and under the procedure established by Chapter 125, Wis. Stats.
- (b) **ABANDONMENT OF PREMISES.** Any licensee holding a license to sell alcohol beverages who abandons such business shall forfeit any right or preference he may have to the holding of or renewal of such license. Abandonment shall be sufficient grounds for revocation of any alcohol beverage license. The losing of the licensed premises for at least six (6) months shall be prima facie evidence of the abandonment, unless extended by the Common Council. All persons issued a license to sell alcohol beverages in the City for which a quota exists limiting the number of such licenses that may be issued by the City shall cause such business described in such license to be operated on the premises described in such license for at least one hundred fifty (150) days during the terms of such license, unless such license is issued for a term of less than one hundred eighty (180) days, in which event this Subsection shall not apply.
- (c) **OTHER PROVISIONS.** Any license issued pursuant to this Chapter shall be subject to such further regulations and restrictions as may be imposed by the Common Council by amendment to this section or by the enactment of new ordinances. If any licenses shall fail or neglect to meet the requirements imposed by such new restrictions and regulations his license may be revoked in accordance with this Section. In case of revocation of any license or any violation of any provision of this Chapter in accordance with this Section or by the court or for any reasonable cause except the imposition of new restrictions, no refund shall be made of any part of the license fee.

CITY OF MENASHA,  
a Wisconsin Municipal Corporation,  
140 Main Street  
Menasha, WI 54952  
Plaintiff,

vs.

NOTICE OF HEARING

Vertigo 1894, LLC  
Dan Pamerter, Agent  
167 Main Street  
Menasha, WI 54952  
Defendant.

---

PLEASE TAKE NOTICE that pursuant to City of Menasha Code of Ordinances, SEC. 7-2-19, a hearing will be held by the City of Menasha, through its Administration Committee, to consider revocation of your Reserve Class B Intoxicating Liquor and Fermented Malt Beverage license. A copy of the reasons for the recommendation to revoke your license is attached and served upon you.

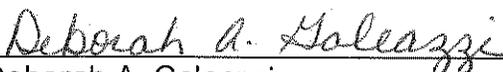
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TIME: 6:30 p.m.

LOCATION: City of Menasha  
City Hall Council Chambers (3<sup>rd</sup> Floor)  
140 Main Street  
Menasha, Wisconsin

YOU ARE FURTHER NOTIFIED, that at the hearing you have the right to provide any relevant information to the Administration Committee for its consideration. You also may be represented by counsel, at your own expense, if you wish.

Dated this 28<sup>th</sup> day of March, 2013 at Menasha, Wisconsin.

  
\_\_\_\_\_  
Deborah A. Galeazzi  
City Clerk  
City of Menasha  
140 Main Street  
Menasha, WI 54952

STATE OF WISCONSIN

CITY OF MENASHA

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CITY OF MENASHA,  
a Wisconsin Municipal Corporation,  
140 Main Street  
Menasha, WI 54952

Plaintiff,

vs.

REASON FOR REVOCATION

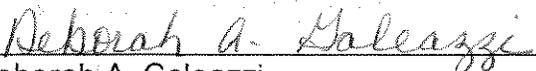
Vertigo 1894, LLC  
Dan Pamerter, Agent  
167 Main Street  
Menasha, WI 54952

Defendant.

---

The City Clerk recommends revocation of Reserve Class B Intoxicating Liquor and Fermented Malt Beverage license for violation of Section 7-2-18(b) of the City Code, not operating for 150 days of the 2012-2013 licensing year.

Dated this 28<sup>th</sup> day of March, 2013.

  
\_\_\_\_\_  
Deborah A. Galeazzi  
City Clerk  
City of Menasha  
140 Main Street  
Menasha, Wisconsin 54952

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ORDINANCE O-1-13

AN ORDINANCE REPEALING SECTIONS 7-2-20 TO 7-2-26 OF THE CODE OF ORDINANCES  
(Operators' License)

INTRODUCED BY

The Common Council of the City of Menasha does hereby repeals and replaces as follows:

SECTION 1: Replace Title 7, Chapter 2, Article B, SEC. 7-2-20 to 7-2-26 of the Code of Ordinances of the City of Menasha, Wisconsin as follows:

**Title 7 – Licensing and Regulation**

**CHAPTER 2**

Fermented Malt Beverages and Intoxicating Liquor

**ARTICLE B**

Operators' License

**~~SEC. 7-2-20 OPERATOR'S LICENSE REQUIRED; MANAGER'S LICENSE.~~**

- (a) **~~OPERATOR'S LICENSE.~~** There shall be upon the premises operated under a ~~every~~ Class "A" ~~"Class A" intoxicating liquor license, or Class "B" "Class B" intoxicating liquor license, Class "A" fermented malt beverage license, Class "B" Class "B" fermented malt beverage license or Class C wine license,~~ at all times, the licensee or some other person who shall have an operator's license and who shall be responsible for the acts of all persons serving or selling any intoxicating liquor or fermented malt beverages to customers. No person other than the licensee shall serve or sell fermented malt beverages or intoxicating liquor in any place operated under Class "A" ~~"Class A" intoxicating liquor or Class "B" "Class B" intoxicating liquor license or, Class "A" fermented malt beverage , Class "B" fermented malt beverage license, or Class C wine licenses unless he or she shall possess an operator's license or unless he or she shall be under the immediate supervision of the licensee or a person holding an operator's license who shall be upon the premises at the time of such service.~~
- (b) **~~MANAGER'S LICENSE.~~** Twenty five Dollars (\$25.00) per year. Said manager's license, or otherwise known as an agent's license, shall be given upon written application to the person who has the responsibility or authority for personnel, management of all employees whether or not the person is authorized to sign employment contracts or contracts for the purchase or sale of goods but actually does such purchasing and generally assumes the daily operation of the ~~"Class A" intoxicating liquor or Class "A" fermented malt beverage or "Class B" intoxicating liquor or Class "B" fermented malt beverage or Class C wine premises. Said application shall be on forms as prescribed by the City Clerk Police Department whose mandatory duty it shall be to supply such forms. There shall be a Twenty five Dollar (\$25.00) annual fee for a manager's license.~~

~~(c) — **PROVISIONAL LICENSE.**~~

- ~~(1) A provisional operator's license may be issued by the Police Department to a person who has applied for an operator's license under Sec. 7-2-20(a).~~
- ~~(2) A provisional operator's license may not be issued to any person who has been denied an operator's license.~~
- ~~(3) The provisional license expires sixty (60) days after the issuance or when a license under Sec. 7-2-20(a) is issued to the applicant, whichever is sooner.~~
- ~~(4) A fee of Ten Dollars (\$10.00) shall be charged for a provisional operator's license.~~

~~**SEC. 7-2-21 — PROCEDURE UPON APPLICATION.**~~

- ~~(a) The Police Department may issue an operator's license, which license shall be granted only upon application in writing on forms to be obtained from the City Treasurer only to persons eighteen (18) years of age or older. — Operator's licenses shall be operative only within the limits of the City.~~
- ~~(b) An operator's license for retail Class "A" "Class A" intoxicating liquor or Class "A" fermented malt beverage or "Class B" intoxicating liquor or Class "B" fermented malt beverage or Class C wine and "B" B fermented malt and intoxicating liquor license premises pursuant to Sec. 125.17, Wis. Stats., may be issued by the Police Department to any person of legal drinking age who has been a citizen of the United States 18 years of age and a resident of this state continuously for no less than ten (10) days, prior to the date of the filing of the application, upon certification of the Menasha Police Department. The Menasha Police Department will run a criminal history check through the Wisconsin Criminal History Records information database to determine the applicant's prior criminal history. When an applicant in this state has been convicted of a felony and has not been pardoned, such application shall be submitted to the City Attorney by the Police Department for further review.~~
- ~~(c) Whenever the Police Department denies a license, the applicant will then have the right to appeal such decision to the Administration Committee after a due process hearing. — The action of the Committee shall be final.~~

~~**SEC. 7-2-22 — DURATION.**~~

~~Licenses issued under the provisions of this Chapter shall be valid for a period of two (2) years and shall expire on the thirtieth (30th) day of June.~~

~~**SEC. 7-2-23 — OPERATOR'S LICENSE FEE.**~~

- ~~(a) The fee for an operator's license shall be Fifty Dollars (\$50.00).~~
- ~~(b) The fee for any operator's license that is issued such that it will expire in six months or less shall be twenty five dollars (\$25.00).~~
- ~~(c) A fee of fifteen dollars (\$15.00) shall be charged for a provisional operators license.~~

~~**SEC. 7-2-24 — ISSUANCE.**~~

~~The Police Department shall issue the operator's license. — Such licenses shall be issued and numbered in the order they are granted and shall give the applicant's name and address and the date of the expiration of such license.~~

~~**SEC. 7-2-25 — DISPLAY OF LICENSE.**~~

~~Each license issued under the provisions of this Chapter shall be posted on the premises whenever the operator dispenses beverages.~~

**~~SEC. 7-2-26 — REVOCATION OF OPERATOR'S LICENSE.~~**

~~Violation of any of the terms or provisions of the State Law or of this Chapter relating to operator's licenses by any person holding such operator's license shall be cause for revocation of the license.~~

**~~SECTION 7-2-27 THROUGH SECTION 7-2-29 — RESERVED FOR FUTURE USE.~~**

**SEC. 7-2-20 OPERATORS' LICENSE**

**(a) REGULAR OPERATORS' LICENSE APPLICATIONS**

- (1) Applications for all operators' licenses shall be made on a form provided by the Police Department.
- (2) An application shall be accurately completed in its entirety or shall be rendered void by the Police Department.
- (3) The Police Department shall verify the veracity of the application as well as research the qualifications of the applicant.
- (4) The license fee shall be submitted with the application.
- (5) Operators' licenses may be granted by the Common Council without further review in the event the Police Department approved of the application.
- (6) The Common Council shall issue an Operators' license to any applicant meeting the qualification under Wis. Stats. §§125.04(5) and 125.17(6) and shall be valid for a period of two (2) years and shall expire on the thirtieth (30) day of June.

- (b) TEMPORARY OPERATORS LICENSE.** The Police Department or designee is authorized to issued a Temporary Operator's license to an applicant under the terms outlined in Wis. Stats. §125.17(4).

**(c) PROVISIONAL LICENSE.**

- (1) The Police Department or designee is authorized to issue a Provisional Operator's license to an applicant for a regular Operators' license provided the applicant:
  - (a) Files a certified copy of a valid operators' license issued by another municipality; and
  - (b) Pays the fee; and
  - (c) Meets the "City of Menasha Guidelines for Operators' Licenses" adopted by the Common Council; and
  - (d) Has not been denied an Operators' license by the Common Council; and
  - (e) Has met the training requirement under Wis. Stats. §125.17(6)
- (2) A Provisional Operators license expires 60 days after its issuance or when a regular Operator's license is issued or upon expiration of an Operators' license issued by another municipality and filed under paragraph (1)(a) above, whichever is sooner.
- (3) The Police Department or designee may revoke a Provisional Operator's license upon discovery of a false statement made on the application or if an applicant enrolled in a responsible beverage server training course fails to successfully complete the course in which he or she is enrolled.

- (d) APPEALS.** Any applicant whose application has been voided or denied or whose license has been revoked by the Police Department may appeal such determination of the Administration Committee.

**SEC. 7-2-21 OPERATORS' LICENSE FEE.**

(a) The fees for Operators' licenses shall be established by the Common Council.

**SEC. 7-2-22 DISPLAY OF LICENSE.**

(a) Each Operators' license issued under the provisions of this Chapter shall be posted on the premises whenever the operator dispenses beverages.

SECTION 2: This Ordinance shall take effect upon passage and publication as provided by law.

Passed and approved this            day of            , 2013.

\_\_\_\_\_  
Donald Merkes, Mayor

ATTEST:

\_\_\_\_\_  
Deborah A. Galeazzi, City Clerk

**WB-3 VACANT LAND LISTING CONTRACT - EXCLUSIVE RIGHT TO SELL**

**1 SELLER GIVES BROKER THE EXCLUSIVE RIGHT TO SELL THE PROPERTY ON THE FOLLOWING TERMS:**

2 ■ **PROPERTY DESCRIPTION:** Street address is: 901 Airport Road  
3 in Section \_\_\_\_\_ in the City of Menasha, County of Winnebago,  
4 Wisconsin. Insert additional description, if any, at lines 254-261 or attach as an addendum per lines 262-264.

5 ■ **LIST PRICE:** One Hundred Twelve Thousand Dollars (\$ 112,000.00).

6 ■ **INCLUDED IN LIST PRICE:** Seller is including in the list price the Property, all Fixtures not excluded on lines 10-11,  
7 and the following items: None

8  
9 ■ **NOT INCLUDED IN LIST PRICE: CAUTION:** Identify Fixtures to be excluded by Seller or which are rented and will  
10 continue to be owned by the lessor. (See lines 212-217): None

11  
12 ■ **GOVERNMENTAL AND CONSERVATION PROGRAMS:** Seller represents that all or some of the Property is  
13 enrolled in the following governmental conservation, farmland, environmental, land use or use restricting programs,  
14 agreements or conservation easements, (county, state or federal): N/A

15  
16 ■ **USE VALUE ASSESSMENT:** Seller represents that ~~(all or some of the Property)~~ (none of the Property) STRIKE  
17 ONE has been assessed as agricultural property under use value law.

18 ■ **SPECIAL ASSESSMENTS:** Seller represents that the Property is subject to the following special assessments:  
19 None

20 ■ **SPECIAL ZONING, LAND USE OR DEVELOPMENT RESTRICTIONS:** Seller represents that the Property is  
21 subject to the following special zoning, land use, development restrictions or other conditions affecting the Property:  
22 N/A

23 ■ **MARKETING:** Seller authorizes and Broker agrees to use reasonable efforts to procure a buyer for the Property.  
24 Seller agrees that Broker may market Seller's personal property identified on lines 7-8 during the term of this Listing.  
25 Broker's marketing may include: Signs, LoopNet, websites, direct or e-mailings, broker networking

26  
27 Broker may advertise the following special financing and incentives offered by Seller: N/A  
28  
29 Seller has a duty to cooperate with Broker's marketing  
30 efforts. See lines 84-90 regarding Broker's role as marketing agent and Seller's duty to notify Broker of any potential  
31 buyer known to Seller. Seller agrees that Broker may market other properties during the term of this Listing.

32 ■ **OCCUPANCY:** Unless otherwise provided, Seller agrees to give buyer occupancy of the Property at time of closing.  
33 Unless otherwise agreed, Seller agrees to have the Property free of all debris and personal property except for  
34 personal property belonging to current tenants, sold to buyer or left with buyer's consent.

35 ■ **COOPERATION, ACCESS TO PROPERTY OR OFFER PRESENTATION:** The parties agree that Broker will work  
36 and cooperate with other brokers in marketing the Property, including brokers from other firms acting as subagents  
37 (agents from other companies engaged by Broker - See lines 148-151) and brokers representing buyers. Cooperation  
38 includes providing access to the Property for showing purposes and presenting offers and other proposals from these  
39 brokers to Seller. Note any brokers with whom Broker shall not cooperate, any brokers or buyers who shall not be  
40 allowed to attend showings, and the specific terms of offers which should not be submitted to Seller: N/A

41 CAUTION: Limiting Broker's cooperation with other brokers may reduce the marketability of the Property.

42 ■ **EXCLUSIONS:** All persons who may acquire an interest in the Property as a Protected Buyer under a prior listing  
43 contract are excluded from this Listing to the extent of the prior broker's legal rights, unless otherwise agreed to in writing.  
44 Within seven days of the date of this Listing, Seller agrees to deliver to Broker a written list of all such prospective buyers.  
45 The following other buyers are excluded from this Listing until \_\_\_\_\_ [INSERT DATE] :

46  
47 These other buyers are no longer excluded from this Listing after the specified date unless, on or before the specified date,  
48 Seller has either accepted an offer from the buyer or sold the Property to the buyer.

49 ■ **COMPENSATION TO OTHERS:** Broker offers the following commission to cooperating brokers: 4% to other  
50 brokers. (Exceptions if any): \_\_\_\_\_

51 ■ **COMMISSION:** Broker's commission shall be See Line 254

52 Seller shall pay Broker's commission, which shall be earned, if, during the term of this Listing:  
53 1) Seller sells or accepts an offer which creates an enforceable contract for the sale of all or any part of the Property;  
54 2) Seller grants an option to purchase all or any part of the Property which is subsequently exercised;  
55 3) Seller exchanges or enters into a binding exchange agreement on all or any part of the Property;  
56 4) A transaction occurs which causes an effective change in ownership or control of all or any part of the Property; or

57 5) A buyer is procured for the Property by Broker, by Seller, or by any other person, at no less than the price and on  
 58 substantially the same terms set forth in this Listing and in the standard provisions of the current WB-13 VACANT  
 59 LAND OFFER TO PURCHASE, even if Seller does not accept this buyer's offer. (See lines 222-225 regarding  
 60 procurement.)

61 A percentage commission, if applicable, shall be calculated based on the purchase price if commission is earned under 1)  
 62 or 2) above, or calculated based on the list price under 3), 4) or 5). A percentage commission shall be calculated on the  
 63 fair market value of the Property exchanged under 3) if the exchange involves less than the entire Property or on the fair  
 64 market value of the Property to which an effective change in ownership or control takes place, under 4) if the transaction  
 65 involves less than the entire Property. Once earned, Broker's commission is due and payable in full at the earlier of closing  
 66 or the date set for closing, unless otherwise agreed in writing. Broker's commission shall be earned if, during the term of  
 67 the Listing, one owner of the Property sells, conveys, exchanges or options an interest in all or any part of the Property to  
 68 another owner, except by divorce judgment.

69 NOTE: A sale, option, exchange or procurement of a buyer for a portion of the Property does not terminate the Listing as to  
 70 any remaining Property.

71 ■ **EXTENSION OF LISTING:** The Listing term is extended for a period of one year as to any Protected Buyer. Upon  
 72 receipt of a written request from Seller or a broker who has listed the Property, Broker agrees to promptly deliver to  
 73 Seller a written list of those buyers known by Broker to whom the extension period applies. Should this Listing be  
 74 terminated by Seller prior to the expiration of the term stated in this Listing, this Listing shall be extended for Protected  
 75 Buyers, on the same terms, for one year after the Listing is terminated.

76 ■ **TERMINATION OF LISTING:** Neither Seller nor Broker has the legal right to unilaterally terminate this Listing absent a  
 77 material breach of contract by the other party. Seller understands that the parties to the Listing are Seller and the Broker  
 78 (firm). Agents (salespersons) for Broker (firm) do not have the authority to enter into a mutual agreement to terminate the  
 79 Listing, amend the commission amount or shorten the term of this Listing, without the written consent of the agent(s)  
 80 supervising broker. Seller and Broker agree that any termination of this Listing by either party before the date stated on  
 81 line 269 shall be indicated to the other party in writing and shall not be effective until delivered to the other Party in  
 82 accordance with lines 206-211. CAUTION: Early termination of this Listing may be a breach of contract, causing the  
 83 terminating party to potentially be liable for damages.

84 ■ **SELLER COOPERATION WITH MARKETING EFFORTS:** Seller agrees to cooperate with Broker in Broker's  
 85 marketing efforts and to provide Broker with all records, documents and other material in Seller's possession or control  
 86 which are required in connection with the sale. Seller authorizes Broker to do those acts reasonably necessary to  
 87 effect a sale and Seller agrees to cooperate fully with these efforts which may include use of a multiple listing service,  
 88 Internet advertising or a lockbox system on Property. Seller shall promptly notify Broker in writing of any potential buyers  
 89 with whom Seller negotiates during the term of this Listing and shall promptly refer all persons making inquiries  
 90 concerning the Property to Broker.

91 ■ **LEASED PROPERTY:** If Property is currently leased and lease(s) will extend beyond closing, Seller shall assign  
 92 Seller's rights under the lease(s) and transfer all security deposits and prepaid rents (subject to agreed upon proration)  
 93 thereunder to buyer at closing. Seller acknowledges that Seller remains liable under the lease(s) unless released by  
 94 tenant(s). CAUTION: Seller should consider obtaining an indemnification agreement from buyer for liabilities under the  
 95 lease(s) unless released by tenants.

96 ■ **BROKER DISCLOSURE TO CLIENTS:**

97 **UNDER WISCONSIN LAW, A BROKER OWES CERTAIN DUTIES TO ALL PARTIES TO A TRANSACTION:**

- 98 (a) The duty to provide brokerage services to you fairly and honestly.
- 99 (b) The duty to exercise reasonable skill and care in providing brokerage services to you.
- 100 (c) The duty to provide you with accurate information about market conditions within a reasonable time if you request  
 101 it, unless disclosure of the information is prohibited by law.
- 102 (d) The duty to disclose to you in writing certain material adverse facts about a property, unless disclosure of the  
 103 information is prohibited by law. (See Lines 218-221)
- 104 (e) The duty to protect your confidentiality. Unless the law requires it, the broker will not disclose your confidential  
 105 information or the confidential information of other parties. (See Lines 157-173)
- 106 (f) The duty to safeguard trust funds and other property the broker holds.
- 107 (g) The duty, when negotiating, to present contract proposals in an objective and unbiased manner and disclose the  
 108 advantages and disadvantages of the proposals.

109 ■ **BECAUSE YOU HAVE ENTERED INTO AN AGENCY AGREEMENT WITH A BROKER, YOU ARE THE  
 110 BROKER'S CLIENT. A BROKER OWES ADDITIONAL DUTIES TO A CLIENT:**

- 111 (a) The broker will provide, at your request, information and advice on real estate matters that affect your transaction,  
 112 unless you release the broker from this duty.
- 113 (b) The broker must provide you with all material facts affecting the transaction, not just adverse facts.
- 114 (c) The broker will fulfill the broker's obligations under the agency agreement and fulfill your lawful requests that are  
 115 within the scope of the agency agreement.
- 116 (d) The broker will negotiate for you, unless you release the broker from this duty.
- 117 (e) The broker will not place the broker's interests ahead of your interests. The broker will not, unless required by

118 law, give information or advice to other parties who are not the broker's clients, if giving the information or advice is  
119 contrary to your interests.  
120 (f) If you become involved in a transaction in which another party is also the broker's client (a "multiple representation  
121 relationship"), different duties may apply.

122 ■ **MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY:**

123 ■ A multiple representation relationship exists if a broker has an agency agreement with more than one client who is a  
124 party in the same transaction. In a multiple representation relationship, if all of the broker's clients in the transaction  
125 consent, the broker may provide services to the clients through designated agency.

126 ■ Designated agency means that different salespersons employed by the broker will negotiate on behalf of you and the  
127 other client or clients in the transaction, and the broker's duties will remain the same. Each salesperson will provide  
128 information, opinions, and advice to the client for whom the salesperson is negotiating, to assist the client in the  
129 negotiations. Each client will be able to receive information, opinions, and advice that will assist the client, even if the  
130 information, opinions, or advice gives the client advantages in the negotiations over the broker's other clients. A  
131 salesperson will not reveal any of your confidential information to another party unless required to do so by law.

132 ■ If a designated agency relationship is not in effect you may authorize or reject a multiple representation relationship.  
133 If you authorize a multiple representation relationship the broker may provide brokerage services to more than one  
134 client in a transaction but neither the broker nor any of the broker's salespersons may assist any client with  
135 information, opinions, and advice which may favor the interests of one client over any other client. If you do not  
136 consent to a multiple representation relationship the broker will not be allowed to provide brokerage services to more  
137 than one client in the transaction.

138 **INITIAL ONLY ONE OF THE THREE LINES BELOW:**

139 \_\_\_\_\_ I consent to designated agency.

140 \_\_\_\_\_ I consent to multiple representation relationships, but I do not consent to designated agency.

141 \_\_\_\_\_ I reject multiple representation relationships.

142 NOTE: YOU MAY WITHDRAW YOUR CONSENT TO DESIGNATED AGENCY OR TO MULTIPLE REPRESENTATION  
143 RELATIONSHIPS BY WRITTEN NOTICE TO THE BROKER AT ANY TIME. YOUR BROKER IS REQUIRED TO DISCLOSE TO  
144 YOU IN YOUR AGENCY AGREEMENT THE COMMISSION OR FEES THAT YOU MAY OWE TO YOUR BROKER. IF YOU HAVE  
145 ANY QUESTIONS ABOUT THE COMMISSION OR FEES THAT YOU MAY OWE BASED UPON THE TYPE OF AGENCY  
146 RELATIONSHIP YOU SELECT WITH YOUR BROKER YOU SHOULD ASK YOUR BROKER BEFORE SIGNING THE AGENCY  
147 AGREEMENT.

148 ■ **SUBAGENCY:** The broker may, with your authorization in the agency agreement, engage other brokers who assist  
149 your broker by providing brokerage services for your benefit. A subagent will not put the subagent's own interests  
150 ahead of your interests. A subagent will not, unless required by law, provide advice or opinions to other parties if doing  
151 so is contrary to your interests.

152 **PLEASE REVIEW THIS INFORMATION CAREFULLY. A broker or salesperson can answer your questions about**  
153 **brokerage services, but if you need legal advice, tax advice, or a professional home inspection, contact an**  
154 **attorney, tax advisor, or home inspector. This disclosure is required by section 452.135 of the Wisconsin statutes**  
155 **and is for information only. It is a plain language summary of a broker's duties to you under section 452.133 (2) of**  
156 **the Wisconsin statutes.**

157 ■ **CONFIDENTIALITY NOTICE TO CLIENTS:** Broker will keep confidential any information given to Broker in  
158 confidence, or any information obtained by Broker that he or she knows a reasonable person would want to be kept  
159 confidential, unless the information must be disclosed by law or you authorize Broker to disclose particular information.  
160 Broker shall continue to keep the information confidential after Broker is no longer providing brokerage services to you.  
161 The following information is required to be disclosed by law:

- 162 1) Material adverse facts, as defined in section 452.01 (5g) of the Wisconsin statutes (lines 218-221).
- 163 2) Any facts known by the Broker that contradict any information included in a written inspection report on the property  
164 or real estate that is the subject of the transaction.

165 To ensure that the Broker is aware of what specific information you consider confidential, you may list that information  
166 below (see lines 168-170). At a later time, you may also provide the Broker with other information you consider to be  
167 confidential.

168 **CONFIDENTIAL INFORMATION:** None  
169 \_\_\_\_\_  
170 \_\_\_\_\_

171 **NON-CONFIDENTIAL INFORMATION** (The following may be disclosed by Broker): None  
172 \_\_\_\_\_  
173 \_\_\_\_\_

174 ■ **SELLER'S DISCLOSURE REPORT:** Wisconsin Administrative Code Chapter RL 24 requires listing brokers to  
175 make inquiries of the Seller on the condition of the Property and to request that Seller provide a written response to  
176 Broker's inquiry. Seller agrees to complete a seller's disclosure report to the best of Seller's knowledge. Seller agrees  
177 to amend the report should Seller learn of any defect(s) after completion of the report but before acceptance of a buyer's  
178 offer to purchase. Seller authorizes Broker to distribute the report to all interested parties and their agents inquiring  
179 about the Property and acknowledges that Broker has a duty to disclose all material adverse facts as required by law.

180 ■ **SELLER REPRESENTATIONS REGARDING DEFECTS:** Seller represents to Broker that as of the date of this  
 181 Listing, if a seller's disclosure report or other form of written response to Broker's inquiry regarding the condition of the  
 182 Property has been made by the Seller, the Seller has no notice or knowledge of any defects affecting the Property other  
 183 than those noted on Seller's disclosure report or written response.

184 **WARNING: IF SELLER REPRESENTATIONS ARE INCORRECT OR INCOMPLETE, SELLER MAY BE LIABLE FOR**  
 185 **DAMAGES AND COSTS.**

186 ■ **OPEN HOUSE AND SHOWING RESPONSIBILITIES:** Seller is aware that there is a potential risk of injury, damage  
 187 and/or theft involving persons attending an "individual showing" or an "open house." Seller accepts responsibility for  
 188 preparing the Property to minimize the likelihood of injury, damage and/or loss of personal property. Seller agrees to  
 189 hold Broker harmless for any losses or liability resulting from personal injury, property damage, or theft occurring  
 190 during "individual showings" or "open houses" other than those caused by Broker's negligence or intentional  
 191 wrongdoing. Seller acknowledges that individual showings and open houses may be conducted by licensees other  
 192 than Broker, that appraisers and inspectors may conduct appraisals and inspections without being accompanied by  
 193 Broker or other licensees, and that buyers or licensees may be present at all inspections and testing and may  
 194 photograph or videotape Property unless otherwise provided for in additional provisions at lines 254-261 or in an  
 195 addendum per lines 262-264.

196 ■ **DEFINITIONS:**

197 **ADVERSE FACT:** An "adverse fact" means any of the following:

- 198 (a) A condition or occurrence that is generally recognized by a competent licensee as doing any of the following:
- 199 1) Significantly and adversely affecting the value of the Property;
  - 200 2) significantly reducing the structural integrity of improvements to real estate; or
  - 201 3) presenting a significant health risk to occupants of the Property.
- 202 (b) Information that indicates that a party to a transaction is not able to or does not intend to meet his or her  
 203 obligations under a contract or agreement made concerning the transaction.

204 **DEADLINES - DAYS:** Deadlines expressed as a number of "days" from an event are calculated by excluding the day the  
 205 event occurred and by counting subsequent calendar days.

206 **DELIVERY:** Delivery of documents or written notices related to this Listing may only be accomplished by:

- 207 1) giving the document or written notice personally to the party;
- 208 2) depositing the document or written notice postage or fees prepaid or charged to an account in the U.S. Mail or a  
 209 commercial delivery system, addressed to the party, at the party's address (See lines 275, 281 and 287.);
- 210 3) electronically transmitting the document or written notice to the party's fax number (See lines 277, 283 and 289.); or,
- 211 4) as otherwise agreed in additional provisions on lines 254-261 or in an addendum to this Listing.

212 **FIXTURES:** A "fixture" is an item of property which is physically attached to or so closely associated with land so as to  
 213 be treated as part of the real estate, including, without limitation, physically attached items not easily removable  
 214 without damage to the premises, items specifically adapted to the premises, and items customarily treated as fixtures,  
 215 including, but not limited to, all: perennial crops; garden bulbs; plants; shrubs and trees; and fences; storage buildings  
 216 on permanent foundations and docks/piers on permanent foundations.

217 **CAUTION: Annual crops are not part of the purchase price unless otherwise agreed.**

218 **MATERIAL ADVERSE FACT:** A "material adverse fact" means an adverse fact that a party indicates is of such  
 219 significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable  
 220 party, that it affects or would affect the party's decision to enter into a contract or agreement concerning a transaction  
 221 or affects or would affect the party's decision about the terms of such a contract or agreement.

222 **PROCURE:** A buyer is procured when, during the term of the Listing, an enforceable contract of sale is entered into  
 223 between the Seller and the buyer or when a ready, willing and able buyer submits to the Seller or the Listing Broker a written  
 224 offer at the price and on substantially the terms specified in this Listing. A buyer is ready, willing and able when the buyer  
 225 submitting the written offer has the ability to complete the buyer's obligations under the written offer. (See lines 57-60)

226 **PROPERTY:** Unless otherwise stated, "Property" means the real estate described at lines 2-4.

227 **PROTECTED BUYER:** Means a buyer who personally, or through any person acting for such buyer: 1) delivers to Seller or  
 228 Broker a written offer to purchase, exchange or option on the Property during the term of this Listing; 2) negotiates directly  
 229 with Seller by discussing with Seller the potential terms upon which buyer might acquire an interest in the Property; or 3)  
 230 attends an individual showing of the Property or discusses with Broker or cooperating brokers the potential terms upon  
 231 which buyer might acquire an interest in the Property, but only if Broker delivers the buyer's name to Seller, in writing, no  
 232 later than three days after the expiration of the Listing. The requirement in 3), to deliver the buyer's name to Seller in writing,  
 233 may be fulfilled as follows: a) If the Listing is effective only as to certain individuals who are identified in the Listing, by the  
 234 identification of the individuals in the Listing; or, b) if a buyer has requested that the buyer's identity remain confidential, by  
 235 delivery of a written notice identifying the broker with whom the buyer negotiated and the date(s) of any showings or other  
 236 negotiations.

237 ■ **NON-DISCRIMINATION:** Seller and Broker agree that they will not discriminate against any prospective buyer on  
 238 account of race, color, sex, sexual orientation as defined in Wisconsin Statutes, Section 111.32 (13m), disability,  
 239 religion, national origin, marital status, lawful source of income, age, ancestry, familial status, or in any other unlawful  
 240 manner.

241 ■ **EARNEST MONEY:** If Broker holds trust funds in connection with the transaction, they shall be retained by Broker in  
242 Broker's trust account. Broker may refuse to hold earnest money or other trust funds. Should Broker hold the earnest money  
243 Seller authorizes Broker to disburse the earnest money as directed in a written earnest money disbursement agreement  
244 signed by or on behalf of all parties having an interest in the trust funds. If the transaction fails to close and the earnest  
245 money is disbursed to Seller, then upon disbursement to Seller the earnest money shall be paid first to reimburse Broker for  
246 cash advances made by Broker on behalf of Seller and one half of the balance, but not in excess of the agreed commission,  
247 shall be paid to Broker as Broker's full commission in connection with said purchase transaction and the balance shall belong  
248 to Seller. This payment to Broker shall not terminate this Listing.

249 ■ **UTILITY AVAILABILITY:** Seller represents that the following utility connections are located as follows: (e.g. at the  
250 lot line, on the property, across the street, unknown, etc.): electricity to the site; gas to the site ;  
251 municipal sewer to the site ; municipal water to the site ; telephone to the site ;  
252 other none ; **STRIKE AND COMPLETE AS APPLICABLE**

253 ■ **ZONING:** Seller represents that the property is zoned: C-1 General Commercial

254 ■ **ADDITIONAL PROVISIONS:** 1. Mike Pfefferle will not be charging a commission to list. Also,  
255 Pfefferle Companies Brokers will not be paid a commission. Outside Brokers will be paid  
256 4%. A Phase 1 Environmental assessments shall be made available to all purchasures.

258 2. See attached addendum

262 ■ **ADDENDA:** The attached addenda None

264 \_\_\_\_\_ is/are made part of this Listing.

265 ■ **NOTICE ABOUT SEX OFFENDER REGISTRY:** You may obtain information about the sex offender registry and  
266 persons registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at  
267 <http://www.widocoffenders.org> or by telephone at (608)240-5830.

268 ■ **TERM OF THE CONTRACT:** From the 25th day of March, 2013  
269 up to and including midnight of the 25th day of March, 2014

270 ■ **READING/RECEIPT: BY SIGNING BELOW, SELLER ACKNOWLEDGES RECEIPT OF A COPY OF THIS**  
271 **LISTING CONTRACT AND THAT HE/SHE HAS READ ALL FIVE PAGES AS WELL AS ANY ADDENDA AND ANY**  
272 **OTHER DOCUMENTS INCORPORATED INTO THE LISTING.**

273 (x) \_\_\_\_\_ City of Menasha  
274 Seller's Signature ▲ \_\_\_\_\_ Print Name Here: ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_  
275 140 Main St.  
276 Menasha, WI 54952 \_\_\_\_\_ (920) 967-3600  
276 Seller's Address ▲ \_\_\_\_\_ Seller's Phone # ▲ \_\_\_\_\_

277 \_\_\_\_\_ gkeil@ci.menasha.wi.us  
278 Seller's Fax # ▲ \_\_\_\_\_ Seller's E-Mail Address ▲ \_\_\_\_\_

279 (x) \_\_\_\_\_  
280 Seller's Signature ▲ \_\_\_\_\_ Print Name Here: ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_  
281 \_\_\_\_\_  
282 Seller's Address ▲ \_\_\_\_\_ Seller's Phone # ▲ \_\_\_\_\_  
283 \_\_\_\_\_  
284 Seller's Fax # ▲ \_\_\_\_\_ Seller's E-Mail Address ▲ \_\_\_\_\_

285 (x)  Richard J. Knight,  
286 Agent for Broker ▲ EVP, Secy \_\_\_\_\_ Grubb & Ellis | Pfefferle 3-28-13  
287 200 E. Washington St. \_\_\_\_\_ Broker/Firm Name ▲ \_\_\_\_\_ Date ▲ \_\_\_\_\_  
288 Appleton, WI 54911 \_\_\_\_\_ (920) 968-4700  
288 Broker/Firm Address ▲ \_\_\_\_\_ Broker/Firm Phone # ▲ \_\_\_\_\_

289 (920) 968-4300 \_\_\_\_\_ mikep@gepwi.com  
290 Broker/Firm Fax # ▲ \_\_\_\_\_ Broker/Firm E-Mail Address ▲ \_\_\_\_\_

## Addendum A

901 Airport Road  
Menasha, WI

Property is being sold subject to the following conditions:

Within 18 months of closing, purchaser must begin construction of a building or structure in compliance with city ordinances and other applicable laws and for a permitted purposed under city ordinances. Construction must be completed with 1 year after construction begins.

**TOWER AND GROUND SPACE LEASE AGREEMENT**

This Agreement is made and entered into the \_\_\_\_ day of \_\_\_\_\_ 2013 by and between \_\_\_\_\_, a \_\_\_\_\_ corporation doing business as \_\_\_\_\_, Attention: \_\_\_\_\_, \_\_\_\_\_ (hereinafter referred to as "Landlord") and Airadigm Communications, Inc., a Wisconsin corporation, doing business as *Airfire Mobile*, 2301 Kelbe Drive, Little Chute, WI 54140 (hereinafter referred to as "Tenant").

WHEREAS, Tenant has interest in certain real property located at 955 Plank Road, City of Menasha in Winnebago County, 54952, State of Wisconsin, at coordinates 44° 12' 26.1" North, 88° 25' 26.6" West (the "Site"). The Site is legally described on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, Tenant desires to occupy, and Landlord is willing to provide, attachment locations upon the Tower (the "Tower") for the placement of Tenant's antennas, cabling and ancillary equipment (the "Tower Space") as well as certain space on the ground adjacent to the Tower (the "Ground Space") for Tenant's cellular common carrier mobile radio telephone base station; collectively the Tower Space and the Ground Space shall be referred to hereinafter as the "Leased Space."

NOW, THEREFORE, in consideration of the mutual promises, conditions, and other good and valuable consideration of the parties hereto, it is covenanted and agreed as follows:

1. Lease Conferred. Landlord hereby confers upon Tenant, and Tenant hereby receives and accepts from Landlord, a lease and privilege, which shall be irrevocable for the stated duration hereof unless otherwise stated herein, to do all of the following:

(a) Occupy attachment locations upon the Tower Space for the placement of Tenant's antennas, cabling and ancillary equipment ("Tenant's Equipment"), more particularly described in Exhibit B;

(b) Occupy up to \_\_\_\_ (\_\_\_\_) square feet of ground space adjacent to the Tower with Tenant's cellular common carrier mobile radio telephone base station transceiver and associated equipment upon a poured concrete foundation, as shown in attached Exhibit C. Tenant's cabinet, transmission lines, radio communications facilities, including without limitation utility lines, transmission lines, electronic equipment, radio transmitting and receiving antennas and supporting equipment and structures thereto, shall be collectively referred to as "Tenant's Equipment." The contents of Exhibits B and C may be revised by the Tenant from time to time by providing revised versions of such Exhibits to the Landlord. Such revisions shall not cause a revision in rent payable by the Tenant under the terms of this Agreement and shall be effective thirty (30) days from the delivery of same to the Landlord.

- (c) Extend and connect lines for signal carriage and amplifier power between Tenant's antennas upon the Tower and Tenant's Equipment upon the ground;
- (d) Extend and connect utility lines and related infrastructure between Tenant's Equipment and suitable utility company service connection points;
- (e) Traverse the Site as reasonably necessary to accomplish Tenant's purpose contemplated herein.

2. Improvements and Purpose.

(a) Use. Tenant shall be permitted to use the Site and the Tower to install, operate, and maintain thereon common carrier radio base station equipment, including system networking, station control and performance monitoring functions, and for no other use or purpose. Tenant's installation of Tenant's Equipment on the Tower and the Site shall be limited to the antennas and other equipment and frequencies agreed upon in advance by Landlord. Tenant's equipment shall at all times comply with and conform to all laws and regulations applicable thereto, and shall be subject to Landlord's review and approval which shall not be unreasonably withheld, conditioned or delayed, regarding Tenant's placement of equipment, method of installation, and all other matters which Landlord deems, in Landlord's reasonable opinion, to affect Landlord's own operations or interests.

(b) Plans and Specifications. Tenant, at the Tenant's expense and prior to commencing the installation of Tenant's Equipment, shall submit to Landlord the following: (i) detailed site plans and specifications setting forth the proposed antennas and other equipment, the height and location of such equipment, and the construction, installation, and other work to be performed on the Tower and the Site, and (ii) a list of all known frequencies licensed or assigned to Tenant by the Federal Communications Commission (the "FCC") to be used at the leased Site. Tenant shall not install any equipment or commence any work on the Tower or Site until Landlord approves Tenant's site plan, plans and specifications, and frequencies, such approval to be given in Landlord's reasonable/sole and absolute discretion. If Landlord does not approve Tenant's site plan, plans and specifications, or frequencies, Tenant may not install or construct Tenant's Equipment on the Tower or the Site.

(c) Compliance with Laws. Tenant's installation of Tenant's Equipment shall be in compliance with all present and future laws, regulations, and requirements of all federal, state or local authorities, and Tenant shall deliver to Landlord, prior to installing Tenant's Equipment on the Tower and the Site or structurally enhancing the Tower, all certificates, permits, licenses and other approvals required by any federal, state or local authority to install Tenant's Equipment or structurally enhance the Tower.

3. Duration. The initial term of this Agreement shall be five (5) years, commencing on the 1<sup>st</sup> of the month after the start of construction or \_\_\_\_\_, 20\_\_ and expiring on the last day of the month in which the 5<sup>th</sup> annual anniversary of the Commencement Date occurred. Thereafter, provided that it has faithfully performed its obligations under this Agreement, Tenant shall have the option to extend its occupation of the Leased Space, continuing all the same

conditions and provisions hereof, for four (4) additional terms of five (5) years each. This Agreement shall automatically renew unless Tenant shall notify Landlord, in writing, of Tenant's intention not to renew this Agreement, at least one hundred twenty (120) days prior to the expiration of the initial term, or as applicable, any additional term.

4. Base Rent. Tenant shall pay to Landlord as a Base Rent pursuant to this Agreement in the basic amount of One Thousand Two Hundred Dollars (\$1,200.00) per month which amount shall be due on the first (1st) day of each calendar month. Payments not received by the tenth day of the month when due shall be subject to the imposition of a late payment charge at the rate of five percent (1.5%) per month until paid. Annually, on the first day of a month immediately following the Commencement Date, and every year thereafter for the duration of this Agreement, the amount of the monthly rent which Tenant shall pay to Landlord shall be increased by an amount equal to three percent (3%) of the Base Rent in effect during the previous year. Until further notice, checks should be made payable to: \_\_\_\_\_, and mailed to \_\_\_\_\_. Landlord's FEIN is \_\_\_\_\_.

5. Utilities. Tenant shall solely and independently be responsible for the separate metering, billing, and payment of utility services consumed by Tenant's operations. Landlord agrees to grant Tenant or its designated utility provider easements reasonably required for the delivery of electricity and telephone services to Tenant's operations.

6. Mechanic's Liens. Tenant shall keep the Tower and the Site free and clear of all mechanic's and materialmen's liens arising from or relating to the installation, repair, maintenance, or removal of the Tenant's Equipment on or from the Tower or the Site and Tenant's structural enhancement of the Tower, if any, and for a one hundred twenty (120) day period after completion of the installation, repair, maintenance, or removal of the Tenant's Equipment on or from the Tower or the Site or any structural enhancements to the Tower. If a mechanic's or materialmen's lien is filed against the Tower or the Site as a result of Tenant's installation, repair, maintenance, or removal of the Tenant's Equipment on or from the Tower or the Site or structural enhancement of the Tower, Tenant shall cause any such lien to be bonded or discharged of record within twenty (20) days of being notified of the lien. If Tenant fails to bond or discharge the lien within such twenty (20) day period, Landlord, in addition to any other rights or remedies available at law or equity, shall have the right to discharge the lien by paying the amount claimed to be due or to bond the lien. Any amount paid by Landlord in discharging or bonding any lien together with all costs and expenses, including, without limitation, attorneys fees and costs, shall be immediately due and payable by Tenant upon demand from Landlord and Tenant agrees to indemnify and hold Landlord harmless from all such amounts.

7. Taxes. Landlord shall be responsible for payment of all personal and real property taxes assessed directly upon and arising solely from the Tower and Landlord's Equipment or use of Landlord's communications system on the Site; provided, however, if Landlord's personal or real property taxes increase as a result of Tenant's Equipment or any improvements constructed by Tenant on the Site, Tenant shall be responsible for payment of the increase in Landlord's personal and real property taxes. Tenant shall be responsible for payment of all personal property and any other taxes assessed directly upon and arising from Tenant's Equipment or the Tenant's use of Tenant's Equipment on or about Tower or the Site.

## 8. Maintenance and Repairs.

(a) Tower and Landlord's Equipment. Landlord shall be responsible for proper maintenance of the Tower, and Landlord covenants to keep the Tower in good condition and repair, and in compliance with rules and regulations enforceable by the Federal Communications Commission, the Federal Aviation Administration, and other governmental authorities, provided, however, in the event Tenant's Equipment cause increased maintenance, repairs, or replacements to the Tower, Tenant shall pay the cost of the increased maintenance, repairs and replacements to Landlord within thirty (30) days of receipt of written notice and copy of an itemized invoice from Landlord. Tenant shall be responsible for the proper maintenance of Tenant's Equipment.

(b) Tenant's Equipment. Tenant, at Tenant's expense, shall maintain, repair and replace Tenant's Equipment during the term or any renewal terms of this Agreement provided that any alterations, modifications, repairs or replacements to Tenant's Equipment do not increase the number of antennas, cables or other equipment in the Tower Space, or increase the size or weight thereof, or materially alter the location or appearance thereof without prior written approval from Landlord. In order to protect the integrity of the Tower, Tenant agrees that any maintenance, repair and/or replacement performed on the Tenant's Equipment on the Tower or Site shall be done in a workmanlike manner and all work shall be performed in a manner consistent with Landlord's high quality construction standards. Further, any maintenance, repair or replacement work performed on the Tenant's Equipment shall not interrupt or interfere with the operation of Landlord's communications system or Landlord's Equipment unless Landlord agrees to such interruption or interference in writing. Tenant shall have twenty-four (24) hour access for routine maintenance of base station equipment. Tenant shall provide Landlord with at least forty-eight (48) hours notice prior to any maintenance, repair or replacement that requires access to the Tower unless an emergency exists, in which case notice shall be provided to Landlord at least twenty-four (24) hours after access to the Tower or Site has occurred. Landlord shall have the right to have a representative present during any maintenance, repair or replacement on the Tenant's Equipment that requires access to the Tower or the Site.

9. Access. Tenant shall at all times have unrestricted access to Tenant's equipment; provided, however, that its access to the Tower shall be limited to the installation, removal, and periodic maintenance of Tenant's antennas and lines at Tenant's sole expense by a qualified tower services contractor approved in advance by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. In addition, the Tenant shall have the right to allow qualified inspectors to examine/inspect the structural integrity of the Tower at such times as they deem reasonable. These inspections shall also be definitive on whether the Landlord is or is not in compliance under the requirements of Section 8(a) herein. In the event that such inspection shall detect a lack of the required maintenance of the Tower, Tenant shall have the inspector provide a detailed summary of such deficiencies to the Landlord. Upon receipt of such summary, the Landlord shall have thirty (30) days to cure all such deficiencies or the Tenant shall have the right to cure same. Any expenses incurred by the Tenant in performing maintenance on the Tower required to be performed by the Landlord may be recovered by the from the Landlord or t their option, may e utilized as an offset on rent payable by the Tenant under the terms of this Agreement.

10. Interference. Tenant agrees not to allow any use of Tenant's Equipment, the Tower, or the Site that may cause interference with or cause the improper operation of the Tower, Landlord's related equipment, Landlord's communications signal or system, or any third party's equipment or communications system located on the Tower prior to Tenant's use of the Tower. In the event Tenant's Equipment or Tenant's use of the Tower or the Site causes measurable interference with or the improper operation of the Tower, Landlord's related equipment or communications system or any third party's equipment or communications system located on the Tower prior to Tenant's use of the Tower, Tenant, upon notification of such interference, agrees to promptly remedy such interference at Tenant's cost and, if necessary, agrees to cease operations (other than tests) until such interference is corrected to Landlord's sole satisfaction. Landlord agrees not to allow any subsequent third party's use of equipment, the Tower, or the Site that may cause interference with or cause the improper operation of the Tower, the Tenant's related equipment, or the Tenant's communications signal or system. In the event any subsequent third party causes measurable interference with or the improper operation of the Tower, Tenant's related equipment or communications system, Landlord, upon notification of such interference, agrees to promptly remedy such interference to Tenant's sole satisfaction, at Landlord's cost.

11. Interruptions. Landlord and Tenant agree that Landlord shall have no responsibility or liability whatsoever for interruptions, disruptions, or failures in the Tenant's Equipment or the operation of the Tenant's Equipment including, without limitation, equipment failures, utility failures, structural failures, or otherwise. Landlord shall not give any unauthorized access to Tenant's Equipment; however, Landlord shall not be responsible to Tenant for any unauthorized access thereto. In all maintenance, repair, or replacement work performed by Landlord on Landlord's Equipment or the Tower, Landlord shall take all reasonable steps to not interrupt or interfere with the operation of Tenant's communications system or equipment without Tenant's written agreement.

12. Compliance with Laws. Tenant shall comply with all present and future laws, regulations, and requirements of all federal, state, and local governments and their agencies as they relate to the use, operation, maintenance, repair, replacement, and occupancy of the Tower, the Site, and the Tenant's Equipment, as the case may be. Without limiting the foregoing, the Tenant shall at all times use, operate, maintain, repair, replace, and occupy the Tower, and the Site, and the Tenant's Equipment, as the case may be, in accordance with all FCC, FAA, and all other regulations, ordinances or laws.

13. Compliance with FCC Radio Frequency Emissions Requirements.

(a) It shall be the responsibility of the Tenant to ensure that Tenant's use, installation, or modification of Tenant's radios, signal carriage devices and antennas (Tenant's Equipment") at the Site does not cause radio frequency exposure levels of all the existing equipment located at the Site and in the surrounding vicinity including the Tenant's Equipment, Landlord's equipment and all other transmitting equipment in the vicinity to exceed those levels permitted by the Federal Communications Commission ("FCC"). Landlord shall require other communications users of the Site to bear the same responsibility.

(b) If it is determined that the radio frequency levels at the Site and surrounding

vicinity exceed exposure levels set by the FCC and the responsible party causing such exposure cannot be identified, then Tenant shall reconfigure Tenant's Equipment, including but not limited to reducing power levels, as reasonably directed by Landlord, and shall equitably share in all expenses incurred by Landlord as are necessary in order to meet FCC compliance levels.

(c) Tenant shall reimburse Landlord, within 30 days following receipt of an invoice from Landlord, for reasonable expenses or costs incurred by Landlord to perform FCC RF compliance tests for human exposure to RF radiation as a result of the installation, existence or subsequent modification of Tenant's Equipment at the Site.

(d) Tenant agrees that in the event there is any change to applicable rules, regulations, and procedures governing exposure to radio frequency radiation which place the Site in non-compliance, Tenant will cooperate with Landlord and other users of the Site to bring the Site into compliance, which cooperation shall include, but not be limited to, sharing pro rata the costs associated with bringing the Site into compliance.

(e) Tenant acknowledges and agrees that, upon reasonable prior notice (except for emergency situations), Tenant shall reduce operating power or cease operation of Tenant's Equipment when it is necessary to prevent the overexposure of workers on the Tower to RF radiation.

14. Mutual Indemnification. Landlord and Tenant shall each indemnify and hold harmless the other against and from any and all claims, demands, liability, loss, cost or expense, including reasonable attorney fees, resulting from their own respective negligent acts and omissions or the negligent acts and omissions of their respective employees in the course of their employment or the negligent acts and omissions of their respective contractors and invitees.

15. Insurance. Tenant shall have adequate insurance at all times at Tenant's expense which coverages shall include but are not limited to the following: Commercial Workers' Compensation Insurance as required by law, Commercial General Liability Insurance with a minimum combined single limit of \$2,000,000 covering personal injury and property damage, (which may be provided in any combination of primary and excess coverage); Employer's Liability Insurance with a minimum combined single limit of \$1,000,000; and Commercial Automobile Liability Insurance for any motor vehicle, covering bodily injury and property damage with a minimum combined single limit of \$500,000. The foregoing insurance shall be issued on an occurrence basis, shall be primary with respect to any liability assumed by Tenant hereunder, shall name Landlord as an additional insured if specifically requested, and include a waiver of subrogation in favor of Landlord. Tenant shall provide Landlord with certificates of insurance evidencing the required coverage and shall give Landlord written notice if the coverage represented in these certificates is reduced or canceled.

Notwithstanding the foregoing, Tenant, nor any employee, contractor, subcontractor or agent of Tenant, shall allow any person to enter upon or climb on the Tower without inclusion of such person under its insurance policy coverage as required hereunder or without ensuring that such person is adequately insured and using appropriate preventive fall protection.

16. Opportunity to Cure Defaults. If Tenant fails to comply with any provision of this Agreement which Landlord claims to be a default hereof, Landlord shall serve written notice upon Tenant specifying the default, whereupon a grace period of thirty (30) days shall commence to run during which Tenant shall undertake and diligently pursue a cure of the default. Such grace period shall automatically be extended for an additional thirty (30) days, provided Tenant makes a good faith showing that efforts toward a cure are continuing.

17. Transfer of Tenant's Interest. Tenant's interest under this Agreement shall be assignable by Tenant, without the necessity of obtaining Landlord's consent, in connection with the transfer to the named holder of a FCC license or to an affiliate, subsidiary or partner of Tenant. Any other assignment of this Agreement by Tenant shall require Landlord's prior written consent, the approval of which shall not be unreasonably withheld.

18. Multiple Users. Tenant shall not sublet or otherwise subdivide the Leased Space or any portion thereof, or permit the Leased Space to be occupied by multiple simultaneous users claiming through or under Tenant.

19. Removal of Tenant's Property. Tenant's Equipment is agreed to be Tenant's personal property, and Tenant shall at all times be authorized to create security interests in said property specifically itemized, and to remove said property from the Leased Space free from any lien of Landlord. Upon the expiration or earlier termination of this Agreement, Tenant: (i) shall remove Tenant's Equipment in a good, efficient, and workmanlike manner and in compliance with all applicable legal requirements, (ii) shall repair any damage caused to the Tower and the Site caused by such removal, (iii) shall not interrupt or interfere with the operation of Landlord's communications system or Landlord's Equipment in removing Tenant's Equipment, and (iv) shall surrender the Tower and the Site in good condition, ordinary wear and tear excepted. In the event Tenant fails to remove any of Tenant's Equipment from the Tower or the Site within sixty (60) days of the expiration or earlier termination of this Agreement, Tenant shall be deemed to have abandoned Tenant's Equipment and Landlord shall be free to remove and dispose of Tenant's Equipment in any manner determined by Landlord, in Landlord's sole and absolute discretion, and without any liability to Tenant therefor. If Tenant is deemed to have abandoned Tenant's Equipment to Landlord, pursuant to the preceding sentence, Tenant shall reimburse Landlord within thirty (30) days of Tenant's receipt of an invoice from Landlord, for all costs incurred by Landlord in removing and disposing of Tenant's Equipment, such obligation to reimburse Landlord to survive the termination of this Agreement. Notwithstanding the foregoing, Tenant shall not have the right to, and may not, remove any structural enhancements to the Tower, such structural enhancements becoming the property of Landlord upon the expiration or earlier termination of this Agreement.

20. Default.

(a) Event of Default. The occurrence of one (1) or more of the following events shall constitute an "Event of Default" hereunder:

(i) Monetary Default. The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when

due, where such failure shall continue for a period of ten (10) days after written notice thereof is received by Tenant from Landlord.

(ii) Other Default. The failure by a party to observe or perform any of the covenants or provisions of this Agreement to be observed or performed by such party, where such failure shall continue for a period of fifteen (30) days after written notice thereof is received from the other party; provided, however that it shall not be deemed an Event of Default by a party if the other party commences to cure such failure within such fifteen (30) day period and thereafter diligently prosecutes such cure to completion.

(b) Termination. If there occurs an Event of Default by Tenant, in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the right to terminate this Agreement and all rights of Tenant hereunder. If there occurs an Event of Default by Landlord or if any permit or any approval of any federal, state or local government entity is cancelled, expires, terminated or withdrawn, or in addition to any other remedies available to Tenant at law or in equity, Tenant shall have the right to terminate this Agreement without further obligation under this Agreement other than the removal of Tenant's Equipment.

21. Termination. Tenant shall have the right to terminate this agreement at any time upon one (1) years prior written notice by Tenant to Landlord subsequent to the fifth (5<sup>th</sup>) year anniversary of the commencement date of this Agreement upon paying Landlord a termination fee equal to one (1) years rent at the rental rate in effect on the effective date of such termination and payable on the effective date of the termination.

22. Destruction. If the Tower is totally or substantially destroyed, Landlord, in Landlord's sole and absolute discretion, may terminate this Agreement or may rebuild the Tower at Landlord's expense. If Landlord elects to terminate this Agreement, all rights and obligations of Landlord and Tenant arising after the termination date shall terminate. If Landlord elects to rebuild the Tower, Tenant shall not be required to pay rent while the Tower is being rebuilt unless Landlord provides Tenant with alternative space.

23. Condemnation.

(a) Permanent and Entire Condemnation. In the event the Tower and the Site are permanently and entirely taken or condemned for public purposes or sold to a condemning authority under threat of condemnation, this Agreement shall terminate on the date of condemnation or sale. Upon termination of this Agreement, all rights and obligations of Landlord and Tenant arising after the termination date shall terminate.

(b) Temporary or Partial Condemnation or Damage. In the event the Tower and the Site are temporarily damaged, taken, or condemned in their entirety or in the event a portion of the Tower or the Site is temporarily or permanently damaged, taken, or condemned whereby the Tower is not able to be utilized by the Tenant as it was on the effective date for a period of one (1) year or more, then the Tenant shall have the right to terminate this Agreement from the time of the damage, taking, or condemnation until the

Leased Space is in its original condition. Landlord shall have the right to terminate this Agreement by giving Tenant written notice thereof or to provide alternative space to Tenant, such alternative space to be acceptable to Tenant in Tenant's sole and absolute discretion. If the alternative space is unacceptable to Tenant, Tenant shall give Landlord written notice thereof and, upon Landlord's receipt of such written notice, this Agreement shall terminate. If either Landlord or Tenant elects to terminate this Agreement, all rights and obligations of Landlord and Tenant arising after the termination date shall terminate, except for the parties' obligations concerning termination.

(c) Condemnation Award. Landlord shall receive the entire condemnation award for the Tower, Landlord's Equipment and the leasehold interest in the Site and Tenant hereby assigns to Landlord any and all right, title and interest of Tenant in and to such award. Tenant shall have the right to recover from such authority, but not from Landlord, any compensation awarded to Tenant on account of Tenant's Equipment, Tenant's moving and relocation expenses, and Tenant's lease interest.

24. Quiet Enjoyment. Landlord covenants that Tenant shall have quiet enjoyment of the Leased Space throughout the duration of the Agreement, as the same may be renewed and extended, and that Landlord will not intentionally disturb Tenant's occupation thereof as long as Tenant is not in default under this Agreement.

25. Attorney's Fees. In any action at law or in equity, the substantially prevailing party shall be entitled to recover the reasonable costs and expenses of its successful case, including reasonable attorney's fees and costs of appeal from the non-prevailing party.

26. Binding Effect. All of the covenants, conditions, and provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

27. Entire Agreement. This Agreement constitutes the entire contract between the parties, and supersedes any prior understanding or oral or written agreements between them respecting the within subject matter.

28. Modifications. This Agreement may not be modified, except in writing signed by the party against whom such modification is sought to be enforced.

29. Severability. If any term of this Agreement 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. The parties shall agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

30. Authority. The persons who have executed this Agreement represent and warrant that they are duly authorized to execute this Agreement in their individual or representative capacity as indicated.

31. Environmental.

(a) **Definitions:** For purpose of this Agreement, the Term “Hazardous Substances” shall be defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sections 9601 et seq., and any regulations promulgated pursuant thereto, and as used to define, “Hazardous Wastes” in the Resource Conservation and Recovery Act 42 U.S.C. Sections 6901 et seq., and any regulations promulgated thereto. For purposes of this Lease, the term “Environmental Laws” shall mean any and all local, state and Federal statutes, regulations or ordinances pertaining to the environmental or natural resources.

(b) **Duty of Tenant:** Tenant shall not (either with or without negligence) cause or permit the use, storage, generation, escape, disposal or release of any Hazardous Substances or Hazardous Wastes in any manner not sanctioned by law. In all events, Tenant shall indemnify and hold Landlord harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorney’s fees, and consultants’ and experts’ fees) from the presence or release of any Hazardous Substances or Hazardous Wastes on the Lease Premises if caused solely by Tenant or persons acting under the direction and control of Tenant. Tenant shall execute such affidavits, representations and the like from time to time as Landlord may reasonably request concerning Tenant’s best knowledge and belief as to the presence of Hazardous Substances or Hazardous Wastes on the Leased Premises.

(c) **Duty of Landlord:** Landlord shall not (either with or without negligence) cause or permit the use, storage, generation, escape, disposal or release of any Hazardous Substances or Hazardous Wastes in any manner not sanctioned by law. In all events, Landlord shall indemnify and hold Tenant harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorney’s fees, and consultants’ and experts’ fees) from the presence or release of any Hazardous Substances or Hazardous Wastes on the property unless caused solely by Tenant or person acting under the direction and control of Tenant. Landlord shall execute such affidavits, representations and the like from time to time as Tenant may reasonably request concerning Landlord’s best knowledge and belief as to the presence of Hazardous Substances or Hazardous Wastes on the Property.

(d) **Effect of Mutual Indemnification:** The indemnifications contained in this Section specifically include costs incurred in connection with any investigation of site conditions by either party or third parties or any cleanup remedial, removal or restoration work required by any governmental authority. Notwithstanding any other provisions in this Agreement, the provisions of this Section will survive the expiration or termination of this Agreement and either party shall have the right to summarily terminate this Agreement, without giving notice required under this Agreement, in the event of default of the other under this Section.

32. Applicable law. This Agreement shall be construed, performed and enforced in accordance with the laws of the State in which the Leased Space is located.

33. Notices. Any notice, request or demand required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if delivered by messenger at the address of the intended recipient, sent prepaid by Federal Express (or a comparable guaranteed overnight delivery service), or deposited in the United States first class

mail (registered or certified, postage prepaid, with return receipt requested), addressed to the intended recipient at the address set forth below or at such other address as the intended recipient may have specified by written notice to the sender in accordance with the requirements of this paragraph. Any such notice, request, or demand so given shall be deemed given on the day it is delivered by messenger at the specified address, on the day after deposit with Federal Express (or a comparable overnight delivery service), or on the day that is two (2) days after deposit in the United States mail, as the case may be.

LANDLORD:

\_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Site Name/Number: \_\_\_\_\_

TENANT:

Airadigm Communications, Inc.  
Attention: Contract Administrator  
2301 Kelbe Drive  
Little Chute, WI 54140  
Site Name/Number: APP013

34. Waiver of Compliance. Any failure of the Tenant to comply with any obligation, covenant, agreement or condition herein may be expressly waived by Landlord, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

35. Survival. The representations, warranties, and indemnifications contained herein shall survive the termination or expiration of this Agreement.

**END OF AGREEMENT - SIGNATURE PAGE TO FOLLOW**

**Signature Page**

IN WITNESS WHEREOF, the parties hereto bind themselves to this *Tower and Ground Space Lease Agreement* as of the day and year first above written

**LANDLORD**

\_\_\_\_\_

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

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT**

**Airadigm Communications, Inc.**

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

Printed: \_\_\_\_\_ Robert J. Galle

Title: \_\_\_\_\_ CEO

**ACKNOWLEDGEMENTS**

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, hereby certify that [name] \_\_\_\_\_, [title] \_\_\_\_\_, known to me to be the same person who signed the foregoing "Tower and Ground Space Lease Agreement," personally appeared before me this day and acknowledged that, pursuant to his authority, he signed the said Agreement as his free and voluntary act on behalf of said corporation for the uses and purposes therein stated.

Witness my hand and official seal the day \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

Notary Public

STATE OF WISCONSIN )  
 )  
COUNTY OF OUTAGAMIE )

I, the undersigned, a Notary Public in and for the State of Wisconsin, hereby certify that [name] \_\_\_\_\_ [title] \_\_\_\_\_, known to me to be the same person who signed the foregoing "Tower and Ground Space Lease Agreement," personally appeared before me this day and acknowledged that, pursuant to his authority, he signed the said Agreement as his free and voluntary act of said corporation, for the uses and purposes therein stated.

Witness my hand and official seal the day \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

Notary Public

Site Number: APP013

Site Name: Plank Road

**Exhibit A**  
**Legal Description**

Site Number: APP013

Site Name: Plank Road

**Exhibit B  
Equipment**

Site Number: APP013

Site Name: Plank Road

**Exhibit C**  
**Site Description**