

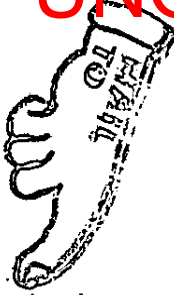
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8/31/03 07 001 Page 1 of 8

2001-01-16 09:31:21

Cook County Recorder 35.50



**After Recording
MAIL TO:**

**Kim Pape
OnePoint Communications
Two Conway Park
150 Field Drive, # 300
Lake Forest, IL 60045**



0010036188

[Handwritten signature]

Property of Cook County, Illinois

AGREEMENT

Legal Description:

Parcel One: Lots 5, 6 and 7 in Ewing Addition to Chicago, said addition being a subdivision in Block 17 of Bushnell's Addition to Chicago in the Southeast ¼ of Section 4, Township 39 North, Range 14 East of the Third Principal Meridian, according to the plat thereof recorded 8 October 1895 as Document 2288460, in Cook County, Illinois.

Parcel Two: The North 20 feet of Lot 5 in the Assessor's Division of the North 200 feet of Block 17 in Bushnell's Addition to Chicago, said land being also described as follows: Beginning at a point on the West line of said Block 175 feet South of the North line of said Block and running thence South along said West line 20 feet more or less, thence East along a line parallel with the North line of said Block, 148.8 feet, more or less, to an a ley thence North along the West line of said alley, 20 feet, more or less, to a point 175 feet South from the North line of said Block; thence West parallel with the North line of said Block, 148.5 feet, more or less, to the place of beginning, all in Section 4, Township 39 North, Range 14 East of the Third Principal Meridian, according to the plat thereof recorded 8 October 1895 as Document 2288460, in Cook County, Illinois.

Property Address: 1117 North Dearborn, Chicago, IL 60610

P.I.N. 17-04-414-007
17-04-414-008

35.50

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Property of Cook County Clerk's Office

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ONEPOINT COMMUNICATIONS TELECOMMUNICATIONS SERVICES AGREEMENT

THIS AGREEMENT is made this 9 day of December, 1999, between OnePoint Communications-Illinois, LLC, (hereinafter referred to as "OnePoint") and The Dearborn North Apartments, with its principal office at 1117 North Dearborn, Chicago, IL 60610 (hereinafter referred to as "Property Owner").

A. Property Owner owns a parcel of real estate, which consists of approximately one hundred thirty-four (134) residential units ("Units"), located in 1117 North Dearborn, Chicago, IL 60610, known as The Dearborn North Apartments (the "Property");

B. Property Owner desires that OnePoint provide Telecommunications Services for the benefit of the residents of the Property and OnePoint is willing to provide the Telecommunication Services pursuant to this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, OnePoint and Property Owner agree as follows:

Section 1. Grant of License to OnePoint. Property Owner hereby grants the following License to OnePoint:

1.1 Telecommunications Services. Except as provided by existing state, local or federal law, OnePoint shall have a license that shall accord to it (i) the sole and exclusive right to market Telecommunications Services to residents of the Property, (ii) the right to provide Telecommunications Services to residents and prospective residents of the Property, and (iii) the right to install, own, operate, control, replace, modify with Owner's prior approval and maintain on-site equipment, specifically inside the residential unit and/or at the designated network interface unit (the "Equipment"), on and through the Property as deemed necessary by OnePoint to provide the Telecommunications Services pursuant to this Agreement. The equipment shall be installed at a location proposed by OnePoint and agreed to by the Owner. "Telecommunications Services" shall mean the transmission and/or receipt of telecommunications services (including but not limited to local, long distance and data services) and any and all services and features ancillary thereto that relate to voice and data transmission, as specified in Exhibit A attached hereto, as the same may be amended from time to time.

If OnePoint installs equipment as outline above and such equipment is removed by OnePoint at the end of the agreement, OnePoint agrees to leave Owner's property in a similar condition prior to OnePoint installation, normal wear and tear accepted.

1.2 Right of Entry to the Property. Property Owner hereby grants and conveys to OnePoint an exclusive and irrevocable right of entry to use all necessary portions of the Property, for the term of this Agreement, to market and provide Telecommunications Services to residents and prospective residents of the Property, including any activities incidental to marketing and providing Telecommunications Services, and to install, maintain, operate, repair and remove the Equipment, except for any and all inside wiring.

Installation of any equipment, wiring or repair in any of common areas, exclusive of the resident's apartment or designated network interface unit, is not allowed.

1.3 Definition. The rights granted to OnePoint in sections 1.1 and 1.2 shall collectively constitute what is herein called the "License."

When Recorded, Please Return to:

Kim Pape
OnePoint Communications
Two Conway Park
150 Field Drive, Suite 300
Lake Forest, Illinois 60045

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1.4 Exclusivity. The License shall be exclusive. Property Owner shall not grant a license permitting access to the Property for the purpose of, or permit or grant a license for a right to permit, the soliciting or marketing of Telecommunications Services to any other person or entity. The foregoing shall not be deemed to restrict the provision of the Telecommunications Services by local exchange companies so long as it is a requirement of state, local or federal law that such entities may not be denied the ability to provide such service to the Property and such Telecommunications Services are provided to a resident specifically at the request of such resident.

1.5 Acceptance of Property. OnePoint shall have the right to assess the feasibility of marketing and providing the Telecommunications Services to the Property within the sixty (60)-day period immediately following the execution of this Agreement. During such sixty (60)-day period, Property Owner shall provide OnePoint with access to such Property as is reasonable and necessary to assess the feasibility of marketing and providing the Telecommunications Services at the Property. If OnePoint determines that the marketing and providing of the Telecommunications Services to the Property is feasible, OnePoint shall deliver to Property Owner, not later than the sixtieth (60th) day following the date of the execution of this Agreement, written notice of its acceptance of the Property and the date such notice is received by Property Owner shall be the "Acceptance Date" of the Property. If OnePoint has not delivered to Property Owner written notice of its acceptance of the Property within such sixty (60)-day period, then the Property shall be deemed rejected by OnePoint and this Agreement shall terminate on the expiration of such sixty (60)-day period.

Section 2. Obligations of OnePoint. In consideration for the granting of the License, OnePoint shall have the following obligations hereunder.

2.1 Telecommunications Services and Rates.

(a) **Services and Rates.** OnePoint agrees to provide to each resident ("Customer") of the Property requesting the Telecommunications Services, on a nondiscriminatory basis, access to the Telecommunications Services, conditioned on the Customer paying service charges and meeting other reasonable requirements as are established by OnePoint from time to time. Customers will be charged and billed individually by OnePoint for Telecommunications Services they receive at rates established by OnePoint. OnePoint shall be entitled to all amounts collected or arising from the provision of the Telecommunications Services.

(b) **Fees to Property Owner.** From and after the Acceptance Date during the Term hereof, OnePoint shall remit to Property Owner the fees set forth on Exhibit B attached hereto, pursuant to the terms provided therein.

2.2 Operation, Maintenance and Repair. OnePoint's provision of the Telecommunications Services shall comply in all material respects with federal, state and local laws. OnePoint shall respond to any service and repair requests by Customers in a timely manner, and such responses shall be in material compliance with general industry standards. OnePoint shall promptly repair all damage to the Property and all improvements thereon caused by OnePoint and its agents, employees and contractors.

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2.3 Insurance. During the Term of this Agreement, OnePoint agrees to procure and maintain policies of general liability coverage in the amount of One Million Dollars (\$1,000,000) for (a) general liability property damage and bodily injury or death resulting from any one (1) accident; and (b) an umbrella excess liability policy providing coverage of at least Two Million Dollars (\$2,000,000) for bodily injury and property damage combined.

2.4 Control, Ownership and Character of the Telecommunications System Equipment. Subject to the terms hereof, the Equipment, if any is newly installed by OnePoint Communications, shall at all time remain the sole property of, and be controlled exclusively by, OnePoint, its successors and assigns. It is the intention of the parties that the Equipment and each and every component thereof shall retain its character as personal property following the installation and shall not be deemed to be a fixture that is part of the Property. Without limiting the foregoing, Property Owner shall create no security interest in the Equipment of any nature whatsoever including, without limitation, subjecting the Equipment to any mortgage, deed of trust or lien that encumbers the Property.

A. All existing phone equipment and inside wiring remains the property of Owner.

Section 3. Obligations of Property Owner.

Property Owner shall have the following obligations:

3.1 Promotion of Telecommunications Services. Property Owner shall cooperate with OnePoint in promoting the Telecommunications Services to residents and prospective residents of the Property and shall use reasonable efforts to promote the use of the Telecommunications Services provided by OnePoint to residents and prospective residents of the Property as part of the amenities provided at the Property. As part of such promotional activities, Property Owner shall, without limitation, distribute OnePoint's marketing materials to existing and prospective residents of the Property and encourage such residents to subscribe to the Telecommunications Services. OnePoint will pay the Property a commission incentive program to be compensated based upon Owner's discretion. These incentive payments may be used by Owner for events, activities, specifically designed and held for property management staff on a consistent basis and fully using such incentive payments.

3.2 Information Property Owner shall provide to OnePoint, on a monthly basis, a current list of residents and information regarding Unit sales and current move-ins and move-outs and the entering into and termination of leases at the Property.

3.3 Permits. Property Owner shall cooperate with OnePoint and use reasonable efforts to assist in obtaining permits, consents, licenses and any other requirements which may be necessary for OnePoint to install and operate the Equipment and furnish the Telecommunications Services in accordance with this Agreement, provided that OnePoint is primarily responsible for obtaining and maintaining such permits, consents, licenses and other requirements at its cost.

3.4 Cable Television Option. Property Owner shall provide to OnePoint a complete and accurate copy of each contract Property Owner currently has for the provision of cable television services to residents of the Property (an "Existing Cable Contract"). Property Owner agrees to negotiate in good faith a contract with OnePoint, at the option of OnePoint, under which OnePoint will undertake to provide cable television service to residents of the Property (the "OnePoint Cable Agreement"). The OnePoint Cable Agreement shall become effective at the earlier of the termination or the next renewal date of any such Existing Cable Contract. In no event shall this provision be interpreted to impose any obligation upon Property Owner to violate an Existing Cable Contract or upon OnePoint to supply cable service in any way that would, in OnePoint's judgment, interfere with Property Owner's obligations under an Existing Cable Contract.

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Section 4. Term. The term ("Term") of this Agreement shall include the Initial Term and all Extension Terms.

4.1 Initial Term; Extensions. This Agreement shall remain in full force and effect for five (5) years (the "Initial Term") from January 1, 2000 (the "Commencement Date") and shall renew for successive extension periods ("Extension Terms") of three (3) years each unless either party gives notice of its intent to terminate this Agreement at least ninety (90) days before the end of the initial Term or during any successive Extension Term.

4.2 Termination. This Agreement shall terminate upon the expiration of the Term or earlier upon the first to occur of the following:

- (a) the mutual written consent of the parties hereto;
- (b) at the option of either party, if the other party materially breaches any of its representations, warranties or obligations under this Agreement, and fails to cure such breach within sixty (60) days after written notice thereof to the breaching party (which notice specifies the material breach(es)) of the other party's intention to terminate if not cured;
- (c) at the option of OnePoint, if, in the sole discretion of OnePoint, it becomes infeasible for legal or regulatory reasons or for ~~economic~~ Economic (as defined below) or technological reasons to provide Telecommunications Services to the Property, provided that OnePoint provides one hundred twenty (120) days written notice to Property Owner; solely for the purposes of the preceding sentence, Economic shall mean OnePoint's determination, in its sole discretion, that OnePoint's profit margin on the resale of regional bell operating company ("RBOC") or incumbent local exchange company ("ILEC") service is reduced to an unacceptable level because of an increase in the cost paid by OnePoint for such RBOC or ILEC service; or
- (d) as expressly provided in Section 4.5.

4.3 Removal of Equipment upon Termination. Upon expiration or earlier termination of this Agreement, OnePoint shall have the right, at its expense, to remove the Equipment, except all inside wiring and existing equipment attached to Real Estate and any new wiring that shall be installed to serve an individual tenant, if any, from the Property within ninety (90) days from the date of such expiration or termination, as the case may be; provided, however, that such period shall be extended by any period of time during which Property Owner does not provide access to the Property as provided herein, or due to delays caused by coordination with Property Owner's new service provider(s).

Section 5. Indemnification; Limitation of Remedies.

5.1 Indemnification. Subject to the provisions set forth in Section 5.2 below, OnePoint and Property Owner hereby agree to indemnify, defend and hold each other (and each other's members, partners, officers, directors, owners, employees and agents) harmless from and against all claims, losses or liabilities asserted by a third party against one Party to this Agreement and in any way relating to, arising out of, or resulting from an act or omission of the other Party.

5.2 Limitation of Remedies. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, ONEPOINT SHALL NOT BE LIABLE FOR ANY REASON FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OF ANY NATURE WHATSOEVER OR, EXCEPT AS PROVIDED HEREIN, FOR THE CONDITION OR REPAIR OF ANY PROPERTY TO WHICH THE EQUIPMENT IS ATTACHED.

5.3 Availability of Remedies. Except as expressly provided in this Section 5, the remedies available to the Parties for breach of their respective representations, warranties, or obligations under this Agreement shall not be limited and any remedies specifically set forth herein shall be in addition to all other remedies available at law or in equity.

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Section 6. Miscellaneous.

6.1 Entire Agreement. This Agreement, including all Exhibits hereto (whether now or hereafter appended) which by this reference are incorporated herein, contains all of the terms and conditions agreed upon by the parties hereto with reference to the subject matter hereof and supersedes all prior agreements and negotiations with respect to the subject matter hereof. This Agreement cannot be modified or changed except by written instrument signed by all parties hereto.

6.2 Representations and Warranties of Owner. Property Owner hereby represents and warrants to OnePoint that: (a) this Agreement has been duly authorized, executed and delivered by Property Owner (b) no consent or approval of any other person or entity is required for the execution, delivery, performance or enforceability of this Agreement; and (c) there are no other telephone or wireline telecommunications service contracts affecting the Property.

6.3 No Waiver. No provision of this Agreement shall be deemed to have been waived, except if such waiver is contained in a written instrument and executed by the party against which such waiver is to be enforced. No waiver by a party of any term or condition of this Agreement shall constitute a waiver by such party of any prior, concurrent or subsequent breach or default of the same or any other term or condition of this Agreement.

6.4 Notices. All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be deemed effective when actually delivered to the addressee at its address or facsimile number set forth following its name below:

To OnePoint: OnePoint Communications, LLC
2201 Waukegan Road, Suite West-100
Bannockburn, IL 60015
Facsimile No.: (847) 374-3701
Attention: William F. Wallace, President

To Property Owner: The Dearborn North Apartments
~~1117 North Dearborn~~ 3767 N. RACINE
Chicago, IL. 60618
Attention: Bob Walters

6.5 Warranty. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT OR AS PROVIDED BY STATUTE, ONEPOINT MAKES NO WARRANTIES REGARDING ITS EQUIPMENT OR ITS PROVISION OF THE TELECOMMUNICATIONS SERVICES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6.6 Force Majeure. If OnePoint's or Property Owners performance of any of its obligations under this Agreement is interfered with by any reason or any circumstances beyond its control including, without limitation, fire, explosion, power failure or power surge, acts of God, war, revolution or insurrection, civil commotion, or requirement of any government or legal body or any representative of any such government or legal body, non-performance of any obligation of a third party contractor, labor unrest, including without limitation, strikes, slowdowns, picketing or boycotts, then OnePoint or Property Owner shall be excused from performance on a day-by-day basis to the extent of such interference. Notwithstanding any of the provisions herein contained, the Telecommunications Services are not guaranteed to the extent of any breakdown in transmissions beyond the control of OnePoint.

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6.7 Severability. In the event that any part of this Agreement shall be held to be indefinite, invalid or otherwise unenforceable, the entire Agreement shall not fail on account thereof, and the balance of the Agreement shall continue in full force and effect.

6.8 Arbitration. Any controversy, dispute, or claim of any nature arising out of, in connection with, or in relation to the interpretation, performance or breach of this Agreement, including any claim based on contract, tort or statute, shall be resolved at the written request of any party to this Agreement by final and binding arbitration before a single arbitrator agreed upon by the parties. In the event that a single arbitrator cannot be agreed upon by the parties within thirty (30) days of written request for arbitration, each party shall within five (5) days thereafter choose an arbitrator and the two (2) arbitrators so chosen shall choose a third arbitrator and the determination shall be made by a majority vote of at least two (2) of the three (3) arbitrators. If either party shall fail to choose an arbitrator, the arbitrator chosen by the other party shall act as the single arbitrator. The arbitration shall be conducted at a location determined by the arbitrator in the county in which the Property is located, administered by and in accordance with the then existing rules of practice and procedure of the American Arbitration Association. Both parties agree to act promptly to complete the arbitration within sixty (60) days from the date of written request for arbitration, where reasonably practicable. Each party shall bear its own expenses of the Arbitration and shall share the expense of the third arbitrator equally.

6.9 Binding Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors in interest and permitted assigns.

(a) Assignment by Property Owner (Sale of Property). If Property Owner sells or otherwise conveys its ownership in the Property to any third party, or if Property Owner converts the Property to condominium regime, then the purchaser, transferee or condominium owners' association acquiring the Property shall accept an assignment of Property Owner's interest hereunder and assume Property Owner's obligations and responsibilities hereunder. Upon such assignment and assumption, for which Property Owner shall give OnePoint a minimum of thirty (30) days notice, Property Owner shall be relieved of all of its obligations hereunder with respect to the conveyed Property and OnePoint shall look solely to the assignee for the same.

(b) Assignment by OnePoint. OnePoint shall have the right to make collateral assignments of this Agreement as security for the financing of its equipment, or in connection with other general financing that OnePoint may obtain. OnePoint shall have the right to assign its rights and obligations under this Agreement, to an entity that purchases all or substantially all of OnePoint's assets or that is OnePoint's successor by merger or restructure or recapitalization or to any affiliate (including, without limitation, all equity holders of OnePoint); provided, however, that any such assignment shall be to an assignee who will assume OnePoint's obligations pursuant to this Agreement. For any other assignment by OnePoint, OnePoint shall provide Property Owner with thirty (30) days prior notice of such assignment and such assignment shall be subject to Property Owner's consent, which consent shall not be unreasonably withheld. If Property Owner's consent to an assignment by OnePoint is required and Property Owner does not give notice of its refusal to consent to the assignment within the thirty (30) day period, Property Owner is deemed to consent to the assignment. Property Owner's consent shall not be conditioned upon receiving any monetary consideration from OnePoint or the assignee or obtaining any additional terms for Property Owner's betterment in this Agreement.

6.10 Governing Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of Illinois.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first set forth above.

ONEPOINT:

ONEPOINTCOMMUNICATIONS-ILLINOIS, LLC

By: WA Wallace

Name: William Wallace

Title: President

PROPERTY OWNER:

By: Robert Walters

Name: Robert Walters

Title: _____

Property of Cook County Clerk's Office