

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL WORKSHOP
JULY 24, 2007 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
First Amendment to License Agreement with American Tower Asset Sub, LLC for Antenna Space on the Katrine Well House	✓ Resolution Ordinance Motion Discussion Only	Enza Petrarca Village Attorney

SYNOPSIS

A resolution has been prepared to approve the First Amendment to a license agreement between American Tower Asset Sub, LLC and the Village for the purpose of installing, maintaining and operating antenna equipment on the Katrine Well House located at 5235 Katrine, Downers Grove, Illinois.

STRATEGIC PLAN ALIGNMENT

The Five Year Plan and Goals for 2006-2011 identified one goal as an *Exceptional Municipal Organization* and explained what it meant to citizens as involving a *Timely Professional Response to a Call for Service*.

FISCAL IMPACT

The present license fee is \$1924.31 per month for the year. Each September 1, the monthly fee increases by 4%. The First Amendment provides that beginning September 1, 2011, the monthly fee for that year will be \$2251.18. Further, any sublease that American Tower obtains will pay 50% of the rental fee directly to the Village.

RECOMMENDATION

Approval on the August 7, 2007 consent agenda.

BACKGROUND

American Tower Asset Sub, LLC is an owner and operator of wireless and broadcast communications sites in North America. In 2005, American Tower merged with Spectra Site. In July 1996, the Village and Spectra Site entered into a license agreement whereby Spectra Site would lease antenna space from the Village at the Katrine wellhouse. This agreement was for an initial five (5) year period with two (2) five-year extensions. The latest extension began September 1, 2006, and will end August 31, 2011. American Tower, Spectra Site's successor, approached the Village requesting an extension to the current agreement so that they could better market their services.

This First Amendment to the License Agreement extends the term of the agreement for two (2) additional five (5) year periods commencing September 1, 2011. The license fee will continue to increase 4% per year and will be at \$2251.18 per month beginning September 1, 2011. In addition, American Tower will pay 50% of any sublease it obtains for use of the Katrine Well House site. Within this amendment, the Village is granting approval of such a sublease. The Village will obtain a copy of the sublease agreement within thirty (30) days after execution of this amendment. Finally, within this

amendment, American Tower has agreed to replace its present wooden fencing with a chain link fence with privacy slats to clean up the look of the area.

In addition to the amendment, American Tower has requested that the Village execute a Memorandum of License Agreement so that they may record this with the County.

ATTACHMENTS

Resolution

First Amendment to License Agreement

Memorandum of Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A FIRST AMENDMENT TO LICENSE
AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE
AND AMERICAN TOWER ASSET SUB, LLC**

BE IT RESOLVED by the Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a proposed Agreement (the "Agreement") between the Village of Downers Grove (the "Landlord"), and American Tower Asset Sub, LLC ("Tenant") providing for an amendment to the antenna agreement for equipment located on the Katrine Well House located at 5235 Katrine, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____

Village Clerk

FIRST AMENDMENT TO LICENSE AGREEMENT

THIS FIRST AMENDMENT TO LICENSE AGREEMENT ("Amendment"), dated as of the later of the signature dates below, is by and between the Village of Downers Grove, an Illinois municipal corporation, having a mailing address of 801 Burlington Avenue, Downers Grove, Illinois 60515 (hereinafter referred to as "Landlord") and American Tower Asset Sub, LLC, a Delaware limited liability company having a mailing address of 10 Presidential Way, Woburn, MA 01801, Attn: Land Management (hereinafter referred to as "Tenant").

WHEREAS, Landlord and Tenant's predecessor, Smart SMR, Inc. d/b/a Nextel Communications, entered into a License Agreement dated July of 1996, whereby Landlord leased to Tenant certain Premises, therein described, that are a portion of the Property located at 5235 Katrine, Downers Grove, Illinois ("Agreement"); and

WHEREAS, Landlord and Tenant desire to amend the Agreement to provide that the term of the Agreement shall be extended as well as to confirm compensation amounts.

WHEREAS, Landlord and Tenant desire to amend the Agreement to provide that any notice or communication shall be sent to the Landlord at its current address and to Tenant at its current address.

WHEREAS, Landlord and Tenant desire to amend the Agreement to provide for approval of a new sublease by Tenant.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. "Section 5. Term" of the Agreement is amended to extend the term of the current Agreement. With this Amendment, the Agreement shall be automatically renewed for two (2) additional five (5) year renewal terms commencing on September 1, 2011, September 1, 2016. After the term beginning September 1, 2016, Tenant may request the Village to enter into negotiations toward renewing or extending this Agreement. Any renewal or extension shall be according to terms that are mutually agreeable and the Village shall not be bound to accept any particular terms or to renew any or all of the rights granted by this Agreement. Automatic renewal as provided herein will only cease upon ninety (90) days written notice of non-renewal by one party to the other or until the final expiration date, which ever is sooner. Landlord agrees not to terminate this lease simply as a method to re-negotiate the terms contained herein.

2. "Section 10. Compensation" of the Agreement is amended to verify that effective each September 1st that this Agreement remains in effect through the extended periods, that the fee shall increase in an amount equal to the fee for the preceding year multiplied by 1.04 (104%). Therefore, beginning September 1, 2011, the license fee shall be two thousand two hundred fifty one dollars and eighteen cents (\$2251.18) per month.

Thereafter, effective on the first day of September 1st of each subsequent year, the fee shall increase as provided in the Agreement and as written above.

3. Under the terms of the Agreement, Section 15 (c) regarding subleasing by Tenant, the Agreement shall be amended to include an approval by Landlord of a sublease by Tenant to Cricket as depicted on Exhibit A, attached. This sublease shall comply with Section 15 (c) regarding payment to Landlord of fifty percent (50%) of the sublease amounts as well as Sections 3 and 4 of the Agreement. With the signing of this Amendment, Landlord requires a copy of the Cricket lease with American Tower be provided within thirty (30) days of the last date to this Amendment.

4. "Section 18. Notices" of the Agreement is amended to indicate the current addresses of each party:

Village of Downers Grove
801 Burlington Ave.
Downers Grove, IL 60515
Attn: Village Manager

American Tower Asset Sub, LLC
10 Presidential Way
Woburn, MA 01801
Attn: Land Management

With a copy to: American Tower
116 Huntington Ave.
Boston, MA 02116

5. Further, it is agreed that Tenant will replace its present wooden fencing with a chain link fence with privacy slats as soon as practical. All Village of Downers Grove ordinances regarding permitting shall be applicable to this change, as provided in Section 3 of the Agreement. Finally, any time Tenant enters the license area, Tenant shall contact the Landlord/Village to inform them of their presence on Village property as provided in Section 3, specifically paragraph (e), of the Agreement. Tenant shall be entitled to access their equipment Monday through Friday, 7am to 3:30pm CST, by contacting Water Management at 630/434-5462 or 630/434-5460. If access is required after business hours, on weekends, on a holiday or in the event of an emergency, Tenant shall contact the Village Operations Center at 630/434-5706 or 630/434-5707.

6. Except as amended herein, all terms, conditions, provisions, covenants and agreements contained in the Agreement shall remain in full force and effect in their entirety. In the event of a conflict between this Amendment and the Agreement, the Amendment shall control. Each reference in the Agreement to itself shall be deemed also to refer to this Amendment.

(Intentionally left blank)

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Amendment on the dates set forth below.

VILLAGE OF DOWNERS GROVE

AMERICAN TOWER ASSET SUB, LLC

By: _____
Cara Pavlicek, Village Manager

By: _____
Jason D. Hirsch, Vice President
Land Management

Date: _____

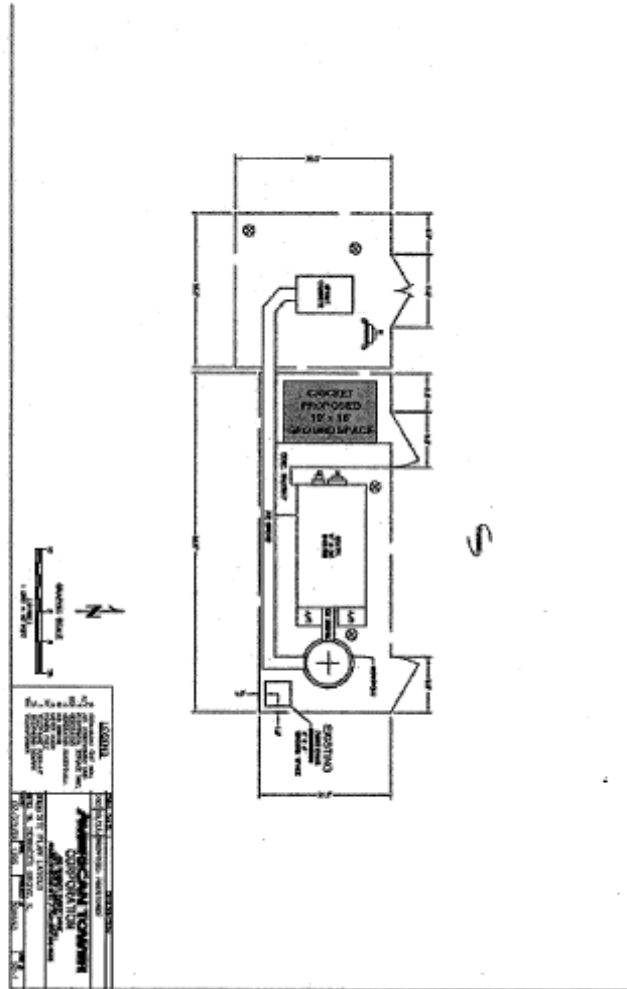
Date: _____

Attest: _____
April Holden, Village Clerk

Subscribed and sworn to before me this
_____ day of _____, 2007.

Notary Public

EXHIBIT A



Prepared by and Return To:

Attorney: Sara White

American Tower Corporation

10 Presidential Way

Woburn, M A 01801

Attn: Land Management

ATC Site #304443

ATC Site Name: W.Downer's Grove, IL

Tax Parcel ID Number(S):

MEMORANDUM OF LICENSE AGREEMENT

THIS FIRST AMENDMENT TO LICENSE AGREEMENT ("Memorandum"), dated as of the later of the signature dates below, is by and between the Village of Downers Grove, an Illinois municipal corporation, having a mailing address of 801 Burlington Avenue, Downers Grove, Illinois 60515 (hereinafter referred to as "Landlord") and American Tower Asset Sub, LLC, a Delaware limited liability company having a mailing address of 10 Presidential Way, Woburn, MA 01801, Attn: Land Management (hereinafter referred to as "Tenant").

WHEREAS, Landlord and Tenant's predecessor, Smart SMR, Inc. d/b/a Nextel Communications, entered into a License Agreement dated July of 1996, whereby Landlord leased to Tenant certain Premises, therein described, that are a portion of the Property located at 5235 Katrine, Downers Grove, Illinois ("Agreement"); and

WHEREAS, Landlord and Tenant desire to amend the Agreement to provide that the term of the Agreement shall be extended as well as to confirm compensation amounts.

WHEREAS, Landlord and Tenant desire to amend the Agreement to provide that any notice or communication shall be sent to the Landlord at its current address and to Tenant at its current address.

WHEREAS, Landlord and Tenant desire to amend the Agreement to provide for approval of a new sublease by Tenant.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. The terms and conditions of said Agreement are incorporated into this Memorandum by reference.
2. Premises: Subject to the terms of the Agreement, Landlord has leased to Tenant a portion of the real property described in Exhibit A attached hereto and incorporated herein by reference.
3. Term: of the Agreement is amended to extend the term of the current Agreement. With this Amendment, the Agreement shall be automatically renewed for two (2) additional five (5) year renewal terms commencing on September 1, 2011, September 1, 2016. After the term beginning September 1, 2016, Tenant may request the Village to enter into negotiations toward renewing or extending this Agreement. Any renewal or extension shall be according to terms that are mutually agreeable and the Village shall not be bound to accept any particular terms or to renew any or all of the rights granted by this Agreement. Automatic renewal as provided herein will only cease upon ninety (90) days written notice of non-renewal by one party to the other or until the final expiration date, which ever is sooner. Landlord agrees not to terminate this lease simply as a method to re-negotiate the terms contained herein.
4. This Memorandum is not a complete summary of the terms and conditions contained in the Agreement. Provisions in the Memorandum shall not be used in interpreting the Agreement provisions. In the event of a conflict between this Memorandum and the Agreement, the Agreement shall control.

[SIGNATURES NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Amendment on the dates set forth below.

VILLAGE OF DOWNERS GROVE

AMERICAN TOWER ASSET SUB, LLC

By: _____
Cara Pavlicek, Village Manager

By: _____
Jason D. Hirsch, Vice President
Land Management

Date: _____

Date: _____

Attest: _____
April Holden, Village Clerk

Subscribed and sworn to before me this
_____ day of _____, 2007.

Notary Public

5

