

RESOLUTION NO. 6/13/17-1

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A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR
CREDITOR'S ASSUMPTION OF KANSAS FIBER NETWORK FRANCHISE AS
ADDITIONAL COLLATERAL FOR A CERTAIN LOAN TO FRANCHISEE.
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WHEREAS, the City of Garnett, Kansas, granted Kansas Fiber Network, LLC a non-exclusive franchise to provide telecommunication services in Garnett, Kansas; and,

WHEREAS, said Franchisee desires to assign said franchise as additional collateral for a certain loan of money by CoBank, ACB to said Franchisee and has given the City as Franchisor notice of the same and prepared a written agreement of assignment and assumption; and,

WHEREAS, the said franchise agreement allows an assignment for such purposes upon notice to Franchisor city; the agreement, attached hereto and marked, Exhibit A, has been reviewed and the same is approved as to form.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GARNETT, KANSAS, that the Mayor and the City Clerk be and they are hereby authorized and directed to execute on behalf of the City of Garnett, Kansas, the said assignment and assumption agreement, substantially in the form appended to this resolution and marked "Exhibit A".

ADOPTED this _____ day of June, 2017.

Mayor

Commissioner

Commissioner

A T T E S T:

City Clerk

ASSIGNMENT AND ASSUMPTION AGREEMENT

This **ASSIGNMENT AND ASSUMPTION AGREEMENT** ("Agreement") dated as of _____, 2017, is made by and between KANSAS FIBER NETWORK, LLC ("Assignor"), a Kansas limited liability company, CoBank, ACB ("Lender"), whose mailing address is P.O. Box 5110, Denver, Colorado 80217, and the CITY OF GARNETT, KANSAS ("FRANCHISOR").

RECITALS

WHEREAS, the Franchisor granted the Assignor a contract franchise (the "Franchise") for providing telecommunications services in the City of Garnett, by way of Ordinance No. 4145, Granting to Kansas Fiber Network, L.L.C., a Kansas Limited Liability Company, a Contract Franchise for the Providing of Telecommunications Services in the City of Garnett (the "Franchise Ordinance");

WHEREAS, Assignor and Lender have entered into that certain loan agreement, dated February 22, 2013, and last amended March 7, 2017, designated as CoBank Loan No. RX1134, pursuant to which Lender has agreed to loan Assignor an aggregate principal amount of up to Twenty-two Million and 00/100 Dollars (\$22,000,000.00) (the "Loan Agreement");

WHEREAS, as a condition to entering into the Loan Agreement, Lender has required, among other things, that Assignor execute this Agreement assigning its interest in the Franchise to Lender as additional security for the payment and performance of the Obligations (as defined in the Loan Agreement);

WHEREAS, the Franchise permits the Assignor to assign its interest in the Franchise for the purposes set forth in the Loan Agreement, provided that Franchisor be given notice thereof.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants hereinafter contained, the parties hereto agree and bind themselves as follows:

1. **Assignment**. As security for Assignor's performance of its obligations under the terms and provisions of the Loan Agreement, Assignor hereby assigns to Lender, as collateral security, all of Assignor's right, title and interest in and to the Franchise; provided, however, that Lender shall not exercise any of its rights and remedies hereunder in respect of the Franchise unless and until an Event of Default (as defined in the Loan Agreement) has occurred.

Unless and until an Event of Default shall have occurred, Assignor shall be fully entitled to all rights and benefits reserved to it under the Franchise Ordinance.

Exhibit A

2. **Rights Upon Default.** If an Event of Default shall occur and be continuing, then, subject to any cure period provided for herein, Lender may, at its option and upon written notice to the Assignor and to the Franchisor (a "Default Notice"), succeed to all of Assignor's rights under the Franchise Ordinance.

3. **Representations and Warranties.**

3.1. Assignor hereby represents and warrants the following:

(i) Assignor has the right and power, and has taken all necessary action to authorize it, to execute, deliver and perform this Agreement in accordance with its terms. This Agreement has been duly executed and delivered by the Assignor and is a legal, valid and binding obligation of the Assignor, enforceable against it in accordance with its terms;

(ii) No approval, consent, order, permission, authorization, license of or registration with, or notice to or taking of any action with or by any governmental authority or regulatory body is necessary in connection with the execution, delivery, performance or enforcement of this Agreement, except such as have been obtained and are in full force and effect;

(iii) Assignor has not assigned, pledged, granted an interest in, or otherwise encumbered or transferred any interest in the Franchise to any other party.

3.2. Lender hereby represents and warrants the following:

(i) Lender has the right and power, and has taken all necessary action to authorize it, to execute, deliver and perform this Agreement in accordance with its terms. This Agreement has been duly executed and delivered by the Lender and is a legal, valid and binding obligation of the Lender, enforceable against it in accordance with its terms;

(ii) No approval, consent, order, permission, authorization, license of or registration with, or notice to or taking of any action with or by any governmental authority or regulatory body is necessary in connection with the execution, delivery, performance or enforcement of this Agreement, except such as have been obtained and are in full force and effect.

4. **Covenants.**

4.1. **Performance.** Assignor shall remain fully in compliance with the terms and conditions of the Franchise, notwithstanding Lender's exercise of any of its rights or remedies hereunder.

4.2. **No Release.** Assignor shall not, directly or indirectly, release the Franchisor from its obligations under the Franchise Ordinance without obtaining Lender's prior written consent.

4.3. No Other Assignment. Assignor shall not assign, pledge, grant a security interest in, or otherwise encumber or transfer any interest in the Franchise to any other party without Lender's prior written consent.

4.4. No Amendments. Assignor shall not amend or consent to the amendment of the Franchise Ordinance without Lender's prior written consent if such Amendment would alter the Assignor's rights or obligations thereunder.

4.5. Indemnity. Assignor shall indemnify and hold harmless Lender, its directors, officers, employees and agents from and against any and all liabilities, losses, damages, claims, fines, penalties, costs, fees and expenses of every kind, nature or description arising out of or incurred in connection with Lender's lawful exercise of its rights or remedies hereunder.

5. Franchisor Consent to Asset Transfer. Franchisor hereby consents to the assignment and assumption of the Franchise as described herein. Franchisor's consent is given on condition that, as between Franchisor and Franchisee, or any assignee of Franchisee, this agreement shall not alter, or be construed to alter, in any way any and all rights and remedies of Franchisor as set forth in the original franchise agreement. Assignee does hereby agree to be bound by all terms and conditions of original Franchise Agreement.

6. Further Assurances. Assignor shall, from time to time, and at all times when requested, deliver to Lender any and all documents as may be reasonably requested by Lender, and execute and deliver all such further instruments as are necessary in the opinion of Lender or its counsel to carry into full effect the true intent and meaning of this Agreement.

7. Miscellaneous Provisions.

7.1. Notices. All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered or telecopied to the intended recipient at the "Address for Notices" specified below, or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when personally delivered or, in the case of a telecopied or mailed notice, upon receipt, in each case given or addressed as provided for herein. It shall constitute receipt for telecopied notices if confirmed electronically or otherwise by the sender. The Address for Notices of the respective parties are as follows:

If to Lender:

CoBank, ACB
P.O. Box 5110
Denver, CO 80217

Attn: Communications Banking Group

To Assignor:

Kansas Fiber Network, LLC
8201 E. 34th Street North, No. 1500
Wichita, KS 67226
Attn: Brian Christiansen
Fax No. 316-712-6029

To Franchisor:

City of Garnett
Garnett City Hall
131 West Fifth Avenue
P.O. Box H
Garnett, KS 66032
Attention: City Manager

7.2. Expenses. The Assignor will pay all costs and expenses of Lender, including reasonable fees of counsel, incurred in connection with the enforcement of this Agreement or with the preparation for such enforcement if Lender has reasonable grounds to believe that such enforcement may be necessary.

7.3. No Waiver. No failure on the part of Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise by Lender of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

7.4. Modifications. No modification or waiver of any provision of this Agreement, and no consent to any departure by Assignor therefrom, shall in any event be effective unless the same shall be in writing by the party granting such modification, waiver or consent.

7.5. Merger and Integration. This Agreement (including the Recitals and all exhibits and schedules hereto), and matters incorporated by reference herein together contain the entire agreement of the parties hereto with respect to the matters covered hereby.

7.6. Severability. If any term, provision or condition, or any part thereof, of this Agreement shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision or condition nor any other term, provision or condition, and this Agreement shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

7.7. **Termination of Assignment.** This Agreement shall terminate at such time as Assignee shall no longer be indebted to Lender and/or its successors and assigns under the Loan Agreement, or as otherwise agreed in writing by all parties hereto.

7.8. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

7.9. **Captions.** The headings of the various sections hereof are for convenience of reference only and shall not affect the meaning or construction of any provision hereof.

7.10. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

KANSAS FIBER NETWORK, LLC

By: _____

Title: _____

Name: _____

Attest: _____
Brian Thomason, Secretary

COBANK, ACB

By: _____

Title: _____

Name: _____

Attest: _____

Name: _____

Franchisor hereby acknowledges and consents to the foregoing Agreement and the terms hereof.

THE CITY OF GARNETT, KANSAS

By: _____

Title: _____

Name: _____

Attest: _____

Name: _____