



1317754

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2/16/2011 9:36 AM  
EASE \$40.00

I MORTGAGE SERVICES

RECORDER'S OFFICE, CASS COUNTY, ND 2/16/2011 9:36 AM  
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.  
JEWEL A. SPIES, COUNTY RECORDER

by Teresa A. Gily, Sup.

1317754



PREPARED BY AND  
WHEN RECORDED MAIL TO:

iMortgage Services LLC  
2570 Boyce Plaza Road  
Pittsburgh, PA 15241

SPACE ABOVE THIS LINE FOR RECORDER'S USE

### EXCLUSIVE EASEMENT AGREEMENT

**THIS EXCLUSIVE EASEMENT AGREEMENT** ("Agreement") is made as of the 1<sup>st</sup> day of FEBRUARY, 2011 ("Effective Date") by and between **JOHN J. WOELL** ("Grantor") and **III PROPERTIES, LLC**, a Delaware limited liability company ("Grantee"). Grantor and Grantee are at times collectively referred to hereinafter as the "Parties" or individually as a "Party".

#### **RECITALS:**

**WHEREAS**, Grantor is the owner of that certain real property located at 3485 152nd Avenue SE, Casselton, Cass County, North Dakota (Parcel Number 29010000010000) ("Property"), which Property is more particularly described on Exhibit "A" attached hereto and made a part hereof; and

**WHEREAS**, Grantor and Grantee have entered into that certain Letter Agreement last executed the 4<sup>th</sup> day of October, 2010 ("Letter Agreement"), in which Grantor has agreed to grant to Grantee certain easement rights to a portion of the Property in accordance with the terms herein.

**NOW, THEREFORE**, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid, the mutual promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Grantor and Grantee hereby agree and covenant to and with each other the following:



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1. **Recitals.** The recitals set forth above and the Letter Agreement are incorporated herein by reference and made a part of this Agreement.

2. **Grant of Easement.**

(a) Grantor grants, bargains, sells, transfers and conveys to Grantee:

(i) an easement in, to, under and over the portions of the Property, as shown or described on Exhibit "B" attached hereto ("Communication Easement"), for the transmission and reception of any and all wireless communication signals and the construction, maintenance, repair, replacement, improvement, operation and removal of towers, antennas, cabinets, buildings, ice bridges, fences, gates and all related facilities (collectively "Facilities"), and any and all activities and uses of the Communication Easement related to the operation of a wireless communications site, which Communication Easement shall be exclusive except for any contrasting rights granted prior to the Effective Date via the leases or other agreements listed on Exhibit "C" ("Current Agreements") and exclusive upon the expiration or earlier termination of such Current Agreements; and

(ii) non-exclusive easements in, to, under and over portions of the Property ("Access and Utility Easements") for ingress and egress to and from the Communication Easement and a publicly dedicated roadway, and for the installation, repair, replacement, improvement, maintenance and removal of utilities providing service to the Communication Easement and the Facilities, and any related activities and uses; the Communication Easement and Access and Utility Easements are collectively referred to herein as the "Easement".

(b) The Parties agree that the Easement shall be modified to include any additional areas utilized by the lessee or any assignees or sublessees under the Current Agreements at the time of expiration of such respective Current Agreements if any such areas extend beyond those areas described in Exhibit "B". Such additional areas may be documented by a survey acquired by Grantee at Grantee's cost. Grantee shall have the right to replace any site plan or description provided in Exhibit "B" or on any ancillary documents with a survey.

3. **Current Agreements.** Grantor shall not transfer or assign to Grantee all or any portion of its rights, obligations, title and interest in, to and under the Current Agreements. Grantor covenants and agrees that Grantor remains the fee owner of the Property and Grantor is not assigning and shall continue to comply with all of Grantor's obligations as lessor under the Current Agreements. Grantor shall have the right to enter upon the Easement to the extent necessary to comply with Grantor's obligations under the Current Agreements. During the term of the Current Agreements, maintenance of the Easement is the responsibility of any tenants under the Current Agreements. In the event of a default by a tenant with respect to any maintenance obligation under any of the Current Agreements, Grantee shall not be responsible for such default nor obligated to cure or seek remedy for such default, and Grantor may pursue such remedies from the defaulting tenant as may be available to Grantor under the Current Agreements or at law or equity. Grantor shall not extend the Current Agreements and/or otherwise revise the Current Agreements in any manner that further burdens the Easement without Grantee's prior written consent, which consent may be denied in Grantee's sole discretion. Grantor shall,



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upon request of Grantee, provide any notice(s) required by the Current Agreements to avoid renewal term(s) thereunder. Grantor hereby irrevocably constitutes and appoints Grantee as Grantor's true and lawful attorney-in-fact, with full power of substitution and resubstitution, to deliver on behalf of Grantor (i) any notice(s) required by the Current Agreements to avoid renewal term(s) under such Current Agreements and (ii) any notice(s) waiving tower removal and/or site restoration obligations under the Current Agreements.

4. **Use of Easement.** Grantor shall provide to Grantee the quiet enjoyment and use of the Easement. Grantee shall have the exclusive, unrestricted right to lease, sublease, license, transfer, assign or encumber, in whole or in part, or grant the use of the Easement and/or its rights under this Agreement to any third parties, including but not limited to (i) communication service providers or tower owners or operators, (ii) any lessee, sublessee or licensee under the Current Agreements, (iii) the affiliates, subsidiaries, parents, successors, purchasers in whole or in part, agents, contractors, invitees and employees of Grantee, and (iv) Grantee's present or future lessees, sublessees or licensees (collectively "Customers"). Grantee and its Customers shall have the right to enter and access the Easement at any time, twenty-four (24) hours a day, seven (7) days a week.

5. **Term.** This Agreement and the Easement shall be perpetual commencing on the Effective Date, except if terminated in accordance with the terms herein.

6. **Termination.** In the event Grantee and Customers cease all use of all portions of the Easement for a period of more than five (5) consecutive years (for reasons other than casualty or force majeure) subsequent to the expiration or earlier termination of the Current Agreements, the Easement shall be deemed abandoned. Limited or partial use of the Easement by Grantee or any Customers shall not be deemed a surrender or abandonment of the Easement or any unused portion thereof, nor prevent Grantee from benefiting from the full use and enjoyment of the entirety of the Easement. Grantee may abandon the Easement upon thirty (30) days notice to Grantor. This Agreement may not be terminated by Grantor except if (i) Grantee fails to timely pay any sums due to Grantor and such default continues for fifteen (15) days after receipt of written notice of non-payment, or (ii) Grantee fails to observe or perform any of the other covenants, conditions or provisions of this Agreement and Grantee fails to cure such default within sixty (60) days after notice thereof in writing to Grantee or if such default cannot be reasonably cured within sixty (60) days, unless Grantee begins such cure within sixty (60) days and diligently pursues such cure to completion. Upon abandonment, this Agreement shall be terminated, and Grantee and Grantor shall cooperate in the execution and recordation of such documents reasonably required to evidence such termination.

7. **Improvements.** Grantee and its Customers may, at their discretion and expense, construct improvements in, to, under and over the Easement, all of which shall be deemed part of the Facilities. The Facilities shall remain the personal property of Grantee and its Customers, as applicable, and Grantor shall possess no right, title or interest therein. Grantee and its Customers may from time to time temporarily utilize additional portions of the Property contiguous to the Easement to the minimum extent necessary for installation, maintenance or other work on the Facilities, or for the placement of mobile facilities to maintain service during periods of repair or replacement of the Facilities. Grantor shall be under no obligation to reserve any such additional Property. Any such additional Property that is used hereunder shall be returned to the condition which existed prior to such use promptly upon the completion of such use.

8. **Taxes.** Upon the expiration of the Current Agreements, Grantee shall thereafter be responsible for all taxes directly attributable to the Facilities as evidenced by an applicable tax bill. Grantor shall pay all other taxes that are not directly attributable to the Facilities.



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9. **Exclusive Use.** Except for Grantee's use or the use of any Customers or third parties with Grantee's permission or as otherwise permitted by the Current Agreements, no portion of the Property or any other property owned by Grantor and located within a two (2) mile radius of the Property shall be used for the purpose of or in connection with communications towers and/or facilities without the prior written consent of Grantee, which consent may be withheld in Grantee's sole discretion. Grantor shall not install or permit to be installed any structure or equipment which causes measurable interference to the equipment of Grantee or its Customers, or otherwise permit any portion of the Property to be used in a manner which materially interferes with the operations of Grantee and/or any Customers. Grantor and Grantee acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this section and therefore, Grantee shall have the right to specifically enforce the provisions herein in a court of competent jurisdiction.

10. **Environmental Covenants and Indemnity.** Grantor represents that it has no knowledge of any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation ("Hazardous Materials") located on, under or about, or otherwise affecting, the Property or the Easement. Neither Grantor nor Grantee will introduce or use any Hazardous Materials on, under or about the Property or the Easement in violation of any applicable law or regulation. Grantor and Grantee shall indemnify, defend and hold the other Party harmless from and against any and all demands, claims, enforcement actions, costs and expenses, including reasonable attorneys' fees, arising out of the presence of Hazardous Materials upon or affecting the Property or the Easement and caused by the indemnifying Party. The foregoing indemnity shall survive any termination of this Agreement.

11. **General Indemnity.** Grantor and Grantee shall each indemnify, defend and hold the other harmless against any and all costs and claims of liability or loss arising (i) due to the breach of any representation, warranty or covenant of such indemnifying Party set forth herein, or (ii) out of the use and/or occupancy of the Property or the Easement by the indemnifying Party, except to the extent arising from the negligence or intentional misconduct of the indemnified Party. The foregoing indemnity shall survive any termination of this Agreement.

12. **Transfer of the Property; Assignment.** The provisions and covenants contained in this Agreement shall run with the land and shall bind and inure to the benefit of the Parties and their respective successors, heirs and assigns. Should Grantor sell or otherwise convey all or any part of the Property to a purchaser or transferee other than Grantee, such sale or conveyance shall be under and subject to the terms contained in this Agreement and Grantee's rights hereunder. Notwithstanding the foregoing, this Agreement and the Easement are for the benefit of Grantee, its Customers, successors and assigns, rather than for the benefit of any other tract of land, and may be assigned freely, in whole or in part, by Grantee and its successors and assigns.

13. **Mortgages.** At Grantor's option, this Agreement and the Easement shall be subordinate to any mortgage or other security interest by Grantor which from time to time may encumber all or part of the Easement so long as Grantor's lender shall agree in writing in a form reasonably acceptable to Grantee that such lender will not disturb Grantee's possession and rights under this Agreement so long as Grantee remains in compliance with this Agreement.

14. **Secured Parties.** Grantee shall have the unrestricted right to assign, mortgage or grant a security interest in Grantee's interest in and to this Agreement and the Easement, and may assign this Agreement and the Easement to any such assignees, mortgagees or holders of security interests, including their successors and assigns ("Secured Parties"). If Grantee fails to perform any of its obligations under this Agreement, Grantor agrees to provide written notice of such default to Grantee and all Secured



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Parties of which Grantor has been notified, and to give Grantee and/or such Secured Parties the right to cure such default within a period of not less than sixty (60) days from receipt of the written default notice.

15. **Estoppel Certificate.** Each Party shall, within ten (10) days after request by the other Party, execute and deliver to the requesting Party, or the Party designated by the requesting Party, a statement certifying (i) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, stating the modifications and that the modified Agreement is in full force and effect); (ii) whether either Party is in default in performance of any of its obligations under this Agreement, and, if so, specifying each default; and (iii) any other information reasonably requested concerning this Agreement.

16. **Condemnation.** In the event of any condemnation of the Easement in whole or in part, Grantee shall be entitled to file claims against the condemning authority for, and to receive, the entire value of the portion of the Property so taken on which the Easement is located, business dislocation expenses and any other award or compensation to which Grantee may be legally entitled.

17. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given one (1) day after posting with a nationally recognized overnight courier service, or the earlier of receipt or ten (10) days after posting by registered or certified mail, return receipt requested, to the addresses of Grantor and Grantee as set forth on the signature page. Either Party may change its notice address by providing notice as set forth herein.

18. **Miscellaneous.**

- (a) This Agreement, including all Exhibits attached hereto and the Letter Agreement which is incorporated herein by reference, constitutes the entire agreement and understanding of Grantor and Grantee with respect to the subject matter of this Agreement, and supersedes all offers, negotiations and any other written or verbal agreements, and any amendments to this Agreement must be in writing and executed by both Parties;
- (b) this Agreement is governed by the laws of the State in which the Property is located;
- (c) in the event that either Party fails to pay when due any taxes, loans, judgments or payments attributable to or encumbering the Property, Easement or this Agreement, the other Party shall have the right, but not the obligation, to pay such sums on behalf of the non-paying Party, and the non-paying Party shall thereafter reimburse the paying Party for the full amount of such sums paid within five (5) business days of the non-paying Party's receipt of an invoice from the paying Party, or at the Paying party's option the paying Party may offset such amount, plus reasonable interest thereon, against any sums due from the paying Party to the non-paying Party;
- (d) if any term of this Agreement is found to be void, invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the minimum extent necessary to be operative, valid and enforceable to most closely reflect the intent of the Parties as expressed herein, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect;





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- (e) the Parties shall perform, execute and/or deliver promptly any and all such further acts and documents as may be reasonably required to consummate and continue to effectuate the transaction contemplated hereby, including any documents required for Grantee to acquire title insurance on the Easement;
- (f) the section headings of this Agreement have been inserted for convenience of reference only, and shall in no way modify or restrict the terms of this Agreement;
- (g) this Agreement has been negotiated at arm's-length, and in the event of any ambiguity in any of the terms and provisions, this Agreement shall be interpreted in accordance with the intent of the Parties and shall not be interpreted against or in favor of either Grantor or Grantee;
- (h) each Party acknowledges that neither Party has provided any legal or tax advice to the other regarding the transaction contemplated hereby or in connection with the execution of this Agreement or any ancillary documents hereto, and each of Grantor and Grantee has had the full opportunity to avail itself of legal and financial representation;
- (i) if either Grantor or Grantee files an action for the enforcement or breach of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs;
- (j) Grantee, at Grantee's expense, may record this Agreement upon the full execution hereof; and
- (k) this Agreement may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

[Signatures to immediately follow.]



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IN WITNESS WHEREOF, and intending to be legally bound, Grantor and Grantee have executed this Agreement.

GRANTOR:

John J. Woell

X John J. Woell  
Name: John J. Woell

PO Box 308  
Casselton, ND 58012  
Tel.: (701) 347-4209

STATE OF NORTH DAKOTA )

COUNTY OF )

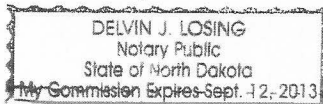
LASS

SS: )

On this 1<sup>st</sup> day of October, 2010, before me, a Notary Public, the undersigned officer, personally appeared John J. Woell, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed for the purposes and consideration therein expressed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Delvin J. Losing  
Notary Public  
My Commission Expires:



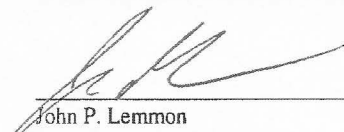


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## GRANTEE:

III Properties, LLC,  
a Delaware limited liability company  
\_\_\_\_\_  
John P. Lemmon  
Vice President and General CounselWhitehall Towers, 3<sup>rd</sup> Floor  
470 Streets Run Road  
Pittsburgh, PA 15236  
Tel.: (412) 882-4630

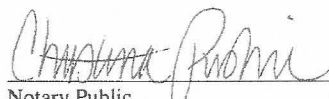
COMMONWEALTH OF PENNSYLVANIA )

SS:

COUNTY OF ALLEGHENY )

On this 1<sup>st</sup> day of February, 2011, before me, a Notary Public, the undersigned officer, personally appeared John P. Lemmon, who acknowledged himself to be the Vice President and General Counsel of III Properties, LLC, a Delaware limited liability company, and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing his name on behalf of said limited liability company by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 10-15-2012

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Christina Pushic, Notary Public  
Whitehall Boro, Allegheny County  
My Commission Expires Oct. 15, 2012  
Member, Pennsylvania Association of Notaries





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**Exhibit "A"**

The Property

In the County of Cass, North Dakota

**Legal Description:**

A tract of land located in the Southwest corner of Section 29, Township 140 North, Range 52 West of the Fifth Principal Meridian, Cass County, North Dakota, and more particularly described as follows:

Beginning at the Southwest corner of said Section 29, thence on an assumed bearing of North 00 degrees 00 minutes 00 seconds East along the West line of said Section 29 for a distance of 800.00 feet, thence North 80 degrees 29 minutes 12 seconds East 800.00 feet parallel with the South line of said Section 29, thence South 00 degrees 00 minutes 00 seconds West 800.00 feet parallel with the West line of said Section 29, thence South 80 degrees 29 minutes 12 seconds West along the South line of Section 29 for a distance of 800.00 feet to the point of beginning. Said tract contains 14.69 acres more or less and is subject to all easement of site or record.

Also known as Lot One in Block One of US West NewVector Group, Inc. Subdivision, situate in the County of Cass and the State of North Dakota

Known as: 3485 152nd Avenue SE, Casselton, Cass County, North Dakota

Parcel/Tax Number: 29010000010000



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**Exhibit "B"**

The Easement

Those premises and access/utility easements previously leased pursuant to the Current Agreements as defined herein.

This Exhibit "B" may be replaced by a survey in accordance with the terms of the Agreement.



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**Exhibit "C"**

Current Agreements

1. That certain Option and Lease Agreement entered into by and between Grantor as lessor and Fargo-Moorhead Cellular Limited Partnership, US WEST NewVector Group, Inc., General Partner as lessee, dated August 24, 1990, including any amendments thereto.
2. Any other leases, licenses or agreements respecting the Easement to which Grantor is a party.

8-24-90 OLL

FAR/Casselton  
Alt. # 2

ORIGINAL

OPTION AND LEASE AGREEMENT

This Agreement, made August 24, 1990

between John J. Woell

hereinafter designated LESSOR, and Fargo-Moorhead Cellular Limited Partnership,

U S WEST NewVector Group, Inc., General, 3350 161st Avenue Southeast, P. O.  
Partner

Box 7329, Bellevue, Washington 98008-1329, hereinafter called TENANT.

RECITALS

1. LESSOR is the owner of certain real property located in

Cass County, State of North Dakota, and,

2. TENANT desires to obtain an option to lease a portion of said real property, the leased portion of which shall be hereinafter referred to as "Property", including rights-of-way and easements for ingress, egress and utilities thereto, containing approximately 640,000 square feet, described on Exhibit "A", and its subparts, attached hereto and incorporated herein by this reference.

OLA001  
01/01/88

# A G R E E M E N T

NOW THEREFORE, in consideration of the sum of Five Hundred  
\_\_\_\_\_ dollars (\$ 500 ) hereinafter  
referred to as Option Money, to be paid by TENANT to the LESSOR,  
which TENANT will provide upon its execution of this Agreement, the  
LESSOR hereby grants to TENANT the right and option to lease said  
Property, including rights-of-way and easements for ingress, egress  
and utilities for access thereto, for the term and in accordance with  
the covenants and conditions set forth herein.

The Option may be exercised at any time prior to \_\_\_\_\_  
August 24 \_\_\_\_\_, 1991. At TENANT'S election and upon TENANT'S  
prior written notification to LESSOR, the time during which the  
Option may be exercised may be further extended for one additional  
period of one year, through and including August 24 \_\_\_\_\_,  
1992, with an additional payment of Five Hundred \_\_\_\_\_  
dollars (\$ 500 \_\_\_\_\_) by TENANT to LESSOR for the option period  
so extended. The time during which the Option may be exercised may  
be further extended by mutual agreement in writing. If during said  
option period, or during the term of the lease if the Option is  
exercised, the LESSOR decides to subdivide, sell, or change the  
status of the Property or his property contiguous thereto, he shall  
immediately notify TENANT in writing so that TENANT can take any  
steps necessary to protect TENANT'S interest in the Property.

This Option may not be sold, assigned, or transferred at any time by TENANT except to TENANT'S affiliates or subsidiaries. As to other parties, this Option may not be sold, assigned, or transferred without the written consent of the LESSOR, such consent not to be unreasonably withheld.

Should TENANT fail to exercise this Option or any extension thereof within the time herein specified, all rights and privileges granted hereunder shall be deemed completely surrendered, this Option terminated, and LESSOR shall retain all money paid for the Option, and no additional money shall be payable by either party to the other.

The LESSOR shall permit TENANT, during the Option period, free ingress and egress to the Property to conduct such surveys, structural strength analysis, subsurface boring tests and other activities of a similar nature as TENANT may deem necessary, at sole cost of TENANT.

LESSOR also hereby grants to TENANT the right to obtain metes and bounds legal description and/or a survey of said Property, and said metes and bounds legal description and/or survey shall then become Exhibit "B" which shall be attached hereto and made a part hereof, and shall control in the event of discrepancies between it and Exhibit "A", or its subparts. Cost of such work shall be paid by TENANT.

Notice of the exercise of the Option shall be given by TENANT to the LESSOR in writing by certified mail, return receipt requested.



Notice shall be deemed effective on the date it is postmarked. On the effective date of such notice the following Agreement shall take effect.

#### LEASE AGREEMENT

1. LESSOR hereby leases to TENANT that certain parcel of property (hereinafter "Property") containing 640,000 square feet situated on SW1/4 of the SW1/4 of Section 29, Township 140 N., Range 52 W., County of Cass, State of North Dakota, together with the non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, and for the installation and maintenance of utility wires, cables, conduits, and pipes over, under, or along a twenty (20) foot wide right-of-way adjacent to the nearest public right-of-way adjacent to the demised premises. LESSOR agrees, without delay, to execute any such easement documents as may be required by any and all utility companies in connection with TENANT's use of said Property. Said Property, right-of-way and easement for ingress, egress and utilities are described herein in Exhibit "A", and its subparts, attached hereto and made a part hereof by this reference.

2. LESSOR also hereby grants to TENANT the right to obtain metes and bounds legal description and/or a survey of said Property, and said metes and bounds legal description and/or survey shall then become Exhibit "B" which shall be attached hereto and made a part hereof, and shall control in the event of discrepancies between it

and Exhibit "A", and its subparts. Cost of such work shall be paid by TENANT.

3. This Agreement shall be for an initial term of five (5) years, commencing on the date the Option is exercised by TENANT, at an annual rental of Four Thousand Eight Hundred dollars (\$ 4,800) to be paid in equal monthly installments on the first day of each month, in advance, to John J. Woell or to such other person, firm, or place as the LESSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date.

4. TENANT shall have the right to extend this lease for four (4) additional five (5) year terms by giving the LESSOR written notice of its intention to do so at least six (6) months prior to the end of the then current term.

5. The annual rental for the first five (5) year extension term shall be increased to Six Thousand One Hundred Twenty Five dollars (\$ 6,125); the second (2nd) five (5) year extension term shall be increased to Seven Thousand Eight Hundred dollars (\$ 7,800); the third (3rd) five (5) year extension term shall be increased to Ten Thousand dollars (\$ 10,000); and the fourth (4th) five (5) year extension term shall be increased to Twelve Thousand Five Hundred dollars (\$ 12,500).

6. If, at the end of the fourth (4th) five (5) year extension term, this Agreement has not been terminated by either party by giving to the other written notice of an intention to terminate it at least six (6) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms, and conditions, and at the rental specified for the fourth (4th) five (5) year extension term, for a further term of one (1) year and for annual terms thereafter until terminated by either party giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of such term.

7. TENANT shall use the Property for the purpose of constructing, maintaining, and operating a Mobile Communications Facility and uses incidental thereto, consisting of one (1) building of approximately 360 square feet and one (1) antenna structure of approximately 450 feet in height, including cellular antennas and link antennas and all necessary connecting appurtenances. A security fence consisting of chain link construction or similar, but comparable, construction may be placed around the perimeter of the Property (not including the access easement). All improvements shall be at the TENANT'S expense. TENANT shall maintain the Property in reasonable condition. It is understood and agreed that TENANT'S ability to use the Property is contingent upon its obtaining, after the execution date of this Agreement, all the certificates, permits, and other approvals that may be required by any federal, state, or local authorities. LESSOR shall cooperate with TENANT in its efforts

Agreement and TENANT'S right hereunder, and any sale by the LESSOR of the portion of the LESSOR'S property underlying any and all rights-of-way and easements for ingress, egress and utilities herein granted shall be under and subject to the right of the TENANT in and to such rights-of-way and easements.

13. LESSOR covenants that TENANT, on paying the rent and performing the covenants by it herein made, shall and may peacefully and quietly have, hold, and enjoy the leased Property.

14. LESSOR covenants that LESSOR is seized of good and sufficient title and interest in the Property and has full authority to enter into and execute this Agreement. LESSOR further covenants that there are no other liens, judgments, or impediments of title on the Property.

15. It is hereby mutually agreed and understood that this Agreement contains all agreements, promises, and understandings between the LESSOR and TENANT and that no verbal or oral agreements, promises, or understandings shall or will be binding upon either the LESSOR or TENANT in any dispute, controversy, or proceeding at law, and any addition, variation, or modification to this Agreement shall be void and ineffective unless in writing and signed by the parties hereto.

16. This Option and Lease Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of North Dakota.

17. This Agreement may not be sold, assigned, or transferred at any time by TENANT except to TENANT'S affiliates or subsidiaries. As to other parties, this Agreement may not be sold, assigned, or transferred without the written consent of the LESSOR, such consent not to be unreasonably withheld.

18. In the event that either party hereto shall institute suit to enforce any rights hereunder, the prevailing party shall be entitled to recover court costs and a reasonable attorney's fee. Upon appeal, the prevailing party shall be entitled to recovery of court costs and reasonable attorneys' fees incurred as a result of such appeal.

19. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

TENANT: Fargo-Moorhead Cellular Limited Partnership,  
U S WEST NewVector Group, Inc., General Partner  
3350 161st Avenue Southeast  
P. O. Box 7329  
Bellevue, Washington 98008-1329  
Attn: Real Estate Department

LESSOR:

John Weell  
Box 135  
Cassellton ND 58012

20. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of the parties hereto.

21. At LESSOR'S option, this Agreement shall be subordinate to any mortgage by LESSOR which, from time to time, may encumber all or

part of the Property and any or all Rights-of-Way and easements thereto; provided, however, every such mortgage shall recognize the validity of this Agreement in the event of a foreclosure of LESSOR'S interest and also TENANT'S right to remain in occupancy of and have access to the Property as long as TENANT is not in default of this Agreement. TENANT shall execute whatever instruments may reasonably be required to evidence this subordination clause. If the Property is presently encumbered by one or more mortgages, LESSOR will provide TENANT with a Non-Disturbance Agreement in recordable form for each such mortgage.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals the day and year first above written.

WITNESS:

Tommy C. [Signature]

LESSOR:

John J. Waell  
Name

501-16-7739  
SS# or Taxpayer ID#

\_\_\_\_\_  
Name

\_\_\_\_\_  
SS# or Taxpayer ID#

TENANT:

[Signature]  
By:

UPONNS/AVGR  
Its:



INDIVIDUAL ACKNOWLEDGMENT

State of NORTH DAKOTA }  
County of CASS } ss.

On this day personally appeared before me JOHN WOELL  
to me known to be the individual(s) described in and who executed  
the within and foregoing instrument, and acknowledged that  
he/she/they signed the same as his/her/their free and voluntary  
act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 22 day of AUGUST,  
1990.

BRADLEY J. BURGUM  
Notary Public, CASS COUNTY, N. DAK.  
My Commission Expires JUNE 7, 1995

Bradley J. Burgum  
NOTARY PUBLIC in and for the  
State of \_\_\_\_\_,  
residing at \_\_\_\_\_,  
My commission expires \_\_\_\_\_.

CORPORATE ACKNOWLEDGMENT

STATE OF WASHINGTON       )  
                                  ) ss.  
COUNTY OF KING           )

On this 19<sup>th</sup> day of September, 1990, before me,  
the undersigned, a Notary Public in and for the State  
of Washington, duly commissioned and sworn, personally  
appeared William J. Dixon, to me known  
to be the Vice President - OPS/Engineering  
of U S WEST NewVector Group, Inc.  
the corporation that executed the foregoing instrument, and  
acknowledged the said instrument to be the free and voluntary act  
and deed of said corporation, for the uses and purposes therein  
mentioned, and on oath stated that he/she is authorized to execute  
the said instrument and that the seal affixed; if any; is the  
corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day  
and year first above written.

John P. Paszski  
NOTARY PUBLIC in and for the  
State of Washington,  
residing at Kirkland.  
My Commission Expires 8-30-91.



# Greenberg Realty

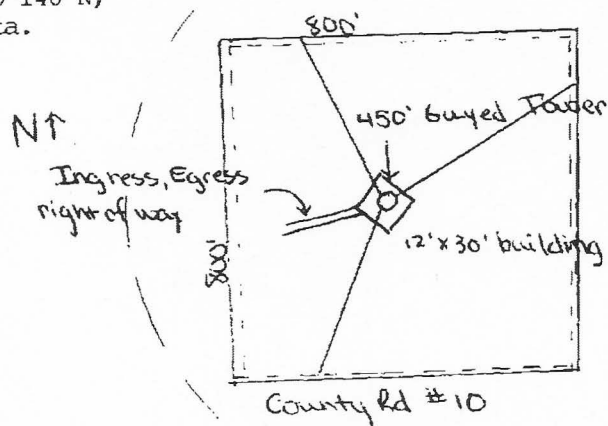
• Residential • Commercial • Farm

## Site Location "Exhibit A"

not to scale  
measurements are  
approx.

### legal description

640,000 square feet situated on the SW1/4  
of the SW1/4 of Section 29, Township 140 N,  
Range 52 W, Cass County, North Dakota.



Site Location

