

**CITY OF BROOKINGS
STATE OF OREGON**

RESOLUTION 11-R-969

A RESOLUTION OF THE CITY OF BROOKINGS APPROVING THE PURCHASE OF 230 KING STREET AND AUTHORIZING THE MAYOR TO SIGN THE PURCHASE AND SALE AGREEMENT.

WHEREAS, the City of Brookings is currently using 230 King Street as its public works yard;

WHEREAS, the City of Brookings is in need of a stable location for its public works yard;

WHEREAS, 230 King Street is currently owned by Curry County; and

WHEREAS, Curry County desires to sell to City and City desires to purchase from Curry County that real property known as 230 King Street for the price of \$575,000 plus additional consideration as set forth in the purchase and sale agreement;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brookings that:

1. The attached Purchase and Sale Agreement with Curry County is hereby approved; and
2. The Mayor is hereby authorized to sign said Purchase and Sale Agreement, as well as all other documents contemplated by the transaction, on behalf of the City of Brookings.

Passed by the City Council August 8, 2011 and made effective the same date.



Mayor Larry Anderson

Attest:



City Recorder Joyce Heffington

**PURCHASE AND SALE AGREEMENT FOR REAL PROPERTY
230 KING STREET, BROOKINGS, OREGON**

THIS AGREEMENT is entered into on August ____, 2011 ("Effective Date") by and between the City of Brookings, an Oregon municipal corporation ("BUYER"), and Curry County, a political subdivision of the State of Oregon ("SELLER"). SELLER and BUYER are referred to jointly in this Agreement as "Parties" and individually as a "Party."

AGREEMENT

SELLER agrees to sell and convey, and BUYER agrees to purchase, AS-IS, the real property situated in the City of Brookings, Curry County, Oregon, commonly referred to as 230 King Street, and more particularly described in Exhibit A, which is attached to this Agreement and incorporated by this reference ("the Property"), on the following terms and conditions.

1. GENERAL TERMS OF CONVEYANCE

1.01 Conveyance of Property. Upon satisfaction of the Conditions Precedent to Closing in Section 4 hereof, SELLER will convey the Property AS-IS to BUYER pursuant to a statutory warranty deed in substantially the same form as the sample deed in Exhibit B, attached to this Agreement. The closing will occur in an escrow closing at the office of Curry County Title (the "Escrow Agent") in Brookings, Oregon.

1.02 Purchase Price. The total purchase price of the Property is Five Hundred Seventy-Five Thousand Dollars (\$575,000.00), payable by BUYER to SELLER.

1.03 Additional Consideration. As additional consideration for the Property, BUYER will accept that portion of Parkview Drive that is within the city limits into the city maintained street system. BUYER will work in good faith with SELLER to complete the transfer in accordance with applicable Oregon law. SELLER will bear the costs associated with the transfer.

1.04 Assignment of Lease. As part of this Agreement, SELLER will assign the ground lease with U.S. Cellular dated October 15, 1999, as amended, on the Property to BUYER. The lease is attached hereto as Exhibit C. The assignment of the lease will automatically take place upon the recordation of the deed.

1.05 Parties to Bear Own Expenses. Except as otherwise specifically provided in this Agreement, BUYER and SELLER will pay their own costs, respective attorney's fees and expenses incurred or to be incurred by them in negotiating and preparing this Agreement and in carrying out the transactions contemplated hereby.

2. TITLE REVIEW

2.01 Within fifteen (15) days after the Effective Date, SELLER will deliver to BUYER a preliminary title report with respect to the Property, and copies of all exception documents (the "Title Report"). Within ten (10) days following its receipt of the Title Report, BUYER may object to SELLER in writing to any exceptions to title. Within ten (10) days of BUYER's

written notice to SELLER described in the preceding sentence, SELLER must notify BUYER in writing of its intention to remove or not remove the objectionable exceptions to title prior to closing. If SELLER refuses to remove any such objected to exceptions, BUYER may terminate this Agreement or proceed to close subject to same. Any exceptions to which BUYER does not timely object in writing or otherwise accepts at closing are the "Permitted Exceptions."

2.02 SELLER covenants and agrees that it will not further encumber the Property (other than Permitted Exceptions). BUYER may, at any time prior to closing, obtain an updated Title Report. Within ten (10) days following its receipt of the updated Title Report, BUYER may object to SELLER in writing to any exceptions to title. Within five (5) days of BUYER's written notice to SELLER described in the preceding sentence, SELLER must notify BUYER in writing of its intention to remove or not remove the objectionable exceptions to title prior to closing. If SELLER refuses to remove any such objected to exceptions, BUYER may terminate this Agreement or proceed to close subject to same. Any exceptions to which BUYER does not timely object in writing or otherwise accepts at closing are the "Final Permitted Exceptions."

3. TITLE INSURANCE & CLOSING COSTS.

3.01 Title Insurance. BUYER will pay the premium for an ALTA Owner's Policy of Title Insurance, issued by Escrow Agent, covering the Property insuring BUYER in the amount of the Purchase Price, all free and clear of encumbrances except the standard exceptions and the Final Permitted Exceptions.

3.02 Closing Costs. The costs for recording the deed will be paid by BUYER. SELLER and BUYER will each pay one-half of the escrow fees charged by Escrow Agent. BUYER will be obligated to pay all property taxes from and after the closing date. Any assessments, if any, on the Property will be prorated as of the closing date. All other closing costs, if any, will be shared equally by the Parties.

4. CONDITIONS PRECEDENT TO CLOSING.

4.01 Conditions. BUYER and SELLER are not obligated to close unless the following conditions have been satisfied to the reasonable satisfaction of the benefited Party. The Party benefited by a particular condition may not unreasonably withhold, condition or delay acknowledgment that the conditions have been satisfied. The Parties must act diligently and in good faith to satisfy conditions over which they have control or influence.

4.02 BUYER's Conditions. BUYER is not obligated to purchase the Property until to BUYER's satisfaction:

- (a) SELLER is able to transfer title to the Property to BUYER in accordance with and subject to the provisions of Section 1.01;
- (b) BUYER is able to secure a title insurance policy;

(c) No litigation is pending which prevents the SELLER or BUYER from performing their respective obligations under this Agreement; and

(d) BUYER has inspected and approved the Property for the use contemplated by BUYER. BUYER may take soil samples, obtain environmental surveys, and obtain engineering studies of the Property.

4.03 SELLER's Conditions. SELLER is not obligated to sell the Property until to SELLER's satisfaction:

(a) BUYER has full authority to enter into and perform the obligations of this Agreement;

(b) No litigation is pending which prevents SELLER or BUYER from performing their respective obligations under this Agreement; and

(c) BUYER has performed its obligations under this Agreement.

4.04 Election Upon Non-Occurrence of Conditions. Except as provided below, if any condition in Section 4.02 or 4.03 is not fulfilled to the satisfaction of the benefited Party or Parties on the date scheduled for closing, then such benefited Party or Parties may elect to:

(a) Terminate this Agreement, which termination will be effective immediately upon notice to the other Party; or

(b) Waive, in writing, the benefit of the condition precedent to its obligation to perform under this Agreement, and proceed in accordance with the terms hereof.

5. RIGHTS, DUTIES, REPRESENTATIONS AND WARRANTIES

5.01 Rights and Duties of BUYER. BUYER has the following rights and duties. BUYER or BUYER's agents are granted the right, at any time and from time to time after the opening of the escrow and for twenty (20) days thereafter, to conduct tests or investigations on the Property. The acts shall be conducted at the sole cost and expense of BUYER and any damage resulting therefrom shall be the responsibility of BUYER. BUYER shall indemnify and hold SELLER harmless from any costs or liability resulting from the acts.

5.02 BUYER representations and warranties.

BUYER represents that:

(a) BUYER has full power and authority to enter into and perform this Agreement in accordance with its terms, and BUYER has taken all requisite action in connection with the execution of this Agreement and the transactions contemplated hereby.

(b) BUYER enters into this Agreement without reliance upon any oral representation of any kind by SELLER, its employees, agents or consultants regarding any aspect of the Property.

5.03 SELLER representations and warranties.

SELLER represents that:

(a) SELLER owns the Property, free and clear of all liens, licenses, claims, encumbrances, easements, encroachments on the Property from adjacent properties, encroachments by improvements on the Property onto adjacent properties, and rights of way of any nature, not disclosed by the public record.

(b) To the best of SELLER's knowledge, there is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending or threatened, which may affect the Property or SELLER's ability to perform its obligations under this Agreement.

(c) SELLER has full power and authority to enter into and perform this Agreement in accordance with its terms, and all requisite action has been taken by SELLER in connection with the execution of this Agreement and the transactions contemplated hereby.

5.04 Survival of Warranties. All warranties, covenants, and other obligations in this Agreement shall survive delivery of the deed.

6. ESCROW & CLOSING

6.01 Opening of Escrow. Within five (5) business days of the Effective Date of this Agreement, BUYER will open an escrow account with the Escrow Agent. BUYER and SELLER shall deposit with the Escrow Agent all instruments, documents, and other items identified in the escrow instructions or reasonably required by the Escrow Agent to close the sale on the closing date specified below.

6.02 Earnest Money. At the time of opening the escrow account, BUYER will deposit the sum of One Thousand Dollars (\$1,000.00) as earnest money (the "Escrowed Funds") with Escrow Agent, which agrees to hold the sum in escrow for disposition according to this Section 6.02.

(a) Upon closing, the Escrowed Funds will be credited toward the purchase price.

(b) If closing does not occur for any reason other than the default by BUYER as provided in Section 7 below, then the Escrowed Funds will be delivered by Escrow Agent to BUYER.

(c) If closing does not occur because of the default by BUYER as provided in Section 7 below, then the Escrowed Funds will be delivered by Escrow Agent to SELLER.

6.03 Closing of Escrow. BUYER and SELLER will accomplish the purchase and sale of the Property (the “Closing”) at such a place and time as may be mutually agreed upon.

(a) Obligations of Seller at Closing. SELLER will retain possession of the Property until Closing and will deliver possession to BUYER upon Closing.

(b) Delivery of Title. At the closing escrow, the Escrow Agent will deliver to BUYER a copy of the recorded statutory warranty deed.

(c) Obligations of Buyer at Closing. On the Closing date, BUYER will deliver to Escrow Agent the purchase price and its share of the closing costs as described in Section 3.02.

6.04 Closing Date. Escrow shall close within 60 days of its opening unless said closing date is extended by mutual agreement of the parties.

7. DEFAULT

7.01 Consequences of BUYER’S Default. If BUYER defaults on any material term of this Agreement before the sale of the Property to BUYER closes, SELLER’s sole and exclusive remedy shall be to terminate this Agreement by written notice to BUYER and to receive from the Escrow Agent the Escrowed Funds as liquidated damages. The Parties agree that the extent of monetary damages incurred by SELLER in the case of BUYER’s default prior to the Closing is difficult to ascertain. Therefore, as liquidated damages, and not as a penalty, SELLER will retain the Escrowed Funds.

7.02 Consequences of SELLER’s Default. If any condition set forth in this Agreement is not satisfied, or if BUYER notifies SELLER in writing before the close of escrow of SELLER’s breach of any of SELLER’s warranties set forth in this Agreement, then BUYER may cancel the escrow, terminate this Agreement, and recover the Escrowed Funds less BUYER’s share of escrow charges. BUYER shall exercise this power to terminate by providing written notice to SELLER and the Escrow Agent within five (5) days of the discovery of the failure or breach. The exercise of this power shall not waive any other rights BUYER may have against SELLER for breach of this contract. SELLER shall instruct the Escrow Agent, in the escrow instructions, to refund to BUYER all money and instruments deposited in escrow by BUYER pursuant to this contract on failure of a condition or breach of a warranty and receipt of a termination notice. This instruction shall be irrevocable.

8. RISK OF LOSS

8.01 Before Close of Escrow. If damage, destruction, or condemnation occurs at any time before the close of escrow, without fault of BUYER, BUYER shall not have the right to terminate this contract, but shall be entitled to offset the cost of repair or replacement against the purchase price of the Property.

8.02 After Close of Escrow. If after SELLER transfers legal title to the Property to BUYER, all or any part of the Property is destroyed without fault of SELLER, or is taken by eminent domain by any person or entity, BUYER is not relieved from BUYER's obligation under this Agreement to pay the full price for the Property, nor is BUYER entitled to recover any portion of the price BUYER has paid.

9. GENERAL PROVISIONS

9.01 Notice. Any notice or communication under this Agreement by either Party to the other will be deemed given and delivered (a) seventy-two (72) hours after being deposited with the U.S. Postal Service, sent registered or certified, postage prepaid, or (b) when received if personally delivered, and:

(a) In the case of a notice or communication to BUYER, addressed as follows:

Gary Milliman, City Manager
City of Brookings
898 Elk Drive
Brookings, OR 97415

(b) In the case of a notice or communication to SELLER, addressed as follows:

Jeni Meyer, Assistant County Counsel for Curry County
P.O. Box 746
94235 Moore Street
Gold Beach, OR 97444

or addressed in such other way in respect to either Party as that Party may, from time to time, designate in writing and serve as provided in this Section. Notice given in any other manner will be effective upon receipt by the Party for whom the same is intended.

9.02 Waivers. No waiver by SELLER or BUYER of any provision of this Agreement or any breach thereof may be of any force or effect unless in writing; and no such waiver may be construed to be a continuing waiver.

9.03 Calculation of Time. All periods of time referred to herein include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday or legal holiday, the period will be extended to include the next day which is not a Saturday, Sunday or legal holiday.

9.04 Brokers. Each Party agrees to pay any commission or finder's fees that may be due on account of this transaction to any broker or finder employed by it and to indemnify the other Party against any claims for such commissions or fees.

9.05 Modifications. Any modifications to this Agreement must be made in writing and signed by both Parties.

9.06 Governing Law. This Agreement is governed by the laws of the State of Oregon.

9.07 Severability. If any clause, sentence or any other provision of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining provisions will remain in full force and effect to the fullest extent permitted by law.

9.08 Entire Agreement. This Agreement and the attachments hereto are the entire agreement between the Parties. There is no other oral or written agreement between the Parties with regard to this subject matter. The Parties are not entitled to rely on any prior oral or written representations made by either Party, implied or express, other than those contained in this Agreement.

9.09 Time of the Essence. Time is of the essence in this Agreement and failure to comply with this provision constitutes a material breach of this Agreement.

Executed this ____ day of _____, 2011.

CITY OF BROOKINGS

Larry Anderson, Mayor

ATTEST:

Joyce Heffington, City Recorder

CURRY COUNTY

George Rhodes, Chair

David Itzen, Vice Chair

Bill Waddle, Commissioner

EXHIBIT A: Property Description

PARCEL 1

That certain tract of land lying in the Southeast Quarter (SE 1/4) of the Southeast Quarter (SE 1/4) of Section Six (6), Township Forty-one (41) South, Range Thirteen (13) West, Willamette Meridian, City of Brookings, Curry County, Oregon, described as follows:

Beginning at a point as described in Book of Records 23, page 188, Official Records, Curry County, Oregon being 496.6 feet South and 127.1 feet East of the Southeast Corner of Block Six (6), Plat of the City of Brookings, Oregon;

Thence North 89° 41' West 222.2 feet to the East boundary of King Street;
Thence following the East boundary of King Street North 0° 03' East 80.2 feet;
Thence South 89° 42' 30" East 222.4 feet;
Thence South 00° 11' West 80.0 feet to the point of beginning.

Together with that certain tract of land lying in Section Six (6), Township Forty-one (41) South, Range Thirteen (13) West, Willamette Meridian, City of Brookings, Curry County, Oregon, described as follows:

Beginning at a point as described in Book of Records 43, pages 83 and 84, Official Records, Curry County, Oregon being 344.68 feet South and 154.35 feet West of the Southeast Corner of Block Six (6), City of Brookings, Plat No. 1;

Thence South 39° 46' East 92.55 feet;
Thence South 89° 42' East 222.4 feet;
Thence North 00° 11' East 115.97 feet to the Southwest boundary of Railroad Street;
Thence following the Southwesterly boundary of Railroad Street, North 71° 25' West 73.83 feet;
Thence South 00° 14' West 69.38 feet;
Thence North 89° 34' West 110 feet;
Thence North 89° 14' West (this bearing sometimes called North 69° 34' West) 101.72 feet, more or less, to the point of beginning.

PARCEL 2

A tract of land lying in the Southeast Quarter (SE 1/4) of the Southeast Quarter (SE 1/4) of Section Six (6), Township Forty-one (41) South, Range Thirteen (13) West, Willamette Meridian, City of Brookings, Curry County, Oregon:

Beginning at a point as described in Deed Volume 50, page 259, Official Records, Curry County, Oregon being North 580.43 feet and West 1099.80 feet from the Southeast Corner of said Section Six (6), said point being on the East line of King Street;

Thence following said Street line North 16° 16' East 206.25 feet;

Thence East 156.24 feet;
Thence South 16° 16' West 250.00 feet;
Thence North 73° 44' West 150.00 feet to the point of beginning.

PARCEL 3

A tract of land lying in the Southeast Quarter (SE 1/4) of the Southeast Quarter (SE 1/4) of Section Six (6), being also in Donation Land Claim Number Thirty-seven (37) in Township Forty-one (41) South, Range Thirteen (13) West of the Willamette Meridian, in Curry County, Oregon, described as follows:

Beginning at a point as described in Book of Records 38, page 209, Official Records, Curry County, Oregon being North 490.42 feet and West 969.80 feet from the Southeast Corner of said Section Six (6);

Thence North 73° 44' West 150.00 feet;
Thence North 16° 16' East 50.00 feet;
Thence South 73° 44' East 150.00 feet;
Thence South 16° 16' West 50.00 feet to the point of beginning.

EXHIBIT B: Sample Deed

After Recording Return to and
Tax Statements to be sent to:

City of Brookings
898 Elk Drive
Brookings, OR 97415

STATUTORY WARRANTY DEED

KNOW ALL PEOPLE, that the COUNTY OF CURRY, a political subdivision of the State of Oregon located at 94235 Moore Street, Gold Beach, Oregon 97444 (“Grantor”), does hereby convey and warrant to the CITY OF BROOKINGS, an Oregon municipal corporation (“Grantee”), and unto its successors and assigns, all the following described real property free of encumbrances except as specifically set forth herein, with the tenements, hereditaments, and appurtenances (herein called the “Property”), situated in the County of Curry and State of Oregon:

See Attachment 1 – Description of Real Property.

The conveyance is subject to the following: all easements, covenants, restrictions, conditions and encumbrances which may appear in the public record, including those shown on any recorded plat or survey.

The true consideration given for this conveyance is \$575,000.00 and other value given.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

[SIGNATURES ON NEXT PAGE]

Attachment 1 – Description of Real Property

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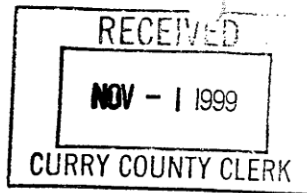
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Thence South $16^{\circ} 16'$ West 50.00 feet to the point of beginning.

EXHIBIT C: Lease Agreement



VOL# 1999 DOC# 622

2355

GROUND LEASE

10

This Lease agreement is made and entered into this 15th day of October, 1999, by and between Curry County, 94235 Moore Street, P.O. Box 746, Gold Beach, Oregon 97444, hereinafter referred to as "Lessor", and USCOC of Oregon RSA #5, Inc., a Delaware corporation, doing business as *United States Cellular Wireless Communications*, Attention: Real Estate, 8410 West Bryn Mawr Avenue, Suite 700, Chicago, Illinois 60631 ("Lessee").

1. Demise of Leasehold Parcel. Lessor lets and demises unto Lessee, and Lessee receives and accepts from Lessor, the property legally described on the attached Exhibit "A" and "B" which are incorporated by reference.
2. Grant of Easement. Lessor will grant a utility easement to the local cooperative for electrical service to the leasehold property.
3. Grant of Additional Rights. To effect the purposes of this lease, Lessor grants to Lessee the following additional rights:
 - a) the right to improve an access road within the leasehold property, and
 - b) the right to place utility lines and related infrastructure within the Utilities Easement Parcel.
4. Use of the Premises. Lessee shall be entitled to use the Premises to construct, operate, modify as necessary, and maintain thereon a communications antenna tower (including aviation hazard lights when required), an access road, one or more equipment buildings, and a security fence, together with all necessary lines, anchors, connections, devices, and equipment for the transmission, reception, encryption, and translation of voice and data signals by means of radio frequency energy and landline carriage. The Premises shall not be used for any other purposes without the consent of Lessor. In its use of the property, Lessee shall conform to all applicable laws and regulations of any public authority affecting the Leasehold property, and shall correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's uses.
5. Term of Lease. This lease term shall commence on the date the Lessee sends notice to Lessor that the conditions precedent have been satisfied and shall expire twenty years later unless the lease is renewed or terminated in accordance with its provisions.
6. Option to Renew. Lessee shall have the option to renew this Lease for up to two

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additional terms of five years each, upon a continuation of all the same provisions hereof, by giving written notice to Lessor of Lessee's exercise of this option at least sixty (60) days before the expiration of the term then present at the time of such notice.

7. Option to Terminate. Lessee shall have the unilateral right to terminate this Lease at any time by giving written notice to Lessor of Lessee's exercise of this option and paying Lessor the amount of \$2,500.00 as an early termination fee.

8. Base Rent. Lessee shall pay Base Rent to Lessor in the amount of five thousand dollars (\$5,000.00) per year, which shall be due on the commencement date of this lease and then regularly thereafter each year on the anniversary date of the first payment.

9. Adjusted Rent. On every five years' anniversary of the commencement date of the term of this Lease, and throughout the duration hereof as renewed and extended, the Base Rent shall be adjusted in proportion to the cumulative change in the latest published Consumer Price Index compared to the same index as historically recorded for the month and year in which the term of this Lease commenced. "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers, All Items, U.S. City Average, 1982-84 = 100, (U.S. Department of Labor, Bureau of Labor Statistics). If the said Index ceases to be published, then a reasonably comparable index shall be used.

10. Possession of Premises. Lessee shall not be entitled to take possession of the Premises and commence work to construct the Improvements until Lessee makes the first payment of rent. Lessee shall, however, be permitted to enter upon the Premises to cause engineering studies to be made with respect thereto, including surveys, soil tests, radio wave propagation and field strength tests, and such other analyses and studies of the Premises as Lessee determines to be necessary or desirable without being deemed to have taken possession.

11. Utilities. Lessee shall solely and independently be responsible for all costs of providing utilities to the Premises, including the separate metering, billing, and payment of utility services consumed by Lessee's operations.

12. Property Taxes. Lessee shall pay the personal property taxes levied against the Improvements and the real estate taxes levied against the land underlying the Leasehold Parcel. If the classification of the land for tax purposes changes as a result of Lessee's commercial use, then Lessee shall be responsible for increases attributable to such commercial use.

13. Repairs. Lessee shall be responsible for all repairs of the Improvements, and may at its own expense alter or modify the Improvements to suit its needs consistent with the intended use of the Premises.

14. Mutual Indemnification. Lessee shall indemnify and hold Lessor harmless from and

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against any loss, damage, or injury caused by, or on behalf of, or through the fault of Lessee, or in any way resulting from Lessee's presence upon Lessor's lands. Lessor shall indemnify and hold Lessee harmless from and against any loss, damage, or injury caused by, or on behalf of, or through the fault of the Lessor. Nothing in this Article shall require a party to indemnify the other party against such other party's own willful or negligent misconduct.

15. Insurance. Lessee shall continuously maintain in full force and effect a policy of commercial general liability insurance with limits of One Million Dollars on an occurrence basis covering Lessee's work and operation upon Lessor's lands.

16. Liens.

(a) Except with respect to activities for which Lessor is responsible, Lessee shall pay as due all claims for work done on and for services rendered or material furnished to the leased premises and shall keep the premises free from any liens. If Lessee fails to pay any such claims or discharge any lien, Lessor may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of 9% per annum from the date expended by Lessor and shall be payable on demand. Such action by Lessor shall not constitute a waiver of any right or remedy which Lessor may have on account of Lessee's default.

(b) Lessee may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, so long as Lessor's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Lessee shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with Lessor cash or sufficient corporate surety bond or other surety satisfactory to Lessor in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

17. Default.

There shall be a default in each of the following instances:

(a) Default in Rent. Failure of Lessee to pay any rent or other charge within 10 days after written notice that it is due.

(b) Default in Other Covenants. Failure of Lessee to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges) within 20 days after written notice by Lessor specifying the nature of the default with reasonable particularity. If the default is of such nature that it cannot be completely remedied within the 20-day period, this provision shall be complied with if Lessee begins correction of the default within the 20-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

Page 3

18. Remedies in Default. In the event of a default the lease may be terminated at the option of Lessor by notice in writing to Lessee. If the lease is not terminated by election of Lessor or otherwise, Lessor shall be entitled to recover damages from Lessee for the default. If the lease is terminated, Lessee's liability to Lessor for damages shall survive such termination, and Lessor may reenter, take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages.

19. Assignment and Sublease. No part of the lease property may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means, without the prior written consent of Lessor. This provision shall apply to all transfers by operation of law. No consent in one instance shall prevent the provision from applying to a subsequent instance. Lessor shall consent to a transaction covered by this provision when withholding such consent would be unreasonable in the circumstances.

20. Execution of Other Instruments. Lessor agrees to execute, acknowledge, and deliver to Lessee other instruments respecting the Premises, as Lessee or Lessee's lender may reasonably request from time to time, provided that any such instruments are in furtherance of, and do not substantially expand, Lessee's rights and privileges herein established. Such instruments may include a memorandum of lease which may be recorded in the country land records. Lessor also agrees to reasonably cooperate with Lessee's efforts to obtain all private and public consents related to Lessee's use of the Premises, as long as Lessor is not expected to bear the financial burden of any such efforts.

21. Removal of Improvements. The improvements are agreed to be Lessee's personal property and shall never be considered fixtures to the real estate. Lessee shall at all times be authorized to remove the improvements from the Premises. Upon the expiration or earlier termination of this Lease, Lessee shall remove any above-ground improvements from the Premises. Lessee shall be entitled to abandon all footings, foundations, and other below-ground improvements in place.

22. Enjoyment of Premises. Lessee understands that the leasehold property is adjacent to a county road shop where such activities as the stockpiling of gravel and culvert disposal occur on a regular basis. Lessee has entered into this lease knowing and consenting to this arrangement of being located adjacent to the County shop. Within the parameters of ordinary work activity, Lessor covenants to Lessee that it will not intentionally disturb Lessee's enjoyment thereof so long as Lessee is not in default under this lease.

23. Entry for Inspection. Upon reasonable notice Lessor shall have the right to enter upon the leasehold property to determine Lessee's compliance with this lease.

24. Maintenance. Lessee shall maintain the leasehold property and all improvements in first class condition and repair throughout the term of the lease, ordinary wear and tear expected.

Page 4

25. Reconstruction After Damage. Except as set forth below, if any building, antenna pole or tower, or other improvement in the Leasehold Parcel is damaged or destroyed by fire or any other cause at any time during the lease term, Lessee shall promptly repair the damage and restore the improvement; provided however, in the event any of the said improvements in the Leasehold Parcel are completely destroyed or so damaged by fire or other casualty covered by insurance as to render it unfit for use as a cellular communication's facility, and repair or restoration is not economically feasible, the Lessee may terminate this lease on notice of at least ten (10) days and no more than thirty (30) days. This notice shall be given within thirty (30) days after the date of such damage or destruction. If the lease shall so terminate, rent shall be apportioned to the date of termination.

26. Surrender. Upon expiration of the lease term or renewal term, Lessee shall surrender the Premises to Lessor in good condition.

27. Holdover. Failure by Lessee to vacate the leasehold property at the time specified in the lease shall not constitute a renewal or extension or give Lessee any additional rights in the premises. Upon such a holdover, Lessee shall defend and indemnify Lessor from all liability and expense resulting from the failure or delay of Lessee to timely surrender the leasehold.

28. Governing Law. This lease and the parties' rights under it shall be construed and regulated by the laws of the State of Oregon. Any legal action initiated pursuant to this lease shall be in the Circuit Court of Curry County, Oregon or a Federal Court in the State of Oregon.

29. Binding Effect. All of the covenants, conditions, and provisions of this lease shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

30. Entire Agreement. This lease constitutes the entire agreement between the parties and supersedes any prior understandings or oral or written agreements between the parties respecting the within subject matter.

31. Modifications. This lease may not be modified, except in writing signed by the party against whom such modification is sought to be enforced.

32. Attorney's Fees. In any action of this lease at law or in equity, the prevailing party shall be entitled to recover the reasonable costs of its successful case, including reasonable attorney's fees and costs of appeal.

33. Subordination. Lessee agrees to subordinate this lease to any mortgage or trust deed which may hereafter be placed on the Premises, provided such mortgage or trust deed thereunder shall ensure to Lessee the right to possession of the Premises and other rights granted to Lessee herein so long as Lessee is not in default beyond any applicable grace or cure period, such assurance to be in form reasonably satisfactory to Lessee. If requested by

Page 5

Lessee, Lessor agrees to use Lessor's best efforts to assist Lessee in obtaining from any holder of a security interest in the land underlying the Premises a non-disturbance agreement in form reasonably satisfactory to Lessee.

34. Conditions Precedent. This lease and Lessee's obligations hereunder, including the obligations to pay rent or damages, are expressly conditioned upon and subject to the following conditions being met March 1, 2000:

- 1) Lessee has a survey done of the requested leasehold interest at its expense.
- 2) Lessee must receive all necessary local, state, and federal governmental approvals relating to Lessee's intended use of the Premises. All land use appeals must be resolved in favor of USCO;
- 3) Lessee's technical reports must establish to Lessee's exclusive satisfaction that the Premises are capable of being suitably engineered to accomplish Lessee's intended use of the Premises;
- 4) Lessee's title insurer must determine that Lessor owns good and clear marketable title to the land underlying the Premises, and that such title is free from encumbrances and restrictions which would interfere with Lessee's intended use of the Premises or would impair Lessee's ability to pledge the leasehold estate as collateral to secure debt financing; and
- 5) Written objections, if any, by local community residents must be resolved to the exclusive satisfaction of Lessee to ensure popular support of Lessee's operations.

Lessee shall notify Lessor in writing within 10 days of when the conditions precedent have been met. The first payment of rent is due upon the mailing of notice that the conditions have been met. If each and every one of the conditions are not met by March 1, 2000, this lease shall expire automatically.

35. Lessor's Option to Install Antenna. Lessor shall have the option to install an antenna on Lessee's communication antenna tower, subject to Lessor's non-interference of Lessee's operations.

IN WITNESS WHEREOF, the parties hereto bind themselves to this Ground Lease as of the day and year first above written.

LESSOR:

Curry County

Social Security # (or FEIN)

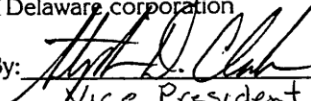
93-600-2291

LESSEE:

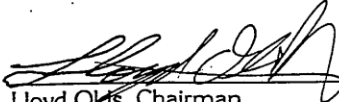
USCOC of Oregon RSA #5, Inc.

a Delaware corporation

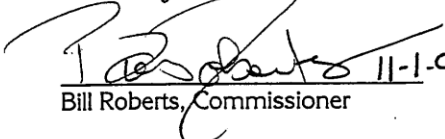
By:


Vice President

BOARD OF COMMISSIONERS

 11-1-99
Lloyd Olds, Chairman

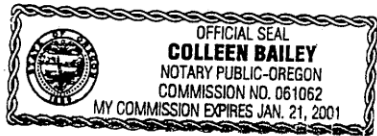
 11-1-99
Cheryl Thorp, Vice Chair

 11-1-99
Bill Roberts, Commissioner

STATE OF Oregon)
COUNTY OF Curry)

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that Lloyd Ods, Cheryl Thore (and) Bill Roberts, known to me to be the same person(s) whose name(s) (~~is~~) (are) subscribed to the foregoing Ground Lease, appeared before me this day in person and (~~severally~~) acknowledged that (~~he~~) (~~she~~) (they) signed the said Lease as (~~his~~) (~~her~~) (their) free and voluntary act for the uses and purposes therein stated.

Given under my hand and seal this 1st day of November, 1999.



Colleen Bailey
Notary Public

My commission expires 1/21/01

STATE OF Illinois)
COUNTY OF Cook)

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that Stephen Clark Vice President of USCOC of Oregon known to me to be the same person whose name is subscribed to the foregoing Ground Lease, appeared before me this day in person and acknowledged that, pursuant to his authority, he signed the said Lease as his free and voluntary act on behalf of the named Lessee corporation, for the uses and purposes therein stated.

Given under my hand and seal this 15th day of October, 1997.

Murray J. Lewison
Notary Public

My commission expires _____

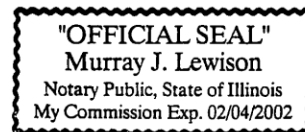


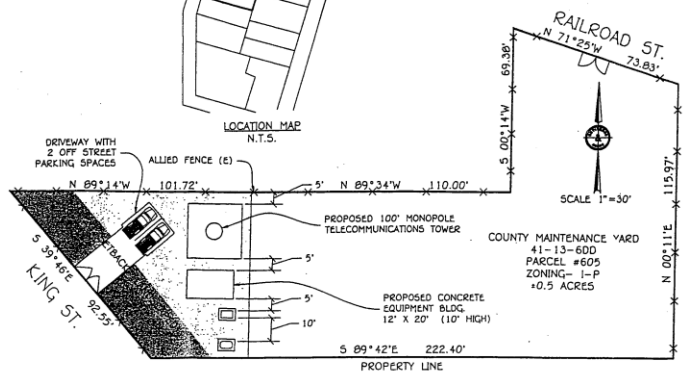
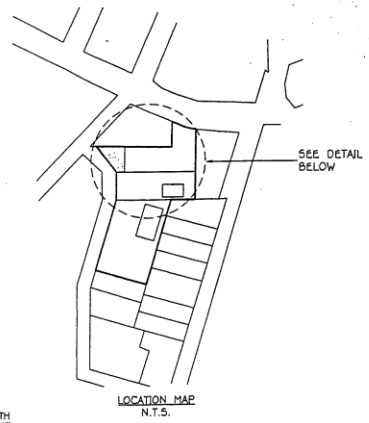
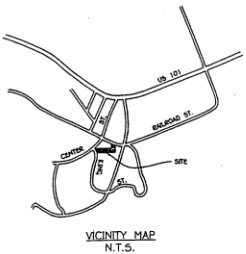
EXHIBIT "A"

A portion of that certain tract of land lying in Section 6, Township 41 South, Range 13 W, (Curry County Assessors Parcel Number 605), Willamette Meridian, City of Brookings, Curry County, State of Oregon.

Approximate dimensions: approximately 102 feet by 72 feet, by 42 feet, by 93 feet.

Sheet B

2:\maced\architectural\Drawings\US Cellular\KINGS.dwg Mon Jan 11 11:00:58 1999



OWNER INFO
 COUNTY OF CURRY
 NO SLOPES ON PROPERTY
 NO EASEMENTS AFFECTING PROPERTY
 NO NATURAL FEATURES
 NO EXISTING BUILDINGS

**UNITED STATES CELLULAR
 SITE PLAN
 BROOKINGS, OR**

Ontiveros & Associates
 Consulting Engineers & Surveyors

5 Wabash Ave. - Eureka, CA 95503
 P.O. Box 692 - Ferndale, CA 95640
 Phone (707) 268-1886
 FAX (707) 268-1886

JOB No.: USC-98-133
 DATE: 1/09/99
 DRAWN BY: ALM

SHT. **1** OF **1**



copy
COPY

#3285

August 7, 2004

Curry County
94235 Moore Street
P.O. Box 746
Gold Beach, OR 97444

Re: Request For Consent To Sublease Space at US Cellular's *North Brookings* site, #573327

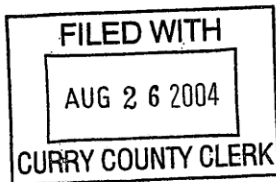
U.S. Cellular is committed to working with others in the wireless industry to make maximum use of existing infrastructure and thereby help reduce the need for additional tower construction. As a result, one of our competitors in Oregon, *Nextel Communications*, would like to collocate with us at the tower site we constructed on your land -- the site we refer to as North Brookings, #573327. We would like to accommodate their request and, accordingly, pursuant to Section 19 of the Ground Lease between Curry County and USCOC of Oregon RSA # 5, d/b/a U.S. Cellular, dated October 15, 1999, we are requesting that you acknowledge your consent of this arrangement by signing both copies of this letter and returning one copy to us in the enclosed stamped, self-addressed envelope and retaining the other copy for your files.

Thank you for your cooperation in this matter, and should you have any questions please feel free to call us.

Sincerely,

Carol Opiela
Carol Opiela
Site Specialist-Colocations
773-399-7523

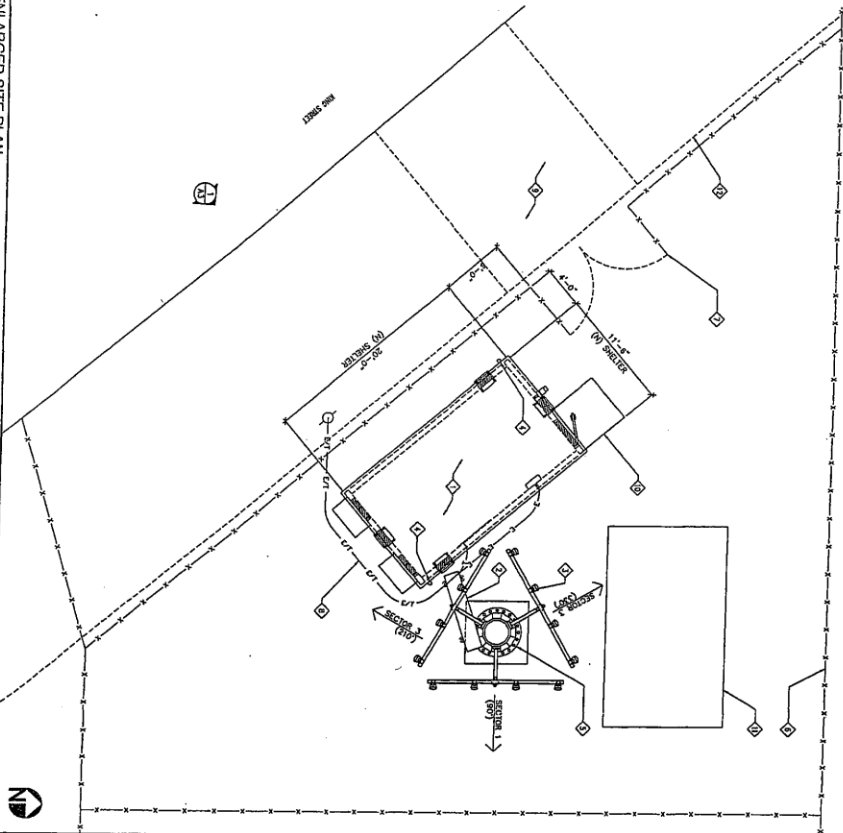
CO/nea



Marilyn Self
Name
Chair, Board of Commissioners
Title
8/25/04
Date

8410 West Bryn Mawr Avenue
Chicago, IL 60631-3486
Tel: 773 399 8900 Fax: 773 399 8936
www.uscellular.com

ENLARGED SITE PLAN



3 ANTENNA CONFIGURATION

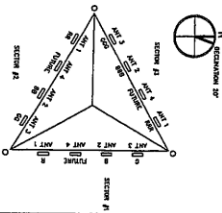
3 ANTENNA CONFIGURATION

1

KEY NOTES

- ① 1/2" NEXTEL 11'-6" x 4'-0" EQUIPMENT SKETCH
- ② 1/2" EXIST. DRAINAGE MARK
- ③ 1/2" NEXTEL 10'-0" x 10'-0" ANTENNA
- ④ 1/2" NEXTEL 10'-0" x 10'-0" ANTENNA
- ⑤ 1/2" PER ANNOTATE
- ⑥ 1/2" CL. FENCE V/ SHARED PCE
- ⑦ 1/2" CL. ACCESS DRIVE V/ LOCK
- ⑧ 1/2" 5'-0" x 5'-0" CONCRETE STUMP
- ⑨ 1/2" 16'-0" x 16'-0" CONCRETE STUMP
- ⑩ 1/2" 30'-0" URSQUARTER SERVICE

SECTION 1		SECTION 2		SECTION 3	
NO.	DATE	NO.	DATE	NO.	DATE
1	07-23-04	1	07-23-04	1	07-23-04
2		2		2	
3		3		3	
4		4		4	
5		5		5	



2

THE FIRM TECH
 1004 MILLERS RD. S.W. #110
 BROOKINGS, OR 97415
 (503) 226-7427
 (503) 226-7428 FAX

NEXTEL
 NEXTEL WIRELESS COMM. INC.
 225 KING STREET
 BROOKINGS, OR 97415

PROJECTIONS
 225 KING STREET
 BROOKINGS, OR 97415

APPROVALS

DATE:	DATE:
BY:	BY:
DATE:	DATE:
DATE:	DATE:
DATE:	DATE:
DATE:	DATE:
DATE:	DATE:
DATE:	DATE:
DATE:	DATE:

CURRENT ISSUE DATE:
 07-23-04
ISSUED FOR:
 CONSTRUCTION

NO. DATE ISSUE
 07-23-04 CD

CHECKED BY: JH

PROJECT NO: 00251-A

SHEET NUMBER: A-2

SHEET TITLE:
 ENLARGED SITE PLAN

DATE SUBMITTED:
 07-23-04



COPY #3454

July 20, 2005

Raymond Brown, Commissioner
Curry County
P.O. Box 746
94235 Moore Street
Gold Beach, OR 97444


Re: Request For Consent To Sublease Space at US Cellular's *N. Brookings* site, #573327

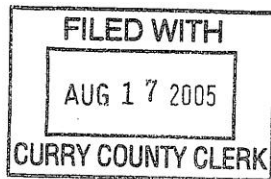
Dear Commissioner Brown:

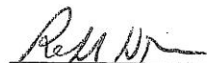
U.S. Cellular is committed to working with others to make maximum use of existing infrastructure and thereby help reduce the need for additional tower construction. As a result, Clearwire would like to collocate with us at the tower site we constructed on your land -- the site we refer to as *N. Brookings*, #573327. We would like to accommodate their request and, accordingly, pursuant to Section 19 of the Ground Lease between USCOC of Oregon RSA #5, Inc. dated October 15, 1999, we are requesting that you acknowledge your consent of this arrangement by signing both copies of this letter and returning one copy to us in the enclosed stamped, self-addressed envelope and retaining the other copy for your files.

Thank you for your cooperation in this matter, and should you have any questions please feel free to call us.

Sincerely,


Donald L. Dicke
Site Specialist
773-864-3150




Signed

Ralph H. Brown
Printed


Chair, Board of Commissioners 8/1/05
Title Date

Site: Brookings/573327

Lessor's Consent

Curry County is the landlord ("Lessor") under that certain Ground Lease dated October 15, 1999 (the "Lease") with USCOC of Oregon RSA #5, Inc., a Delaware corporation as the tenant ("Lessee"). Lessor hereby consents to the merger of Lessee into Oregon RSA #2, Inc., an Oregon corporation and the transfer of Lessee's interest in the Lease to New Lessee, effective on the effective date of the assignment.

LESSOR:

By: 
Name: MARLYN SCHAFFER
Its: CHAIR, BOARD OF COMMISSIONERS

Dated: 12/21/07

COPY