

ORDINANCE NO. 2008-76

AN ORDINANCE AMENDING THE LAND LEASE AGREEMENT ENTERED INTO WITH GTE MOBILNET ON SEPTEMBER 1, 1995, WHICH WAS AMENDED ON APRIL 5, 2000, MODIFYING THE LENGTH OF THE LEASE, CLARIFYING THE ALLOCATIONS OF RENTS FROM NEW "TENANTS" ON THE TOWER, AND GIVING THE CITY THE OPTION TO TAKE THE TOWER IN THE FUTURE, AND DECLARING AN EMERGENCY.

WHEREAS, GTE Mobilnet of Ohio and the City of Kent entered into a Land Lease Agreement for the placement of a communications tower on City property in September, 1995; and

WHEREAS, GTE Mobilnet of Ohio transferred and assigned its interest in said tower to "The Venture", a joint ventures company comprised of GTE and Crown Castle International Corporation on April 5, 2000; and

WHEREAS, the City and GTE Mobilnet and Crown Castle International Corporation "The Venture" wish to modify the terms of the lease modifying the length of the lease, clarifying the allocations of rents from new "tenants" on the tower and giving the City the option to take the tower in the future; and

WHEREAS, GTE Mobilnet of Ohio and Crown Castle International Corporation "The Venture" are current in their rent payments.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio, at least two-thirds (2/3) of all members elected thereto concurring:

SECTION 1. The Council does hereby approve and authorize the City Manager, or his designee, to execute the amendment to the lease with "The Venture" pursuant to the Land Lease Agreement amendment attached hereto as Exhibit "A".

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of this City, for which reason and other reasons manifest to this Council this ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: 05/21/08
DATE

MAYOR AND PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2008-76 was duly enacted this 21 day of
May, 2008, by the Council of the City of Kent, Ohio.

CLERK OF COUNCIL

Drafted by:

Rachel J. Kotys
Sittig, Cortese & Wratcher
1500 Frick Building
437 Grant Street
Pittsburgh, PA 15219

FIRST AMENDMENT TO LAND LEASE AGREEMENT

THIS FIRST AMENDMENT TO LAND LEASE AGREEMENT ("First Amendment") is made effective this _____ day of _____, 2008, by and between *City of Kent, Ohio, a municipal corporation* ("Landlord"), having a mailing address of 310 South Water Street, Kent, Ohio 44240 and *Crown Castle GT Company LLC, a Delaware limited liability company* ("Tenant") with a mailing address of 2000 Corporate Drive, Canonsburg, Pennsylvania 15317.

WHEREAS, Landlord and GTE Mobilnet of Ohio, Limited Partnership ("GTE") entered into a Land Lease Agreement dated September 1, 1995 (the "Lease"), for which a Memorandum of Lease dated September 1, 1995 was recorded on an unknown date in Volume 71, Page 483 in the Public Records of Portage County, Ohio, for an area of land containing approximately 0.73 acres of land (the "Leased Premises"), being part of a larger parcel owned by Landlord (the "Property"); and,

WHEREAS, GTE and Tenant entered into an Assignment and Assumption Agreement dated January 31, 2000, and recorded May 15, 2001 as Instrument No. 200112214 with the Public Records of Portage County, Ohio, pursuant to which GTE assigned all of its right, title and interest in the Lease to Tenant; and,

WHEREAS, Landlord recognized the Lease and the assignment to Tenant by virtue of Ordinance No. 2000-28 of the City of Kent, Ohio; and

WHEREAS, the Lease had an initial term of five (5) years, with five (5) additional five (5) year renewal terms, which renew automatically and terminate on August 31, 2025 (the "Original Term"); and,

WHEREAS, Landlord and Tenant now desire to amend the terms of the Lease to provide for an additional term beyond the Original Term as well as other considerations.

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

1. Defined Terms. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Lease.

2. Add Paragraph 4(d). The following is added to Paragraph 4 as section (d):

(d) As additional rent, Tenant shall pay Landlord Three Thousand and No/100 Dollars (\$3,000.00) per year, per user ("Additional Rent") that is the result of future subleasing of licensing of a portion of the wireless communications facility to cellular or PCS wireless carriers. The parties acknowledge that there is currently one (1) carrier located on the tower. Additional Rent will become due and payable when the third (3rd) carrier, and each carrier thereafter locate at the Leased Premises. The Additional Rent shall be subject to the same periodic increases as the Rent set forth in Paragraph 5 of the Lease. If a carrier terminates its agreement with Tenant and Tenant is no longer receiving rental payments, then Tenant's obligation to pay Landlord Additional Rent will cease upon removal of the terminating carrier's equipment from the Leased Premises. The parties agree backhaul and narrowband providers are specifically excluded from Tenant's obligation to pay Additional Rent as set forth in this provision.

3. Amend Paragraph 5. Paragraph 5 of the Lease is amended by adding the following at the end of the existing paragraph:

Subject to Tenant's termination rights as set forth herein, at the expiration of the Original Term, this Lease shall automatically renew for ten (10) additional terms of five (5) years each (the "Additional Renewal Terms"). The Additional Renewal Terms shall exceed the Original Term by fifty (50) years and shall terminate on August 31, 2075.

Landlord and Tenant agree that commencing on March 1, 2008 and ending on February 28, 2018, Tenant will not exercise any right it may have to terminate the Lease and further agrees to continue paying Rent to Landlord as provided in the Lease.

Landlord and Tenant agree that during the Additional Renewal Terms, the Rent shall continue to increase in accordance with the language herein, in an amount equal to the change in CPI-U multiplied by the Rent for the previous five (5) year term.

4. Add Paragraph 23. The following is added as Paragraph 23 of the Lease:

Landlord and Tenant agree that in the event the tower becomes empty and Tenant chooses to decommission and remove the tower from the Leased Property, Tenant will grant Landlord the option of tower ownership without charge, prior to and in lieu of removal. Upon Landlord acceptance, Tenant will have no further interest or responsibility for the tower.

5. Add Paragraph 24. The following is added as Paragraph 24 of the Lease:

Upon request from Tenant and on a timely basis, Landlord will execute and deliver and/or cooperate to obtain a statement in writing certifying, among other things, that the Lease is in full force and effect, the dates to which the Rent has been paid and whether, to the best of Landlord's knowledge, any defaults of Tenant exist under the Lease.

6. Representations, Warranties and Covenants of Landlord. Landlord represents, warrants and covenants to Tenant as follows:

- (a) The Leased Premises are owned by Landlord free and clear of any mortgage, deed of trust, lien, or right of any individual, entity or governmental authority arising under any option, right of first refusal, lease, license, easement or other instrument, except for the rights of Tenant arising under the Lease as amended hereby and the rights of utility providers under recorded easements.

- (b) Upon Tenant's request, Landlord agrees to discharge and cause to be released (or, if approved by Tenant, subordinated to Tenant's rights under the Lease as amended hereby) any mortgage, deed of trust, lien or other encumbrance that may now or hereafter exist against the Leased Premises.
- (c) Upon Tenant's request, Landlord agrees to cure any defect in Landlord's title to the Leased Premises which in the reasonable opinion of Tenant has or may have an adverse effect on Tenant's use or possession of the Leased Premises.
- (d) Landlord agrees to execute such further documents and provide such further assurances as may be reasonably requested by Tenant to effect any release or cure referred to in this paragraph, to evidence the full intention of the parties, and to assure Tenant's use, possession and quiet enjoyment of the Leased Premises under the Lease as amended hereby.

7. IRS Form W-9. Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this First Amendment and at such other times as may be reasonably requested by Tenant. In the event the Leased Premises is transferred, the succeeding Landlord shall have a duty at the time of such transfer to provide Tenant with a completed IRS Form W-9, or its equivalent, and other related paper work to affect a transfer in Rent to the new Landlord. Landlord's failure to provide the IRS Form W-9 within thirty (30) days after Tenant's request shall be considered a default and Tenant may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from Rent payments.

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

IN WITNESS WHEREOF, Landlord and Tenant have caused this First Amendment to be duly executed on the day and year first written above.

LANDLORD:

*City of Kent, Ohio,
A municipal corporation*

By: _____

Printed Name: _____

Title: _____

Date: _____

By: _____

Printed Name: _____

Title: _____

Date: _____

STATE OF _____)

COUNTY OF _____)

SS:

On this _____ day of _____, 200__, before me personally appeared _____, the _____ of the *City of Kent, Ohio, a municipal corporation*, along with _____, the _____ of the *City of Kent, Ohio, a municipal corporation*, to me known (or satisfactorily proven) to be the person(s) that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said person(s) for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

Notary Public

My commission expires _____

TENANT:

**Crown Castle GT Company LLC,
a Delaware limited liability company**

By: _____

Name: _____

Title: _____

Date: _____

STATE OF _____)

COUNTY OF _____)

) SS:
)

On this _____ day of _____, 200__, before me personally appeared _____, to me known to be the _____ for **Crown Castle GT Company LLC, a Delaware limited liability company**, that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

Notary Public

My commission expires _____