

## MARINA COMMITTEE MEETING

**DATE OF MEETING:** June 1, 2020 at 5:30 p.m. DeWitt County Building/Teleconference

**MEMBERS PRESENT:** Jay Wickenhauser – chair, Camille Redman, and Terry Ferguson. Dan Matthews and Travis Houser present via teleconference. Also present, Dee Rentmeister, County Administrator. Joe Caldwell, marina operator, present via teleconference.

**MEMBERS ABSENT:** None

### SUMMARY OF DISCUSSION:

- Motion by Ferguson, 2<sup>nd</sup> by Redman to approve last month's minutes. Voice vote, motion carried.
- Motion by Redman, 2<sup>nd</sup> by Ferguson to approve the claims. Voice vote, motion carried.
- Discussion on the Consent Letter allowing for the County to enter into a separate lease for a Wi-Fi tower. The Consent Letter lists a specific company. Discussion on revising the letter to delete the name of the tower company and allow the County to enter into a lease for a Wi-Fi tower with any company they choose. Joe indicated that he had no problem with deleting the reference to a specific company. Motion by Ferguson, 2<sup>nd</sup> by Matthews to recommend to the full board to accept the Consent Letter with changes. Voice vote, motion carried.
- Motion by Houser, 2<sup>nd</sup> by Matthews to recommend to the full board to enter into a Wi-Fi tower lease with Wireless Data Net, LLC. Voice vote, motion carried.
- Discussion on drainage work around the building along with a concrete pad. Ferguson indicated that he had not gotten a bid from Nelson Excavating. If a bid is received before the full board meeting this month will put item on the agenda for action.
- The County was contacted about possibly reducing the rent on slip 401 and 402. Joe indicated that he felt that he could rent these slips at the stated rate.
- Wickenhauser informed the committee that we are working on completing the grant application for a \$250,000 grant. The initial request for the grant was for the replacement of the breakwater, repairs to parking lot and replacement of roofs on several docks. Will keep the committee updated.
- Joe stated that a mechanic has been hired.
- Joe informed the committee that the first big weekend had a line at the ramp for 2.5 hours. Received a lot of compliments. Also added pizzas to the items of food that is being sold.
- Motion by Redman, 2<sup>nd</sup> by Ferguson to adjourn at 5:50 p.m. Voice vote, Motion carried.

### COMMITTEE ACTION:

Approve last month's minutes.

Approve claims.

Recommend to the full board to accept the Consent Letter with changes.

Recommend to the full board to enter into a Wi-Fi tower lease with Wireless Data Net, LLC.

### RECOMMENDATIONS TO THE BOARD:

Recommend to the full board to accept the Consent Letter with changes.

Recommend to the full board to enter into a Wi-Fi tower lease with Wireless Data Net, LLC.

**DATE OF NEXT MEETING:** July 6, 2020 at 5:30 p.m.

**AGENDA FOR THE  
MARINA COMMITTEE**

Date and Time of Meeting: June 1, 2020 at 5:30 p.m.      Location: County Building

1. Call Meeting to Order
2. Persons Wishing to Address the Committee/Public Comment (If requesting action, also list below in section three).
3. Items for Discussion and Possible Action
  - a. Approve last month's minutes
  - b. Approve claims
  - c. Consent letter to lease
  - d. Wi-Fi tower lease
  - e. Drainage work around main building with concrete pad
  - f. Slip rental charge for slip 401/402
  - g.
4. Closed Session
5. Items for Discussion Only (No Action Requested)
  - a. Grant update
  - b.
  - c.
6. Motion to adjourn.

Posted: May 27, 2020 at 4:15 p.m.

By: Dee Dee Rentmeister

Join Zoom Meeting

<https://zoom.us/j/4327127633?pwd=RlZoc3Q1YVFiWjIvVVBNOjRjaUJFZz09>

Meeting ID: 432 712 7633

Password: 7G4RfQ

One tap mobile

+13126266799,,4327127633#,,1#,916633# US (Chicago)

Dial by your location

+1 312 626 6799 US (Chicago)

Meeting ID: 432 712 7633

Password: 916633

**CONSENT FOR THE DEWITT COUNTY BOARD TO ENTER INTO A  
CONTRACT WITH WIRELESS DATA NET FOR THE PURPOSES OF  
CONSTRUCTING A COMMUNICATION TOWER UPON LEASED PREMISES  
AND PROVIDING WIFI TO THE CLINTON LAKE MARINA**

1. Whereas, 1125 Property Management (hereinafter referred to as "1125") is the sole leaseholder of the Clinton Lake Marina pursuant to a "Marina Contract" entered into by 1125 and the DeWitt County Board (hereinafter referred to as "Board".) Said contract was executed on October 18, 2018 and all the terms of the Marina Contract are incorporated by reference into this Consent and further, all the terms thereof are hereby restated, ratified, and applicable to this Consent.
2. The parties agree that pursuant to the Marina Contract, the consent of 1125 is necessary before the Board may contract with a 3<sup>rd</sup> party to use premises that are currently solely leased to 1125.
3. The parties agree that it would be beneficial to each party that Wi-Fi was available at the Clinton Lake Marina.
4. IN LIGHT OF THE FOREGOING, 1125 hereby CONSENTS that the DeWitt County Board may contract with Wireless Data Net LLC in order to construct a Communication Tower for the purposes of providing Wi-Fi to Clinton Lake Marina, upon the leased premises that are the subject of the Marina Contract. Further, 1125 hereby CONSENTS to a contract for the same that is substantially in the same form as the attached Exhibit A (Tower Site Lease).
5. That 1125 CONSENTS to all the foregoing, and the DeWitt County Board accepts said consent.

1125 Property Management

ACCEPTED BY DeWitt  
County Board:

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

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

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

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



DEWITT COUNTY  
 STATE'S ATTORNEY'S OFFICE  
 201 W. Washington St.  
 Clinton, IL 61727  
 Phone: (217) 935-7810  
 Fax: (217) 935-7819



John Hoblit  
 Asst. State's Attorney

Dan Markwell  
 State's Attorney

Tim Holl  
 Asst. State's Attorney

**Tower Site LEASE**

**DEWITT COUNTY MARINA**

This Lease Agreement will be entered into this \_\_\_\_\_ day of October, 2019, between the land owner County of DeWitt, Illinois, a body politic. ("Lessor") and Wireless Data Net, LLC. ("Lessee").

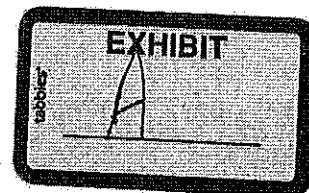
WHEREAS, Lessor possesses land in DeWitt County, Illinois, a location more particularly described as Clinton Lake Marina (the "Site") (together, the "Premises"); and

WHEREAS, Lessee desired to utilize site to construct a Communication Tower; and

WHEREAS, Lessor is willing to permit such use on the terms and conditions set forth herein;

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

1. **USE:** The Lessee may use the Site for the purpose of wireless voice and data communications. This includes constructing a self-supporting tower within a 20'x20' fenced area located as depicted in appendix A (see attached Map) or alternative location if preferred location is not approved by county zoning. Lessor will also provide any easements necessary to provide vehicle access to said locations.
2. **TERM:** The term of the Lease shall be five (5) years, commencing upon construction of the tower or no later than \_\_\_\_\_, 2020 (the "Commencement Date"), and terminating at 11:59 p.m. \_\_\_\_\_, 2025 (the "Original Term"). This lease will automatically be extended for five (5) additional years upon conclusion of the Original Term or any subsequent additional term, unless prior to 90 days before expiration of the term in effect, either party provides written notice to the other party of its desire to not renew the lease for an additional five (5) year term beyond the Original Term or any subsequent term.
3. **RENT:** Lessee will make its best effort to provide Internet bandwidth to the Marina building at an initial connection speed of 20 Mbps for the term of this contract/lease. Lessor will provide a 15 Amp electric feed at the newly constructed tower site. Lessee will cover the expense of all materials and labor for this connection.



4. **ZONING:** Lessee understands that it will comply with any and all zoning requirements under the DeWitt County Code of Ordinances and the Illinois Compiled Statutes and shall obtain any needed zoning or building permits required from DeWitt County. In the event that needed zoning or permits are refused, Lessee may cancel this agreement without penalty.
5. **COMPLIANCE WITH LAW:** Lessee shall conform to current and future applicable laws and regulations of any public authority affecting the Site and the use thereon and assume, at Lessee's sole expense, any costs of such compliance including any fines or penalties. The Lessee shall obtain all federal, state permits and licenses necessary to operate under this Lease. Lessee shall operate its equipment and units in compliance with the rules and regulations of the Federal Communications Commission and any other applicable licensing authority. Lessee shall comply with standards or requirements in effect for non-ionizing electromagnetic radiation levels as established by the Environmental Protection Agency or other governing agencies. Lessor and Lessee both agree to comply with any and all State of Illinois and Federal laws pertaining to the Lease and agree that the Leased Premises/Site shall not be used for any illegal purpose.
6. **IMPROVEMENTS:** Lessee shall have the obligation, at its expense, to install and maintain the tower facility. The Tower and any facility improvements shall remain the exclusive property of Lessee, and Lessee shall have the obligation to remove the tower and any other improvements associated with its construction following any termination of this Lease. After removal of its equipment, Lessee shall restore the Premises to its original condition at the time of leasing, including but not limited to complete excavation and removal of concrete foundation piers, and regrading of soil as may be required. Restoration of the Premises to its original condition shall occur within 30 days of termination of this Lease unless otherwise agreed to by a majority of the DeWitt County Marina Committee or such other committee as may be determined by the DeWitt County Board.
7. **ACCESS:** Lessor shall provide Lessee 24 hour/day, 7day/week ingress, egress, and access to the Site at no additional charge. Access to the Site is restricted to Lessee and its staff, and Lessee warrants that no other personnel or contractors will be granted access to the Site without explicit prior approval of Lessor. Lessor retains the right to access the leased as may be necessary for maintaining the health, safety and welfare of persons at the Clinton Lake Marina property. Lessor shall make all practical attempts to contact the Lessee before any entry onto the leased Site.
8. **SUBLET/ASSIGNMENT:** Lessee shall give Lessor 90 days written notice of its intent to sublet the Premises or assign this contract/lease to any other party.
9. **TOXIC OR HARMFUL SUBSTANCES AND DEBRIS:** Lessee shall not keep on or about the Site any substances now or hereinafter designated as or containing components now or hereinafter designated as hazardous, toxic, dangerous, or harmful, (and/or which are subject to regulation as hazardous, toxic, dangerous or harmful) by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as "Hazardous Substances"). Lessee shall immediately notify Lessor of (i) all failures comply with any federal, state, or local law, regulation or ordinance, as

now enacted or as subsequently enacted or amended, (ii) all inspections of the Lessee's equipment at the Site by any regulatory entity concerning Hazardous Substances at the Site, (iii) all regulatory orders or fines or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private party concerning the Lessee's equipment at the Site. Lessee shall be fully and completely liable to Lessor and shall indemnify, defend, and hold harmless the Lessor and its employees, officers and agents with respect to any and all damages, costs, fees (including attorney's fees and costs), penalties (civil and criminal), and cleanup costs assessed against or imposed as a result of the Lessee's use, disposal, transpiration, and/or generation of Hazardous Substances. Lessee shall not allow debris or refuse to accumulate at the Site.

10. **TAXES.** Lessee shall pay any real or personal property taxes assessed on, or any portion of such taxes attributable to, the Lessee's Equipment. Lessor shall pay any real or personal property taxes assessed on, or any portion of such taxes attributable to the land at the Site.

11. **INSURANCE:**

- a. Any policies maintained by Lessee, its contractors, or subcontractors shall be primary without right of contribution or offset from any policy of insurance or program of self-insurance maintained by Lessor. Lessee agrees and shall require each of its contractors and/or subcontractors to agree that they shall each arrange for the issuers of all insurance policies to waive their rights of subrogation against Lessor, including all elected officials and employees of Lessor.
- b. All insurance policies required shall be issued by a reputable company having a minimum Best's Rating of B+/IV and shall provide 30 days prior written notice of any substantial change in the coverage, cancellation or non-renewal. Such notices shall be required to be sent to Lessor as well as Lessee and/or Lessee's contractors or subcontractors. Prior to taking possession of Leased Premises, Lessee shall furnish copies all policies to the County Administrator.

Lessee shall maintain the following policies during the term of the Lease:

Lessee shall maintain a Workers Compensation insurance policy with a minimum coverage of \$1,000,000. This coverage shall extend to all employees, contractors, subcontractors, and their subcontractors utilized by Lessee. Policy must include a waiver of subrogation in favor of DeWitt County. Policy shall otherwise conform to the requirements of Workers Compensation laws.

Lessee shall maintain a General Liability insurance policy covering all employees, contractors, subcontractors, and all their subcontractors with a minimum coverage of \$1,000,000. Said policy shall cover bodily injuries, death, or incapacitation of persons and property damage sustained by one or more persons or entities. Lessor shall be added as Additional Insured through an endorsement properly designated by the insurance provider. Policy must include a waiver of subrogation in favor of DeWitt County.

All insurance policies shall be maintained by Lessee during the term of Lease and proof of the above coverage shall be filed with the County Administrator of DeWitt County. Policies must include a waiver of subrogation in favor of DeWitt County.

Lessee shall require any entity performing work on Lessee's behalf of any kind to meet or exceed the above requirements. Lessee agrees to indemnify County in the event that any entity performing work on Lessee's behalf seeks compensation for any action or omission.

12. **INDEMNIFICATION:** To the fullest extent permitted under law, Lessee agrees to protect, indemnify, defend and hold harmless Lessor, Lessor's agents, and Lessor's employees from and against any and all losses, costs, damages, liabilities, expenses or causes of actions brought against Lessor (1) arising out of, resulting from, relating to or connected with any act or omission of Lessee or Lessee's employees on or about the Leased Premises, and (2) any breach or violation of Lease and such obligations to indemnify shall survive the termination of this Lease for any reason.

1. Lessee releases Lessor from any claims for any personal injury or any loss of damage resulting directly or indirectly from any existing or future condition, defect, matter, or thing in or about the Leased Premises or resulting from any accident in or about the Leased Premises or resulting from any act or neglect.
2. Lessee agrees, in any dispute arising out of Lease, to waive any and all consequential damages, compensation or claims for inconvenience or loss of business, rents or profits. Lessee shall also indemnify and hold Lessor harmless for any damages caused by fire, vandalism, or acts of God to any vehicle, equipment, merchandise or personal property on Leased Premises, except to the extent losses are a result of Lessor's willful misconduct or breach of Lessor's obligation under Lease.

13. **CONDEMNATION:** If a condemning authority takes all of the Site, or a portion sufficient, in Lessee's determination, to render the Tower unsuitable for the use, which Lessee was then making of the Tower, this Lease shall be terminated as of the date the title vests in the condemning authority.

14. **INSOLVENCY:** If a receiver or trustee is appointed to take possession of all or substantially all of the assets of Lessee; or if any action is taken or suffered by Lessee pursuant to an insolvency, bankruptcy or reorganization act; or if the Lessee makes a general assignment for the benefit of its creditors; and if such appointment, action or assignment continues for a period of thirty (30) days, it shall, at Lessor's option, constitute a breach by Lessee and Lessor shall be entitled to the remedies set forth in this document.

15. **DESTRUCTION, FORCE MAJURE:** If the Site, or the Tower are destroyed or damages so as, in Lessee's judgment, to hinder the effective use of the site, by no act of the Lessee or Lessor, Lessee may elect to terminate this Lease as of the date of the damage or destruction by so notifying Lessor not more than 15 days following the date of damage. Lessor shall not be responsible for repair or replacement of any equipment



that may be damaged or destroyed or for any other damages, consequential or direct, which may result from damage or destruction to Lessee's equipment.

16. **CONFLICT OF INTEREST:** Lessor and Lessee hereby represent that neither has a conflict of interest in entering into this Lease, nor are either Lessor or Lessee prohibited by law from entering into said Lease.
17. **AUTHORITY:** Lessee represents that he/she/it has full authority and power to enter into Lease, and shall be responsible for the obligations contained herein. Lessee represents authorization to enter into this agreement has been granted by majority vote of the County Board of DeWitt County, Illinois.
18. **BODY POLITIC:** Lessee understands that this agreement is with a body politic, and no single member may alter this agreement or bind DeWitt County without prior approval of the DeWitt County Board, and a board member may only employ discretion that has been approved by vote and delegated to him by the board as a whole.
19. **DISPUTE RESOLUTION AND INTERPRETATION:**
  - a. **COMPLETE AGREEMENT:** This Lease is the complete and whole agreement between the parties. No other negotiations or communications, be they past or future, shall be applicable to the interpretation of this Lease in the event of a dispute. Any negotiations or promises be they oral or written, whether supported by consideration or not, shall not be considered part of Lease or be used in the interpretation of Lease. Nor shall the past or future conduct of either party be used in interpreting Lease.
  - b. **CHOICE OF LAW:** This Lease and any disputes arising from enforcement or interpretation of Lease shall be governed by the laws of the State of Illinois.
  - c. **DISPUTE VENUE:** In the event of a legal dispute concerning Lease, the venue shall be the Circuit Court of DeWitt County, Illinois. Both parties hereby agree to waive jury trial and settle any dispute by bench trial before a judge assigned to the case by the Chief Judge of the Sixth Judicial Circuit. Both parties agree that the Circuit Court of DeWitt County shall have jurisdiction over any dispute arising from Lease, and shall not object to jurisdiction or venue. This section does not prohibit the parties from attempting to reach an agreement in lieu of litigation in the event of a dispute.
  - d. **ATTORNEYS' FEES:** If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees, not to include filing fees, discovery costs, or costs of appeal.
  - e. **WAIVER:** Waiver of any condition stated at any time shall not be considered a permanent waiver of the authority of either party, and either Lessor or Lessee may waive then later enforce any condition at their discretion.

- f. **HEADINGS:** The headings or titles of each section of Lease are for convenience and reference only and shall not be used in the interpretation of Lease.
- g. **DEFAULT:** The following shall result in default
  - i. Lessee fails to make its best effort to provide internet service.
  - ii. Lessee fails to maintain required insurance coverage. Lessee shall have 10 business days to cure any lapse in required coverage upon discovery.
  - iii. Lessee becomes insolvent or bankrupt.
  - iv. Any other failures not specifically listed that are an obligation of Lessee.

This Lease may also be terminated pursuant to the terms of Paragraph 2. Upon termination of this agreement, Lessee agrees to remove all of its facility from the Site, and return the areas occupied by the Tower to their original condition at the time of leasing within 30 days of the termination, unless otherwise agreed to by the Lessor and Lessee. Removal of the Tower and any other improvements of the Lessee shall be done in such a manner as to not materially affect the operation of the Clinton Lake Marina.

In the event of any breach of any provision of this Lease by Lessee, the breach shall be deemed a default, entitling Lessor to the remedies set forth in this Lease or otherwise available at law or equity, after Lessor has delivered to Lessee notice of the breach and a demand that the same be remedied immediately; provided that Lessee shall not be in default after receipt of notice, if Lessee cures the breach within ten (10) days after receipt of notice. When a default is discovered Lessor shall send notice via certified mail to Lessee.

- h. **REMEDIES:** In the event of a default, Lessor shall have the right to terminate the Lease and re-enter the Leased Premises after Lessee fails to cure default, or in the case of immediate default Lessor shall have the right to terminate Lease and re-enter the Leased Premises immediately. Lessee may confess termination of Lease through a writing authorizing such signed by a principal of Lessee. Upon such termination, Lessor may seek damages for any such breach or default with or without terminating the Lease.

## **20. NON-DEFAULT TERMINATION:**

- a. In addition to any other termination rights set forth in Lease, Lessor may, at its sole discretion, terminate all or a part of this Lease upon written request by Lessee for surrender of leasehold upon satisfaction by the Lessee of all outstanding rents, duties and obligations.
- b. **TERMINATION BASED UPON CHANGE IN LAW:** In the event a law is enacted by the Illinois legislature rendering contract/lease void, or if such law confers an additional burden upon Lessee, such Lease shall be deemed terminated, and both parties shall be free of any future obligations regarding Lease, but all previous obligations shall remain.

- c. **TERMINATION BASED ON SALE OF PREMISES:** Should the current County Board or future County Board determine by majority vote to sell the Premises/Site commonly known as the Clinton Lake Marina, this Lease shall be deemed terminated, and both parties shall be free of any future obligations regarding the Lease, but all previous obligations shall remain.
21. **CONSEQUENTIAL DAMAGES:** Nothing in this lease agreement shall limit a party from seeking consequential damages in the event of breach.
22. **COVENANT AGAINST LIENS:** Lessee hereby covenants and agrees that it will not cause or permit any lien or claim for lien to be asserted against the Leased Premises or any improvement thereon by reason of work, labor, services or materials performed or supplied to Lessee. Lessee shall indemnify Lessor for any costs, damages or expenses (including attorneys' fees) incurred as a result of the filing of such liens or in obtaining their discharge whether such costs, damages or expenses were incurred prior or subsequent to Lease termination. Lessee shall actively seek to terminate any lien placed against Leased Premises or any improvements thereon at Lessee's expense. Lessee shall cause any such lien to be discharged of record within thirty (30) days after the date of filing the same unless other arrangements are authorized in writing by Lessor. Lessor may take action, at its sole option, to remove any lien and shall be entitled to full reimbursement for all costs in removing lien from Lessee.
23. **FREEDOM OF INFORMATION ACT:** Lessee agrees to provide documents upon request to comply with the Illinois Freedom of Information Act, and understands that such requested documents must be provided promptly to comply with said Act. Lessee agrees to indemnify and hold harmless Lessor for any action arising out of its failure to supply required documents to comply with said Act. Lessee understands that it may be subject to the Freedom of Information Act due to Lease and the agreement with Lessor, a body politic of the State of Illinois.
24. **MISCELLANEOUS.** The substantially prevailing party in any litigation, arbitration or other action arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any. This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.
25. **SAVINGS:** This Lease shall be construed in accordance with the laws of the State of Illinois. In the event that any one of the conditions set forth in Lease are held to be contrary to public policy or otherwise unenforceable by a court, both parties agree all other conditions of Lease shall remain in full force and effect.
26. **CHANGES OR AMENDMENTS:** Any and all changes to this Lease shall be in writing and authorized by majority vote of the County Board of DeWitt for and by an authorized agent for Lessee. No oral agreements shall be binding on either party. Lessee acknowledges that a single board member may not bind the county unless previously authorized by majority vote to act on behalf of the County of DeWitt.

27. **THIRD PARTY BENEFICIARIES:** Lessee agrees that there are no intended third party beneficiaries to Lease, nor are any rights conferred upon any party not named in Lease.

28. **POINT OF CONTACT:** In the event that Lessor must be contacted to resolve an issue, Lessee shall contact the current DeWitt County Marina Committee Chairman at 201 W. Washington Street, Clinton, IL. 61727. In the event that the Marina Committee Chairman is not available and an alternative contact has not been established any member of the Marina Committee may be contacted in lieu of the Chairman. The DeWitt County Board reserves the right to remove this authority as a body politic or transfer this authority to another agent or board member without prior notice to Lessee. In the event Lessee must be contacted to resolve an issue, Lessor shall contact Lessee as follows: Wireless Data Net, LLC, ATTN: Tristan Johnson, PO Box 345, Saybrook, IL. 61770.

All legal notices to Lessor shall be sent to:  
DeWitt County Marina Committee  
201 W. Washington Street  
Clinton, IL 61727

With a copy sent to:  
DeWitt County State's Attorney's Office  
201 W. Washington Street  
Clinton, IL 61727

All legal notices to Lessee shall be sent to:

Tristan Johnson  
Wireless Data Net, LLC  
P.O. Box 345  
Saybrook, IL. 61770

\_\_\_\_\_  
LESSOR  
David Newberg, County Board Chairman on behalf of the County of DeWitt

\_\_\_\_\_  
Date

\_\_\_\_\_  
LESSEE  
Tristan Johnson, Principal Officer Wireless Data Net, LLC

\_\_\_\_\_  
Date



**DEWITT COUNTY  
STATE'S ATTORNEY'S OFFICE**

201 W. Washington St.  
Clinton, IL 61727  
Phone: (217) 935-7810  
Fax: (217) 935-7819



**John Hoblit**  
*Asst. State's Attorney*

**Dan Markwell**  
*State's Attorney*

**Tim Holl**  
*Asst. State's Attorney*

**Tower Site LEASE**

**DEWITT COUNTY MARINA**

This Lease Agreement will be entered into this \_\_\_\_ day of June, 2020, between the land owner County of DeWitt, Illinois, a body politic, ("Lessor") and Wireless Data Net, LLC. ("Lessee").

WHEREAS, Lessor possesses land in Dewitt County, Illinois, a location more particularly described as Clinton Lake Marina (the "Site") (together, the "Premises"); and

WHEREAS, Lessee desired to utilize site to construct a Communication Tower; and

WHEREAS, Lessor is willing to permit such use on the terms and conditions set forth herein;

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

1. **USE:** The Lessee may use the Site for the purpose of wireless voice and data communications. This includes constructing a self-supporting tower within a 20'x20' fenced area located as depicted in appendix A (see attached Map) or alternative location if preferred location is not approved by county zoning. Lessor will also provide any easements necessary to provide vehicle access to said locations.
2. **TERM:** The term of the Lease shall be five (5) years, commencing upon construction of the tower or no later than \_\_\_\_\_, 2020 (the "Commencement Date"), and terminating at 11:59 p.m. \_\_\_\_\_, 2025 (the "Original Term"). This lease will automatically be extended for five (5) additional years upon conclusion of the Original Term or any subsequent additional term, unless prior to 90 days before expiration of the term in effect, either party provides written notice to the other party of its desire to not renew the lease for an additional five (5) year term beyond the Original Term or any subsequent term.
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4. **ZONING:** Lessee understands that it will comply with any and all zoning requirements under the DeWitt County Code of Ordinances and the Illinois Compiled Statutes and shall obtain any needed zoning or building permits required from DeWitt County. In the event that needed zoning or permits are refused, Lessee may cancel this agreement without penalty.
5. **COMPLIANCE WITH LAW:** Lessee shall conform to current and future applicable laws and regulations of any public authority affecting the Site and the use thereon and assume, at Lessee's sole expense, any costs of such compliance including any fines or penalties. The Lessee shall obtain all federal, state permits and licenses necessary to operate under this Lease. Lessee shall operate its equipment and units in compliance with the rules and regulations of the Federal Communications Commission and any other applicable licensing authority. Lessee shall comply with standards or requirements in effect for non-ionizing electromagnetic radiation levels as established by the Environmental Protection Agency or other governing agencies. Lessor and Lessee both agree to comply with any and all State of Illinois and Federal laws pertaining to the Lease and agree that the Leased Premises/Site shall not be used for any illegal purpose.
6. **IMPROVEMENTS:** Lessee shall have the obligation, at its expense, to install and maintain the tower facility. The Tower and any facility improvements shall remain the exclusive property of Lessee, and Lessee shall have the obligation to remove the tower and any other improvements associated with its construction following any termination of this Lease. After removal of its equipment, Lessee shall restore the Premises to its original condition at the time of leasing, including but not limited to complete excavation and removal of concrete foundation piers, and regrading of soil as may be required. Restoration of the Premises to its original condition shall occur within 30 days of termination of this Lease unless otherwise agreed to by a majority of the DeWitt County Marina Committee or such other committee as may be determined by the DeWitt County Board.
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9. **TOXIC OR HARMFUL SUBSTANCES AND DEBRIS:** Lessee shall not keep on or about the Site any substances now or hereinafter designated as or containing components now or hereinafter designated as hazardous, toxic, dangerous, or harmful, (and/or which are subject to regulation as hazardous, toxic, dangerous or harmful) by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as "Hazardous Substances"). Lessee shall immediately notify Lessor of (i) all failures comply with any federal, state, or local law, regulation or ordinance, as now enacted or as subsequently enacted or amended, (ii) all inspections of the Lessee's equipment at the Site by any regulatory entity concerning Hazardous

Substances at the Site, (iii) all regulatory orders or fines or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private party concerning the Lessee's equipment at the Site. Lessee shall be fully and completely liable to Lessor and shall indemnify, defend, and hold harmless the Lessor and its employees, officers and agents with respect to any and all damages, costs, fees (including attorney's fees and costs), penalties (civil and criminal), and cleanup costs assessed against or imposed as a result of the Lessee's use, disposal, transpiration, and/or generation of Hazardous Substances. Lessee shall not allow debris or refuse to accumulate at the Site.

10. **TAXES.** Lessee shall pay any real or personal property taxes assessed on, or any portion of such taxes attributable to, the Lessee's Equipment. Lessor shall pay any real or personal property taxes assessed on, or any portion of such taxes attributable to the land at the Site.

11. **INSURANCE:**

- a. Any policies maintained by Lessee, its contractors, or subcontractors shall be primary without right of contribution or offset from any policy of insurance or program of self-insurance maintained by Lessor. Lessee agrees and shall require each of its contractors and/or subcontractors to agree that they shall each arrange for the issuers of all insurance policies to waive their rights of subrogation against Lessor, including all elected officials and employees of Lessor.
- b. All insurance policies required shall be issued by a reputable company having a minimum Best's Rating of B+/IV and shall provide 30 days prior written notice of any substantial change in the coverage, cancellation or non-renewal. Such notices shall be required to be sent to Lessor as well as Lessee and/or Lessee's contractors or subcontractors. Prior to taking possession of Leased Premises, Lessee shall furnish copies all policies to the County Administrator.

Lessee shall maintain the following policies during the term of the Lease:

Lessee shall maintain a Workers Compensation insurance policy with a minimum coverage of \$1,000,000. This coverage shall extend to all employees, contractors, subcontractors, and their subcontractors utilized by Lessee. Policy must include a waiver of subrogation in favor of DeWitt County. Policy shall otherwise conform to the requirements of Workers Compensation laws.

Lessee shall maintain a General Liability insurance policy covering all employees, contractors, subcontractors, and all their subcontractors with a minimum coverage of \$1,000,000. Said policy shall cover bodily injuries, death, or incapacitation of persons and property damage sustained by one or more persons or entities. Lessor shall be added as Additional Insured through an endorsement properly designated by the insurance provider. Policy must include a waiver of subrogation in favor of DeWitt County.

All insurance policies shall be maintained by Lessee during the term of Lease and proof of the above coverage shall be filed with the County Administrator of DeWitt County. Policies must include a waiver of subrogation in favor of DeWitt County.

Lessee shall require any entity performing work on Lessee's behalf of any kind to meet or exceed the above requirements. Lessee agrees to indemnify County in the event that any entity performing work on Lessee's behalf seeks compensation for any action or omission.

12. **INDEMNIFICATION:** To the fullest extent permitted under law, Lessee agrees to protect, indemnify, defend and hold harmless Lessor, Lessor's agents, and Lessor's employees from and against any and all losses, costs, damages, liabilities, expenses or causes of actions brought against Lessor (1) arising out of, resulting from, relating to or connected with any act or omission of Lessee or Lessee's employees on or about the Leased Premises, and (2) any breach or violation of Lease and such obligations to indemnify shall survive the termination of this Lease for any reason.

1. Lessee releases Lessor from any claims for any personal injury or any loss of damage resulting directly or indirectly from any existing or future condition, defect, matter, or thing in or about the Leased Premises or resulting from any accident in or about the Leased Premises or resulting from any act or neglect.
2. Lessee agrees, in any dispute arising out of Lease, to waive any and all consequential damages, compensation or claims for inconvenience or loss of business, rents or profits. Lessee shall also indemnify and hold Lessor harmless for any damages caused by fire, vandalism, or acts of God to any vehicle, equipment, merchandise or personal property on Leased Premises, except to the extent losses are a result of Lessor's willful misconduct or breach of Lessor's obligation under Lease.

13. **CONDEMNATION.** If a condemning authority takes all of the Site, or a portion sufficient, in Lessee's determination, to render the Tower unsuitable for the use, which Lessee was then making of the Tower, this Lease shall be terminated as of the date the title vests in the condemning authority.

14. **INSOLVENCY:** If a receiver or trustee is appointed to take possession of all or substantially all of the assets of Lessee; or if any action is taken or suffered by Lessee pursuant to an insolvency, bankruptcy or reorganization act; or if the Lessee makes a general assignment for the benefit of its creditors; and if such appointment, action or assignment continues for a period of thirty (30) days, it shall, at Lessor's option, constitute a breach by Lessee and Lessor shall be entitled to the remedies set forth in this document.

15. **DESTRUCTION, FORCE MAJURE:** If the Site, or the Tower are destroyed or damages so as, in Lessee's judgment, to hinder the effective use of the site, by no act of the Lessee or Lessor, Lessee may elect to terminate this Lease as of the date of the damage or destruction by so notifying Lessor not more than 15 days following the date of damage. Lessor shall not be responsible for repair or replacement of any equipment that may be damaged or destroyed or for any other damages, consequential or direct, which may result from damage or destruction to Lessee's equipment.



16. **CONFLICT OF INTEREST:** Lessor and Lessee hereby represent that neither has a conflict of interest in entering into this Lease, nor are either Lessor or Lessee prohibited by law from entering into said Lease.
17. **AUTHORITY:** Lessee represents that he/she/it has full authority and power to enter into Lease, and shall be responsible for the obligations contained herein. Lessee represents authorization to enter into this agreement has been granted by majority vote of the County Board of DeWitt County, Illinois.
18. **BODY POLITIC:** Lessee understands that this agreement is with a body politic, and no single member may alter this agreement or bind DeWitt County without prior approval of the DeWitt County Board, and a board member may only employ discretion that has been approved by vote and delegated to him by the board as a whole.
19. **DISPUTE RESOLUTION AND INTERPRETATION:**
- a. **COMPLETE AGREEMENT:** This Lease is the complete and whole agreement between the parties. No other negotiations or communications, be they past or future, shall be applicable to the interpretation of this Lease in the event of a dispute. Any negotiations or promises be they oral or written, whether supported by consideration or not, shall not be considered part of Lease or be used in the interpretation of Lease. Nor shall the past or future conduct of either party be used in interpreting Lease.
  - b. **CHOICE OF LAW:** This Lease and any disputes arising from enforcement or interpretation of Lease shall be governed by the laws of the State of Illinois.
  - c. **DISPUTE VENUE:** In the event of a legal dispute concerning Lease, the venue shall be the Circuit Court of DeWitt County, Illinois. Both parties hereby agree to waive jury trial and settle any dispute by bench trial before a judge assigned to the case by the Chief Judge of the Sixth Judicial Circuit. Both parties agree that the Circuit Court of DeWitt County shall have jurisdiction over any dispute arising from Lease, and shall not object to jurisdiction or venue. This section does not prohibit the parties from attempting to reach an agreement in lieu of litigation in the event of a dispute.
  - d. **ATTORNEYS' FEES:** If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees, not to include filing fees, discovery costs, or costs of appeal.
  - e. **WAIVER:** Waiver of any condition stated at any time shall not be considered a permanent waiver of the authority of either party, and either Lessor or Lessee may waive then later enforce any condition at their discretion.
  - f. **HEADINGS:** The headings or titles of each section of Lease are for convenience and reference only and shall not be used in the interpretation of Lease.

- g. **DEFAULT:** The following shall result in default
  - i. Lessee fails to make its best effort to provide internet service.
  - ii. Lessee fails to maintain required insurance coverage. Lessee shall have 10 business days to cure any lapse in required coverage upon discovery.
  - iii. Lessee becomes insolvent or bankrupt.
  - iv. Any other failures not specifically listed that are an obligation of Lessee.

This Lease may also be terminated pursuant to the terms of Paragraph 2. Upon termination of this agreement, Lessee agrees to remove all of its facility from the Site, and return the areas occupied by the Tower to their original condition at the time of leasing within 30 days of the termination, unless otherwise agreed to by the Lessor and Lessee. Removal of the Tower and any other improvements of the Lessee shall be done in such a manner as to not materially affect the operation of the Clinton Lake Marina.

In the event of any breach of any provision of this Lease by Lessee, the breach shall be deemed a default, entitling Lessor to the remedies set forth in this Lease or otherwise available at law or equity, after Lessor has delivered to Lessee notice of the breach and a demand that the same be remedied immediately; provided that Lessee shall not be in default after receipt of notice, if Lessee cures the breach within ten (10) days after receipt of notice. When a default is discovered Lessor shall send notice via certified mail to Lessee.

- h. **REMEDIES:** In the event of a default, Lessor shall have the right to terminate the Lease and re-enter the Leased Premises after Lessee fails to cure default, or in the case of immediate default Lessor shall have the right to terminate Lease and re-enter the Leased Premises immediately. Lessee may confess termination of Lease through a writing authorizing such signed by a principal of Lessee. Upon such termination, Lessor may seek damages for any such breach or default with or without terminating the Lease.

## 20. NON-DEFAULT TERMINATION:

- a. In addition to any other termination rights set forth in Lease, Lessor may, at its sole discretion, terminate all or a part of this Lease upon written request by Lessee for surrender of leasehold upon satisfaction by the Lessee of all outstanding rents, duties and obligations.
- b. **TERMINATION BASED UPON CHANGE IN LAW:** In the event a law is enacted by the Illinois legislature rendering contract/lease void, or if such law confers an additional burden upon Lessee, such Lease shall be deemed terminated, and both parties shall be free of any future obligations regarding Lease, but all previous obligations shall remain.

- 21. **SALE OF PREMISES:** Should the current County Board or future County Board determine by majority vote to sell the Premises/Site commonly known as the Clinton Lake Marina, this Lease shall be deemed to run with the land during the term of this agreement, and all previous obligations shall remain.

22. **CONSEQUENTIAL DAMAGES:** Nothing in this lease agreement shall limit a party from seeking consequential damages in the event of breach.
23. **COVENANT AGAINST LIENS:** Lessee hereby covenants and agrees that it will not cause or permit any lien or claim for lien to be asserted against the Leased Premises or any improvement thereon by reason of work, labor, services or materials performed or supplied to Lessee. Lessee shall indemnify Lessor for any costs, damages or expenses (including attorneys' fees) incurred as a result of the filing of such liens or in obtaining their discharge whether such costs, damages or expenses were incurred prior or subsequent to Lease termination. Lessee shall actively seek to terminate any lien placed against Leased Premises or any improvements thereon at Lessee's expense. Lessee shall cause any such lien to be discharged of record within thirty (30) days after the date of filing the same unless other arrangements are authorized in writing by Lessor. Lessor may take action, at its sole option, to remove any lien and shall be entitled to full reimbursement for all costs in removing lien from Lessee.
24. **FREEDOM OF INFORMATION ACT:** Lessee agrees to provide documents upon request to comply with the Illinois Freedom of Information Act, and understands that such requested documents must be provided promptly to comply with said Act. Lessee agrees to indemnify and hold harmless Lessor for any action arising out of its failure to supply required documents to comply with said Act. Lessee understands that it may be subject to the Freedom of Information Act due to Lease and the agreement with Lessor, a body politic of the State of Illinois.
25. **MISCELLANEOUS.** The substantially prevailing party in any litigation, arbitration or other action arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any. This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.
26. **SAVINGS:** This Lease shall be construed in accordance with the laws of the State of Illinois. In the event that any one of the conditions set forth in Lease are held to be contrary to public policy or otherwise unenforceable by a court, both parties agree all other conditions of Lease shall remain in full force and effect.
27. **CHANGES OR AMENDMENTS:** Any and all changes to this Lease shall be in writing and authorized by majority vote of the County Board of DeWitt for and by an authorized agent for Lessee. No oral agreements shall be binding on either party. Lessee acknowledges that a single board member may not bind the county unless previously authorized by majority vote to act on behalf of the County of DeWitt.
28. **THIRD PARTY BENEFICIARIES:** Lessee agrees that there are no intended third party beneficiaries to Lease other than the Marina Operator, nor are any rights conferred upon any party not named in Lease. This Lease is subject to the approval of the Marina Operator and any renewal or extension of Lease is subject to the approval of the existing Marina Operator at the time of the renewal or extension.

29. **POINT OF CONTACT:** In the event that Lessor must be contacted to resolve an issue, Lessee shall contact the current DeWitt County Marina Committee Chairman at 201 W. Washington Street, Clinton, IL. 61727. In the event that the Marina Committee Chairman is not available and an alternative contact has not been established any member of the Marina Committee may be contacted in lieu of the Chairman. The DeWitt County Board reserves the right to remove this authority as a body politic or transfer this authority to another agent or board member without prior notice to Lessee. In the event Lessee must be contacted to resolve an issue, Lessor shall contact Lessee as follows: Wireless Data Net, LLC, ATTN: Tristan Johnson, PO Box 345, Saybrook, IL. 61770.

All legal notices to Lessor shall be sent to:  
DeWitt County Marina Committee  
201 W. Washington Street  
Clinton, IL 61727

With a copy sent to:  
DeWitt County State's Attorney's Office  
201 W. Washington Street  
Clinton, IL 61727

All legal notices to Lessee shall be sent to:

Tristan Johnson  
Wireless Data Net, LLC  
P.O. Box 345  
Saybrook, IL. 61770

\_\_\_\_\_  
LESSOR

David Newberg, County Board Chairman on behalf of the County of DeWitt

\_\_\_\_\_  
Date

\_\_\_\_\_  
LESSEE

Tristan Johnson, Principal Officer Wireless Data Net, LLC

\_\_\_\_\_  
Date