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Resolution No. 2015-18
A RESOLUTION OF THE CITY OF TROY, ILLINOIS
AUTHORIZING THE CITY TO ENTER INTO A NEW ELEVATED STRUCTURE
AGREEMENT WITH WISPER

Adopted by the City Council
of the City of Troy, Illinois
This 19TH Day of OCTOBER, 2015.

RESOLUTION NO. 2015 - 18

**A RESOLUTION OF THE CITY OF TROY, ILLINOIS
AUTHORIZING THE CITY TO ENTER INTO A NEW ELEVATED
STRUCTURE AGREEMENT WITH WISPER**

WHEREAS, the City of Troy, Illinois, is the owner of two (2) water towers within the City of Troy, Illinois; and

WHEREAS, the City of Troy, Illinois, has previously maintained an Elevated Structure Agreement with Wisper that expires effective October of 2015; and

WHEREAS, the City Council for the City of Troy, Illinois, has determined that it is in the best interests of the City of Troy, Illinois, to continue its relationship with Wisper, and to enter into a new Elevated Structure Agreement to allow Wisper to continue to place its RF antennas and connection supply devices on the two (2) water towers within the City of Troy, Illinois; and

WHEREAS, both the City Council for the City of Troy, Illinois, and Wisper desire to enter into a new Elevated Structure Agreement; and

WHEREAS, a copy of said Elevated Structure Agreement is attached hereto, marked "Exhibit A," and made a part hereof; and

WHEREAS, the City of Troy, Illinois, and Wisper have negotiated the terms and conditions of said Elevated Structure Agreement attached hereto as "Exhibit A" and the City of Troy, Illinois, believes that same are in the best interest of the City and its residents.


NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF TROY, ILLINOIS, AS FOLLOWS:

1. The recitals set forth above are hereby incorporated herein as if fully set forth.
2. The Mayor of the City of Troy, Illinois, is hereby authorized to enter into the attached Elevated Structure Agreement with Wisper, and is further authorized to take all actions and sign all documents necessary to fulfill the intent of this Resolution.
3. This Resolution shall be in effect following its passage, approval and publication as provided by law.
4. Any and all Resolutions, sections or subsections of Resolutions in conflict herewith are hereby repealed.

PASSED by the City Council of the City of Troy, Madison County, Illinois, approved by the Mayor, and deposited in the office of the City Clerk this 19th day of October, 2015.

Those voting aye: DeCarli, Oyer, Greenfield, Hendrickson, Italiano, Jackson, Portney, Turner.
Those voting nay: _____

Those absent: _____

APPROVED:
By: 
ALLEN P. ADOMITE, Mayor
City of Troy, Illinois

ATTEST:
BY: 
JAMIE MYERS, Clerk
City of Troy, Illinois

(SEAL)

October 16, 2015

Elevated Structure Agreement

THIS LEASE, entered into the 23rd Day of October 2015, by and between Wisper ISP, INC., having its principal place of business at 3680 Lebanon Ave, Belleville, IL 62221 (hereinafter referred to as "Tenant"), and City of Troy, IL, having their principal address at 116 E Market St., Troy, IL 62294 (hereinafter referred to as "Landlord").

WITNESSETH:

WHEREAS, Tenant desires to erect and operate RF transmission antennas and connection supply devices on the Premises at the following current Landlord Locations:

	LAT	LON	Premises Name
1	38.73	-89.90	Troy Water tower 1
2	38.72	-89.86	Troy Water tower 2
3			

In accordance with the terms and conditions set forth herein; and

WHEREAS, Landlord, in consideration of rental payments or other valuable considerations to be received of Tenant, desires to Lease specific space on the Landlord's towers/buildings (the "Premises") to Tenant for the placement of said RF transmission antenna thereat, but subject to compliance with all terms and conditions set forth herein;

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth to be performed by the parties hereto, it is agreed by and between Landlord and Tenant as follows:

1. **Term.** The Term of the Lease shall be for three (3) years, commencing upon the execution date of this Lease agreement. During this term the Tenant will have exclusive rights to the unlicensed bands of 900mHz, 2.4gHz, 4.9gHz-5.8gHz and licensed band of 3.65gHz and any new unlicensed bands made available.
2. **Premises, Permitted Use.** Subject to approval by Landlord of Tenant's plans, Tenant may mount as many RF transmission antennas and connection supply devices as needed, within reason, on the Premises the Landlord owns. Tenant may run such cabling and other lines and equipment from the Premises into the designated area where it shall have equipment not larger than eight (8) by eight (8) feet at the base and not taller than eight (8) feet in height. Landlord will provide access to standard 110-volt electric power and Tenant will remit to the Landlord \$10.00 per month for electric cost(s).
3. **Construction; Maintenance.** Landlord shall review and approve all plans for any work the Tenant intends to perform on the Premises. Tenant shall utilize existing concrete, brick, or steel supports on the Premises if available for Tenant's use, or, at Tenant's sole expense and in accordance with Tenant's plans, Tenant may install adequate support for Tenant's

RF transmission antenna on the side of substructures attached thereto without drilling into or welding to the Premises. Tenant's receiving antenna shall be installed as such, as a way to do no physical harm to the Premises and shall be of adequate strength to give reasonable and normal support. Said construction and Tenant's subsequent maintenance of the RF transmission antenna shall be at Tenant's sole risk and cost and shall be in compliance with all applicable laws and ordinances.

4. **Access.** Landlord and its agents shall have the right to enter and inspect the Premises at all times. Tenant shall be granted access to the Premises at all times upon at least three (3) hours prior notice for the purpose of examining, maintaining, or repairing Tenant's equipment. Access to the Premises by Tenant shall not be permitted unless Tenant's designated service personnel is authorized by Landlord.
5. **Rent.** Tenant shall pay Landlord **\$300.00/month** for each location listed above that the tenant wishes to rebroadcast from (**\$600.00/total**). The monthly payment is due to Landlord on the 15th of the month with a maximum grace period of 15 days. Landlord will begin receiving monthly rent once Tenant has completed installation of Internet equipment at Landlord's Premises.
6. **Indemnity of Landlord.** Tenant shall indemnify and hold harmless against and from any and all loss, costs, damages, and claims to the extent of such damage arises from Tenant's negligence or wrongful acts or from any activity, work, or thing done, or permitted by the Tenant in the Premises, and shall further indemnify and hold harmless Landlord against and from any and all loss, costs, damages, and claims to the extent such damages arises from Tenant's negligence or wrongful acts arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of the Tenant, or of its agents, contractors, servants, invitees, or employees, and from and against all costs, attorneys' fees, expenses and liabilities incurred or paid in connection with any such claim or any action or proceeding brought against the Landlord by reason of Tenant's use of the Premises.

Neither Landlord nor its agents shall be liable for any incidental or consequential damages or for any damage to property entrusted to employees of the Premises, nor for loss of or damage to any property by theft or otherwise, nor for any injury or damage to persons or property resulting from fire, explosion, falling pipes, appliances, or plumbing work therein, nor from the roof, street, or sub-surface, nor from any other place or resulting from dampness, nor from any other cause whatsoever, unless caused by or due to the gross negligence of Landlord, it's agents, servants, or employees. Tenant shall give prompt notice to Landlord in case of fire or accidents in the Premises or of defects therein or in the fixtures or equipment.

7. **Rights of Landlord.** The Landlord reserves the following rights: (a) to change the name of the Premises without notice or liability to Tenant; (b) constantly to have access to the Premises; (c) to grant to anyone the exclusive right to conduct any particular business or undertaking in the structure; and (d) at any time, and from time to time, whether at the insistence of Landlord or pursuant to government requirements, at Landlord's expense, to



decorate or make repairs, alterations, additions, or improvements, whether structural or otherwise, in or to the Premises or any part thereof, including the Premises. Landlord will not knowingly permit the installation of equipment on or within the Premises which will interfere with the reception of signals by Tenant's antenna or operate within the same frequencies as the tenant and tenant will take no action to interfere with other tenants at said location.

8. **Assignment and Subletting.** Tenant shall not sublet or grant access to the Premises or any part thereof or assign this Lease, or permit any business to be operated in or from the Premises by any person, firm or corporation other than Tenant without the prior written consent of Landlord, which consent shall not be unreasonably withheld or denied.
9. **Damage or Destruction.** If the Premises are damaged by fire or other casualty, Landlord may elect to immediately terminate this Lease or if Landlord elects to so repair, Tenant to the extent of its obligation to maintain and repair the Premises shall also promptly repair such damage. There shall be no abatement of Rent by reason of any portion of the Premises being unusable for a period of thirty (30) days or less.
10. **Defaults.** The occurrence of any of the following shall constitute an event of default:
 - (a) A failure by Tenant to make any payment required to be made by Tenant hereunder, where such failure continues for ten (10) days after notice that such payment was due.
 - (b) A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for twenty (20) days after written notice thereof by Landlord.

If an event of default shall occur, Landlord may, at any time thereafter, at Landlord's option, exercise any or all rights at law or in equity, which are permitted by Illinois State Law.

11. **Rules and Regulations.** Tenant shall faithfully observe and strictly comply with the Rules and Regulations attached to this Lease and such other rules and regulations as Landlord may from time to time reasonably adopt.
12. **Requirements by Law.** Tenant, at Tenant's sole cost and expense, shall promptly comply with all present and future laws, orders, regulations, and requirements of all public authorities and any fire underwriters insurance rating agency or similar organization which may impose any violation, order or duty upon Landlord or Tenant with respect to use of the Premises.
13. **Surrender of Premises.** At the expiration of the Term hereof, Tenant will remove its antenna and other trade fixtures excluding in-the-wall cabling, and repair any damage which may be caused to the Premises as a result of such removal, reasonable wear and tear excepted.

14. **Liens.** Tenant shall do all things necessary to prevent the filing of any mechanic's, material provider's, or other lien against the Premises or the interest of the Landlord by reason of any work, labor, services, or material performed or supplied or claimed to have been performed or supplied to Tenant, or anyone holding the Premises, or any part thereof, though or under Tenant. If any such lien shall at any time be filed, Tenant shall either cause the same to be immediately vacated and canceled of record. If Tenant in good faith determines that such lien should be contested, Tenant shall furnish such security, surety bond or otherwise, as may be necessary or be prescribed by law to release the same as a lien. If Tenant shall fail to vacate or release such lien, Landlord may, but shall not be obligated to, vacate or release the same. Tenant shall repay to Landlord, on demand, all sums disbursed or deposited by Landlord pursuant to the foregoing provisions of this paragraph, including Landlord's costs and expenses and reasonable attorneys' fees incurred in connection therewith.

15. **Insurance.** Tenant shall obtain and keep in force during the Term of this Lease a Commercial General Liability policy of insurance protecting Tenant and Landlord (as an additional insured) against claims for bodily injury, personal injury, and property damage based upon, involving or arising out of the use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$2,000,000 per occurrence. The limits of said insurance required by this Lease or as carried by Tenant shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation hereunder. All insurance to be carried by Tenant shall be primary to and not contributory with any similar insurance carried by Landlord, whose insurance shall be considered excess insurance only.

16. **Waiver of Subrogation.** Provided that, and for so long as the provisions of this paragraph do not result in the cancellation or invalidation of policies of fire and extended coverage or additional perils insurance covering the Premises, Landlord and Tenant agree to, and each does hereby, waive all rights of recovery and causes of action against the other and all parties claiming by, though or under either Landlord or Tenant for any damage or destruction of any property of either Landlord or Tenant caused by any of the perils embraced within the fire and extended coverage and additional perils insurance policies of Landlord and Tenant, or either, notwithstanding that said damage or destruction shall result from the negligence of any or all of the parties in whose favor this agreement operates.

17. **Subordination.** This Lease is and shall at all times, unless Landlord shall otherwise elect, be subject and subordinate to all covenants, restrictions, easements and encumbrances now or hereafter affecting the fee title to the Premises and to all ground and underlying leases and mortgages or financing of refinancing.

18. **Attornment.** Tenant agrees that, in the event of a sale, transfer, or assignment of the Landlord's interest in the Premises or any part thereof, including the Premises, Tenant will attorn to and recognize such transferee, purchaser, ground or underlying lessor or mortgagee as Landlord under this lease.

19. **Estoppel Certificate.** Tenant shall, at any time and from time to time execute, acknowledge and deliver to Landlord a statement in writing (i) certifying that this Lease is unmodified and in full force and effect and the dates to which the rental and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults, if any, which are claimed. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the real property of which the Premises are in part.
20. **Interest on Past Due Obligations.** If Tenant shall fail to pay Rent required to be paid hereunder after the same becomes due and payable in accordance with paragraph 10 hereof, such unpaid amounts shall bear interest from the due date thereof to the date of the payment at the lesser of eighteen percent (18%) per annum, or such other rate as is the highest legal rate of interest in effect on the date said sum is due and payable hereunder which may be charged to Tenant in the state where the Premises are located.
21. **Transfer of Landlord's Interest.** In the event of any transfer of Landlord's interest in the Premises or in the real property of which the Premises is a part, the transferor shall be automatically relieved of any and all obligations and liabilities on the part of Landlord accruing from and after the date of such transfer.
22. **Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than that stipulate herein for Rent shall be deemed to be other than on account of the earliest stipulated Rent then due, nor shall any endorsement or statement on a check or letter accompanying any check or payment be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease, at law or in equity.
23. **Fees or Commissions.** Tenant covenants, warrants and represents to Landlord that there are no possible claims for broker's commissions or finders' fees in connection with this lease.
24. **Notices.** Every notice to be given under this Lease shall be in writing and shall be sent by Certified or Registered Mail, postage prepaid, return receipt requested, or overnight courier, and shall be addressed to the respective party's mailing address and the same shall be deemed given when received or refused by the addressee. Either party may designate, by similar written notice to the other party, any other address for such purposes. Except with respect to service of a summons and other papers in a lawsuit, each of the parties hereto waive personal or any other service than as provided for in this paragraph. Notwithstanding the foregoing, either party hereto may give the other party telephonic notice of the need for emergency repairs.
25. **Entire Agreement.**
 - (a) This Lease, the exhibits and addenda, if any, attached hereto set forth all of the covenants, promises, agreements, conditions and understanding, between the parties.

- (b) All prior conversations or writings between the parties hereto or their representatives are merged herein and extinguished.
- (c) This Lease shall not be modified, except by a writing subscribed to by the party to be charged, or be canceled by Tenant or the Premises surrendered except with the prior express written authorization of Landlord, unless in accordance with paragraph 1 or as otherwise specifically provided herein.
- (d) Should Tenant earn no income from selling End Users wireless Internet service utilizing antenna and equipment installed at Premises by Tenant (and therefore no rent payment due to Landlord for that same period), either party may terminate this lease with 30 days written notice to the other party.

26. **Liability of Landlord.** Anything contained in this Lease to the contrary notwithstanding, Tenant agrees that Tenant shall look solely to the estate and property of the Landlord in the real estate of which the Premises is a part and the rentals therefrom for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any condition, covenant, or agreement of this Lease to be observed and/or performed by Landlord, subject, however to the prior rights of any ground or underlying lessor or mortgagee of the real estate of which the Premises is a part, or part thereof.

27. **Successors and Assigns.** Except as otherwise provided in this Lease, all of the conditions, covenants, and agreements of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representative, successors and assigns. Each provision of this Lease to be performed by Tenant shall be construed as both a covenant and a condition, and if there shall be more than one Tenant, they shall all be bound, jointly and severally, by the provisions of this Lease.

28. **Governing Law.** This agreement shall be governed by the laws of the State of Illinois and any disputes, causes of action or claims shall be brought in the Twentieth Judicial District Court, St Clair County, IL and the parties hereto consent to the jurisdiction of such Court.



IN WITNESS WHEREOF, Landlord and Tenant have executed the Lease, in duplicate, as of the Date(s) set forth below their respective signatures hereto.

LANDLORD.

Wisper ISP, INC.

By: *Allen P. Adomite*
MAJOR

By: *Nothan T. Stooke* ^{DR}

Print: Allen P. Adomite
MAJOR

Print: Nothan Stooke

Date: 10/23/15

Date: 10/23/2015

END OF DOCUMENT