

# Mapleton City Council Staff Report

Meeting Date: November 18, 2014

**Prepared by:** Cory Branch

**Applicant:** AT&T Mobility

**ACTION ITEM:**

Consideration by AT&T Mobility to modify the existing cell site lease agreement for property located generally at 450 West 3100 South.

**FINDINGS OF FACT:**

1. On September 14, 2005 Cingular Wireless, currently known as AT&T Mobility entered into a Lease Agreement with Mapleton City for the purpose of using city owned land for their cell site. (see Attachment 1 – Existing Lease Agreement)
2. The Agreement is currently in its 1<sup>st</sup> Extension Term which ends on September 14, 2015. The Agreement does allow for an automatic renewal for three (3) additional five (5) year terms with an ending date of September 14, 2030. (see Attachment 1 – Pg. 2 - Term – Existing Lease Agreement)
3. As per the agreement Mapleton City currently receives \$9,675. (see Attachment 1 – Pg. 2 - Rent – Existing Lease Agreement)
4. On October 14, 2014 Mapleton City received a letter from AT&T Mobility requesting to modify the original agreement in order to meet current business requirements and enhance our site's value to the network. (see Attachment 2 – Letter issued by AT&T Mobility)
5. The letter proposes two offers. The first offer would be to secure a longer-term lease with a new annual lease starting at \$6,600 commencing January 1, 2015, a 7.5% rent increase every 5 years, commencing 2020, and the extension of the Lease is good through December 31, 2045. With the new lease the city would begin losing \$3,075 (\$9,675 minus \$6,600) annually. The second option is for AT&T Mobility to provide a one-time lump sum payment of \$70,000 in return the city will grant a ninety-nine (99) year easement on the property.
6. The applicant has stated that if the Council chooses not to modify the existing cell site lease they may consider not renewing their existing Agreement and relocate to another cell site.

**STAFF RECOMMENDATION:**

Staff recommends modifying the existing cell site agreement as proposed. Staff is prepared to discuss the reasons why at the night of the meeting.

**ATTACHMENTS:**

1. Existing Lease Agreement
2. Letter issued by AT&T Mobility

Market: UT/ID  
Cell Site Number: SLKCUT4018  
Cell Site Name: MAPLETON

## UTAH LEASE AGREEMENT

THIS LEASE AGREEMENT (“**Agreement**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is entered into by **Mapleton City Corporation, a Utah Municipal Corporation**, having a mailing address of 35 East Maple Street, Mapleton, Utah 84664 (hereinafter referred to as “**Landlord**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 6100 Atlantic Boulevard, Norcross, GA 30071 (hereinafter referred to as “**Tenant**”).

### BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, located at 800 West 3200 South (Water Tank) Mapleton, UT 84664, in the County of UTAH, State of Utah and more particularly described on **Exhibit 1** attached hereto (collectively, the “**Property**”). Tenant desires to use a portion of the Property in connection with its federally licensed communications business. Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

- 1. LEASE OF PREMISES.** Landlord leases to Tenant a certain portion of the Property containing approximately 1064 square feet as described on attached **Exhibit 1**, together with unrestricted access for Tenant’s uses from the nearest public right-of-way along the Property to the Premises as described on the attached **Exhibit 1** (collectively, the “**Premises**”).
- 2. PERMITTED USE.** Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of its communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, I beams, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (collectively, the “**Communication Facility**”), as well as the right to test, survey and review title on the Property; Tenant further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord (collectively, the “**Permitted Use**”). Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant’s Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord’s execution of this Agreement will signify Landlord’s approval of **Exhibit 1**. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the main entry point to the equipment shelter or cabinet, and to make Property improvements, alterations, upgrades or additions appropriate for Tenant’s use (“**Tenant Changes**”). Tenant Changes include the right to construct a fence around the Premises and undertake any other appropriate means to secure the Premises. Tenant agrees to comply with all applicable governmental laws, rules, statutes and

regulations, relating to its use of the Communication Facility on the Property. Tenant has the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the Communication Facility within the Premises at any time during the term of this Agreement. Tenant will be allowed to make such alterations to the Property in order to accomplish Tenant's Changes or to insure that Tenant's Communication Facility complies with all applicable federal, state or local laws, rules or regulations. In the event Tenant desires to modify or upgrade the Communication Facility, and Tenant requires an additional portion of the Property (the "**Additional Premises**") for such modification or upgrade, Landlord agrees to lease to Tenant the Additional Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises by a reasonable amount consistent with rental rates then charged for comparable portions of real property being in the same area. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.

### 3. TERM.

(a) The initial lease term will be five (5) years ("**Initial Term**"), commencing on the Effective Date. The Initial Term will terminate on the fifth (5<sup>th</sup>) annual anniversary of the Effective Date.

(b) This Agreement will automatically renew for four (4) additional five (5) year term(s) (each five (5) year term shall be defined as the "**Extension Term**"), upon the same terms and conditions unless the Tenant notifies the Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Term.

(c) If, at least sixty (60) days prior to the end of the fourth (4<sup>th</sup>) extended term, either Landlord or Tenant has not given the other written notice of its desire that the term of this Agreement end at the expiration of the fourth (4<sup>th</sup>) extended term, then upon the expiration of the fourth (4<sup>th</sup>) extended term this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of any such annual term. Monthly rental during such annual terms shall be equal to the rent paid for the last month of the fourth (4<sup>th</sup>) extended term. If Tenant remains in possession of the Premises after the termination of this Agreement then Tenant will be deemed to be occupying the Premises on a month to month basis (the "**Holdover Term**"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, the Extension Term and the Holdover Term are collectively referred to as the Term ("**Term**").

### 4. RENT.

(a) Commencing on the first day of the month following the date that Tenant commences construction (the "**Rent Commencement Date**"), Tenant will pay the Landlord a monthly rental payment of Seven hundred fifty and No/100 Dollars (\$750.00) ("**Rent**"), at the address set forth above, on or before the fifth (5<sup>th</sup>) day of each calendar month in advance. In partial months occurring after the Rent Commencement Date, Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within thirty (30) days after the Rent Commencement Date.

(b) In year one (1) of each Extension Term, the monthly Rent will increase by seven and one-half percent (7 ½ %) over the Rent paid during the previous Term.

(c) All Rent or other charges payable under this Agreement shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The provisions of the foregoing sentence shall survive the termination or expiration of this Agreement.

## 5. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises for Tenant's Permitted Use and Tenant's ability to obtain and maintain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Tenant for its use of the Premises, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"). Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals. In addition, Tenant shall have the right to initiate the ordering and/or scheduling of necessary utilities.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of Tenant's choice. In the event Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory, Tenant will have the right to terminate this Agreement upon notice to Landlord.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if the Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

6. TERMINATION. This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Paragraph 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;

(c) by Tenant upon written notice to Landlord for any reason, at any time prior to commencement of construction by Tenant; or

(d) by Tenant upon sixty (60) days prior written notice to Landlord for any reason, so long as Tenant pays Landlord a termination fee equal to three (3) months Rent, at the then current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any one or more of Paragraphs 5(b), 6(a), 6(b), 6(c), 8, 11(d), 18, 19 or 20.

## 7. INSURANCE.

(a) Tenant will carry during the Term, at its own cost and expense, the following insurance: (i) "All Risk" property insurance for its property's replacement cost; (ii) commercial general liability insurance with a minimum limit of liability of \$2,500,000 combined single limit for bodily injury or death/property damage arising out of any one occurrence; and (iii) Workers' Compensation Insurance as required by law. The coverage afforded by Tenant's commercial general liability insurance shall apply to Landlord as an additional insured, but only with respect to Landlord's liability arising out of its interest in the Property.

(b) Tenant shall have the right to self-insure with respect to any of the above insurance requirements.

## **8. INTERFERENCE.**

(a) Where there are existing radio frequency user(s) on the Property, the Landlord will provide Tenant with a list of all existing radio frequency user(s) on the Property to allow Tenant to evaluate the potential for interference. Tenant warrants that its use of the Premises will not interfere with existing radio frequency user(s) on the Property so disclosed by Landlord, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party for the use of the Property, if such use may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord will not use, nor will Landlord permit its employees, tenants, licensees, invitees or agents to use, any portion of the Property in any way which interferes with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period then the parties acknowledge that Tenant will suffer irreparable injury, and therefore, Tenant will have the right, in addition to any other rights that it may have at law or in equity, for Landlord's breach of this Agreement, to elect to enjoin such interference or to terminate this Agreement upon notice to Landlord.

## **9. INDEMNIFICATION.**

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs but excluding real property or personal property taxes) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, agents or independent contractors.

(b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs but excluding real property or personal property taxes) arising directly from the actions or failure to act of Landlord or its employees or agents, or Landlord's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.

(c) Notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages.

#### 10. WARRANTIES.

(a) Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

(b) Landlord represents and warrants that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license and solely owns the structure; (ii) the Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) as long as Tenant is not in default then Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on the Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord shall provide promptly to Tenant a Subordination, Non-Disturbance and Attornment Agreement in substantially the form of **Exhibit 2** attached hereto.

#### 11. ENVIRONMENTAL.

(a) Landlord represents and warrants that the Property is free of hazardous substances as of the date of this Agreement, and, to the best of Landlord's knowledge, the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or other matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in or on the Property.

(b) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) the indemnifying party's failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Property and activities conducted by the party thereon, unless the environmental conditions are caused by the other party.

(c) The indemnifications of this Paragraph 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Paragraph 11 will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental or industrial hygiene condition or matter relating to the Property that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of government action, intervention or third-party liability, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate the Agreement upon notice to Landlord.

**12. ACCESS.** At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. Landlord grants to Tenant an easement for such access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such access at no additional cost to Tenant. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. In the event any public utility is unable to use the access or easement provided to Tenant then the Landlord agrees to grant additional access or an easement either to Tenant or to the public utility, for the benefit of Tenant, at no cost to Tenant.

**13. REMOVAL/RESTORATION.** All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of the Tenant and may be removed by Tenant at any time during the Term. Within one hundred twenty (120) days of the termination of this Agreement, Tenant will remove all of Tenant's above-ground improvements and Tenant will, to the extent reasonable, restore the Premises to its condition at the commencement of the Agreement, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation, nor will Tenant be required to remove from the Premises or the Property any foundations or underground utilities.

**14. MAINTENANCE/UTILITIES.**

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements.

(b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to submeter from the Landlord. When submetering is necessary and available, Landlord will read the meter on a monthly or quarterly basis and provide Tenant with the necessary usage data in a timely manner to enable Tenant to compute such utility charges. Failure by Landlord to perform this function will limit utility fee recovery by Landlord to a 12-month period. Landlord will fully cooperate with any utility company requesting an easement over, under and across the Property in order for the utility company to provide service to the Tenant. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

**15. DEFAULT AND RIGHT TO CURE.**

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after receipt of written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement. Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after receipt of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have the right to exercise any and all rights available to it under law and equity, including the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant.

**16. ASSIGNMENT/SUBLEASE.** Tenant will have the right to assign this Agreement or sublease the Premises and its rights herein, in whole or in part, without Landlord's consent. Upon notification to Landlord of such assignment, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement.

**17. NOTICES.** All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Tenant:                   c/o Cingular Wireless LLC  
  Attn: Network Real Estate Administration  
  Re: Cell Site #: SLKCUT4018; Cell Site Name: MAPLETON  
  6100 Atlantic Boulevard  
  Norcross, Georgia 30071

with a copy to:               Cingular Wireless  
  Attn.: Legal Department  
  Re: Cell Site #: SLKCUT4018; Cell Site Name: MAPLETON  
  15 East Midland Avenue  
  Paramus, NJ 07652

If to Landlord:               Mapleton City Corporation  
  
  35 East Maple Street  
  
  Mapleton, UT 84664

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

**18. SEVERABILITY.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either party on ten (10) business days prior written notice to the other party hereto.

**19. CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses, provided that any award to Tenant will not diminish Landlord's recovery. Tenant will be entitled to reimbursement for any prepaid Rent on a prorata basis.

**20. CASUALTY.** Landlord will provide notice to Tenant of any casualty affecting the Property within forty-eight (48) hours of the casualty. If any part of the Communication Facility or Property is damaged by fire or other casualty so as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to the Landlord, which termination will be effective as of the date of such damage or destruction. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis. If notice of termination is given, or if Landlord or Tenant undertake to rebuild the Communications Facility, Landlord agrees to use its reasonable efforts to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until such time as Tenant is able to secure a replacement transmission location or the reconstruction of the Communication Facility is completed.

**21. WAIVER OF LANDLORD'S LIENS.** Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law, and Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

**22. TAXES.**

(a) Tenant shall be solely responsible for and shall timely pay all personal property taxes levied and assessed against it or its personal property. Tenant shall reimburse the Landlord for Tenant's proportionate share of the real estate taxes, upon timely receipt of a copy of the tax bill and request for reimbursement from the Landlord. For purposes herein, Tenant's proportionate share shall be determined based upon the square footage of the Premises (excluding therefrom any unassessed square footage used by Tenant, e.g., the rooftop) relative to Landlord's entire parcel of real estate (using, in the case of building space, the net usable square footage of the building, and in the case of leased land, the unimproved portion of Landlord's real estate (including parking areas)). At the request of either party, the other shall provide evidence of payment of taxes.

(b) Tenant shall have the right to contest all taxes, assessments, charges and impositions assessed against its personal property or improvements, and Landlord agrees to join in such contest, if required by law, and to permit the Tenant to proceed with the contest in Landlord's name, provided that the expense of the contest is borne by Tenant. If the Landlord initiates an action to contest taxes or other items, Tenant may join in such action provided that Tenant pays its own expenses of so participating. Landlord shall, within seven (7) days of receipt of notice of any increase in taxes, assessments or other charges, send a copy of such notice by certified mail, return receipt requested, to Tenant. If Landlord fails to give Tenant such notice as set forth above, Landlord will be responsible for payment of any increases and Tenant shall have the option to pay the same and deduct such payment from Rent or any other sums next due.

### **SALE OF PROPERTY.**

(a) If during Term of this Agreement Landlord decides to subdivide, sell, or change the status of the zoning of the Premises, Property or any of Landlord's contiguous, adjoining or surrounding property (the "**Surrounding Property**,") or in the event of foreclosure, Landlord shall immediately notify Tenant in writing. Any sale of the Property shall be subject to Tenant's rights under this Agreement. Landlord agrees that during the Term of this Agreement Landlord shall not initiate or consent to any change in the zoning of the Premises, Property or Surrounding Property or impose or consent to any other restriction that would prevent or limit Tenant from using the Premises for the uses intended by Tenant as set forth in this Agreement.

(b) If Landlord, at any time during the Term of this Agreement, decides to sell, subdivide or rezone any of the Premises, all or any part of the Property or Surrounding Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such sale, subdivision or rezoning shall be subject to this Agreement and Tenant's rights hereunder. Landlord agrees not to sell, lease or use any areas of the Property or Surrounding Property for the installation, operation or maintenance of other wireless communications facilities if such installation, operation or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion, any such testing to be at the expense of Landlord or Landlord's prospective purchaser, and not Tenant. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or using any areas of the Property or the Surrounding Property for purposes of any installation, operation or maintenance of any other wireless communications facility or equipment. Landlord shall not be prohibited from the selling, leasing or use of any of the Property or the Surrounding Property for non-wireless communication use. In the event the Property is transferred, the new landlord shall have a duty at the time of such transfer to provide Tenant with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in Rent to the new landlord. The provisions of this Paragraph 23 shall in no way limit or impair the obligations of Landlord under Paragraph 8 above.

### **23. MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Landlord and an authorized agent of the Tenant. No provision may be waived except in a writing signed by both parties.

(b) **Memorandum of Lease.** Either party will, at any time upon fifteen (15) business days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease in substantially the form attached hereto as **Exhibit 3**. Either party may record this Memorandum of Lease at any time, in its absolute discretion.

(c) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(d) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

(e) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(f) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; and (vi) reference to a default will take into consideration any applicable notice, grace and cure periods.

(g) **Estoppel.** Either party will, at any time upon twenty (20) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises. The requested party's failure to deliver such a statement within such time will be conclusively relied upon by the requesting party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting party, (ii) there are no uncured defaults in either party's performance, and (iii) no more than one month's Rent has been paid in advance.

(h) **No Electronic Signatures/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant.

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the last date written below.

**"LANDLORD"**

Mapleton City Corporation a Utah Municipal Corporation.

By:   
Print Name: Robert D. Brademan  
Its: City Administrator  
Date: 8/10/05

**"TENANT"**

New Cingular Wireless PCS, LLC,  
a Delaware limited liability company

By:   
Print Name: DENNIS NEAL  
Its: REAL ESTATE & CONST. MGR  
Date: 8/15/05

## EXHIBIT 1

### DESCRIPTION OF PROPERTY AND PREMISES

---

Landlord owns certain property with an address of 3100 South 450 West, Mapleton, UT 84664 hereinafter identified as the "Property".

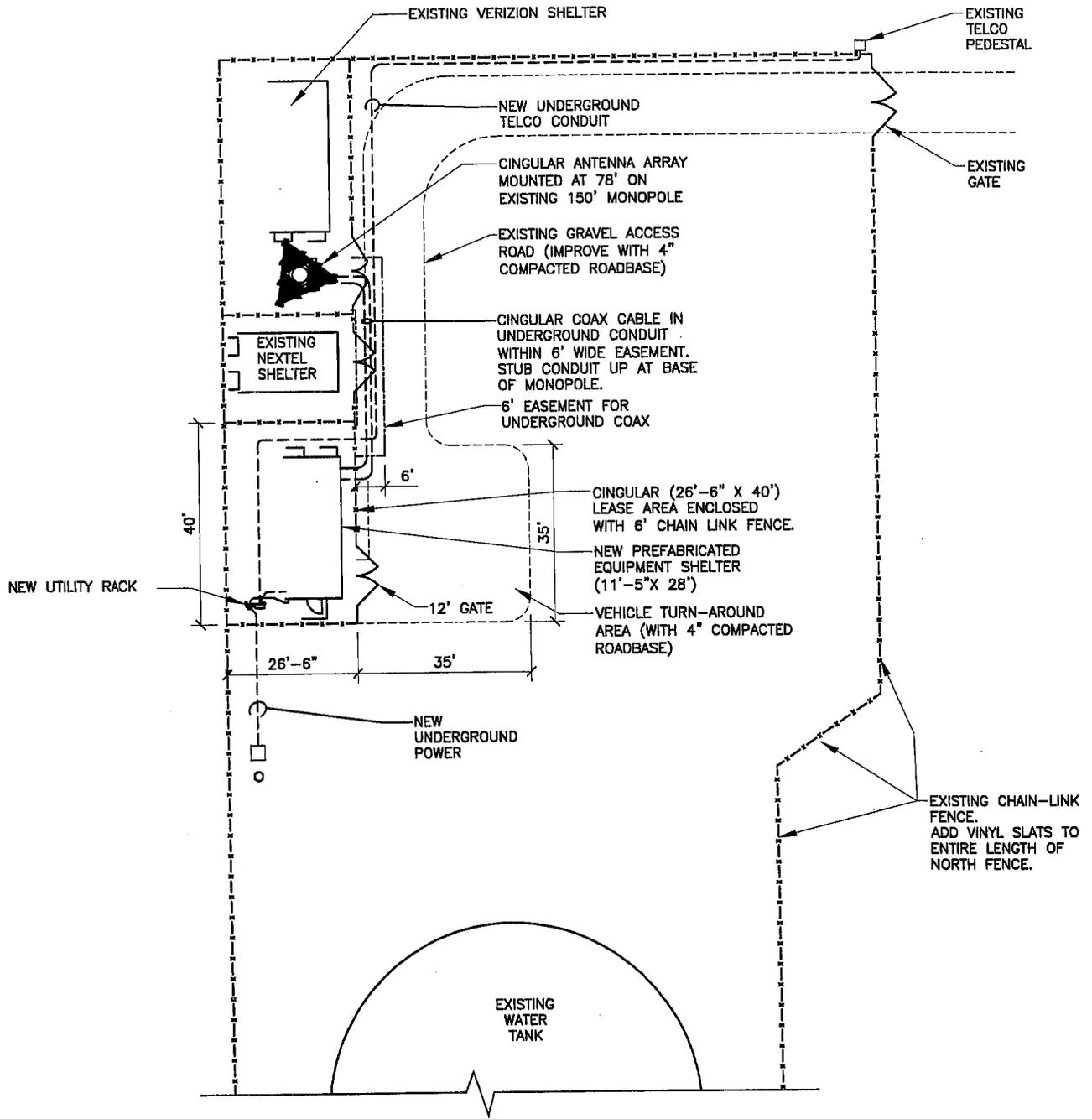
Commencing N 142.74 feet and E 1044.35 feet from the South quarter corner of Section 22, T 8 S, R 3 E SLBM; thence S 00 41'57" E 1299.99 feet; thence N 89 18'03" E 265.00 feet; thence N 00 41' 57" W 76.00 feet; thence N 45 41'57" W 48.08 feet; thence S 89 18' 03" W 66.01 feet; thence 45 41'51" W 28.27 feet; thence S 89 18' 03" W 145.00 feet to the point of beginning.

Tenant leases a portion of the Property identified as the "Premises". The Premises are described and/or depicted as follows:

**SEE ATTACHED EXHIBIT 1** pages 1 and 2.

#### **Notes:**

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Premises once received by Tenant.
2. Any setback of the Premises from the Property's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers and mounting positions may vary from what is shown above.



**Wasatch Electric**  
A Division of Dynalectric  
An EMCOR Company

1074 SOUTH WEST TEMPLE  
SALT LAKE CITY, UTAH  
(801) 487-4511 FAX (801) 487-5032



CINGULAR WIRELESS SERVICES, INC.  
4363 S. RIVERBOAT ROAD  
TAYLORSVILLE, UT 84123

**PROJECT ADDRESS:**

MAPLETON  
3100 S. 450 W.  
MAPLETON, UTAH 84664

**PROPERTY OWNER:**

MAPLETON CITY  
35 E. MAPLE ST.  
MAPLETON, UT 84664

**TOWER OWNER:**

AMERICAN TOWER  
651 CORPORATE CIR. #108  
GOLDEN, CO 80401

**LEASE EXHIBIT 1**

SITE NAME:  
MAPLETON

SITE NUMBER:  
SLKCUT4018A

REVISION NO. 2

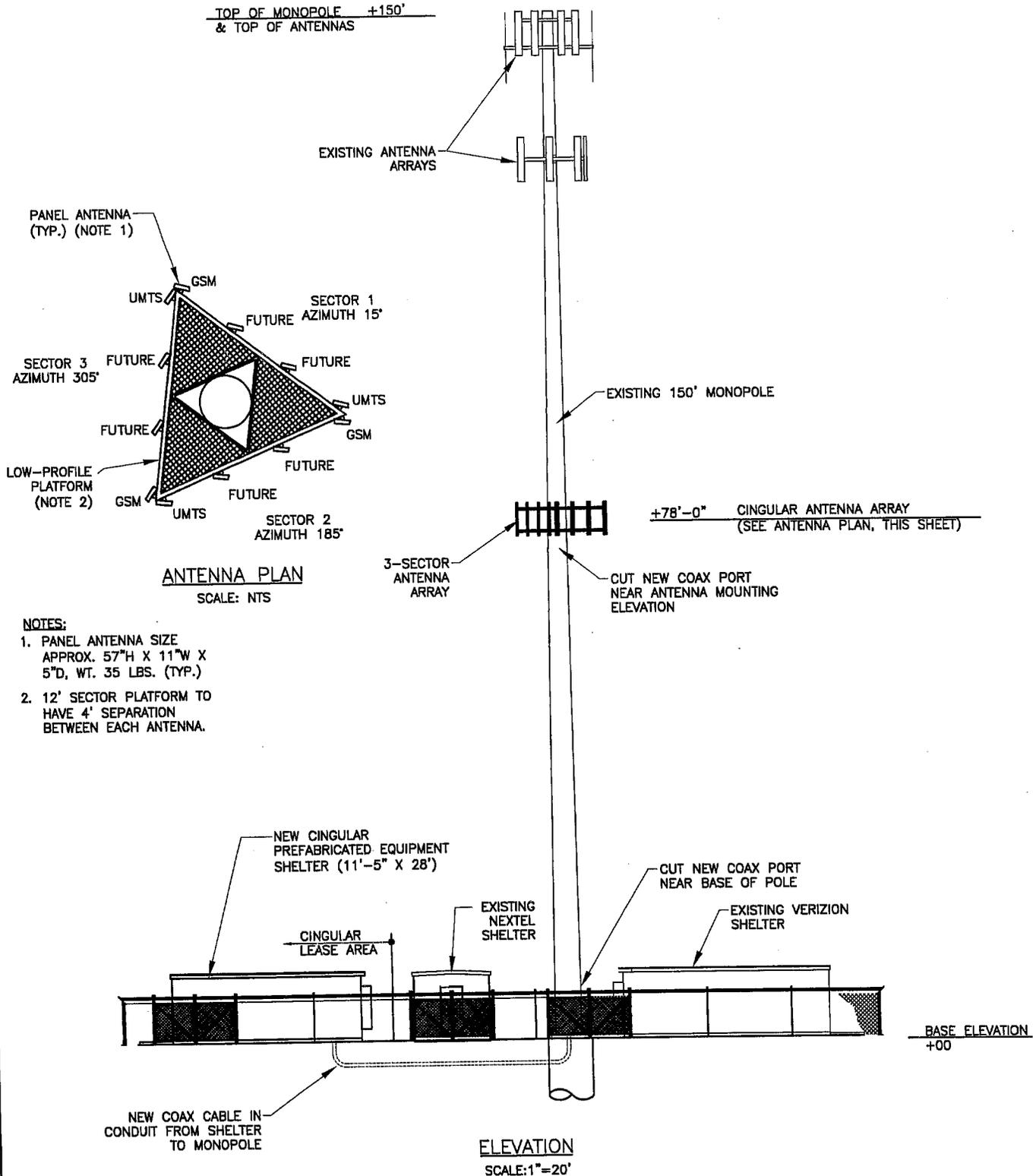
DATE ISSUED: 8/10/05

SCALE: AS NOTED

DWG. NO.  
SLKCUT4018A

SHEET NO. 1 OF 2

TOP OF MONOPOLE +150'  
& TOP OF ANTENNAS



**ANTENNA PLAN**  
SCALE: NTS

**ELEVATION**  
SCALE: 1"=20'

- NOTES:**
1. PANEL ANTENNA SIZE APPROX. 57"H X 11"W X 5"D, WT. 35 LBS. (TYP.)
  2. 12' SECTOR PLATFORM TO HAVE 4' SEPARATION BETWEEN EACH ANTENNA.

**Wasatch Electric**  
A Division of Dynalectric  
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AMERICAN TOWER  
651 CORPORATE CIR. #108  
GOLDEN, CO 80401

**LEASE EXHIBIT 1**

**SITE NAME:**  
MAPLETON

**SITE NUMBER:**  
SLKCUT4018A

REVISION NO. 2	DWG. NO. SLKCUT4018A
DATE ISSUED: 8/10/05	
SCALE: AS NOTED	SHEET NO. 2 OF 2



October 14, 2014

Mapleton City Corporation  
35 East Maple Street  
Mapleton, UT 84664

Re: Communications Facility located at 3100 SOUTH 450 WEST, MAPLETON, UT 84664

Contract #: 47436 FA#: 10104028

Dear Landlord,

As you are aware, AT&T Mobility (“AT&T”) has partnered with Md7 to work with you to facilitate certain modifications to the cell site lease on your property. These modifications will allow AT&T to meet current business requirements and enhance your site’s value to the network.

### **Changes in the Wireless Industry**

Recent industry developments are changing how wireless telecommunications carriers operate. In the past, carriers focused on rapidly building out their networks in order to provide the best coverage. Today, while consumers are enjoying greater services and better coverage than ever before, operating costs continue to escalate. As a result, the wireless industry is also focusing on operating networks as efficiently as possible.

### **Eliminating Risk and Increasing Value**

AT&T is addressing this shift by reviewing its cell site portfolio. AT&T has partnered with Md7 to offer selected landlords like you the opportunity to minimize the business risks associated with industry uncertainties and to increase the value of your cell site lease.

### **Criteria for Cellular Site Retention/Rent Guarantee Period**

AT&T is willing to offer the following option to secure a longer-term lease with you:

- **\$6,600** per year, commencing **January 01, 2015**
- **7.5%** rent increase every 5 years, commencing **2020**
- Extension of Lease through **December 31, 2045**

AT&T will modify its termination rights under the lease to guarantee your rental income in the amount of **\$33,000** for the next **60** months.

Current Amount of Guaranteed Rent (with terms of the current lease, Section 6(d)):  
\$4,031.25

**Or**

Md7 will provide a one-time lump sum payment of **\$70,000**. In return, you will grant a ninety-nine (99) year easement on your property and assign the lease rights and rental income under your lease with AT&T to Md7 or an affiliate of Md7. It is important for you to know that the **\$70,000** pre-payment does not change the ownership or control of the rest of your property in any manner.

This letter of understanding is subject in all respects to the preparation, execution and delivery of a definitive amendment in form and substance mutually agreeable to each of us. This letter will not be legally binding between us with respect to the proposed business relationship, but instead serves as a statement of our mutual intent to work toward entering into such an amendment.

AT&T values its affiliation with you and hopes to continue a long and mutually profitable relationship in the years to come. After having reviewed these options, please contact me prior to October 27, 2014. Thank you for your consideration.

Sincerely,

**Joseph Peairs**

**Md7** | Lease Consultant  
10590 West Ocean Air Dr.  
San Diego, CA 92130  
o (858) 754-2152  
f (858) 408-3482  
jpeairs@md7.com

**Authorized Agent for AT&T Mobility**

cc: Gregory D. Ohmer  
*Area Manager Real Estate Transaction, AT&T Mobility*

