

MUTUAL COOPERATIVE PROMOTIONAL AGREEMENT

This Promotional Agreement ("Agreement") is made and entered into by and between the Baldwin County Commission (herein called "Developer"), whose principal place of business for this Agreement is located at 312 Courthouse Square, Suite 12, Bay Minette, Alabama, 36507, and AT&T Alabama and its affiliates (herein called "AT&T"), whose principal place of business for purposes of this Agreement is 600 19th Street N, Birmingham, Alabama, 35203. The Developer has an interest in promoting the sale or occupancy of certain real property located in Bay Minette, Alabama, which is known as The South Alabama Mega Site (herein "Development") which may be identified for promotional purposes as a development with AT&T FIBER READY Communications Services.

A cooperative promotional effort is formed solely to permit AT&T and the Developer to effectively promote the advanced broadband communications capacity within the Development. It is not the purpose of the parties to allow the Developer to resell communications services to owners or tenants located within the Development if it would otherwise be legally precluded from doing so or to require the Developer to deal exclusively with AT&T with respect to communications services for the Development.

1. SCOPE OF AGREEMENT

This Agreement is not intended to be a financial commitment by either the Developer or AT&T. The Agreement is intended to set forth the basis for the limited use of certain trademarks, service marks and trade names owned by or used by AT&T and the Developer in an effort to promote the Development as an attractive place to relocate or expand business and the availability of advanced broadband communications technology and services provided by AT&T to business located in the Development.

Attachment A, made a part of and incorporated into this Agreement, sets forth the location for the Development.

A. Developer's Responsibilities

- i. The Developer agrees that, upon receiving a request from a prospective owner or tenant regarding communications services, and upon receiving commitments to purchase or lease property in the Development, the Developer will use best efforts to share the name, address, e-mail address and telephone number with AT&T's designated representative identified in the NOTICES clause of this Agreement. The purpose of this notification is to permit AT&T to meet with the owner or tenant to assess its communications requirements and recommend options for meeting those requirements. All such information furnished by the Developer to AT&T's designated representative(s) shall be furnished on a confidential basis, and AT&T agrees to hold such information in confidence and not to disclose the same to any third parties or to use it for any purposes other than as specifically authorized by this Agreement.
- ii. The Developer may promote AT&T and the advanced broadband communications network in appropriate advertising and promotional materials to owners, tenants, prospective owners and tenants, and the general public (subject to the restrictions set forth in paragraph 2 below).
- iii. Developer agrees that AT&T shall have the right to use the name of the Developer and trade name, trademark and service mark (hereinafter "Developer Marks") (subject to the restrictions set forth in paragraph 2 below) to promote AT&T's advanced broadband communications technology and services to owners and/or tenants in the Development.

B. AT&T's Responsibilities

- i. AT&T may promote its existing and future advanced broadband communications facilities to tenants and owners within the Development. AT&T will determine when and where the fiber may be installed, the manner in which advanced broadband communications services will be provided, and the manner in which all other AT&T communications services will be provided, subject to using or obtaining any necessary easements and/or other approvals.
- ii. Developer shall have the right to use the AT&T FIBER READY mark and AT&T name (hereinafter "AT&T Marks") (subject to the restrictions set forth in paragraph 2 below) to promote AT&T advanced broadband communications services and capabilities to owners and tenants locating in the Development.
- iii. AT&T agrees to provide to the Developer news releases and other material on service improvements in the region that will help promote the Development.
- iv. AT&T agrees to provide approved camera ready logo art and sample advertisement copy for use by the Developer to promote the Development.
- v. AT&T agrees to designate a representative(s) to make presentations to prospective tenants or owners.
- vi. AT&T may promote the AT&T Marks throughout the region through local, statewide and national news releases to various publications, trade journals and professional organizations. Brochures and other promotional materials may be distributed at various economic development organizations' regional and national meetings (*e.g.*, Industrial Development Research Council (IDRC), American Economic Development Council (AEDC) and others).

2. TRADEMARKS

A. Ownership of Marks

AT&T, as owner of the AT&T Marks, grants Developer a non-exclusive, non-transferable, worldwide, royalty-free, license to use, reproduce, and display the AT&T Marks solely for the promotion of communications capabilities available from AT&T to prospective or existing owners and tenants in the Development.

Developer, as owner of the Developer Marks, grants AT&T a non-exclusive, non-transferable, worldwide, royalty-free, license to use, reproduce and display the Developer Marks solely for the promotion of communications capabilities available from AT&T to prospective or existing owners and tenants in the Development.

- i. Developer acknowledges AT&T's ownership rights to the AT&T Marks and agrees that it will not dispute AT&T's title to the AT&T Marks. AT&T acknowledges Developer's ownership rights to the Developer Marks. AT&T agrees that it will not dispute Developer's title to the Developer Marks.
- ii. Developer agrees that it will do nothing inconsistent with AT&T's rights and ownership, and that all use of the AT&T Marks and goodwill associated therein shall inure to the benefit of AT&T. AT&T agrees that it will do nothing inconsistent with Developer's rights and ownership, and that all use of the Developer Marks and goodwill associated therein shall inure to the benefit of Developer.

B. Publicity

- i. The Developer shall be authorized to use the AT&T Marks in its advertising, marketing and promotional activities, provided that AT&T shall have the opportunity to review and approve the use of same prior to Developer's use. In the event that AT&T shall find the use of same objectionable, the Developer shall revise its advertising, marketing and promotional activities, or otherwise follow AT&T's instructions so as to eliminate AT&T's objections. Developer agrees its use of the AT&T Marks will meet the standards, specifications and qualities established by AT&T for the purpose of protecting its Marks under the U.S. Trademark Laws.
- ii. AT&T shall be authorized to use the Developer Marks in its advertising, marketing and promotional activities which are related to its provision of advanced telecommunications technology and services to businesses located in the Development provided that Developer shall have the opportunity to review and approve the use of same prior to AT&T's use. In the event that Developer shall find the use of same objectionable, AT&T shall revise its advertising, marketing and promotional activities, or otherwise follow Developer's instructions, so as to eliminate Developer's objections. AT&T agrees its use of the Developer Marks will meet the standards, specifications and qualities established by Developer for the purpose of protecting its Marks under the U.S. Trademark Laws.

C. Unauthorized Use

- i. Developer agrees to promptly notify AT&T of any unauthorized use of the AT&T Marks by others which may come to attention of Developer. AT&T agrees to promptly notify Developer of any unauthorized use of the Developer Marks by others which may come to attention of AT&T.
- ii. AT&T shall have the sole right and discretion to bring infringement or unfair competition proceedings involving the AT&T Marks. Developer shall have the sole right and discretion to bring infringement or unfair competition proceedings involving the Developer Mark.

3. ASSIGNMENT

Neither party shall assign, subcontract or otherwise transfer its rights or obligations under this Agreement except with the prior written consent of the other, said consent not to be unreasonably withheld; provided, however, each party shall have the right to assign this Agreement to any of such party's present or future affiliates, subsidiary or parent corporation without securing the consent of the other party, and may grant to any such assignee the same rights and privilege the assignor enjoys under this Agreement.

4. INDEPENDENT CONTRACTOR: NO PARTNERSHIP

Each party has and hereby retains the right to exercise full control and supervision over its own employees performing its obligations under this Agreement. Each party shall perform this Agreement as an independent contractor and not as an agent, employee or partner of the other party. It is not the intent of the parties hereto to form a partnership, whether express or implied, or general or limited, as a result of their entering into this Agreement. Relations between the parties are intended to be governed by this Agreement and interpreted pursuant to the law of contracts, rather than pursuant to partnership law.

5. NO FIDUCIARY DUTY

The parties hereto recognize and agree that this Agreement resulted from arms-length bargaining and, therefore, that the parties owe no fiduciary duty to each other as a result of this Agreement.

6. NON-EXCLUSIVE DEALING

Each party has the right to participate in similar agreements with other parties at the Development and other developments.

7. BREACH OF CONTRACT

In the event either party shall be in material breach or default of any of the terms, conditions, or covenants of this Agreement, and said breach or default shall continue for a period of thirty (30) days after the giving of written notice thereof to the party in breach or default, then in addition to all other rights and remedies at law or in equity, the party not in breach or default shall have the right to cancel this Agreement.

8. MODIFICATION TO CONFORM TO LAW

This Agreement and all obligations hereunder shall be subject to all applicable laws, court orders, rules and regulations (collectively "Laws"). In the event this Agreement or any provision hereof, or the operations contemplated hereunder, are found to be consistent with or contrary to any Laws, the Laws shall be deemed to control and, if commercially practicable, this Agreement shall be regarded as modified accordingly and shall continue in full force and effect as modified. If such modified Agreement is not commercially practicable, in the opinion of either party, the parties agree to meet promptly and discuss any necessary amendments or modifications to this Agreement. If after good faith discussion, the parties are unable to agree on necessary amendments or modifications in order to comply with the Laws, then this Agreement may be terminated immediately by either party.

9. NON-WAIVER

No course of dealing or failure of either party to enforce strictly any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition. Waiver by either party of any default of the other hereunder shall not be deemed a waiver of any other default (whether similar or dissimilar) of such party. The express provisions herein for certain rights and remedies of the parties are in addition to any other legal and equitable rights and remedies to which they would otherwise be entitled.

10. FORCE MAJEURE

Neither party shall be held responsible for or have any liability as a result of any delay or failure in performance of either party to this Agreement to the extent that such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authorities, Act of God, or by the public enemy, or other causes beyond the control of AT&T or the Developer. If any force majeure conditions occur, the party delayed or unable to perform shall give immediate notice to the other party and the party affected by the other's inability to perform may elect to:

- (a) terminate this Agreement as to obligations not already performed or,
- (b) suspend this Agreement for the duration of the force majeure conditions and resume performance under this Agreement once the force majeure condition ceases, with an option in the affected party to extend the period of this Agreement up to the length of time the force majeure condition endured.

Unless written notice is given within thirty (30) days after such affected party is notified of the force majeure condition, option (b) shall be deemed selected.

11. SEVERABILITY

If any of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of Developer and AT&T shall be construed and enforced accordingly.

12. TERMINATION

- A. The term of this Agreement shall be one year from the date here of and thereafter shall continue in effect unless and until terminated by either party by giving at least sixty (60) days prior written notice to the other. Termination of this Agreement will not affect AT&T's obligations to provide quality communications products and services to tenants located within the Development.
- B. If at any time, either party fails to adhere to the terms, conditions or obligations of this Agreement with respect to the other party's Marks, this Agreement may be terminated under Section 7 upon thirty (30) days notice to the breaching party. Upon termination or cancellation of this Agreement, each party agrees that it shall immediately discontinue all use of the other party's Marks and any terms, words, or phrases which are confusingly similar to such Marks; and that it shall destroy or surrender to the other party all printed materials bearing such Marks.

13. LIMITATION AND EXCLUSION OF LIABILITY

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES WHETHER ARISING OUT OF BREACH OR WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT TORT LIABILITY OR OTHERWISE.

DEVELOPER ACKNOWLEDGES THAT IT ALONE IS RESPONSIBLE FOR THE ECONOMIC SUCCESS OR FAILURE OF THE DEVELOPMENT AND THAT AT&T SHALL IN NO WAY BE RESPONSIBLE OR LIABLE FOR THE SUCCESS OR FAILURE OF THE DEVELOPMENT.

AT&T'S OBLIGATION UNDER THIS AGREEMENT SHALL NOT INCLUDE ANY LOSSES, EXPENSES OR DAMAGES ARISING FROM ANY MATTERS RELATING TO THE EXISTENCE WITHIN THE DEVELOPMENT OF "HAZARDOUS SUBSTANCE" AS DEFINED IN THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT, AS AMENDED, 42 U.S.C. §9601, ET SEQ., OR SIMILAR STATE ENVIRONMENTAL LAWS OR SUBSEQUENT FEDERAL OR STATE LEGISLATION OF A SIMILAR NATURE WHICH MAYBE ENACTED FROM TIME TO TIME, EXCEPT TO THE EXTENT THE EXISTENCE OF SUCH HAZARDOUS SUBSTANCES OF HAZARDOUS WASTES IS DUE TO (i) ANY COMMUNICATIONS FACILITIES INSTALLED BY AT&T WITHIN THE DEVELOPMENT OR (ii) ANY ACTIVITIES OF AT&T OR ITS AGENT OR SUBCONTRACTORS. THE MATTERS DESCRIBED IN CLAUSES (i) AND (ii) OF THE IMMEDIATELY PRECEDING SENTENCE ARE HEREIN AFTER REFERRED TO AS THE "AT&T LIABILITIES." AS BETWEEN AT&T AND DEVELOPER, ALL OF THE FOREGOING MATTERS (OTHER THAN THE AT&T LIABILITIES) SHALL BE DEVELOPER'S SOLE RESPONSIBILITY. DEVELOPER SHALL FULLY INDEMNIFY AT&T FROM ANY LOSS, COST, EXPENSE OR LIABILITY, INCLUDING REASONABLE

ATTORNEY'S FEES, ARISING FROM ANY OF THE FOREGOING MATTERS (OTHER THAN THE AT&T LIABILITIES), TO THE EXTENT IT IS PERMITTED TO DO SO BY STATE LAW. AT&T SHALL FULLY INDEMNIFY DEVELOPER FROM ANY LOSS, COST, EXPENSE OR LIABILITY, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING FROM THE AT&T LIABILITIES. THIS PROVISION SHALL SURVIVE THE TERMINATION AND OR EXPIRATION OF THIS AGREEMENT AND REMAIN IN EFFECT.

14. DISCLAIMER OF WARRANTIES

Each party accepts all information and services provided under Paragraph 1 of this agreement "as is." Except as expressly provided herein, neither party makes any warranties related to such information and services, whether express or implied, including, but not limited to any warranty of fitness for a particular purpose and any warranty of merchantability.

15. CONFLICT OF INTEREST

Each party represents and warrants that no officer, employee, or agent of the other has been or will be employed, retained, paid a fee, or otherwise has received or will receive any personal compensation or consideration by or from it or any of its officers, employees or agents in connection with the obtaining, arranging or negotiation of this Agreement or other documents entered into or executed in connection herewith.

16. NO RELEASES

Neither AT&T nor Developer shall require waivers or releases of any personal rights from representatives of the other in connection with visits to AT&Ts and Developer's respective premises which are made in the course of performance of this Agreement and no such releases or waivers shall be pleaded by AT&T or Developer or third person in any action or proceeding arising out of this Agreement.

17. CHOICE OF LAW

This Agreement shall be governed by the laws of the State of Alabama.

18. USE OF INFORMATION

Any specifications, drawings, sketches, models, samples, tools, computer or other apparants, programs, technical or business information or data, written, oral or otherwise (all hereinafter designated "Information") furnished by either party under this Agreement or in contemplation of this Agreement, shall remain the property of the party furnishing the same. All copies of such information in written, graphic or other tangible form shall be returned to the party which furnished such information upon request. All such Information shall be kept confidential by the receiving party in performing under this Agreement and may not be used for any purposes except upon such terms as may be agreed upon between the Developer and AT&T in writing. The terms of this Agreement are not for distribution or disclosure beyond those authorized employees of the respective parties. The obligations of either party under this section will not apply to:

- (i) any information that is in the public domain, or enters the public domain other than as a result of improper disclosure by the receiving party; or
- (ii) information in the possession of the receiving party prior to disclosure by the other party;
- (iii) information rightfully provided by a third party; or
- (iv) information required to be disclosed by law (provided that the receiving party will use its best efforts to give notice to the other party prior to such required disclosure).

19. NOTICES

Any notices or demand which under the terms of this Agreement, or under any statute, must or may be given or made by the Developer or AT&T shall be in writing and shall be given or made by electronic mail or by certified or registered mail addressed to the respective parties as shown:

To Developer: T. Christopher Elliott, Chairman
Baldwin County Commission
312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507

To AT&T: A. Langley Kitchings
Suite 4300
675 W. Peachtree Street
Atlanta, GA 30308
lk2673@att.com
404 927 9570

Such notice or demand shall be deemed to have been given or made when sent by electronic mail to the addresses show above or when deposited, postage prepaid in the U.S. mail.

The above addresses may be changed at any time by giving thirty (30) days prior written notice as above provided.

20. ENTIRE AGREEMENT

The terms contained in this Agreement constitute the entire agreement between Developer and AT&T and may not be modified except by a writing signed by the Developer and AT&T. The provisions of this Agreement supersede all prior oral and written provisions of this Agreement supersede all prior oral and written quotations, communications, agreements, and understanding(s) of the parties in respect of the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate and do hereby warrant and represent that their respective signatories whose signature appear below have been and are, on the date of execution of this Agreement, duly authorized by all necessary and appropriate corporation action to execute this Agreement.

By: _____
Fred McCallum, Jr.
President
AT&T Alabama

By: _____
T. Christopher Elliott
Chairman
Baldwin County Commission

Date: _____

Date: _____