

RESOLUTION NO. 34-04  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Robert L. Corbin ON THE  
18<sup>th</sup> DAY OF October, 2004.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SITE AGREEMENT, ON BEHALF OF THE CITY OF CENTERVILLE, WITH SPRINTCOM, INC., FOR THE LEASE OF PROPERTY OWNED BY THE CITY OF CENTERVILLE.

WHEREAS, The City of Centerville owns property at 8000 South Suburban Road in the City of Centerville, and

WHEREAS, SprintCom, Inc., a Kansas Corporation ("Sprint PCS") desires to lease land on this site consisting of approximately 6960 square feet, to construct its base station equipment and antenna support structure as well as space required for cable runs to connect its equipment and antennas in locations specified in a Site Agreement, together with non-exclusive easements for reasonable access, for placement of an underground grounding system, and for access to the appropriate source of electric and telephone facilities, in the discretion of Sprint PCS, and

WHEREAS, the City of Centerville, the lessor, desires to enter into a Site Agreement with SprintCom, Inc., the lessee, for the use of approximately 6960 square feet at 8000 South Suburban Road.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager be and is hereby authorized to enter into a Site Agreement between the City of Centerville and SprintCom, Inc., a Kansas Corporation ("Sprint PCS"), a copy of which is attached hereto, incorporated herein, and marked as Exhibit "A".

PASSED this 18<sup>th</sup> day of October, 2004.

C. Mark Kegees  
Mayor of the City of Centerville, Ohio

ATTEST:

Marilee J. McLaughlin  
Clerk of Council, City of Centerville, Ohio

**CERTIFICATE**

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 34-04, passed by the Council of the City of Centerville, Ohio, on the 18<sup>th</sup> day of October, 2004.

Marilee J. McLaughlin  
Clerk of Council

Approved as to form, consistency with existing Ordinances, the Charter and Constitutional Provisions.

Department of Law  
Scott A. Liberman  
Municipal Attorney

**SITE AGREEMENT**

Site Name: Suburban

Sprint PCS Site ID #: CI60XC309A

1. Premises and Use. Owner leases to SprintCom, Inc., a Kansas Corporation ("Sprint PCS"), the site described below [Check all appropriate boxes]:

- Land consisting of approximately 6960 square feet upon which Sprint PCS will construct its
  - base station equipment and  antenna support structure;
- Building interior space consisting of approximately \_\_\_\_\_ square feet for placement of base station equipment;
- Building exterior space consisting of approximately \_\_\_\_\_ square feet for placement of base station equipment;
- Building exterior space for attachment of antennas;
- Tower space between the \_\_\_\_\_ foot and \_\_\_\_\_ foot level on the tower for attachment of antennas;

as well as space required for cable runs to connect its equipment and antennas in the location(s) shown on Exhibit A, attached hereto, together with non-exclusive easements for reasonable access thereto, for placement of an underground grounding system, and for access to the appropriate source of electric and telephone facilities, in the discretion of Sprint PCS (the "Site"). The Site will be used by Sprint PCS for the purpose of installing, removing, replacing, modifying, maintaining and operating, at its expense, communications service facilities, including, without limitation, antenna and base station equipment, cable, wiring, back-up power sources (including generators and fuel storage tanks), related fixtures and, if applicable to the Site, an antenna support structure (the "Facilities"). Sprint PCS will use the Site in a manner which will not unreasonably disturb the occupancy of Owner's other tenants, if any. Sprint PCS will have unrestricted access to the Site 24 hours per day, 7 days per week. Upon prior written approval by Sprint PCS, Owner will be entitled to install City of Centerville public safety antennae to the antenna support structure. Such installation shall be subject to the structural capacity of the tower and shall not interfere with future collocation. Sprint PCS shall not be entitled to any rent for such installation by the City of Centerville.

2. Term. The term of this Agreement (the "Initial Term") is 5 years, commencing on the date that both Owner and Sprint PCS have executed this Agreement ("Lease Commencement Date"). This Agreement will be automatically renewed for 4 additional terms of 5 years each (each a "Renewal Term"), unless Sprint PCS provides Owner with notice of its intention not to renew not less than 90 days prior to the expiration of the Initial Term or any Renewal Term.

3. Rent. Until the date which is 60 days after the issuance of a building permit, or if no building permit is required, the date that is 60 days after the date Sprint PCS commences installation of the Facilities at the Site ("Rent Commencement Date"), rent will be a one-time aggregate payment of \$100, the receipt of which Owner acknowledges. Thereafter, rent will be paid in advance in equal monthly installments of \$1,495.00 (until increased as set forth herein), partial months to be prorated. Rent for each Renewal Term will be increased on the anniversary of the Lease Commencement Date to an amount equal to 110% of the rental rate in effect for the prior Term. Notwithstanding anything contained in this Section, Sprint PCS' obligation to pay rent is contingent upon Sprint PCS' receipt of a W-9 form setting forth the tax identification number of Owner or of the person or entity to whom rent checks are to be made payable as directed in writing by Owner.

4. Title and Quiet Possession. Owner represents and warrants to Sprint PCS and further agrees that: (a) it is the owner of the Property; (b) it has the right to enter into this Agreement; (c) the person signing this Agreement has the authority to sign; (d) Sprint PCS is entitled to access the Site at all times and to the quiet possession of the Site throughout the Initial Term and each Renewal Term so long as Sprint PCS is not in default beyond the

expiration of any cure period; and (e) Owner will not have unsupervised access to the Site or to the Facilities.

5. Assignment/Subletting. Sprint PCS will have the right to sublease all or any portion of the Site, or assign its rights under this Agreement without notice to or consent of Owner.

6. Notices. All notices must be in writing and are effective only when deposited in the U.S. mail, certified and postage prepaid, or when sent via overnight delivery. Notices to Sprint PCS are to be sent to: Sprint National Lease Management, 6391 Sprint Parkway, Mailstop KSOPHT0101-Z2650, Overland Park, Kansas 66251-2650, with a copy to: Sprint Law Department, 6391 Sprint Parkway, Mailstop KSOPHT0101-Z2020, Overland Park, Kansas 66251-2020, Attn.: Sprint PCS Real Estate Attorney. Notices to Owner must be sent to the address shown underneath Owner's signature.

7. Improvements. Sprint PCS may, at its expense, make improvements on the Site as it deems necessary or desirable from time to time for the operation of the Facilities. Owner agrees to cooperate with Sprint PCS with respect to obtaining any required zoning or other governmental approvals for the Site and the Facilities. Upon termination or expiration of this Agreement, Sprint PCS will remove the Facilities and will restore the Site to substantially the condition (down to a depth of one foot below ground level) existing on the Lease Commencement Date, except for ordinary wear and tear and casualty loss. Upon execution of this Agreement, Sprint PCS shall submit a removal bond to Owner, sufficient to cover the expense of removal as contemplated in this paragraph.

8. Compliance with Laws. Owner represents and warrants to Sprint PCS that Owner's property (including the Site), and all improvements located thereon, are in substantial compliance with building, life/safety, disability and other laws, codes and regulations of applicable governmental authorities. Sprint PCS will substantially comply with all applicable laws relating to its possession and use of the Site.

9. Interference. Sprint PCS will resolve technical interference problems with other equipment located at the Site on the Lease Commencement Date or any equipment that becomes attached to the Site at any future date when Sprint PCS desires to add additional equipment to the Site. Likewise, Owner will not permit or suffer the installation of any equipment after the Lease Commencement Date that: (a) results in technical interference problems with the Facilities; or (b) encroaches onto the Site.

10. Utilities. Owner represents and warrants to Sprint PCS that all utilities adequate for Sprint PCS' use of the Site are available at or near the Site. Sprint PCS will pay for all utilities used by it at the Site. Owner will cooperate with Sprint PCS in Sprint PCS' efforts to obtain utilities from any location provided by Owner or the servicing utility, including signing any easement(s) or other instrument(s) reasonably required by the utility company. If there is a loss of electrical service at the Site, Sprint PCS may, at its expense, install and maintain a temporary generator and fuel storage tank at the Site or the property adjacent to the Site at the location depicted in Exhibit A.

11. Termination. Notwithstanding any provision contained in this Agreement, Sprint PCS may, in Sprint PCS' sole and absolute discretion and at any time and for any or no reason, terminate this Agreement without further liability by delivering prior written notice to Owner.

12. Default. If either party is in default under this Agreement for a period of 30 days following receipt of written notice from the non-defaulting party, the non-defaulting party may pursue any remedies available to it against the defaulting party at law or in

Site Name: Suburban

Sprint PCS Site ID #: CI60XC309A

equity, including, but not limited to, the right to terminate this Agreement. If a non-monetary default cannot reasonably be cured within a 30-day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within the 30-day period and proceeds with due diligence to fully cure the default.

**13. Indemnity.** Subject to Section 17 hereof, Owner, to the extent permitted by law, and Sprint PCS each indemnifies and agrees to defend the other against and holds the other harmless from any and all costs (including reasonable attorneys' fees) and claims of liability or loss which arise out of the ownership, use and occupancy of the Site by the indemnifying party. This indemnity does not apply to any claims arising from the negligence or intentional misconduct of the indemnified party. The indemnity obligations under this Section will survive termination of this Agreement.

**14. Hazardous Substances.** Owner represents and warrants to Sprint PCS that it has no knowledge of any substance, chemical or waste on the Site that is identified as hazardous, toxic or dangerous (collectively, "Substance") in any applicable federal, state or local law or regulation. Sprint PCS will not introduce or use any Substance on the Site in violation of any applicable law. Owner will have sole responsibility for the identification, investigation, monitoring and remediation and/or cleanup of any Substance discovered at the Site unless the presence or release of the Substance is caused by the activities of Sprint PCS.

**15. Subordination and Non-Disturbance.** This Agreement is subordinate to any mortgage or deed of trust of record against the Site as of the Lease Commencement Date. Promptly after this Agreement is fully executed, however, Owner will obtain a non-disturbance agreement in a form reasonably acceptable to Sprint PCS from the holder of any mortgage or deed of trust.

**16. Property Taxes.** Sprint PCS will be responsible for payment of all personal property taxes assessed directly upon and arising solely from its use of the Facilities on the Site. Sprint PCS will pay to Owner any increase in real property taxes attributable solely to any improvements to the Site made by Sprint PCS within 60 days after receipt of satisfactory documentation indicating calculation of Sprint PCS' share of the real estate taxes and payment of the real estate taxes by Owner. Owner will pay when due all other real estate taxes and assessments attributable to the property of Owner of which the Site is a part.

**17. Insurance.** Sprint PCS will procure and maintain commercial general liability insurance, with limits of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage liability, with a certificate of insurance to be furnished to Owner within 30 days after Sprint PCS' receipt of a written request. Each party hereby waives its right of recovery against the other for any loss or damage covered by any insurance policies maintained by the waiving party. Each party will cause each insurance policy obtained by it to provide that the insurance company waives all rights of recovery by subrogation against the other party in connection with any damage covered by the policy.

**18. Maintenance.** Sprint PCS will be responsible for repairing and maintaining the Facilities and any other improvements installed by Sprint PCS at the Site in a proper operating and reasonably safe condition; provided, however, if any repair or maintenance is required due to the acts or omissions of Owner, its agents, contractors or employees, Owner will promptly reimburse Sprint PCS for the reasonable costs incurred by Sprint PCS to restore the damaged areas to the condition which existed immediately prior thereto. Owner will maintain and repair all other portions of the property of which the Site is a part in a proper operating and reasonably safe condition.

**19. Miscellaneous.** (a) This Agreement applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this Agreement; (b) this Agreement is governed by the laws of the state in which the Site is located; (c) Owner agrees to promptly execute and deliver to Sprint PCS a recordable Memorandum of Agreement in the form of Exhibit B, attached hereto; (d) this Agreement (including the Exhibits) constitutes the entire agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties. Any amendments to this Agreement must be in writing and executed by both parties; (e) if any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of the provision to persons other than those as to whom it is held invalid or unenforceable, will not be affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law; and (f) the prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Agreement is entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party.

**20. Non-Binding Until Fully Executed.** This Agreement is for discussion purposes only and does not constitute a formal offer by either party. This Agreement is not and will not be binding on either party until and unless it is fully executed by both parties.

The following Exhibits are attached to and made a part of this Agreement: Exhibits A, B and C.

**OWNER:**

City of Centerville, an Ohio Municipal Corporation

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

Name: \_\_\_\_\_

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

Taxpayer ID: \_\_\_\_\_

Address: 100 W. Spring Valley Road

Centerville, Ohio 45458

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

See Exhibit A1 for continuation of Owner signatures

**SPRINT PCS:**

SprintCom, Inc., a Kansas Corporation

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

Name: \_\_\_\_\_

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

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

Attach Exhibit A - Site Description

Attach Exhibit B - Memorandum of Agreement Form