



Doc#: 0909103022 Fee: \$48.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 04/01/2009 10:24 AM Pg: 1 of 7

Prepared by:
Capitol Infrastructure, LLC
d/b/a Connexion Technologies
111 Coming Road, Suite 250
Cary, NC 27518

Return to after recording:
Linda Price
Capitol Infrastructure, LLC
d/b/a Connexion Technologies
111 Coming Road, Suite 250
Cary, NC 27518

EASEMENT AND MEMORANDUM OF AGREEMENT

STATE OF ILLINOIS
COUNTY OF COOK

1. **Grant of Easement.** In consideration of \$10.00, and for other good and valuable consideration including the payment of rents as provided in the Master Community Infrastructure Agreement dated March 10, 2008, the receipt and sufficiency of which are acknowledged, and in consideration of Capitol Infrastructure, LLC ("CI"), a North Carolina limited liability company, having entered into such Master Community Infrastructure Agreement with Grantor (the "Agreement"), the undersigned ("Grantor") grants to CI, its successors and assigns and their designees and licensees (together, "Grantee"), an easement on Grantor's property and all its improvements identified as ENV and as described in the attached Attachment I to this Agreement (the "Property") as follows:

2. **Definitions.** The following definitions shall apply:

Multi-Channel Video Services. "Multi-Channel Video Services" means the package of multi-channel cable television and other video-and/or-sound services, provided over the Infrastructure (e.g., the basic, premium, and pay-per-view services, whether analog or digital) offered by multi-channel video service providers generally to customers in the area where the Property is located (the "Area").

Voice Services. "Voice Services" means local voice telecommunications services, delivered within the Property in whole or in part via wired or cable transmission, provided by local exchange carriers ("LECs") or competitive local exchange carriers ("CLECs"), as well as long distance voice telecommunications services provided by interexchange carriers ("IXCs"), or by resellers of the same. Voice Services may include voice over internet protocol ("VOIP").

Data Services. "Data Services" means data transmission, including but not limited to connectivity with the internet using internet protocol ("IP") or the equivalent or successor protocol via wired Ethernet, wireless (802.11) transmission or other transmission media or protocol.

Security Services. "Security Services" means installation and/or monitoring of burglar, fire and other security systems and related equipment, including but not limited to wired or wireless detection and transmission equipment.

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Additional Services. “Additional Services” means any services other than the Multi-Channel Video Services, Voice Services, Data Services or Security Services that can be provided over the Infrastructure.

Infrastructure. “Infrastructure” means internal (other than within a single family detached home or town house) and external wiring, cables, poles, conduits, molding, pipes, antennas, transmitters, receivers, servers, switch equipment, software, edge equipment, central processing units, audio, video or information servers, satellite earth stations, electrical connections, one or more equipment rooms with space sufficient for the installation, operation and maintenance of head end equipment and termination of transmission lines, and other facilities and equipment for the provision and delivery of Multi-Channel Video Services, Voice Services, Data Services, Security Services or Additional Services.

Services. “Services” means the Multi-Channel Video Services, Voice Services, Data Services, Security Services, and Additional Services, each as more particularly defined above.

3. Blanket Easement. Subject to the provisions of Section 10 below relating to Grantee’s obligation to make certain easements available to regulated public utilities and public franchise video providers, Grantee, its successors, assigns, designees and licensees is hereby granted and shall retain an easement on, over, under and through all of the Property to (i) sell, market and provide Voice, Data, Security, Multi-Channel Video Services and Additional Services, and (ii) design, construct, install, operate, market, maintain, upgrade, repair, replace, access and remove Infrastructure to provide Voice, Data, Security, Additional Services and Multi-Channel Video Services. Subject to applicable law and subject to the provisions of Section 10 relating to Grantee’s obligation to make certain easements available to regulated public utilities and public franchise video providers, during the term of the Agreement no provider of Services other than Grantee may also provide Services within the Property. Subject to applicable law, and in recognition of Grantee’s obligations under Section 10 below to make certain easements available to regulated public utilities and public franchise video providers, during the term of the Agreement Grantor, its successors and assigns, will not (i) grant any easements across all or a part of the Property to providers of Services other than Grantee in any portion of the Property that is not a public street, road, highway or sidewalk, or public right of way and (ii) will not grant or dedicate any street, road, sidewalk or highway or public right of way to any public authority unless such grant expressly indicates that it is subject to this private easement. Subject to applicable law, even on portions of the Property which subsequently become a public street, road, sidewalk or highway or public right of way, no Infrastructure installed by or on behalf of Grantee may be used by any other party without the express written permission of Grantee, which permission may be withheld for any reason. Grantee’s easement rights set forth herein shall include, without limitation, the right to transmit signals related to the provision of Services over the Infrastructure to serve residents of other properties within the Area.

4. Perimeter Easement. Subject to the provisions of Section 10 below relating to Grantee’s obligation to make certain easements available to regulated public utilities and public franchise video providers, Grantee shall have a five-foot easement (the “Perimeter Easement”) on, over, under and through the outermost perimeter of the Property, and along any road or lot boundary within the Property, provided that if a public right of way or public easement intrudes into the Property, the Perimeter Easement shall be located from the edge of such right of way or easement to five feet inside the Property from such edge. Subject to Section 10 below relating to Grantee’s obligation to make certain easements available to regulated public utilities and public franchise video providers, said easement shall be to sell, market and provide Services and to design, construct, install, operate, market, maintain, upgrade, repair, replace, access and remove Infrastructure to provide Services. Subject to applicable law, and in recognition of Grantee’s obligations under Section 10 below to make certain easements available to regulated public utilities and public franchise video providers, during the term of the Agreement Grantor, its successors and assigns, will not grant any easements across all or a part of the Perimeter Easement to any providers of Services other than Grantee.

5. Easement in Common Areas and Multi-Family Structures. Subject to the provisions of Section 10 below relating to Grantee’s obligation to make certain easements available to regulated public

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utilities and public franchise video providers, Grantee shall have an easement on, over, under and through any common area or common property (including but not limited to utility areas, attics, and roofs) of a home Owners association, town house regime, multi-family apartment complex or condominium regime, now existing or hereinafter established within the Property (the “**Common Area Easement**”), to sell, market and provide Services and to design, construct, install, operate, market, maintain, upgrade, repair, replace, access and remove Infrastructure to provide Services. Subject to the provisions of Section 10 below relating to Grantee’s obligation to make certain easements available to regulated public utilities and public franchise video providers, no provider of Services other than Grantee may use such common areas and areas within multi-family apartment structures to install Infrastructure to provide Services. Subject to applicable law, and in recognition of Grantee’s obligations under Section 10 below to make certain easements available to regulated public utilities and public franchise video providers, during the term of the Agreement Grantor, its successors and assigns, will not grant any easements across all or a part of the Common Area Easement to any providers of Services other than Grantee.

6. Easement Under Roads and Public Right of Ways Established within the Property. Subject to the provisions of Section 10 below relating to Grantee’s obligation to make certain easements available to regulated public utilities and public franchise video providers, Grantee is hereby granted an easement on, over, under and through any road, street or highway within the Property, to (i) sell, market and provide Services, and (ii) design, construct, install, operate, market, occupy, maintain, upgrade, repair, replace, access and remove Infrastructure to provide Services. If such road, street or highway within the Property is subsequently dedicated to any public body or all or any other portion of the Property subsequently be dedicated as a public right of way, such dedication or conveyance shall be subject to the private easement established in the preceding sentence, provided that such private easement retained by Grantee its successors and assigns shall become non-exclusive in such otherwise public road, street or highway or public right of way. In such case, subject to the provisions of Section 10 below relating to Grantee’s obligation to make certain easements available to regulated public utilities and public franchise video providers, (i) the non-exclusive easement of Grantee, its successors, assigns, designees and licensees shall remain a private easement, (ii) the public shall have no interest in the private easement of Grantee, its successors, assigns, designees and licensees, (iii) neither the public nor any person or entity granted any rights by any public authority shall have the right to use any of the facilities of Grantee, its successors, assigns, designees and licensees in such private easement area. Subject to the provisions of Section 10 below relating to Grantee’s obligation to make certain easements available to regulated public utilities and public franchise video providers, Grantee, with respect to any road, street or highway within the Property that does not become a public road, street or highway, or any portion of the Property that does not otherwise become public property, shall at all times retain an easement (the “**Road Easement**”) to (i) sell, market and provide Services and (ii) design, construct, install, operate, market, occupy, maintain, upgrade, repair, replace, access and remove Infrastructure to provide Services. Subject to applicable law, and in recognition of Grantee’s obligations under Section 10 below to make certain easements available to regulated public utilities and public franchise video providers, during the term of the Agreement Grantor, its successors and assigns, will not grant any easements across all or a part of the Road Easement to any providers of Services other than Grantee.

7. Fixtures. Infrastructure shall not be deemed to be affixed to or a fixture of the Property.

8. Development Plan. Grantee, its successors and assigns will work with Grantor to locate Infrastructure with and in furtherance of the overall development plan for the Property, and to install its exterior telecommunications cable underground except for switch locations and junction boxes.

9. Other Easements; Term of Easements. Grantor reserves the right to grant other easements on the Property not in conflict with Grantee’s rights set forth herein, but Grantor will not allow such other easements to cause unreasonable interference with the easement granted to Grantee herein. Neither Grantor nor any Owner of any portion of the Property (referred to individually herein as an “**Owner**”, and collectively as the “**Owners**”) shall take any action with respect to the easements granted to Grantee

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herein that would interfere or be inconsistent with the use of the easement by Grantee for the purposes named herein.

Grantee will have and hold the easements on the Property granted herein, together with every right and appurtenance connected to them for so long as Grantee and Grantor or Grantor's successors and assigns or a homeowners' or condominium Owners' association created by Grantor have entered into a Master Community Infrastructure Agreement with Grantee, and during this period the easements granted to Grantee herein shall be exclusive easements. Upon termination or expiration of such Master Community Infrastructure Agreement, such exclusive easements shall become nonexclusive and remain in effect for a period of one hundred twenty (120) days, after which time Grantee shall have the right to enter the Property for an additional period of up to ninety (90) days to remove its Infrastructure on the Property, provided that Grantee shall repair any portions of the Property damaged during the removal of its Infrastructure to the condition immediately prior to such removal, ordinary wear and tear excepted. Grantor, its successors and assigns hereby agree to warrant and forever defend the easements to Grantee as well as its successors and assigns against every person who claims any part of them.

These easements and other rights granted to Grantee hereunder run with the title to the Property and are binding on Grantor, its successors and assigns and on all subsequent Owners of the Property or portions thereof acquired directly or indirectly from Grantor, as well as on others who may claim an interest in all or a portion of the Property.

10. Access by Public Utilities and Franchise Video Providers. Notwithstanding any provision of this Agreement and Memorandum of Agreement to the contrary, if a resident within the Property enters into a valid bona fide service agreement with a franchise video provider or public utility in the state in which the Property is located with respect to regulated video or voice services respectively, as the case may be, Grantee will, upon request by such resident, public utility or regulated service provider, and subject to Grantee receiving reasonable compensation therefore, grant limited non-Infrastructure non-exclusive easement access rights to the Property to such public utility or franchise video provider sufficient to enable such provider to provide the regulated service to the end user on the Property during the term of such service agreement, such rights to be consistent with the provisions of Section 8 above.

11. Memorandum of Agreement. In addition to the rights granted above, the Agreement grants to Grantee certain rights to market and to designate providers of Services to residents of the Property.

[Signature page to follow]

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IN WITNESS WHEREOF, Grantor has executed this Easement and Memorandum of Agreement on the date stated following its signature below.

OWNER:

161 WEST KINZIE JV, LLC,
a Delaware limited liability company

By: [Signature]

Name: ADAM D LYND

Title: VP

DATE: 12/17, 2008

Signed, sealed and delivered in the presence of:

[Signature]
Witness 1 Signature

BIMLA SCHAEFFER
Witness 1 Print Name:

[Signature]
Witness 2 Signature

Cynthia Mora
Witness 2 Print Name:

ACKNOWLEDGMENT

STATE OF Texas

COUNTY OF Bexar

I, Liz Balderas, a Notary Public of County and State
aforementioned, do hereby certify that A. David Lynd, known to me to be the
authorized signer of _____, a _____, personally appeared before me
this day and acknowledged the due execution of the foregoing instrument on behalf of that
entity.

Witness my hand and seal this 2 day of March 2009.

Notary Public: Liz Balderas

My Commission Expires: 1/24/13



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Attachment I to Easement and Memorandum of Agreement

Legal Description of the Property

Parcel 1:

That part of Lot 2, 3, and 8 and all of Lots 4,5,6, and 7 in the resubdivision of Lot 5 in Block 4 in the original town (now City) of Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian; and that part of Lot 6 in Block 4 in said Original town of Chicago; together with all that part of the vacated alley bounded and described as follows:

Beginning at the Northwest corner of Lot 6 in Block 4 in said Original Town of Chicago; Thence South along the West line of said Lot 6 to the Easterly extension of the North line of the South 19.00 feet of Lot 2 in said resubdivision of Lot 5; Thence West along the last described line to the East line of said Lot 2; Thence South along the East line of said Lot 2 in said resubdivision to a point 8.00 feet North of the Southeast corner of said Lot 2; Thence South, easterly along a straight line drawn to a point 1.00 foot South of the north line and 9.00 feet West of the East line of said Lot 3; thence West along a line parallel with the North line of said Lot 3 to the West line thereof; Thence South along the West line of Lots 3,4,5,6, 7 and 8 in said resubdivision, a distance of 108.00 feet; thence Southeasterly along a straight line, a distance of 88.40 feet to a point on the Northerly line of Carroll Avenue and so called extension across said vacated alley; thence Easterly along the Northerly line of said Avenue, and the extension thereof across said vacated alley to the West line of the East 26.00 feet of the West ½ of Lot 6 in Block 4 in said original Town of Chicago; Thence North along the last described line to the North line of said Lot 6; thence West along the North line of said Lot 6 to the point of beginning, in Cook County, Illinois.

Parcel 2:

The South 19.00 feet of Lot 2 and the North 1.00 foot of Lot 3 of the Resubdivision of Lot 5 in Block 4 in Original Town of Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, excepting and excluding however a triangular shaped piece of land in Southeast corner thereof, which measures 9.00 feet on the Southerly side and 9.00 feet on the Easterly side, in Cook County, Illinois.

Parcel 3:

Sublot 1 and the North 2.00 feet of Sublot 2 of Lot 5 in Block 4 in Original town of Chicago in the Southeast ¼ of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 4:

that part of Lot 8 in the resubdivision of Lot 5 and that part of Lot 6 in Block 4 in the Original town of Chicago; together with that part of the 10-foot vacated alley in Section 9, Township 39 North, Range 14; East of the third Principal Meridian, bounded and described as follows:

Beginning at a point on the West line of said Lot 8, a distance of 108.00 feet South of the intersection of the West line of Lots 3 to 8, inclusive in the resubdivision of Lot 5 aforesaid, with the South line of the North 1.00 foot of lot 3 aforesaid; Thence Southeasterly, a distance of 88.40 feet to a point on the Northerly line of Carroll Avenue; Thence westerly along the Northerly line of Carroll Avenue to the West line of said Lot 8; thence North along the West line of said Lot 8 to the point of beginning, in Cook County, Illinois.

Parcel 5:

Lot 3, and the East 6 feet of Lot 4 (except that part of said Lots taken and used for West Carroll Avenue) in the subdivision of Lot 6 all in Block 4 in the Canal Trustees Subdivision of Lots in the Original Town of Chicago in

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Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 6:

That part of the following described property lying above a horizontal plane 22.6 feet above Chicago City Datum and described as follows:

Those parts of Lot 3 and the East 6 feet of Lot 4 in the Subdivision of Lot 6 in Block 4 in the Canal Trustees subdivision of Lots in the Original Town of Chicago, lying South of the North line of West Carroll Avenue in Section 9, Township 39 North, Range 14, East of the third Principal Meridian, in Cook County, Illinois.

Parcel 7

That part of the vacated North-South 10 foot public alley vacated by ordinance approved July 19, 2007 by the city council of the city of Chicago, lying west of the west line of lot 4 in Canal Trustees Subdivision of Lots in Original Town of Chicago in the Southeast 1/4 of Section 9 Township 39 North Range 14 east of the third principal meridian in Cook County IL and lying east of the east line of lots 1 and 2 in the subdivision of Lot 5 in Block 4 in Original Town of Chicago aforesaid lying south of a line drawn from the Northeast corner of lot 1 in Subdivision of Lot 5 in Block 4 in the Original Town of Chicago aforesaid to the Northwest corner of Lot 4 in Canal Trustees Subdivision of Lots in Original Town of Chicago in the Southeast 1/4 of Section 9 aforesaid and lying North of the North line of the vacated North-South 10 foot alley vacated by ordinance approved July 29, 1930 by the City Counsel of the City Chicago and the quit claim deed of conveyance of said North South 10 foot alley recorded October 22, 1930 in the Office of the Recorder of Deeds of Cook County, IL as document number 10774448 said North line of the vacated North South 10 foot alley being described as the Easterly extension of the North line of the South 10 feet of Lot 2 in Subdivision of Lot 5 in block 4 in Original Town of Chicago aforesaid in Cook County IL.

PINS: 17-09-404-001
17-09-404-002
17-09-404-003
17-09-404-011
17-09-404-016

Common Address: 161 W. Kinzie
Chicago, Illinois