

**VILLAGE OF WARRENSBURG, ILLINOIS**

**ORDINANCE NO. 757**

**AN ORDINANCE AUTHORIZING AND APPROVING SITE  
LEASE WITH BRANDON RARICK FOR INSTALLATION  
OF ANTENNAS AND RELATED EQUIPMENT**

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**ADOPTED BY  
THE BOARD OF TRUSTEES OF  
THE VILLAGE OF WARRENSBURG**

**THIS 16<sup>th</sup> DAY OF FEBRUARY, 2021**

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**Published in pamphlet form by authority of the Board of Trustees of  
the Village of Warrensburg, Macon County, Illinois,  
this 16<sup>th</sup> day of February, 2021**

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WHEREAS, the Village of Warrensburg ("Warrensburg"), has identified that reliable, high speed internet service is a critical component of conducting business in the Warrensburg community; and

WHEREAS, Warrensburg recognizes that reliable, high speed internet service is a important aspect to improve the lives of families, businesses, farmers, and other residents of Warrensburg for all components of life from health care to education; and

WHEREAS, increasing the opportunity for reliable, high speed internet service will also help provide community connectivity to serve students, faculty, local governments, and assist in disaster recovery services and data, video and audio communication; and

WHEREAS, A.C.T.S., LLC, an Illinois Limited Liability Company ("A.C.T.S.") offers fixed wireless internet and fiber internet service in central Illinois; and

WHEREAS, A.C.T.S. has offered to provide improved internet service in the Warrensburg community under the terms and conditions as set forth in the attached Non-Exclusive Franchise Agreement for Internet Service Infrastructure; and

WHEREAS, Warrensburg anticipates entering into a non-exclusive franchise agreement with A.C.T.S.; and

WHEREAS, in connection with the provision of improved internet service, it is necessary at that the Village provide a location on an existing water tower for the installation of a maximum of six (6) antennas located at a height of approximately 100 feet; a location of approximately 300 square feet at the base of the water tower for cable runs; and a non-exclusive easement for the unrestricted right of access thereto and for suitable service of electricity, telephone, and other utility facilities, all collectively referred to as the

“Site” or “Leased Premises”; and Brandon Rarick, as Lessee (“Lessee”), will provide access to the site to A.C.T.S. for purposes of improved internet services; and

WHEREAS, Lessee has proposed a Site Lease for a period five (5) years commencing on the date Lessee commences construction at the site or not to exceed 90 days, whichever occurs first, which lease term shall automatically be extended by Lessee for five (5) additional five (5) year periods provided that Lessee does not provide Warrensburg with written notice of his intention not to renew, all as set forth in the proposed Site Lease attached to this Ordinance.

NOW, THEREFORE BE IT HEREBY ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WARRENSBURG:

**Section 1:** The Site Lease between the Village of Warrensburg, Illinois, as Owner, and Brandon Rarick, as Lessee for a period of five (5) years, commencing on the date Lessee commences construction at the site or not to exceed 90 days, whichever occurs first, with automatic extensions for five (5) additional five (5) year periods, in substantially the same form as attached hereto and made a part hereof, be and is hereby authorized and approved.

**Section 2:** That reimbursement for utilities from the Lessee shall be negotiated between the parties in an amount not to exceed Fifty Dollars (\$50.00) per month (“Base Reimbursement for Utilities”), plus One Dollar (\$1.00) for each authorized customer who utilizes the antenna facilities (“Additional Reimbursement for Utilities”). During each subsequent renewal term, the amount of Base Rent shall increase by \$25.00 and the Additional Reimbursement for Utilities shall increase by \$00.25.

**Section 3:** The President of the Board of Trustees and the Village Administrative Clerk be and are hereby authorized to execute the Site Lease.

**Section 4:** The Village Administrative Clerk of the Village of Warrensburg shall certify to the adoption of this Ordinance and shall cause it to be published in pamphlet form and this Ordinance shall take effect upon its passage and publication in pamphlet form, as so certified, in the manner, form, and time as provided by the laws of the State of Illinois.

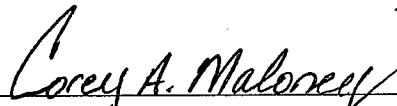
TRUSTEES:

Ray Ewing	Aye - <u>X</u>	Nay - ___	Absent - ___
Douglas Fisher	Aye - <u>X</u>	Nay - ___	Absent - ___
Leland Hackl	Aye - <u>X</u>	Nay - ___	Absent - ___
Kerry Hood	Aye - <u>X</u>	Nay - ___	Absent - ___
Nelson E. Lock	Aye - <u>X</u>	Nay - ___	Absent - ___
John Oakley	Aye - <u>X</u>	Nay - ___	Absent - ___
Corey Maloney	Aye - ___	Nay - ___	Absent - ___

PRESENTED, PASSED and APPROVED this 16<sup>th</sup> day of February, 2021.

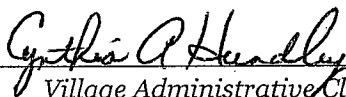
RECORDED this 16<sup>th</sup> day of February, 2021.

Approved:



\_\_\_\_\_  
President of the Board of Trustees of the  
Village of Warrensburg, Illinois

ATTEST:



\_\_\_\_\_  
Village Administrative Clerk of the  
Village of Warrensburg, Illinois

## SITE LEASE

THIS SITE LEASE ("Lease") is made and entered into on this day of 2021, by and between the \_\_\_\_\_ ("Owner" or "Village"), and Brandon Rarick ("Lessee").

### **1. Leased Site.**

- a. Village leases to Lessee, and Lessee leases from Village, on the terms and conditions contained herein, (a) space on the handrail of an existing water tower (the "Tower") for the installation of a maximum of six (6) antennas located at a height of approximately 100 ft., (b) a 300 square foot area at the base of the Tower which is required for cable runs to connect Lessee's equipment, and (c) a non-exclusive easement for the unrestricted right of access thereto and for a suitable service of electricity, telephone and other utility facilities under the property described on attached Exhibit A (collectively, the "Site" or "Leased Premises"). The parties acknowledge and agree that the Owner's execution of this Lease constitutes a permit for Lessee to use the Site and that Lessee intends to locate at the Site (as shown on the attached Exhibit A), a cellular antenna array and associated cables, wires, electrical equipment, base station, etc. (the "Antenna Facilities"). During the term of this Lease, Lessee, its employees, agents, invitees, and its authorized representatives and contractors shall have access as needed to the Tower and its equipment shelter twenty-four (24) hours per day, seven (7) days per week. Whenever practical, Lessee shall give advance notice of its intent to access the Tower to the Village of Warrensburg and to its Water Superintendent. The Owner reserves the right of access to the Site in emergencies as may be necessary to ensure the sound maintenance and safe operation of all facilities at the Tower site, but under no circumstances will the Village willfully damage or interfere with Lessee's access to or use of the Site.

### **2. Term.**

- a. The initial term ("Initial Term") of this Lease shall be for a period of five (5) years, commencing on the date Lessee commences construction at the Site or not to exceed 90 days, whichever occurs first (the "Commencement Date"),

### **3. Renewal Term.**

- a. The terms of this Lease may be automatically extended by Lessee for five (5) additional five (5) year periods (the "Renewal Terms") provided that Lessee does not provide the Owner with written notice of Lessee's intentions to not renew no less than ninety (90) days prior to the natural expiration of the prior Term.

#### **4. Reimbursement for Utilities.**

- a. On the first day of the month after Lessee's Antenna Facilities become operational, the first monthly Reimbursement for Utilities payment shall be due in the amount of Fifty Dollars (\$50.00) ("Base Reimbursement for Utilities") plus One Dollar (\$1.00) for each authorized customer who utilizes the Antenna Facilities ("Additional Reimbursement for Utilities"). During each subsequent Renewal Term, the amount of Base Reimbursement for Utilities shall increase by \$ 25, and the Additional Reimbursement for Utilities shall increase by \$ 00.25.

#### **5. Customers Records.**

- a. Lessee shall report any increase or decrease in the number of authorized customers to the Owner in the month immediately following such change. Lessee shall allow the Owner to audit his customer records upon request, but in no event shall an audit be requested more than two (2) times during any 12-month period.

#### **6. Maintenance.**

- a. Lessee shall have sole responsibility for the maintenance, repair and security of its Antenna Facilities, and shall keep the same in good repair and condition during the Term and any Renewal Terms of this Lease. Lessee shall keep the Site clean and neat with respect to Lessee's use, Lessee shall keep the Leased Premises free of debris and anything of a dangerous, noxious, or offensive nature which may create a hazard, undue vibration, heat, noise, or interference with other equipment or facilities of the Village.

#### **7. Utilities.**

- a. Lessee shall be responsible for all charges for utilities required for Lessee's operation of the Antenna Facilities, Said charges are incorporated into the Base Reimbursement for Utilities as described above. In the event that the utility charges related to Lessee's operation of the Antenna Facilities for a particular month exceed the amount of Base Reimbursement for Utilities, Lessee shall be responsible for paying the overage. Any additional costs incurred for the maintenance, repair, operation and/or replacement of utility services to the Site requested by Lessee shall be paid by Lessee. Lessee shall promptly repair any damage occasioned by said construction or maintenance at Lessee's sole expense.

#### **8. Interference.**

- a. Lessee's installation, operation, and maintenance of its Antenna Facilities

shall not damage or interfere in any way with the Owner's Tower operations or with such activities of other tenants of the Tower. In the event the Antenna Facilities cause such interference, the Village may provide written notice to Lessee to immediately remediate the issue. If said interference is substantial and cannot be resolved within 48 hours, Lessee must power down its equipment and cease operations until the issue can be corrected. If Lessee cannot correct the issue within fifteen (15) days of receipt of notice, Owner may terminate this Lease effective immediately. Upon termination of the Lease pursuant to this subsection, Lessee shall immediately remove the Antenna Facilities in its entirety, and Lessee shall incur rent of \$5.00 for each day that any portion of the Antenna Facilities remain on the Site after termination.

#### **9. Insurance.**

a. Lessee shall maintain, at its sole cost during the Term of this Lease, commercial general liability insurance insuring Lessee against liability for personal injury, death or damage to personal property arising out of the use of the Site by Lessee. Such insurance shall provide coverage in an amount not less than \$1 million for property damage. Lessee shall provide Owner with a certificate of insurance evidencing such coverage which states that the carrier has insured Lessee for all liabilities under this Lease and that it will not cancel or change any policy of insurance issued to Lessee except after thirty (30) days' notice in writing to Owner. Owner shall be added to the policy as an additional insured. The fact that Lessee is required to furnish insurance in accordance with this paragraph or the fact that such insurance is furnished does not and shall not relieve Lessee from its obligations to the Owner under the Indemnity provisions of this lease for any deficiency amount Lessee owes to the Owner. Owner shall insure its property, the Tower and building of which the Site is a part thereof, as the case may be, against loss or damage under a policy or policies of fire and extended coverage.

#### **10. Indemnity.**

a. Lessee and Owner shall indemnify and hold the other harmless from any and all costs (including, but not limited to, reasonable attorneys' fees and court costs) and claims of liability or loss which arise out of the use and/or occupancy of the Site by such indemnifying party, including liability or loss arising from environmental contamination.

#### **11. Assignment.**

a. Lessee shall not assign its rights and obligations under this Lease without prior written authorization from the Owner.

#### **12. Termination of Lease.**

a. Lessee shall have the right to terminate this Lease at any time

without further liability to Owner if (a) Lessee cannot obtain all certificates, permits, licenses or other approvals (collectively, "Approvals") required from any governmental authority and/or any easements required from any third party to operate its communications facility; (b) such Approvals are canceled, expire, laps, are withdrawn or terminated; or (c) if Lessee determines that it will be unable to use the Site for the use intended by this Lease. Owner can terminate this Lease for a material breach (other than a breach described in Paragraph 8 above) thirty (30) days after providing Lessee with written notice of said breach,

**13. Notices.**

a. All notices shall be in writing and sent by U.S. mail. Notice is deemed given three (3) days after being deposited in a U.S. mailbox. All notices must be sent to the respective parties at their address below:

Brandon Rarick PO Box 166 Moweaqua, IL

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**14. Miscellaneous.**

a. The terms and conditions of this Lease shall extend to and bind the heirs, personal representatives, successors and assigns of Owner and Lessee. Owner shall be entitled to receive from Lessee its reasonable attorney's fees, costs and expenses incurred in any action or proceeding in court to enforce the terms of this lease. This Lease shall be construed pursuant to the laws of the State of Illinois.

b. There shall be no signage on the Tower site by Lessee, other than reasonable signs for safety, signs required by federal and or state regulation, or emergency contact information.

c. This Lease contains all agreements, promises and understandings between Owner and Lessee. All Exhibits are incorporated by reference.

\_\_\_\_\_  
Owner(Village)

Date: \_\_\_\_\_

\_\_\_\_\_  
A.C.T.S LLC

Date: \_\_\_\_\_:



**Exhibit A:** Water Tower located behind the Village Hall at 155 E. Main Street P.O. Box 350,  
Warrensburg, IL 62573

STATE OF ILLINOIS     )  
                                  ) SS  
COUNTY OF MACON     )

**CERTIFICATE**

I, CYNTHIA A. HUNDLEY, certify that I am the duly appointed Village Administrative Clerk of the Village of Warrensburg, Macon County, Illinois.

I further certify that on the 16<sup>th</sup> day of February, 2021, the President and Board of Trustees of the Village of Warrensburg passed and approved Ordinance No. 757, entitled "An Ordinance Authorizing and Approving Site Lease with Brandon Rarick for Installation of Antennas and Related Equipment", which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 757, including Ordinance and cover sheet thereof was prepared, a copy of such Ordinance was posted in the Warrensburg Village Hall, the Barclay Public Library, and Warrensburg Post Office, commencing February 17, 2021, and continuing for at least 10 days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the Village Administrative Clerk.

DATED at Warrensburg, Illinois this 17<sup>th</sup> day of February, 2021.



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Village Administrative Clerk of the  
Village of Warrensburg, Illinois