

CONSENT TO SUBLEASE AGREEMENT

The City of San Diego [CITY], as LESSOR under that certain Lease Agreement [Master Lease] entered into with Airtouch Cellular, a California corporation [LESSEE] on file in the Office of the City Clerk as Document No. OO-18260, consents to that Limited Use Sublease [the Sublease] between LESSEE and San Diego Trolley, Inc., [SDT or SUBLESSEE], a California nonprofit public benefit corporation, based upon the following facts and circumstances:

1. On May 11, 1998, CITY and SDT entered into a Communication Flat Rate Lease, on file in the Office of the City Clerk as Document No. RR-290084 [the SDT Lease].
2. The SDT Lease, section 6.5, provides:

CITY reserves the right to reassign [SDT] an equivalent amount of space in a different location when and if the facility has been upgraded and reconfigured. [SDT] agrees to cooperate fully with CITY and its contractors during any renovation, repair, or other alteration of the facility. [SDT] acknowledges that its equipment may be relocated as a result of the renovation, repair, or other alternation of the facility. CITY warrants that every effort will be made to ensure continuous, uninterrupted broadcast/receiving capability during any conversion.
3. Due to public works activities requiring demolition of the current assigned space for SDT's facilities, the CITY has determined that relocation pursuant to Section 6.5 of the SDT Lease is necessary.
4. SDT and LESSEE are willing to allow relocation of the SDT facilities to the property covered by the Master Lease.

CONSENT. The CITY consents to the relocation of the SDT facilities from the SDT Lease premises to the Master Lease premises and to the Sublease entered into between SDT and LESSEE.

The CITY does not consent to any individual term of the Sublease and does not agree to be bound to the SUBLESSEE in any respect by this consent.

The Sublease shall be subordinate to the Master Lease in all respects. The CITY is merely approving the SUBLESSEE and the proposed use. All terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in

the Sublease. The CITY is not bound by any term or condition in the Sublease which in any way conflicts with or is additional to the provisions of the Master Lease.

Upon the commencement date of the Sublease, SDT shall pay monthly rent to LESSEE in the amount of \$200. SDT shall pay monthly rent to CITY in the amount of \$133.25.

Date: 5/21/99

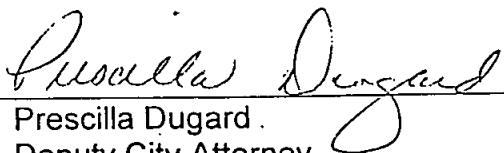
THE CITY OF SAN DIEGO

By: 
William T. Griffith
Real Estate Assets Director

Date: 5/24/99

APPROVED AS TO FORM
AND LEGALITY:

CASEY GWINN, City Attorney

By: 
Prescilla Dugard
Deputy City Attorney

LIMITED USE SUBLEASE

This Limited Use Sublease ("Sublease") is made and entered into as of this 21st day of May, 1999, by and between AIRTOUCH CELLULAR, a California corporation, ("Sublessor"), and SAN DIEGO TROLLEY, INC., a California nonprofit public benefit corporation, ("Sublessee"), with reference to the following facts:

RECITALS

A. Pursuant to a certain Flat Rate Lease dated February 12, 1996 ("Master Lease") between The City of San Diego, a municipal corporation, hereinafter called "CITY" ("Master Lessor") and Sublessor, Sublessor is leasing 6770 Aviation Drive ("Master Lease Premises") from Master Lessor for the construction, installation, operation and maintenance of a communications facility ("Sublessor's Facility"), as more particularly described in the Master Lease. A copy of the Master Lease is attached to this Sublease as Exhibit "A."

B. Subject to the terms and conditions of this Sublease, Sublessee desires to sublease a portion of the Master Lease Premises from Sublessor for the construction, installation, operation and maintenance of a communications facility ("Sublessee's Facility") and certain other improvements, at Sublessee's sole cost and expense, as more particularly described below, and Sublessor desires to sublease a portion of the Master Lease Premises to Sublessee for such purposes.

NOW THEREFORE, in consideration of the facts set forth above, the mutual covenants and conditions contained below in this Sublease, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sublessor and Sublessee agree as follows:

AGREEMENT

1. Premises

(a) Subject to the terms and conditions of this Sublease, and contingent upon Sublessor obtaining the required consent from Master Lessor to enter into this Sublease (as provided in Section 2(a) below), Sublessor hereby leases the Sublease Premises (as defined below) to Sublessee, and Sublessee hereby leases the Sublease Premises from Sublessor. The "Sublease Premises" shall consist of: (i) approximately 16 square feet of interior, ground level area located within the Master Lease Premises for the installation of an equipment rack; (ii) antenna space on the roof of the equipment building constructed by Sublessor and comprising a part of Sublessor's Facility ("Antenna Platform"); and (iii) space for utility cables, wires and conduits required to connect Sublessee's equipment on the ground level portion of the Sublease Premises to Sublessee's antennas on the

Antenna Platform. The Sublease Premises and all of Sublessee's intended improvements are depicted on the construction drawings and specifications attached to this Sublease as Exhibit "B."

(b) Sublessor shall have the right at any time and from time to time, to request that Sublessee relocate all or any part of Sublessee's wires, cables, conduit, equipment, antennas and/or components within the confines of the Sublease Premises to accommodate Sublessor's current or future communications requirements. Sublessee agrees that Sublessor may elect either (i) that Sublessor relocate Sublessee's wires, cables, conduit, equipment, antennae and/or components at Sublessor's cost and subject to Sublessee's reasonable supervision; or (ii) that Sublessee relocate Sublessee's wires, cables, conduit, equipment, antennas and/or components at Sublessee's cost and subject to Sublessor's reasonable supervision. In either case, any relocation(s) of Sublessee's antennas shall be subject to the following conditions:

(i) Sublessor shall give Sublessee prior written notice of Sublessor's desire to relocate Sublessee's antennas specifying the location on the Antenna Platform to which the antennas are to be relocated. Such relocation work shall be completed within sixty (60) days after delivery of notice of relocation to Sublessee and receipt of any and all governmental permits and approvals required for such relocation, and shall not materially interfere with Sublessee's continuous operations on the Sublease Premises.

(ii) In the event that the relocation of Sublessee's antennas will have a significant adverse effect on Sublessee's operations on the Antenna Platform which cannot be reasonably mitigated as determined by Sublessor and Sublessee, then Sublessee shall have the right to (a) relocate its antennas to another area on and/or within the Sublease Premises as mutually agreed upon by Sublessor and Sublessee, provided that Sublessee delivers notice of its election to relocate to such alternative area within thirty (30) days after receipt of relocation notice from Sublessor; or (b) terminate this Sublease effective thirty (30) days after delivery of termination notice to Sublessor by Sublessee.

(c) Sublessor hereby conveys to Sublessee an irrevocable, non-exclusive license to enter the Sublease Premises as limited herein, together with a right-of-way over and across the Master Lease Premises for ingress and egress to the Sublease Premises, twenty-four (24) hours a day, seven (7) days a week, for the sole purpose of installing, maintaining, operating and replacing wires, cables, conduit, equipment, antennas and components to the extent reasonably necessary to accommodate Sublessee's permitted use of the Sublease Premises as specifically set forth in Section 3(a), below. The license and right-of-way are further subject to and limited by any and all restrictions upon Sublessor as set forth in the Master Lease.

2. Term And Rent

(a) This Sublease shall begin on the earlier of (i) the date Sublessor receives written consent to this Sublease from Master Lessor and Sublessee receives all permits and approvals required by governmental and quasi-governmental agencies for the construction of Sublessee's Facility or (ii) March 1, 1999 ("Commencement Date"). Notice of Master Lessor's consent shall be delivered promptly to Sublessee by Sublessor after receipt of such notice. Notice of Sublessee's receipt of all required permits and approvals for the construction of Sublessee's Facility shall be delivered promptly to Sublessor by Sublessee after receipt of the same. Sublessee shall be obligated to pay an initial rent of Three thousand nine hundred ninety six (\$3996.00) per year ("Annual Rent"). Subject to the provisions of Section 2(b) below, the term of this Sublease shall terminate on February 28, 2001. Annual Rent shall be paid in equal monthly installments, in advance, on the first day of each calendar month to Sublessor or to any other person, firm or entity as Sublessor may otherwise direct from time to time in writing at least thirty (30) days prior to any rent payment date. All Annual Rent not received by Sublessor when due shall bear interest from the due date until paid at the greater of ten percent (10%) per annum or the maximum rate permitted by applicable law. Notwithstanding any provision of this Sublease to the contrary, Sublessee shall have the right to terminate this Sublease at any time effective ninety (90) days after delivery of notice to Sublessor, without the obligation to pay any additional consideration or penalty for such termination right, in the event (i) any permit, approval or authorization required for the construction and operation of Sublessee's Facility by any governmental agency having jurisdiction over the Sublease Premises is denied, rejected or withdrawn or (ii) Sublessee determines that the Sublease Premises are no longer suitable or acceptable for the operation of Sublessee's Facility.

(b) Sublessee is hereby granted two (2) options to extend the term of this Sublease on the same terms and conditions for additional five (5) year periods after the original term expires by giving Sublessor written notice of its intention to do so at least one hundred twenty (120) days prior to the date the term would otherwise end, provided that Sublessor exercises any corresponding options to extend the term of the Master Lease. Subject to the foregoing, the term of this Sublease shall be extended for one (1) year periods after such option periods, provided that Sublessor does not deliver notice of termination to Master Lessor pursuant to applicable provisions of the Master Lease) unless Sublessee delivers notice of termination of this Sublease to Sublessor not less than ninety (90) days prior to the end of the applicable term.

(c) The parties agree that Annual Rent shall be adjusted annually throughout the term of this Sublease on the anniversary of the Commencement Date by the percentage change in the most recently published Consumer Price Index (1982-84 = 100) Urban Wage Earners and Clerical Workers -- Los Angeles, Anaheim, Riverside ("Index") compared to the Index published twelve (12) months earlier. If the Index is discontinued or changed so that

it is not practical to obtain a continuous measurement of price changes, the Index shall be replaced by a comparable governmental index.

(d) Sublessee acknowledges that Sublessor has certain absolute rights to terminate the Master Lease as provided therein and Sublessor shall continue to have such rights provided that Sublessor delivers notice to Sublessee concurrently with the required notice to Master Lessor upon the exercise of such rights.

(e) Upon expiration, cancellation or termination of this Sublease, Sublessee shall remove all of Sublessee's wires, cables, conduit, equipment, antennas and components from the Sublease Premises. Such removal work shall be made within thirty (30) days after expiration, cancellation or termination of this Sublease in a good and workmanlike manner, and shall in no way interfere with Sublessor's communications operations. Upon vacation of the Sublease Premises, Sublessee shall surrender the Sublease Premises in the condition existing as of the Commencement Date, ordinary wear and tear excepted. Sublessor shall have no further obligations to Sublessee following any such expiration, cancellation, or termination.

3. Use.

(a) Sublessee shall use the Premises for the purpose of installing, maintaining and operating a trolley communications facility, as shown on the attached Exhibit "B." No changes, modifications, additions or substitutions shall be made to any of Sublessee's antennas, equipment and/or improvements shown on Exhibit "B" without the prior written approval of Sublessor, as provided in Section 3(f) below.

(b) Sublessee and Sublessor agree to use their best efforts to prevent any and all interference with or to each other's use of their respective facilities on the Master Lease Premises. Sublessor and Sublessee shall cooperate with each other in measuring interference levels. Interference by either party shall be determined by measuring the combination of (i) worst case level measured out of such party's transmit line added to (ii) worst case antenna isolation. Such value shall be no greater than -120dBm in the respective party's Federal Communications Commission authorized receive and transmit bands of operation. If either party determines that its operations are experiencing interference caused by the other party, such party shall immediately notify the interfering party, and the interfering party shall immediately take action to mitigate or eliminate the interference.

(c) Sublessee acknowledges that the Sublease Premises are being subleased to Sublessee on an "as is" basis and that neither Sublessor nor any agent of Sublessor has made any representation or warranty regarding the Sublease Premises or the Master Lease Premises with respect to their suitability for the conduct of Sublessee's business as permitted under this Sublease. Sublessee's decision to sublease the Sublease Premises is based on Sublessee's own investigation and analysis of the Sublease

Premises. In connection therewith and as a condition precedent to commencement of this Sublease, Sublessee shall be responsible for determining, at its sole cost and expense and to the satisfaction of Sublessor, that the structural capacity of the Antenna Platform is sufficient to bear that portion of Sublessee's permitted installation and that the Antenna Platform shall not be adversely impacted as a result of the addition of such permitted installation. Sublessee shall be obligated, at its sole cost and expense, to repair any and all damage caused by any installation undertaken by Sublessee as permitted under this Sublease.

(d) In the event Sublessor reasonably determines that any structural modifications and/or repairs are needed due in material part to the installation of any equipment or improvements constructed and/or installed by Sublessee, Sublessee shall make all such modifications and/or repairs at Sublessee's sole cost and expense, using contractors approved by Sublessor.

(e) Notwithstanding Sublessee's permitted use of the Sublease Premises as set forth in Section 3(a) above, or the provisions concerning interference in Section 3(b) above, in the event Sublessor reasonably determines that any of Sublessee's operations or equipment cause or contribute to any interference or disruption of Sublessor's communications operations, Sublessee shall, upon demand by Sublessor, immediately take all necessary action to eliminate such interference or disruption. In the event Sublessee fails to eliminate such interference or disruption within twenty-four (24) hours after delivery of notice by Sublessor, Sublessor shall have the right, without any liability or other obligation to Sublessee, to perform all necessary remedial actions and to terminate this Sublease pursuant to Section 11 below. Sublessee shall promptly reimburse Sublessor for any and all costs incurred by Sublessor arising from such remedial action.

(f) Prior to the installation of any antennas, equipment or improvements which are not set forth on Exhibit "B" on or about the Sublease Premises, Sublessee shall submit to Sublessor, for Sublessor's approval, detailed engineering drawings and specifications for such installation. Such approval shall not be unreasonably withheld, conditioned or delayed. Sublessor's approval, conditioned approval or disapproval of such engineering drawings and specifications shall be delivered to Sublessee not later than thirty (30) business days after delivery of the same to Sublessor. Approval of such drawings and specifications by Sublessor shall not in any way be construed to be a confirmation of the accuracy and/or sufficiency of any of the contents of the same. All installations and improvements made by Sublessee shall be at Sublessee's sole cost and expense and shall comply with all governmental laws and regulations applicable to the Sublease Premises and the Master Lease Premises.

4. Master Lease.

(a) This Sublease is and shall at all times be subject to the terms and conditions of the Master Lease. The terms, conditions and respective obligations of Sublessor and

Sublessee to each other under this Sublease shall include the terms and conditions of the Master Lease, except for those provisions of the Master Lease which are directly and expressly contradicted by this Sublease, in which event the terms of this Sublease shall control over such terms of the Master Lease.

(b) In the event Master Lessor exercises any right to relocate the Master Lease Premises pursuant to the Master Lease, Sublessor agrees to: (i) promptly deliver a copy of Master Lessor's notice of its intention to relocate the Master Lease Premises to Sublessee; (ii) promptly deliver a copy of the information provided by Master Lessor concerning the proposed relocation to Sublessee; (iii) cooperate reasonably with Sublessee in designating the relocated Premises; and (iv) provide Sublessee with rights of access and utility easements similar to those provided to Sublessor by Master Lessor. Sublessor shall use its best efforts to accommodate Sublessee's space requirements within the relocated Premises. Sublessor shall cooperate reasonably with Sublessee with respect to the layout, design and qualifications of the relocated Premises in any building constructed by Master Lessor.

5. Electricity.

Sublessee, at its sole cost and expense, shall cause electricity to be supplied to the Sublease Premises at a level sufficient for the ordinary and customary operation of Sublessee's equipment as permitted under this Sublease in strict accordance with Section 3(a), above. Sublessor shall not be liable for, and Sublessee shall not be entitled to any abatement or reduction of Annual Rent or any other remedy against or compensation from Sublessor (whether for damage to Sublessee's wires, cables, conduit, equipment, antennas and components, interruption of Sublessee's business or otherwise) by reason of the total or partial interruption of electrical service to the Sublease Premises, regardless of whether such failure is caused by accident, breakage, strike or other labor dispute, or by any other cause, unless caused as a result of Sublessor's gross negligence or willful misconduct.

6. Taxes.

Sublessee shall pay to Sublessor upon demand (i) all personal property taxes payable by Sublessor and/or Master Lessor as a result of Sublessee's installations, and (ii) any increase in real property taxes and assessments levied against the Master Lease Premises and payable by Sublessor, as a result of Sublessee's installations, in accordance with applicable provisions of the California Revenue and Taxation Code and all regulations promulgated thereunder, and all amendments and successor statutes and regulations thereto, or similar statutes or regulations.

7. Indemnification and Exemption from Liability.

Except as otherwise provided in Section 8 below, each party shall indemnify, defend and hold the other party, its officers, partners, affiliates, agents and employees harmless, from and against any and all claims, causes of action, judgments, damages, expenses, including reasonable attorneys fees, and liabilities (collectively, "Claims") incurred by the indemnified party arising out of, or in any way connected with this Sublease including, without limitation, Claims for loss or damage to any property or for death or injury to any person or persons, to the extent that such Claims arise from the negligence or willful acts or omissions of the indemnifying party, its agents or employees, or from the indemnifying party's breach of any term of this Sublease. Notwithstanding the foregoing, neither Sublessor nor Sublessee shall be liable to the other and each hereby so releases the other for incidental and consequential damages (including loss profits) which might be suffered by the releasing party due to negligent acts or omissions of the released party on or about the Master Lease Premises. This Section 7 shall survive the expiration or earlier termination of this Sublease.

8. Mutual Release and Waiver of Subrogation.

Each party hereby releases the other and the other's officers, partners, affiliates, agents, and employees from liability for any property loss or property damage to the releasing party's property resulting from any cause or hazard with respect to which the releasing party is insured or is required to be insured under this Sublease. Such releases shall apply between Sublessor and Sublessee, and shall also apply to any claims under or through Sublessor or Sublessee as a result of any asserted right of subrogation. All policies of property insurance obtained by each party pursuant to this Sublease shall include a clause or endorsement waiving the insurer's right of subrogation against the other party. This Section 8 shall survive the termination or expiration of this Sublease.

9. Insurance.

(a) Sublessee shall, at all times and at its own cost, keep or cause to be kept in force, the following insurance during the term of this Sublease:

(i) Commercial, general, and automobile coverage insuring against bodily injury and property damage liability with a combined single limit for bodily injury and property damage with limits of at least One Million Dollars (\$1,000,000.00); and

(ii) Personal property insurance in an amount sufficient to fully protect all of Sublessee's installations and property from theft, fire or other loss or damage while upon the Sublease Premises and the Master Lease Premises.

(b) Sublessee shall provide Sublessor with satisfactory evidence of the insurance coverage required pursuant to this Section 9 upon execution of this Sublease. The limits of

policies required to be carried by Sublessee shall not limit the liability of Sublessee under this Sublease. All bodily injury liability insurance and property damage liability insurance shall specifically insure the performance by Sublessee of the indemnity obligations contained in Section 7 above. All policies of insurance shall name Sublessor and Master Lessor as additional insureds.

10. Hazardous Materials.

(a) For the purposes of this Sublease, "Hazardous Material(s)" shall mean any material or substance that is at any time defined or listed in, or otherwise classified pursuant to, any applicable federal, state or local laws or regulations (collectively, "Environmental Laws"), as a "hazardous material," "hazardous substance," "hazardous waste," "infectious waste," "toxic substance," or "toxic pollutant," including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, petroleum by-products and wastes or by-products associated with the extraction, refining or use of petroleum or petroleum products, whether or not the same are listed or classified by any Environmental Laws.

(b) Sublessee shall not use, store, release, discharge or manufacture any Hazardous Materials on or from the Sublease Premises or the Master Lease Premises in violation of Environmental Laws. Sublessee shall at all times comply with all Environmental Laws.

(c) Sublessee shall immediately notify Sublessor in writing of (i) the presence or suspected presence of any Hazardous Materials on or beneath any portion of the Master Lease Premises, (ii) any enforcement, cleanup, removal or other governmental or regulatory action instituted or threatened pursuant to any Environmental Laws, (iii) any claim made or threatened by any person against Sublessee, Sublessor and/or Master Lessor relating to damage, loss or injury resulting from any Hazardous Materials on or about any portion of the property, or (iv) any reports made to any governmental or quasi-governmental agency arising out of or in connection with the presence, discharge or removal of Hazardous Materials on or from any portion of the Master Lease Premises.

11. Termination Event.

(a) In addition to Sublessor's rights to terminate this Sublease as provided in Section 14 below, Sublessor shall have the right to terminate this Sublease in the event any governmental authority takes or threatens to take any action to withdraw or limit by reason of this Sublease any approval, consent, permit or permission required for Sublessor's Facility ("Termination Event").

(b) Upon the occurrence of a Termination Event, Sublessor may elect to terminate this Sublease by providing Sublessee with written notice of such termination ("Termination Notice"). In the event Sublessor elects to terminate this Sublease in accordance with the provisions of this Section 11(b),

this Sublease shall terminate upon the earlier of (i) one hundred twenty (120) days after Sublessor's delivery of the Termination Notice to Sublessee, or (ii) the date Sublessee vacates the Sublease Premises in accordance with the provisions of Section 2(e) above. Until termination of this Sublease in accordance with the provisions of this Section 11, this Sublease shall remain in full force and effect. Upon termination of this Sublease, except as otherwise expressly provided in this Sublease, both parties shall be released from all further obligations and liabilities arising after the date of such termination.

12. Maintenance and Repair.

Sublessee shall be entirely responsible for the maintenance and repair of the Sublease Premises and all of Sublessee's installations and improvements. Such maintenance and repair shall not in any way interfere with or disrupt the operation of Sublessor's Facilities. Under no circumstances shall Sublessor have any obligation to maintain, repair and/or replace the Sublease Premises or any portion thereof, or Sublessee's installations or any portion thereof.

13. Damage or Destruction.

Sublessee hereby assumes the risk of any inability to operate its communications facility as a result of structural failures in the Antenna Platform or in any other part of Sublessor's Facility, or failure of Sublessee's installations for any reason whatsoever, and agrees to indemnify and hold Sublessor harmless from and against any and all damages and costs, including attorneys fees, incurred by Sublessor in defending any claim or suit for damages of any kind asserted by any third party, including claims for business interruption, asserted against Sublessor by reason of such failure. In the event of any failure, damage or destruction of any structure or equipment subject to this Sublease, or any part thereof, Sublessor may, but shall have no obligation to, repair, rebuild or restore, at its own cost and expense, all or any part of such damaged improvement, provided that during such period of repair this Sublease shall remain in full force and effect.

14. Default.

(a) The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder by Sublessee:

(i) The failure by Sublessee to make any payment of Annual Rent or any other payment required to be made by Sublessee hereunder within five (5) days after receiving written notice from Sublessor that such payment is overdue; or

(ii) The failure by Sublessee to observe or perform any of the express or implied covenants or provisions of this Sublease, required to be observed or performed by Sublessee, where such failure continues for a period of thirty (30) days after written notice thereof is received by Sublessee from

Sublessor; provided, however, that an Event of Default shall not arise if Sublessee commences to cure such failure within the thirty (30) day period and thereafter diligently prosecutes such cure to completion; or

(iii) Sublessee fails to eliminate any interference and/or disruption to Sublessor's communications operations (as required in Section 3(e) above) within twenty-four (24) hours after delivery of written notice of such interference and/or disruption to Sublessee from Sublessor.

(b) If there occurs an Event of Default, in addition to any other remedies available to Sublessor at law or in equity, Sublessor shall have the right to immediately terminate this Sublease, together with all of the rights of Sublessee hereunder.

15. Assignment and Subletting.

Sublessee shall not: (a) assign, encumber, dispose of or convey this Sublease or any interest in this Sublease; (b) allow any assignment or transfer of Sublessee's interest in this Sublease, whether by operation of law or otherwise; (c) sublease the Sublease Premises or any part thereof; or (d) permit the use of the Sublease Premises by anyone other than Sublessee. Any attempted assignment, subleasing or other transfer by Sublessee of all or any interest in the Sublease Premises or this Sublease shall be void and of no legal effect and shall constitute an event of default under this Sublease.

16. Notices.

All notices hereunder shall be in writing and, unless otherwise provided herein, shall be deemed validly given if sent by certified mail, return receipt requested, or via recognized overnight courier service, addressed as follows (or to any other mailing address which the party to be notified may designate to the other party by such notice). All notices properly given as provided for in this section shall be deemed to be given on the date when sent. Should Sublessor or Sublessee have a change of address, the other party shall immediately be notified as provided in this section of such change.

Sublessee: San Diego Trolley, Inc.
1255 Imperial Avenue, Suite 900
San Diego, California 92101-7492
Attn: Mr. Langley C. Powell,
President-General Manager

Sublessor: AirTouch Cellular
5355 Mira Sorrento Place, Suite 500
San Diego, California 92121
Attn: Property Management

With a copy to: AirTouch Cellular
P.O. Box 19707
Irvine, California 92713
Attn: Legal Department

17. Covenants and Conditions.

(a) As covenants of Sublessee, and as conditions precedent to the continued effectiveness of this Sublease, all of the following shall have occurred (collectively, "Conditions"):

(i) Sublessee shall reimburse Sublessor for all reasonable costs and expenses incurred by Sublessor arising from the negotiation, due diligence and preparation of the Sublease Premises and this Sublease, including, without limitation, (i) engineering and site design costs, (ii) fees and costs for the issuance of certificates, permits and other approvals required by governmental or quasi-governmental agencies, (iii) legal fees and costs in connection with the review and negotiation of this transaction, and (iv) administrative costs and expenses. Sublessor shall present Sublessee with an itemized list of such costs on or immediately after the Commencement Date;

(b) If the Conditions are not satisfied in their entirety or waived in writing by Sublessor prior to the Commencement Date, this Sublease shall be deemed canceled, and neither party shall have any liabilities or obligations to the other party arising after the cancellation date.

18. Miscellaneous.

(a) It is understood and agreed that this Sublease contains all of the agreements, promises and understandings between Sublessor and Sublessee with respect to the subject matter hereof, and no verbal or oral agreements, promises or understandings shall or will be binding upon either Sublessor or Sublessee, and any addition, variation or modification to this Sublease shall be ineffective unless made in writing and signed by officers of Sublessor and Sublessee.

(b) This Sublease shall be governed, interpreted, construed and regulated by the laws of the State of California.

(c) Each and every covenant and condition of this Sublease shall extend to and bind the heirs, personal representatives, successors and assigns of Sublessor and Sublessee.

(d) All provisions of this Sublease shall be construed as both covenants and conditions. The language of each provision of this Sublease shall be construed simply and according to its fair meaning, and not in favor of one party over the other.

(e) If any portion of this Sublease is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion shall be deemed modified to the extent necessary in such court's opinion to render such portion enforceable, and, as so modified, such portion and the balance of this Sublease shall continue in full force and effect.

(f) Notwithstanding any provision of this Sublease to the contrary, in addition to the other remedies provided in this Sublease, Sublessor and Sublessee shall be entitled to immediate restraint by injunction of any violation of any of the covenants, conditions or provisions in this Sublease.

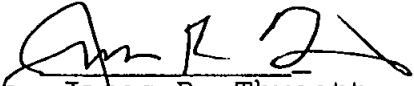
(g) The captions and headings of the sections of this Sublease are for convenience of reference only and shall not affect the interpretation of this Sublease or limit or amplify any of its terms or provisions.

(h) The parties each represent and warrant that the representatives of each party signing this Sublease below has full legal right and authority to execute this Sublease on behalf of such party, and that any corporate proceedings required to be taken by such party to authorize such party to carry out its obligations under this Sublease have been duly and properly taken.

"SUBLESSOR"

Airtouch Cellular, a California corporation,

By: AIRTOUCH CELLULAR, a California corporation,

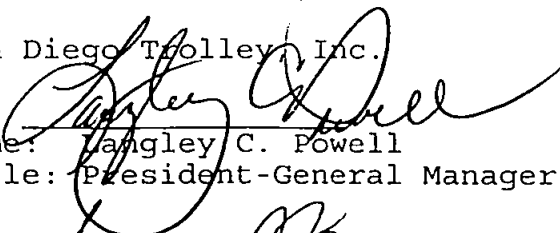
By: 

Name: James R. Thweatt

Title: Director, Network Services
Sierra Pacific Region

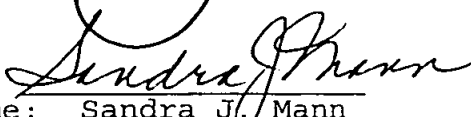
"SUBLESSEE"

San Diego Trolley, Inc.

By: 

Name: Langley C. Powell

Title: President-General Manager

By: 

Name: Sandra J. Mann

Title: Vice President-CFO

DUPLICATE

EXHIBIT "A"
Limited Use Sub Lease
Dated May 21, 1999

THE CITY OF SAN DIEGO

AIRTOUCH CELLULAR

Flat Rate Lease

ENCANTO RESERVOIR

DOCUMENT NO. 18260
FILED FEB 12 1996
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

LEASE OUTLINE

SECTION 1: USES	1
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1.2 <u>Uses</u>	1
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**CITY OF SAN DIEGO
FLAT RATE LEASE**

THIS LEASE AGREEMENT is executed between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter called "CITY," and AIRTOUCH CELLULAR, hereinafter called "LESSEE."

SECTION 1: USES

- 1.1 Premises. CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of San Diego, County of San Diego, State of California, described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises." CITY shall have the right to use the remainder of the parcel for any other use or purpose which does not interfere with LESSEE'S use of its portion.
- 1.2 Uses. It is expressly agreed that the premises are leased to LESSEE solely and exclusively for the purposes of operation of a cellular phone communication site in accordance with Exhibit A, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

The use of the premises for any unauthorized purpose shall constitute a substantial default and subject this lease to termination at the sole option of the CITY.

LESSEE covenants and agrees to use the premises for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

- 1.3 Related Council Actions. By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals

which may be required for the development and operation of the leased premises.

- 1.4 Quiet Possession. LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.5 Easements and Reservations.

- a. CITY hereby reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the leased premises resulting from CITY exercising the rights reserved in this section. Such reimbursement may include a reduction in the rent proportionate to the amount of physical damage as determined by CITY. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.6 Competent Management. Throughout the term of this lease agreement, LESSEE shall provide competent management of the leased premises to the satisfaction of the City Manager. For the purposes of this paragraph, "competent management" shall mean demonstrated

ability in the management and operation of a cellular communications facility and related activities in a fiscally responsible manner.

- 1.7 On Air Compatibility Test. LESSEE agrees to observe the requirement of the Test outlined in Exhibit B attached hereto and by this reference made part of this agreement.

SECTION 2: TERM

- 2.1 Commencement. The term of this agreement shall be five years commencing on the first day of the calendar month following execution by the City Manager. "Lease year" as used in this lease shall mean the 12-month period commencing on the first day of the calendar month following the execution of this lease by the City Manager. Provided that Lessee is not in default of any of the terms of this lease, LESSEE has the right to extend this lease for three additional periods of five years each. To exercise this right, LESSEE must give CITY 60 days written notice of its intent to renew prior to the expiration of each five year period.
- 2.2 Holdover. Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.
- 2.3 Quitclaim and Surrender of LESSEE'S Interest. On execution of this lease, LESSEE shall deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the premises. CITY may record such deed only on the expiration or earlier termination of this lease. In the event that CITY requires any subsequent quitclaim deed, LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor.

At the expiration or earlier termination of this lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe, and sanitary condition. In the case of termination of this lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the City Manager.

SECTION 3: RENT

- 3.1 Time and Place of Payment. Any rent that may become due under this agreement is due monthly in advance on or before the first day of each calendar month. All monthly rents will be prorated during the first and final months of any rental period in order to achieve payment on the first day of each calendar month. Checks should be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 2289, San Diego, California 92112-4165, or delivered to the Office of the City Treasurer, City Operations Building, 1222 First Avenue, Third Floor, San Diego, California.

The place and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.2 Rent.

- a. Rent Amount. The initial rent is [REDACTED] per month. Said rent is subject to adjustments based on increases, if any, in the Consumer Price Index (CPI) and in the fair market value of the leased premises as hereinafter provided.
- b. (1) CPI Index Adjustments. If, at the end of the first five year period, the LESSEE elects to renew this lease agreement for a further five year term, the value of the base rent shall be adjusted to reflect increases in the Consumer Price Index (CPI).

In calculating the CPI adjustment, the index used will be the CPI for "All Urban Consumers" for Los Angeles/Long Beach/Anaheim, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index. If a rental adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI,

the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to "CPI" in any event.

Regardless of the index publication dates, the effective date of the rent adjustment is as specified in this Subsection b.(1), CPI Index Adjustments. Until the rent adjustment can be reasonably determined by the index method, LESSEE shall continue to make payments at the existing rental rate. When the adjustment is determined, the balance of rents due at the adjusted rate will be paid to CITY within thirty (30) days. In no event shall the adjusted rent as established by the Consumer Price Index be less than the rent in existence immediately prior to the adjustment date.

- (2) Index Adjustment Computation. The rent for each rental period following the adjustment until the next adjustment or other rental determination, as provided herein, shall be determined prior to the date of adjustment by multiplying the rent which is effective immediately prior to said adjustment by the "adjustment figure" established as follows:

The "adjustment figure" shall be established by dividing the "current index" by the "base figure", both as defined herein:

The "base figure" for the first such adjustment shall be a three-month average of index figures published by said CPI using the fourth, fifth, and sixth full months preceding the effective date of this agreement.

To illustrate, if the lease began in May, the CPI figures for November (sixth month), December (fifth month), and January (fourth month) preceding May would be averaged to establish the base figure (Example 1).

The "current index" shall be a three-month average of index figures published by said CPI. The three months to be used to establish said average shall be the fourth, fifth, and sixth full months preceding the adjustment date.

The "base figure" for each successive adjustment shall be the "current index" figure used in the last preceding adjustment period (Example 2).

Example 1

Current Index	<u>121</u>
Base Figure	110 = 1.10 (Adjustment Figure)

Effective Rent x 1.10 = Adjusted Rent

Example 2

Current Index	<u>138</u>
Base Figure	121 = 1.14 (Adjustment Figure)

Effective Rent x 1.14 = Adjusted Rent

The adjustment figure is then multiplied by the monthly rent from the preceding adjustment period to determine the new rent. Using the foregoing examples, if the rent is now \$1,000 per month, after the first adjustment it will be \$1,100 per month (\$1,000 x 1.10). In the second adjustment it will be \$1,254 per month (\$1,100 x 1.14).

In no event shall the adjusted rent be less than the rent that was in existence immediately prior to the adjustment date.

- c. Market Value Adjustments. In addition to said CPI adjustments, at the end of the tenth year following the effective date of this agreement and at the end of each five-year period thereafter, the rent for the ensuing five years, subject to the aforesaid CPI adjustments, shall be determined by multiplying the capitalization rate of ten percent (10%) by the fair market value of the leased premises as of the adjustment date. The fair market value of the leased premises shall be determined by an appraisal made by a professional independent real estate appraiser selected by mutual consent of the parties from the list of appraisers approved by CITY. In the event the parties cannot reach agreement upon

selection of a mutually acceptable appraiser, then CITY and LESSEE shall each select a professional independent real estate appraiser who in turn will select a third independent real estate appraiser, which third appraiser will be employed to make the appraisal of the fair market value of the premises and which value will be utilized to determine the adjusted rent previously described herein. In the event that the two selected appraisers fail to mutually select a third appraiser within thirty (30) days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, on prompt application by either CITY or LESSEE with notice thereupon to the other party. In the event that the Superior Court judge declines to make the appointment, the parties hereto agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. Said third appraiser shall complete the assignment within sixty (60) days of appointment. Each party shall pay the cost of its own selected appraiser, and both CITY and LESSEE agree to equally share the cost of the mutually selected or court appointed third appraiser. CITY and LESSEE agree to accept and be bound by the valuation determined by the selected or appointed appraiser.

In establishing the fair market value of the premises, the appraiser shall consider the property as a fee simple absolute estate and as vacant and available for lease or sale for the authorized purposes of this lease at the commencement of the rental period under review.

The date of value of the appraisal shall be the date of rental adjustment as hereinabove established. In the event the appraisal is not completed in time to permit the adjustment to be made upon the date specified, LESSEE agrees to continue to pay rent in accordance with the then-existing lease rates, and the adjustment, when determined, will be retroactive to said effective date of rental adjustment. Any deficiency shall be paid by LESSEE to CITY within thirty (30) days after determination of the new rental rate. IN NO EVENT SHALL THE ADJUSTED RENT, AS ESTABLISHED BY PERIODIC APPRAISALS AS PROVIDED FOR HEREIN, BE LESS THAN THE RENT IN EXISTENCE IMMEDIATELY PRIOR TO THE ADJUSTMENT DATE. Notwithstanding the foregoing, the City Manager, in his sole discretion, may determine that no market value adjustment is necessary and waive the

requirement for the appraisal process for any specific adjustment period.

- 3.3 Delinquent Rent. If LESSEE fails to pay any monetary rent when due, in addition to the unpaid rent, LESSEE will pay ten percent (10%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) [being a total of fifteen percent (15%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payments of rent be less than Ten Dollars (\$10).

SECTION 4: ASSIGNMENT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence of all of the terms, covenants, and conditions of this lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. LESSEE shall not assign this lease or any interest therein and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this lease. This lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager.

"Assignment" for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

4.3 Encumbrance. Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of developing the leased premises. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon must first have the approval in writing of the City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. LESSEE understands and specifically agrees that the City Manager shall have the sole and absolute discretion to approve, disapprove, or condition any such proposed subsequent encumbrance, including but not limited to amending the lease to provide then-current rents and provisions.

In the event any such approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this lease with all the rights, privileges, and duties granted and imposed in this lease.

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified, and financially responsible person or entity in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have a financial interest in this lease. The City Manager's approval will not be unreasonably withheld, provided all such persons and entities are of good character and reputation in the community.

4.4 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, and LESSEE shall fail to commence to cure the default(s) within said thirty-day period and diligently pursue such cure to completion; or
- (2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (3) LESSEE shall be adjudicated a bankrupt; or
- (4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises, provided that LESSEE shall have fifteen (15) business days to remove its personal property, equipment and fixtures from the premises, during which period shall interfere with such removal work. Provided, however, in the event that any default described in Section 4.4a.(1), hereinabove is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s) complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended

during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

- b. Remedies of Lender. Should the default(s) be noncurable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.
- c. Abandonment by LESSEE. Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- d. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take

action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.5 Eminent Domain. If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.
- d. Award. All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. Notwithstanding the foregoing, LESSEE shall be entitled to recover from the condemning authority (i) any sum awarded to LESSEE for damages to or loss of LESSEE'S business; and (ii) such compensation as may be separately awarded or recoverable by LESSEE on account of any and all costs or losses suffered by LESSEE in removing LESSEE'S equipment, fixtures and improvements to a new location. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to

exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.

- f. No Inverse Condemnation. The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this agreement, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

5.2 Insurance.

- a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:
 - (1) Public liability and property damage insurance in the amount of not less than One Million Dollars (\$1,000,000) Combined Single Limit Liability with an occurrence claims form. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the premises.
 - (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the premises in an amount to cover 100 percent of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE. The proceeds shall be placed in a trust fund to be reinvested in rebuilding or repairing the damaged property. If there is a mortgage or trust deed on the leasehold in accordance with Section 4.3, Encumbrance, hereof, the proceeds may be paid to the approved mortgagee or beneficiary so long as adequate provision reasonably satisfactory to CITY has been made in each case for the use of all proceeds for repair and restoration of damaged or destroyed improvements on the premises.
- b. LESSEE'S responsibility to maintain said insurance also includes the following:
 - (1) Additional Insured. All insurance policies will name CITY as an additional insured, protect CITY against any legal costs in defending claims, and will not terminate without sixty (60) days' prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy will remain

on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.

- (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving LESSEE sixty (60) days' prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.
- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection (4), if LESSEE fails or refuses to take out or maintain insurance as required in this lease or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the leased premises shall be damaged by LESSEE's actions or omissions, which puts the premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the premises to the condition which existed prior to said damage; or, at CITY'S option, LESSEE agrees to clear and remove from the leased premises all debris resulting from said damage and rebuild the premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, hereof.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. CITY may determine an equitable deduction in the minimum annual rent requirement for such period or periods that said premises are untenable by reason of such damage.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects whether apparent or latent, in the premises, including the presence of any hazardous wastes.
- 6.2 Entry and Inspection. CITY reserves the right to inspect the premises upon reasonable notice during business hours, or at any time in an emergency. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary

condition, CITY shall have the right, after ten (10) days' written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.

- 6.3 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws.
- 6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager, which approval shall not be unreasonably withheld. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.
- 6.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises. All utilities will be installed underground.
- 6.6 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the

premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.7 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits, which taxes, assessments and/or fees relate directly to LESSEES possessory interest in the premises or the installation of LESSEES' improvements. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

6.8 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.9 Ownership of Improvements and Personal Property.

- a. Any and all improvements, structures, and installations or additions to the premises now existing or constructed on the premises by LESSEE, (not including any of LESSEE'S communications equipment, trade fixtures or personal property) shall at lease expiration or termination be deemed to be part of the premises and shall become, at CITY'S option, CITY'S property free of all liens and claims, except as otherwise provided in this lease.

*but can
pick up
to tear
down*

- b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures, and installations, CITY shall so notify LESSEE thirty (30) days prior to termination or one hundred eighty (180) days prior to expiration, and LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.
 - c. LESSEE-owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.
 - d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.
 - e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said expiration or termination.
 - f. Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said premises upon expiration or termination of this lease, then CITY shall have the first right to acquire or purchase said personal property.
- 6.10 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, said party shall be excused from performing that act for the period equal to the period of the prevention or delay. Provided, however, this provision shall not apply to obligations to pay rental as required pursuant to this lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of such fact within ten (10) days after the beginning of any such claimed delay.

SECTION 7: GENERAL PROVISIONS

7.1 Notices

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to CITY return receipt requested:

City Manager
Attention Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155

To LESSEE, return receipt requested:

Airtouch Cellular
5355 Mira Sorrento Place, Suite 500
San Diego, CA 92121
Attn: Real Estate Department

or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

- b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.

7.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation.

7.3 CITY Approval. The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.

7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender,

sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

7.5 Compliance with CITY'S Equal Opportunity Contracting Program.

- a. Equal Opportunity Contracting. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve the CITY'S commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this lease agreement so that such provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY'S Equal Opportunity Contracting Program staff.

- b. Local Business and Employment. LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this lease agreement from local residents and

firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this lease agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Legal Fees. In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.8 Number and Gender. Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.
- 7.10 Entire Understanding. This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or LESSEES

shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

7.12 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees' for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

7.13 Recording. Concurrently with the execution of this lease, CITY shall execute before a notary and deliver to LESSEE for recording a "Memorandum of Flat Rate Lease" in the form of Exhibit "E", attached hereto and by this reference incorporated herein.

SECTION 8: SIGNATURES

8.1 Signature Page.

IN WITNESS WHEREOF, this lease agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

Date FEB 12 1996

By Robert J. Collins
Real Estate Assets Manager
AIRTOUCH CELLULAR

Date 11-21-95

By Nancy J. Hobbs
Nancy J. Hobbs, President and
General Manager: San Diego
and Imperial Counties

FORM APPROVED
LEGAL DEPARTMENT

BY: Eric C. Young 11-21-95
ERIC C. YOUNG

By Steven N. Wilson
Steven N. Wilson
Assistant Secretary

APPROVED as to form and legality this 23 day of February, 1996.

JOHN W. WITT, City Attorney

By John W. Witt
Deputy City Attorney

MLM/dcj
8/29/95
I:\WPO\1995\MUMERTLS-AIR.ENC

That portion of Lot 162, Encima De San Diego, in the City of San Diego, County of San Diego, State of California, according to the Map thereof No. 1546, filed in the Office the County Recorder of San Diego County, March 18, 1913, lying southerly from a line d parallel with a distant 60.00 feet southerly from the southerly line of Benson Avenue, formerly Boston Avenue as shown on said Map No. 1546, and easterly from the following described line:

Commencing at the point of intersection of the southerly line of said Benson Avenue with the southwesterly line of Aviation Drive, formerly Lot A, as shown on said Map No. 1546; thence along the southerly line of said Benson Avenue North $89^{\circ}11'$ West a distance of 65.00 feet to a point; thence South $0^{\circ}49'$ West a distance of 60.00 feet to the true point of commencement; thence continuing South $0^{\circ}49'$ West 181 feet, more or less, to an intersection with the center line of said Aviation Drive.

9.2 Parcel Map(s).

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AVIATION

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MAP 1546-ENCIMA DE SD ADD NO 1
ROS 10316

CHANGES

BLK OLD NEWRCUT

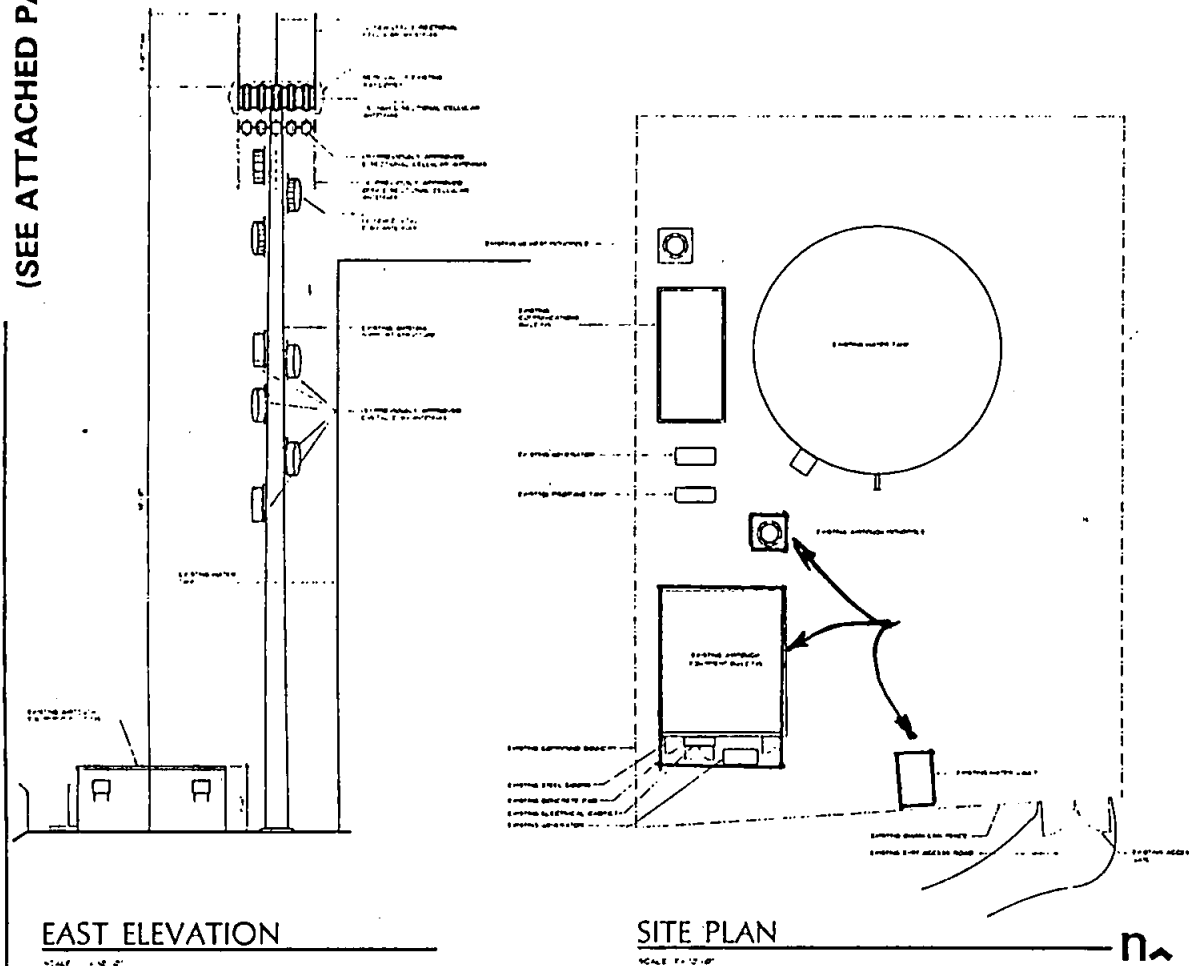
44760-1005 CC

SAN DIEGO COUNTY
ASSESSOR'S MAP
BOOK 549 PAGE 32

9.3 Building Plan or Floor Plan(s).

EXHIBIT "A"

(SEE ATTACHED PARCEL MAP)



AIRTOUCH Cellular

AVIATION CELL SITE

PROJECT DIRECTORY

OWNER:
CITY OF SAN DIEGO - CITY MANAGER
1200 G STREET, SUITE 100
SAN DIEGO, CA 92101
PHONE: (619) 444-1234

CLIENT:
AIRTOUCH CELLULAR
1111 THIRD AVENUE, SUITE 100
SAN DIEGO, CALIFORNIA
PHONE: (619) 591-1234
CONTACT: KEVIN W. GEE

ARCHITECT:
SPRINK CONSULTING ARCHITECTS
3400 LA JOLLA VILLAGE SQUARE, SUITE 100
SAN DIEGO, CALIFORNIA
PHONE: (619) 591-1234
CONTACT: KEVIN W. GEE

PROJECT DESCRIPTION

AIRTOUCH CELLULAR PROPOSES TO INSTALL AN EXISTING COMMUNICATIONS FACILITY BY ADDING 100 1/2" DIAMETER CELLULAR ANTENNAS TO EXISTING 100 1/2" DIAMETER CELLULAR ANTENNAS. THE PROPOSED ANTENNAS WILL BE INSTALLED ON THE EXISTING 100 1/2" DIAMETER CELLULAR ANTENNAS. THE PROPOSED ANTENNAS WILL BE INSTALLED ON THE EXISTING 100 1/2" DIAMETER CELLULAR ANTENNAS.

LEGAL DESCRIPTION

SECTION OF LOT 10, BLOCK 10, SAN DIEGO, CALIFORNIA

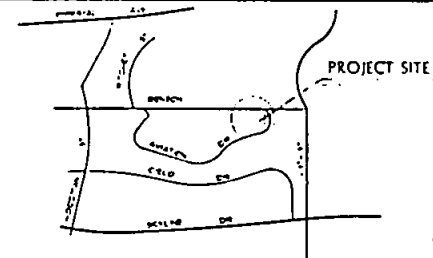
PROJECT DATA

DATE: 1/1/00

PROJECT ADDRESS

1111 THIRD AVENUE, SUITE 100
SAN DIEGO, CALIFORNIA 92101

VICINITY MAP



AVIATION CELL SITE MODIFICATION

AVIATION CELL SITE

AIRTOUCH

TITLE SHEET, SITE PLAN AND ELEVATION

CUP DRAW

AVIATION

1

EXHIBIT B

USER COMMITTEE ELECTRONIC LAND USE "ON THE AIR" TEST INSTRUCTIONS AND PROCEDURES

1. Explanation

Prior to the LESSOR'S approval of an application for a new radio-electronic use authorization or modification of an existing authorization, pre-installation or pre-use tests will be required. Such tests will determine whether or not radio frequency interference or degraded performance will result to the existing authorized radio electronic type uses at the facility.

Should the interference problems result, it will be the responsibility of the user implementing the new installation to initiate mutually agreeable actions of the parties involved to settle the problem among themselves.

LESSORS may recognize the right of prior authorizes and withhold approval of a radio-electronic authorization application or authorization modification pending settlement of interference problems between the applicant and other authorizes.

2. Pre-installation or pre-use Testing

- A. It will be the responsibility of the applicant to make the complete arrangements and conduct all tests in a technically sound manner.
 - (1) A listing of all radio-electronic land use authorizes operating at the facility will be obtained from the users committee.
- B. It will be the responsibility of the applicant to notify all radio electronic authorizes at the facility of the tests and details thereof, at least 14 days in advance of the tests.
 - (1) The notification shall be in the form of letter to each listed authorizee giving a technical summary of the test and shall specify the date and hour the test will start. The letter of notification shall request the authorizes to have a qualified representative present for the test to observe for possible interference problems and with authority to sign an interference or noninterference certification on behalf of the authorizes.

- (2) A copy of these instructions, "City of San Diego Radio-Electronic Land Use On-The-Air Test Instructions and Procedures" shall be attached to each notification and it shall be so noted in the notification letter.
 - (3) Notification to Permittees shall be sent via U.S. Mail or hand delivered.
 - (4) The notification letter to the City Communications Engineer shall include a list of all Permittees notified.
- C. It will be the applicant's responsibility to submit to the City Communications Engineer following the completion of the tests, a letter stating test results obtained from each PERMITTEE participating in the test and a list of those Permittees who did not respond.
- D. In the event a notified PERMITTEE fails to send a qualified representative to observe and participate in the tests, it will be assumed by the City that the PERMITTEE has assured himself that his operations will not be affected.

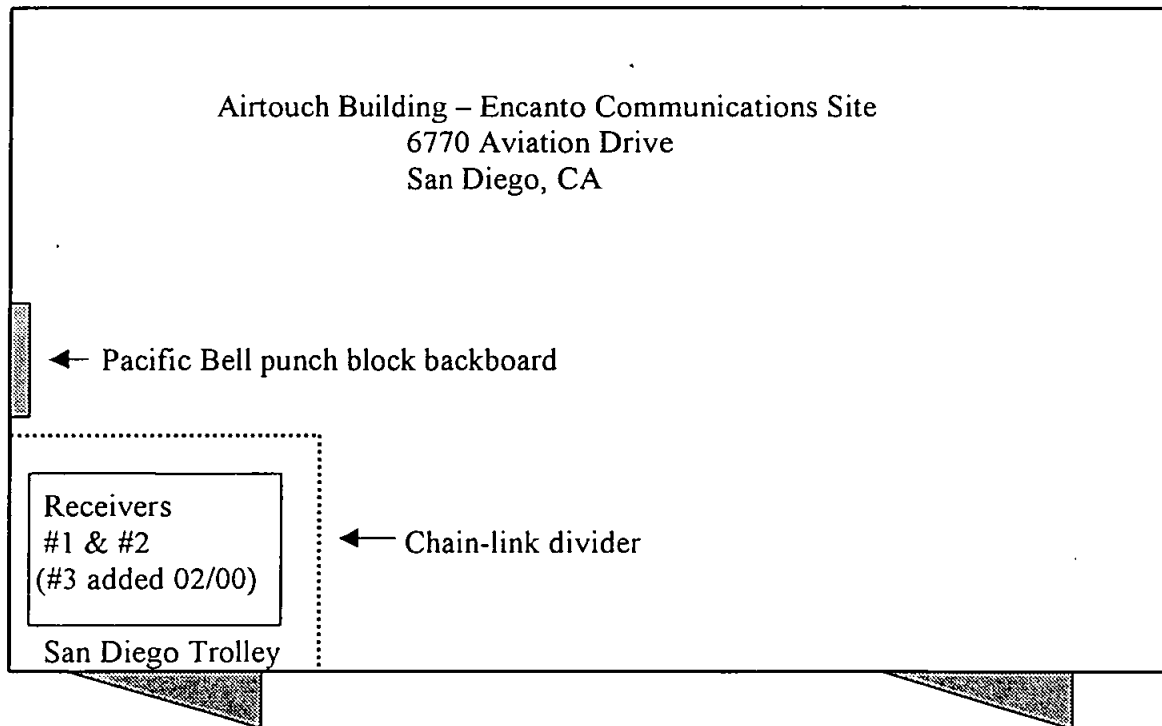
3. On-The-Air Tests - Technical Details

Pre-installation or pre-use on-the-air tests shall be conducted by the applicant under the following technical conditions:

- A. The applicant's transmitting and receiving equipment shall be of the type planned for final use at the site.
- (1) The transmitted RF power shall be the maximum to be used and authorized at the location.
 - (2) On-the-air transmitter tests shall include the use of full allowable modulation.
 - (3) Antenna height(s), location(s) and type(s) shall be the same as the final installation plan.
- B. Tests shall include on-the-air operation of all participating transmitter(s) and receiver(s) in all possible combinations with the applicant's electronic equipment.
- C. All tests will include testing with all frequencies planned for use by the applicant at the location.

EXHIBIT "B"

**SAN DIEGO TROLLEY, INC.
RELOCATION OF ENCANTO RECEIVERS BY BEARCOM WIRELESS
AUGUST 5, 1999**



Receiver #1 - Spectra Tac / Micor
Receiver #2 - Spectra Tac / Micor
Receiver #3 - MTR 2000

Notes:

Each receiver is connected in the Airtouch portion of the building with the Pacific Bell punch block for transmission to the San Diego Trolley "Central Dispatch"

Power is supplied using 10 AWG power cable with an SDG&E meter connection outside of structure.

Roof-mounted antenna is a receiver antenna for a 160MHz communication system and does not transmit or emit any measurable signal associated with PEL concerns.

(O-96-100)

ORDINANCE NUMBER O- **18260** (NEW SERIES)

ADOPTED ON FEB 12 1996

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO
EXECUTE A FIVE-YEAR LEASE AGREEMENT, WITH
THREE FIVE-YEAR OPTIONS TO RENEW, WITH
AIRTOUCH CELLULAR FOR APPROXIMATELY 1,200
SQUARE FEET OF SPACE AT THE ENCANTO STANDPIPE

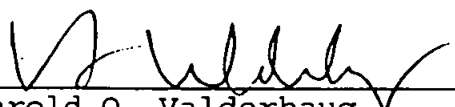
BE IT ORDAINED, by the Council of The City of San Diego, as
follows:

Section 1. That the City Manager is hereby authorized to
execute, for and on behalf of The City of San Diego, a five-year
lease agreement, with three five-year options to renew, with
AIRTOUCH CELLULAR, for the use of approximately 1,200 square feet
of space at the Encanto Standpipe, described as a portion of Lot
162, Encina de San Diego, Map No. 1546, for the operation of a
cellular phone communication facility, at an initial monthly rent
of \$1,000, under the terms and conditions set forth in the lease
agreement on file in the office of the City Clerk as Document
No. OO- **18260**.

Section 2. This ordinance shall take effect and be in force
on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps
01/08/96
Or.Dept:READ
Job:220267
O-96-100

Passed and adopted by the Council of The City of San Diego on
FEB 12 1996 by the following vote:

YEAS: Mathis, Wear, Kehoe, Stevens, Warden, Stallings, McCarty, Vargas.

NAYS: None.

NOT PRESENT: Mayor Golding.

AUTHENTICATED BY:

SUSAN GOLDING

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: MAYDELL L. PONTECORVO, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O- 18260 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on January 29, 1996 and on FEB 12 1996.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: Maydell L. Pontecorvo, Deputy