

TOWN OF TIMNATH

RESOLUTION NO. 02-2008

A RESOLUTION AUTHORIZING THE TOWN TO ENTER INTO THE 1ST AMENDMENT TO THE RELOCATION AND EXCHANGE AGREEMENT, DATED JULY 9, 2007, AND TO ENTER INTO THE POSSESSION AND USE AGREEMENT.

WHEREAS, the Authority and the Town entered into the Relocation and Exchange Agreement, dated July 9, 2007; and

WHEREAS, the Relocation and Exchange Agreement provided for the relocation of the cell phone tower to allow construction of a new Frontage Road and the Ptarmigan Area Sewer Line; and

WHEREAS, the Relocation and Exchange provided for the relocation of the cell phone tower on or before February 1, 2008, and for reimbursement of relocation costs up to a maximum of \$280,000; and

WHEREAS, the postponement of construction of the Wal-mart store and delays in receiving regulatory approvals for the new cell phone tower location make it desirable to amend the Relocation and Exchange Agreement; and

WHEREAS, the parties have agreed to enter into a Possession and Use Agreement that will allow the Town to take immediate possession of the existing cell phone tower site in the event all facilities have not been removed prior to June 15, 2008; and

WHEREAS, the 1st Amendment to the Relocation and Exchange Agreement is attached hereto as **Exhibit A** and the Possession and Use Agreement is attached hereto as **Exhibit B**.


THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO:

Section 1. The Town Council directs the Mayor and the Clerk to enter into the 1st Amendment to the Relocation and Exchange Agreement attached hereto as **Exhibit A**.

Section 2. The Town Council directs the Mayor and the Clerk to enter into the Possession and Use Agreement attached hereto as **Exhibit B**.

ADOPTED this 9th day of January, 2008

[SEAL]

By 
Donna Benson, Mayor

ATTEST:

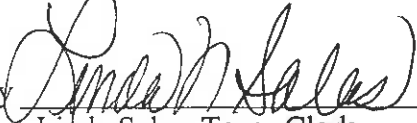
By 
Linda Salas, Town Clerk

Exhibit A

[1ST AMENDMENT TO THE RELOCATION AND EXCHANGE AGREEMENT]

FIRST AMENDMENT TO RELOCATION AND EXCHANGE AGREEMENT

THIS FIRST AMENDMENT TO RELOCATION AND EXCHANGE AGREEMENT (this "First Amendment"), is made and entered into this 27th day of December, 2007, by the **Town of Timnath**, a municipal corporation of the State of Colorado (the "Town"), **Timnath Development Authority**, a body corporate duly organized and existing as an urban renewal authority under the laws of the State of Colorado (the "Authority"), **Global Signal Acquisitions III LLC**, a Delaware limited liability company ("GSA III"), **Global Signal Acquisitions IV LLC**, a Delaware limited liability company ("GSA IV"), **STC Five LLC**, a Delaware limited liability company, by **Global Signal Acquisitions III LLC**, a Delaware limited liability company, its Attorney In Fact ("Lessee"), **Harmony Road Enterprises, LLLP**, a Colorado limited liability limited partnership ("HRE") and **Cache La Poudre Investors North, LLC**, a Colorado limited liability company ("Cache La Poudre"). The foregoing parties are hereinafter collectively referred to herein as the "**Parties.**"

RECITALS

- A. The Parties are parties to that certain Relocation and Exchange Agreement, dated July 9, 2007 (the "Agreement").
- B. The Parties desire to amend the Agreement as set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this First Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Easement Agreement. Section 3 of the Agreement is hereby deleted in its entirety and the following inserted in its place:

Easement Agreement. On or before the later of the following events to occur: (i) August 15, 2007, or (ii) the Notice to Proceed; GSA IV shall deposit with Land America Title Company (the "Easement Escrow Holder") \$310,000 (the "Easement Payment"); and escrow instructions in a form mutually acceptable to HRE and GSA IV. HRE will receive the Easement Payment upon execution of the Easement. The Easement will not be executed until the occurrence of the following events (the "Closing"): (i) GSA IV's receipt of a title report and an environmental report that is satisfactory to GSA IV in its sole discretion, and (ii) GSA III's receipt of the Other Approvals. In the event the Closing does not occur on or before April 15, 2008, GSA IV's obligation and right to purchase the Easement shall terminate and GSA III shall have until June 15, 2008 (the "Completion Deadline"), to complete the Facilities and Removal Work (as such term is defined in Section 4 below). If GSA III

has not completed the Facilities and Removal Work by the Completion Deadline, for any reason whatsoever, the Town will file the Possession and Use Agreement with the District Court of Larimer County, Colorado, and the parties will proceed to the valuation process of a condemnation proceeding for Lessee's leasehold interest in the Existing Cell Tower Parcel. For purposes of this Agreement, the Possession and Use Agreement means the Possession and Use Agreement attached to this Agreement as Exhibit F previously executed by the parties. It is expressly understood that the Town may exercise its rights under the Possession and Use Agreement only if the Facilities and Removal Work has not been completed by the Completion Deadline. Further, it is the intent of the Parties that the Possession and Use Agreement will be filed by the Town on June 16, 2008, or immediately thereafter, and that no other provisions of this Agreement shall apply with respect to extensions of time for default or cure if the Facilities and Removal Work has not been completed by the Completion Deadline. The Parties understand and agree that the Town's exercise of its rights under the Possession and Use Agreement shall serve as (1) a waiver of GSA IV of its right to the Relocation Expenses provided for in Section 5 of this Agreement; and (2) an automatic termination of the license to the Existing Cell Tower Parcel in accordance with the terms of the Lease Amendment. Any equipment or facilities remaining on the Existing Cell Tower Parcel after the filing of Possession and Use Agreement may be removed and disposed of by the Town without any compensation or liability whatsoever to GSA III, GSA IV, Lessee or any other party.

2. Construction of Facilities. Section 4 of the Agreement is hereby deleted in its entirety and the following inserted in its place:

Construction of Facilities. Upon receipt of the Notice to Proceed, GSA III shall diligently proceed with its plans to construct the Facilities within the New Cell Tower Parcel. In no event shall GSA III's construction of the Facilities, transfer of its operations from the Existing Cell Tower Parcel, and removal of all facilities and equipment on the Existing Cell Tower Parcel (the "Facilities and Removal Work") extend beyond the Completion Deadline. Upon GSA III's completion of the Facilities and Removal Work, GSA III shall notify the Town of such completion (the "Completion Notice"). If GSA III fails to complete the Facilities and Removal Work on or before the Completion Deadline, the Town will exercise its rights under the Possession and Use Agreement and the parties will proceed with the valuation process of a condemnation proceeding for Lessee's leasehold interest in the Existing Cell Tower Parcel. It is expressly understood that the Town may exercise its rights under the Possession and Use Agreement only if the Facilities and Removal Work has not been completed by the Completion Deadline. Further, it is the

intent of the Parties that the Possession and Use Agreement will be filed by the Town with the District Court of Larimer County, Colorado, on June 16, 2008, or immediately thereafter, and that no other provisions of this Agreement shall apply with respect to extensions of time for default or cure if the Facilities and Removal Work has not been completed by the Completion Deadline. The Parties understand and agree that the Town's exercise of its rights under the Possession and Use Agreement shall serve as (1) a waiver by GSA III of its right to the Relocation Expenses provided for in Section 5 of this Agreement; and (2) an automatic termination of the license to the Existing Cell Tower Parcel in accordance with the terms of the Lease Amendment. Concurrently with the Town's exercise of its rights under the Possession and Use Agreement, GSA IV and the then owner of the New Cell Tower Parcel shall enter into a temporary license agreement, upon GSA IV's request, to locate and maintain temporary cellular antenna and equipment on the New Cell Tower Parcel but not longer than nine (9) months following the date of the Town's exercise of its rights under the Possession and Use Agreement; provided, however, that GSA IV shall pay a monthly license fee to the then owner of the New Cell Tower Parcel of \$1,500 per month. No later than three (3) days after receipt of the Completion Notice or the Town's exercise of its rights under the Possession and Use Agreement, as applicable, HRE or its successors or assigns, shall grant the Town all necessary rights-of-way and easements required across the Existing Cell Tower Parcel.

3. Authority. GSA III represents and warrants to the Town, the Authority, HRE and Cache La Poudre that it has the full authority and power to enter into this First Amendment and the Possession and Use Agreement on behalf of STC Five LLC as the lessee under the Lease and the First Amendment and Possession and Use Agreement shall be binding on STC Five LLC without the necessity for any additional documentation or approval.

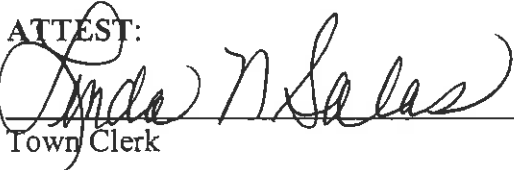
4. Miscellaneous. The balance of the Agreement is hereby amended to reflect the purpose of this First Amendment. The parties hereto acknowledge that except as expressly modified hereby, the Agreement remains unmodified and in full force and effect. In the event of any conflict or inconsistency between the terms of this First Amendment and the Agreement, the terms of this First Amendment shall control. Unless otherwise expressly defined herein, terms in this First Amendment shall have the same meanings assigned to such terms in the Agreement. This First Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

[Signature Page Follows]

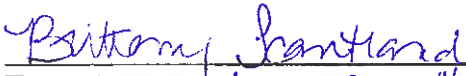
TOWN:

TOWN OF TIMNATH, a municipal corporation of the County of Larimer, State of Colorado

By: 
Name: DONNA BENSON
Title: Mayor


ATTEST:

Town Clerk

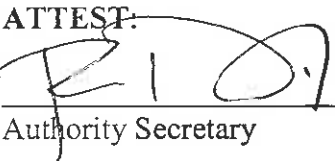
Approved as to legal form by:


Town Attorney, Ass't. Town Attorney

AUTHORITY:

TIMNATH DEVELOPMENT AUTHORITY, a body corporate

By: 
Name: DONNA BENSON
Title: TDA AUTHORITY CHAIR

ATTEST:

Authority Secretary

Approved as to legal form by:


Authority Attorney

GSA IV:

Global Signal Acquisitions IV LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

GSA III:

Global Signal Acquisitions III LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

LESSEE:

STC Five LLC, a Delaware limited liability company, Global Signal Acquisitions III LLC, a Delaware limited liability limited company, its Attorney in Fact

By: _____

Name: _____

Title: _____

HRE:

Harmony Road Enterprises, LLLP, a Colorado limited liability limited partnership

By: _____

Name: _____

Title: _____

Cache La Poudre:

Cache La Poudre Investors North, LLC, a Colorado limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT B

[POSSESSION AND USE AGREEMENT]

AGREEMENT FOR POSSESSION AND USE

This Agreement for Possession and Use (the "Agreement") is made this ___ day of _____, 2008, between the Town of Timnath, a home rule municipality of the State of Colorado (the "Town"), and STC FIVE LLC, a Delaware limited liability company, by Global Signal Acquisitions III LLC, its Attorney in Fact ("Lessee"), for the purpose of granting an irrevocable right of possession and use of its leasehold interest to the real property as described in the attached Exhibit A ("Leasehold").

1. The Lessee hereby irrevocably grants to the Town, its employees, contractors, agents, and all others deemed necessary by the Town, the right to possess and use the Leasehold on or after June 16, 2008. The right to possess and use the Leasehold is for the purpose of constructing, maintaining, replacing and operating the Town's sanitary sewer and roadway project and all other activities and uses that are necessary for the project.

2. The Lessee has entered into this Agreement because the Town has the power of eminent domain and requires the Leasehold for a public purpose. The purpose of the Agreement is to allow the Town to proceed with its project without delay and to allow the Lessee to avoid litigation at this time. In consideration for this irrevocable grant of possession and use, the Town will temporarily forebear from its right to file a condemnation action to acquire immediate possession of the subject property. The parties intend to conduct further negotiations to consummate a voluntary conveyance of the Leasehold.

3. Should the parties for any reason not successfully consummate a voluntary conveyance of the Leasehold by June 15, 2008 (or by such extended time as is agreed to in writing by both parties), the Town shall file a petition in condemnation to acquire the Leasehold through its eminent domain authority. Nothing herein shall be construed as a limitation on the Town's eminent domain rights.

6. By entering into this Agreement, the Lessee acknowledges, stipulates and admits that: 1) the Town has the authority to condemn the subject property; 2) the subject property is being acquired for a public purpose and use; 3) there is a need for the Town to acquire the subject property for the intended public use; and 4) the Town has negotiated in good faith with the Lessee for the acquisition of the subject property. Should the parties not successfully consummate a conveyance of the Leasehold, the Lessee stipulates and agrees that there has been a failure to agree on the compensation to be paid, and that the Town may file a condemnation action to acquire the Leasehold. In the event a condemnation action is filed, the only remaining issue to be determined shall be the amount of just compensation to be paid for the taking of the Leasehold. By entering into this Agreement, neither the Town nor the Lessee waive any right to raise any issue pertaining to just compensation at the time of trial, including damages or benefits, if any, to the remaining property.

7. This Agreement shall remain in effect until such time as: 1) the Leasehold is voluntarily released by the Lessee; 2) a court of competent jurisdiction issues a rule and order

conveying the Leasehold to the Town; or 3) the Town expressly abandons this acquisition. It is understood and agreed that this Agreement is the equivalent of a stipulation for immediate possession of the Leasehold and may be used by the Town, if necessary, to obtain a court order for continued possession of the Leasehold. It is further understood that the Town shall rely upon the terms of this Agreement and may expend funds and labor in furtherance of its project based upon that reliance.

8. The Lessee shall take such additional steps as are deemed necessary by the Town to secure the Town's right to possession and use of the Leasehold as provided by this Agreement. Prior to any final agreement, the Lessee shall provide satisfactory title to these property rights and will obtain any necessary releases, disclaimers or subordinations as may be required by the Town. The Lessee further agrees to pay all taxes, including prorated taxes for the current year, and any special assessments actually due at the time the Town takes possession of the Leasehold, as said taxes or assessments pertain to the Leasehold.

10. This Agreement shall be binding on the parties only when executed by an authorized person on behalf of the Town and by the Lessee or its authorized representative. This Agreement shall also bind the heirs, devisees, executors, administrators, legal representatives, successors and assigns of the parties. The Lessee hereby warrants that the Lessee has the power and authority to enter into this Agreement.

10. The Town may record this document. The rights and obligations created herein shall run with the land.

Lessee: STC Five LLC, a Delaware limited liability company, by Global Signal Acquisitions III LLC, a Delaware limited liability company, its Attorney in Fact

By: _____
Name: _____
Its: _____

Date

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____.

My commission expires: _____

Notary Public

Town of Timnath

By: _____

Date

Rebecca Davidson
Title: Town Manager