

2012-012762

Klamath County, Oregon

11/16/2012 10:02:19 AM

Fee: \$92.00

PREPARED BY:

LANDMARK DIVIDEND LLC
1700 E. WALNUT AVE., SUITE 400
EL SEGUNDO, CA 90245
ATTN: LEGAL DEPT.

RETURN TO:

M. CATER
FIDELITY NATIONAL TITLE
7130 GLEN FOREST DRIVE #300
RICHMOND, VA 23226

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

EASEMENT AND ASSIGNMENT OF LEASE AGREEMENT

This Easement and Assignment of Lease Agreement dated December 21, 2011 (this "Agreement") is by and between **COLUMBIA COMMUNITY BANK CORPORATION**, an Oregon corporation, with principal offices at 314 E. Main Street, Suite A, P.O. Box 725, Hillsboro, OR 97123 ("Grantor") and **LD HOLDINGS LLC**, a Delaware limited liability company ("Grantee") with principal offices at 1700 E. Walnut Ave., Suite 400, El Segundo, CA 90245; and

WHEREAS Grantor owns certain real property that is located at Township 38 South, Range 8 East, Willamette Meridian, Klamath County, Oregon ("**Property**"); as more particularly described in Exhibit "A" attached hereto; and

WHEREAS Grantor intends to grant to Grantee, subject to the Leases (as defined below), an exclusive easement (the "**Easement**") in, to, under and over a certain portion of the Property described in Exhibit "B" attached hereto (the "**Easement Area**") solely for telecommunications purposes; and

WHEREAS Grantor intends to sell, assign, set over, convey and transfer the existing telecommunications lease(s) or license(s) ("**Lease(s)**") more particularly described in Exhibit C attached hereto, to Grantee; and

WHEREAS Grantor intends to allow Grantee to use the Easement in order that Grantee may lease space to tenants in the telecommunications business; and

NOW THEREFORE, In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. GRANT OF EASEMENT. Grantor hereby grants to Grantee an exclusive easement over the Easement Area for the sole purpose of leasing space on the Property to telecommunications tenant(s) and uses associated with the rights of telecommunications tenants under such leases and for no other purpose. Grantor reserves the right to use the Easement Area for any purpose not inconsistent with the rights herein granted.

2. TERM. Commencing on the date on which Grantee pays to Grantor the Purchase Price for this Agreement, as defined in the Purchase and Sale of Telecom Easement and Assignment Agreement between the parties of even date herewith, the term of this Agreement shall be perpetual.

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TC110568_Columbia_AT&T

3. TERMINATION. Following the commencement date hereof, Grantor may not terminate this Agreement; provided however, that in the event that the Easement ceases to be used for a continuous period of two (2) years, the Easement shall be deemed abandoned and this Agreement shall automatically terminate and be of no further force or effect.

4. ASSIGNMENT OF LEASE(S). As part of the consideration provided for this Agreement, Grantor hereby assigns and conveys all of its right, title and interest in and to the Lease(s). Grantor shall retain and continue to faithfully perform and discharge any and all of Grantor's obligations as lessor under the Lease(s) for so long as the Leases in existence as of the date hereof (the "Existing Leases") are in full force and effect, and Grantee assumes no obligations thereunder. Notwithstanding the foregoing, Grantor shall have no liability whatsoever for any Existing Lease that is amended or modified in any way by Grantee and shall have no liability for any subsequent leases entered into between Grantee and telecommunications tenants. Following any such amendment, modification or new lease, Grantee shall have sole responsibility, as lessor, under such leases. In addition, in the event that an Existing Lease expires or is terminated earlier as set forth therein, Grantee shall have sole responsibility for insuring, maintaining, and paying taxes on that portion of the Property previously covered by such lease.

5. NON-EXCLUSIVE ACCESS EASEMENT. As part of the consideration for this Agreement, Grantor hereby grants to Grantee, for so long as this Easement is in effect, a non-exclusive easement in, to, under and across the Property adequate to allow ingress and egress to the Easement Area.

6. REPRESENTATIONS AND COVENANTS OF GRANTOR. Grantor represents and warrants to Grantee, as of the date hereof, that:

- a. This Agreement and any other documents executed by Grantor in connection with it constitute the legal, valid and binding obligation of Grantor, enforceable against Grantor in accordance with their terms.
- b. The execution, delivery and performance by Grantor of this Agreement does not and will not violate or conflict with any provision of Grantor's organizational documents (if Grantor is an organization) or of any agreement to which Grantor is a party including mortgages and deeds of trust, or by which Grantor or the Property is bound and will not violate or conflict with any law, rule, regulation, judgment, order or decree to which Grantor is subject.
- c. There is no pending or, to Grantee's actual knowledge, threatened action, suit or proceeding that, if determined against Grantor, would adversely affect Grantor's ability to grant this easement or such other documents or to perform its obligations hereunder or thereunder.
- d. Grantor owns one hundred percent (100%) of the fee title to the Property and the lessor's interest in and to the Lease(s).
- e. Grantor has not previously deeded, granted, assigned, mortgaged, pledged, hypothecated, alienated or otherwise transferred any of its right, title and interest in and to the Lease(s), to any other person.
- f. Except as expressly set forth in Section 4 hereof, Grantor shall comply with all applicable laws which may affect the Property.
- g. Grantor shall not, nor shall Grantor permit its lessees, licensees, employees, invitees or agents to use any portion of the Property, or the Easement in a way which interferes with the operations of tenants under the Leases, or any other of Grantee's future lessees or licensees, or to interfere with

the non-exclusive access easement set forth in Section 5 hereof. Such interference shall be deemed a material breach by Grantor.

7. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of the parties to this Agreement. This Agreement shall run with the land upon which the Easement is located, and Grantor shall, in any and all deeds or other documents related to the sale, conveyance, assignment, mortgage, pledge, or other encumbrance or transfer of the Property, expressly provide that the Property is subject to all rights, liabilities and obligations under this Agreement. Grantor hereby expressly acknowledges and agrees that Grantee may from time to time sell, convey, assign, mortgage, pledge, encumber, hypothecate, securitize or otherwise transfer some or all of Grantee's right, title and interest in and to this Agreement without consent of Grantor but upon prior written notice to Grantor.

8. ENVIRONMENTAL REPRESENTATIONS.

- a. **Grantor Environmental Representation.** Grantor represents that it has no actual knowledge without investigation of any substance, chemical or waste (collectively "**Hazardous Substance**") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Grantor shall not introduce or use (or permit the use of) any Hazardous Substance on the Property in violation of any applicable federal, state or local environmental laws. Grantor shall be responsible for (and shall promptly conduct any investigation and remediation as required by any applicable environmental laws) all spills or other releases of any Hazardous Substance not caused by Grantee or Grantee's future lessees or licensees, that have occurred or which may occur on the Property.
- b. **Grantee Environmental Representations.** Grantee shall not introduce or use any Hazardous Substance (hereinafter defined) on the Property or the Easement Area in violation of any applicable federal, state or local environmental laws. Notwithstanding the foregoing, Grantee shall not be responsible for any Hazardous Substances arising or present on or before the Effective Date. Liability of Grantee for any claims with respect to any Hazardous Substances at the Property or the Easement shall be limited to contamination caused by a release of a Hazardous Substance by Grantee or Grantee's future lessees or licensees after the Effective Date, and in violation of any applicable federal, state or local environmental laws.
- c. **Mutual Indemnification.** Each party agrees to defend, indemnify, and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to damages, costs, expenses, assessments, penalties, fines, cleanup, remedial, removal or restoration work required by any governmental authority, losses, judgments and reasonable attorneys' fees that the indemnified party may suffer or incur due to the existence or discovery of any Hazardous Substance on the Property caused by the other party or such party's lessees or licensees. This indemnification shall also apply to the migration of any Hazardous Substance to other properties, and the release of any Hazardous Substance into the environment that relate to or arise from the indemnitor's activities on the Property. This indemnification shall survive the termination or expiration of this Agreement.

9. NOTICES. All notices, requests, demands and other communications hereunder shall be delivered by Certified Mail Return Receipt Requested, and/or a nationally recognized Overnight courier. Notice shall be deemed accepted upon receipt or refusal of delivery. Notices shall be delivered:

As to Grantor: Columbia Community Bank Corporation
314 E. Main Street, Suite A
P.O. Box 725
Hillsboro, OR 97123

As to Grantee: LD Holdings LLC
c/o Landmark Dividend LLC
1700 E. Walnut Ave., Suite 400
Attn: Legal Dept.

10. DEFAULT. It shall be an "Event of Default" if either Grantor or Grantee fails to observe or perform any of the terms, conditions or its respective obligations set forth in this Agreement. Upon receiving written notice of such a default or breach of this Agreement, the defaulting party shall have thirty (30) days to cure such default. In the event that the defaulting party fails to cure such default within the cure period, the non-defaulting party shall be entitled to exercise any rights permitted by applicable law.

11. GOVERNING LAW; CERTAIN WAIVERS.

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS IN WHICH THE PROPERTY IS LOCATED, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

(b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES ANY RIGHT TO A JURY TRIAL IN ANY ACTION OR PROCEEDING TO ENFORCE OR INTERPRET THIS AGREEMENT.

(c) EACH PARTY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE CIRCUIT COURT OF KLAMATH COUNTY AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON, AND EACH PARTY WAIVES ANY OBJECTION WHICH IT MAY HAVE TO THE LAYING OF VENUE IN SUCH COURT, WHETHER ON THE BASIS OF INCONVENIENT FORUM OR OTHERWISE.

12. MISCELLANEOUS PROVISIONS.

(a) At all times during the term of this Agreement, Grantee shall carry and maintain in force and effect one or more insurance policies, insuring the parties hereto against all liability for loss or damage for injury to person or property with minimum limits of \$1,000,000 combined single limit, for both personal injury and death and for property damage, for any use of the Easement Area by Grantee and its employees, agents, tenants, contractors, subcontractors, and invitees. The limits set forth herein may be increased from time to time, in Grantor's reasonable determination, to commercially-reasonable limits. Grantee shall furnish Grantor, prior to using the Easement Area or entering onto the Property, with evidence of insurance confirming such coverage, naming Grantor as an additional insured and providing for at least thirty (30) days' prior written notice of cancellation to Grantor.

(b) Grantee agrees that any use of the Easement Area shall be at its own risk and expense. Grantee shall indemnify, defend and hold Grantor harmless from and against any and all claims, losses, expenses, damage and liabilities (including, without limitation, attorneys' fees expended in defending against such claims) attributable to bodily injury, death, or damage to or destruction of property and loss of use thereof arising out of or in connection with its use

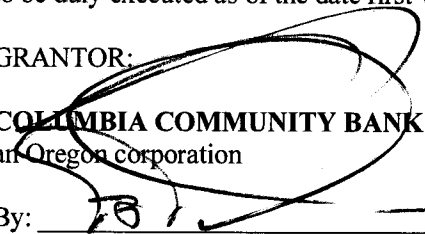
of the Easement Area. As used herein, references to "Grantee" shall include all employees, agents, contractors, subcontractors, tenants, customers and invitees of Grantee.

- (c) In no event shall Grantee allow any liens to be placed against the Property as a result of the activities of Grantee or its employees, agents, contractors or tenants thereon. In the event any such lien is filed, Grantee shall promptly cause the same to be removed. In the event that Grantee fails to do so within ten (10) days of Grantor's written demand, Grantor shall have the right to cause the same to be removed, in which event Grantee shall promptly reimburse Grantor for all costs and expenses incurred by Grantor in connection therewith, together with interest at the rate of twelve percent (12%) per annum from the date of expenditure until the date of payment.
- (d) If either party brings suit to enforce or declare the meaning of this Agreement, then the prevailing party in such suit, in addition to any other relief, shall be entitled to recover from the non-prevailing party reasonable attorneys' fees and costs, including any on appeal or review.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have caused this Agreement to be duly executed as of the date first written above.

GRANTOR:

COLUMBIA COMMUNITY BANK CORPORATION,
an Oregon corporation

By: 

Name: Fred S. Johnson

Title: EVP

Date: 12-20, 2011

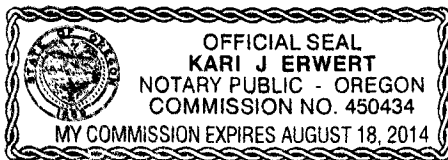
STATE OF Oregon)
COUNTY OF washington) ss.

On 12/20, 2011, before me, Kari J. Erwert, a Notary Public in and for said County and State, personally appeared Fred S. Johnson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official Seal.

Kari J. Erwert
Notary Public
My Commission Expires: August 18, 2014



[SEAL]

GRANTEE:

LD HOLDINGS LLC,
a Delaware limited liability company

By: Landmark Dividend LLC, a Delaware limited
liability company, its sole member

By: _____
Name: _____ **Daniel E. Rebeor**
Title: _____ **Authorized Signatory SVP of Operations**

Date: December 21, 2011

STATE OF California)
COUNTY OF Los Angeles) ss.

On December 21, 2011, before me, ROCIO VELINOV, a Notary Public in
and for said County and State, personally appeared Daniel E. Rebeor,
Authorized Signatory of Landmark Dividend LLC, a Delaware limited liability company, sole member of
LD Holdings, LLC, who proved to me on the basis of satisfactory evidence to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or entity upon behalf of which the person(s) 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.

Rocio Velinov

Notary Public
My Commission Expires: 5/8/2015

[SEAL]



EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL 1:

A parcel of land lying in the Southeast quarter of the Northeast quarter of Section 36, Township 38 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Commencing at the Southeast corner of said Section 36, that point bears South 01°04'29" West 5289.55 feet from the Northeast corner of said Section 36; thence North 08°17'00" West 3412.46 feet to the TRUE POINT OF BEGINNING of this description; thence North 39°21'32" East 167.07 feet; thence North 80°38'28" West 167.07 feet; thence South 20°38'28" West 167.07 feet to the true point of beginning, said point being South 17°10'28" West 2000.99 feet from the Northeast corner of said Section 36. Basis of bearings is Grid North, based on the Oregon State Plane Coordinate System (1983), South Zone.

PARCEL 2:

A 30.00 foot wide access easement located over an existing gravel road, lying in the East half of Section 36, Township 38 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon and lying 15.00 feet on each side of the following described centerline:

Commencing at the Northwest corner of Lot 134, Tract 1461-THE WOODLANDS-PHASE 3, a duly recorded subdivision on file at the Klamath County Surveyors Office, that point being North 44°11'58" West 2973.25 feet from the Southeast corner of said Section 36; thence along the boundary of Tract 1461-THE WOODLANDS-PHASE 3, South 64°16'03" West 21.00 feet to the centerline of Orange Blossom Drive and the TRUE POINT OF BEGINNING of this description; thence North 31°00'13" West 71.92 feet; thence North 00°31'01" West 59.20 feet; thence North 45°31'37" East 164.65 feet; thence North 46°04'14" East 41.18 feet; thence North 45°20'57" East 138.16 feet; thence North 55°58'40" East 148.94 feet; thence North 83°09'21" East 66.68 feet; thence South 70°17'03" East 237.81 feet; thence South 71°53'21" East 220.89 feet; thence South 62°30'33" East 406.94 feet; thence South 55°36'27" East 169.76 feet; thence South 51°26'21" East 275.59 feet; thence South 42°52'22" East 293.30 feet; thence South 37°43'30" East 184.53 feet; thence South 75°19'43" East 26.61 feet; thence North 27°50'57" East 43.08 feet; thence North 03°02'37" West 297.29 feet; thence North 06°37'53" West 171.07 feet; thence North 03°05'35" West 117.55 feet; thence North 08°34' 11" East 56.37 feet; thence North 28°55'12" East 110.25 feet; thence North 15°13'53" East 91.45 feet; thence North 12°53'59" East 400.35 feet; thence North 07°03'53" East 169.53 feet; thence South 86°19'22" West 106.97 feet; thence North 77°44'14" West 49.41 feet; thence North 64°22'57" West 134.76 feet; thence North 57°20'33" West 33.35 feet; thence North 46°32'39" West 46.89 feet; thence North 36°52'30" West 256.25 feet; thence North 35°50'21" West 31.99 feet; thence North 35°38'20" East 61.37 feet to a point on the boundary of the Wynne Broadcasting Lease Area, said point being South 17°57'03" West 1966.82 feet from the Northeast corner of said Section 36, with sidelines extended or shortened to terminate on the beginning and ending lines. Basis of bearings is Grid North, based on the Oregon State Plane Coordinate System (1983), South Zone.

Tax Parcel No. 3808-03600-00400-000, 3808-03600-00400-A01, 3808-03600-00400-A02

EXHIBIT B

EASEMENT AREA DESCRIPTION

Leased Premises:

A parcel of land lying in the southeast quarter of the northeast quarter of Section 36, Township 38 South, Range 8 East, W.M., Klamath County, Oregon, more particularly described as follows:

Commencing at the southeast corner of said Section 36, that point being S 01°04'29"W, 5289.55 feet from the northeast corner of said Section 36; thence N 11°01'41" W , 3404.63 feet to the **True Point of Beginning** of this description; thence N 10°19'03" W, 164.43 feet; thence S 49°40'57" W, 164.43 feet; thence S 70°19'03" E, 164.43 feet to the true point of beginning, said point being S 21°04'51" W, 2086.50 feet from the northeast corner of said Section 36.

Containing 0.27 acres, more or less.

Basis of Bearings is Grid North, based on the Oregon State Plane Coordinate System (1983), South Zone.

Access Easement:

A 30.00 foot wide access easement, located over an existing gravel road, lying in the east half of Section 36, Township 38 South, Range 8 East, W.M., Klamath County, Oregon, and lying 15.00 feet on each side of the following described centerline:

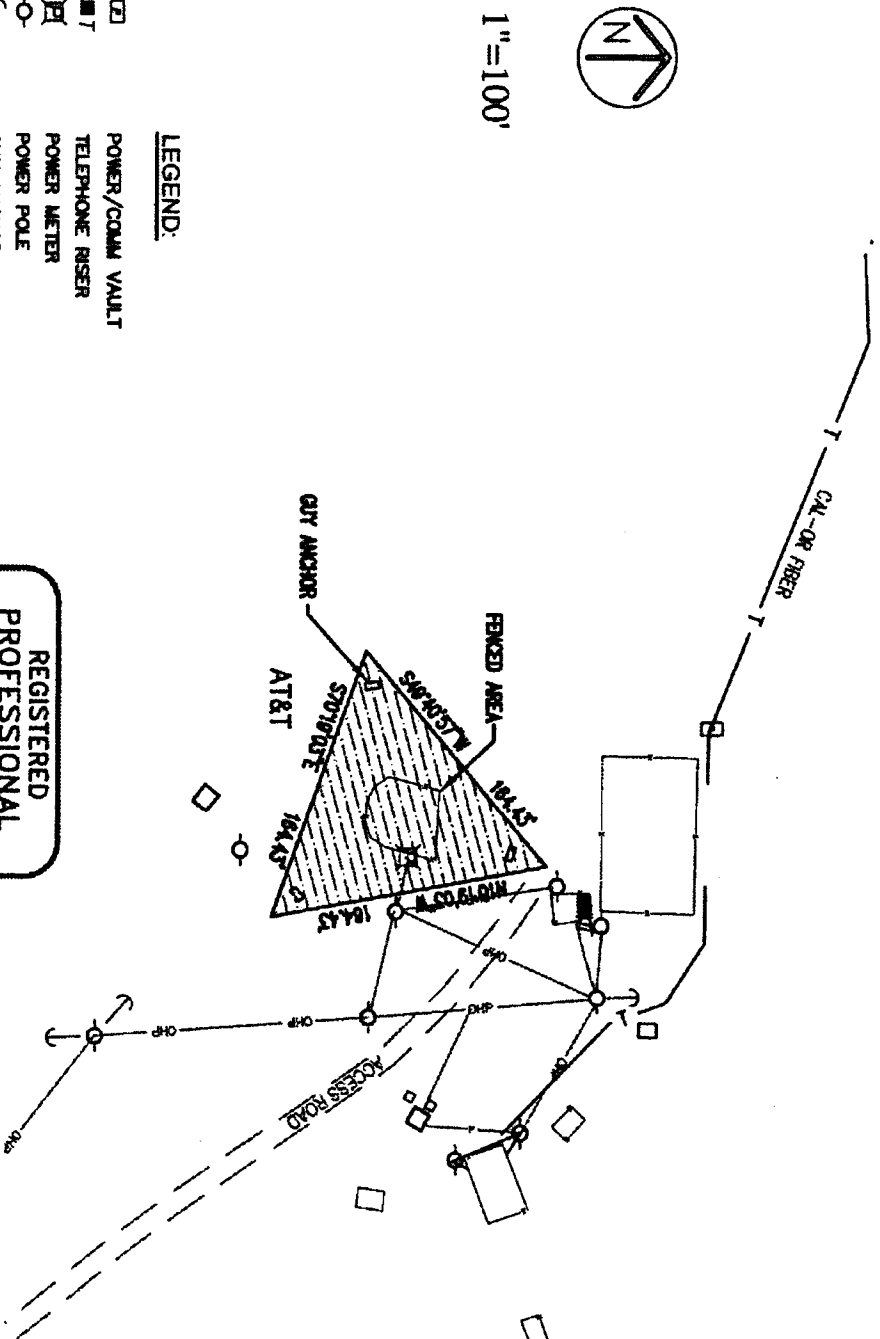
Commencing at the Northwest corner of Lot 134, Tract 1461 - The Woodlands - Phase 3, a duly recorded subdivision on file at the Klamath County Surveyors Office, that point being N 44°11'58"W, 2973.25 feet from the Southeast corner of said Section 36; thence along the boundary of Tract 1461 - The Woodlands - Phase 3, S 64°16'03" W , 21.00 feet to the centerline of Orange Blossom Drive and the **True Point of Beginning** of this description; thence N 31°00'13" W, 71.92 feet; thence N 00°31'01" W, 59.20 feet; thence N 45°31'37" E, 164.65 feet; thence N 46°04'14" E, 41.18 feet; thence N 45°20'57" E, 138.16 feet; thence N 55°58'40" E, 148.94 feet; thence N 83°09'21" E, 66.68 feet; thence S 70°17'03" E, 237.81 feet; thence S 71°53'21" E, 220.89 feet; thence S 62°30'33" E, 406.94 feet; thence S 55°36'27" E, 169.76 feet; thence S 51°26'21" E, 275.59 feet; thence S 42°52'22" E, 293.30 feet; thence S 37°43'30" E, 184.53 feet; thence S 75°19'43" E, 26.61 feet; thence N 27°50'57" E, 43.08 feet; thence N 03°02'37" W, 297.29 feet; thence N 06°37'53" W, 171.07 feet; thence N 03°05'35" W, 117.55 feet; thence N 08°34'11" E, 56.37 feet; thence N 28°55'12" E, 110.25 feet; thence N 15°13'53" E, 91.45 feet; thence N 12°53'59" E, 400.35 feet; thence N 07°03'53" E, 169.53 feet; thence S 86°19'22" W, 106.97 feet; thence N 77°44'14" W, 49.41 feet; thence N 64°22'57" W, 134.76 feet; thence N 57°20'33" W, 33.35 feet; thence N 46°32'39" W, 46.89 feet; thence N 36°52'30" W, 256.25 feet; thence N 35°50'21" W, 111.10 feet; thence N 50°41'59" W, 34.45 feet; thence S 66°16'47" W, 56.93 feet to a point on the boundary of the AT&T Lease Area, said point being S 22°25'40" E, 2009.66 feet from the Northeast corner of said Section 36, with sidelines extended or shortened to terminate on the beginning and ending lines.

Basis of Bearings is Grid North, based on the Oregon State Plane Coordinate System (1983), South Zone.

See Attached Drawing for Map of Easement Area.

AT&T LEASE AREA EXHIBIT

A PARCEL OF LAND LOCATED IN THE SE1/4 NE1/4 OF
SECTION 36, TOWNSHIP 38 SOUTH, RANGE 8 EAST, W.M.,
KLAMATH COUNTY, OREGON
NOVEMBER 2011



LEGEND:

- POWER/COMM VAULT
- TELEPHONE RISER
- ⊕ POWER METER
- POWER POLE
- GUY ANCHOR
- FENCE LINE
- - - OVERHEAD POWER LINE
- - - GRAVEL ROAD
- ▨ LEASE AREA

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Marcus D. Cross

OREGON
JULY 6, 2010
MARCUS D. CROSS
55506PLS

EXPIRES: 12-31-2011

R-C
ENGINEERING - SURVEYING - PLANNING
GROUP

RHINE-CROSS GROUP, LLC
ENGINEERING - SURVEYING - PLANNING
112 N. 5TH ST. SUITE 200 - P.O. BOX 909
KLAMATH FALLS, OREGON 97601
Phone: (541) 851-9405 Fax: (541) 273-9200

EXHIBIT C
EXISTING LEASE(S)

That certain Land Lease Agreement dated as of May 28, 2011, by and between Columbia Community Bank Corporation, an Oregon corporation, having a mailing address of 314 E. Main Street, Suite A, PO Box 725, Hillsboro, OR 97123, as Lessor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Lessee, and all modifications, amendments and memoranda thereto.