



Planning and Community Development Department

2880 International Circle, Colorado Springs, CO 80910

Phone 719.520.6300 | Fax 719.520.6695 | www.elpasoco.com

Type C Application Form (1-2B)

Please check the applicable application type
(Note: each request requires completion of a separate application form):

- ☐ Administrative Relief
- ☐ Certificate of Designation, Minor
- ☐ Site Development Plan, Major
- ☐ Site Development Plan, Minor
- ☐ CMRS Co-Location Agreement
- ☐ Condominium Plat
- ☐ Crystal Park Plat
- ☐ Early Grading Request associated with a Preliminary Plan
- ☐ Maintenance Agreement
- ☐ Minor PUD Amendment
- ☐ Resubmittal of Application(s) (>3 times)
- ☐ Road or Facility Acceptance, Preliminary
- ☐ Road or Facility Acceptance, Final
- ☐ Townhome Plat

Administrative Special Use (mark one)

- ☐ Extended Family Dwelling
- ☐ Temporary Mining or Batch Plant
- ☐ Oil and/or Gas Operations
- ☐ Rural Home Occupation
- ☐ Tower Renewal
- ☐ Other _____

Construction Drawing Review and Permits (mark one)

- ☐ Approved Construction Drawing Amendment
- ☐ Review of Construction Drawings
- ☐ Construction Permit
- ☐ Major Final Plat
- ☐ Minor Subdivision with Improvements
- ☐ Site Development Plan, Major
- ☐ Site Development Plan, Minor
- ☐ Early Grading or Grading
- ☐ ESQCP

Minor Vacations (mark one)

- ☐ Vacation of Interior Lot Line(s)
- ☐ Utility, Drainage, or Sidewalk Easements
- ☐ Sight Visibility
- ☐ View Corridor

☒ Other: **COM**

This application form shall be accompanied by all required support materials.

PROPERTY INFORMATION: Provide information to identify properties and the proposed development. Attached additional sheets if necessary.

Property Address(es):

2865 Akers Drive (Tower) 2875 Akers Drive (parcel)

Tax ID/Parcel Numbers(s)

5332001008

Parcel size(s) in Acres:

9.5 acres

Existing Land Use/Development:

Wireless Telecom Facility

Zoning District:

M CAD-O

- ☐ Check this box if **Administrative Relief** is being requested in association with this application and attach a completed Administrative Relief request form.
- ☐ Check this box if any **Waivers** are being requested in association with this application for development and attach a completed Waiver request form.

PROPERTY OWNER INFORMATION: Indicate the person(s) or organization(s) who own the property proposed for development. Attached additional sheets if there are multiple property owners.

Name (Individual or Organization):

D&K Ackers LLC

Mailing Address:

c/o American Tower, 10 Presidential Way, Woburn, MA

Daytime Telephone:

781-926-4500

Fax:

Email or Alternative Contact Information:

zoning@americantower.com

Description of the request: (attach additional sheets if necessary):

AT&T 302459 equipment modification on an existing commercial cell tower. See attached plans for details.

For PCD Office Use:

Date:

File :

Rec'd By:

Receipt #:

DSD File #:



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APPLICANT(S): Indicate person(s) submitting the application if different than the property owner(s) (attach additional sheets if necessary).

| | |
|--|----------------------|
| Name (Individual or Organization): Kelsey Bousquet, Crafton Communications (Agent for ATC & AT&T) | |
| Mailing Address: 2918 Clairmont Ave S, Birmingham, AL 35205 | |
| Daytime Telephone: 469-312-0678 | Fax: 205-623-1155 |
| Email or Alternative Contact Information: kbousquet@craftongroup.com | |

AUTHORIZED REPRESENTATIVE(S): Indicate the person(s) authorized to represent the property owner and/or applicants (attach additional sheets if necessary).

| | |
|--|----------------------|
| Name (Individual or Organization): Kelsey Bousquet, Crafton Communications (Agent for ATC & AT&T) | |
| Mailing Address: 2918 Clairmont Ave S, Birmingham, AL 35205 | |
| Daytime Telephone: 469-312-0678 | Fax: 205-623-1155 |
| Email or Alternative Contact Information: kbousquet@craftongroup.com | |

AUTHORIZATION FOR OWNER'S APPLICANT(S)/REPRESENTATIVE(S):

An owner signature is not required to process a Type A or B Development Application. An owner's signature may only be executed by the owner or an authorized representative where the application is accompanied by a completed Authority to Represent/Owner's Affidavit naming the person as the owner's agent

OWNER/APPLICANT AUTHORIZATION:

To the best of my knowledge, the information on this application and all additional or supplemental documentation is true, factual and complete. I am fully aware that any misrepresentation of any information on this application may be grounds for denial or revocation. I have familiarized myself with the rules, regulations and procedures with respect to preparing and filing this application. I also understand that an incorrect submittal may delay review, and that any approval of this application is based on the representations made in the application and may be revoked on any breach of representation or condition(s) of approval. I verify that I am submitting all of the required materials as part of this application and as appropriate to this project, and I acknowledge that failure to submit all of the necessary materials to allow a complete review and reasonable determination of conformance with the County's rules, regulations and ordinances may result in my application not being accepted or may extend the length of time needed to review the project. I hereby agree to abide by all conditions of any approvals granted by El Paso County. I understand that such conditions shall apply to the subject property only and are a right or obligation transferable by sale. I acknowledge that I understand the implications of use or development restrictions that are a result of subdivision plat notes, deed restrictions, or restrictive covenants. I agree that if a conflict should result from the request I am submitting to El Paso County due to subdivision plat notes, deed restrictions, or restrictive covenants, it will be my responsibility to resolve any conflict. I hereby give permission to El Paso County, and applicable review agencies, to enter on the above described property with or without notice for the purposes of reviewing this development application and enforcing the provisions of the LDC. I agree to at all times maintain proper facilities and safe access for inspection of the property by El Paso County while this application is pending.

Owner (s) Signature: Digitally signed by See attached Letter of Authorization
DN: cn=See attached Letter of Authorization, o, ou, email=kbousquet@craftongroup.com, c=US
Date: 2020.09.01 16:14:23 -05'00'

Date: _____

Owner (s) Signature: _____

Date: _____

Applicant (s) Signature: **Kelsey Bousquet** Digitally signed by Kelsey Bousquet
DN: cn=Kelsey Bousquet, o, ou, email=kbousquet@craftongroup.com, c=US
Date: 2020.09.01 16:12:18 -05'00'

Date: **9/1/2020**



LETTER OF AUTHORIZATION

ATC SITE # / NAME / Project: 302459 / Elsmere CO 1 / 13248041
ADDRESS: 2875 Akers Drive, Colorado Springs, CO 80922
APN: 53320-01-008
LICENSEE: New Cingular Wireless PCS, LLC dba AT&T Mobility

I, Margaret Robinson, Senior Counsel for American Tower*, by and through its wholly owned subsidiary, American Tower Asset Sub, LLC, attorney-in-fact for D&K Ackers LLC**, the owner of the property located at the address identified above (the "Tower Facility"), do hereby authorize **New Cingular Wireless PCS, LLC dba AT&T Mobility**, its successors and assigns, and/or its agent, (collectively, the "Licensee") to act as American Tower's non-exclusive agent for the sole purpose of filing and consummating any land-use or building permit application(s) as may be required by the applicable permitting authorities for Licensee's telecommunications' installation.

We understand that this application may be denied, modified, or approved with conditions. The above authorization is limited to the acceptance by Licensee only of conditions related to Licensee's installation and any such conditions of approval or modifications will be Licensee's sole responsibility.

Signature:

Print Name: Margaret Robinson
Senior Counsel
American Tower*

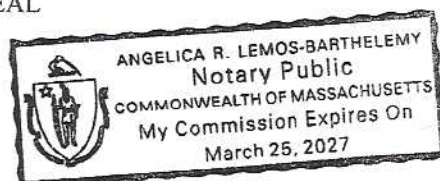
NOTARY BLOCK

Commonwealth of MASSACHUSETTS
County of Middlesex

This instrument was acknowledged before me by Margaret Robinson, Senior Counsel for American Tower*, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

WITNESS my hand and official seal, this 15th day of July 2020.

NOTARY SEAL



Notary Public
My Commission Expires: March 25, 2027

*American Tower includes all affiliates and subsidiaries of American Tower Corporation.
**For Authority, see Easement Agreement attached herewith.

Prepared by and Return to:
Attorney Todd McElheney
American Tower Corporation
10 Presidential Way
Woburn, MA 01801
Attn: Land Management
Site No. 302459 Elsmere CO

(Recorder's Use Above this Line)

STATE OF COLORADO

COUNTY OF El Paso

Premises Parcel No.: 5332001003

EASEMENT AGREEMENT

This Easement Agreement ("Agreement") dated as of 12/18, 2008, by and between **American Tower Asset Sub, LLC** a Delaware limited liability company ("Grantee"), and **D&K Ackers LLC**, a Colorado limited liability company ("Grantor").

BACKGROUND

Grantor is the owner of the real property described on **Attachment "A"** hereto (the "Premises"). Grantor desires to grant to Grantee certain easement rights with respect to the Premises, as more particularly described below, and subject to the terms and conditions of this Agreement.

AGREEMENTS

For and in consideration of the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Grant of Easements.** Grantor, for itself and its heirs, personal representatives, successors and assigns, hereby grants and conveys unto Grantee, its customers, lessees, sublessees, licensees, agents, successors and assigns: (i) a perpetual, exclusive easement (the "Exclusive Easement") in and to that portion of the Premises more particularly described on **Attachment "B"** hereto; and (ii) a perpetual, non-exclusive easement in and to that portion of the Premises more particularly described on **Attachment "C"** hereto (the "Access and Utility Easement") (the Exclusive Easement and the Access and Utility Easement being collectively referred to herein as the "Easements"). The Easements shall be used for the purposes set forth in Section 6 hereof.

2. **Private Easement.** Nothing in this Agreement shall be deemed to be a dedication of any area for public use. All rights, easements and interests herein created are private and do not constitute a grant for public use or benefit.

3. **Successors Bound.** This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, personal representatives, lessees, successors and assigns. It is the intention of the parties hereto that all of the various rights, obligations, restrictions and easements created in this Agreement, including but not limited to those set forth in Sections 1, 10, 11, 12, 23 and 25, shall run with the affected lands and shall inure to the benefit of and be binding upon all future owners and lessees of the affected lands and all persons claiming under them.

4. **Duration.** The duration of the Easements granted herein (the "Term") shall be perpetual, unless Grantee provides written, recordable notice of its intent to terminate this Agreement, in which event this Agreement and all obligations

of Grantee hereunder shall terminate upon Grantee's recordation of any such notice. In the event that the use of the Easements is abandoned by Grantee, or its successors, then Grantor, or its successors, may terminate the Easements by providing legally sufficient evidence of such abandonment, and following such termination all right and title to the land constituting the Easements shall revert back to Grantor. Abandonment shall be deemed to have occurred if neither Grantee nor any of its affiliates, customers, tenants, subtenants, employees or agents utilize (such use shall be construed broadly to include, but not be limited to, use of the tower for the broadcast and receipt of telecommunications signals, maintenance of the tower or the equipment located on the Exclusive Easement, or maintenance and/or upkeep of the Easements) the tower site or facilities in any manner for a consecutive period of two (2) years, and, following the expiration of such 2 year period, do not respond within forty-five (45) days of Grantor's written notice to Grantee, which notice shall assert that non-response will result in termination of the Easements.

5. Easement Consideration. Grantor hereby acknowledges the receipt, contemporaneous with the execution hereof, of all consideration due hereunder. Accordingly, no additional consideration shall be due during the Term of this Agreement.

6. Use of Easement Areas.

(a) Exclusive Easement. The Exclusive Easement shall be used by Grantee and its designated customers, lessees, sublessees, licensees, agents, successors and assigns for installing, constructing, maintaining, operating, modifying, repairing and replacing improvements and equipment, which may be located on the Exclusive Easement from time to time, for the facilitation of communications and other related uses in connection therewith. Grantee may make any improvements, alterations or modifications to the Easements as are deemed appropriate by Grantee, in its sole discretion. At all times during the term of this Agreement, Grantee shall have the exclusive right to use, and shall have free access to, the Easements seven (7) days a week, twenty-four (24) hours a day. Grantee shall have the exclusive right to lease, sublease, license, or sublicense any structure or equipment on the Exclusive Easement and shall also have the right to license, lease or sublease to third parties any portion of the Exclusive Easement, but no such lease, sublease or license shall relieve or release Grantee from its obligations under this Agreement. Grantor shall not have the right to use the Exclusive Easement for any reason and shall not disturb Grantee's right to use the Exclusive Easement in any manner. Grantor and Grantee acknowledge that Grantee shall be locating expensive telecommunications equipment in the Exclusive Easement and that Grantee, in order to comply with FCC regulations, must construct a fence around all or part of the Exclusive Easement, and shall have the right to prohibit anyone, including Grantor, from entry into such Exclusive Easement.

(b) Access and Utility Easement. The Access and Utility Easement shall be used by Grantee, its customers, lessees, sublessees, licensees, agents, successors and assigns for ingress and egress from and to the Exclusive Easement, as well as the construction, installation, operation and maintenance of overhead and underground electric, water, gas, sewer, telephone, data transmission and other utility facilities (including wires, poles, guys, cables, conduits and appurtenant equipment) with the right to reconstruct, improve, add to, enlarge, change and remove such facilities, and to connect the same to utility lines located in a publicly dedicated right of way. Grantor shall not in any manner prevent access to, and use of, the Access and Utility Easement by Grantee or its customers, lessees, sublessees, licensees, agents, successors and assigns; and Grantor shall not utilize the Access and Utility Easement in any manner that interferes with Grantee's or its customers', lessees', sublessees', licensees', agents', successors' and assigns' use of such area. If the Access and Utility Easement is currently used by Grantor or its tenants, then Grantee shall not in any manner prevent access to, and use of, the Access and Utility Easement by Grantor or its tenants.

7. Equipment and Fixtures. Grantee or its licensees and customers shall have the right to erect, install, maintain, replace and operate on the Exclusive Easement such equipment, structures, fixtures, antennae and other personal property as Grantee may deem necessary or appropriate, and such property, including the equipment, structures, fixtures and other personal property currently on the Exclusive Easement, shall not be deemed to be part of the Premises, but shall remain the property of Grantee or its licensees and customers. At any time during the term of this Agreement and within 90 days after termination hereof, Grantee or its customers shall have the right to remove their equipment, structures, fixtures and other personal property from the Easements.

8. Assignment. Grantee may assign this Agreement, in whole or in part, to any person or entity at any time without the prior written consent of Grantor, including but not limited to an affiliate of Grantee. If any such assignee agrees to assume all of the obligations of Grantee under this Agreement, then Grantee will be relieved of all responsibility hereunder.

9. Covenants and Agreements.

(a) Grantor represents and warrants that it is the owner in fee simple of the Easements, free and clear of all liens and encumbrances, except as set forth on the attached Attachment "D", and that it alone has full right to grant the Easements and assign the Lease (as such term is defined in Section 22 hereof). Grantor further represents and warrants that Grantee shall peaceably and quietly hold and enjoy the Easements for the term of this Agreement without any hindrance, molestation or ejection by any party whomsoever.

(b) During the term of this Agreement, Grantor shall pay when due all real property taxes and all other fees and assessments attributable to the Premises. Grantee hereby agrees to pay any increase in real property taxes levied against the Premises which are directly attributable to Grantee's use of the Easements (but not, however, taxes attributable to periods prior to the date of this Agreement such as roll-back or greenbelt assessments) if Grantor furnishes proof of such increase to Grantee. If Grantor fails to pay when due any taxes affecting the Premises, Grantee shall have the right but not the obligation to pay such taxes and demand payment therefor from Grantor, which payment Grantor shall make within ten (10) days of such demand by Grantee.

(c) Unless the Exclusive Easement already constitutes a separate tract or tax parcel, Grantor shall not cause the area comprising the Easements to be legally or otherwise subdivided from any master tract of which it is a part, nor shall Grantor cause the area comprising the Easements to be separately assessed for tax purposes. If it is determined by Grantee that the transfer of the Easements set forth herein requires or shall require the subdivision of the Premises, and if Grantee, in its sole judgment, determines that it desires to seek subdivision approval, then Grantor agrees to cooperate with Grantee, at Grantee's expense, in obtaining all necessary approvals for such subdivision.

(d) Grantor shall not grant, create, or suffer any claim, lien, encumbrance, easement, restriction or other charge or exception to title to the Easements that would adversely affect Grantee's use of the Easements.

(e) Grantor will comply, with all environmental, health and safety laws with respect to the Premises.

(f) Grantor hereby agrees to indemnify, defend and hold harmless Grantee and its officers, directors, shareholders, agents and attorneys for, from, and against all damages asserted against or incurred by any of them by reason of or resulting from a breach by Grantor of any representation, warranty or covenant of Grantor contained herein or in any agreement executed in connection herewith.

10. Non-Disturbance. During the term of this Agreement, Grantor will not improve or grant any other easement, ground lease, lease, license, sale or other similar interest of or upon the Premises if such improvement or interest would interfere with Grantee's use of the Easements. Grantee and its customers are currently utilizing the Exclusive Easement for the purpose of transmitting and receiving telecommunication signals, including but not limited to wireless telecommunications signals. Grantor and Grantee recognize that Grantee's use of the easement rights set forth in this Agreement would be frustrated if the telecommunications signals were blocked, if an obstruction were built that would cause interference with such transmission, or if access and/or utilities to and from the Exclusive Easement were partially and/or completely inhibited. Grantor, for itself, its successors and assigns, hereby agrees to use its best efforts to prevent the occurrence of any of the foregoing, and shall promptly undertake any remedial action necessary to do so. Grantee shall have the express right to seek an injunction to prevent any of the activity prohibited by this Section 10.

11. Access and Utilities. To the extent not otherwise addressed herein, (or to the extent any access and utility easement specifically referenced herein, including but not limited to the Access and Utility Easement or the Exclusive Easement, if applicable, cannot, does not, or will not fully accommodate the access and utility needs of the Exclusive Easement at any time), Grantor hereby grants and conveys unto Grantee, its tenants, licensees, employees, agents, contractors, successors, assigns, assignees, and sublessees, full, complete, uninterrupted and unconditional access to and from the Exclusive Easement, seven days a week, 24 hours a day, over and across any adjacent property now or hereafter owned by Grantor, for, without limitation, ingress and egress to and from the Exclusive Easement, as well as the construction, installation, location, maintenance, relocation and repair of overhead and/or underground utility connections, including electric, telephone, gas, water, sewer, and any other utility connection, provided that Grantee shall repair any damages to the Premises caused by such access. This easement, and the rights granted herein, shall be assignable by Grantee to any public or private utility company to further effect this provision. Grantor agrees to maintain all access roadways from the nearest public right of way to the Exclusive Easement in a manner sufficient to allow for pedestrian and vehicular access to the Exclusive Easement at all times. If it is reasonably determined by Grantor or Grantee that any utilities that currently serve the Exclusive Easement are not encompassed within the description of the Access and Utility Easement set forth herein, then Grantor and Grantee agree to amend the description of the Access and Utility Easement set forth herein to include the description of such areas. If it becomes necessary to relocate any of the utility lines that serve the Exclusive Easement, Grantor hereby consents to the reasonable relocation of such utility lines upon the Premises for no additional consideration, and hereby agrees to reasonably cooperate with Grantee to create a revised legal description for Access and Utility Easement that will reflect such relocation.

12. Mortgagees' Continuation Rights and Notice and Cure. Grantor consents to the granting by Grantee of a lien and security interest in Grantee's interest in this Agreement and all of Grantee's property and fixtures attached to the Exclusive Easement described herein, and furthermore consents to the exercise by Grantee's mortgagee ("Grantee's Mortgagee") of its rights of foreclosure with respect to its lien and security interest. Provided that Grantee gives Grantor written notice of any such mortgagee, Grantor agrees to recognize Grantee's Mortgagee as Grantee hereunder upon any such exercise by Grantee's mortgagee of its rights of foreclosure. Grantor hereby agrees to give Grantee and Grantee's Mortgagee written notice of any breach or default of the terms of this Agreement within fifteen (15) days after the occurrence thereof at such address as is

specified by Grantee in its notice to Grantor of the existence of such Grantee's Mortgage. Grantor further agrees that no default under this Agreement shall be deemed to have occurred unless such notice to Grantee's Mortgagee is also given and that, in the event of any such breach or default under the terms of this Agreement, Grantee and Grantee's Mortgagee shall have the right for a period of 90 days after receipt of written notice from Grantor to cure or correct any such default, and Grantor agrees to accept such payment or performance on the part of the Grantee's Mortgagee as though the same had been made or performed by the Grantee. Grantor agrees that it shall enter into any reasonable amendment hereto requested by Grantee's current or proposed mortgagee.

13. Notices. All notices required to be given by any of the provisions of this Agreement, unless otherwise stated, shall be in writing and delivered in person or by a national overnight delivery service (and shall be effective when received, when refused or when the same cannot be delivered) to the appropriate party at the address set forth below (or at such other address designated in writing pursuant to the terms hereof):

To Grantee: American Tower Asset Sub, LLC
c/o American Tower
10 Presidential Way
Woburn, MA 01801
Attn: Land Management

To Grantor: D&K Ackers LLC
P.O. Box 38517
Colorado Springs, CO 80937

With copy to: American Tower Asset Sub, LLC
c/o American Tower
116 Huntington Avenue
Boston, MA 02116
Attn: Legal Department

14. Force Majeure. The time for performance by Grantor or Grantee of any term, provision, or covenant of this Agreement shall be deemed extended by time lost due to delays resulting from strikes, civil riots, floods, labor or supply shortages, material or labor restrictions by governmental authority, litigation, injunctions, and any other cause not within the control of Grantor or Grantee, as the case may be.

15. Recording. This Agreement shall be recorded.

16. Miscellaneous. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement shall be governed by and construed in accordance with the laws of the state or commonwealth where the Premises are located.

17. Captions and Headings. The captions and headings in this Agreement are for convenience and shall not be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of or the scope or intent of this Agreement.

18. Cumulative Remedies. Except as otherwise expressly provided herein, each and every one of the rights, benefits and remedies provided to Grantor or Grantee by this Agreement, or by any instrument or documents executed pursuant to this Agreement, are cumulative and shall not be exclusive of any other of said rights, remedies and benefits allowed by law or equity to Grantee.

19. Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

20. Severability. If any provision of this Agreement is deemed unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid or shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if such provision had been so limited or as if such provision had not been included herein, as the case may be. Additionally, if any laws, rules or regulations promulgated by any state, county or local jurisdiction, including without limitation those concerning zoning, subdivision or land use, or should any court of competent jurisdiction, make the sale of the Easements herein either void or voidable, Grantor agrees that upon the written request of Grantee, the grant of the Easements shall convert to a ground lease between Grantor, as lessor, and Grantee, as lessee, (with the Exclusive Easement area being the leased premises therein, and the Access and Utility Easement area remaining a non-exclusive easement for access and utility purposes) for uses consistent with those set forth in Section 6 hereof, and containing other terms and conditions acceptable to both parties; provided that Grantee shall not be required to obtain the consent of Grantor to enter into any sublease or license of any portion of the Exclusive Easement or to permit sublessees or licensees to utilize the Access and Utility Easement; nor shall Grantor be entitled to any additional consideration in connection with such subleases and licenses; and provided that that the delivery of the consideration paid by Grantee to Grantor for the Easements at

the execution of this Agreement shall constitute the prepayment of rent under such ground lease for an extended term of 99 years, or as long as permitted by applicable law.

21. Attorney's Fees. If there is any legal action or proceeding between Grantor or Grantee arising from or based on this Agreement, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorney's fees and disbursements incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorney's fees and disbursements shall be included in and as a part of such judgment.

22. Entire Understanding and Amendment. This Agreement, the Easement Acquisition Agreement by and between Grantor and Grantee, and the closing documents executed in connection therewith, constitute the entire understanding between the parties with regard to the subject matter hereof and there are no representations, inducements, conditions, or other provisions other than those expressed herein. This Agreement may not be modified, amended, altered or changed in any respect except by written agreement and signed by each of the parties hereto.

23. Zoning. To the extent any improvements upon the Exclusive Easement do not meet zoning or other land-use requirements, or to the extent such improvements may otherwise have to be relocated, Grantor hereby consents to the reasonable relocation of such improvements to accommodate such requirements. Grantor hereby agrees to reasonably cooperate with Grantee to create a revised legal description for the Exclusive Easement and the Access and Utility Easement that will accommodate the requirements for any relocated tower, including its access and utility needs. Grantor hereby covenants and agrees that neither Grantor nor an affiliate of Grantor shall at any time file an opposition to a zoning or land use application of Grantee or in any way publicly oppose Grantee at a zoning hearing or other land use proceedings in connection with the Premises and the Easements; and that Grantor shall promptly cooperate with Grantee in making application for obtaining all licenses, permits, and any other necessary approvals that may be required for Grantee's intended use of the Easements.

24. Rule Against Perpetuities. If the rule against perpetuities or any other rule of law would invalidate the Easements or any portion or provision hereof or would limit the time during which the Easements or any portion or provision hereof shall be effective due to the potential failure of an interest in property created herein to vest within a particular time, then each such interest in property shall be effective only from the date hereof until the passing of twenty (20) years after the death of the last survivor of the members of Congress of the United States of America (including the House of Representatives and the Senate) representing the state in which the Premises is located who are serving on the date hereof, but each such interest in property shall be extinguished after such time, and all other interests in property created herein and all other provisions hereof shall remain valid and effective without modification.

25. Assignment of Ground Lease. The parties hereby recognize and agree that the Premises is currently subject to that certain lease, dated February 27, 1996 originally by and between Electronic Drive LLC and OneComm Corporation, N.A., as amended from time to time (collectively, the "Lease"), which Lease is memorialized in a document recorded as Reception No. 99115576, in the El Paso County, Colorado land records. Grantor hereby acknowledges that there currently exists no default under the Lease, and no conditions that, with the passage of time, would constitute defaults under the Lease. Grantor hereby assigns, transfers, sets over and delivers to Grantee, all of its rights, title and interests under the Lease arising or accruing on or after the date of this Agreement, and Grantee hereby accepts, assumes and agrees to be bound by all the terms and conditions which are the responsibility of the landlord under the Lease. Grantor hereby releases and forever remises Grantee from all claims arising under the Lease. Grantor hereby agrees to indemnify and agrees to hold Grantee harmless with respect to any demands, claims, actions, causes of action, assessments, expenses, costs, damages, losses, and liabilities (including reasonable attorneys' fees and costs) under the Lease which relate to costs or actions first arising on or before the date of this Agreement. Grantee hereby agrees to indemnify and agrees to hold Grantor harmless with respect to any demands, claims, actions, causes of action, assessments, expenses, costs, damages, losses, and liabilities (including reasonable attorneys' fees and costs) under the Lease which relate to costs or actions first arising after the date of this Agreement.

26. Further Acts; Attorney-In-Fact. Grantor shall cooperate with Grantee in executing any documents necessary to protect Grantee's rights under this Agreement or Grantee's use of the Easements and to take such action as Grantee may reasonably require to effect the intent of this Agreement. Grantor hereby irrevocably appoints Grantee as Grantor attorney-in-fact coupled with an interest to prepare, execute and deliver land-use and zoning applications that concern the tower or the tower facilities, on behalf of Grantor with federal, state and local governmental authorities.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year set forth below.

WITNESSES:

Michael Carroll
Print Name: MICHAEL CARROLL
Michael Carroll
Print Name: MICHAEL CARROLL

GRANTOR:

D&K Ackers LLC
a Colorado limited liability company
by:

Bradley L. Kuhn (Seal)
Bradley L. Kuhn
Its: Member
Date: 11-21-08

ACKNOWLEDGEMENT

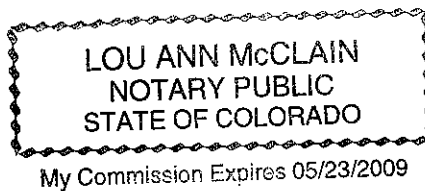
State of COLORADO
County of EL PASO

On 11-21-08, before me, Lou Ann McClain

personally appeared BRADLEY KUHN, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature Lou Ann McClain (Seal)



IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year set forth below.

WITNESSES:

Michael Carroll
Print Name: MICHAEL CARROLL

Michael Carroll
Print Name: MICHAEL CARROLL

GRANTOR:

D&K Ackers LLC
a Colorado limited liability company
by:

Lawrence Dillie (Seal)
Lawrence Dillie

Its: Member

Date: 11-20-08

ACKNOWLEDGEMENT

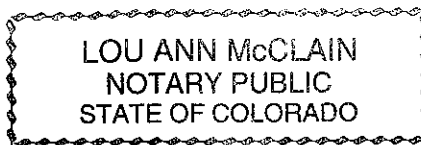
State of COLORADO)
County of EL PASO)

On 11-21-08, before me, Lou Ann McClain

personally appeared Lawrence Dillie, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature Lou Ann McClain (Seal)



My Commission Expires 05/23/2009

WITNESSES:

B. Myers
Print Name: BEN MYERS

Renee Byrd
Print Name: Renee Byrd

GRANTEE:

American Tower Asset Sub, LLC
a Delaware limited liability company

By: [Signature]
Jason D. Hirsch
Its: Vice President, Land Management
Date: 12/18/08

Commonwealth of Massachusetts
County of Middlesex


This instrument was acknowledged before me by Jason D. Hirsch, who is the Vice President, Land Management, a Duly Authorized Individual, of American Tower Asset Sub, LLC, a Delaware limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal, this 18th day of December, 2008.

NOTARY SEAL

[Signature]
Notary Public

My Commission Expires: _____

 **TODD X. McELHENEY**
Notary Public
Commonwealth of Massachusetts
My Commission Expires
May 4, 2012

Attachments:

Attachment "A" – Premises (legal description of Premises to be attached)

Attachment "B" – Exclusive Easement (legal description of Exclusive Easement to be attached)

Attachment "C" – Access and Utility Easement (legal description of Access and Utility Easement to be attached)

Attachment "D" – Permitted Encumbrances (Permitted Encumbrances to be attached)

Attachment "A" – Premises

Lot 3 in Akers Acres Subdivision No. 1, El Paso County, Colorado.

Attachment "B" – Exclusive Easement

This Attachment B May be Replaced by an As-Built Survey at Grantee's option depicting the Exclusive Easement, Access and Utilities Easements and if applicable, guy wire and guy anchor easements

A parcel of land situated in the Northeast Quarter and the Southeast Quarter of Section 32, Township 13 South, Range 65 West of the 6th Principal Meridian; being further described as being located within Lot 3, AKER'S ACRES SUBDIVISION NO. 1, El Paso County, Colorado and being more particularly described as follows:

Commencing at the Southwest corner of said Lot 3; thence N 90°00'00" E a distance of 315.00 feet along the South line of said Lot 3; thence N 00°00'00" W, a distance of 65.00 feet to the Southeast corner of the lease parcel and the True Point of Beginning; thence S 90°00'00" W, 40.00 feet; thence N 00°00'00" W, 40.00 feet; thence N 90°00'00" E, 40.00 feet; thence S 00°00'00" E, 40.00 feet to the Point of Beginning.

Attachment "C" – Access and Utility Easement

This Attachment C May be Replaced by an As-Built Survey at Grantee's option depicting the Exclusive Easement, Access and Utilities Easements and if applicable, guy wire and guy anchor easements

An ingress-egress and utility easement 20 feet in width, over and across a portion of Lot 3, AKER'S ACRES SUBDIVISION NO. 1, situated in the Northeast Quarter and the Southeast Quarter of Section 32, Township 13 South, Range 65 West of the 6th Principal Meridian, El Paso County, Colorado, said easement being 10.00 feet on either side of the following described centerline:

Commencing at the Southwest corner of said Lot 3; thence N 00°00'00" E, a distance of 14.30 feet along the West line of said Lot 3 and the East line of Aker's Drive, a dedicated street, to the TRUE POINT OF BEGINNING o this easement description; thence N 90°00'00" E, 295.28 feet; thence N 00°00'00" W, 50.70 feet to the South line of the Lease parcel, and the Point of Terminus of this easement.

Attachment "D" – Permitted Encumbrances