

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING AGENDA**

**PRE-COUNCIL ROOM (A106) CITY HALL
56 CHURCH STREET
MOUNTAIN BROOK, AL 35213**

JULY 27, 2015, 6:00 P. M.

1. Presentation of the audit report for the City of Mountain Brook Emergency Communications District for the years ended September 30, 2013 and 2014 – Whitney Atchison of the Alabama Department of Examiners of Public Accounts.
2. Drainage study for Overbrook Road area in and around Canterbury Methodist Church – Walter Schoel of Schoel Engineering (See attached information. This item may be added to the formal agenda.)
3. First amendment to the lease with American Tower Corporation for the cell tower located at the high school athletic complex-Steve Boone (See attached information. This item may be added to the formal agenda.)



July 16, 2015

City of Mountain Brook
56 Church Street
PO Box 130009
Mountain Brook, Alabama 35213

Attention: Mr. Sam Gaston
Reference: ~~Pine Crest Road~~
Overbrook
Drainage Study

Dear Mr. Gaston:

Please accept this letter as a proposal to provide Consulting Services on the above referenced project. The Detailed Scope is as follows:

1) HYDROLOGIC CONSULTING

The consultant will investigate drainage conditions in the drainage way that drains under Pine Crest Road and on through the Canterbury United Methodist Church property. The drainage basin contributing to this location includes Mountain Brook Junior High and encompasses approximately 400 acres. The goal of this study would be to quantify the drainage issues, especially as related to the lot at 326 ~~Pine Crest Road~~. The detailed scope is as follows:

- Meet with the Client and inspect the drainage way
- Develop a project bas map from GIS information
- Update drainage basin map to reflect current conditions
- Develop return-period flows using urban regression equations
- Develop HEC-RAS water surface model based on field-shot and GIS information
- Compute water surface profiles in area, based on multiple return-period events
- Prepare brief report and exhibits that depict flooding conditions
- Meet and present conclusions to the City

Lump Sum Fee \$11,800

The goal of this study is to understand and quantify the drainage flooding conditions in the area. If any unusual conditions are found that contribute to the drainage issues are noted, these will be mentioned in the summary report.

Payment Terms

The Consultant will bill the Client monthly based on work completed during the billing period. Work completed will be based upon a percentage of completion for Lump Sum Fees. The Consultant has the right to review and adjust fees annually subject to Clients final approval. Payments are due upon receipt. Additional services beyond the herein-described scope of work will be performed according to the attached schedule of unit rates, or alternately for an additional fee as agreed upon.

Established in 1888
WALTER SCHOEL ENGINEERING COMPANY, INC.
1001 22nd Street South • Birmingham, Alabama 35205
P 205-323-6166 • F 205-328-2252 • schoel.com

PROPOSAL ACCEPTANCE

SUBMITTED:

Consultant: Walter Schoel Engineering Company, Inc.

Signature: Walt Schoel III

Name: Walter Schoel III

Title: President

Date: July 16, 2015

ACCEPTED:

Client: City of Mountain Brook

Signature: _____

Name: _____

Title: _____

Date: _____

Schedule of Unit Rates – Effective Through 12/31/2014

Senior Principal	\$ 225.00 per hour
Principal	\$ 170.00 per hour
Chief Land Surveyor	\$ 150.00 per hour
Senior Project Manager	\$ 140.00 per hour
Project Manager 2	\$ 125.00 per hour
Project Manager 1	\$ 110.00 per hour
Senior Professional	\$ 120.00 per hour
Project Professional	\$ 105.00 per hour
Staff Professional	\$ 90.00 per hour
Senior Designer / Survey Draftsman / Specialist	\$ 90.00 per hour
Designer / Survey Draftsman / Specialist 2	\$ 80.00 per hour
Designer / Survey Draftsman / Specialist 1	\$ 70.00 per hour
Field Survey Party	\$ 150.00 per hour
Laser Scanning Field Crew	\$ 200.00 per hour
Laser Scanning Specialist	\$ 125.00 per hour
Intern/Support	\$ 55.00 per hour
Courier	\$ 25.00 per delivery
Transportation	\$ 0.50 per mile
Materials (Stakes and Hubs)	\$ 0.35 each
(Flagging)	\$ 2.50 per roll
(Iron Pins and Caps)	\$ 5.00 each
(Spray Paint)	\$ 5.00 per can

Printing and other reimbursable expenses will be charged at cost, and are not included in the fee basis described above. Sub-consultant invoices will be billed to the client at a rate of 110% of the sub-consultant invoice. Overtime rates may apply for work required during non-standard work hours.

GENERAL TERMS AND CONDITIONS

- 1) The Client hereby agrees that to the fullest extent permitted by law the Consultant's total liability to Client for any and all injuries, claims, losses, expenses of damages whatsoever arising out of or in any way relating to the project, the site, or this Agreement, from any cause or causes including but not limited to the Consultant's negligence, errors, omissions, strict liability, breach of contract, breach of warranty shall not exceed the greater of the total amount paid by the Client for the services of the Consultant under this contract or \$50,000.00, whichever is greater. The Consultant's liability shall expire one (1) year from the completion date of the provision of services for each phase of the work.
- 2) The figures given above and in the body of this Agreement are based on the Scope of Work as described herein. If the above outlined Scope of Services is changed, or if there are other services that may be requested by the Client, these additional services will also be performed at the above unit rates, or a revised fee will be negotiated to the satisfaction of both the Client and Consultant at that time. The Consultant reserves the right to adjust these unit rates for inflation costs on a one-year interval from the date of this proposal.
- 3) All reports, plans, documents, or other materials resulting from the Consultant's efforts shall remain the property of the Consultant and are intended solely for the purpose of this Agreement. Any reuse by Client of other for purposes outside of this Agreement or any failure to follow Consultant's recommendations without Consultant's written permission shall be at the users sole risk.
- 4) The Consultant shall not be responsible for construction site safety or construction procedures, nor will the Consultant be responsible for the quality of the work performed by the contractor or other consultant.

----- Forwarded message -----

From: **Patricia Barnaby** <Patricia.Barnaby@americantower.com>

Date: Fri, Jun 26, 2015 at 1:24 PM

Subject: RE: Redraft: 300249: Marked-up version of the lease amendment

To: "boones@mtnbrook.org" <boones@mtnbrook.org>

Cc: Andrew Darrigo <Andrew.Darrigo@americantower.com>

Good afternoon Mr. Boone,

I am working with Andrew Darrigo on the amendment for this site and have reviewed the redlined draft provided. All of the changes were fine except I did add language to section 2 of the amendment deleting section 10(e) of the original lease. All of the defaults and timeframes are fine under section 10 so we do not have a problem deleting the default language from the amendment. However, section 10 (e) provides for Landlord's right to terminate 6 months prior to the end of the initial, first and second renewal terms and since we are still in the second renewal term of the lease, we would request for that section to be deleted since it is the intent of the parties to extend the lease under this amendment.

If the attached agreement is acceptable to the City, I have provided a clean draft in .pdf format.

If you have any questions or concerns, please do not hesitate to contact me.

Thank you and have a great weekend.

Trish

Patricia Barnaby
Attorney, US Tower
American Tower Corporation
10 Presidential Way
Woburn, MA 01801
781.926.4547 office
patricia.barnaby@americantower.com

THE FIRST AMENDMENT TO TOWER SITE SUBLEASE AGREEMENT

This First Amendment to Tower Site Sublease Agreement (this "*Amendment*") is made effective as of the latter signature date hereof (the "*Effective Date*") by and between the City of Mountain Brook, Alabama, an Alabama municipal corporation, ("*Landlord*") and American Tower Asset Sub, LLC, a Delaware limited liability company, ("*Tenant*") (Landlord and Tenant being collectively referred to herein as the "*Parties*").

RECITALS

WHEREAS, the Board of Education of the City of Mountain Brook ("*Board*") is the owner of certain real property located in Jefferson County, Alabama, being more particularly depicted or described on Exhibit A attached hereto and by this reference made a part hereof (the "*Parent Parcel*") and the Board leased a portion of the Parent Parcel to Landlord pursuant to that certain lease agreement, dated October 1, 1989, as amended, and further pursuant to a restated and amended lease agreement dated January 26, 2015, as recorded in Book LR 201511, Page 27633 in the office of the Judge of Probate of Jefferson County, Alabama; and

WHEREAS, Landlord and Tenant (or its predecessor-in-interest) entered into that certain Tower Site Sublease Agreement dated November 1, 1997 (as the same may have been amended, collectively, the "*Lease*"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Lease (such leasehold and easement rights and interests, collectively, the "*Leased Premises*"), which Leased Premises are also described on Exhibit A; and

WHEREAS, Landlord and Tenant desire to amend the terms of the Lease to extend the term thereof and to otherwise modify the Lease as expressly provided herein.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **One-Time Payment.** Tenant shall pay to Landlord a one-time payment in the amount of Fifteen Thousand and No/100 Dollars (\$15,000.00), payable within thirty (30) days of the Effective Date and subject to the following conditions precedent: (a) Tenant's receipt of this Amendment executed by Landlord, on or before July 15, 2015; (b) Tenant's confirmation that Landlord's statements as further set forth in this Amendment are true, accurate, and complete, including verification of Landlord's right to sublease the Leased Premises to Tenant; (c) Tenant's receipt of any documents and other items reasonably requested by Tenant in order to effectuate the transaction and payment contemplated herein; and (d) receipt by Tenant of an original Memorandum (as defined herein) executed by Landlord.
2. **Lease Term Extended.** Notwithstanding anything to the contrary contained in this Amendment or in the Lease, the Parties agree that the Lease originally commenced on December 1, 1997. In addition to any renewal options granted to Tenant in the Lease, Tenant shall have the option to extend the Lease for each of four (4) additional five (5) year renewal terms (each a "*New Renewal Term*" and, collectively, the "*New Renewal Terms*"). The first New Renewal Term shall commence simultaneously with the expiration of the Lease, taking into account all existing renewal term(s) (each an "*Existing Renewal Term*" and, collectively, the "*Existing Renewal Terms*") available under the Lease. Notwithstanding

anything to the contrary contained in the Lease, all Existing Renewal Terms and New Renewal Terms shall automatically renew unless Tenant notifies Landlord that Tenant elects not to renew the Lease not less than sixty (60) days prior to the expiration of the then current term. References in this Amendment to "**Renewal Term**" shall refer, collectively, to the Existing Renewal Term(s) and the New Renewal Term(s). The Parties hereby acknowledge and agree that Section 10 (e) of the Lease is hereby deleted in its entirety. The Landlord hereby agrees to execute and return to Tenant an original Memorandum of Lease in the form and of the substance attached hereto as **Exhibit B** and by this reference made a part hereof (the "**Memorandum**") executed by Landlord, together with any applicable forms needed to record the Memorandum, which forms shall be supplied by Tenant to Landlord.

3. **Rent and Escalation.** Commencing on December 1, 2017 and on the beginning of each Renewal Term thereafter, Rent due under the Lease shall increase by an amount equal to twenty percent (20%) of the then current rent. Notwithstanding anything to the contrary contained in the Lease, all Rent and any other payments expressly required to be paid by Tenant to Landlord under the Lease and this Amendment shall be paid to the **City of Mountain Brook, Alabama.**
4. **Landlord and Tenant Acknowledgments.** Except as modified herein, the Lease and all provisions contained therein remain in full force and effect and are hereby ratified and affirmed. The parties hereby agree that no defaults exist under the Lease. To the extent Tenant needed consent and/or approval from Landlord for any of Tenant's activities at and uses of the site prior to the Effective Date, Landlord's execution of this Amendment is and shall be considered consent to and approval of all such activities and uses. Tenant shall fully comply with all municipal ordinances governing its operations, including but not limited to zoning, telecommunication and building code ordinances. To the extent approval is necessary from governmental agencies other than the City of Mountain Brook, Landlord authorizes Tenant, its subtenants and licensees, and their agents to file applications or seek approval with other such authorities or agencies for Tenant's intended use of the Leased Premises. Upon request by Tenant and at Tenant's sole cost and expense, Landlord hereby agrees to promptly execute and return to Tenant applications and other forms and documents, including a memorandum of lease, as required for such approval or use of the Leased Premises by Tenant and/or Tenant's customers, licensees, and sublessees. The terms, provisions, and conditions of this Section shall survive the execution and delivery of this Amendment.
5. **Landlord Statements.** Landlord hereby represents and warrants to Tenant that: (i) to the extent applicable, Landlord is duly organized, validly existing, and in good standing in the jurisdiction in which Landlord was organized, formed, or incorporated, as applicable, and is otherwise in good standing and authorized to transact business in each other jurisdiction in which such qualifications are required; (ii) Landlord has the full power and authority to enter into and perform its obligations under this Amendment, and, to the extent applicable, the person(s) executing this Amendment on behalf of Landlord, have the authority to enter into and deliver this Amendment on behalf of Landlord; (iii) no consent, authorization, order, or approval of, or filing or registration with, any governmental authority or other person or entity is required for the execution and delivery by Landlord of this Amendment; (iv)

Landlord is the leasehold owner of the Leased Premises; and (v) there are no agreements, liens, encumbrances, claims, claims of lien, proceedings, or other matters (whether filed or recorded in the applicable public records or not) related to, encumbering, asserted against, threatened against, and/or pending with respect to the Leased Premises which do or could (now or any time in the future) adversely impact, limit, and/or impair Tenant's rights under the Lease, as amended and modified by this Amendment. The representations and warranties of Landlord made in this Section shall survive the execution and delivery of this Amendment.

6. **Confidentiality.** Notwithstanding anything to the contrary contained in the Lease or in this Amendment, Landlord agrees and acknowledges that all the terms of this Amendment and the Lease and any information furnished to Landlord by Tenant in connection therewith shall be and remain confidential to the extent permitted by law. Except with Landlord's attorney, accountant, broker, lender, a prospective fee simple purchaser of the Parent Parcel, or if otherwise required by law, Landlord shall not disclose any such terms or information without the prior written consent of Tenant. The terms and provisions of this Section shall survive the execution and delivery of this Amendment.
7. **Notices.** All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein; To Landlord at: City of Mountain Brook, 56 Church Street, Mountain Brook, AL 35213; To Tenant at: Attn: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn Legal Dept. 116 Huntington Avenue, Boston, MA 02116. Any of the Parties, by thirty (30) days prior written notice to the others in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.
8. **Counterparts.** This Amendment may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the same counterpart. Furthermore, the Parties may execute and deliver this Amendment by electronic means such as .pdf or similar format. Each of the Parties agrees that the delivery of the Amendment by electronic means will have the same force and effect as delivery of original signatures and that each of the Parties may use such electronic signatures as evidence of the execution and delivery of the Amendment by all Parties to the same extent as an original signature.
9. **Governing Law.** Notwithstanding anything to the contrary contained in the Lease and in this Amendment, the Lease and this Amendment shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.

10. **Waiver.** Notwithstanding anything to the contrary contained herein, in no event shall Landlord or Tenant be liable to the other for, and Landlord and Tenant hereby waive, to the fullest extent permitted under applicable law, the right to recover incidental, consequential (including, without limitation, lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.

11. **Tenant's Securitization Rights; Estoppel.** Landlord hereby consents to the granting by Tenant of a lien and security interest in Tenant's interest in this Lease, as amended, and all of Tenant's property and fixtures attached to and lying within the Leased Premises and further consents to the exercise by Tenant's mortgagee ("*Tenant's Mortgagee*") of its rights of foreclosure with respect to any such lien or security interest so granted. Provided that Tenant gives Landlord written notice that it has granted any such lien or security interest and the full name and address of Tenant's Mortgagee, Landlord shall recognize Tenant's Mortgagee as "Tenant" hereunder in the event Tenant's Mortgagee exercises its right of foreclosure. Provided, however, that in such case, the rights of Tenant's Mortgagee shall not, under any circumstances, be greater than those rights granted to Tenant under the Lease and this First Amendment. Landlord further agrees to execute a written estoppel certificate within thirty (30) days of written request of the same by Tenant or Tenant's Mortgagee.

[SIGNATURES FOLLOW ON NEXT PAGE]

LANDLORD:

City of Mountain Brook,
an Alabama municipal corporation

Signature: _____
Print Name: _____
Title: _____
Date: _____

[SIGNATURES CONTINUE ON NEXT PAGE]

TENANT:

American Tower Asset Sub, LLC,
a Delaware limited liability company

Signature: _____

Print Name: _____

Title: _____

Date: _____

EXHIBIT A

This Exhibit A may be replaced at Tenant's option as described below

PARENT PARCEL

Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's improvements thereon

The Parent Parcel consists of the entire legal taxable lot owned by City Board of Education, City of Mountain Brook and a portion of which is leased to Landlord and the Leased Premises is a part thereof with such Parent Parcel being described below.

Beginning at the Southeast Corner of Section 2, Township 18 South, Range 2 West of the Huntsville Principal Meridian, run West along the South Line of said Section 2, 2703.25 feet; thence 135°00' right 372.00 feet; thence 12°30' left 258.00 feet; thence 58°00' right 289.00 feet; thence 17°00' right 83.66 feet; Thence 17°00' left 185.00 feet; thence 90°00' left 440.00 feet; thence 19°00' left 451.20 feet to the North Line of the Southwest Quarter of the Southeast Quarter of Section 2; thence 108°34' right 1846.30 feet along said North line of the Southwest Quarter of the Southeast Quarter of said Section 2 to the East line of same; thence 88°07' right 1318.0 feet along said East line to the Point Of Beginning. Less and Except that property conveyed to the State of Alabama in Real Volume 1130, Page 359. Situated In Jefferson County, Alabama.

LEASED PREMISES

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements. The square footage of the Leased Premises shall be the greater of: (i) the land area conveyed to Tenant in the Lease; (ii) Tenant's existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

A parcel of land situated in the Southeast Quarter of the Southeast Quarter of Section 2, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at the Northeast Corner of the Southeast Quarter of the Southeast Quarter of Section 2, Township 18 South, Range 2 West; thence run South 08°38'58" West for a distance of 1,028.93 feet to the Point of Beginning; thence run South 15°44'07" West for a distance of 35.27 feet to a point; thence run South 72°30'29" West for a distance of 64.38 feet to a point; thence run North 36°08'03" West for a distance of 23.30 feet to a point; thence run North 23°01'32" East for a distance of 56.62 feet to a point; thence run South 74°16'06" East for a distance of 65.00 feet to the Point of Beginning.
Said parcel contains 0.09 acres.

EXHIBIT A (Continued)

ACCESS AND UTILITIES

The Access and Utilities Easements include all easements of record as well as existing access and utilities currently servicing the Leased Premises to and from a public right of way, including but not limited to the following;

An easement of land situated in the Southeast Quarter of the Southeast Quarter of Section 2, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at the Northeast Corner of the Southeast Quarter of the Southeast Quarter of Section 2, Township 18 South, Range 2 West; thence run South $08^{\circ}38'58''$ West for a distance of 1,028.93 feet to a point; thence run North $74^{\circ}16'36''$ West for a distance of 41.00 feet to the Point of Beginning of the centerline of an Ingress/Egress Easement that lies 10 feet either side of said centerline as described herein; thence run North $15^{\circ}55'59''$ East for a distance of 270.55 feet to a point; thence run North $54^{\circ}50'41''$ East for a distance of 138.88 feet to a point; thence run North $03^{\circ}42'55''$ East for a distance of 48.58 feet to a point; thence run North $19^{\circ}59'11''$ West for a distance of 113.33 feet to a point; thence run North $35^{\circ}35'30''$ West for a distance of 231.06 feet to a point; thence run North $44^{\circ}43'10''$ West for a distance of 108.28 feet to a point; thence run North $50^{\circ}23'52''$ West for a distance of 165.69 feet to a point; thence run North $54^{\circ}16'13''$ West for a distance of 59.80 feet to a point; thence with a curve to the right, with a radius of 53.34 feet and a delta angle of $107^{\circ}24'40''$, for a distance of 93.77 feet to a point; thence run North $57^{\circ}29'15''$ East for a distance of 97.29 feet to a point; thence run North $71^{\circ}04'21''$ East for a distance of 91.25 feet to a point; thence run North $77^{\circ}42'16''$ East for a distance of 45.85+/- feet to a point on the western right-of-way of Interstate 459, having a variable right-of-way, and also being the terminus of easement.

EXHIBIT B

FORM OF MEMORANDUM OF LEASE

Prepared by and Return to:

American Tower

10 Presidential Way

Woburn, MA 01801

Attn: Land Management/Patricia Barnaby, Esq.

ATC Site No: 300249

ATC Site Name: Liberty Parkway AL

Assessor's Parcel No(s): 28-00-02-4-001-020.000

28-00-02-4-001-001.002

State of Alabama

County of Jefferson

MEMORANDUM OF LEASE

This Memorandum of Lease (the "**Memorandum**") is entered into on the _____ day of _____, 201____ by and between **City of Mountain Brook**, an Alabama municipal corporation, ("**Landlord**") and **American Tower Asset Sub, LLC**, a Delaware limited liability company, ("**Tenant**").

NOTICE is hereby given of the Lease (as defined and described below) for the purpose of recording and giving notice of the existence of said Lease. To the extent that notice of such Lease has previously been recorded, then this Memorandum shall constitute an amendment of any such prior recorded notice(s).

1. **Parent Parcel and Lease.** The Board of Education of the City of Mountain Brook ("**Board**") is the owner of certain real property located in Jefferson County, Alabama, being more particularly depicted or described on **Exhibit A** attached hereto and by this reference made a part hereof (the "**Parent Parcel**") and the Board leased a portion of the Parent Parcel to Landlord pursuant to that certain lease agreement, dated October 1, 1989, as amended, and further pursuant to a restated and amended lease agreement dated January 25, 2015, as recorded in Book LR 201511, Page 27633 in the office of the Judge of Probate of Jefferson County, Alabama. Landlord and Tenant (or its predecessor-in-interest) entered into that certain Tower Site Sublease Agreement dated November 1, 1997 (as the same may have been amended, renewed, extended, restated, and/or modified from time to time, collectively, the "**Lease**"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Lease (such leasehold and easement rights and interests, collectively, the "**Leased Premises**"), which Leased Premises is also described on **Exhibit A**.
2. **Expiration Date.** Subject to the terms, provisions, and conditions of the Lease, and assuming the exercise by Tenant of all renewal options contained in the Lease, the final expiration date of the Lease would be November 30, 2042. Notwithstanding the foregoing, in no event shall Tenant be required to exercise any option to renew the term of the Lease.
3. **Leased Premises Description.** Tenant shall have the right, exercisable by Tenant at any time during the original or renewal terms of the Lease, to cause an as-built survey of the Leased Premises to be prepared and, thereafter, to replace, in whole or in part, the description(s) of the Leased Premises set forth on

Site No: 300249

Site Name: Liberty Parkway AL

Exhibit A with a legal description or legal descriptions based upon such as-built survey. Upon Tenant's request, Landlord shall execute and deliver any documents reasonably necessary to effectuate such replacement, including, without limitation, amendments to this Memorandum and to the Lease.

4. **Effect/Miscellaneous.** This Memorandum is not a complete summary of the terms, provisions and conditions contained in the Lease. In the event of a conflict between this Memorandum and the Lease, the Lease shall control. Landlord hereby grants the right to Tenant to complete and execute on behalf of Landlord any government or transfer tax forms necessary for the recording of this Memorandum. This right shall terminate upon recording of this Memorandum.
5. **Notices.** All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein; To Landlord at: City of Mountain Brook, 56 Church Street, Mountain Brook, AL 35213; To Tenant at: Attn: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn Legal Dept. 116 Huntington Avenue, Boston, MA 02116. Any of the parties hereto, by thirty (30) days prior written notice to the other in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.
6. **Counterparts.** This Memorandum may be executed in multiple counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.
7. **Governing Law.** This Memorandum shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have each executed this Memorandum as of the day first above written.

LANDLORD

2 WITNESSES

City of Mountain Brook,
an Alabama municipal corporation

Signature: _____
Print Name: _____
Title: _____
Date: _____

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of _____

County of _____

On this ____ day of _____, 201____, before me, the undersigned Notary Public, personally appeared _____, 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 which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public
Print Name: _____
My commission expires: _____

[SEAL]

[SIGNATURES CONTINUE ON NEXT PAGE]

TENANT

WITNESS

American Tower Asset Sub, LLC,
a Delaware limited liability company

Signature: _____
Print Name: _____
Title: _____
Date: _____

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

WITNESS AND ACKNOWLEDGEMENT

Commonwealth of Massachusetts

County of Middlesex

On this ____ day of _____, 201____, before me, the undersigned Notary Public, personally appeared _____, 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 which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public
Print Name: _____
My commission expires: _____

[SEAL]

EXHIBIT A

This Exhibit A may be replaced at Tenant's option as described below

PARENT PARCEL

Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's improvements thereon

The Parent Parcel consists of the entire legal taxable lot owned by City Board of Education, City of Mountain Brook and a portion of which is leased to Landlord and the Leased Premises is a part thereof with such Parent Parcel being described below.

Beginning at the Southeast Corner of Section 2, Township 18 South, Range 2 West of the Huntsville Principal Meridian, run West along the South Line of said Section 2, 2703.25 feet; thence 135°00' right 372.00 feet; thence 12°30' left 258.00 feet; thence 58°00' right 289.00 feet; thence 17°00' right 83.66 feet; Thence 17°00' left 185.00 feet; thence 90°00' left 440.00 feet; thence 19°00' left 451.20 feet to the North Line of the Southwest Quarter of the Southeast Quarter of Section 2; thence 108°34' right 1846.30 feet along said North line of the Southwest Quarter of the Southeast Quarter of said Section 2 to the East line of same; thence 88°07' right 1318.0 feet along said East line to the Point Of Beginning. Less and Except that property conveyed to the State of Alabama in Real Volume 1130, Page 359. Situated in Jefferson County, Alabama.

LEASED PREMISES

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements. The square footage of the Leased Premises shall be the greater of: (i) the land area conveyed to Tenant in the Lease; (ii) Tenant's existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

A parcel of land situated in the Southeast Quarter of the Southeast Quarter of Section 2, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at the Northeast Corner of the Southeast Quarter of the Southeast Quarter of Section 2, Township 18 South, Range 2 West; thence run South 08°38'58" West for a distance of 1,028.93 feet to the Point of Beginning; thence run South 15°44'07" West for a distance of 35.27 feet to a point; thence run South 72°30'29" West for a distance of 64.38 feet to a point; thence run North 36°08'03" West for a distance of 23.30 feet to a point; thence run North 23°01'32" East for a distance of 56.62 feet to a point; thence run South 74°16'06" East for a distance of 65.00 feet to the Point of Beginning.

Said parcel contains 0.09 acres.

EXHIBIT A (Continued)

ACCESS AND UTILITIES

The Access and Utilities Easements include all easements of record as well as existing access and utilities currently servicing the Leased Premises to and from a public right of way, including but not limited to the following;

An easement of land situated in the Southeast Quarter of the Southeast Quarter of Section 2, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at the Northeast Corner of the Southeast Quarter of the Southeast Quarter of Section 2, Township 18 South, Range 2 West; thence run South $08^{\circ}38'58''$ West for a distance of 1,028.93 feet to a point; thence run North $74^{\circ}16'36''$ West for a distance of 41.00 feet to the Point of Beginning of the centerline of an Ingress/Egress Easement that lies 10 feet either side of said centerline as described herein; thence run North $15^{\circ}55'59''$ East for a distance of 270.55 feet to a point; thence run North $54^{\circ}50'41''$ East for a distance of 138.88 feet to a point; thence run North $03^{\circ}42'55''$ East for a distance of 48.58 feet to a point; thence run North $19^{\circ}59'11''$ West for a distance of 113.33 feet to a point; thence run North $35^{\circ}35'30''$ West for a distance of 231.06 feet to a point; thence run North $44^{\circ}43'10''$ West for a distance of 108.28 feet to a point; thence run North $50^{\circ}23'52''$ West for a distance of 165.69 feet to a point; thence run North $54^{\circ}16'13''$ West for a distance of 59.80 feet to a point; thence with a curve to the right, with a radius of 53.34 feet and a delta angle of $107^{\circ}24'40''$, for a distance of 93.77 feet to a point; thence run North $57^{\circ}29'15''$ East for a distance of 97.29 feet to a point; thence run North $71^{\circ}04'21''$ East for a distance of 91.25 feet to a point; thence run North $77^{\circ}42'16''$ East for a distance of 45.85+/- feet to a point on the western right-of-way of Interstate 459, having a variable right-of-way, and also being the terminus of easement.

THE FIRST AMENDMENT TO TOWER SITE SUBLEASE AGREEMENT

This First Amendment to Tower Site Sublease Agreement (this "**Amendment**") is made effective as of the latter signature date hereof (the "**Effective Date**") by and between the **City of Mountain Brook, Alabama**, an Alabama municipal corporation, ("**Landlord**") and **American Tower Asset Sub, LLC**, a Delaware limited liability company, ("**Tenant**") (Landlord and Tenant being collectively referred to herein as the "**Parties**").

RECITALS

WHEREAS, the Board of Education of the City of Mountain Brook ("**Board**") is the owner of certain real property located in Jefferson County, Alabama, being more particularly depicted or described on **Exhibit A**, attached hereto and by this reference made a part hereof (the "**Parent Parcel**") and the Board leased a portion of the Parent Parcel to Landlord pursuant to that certain lease agreement, dated October 1, 1989, as amended, and further pursuant to a restated and amended lease agreement dated January 26, 2015, as recorded in Book LR 201511, Page 27633 in the office of the Judge of Probate of Jefferson County, Alabama; and,

WHEREAS, Landlord and Tenant (or its predecessor-in-interest) entered into that certain Tower Site Sublease Agreement dated November 1, 1997 (as the same may have been amended, collectively, the "**Lease**"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Lease (such leasehold and easement rights and interests, collectively, the "**Leased Premises**"), which Leased Premises are also described on **Exhibit A**; and

WHEREAS, Landlord and Tenant desire to amend the terms of the Lease to extend the term thereof and to otherwise modify the Lease as expressly provided herein.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

- One-Time Payment.** Tenant shall pay to Landlord a one-time payment in the amount of Fifteen Thousand and No/100 Dollars (\$15,000.00), payable within thirty (30) days of the Effective Date and subject to the following conditions precedent: (a) Tenant's receipt of this Amendment executed by Landlord, on or before July 15, 2015; (b) Tenant's confirmation that Landlord's statements as further set forth in this Amendment are true, accurate, and complete, including verification of Landlord's right to sublease the Leased Premises to Tenant; (c) Tenant's receipt of any documents and other items reasonably requested by Tenant in order to effectuate the transaction and payment contemplated herein; and (d) receipt by Tenant of an original Memorandum (as defined herein) executed by Landlord.
- Lease Term Extended.** Notwithstanding anything to the contrary contained in this Amendment or in the Lease, the Parties agree that the Lease originally commenced on December 1, 1997. In addition to any renewal options granted to Tenant in the Lease, Tenant shall have the option to extend the Lease for each of four (4) additional five (5) year renewal

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person(s) executing this Amendment on behalf of Landlord, have the authority to enter into and deliver this Amendment on behalf of Landlord; (iii) no consent, authorization, order, or approval of, or filing or registration with, any governmental authority or other person or entity is required for the execution and delivery by Landlord of this Amendment; (iv) Landlord is the leasehold owner of the Leased Premises; and (v) there are no agreements, liens, encumbrances, claims, claims of lien, proceedings, or other matters (whether filed or recorded in the applicable public records or not) related to, encumbering, asserted against, threatened against, and/or pending with respect to the Leased Premises which do or could (now or any time in the future) adversely impact, limit, and/or impair Tenant's rights under the Lease, as amended and modified by this Amendment. The representations and warranties of Landlord made in this Section shall survive the execution and delivery of this Amendment.

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6. **Confidentiality.** Notwithstanding anything to the contrary contained in the Lease or in this Amendment, Landlord agrees and acknowledges that all the terms of this Amendment and the Lease and any information furnished to Landlord by Tenant in connection therewith shall be and remain confidential ~~to the extent permitted by law.~~ Except with Landlord's attorney, accountant, broker, lender, a prospective fee simple purchaser of the Parent Parcel, or if otherwise required by law, Landlord shall not disclose any such terms or information without the prior written consent of Tenant. The terms and provisions of this Section shall survive the execution and delivery of this Amendment.

Deleted: Landlord hereby does and agrees to indemnify Tenant for any damages, losses, costs, fees, expenses, or charges of any kind sustained or incurred by Tenant as a result of the breach of the representations and warranties made herein or if any of the representations and warranties made herein prove to be untrue. The aforementioned indemnification shall survive the execution and delivery of this Amendment.

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7. **Notices.** All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein; To Landlord at: City of Mountain Brook, 56 Church Street, Mountain Brook, AL 35213; To Tenant at: Attn: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn Legal Dept. 116 Huntington Avenue, Boston, MA 02116. Any of the Parties, by thirty (30) days prior written notice to the others in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.

8. **Counterparts.** This Amendment may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the same counterpart. Furthermore, the Parties may execute and deliver this Amendment by electronic means such as .pdf or similar format. Each of the Parties agrees that the delivery of the Amendment by electronic means will have the same force and effect as delivery of original signatures and that each of the Parties may use such electronic signatures as evidence of the execution and delivery of the Amendment by all Parties to the same extent as an original signature.

9. **Governing Law.** Notwithstanding anything to the contrary contained in the Lease and in this Amendment, the Lease and this Amendment shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased

Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.

10. **Waiver.** Notwithstanding anything to the contrary contained herein, in no event shall Landlord or Tenant be liable to the other for, and Landlord and Tenant hereby waive, to the fullest extent permitted under applicable law, the right to recover incidental, consequential (including, without limitation, lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.

11. **Tenant's Securitization Rights; Estoppel.** Landlord hereby consents to the granting by Tenant of a lien and security interest in Tenant's interest in this Lease, as amended, and all of Tenant's property and fixtures attached to and lying within the Leased Premises and further consents to the exercise by Tenant's mortgagee ("*Tenant's Mortgagee*") of its rights of foreclosure with respect to any such lien or security interest so granted. Provided that Tenant gives Landlord written notice that it has granted any such lien or security interest and the full name and address of Tenant's Mortgagee, Landlord shall recognize Tenant's Mortgagee as "Tenant" hereunder in the event Tenant's Mortgagee exercises its right of foreclosure. Provided, however, that in such case, the rights of Tenant's Mortgagee shall not, under any circumstances, be greater than those rights granted to Tenant under the Lease and this First Amendment. Landlord further agrees to execute a written estoppel certificate within thirty (30) days of written request of the same by Tenant or Tenant's Mortgagee.

[SIGNATURES FOLLOW ON NEXT PAGE]

LANDLORD:

City of Mountain Brook,
an Alabama municipal corporation

Signature: _____

Print Name: _____

Title: _____

Date: _____

[SIGNATURES CONTINUE ON NEXT PAGE]

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TENANT:

American Tower Asset Sub, LLC,
a Delaware limited liability company

Signature: _____

Print Name: _____

Title: _____

Date: _____

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Site No: 300249
Site Name: Liberty Parkway AL

EXHIBIT A

This Exhibit A may be replaced at Tenant's option as described below

PARENT PARCEL

Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's improvements thereon

The Parent Parcel consists of the entire legal taxable lot owned by City Board of Education, City of Mountain Brook and a portion of which is leased to Landlord and the Leased Premises is a part thereof with such Parent Parcel being described below.

Beginning at the Southeast Corner of Section 2, Township 18 South, Range 2 West of the Huntsville Principal Meridian, run West along the South Line of said Section 2, 2703.25 feet; thence 135°00' right 372.00 feet; thence 12°30' left 258.00 feet; thence 58°00' right 289.00 feet; thence 17°00' right 83.66 feet; Thence 17°00' left 185.00 feet; thence 90°00' left 440.00 feet; thence 19°00' left 451.20 feet to the North Line of the Southwest Quarter of the Southeast Quarter of Section 2; thence 108°34' right 1846.30 feet along said North line of the Southwest Quarter of the Southeast Quarter of said Section 2 to the East line of same; thence 88°07' right 1318.0 feet along said East line to the Point Of Beginning. Less and Except that property conveyed to the State of Alabama in Real Volume 1130, Page 359. Situated in Jefferson County, Alabama.

LEASED PREMISES

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements. The square footage of the Leased Premises shall be the greater of: (i) the land area conveyed to Tenant in the Lease; (ii) Tenant's existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

A parcel of land situated in the Southeast Quarter of the Southeast Quarter of Section 2, Township 18 South, Range 2 West, Jefferson County, Alabama, and being more particularly described as follows:

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Said parcel contains 0.09 acres.

EXHIBIT A (Continued)

ACCESS AND UTILITIES

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EXHIBIT B

FORM OF MEMORANDUM OF LEASE

Site No: 300249
Site Name: Liberty Parkway AL

Prepared by and Return to:

American Tower
10 Presidential Way
Woburn, MA 01801
Attn: Land Management/Patricia Barnaby, Esq.
ATC Site No: 300249
ATC Site Name: Liberty Parkway AL
Assessor's Parcel No(s): 28-00-02-4-001-020.000
28-00-02-4-001-001.002

State of Alabama
County of Jefferson

MEMORANDUM OF LEASE

This Memorandum of Lease (the "*Memorandum*") is entered into on the _____ day of _____, 201____ by and between City of Mountain Brook, an Alabama municipal corporation, ("*Landlord*") and American Tower Asset Sub, LLC, a Delaware limited liability company, ("*Tenant*").

NOTICE is hereby given of the Lease (as defined and described below) for the purpose of recording and giving notice of the existence of said Lease. To the extent that notice of such Lease has previously been recorded, then this Memorandum shall constitute an amendment of any such prior recorded notice(s).

- 1. Parent Parcel and Lease.** ~~The Board of Education of the City of Mountain Brook ("*Board*") is the owner of certain real property located in Jefferson County, Alabama, being more particularly depicted or described on Exhibit A attached hereto and by this reference made a part hereof (the "*Parent Parcel*") and the Board leased a portion of the Parent Parcel to Landlord pursuant to that certain lease agreement, dated October 1, 1989, as amended, and further pursuant to a restated and amended lease agreement dated January 25, 2015, as recorded in Book LR 201511, Page 27633 in the office of the Judge of Probate of Jefferson County, Alabama. Landlord and Tenant (or its predecessor-in-interest) entered into that certain Tower Site Sublease Agreement dated November 1, 1997 (as the same may have been amended, renewed, extended, restated, and/or modified from time to time, collectively, the "*Lease*"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Lease (such leasehold and easement rights and interests, collectively, the "*Leased Premises*"), which Leased Premises is also described on Exhibit A.~~
- 2. Expiration Date.** Subject to the terms, provisions, and conditions of the Lease, and assuming the exercise by Tenant of all renewal options contained in the Lease, the final expiration date of the Lease would be November 30, 2042. Notwithstanding the foregoing, in no event shall Tenant be required to exercise any option to renew the term of the Lease.

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Deleted: City Board of Education, City of Mountain Brook

Deleted: and restated by instrument, dated September 9, 1996, as further amended by an instrument dated November 21, 1997, and recorded on _____ in

Site No: 300249
Site Name: Liberty Parkway AL

3. **Leased Premises Description.** Tenant shall have the right, exercisable by Tenant at any time during the original or renewal terms of the Lease, to cause an as-built survey of the Leased Premises to be prepared and, thereafter, to replace, in whole or in part, the description(s) of the Leased Premises set forth on **Exhibit A** with a legal description or legal descriptions based upon such as-built survey. Upon Tenant's request, Landlord shall execute and deliver any documents reasonably necessary to effectuate such replacement, including, without limitation, amendments to this Memorandum and to the Lease.
4. **Effect/Miscellaneous.** This Memorandum is not a complete summary of the terms, provisions and conditions contained in the Lease. In the event of a conflict between this Memorandum and the Lease, the Lease shall control. Landlord hereby grants the right to Tenant to complete and execute on behalf of Landlord any government or transfer tax forms necessary for the recording of this Memorandum. This right shall terminate upon recording of this Memorandum.
5. **Notices.** All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein; To Landlord at: City of Mountain Brook, 56 Church Street, Mountain Brook, AL 35213; To Tenant at: Attn: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn Legal Dept. 116 Huntington Avenue, Boston, MA 02116. Any of the parties hereto, by thirty (30) days prior written notice to the other in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.
6. **Counterparts.** This Memorandum may be executed in multiple counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.
7. **Governing Law.** This Memorandum shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.

Deleted: <#>Right of First Refusal
There is a right of first refusal in the Lease.
¶

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[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have each executed this Memorandum as of the day first above written.

LANDLORD

2 WITNESSES

City of Mountain Brook,
an Alabama municipal corporation

Signature: _____
Print Name: _____
Title: _____
Date: _____

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of _____

County of _____

On this ____ day of _____, 201____, before me, the undersigned Notary Public, personally appeared _____, 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 which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public
Print Name: _____
My commission expires: _____

[SEAL]

[SIGNATURES CONTINUE ON NEXT PAGE]

TENANT

WITNESS

American Tower Asset Sub, LLC,
a Delaware limited liability company

Signature: _____
Print Name: _____
Title: _____
Date: _____

Signature: _____
Print Name: _____

Signature: _____
Print Name: _____

WITNESS AND ACKNOWLEDGEMENT

Commonwealth of Massachusetts

County of Middlesex

On this ____ day of _____, 201____, before me, the undersigned Notary Public, personally appeared _____, 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 which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public
Print Name: _____
My commission expires: _____

[SEAL]

EXHIBIT A

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Said parcel contains 0.09 acres.

EXHIBIT A (Continued)

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