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NCSG-464
Suburban Loop

0011177044

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2001-12-12 10:41:54
Cook County Recorder 16.50



FOR RECORDER'S USE ONLY

AMENDED CONTRACTOR'S NOTICE AND CLAIM FOR MECHANIC'S LIEN
(AS CONTRACTOR, OR ALTERNATIVELY, SUBCONTRACTOR)

TO: VIA CERTIFIED MAIL R/R
Illinois State Toll Highway Authority
c/o Arthur W. Phillip, Chairman
2700 Ogden Avenue
Downers Grove, Illinois

VIA CERTIFIED MAIL R/R
Adesta Communications, Inc.
c/o CT Corporation System, Registered Agent
301 S. 13th Street, Suite 500
Lincoln, Nebraska 68508

VIA CERTIFIED MAIL R/R
State of Illinois
Jim Ryan, Illinois Attorney General
500 South Second Street
Springfield, IL 62706

VIA CERTIFIED MAIL R/R
Touch America, Inc.
c/o Corporation Service Company, Registered
Agent
26 West 6th Avenue
Helena, Montana 59624

VIA CERTIFIED MAIL R/R
McLeodUSA Telecommunications
Services, Inc.
c/o CT Corporation System,
Registered Agent
208 South LaSalle Street
Chicago, Illinois 60604

VIA CERTIFIED MAIL R/R
Village of Elk Grove Village
c/o Ann I. Walsh, Village Clerk
901 Wellington Avenue
Elk Grove Village, Illinois 60007

VIA CERTIFIED MAIL R/R
Village of Arlington Heights
c/o Edwina Corso, Village Clerk
33 South Arlington Heights Road
Arlington Heights, Illinois 60005

VIA CERTIFIED MAIL R/R
City of Rolling Meadows
c/o Patricia Sutherland Weicker, City Clerk
3600 Kirchoff Road
Rolling Meadows, Illinois 60008

VIA CERTIFIED MAIL R/R
Village of Mount Prospect
c/o Velma Lowe, Village Clerk
100 South Emerson Street
Mount Prospect, Illinois 60056

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THE CLAIMANT, **Henkels & McCoy, Inc.**, general contractor or, alternatively subcontractor, claims a lien against the real estate, more fully described below, and against the interest of the following entities in the real estate: **Village of Elk Grove Village, City of Rolling Meadows, Village of Arlington Heights, Village of Mount Prospect, Illinois State Toll Highway Authority ("ISTHA"), Adesta Communications, Inc. f/k/a MFS Network Technologies, Inc. ("Adesta")**, developer, lessee or contractor, **Touch America, Inc.**, sublessee or lessee, **McLeod USA Telecommunications Services, Inc.**, sublessee or lessee, and any other person(s) claiming an interest in the real estate, more fully described below, stating as follows:

1. At all times relevant hereto and continuing to the present, the above referenced parties held an interest in the following described land in the County of Cook, State of Illinois, to wit:

- PARCELS:
- a. First right-of-way starting at McLeod's Rolling Meadows Node, buried south on New Wilke Road, continuing East on Golf Road, then southeast on Algonquin Road to Arlington Heights Road, south on Arlington Heights Road to Point Road, west on Point Road back to Arlington Heights Road, south on Arlington Heights Road to Bennett, east on Bennett to Gaylord, south on Gaylord to Higgins, east on Higgins to King Street and ending at an existing Ameritech duct.
 - b. Second right-of-way starting at the Elk Grove CO, continuing north on King Street until Lee Street, then east on Lee Street under Interstate 90 in an existing Ameritech conduit, then north on Briarwood till Algonquin, west on Algonquin until Arlington Heights Road, then north on Arlington Heights Road until Central, west on Central until Evergreen, north on Evergreen to Grove ending at the existing Ameritech duct.

2. On or about June 22, 2000, ISTHA entered into a "Permit Agreement" with Adesta granting Adesta the exclusive right to utilize the premises for certain purposes, pursuant to which Adesta would develop and operate a fiber optic cable network along ISTHA right-of-way and, Adesta would, among other things; 1) Pay ISTHA \$5,600,000.00 for its interest in the right-of-way; 2) Provide ISTHA and other Illinois Agencies a free and unrestricted use of the fiber optic system;

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3) ISTHA would share with the profits from third party agreements entered between them and users of the system, including, Touch America, Inc. and McLeod USA Telecommunications Services, Inc.; and 4) Adesta and ISTHA would share losses incurred by Adesta in the development and operation of the system.

3. Thereafter, Adesta contracted with Claimant, under Adesta contract No. 007-694-002, to furnish labor and materials in connection with the construction of a duct and fiber optic system along the above described property, which is referred to as "Suburban Loop."

4. The Claimant completed its work under said contract on August 6, 2000.

5. The original principal amount of the aforementioned contract was \$1,030,000.00. Payments have been made of \$920,690.29. There is due, unpaid and owing to the Claimant, after allowing all credits, the principal sum of **One Hundred Nine Thousand Three Hundred Nine and 71/100 Dollars (\$109,309.71)** which amount bears interest at the statutory rate of ten percent (10%) per annum.

6. Claimant claims a lien against the real estate and against the interest of Adesta, and against the interest of ISTHA, and all other parties named above, in the real estate (including all land and improvements thereon) and on the monies or other consideration due or to become due from or to Adesta and the other named parties under said contract, in the amount of **One Hundred Nine Thousand Three Hundred Nine and 71/100 Dollars (\$109,309.71)** plus interest.

7. Amended notice is given that Claimant's subcontract with Adesta purportedly arose from a contract between McLeodUSA Telecommunications Services, Inc. and Adesta dated September 15, 1999 under which Adesta, as contractor, would furnish and install a duct system and install a fiber optic cable route for the routes known as the "Elk Grove / Arlington Heights

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Loop,” the “Downers Grove Loop,” and the “Rolling Meadows Node Laterals” for McLeodUSA Telecommunications Services, Inc. (the “McLeodUSA Contract”).

8. Amended notice is given that Claimant claims an additional lien against the real estate and against the interest of Adesta and against the interest of McLeodUSA Telecommunications Services, Inc. and all other parties named above, in the real estate (including all land and improvements thereon) and on the monies or other consideration due or to become due to Adesta and McLeodUSA Telecommunications Services, Inc. under the McLeodUSA Contract, in the amount of **One Hundred Nine Thousand Three Hundred Nine and 71/100 Dollars (\$109,309.71)** plus interest.

Henkels & McCoy, Inc., a Pennsylvania corporation,

By: 

One of its attorneys

**This notice was prepared by and
after recording should be mailed to:**

James T. Rohlfing
Mark B. Grzymala
ROHLFING & OBERHOLTZER
One East Wacker Dr., Ste. 2420
Chicago, Illinois 60601
(312) 923-7100

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VERIFICATION

The undersigned, J. DEAN GAMBIZONE, being first duly sworn, on oath deposes and states that he is an authorized representative of Henkels & McCoy, Inc., that he has read the above and foregoing amended contractor's (or in the alternative, subcontractor's) notice and claim for mechanic's lien and that to the best of his knowledge and belief the statements therein are true and correct.

J. Dean Gambizone

SUBSCRIBED AND SWORN to before me this 10th day of December, 2001.

Ann B. Ocheltree
Notary Public

NOTARIAL SEAL
ANN B. OCHELTREE, Notary Public
Whitsein Twp., Montgomery County
My Commission Expires Sept. 24, 2004

My commission expires: _____

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