

UNOFFICIAL COPY

8 6 2 3 5 0 2 86235029

Owner Prudential Insurance
Company of America

Address 130 E. Randolph Drive
Chicago, Illinois 60601

A#-949374-Sale

LEASEHOLD DEED OF TRUST
(WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT
AND FINANCING STATEMENT)

Dated as of June 3, 1986

53⁰⁰

THE STATE OF ILLINOIS)
)
COUNTY OF COOK)

As used herein, "Lender" means REPUBLICBANK DALLAS, NATIONAL ASSOCIATION, THE FIRST NATIONAL BANK OF CHICAGO, THE PHILADELPHIA NATIONAL BANK and NATIONAL WESTMINSTER BANK USA, their successors and assigns and "Grantor" means Tower Communication Systems Corporation, whose mailing address is 13375 National Road S.W., Reynoldsburg, Ohio 43068. REPUBLICBANK DALLAS, NATIONAL ASSOCIATION, whose mailing address for purposes of this deed of trust is Pacific and Ervay Streets, Dallas, Texas 75201, is collateral agent (in such capacity, the "Collateral Agent") under that certain Collateral Agent and Intercreditor Agreement of even date herewith (the "Collateral Agent Agreement") among various parties signatory thereto. In consideration of the debt and trust hereinafter mentioned, Grantor does hereby grant, bargain, sell, transfer, assign and convey unto H. Clinton Roberts, Jr., Trustee (hereinafter called "Trustee") a first and prior security interest and lien securing the Obligation (as hereinafter defined) on behalf of the Collateral Agent on behalf of and for the ratable benefit of Lender, its successors and assigns and a second security interest and lien on behalf of The Prudential Insurance Company of America, whose mailing address for purposes of this deed of trust is 100 Mulberry Tree, Newark, New Jersey 07162 ("Subordinated Creditor"), and its successors and assigns, as their respective interests are defined in accordance with the Collateral Agent Agreement, in and to all right and title of Grantor in and to the leasehold interest in the real property described in Exhibit "B" attached hereto created by that certain License Agreement (the "Lease" together

Prepared By:
Elaine Harrison
Jones, Day, Reavis & Pogue
2300 LTV Center
2001 Ross Ave.
Dallas, TX 75201

Return To:
Elaine Harrison
Jones, Day, Reavis & Pogue
2300 LTV Center
2001 Ross Ave.
Dallas, TX 75201

47

86235029


 Sales

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

with all extensions, amendments, supplements and restatements thereof), dated July 23, 1984, between Grantor and Prudential Insurance Company of America (the "Lessor") attached hereto as Exhibit "A" and made a part hereof, together with all improvements on the realty and hereafter placed thereon, and all equipment, apparatus, fixtures, inventory and all other property, now or hereafter belonging to Grantor and now or hereafter installed, used or situated on the real property herein described or the improvements thereon, including, but not limited to, electronic equipment, standby generators, all towers, antennae and similar equipment, heating, lighting, refrigeration, plumbing, ventilating, incinerating, waterheating, cooking, dishwashing, radio, communication, electrical, and air conditioning equipment, together with all appliances, generators, engines and machinery, elevators, pumps, motors, compressors, boilers, condensing units, disposals, range hoods, furniture, furnishings, sprinklers, wiring, pipe, doors, windows, window screens, draperies, awnings, shelving, mantels, cabinets, paneling, wall coverings and floor coverings, and such other goods and chattels and personal property as are ever owned by Grantor and used or furnished in operating a building or buildings or in conducting any activity therein, upon the real property herein described, and all renewals, replacements and substitutions thereof and additions and accessions thereto, whether or not the same are or shall be attached to the realty in any manner, together with all building materials and equipment owned by Grantor now or hereafter delivered to such premises and intended to be installed thereon; and together with all other interest of every kind and character in and to the real property herein described which the Grantor now owns or at any time hereafter acquires.

This conveyance shall include, and the lien, security interest and assignment created hereby shall encumber and extend to, all other, further or additional title, estates, interest or rights which may exist now or at any time be acquired by Grantor in or to the property demised under the lease creating such leasehold estate and including Grantor's rights, if any, to purchase the property demised under such lease and, if fee simple title to any of such property shall ever become vested in Grantor, such fee simple interest shall be encumbered by this Deed of Trust in the same manner as if Grantor had fee simple title to such property as of the date of execution hereof. All property above described and all rights, title, estates and interests of Grantor therein described above

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

(whether one or more tracts and whether real and personal property or only realty or only personalty), together with any additional interest therein now owned or hereafter acquired by Grantor, is referred to below as the "Mortgaged Property."

TO HAVE AND TO HOLD the Mortgaged Property, together with all the rights, hereditaments and appurtenances in any wise appertaining or belonging thereto, unto said Trustee and his successors or substitutes in this trust, and his and their assigns, in trust and for the uses and purposes hereinafter set forth, forever.

The expression "Grantor's successors" as used herein shall mean each and all of the Grantor's representatives, successors, and assigns. Grantor hereby binds Grantor and Grantor's successors to warrant and forever defend, all and singular, the Mortgaged Property unto the Trustee and his successors or substitutes in this trust, and to his and their assigns, forever, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

In addition to the lien above created, Grantor hereby grants to the Trustee a first security interest and lien, on behalf of the Collateral Agent on behalf of and for the ratable benefit of Lender and its successors and assigns and a second security interest and lien on behalf of Subordinated Creditor and its successors and assigns as their interests are defined in the Collateral Agent Agreement, a security interest in (i) each and every part of the Mortgaged Property which are fixtures or personal property, (ii) in all proceeds from the sale, lease or other disposition thereof, (iii) in all sums, proceeds, funds and reserves described or referred to in Sections 5.5 and 5.6 hereof, and (iv) all substitutions, additions, replacements and accessions of any of the foregoing; provided that this grant of a security interest in proceeds shall not be deemed to authorize any action otherwise prohibited herein.

ARTICLE I - SECURED INDEBTEDNESS

1.1 This deed of trust is given to secure (a) the obligations hereunder, the obligations under any instrument given to secure the hereinafter mentioned notes, the Obligation, as defined in the Credit Agreement (as the same may from time to time be amended, supplemented or otherwise modified, the "Credit Agreement"), dated June 3, 1986, among Lender and Communications Transmission Holding, Inc. (the

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

"Company") and its Subsidiaries, including but not limited to, those certain promissory notes, dated June 3, 1986, executed by the Company and/or its Subsidiaries, payable to the order of Lender in the aggregate original principal amount of \$160,000,000, bearing interest as in said notes specified, interest payable as in said notes specified, and having final maturity dates of June 1, 1993, and any and all renewals, modifications, increases or extensions of said notes and notes issued in substitution or exchange therefor (hereinafter called "the note"), or any part thereof, (b) the Subordinated Debt and the Subordinated Notes issued pursuant to the Note and Stock Purchase Agreement, dated June 3, 1986 (the "Note and Stock Purchase Agreement"), including, but not limited to, the Subordinated Notes due April 30, 1996, dated June 3, 1986, executed by the Company, registered in the name of the Subordinated Creditor in the aggregate original principal limit of \$35,000,000, any additional Subordinated Notes hereafter executed by the Company in the aggregate original principal amount of not in excess of \$18,000,000, bearing interest as in said Subordinated Notes specified, and any and all renewals, modifications, increases, or extensions of said Subordinated Notes and Subordinated Notes issued in substitution or exchange therefor which are permitted by Lender (referred to herein as the "Subordinated Debt") and (c) all costs incurred by the Collateral Agent to obtain, preserve, perfect and enforce this agreement and security interest, collect the Obligation and the Subordinated Debt, and maintain, preserve, collect and enforce the Mortgaged Property, including but not limited to taxes, assessments, insurance premiums, repairs, reasonable attorney's fees and legal expenses, rent, storage costs and expenses of sale. The words "Secured Indebtedness," as used herein, shall mean all of the indebtedness, obligations and liabilities described or referred to above in clauses (a), (b) and (c) of this Section 1.1. In no event will the Secured Indebtedness ever exceed \$660,000,000, and in the event that the sum of the indebtedness, obligations and liabilities described or referred to in clauses (a), (b) and (c) of this Section 1.1 exceed said amount, then the Subordinated Debt, to the extent of such excess, shall be deemed unsecured by this deed of trust, and such unsecured portion shall not receive priority. The words "Collateral Agent" or "Collateral Agents" as used herein shall mean the holder of the Secured Indebtedness. Unless otherwise defined herein, terms used herein shall have the same meanings as those used in the Credit Agreement.

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

ARTICLE II - CERTAIN REPRESENTATIONS, WARRANTIES AND COVENANTS OF GRANTOR

2.1 Grantor warrants that Grantor is lawfully seized of the Mortgaged Property and has good and merchantable title to the Mortgaged Property, free and clear of all superior liens, charges and encumbrances, that Grantor has the authority to execute and deliver this deed of trust, including the grant of a security interest and assignment of rents contained herein, and to warrant and defend the title against the claims of all persons whomsoever and that the lien granted hereunder constitutes a first and prior perfected security interest and lien in the Mortgaged Property on behalf of the Collateral Agent on behalf of and for the ratable benefit of Lender and a second security interest and lien on behalf of Subordinated Creditor. Grantor further warrants that the Lease is in full force and effect; no default in payment and no material nonmonetary default (nor any event, which, with notice or lapse of time or both, could cause such a default) has occurred and is continuing thereunder, that the Lease is not subject to any defenses, offsets, or counter claims and that there have been no renewals and/or extensions of, or supplements, modifications, or amendments to the Lease not previously disclosed to the Collateral Agent, and that Grantor is in the possession of the premises covered by, and leased under the Lease. Grantor shall punctually and properly perform, observe, and otherwise comply with each and every covenant, agreement, requirement and condition set forth in the Lease, which are material to maintaining the Lease in full force and effect, and do or cause to be done all things necessary or appropriate to keep the Lease in full force and effect and to preserve and keep unimpaired the rights of Grantor and the Collateral Agent thereunder, and Grantor shall neither do nor suffer to be done any act of commission or omission which would justify the Lessor under the Lease to cancel same, evict Grantor, or declare due and payable all or any part of the rental and other sums payable thereunder in advance of the time specified therein for the payment thereof. Grantor will not, without the express prior written consent of the Collateral Agent, amend, modify, surrender, impair, forfeit, cancel, or terminate, or permit the amendment, modification, surrender, impairment, forfeiture, cancellation, or termination of the Lease in whole or in part, whether or not a default shall have occurred and shall be continuing thereunder. Grantor shall promptly notify the Collateral Agent and Subordinated Creditor in writing of the occurrence of an event of default (or any event which, with the lapse of time or notice or both, could become such a default) on the part of or caused by any party to the Lease; if

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

for any reason Grantor cannot timely make any payment under the Lease or perform or comply with any of its obligations under the Lease, Grantor shall notify the Collateral Agent in sufficient time to enable the Collateral Agent (but the Collateral Agent shall not be obligated) to timely make such payments and/or to perform or comply with such other obligations. Grantor has good and merchantable title to the Lease.

2.2 Grantor warrants that no part of the Mortgaged Property constitutes a part of Grantor's business homestead.

2.3 Grantor, for Grantor and Grantor's successors, covenants and agrees: (a) to pay, or cause to be paid, before delinquent, all lawful taxes and assessments of every character in respect of the Mortgaged Property, or any part thereof (for purposes of this Section 2.3, "Mortgaged Property" shall include the real property underlying the Lease), and from time to time, upon request of the Collateral Agent, to furnish to the Collateral Agent evidence satisfactory to the Collateral Agent of the timely payment of such taxes and assessments; (b) to carry insurance with respect to the Mortgaged Property with such insurers, in such amounts and covering such risks as shall be reasonably satisfactory to the Collateral Agent, including, but not limited to, insurance against loss or damage by fire, lightning, hail, windstorm, explosion, riot, hazards, casualties and other contingencies; provided that in the absence of written direction from the Collateral Agent, the insurance shall not be less than the fair insurable value of the Mortgaged Property or the amount of the Secured Indebtedness, whichever is less, but in no event shall such insurance coverage be less than eighty percent (80%) of the full insurable value of the Mortgaged Property; (c) if, and to the extent that, the Mortgaged Realty (as defined hereinafter) or any part thereof is located within an area that has been, or should such area at any time be, designated or identified as an area having special flood hazards by the Secretary of Housing and Urban Development or by such other official as shall from time to time be authorized by federal or state law to make such designation pursuant to the National Flood Insurance Act of 1968, as such act may from time to time be amended and in effect, or pursuant to any other national or state program of flood insurance, to carry flood insurance with respect to the Mortgaged Realty in amounts not less than the maximum limit of insurance coverage then available with respect to the Mortgaged Realty pursuant to any and all national and state flood insurance programs then in effect or the amount of the Secured Indebtedness, whichever is less; (d) to cause all insurance so

UNOFFICIAL COPY

3 6 2 3 5 0 2 9

carried to contain a standard mortgagee clause and to be payable to the Collateral Agent and to Subordinated Creditor as their interests may appear and are defined pursuant to the Collateral Agent Agreement, to deliver the policies of insurance to the Collateral Agent, and, in the case of all policies of insurance carried by each Lessee (as that term is hereinafter defined) for the benefit of Grantor, to cause all such policies to be payable to the Collateral Agent and to Subordinated Creditor as their interest may appear and are defined pursuant to the Collateral Agent Agreement; (e) to pay, or cause to be paid, all premiums for such insurance before such premiums become due, to furnish to the Collateral Agent satisfactory proof of the timely making of such payments and to deliver all renewal policies to the Collateral Agent at least fifteen (15) days before the expiration date of each expiring policy; (f) not to do or permit others to perform any act that would create or result in an increased hazard or risk of loss to the Mortgaged Property, or any part thereof, unless and until notice of such increased risk or hazard shall have been given to the Collateral Agent and to the insurers and evidence of satisfactory insurance coverage regarding such risk shall have been delivered to the Collateral Agent; (g) to comply with all valid governmental laws, ordinances and regulations applicable to the Mortgaged Property and its ownership, use and operation, and with all easements, restrictions, agreements, covenants and conditions with respect to or affecting the Mortgaged Property, or any part thereof; (h) at all times to maintain, preserve and keep the Mortgaged Property and all appurtenances thereto in good repair and condition, and from time to time to make all necessary and proper repairs, replacements and renewals, and not to commit or permit any waste on or of the Mortgaged Property, and not to do anything to the Mortgaged Property, that may impair its value, (i) to pay promptly all bills for labor and materials incurred in connection with the Mortgaged Property, and never to permit to be fixed against the Mortgaged Property, or any part thereof, any lien or security interest, even though inferior to the liens and security interests hereof, for any such bill which may be legally due and payable, and, never to permit to be created or exist in respect of the Mortgaged Property, or any part thereof, any other or additional lien or security interest on a parity with or superior to the liens and security interests hereof; (j) at any time, and from time to time, upon request by the Collateral Agent or Subordinated Creditor, forthwith, to execute and deliver to the Collateral Agent and Subordinated Creditor any and all additional instruments and further assurances, and do all other acts and things, as may be necessary or proper, in the Collateral Agent's or Subordinated

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

Creditor's opinion, to effect the intent of these presents, more fully evidence and perfect the rights, titles, liens and security interests herein created or intended to be created and protect the rights, remedies, powers and privileges of the Collateral Agent hereunder; (k) from time to time, upon request of the Collateral Agent, to furnish promptly to the Collateral Agent such financial statements and reports relating to Grantor and Grantor's business affairs as the Collateral Agent or Subordinated Creditor may reasonably request; (l) if Grantor is a corporation, to maintain continuously Grantor's corporate existence, good standing and its right to do business in Illinois and in each other state where any part of the Mortgaged Property is situated; (m) without the prior written consent of the Collateral Agent on behalf of Lender (which consent may be withheld with or without cause), not to sell, trade, transfer, assign, exchange or otherwise dispose of the Mortgaged Property, or any part thereof other than as permitted under the Credit Agreement; (n) to pay the Secured Indebtedness in accordance with the terms thereof or hereof, or when the maturity thereof may be accelerated in accordance with the terms thereof or hereof; (o) promptly, after execution of a contract, to deliver to the Collateral Agent and Subordinated Creditor the terms of any sale of the Mortgaged Property, or any part thereof, and to pay to the Collateral Agent a reasonable fee each time title to the Mortgaged Property or any part thereof is transferred, to reimburse the Collateral Agent and anyone acting on behalf of the Collateral Agent and Subordinated Creditor for time spent and expenses incurred as a result of each such transfer; provided, however, that neither this subsection (o) nor Section 5.4, 5.7, 5.9 and 5.11 hereof shall be construed to impliedly or expressly authorize any action by Grantor contrary to Subsection 2.3(m) preceding; (p) (deleted); (q) at any time that any law shall be enacted imposing or authorizing the imposition of any tax upon this deed of trust, or upon any rights, titles, liens or security interests created hereby, or upon the Secured Indebtedness, or any part thereof, immediately to pay all such taxes; provided that, in the alternative, Grantor may, in the event of the enactment of such law, and must, if it is unlawful for Grantor to pay such taxes, prepay the Secured Indebtedness in full within sixty (60) days after demand therefor by the Collateral Agent; (r) to furnish promptly at any time and from time to time, upon request, a written statement or affidavit, in such form as shall be reasonably satisfactory to the Collateral Agent and Subordinated Creditor, stating the unpaid balance of the Secured Indebtedness and that there are no offsets or defenses against full payment of the Secured Indebtedness and the terms hereof, or, if there are any such offsets and

UNOFFICIAL COPY

8 6 2 3 5 J 2 9

defenses, specifying them; (s) to perform punctually and properly all of Grantor's covenants, duties and liabilities under any other security agreement, mortgage, deed of trust, collateral pledge agreement, loan agreement, contract or assignment of any kind now or hereafter existing as security for or in connection with payment of the Secured Indebtedness, or any part thereof; (t) to allow the Collateral Agent and Subordinated Creditor to inspect the Mortgaged Property and all records relating thereto or to the Secured Indebtedness, and to make and take away copies of such records; and (u) not to cause or permit all or any portion of the Mortgaged Property which is fixtures or personal property to be removed from the real property on which said personal property is located, except as permitted according to the terms and provisions of the Credit Agreement.

2.4 In the event that any lien or security interest shall ever exist or be created which is on a parity with or superior to the liens and security interest herein, Grantor warrants that no default or event of default has occurred or will occur under any instrument or agreement creating or giving rise to such lien or security interest, and covenants that Grantor will timely perform or cause to be performed all covenants, agreements and obligations required to be performed under or pursuant to the terms of any such instrument or agreement. Grantor covenants that no such liens or security interests shall exist or be created, nor shall any other or additional indebtedness be created and secured thereby, without the express written consent of the Collateral Agent and the Subordinated Creditor in accordance with the terms and provisions of the Credit Agreement and the Collateral Agent Agreement. Nothing in this Section 2.4 shall be construed to authorize, either impliedly or expressly, the creation or existence of any lien or security interest contrary to any warranty of title or covenant contained herein or in the Loan Papers (as defined in the Credit Agreement), nor the taking of any action by Grantor contrary to any covenant contained herein, including, but not limited to, the covenants contained in Subsection 2.3(i) hereof.

2.5 Any and all covenants in this deed of trust may from time to time, by instrument in writing signed by Holder and delivered, be waived to such extent and in such manner as the Holder may desire, but no such waiver shall ever affect or impair the Holder's rights or liens hereunder, except to the extent so specifically stated in such written instrument.

86235029

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

ARTICLE III - RESPECTING DEFAULTS AND CERTAIN REMEDIES

3.1 The term "default," as used herein, shall mean an Event of Default under the Credit Agreement, the Note and Stock Purchase Agreement or any default under any note or Subordinated Notes secured hereby, or any default under any instrument now or hereafter given to secure the note or the Obligation or the Secured Indebtedness, or any default in the performance of obligations or covenants of this deed of trust.

3.2 If Grantor should fail to keep or perform any covenant whatsoever contained in this deed of trust, the Collateral Agent or Subordinated Creditor may, but shall not be obligated to any person to do so, perform or attempt to perform said covenant, and any such payment so made or expense incurred in the performance or attempted performance of any such covenant shall be a part of the Secured Indebtedness, and Grantor promises, upon demand, to pay to the Collateral Agent to be applied in accordance with the terms and provisions of the Collateral Agent Agreement, all sums so advanced or paid by the Collateral Agent, with interest at the Highest Lawful Rate (as defined in the Credit Agreement) per annum from date when paid by the Collateral Agent or Subordinated Creditor until repaid by Grantor. No such payment by the Collateral Agent or Subordinated Creditor shall constitute a waiver of any such default. In addition to the lien thereof, the Collateral Agent or Subordinated Creditor shall be subrogated to all rights and liens securing the payment of any debt, claim, tax or assessment paid from any advance made by the Collateral Agent or Subordinated Creditor, subject to the terms and provisions of the Collateral Agent Agreement.

3.3 Upon the occurrence of a default, the Collateral Agent may, at its option, do any one or more of the following: (a) Without notice, demand or presentment, which are hereby waived by Grantor, declare the entire unpaid balance of principal of the Secured Indebtedness, and all accrued interest thereon, immediately due and payable. (b) Proceed or direct Trustee to proceed to exercise all the rights to foreclose the lien hereof in accordance with the laws of the State of Illinois and to exercise any other remedies of Trustee (as a mortgagee) provided in this deed of trust or which Trustee may have at law, equity or otherwise. (c) It is intended by each of the foregoing provisions of Subsection 3.3(b) that Trustee shall have the remedies of a secured party under the Illinois Uniform Commercial Code (the "Code"), including without limitation, the right to take immediate and exclusive possession of the

86235029

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

fixtures, equipment, goods and other personal property, or any part thereof, and for that purpose may, with or without judicial process, take possession of such property in accordance with Subsection 3.3(d) hereof. (d) Enter upon and take possession of the Mortgaged Property and remove the fixtures or personal property or any part thereof, to the extent they are owned by the Grantor, with or without judicial process and, in connection therewith, without any responsibility or liability on the part of Lender, Subordinated Creditor or the Collateral Agent, take possession of any property of the Grantor located on or in the Mortgaged Property which is a part of the Mortgaged Property and hold or store such property at Grantor's expense. (e) Require Grantor to assemble all or any part of the Mortgaged Property constituting fixtures or personal property and make it available to the Collateral Agent at a place to be designated by the Collateral Agent which is reasonably convenient to Grantor and the Collateral Agent. (f) After notification, if any, hereafter provided in this Subsection 3.3(f), sell, lease or otherwise dispose of, at the office of the Collateral Agent, or on the Mortgaged Realty, or elsewhere, as chosen by the Collateral Agent, all or any part of the Mortgaged Property constituting fixtures or personal property in its then condition, or following any commercially reasonable preparation or processing, and each Sale [as used herein the term "Sale" means any such sale, lease or other disposition made pursuant to this Subsection 3.3(f)] may be as a unit or in parcels, by public or private proceedings, and by way of one or more contracts, and, at any Sale, it shall not be necessary to exhibit such fixtures or personal property, or part thereof, being sold. The Sale of any part of such fixtures or personal property shall not exhaust the Collateral Agent's power of Sale, but Sales may be made from time to time until the Secured Indebtedness is paid and performed in full. Reasonable notification of the time and place of any public Sale pursuant to this Subsection 3.3(f), or reasonable notification of the time after which any private Sale is to be made pursuant to this Subsection 3.3(f), shall be sent to Grantor and to any other person entitled under the Code to notice; provided that if the fixtures or personal property, or part thereof, being sold are perishable, or threaten to decline speedily in value, or are of a type customarily sold on a recognized market, the Collateral Agent may sell, lease or otherwise dispose of such fixtures or personal property, or part thereof, being sold, leased or otherwise disposed of without notification, advertisement or other notice of any kind. It is agreed that notice sent or given not less than five (5) calendar days prior to the taking of the action to which the notice relates, is reasonable notification and notice

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

for the purposes of this Subsection 3.3(f). (g) Surrender the insurance policies maintained pursuant to Subsection 2.3(b) and 2.3(c) hereof, or any part thereof, and receive and apply the unearned premiums as a credit on the Secured Indebtedness, and, in connection therewith, Grantor hereby appoints the Collateral Agent as the agent and attorney-in-fact for Grantor to collect such premiums to be applied in accordance with the terms and provisions of the Collateral Agent Agreement. The Collateral Agent shall have no obligation to keep any insurance in force with respect to the Mortgaged Property or any part thereof.

(h) Retain any or all of the Mortgaged Property which is fixtures or personalty in satisfaction of the Secured Indebtedness whenever the circumstances are such that the Collateral Agent is entitled to do so under the Code. (i) Hold, manage, operate or otherwise use or permit the use of the Mortgaged Property, either itself or by other persons, firms or entities, in such manner, for such time, and upon such other terms as the Collateral Agent may deem prudent under the circumstances. (Provided however, that nothing herein shall contravene subsections 5.15 and 5.16 hereof.)

3.4 The Collateral Agent or Subordinated Creditor may buy the Mortgaged Property, or any part thereof, at any public or judicial sale.

3.5 The Collateral Agent may buy the fixtures or personal property of the Grantor, or any part thereof, at any private Sale if the fixtures or personal property, or part thereof, being sold are a type customarily sold in a recognized market or are a type which is the subject of widely distributed standard price quotations.

3.6 In addition to any right or remedy granted to the Collateral Agent hereunder, the Collateral Agent shall have and may exercise any and all other rights and remedies which the Collateral Agent may have at law or in equity, or by virtue of any other security instrument, or under the Code, or otherwise.

3.7 If the Collateral Agent is the purchaser of the Mortgaged Property, or any part thereof, at any sale thereof, the Collateral Agent shall, upon any such purchase, acquire good title to the Mortgaged Property so purchased, free of the liens and security interests of these presents.

3.8 Should any part of the Mortgaged Property come into the possession of the Collateral Agent, after the occurrence and during the continuation of a default, the Collateral Agent may use or operate the Mortgaged Property (i) for the purpose

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

of preserving it or its value, (ii) in accordance with any other rights held by the Collateral Agent in respect of the Mortgaged Property, or (iii) pursuant to the order of a court of appropriate jurisdiction. Grantor covenants to promptly reimburse and pay to the Collateral Agent, at the place where the note is payable, or at such other place as may be designated by the Collateral Agent in writing, the amount of all reasonable expenses (including the cost of any insurance, taxes or other charges) incurred by the Collateral Agent in connection with its custody, preservation, use or operation of the Mortgaged Property, together with interest thereon from the date incurred by the Collateral Agent until repaid by Grantor at the Highest Lawful Rate per annum, and all such expenses, cost, taxes, interest and other charges shall be a part of the Secured Indebtedness, subject to the terms and provisions of the Collateral Agent Agreement. It is agreed, however, that the risk of accidental loss or damage to the Mortgaged Property is on Grantor, and the Collateral Agent shall have no liability whatever for decline in value of the Mortgaged Property, nor for failure to obtain or maintain insurance, nor for failure to determine whether any insurance ever in force is adequate as to amount or as to the risks insured.

3.9 In case the liens or security interests hereof shall be foreclosed, the purchaser at any such sale shall receive, as an incident to his ownership, immediate possession of the property purchased, and if Grantor or Grantor's successors shall hold possession of said property, or any part thereof, subsequent to foreclosure, Grantor and Grantor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure Sale, and anyone occupying the property after demand made for possession thereof shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

3.10 The proceeds from any Sale, lease or other disposition made pursuant to this Article III or the proceeds from surrendering any insurance policies pursuant to Subsection 3.3(h) hereof, or any Rental collected by the Collateral Agent pursuant to Article IV hereof, or sums received pursuant to Section 5.5 hereof, or proceeds from insurance which the Collateral Agent elects to apply to the Secured Indebtedness pursuant to Section 5.6 hereof, shall be applied by Trustee, or by the Collateral Agent, as the case may be, as provided for in the Collateral Agent Agreement.

86235029

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

3.11 In the event of the death or incapacity of Trustee, or removal from the County of residence named above, or failure, refusal or inability, for any reason, to make any such sale or to perform any of the trusts herein declared, or at the option of the Collateral Agent, without cause, then the Collateral Agent may appoint, in writing, a substitute Trustee, who shall thereupon succeed to all the estate, rights, powers and trusts herein granted to and vested in the prior Trustee. Such appointment may be made on behalf of the Collateral Agent by any person who is then the president, or a vice-president, or any other authorized officer, of the Collateral Agent. In the event of the death of any substitute Trustee, or his failure, refusal or inability to make any such Sale or perform such trusts, successive substitute Trustees may thereafter, from time to time, be appointed in the same manner.

ARTICLE IV - LEASES AND ASSIGNMENT OF RENTAL

4.1 As used in this deed of trust: (a) "Sublease" means any lease, sublease, assignment or other agreement under the terms of which any person other than Grantor has or acquires any right to occupy or use the Mortgaged Property, or any part thereof, or interest therein; (b) "Lessee" means the lessee, sublessee, tenant or other person having the right to occupy or use a part of the Mortgaged Property under a Sublease; and (c) "Rental" means the rents, royalties and other consideration payable to Grantor by the Lessee under the terms of a Sublease. Nothing in this Article IV shall be construed to authorize, either impliedly or expressly, the taking of any action by Grantor contrary to Subsection 2.3(i) hereof.

4.2 Grantor hereby assigns to the Collateral Agent and Subordinated Creditor in accordance with the terms of the Collateral Agent Agreement all Rental payable under each Sublease now or at any time hereafter existing, such assignment being upon the following terms: (a) until receipt from the Collateral Agent of notice of the occurrence of a default, each Lessee may pay Rental directly to Grantor, but after the occurrence and during continuation of a default Grantor covenants to hold all Rental so paid in trust for the use and benefit of the Collateral Agent and Subordinated Creditor as their interests are defined in the Collateral Agent Agreement; (b) upon receipt from the Collateral Agent of notice that a default exists, each Lessee is hereby authorized and directed to pay directly to the Collateral Agent all Rental thereafter accruing, and the receipt of the Collateral Agent shall be a release of such Lessee to the extent of all amounts so paid;

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

(c) Rental so received by the Collateral Agent shall be applied by the Collateral Agent, first, to the expenses, if any, of collection and then in accordance with Section 3.10; (d) without impairing its rights hereunder, the Collateral Agent may, at its option, at any time and from time to time, release to Grantor Rental so received by the Collateral Agent, or any part thereof; (e) the Collateral Agent shall not be liable for its failure to collect, or its failure to exercise diligence in the collection of, Rental, but shall be accountable only for Rental that it shall actually receive; (f) this assignment shall terminate upon the release of this deed of trust, but no Lessee shall be required to take notice of termination until a copy of such release shall have been delivered to such Lessee. As between Subordinated Creditor, the Collateral Agent and Grantor, and any person claiming through or under Grantor, other than a Lessee who has not received notice of default pursuant to Subsection 4.2(a), the assignment contained in this Section 4.2 is intended to be absolute, unconditional and presently effective and the provisions of Subsections 4.2(a) and 4.2(b) are intended solely for the benefit of each Lessee and shall never inure to the benefit of Grantor or any person claiming through or under Grantor, other than a Lessee who has not received such notice. It shall never be necessary for the Collateral Agent to institute legal proceedings of any kind whatsoever to enforce the provisions of this Section 4.2.

4.3 Nothing in this Article IV shall ever be construed as subordinating this deed of trust to any Sublease.

4.4 Grantor, for Grantor and Grantor's successors, covenants: (a) upon request by the Collateral Agent, to assign to the Collateral Agent and Subordinated Creditor in accordance with the terms of the Collateral Agent Agreement, by separate instrument in form and substance satisfactory to the Collateral Agent, any or all Subleases, or the Rental payable thereunder, including but not limited to, any Sublease which is now in existence or which may be executed after the date hereof; (b) not to accept from any Lessee, nor permit any Lessee to pay, Rental for more than one month in advance; (c) to comply with the terms and provisions of each Sublease; (d) not to amend, modify, extend or renew any Sublease; (e) not to assign, transfer, mortgage, cancel or accept surrender of any Sublease; (f) not to assign, transfer, pledge or mortgage any Rental; (g) not to waive, excuse, release or condone any nonperformance of any covenants by any Lessee which are material to the maintenance of the Mortgaged Property; (h) to give to the Collateral Agent and Subordinated Creditor duplicate notice of each default by each Lessee; and (i) to use reasonable efforts

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

to cause each Lessee to agree (and, each Lessee under each Sublease executed after the date hereof does so agree) to give to the Collateral Agent and Subordinated Creditor written notice of each and every default by Grantor under his Sublease and not to exercise any remedies under such Sublease unless the Collateral Agent fails to cure such default within thirty (30) days, or within such longer period as may be reasonably necessary if such default cannot be cured within thirty (30) days, after the Collateral Agent has received such notice; provided that the Collateral Agent shall never have any obligation or duty to cure any such default.

4.5 In the event the Collateral Agent ever collects Rental, the Collateral Agent shall be entitled to pay its agent as compensation for collecting such Rental, from sums so collected, a reasonable fee for such services which shall not be less than the normal and usual compensation charged by individuals in the business of performing such services, together with all actual expenses incurred in the collection of such Rental, and any portion of the Rental so paid as compensation and expenses for collecting such Rental shall not reduce the outstanding balance of the Secured Indebtedness, subject to the terms of the Collateral Agent Agreement.

ARTICLE V - MISCELLANEOUS

5.1 If the Secured Indebtedness is paid and discharged in full in accordance with the terms of this deed of trust and the note and other instruments evidencing it, if Grantor shall well and truly perform all of Grantor's covenants contained herein, and if the Collateral Agent has executed a release of this deed of trust in fully recordable form, then this conveyance shall become null and void and be released at Grantor's request and expense; otherwise, it shall remain in full force and effect, provided that no release hereof shall impair Grantor's warranties and indemnities contained herein.

5.2 As used in this Article V, "Rights" means rights, remedies, powers and privileges, and "Liens" means titles, interests, liens and security interests. All Rights and Liens herein expressly conferred by this Article V are cumulative of all other Rights and Liens herein, or by law or in equity provided, or provided in any other security instrument executed by Grantor, or by any other person liable on the Secured Indebtedness, and shall not be deemed to deprive the Collateral Agent or Trustee of any such other legal or equitable Rights and Liens by judicial proceedings, or otherwise, appropriate to

UNOFFICIAL COPY

0 6 2 3 5 0 2 9

enforce the conditions, covenants and terms of this deed of trust, the note and other security instruments, and the employment of any Rights hereunder, or otherwise, shall not prevent the concurrent or subsequent employment of any other appropriate Rights.

5.3 It is not the intention of Grantor, the Collateral Agent or Subordinated Creditor to make an agreement violative of the Laws of any applicable jurisdiction relating to usury. Regardless of any provision in any of the Loan Papers, the Collateral Agent shall not ever be entitled to receive, collect or apply, as interest on the Obligation, any amount in excess of the Highest Lawful Rate. If the Collateral Agent ever receives, collects or applies, as interest, any such excess, such amount which would be excessive interest shall be applied, with respect to the Obligation, as set forth in the Credit Agreement.

5.4 Grantor hereby waives all rights of marshaling in event of any foreclosure of the liens and security interests hereby created.

5.5 The Collateral Agent shall be entitled to receive any and all sums which may be awarded or become payable to Grantor for the condemnation of the Mortgaged Property, or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Grantor for damages caused by public works or construction on or near the Mortgaged Property. All such sums are hereby assigned to the Collateral Agent and Subordinated Creditor as their interests are defined in the Collateral Agent Agreement, and Grantor shall, upon request of the Collateral Agent, make, execute, acknowledge and deliver any and all additional assignments and documents as may be necessary from time to time to enable the Collateral Agent to collect and receipt for any such sums. The Collateral Agent shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of, any of such sums.

5.6 the Collateral Agent may collect the proceeds of any and all insurance that may become payable with respect to the Mortgaged Property, or any part thereof, and, at its option, may use the same to rebuild or restore the improvements on the Mortgaged Property or may apply the same to the Secured Indebtedness in the order and manner set forth in Section 3.10 hereof, whether then matured or to mature in the future, and may deduct therefrom any expenses incurred in connection with

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

the collection or handling of such proceeds, it being understood that the Collateral Agent shall not be, under any circumstances, liable or responsible for failure to collect, or exercise diligence in the collection of any of such proceeds.

5.7 It is understood and agreed that the proceeds of the note and Subordinated Note, to the extent the same are utilized to renew or extend any indebtedness or take up any outstanding Liens against the Mortgaged Property, or any portion thereof, have been advanced by the Collateral Agent or Subordinated Creditor at Grantor's request and upon Grantor's representation that such amounts are due and payable. The Collateral Agent and Subordinated Creditor shall be subrogated to any and all Rights and Liens owned or claimed by any owner or holder of said outstanding Rights and Liens, however remote, regardless of whether said Rights and Liens are acquired by assignment or are released by the holder thereof upon payment, subject to the terms and provisions of the Collateral Agent Agreement.

5.8 If the Rights and Liens created by this deed of trust shall be invalid or unenforceable as to any part of the Secured Indebtedness, then any portion thereof that is so determined to be unsecured shall be completely paid prior to the payment of the remaining and secured portion of the Secured Indebtedness, and all payments made on the indebtedness of Grantor to the Collateral Agent shall be considered to have been paid on and applied first to the complete payment of any unsecured portion of such indebtedness.

5.9 This deed of trust is binding upon Grantor and Grantor's successors, and shall inure to the benefit of the Collateral Agent and Subordinated Creditor, and their successors and assigns, and the provisions hereof shall likewise be covenants running with the land. The duties, covenants, conditions, obligations and warranties of Grantor in this deed of trust shall be joint and several obligations of Grantor and Grantor's successors.

5.10 Grantor waives notices of the creation, advance, increase, existence, extension or renewal of, and of any indulgence with respect to, the Secured Indebtedness; waives presentment, demand, notice of dishonor, and protest; waives notice of the amount of the Secured Indebtedness outstanding at any time, notice of any change in financial condition of any person liable for the the Secured Indebtedness or any part thereof, notice of any event of default, and all other notices respecting the the Secured Indebtedness; and agrees that maturity of the the Secured Indebtedness and any part thereof

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

may be accelerated, increased, extended or renewed one or more times by the Collateral Agent in its discretion, without notice to Grantor.

5.11 In the event Grantor or any of Grantor's successors conveys his interest in the Mortgaged Realty, or any part thereof, to any other party, the Collateral Agent may, without notice to Grantor or Grantor's successors, deal with any owner of any part of the Mortgaged Realty with reference to this deed of trust and the Secured Indebtedness, either by way of forbearance on the part of the Collateral Agent, or extension of time of payment of the Secured Indebtedness, or release of all or any part of the Mortgaged Realty, or any other property securing payment of the Secured Indebtedness, without in any way modifying or affecting the Collateral Agent's or Subordinated Creditor's Rights and Liens hereunder or the liability of Grantor or any other party liable for payment of the Secured Indebtedness, in whole or in part. Nothing in this Section 5.11 shall be construed to authorize, either impliedly or expressly, the taking of any action by Grantor contrary to Section 2.3(i) hereof.

5.12 This deed of trust may be simultaneously executed in a number of identical counterparts, in which event, each of which, for all purposes, shall be deemed an original and all of which together shall be deemed to be a single document. If any Grantor is a corporation, this instrument is executed by Grantor's officers hereunto duly authorized.

5.13 The parties agree that this deed of trust shall constitute a security agreement and a financing statement within the meaning of the Code with respect to the fixtures, equipment, goods or other personal property described above, or any part thereof, and the Collateral Agent shall have the right at any time to file this deed of trust as a financing statement, but the failure of the Collateral Agent to do so shall not impair the validity and enforceability of this deed of trust in any respect whatsoever. Unless otherwise stated herein or in an instrument filed or recorded subsequent to the filing of this deed of trust, the address of the Collateral Agent from which information may be obtained concerning the liens and security interests herein granted is the address set forth herein for the Collateral Agent.

5.14 Except to the extent that federal law may govern the interest rate charged hereunder, this deed of trust shall be construed according to the laws of Illinois. It is performable by Grantor in the county of Collateral Agent's address set forth above.

86235029

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

5.15 Notwithstanding anything contained herein which may be to the contrary, any foreclosure on, sale, transfer or other disposition of, or any other action taken or proposed to be taken by the Collateral Agent or Subordinated Creditor hereunder which would affect the operational, voting, or other control of the Grantor, shall be pursuant to Section 310(d) of the Communications Act of 1934, as amended "the "Communications Act"), and to the applicable rules and regulations thereunder, and, if and to the extent required thereby, subject to the prior approval of the Federal Communications Commission.

5.16 Notwithstanding anything contained herein which may be to the contrary, this deed of trust and the transactions contemplated hereby (i) do not and will not constitute, create, or have the effect of constituting or creating, directly or indirectly, actual or practical ownership of Grantor by the Collateral Agent or Subordinated Creditor, or control, affirmative or negative, direct or indirect, by the Collateral Agent or Subordinated Creditor over the programming, management, or any other aspect of the day-to-day operation of Grantor, which control remains in Grantor, and its shareholders and board of directors, and (ii) do not and will not constitute the transfer, assignment, or disposition in any manner, voluntary or involuntary, directly or indirectly, of any FCC License or authorization, or the transfer of control of Grantor within the meaning of Section 310(d) of the Communications Act.

5.17. Upon the termination of the Collateral Agent Agreement, Subordinated Creditor shall be entitled to the rights and remedies of the Collateral Agent hereunder.

EXECUTED this the 3rd day of June, 1986.

TOWER COMMUNICATION SYSTEMS
CORPORATION

By

[Signature]
its _____
Pees.

6555G

86235029

UNOFFICIAL COPY

3 0 2 3 5 0 2 9

THE STATE OF TEXAS)
)
COUNTY OF DALLAS)

This instrument was acknowledged before me on June 3,
1986 by George M. Batsche, Pres. of Tower
Communication Systems Corporation, an Ohio corporation, on
behalf of said corporation.

James C. Doeker
Notary Public, State of Texas

My Commission Expires:

DEWEU C. DOEKER, Notary Public
State of Texas,
My commission expires 9/23/89

GRANTEE'S ADDRESS:

RepublicBank Dallas,
National Association
Pacific and Ervay Streets
Dallas, Texas 75201

6781G

86235029

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

Exhibit "A"
to Leasehold Deed of Trust

Property of Cook County Clerk's Office

6555G

86235029

UNOFFICIAL COPY

3 0 2 3 5 0 2 9

Exhibit "B"
to Leasehold Deed of Trust

Property of Cook County Clerk's Office

6555G

86235029

UNOFFICIAL COPY

8 6 2 3 5 0 2 9
Exhibit A

LICENSE AGREEMENT BETWEEN
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA
AND
TOWER COMMUNICATION SYSTEMS CORPORATION

This agreement made this 24th day of January, 1983 by and between THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation, hereinafter called "Licensor" and TOWER COMMUNICATION SYSTEMS CORPORATION, an Ohio corporation, hereinafter called "Licensee", witnesseth:

I. Licensor for and in consideration of the covenants and agreements made by Licensee herein contained does hereby grant unto the Licensee a license to utilize space (as outlined in red on the attached Exhibit A) on the roof of The Prudential Building, hereinafter called the "Building", located at 130 East Randolph Drive, Chicago, Illinois, 60601 for the purpose of installing and using ~~one~~ Andrew Corporation model SHX-10 horn-type microwave antenna, for the term of 10 years, commencing April 1, 1983 and ending March 31, 1993, unless sooner terminated as provided herein. Exhibit A attached hereto is made a part hereof and is identified by the signatures of the parties hereto.

II. Licensee shall make payments to Licensor, in coin or currency which, at the time of payment, is legal tender for public and private debts in the United States of America, at the office of the Building, or elsewhere as designated from time to time by notice in writing to Licensee, in installments as follows:

1. For the period beginning April 1, 1983, and ending March 31, 1984, the sum of One Thousand Two Hundred Fifty and No/100-----Dollars (\$1,250.00) a month; and

2. For the period beginning April 1, 1984, and ending March 31, 1988, the sum of One Thousand Two Hundred Fifty and No/100-----Dollars (\$1,250.00) a month, subject to adjustment as provided in Section III; and

86235029

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

3. For the period beginning April 1, 1988, and ending March 31, 1989 a monthly sum to be determined by Licensor based on the market rate then in effect for comparable installations in the City of Chicago; and

4. For the period beginning April 1, 1989 and for the remainder of the term hereof, the monthly sum determined in sub-paragraph 3 above, subject to adjustment as provided in Section III;

payable one each in advance promptly on the first day of every calendar month of the term (a pro-rated monthly installment shall be paid at the current rate for fractions of a month if the term shall begin on any day except the first day, or shall be terminated on any day except the last day, of any month); (b) all other sums payable hereunder within ten days after Licensor renders a statement therefor; and (c) interest at 8% per annum from the due date of each obligation until paid. Licensor shall provide Licensee with 6 months prior written notice of the revised rate of payment to be put into effect under sub-paragraph 3 above.

III. For the period of this license beginning April 1, 1984 and for the remainder of the term, including any extensions or renewals thereof, the payments provided to be paid in Section II of this license shall be adjusted and shall be computed and paid as follows:

1. Definitions-

- (a) BASIC PERIOD shall mean the period of the term of this license beginning April 1, 1983 and ending March 31, 1984.
- (b) ANNUAL BASE PAYMENT (i) for the first five years of the term of this license shall mean the sum obtained by multiplying by twelve, the amount of the monthly payment set forth in sub-paragraph 1 of Section II, and (ii) for the sixth through tenth subsequent license years of the term of this license shall mean the sum obtained by multiplying by twelve, the amount of the monthly payment set forth in sub-paragraph 3 of Section II.

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

- (c) BASE YEAR shall mean (i) the calendar year 1982 for the period beginning April 1, 1984 and ending March 31, 1988 and (ii) the calendar year 1987 for the period beginning April 1, 1989 and for the remainder of the term.
- (d) ADJUSTED PAYMENT PERIOD shall mean the one-year period of the term of this license beginning with the first day next following the end of the Basic Period and each of the succeeding one-year periods, including, if any, a final period of less than one year.
- (e) ADJUSTED PAYMENT shall mean the rent to be paid during each of the Adjusted Payment Periods as herein required.
- (f) CONSUMER PRICE INDEX shall mean the twelve-month average of the Consumer Price Index for All Urban Consumers (U.S. City Average: All items 1967 = 100) published by the United States Department of Labor. In the event the publication of the Consumer Price Index is terminated, there shall be substituted for such index the most nearly similar index as determined by the firm of independent public accountants in charge of auditing Licensor's books.

2. The Adjusted Payment for each Adjusted Payment Period shall be the product obtained by multiplying the Annual Base Payment by a fraction which has as its numerator the Consumer Price Index for the calendar year immediately prior to such Adjusted Payment Period and has as its denominator the Consumer Price Index for the Base Year.

In no event shall the Adjusted Payment be less than the Annual Base Payment. If any Adjusted Payment Period shall be less than one year, the Adjusted Payment for such period shall be reduced proportionately.

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

3. The Adjusted Payment shall be paid in equal monthly installments in advance on the first day of each month of each Adjusted Payment Period; except that, if on the first day of any Adjusted Payment Period, Adjusted Payment for such period has not been determined as aforesaid, a payment shall be made on the first day of each month of such period at the same rate as immediately prior to the commencement thereof, and on the first day of the first month after the determination of such Adjusted Payment an adjustment shall be made by payment of an additional sum by Licensee, or allowance of credit by Licensor, so that the payment for any elapsed period during any such Adjusted Payment Period for which Payment has not been paid or credit given shall be adjusted to conform to the Adjusted Payment applicable thereto.

4. On or before the first day of each Adjusted Payment Period, or as soon after such dates as the information reasonably can be determined, Licensor shall notify Licensee in writing of the change, if any, in the amount of the Adjusted Payment.

IV. The size, location and placement of the antenna shall be subject to approval of the Licensor.

V. Licensor shall furnish electricity to Licensee, at Licensee's expense, so long as Licensor shall distribute electric current in the Building. Upon thirty (30) days' written notice, Licensor may cease to furnish current without responsibility to Licensee except to connect, within the thirty day period, the electric wiring system with another source of alternating current and Licensee shall pay the supplier thereafter for such service.

VI. Licensee, at its expense, shall prior to the installation of its equipment secure and at all times thereafter maintain all required approvals and permits of the Federal Communications Commission and all other governmental bodies having jurisdiction over its business including its communications operations and facilities.

VII. Licensee, at its expense, shall be solely responsible for and shall maintain its equipment in a safe, structural, sound, clean and sightly condition and shall indemnify and save harmless Licensor against all liens and claims of mechanics and materialmen furnishing labor and materials in the construction and maintenance of its equipment.

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

VIII. Licensor hereby grants unto the Licensee the right to enter upon the roof of the Building for the sole purpose of gaining access to the Licensee's installation. In addition thereto, Licensor grants unto the Licensee the right to install such equipment, conduits, cables and materials (hereinafter called "the connecting equipment") in shafts, ducts, conduits, chases, utility closets and other facilities of the Building as designated by Licensor as is necessary to connect the Licensee's antenna to Licensee's other machinery and equipment in other parts of the Building, subject to the requirements of any permits and the code, regulations and rules of any governmental body, agency or authority. Licensor further grants a right of access at all times to the areas where such connecting equipment is located for the purposes of maintaining, repairing, testing and replacing the connecting equipment, provided, however, Licensee shall notify Licensor each time Licensee requires such access.

Anything herein to the contrary notwithstanding, Licensee shall notify Licensor each time Licensee desires to enter upon the roof of the Building and Licensee shall enter upon the roof only at such times and under such circumstances which shall not cause endangerment of life or limb.

IX. The license granted to the Licensee shall not be deemed to give to Licensee the exclusive right to use the roof of the Building and shall not preclude Licensor from granting a license or licenses to others. The rights of other licensees shall be exercised without causing objectionable interference with the activities being carried on at the same time by Licensee in accordance with its license. Similarly, the license of Licensee shall be exercised without causing objectionable interference with the activities being carried on at the same time by other licensees in accordance with their respective licenses. Licensee shall not change or materially alter the installation agreed to herein, without the prior approval of Licensor.

X. Licensee agrees to indemnify and save harmless Licensor and to assume all liability for death or injury to any persons and all liability for loss, damage or injury to any property incurred or sustained by Licensee arising from, growing out of or resulting from Licensee's use of the roof of the Building or any other areas in the Building where Licensee's connecting equipment is

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

located including costs, attorney's fees and other expenses incurred by Licensor in defending any such claim unless such loss, damage or injury is due to the negligence of Licensor, its employees, agents, or invitees.

XI. Licensee waives and releases all claims against Licensor its officers, directors, agents, employees and servants, and agrees that they shall not be liable for, injury to person or damage to property sustained by Licensee or by any occupant of the Building or any other person occurring in or about the Building resulting directly or indirectly from any existing or future condition, defect, matter of thing in the Building or any part of it or from equipment or appurtenance becoming out of repair, or from any occurrence, act, or from the negligence or omission of any tenant or occupant of the Building or of any other person; except for the negligence or omission by Licensor, its officers, directors, agents, employees and servants.

XII. If the term of any lease or license made by Licensee for any space in the Building shall be terminated or terminable after the making of this license, because of any default by Licensee under such other lease or license, such fact shall empower Licensor, at Licensor's sole option, to terminate this license by notice to Licensee.

XIII. In the event Licensee shall cease to occupy leased space in the Building, this license shall automatically terminate as of the same date that the Licensee ceases to occupy such leased space.

XIV. No notice or demand related to this license shall be effective unless in writing and either delivered personally to the party for whom intended, or to an officer of such party if a corporation, or sent by United States registered mail return receipt requested, postage prepaid, in a sealed envelope addressed: If to Licensee at its office in the Building with a copy to The Times Mirror Company, Times Mirror Square, Los Angeles, California 90053, Attention: Senior Vice President and General Counsel, or if Licensee is not in possession thereof, then to Licensee's address last known to Licensor, and if to Licensor, to Licensor at 170 East Randolph Drive, Chicago, Illinois 60601; provided that either party may, by notice to the other, from time to time designate another address in the United States of America to which notices mailed more than ten (10) days thereafter shall be addressed. Notices mailed as aforesaid shall be effectively given as of the date of mailing.

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

XV. At the termination of this license by lapse of time or otherwise, all installations and the connecting equipment installed under the terms of this license shall be removed by Licensee upon the request of Licensor and the area of the Building where they were installed shall be restored by Licensee in as good condition as existed immediately prior to installation of such installations and connecting equipment.

XVI. This agreement shall be binding upon the successors and assigns of the parties hereto provided that Licensee shall not assign or transfer this license to anyone else without Licensor's written approval which may be withheld at its discretion.

IN WITNESS WHEREOF, the parties to this agreement have caused the same to be signed by their authorized officers the day and year first above written.

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA

By [Signature]
Vice President



ATTEST

[Signature]
Assistant Secretary

TOWER COMMUNICATION SYSTEMS CORPORATION

By [Signature]
President

ATTEST

[Signature]
Secretary

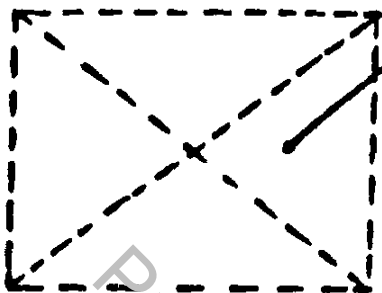
86235029

U

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

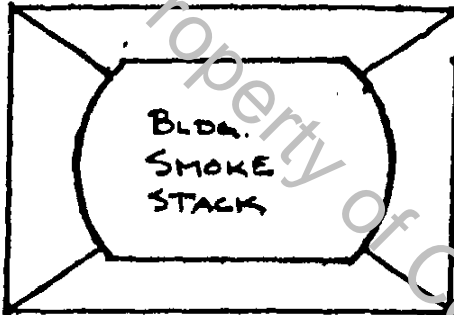
X



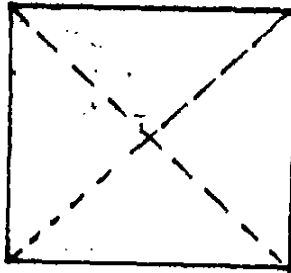
EXISTING LICENSE

— 14

Prudential Building
Partial Roof Plan
Northeast Section

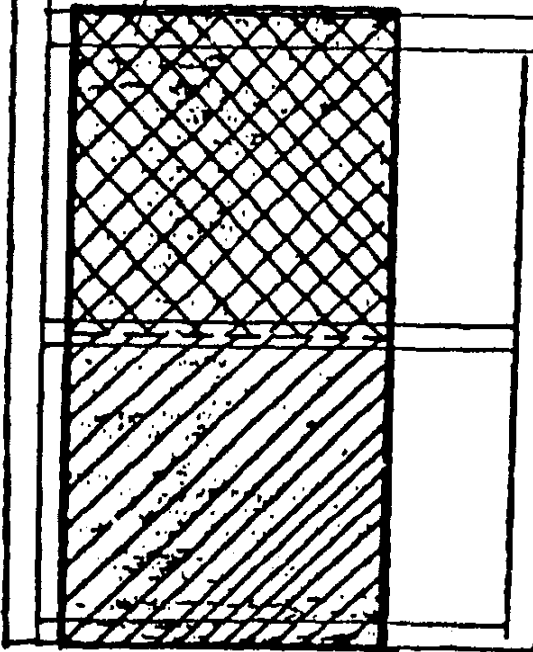


BLDG.
SMOKE
STACK



— 12

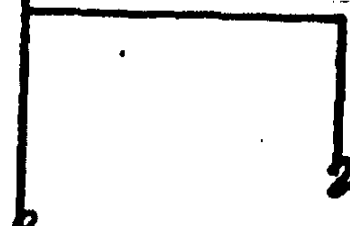
EXISTING LICENSE



— 11

Plan attached to License Agreement

Property of Cook County Clerk's Office

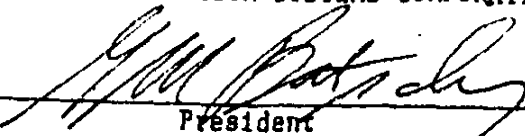


OK
86235029

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

TOWER COMMUNICATION SYSTEMS CORPORATION

By 
Vice President

By 
President

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

LICENSE AGREEMENT BETWEEN
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA
AND
TOWER COMMUNICATION SYSTEMS CORPORATION

This agreement made this 23rd day of July 1984 by and between THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation, hereinafter called "Licensor" and TOWER COMMUNICATION SYSTEMS CORPORATION, an Ohio corporation, hereinafter called "Licensee", witnesseth:

I. Licensor for and in consideration of the covenants and agreements made by Licensee herein contained does hereby grant unto the Licensee a license to utilize space (as outlined in yellow on the attached Exhibit A) on the roof of The Prudential Building, hereinafter called the "Building", located at 130 East Randolph Drive, Chicago, Illinois, 60601 for the purpose of installing and using one Andrew Corporation model SHX-10 horn-type microwave antenna, for the term of 8 years 7 months, commencing September 1, 1984 and ending March 31, 1993, unless sooner terminated as provided herein. Exhibit A attached hereto is made a part hereof and is identified by the signatures of the parties hereto.

II. Licensee shall make payments to Licensor, in coin or currency which, at the time of payment, is legal tender for public and private debts in the United States of America, at the office of the Building, or elsewhere as designated from time to time by notice in writing to Licensee, in installments as follows:

1. For the period beginning September 1, 1984, and ending March 31, 1986, the sum of One Thousand Five Hundred and No/100 -----Dollars (\$1,500.00) a month; and

2. For the period beginning April 1, 1986, and ending March 31, 1988, the sum of One Thousand Five Hundred and No/100 -----Dollars (\$1,500.00) a month, subject to adjustment as provided in Section III; and

3. For the period beginning April 1, 1988, and ending March 31, 1989, a monthly sum to be determined by Licensor based on the market rate then in effect for comparable installations in the City of Chicago; and

86235029

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

4. For the period beginning April 1, 1989 and for the remainder of the term hereof, the monthly sum determined in sub-paragraph 3 above, subject to adjustment as provided in Section III;

payable one each in advance promptly on the first day of every calendar month of the term (a pro-rated monthly installment shall be paid at the current rate for fractions of a month if the term shall begin on any day except the first day, or shall be terminated on any day except the last day, of any month); (b) all other sums payable hereunder within ten days after Licensor renders a statement therefor; and (c) interest at 8% per annum from the due date of each obligation until paid. Licensor shall provide Licensee with 6 months prior written notice of the revised rate of payment to be put into effect under sub-paragraph 3 above.

III. For the period of this license beginning April 1, 1986 and for the remainder of the term, including any extensions or renewals thereof, the payments provided to be paid in Section II of this license shall be adjusted and shall be computed and paid as follows:

1. Definitions-

- (a) BASIC PERIOD shall mean the period of the term of this license beginning September 1, 1984 and ending March 31, 1986.
- (b) ANNUAL BASE PAYMENT (i) for the term of this license through March 31, 1988, shall mean the sum obtained by multiplying by twelve, the amount of the monthly payment set forth in sub-paragraph 1 of Section II, and (ii) for the license year beginning on April 1, 1988 and each subsequent license year of the term of this license shall mean the sum obtained by multiplying by twelve, the amount of the monthly payment set forth in sub-paragraph 3 of Section II.
- (c) BASE YEAR shall mean (i) the calendar year 1983 for the period beginning April 1, 1986 and ending March 31, 1988 and (ii) the calendar year 1987 for the period beginning April 1, 1989 and for the remainder of the term.

86235029

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

1. Definitions (cont'd)-

- (d) ADJUSTED PAYMENT PERIOD shall mean the one-year period of the term of this license beginning with the first day next following the end of the Basic Period and each of the succeeding one-year periods, including, if any, a final period of less than one year.
- (e) ADJUSTED PAYMENT shall mean the rent to be paid during each of the Adjusted Payment Periods as herein required.
- (f) CONSUMER PRICE INDEX shall mean the twelve-month average of the Consumer Price Index for All Urban Consumers (U.S. City Average: All items 1967 = 100) published by the United States Department of Labor. In the event the publication of the Consumer Price Index is terminated, there shall be substituted for such index the most nearly similar index as determined by the firm of independent public accountants in charge of auditing Licensor's books.

2. The Adjusted Payment for each Adjusted Payment Period shall be the product obtained by multiplying the Annual Base Payment by a fraction which has as its numerator the Consumer Price Index for the calendar year immediately prior to such Adjusted Payment Period and has as its denominator the Consumer Price Index for the Base Year.

In no event shall the Adjusted Payment be less than the Annual Base Payment. If any Adjusted Payment Period shall be less than one year, the Adjusted Payment for such period shall be reduced proportionately.

3. The Adjusted Payment shall be paid in equal monthly installments in advance on the first day of each month of each Adjusted Payment Period; except that, if on the first day of any Adjusted Payment Period, Adjusted Payment for such period has not been determined as aforesaid, a payment shall be made on the first day of each month of such period at the same rate as immediately prior to the commencement thereof, and on the first day of the first month after the determination of such Adjusted Payment an adjustment shall be made by payment of an additional sum by Licensee, or allowance of credit by Licensor, so that the payment for any elapsed period during any such Adjusted Payment Period for which Payment has not been paid or credit given shall be adjusted to conform to the Adjusted Payment applicable thereto.

UNOFFICIAL COPY

4. On or before the first day of each Adjusted Payment Period, or as soon after such dates as the information reasonably can be determined, Licensor shall notify Licensee in writing of the change, if any, in the amount of the Adjusted Payment.

IV. The size, location and placement of the antenna shall be subject to approval of the Licensor, however in no event shall the overall installed-height of the combined antenna and framing support exceed the present height of Tenant's existing antenna installation east of the smoke stack. Refer to Murphy/Jahn drawing A-1-1 dated 7/20/84, attached hereto and made a part of and identified by the signatures of the parties hereto, as Exhibit "B".

V. Licensor shall furnish electricity to Licensee, at Licensee's expense, so long as Licensor shall distribute electric current in the Building. Upon thirty (30) days' written notice, Licensor may cease to furnish current without responsibility to Licensee except to connect, within the thirty day period, the electric wiring system with another source of alternating current and Licensee shall pay the supplier thereafter for such service.

VI. Licensee, at its expense, shall prior to the installation of its equipment secure and at all times thereafter maintain all required approvals and permits of the Federal Communications Commission and all other governmental bodies having jurisdiction over its business including its communications, operations and facilities.

VII. Licensee, at its expense, shall be solely responsible for and shall maintain its equipment in a safe, structural, sound, clean and sightly condition and shall indemnify and save harmless Licensor against all liens and claims of mechanics and materialmen furnishing labor and materials in the construction and maintenance of its equipment.

VIII. Licensor hereby grants unto the Licensee the right to enter upon the roof of the Building for the sole purpose of gaining access to the Licensee's installation. In addition thereto, Licensor grants unto the Licensee the right to install such equipment, conduits, cables and materials (hereinafter called "the connecting equipment") in shafts, ducts, conduits, chases, utility closets and other facilities of the Building as designated by Licensor as is necessary to connect the Licensee's antenna to Licensee's other machinery and equipment in other parts of the Building, subject to the requirements of any permits and the code, regulations and rules of any governmental body, agency or authority. Licensor further grants a right of access at all times to the areas where such connecting equipment is located for the purposes of maintaining, repairing, testing and replacing the connecting equipment, provided, however, Licensee shall notify Licensor each time Licensee requires such access.

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

Anything herein to the contrary notwithstanding, Licensee shall notify Licensor each time Licensee desires to enter upon the roof of the Building and Licensee shall enter upon the roof only at such times and under such circumstances which shall not cause endangerment of life or limb.

IX. The license granted to the Licensee shall not be deemed to give to Licensee the exclusive right to use the roof of the Building and shall not preclude Licensor from granting a license or licenses to others. The rights of other licensees shall be exercised without causing objectionable interference with the activities being carried on at the same time by Licensee in accordance with its license. Similarly, the license of Licensee shall be exercised without causing objectionable interference with the activities being carried on at the same time by other licensees in accordance with their respective licenses. Licensee shall not change or materially alter the installation agreed to herein, without the prior approval of Licensor.

X. Licensee agrees to indemnify and save harmless Licensor and to assume all liability for death or injury to any persons and all liability for loss, damage or injury to any property incurred or sustained by Licensee arising from, growing out of or resulting from Licensee's use of the roof of the Building or any other areas in the Building where Licensee's connecting equipment is located including costs, attorney's fees and other expenses incurred by Licensor in defending any such claim unless such loss, damage or injury is due to the negligence of Licensor, its employees, agents, or invitees.

XI. Licensee waives and releases all claims against Licensor its officers, directors, agents, employees and servants, and agrees that they shall not be liable for, injury to person or damage to property sustained by Licensee or by any occupant of the Building or any other person occurring in or about the Building resulting directly or indirectly from any existing or future condition, defect, matter of thing in the Building or any part of it or from equipment or appurtenance becoming out of repair or from any occurrence, act, or from the negligence or omission of any tenant or occupant of the Building or of any other person; except for the negligence or omission by Licensor, its officers, directors, agents, employees and servants.

86235029

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

XII. If the term of any lease or license made by Licensee for any space in the Building shall be terminated or terminable after the making of this license, because of any default by Licensee under such other lease or licence, such fact shall empower Licensor, at Licensor's sole option, to terminate this license by notice to Licensee.

XIII. In the event Licensee shall cease to occupy leased space in the Building, this license shall automatically terminate as of the same date that the Licensee ceases to occupy such leased space.

XIV. No notice or demand related to this license shall be effective unless in writing and either delivered personally to the party for whom intended, or to an officer of such party if a corporation, or sent by United States registered mail return receipt requested, postage prepaid, in a sealed envelope addressed: If to Licensee at its office in the Building with a copy to The Times Mirror Company, Times Mirror Square, Los Angeles, California 90053, Attention: Senior Vice President and General Counsel, or if Licensee is not in possession thereof, then to Licensee's address last known to Licensor, and if to Licensor, to Licensor at 130 East Randolph Drive, Chicago, Illinois 60601; provided that either party may, by notice to the other, from time to time designate another address in the United States of America to which notices mailed more than ten (10) days thereafter shall be addressed. Notices mailed as aforesaid shall be effectively given as of the date of mailing.

XV. At the termination of this license by lapse of time or otherwise, all installations and the connecting equipment installed under the terms of this license shall be removed by Licensee upon the request of Licensor and the area of the Building where they were installed shall be restored by Licensee in as good condition as existed immediately prior to installation of such installations and connecting equipment.

XVI. This agreement shall be binding upon the successors and assigns of the parties hereto provided that Licensee shall not assign or transfer this license to anyone else without Licensor's written approval which may be withheld at its discretion.

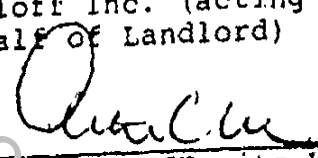
86235029

UNOFFICIAL COPY

0 6 2 3 5 0 2 9

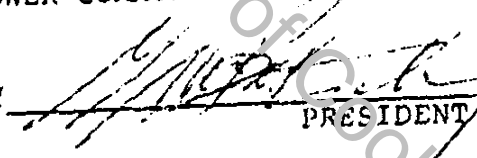
IN WITNESS WHEREOF, the parties to this agreement have caused the same to be signed by their authorized officers the day and year first above written.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA
By Rubloff Inc. (acting as Management Agent
on behalf of Landlord)

BY 
ARTHUR C. WEST, its Vice President



TOWER COMMUNICATION SYSTEMS CORPORATION

BY 
PRESIDENT

Property of Cook County Clerk's Office

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

GUARANTY

August 31, 1984

For value received, the undersigned, The Times Mirror Company, a California corporation, (herein called the "Guarantor") hereby unconditionally guarantees (i) the payment, when due, of all sums payable under the license dated July 23, 1984 between The Prudential Insurance Company of America, a New Jersey corporation, (herein called "Licensor") and Tower Communication Systems Corporation, an Ohio corporation and a wholly-owned subsidiary of the Guarantor, (herein called the "Licensee") for the purpose of a microwave installation on the roof of The Prudential Building, 130 East Randolph Drive, Chicago, Illinois 60601, for the term of eight (8) years seven (7) months commencing September 1, 1984 and ending March 31, 1993 in the total amount of One Hundred Fifty Four Thousand Five Hundred and No/100 Dollars (\$154,500) which is payable in monthly installments, to be adjusted, as provided for in the license and (ii) the due and punctual performance by Licensee of any and all terms, covenants, conditions and agreements contained in said license. The Guarantor agrees that, upon default, the Licensor may proceed forthwith and directly against the Guarantor without proceeding against the Licensee or any other person or party. The Guarantor represents that the lease, as originally executed and delivered has been or when delivered will have been duly executed by duly authorized officers of Licensee, and is or when delivered will be a valid obligation of Licensee, legally binding upon it in accordance with its respective terms.

THE TIMES MIRROR COMPANY

BY *[Signature]*

BY *[Signature]*

The foregoing Guaranty is hereby accepted as of the date first above-written.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA
By Rubloff Inc. (acting as Management Agent
on behalf of Landlord)

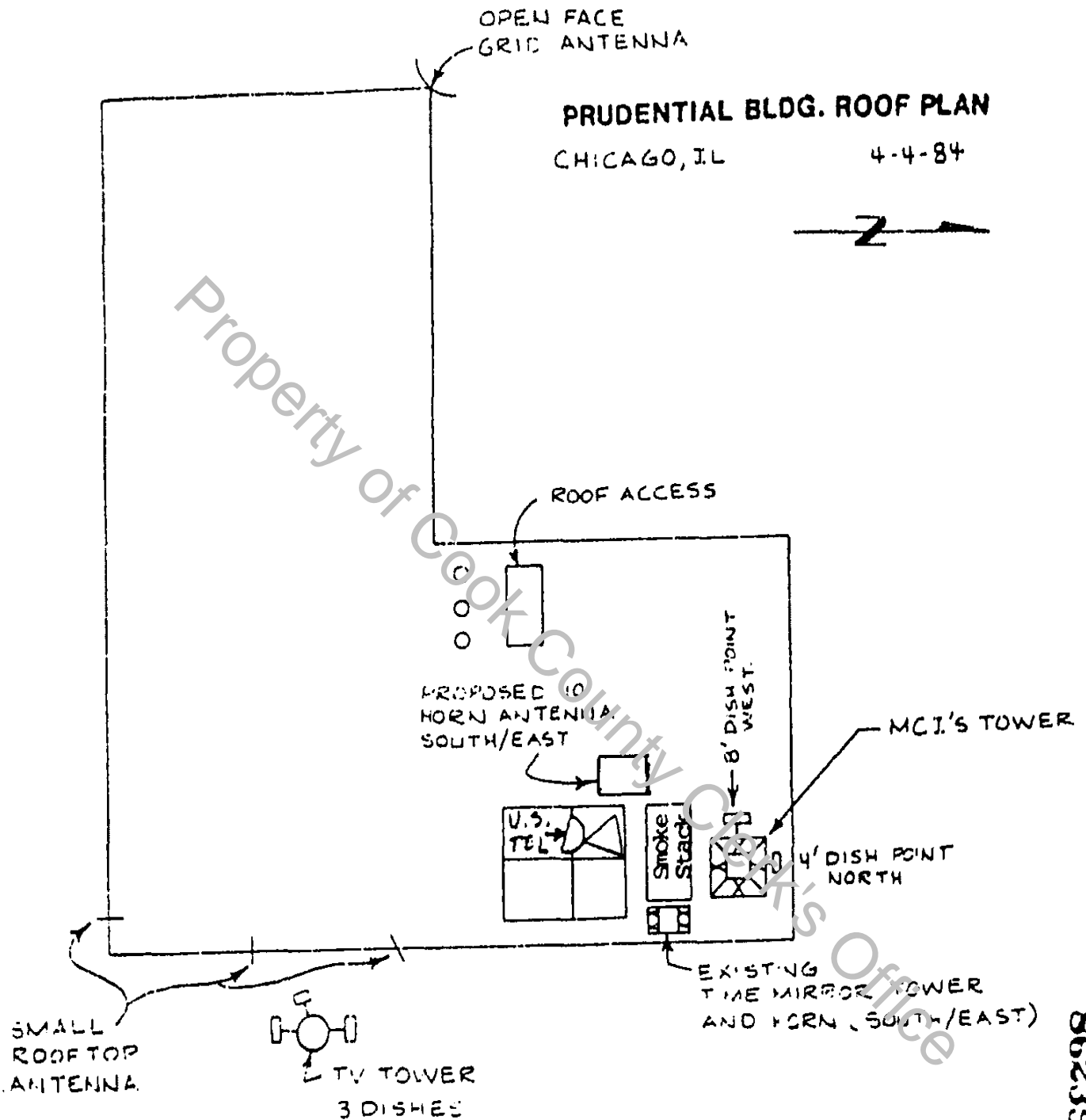
BY *[Signature]*

ARTHUR C. WEST, its Vice President *[Signature]*

86235029

EXHIBIT "A"
UNOFFICIAL COPY

8 6 2 3 5 0 2 9



Plan attached to License Agreement with Tower Communication Systems Corporation, identifying the area reserved for the antenna installation on the roof.

86235029

RUBLOFF INC.

BY Arthur C. West
Arthur C. West, Vice President

TOWER COMMUNICATION SYSTEMS CORPORATION

BY [Signature]

UNOFFICIAL COPY

FIRST AMENDMENT TO LICENSE AGREEMENT

8 6 2 3 5 0 2 9

This indenture is made this ____ day of ~~August~~^{November}, 1985, by and between The Prudential Insurance Company of America (hereinafter called "Landlord") and Tower Communication Systems Corporation (hereinafter called "Tenant").

WITNESSETH:

Whereas, Landlord and Tenant entered into a certain license agreement ("License Agreement"), dated July 23, 1984 to utilize space on the roof of the premises commonly known as the Prudential Building, 130 East Randolph Drive, Chicago, Illinois 60601; and

Whereas, Landlord and Tenant desire to modify said License Agreement so as to include the addition of new equipment and to increase the payments made by the Tenant to the Landlord thereunder; and

Whereas, it is intended by this agreement to modify and amend said License Agreement.

Now, therefore, in consideration of the covenants and agreements herein undertaken to be kept and performed, it is agreed as follows:

1. The following is hereby added to Section 1, after the last sentence:

An additional 6 foot diameter antenna shall be installed on the existing self supporting tower. Installation shall include a new conduit run from said tower on the 42nd level roof to the 40th floor radio room.

UNOFFICIAL COPY

8 6 2 3 5 0 2 9

2. Paragraph 11.1 is hereby deleted in its entirety, and the following paragraph is inserted in lieu thereof:

For the period beginning September 1, 1984 and ending August 31, 1985, the sum of One Thousand Five Hundred and No/100 Dollars (\$1,500.00) a month; and for the period beginning September 1, 1985 and ending March 31, 1986, the sum of Two Thousand Two Hundred Fifty and No/100 Dollars (\$2,250.00) a month; and

3. Paragraph 11.2 is hereby deleted in its entirety and the following paragraph is inserted in lieu thereof:

For the period beginning April 1, 1986 and ending March 31, 1988, the sum of Two Thousand Two Hundred Fifty and No/100 Dollars (\$2,250.00) a month, subject to adjustment as provided in Section 111; and

4. Except as herein specifically modified and amended, said license agreement shall not be hereby modified or amended, and shall remain in full force and effect.

TENANT:
TOWER COMMUNICATION SYSTEMS CORPORATION

LANDLORD:
THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA

By: R. Francis Ferguson
Title: Asst. Vice-President

By: Eugene J. [Signature]
Title: V.P. [Signature] mfp

The above is agreed to and accepted by the Guarantor of the said license agreement this 4th day of November, 1985.

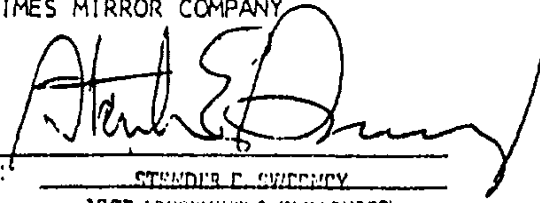


UNOFFICIAL COPY

0 0 2 3 5 0 2 9

GUARANTOR:
THE TIMES MIRROR COMPANY

By:
Title:


STENDER E. SWIEEMPY
VICE PRESIDENT & TREASURER

Property of Cook County Clerk's Office

5225-80-06
8/13/85

86235029

EXHIBIT, "B"

UNOFFICIAL COPY

8 6 2 3 5 0

Prudential Plag -
Chicago, Ill.

150 E. Randolph

17-10-313-002-0000

PLAT OF THE PRUDENTIAL AND
ILLINOIS CENTRAL SUBDIVISION

Of all that part of the south half of fractional section 10, Township 39 north, range 14 east of the third principal meridian, and land adjacent thereto, described as: beginning at the point of intersection of the east line of Beaubien Court and the north line of east Randolph Street, thence north along the east line of Beaubien Court to the north line of east Lake Street; thence east along a straight line which is perpendicular to the west line of north Michigan Avenue and to the east line of Beaubien Court and passes through the point of intersection of the east line of Beaubien Court and the north line of east Lake Street, a distance of four hundred fifty-one and five tenths feet (451.5') to a point; thence south along a line parallel to and four hundred fifty-one and five tenths feet (451.5') east of the east line of Beaubien court to a point on the north line of east Randolph Street extended east; thence westerly along the north line of east Randolph Street extended east, to the point of beginning, in the City of Chicago, County of Cook, State of Illinois.

Cook County Clerk's Office

86235029

476