COUNCIL ITEM 8A
DATE 10/24/11

~~COUNCIL ITEM 10A~~
~~DATE 10/10/11~~

ORDINANCE 11-77

AN ORDINANCE AUTHORIZING THE CITY MANAGER OF THE CITY OF PORT ST. LUCIE TO ENTER INTO A THIRD AMENDMENT TO SITE LEASE AGREEMENT BETWEEN THE CITY OF PORT ST. LUCIE AND STC FIVE, LLC; PROVIDING AN EFFECTIVE DATE

THE CITY OF PORT ST. LUCIE HEREBY ORDAINS:

Section 1. The City Manager of the City of Port St. Lucie is hereby authorized and directed to enter into a Third Amendment to Site Lease Agreement between the City of Port St. Lucie and STC Five, LLC, for a telecommunication tower located at Southport Utility Facility; to be substantially in the form of the Third Amendment to Site Lease Agreement attached hereto as Exhibit "A" and by reference incorporated herein.

Section 2. This Ordinance shall become effective ten (10) days after its final adoption.

PASSED AND APPROVED by the City Council of the City of Port St. Lucie, Florida, this ____ day of _____, 2011.

CITY COUNCIL
CITY OF PORT ST. LUCIE

BY:_____
JoAnn M. Faiella, Mayor

ATTEST:

_____
Karen A. Phillips, City Clerk

APPROVED AS TO FORM:_____
Roger G. Orr, City Attorney

THIRD AMENDMENT TO SITE LEASE AGREEMENT
SOUTHPORT WATER STORAGE TELECOMMUNICATION TOWER

THIS THIRD AMENDMENT TO SITE LEASE AGREEMENT (the "Amendment"), dated as of the latter of the signature dates below (the "Effective Date"), by and between **THE CITY OF PORT ST. LUCIE**, a Florida municipal corporation, having a mailing address 121 SW Port St. Lucie, Port St. Lucie, Florida 34984 ("Owner"), and **STC FIVE LLC**, a Delaware limited liability company ("Tenant"), with a mailing address of 2000 Corporate Drive, Canonsburg, Pennsylvania 15317, by and through its Attorney-in-Fact, Global Signal Acquisitions II LLC, a Delaware limited liability company.

WITNESSETH

WHEREAS, Owner and Sprint Spectrum, L.P. ("Sprint"), a Delaware limited partnership, as original tenant, entered into that certain Site Lease Agreement dated February 19, 1998 ("Original Lease"), as amended by that certain Addendum No. 1 dated on or around July 15, 1998 ("Addendum No. 1"); and further amended by that certain Second Amendment to Site Lease Agreement dated as of October 17, 2006 ("Second Amendment") (the Original Lease, Addendum No. 1 and Second Amendment shall be collectively referred to herein as the "Agreement") as evidenced by that certain Instrument dated October 6, 2005 recorded under Document No. 2734918, Official Records Book 2400, Page 1968 in the Official Public Records of St. Lucie County, Florida, whereby Owner leased to Sprint a portion of land consisting of approximately 2,875 square feet in the City of Port St. Lucie, St. Lucie County, Florida, together with access and utility easements thereto (the "Site"), as more particularly described in the Agreement; and

WHEREAS, Tenant is the successor in interest to Sprint's interest in, to and under the Agreement; and

WHEREAS, the Site may be used for the purpose of constructing, maintaining and operating a communications facility, including tower structures, equipment shelters, cabinets, meter boards, utilities, antennas, equipment, any related improvements and structures and uses incidental thereto; and

WHEREAS, the Agreement has an initial term and renewal terms that will expire on February 18, 2023 (the "Original Term"), and Owner and Tenant desire to enter into this Amendment in order to amend the Agreement to, among other things, provide for additional renewal terms beyond the Original Term; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Owner and Tenant hereby acknowledge the accuracy of and agree to the recitals in the "WHEREAS" paragraphs set forth above, which are further hereby incorporated into this Amendment, and additionally agree as follows:

1. **Defined Terms**. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement. Any reference to "SSLP" in the Agreement shall be deleted and substituted therein with "Tenant."

2. **Paragraph 2 Amendment: Extended Term**. Paragraph 2 of the Agreement is hereby amended to delete the third sentence thereof and insert in lieu thereof the following:

> "This Agreement will be automatically renewed for six (6) additional and successive terms (each a "Renewal Term") of five (5) years each, commencing on each five (5) year anniversary of the Rent Start Date, unless Tenant provides Owner notice of intention not to renew not less than ninety (90) days prior to the expiration of the Initial Term or any Renewal Term."

The Initial Term and the Renewal Terms shall be collectively referred to herein as the "Lease Term." The parties acknowledge that pursuant to this Amendment the Lease Term exceeds the Original Term by ten (10) years and that, unless terminated sooner, the final Renewal Term of the Agreement will expire on February 18, 2033.

3. **Paragraph 6 Amendment: Notice**. Paragraph 6 of the Agreement, as amended by the Second Amendment, is hereby amended by deleting the address for Tenant, and inserting in lieu thereof the following:

TENANT: Sprint Contracts and Performance
Mailstop KSOPHT0101 – Z2650
Re: Cell Site #878257 – South Port Water Storage
6391 Sprint Parkway
Overland Park, Kansas 66251-2650
Attn: Marion S. Crable, Manager

with a copy to: Global Signal Acquisitions II LLC
c/o Crown Castle USA Inc.
Re: Cell Site #878257 – South Port Water Storage
2000 Corporate Drive
Canonsburg, Pennsylvania 15317
Attn: Legal Department

4. **Authority**. Owner represents and warrants that, as of the date of this Amendment, Owner is duly authorized and has the full power, right and authority to enter into this Amendment and to perform all of the Owner's obligations under this Amendment and to execute and deliver this Amendment to Tenant.

5. **Remainder of Agreement Unaffected**. In all other respects, the remainder of the Agreement shall remain in full force and effect. Any portion of the Agreement that is inconsistent with this Amendment is hereby amended to be consistent.

6. **Headings**. The headings contained in this Amendment are for reference purposes only and shall not modify or affect this Amendment in any manner whatsoever.

7. **Counterparts**. This Amendment may be executed in counterparts, all of which together shall constitute one agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or same counterpart.

8. **Recordation**. Tenant, at its cost and expense, shall have the right to record a memorandum of this Amendment in the public records of St. Lucie County, Florida, at any time following the execution of this Amendment by all parties hereto.

IN WITNESS WHEREOF, Owner and Tenant have caused this Amendment to be duly executed as of the date of their execution.

OWNER:

Signed, sealed and delivered in the presence of:

THE CITY OF PORT ST. LUCIE,
a Florida municipal corporation

_____

Print Name:_____

By: _____
Name: _____
Title: _____
Date: _____

_____

Print Name:_____

STATE OF _____ :
: ss
COUNTY OF _____ :

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, as the _____ of **THE CITY OF PORT ST. LUCIE**, a Florida municipal corporation, for and on behalf of said entity and for the consideration, intent and purposes set forth in the foregoing instrument. He/She is personally known to me or has produced _____ as identification.

_____
Signature of Notary Public

_____
Printed Name of Notary Public:
[Seal]

My Commission Expires:

TENANT:

Signed, sealed and delivered in the presence of:

STC FIVE LLC,
a Delaware limited liability company

_____

Print Name:_____

By: **GLOBAL SIGNAL ACQUISITIONS II LLC,**
a Delaware limited liability company
its Attorney-in-Fact

_____

Print Name:_____

By: _____
Name: _____
Title: _____
Date: _____

STATE OF _____ :
: ss
COUNTY OF _____ :

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, as the _____ of Global Signal Acquisitions II LLC, a Delaware limited liability company, the Attorney-in-Fact of **STC FIVE LLC**, a Delaware limited liability company, for and on behalf of said entity and for the consideration, intent and purposes set forth in the foregoing instrument. He/She is personally known to me or has produced _____ as identification.

_____
Signature of Notary Public

_____
Printed Name of Notary Public:

My Commission Expires:

[Seal]

MEMORANDUM

TO: JERRY A. BENTROTT, CITY MANAGER

FROM: PAM E. BOOKER HAKIM, SENIOR ASSISTANT CITY ATTORNEY

DATE: OCTOBER 5, 2011

SUBJECT: COMMUNICATION TOWER
THIRD AMENDMENT TO LEASE AGREEMENT
SOUTHPORT WATER STORAGE

Attached please find a proposed Third Amendment to Site Lease Agreement between the City of Port St. Lucie and STC Five LLC, for Telecommunication Tower Site located at the Southport Utility Facility. This item was considered by the City Council last year wherein the City Council agreed to a ten years extension, not the twenty years as requested by Crown Castle. The Amendment adds two 5-years terms to the Lease. The additional 10 year lease extension creates a new expiration day of 2033.

This Amendment has been reviewed and approved by the Legal Department. Please place this item on the next available City Council Agenda. Should you have any questions or need additional information, please contact me at 873-6525.

PBH/liw

RECEIVED
OCT 05 2011
City Manager's Office

Denise/pam/memos/cel tower-Southport water- 3rd amendment