

## EASEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that, Alexander Thomas McCulloch, Jr., also known as Alexander T. McCulloch, Jr., and Carole S. McCulloch, whose address is 1655 Timber Valley Rd, Colorado Springs, Colorado, 80819-2815, hereinafter called Grantor, for and in consideration of good and valuable consideration, the receipt of which is hereby acknowledged, does grant unto Level 3 Communications, LLC/its successors, assigns, lessees and agents, hereinafter called Grantee, whose address is 14023 Denver West Parkway, First Floor, Golden, Colorado 80401, a non-exclusive right of way and easement to construct, operate, maintain, inspect, alter, replace and remove such underground communications system ("System") as the Grantee may, from time to time, require, consisting of underground cables, wires, conduits, manholes, drains, splicing boxes, surface location markers and other facilities and equipment for similar uses, upon, over, through, under and along a parcel of land ten feet (10') in width ("Easement") crossing the real property described in Exhibit A attached hereto ("Property") and a plat of the Easement shown on Exhibit B attached hereto and, by reference both made a part hereof, together with:

- (A) the right of ingress and egress over and across the adjacent real property as defined herein as "Temporary Work Space" owned or controlled by Grantor and the Easement, including all existing roads, for the purpose of exercising the rights granted herein provided that such ingress and egress does not interfere with Grantor's improvements or uses and provided that Grantee restores the property and/or roads to their prior condition. Grantee shall pay special attention not to add rutting, washouts, or erosion to the existing roads and agrees to repair any such damage. Grantee shall double lock the entry gate providing the access route to the Easement and Temporary Work Space on a twenty-four (24) hours a day, seven (7) days a week basis;
- (B) the right to clear and keep cleared all trees, roots, brush and other obstructions from the surface and sub-surface of the Easement, and during construction or maintenance periods, to use additional areas adjacent to the Easement for ingress and egress; and
- (C) During construction and/or maintenance Grantee shall have the right to use thirty feet (30') (Temporary Work Space) in width from outer edge to outer edge parallel and adjacent to the ten (10') Easement shown on Exhibit B.
- (D) Rights of ingress and egress during construction or maintenance periods shall be restricted to the 10 foot (10') Easement area and the thirty foot (30') Temporary Work Space; with the sole exception of use of Grantor's existing private roads for inspection purposes only, and as marked on Exhibit B.
- (E) Grantee will furnish Grantor with a plat of subject tract showing the herein referenced fiber optic cable line route prior to beginning construction of the cable line, which shall be attached hereto as Exhibit B and made a part hereof.

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Grantee agrees all facilities shall be buried underground and that no above ground facilities of any kind shall be placed on the property except mile posts, warning markers and approved signs.

Grantor represents and warrants to Grantee that: To the best of Grantor's knowledge, Grantor is the sole lawful and owner and is in peaceful possession of the Property; Grantor has good and marketable title to convey the Easement granted herein; the Easement is wholly within the Property; and the Easement is free of any grants, claims, or encumbrances, except those grants, claims or encumbrances, already existing of public record, which would conflict with Grantee's unrestricted use thereof, as contemplated by this agreement.

Grantor shall have the right to use and enjoy the surface of the Easement except when such use interferes with the rights and privileges conveyed herein to Grantee. Grantor agrees not to erect or construct any building or structure, or plant trees within the Easement.

Grantee hereby agrees that any boring or trenching will be completed in such a way as to minimize soil erosion. Grantee hereby agrees that Grantee shall repair any disturbed surface of the Easement and Temporary Work Space by compacting any trenched areas, adding a layer of topsoil and replanting the surface with grass seed and hay within ninety (90) days of completion of construction. Grantee agrees that all of Grantee's installations will be underground and buried at a depth of at least forty-two inches (42"), with the exception of any required manholes, markers and existing water lines. Manholes shall be installed in such a manner as to be level with the surrounding terrain.

Grantee shall use special care to protect against damage or injury to livestock. Grantee agrees that all gates and fences should remain closed to the greatest extent possible. If during survey, construction or maintenance periods it is necessary for each gates or fencing to be open, Grantee agrees to have an individual stand sentinel at the opening. During survey, construction or maintenance periods, Grantee shall on a daily basis, walk the work area and pick up all construction debris thereby minimizing the opportunity of Grantor's livestock to ingest this foreign matter.

During survey, construction and maintenance periods, Grantee and its agents agree to stay on Grantor's private road to the greatest extent possible. Whenever Grantee's vehicles come to stop on this private road, the driver will turn off the vehicle's engine to minimize the risk of prairie fires.

Grantee agrees to fully compensate Grantor for any damage or injury done to livestock, growing crops, improvements, structures, parking areas, landscaping and other appurtenances and/or other improvements in the course of surveying, construction and maintenance associated with the aforesaid System except if caused by the negligent or willful act or omissions of Grantor, its heirs, assigns, agents, employees or contractors. Grantee agrees that any areas adjacent to the Easement that are altered or damaged as a result of construction or maintenance by Grantee, but which are lying outside the Easement shall be restored to their prior condition (including soil compaction, adding a top layer of top soil and planting the area with grass seed and hay) when said surveying, construction or maintenance is completed.

Grantee agrees to release, indemnify, defend and hold harmless Grantor against any and all claims, demands and causes of action arising in favor of any person, corporation or governmental

entity, because of personal injury including death, or damages to property, including the System, resulting from any act or omission of Grantee its employees, contractors, subcontractors, or agents in the course of construction and maintenance of the System or use of the Easement and Temporary Work Space.

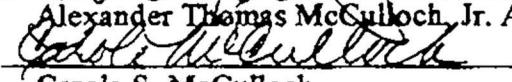
Grantor agrees that should the System be abandoned, or not used for a period of two (2) years, the Easement shall automatically cease and terminate and Grantee shall, if requested by the undersigned, release the same of record.

Grantor hereby agrees to warrant and forever defend title to the Easement by, through or under Grantor, and that Grantor has full right and authority to enter into and deliver unto Grantee this right of way and easement.

This Easement may not be assigned by the Grantee to a party other than Grantee's affiliates, subsidiaries or successors without the prior written consent of the Grantor. This Easement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties, hereto. Grantee shall deliver written notice to Grantor upon an assignment.

The covenants, terms, conditions and provisions therein shall extend to and be binding upon the heirs, executors, administrators, personal representatives, successors, assigns, lessees and agents of the parties hereto.

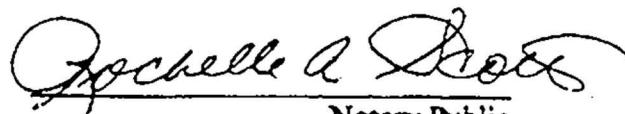
IN WITNESS WHEREOF, this instrument is executed this 26 day of April, 1999.

By:   
Alexander Thomas McCulloch, Jr. AKA Alexander T. McCulloch, Jr.  
By:   
Carole S. McCulloch

#### ACKNOWLEDGMENT

STATE OF Colorado  
COUNTY OF El Paso

BEFORE ME, the undersigned authority, on this 26 day of April, 1999, personally appeared A.T. McCulloch & Carole McCulloch known to me to be the person(s) whose names is(are) subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as his/her free act and deed and for the purposes and consideration therein expressed.



Notary Public

9/12/01  
Commission Expires

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EXHIBIT A

**LEGAL DESCRIPTION OF REAL PROPERTY**

Property situated in County of Pueblo, State of Colorado, and legally described as follows:

Township 18 South, Range 64 West of the 6<sup>th</sup> Principal Meridian, Section 31; and

Township 19 South, Range 64 West of the 6<sup>th</sup> Principal Meridian, Sections 5,4,3  
2, 11,14, 13, 24, 25, 26 and 35.

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**EXHIBIT B**

**PLAT OR DEPICTION OF THE EASEMENT AND TEMPORARY WORK SPACE  
INCLUDING EXISTING PRIVATE ROADS OF GRANTOR WHICH MAY BE USED  
BY GRANTEE.**

**"As Built" Drawings with Precise Legal Description to be Furnished Within 90 days of  
Completion of Construction.**

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EXHIBIT B

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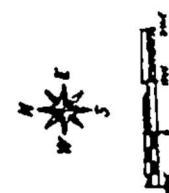
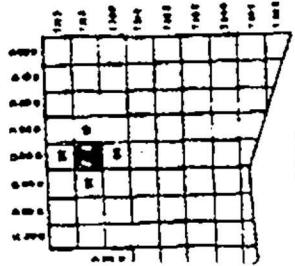
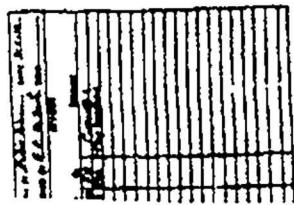
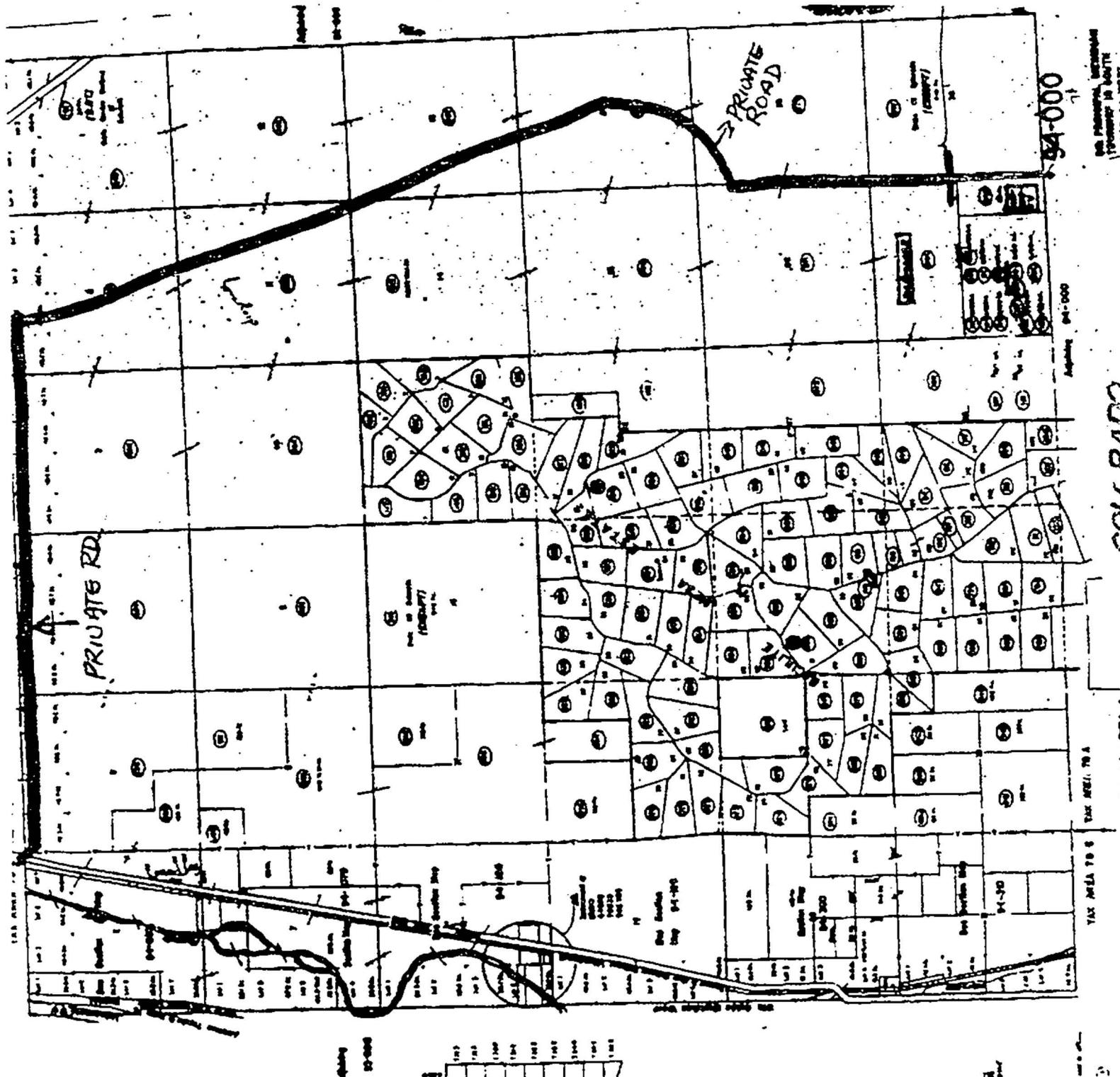
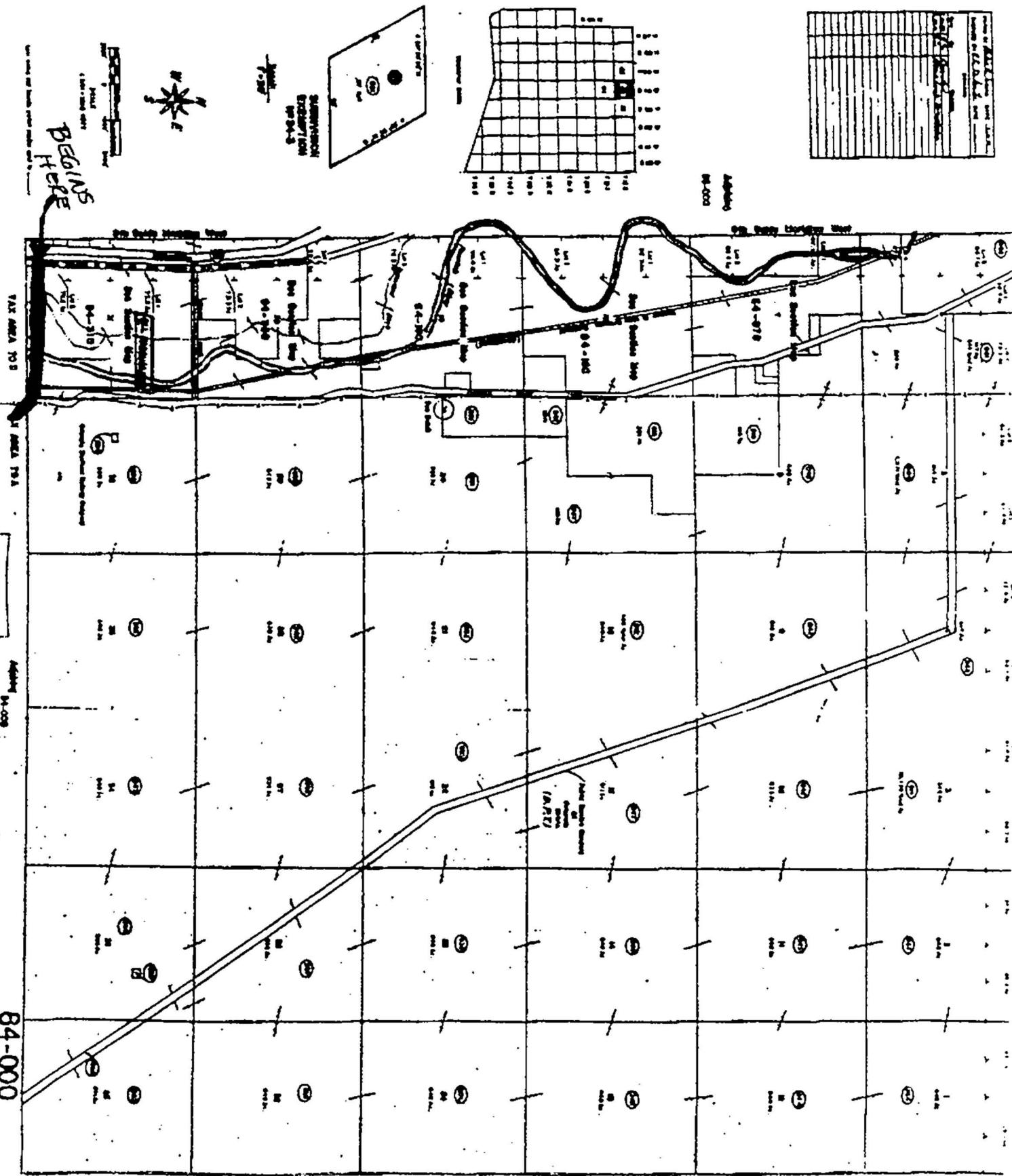


EXHIBIT L  
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PUEBLO COUNTY

COLORADO

MAPS BY MICROGRAPH  
TOPOGRAPHIC MAPS  
1:250,000



OPTION AND EASEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that, Alexander Thomas McCulloch, Jr., also known as Alexander T. McCulloch, Jr., and Carole S. McCulloch whose address is 1655 Timber Valley Road, Colorado Springs, Colorado, 80819-2815, (hereinafter referred to as "Grantor") and Level 3 Communications, LLC, a Delaware limited liability company, its successors, assigns, lessees and agents, whose address is 14023 Denver West Parkway, First Floor, Golden, Colorado 80401; with a copy of all correspondence to: Level 3 Communications, LLC, 1450 Infinite Drive, Louisville, Colorado 80027 Attention: General Counsel (hereinafter referred to as "Grantee") hereby agree as follows:

OPTION AGREEMENT:

Grantor is the owner of the real estate ("Property") legally described on Exhibit A attached hereto. Grantor hereby grants Grantee the exclusive option (the "Option") during the Option Term (as hereafter defined) to secure a right-of-way and Easement (as hereafter described) for the sum of no less than One Hundred One Thousand, Three Hundred Ten and 00/100 Dollars (\$101,310.00) (the "Option Price"), to be calculated on two (\$2.00) dollars per linear foot. If the constructed footage exceeds 50,655 feet, then within a 90 day period from end of construction, Grantee shall be paid additional monies for the Easement calculated on the constructed footage. Grantee may exercise the Option at any time during the period commencing with the date hereof and ending on ~~April 30,~~ 1999 (the "Option Term"). In consideration of the grant of the Option, Grantee hereby agrees to pay Grantor the sum of Four Thousand Five Hundred and 00/100 Dollars (\$4500.00) the "Option Monies"). The Option Monies is to be paid to Grantor upon signing of this Option & Easement Agreement and, in addition, Grantee agrees to pay Grantor the Option Price upon exercise of this Option & Easement Agreement.

m447\*  
JC  
JW  
AM

Grantee may exercise the Option by delivery of written notice of exercise (the "Exercise Notice") from Grantee to Grantor before the expiration of the Option Term (the date of delivery of the Exercise Notice is called the "Exercise Date"). In the event Grantee shall fail to deliver an Exercise Notice to Grantor within the Option Term, the Option shall be void and of no further force or effect and the Option Monies shall be retained by the Grantor. During the Option Term, Grantee shall have the right to conduct such inspections, reviews and investigations of the Property, including environmental assessments, as Grantee shall determine necessary in its sole discretion ("Inspections") Grantee shall use special care to protect against damage or injury to livestock, Grantee agrees to fully compensate Grantor for any damage or injury done to livestock, growing crops, improvements, structures, parking areas, landscaping and other appurtenances and/or other improvements in the course of "Inspections".

EASEMENT AGREEMENT:

Upon the delivery of the Exercise Notice, and subject to the terms and conditions contained herein, Grantor shall be deemed to have hereby and thereby agreed to grant to Grantee, and Grantee shall be deemed to have hereby and thereby agreed to accept and purchase from Grantor, the right-of-way and Easement for the Option Price. Said Easement Agreement is attached hereto and made a part of the Option Agreement.

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IN WITNESS WHEREOF, this instrument is executed this 26<sup>th</sup> day of April 1999.

GRANTOR:

By: 

Alexander Thomas McCulloch, Jr.

By: 

Carole S. McCulloch

GRANTEE:

By: 

Title: AGWT for Level 3 Communications, LLC

GRANTOR ACKNOWLEDGMENT

STATE OF Colorado

COUNTY OF El Paso

BEFORE ME, the undersigned authority, on this day of 26<sup>th</sup> April 1999, personally appeared Alexander T. McCulloch and Carole McCulloch known to me to be the person(s) whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as his/her free act and deed and for the purposes and consideration therein expressed.

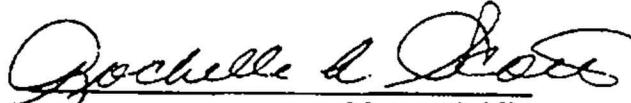
  
Rochelle D. Scott  
Notary Public  
9/20/01  
Commission Expires

GRANTEE ACKNOWLEDGMENT

STATE OF Colorado

COUNTY OF El Paso

BEFORE ME, the undersigned authority, on this day of 26<sup>th</sup> April 1999, personally appeared Joy Potts known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as his/her free act and deed and for the purposes and consideration therein expressed.

  
Rochelle D. Scott  
Notary Public  
9/20/01  
Commission Expires

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