

TELECOMMUNICATIONS FACILITIES AND SERVICES AGREEMENT

THIS AGREEMENT, dated as of November 14th, 2001, is executed by and between HIGHWAY SEVENTY, L.L.C., a Virginia limited liability company (the "Developer"), and CTC EXCHANGE SERVICES, INC., a North Carolina corporation ("CTCES") and a subsidiary of CT Communications, Inc.

WITNESSETH

WHEREAS, the Developer owns and has the right to develop certain property shown on Appendix A hereto (for the purposes of this Agreement, such property is herein referred to as the "Project Property" and the development known as "Cornerstone Park" to be located on the Project Property, is herein referred to as the "Project"); and

WHEREAS, CTCES is designing and constructing facilities to provide certain telecommunications services to the Project Property and to the Project; and

WHEREAS, the Developer has agreed to grant CTCES certain easements and rights-of-way for the provision of the telecommunications services; and

WHEREAS, the parties have agreed to the terms of a marketing arrangement pursuant to which CTCES will provide the telecommunications services to the Developer and other users at the Project Property and CTCES will be designated as the "Preferred Telecommunications Provider" of the Project and the Project Property.

NOW, THEREFORE, in consideration of the terms, covenants and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer and CTCES agree as follows:

1. PROVISION OF TELECOMMUNICATIONS SERVICES

- 1.1 CTCES and its affiliates will provide the telecommunications services described in Appendix B to the Developer's facilities (*i.e.*, construction trailer, model homes and leasing and business offices) on the Project Property as required by the Developer.
- 1.2 CTCES will provide the telecommunications services described in Appendix C to all users (other than the Developer) located on the Project Property as the "Preferred Provider." As used herein, the term "Preferred Provider" shall mean that the Developer will generally represent and hold out CTCES and its affiliates to prospective tenants, lessees, buyers, developers, subcontractors, partners, business contacts and other members of the public as the preferred provider of the telecommunications services described in Appendices B and C for the Project and the Project Property, all as further described in Appendix D.
- 1.3 All regulated telecommunications services will be provided by CTCES and its affiliates at the applicable price list or tariff on file with the North

Carolina Utilities Commission. All unregulated telecommunications services will be provided by CTCES and its affiliates at competitive rates.

2. EASEMENTS AND RIGHTS-OF-WAY

- 2.1 The Developer will provide CTCES such rights-of-way and easements as may be reasonably necessary to permit CTCES to provide the telecommunications services listed in Appendices B and C; provided, however, CTCES will agree to work with the Developer to locate all easements and rights-of-way in accordance with and in furtherance of the overall development plan for the Project Property. Subject to applicable law and to the exceptions set forth in this **Section 2.1**, the Developer will not grant a right-of-way across the Project Property to another Person for use in providing any telecommunications services. Any right-of-way shall not be subject to the immediately preceding sentence at such time as the portion of the Project Property in which the right-of-way is located becomes a public street, road, or highway or otherwise becomes public property. CTCES will continue to have a right-of-way in relation to other telecommunications providers in any property that is leased by the Developer to others (e.g., an apartment complex or shopping center); provided, however, that CTCES agrees that it will, upon request of a tenant and of another provider of telecommunications services who wishes to provide such services, enter into and maintain an interconnection agreement as required by law.
- 2.2 The Developer represents to CTCES that it is the sole owner of the Project Property, that it has the right to convey the easements contemplated by this **Article 2** and that it will warrant and defend the title to the easement tract against the lawful claims of all persons whomsoever.
- 2.3 The Developer hereby grants to CTCES a non-exclusive license to enter upon the Project Property from time to time for the purposes of installing, maintaining, operating, repairing, replacing and augmenting the facilities necessary for CTCES to provide the telecommunications services required or permitted by this Agreement. CTCES agrees to coordinate the installation, maintenance, operation, repair, replacement and augmentation of the facilities with the Developer, its affiliates and contractors.
- 2.4 The easements rights of way and license granted pursuant to this **Article 2** shall survive any sale or other transfer of the Project or the Project Property by the Developer.
- 2.5 The Developer shall execute and deliver to CTCES, for recordation by CTCES, an easement in the form of the Easement Agreements set forth on Appendices F-1 and F-2, as needed, for the purpose of providing record notice of the easements granted by this Agreement.

3. MARKETING PARTNER BENEFITS PACKAGE

- 3.1 The Developer will provide CTCES with the marketing benefits package described in Appendix D to this Agreement.
- 3.2 As consideration for electing CTCES as the Preferred Provider pursuant to **Section 1.2** and for the marketing benefits package described in Appendix D, CTCES will pay the Developer the compensation as set forth on Appendix E.

4. INSURANCE

- 4.1 During the term of this Agreement, each of CTCES, on the one hand, and the Developer and the contractors who are building the Project, on the other hand, shall maintain such insurance as is customary in accordance with general usage for its respective operations at the Project.

5. TERM

- 5.1 The term of this Agreement will begin on the date of this Agreement and shall terminate on the tenth anniversary of the date of this Agreement. Notwithstanding the foregoing, the easements and rights-of-way granted to CTCES pursuant to **Article 2** shall survive indefinitely any termination of this Agreement.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 6.1 CTCES represents and warrants to the Developer that CTCES is a corporation duly formed and existing in good standing under the laws of the State of North Carolina and has the corporate power and authority to consummate the transactions contemplated by this Agreement.
- 6.2 The Developer represents and warrants to CTCES that the Developer is duly formed and existing in good standing under the laws of the State of its organization or incorporation, as the case may be, and has the legal power and authority to consummate the transactions contemplated by this Agreement.

7. MISCELLANEOUS PROVISIONS

- 7.1 This Agreement shall be governed by the law of the State of North Carolina.
- 7.2 This Agreement, including all exhibits and appendices hereto and thereto, contain the entire agreement between CTCES and the Developer concerning the Project or the Project Property, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understandings of CTCES and the Developer, oral or written, express or implied, including without limitation

any "letter of intent" relating to the Project or the Project Property, are hereby superseded by this Agreement.

- 7.3 Each party shall fully support and cooperate with the other party in giving effect to the purpose and intent of this Agreement, including, without limitation, in a party's efforts to obtain from any governmental authority or any other Person any permit, entitlement, authorization or other right necessary or convenient in connection with such party's activities or operations. Without limiting the generality of the foregoing, each party agrees to execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the intent of the parties as set forth in this Agreement.
- 7.4 This Agreement may be amended only by a written instrument signed by both the Developer and CTCES.
- 7.5 Any notice, tender, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered, mailed, or sent by facsimile transmission in the manner provided in this Section to the following Persons:

If to the Developer:

HIGHWAY SEVENTY, L.L.C.
448 VIKING DRIVE
SUITE 220
VIRGINIA BEACH, VIRGINIA 23452
Telephone No.: 757-463-5000
Telecopy No.: 757-463-8374
Attn: NATHAN D. BENSON

If to CTCES:

CTC Exchange Services, Inc.
68 Cabarrus Avenue, East
PO Box 227
Concord, NC 28026-0227
Telephone No.: (704) 722-2404
Telecopy No. (704) 722-2558
Attn: Barry R. Rubens

Either party may change such party's address for these purposes by giving written notice of the change to the other party.

- 7.6 The covenants, obligations, and liabilities of the parties are intended to be several and not joint or collective, and nothing herein contained shall be construed to create an association, joint venture, trust or partnership, or to

impose a trust or partnership covenant, obligation or liability on or with regard to the parties. Each party shall be individually responsible for its own covenants, obligations and liabilities as herein provided. No party shall be under the control of or shall be deemed to control the other party. No party shall be the agent of or have a right or power to bind the other party without its express written consent, except as expressly provided in this Agreement.

- 7.7 This Agreement may be assigned by either Party to another Person only with the advance written consent of the other party provided the assigning party provides reasonable evidence that the assignee has the financial and other qualifications necessary to permit it to perform the obligations of the assigning party under this Agreement and the assignee signs and delivers to the other party a copy of this Agreement to evidence each assignee's agreement to be bound by this Agreement. Any such assignment contrary to the foregoing provisions shall be void. Notwithstanding the foregoing, CTCES acknowledges and agrees that the Developer may assign this Agreement with respect to any part of the Project Property to a builder for construction and resale of residential dwelling units thereon, including, without limitation, Westfield Homes of North Carolina, Inc., Centex Homes and Pulte Home Corporation, to which the Developer sells and conveys such portion of the Project Property. Upon such assignment, the Developer shall be released of any further obligation or liability under this Agreement with respect to such portion of the Project Property which has been sold and conveyed to such builder as long as such portion of the Project Property is conveyed pursuant to **Section 2.4**. The Developer shall remain a party to this Agreement and be subject to the rights and obligations herein provided with respect to any portion of the Project Property retained by the Developer. Notwithstanding the foregoing and any assignment of this Agreement by the Developer, CTCES shall remain obligated to pay to the Developer and the Developer shall remain entitled to receive, the Initial Referral Fee, as well as the Referral Fees with respect to the portion of the Project Property described in Appendix A-1 and owned by the Developer.
- 7.8 Except as and to the extent required by law, the parties agree not to disclose or use, and will direct their representatives not to disclose or use, any Confidential Information received from the other party at any time or in any manner, other than in connection with the transaction contemplated in this Agreement. As used herein, "Confidential Information" shall mean any information (i) about the providing party or its business or operations obtained by the other party in connection with, or pursuant to, this Agreement and (ii) about the providing party's services to be provided under this Agreement, unless (A) such information is already known to the receiving party or its representatives or such information becomes publicly available through no fault of the receiving party or its representatives, (B) the use of such information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of

the transactions contemplated herein, or (C) the furnishing or use of such information is required or necessary in connection with legal proceedings. Upon written request of the providing party, the receiving party will promptly return to the providing party any Confidential Information received therefrom and will destroy all copies thereof and will certify to the providing party that it has done so.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement as of the date first set forth above.

CTC EXCHANGE SERVICES, INC.

By: _____

Title: _____

HIGHWAY SEVENTY, L.L.C.

By: _____,
as Manager

By: NATHAN D. BENSON

Title: MANAGER

APPENDIX A

Description of Project Property

[TO BE SUPPLIED BY THE DEVELOPER]

APPENDIX A-1

**Description of that portion of Project Property
where Developer intends to build a commercial building**

APPENDIX B

Telecommunications Services to be Provided by CTCES at the Project to the Developer and its Affiliates

CTCES will provide the following Telecommunications Services:

1. Local telephone service and features.
2. Long distance telephone service.
3. Public payphone service.
4. Internet access, including high speed internet access.
5. Such other telecommunications services as may be agreed to by the parties.

APPENDIX C

Telecommunications Services to be Provided by CTCES on a Preferred Basis

The following services will be offered by CTCES and its affiliates as the Preferred Provider to each end user located at the Project or on the Project Property at the beginning of the end user's initial occupancy and thereafter:

1. Local telephone service and features.
2. Long distance service.
3. Public payphone service.
4. Wireless services including only paging and digital mobile communications.
5. Internet access, including high speed internet access, and Web design services.
6. Data applications agreed upon.
7. Phone systems and system installations.
8. Such other telecommunications services as may be agreed to by the parties.

APPENDIX D

Marketing Benefit Package

The marketing benefit package will provide CTCES with the following benefits:

1. To extent legally permissible, listings, including names and contact names (if applicable), addresses and phone numbers, of actual or prospective tenants, lessees, subcontractors, builders, developers and buyers of any part of the Project or Project Property to be sent to CTCES on a regular basis.
2. Rights to the phrase "Preferred Provider of Telecommunications Services for "Cornerstone Park" (or such other phrase as may be agreed to in writing by the parties) and the rights to use the Developer, Project, and Project Property logos in connection with CTCES' advertising.
3. Allowance of public signage (to be erected and maintained by CTCES at its sole cost and expense) designating CTCES as "Developer's Preferred Provider of Telecommunications Services for Cornerstone Park" (or such other phrase as may be agreed to in writing by the parties) on all property within the Project Property subject to the Developer's approval. CTCES will agree to remove any sign upon Developer's request to do so.
4. The grant of easements and right of ways reasonably necessary for CTCES to effectively and properly provide the Telecommunications Services to the Project or the Project Property as more fully described in **Article 2** of the Agreement to which this Appendix D is attached.
5. The Developer will represent and designate to its existing and prospective tenants, lessees, subcontractors, builders, developers and buyers that CTCES is the Preferred Provider of the telecommunications services to the Project and the Project Property and will not enter into any agreement for co-marketing or revenue sharing or other similar arrangement with competing telecommunications service providers. For example, CTCES will be identified as the "Preferred Provider" in all information packages prepared by the Developer or any its affiliates for the benefit of the Project or the Project Property, and, to the extent legally permitted, CTCES will be the only provider of telecommunications service represented at marketing and construction meetings with existing or prospective tenants, lessees, subcontractors, builders, developers, business contacts, and buyers. In addition, the Developer will publicly and actively endorse CTCES' telecommunications services for the Project and the Project Property.

APPENDIX E

Referral Fees

1. Initial Referral Fee. CTCES shall pay to the Developer \$5,000 as an initial referral fee ("Initial Referral Fee"). The Initial Referral Fee shall be paid in full within 30 days after the first subscriber on the Project Property pays in full to CTCES its first bill for local telephone service.

2. Referral Fees. The Developer will earn revenue referral fees in an amount equal to 4% of the Adjusted Gross Revenue. For purposes of this paragraph, the following definitions shall apply:

"Adjusted Gross Revenue" shall mean, for any fiscal quarter of CTCES, Gross Revenue less (i) revenues and taxes collected by CTCES as billing or collections agent on behalf of other telecommunications service providers with respect to such subscribers during such fiscal quarter; (ii) taxes or similar charges collected by CTCES as collection agent for any governmental authority with respect to such subscribers during such fiscal quarter; (iii) customer credits ordered by the North Carolina Utilities Commission, the Federal Communications Commission or any other state or federal agency or regulatory board having jurisdiction with respect to such subscribers during such fiscal quarter; and (iv) revenues of CTCES generated from parts, installation and repair fees during such fiscal quarter.

"Gross Revenue" shall mean, for any fiscal quarter, all revenues collected by CTCES for the services referenced in Appendix C from subscribers located on that portion of the Project Property shown on Appendix A-1 hereto.

CTCES will pay to the Developer within 30 days after at the end of each fiscal quarter an amount equal to the revenue referral fees earned during such fiscal quarter.

CTC Exchange Services, Inc.
Right of Way Agreement
(Highway)

Right of Way Grant for construction on North Carolina State Highway Number _____ County Road and/or Private Road _____

Received of CTC EXCHANGE SERVICES, INC. _____/100 Dollars in consideration of which (I) (we) hereby grant the Company, its associated and allied companies, their respective licensees, successors and assigns, the perpetual right to construct, operate and maintain a line of communication consisting of such wires, cables, conduits, wires, guys, anchors and other necessary appurtenances as from time to time are required ~~across and~~ under that certain tract of land situated in _____ County, State of North Carolina, to wit:

and under the roads, streets or highways adjoining or through said property with the right to permit the attachment of and/or carry in conduit wires and cables of any other person or company for communications purposes or for the transmission and distribution of electric power and the right of ingress and egress to said premises at all times for the purpose of inspecting and maintaining said line and with the right to clear and keep cleared all trees, undergrowth or other obstructions within a strip of land five (5) feet on each side of the center of said line and to trim and cut and keep trimmed and cut all dead, weak, leaning or dangerous trees which might reach said line in falling; including the right to relocate said line on said premises to conform to any future highway relocation, widening or improvement, the said line of said premises to conform to any future highway relocation, widening or improvement, the said sum being received in full payment for the rights herein granted.

This property lies on the _____ side of the road and is joined on the _____ by _____ and on the _____ by _____.

IN TESTIMONY WHEREOF, the undersigned Member-Manager/Member-Partner has executed this instrument on behalf of said Limited Liability Company/Limited Partnership pursuant to authority duly given, this the 14th day of NOVEMBER, 2001.

OWNER:

HIGHWAY SEVENTY LLC
(Name of Limited Liability Company/Limited Partnership)

By: [Signature]
Manager-Member/Manager-Partner

Notary Statement:

NORTH CAROLINA, WAKE COUNTY, I, WILLIAM H. SUTTER, a Notary Public of the County and State as shown, certify that NATHAN D. BENSON personally appeared before me this day and acknowledged that he/she is a Member-Manager/Member-Partner of HIGHWAY SEVENTY LLC, a North Carolina Limited Liability Company/Limited Partnership and that by authority duly given and as the act of the Company/Partnership, he/she executed the foregoing instrument on its behalf.

WITNESS my hand and official Notarial stamp or seal, this the 14th day of NOVEMBER, 2001.
My Commission expires 12-29, 2002. William H. Sutter
Notary Public

NORTH CAROLINA _____ COUNTY

The foregoing certificate of _____ a Notary Public, of _____ County attested by a Notarial Seal is certified to be correct. This instrument was presented for registration this _____ day of _____, 2001 at _____ A.M., P.M., and duly recorded in the office of the Register of Deeds of _____ County, North Carolina in Book _____, Page _____.

This the _____ day of _____, 2001.

REGISTER OF DEEDS

By: _____
ASSISTANT, DEPUTY REGISTER OF DEEDS

CTC Exchange Services, Inc.
Right of Way Agreement
(Carrier Servicing Area)

Received of CTC EXCHANGE SERVICES, INC. _____

_____ /100 Dollars in consideration of which (I) (we) hereby grant the Company, its associated and allied companies, their respective licensees, successors and assigns, the perpetual right to construct, operate and maintain communications and electronic equipment including wires, cables and conduits, and to place and construct the buildings, structures, and other containers necessary to house

said equipment as from time to time are required on a tract of land in _____ County, North Carolina, described as follows:

The above tract of land shall be _____ feet wide by _____ feet deep and shall be _____ feet _____ of _____ Road and is reflected on the attached Exhibit A:

TOGETHER WITH a right of way 15 feet wide for a maintainable drive from _____ Road to the above property for ingress and egress and for wires and cables for communications purposes and for the transmission and distribution of electric power, including the right to relocate said rights of way on said premises to conform to any future highway relocation, widening or improvement, the said rights of way on said premises shall be a similar distance to any future highway relocation, widening or improvement; the said sum being received in full payment for the rights herein granted.

IN TESTIMONY WHEREOF, the undersigned Member-Manager/Manager-Partner has executed this instrument on behalf of said Limited Liability Company/Limited Partnership pursuant to authority duly given, this the _____ day of _____, 200____.

OWNER:

HIGHWAY SEVENTY LLC
(Name of Limited Liability Company/Limited Partnership)

By: _____
Manager-Member/Manager-Partner

Notary Statement:

NORTH CAROLINA, WAKE COUNTY, I, William H. Sutton, a Notary Public in the County and State as shown, certify that NATHAN D. BENSON personally appeared before me this day and acknowledged that he/she is a Member-Manager/ Manager-Partner of HIGHWAY SEVENTY LLC a North Carolina Limited Liability Company/Limited Partnership and that by authority duly given and as the act of the Company/Partnership, he/she executed the foregoing instrument on its behalf.

WITNESS my hand and official Notarial stamp or seal, this the 14th day of Nov.

My Commission expires 12-29, 2002.

William H. Sutton
Notary Public

NORTH CAROLINA _____ COUNTY

The foregoing certificate of _____ a Notary Public, of _____ County attested by a Notarial Seal is certified to be correct. This instrument was presented for registration this _____ day of _____, 200____ at _____ A.M., P.M., and duly recorded in the office of the Register of Deeds of _____ County, North Carolina in Book _____, Page _____.
This the _____ day of _____, 200____.

REGISTER OF DEEDS

By: _____
ASSISTANT, DEPUTY REGISTER OF DEEDS

CT Communications, Inc.
1201 Edwards Mill Road
Suite 101
Raleigh, NC 27607-3625



January 10, 2003

Mr. Nathan Benson
HIGHWAY SEVENTY, L.L.C.
448 Viking Drive, Suite 220
Virginia Beach, VA 23452

Re: Modification of Rights Under Telecommunications Facilities and Services
Agreement

Dear Nathan:

It has been a pleasure doing business with you over the last eighteen months and we look forward to continuing our relationship into the future on new and existing projects. The purpose of this letter is to advise you of a change in your rights under the Telecommunications Facilities and Services Agreement previously executed between HIGHWAY SEVENTY, L.L.C. and CTC ("Agreement").

On December 4, 2002, the North Carolina Utilities Commission ("Commission") issued its Order Denying Motions For Reconsideration in Docket No. P-89, Sub 79. This Order, along with a prior order of the Commission in the same docket dated August 15, 2002, may potentially alter your rights under our Agreement and we wanted to be sure you were aware of this fact. In these Commission orders, the Commission determined that exclusive easement rights (i.e. where a developer is contractually precluded from granting private easements to other providers) and exclusive provider arrangements (where one company is designated as the only company permitted to provide service to end users within a development) are anti-competitive. Our Agreement with HIGHWAY SEVENTY, L.L.C. does not contain an exclusive provider provision (it contains a Preferred Provider arrangement instead) but it may contain an exclusive easement provision. To the extent that our Agreement with you contains provisions that constitute an exclusive easement arrangement, or contains provisions that could be construed to be either an exclusive provider or exclusive easement arrangement, these provisions are no longer enforceable by CTC. Significantly, the Commission's orders did not find that CTC's "Preferred Provider" relationship with HIGHWAY SEVENTY, L.L.C. was unlawful or improper in any way and that arrangement will continue in place, along with all other provisions of our Agreement, except as noted above.

CTC has every intention of abiding by the Commission's rulings in these regards and you may consider this letter as a formal waiver of any right of CTC to enforce provisions that

prefer to formally amend your Agreement to reflect this change, please let us know. As a legal matter, our attorneys have informed us that this letter should be sufficient to protect your legal rights in this regard.

If you have any questions about these matters, please let us know.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wayne Parrish". The signature is fluid and cursive, with the first name "Wayne" being more prominent than the last name "Parrish".

Wayne Parrish
Business Development Manager
CT Communications

Received Time Jan.17. 1:38PM

** TOTAL PAGE.05 **