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LISA SMITH, COUNTY RECORDER  
MADISON COUNTY IOWA

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✓ After recording return to:  
WHEN RECORDED RETURN TO:  
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ATTN: POST CLOSING  
520 SOUTH MAIN STREET  
SUITE 1031  
CHICAGO, IL 60606  
01-13006776-03A

RECORD 3<sup>RD</sup>

**CONSENT, NONDISTURBANCE AND ATTORNMENT AGREEMENT**

This Consent, Nondisturbance and Attornment Agreement (this "**Agreement**"), effective this 18<sup>th</sup> day of MARCH, 2013.

by and between

**Global Signal Acquisitions IV LLC**, a Delaware limited liability company, with a notice address of Crown Castle USA Inc., E. Blake Hawk, General Counsel, Attn: Legal – Real Estate Department, 2000 Corporate Drive, Canonsburg, Washington County, Pennsylvania 15317 (hereinafter "**Grantee**");

and

**Thomas F. Kivell and Tamara J. Kivell**, husband and wife as joint tenants with full rights of survivorship and not as tenants in common, whose address is 3388 Peru Road, Truro, Iowa 50257 (hereinafter, collectively "**Grantor**");

and

**Farm Credit Services of America, FLCA**, with a principal place of business located at 5015 S. 118<sup>th</sup> Street, Omaha, Nebraska 68137 (hereinafter "**Lender**").

## RECITALS:

**WHEREAS**, T-Mobile USA, Inc., a Delaware corporation, successor in interest to Western PCS I Corporation, a Delaware corporation ("**T-Mobile**"), is in possession of certain property (the "**Property**") more specifically described on Exhibit A attached hereto, pursuant to that certain Site Lease with Option dated September 24, 1996, originally by and between T-Mobile, as the original tenant, and Scotty W. Rogers, a single man ("**Rogers**"), as the original landlord ("**Lease Agreement**"). The Lease Agreement is memorialized by that certain Memorandum of Lease recorded on November 20, 1996 as Document Number 1400 (Book 43, Page 716) in the Public Records of Madison County, Iowa. Grantor is the successor in title to Rogers, the original landlord under the Lease Agreement (hereinafter, the Lease Agreement, as amended and/or assigned, is referred to as the "**Lease**");

**WHEREAS**, Grantee is purchasing from Grantor an easement ("**Easement**") over the Property and an assignment (the "**Assignment**") of Grantor's interest in the Lease;

**WHEREAS**, the Property is part of a parcel which is encumbered by one or more mortgages, deeds of trust, deeds to secure debt or similar security agreements (collectively, the "**Security Instrument**") from Grantor in favor of Lender, including, without limitation, the Real Estate Mortgage dated February 21, 2003 and recorded February 27, 2003 as Document Number 001071 (Book 2003, Page 1071) in the Public Records of Madison County, Iowa;

**WHEREAS**, the parties desire to establish certain rights, safeguards, obligations and priorities with regard to their respective interests by means of this Agreement and are willing to so agree on the terms and conditions hereafter provided;

**NOW THEREFORE**, in consideration of the mutual promises, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged and for other good and valuable consideration, the parties, intending to be legally bound hereby, covenant and agree as follows:

1. Consent. Lender consents to the Easement and Assignment.
2. Nondisturbance. So long as the Easement is in full force and effect and Grantee is not in material default of any of its terms, obligations, covenants or conditions under the Easement, Lender agrees for itself and its successors in interest and for any other person acquiring title to the Property through a conveyance (an "**Acquiring Party**"), that the right of possession of the Property and all other rights of Grantee under the Easement and Assignment shall remain in full force and effect and shall not be affected or disturbed by Lender in the exercise of its rights under the Security Instrument during the term of the Easement, by reason of a Conveyance as defined herein. For purposes of this agreement, a "**Conveyance**" shall mean any of the following, including, but not limited to, any exercise by Lender of its rights under the Security Instrument, including a foreclosure, sheriff's or trustee's sale under the power of sale contained in the Security Instrument, the termination of any superior lease of the Property and any other transfer, sale or conveyance of the Grantor's interest in the Property under peril of foreclosure, including, without limitation to the generality of the foregoing, an assignment or sale in lieu of

foreclosure. Lender or any Acquiring Party and Grantee agree that any Conveyance shall be made subject to the Easement, the Assignment and the rights of Grantee under the Easement and the Assignment and the parties shall be bound to one another and have the same remedies against one another for any breach of the Easement and the Assignment as such parties had before the Conveyance; provided however, that Lender or any Acquiring Party shall not be liable for any act or omission of any prior land owner. Lender will not join any land owner as a party in any action or proceeding to foreclose unless such joinder is necessary to foreclose on the Security Instrument and then only for such purpose and not for the purpose of terminating the Easement or voiding the Assignment.

3. Attornment. Upon receipt by Grantee of notice to attorn from Lender or any Acquiring Party, along with reasonable supporting documentation, the parties agree to not seek to terminate the Easement or void the Assignment, to remain bound by the Easement and the Assignment and Grantee agrees to attorn to, accept and recognize Lender or any Acquiring Party as the land owner under the Easement pursuant to the provisions expressly set forth therein for the term of the Easement. The parties agree, however, to execute and deliver, at any time and from time to time, upon the request of another party any reasonable instrument which may be necessary or appropriate to evidence such attornment.

4. Release of Lease. To the extent the Security Instrument in any way includes the Lease or any other lease related to communications towers, antennas, and related equipment on the Property (the Lease and such other leases are collectively referred to herein as the “**Easement Leases**”), including the rents, profits, and revenue derived from the Easement Leases as security for the debt evidenced by the Security Instrument, the Easement Leases and the rents, profits, and revenue derived therefrom are hereby released and forever discharged from the lien evidenced by the Security Instrument and; it being intended that the Easement Leases and the rents, profits, and revenue derived therefrom, can, and shall be conveyed to Grantee by Grantor simultaneously with the execution of the Easement, free and clear of the lien evidenced by the Security Instrument. Furthermore, in the event Grantor has previously assigned any rights, rents, profits, and revenue from the Easement Leases to Lender, the Lender hereby reassigns such rights, rents, profits, and revenue to Grantee.

5. Limitation. This Agreement shall not apply to any equipment, trade fixtures or other personal property now or hereafter located on or affixed to the Property or any portion thereof regardless of the manner in which same are attached or affixed to the Property and Lender hereby expressly waives any interest in same, agrees that the same do not constitute realty and acknowledges that Grantee is authorized to remove said personal property.

6. Binding Effect. This Agreement will be binding upon and will inure to the benefit of the successors and assigns of the parties hereto or any person or entity which acquires title to or the right to possession of the Property whether directly or indirectly through Lender and to any assignees, licensees, agents, subeasement holders, tenants or subtenants of Grantee. Furthermore, in the event Grantee assigns its right to purchase the Easement and Assignment to a third party, Grantee shall have the right to assign its rights and interest in this Agreement to such third party without the consent of Lender and Grantor.

7. Notices. All notices which are required or permitted to be given or served hereunder shall be in writing and shall be deemed to have been given or served (a) by hand delivery on the date of hand delivery; (b) one business day after delivery to an overnight courier for next business day delivery or (c) three days after deposit in United States Mail via certified mail, return receipt requested to the address given above. Any party hereto may change the address set forth above from time to time by serving written notice of the change upon the other parties hereto.

8. Counterparts. This Agreement may be executed in separate and multiple counterparts, each of which shall be deemed an original but all of which taken together shall be deemed to constitute one and the same instrument.

9. Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State where the Property is located.

IN WITNESS WHEREOF, the parties have hereunder set their hands and seals as of the date first set forth above.

*[Signature pages follow.]*

**GRANTEE:**

**Global Signal Acquisitions IV LLC,**  
a Delaware limited liability company

By: *Tracy Van Swol*

Print Name: Tracy Van Swol  
Real Estate Transaction Manager

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

Date: 3/18/13

**ACKNOWLEDGEMENT**

STATE OF TEXAS                    )  
  ) SS  
COUNTY OF HARRIS                )

On this, the 18 day of March, 2013, before me Sarah Scopel,  
Notary Public, the undersigned officer, personally appeared  
Tracy Van Swol, who acknowledged him/herself to be the  
REI Manager of Global Signal  
Acquisitions IV LLC, a Delaware limited liability company, and that he/she, being authorized to  
do so, executed the foregoing Consent, Nondisturbance and Attornment Agreement for the  
purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Sarah E Scopel*

Notary Public, State of Texas, County of Harris

My Commission Expires: 8.8.15

[SEAL REQUIRED]



**GRANTOR:**

**Thomas F. Kivell and Tamara J. Kivell**, husband and wife as joint tenants with full rights of survivorship and not as tenants in common

By: Thomas F. Kivell

Print Name: Thomas F. Kivell

Date: 3/14/2013

By: Tamara J. Kivell

Print Name: Tamara J. Kivell

Date: 3/14/2013

**ACKNOWLEDGEMENT**

STATE OF IOWA )  
COUNTY OF POIK ) SS

On this, the 14 day of March, 2013, before me JERRI DAHLMAN Notary Public, the undersigned officer, personally appeared Thomas F. Kivell, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Consent, Nondisturbance and Attornment Agreement, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Jerrri Dahلمان

Notary Public, State of Iowa, County of POIK

My Commission Expires: 3/14/16

[SEAL REQUIRED]



ACKNOWLEDGEMENT

STATE OF IOWA )  
COUNTY OF POIK ) SS

On this, the 14 day of March, 2013, before me JERRI DAHLMAN,  
Notary Public, the undersigned officer, personally appeared Tamara J. Kivell, known to me (or  
satisfactorily proven) to be the person whose name is subscribed to the within Consent,  
Nondisturbance and Attornment Agreement, and acknowledged that she executed the same for  
the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

JERRI DAHLMAN  
Notary Public, State of Iowa, County of POIK

My Commission Expires: 3/14/16

[SEAL REQUIRED]



**LENDER:**

**Farm Credit Services of America, FLCA**

By: Karen Turner  
Print Name: Karen Turner  
Print Title: Assistant Corporate Secretary  
Date: 2-27-2013

**ACKNOWLEDGEMENT**

STATE OF Iowa )  
 ) SS  
COUNTY OF DALLAS )

On this, the 27<sup>th</sup> day of February, 2013, before me Patty Stanton (Patricia)  
Notary Public, the undersigned officer, personally appeared  
Karen Turner, who acknowledged him/herself to be the  
Assistant Corporate Secretary of Farm Credit  
Services of America, FLCA, and that he/she, being authorized to do so, executed the foregoing  
Consent, Nondisturbance and Attornment Agreement for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Patricia A. Stanton

Notary Public, State of Iowa, County of Dallas

My Commission Expires: 5/4/14

[SEAL REQUIRED]





**EXHIBIT A**  
**(Description of Property)**

The Easement Area shall include any portion of Grantor's Property on which communications facilities exist on the date of the Easement together with the portion of the Grantor's Property leased by Grantor pursuant to the Lease and the portion of the Property described as follows:

**EASEMENT AREA:**

A PORTION OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 74 NORTH, RANGE 26 WEST OF THE 5TH P.M. MADISON COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 12, THENCE SOUTH 82 DEGREES 28 MINUTES 57 SECONDS WEST ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 177.15 FEET; THENCE DEPARTING SAID NORTH LINE, SOUTH 07 DEGREES 31 MINUTES 03 SECONDS EAST, A DISTANCE OF 706.20 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 89 DEGREES 38 MINUTES 40 SECONDS EAST, A DISTANCE OF 41.84 FEET;

THENCE SOUTH 00 DEGREES 46 MINUTES 33 SECONDS WEST, A DISTANCE OF 51.83 FEET;

THENCE SOUTH 89 DEGREES 35 MINUTES 02 SECONDS WEST, A DISTANCE OF 42.03 FEET;

THENCE NORTH 00 DEGREES 58 MINUTES 53 SECONDS EAST, A DISTANCE OF 51.88 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,174 SQUARE FEET OR 0.05 ACRES, MORE OR LESS

AND

A PORTION OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 74 NORTH, RANGE 26 WEST AND THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 74 NORTH, RANGE 25 WEST OF THE 5TH P.M. MADISON & WARREN COUNTY, IOWA, BEING A 12.00 FEET WIDE ACCESS EASEMENT LYING 6.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 12, THENCE SOUTH 82 DEGREES 28 MINUTES 57 SECONDS WEST ALONG THE NORTH LINE OF

SAID NORTH LINE, SOUTH 07 DEGREES 31 MINUTES 03 SECONDS EAST, A DISTANCE OF 706.20 FEET;

THENCE NORTH 89 DEGREES 38 MINUTES 40 SECONDS EAST, A DISTANCE OF 27.33 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 05 DEGREES 15 MINUTES 53 SECONDS EAST, A DISTANCE OF 109.31 FEET;

THENCE NORTH 16 DEGREES 15 MINUTES 42 SECONDS EAST, A DISTANCE OF 49.14 FEET;

THENCE NORTH 12 DEGREES 10 MINUTES 22 SECONDS EAST, A DISTANCE OF 49.68 FEET;

THENCE NORTH 03 DEGREES 14 MINUTES 01 SECONDS EAST, A DISTANCE OF 107.20 FEET;

THENCE NORTH 00 DEGREES 16 MINUTES 02 SECONDS WEST, A DISTANCE OF 50.14 FEET;

THENCE NORTH 00 DEGREES 49 MINUTES 05 SECONDS EAST, A DISTANCE OF 49.44 FEET;

THENCE NORTH 00 DEGREES 40 MINUTES 10 SECONDS EAST, A DISTANCE OF 111.00 FEET;

THENCE NORTH 03 DEGREES 27 MINUTES 46 SECONDS EAST, A DISTANCE OF 93.13 FEET MORE OR LESS TO THE SOUTH RIGHT OF WAY LINE OF COUNTY ROAD G64 AND ALSO BEING THE POINT OF TERMINUS.

CONTAINING 7,411 SQUARE FEET OR 0.17 ACRES, MORE OR LESS

AND

A PORTION OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 74 NORTH, RANGE 26 WEST OF THE 5TH P.M. MADISON COUNTY, IOWA, BEING A 8.00 FEET WIDE UTILITY EASEMENT LYING 4.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 12, THENCE SOUTH 82 DEGREES 28 MINUTES 57 SECONDS WEST ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 177.15 FEET; THENCE DEPARTING

SAID NORTH LINE, SOUTH 07 DEGREES 31 MINUTES 03 SECONDS EAST, A DISTANCE OF 706.20 FEET;

THENCE NORTH 00 DEGREES 21 MINUTES 20 SECONDS WEST, A DISTANCE OF 4.00 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 89 DEGREES 38 MINUTES 40 SECONDS EAST, A DISTANCE OF 49.55 FEET TO THE POINT OF TERMINUS.

CONTAINING 396 SQUARE FEET OR 0.009 ACRES, MORE OR LESS

Parent Parcel Tax I.D. Number: 770161282012000

Owner: Thomas F. Kivell and Tamara J. Kivell, husband and wife as joint tenants with full rights of survivorship and not as tenants in common

Legal: Document Number 001070 (Book 2003, Page 1070)

Common Address: 3390 Peru Road, Truro, Iowa 50257