

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2009 081278

2009 DEC -8 AM 11:28

MICHAEL A. BROWN
RECORDER

PREPARED BY:
Md7 Capital One, LLC

~~WHEN RECORDED RETURN TO:~~

Michael Fraunces, President
3721 Valley Centre Drive
Suite 301
San Diego, CA 92130

*Return to Dionne Carter
Lawyers Title Ins Corp.
7138 Glen Forest Dr. Ste. 300
Richmond, Va 23226*

PARCEL #: 64-05-15-232-001.000-016
(08-003113044)

SPACE ABOVE FOR RECORDER'S USE

**OPEN-END MORTGAGE, ASSIGNMENT OF LEASES AND RENTS
AND SECURITY AGREEMENT**

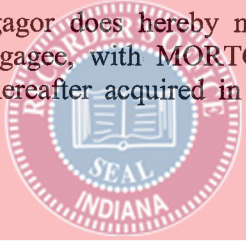
(Maximum Principal Indebtedness \$82,000,000.00)

NOTICE TO MORTGAGOR: THE LOAN SECURED BY THIS MORTGAGE PROVIDES FOR A VARIABLE INTEREST RATE.

This OPEN-END MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT ("Mortgage"), is made as of November 24, 2009, by and among Md7 Capital One, LLC, a Delaware limited liability company ("Mortgagor"), whose address is 3721 Valley Centre Drive, Suite 301, San Diego, California 92130, and Key Equipment Finance Inc., a Michigan corporation, as facility agent on behalf of itself and KeyBank National Association, a national banking association ("KeyBank") (Key Equipment Finance Inc., in that capacity, "Mortgagee"), whose address is 1000 South McCaslin Boulevard, Superior, CO 80027, Attention: LAS Operations.

1. Grants; Obligations Secured.

1.1 Real Property. Mortgagor does hereby mortgage, give, grant, bargain, sell, alien, convey, confirm and assign unto Mortgagee, with MORTGAGE COVENANTS, all right, title and interest of Mortgagor, now owned or hereafter acquired in and to the following property, rights and interests (collectively the "Property"):



*340
OK # 161
3574824
dm*

11738788
CH38948A

IN-T8

(a) that certain lease agreement, and any successor lease (either of the foregoing, as applicable, the “Lease”) assigned or created pursuant to, or as described in, that certain Terms and Conditions of Lease Assignment Agreement between City of Portage Department of Parks and Recreation, previously and erroneously referred to as Portage Park and Recreation Board of the City of Portage, as assignor, and Mortgagee, as assignee (“Lease Assignment Agreement”), pertaining to that certain real property leased by T-Mobile Central LLC, a Delaware limited liability company, as successor in interest to VoiceStream GSM I Operating Company LLC, a Delaware limited liability company, as lessee, pursuant to that certain Site Lease with Option dated April 30, 2003 as amended (“Lease Agreement”), and located in the County of Porter, State of Indiana, described as set forth on **Exhibit “A”** attached hereto and incorporated by this reference (the “Real Property”);

(b) any interest in the Real Property or the Lease Agreement arising by reason of the Lease Assignment Agreement or otherwise;

(c) all of the rents, issues, royalties, profits, receipts, revenue and income payable under or in respect of the foregoing (collectively the “Rents”) as more fully described in the Lease Assignment Agreement (subject, however, to the absolute assignment thereof set forth hereinafter and the right, power and authority hereinafter given to and conferred upon Mortgagee to collect and apply the Rents); and

(d) all proceeds, including insurance proceeds and claims arising on account of any damage to, loss or taking of, or diminution in value of, any of the Property.

1.2 Obligations Secured. The grants, assignments and transfers made in **Section 1.1** secure, in such order of priority as Mortgagee, in its absolute discretion, may determine, the due, prompt and complete payment, performance, observance and satisfaction by Mortgagee of all of its indebtedness obligations, covenants, agreements and conditions under all of the following (collectively, the “Obligations”): (a) that certain Amended and Restated Loan and Security Agreement among Mortgagee, Md7 Capital Two, LLC, Md7 Capital, LLC, Mortgagee, and KeyBank, dated as of January 23, 2009 (the “Amended and Restated Loan and Security Agreement”) and the other transaction documents defined therein (the “Secured Documents”), (b) this Mortgage, including all additional advances made by the Mortgagee under the Amended and Restated Loan and Security Agreement or under this Mortgage, (c) all other agreements to which Mortgagee and Mortgagee may now or hereafter be or become parties which state that Mortgagee’s obligations under such agreements are secured by this Mortgage, and (d) all extensions, modifications, substitutions, replacements and renewals of any of the foregoing. Mortgagee acknowledges (i) that the Amended and Restated Loan and Security Agreement provides for the making of advances on a revolving basis, and (ii) that the lien of this Mortgage shall not be affected by any increase or reduction (including, without limitation, to zero) in the outstanding principal amount of the Obligations from time to time, and (iii) that, for purposes of any reconveyance, the Obligations will not be considered to have been paid in full until the occurrence of the Final Payout Date, as defined in the Secured Documents.

1.3 Open-End Mortgage. This Mortgage is an Revolving Credit Plan Mortgage under Section 32.29 of the Indiana Code and is intended to secure the unpaid balances of loan advances to be made after this Mortgage has been delivered to the appropriate county recorder’s office for recordation.

The parties agree a portion of the advances secured by this Mortgage will be revolving in nature (where principal is advanced, repaid and readvanced pursuant and subject to the Loan and Security Agreement) and as a result, the aggregate loan advances secured by this Mortgage are anticipated to exceed Forty-One Million Dollars (\$41,000,000.00); provided, however, the maximum amount of unpaid loan indebtedness, exclusive of interest thereon and other charges due hereunder, which may be outstanding at any one time is Eighty-Two Million Dollars (\$82,000,000.00).

2. To protect the security of this Mortgage, Mortgagor represents, warrants and agrees as follows:

2.1 Defense Obligations; Reimbursement. Mortgagor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee. Mortgagor shall immediately reimburse Mortgagee for all fees and costs, including attorneys' and experts' fees and costs, incurred by Mortgagee for: (a) enforcement of any of the Obligations, this Mortgage or any of its terms, or the exercise of any rights or remedies hereunder and/or at law, in equity or otherwise, whether or not any action or proceeding is filed; (b) representation of Mortgagee in any bankruptcy, insolvency, reorganization or other debtor-relief or similar proceeding of or relating to Mortgagor, to any person liable (by way of co-obligation, guaranty, assumption, endorsement or otherwise) upon or in connection with any of the Obligations, or to the Property; or (c) representation of Mortgagee in any action or proceeding relating to the Property, whether commenced by Mortgagee or any other person, including foreclosure, receivership, lien or stop-notice enforcement, bankruptcy, eminent domain and probate actions or proceedings.

2.2 Protection of Security. Should Mortgagor fail to make any payment or to do any act as provided herein or in any of the Secured Documents, then Mortgagee, but without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee; pay, purchase, contest or compromise any encumbrance, charge or lien which in its judgment appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees. In addition to any other debt or obligation secured hereby, this Mortgage shall also secure unpaid balances of advances heretofore and hereafter made with respect to the Property, for the payment of taxes, assessments, insurance premiums or costs incurred for the protection of the Property. Unless Mortgagor and Mortgagee agree to other terms of payment, such amounts shall be immediately due and payable with interest thereon at the rate provided in the Loan and Security Agreement. Mortgagor hereby covenants and agrees that Mortgagee shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the indebtedness secured hereby. Nothing contained in this paragraph shall require Mortgagee to incur any expense or take any action hereunder.

2.3 Payment. Mortgagor shall pay upon demand all sums expended by Mortgagee pursuant to **Section 2.2**, with interest from the date of expenditure at the rate applicable from time to time under the Secured Documents, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Mortgagee not to exceed the maximum allowed by law at the time when said statement is demanded.

2.4 Security Interest Information.

2.4.1 Representations and Warranties. Mortgagor represents and warrants to Mortgagee that: (a) Mortgagor's full, correct and legal name, as indicated on the public record of the

jurisdiction of its organization, which shows Mortgagor to have been organized, is as shown in the first paragraph of this Mortgage; (b) Mortgagor's mailing address for purposes of any financing statement filed in connection with this Mortgage is as shown in the first paragraph of this Mortgage; (c) the Property is for business, commercial and/or investment use by Mortgagor, and does not include goods used or bought for use by Mortgagor primarily for personal, family, or household purposes; (d) the Obligations are incurred by Mortgagor for business, commercial and/or investment purposes, and not primarily for personal, family, or household purposes; and (e) the transaction that is the subject of the Secured Documents is not a consumer-goods transaction or a consumer transaction.

2.4.2 **Changes in Name or State of Organization.** Mortgagor will make no change to its name, address, organizational status or existence, or state of organization, without providing Mortgagee thirty (30) days' prior written notice.

2.5 **Ownership of Property.**

2.5.1 Mortgagor represents and warrants that it is, and as to portions of the Property to be acquired hereafter agrees that it will be, the sole owner of the Property, free from any adverse lien, security interest or other claim, other than the security interest granted hereby. Mortgagor represents and warrants that it has not executed or authorized any security agreement, assignment, pledge or financing statement covering any of the Property except in favor of Mortgagee, and that no financing statement covering any of the Property is on file in any public office in any jurisdiction. Without Mortgagee's prior written consent, Mortgagor will not execute, file or authorize to be filed, in any jurisdiction, any financing statement covering any of the Property in which Mortgagee is not named as the sole secured party.

2.5.2 Mortgagor will maintain and keep the Property in good condition and repair and will not commit or permit any waste or unreasonable depreciation. Mortgagor will not alter, remove, or demolish any Property without Mortgagee's prior written consent, except as may be required by law or permitted by other provisions of this Mortgage.

2.6 **Further Agreements, Acts; Financing Statements.** In addition to being an Open End Mortgage and Assignment of Rents, this Mortgage is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Mortgagor hereby grants Mortgagee a security interest in said items. Mortgagor shall execute any and all further agreements, assignments, documents and financing statements, and take such other further acts, as Mortgagee may reasonably request from time to time in order to evidence, protect, perfect or continue the security interest of Mortgagee in the Property or otherwise carry out the purposes and intent of this Mortgage. Mortgagee may file financing statements in all states, counties and other jurisdictions as it may elect, without the signature of Mortgagor if permitted by law.

3. **It is further agreed:**

3.1 **Condemnation Award.** Any award of damages in connection with any condemnation for public use of or injury to the Property, or any part thereof is hereby assigned and shall be paid to Mortgagee who may apply or release such moneys received by it in the manner provided in the Loan and Security Agreement.

3.2 **Acceptance of Late Payment.** By accepting payment of any sum secured hereby after its due date, Mortgagee does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

3.3 Other Mortgagee Rights. At any time or from time to time, without liability therefor and without notice, upon written request of Mortgagee and presentation of this Mortgage and the Secured Documents (to the extent legally required) for endorsement, and without affecting the personal liability of any person for payment of the Obligations, Mortgagee may: reconvey any part of the Property, consent to the making of any map or plat thereof; join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.

3.4 Statutory Condition. This Mortgage is upon the STATUTORY CONDITION and upon the further condition that all covenants and agreements of Mortgagor contained herein and in the Note shall be kept and fully performed, for any breach of which Mortgagee shall have the STATUTORY POWER OF SALE.

3.5 Leases and Rents.

3.5.1 Mortgagor absolutely and unconditionally hereby ASSIGNS and TRANSFERS to Mortgagee all of the Rents; reserving to Mortgagor only the right, prior to the occurrence of a Termination Event (as defined in the Loan and Security Agreement) (which right shall terminate immediately and automatically upon the occurrence and during the continuance of any such Termination Event, without notice), subject to the provisions of the Secured Documents, to collect, receive and retain the Rents as and when (and not before) they become due and payable, but not otherwise. Mortgagor shall, at the request of Mortgagee, execute such further assignments to Mortgagee of the Rents as Mortgagee may require.

3.5.2 Upon the occurrence and during the continuance of a Termination Event, Mortgagee may, at any time and without notice, irrespective of whether a notice of such Termination Event has been delivered to Mortgagee, and without regard to the adequacy of the security for the Obligations, in person or by agent or representative with or without bringing any action or proceeding, or by a receiver appointed by a court, do any one or more of the following, in its own name or in the name of Mortgagor: (a) enter upon, take possession of and/or operate the Property, or any part thereof; (b) sue for or otherwise collect and receive Rents (including those past due and unpaid) and apply such Rents (less costs and expenses of operation (including reserves) and collection, including attorneys' and experts' fees and costs) to the payment of the Obligations in such order and in proportions as Mortgagee in its absolute discretion may determine; (c) dispossess by usual proceedings any lessee defaulting in the payment of Rents; (d) lease the Property or any part thereof; (e) do any other acts which Mortgagee deems proper to protect this assignment and its interests hereunder until all of the Obligations are paid in full; and (f) exercise any other right permitted by law. The exercise of any of the foregoing rights shall not cure or waive any Termination Event or notice of the occurrence and continuance of a Termination Event hereunder or invalidate any act done pursuant to such notice, nor render Mortgagee a mortgagee in possession.

3.6 Default and Remedies.

3.6.1 **Default.** The occurrence and continuance of a Termination Event, as defined in the Loan and Security Agreement, shall constitute an Event of Default under this Mortgage.

3.6.2 **Remedies.** Upon the occurrence of or during the continuance of an Event of Default, Mortgagee may in addition to all of its other rights and remedies, all of which are cumulative, do any one or more of the following: (a) declare all sums secured hereby immediately due and payable; (b) enter on or into the Property, in person, by agent or by court appointed receiver, and take such action as Mortgagee may determine desirable to complete any unfinished development and/or to manage and operate the Property and/or to collect Rents, and Mortgagee may apply any Rents collected against the

Obligations without in any way curing or waiving any default of Mortgagor; (c) foreclose, non-judicially and/or by judicial action, in any order, separately or together, at the same or different times and places, in one sale or any number of separate sales, with disclaimers of any or all warranties, against some or all of the Property, and/or any other real or personal property security for the Obligations, without waiving any other part thereof; (d) obtain the appointment of a receiver ex parte and without prior notice to Mortgagor, which notice Mortgagor hereby waives; (e) do any other acts which Mortgagee deems proper to protect this Mortgage and its interests hereunder until all of the Obligations are paid and performed in full; and (f) exercise any other legal, equitable or contractual right or remedy against Mortgagor and/or any security and/or any other person liable (by way of co-obligation, guaranty, assumption, endorsement or otherwise) upon the Obligations. It is the intention of the parties hereto that this Mortgage shall also constitute a security agreement in favor of Mortgagee, as secured party, within the meaning of the Uniform Commercial Code (the "UCC") of the State in which the Property is located and that Mortgagee shall have all the rights of a secured party under the UCC in addition to having any other right or remedy available at law or in equity.

3.6.3 Effect of Exercise of Remedies. No remedy provided or permitted under this Mortgage is exclusive of any other, or of any remedy provided or permitted by law, equity or any instrument or agreement evidencing, securing, guarantying or relating to any of the Obligations. Each such remedy is cumulative and in addition to every other. No exercise of remedies, including foreclosure, against any part of the Property shall exhaust or extinguish Mortgagee's rights to exercise remedies, including foreclosure, against any other part of the Property until the Obligations are paid in full. A sale of less than all of the Property or any defective or irregular sale made under this Mortgage shall not exhaust or extinguish the power of sale provided for in this Mortgage or any right or power of sale provided by law, and subsequent sales may be made until the Obligations are paid in full, or the entire Property sold, without defect or irregularity. Mortgagee may exercise any one or more of its remedies at its option without regard to the adequacy of its security.

3.6.4 Sale(s) by Mortgagee of the Property.

(a) If Mortgagee elects to sell any of the Property under the power of sale herein granted, Mortgagee shall record and give all notices of default(s), election(s) to sell and sale(s) as may be required by law. Upon the expiration of such time(s) as is required by law, Mortgagee shall, without demand on Mortgagor, sell all or such portions of the Property as Mortgagee may direct in its sole discretion upon any terms and conditions specified by Mortgagee and permitted by law, at the time and place (or the times and places) fixed in the notice(s) of sale(s) (subject to postponement as provided below), as a whole or in separate parcels or items, and in such order, and in one sale or any number of separate sales, all as Mortgagee may direct in its sole discretion, at public auction(s), to the highest bidder(s) for cash payable at the time of sale(s). Mortgagor waives all rights (i) to require that the Property be sold together or separately, (ii) to direct the order in which any of the Property will be sold, and (iii) to have any of the Property marshalled upon any sale. Mortgagee may postpone any sale from time to time by public announcement at the time and place of the sale as fixed by notice or by prior postponement, and may without further notice make such sale at the time fixed by the last postponement.

(b) Any person, including Mortgagee, may purchase at such sale. Mortgagee shall deliver to the purchaser a deed conveying the Property or portion thereof sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof.

(c) Upon a sale by Mortgagee, and after deducting all costs, expenses, and fees of Mortgagee and of this trust (including the cost of evidence of title in connection with the sale),

Mortgagee shall apply the proceeds from the sale to the payment of the Obligations in such order as Mortgagee may direct and the remainder, if any, to the person or persons legally entitled thereto.

3.7 Successor Mortgagee. Mortgagee, or any successor in ownership of any of the Obligations, may from time to time, by instrument in writing, substitute a successor or successors to any Mortgagee named herein or acting hereunder, which instrument, executed by the Mortgagee and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated shall be conclusive proof of proper substitution of such successor Mortgagee or Mortgagees, who shall, without conveyance from the Mortgagee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Mortgagor and Mortgagee hereunder, the recordation information for this Mortgage, and the name and address of the new Mortgagee.

3.8 Binding. This Mortgage applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Mortgagee shall mean the owner and holder, including pledgees, of the Secured Documents, whether or not named as Mortgagee herein. In this Mortgage, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular includes the plural and vice versa.

3.9 Acceptance by Mortgagee. That Mortgagee accepts this Mortgage when this Mortgage, duly executed and acknowledged, is made a public record as provided by law. Mortgagee is not obligated to notify any party hereto of pending sale under any other Mortgage or of any action or proceeding in which Mortgagor or Mortgagee shall be a party unless brought by Mortgagee.

3.10 Acceleration of Indebtedness Upon Sale of the Property. In the event Mortgagor, or any successor in interest to Mortgagor in the Property, sells, conveys, alienates, assigns, transfers, encumbers or disposes of the Property, or any part thereof or any interest therein, or becomes divested of its title or any interest therein in any manner or way, absolutely or for security, voluntarily or involuntarily, or enters into an agreement to do so, without the prior written consent of Mortgagee except as otherwise expressly permitted under the Secured Documents, then this Mortgage shall be in default and Mortgagee may, at its election, declare the sums due under the Secured Documents and the other Obligations, irrespective of the terms of the Secured Documents and/or such other Obligations, immediately due and payable without notice. No waiver of the requirement of consent by Mortgagee as set forth herein shall be effective unless in writing. Consent by Mortgagee to any one or more transactions described above shall not constitute nor be deemed to be a consent, or waiver of the requirement of consent, as to any future or succeeding transactions.

3.11 Receiver. Following an Event of Default, the Mortgagee may apply to a court of competent jurisdiction for the appointment of a receiver of the Property, ex parte without Notice to the Mortgagor, whether or not the value of the Property exceeds the Indebtedness, whether or not waste or deterioration of the Real Property has occurred, and whether or not other arguments based on equity would justify the appointment. The Mortgagor irrevocably, with knowledge and for valuable consideration, consents to such an appointment. Any such receiver shall have all the rights and powers customarily given to receivers in Indiana, including the rights and powers granted to the Mortgagee by this Mortgage, the power to maintain, lease and operate the Real Property on terms approved by the court, and the power to collect the Rents and apply them to the Obligations or otherwise as the court may direct. Once appointed, a receiver may at the Mortgagee's option remain in place until the Obligations have been paid in full.

3.12 No Merger. No merger shall occur, and Mortgagee shall not be deemed to have intended that any merger occur, as a result of Mortgagee's acquiring any other estate or interest in, or any other lien on, the Property, unless Mortgagee consents to a merger in writing.

3.13 Severability; Construction; Governing Law. If any term or provision of this Mortgage or the application thereof to any person, entity or circumstances shall to any extent be invalid or unenforceable, the remainder of this Mortgage, or the application of such terms or provision to persons, entities, or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of this Mortgage shall be valid and enforceable to the fullest extent permitted by law. Headings in this Mortgage are for convenience only and do not govern, limit or aid in the interpretation of the provisions of this Mortgage. This Mortgage and the obligations secured hereby shall be governed by and interpreted in accordance with the laws of the State of Indiana.

3.14 Joint and Several. If more than one Mortgagor is named herein, all obligations of Mortgagor hereunder are joint and several and references to "Mortgagor" shall refer to each and every Mortgagor hereunder. If Mortgagor is a partnership, Mortgagor's obligations hereunder are the joint and several obligations of all general partners in Mortgagor.

3.15 Request for Notice. Mortgagor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Mortgagor at the address hereinbefore set forth.

3.16 Interpretation. The words "herein," "hereof," "hereunder" and words of similar import refer to this Mortgage as a whole and not to any particular Article, Section or subdivision hereof. All references to "Articles," "Sections," "Exhibits" and other parts or subdivisions are to the corresponding Articles, Sections, Exhibits or parts or subdivisions of this Mortgage, unless otherwise specified. The terms "include," "including" and forms thereof mean inclusive without limitation. The term "day" means calendar day. The term "person" means any individual, corporation, partnership, limited liability company, governmental entity or authority, or other entity of any kind.

3.17 No Impairment. Mortgagee's security rights and interest under this Mortgage will furthermore not be impaired or adversely affected should Mortgagor, at any time and for any reason, acquire ownership of all or any part of the leased Property subject to this Mortgage, whether by purchase of the Real Property from the Lessor or otherwise. Should the foregoing occur, Mortgagor's additional ownership rights in and to the Real Property shall automatically become subject to the terms and conditions of the security interest and rights granted under this Mortgage, without the necessity of executing a formal amendment hereto.

3.18 Advances. Mortgagee shall have the right, within Mortgagee's sole option and discretion, to make additional advances on Mortgagor's behalf for the following purposes: If Mortgagor should for any reason fail to pay any rent, or violate or fail to comply with any other term or condition of, or breach, or commit an event of default under the Lease, Mortgagor agrees that Mortgagee may make additional advances on Mortgagor's behalf and/or take such other action or actions as Mortgagee may deem to be necessary and proper, within Mortgagee's sole discretion, to pay such rent, to perform such other terms and conditions, to cure or rectify any such default or defaults under the Lease, and/or to prevent additional defaults from occurring in the future.

3.19 Waiver. In the event the Lease shall be terminated by reason of a default thereunder by Mortgagor and Mortgagee shall acquire from the fee owner a new lease, Mortgagor hereby waives any right, title and interest in and to such new lease or the leasehold estate created thereby, waiving all rights of redemption now or hereafter operable under any law.

3.20 Waiver of Marshalling. Notwithstanding the existence of any other security interests in the Property held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Mortgagee shall have the right to determine the order in which any or all portions of the indebtedness secured hereby

are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagor, any party who consents to this Mortgage, and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby, waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

3.21 Release. Upon payment of all sums secured by this Mortgage, Mortgagee shall discharge this Mortgage. Mortgagor shall pay Mortgagee's reasonable costs incurred in discharging this Mortgage.

3.22 Priority of Mortgage Lien. Mortgagee, at Mortgagee's option, is authorized and empowered to do all things provided to be done by a mortgagee under IC §32-29, and any present or future amendments or supplements thereto, for the protection of Mortgagee's interest in the premises.

3.23 Future Advances. This Mortgage shall secure unpaid balances of loan advances, either optional or obligatory, to be made pursuant to the Loan and Security Agreement after this Mortgage is delivered to the Recorder for record. Said loan advances as well as the amount being advanced contemporaneously with the execution and delivery hereof shall constitute the loan indebtedness and shall be secured hereby.

SIGNATURE OF MORTGAGOR:

Md7 CAPITAL ONE, LLC, a
Delaware limited liability company



STATE OF CALIFORNIA

)
) ss:
)

COUNTY OF SAN DIEGO

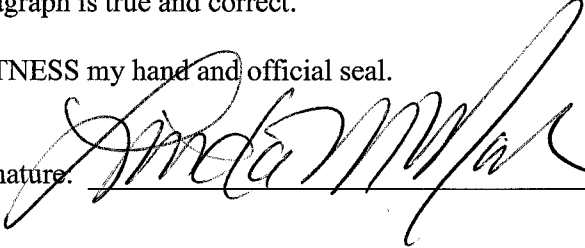
On 11-24, 2009, before me, Linda M Marsh

a Notary Public, personally appeared Michael Fraunces, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument he, or the entity upon behalf of which he acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____



(Seal)

This document was prepared by:
Michael Fraunces, President
Md7 Capital One LLC
3721 Valley Centre Drive, Suite 301
San Diego, CA 92130

and I affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Michael Fraunces

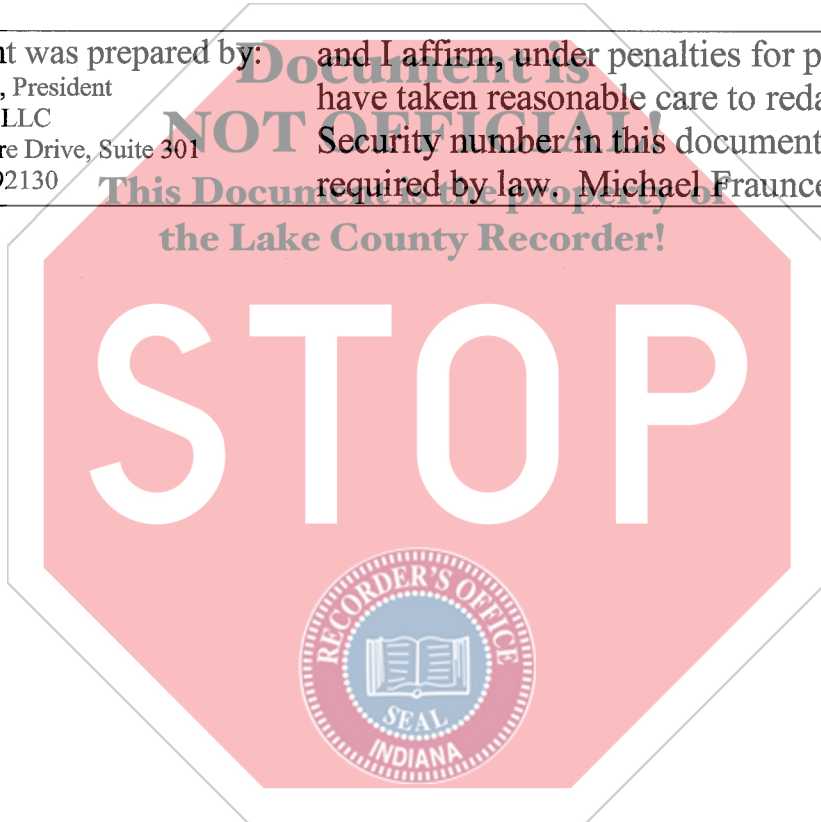


EXHIBIT A
PREMISES DESCRIPTION AND LEGAL DESCRIPTION OF PROPERTY

Grantee address

Street Address: 5250 US Highway 6, Portage, IN 46368

Parcel #: 64-05-15-232-001.000-016 (08-003113044)

Legal Description:

That certain cell tower site (and easement) located on a portion of the real property described as follows:

Part of the northeast quarter of the northeast quarter of Section 15, Township 36 North, Range 7 West of the Second Principal Meridian in the City of Portage, Porter County, Indiana, lying south of Evergreen Meadows Unit N2 4-A, a subdivision as shown in Plat File 13-E-3 in the Office of the Recorder of said County, which part lies west of the east line of said subdivision extended to the south line of said northeast quarter.

AND BEING the same property conveyed to Byco from Jacquelyn M. Sterling by Tax Title Deed dated August 13, 1987 and recorded August 14, 1987 in Deed Book 381, Page 33; AND FURTHER CONVEYED to City of Portage Department of Parks and Recreation from Mont R. Jones, Charlotte A. Munter, and Wanda Y. Vajner, collectively doing business under the name Byco by Quit-Claim Deed dated March 12, 1997 and recorded April 25, 1997 in Deed Book 477, Page 597.

