Development Agreement Staff Report

Meeting Body:

Magna City Council

Meeting Date:

August 26th, 2025

File Number & Project Type:

CUP2025-001379,

Development Agreement

Planner:

Gordon Bennett, Planner I

Applicant:

New Cingular Wireless PCS, LLC (AT&T)

Magna Planning

Commission Recommendation:

Approval of Development Agreement

Exhibits:

- **A.** Site Plan
- **B.** Elevations
- **C.** Eligible Facilities Request Form
- **D.** Development Agreement Form

PROJECT DESCRIPTION

New Cingular Wireless PCS, LLC, is looking to extend the height of an existing wireless communications tower located behind the structure at 8585 W Magna Main Street, *see picture below for exact location*.

ISSUES/CONCERNS

Issue:

The current height and position of the wireless communications tower is in compliance with Section 19.42.350 (E, 3, a) with an existing height of 60 feet. The applicant is looking to increase the height of the tower from 60 feet to 80 feet (Exhibit B) to accommodate co-location of a second carrier on the existing pole. Section 19.42.350.E.3.a authorizes the planning commission to allow the additional height upon finding:

1. The monopole will blend in with surrounding structures, poles, or trees and is compatible with surrounding land uses,

2. The monopole will be available for co-location with other companies,

3. The monopole will be setback at least three hundred feet (300') from any residential zone boundary.

As shown in the picture above, the site of the proposed tower height extension is within three hundred feet, directly north of an R-4-8.5 Residential Zone.

Analysis:

The applicant has submitted an "Eligible Facilities Request Application" citing certain FCC regulations. The Eligible Facilities Request Application (Exhibit C) states that the proposed height extension will comply with the following requirements:

1. Federal Communications Commission (FCC) regulations regarding human exposure to radio frequency electromagnetic fields;
2. Federal Aviation Administration (FAA) and FCC tower lighting requirements;
3. Applicable state environmental regulations;
4. Applicable building codes;
5. Applicable fire codes;
6. Other non-discretionary and generally applicable structural and safety codes;
7. Section 106 Historic Preservation Review, if applicable; and
8. National Environmental Policy Act (NEPA), if applicable.

The application also claims to be following Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, which streamlines the review process for modifying existing wireless towers and base station, mandates that local governments approve eligible facility requests for modifications that don't substantially change the physical dimensions of the structure, and aims to accelerate the deployment of wireless infrastructure, particularly for 5G networks.

PUBLIC INPUT

Planning Staff have not received any comments from the public during the Magna Planning Commission Meeting on August 14th, 2025.

RECOMMENDATION

On August 14th, 2025, the Magna Planning Commission recommended approval for the development agreement for CUP2025-001379 to go before the Magna City Council meeting, which is scheduled for August 26th, 2025.

ATTACHMENTS

Exhibit A:

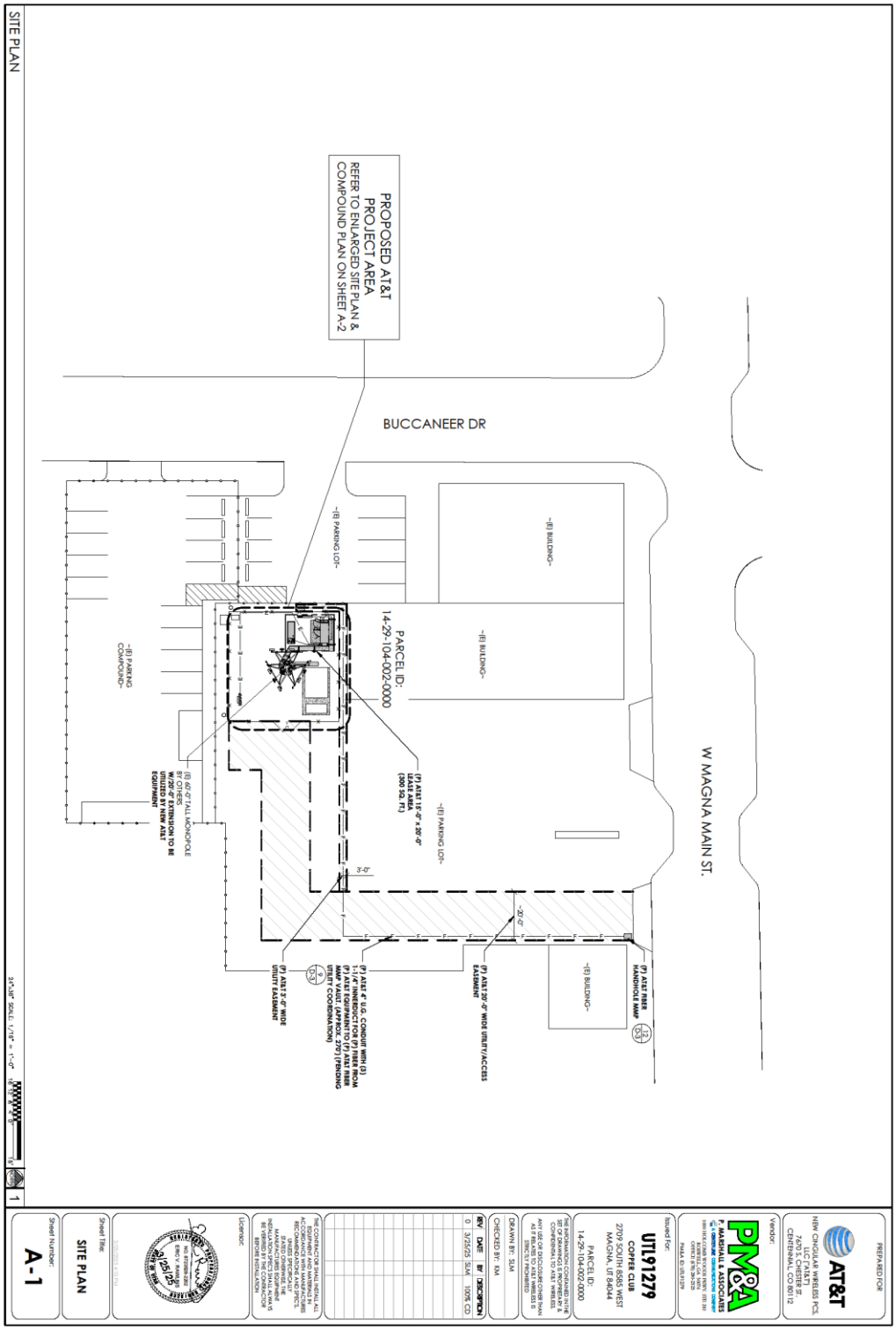

Exhibit B:

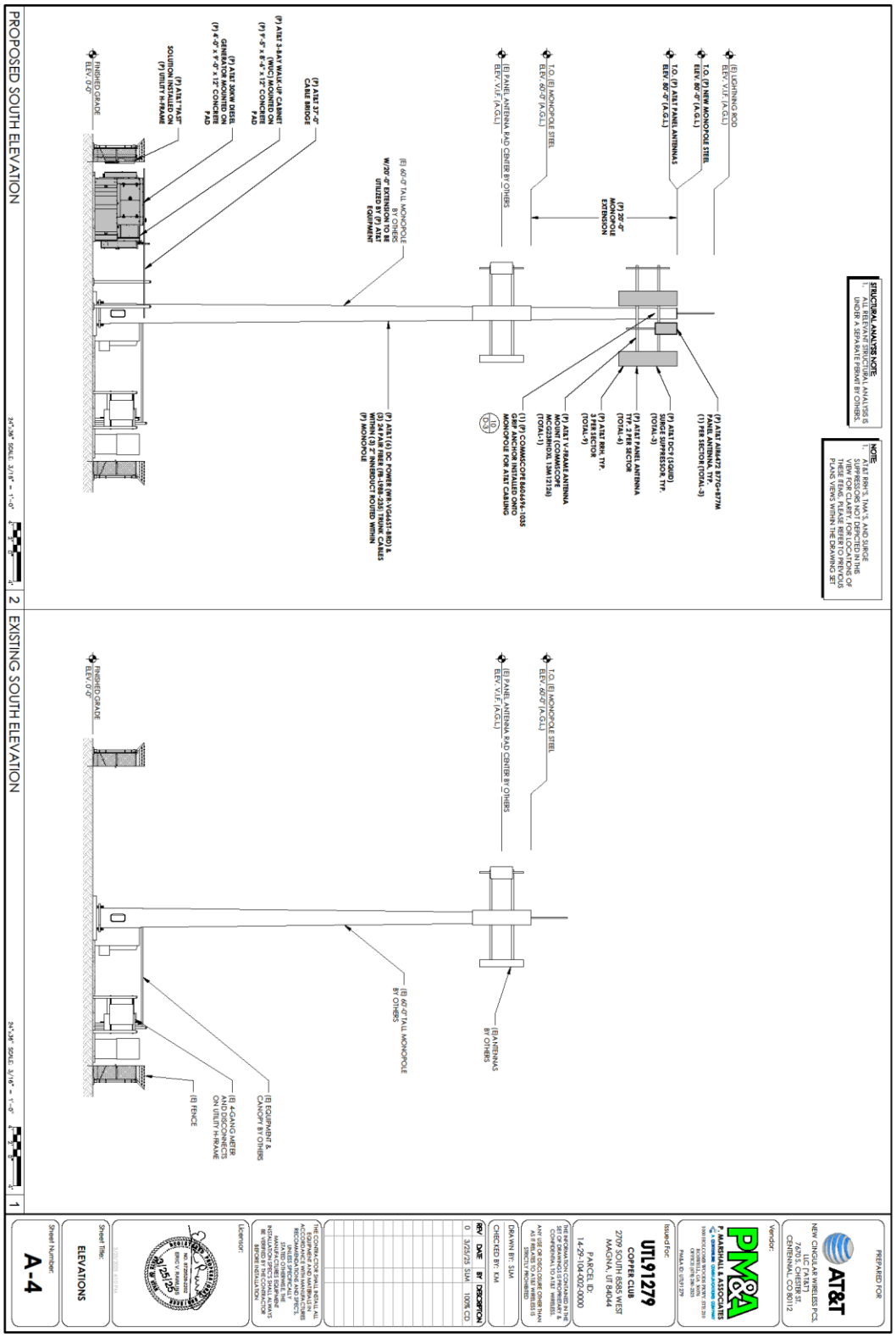
STRUCTURAL ANALYSIS NOTE:
1. ALL RELEVANT STRUCTURAL ANALYSIS IS UNDER A SEPARATE PERMIT BY OTHERS.
NOTE:
1. AT&T RRH'S, TMA'S, AND SURGE SUPPRESSORS ARE SHOWN FOR VIEW PURPOSES ONLY. FOR LOCATIONS OF THESE ITEMS, PLEASE REFER TO PREVIOUS PLANS VIEWS WITHIN THE DRAWING SET
(E) LIGHTNING ROD ELEV: V.I.F. (A.G.L.)
T.O. (P) NEW MONOPOLE STEEL ELEV: 60'-0" (A.G.L.)
T.O. (P) AT&T PANEL ANTENNAS ELEV: 60'-0" (A.G.L.)
(P) 36'-0" MONOPOLE EXTENSION
T.O. (E) MONOPOLE STEEL ELEV: 46'-0" (A.G.L.)
(E) PANEL ANTENNA RAD CENTER BY OTHERS ELEV: V.I.F. (A.G.L.)
(P) AT&T 37'-0" CABLE BRIDGE
(P) AT&T 3-WAY WALK-UP CABINET (WUC) MOUNTED ON (P) 9'-0" x 8'-4" x 12" CONCRETE PAD
(P) AT&T 30KW DIESEL GENERATOR MOUNTED ON (P) 4'-0" x 9'-0" x 12" CONCRETE PAD
(P) AT&T "FAST" SOLUTION MODULE ON (P) UTILITY H-FRAME
FINISHED GRADE ELEV: 0'-0"
(E) 60'-0" TALL MONOPOLE TO BE REDESIGNED W/20'-0" EXTENSION TO BE UTILIZED BY (P) AT&T EQUIPMENT
(P) AT&T (6) DC POWER (WR-VG44ST-BRD) & (3) 24 PAIR FIBER (TR-LFH8-235 TRUNK CABLES INSIDE 2" PVC INNERDUCT ROUTED WITHIN (P) MONOPOLE
(P) AT&T 4484472 B77G+B77H PANEL ANTENNA, TYP. (1) PER SECTOR (TOTAL-3)
(P) AT&T DC9 (QUAD) SURGE SUPPRESSOR, TYP. (TOTAL-3)
(P) AT&T PANEL ANTENNA TYP. 2 PER SECTOR (TOTAL-6)
(P) AT&T RRH, TYP. 3 PER SECTOR (TOTAL-9)
(P) AT&T V-FRAME ANTENNA MOUNT (COMMSCOPE MC-G22-BRFOX-13M12126) (TOTAL-1)
(1) (P) COMMSCOPE B4654-96-1035 GPS ANTENNA MOUNTED ON MONOPOLE FOR AT&T CASING
PROPOSED SOUTH ELEVATION
2
EXISTING SOUTH ELEVATION
1
PREPARED FOR
AT&T
NEW CINGULAR WIRELESS PCS, LLC (AT&T) 7035 S. HIGHLAND DR. CENTENNIAL, CO 80112
Vendor:
PM&A
P. MARSHALL & ASSOCIATES
Issued for:
UTL91279
COPPER CLUB
2709 SOUTH 8565 WEST
MAGNA, UT 84044
PARCEL ID:
14-29-104-002-0000
DRAWN BY: SUM
CHECKED BY: KM
REV DATE BY DESCRIPTION
0 3/25/25 SUM 100% CD
Licensor:
Sheet Title:
ELEVATIONS
Sheet Number:
A-4

Exhibit C:

Eligible Facilities Request Application

(47 U.S.C. § 1455(a))

Applicant: New Cingular Wireless PCS, LLC ("AT&T"

Applicant/Agent Contact Information: Centerline Communications
Jason Evans - 208-866-7725 - jevans@clinellc.com

Property Owner: HAM, HELEN S; JT HAM, JOHN S; JT / Skyway Towers

Property Location (*e.g.*, address, parcel no., GPS coordinates):
14-29-104-002-0000 - Parcel Number

Project Description: AT&T is proposing a Twenty (20) Foot extension as well as Nine (9) Panel Antennas along with pertinent radio head equipment as well as cabling. There will also be One (1) Three bay base station cabinet as well as a 30kw diesel generator.

Date of filing: 4/21/2025

30 days after filing: _____

"To toll the timeframe for incompleteness, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of this section." 47 C.F.R. 1.6100(c)(3)(i).

60 days after filing: _____

"Timeframe for review. *Within 60 days of the date on which an applicant submits a request seeking approval under this section, the State or local government shall approve the application unless it determines that the application is not covered by this section." 47 C.F.R. 1.6100(c)(2).*

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1. Is the proposed modification an **Eligible Support Structure**? Please check the applicable boxes:

An "Eligible Support Structure" means "Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section." 47 C.F.R. 1.6100(b)(4).

☒ *"Tower" means "Any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site." 47 C.F.R. 1.6100(b)(9).*

or

☐ *"Base Station" means "A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.*

(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i)-(ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in paragraphs (b)(1)(i)-(ii) of this section."

47 C.F.R. 1.6100(b)(1).

and

☒ *"Existing" – "A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition." 47 C.F.R. 1.6100(b)(5).*

2. What is the **baseline height** of the Eligible Support Structure? Please complete the Baseline Height Worksheet and insert baseline height here 60 . For modifications that will not change the height of the Eligible Support Structure, insert "N/A."

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3. Is the proposed modification an **Eligible Facilities Request**?

An "Eligible Facilities Request" means "Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

(i) collocation of new transmission equipment;

(ii) removal of transmission equipment; or

(iii) replacement of transmission equipment."

47 C.F.R. 1.6100(b)(3); 47 U.S.C.1445(a).

"Collocation" means "The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes." 47 C.F.R. 1.6100(b)(2).

"Transmission equipment" means "Equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul." 47 C.F.R. 1.6100(b)(8).

3.1 Please check all applicable boxes that describe the proposed modification:

☒ Collocation of new transmission equipment

☐Removal of transmission equipment

☐Replacement of transmission equipment

3.2 Please complete the Substantial Change Worksheet to determine if the proposed modification **substantially changes the physical dimensions** of the Eligible Support Structure. Based on the Substantial Change Worksheet, will the proposed modification substantially change the physical dimensions of the Eligible Support Structure? No. If you answered "Yes," stop because the application is not an eligible facilities request.

4. Compliance with State and Federal regulations and codes. The proposed modification:

Check all applicable boxes

☒ Will comply with FCC regulations regarding human exposure to radio frequency electromagnetic fields

☒ Will comply with Federal Aviation Administration (FAA) and FCC tower lighting requirements

☒ Will comply with applicable state environmental regulations

☒ Will comply with applicable building codes

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☒ Will comply with applicable fire codes

☒ Will comply with other non-discretionary and generally applicable structural and safety codes

☒ Will comply with Section 106 historic preservation review, if applicable

☒ Will comply with the National Environmental Policy Act (NEPA), if applicable

5. Attachments:

☒ Completed Baseline Height Worksheet

☒ Completed Substantial Change Worksheet

☐ Letter of authorization

☐ Applicable non-discretionary permit fees

☒ Building drawings, including site details and plans

☐ Documentation of property rights to site

☐ Prior approval(s) for Eligible Support Structure

☐ Other: _____

_____

_____

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Baseline Height Worksheet

1. Does the application seek approval for collocation or replacement of transmission equipment?

   ☐ No. Stop, the height will not increase for removal of transmission equipment. Continue to #7 and respond "N/A."

   ☒ Yes. Continue to #2.

2. Was the tower or base station subject to previous review and approval by the local jurisdiction (as *originally built or as modified* to its current state)?

   ☒ Yes. Continue to #3.

   ☐ No. Does the application seek to modify a tower or base station that was in a zoned area when built?

   A. ☐ No. Was the tower or base station lawfully constructed?

      i. ☐ Yes. Continue to #3.

      ii. ☐ No. Stop, the application is not an Eligible Facilities Request.

   B. ☐ Yes. Stop, the application is not an Eligible Facilities Request (because the tower or base station is not considered "existing").

3. Does the application seek to collocate transmission equipment that will be separated horizontally on a base station (such as on a rooftop)?

   A. ☐ Yes. Continue to #7. The baseline height is that of the original support structure (*e.g.*, the height of the rooftop, penthouse).

   B. ☒ No. Continue to #4.

4. Has the tower or base station been *modified* per a previous approval by the local jurisdiction?

   A. ☒ No. Continue to #7. The baseline height is the originally-approved height of the tower or base station.

   B. ☐ Yes. Continue to #5.

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5. Was the tower or base station modified based on approval by the local jurisdiction issued before February 17, 2012?[1]

   A. ☐ Yes. Continue to #6.

   B. ☒ No. Continue to #7. The baseline height is the height of the tower or base station as of February 17, 2012.

6. Was the tower or base station modified to the maximum height approved by the local jurisdiction per any approval(s) before February 17, 2012?

   A. ☐ Yes. Continue to #7. The baseline height is the existing height of the tower or base station.

   B. ☐ No. Continue to #7. The baseline height is the height as approved by the local jurisdiction before February 17, 2012.

7. Insert baseline height here 60' and at item 2 to the Eligible Facilities Request Application.

[1] The Spectrum Act was passed by Congress on February 17, 2012 and signed into law by the President on February 22, 2012. The FCC's Report and Order and regulations refer to the date of passage rather than date of enactment as the trigger for the analysis. Approvals issued after February 17, 2012 do not affect the baseline dimensions for determining whether an application proposes a substantial change.

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Substantial Change Worksheet

Definition of "Substantial Change":

"Substantial Change" means "A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(i) for towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(ii) for towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) for any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(iv) it entails any excavation or deployment outside the current site,[2] except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site;

(v) it would defeat the concealment elements of the eligible support structure; or

(vi) it does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in § 1.40001(b)(7)(i)-(iv)[sic]."

47 C.F.R. 1.6100(b)(7).

1. Check the box that describes the Eligible Support Structure:

☐ Base station. Continue to #2.

☐ Tower located in the public right-of-way. Continue to #2.

☒ Tower located outside of the public right-of-way. Continue to #3.

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[2] *"Site" – "For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the Section 6409(a) process." 47 C.F.R. 1.6100(b)(6).*

Applicant Initials _____

2. Answer the following questions about the proposed modification and proceed as instructed:

   A. Is the baseline height for the Eligible Support Structure greater than 100 feet?

      ☐ Yes. Continue to item 2B.

      ☐ No. Continue to item 2C.

   B. Does the proposed modification increase height by more than 10% of the baseline height?

      ☐ Yes. Continue to item 11.

      ☐ No. Continue to item 2D.

   C. Does the proposed modification increase height by more than 10 feet?

      ☐ Yes. Continue to item 11.

      ☐ No. Continue to item 2D.

   D. Does the proposed modification add any appurtenance that would protrude more than 6 feet from the edge of the Eligible Support Structure?

      ☐ Yes. Continue to item 11.

      ☐ No. Continue to item 4.

3. Answer the following questions about the proposed modification and proceed as instructed:

   A. Will the proposed modification increase height by more than 10% of the baseline height of the Eligible Support Structure?

      ☐ Yes. Continue to item 3B.

      ☐ No. Continue to item 3C.

   B. Will the proposed modification increase height by more than the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet?

      ☐ Yes. Continue to item 11.

      ☐ No. Continue to item 3C.

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C. Does the proposed modification add any appurtenance that would protrude more than 20 feet from the edge of the Eligible Support Structure?

☐ Yes. Continue to item 3D.

☐ No. Continue to item 4.

D. Does the proposed modification add any appurtenance that would protrude more than the width of the tower structure at the level of the appurtenance?

☐ Yes. Continue to item 11.

☐ No. Continue to item 4.

4. Does the proposed modification involve installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four?

☐ Yes. Continue to item 11.

☐ No. If the Eligible Support Structure is a base station, continue to item 5.

If the Eligible Support Structure is a tower in the public right-of-way, continue to item 5.

If the Eligible Support Structure is a tower outside of the public right-of-way, continue to item 8.

5. Does the proposed modification involve installation of any new equipment cabinets on the ground?

☐ Yes. Continue to item 6.

☐ No. Continue to item 8.

6. Are there any pre-existing ground cabinets associated with the Eligible Support Structure?

☐ Yes. Continue to item 7.

☐ No. Continue to item 11.

7. Are the proposed new ground cabinets more than 10% larger in height or overall volume than any other ground cabinets associated with the Eligible Support Structure?

☐ Yes. Continue to item 11.

☐ No. Continue to item 8.

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8. Does the proposed modification involve excavation or deployment outside of the current site[3]?

☐ Yes. Continue to item 11. But if the Eligible Support Structure is a tower outside of the public right-of-way and the excavation or deployment is within 30 feet in any direction of the site boundary, exclusive of any access or utility easements related to the site, continue to item 9.

☐ No. Continue to item 9.

9. Will the proposed modification defeat the existing concealment elements of the Eligible Support Structure?

☐ Yes. Continue to item 11.

☐ No. Continue to item 10.

10. Will the proposed modification comply with conditions associated with the siting approval(s)?

A. ☐ Yes. Continue to item 12.

☐ No. Describe the non-compliance: _____
Continue to item 10B.

☐ Not applicable. Continue to item 12.

B. Is the non-compliance with conditions associated with the siting approval(s) based on any of the following: (a) height, (b) protrusion of any appurtenance from the edge of the Eligible Support Structure, (c) number of equipment cabinets to be installed, (d) location of excavation or deployment, or (e) impact to concealment elements that would not exceed the thresholds outlined above?

☐ Yes. Continue to item 12.

☐ No. Continue to item 11.

11. The proposed modification is a substantial change to the physical dimensions of the existing tower or base station. Insert "Yes" in item 3.2 of the Eligible Facilities Request Application.

12. The proposed modification is not a substantial change to the physical dimensions of the existing tower or base station. Insert "No" in item 3.2 of the Eligible Facilities Request Application.

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[3] See footnote 2.

Applicant Initials ____

Exhibit D:

WHEN RECORDED, RETURN TO:
Magna City
Attn: City Manager
8952 West Magna Main Street
Magna, Utah 84044

COVER AND PROJECT INFORMATION SHEET

FOR MAGNA CITY DEVELOPMENT AGREEMENT

made as of the _____ day of _____ in the year 2025.

Between the "Developer":

Centerline Communications
Attn: Jason Evans
3327 North Eagle Road, Suite 110-131
Meridian, ID 83646

and the "City":

Magna City
8952 West Magna Main Street
Magna, Utah 84044

for the following **Project:**

Name:	AT&T Skyway Tower
Project Location:	8585 West Magna Main Street Magna, UT 84044
Description (detailed):	20 foot height increase and installation of a walk-in cabinet at existing cellular tower site

Underlying Zone(s): C-2

Effective Date: _____

Developer Contact: Jason Evans
Program Manager
(208)866-7725

MAGNA CITY

MASTER DEVELOPMENT AGREEMENT

FOR

AT&T SKYWAY TOWER

THIS MASTER DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered as of the Effective Date by and between City and Developer, as each is defined in the Cover and Project Information Sheet ("**Cover Sheet**") for this Agreement, each a "Party" and collectively "Parties" herein.

RECITALS

WHEREAS, the Developer seeks to develop property within Magna City, Utah (the "**Project**"). The property consists of approximately 0.18 acres, identified as Salt Lake County Parcel No. 14-29-104-002-0000 and is more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "**Property**"); and

WHEREAS, the Property is entirely located in the Underlying Zone and is subject to all applicable Magna City Code and development standards;

WHEREAS, the Developer is the owner of a wireless communication site located on the Property, which Property is owned by Helen S. Ham, John S. Ham, and Skyway Towers; and

WHEREAS, the City seeks to promote the health, safety, and welfare of the inhabitants of the City through the establishment and administration of zoning and development regulations concerning the use and development of land in the City;

WHEREAS, the Developer's proposed Project deviates from Chapter 19.42.350(E)(3)(a) of the Magna City Code, "Wireless Telecommunications Facilities," but has been nonetheless approved through legislative discretion of the Magna City Council;

WHEREAS, the City is desirous of development of the Property for the purpose of developing the Project in the manner outlined to the City;

WHEREAS, the City Planning Commission held a meeting and recommended approval of the application for the Project on August 14, 2025, with the conditions specified in that approval and incorporated into this Agreement; and

WHEREAS, it is in the best interests of both the Developer and the City that this Agreement be adopted and effective as a "development agreement" within the meaning, and subject to the provisions, of Utah Code Ann. Section 10-9a-103 *et seq.* and to consent to all the terms of this Agreement as valid conditions of development of the Project.

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged and accepted by both parties, the parties hereto mutually agree and covenant as follows:

1. Effective Date, Termination

1.1. The "Effective Date" of this Agreement is the last date upon which it is signed by any of the Parties hereto, and shall be indicated on the Cover Sheet. The City may not execute this Agreement until approved by the City in accordance with the Magna Municipal Code ("**MMC**").

1.2. This Agreement shall be in full force and effect until the earliest occurrence of: (i) such date as the Project is abandoned, defined as written notice from Developer to the City that it no longer intends to develop the Project; (ii) the use or active development is discontinued for a period of more than six (6) months; or (iii) the Developer defaults on any provision of this Agreement and the default is not resolved as specified in this Agreement. Failure to proceed with development pursuant to this Agreement shall be deemed failure to implement the application with reasonable diligence pursuant to Utah Code Ann. Section 10-9a-509.

2. Project Description

The Project is described more fully herein on the Cover Sheet; in AT&T's application materials, attached as **Exhibit B**; and as illustrated in the "**Site Plan**" for the Project, attached as **Exhibit C**.

3. Development Standards

3.1. Development Standards. The site development standards, procedures, and rules of the Underlying Zone and applicable code and law are modified as shown on **Exhibit D** "Development Standards." All development standards applicable to the Project not expressly modified by this Agreement, including the Utah Municipal Land Use Development and Management Act, remain in full force and effect. Together, Exhibit D standards and the remaining development standards in the City code are the "**Development Standards**" for the Project.

These Development Standards shall apply to all buildings comprising the Project.

3.2. Use of the Property. This Agreement does not modify, amend, or otherwise alter the uses permitted, conditioned, or restricted in the Underlying Zone. Developer acknowledges a separate rezoning request must be submitted to modify the permitted and conditional uses in the applicable zone.

3.3. Approvals. Development of the Project shall be in accordance with Utah's Land Use, Development and Management Act, MMC, the City's future laws which include the

ordinances, policies, standards, and procedures which may be in effect as of a particular time in the future when a development application is submitted for a part of the Project (to the extent they are applicable as specified in this Agreement), the Site Plan and this Agreement. Approval of this Agreement by the City Council constitutes approval of the Site Plan, subject to health and safety review and fee payment compliance by prior to issuance of a building permit. Following approval by the City, the approved Site Plan and included in Exhibit C along with any supporting data and materials on which the Site Plan relies shall be made part of this Agreement and deemed to be an integral part of this Agreement. In the event of any inconsistency between approved plans and the terms of this Agreement, the terms of this Agreement shall govern. Any Development Review Submittals and approvals shall comply with the requirements of MMC for the appropriate development application.

3.4. Modification. The terms and conditions of this Agreement or of any Development Review approval issued in accordance with this Agreement may be modified administratively by the Planning Commission upon written request by Developer, as described in MMC 19.69.130 notwithstanding this Agreement is not made in conjunction with a planned community development application.

3.5. Fees. Nothing herein shall be construed to relieve Developer of the standard obligations to also pay any City fees and charges as part of the development process, as set forth in the existing City fee schedule. These costs will be paid pursuant to procedures set forth in City ordinances and policies.

3.6. Timeline. Developer shall satisfactorily complete construction of all Project improvements in a good and workmanlike manner, no later than six (6) months after the Agreement, subject to reasonable delays due to events of force majeure.

4. Recording.

The responsibilities and commitments of Developer and the City as detailed in this document, when executed shall constitute a covenant and restriction running with the land and shall be binding upon the Developer/Owner of the Property, their assignees and successors in interest and this Agreement or a notice thereof shall be recorded in the Office of the Salt Lake County Recorder by City at Developer's cost.

5. Default.

5.1. Failure to provide any reasonably requested information related to the Site Plan or any modifications thereto, obtain building permits, or complete construction of the Project specified in this Agreement shall constitute a default by Developer, its successors or assigns in interest.

5.2. Notice. If the Developer or the City fails to perform their respective obligations hereunder or to comply with the terms hereof, the Party believing that a default has occurred shall provide a written "**Notice of Default**" to the other Party.

5.3. Contents of the Notice of Default. The Notice of Default shall:

5.3.1. Specify the claimed event of default;

5.3.2. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in default; and

5.3.3. If the City chooses, in its discretion, it may propose a method and time for curing the default which shall be of no less than thirty (30) days duration, if weather conditions permit.

5.4. Remedies. Upon the occurrence of any default, and after notice as required above, then the parties may have all rights and remedies available at law and in equity, including, but not limited to, injunctive relief and/or specific performance.

5.5. Default of Assignee. A default of any obligations expressly assumed by an assignee shall be deemed a default of Developer.

5.6. Limitation on Recovery for Default – No Damages against the City. Anything in this Agreement notwithstanding Developer may not be entitled to any claim for any monetary damages as a result of any breach of this Agreement and Developer waives any claims thereto. The sole remedy available to Developer and any assignee shall be that of specific performance.

6. Vesting.

Upon the Effective Date of this Agreement the Developer's right to construct the Project, under the terms and conditions of this Agreement shall be vested to the fullest extent allowable under Utah Code Ann. Section 10-9a-509. Except as expressly and mutually agreed in writing by the Parties, all development of the Project, including any later phases, shall be governed by the applicable law in effect on the Effective Date of this Agreement. Nothing in this Agreement will limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of the City to enact such legislation under its police power, such legislation will not modify Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Western Land Equities, Inc. v. City of Logan, 617 P.2d 388 (Utah, 1980), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.

6.1. Exceptions. The vested rights and the restrictions on the applicability of the City's future laws to the Project as specified in Section 3 are subject to the following exceptions:

6.1.1. Master Developer Agreement. The City's future laws or other regulations to which the Developer agrees in writing;

6.1.2. State and Federal Compliance. The City's future laws or other regulations which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;

6.1.3. Codes. Any City's future laws that are updates or amendments to existing building, fire, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare;

6.1.4. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated;

6.1.5. Fees. Changes to the amounts of fees for the processing of development applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law;

6.1.6. Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, and imposed by the City pursuant to Utah Code Ann. Section 11-36a-101 *et seq.*;

6.1.7. Planning and Zoning Modification. Changes by the City to its planning principles and design standards as permitted by Local, State or Federal law; and

6.1.8. Compelling, Countervailing Interest. Laws, rules or regulations that the City's land use authority finds, on the record, are necessary to avoid jeopardizing a compelling, countervailing public interest pursuant to Utah Code Ann. Section 10-9a-509.

7. Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered personally, sent by a nationally recognized overnight courier service, or sent by email. Notice by email shall be effective upon receipt of electronic confirmation of delivery. Notices to the parties shall be sent to the addresses set forth on the Cover Sheet to this Agreement or such other address as a party may designate by notice to the other party.

8. General Provisions.

8.1. Both parties recognize the advantageous nature of this Agreement which provides for the accrual of benefits and protection of interests to both parties.

8.2. The recitals contained in this Agreement, the introductory paragraph preceding the Recitals, and all Exhibits to this Agreement are hereby incorporated into this Agreement as if fully set forth herein.

8.3. The captions used in this Agreement are for convenience only and are not intended to be substantive provisions or evidence of intent.

8.4. This Agreement with any amendments shall be in full force and effect until all construction and building occupancy has taken place as per the Project development plans or expiration or termination of this Agreement as provided herein.

8.5. Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under any applicable state law.

8.6. In the event that legal action is required in order to enforce the terms of this Agreement, the prevailing party shall be entitled to receive from the defaulting party any costs and attorney's fees incurred in enforcing this Agreement from the defaulting party.

8.7. This Agreement constitutes the entire agreement between the parties. No changes or modifications may be made in this Agreement except in writing signed by both parties.

8.8. The requirements, obligations and conditions contained within this Agreement shall be binding upon Developer, its successors and assigns, and if different than Developer, the legal title holders and any ground lessors. All rights granted hereunder to Developer shall inure to the benefit of the Developer's successors and assigns, and if different than Developer, the legal title holder and any ground lessors.

8.9. This Agreement does not create a joint venture relationship, partnership or agency relationship or fiduciary relationship between the City, or Developer. Except as specifically set forth herein, the parties do not intend this Agreement to create any third-party beneficiary rights.

8.10. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, will continue in full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable by the final order of a court of competent jurisdiction, either Party to this

Agreement may, in its sole and absolute discretion, terminate this Agreement by providing written notice of such termination to the other Party.

8.11. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

8.12. Each Party will execute and deliver to the other any further instruments and documents as may be reasonably necessary to carry out the objectives and intent of this Agreement, the conditions to development, and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

8.13. The singular will include the plural; the masculine gender will include the feminine; "will" and "shall" are mandatory; "may" is permissive.

8.14. Each Party has participated in negotiating and drafting this Agreement and therefore no provision of this Agreement shall be construed for or against any Party based on which Party drafted any particular portion of this Agreement.

8.15. The Developer may sell, convey, reassign, or transfer the Property or the Project to another entity at any time.

8.16. This Agreement shall be recorded against the Property senior to any respective covenants and any debt security instruments encumbering the Property.

8.17. This Agreement is entered into in Salt Lake County in the State of Utah and shall be construed under the laws of the state of Utah, irrespective of Utah's choice of law rules, and the parties hereto intend that Utah law shall apply to the interpretation thereof.

8.18. Any action to enforce this Agreement may be brought only in the Third District Court, Salt Lake County in and for the State of Utah.

8.19. Time is of the essence to this Agreement and every right or responsibility shall be performed within the times specified.

8.20. To further the commitment of the Parties to cooperate in the implementation of this Agreement, the City and Developer each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Developer. The initial representatives for the City and Developer are hereby appointed as indicated on the Cover Sheet.

The Parties may change their designated representatives by providing written notice. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Project.

8.21. No action taken by any Party may be deemed to constitute a waiver of compliance by such Party with respect to any representation, warranty, or condition contained in this Agreement. Any waiver by any Party of a breach of any provision of this Agreement will not operate or be construed as a waiver by such Party of any subsequent breach.

8.22. The City may not unreasonably withhold, condition, or delay its determination to enter into any agreement with another public agency concerning the subject matter and provisions of this Agreement if necessary or desirable for the development of the Project and if such agreement is consistent with this Agreement and applicable law. Nothing in this Agreement will require that the City take any legal action concerning other public agencies and their provision of services or facilities other than with regard to compliance by any such other public agency with any agreement between such public agency and the City concerning subject matter and provisions of this Agreement.

8.23. Each party represents and warrants that it has the respective power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated and to execute, deliver, and perform its obligations under this Agreement. Specifically, on behalf of the City, the signature of the City Manager or Mayor of the City is affixed to this Agreement lawfully binding the City pursuant to the Approval Resolution indicated on the Cover Sheet.

8.24. This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the parties, notwithstanding that each of the parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by email shall be deemed originally signed copies of this Agreement.

8.25. Except as expressly modified by this Agreement, any statute or municipal code referred to in this Agreement shall be deemed to include that statute as amended, restated, and/or replaced from time to time, and any successor legislation to the same general intent and effect.

8.26. The undersigned certifies that it is not currently engaged in a boycott of the State of Israel and agrees not to engage in a boycott of the State of Israel during the term of this Agreement. The undersigned further acknowledges that its engagement in a boycott of the State of Israel would be in violation of Utah Code Ann. Section 63G-27-201 and could result in termination of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto, having been duly authorized, have executed this Agreement this _____ day of _____, 20__.

CITY ACCEPTANCE

_____
Magna City
By: _____
Its: Mayor

Attest:

_____
Magna City Recorder

Approval as to Form:

_____
Magna City Attorney

DEVELOPER ACCEPTANCE

_____
Developer
By: _____
Its: _____

STATE OF UTAH)
:ss.
COUNTY OF _____)

On the _____ day of _____, 20__, personally appeared before me _____, who being by me duly sworn, did say that he/she is the [POSTION] of Centerline Communications, a Delaware and Massachusetts Limited Liability Company, that the foregoing instrument was duly authorized by the company at a lawful meeting held by authority of its operating agreement and signed in behalf of said company.

_____
NOTARY PUBLIC

My Commission Expires: _____

Residing at: _____

Exhibit A

Description of Property

Exhibit B

Application Materials

Exhibit C

Site Plan

Exhibit D

Development Standards Modifications

D-1. For purposes of this Agreement and only for the Property, an exception to Magna Municipal Code Section 19.42.350 is added providing the following:

> Notwithstanding Magna Municipal Code Section 19.42.350.E.3 (copied below), the Magna City Council may approve a twenty foot (20') height increase to an existing monopole that was properly approved at a height of sixty feet (60'), to allow for a total height of eighty feet (80'), within the three hundred foot (300') setback from the residential zone boundary by making a written determination that such improvement is in the best interests of the City.

Existing Magna Municipal Code Section 19.42.350.E.3. Monopole:

a. The height limit for monopoles is sixty feet (60'), except that the Planning Commission may allow a monopole up to eighty feet (80') in the C-2, C-3, M-1, and M-2 zones if it finds:

   (1) The monopole will blend in with surrounding structures, poles, or trees and is compatible with surrounding uses,

   (2) The monopole will be available for co-location with other companies, and

   (3) The monopole will be setback at least three hundred feet (300') from any residential zone boundary.