

SPONSORED BY: COUNCIL MEMBER MONROE


COUNCILMAN'S RESOLUTION

NO. CB-1616  
Series of 2007

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

A PUBLIC HEARING WILL BE HELD ON CB-1616, SERIES OF 2007, ENTITLED "A BILL FOR A SPECIAL ORDINANCE APPROVING AND RATIFYING THE LEASE AGREEMENT, AS AMENDED BETWEEN THE CITY AND THE SUCCESSOR IN INTEREST TO GLOBALTOWERS, INC., WESTERN SUMMITS, LLC., FOR THE LEASE OF PROPERTY AT THE NORTHGLENN WATER TREATMENT PLANT PROPERTY FOR THE INSTALLATION OF A STEALTH FLAG POLE TELECOMMUNICATIONS TOWER" ON APRIL 12, 2007 AT 7:30 P.M., CITY HALL COUNCIL CHAMBERS, 11701 COMMUNITY CENTER DRIVE, NORTHGLENN.

DATED this 27<sup>th</sup> day of March, 2007.

  
KATHLEEN M. NOVAK  
Mayor

ATTEST:

  
DIANA L. LENTZ, CMC  
City Clerk

AFFIDAVIT OF POSTING:

I, \_\_\_\_\_, certify that CB-1616 was posted at the authorized posting places in the City of Northglenn this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Deputy City Clerk

**EXPLANATORY COVER SHEET**

COUNCILMAN'S BILL NO. CB-1616

SPONSOR: COUNCIL MEMBER MONROE

TITLE: A BILL FOR A SPECIAL ORDINANCE APPROVING AND RATIFYING THE LEASE AGREEMENT, AS AMENDED BETWEEN THE CITY AND THE SUCCESSOR IN INTEREST TO GLOBALTOWERS, INC., WESTERN SUMMITS, LLC., FOR THE LEASE OF PROPERTY AT THE NORTHGLENN WATER TREATMENT PLANT PROPERTY FOR THE INSTALLATION OF A STEALTH FLAG POLE TELECOMMUNICATIONS TOWER

PURPOSE: TO APPROVE A LEASE AGREEMENT ALLOWING FOR THE INSTALLATION OF A STEALTH FLAG POLE TELECOMMUNICATIONS TOWER AT THE NORTHGLENN WATER TREATMENT PLANT, AND TO RESOLVE THE DISPUTE BETWEEN THE CITY AND WESTERN SUMMITS, LLC REGARDING THE LEASE AGREEMENT

ADDITIONAL EXPLANATORY REMARKS:

SPONSORED BY: COUNCIL MEMBER MONROE

COUNCILMAN'S BILL

ORDINANCE NO.

No. CB-1616  
Series of 2007

\_\_\_\_\_  
Series of 2007

A BILL FOR A SPECIAL ORDINANCE APPROVING AND RATIFYING THE LEASE AGREEMENT, AS AMENDED BETWEEN THE CITY AND THE SUCCESSOR IN INTEREST TO GLOBALTOWERS, INC., WESTERN SUMMITS, LLC., FOR THE LEASE OF PROPERTY AT THE NORTHGLENN WATER TREATMENT PLANT PROPERTY FOR THE INSTALLATION OF A STEALTH FLAG POLE TELECOMMUNICATIONS TOWER

WHEREAS, on April 24, 2003, by the passage of Resolution 03-32, the City Council approved a Lease Agreement with GlobalTowers, Inc. (the "Lease Agreement"), in which the City agreed to allow the construction and operation of a monopole telecommunications tower on City-owned property adjacent to the Northglenn Water Treatment Plant;

WHEREAS, on March 11, 2004, the City Council approved Resolution 04-38 authorizing a one (1) year extension of the Lease Agreement through approval of a First Amendment to Lease Agreement (the "First Amendment");

WHEREAS, at some point subsequent to the extension of the Lease Agreement, Western Summits, LLC ("Western Summits") acquired the leasehold interest of GlobalTowers, Inc., and the City commenced discussions with Western Summits, LLC regarding the telecommunications tower to be constructed on City-owned property adjacent to the Northglenn Water Treatment Plant;

WHEREAS, a dispute has arisen between the City and Western Summits regarding whether the Lease Agreement remains in legal effect or has expired, and whether the telecommunications tower received the necessary approvals required from the City at the location originally approved; and

WHEREAS, the City and Western Summits desire to resolve all outstanding issues between the parties and have entered into a Settlement Agreement and General Release and related documents which will be approved by the adoption of the provisions of this Special Ordinance and the ratification of the Lease Agreement, as amended by the First Amendment.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Lease Agreement and the First Amendment attached hereto collectively as **Exhibit 1**, and incorporated herein by this reference, are hereby reaffirmed and ratified in their entirety, subject to the remaining provisions of this Special Ordinance.

Section 2. The Second Amendment to Lease Agreement (the "Second Amendment"), attached hereto as **Exhibit 2**, and incorporated herein by this reference, is hereby approved, and the Mayor is authorized to execute the same on behalf of the City.

Section 3. The City Council further specifically finds and determines as follows:

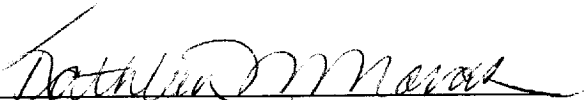
- (a) The property upon which the telecommunications tower will be erected is zoned O-1;
- (b) The maximum height of structures in the O-1 Zone is thirty (30) feet;
- (c) The City Council hereby approves a variance in the height of structures in the O-1 Zone for this Second Amendment for a height not to exceed eighty (80) feet; and
- (d) This variance is approved only in accordance with the specific provisions of the Second Amendment, and the provisions of the Second Amendment are hereby determined to be conditions of approval of this variance.

Section 4. The City Council further specifically finds and determines as follows:

- (a) The equipment more particularly described in Section 5 of the Second Amendment shall be located in equipment shelters/cabinets, wave guide bridges, cable trays, or similar structures, or in the stealth flagpole itself, and no antenna arrays, dishes, cables, wires, electronic equipment generators or other accessories shall be located outside of said shelters in plain view. Notwithstanding the provisions of Section 11-28-2 of the City of Northglenn Zoning Ordinance, any such structures are hereby authorized under this Special Ordinance; and
- (b) The equipment storage shelters shall be subject to the limitations contained in Section 11-55-4 of the City of Northglenn Zoning Ordinance regarding CMRS Facilities as said facilities are defined by Section 11-55-2 of the City of Northglenn Zoning Ordinance.

Section 5. The City Council further authorizes the Mayor to execute any other documents necessary to effectuate the Second Amendment.

INTRODUCED, READ AND ORDERED POSTED this 22<sup>nd</sup> day of March, 2007.

  
KATHLEEN M. NOVAK  
Mayor

ATTEST:

  
DIANA L. LENTZ, CMC  
City Clerk


PASSED ON SECOND AND FINAL READING this \_\_\_\_ day of \_\_\_\_\_,  
2007.

\_\_\_\_\_  
KATHLEEN M. NOVAK  
Mayor

ATTEST:

\_\_\_\_\_  
DIANA L. LENTZ, CMC  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
COREY Y. HOFFMANN  
City Attorney

SPONSORED BY: Councilwoman Tichy

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-32  
Series of 2003

03-32  
Series of 2003

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH GLOBALTOWERS, INC. FOR THE INSTALLATION OF A MONOPOLE TELECOMMUNICATION TOWER ON CITY-OWNED PROPERTY LOCATED ADJACENT TO THE TERMINAL RESERVOIR AT THE NORTHGLENN WATER TREATMENT PLANT.

WHEREAS, a lease agreement has been negotiated between the City and globalTowers, Inc. for the construction and operation of a monopole telecommunication tower to be located on City-owned property adjacent to the terminal reservoir at the Northglenn Water Treatment Plant.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

The Lease Agreement attached hereto is hereby approved and the Mayor is authorized to execute this Agreement on behalf of the City of Northglenn.


DATED at Northglenn, Colorado, this 24<sup>th</sup> day of April, 2003.

  
KATHLEEN M. NOVAK  
Mayor

ATTEST:

APPROVED AS TO FORM:

  
DIANA L. LENTZ, CMC  
City Clerk

  
HERBERT C. PHILLIPS  
City Attorney

## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Agreement") is made and entered into as of the Effective Date (as hereinafter defined) by and between City of Northglenn, a Municipal Corporation (collectively with its successors and assigns referred to herein as "Lessor"), and globalTowers, Inc., a California corporation (collectively with its successors and assigns referred to herein as "Lessee"). Lessor and Lessee are sometimes hereinafter each singularly referred to as a "Party" and collectively referred to as the "Parties".

1. Leased Parcel. For and in consideration of the covenants and agreements contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor that certain real property described on Exhibit A (the "Leased Parcel"). The Leased Parcel is located in or on that certain real property owned by Lessor described on Exhibit B (the "Lessor's Property").

2. Term. This Agreement shall become legally binding on the date that this Agreement is signed by both Parties and a fully executed copy is delivered to and received by both Parties (the "Effective Date"). The term of this Agreement shall be five (5) years commencing on the "Commencement Date" (as hereinafter defined) and expiring on the fifth anniversary of the Commencement Date (the "Term"), unless otherwise previously terminated as provided for herein, or unless renewed as follows: Lessee shall have the right, in its sole and absolute discretion, to extend the Term for five (5) successive five (5) year renewal terms (each a "Renewal Term") on the same terms and conditions as set forth herein. This Agreement shall automatically be deemed extended for each such Renewal Term unless Lessee notifies Lessor, in writing, of its election not to extend this Agreement for the subsequent Renewal Term prior to the expiration of the then current Term or Renewal Term, as the case may be. As used herein, the term "Commencement Date" shall mean the date Lessee begins actual construction of the Communications Facility (as hereinafter defined). Lessee agrees to provide Lessor with no less than thirty (30) days advance notice of its intended Commencement Date.

3. Feasibility Period. Beginning on the Effective Date and continuing until the earlier to occur of twelve (12) months from the Effective Date or the Commencement Date (such period being referred to herein as the "Feasibility Period"), Lessee, its agents and contractors, are hereby granted the right, at Lessee's sole cost and expense, to enter upon Lessor's Property and conduct such studies as Lessee deems necessary to determine the Leased Parcel's suitability for Lessee's intended use of the Leased Parcel for a Communications Facility (as hereinafter defined) and to obtain all Approvals (as hereinafter defined) required to permit Lessee's intended use of the Leased Parcel. These studies (the "Feasibility Studies") may include surveys, soil tests, environmental evaluations, radio wave propagation measurements, field strength tests and such other analyses and studies as Lessee deems necessary or desirable in its sole discretion. Lessee shall not be liable to Lessor or any third party on account of any pre-existing defect or condition on or with respect to Lessor's Property, whether or not such defect or condition is disclosed by the Feasibility Studies or Lessee's analyses thereof. Throughout the Feasibility Period and the Term and any Renewal Term of this Agreement, Lessor agrees to cooperate with Lessee and execute all documents reasonably required to permit Lessee's intended use of Lessor's Property in compliance with all applicable local, state and federal rules and regulations, including, but not limited to, zoning, land use, utility service, and building regulations (collectively, "Approvals"). Lessor shall not take any action that would adversely affect Lessee's ability to obtain or maintain or renew any Approval. Lessor hereby appoints Lessee as its agent and attorney-in-fact for the limited purpose of making application to any governmental or quasi-governmental authority

having jurisdiction over such Approvals and taking such actions as are necessary to obtain any desired permits, zoning authorization, variances, land use approvals and/or building permits reasonably required to allow for Lessee's intended use of Lessor's Property. The Feasibility Period may be further extended by the mutual agreement of the Parties. If, in the sole and absolute opinion of Lessee, Lessor's Property is deemed not suitable for Lessee's intended use, or Lessee determines that the construction and operation of the Communication Facility would not be in Lessee's best interest, Lessee shall have the right at any time prior to the Commencement Date to terminate this Agreement by providing written notice of such termination to Lessor. Thereafter, neither Lessor nor Lessee shall have any further obligation or liability under this Agreement except as otherwise specifically provided herein.

4. Lease Fee. Beginning on the Commencement Date, Lessee shall pay to Lessor the annual fee (the "Lease Fee") of Six Thousand Dollars (\$6000.00) for zero (0) to one (1) carrier, in equal monthly payments of Five Hundred Dollars (\$500.00), Seven Thousand Two Hundred Dollars (\$7200.00) for two (2) carriers, in equal monthly payments of Six Hundred Dollars (\$600.00) and Eight Thousand Four Hundred Dollars (\$8400.00) for three (3) carriers, in equal monthly payments of Seven Hundred Dollars (\$700.00) due and payable on the first day of each month within the Term; provided, however, if Lessee's obligation to pay the Lease Fee commences or ends on a date other than the first day of a calendar month, the Lease Fee payment for that calendar month shall be prorated based upon the actual number of days in that calendar month. Lease fee amount shall increase three percent (3%) per year. A carrier is defined as a licensed or unlicensed wireless service provider.

5. Use. Lessee shall have the exclusive use of the Leased Parcel, which shall be used for the purposes of designing, constructing, installing, removing, replacing, maintaining and operating a communications facility (the "Communications Facility"); provided, however, that Lessee shall not be obligated to install or maintain the Communications Facility on the Leased Parcel. The Communications Facility may include, without limitation, one (1) sixty five foot (65') monopole communications tower with the approval for an additional ten feet (10') in height based on additional carrier need for a maximum height of seventy five feet (75'), antenna arrays, dishes, cables, wires, temporary cell sites, equipment shelters and a maximum of three (3) buildings not exceeding the dimensions of ten feet (10') by twenty feet (20') by twelve feet (12'), electronics equipment, generators and other accessories. Lessee shall have the right to temporarily park its vehicles and equipment and store materials on the Leased Parcel during periods of design, construction, removal, replacement and maintenance of the Communications Facility.

6. Access and Utility Easement. Lessor hereby grants and conveys to Lessee, during the Term and any Renewal Terms, a non-exclusive easement (the "Access and Utility Easement") for the purpose of providing vehicular access, ingress and egress to the Leased Parcel, and for providing utility service to the Leased Parcel in the location(s) and subject to any additional conditions and rights set forth on Exhibit A. All costs associated with improvement of the Access and Utility Easement for its intended purposes by Lessee as set forth herein, including surveying, construction, repair and maintenance shall be borne by Lessee. The Access and Utility Easement is not exclusive, and Lessor shall have an equal right to use the Access and Utility Easement; provided, however, that such use shall not interfere with Lessee's use thereof, and provided that any increased cost of repair and maintenance caused by such use shall be borne by Lessor. The Access and Utility Easement shall remain in effect during the Term and any Renewal Term exercised by Lessee.



7. Temporary Access and Construction Staging Easement. Lessor hereby grants and conveys to Lessee a non-exclusive temporary easement over, under and through those portions of Lessor's Property described in Exhibit A hereto, reasonably required to allow for Lessee to complete the Feasibility Studies and obtain the Approvals, and for the purpose of providing temporary construction staging areas for installation, repair, maintenance and removal of the Communications Facility and any improvements and/or utilities to be located within the Access and Utility Easement. Construction staging areas shall be reasonably limited in scope and located by Lessee adjacent to the Leased Parcel and/or Access and Utility Easement to the greatest extent practicable. The Temporary Access and Construction Staging Easement shall remain in effect during the Term and any Renewal Term exercised by Lessee.

8. Right to Sublease. Lessee shall have the unrestricted right to sublease or license all or any portion of the Leased Parcel, Utility and Access Easement and Temporary Access and Construction Staging Easement to third parties, in Lessee's sole discretion, and without the consent of Lessor. Lessor acknowledges and agrees that Lessee's intent and purpose for entering into this Agreement and constructing the Communication Facility is to sublease the same to third parties in accordance with this unrestricted right.

9. Assignment. Lessee shall have the unrestricted right to sell, assign and convey all or any portion of Lessor's leasehold interest in and to the Leased Parcel, the Access and Utility Easement and the Temporary Access and Construction Staging Easement to any third party in its sole and absolute discretion, without the consent of Lessor; provided however, that any such third party shall assume all of Lessee's obligations hereunder, and Lessee shall be relieved of all such obligations thereafter. Lessee, or any such assignee of Lessee, shall also have the right to mortgage, pledge or encumber its interests hereunder, and any entry or foreclosure and sale by the mortgagee of any such mortgage shall be a permitted assignment provided that the entering or foreclosing mortgagee shall be subject to the terms and conditions of this Agreement. Lessor shall provide all notices to be provided to Lessee hereunder to any mortgagee of which Lessor has received written notice from Lessee and Lessor shall provide mortgagee the same opportunities to cure any defaults provided to Lessee provided for herein.

10. Transfer Warranty. During the term of this Agreement, Lessor covenants and agrees that it will not grant, create, or suffer any claim, lien, encumbrance, easement, restriction, or other charge or exception to title to the Leased Parcel that adversely affects Lessee's rights under this Agreement.

11. Utilities. Lessee shall have the right, at its expense, to install or improve utilities servicing the Leased Parcel including, but not limited to, the installation of emergency power generators, power lines, telephone or fiber optic lines. All utility lines shall be installed underground. Payment for electric service and for telephone or other communication services to the Communications Facility shall be Lessee's responsibility. Lessor agrees to cooperate with Lessee in its efforts to obtain, install and connect the Communications Facility to existing utility service at Lessee's expense.

12. Removal of Improvements. All personal property and trade fixtures of Lessee, specifically including towers and buildings, shall be removed by Lessee within ninety (90) days after the expiration or earlier termination of this Agreement. In such event, Lessee shall return Lessor's Property to substantially the condition existing at the time of this Agreement's execution, reasonable wear and tear excepted. Notwithstanding the foregoing, Lessee shall not be required to remove any foundation more than three (3) feet below grade level, nor shall Lessee be required to remove any improved road surfaces.

13. Insurance. Lessee shall maintain commercial general liability insurance insuring Lessee against liability for personal injury, death or damage to personal property arising out of use of the Lessor's Property by Lessee, with combined single limits of Two Million Dollars (\$2,000,000.00). Lessee shall name Lessor as an additional insured on the policy or policies and shall provide Lessor with appropriate documentation.

14. Condition of Lessor's Property. Lessor makes no (and shall not be deemed to have made any) warranties, express or implied, as to the condition of the leased parcel, its fitness for any particular purpose, the absence of latent or other defects or any other matters, and lessor hereby disclaims the same; it being understood and agreed that the leased parcel is leased to lessee "as is." Lessee acknowledges that it has had an opportunity to inspect and conduct such surveys, tests, evaluations, measurements, analysis and studies as it deemed appropriate during the feasibility period and that lessee has not relied on any representations by the lessor regarding the condition of the leased parcel or lessor's property.

15. Termination. This Agreement may be terminated by Lessee at any time, in its sole discretion by giving written notice thereof prior to the Commencement Date. Further, subject to the cure provisions contained in Section 20, either party may terminate this agreement upon any default or material breach of any provision of this agreement by the other party.

16. Indemnification. Lessee agrees to defend, indemnify and hold Lessor, its directors, officers, employees, agents, representatives, successors, assigns and subcontractors ("Lessor Indemnitees"), harmless from claims arising from the installation, use, maintenance, repair, or removal of the Lessee Facilities, except for claims arising from the negligence or intentional acts of Lessor, its employees, agents or independent contractors. Lessee further agrees to indemnify Lessor Indemnitees for all loss, damages, claim suits, penalties, costs, liabilities, settlements, judgments and expenses, including attorney's fees, based upon or arising out of Lessee's, or its employees, agents, contractors, directors, guests and invitees' activities under this Agreement or otherwise occurring on the Property or the Leased Premises.

17. Casualty and Condemnation. If any portion of Lessor's Property or Communication Facility is damaged by any casualty and such damage adversely affects Lessee's use of the Lessor's Property, or if a condemning authority takes any portion of the Lessor's Property and such taking adversely affects Lessee's use of the Lessor's Property, this Agreement shall terminate as of the date of casualty or the date the title vests in the condemning authority, as the case may be if Lessee gives written notice of the same within sixty (60) days after Lessee receives notice of such casualty or taking. Irrespective of Lessee's election whether to terminate this Agreement, the parties shall be entitled to make claims in any condemnation proceeding for value of their respective interests in the Lessor's Property (which for Lessee may include, where applicable, the value of the Communications Facility, moving expenses, prepaid Fees, and business dislocation expenses). Sale of all or part of Lessor's Property to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation.

18. Waiver of Lessor's Lien. To the extent permitted by law, Lessor hereby waives any and all lien rights it has or may have, statutory or otherwise, concerning the Communications Facility or any portion thereof, or any other personal property or trade fixture of Lessee, regardless of whether or not the same is deemed real or personal property under applicable law.

19. Quiet Enjoyment. Lessee shall peaceably and quietly have, hold and enjoy the Leased Parcel and easement rights granted herein. If, as of the Effective Date or hereafter, there is any mortgage, or other encumbrance affecting Lessor's Property, then Lessor agrees to obtain from the holder of such encumbrance a non-disturbance and attornment agreement that Lessee shall not be disturbed in its possession, use and enjoyment of the Leased Parcel and easement rights granted herein. Lessor shall not cause or permit any use of Lessor's Property that interferes with or impairs the quality of the communication services being rendered by Lessee from the Leased Parcel. Lessor shall not grant any other person or entity the right to operate a wireless communication facility on Lessor's Property without the express written consent of Lessee, which consent may be withheld in Lessee's sole and absolute discretion. Except in cases of emergency, Lessor shall not have access to the Leased Parcel unless accompanied by Lessee's personnel.

20. Default. Except as expressly limited herein, Lessor and Lessee shall each have such remedies for the default of the other Party hereto as may be provided at law or equity following written notice of such default and failure to cure the same within thirty (30) days, or if such default is incapable of being cured in a reasonable manner within thirty (30) days, the defaulting party has not commenced to cure the same within said thirty (30) day period and thereafter diligently prosecutes the same to completion; provided, however, in no event shall such cure period be extended more than one hundred twenty (120) days from the date notice of default is delivered, and; provided, however, that in no event may the Lease Fee be accelerated.

21. Collateral Assignment. Lessor hereby (i) consents to the collateral assignment of and granting of a security interest from time to time in favor of any holder of indebtedness borrowed by Lessee ("Lender") whether now or hereafter existing, in and to all of Lessee's leasehold interest herein or the Communications Facility; (ii) agrees to simultaneously provide Lender with a copy of any notice of default under the Agreement sent to Lessee and allow Lender the opportunity to remedy or cure any default as provided for in the Agreement; and (ii) agrees to attorn to Lender as if Lender were Lessee under the Agreement upon the written election of Lender so long as any existing default under the Agreement has been cured as provided hereunder. Lessor hereby further agrees to permit Lender to remove from Lessor's Property any of the collateral in which Lender has been granted a security interest by Lessee ("Collateral") in accordance with any security documents granted in favor of Lender; provided, however, that Lender shall promptly repair, at its sole cost and expense, any physical damage to the Property directly caused by such removal.

22. Holding Over. In the event of Lessee's continued occupancy of the Leased Parcel after the expiration of the Term or any renewal or extension thereof, or any earlier termination provided or permitted by this Agreement, with the consent of Lessor, such tenancy shall be deemed a month-to-month tenancy. All other covenants, provisions, obligations and conditions of this Agreement shall remain in full force and effect during such month-to-month tenancy.

23. Non-Waiver of Default. No acquiescence by either Party to any default by the other Party shall operate as a waiver of its rights with respect to any other breach or default, whether of the same or any other covenant or condition.

24. Recording. This Agreement shall not be recorded. The parties shall execute, acknowledge and deliver to each other duplicate originals of a short form or memorandum of this Agreement ("Memorandum of Agreement") in substantially the form of Exhibit "C" attached hereto and incorporated herein, describing the Lessor's Property and setting forth the Term of this

Agreement. At its respective sole cost, either party may record such Memorandum of Lease after the Effective Date.

25. Force Majeure. Whenever a Party is required to perform an act under this Agreement by a certain time, said time shall be deemed extended so as to take into account events of "Force Majeure." "Force Majeure" is any of the following events that prevents, delays, retards or hinders a Party's performance of its duties hereunder: act of God; fire; earthquake; flood; explosion; war; invasion; insurrection; riot; mob violence; sabotage; vandalism; inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market; failure of transportation; strikes; lockouts; litigation; condemnation; requisition; governmental, civil, military or naval authorities; or any other cause, whether similar or dissimilar to the foregoing, not within such Party's control.

26. Attorneys' Fees. If either Party becomes a party to any litigation concerning this Agreement or the Leased Parcel or easement rights granted herein by reason of an act or omission of the other Party, the Party that is judicially determined to have caused the other Party to become involved in the litigation shall be liable to such other for such other Party's reasonable attorneys' fees and costs incurred in such litigation. If either Party commences an action against the other Party arising out of or in connection with this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs, whether such action is brought to judgment and whether incurred before or after the filing of such action.

27. Time is of the Essence. The time of the performance of all of the covenants, conditions, and agreements contained herein is of the essence of this Agreement.

28. Authority to enter Agreement. Lessor represents and warrants that Lessor has full authority to enter into and sign this Agreement and has good and indefeasible title to the Lessor's Property. In the event Lessor is not a natural person, the person executing on behalf of Lessor represents individually that such person has the authority to execute this Agreement on behalf of Lessor. Lessee warrants and represents that it is duly authorized to do business in the state in which the Lessee's property is located and that the undersigned is fully authorized by Lessee to enter into this Agreement on behalf of Lessee.

29. Entire Agreement. This Agreement supersedes all prior discussions and negotiations and contains all agreements and understandings between the Lessor and Lessee. This Agreement may only be amended by a writing signed by both parties. All Exhibits attached hereto are incorporated into this Agreement by reference.

30. Counterparts. This Agreement may be signed in counterparts by the Parties hereto. Faxed signatures shall be deemed to be originals.

31. Successors and Assigns. The terms and conditions of this Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of Lessor and Lessee.

32. Notices. Fee payments and notices, requests, and other communication shall be in writing and sent by United States Mail, postage prepaid, certified or registered with return receipt requested or by any nationally recognized overnight courier service. Any such notice shall be deemed given three days after deposit in the United States Mail or delivered to such courier service. Notices shall be sent to:

For Lessee:

Global Towers, Inc.  
Attn: President  
1320 Pearl Street, Suite 330  
Boulder, Colorado 80302

For Lessor:

City Of Northglenn  
Attn: Special Projects Director  
P.O. Box 330061  
Northglenn, CO 80233-8061

33. State Law. This Agreement shall be construed in accordance with the laws of the state in which the Lessor's Property is located.

34. Estoppel Certificate. Each party agrees to furnish to the other, within ten (10) days after request, such truthful estoppel information as the other may reasonably request.

35. No Brokerage. Lessor and Lessee each represent that they have not been represented by a real estate broker or other agent in this transaction and that no commission, fee or other payment is owed to any broker or any other agent claiming to have represented a party herein.

36. Taxes/Liens. Lessor agrees to pay when due all taxes, charges, judgments, liens, claims, assessments, and/or other charges outstanding which are levied upon Lessor or the Lessor's Property and which are or in the future could become liens upon the Lessor's Property, in whole or in any part (individually or collectively, "Liens"). Upon failure of the Lessor to pay the Liens when due as provided above, Lessee at its option, may pay said Liens. Lessee shall have the right to setoff and offset any sum so paid by Lessee and any and all costs, expenses and fees (including reasonable attorney's fees) incurred in effecting said payment, against Lease Fees or against any other charges payable by Lessee to Lessor under the terms of this Agreement. In the event that Lessee elects not to set off or offset the amounts paid by Lessee against the Lease Fee or in the event that the amounts paid by Lessee exceed the Lease Fee payable to Lessor for the then term of the Agreement, Lessor shall reimburse Lessee for all amounts paid by Lessee (or not offset) immediately upon demand. Any forbearance by Lessee in exercising any right or remedy provided in this paragraph or otherwise afforded by law shall not be deemed a waiver of or preclude the later exercise of said right or remedy.

37. Partial Invalidity. If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

38. Interpretation. In interpreting this Agreement in its entirety, any additions written or typed thereon shall be given equal weight, and there shall be no inference, by operation of law or otherwise, that any provision of this Agreement shall be construed against either Party hereto. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Parties causing this Agreement to be drafted.

39. Headings, Captions and References. The section captions contained in this Agreement are for convenience only and do not in any way limit or amplify any term or provision hereof. The use of the terms "hereof", "hereunder" and "herein" shall refer to this Agreement as a whole, inclusive of the Exhibits, except when noted otherwise.


40. Additional Provisions.

- a) Monopole shall be painted a color approved by Lessor
- b) No lights shall be installed on monopole
- c) Lessor shall have the right to install quantity two (2) antenna on monopole provided that said antennas do not interfere with the operations and maintenance of antennas located on monopole.

IN WITNESS WHEREOF, the parties hereto bind themselves to this Agreement effective as of the dates entered together with their signatures set forth below.

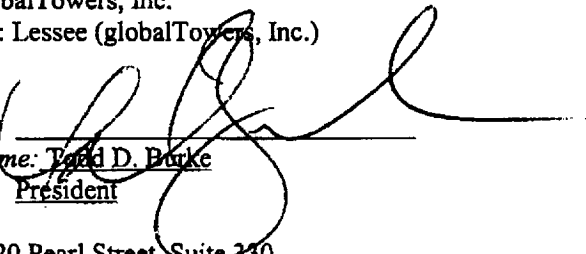
**LESSOR**

City of Northglenn  
(Name of Entity)

By:   
Name: Kathleen Novak  
Title: Mayor  
Address: P.O. Box 330061, Northglenn, CO 80233-8061  
Telephone: 303-450-8709  
Fax: 303-450-8798  
Federal ID No. 84-0592083  
Date: 4-24-03

**LESSEE**

globalTowers, Inc.  
By: Lessee (globalTowers, Inc.)

By:   
Name: Todd D. Burke  
Its: President

1320 Pearl Street, Suite 350  
Boulder, Colorado 80302  
Telephone: 303-294-9293  
Fax: 303-294-9575

Date: 4-15-03

**EXHIBIT "A"**  
**to**  
**LEASE AGREEMENT**

**LEASED PARCEL**  
**and**  
**EASEMENT AREAS**

(Note: Legal Descriptions shall be prepared by a licensed surveyor at the expense of Global Towers, Inc. upon completion of the Feasibility Study and shall be incorporated herein.

**EXHIBIT "B"**  
**to**  
**LEASE AGREEMENT**

**LESSOR'S PROPERTY**

**NORTHWEST ONE-QUARTER, SECTION 9, TOWNSHIP 2 SOUTH, RANGE 68  
WEST, ADAMS COUNTY, COLORADO**



**EXHIBIT "C"**  
to  
**LEASE AGREEMENT**

**MEMORANDUM OF AGREEMENT**

THIS MEMORANDUM evidences that an agreement was made and is hereby entered into by written Lease Agreement dated effective the 24<sup>th</sup> day of APRIL, 2003, between City Of Northglenn, a Municipal Corporation ("Lessor") whose address is as set forth below and globalTowers, Inc., a California Corporation ("Lessee"), whose address is 1320 Pearl Street, Suite 330, Boulder, Colorado 80302, the terms and conditions of which are incorporated herein by reference.

Such Lease Agreement provides, in part, that Lessor, for valuable consideration, Leases to Lessee a part of that certain property owned by Lessor which is described in Exhibit "A" attached hereto and incorporated herein for a term of 5 years commencing on \_\_\_\_\_, 2003, which term is subject to five (5) additional five (5) year option terms.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the day and year first above written.

**LESSOR**

City of Northglenn  
(Name of Entity)

By: Kathleen Novak  
Name: Kathleen Novak  
Title: Mayor  
Address: P.O. Box 330061, Northglenn, CO 80233-8061  
Telephone: 303-450-8798  
Fax: 303-450-8798  
Federal ID No. 84-0592083  
Date: 4-24-03

STATE OF Colorado  
COUNTY OF ADAMS

On April 24, 2003, before me DIANA L. LENTZ,  
Notary Public, personally appeared Kathleen Novak, personally known to me  
(or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed  
to within instrument and acknowledge to me that she/he executed the same in his authorized

capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Miana L. Lenz  
Notary Public

(Seal)

My commission expires: My Commission Expires  
4/2/2005

**LESSEE**

globalTowers, Inc.  
By: Lessee (globalTowers, Inc.)

By: [Signature]  
Name: Todd D. Burke  
Its: President

1320 Pearl Street, Suite 330  
Boulder, Colorado 80302  
Telephone: 303-294-9293  
Fax: 303-294-9575  
Date: 4-15-03

STATE OF Colorado  
COUNTY OF Boulder

On April 15, 2003, before me, Kathleen A. Williamsen, Notary Public, personally appeared TODD D. BURKE, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to within instrument and acknowledge to me that she/he executed the same in his authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Kathleen A. Williamsen  
Notary Public  
My commission expires: 3/20/04



SPONSORED BY: COUNCILWOMAN TICHY

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-40  
Series of 2004

04-38  
Series of 2004

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE FIRST AMENDMENT TO A LEASE AGREEMENT WITH GLOBALTOWERS, INC. FOR THE INSTALLATION OF A MONOPOLE TELECOMMUNICATION TOWER ON CITY-OWNED PROPERTY LOCATED ADJACENT TO THE TERMINAL RESERVOIR AT THE NORTHGLENN WATER TREATMENT PLANT.

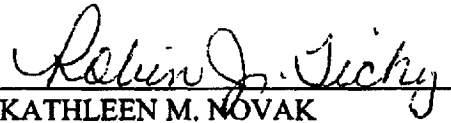
WHEREAS, by Resolution No. 03-32 City Council approved a Lease Agreement between the City and globalTowers, Inc. for the construction and operation of a monopole telecommunication tower to be located on City-owned property adjacent to the terminal reservoir at the Northglenn Water Treatment Plant; and

WHEREAS, globalTowers, Inc. has requested a twelve-month extension to the Feasibility Period as specified in paragraph 3 of the Lease Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

The First Amendment To Lease Agreement between the City of Northglenn and globalTowers, Inc. attached hereto is hereby approved and the Mayor is authorized to execute said First Amendment on behalf of the City of Northglenn.


DATED at Northglenn, Colorado, this 11<sup>th</sup> day of March, 2004.

  
KATHLEEN M. NOVAK  
Mayor

ATTEST:

  
DIANA L. LENTZ, CMC  
City Clerk

APPROVED AS TO FORM:

  
HERBERT C. PHILLIPS  
City Attorney

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO THE LEASE AGREEMENT (the "First Amendment") made this 11<sup>th</sup> day of March 2004 by and between globalTowers, inc., a California corporation ("Lessee") and City of Northglenn, a Municipal corporation ("Lessor"). Lessor and Lessee may also hereinafter be referred to individually as a party and collectively as the parties.

WHEREAS, the parties have entered into a Lease Agreement dated April 24, 2003 (the "Lease") and,

WHEREAS, the parties desire to enter into this First Amendment in order to amend the Lease as provided herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

- 1. For, and in consideration of, the sum of Five Hundred Dollars (\$500.00) the receipt and sufficiency of which is hereby acknowledged by Lessor, the parties hereto agree to extend the Feasibility Period, as defined in Paragraph 3 of the Lease, for an additional twelve (12) months from, and beyond, the original twelve (12) month Feasibility Period as specified in Paragraph 3 of the Lease.

Other than any defined terms established by way of this First Amendment, all defined terms used herein shall have the same meaning as set forth in the Lease. Except as modified by the terms of this First Amendment, the provisions of the Lease shall remain unchanged, in full force and effect and binding upon the parties thereto. If requested by Lessee, Lessor shall execute an amendment to the Memorandum of Lease, in recordable form, describing the terms of this First Amendment. The parties may sign this First Amendment in counterparts hereto.

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Lease as of the date first written above.

LESSOR:

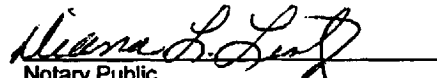
By: City of Northglenn
Its: Robin J. Tichy
Print Name: Robin J. Tichy
Mayor Pro-Tem

STATE OF Colorado, COUNTY OF Adams, to wit:

I HEREBY CERTIFY that on this 11<sup>th</sup> day of March 2004, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Robin J. Tichy who acknowledged himself/herself to an authorized person of Lessor, and that he/she, as such duly

appointed agent being authorized to do so, executed the foregoing instrument for the purposes therein contained.

AS WITNESS my hand and Notarial Seal,

  
Notary Public  
My Commission Expires: 4-2-2005

LESSEE:

By: 

Its: PRESIDENT + CEO

Print Name: TODD D. BURKE

STATE OF Colorado, COUNTY OF Boulder, to wit:

I HEREBY CERTIFY that on this 19<sup>th</sup> day of Feb., 2004, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Todd D. Burke, who acknowledged himself/herself to an authorized person of Lessee, and that he/she, as such duly appointed agent being authorized to do so, executed the foregoing instrument for the purposes therein contained.

AS WITNESS my hand and Notarial Seal,



Notary Public

My Commission Expires: 4-8-06

**SECOND AMENDMENT TO LEASE AGREEMENT**

THIS SECOND AMENDMENT TO LEASE AGREEMENT (the "Amendment") is made effective and entered into as of the latter signature date below (the "Effective Date") by and between the City of Northglenn, a Colorado municipal corporation (hereinafter "Lessor") and Western Summits LLC a Connecticut limited liability company, successor in interest to Global Towers, Inc. (collectively with its successors and assigns and predecessor's in interest hereinafter designated as "Lessee"). Lessor and Lessee are sometimes referred to herein collectively as the "Parties".

**WITNESSETH:**

**WHEREAS**, Lessor and Lessee entered into and executed a Lease Agreement dated April 24, 2003, which agreement was amended by the Parties by a certain First Amendment to Lease Agreement dated March 11, 2004 (hereinafter the Lease Agreement and the First Amendment are referred to herein as the "Lease Agreement"); and

**WHEREAS**, Lessor and Lessee desire to amend and modify certain terms and conditions of the Lease Agreement;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee, intending to be legally bound, do hereby agree as follows:

1. Any capitalized terms used in this Amendment that are not defined herein shall have the meaning(s) given those terms in the Lease Agreement.
2. Exhibit A (Description/Drawing of Leased Parcel) attached to the Lease Agreement shall be and hereby is deleted in its entirety and replaced with the attached exhibit identified as "Exhibit A, Revised" which exhibit is incorporated herein by reference and made a part hereof. Any and all references to Exhibit A in the Lease Agreement shall be deemed to refer to "Exhibit A, Revised". The Parties understand and acknowledge that the Communications Facility shall be located within the current fenced area of the Northglenn Water Treatment Plant located within Lessor's Property and agree that the lease parcel shall be a ground elevation of equal or greater elevation than the previously proposed sites.
3. Notwithstanding any other provision in the Lease Agreement to the contrary, Section 3 of the Lease Agreement, entitled Feasibility Period, shall be and hereby is amended to define the Feasibility Period as the period beginning with the "Effective Date" as that term is defined in the Lease Agreement and through and including the Commencement Date.
4. Section 4 of the Lease Agreement, entitled "Lease Fee," shall be and hereby is deleted in its entirety and replaced with the following Section 4:

4. Lease Fee. Beginning on the Commencement Date, Lessee shall pay to Lessor the annual fee (the "Lease Fee") of Three Thousand dollars (\$3,000.00), payable in equal monthly installments of Two Hundred and Fifty dollars (\$250.00) due and payable on the first day of the month within the Term and any applicable Renewal Term; provided however, if Lessee's obligation to pay the Lease Fee commences or ends on a date other than the first day of the month, the Lease Fee payment for that calendar month shall be prorated based upon the actual number of days in that calendar month.
  
5. Section 5 of the Lease Agreement, entitled "Use," shall be and hereby is deleted in its entirety and replaced with the following Section 5:
  5. Use. Lessee shall have the exclusive use of the Leased Parcel, which shall be used for the purposes of designing, constructing, installing, removing, replacing, maintaining and operating a communications facility within a fifty foot (50') by fifty foot (50') fenced compound (the "Communications Facility"); provided however that Lessee shall not be obligated to install or maintain the Communications Facility on the Leased Parcel. The Communications Facility may include, without limitation, one (1) eighty foot (80') stealth flagpole, antenna arrays, dishes, cables, wires, temporary cell sites, equipment shelters, electronics equipment, generators, and other accessories to accommodate at least four (4) wireless carriers; provided that all such antenna arrays, dishes, cables, wires, electronics, electronics equipment, permanent generators and other accessories shall be located in equipment shelters/cabinets, waveguide bridges, cable trays, similar structures or the stealth flagpole itself. Nothing extraneous shall be attached to the flagpole except as is required to cable the same. Lessee shall have the right to temporarily park its vehicles and equipment and store materials on the Leased Parcel during periods of design, construction, removal, replacement maintenance and emergency operation and maintenance of the Communications Facility. The Parties agree that the stealth flagpole shall be light grey in color. Upon completion of the construction of the stealth flagpole, Lessor agrees that Lessee shall not be responsible for any flag for the stealth flagpole. At all times, Lessor shall be responsible for (1) the maintenance of any flag; (2) the raising and lowering of any flag; (3) the periodic replacement of any flag, when necessary; and (4) the compliance, if any, with proper flag etiquette and decorum. The Parties agree that there shall be no permanent lights placed upon the stealth flagpole. The Parties further agree that Lessor shall have no right to place any equipment within the Leased Parcel and/or on the stealth flag pole.
  
6. The notice address for Lessee and Lessor identified in Section 32 of the Lease Agreement shall be and hereby is deleted in their entirety and replaced with the following:



For Lessee:

Western Summits LLC  
190 Housatonic Street  
Lee, MA 01238

For Lessor:

City of Northglenn  
Attn: City Manager  
P.O. Box 330061  
Northglenn, CO 80233-8061

7. Section 40 of the Lease Agreement shall be and hereby is deleted in its entirety and replaced with the following Section 40:

40. Intentionally Omitted.

8. The Lease Agreement shall be and hereby is revised to include the following provision as Section 41 to the Agreement:

41. Unrestricted Access. The Parties agree that the Lessee and Lessee's sublessees and sublicensees shall have unescorted and unrestricted access, twenty-four (24) hours, seven (7) days per week, to the Leased Parcel and any and all access and utility easements granted under the Agreement, as amended herein.

9. The Lease Agreement shall be and hereby is amended to add the following provisions as Sections 42 through Section 44

42. Ratification; Estoppel; Waiver; Binding Effect. Lessor hereby confirms and agrees that the Agreement is in full force and effect, has not been changed, modified or amended, except as provided for in this Amendment, is free from default by Lessee and represents the valid, binding and enforceable obligations of Lessor and Lessee respectively. Lessor waives any default by Lessee, if any, up through and including the Effective Date. Except as specifically amended herein, the Agreement is hereby ratified and confirmed by the Parties and shall remain unchanged and in full force and effect for the Term and any Renewal Term, subject to the terms and provisions thereof and hereof. This Amendment shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and assigns.

43. Submission. Submission of this Amendment by Lessee to Lessor for examination and/or execution shall not in any manner bind Lessee and no obligation on Lessee shall arise under this Amendment until and unless this Amendment is accepted and signed by an authorized agent of Lessee.

44. Conflict; Interpretation. Except as herein expressly modified and amended, the Agreement shall remain in full force and effect pursuant to each and every one of its terms and conditions. In the event there is a conflict between this Amendment and the Agreement the terms and conditions of this Amendment shall control.

8. This Amendment shall be expressly conditioned upon the approval by T-Mobile West Corporation and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless and/or their affiliates, of the Leased Parcel as now located and depicted in the attached "Exhibit A, Revised".

9. This Amendment shall only become legally binding on the Parties when this Amendment is signed by both Parties and a special ordinance, substantially in form and substance as the attached proposed special ordinance becomes final. Said special ordinance is attached hereto as Exhibit B and incorporated herein and made a part hereof.

10. Notwithstanding any other provision in the Lease Agreement, the Amendment or any documents associated with the Lease Agreement or Amendment, to the contrary, Lessor agrees that the final adoption of the special ordinance attached hereto as Exhibit B and compliance with the conditions and obligations therein constitutes the municipal land use approvals and consents, with the sole exception of any building permits, necessary to allow Lessee to construct and operate the Communications Facility as contemplated by Lease Agreement, and this Amendment herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the dates set forth below.

**LESSOR:**

City of Northglenn

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

**LESSEE:**

Western Summits, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

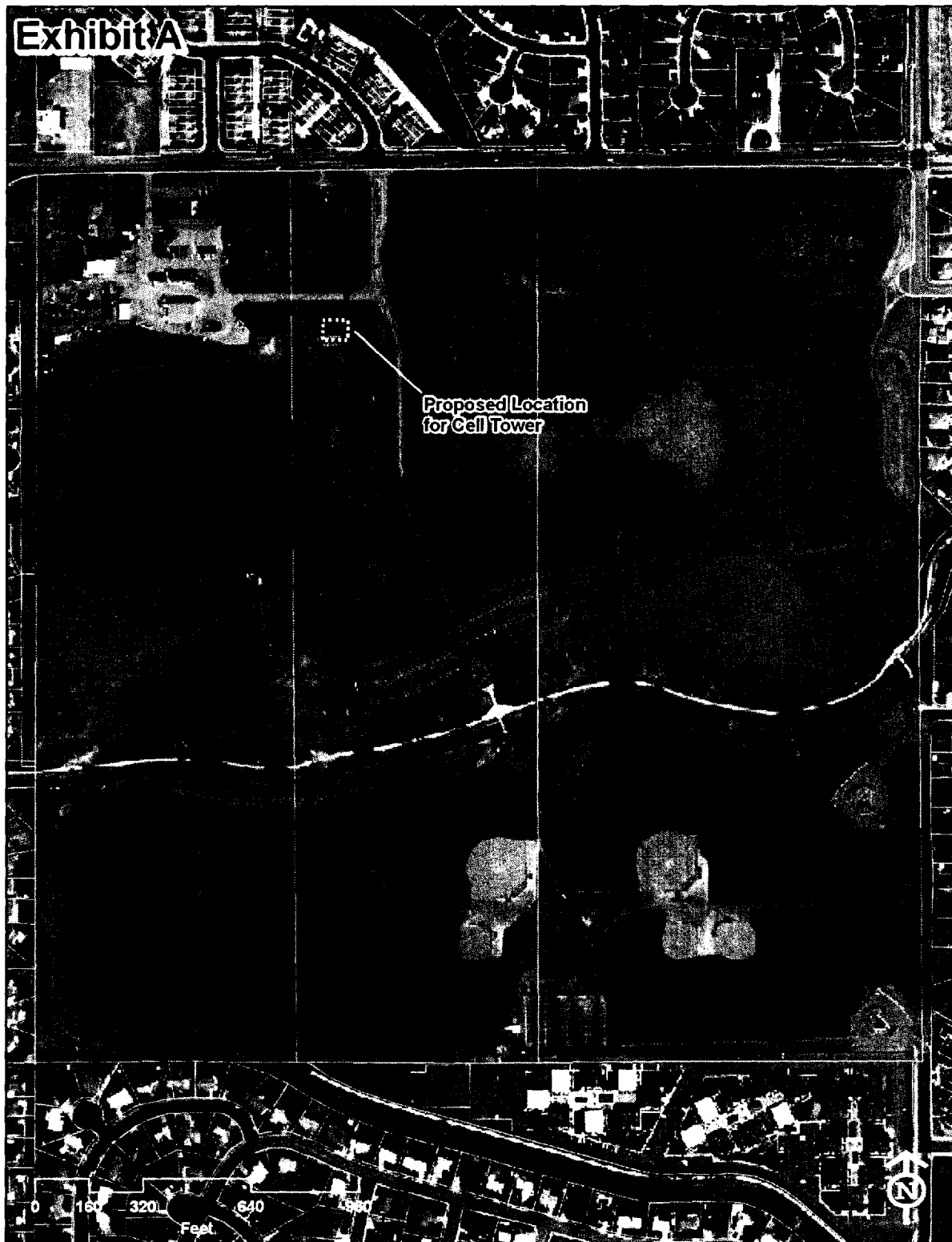
Witness: \_\_\_\_\_

## EXHIBIT A, REVISED

(H.I. Description/Drawing of Leased Parcel)

Notes:

1. *This Exhibit may be replaced by a land survey of the Leased Parcel once it is received by Lessee.*
2. *Setback of the Leased Parcel from applicable property lines shall be the distance required by the applicable governmental authorities.*
3. *Width of access road shall be the width required shall be the width required by the applicable governmental authorities, including police and fire departments.*



**EXHIBIT B**

**Adopted Special Ordinance**

**SECOND AMENDMENT TO LEASE AGREEMENT**

THIS SECOND AMENDMENT TO LEASE AGREEMENT (the "Amendment") is made effective and entered into as of the latter signature date below (the "Effective Date") by and between the City of Northglenn, a Colorado municipal corporation (hereinafter "Lessor") and Western Summits LLC a Connecticut limited liability company, successor in interest to Global Towers, Inc. (collectively with its successors and assigns and predecessor's in interest hereinafter designated as "Lessee"). Lessor and Lessee are sometimes referred to herein collectively as the "Parties".

**WITNESSETH:**

**WHEREAS**, Lessor and Lessee entered into and executed a Lease Agreement dated April 24, 2003, which agreement was amended by the Parties by a certain First Amendment to Lease Agreement dated March 11, 2004 (hereinafter the Lease Agreement and the First Amendment are referred to herein as the "Lease Agreement"); and

**WHEREAS**, Lessor and Lessee desire to amend and modify certain terms and conditions of the Lease Agreement;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee, intending to be legally bound, do hereby agree as follows:

1. Any capitalized terms used in this Amendment that are not defined herein shall have the meaning(s) given those terms in the Lease Agreement.

2. Exhibit A (Description/Drawing of Leased Parcel) attached to the Lease Agreement shall be and hereby is deleted in its entirety and replaced with the attached exhibit identified as "Exhibit A, Revised" which exhibit is incorporated herein by reference and made a part hereof. Any and all references to Exhibit A in the Lease Agreement shall be deemed to refer to "Exhibit A, Revised". The Parties understand and acknowledge that the Communications Facility shall be located within the current fenced area of the Northglenn Water Treatment Plant located within Lessor's Property and agree that the lease parcel shall be a ground elevation of equal or greater elevation than the previously proposed sites.

3. Notwithstanding any other provision in the Lease Agreement to the contrary, Section 3 of the Lease Agreement, entitled Feasibility Period, shall be and hereby is amended to define the Feasibility Period as the period beginning with the "Effective Date" as that term is defined in the Lease Agreement and through and including the Commencement Date.

4. Section 4 of the Lease Agreement, entitled "Lease Fee," shall be and hereby is deleted in its entirety and replaced with the following Section 4:

4. Lease Fee. Beginning on the Commencement Date, Lessee shall pay to Lessor the annual fee (the "Lease Fee") of Three Thousand dollars (\$3,000.00), payable in equal monthly installments of Two Hundred and Fifty dollars (\$250.00) due and payable on the first day of the month within the Term and any applicable Renewal Term; provided however, if Lessee's obligation to pay the Lease Fee commences or ends on a date other than the first day of the month, the Lease Fee payment for that calendar month shall be prorated based upon the actual number of days in that calendar month.
  
5. Section 5 of the Lease Agreement, entitled "Use," shall be and hereby is deleted in its entirety and replaced with the following Section 5:
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For Lessee:

Western Summits LLC  
190 Housatonic Street  
Lee, MA 01238

For Lessor:

City of Northglenn  
Attn: City Manager  
P.O. Box 330061  
Northglenn, CO 80233-8061

7. Section 40 of the Lease Agreement shall be and hereby is deleted in its entirety and replaced with the following Section 40:

40. Intentionally Omitted.

8. The Lease Agreement shall be and hereby is revised to include the following provision as Section 41 to the Agreement:

41. Unrestricted Access. The Parties agree that the Lessee and Lessee's sublessees and sublicensees shall have unescorted and unrestricted access, twenty-four (24) hours, seven (7) days per week, to the Leased Parcel and any and all access and utility easements granted under the Agreement, as amended herein.

9. The Lease Agreement shall be and hereby is amended to add the following provisions as Sections 42 through Section 44

42. Ratification; Estoppel; Waiver; Binding Effect. Lessor hereby confirms and agrees that the Agreement is in full force and effect, has not been changed, modified or amended, except as provided for in this Amendment, is free from default by Lessee and represents the valid, binding and enforceable obligations of Lessor and Lessee respectively. Lessor waives any default by Lessee, if any, up through and including the Effective Date. Except as specifically amended herein, the Agreement is hereby ratified and confirmed by the Parties and shall remain unchanged and in full force and effect for the Term and any Renewal Term, subject to the terms and provisions thereof and hereof. This Amendment shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and assigns.

43. Submission. Submission of this Amendment by Lessee to Lessor for examination and/or execution shall not in any manner bind Lessee and no obligation on Lessee shall arise under this Amendment until and unless this Amendment is accepted and signed by an authorized agent of Lessee.

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8. This Amendment shall be expressly conditioned upon the approval by T-Mobile West Corporation and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless and/or their affiliates, of the Leased Parcel as now located and depicted in the attached "Exhibit A, Revised".

9. This Amendment shall only become legally binding on the Parties when this Amendment is signed by both Parties and a special ordinance, substantially in form and substance as the attached proposed special ordinance becomes final. Said special ordinance is attached hereto as Exhibit B and incorporated herein and made a part hereof.

10. Notwithstanding any other provision in the Lease Agreement, the Amendment or any documents associated with the Lease Agreement or Amendment, to the contrary, Lessor agrees that the final adoption of the special ordinance attached hereto as Exhibit B and compliance with the conditions and obligations therein constitutes the municipal land use approvals and consents, with the sole exception of any building permits, necessary to allow Lessee to construct and operate the Communications Facility as contemplated by Lease Agreement, and this Amendment herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the dates set forth below.

**LESSOR:**

City of Northglenn

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

**LESSEE:**

Western Summits, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

**EXHIBIT A, REVISED**

(H.I. Description/Drawing of Leased Parcel)

Notes:

1. *This Exhibit may be replaced by a land survey of the Leased Parcel once it is received by Lessee.*
2. *Setback of the Leased Parcel from applicable property lines shall be the distance required by the applicable governmental authorities.*
3. *Width of access road shall be the width required shall be the width required by the applicable governmental authorities, including police and fire departments.*

**EXHIBIT B**

**Adopted Special Ordinance**