

FILED
BOOK 2000 PAGE 1843

When Recorded Return to:

2000 APR -6 PM 2: 58

Fremont Department of Utilities
400 East Military Avenue
P. O. Box 1468
Fremont, NE 68026

Carol Aivens

DODGE COUNTY
REGISTER OF DEEDS
COMPUTER INDEX FEE \$

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EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Easement Agreement") is made and entered into as of March 10, 2000, by and between **ANT, LLC**, a Delaware limited liability company whose address is c/o Catellus Development Corporation, 201 Mission Street, 2nd Floor, San Francisco, California, 94105 ("Grantor"), and the **CITY OF FREMONT, NEBRASKA**, a Nebraska municipal corporation whose address is 400 East Military Avenue, P. O. Box 1468, Fremont, Nebraska, 68026 ("Grantee").

RECITALS

A. Grantor is the owner of that certain real property located in or near the City of Fremont, County of Dodge and State of Nebraska, more particularly described in Exhibit A attached hereto (the "Property").

B. Grantee desires to install and maintain water, gas, electrical, sanitary sewer, and storm water sewer lines on the Property, and Grantor has agreed to grant to Grantee a non-exclusive general utility easement for such purposes on the terms and conditions contained in this Easement Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration more particularly described below, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Subject to the terms and conditions of this Easement Agreement, all matters shown by the public records, and subject also to all applicable laws, ordinances and regulations, Grantor hereby grants and conveys unto Grantee (i) a nonexclusive easement on the Property for the purpose of installing, maintaining, operating, inspecting, repairing, replacing and removing water, gas, electrical, sanitary sewer, and storm water sewer lines (the "System"), and (ii) a nonexclusive right of ingress and egress over the Property necessary to access the System. All of the rights granted to Grantee in this Paragraph 1 are herein referred to collectively as the "Easement". Except as expressly set forth in this Easement Agreement, no easement, license or other right

or privilege is hereby granted to the Grantee for any other purpose or for any other manner, and Grantee shall not use the Easement for any purpose other than as expressly permitted herein.

2. As a condition to, and in consideration of, Grantor's grant of the Easement to Grantee, Grantee shall pay to Grantor, on or prior to Grantee's execution of this Easement Agreement, the sum of Four Thousand, Five Hundred Dollars (\$4500.00).

3. Grantee shall be responsible for and shall pay for (a) all costs and expenses associated with the System, including, without limitation, the installation, inspection and maintenance of the System, and (b) the full and complete repair in a good and workmanlike manner of, or the reimbursement to Grantor for, any damage caused by Grantee, or any of its agents, employees, contractors, licensees or invitees to any lands or property of Grantor, including without limitation, any landscaping, paving, fences or other improvements now or hereafter located on or across any portion of the Property. The Grantee hereby agrees to maintain the System and the Property affected thereby in a safe and clean condition of good order and repair, at its sole cost and expense.

4. Except in cases of an emergency, Grantee shall give Grantor not less than five (5) business days' prior written notice before commencing any activity on the Property, including any construction, installation or maintenance of the System. All activity undertaken pursuant to the Easement shall be performed so as not to block or obstruct the driveways and streets on and around the Property.

5. Grantee hereby acknowledges and agrees that Grantor does not make any representation or warranty to Grantee or to any other person or entity respecting the quality, suitability or fitness of the Easement for any intended use.

6. Grantee shall indemnify, defend and hold Grantor, and its affiliated entities, and each of their respective members, managers, trustees, officers, directors, agents, and employees, harmless from and against any and all claims, liabilities, losses, costs, damages, penalties and expenses (including, without limitation, reasonable attorneys' fees) arising out of or resulting from or in any way connected with the use of the Easement, including without limitation, injury or death of persons or damage to or loss of property arising out of the exercise by Grantee, or any of its agents, contractors, employees, licensees or invitees of any of the rights granted herein.

7. The Easement hereby granted shall cease and terminate upon (a) the breach of any provision of this Easement Agreement by Grantee which breach is not cured within thirty (30) days after written notice from Grantor, or (b) nonuse of the Easement or any portion thereof for the purposes set forth herein for a period of two (2) consecutive years. Upon the happening of any of the above events, all right, title and interest of Grantee in and to the Easement shall terminate and revert to Grantor.

8. Upon termination of this Easement or any portion thereof, Grantee shall (a) if requested in writing by Grantor, remove the System and diligently restore the Property as

nearly as possible to its condition prior to construction and installation thereof, and (b) make, execute, acknowledge, and deliver to Grantor a quitclaim deed conveying to Grantor all right, title and interest herein conveyed to Grantee as to the Easement, or portion of the Easement so terminated.

9. Grantee shall, at its sole cost and expense, comply with all applicable laws, statutes and ordinances in connection with the exercise of its rights under this Easement Agreement.

10. Grantor reserves the right to (i) establish and grant nonexclusive easements over, across and under the Property and (ii) make any use of the land surface and airspace above the Property; provided that the exercise of any such reserved rights shall not materially impair the Grantee's use of the Easement and rights granted to Grantee under this Easement Agreement.

11. This Easement Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that Grantee may not transfer or assign its rights under this Agreement to any person or entity, except a corporation or other legal entity which controls, is controlled by or is under common control with Grantee. This Easement Agreement, together with the exhibits attached hereto, all of which are incorporated herein by reference, constitutes the entire agreement of the parties relating to the Easement and shall not be amended or modified except by a writing executed by the parties hereto.

12. Any notice which a party is required or may desire to give the other shall be in writing and shall be sent either (a) by United States registered or certified mail, return receipt requested, postage prepaid, or (b) by a generally recognized overnight carrier providing proof of delivery. Any such notice shall be addressed to a party at the party's address appearing on the first page of the main body of this Easement Agreement. Any notice so given shall be deemed to have been given as of the date of actual receipt. Any party may change its address for notice at any time by written notice in accordance with this Paragraph 12.

13. This Easement Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

14. The invalidation of any of the provisions contained in this Easement Agreement, or of the application thereof to any person by judgment or court order, shall in no way affect any of the other provisions hereof, or the application thereof to any other person, and the same shall remain in full force and effect to the maximum extent possible.

IN WITNESS WHEREOF, the said Grantor has caused this instrument to be signed by its authorized representative, attested by its Assistant Secretary, on the 4th day of April, 2000.

ANT, LLC
a Delaware limited liability company

By: [Signature]
Chris Sorensen
Vice President

ATTEST:

By: [Signature]
R. E. Wilhelm
Assistant Secretary

STATE OF TEXAS §
§ ss.
COUNTY OF DALLAS §

The foregoing instrument was acknowledged before me on this 4th day of April, 2000, by Chris Sorensen, Vice President and R.E. Wilhelm, Assistant Secretary, of ANT, LLC, a Delaware limited liability company, on behalf of the company.

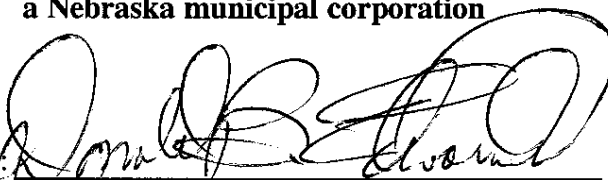


[Signature]
Notary Public Cathy T. Hutchinson

My commission expires: August 19, 2000

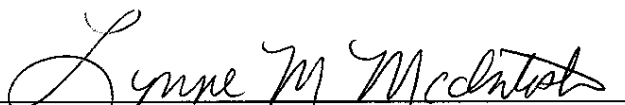
ACCEPTED:

CITY OF FREMONT, NEBRASKA,
a Nebraska municipal corporation

By: 
Print Name: Donald B. Edwards
Title: Mayor

STATE OF Nebraska §
§ ss.
COUNTY OF Dodge §

On this 23 day of March, 2000, before me, the undersigned, a Notary Public in and for said County, personally came Donald B. Edwards, of **CITY OF FREMONT, NEBRASKA**, a Nebraska municipal corporation, to me personally known to be the Mayor and the identical person whose name is affixed to the above acceptance, and acknowledged the acceptance thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation.


Notary Public

My commission expires: _____

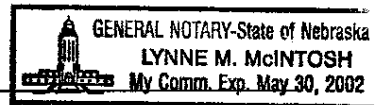


EXHIBIT "A"

The Westerly 20.0 feet of that portion of the $W\frac{1}{2}NE\frac{1}{4}$ of Section 11, Township 17 North, Range 8 East, 6th P. M., Dodge County, Nebraska, lying Northerly of the Chicago & Northwestern Railway Company's (now Fremont and Elkhorn Valley Railroad) 100.0 foot wide right of way, and lying South of a line drawn parallel with and distant 809.22 feet South, as measured at right angles from the North line of said $W\frac{1}{2}NE\frac{1}{4}$.