



MEMORANDUM

From the Office of the
Township Manager

TO: BOARD OF SUPERVISORS
FROM: CHRISTOPHER BASHORE
RE: RESOLUTION NO. 14 – 2023
DATE: APRIL 18, 2023

Before the Board of Supervisors this evening is continued discussion of proposed Resolution No. 14 – 2023. This resolution would approve the first amendment to the Township's cell tower lease agreement with SBA 2012 TC Assets, LLC. By way of background information, the Township first entered into a lease agreement with Nextel Communications on August 30, 2004 to locate a cell tower at the Township's Municipal Complex. The Township receives monthly lease revenue for the cell tower (budgeted revenue for 2023 is \$36,496 in line-item #01340-03522). The proposed first amendment before the Board would provide for six (6) additional successive five (5) year renewal terms, which would commence on May 4, 2030.

The Board discussed this resolution and the proposed first amendment to the lease agreement at the meeting on April 4, 2023. No action was taken at that time as there was concern over the length of the agreement without the ability of the Township to terminate the lease with advanced notice. The Township Solicitor was going to discuss this provision with representatives at SBA 2012 TC Assets, LLC. Please be advised that I am unsure if these discussions occurred prior to this evening's meeting.

Please let me know if you have questions. Thank you.

RESOLUTION NO. 14 – 2023

WEST GOSHEN TOWNSHIP

CHESTER COUNTY, PENNSYLVANIA

A RESOLUTION OF THE BOARD OF SUPERVISORS OF WEST GOSHEN TOWNSHIP GRANTING APPROVAL TO ENTER INTO FIRST AMENDMENT TO WIRELESS TELECOMMUNICATIONS SITE AGREEMENT WITH SBA 2012 TC ASSETS, LLC FOR A CERTAIN TELECOMMUNICATION TOWER LOCATED AT THE TOWNSHIP'S MUNICIPAL COMPLEX LOCATED AT 1025 PAOLI PIKE

WHEREAS, West Goshen Township (the "Township") entered into a Wireless Telecommunications Site Agreement dated August 30, 2004 (the "Agreement") with Nextel Communications of The Mid-Atlantic, Inc., a Delaware corporation d/b/a Nextel Communications ("Nextel") on the property which is the Township's municipal complex located at 1025 Paoli Pike, West Chester, Pennsylvania 19380, identified as Tax Parcel No. 52-5-58;

WHEREAS, to give record notice of the Agreement and its terms, the Township and Nextel entered into a Memorandum of Agreement dated August 30, 2004, which was recorded in the Recorder of Deeds for Chester County on September 1, 2004, in Book 4234, Page 29;

WHEREAS, the Agreement was assigned by Nextel to Tower Entity 8, LLC, a Delaware limited liability company ("Tower Entity"), pursuant to that certain Assignment and Assumption of Ground Lease dated September 18, 2008, and recorded in the Recorder of Deeds for Chester County on August 26, 2009, in Book 7759, Page 1541;

WHEREAS, Tower Entity merged into TowerCo Assets LLC, a Delaware limited liability company ("TowerCo");

WHEREAS, the Township and TowerCo recorded a Memorandum of Agreement dated February 16, 2009, in the Recorder of Deeds for Chester County on March 4, 2009, in Book 7603, Page 1427;

WHEREAS, the Township desires to enter a First Amendment to Wireless Telecommunications Site Agreement ("First Amendment") with SBA 2012 TC Assets, LLC, a Delaware limited liability company ("SBA"), formerly known as TowerCo Assets LLC;

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED by the Board of Supervisors of West Goshen Township, Chester County, Pennsylvania that the Township and its officials are authorized to enter into, execute, deliver and perform the First Amendment which is attached hereto as Exhibit "A", and any and all documents in connection with the First Amendment.

RESOLVED this _____ day of _____, 2023.

ATTEST:

**BOARD OF SUPERVISORS
WEST GOSHEN TOWNSHIP**

Christopher C. Bashore, Secretary

BY: _____
Shaun Walsh, Chair

Ashley Gagné, Vice-Chair

John Hellmann, Member

Robin Stuntebeck, Member

Tinamarie Smith, Member

EXHIBIT A

FIRST AMENDMENT TO WIRELESS TELECOMMUNICATION SITE AGREEMENT

Prepared by: Denise Scherer
After recording return to: Rita Drinkwater
SBA Network Services, LLC
8051 Congress Avenue
Boca Raton, FL 33487
Ph: 800-487-7483 ext. 7872

Parcel ID: 5205 0058000

**FIRST AMENDMENT TO WIRELESS TELECOMMUNICATIONS SITE
AGREEMENT**

THIS FIRST AMENDMENT TO WIRELESS TELECOMMUNICATIONS SITE AGREEMENT ("First Amendment") dated as of _____, 202__ (the "Effective Date") by and between **WEST GOSHEN TOWNSHIP, a political subdivision of the Commonwealth of Pennsylvania**, having an address at 1025 Paoli Pike, West Chester, PA 19380-4641 ("Lessor") and **SBA 2012 TC ASSETS, LLC, a Delaware limited liability company**, having a principal office located at 8051 Congress Avenue, Boca Raton, FL 33487-1307 ("Lessee").

WHEREAS, Lessor and Nextel Communications of The Mid-Atlantic, Inc., a Delaware corporation, d/b/a Nextel Communications, entered into that certain Wireless Telecommunications Site Agreement dated August 30, 2004 as evidenced by that certain Memorandum of Agreement dated February 16, 2009, and recorded March 4, 2009, in Book 7603, Page 1427, as amended and assigned from time to time (collectively, "Agreement") and assigned to Lessee, f/k/a TowerCo Assets LLC, a Delaware limited liability company, successor by merger to Tower Entity 8 LLC, a Delaware limited liability company, pursuant to that certain Assignment and Assumption of Ground Lease dated September 18, 2008, and recorded August 26, 2009, in Book 7759, Page 1541,; said recordings of the Recorder of Deeds of Chester County, Pennsylvania, for Lessee's use of a portion of the real property ("Site") together with access and utilities easement, located at 1025 Paoli Pike Place, West Chester, PA 19380 ("Property"), being more particularly described in the attached **Exhibit "A"**; and

WHEREAS, Lessor and Lessee desire and intend to amend and supplement the Agreement as provided herein.

NOW, THEREFORE, for good and valuable consideration of One Hundred and No/100 Dollars (\$100.00), the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant, agree and bind themselves to the following modifications to the Agreement:

1. **Section 3. Term**, of the Agreement is hereby amended to include the following:

In addition to the Term as referenced in the Agreement, the Agreement is hereby amended to include six (6) additional successive terms of five (5) years (each a "Renewal Term"). Each Renewal Term shall be deemed automatically extended, unless Lessee notifies Lessor of its intention not to renew the Agreement at least sixty (60) days prior to the commencement of the succeeding Renewal Term. The first additional Renewal Term shall commence on May 4, 2030, upon the expiration of the Renewal Term expiring on May 3, 2030.

2. The third (3rd) sentence of **Section 14. Assignment and Subletting**, of the Agreement is hereby deleted in its entirety.

3. **Section 27. Notices**, of the Agreement is hereby amended as follows:

If to Lessor: West Goshen Township
Attn: Township Manager
1025 Paoli Pike
West Chester, PA 19380-4641

If to Lessee: SBA 2012 TC Assets, LLC
Attn: Site Administration
8051 Congress Avenue
Boca Raton, FL 33487-1307
Re: PA47687-A / Goshenville

4. Capitalized terms not defined in this First Amendment will have the meaning ascribed to such terms in the Agreement.
5. This First Amendment will be governed by and construed and enforced in accordance with the laws of the state in which the Property is located without regard to principles of conflicts of law.
6. Except as specifically set forth in this First Amendment, the Agreement is otherwise unmodified and remains in full force and effect and is hereby ratified and reaffirmed. In the event of any inconsistencies between the Agreement and this First Amendment, the terms of this First Amendment shall take precedence.
7. Lessor acknowledges that the attached **Exhibit "A"** may be preliminary or incomplete and, accordingly, Lessee may replace and substitute such exhibit with an accurate survey and

legal descriptions of the Site and easements and re-record this First Amendment without obtaining the further approval of Lessor. Following such re-recording, the descriptions of the Site and easements described therein shall serve as the descriptions for same for all purposes under the Agreement.

8. Lessor represents and warrants to Lessee that Lessor is the sole owner in fee simple title to the Property and Lessor's interest under the Agreement and that consent or approval of no other person is necessary for Lessor to enter into this First Amendment.
9. This First Amendment may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same First Amendment.
10. Lessee shall have the right to record this First Amendment.

[The remainder of this page is intentionally left blank. Signatures to follow.]

AGREED TO AND ACCEPTED on this ___ day of _____, 202__, but shall be effective as of the Effective Date.

WITNESSES:

LESSOR:

West Goshen Township, a political subdivision of the Commonwealth of Pennsylvania

Print Name: _____

By: _____

Print Name: _____

Title: _____

Print Name: _____

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF _____

On this ___ day of _____, 202__, before me a notary public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of West Goshen Township, a political subdivision of the Commonwealth of Pennsylvania, and that he/she as such _____, being authorized to do so, executed the foregoing instrument, for the purposes therein contained, by signing the name of the political subdivision by him/herself as _____.

Notary Public _____

My Commission Expires _____

(NOTARY SEAL)

AGREED TO AND ACCEPTED on this ____ day of _____, 202__, but shall be effective as of the Effective Date.

WITNESSES:

LESSEE:

SBA 2012 TC Assets, LLC, a Delaware limited liability company

Print Name: _____

By: _____

Joshua Koenig
Executive Vice President and General Counsel

Print Name: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 202__, by Joshua Koenig, Executive Vice President and General Counsel of SBA 2012 TC Assets, LLC, a Delaware limited liability company, on behalf of said company, who is personally known to me and did not take an oath.

Notary Public _____

My Commission Expires _____

(NOTARY SEAL)

EXHIBIT "A"

Legal description to be incorporated upon receipt of final survey.

ALL THAT CERTAIN parcel of land situated in West Goshen Township, Chester County, being shown as Lot #5, bounded and described according to a Plan of Subdivision for the Drury Group, Inc., prepared by Edward B. Walsh & Associates, Inc., dated 4/19/93 and last revised 5/13/93 and being more fully described as follows:

BEGINNING at a point in the East ultimate right of way line of North Five Points Road, 50 feet wide; thence from the point of beginning leaving said right of way line and continuing along lands of Lot #4 the 2 following courses and distances: (1) North 54 degrees 29 minutes 44 seconds East 508.00 feet to a point; (2) North 77 degrees 27 minutes 31 seconds East 895.31 feet to a point in the line of lands of John D. Flagg; thence continuing along lands of Flagg the following course and distance: South 12 degrees 09 minutes 45 seconds West 765.71 feet to a point; thence, South 00 degrees 31 minutes 37 seconds West 83.09 feet to a point in the North right of way line of Fern Hill Road, 60 feet wide; thence continuing along said right of way the 5 following courses and distances: (1) along a curve to the left having a radius of 984.91 feet an arc distance of 291.50 feet to a point; (2) South 53 degrees 34 minutes 39 seconds West 326.62 feet to a point; (3) along a curve to the right having a radius of 1243.24 feet and an arc distance of 225.76 feet to a point; (4) South 63 degrees 38 minutes 55 seconds West 267.10 feet to a point; (5) along a curve to the right having a radius of 30.00 feet, an arc distance of 48.91 feet to a point; the intersection of said right of way and the right of way of North Five Points Road, 50 feet wide; thence along the ultimate right of way of North Five Points Road, 50 feet wide, the 4 following courses and distances: (1) North 22 degrees 36 minutes 14 seconds West 74.83 feet to a point; (2) along a curve to the right having a radius of 1016.74 feet, an arc distance of 412.58 feet to a point; (3) North 00 degrees 38 minutes 46 seconds East 206.02 feet to a point; (4) along a curve to the left having a radius of 502.46 feet an arc distance of 212.38 feet to the point and place of beginning.

CONTAINING 25.000 acres of land be the same more or less.