

ORDINANCE NO. 15-2014

**AN ORDINANCE OF THE VILLAGE OF EVERGREEN PARK
APPROVING THE SECOND AMENDMENT TO OPTION AND
LEASE AGREEMENT WITH CROWN CASTLE FOR THE
CELLULAR TOWER AT 9421 SOUTH KEDZIE AVENUE**

BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Evergreen Park, Cook County, Illinois, as follows:

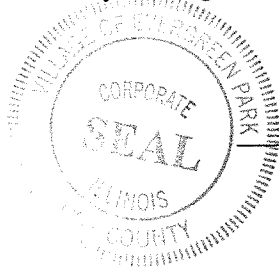
Section 1

That the Second Amendment to Option and Lease Agreement with Crown Castle, in substantially the form attached hereto, is hereby approved for and on behalf of the Village of Evergreen Park. The Mayor is hereby authorized to execute the same for and on behalf of the Village.

Section 2

This ordinance shall be in full force and effect after passage and approval.

This ordinance was passed and deposited in the office of the Village Clerk of the Village of Evergreen Park this 18th day of August, 2014.





CATHERINE T. APARO, Village Clerk

APPROVED by me this 18th
day of August, 2014.

JAMES J. SEXTON, Mayor

SECOND AMENDMENT TO OPTION AND LEASE AGREEMENT
(BU 817017)

THIS SECOND AMENDMENT TO OPTION AND LEASE AGREEMENT ("Second Amendment") is made effective this 18th day of August, 2014 by and between the VILLAGE OF EVERGREEN PARK, a municipal corporation ("Landlord"), and CROWN CASTLE GT COMPANY LLC, a Delaware limited liability company ("Tenant").

WHEREAS, Landlord and Chicago SMSA Limited Partnership, an Illinois limited partnership ("Original Tenant"), entered into an Option and Lease Agreement dated June 14, 1990 (as amended and assigned, the "Agreement"), whereby Landlord leased to Original Tenant an approximately 961 square foot portion of land (the "Property") being legally described as:

That part of Lots 29 and 30 in Block 1 in H.A. Callando Addition to Evergreen Park in the southwest $\frac{1}{4}$ of the southwest $\frac{1}{4}$ of the southwest $\frac{1}{4}$ of Section 1, Township 37 North, Range 13 East of the Third Principal Meridian described as beginning at the southeast corner of said Lot 29; thence westerly along the southerly line of said Lot 29, 29.73 feet; thence northerly, normal to the last described line, 35.00 feet; thence northeasterly, normal to the northeasterly line of said Lots 29 and 30, 12.82 feet to the said northeasterly line of Lot 30; thence southeasterly along said northeasterly line, 33.13 feet; thence southerly along the easterly line of said Lot 29, said line also being the westerly right of way of a 16 foot alley, 15.43 feet to the place of beginning, in Cook County Illinois.

located at 9421 South Kedzie Avenue (Tax Parcel #24-01-322-033), Evergreen Park, Cook County, Illinois, together with those certain access, utility and/or maintenance easements and/or rights of way granted in the Agreement. Notice of the Agreement is provided by, and the Property is described in that certain Memorandum of Lease ("Memorandum"), dated June 26, 1990, and recorded on July 20, 1990, as Instrument Number 90349190 in the Registry; and

WHEREAS, Landlord and Original Tenant entered into that Amendment to Lease Agreement and Amendment to Memorandum of Lease dated April 3, 1995, and recorded on April 19, 1995, as Instrument Number 95258064 in the Registry, whereby the parties agreed to alter the Agreement to provide for the automatic renewal of extension terms; and

WHEREAS, Original Tenant assigned its rights, title and interest in the Agreement to Tenant pursuant to that Assignment and Assumption Agreement dated September 1, 2000, and recorded on April 18, 2001, as Instrument Number 0010315175 in the Registry; and

WHEREAS, the Agreement has an original term, including all extension terms, that will expire on June 11, 2015 ("Original Term"), and Landlord and Tenant now desire to amend the terms of the Agreement to provide for additional extension terms beyond the Original Term, and to make other changes.

NOW THEREFORE, in exchange for the mutual promises contained herein, Landlord and Tenant agree to amend the Agreement as follows:

1. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement. The recitals in this Second Amendment are incorporated herein by this reference.

2. Section 2.2 of the Agreement is amended by replacing “four (4)” with “nine (9)”, thereby adding five (5) additional five (5)-year extension terms to the Agreement beyond the Original Term, and extending its total term to June 11, 2040, unless sooner terminated as provided in the Agreement.

3. Section 2.3 of the Agreement is amended to provide for the following at the end of the section:

On June 1, 2015, the annual rent shall increase to Twenty-Four Thousand Dollars (\$24,000.00). Following such increase, commencing on June 1, 2016, and every year thereafter (each an “Adjustment Date”), the annual rent shall increase by an amount equal to 3% of the annual rent in effect for the year immediately preceding the Adjustment Date.

4. Section 2.4 of the Agreement is amended by replacing “fourth (4th)” in each place it appears with “ninth (9th)”.

5. Section 3.7 of the Agreement is amended by deleting Tenant’s notice addresses and inserting the following:

Tenant: Crown Castle GT Company LLC
c/o Crown Castle USA Inc.
E. Blake Hawk, General Counsel
Attn: Legal-Real Estate Department
2000 Corporate Drive
Canonsburg, Pennsylvania 15317-8564

6. A new Section 3.19 is added to the Agreement as follows:

3.19 Right of First Refusal. If Landlord receives an offer to purchase fee title, an easement, a lease, a license, or any other interest in the Property, or Landlord’s interest in this Agreement, or an option for any of the foregoing, Landlord shall provide written notice to Tenant of said offer, and Tenant shall have a right of first refusal to acquire such interest on the same terms and conditions in the offer, excluding any terms or conditions which are (i) not imposed in good faith or (ii) directly or indirectly designed to defeat or undermine Tenant’s possessory or economic interest in the Property. Landlord’s notice shall include the prospective buyer’s name, the purchase price and/or other consideration being offered, the other terms and conditions of the offer, the due diligence period, and the proposed closing date. If the Landlord’s notice shall provide for a due diligence period of less than sixty (60) days, then the due diligence period shall be extended to be sixty (60) days from exercise of the right

of first refusal and closing shall occur no earlier than fifteen (15) days thereafter. If Tenant does not exercise its right of first refusal by written notice to Landlord given within thirty (30) days, Landlord may convey the property as described in the Landlord's notice. If Tenant declines to exercise its right of first refusal, then this Agreement shall continue in full force and effect and Tenant's right of first refusal shall survive any such conveyance. Tenant shall have the right, at its sole discretion, to assign the right of first refusal to any person or entity, either separate from an assignment of this Agreement or as part of an assignment of this Agreement. Such assignment may occur either prior to or after Tenant's receipt of Landlord's notice and the assignment shall be effective upon written notice to Landlord.

7. As additional consideration for amending the Agreement in accordance with this Second Amendment, Tenant agrees to pay Landlord Seven Thousand Five Hundred and No/100 Dollars (\$7,500.00) for executing and delivering this Second Amendment to Tenant within twenty (20) days of receipt by the Landlord's attorney of the final executable document(s) (the "Expedite Fee"). Landlord understands that time is of the essence, and if this Second Amendment is not signed by Landlord and delivered by Landlord to Tenant within the specified time period, Landlord forfeits the Expedite Fee. The Expedite Fee is a one-time payment due and payable within sixty (60) days of the full execution of this Second Amendment subject to the terms hereof.

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

(a) Landlord is duly authorized to and has the full power and authority to enter into this Second Amendment and to performs all of Landlord's obligations under the Agreement as amended hereby.

(b) Except as expressly identified in this Second Amendment, Landlord owns the Property free and clear of any mortgage, deed of trust, or other lien secured by any legal or beneficial interest in the Property, or any right of any individual, entity or governmental authority arising under an option, right of first refusal, lease, license, easement or other instrument other than any rights of Tenant arising under the Agreement as amended hereby and the rights of utility providers under recorded easements.

(c) Upon Tenant's request, Landlord shall discharge and cause to be released (or, if approved by Tenant, subordinated to Tenant's rights under the Agreement as amended hereby) any mortgage, deed of trust, lien or other encumbrance that may now or hereafter exist against the Property.

(d) Upon Tenant's request, Landlord shall cure any defect in Landlord's title to the Property which in the reasonable opinion of Tenant has or may have an adverse effect on Tenant's use or possession of the Property.

(e) Tenant is not currently in default under the Agreement, and to Landlord's knowledge, no event or condition has occurred or presently exists which, with notice or the passage of time or both, would constitute a default by Tenant under the Agreement.

(f) Landlord agrees to execute and deliver such further documents and provide such further assurances as may be requested by Tenant to effect any release or cure referred to in this paragraph, carry out and evidence the full intent and purpose of the parties under the Agreement as amended hereby, and ensure Tenant's continuous and uninterrupted use, possession and quiet enjoyment of the Property under the Agreement as amended hereby.

9. IRS Form W-9. Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Second Amendment and at such other times as may be reasonably requested by Tenant. In the event the Property 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 effect 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.

10. 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 Second Amendment is hereby amended to be consistent with this Second Amendment. This instrument may be executed in any number of counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Landlord and Tenant have signed this instrument under seal, and have caused this Second Amendment to be duly executed on the day and year first written above.

LANDLORD:

VILLAGE OF EVERGREEN PARK,
an Illinois municipal corporation

By: _____ (SEAL)
James J. Sexton, Mayor

IN WITNESS WHEREOF, Landlord and Tenant have signed this instrument under seal, and have caused this Second Amendment to be duly executed on the day and year first written above.

TENANT:

CROWN CASTLE GT COMPANY LLC,
a Delaware limited liability company

By: _____ (SEAL)

Print Name: _____

Title: _____

**MEMORANDUM OF SECOND AMENDMENT
TO OPTION AND LEASE AGREEMENT**

This document was prepared out of State by:
Joanna Hasapis, Esq.
Parker Poe Adams & Bernstein LLP
P.O. Box 389
Raleigh, NC 27602

Return to:
Crown Castle
1220 Augusta, Suite 500
Houston, Texas 77057

Tax Parcel # 24-01-322-033

Cross Index: Instrument # 90349190
Instrument # 95258064

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

MEMORANDUM OF SECOND AMENDMENT TO OPTION AND LEASE AGREEMENT

THIS MEMORANDUM OF SECOND AMENDMENT TO OPTION AND LEASE AGREEMENT ("Amended Memorandum") is made effective this 18th day of August, 2014 by and between the **VILLAGE OF EVERGREEN PARK**, an Illinois municipal corporation ("Landlord"), with a mailing address of 9418 Kedzie Avenue, Evergreen Park, Illinois 60642, and **CROWN CASTLE GT COMPANY LLC**, a Delaware limited liability company ("Tenant"), with a mailing address of c/o Crown Castle USA Inc. 2000 Corporate Drive, Canonsburg, Pennsylvania 15317-8564.

WHEREAS, Landlord and Chicago SMSA Limited Partnership, an Illinois limited partnership ("Original Tenant"), entered into an Option and Lease Agreement dated June 14, 1990 (as amended and assigned, the "Agreement"), whereby Landlord leased to Original Tenant an approximately 961 square foot portion of land (the "Property") being legally described as:

That part of Lots 29 and 30 in Block 1 in H.A. Callando Addition to Evergreen Park in the southwest ¼ of the southwest ¼ of the southwest ¼ of Section 1, Township 37 North, Range 13 East of the Third Principal Meridian described as beginning at the southeast corner of said Lot 29; thence westerly along the southerly line of said Lot 29, 29.73 feet; thence northerly, normal to the last described line, 35.00 feet; thence northeasterly, normal to the northeasterly line of said Lots 29 and 30, 12.82 feet to the said northeasterly line of Lot 30; thence southeasterly along said northeasterly line, 33.13 feet; thence southerly along the easterly line of said Lot 29, said line also being the westerly right of way of a 16 foot alley, 15.43 feet to the place of beginning, in Cook County Illinois.

located at 9421 South Kedzie Avenue (Tax Parcel #24-01-322-033), Evergreen Park, Cook County, Illinois, together with those certain access, utility and/or maintenance easements and/or rights of way granted in the Agreement. Notice of the Agreement is provided by, and the Property is described in that certain Memorandum of Lease ("Memorandum"), dated June 26, 1990, and recorded on July 20, 1990, as Instrument Number 90349190 in the Registry; and

WHEREAS, Landlord and Original Tenant entered into that Amendment to Lease Agreement and Amendment to Memorandum of Lease dated April 3, 1995, and recorded on April 19, 1995, as Instrument Number 95258064 in the Registry, whereby the parties agreed to alter the Agreement to provide for the automatic renewal of extension terms; and

WHEREAS, Original Tenant assigned its rights, title and interest in the Agreement to Tenant pursuant to that Assignment and Assumption Agreement dated September 1, 2000, and recorded on April 18, 2001, as Instrument Number 0010315175 in the Registry; and

WHEREAS, the Agreement has an original term, including all extension terms, that will expire on June 11, 2015 ("Original Term"), and Landlord and Tenant now desire to amend the terms of the Agreement to provide for additional extension terms beyond the Original Term, and to make other changes; and

WHEREAS, Landlord and Tenant made and entered into a Second Amendment to Option and Lease Agreement of even date herewith ("Second Amendment") and pursuant to the terms of, and for that consideration recited in, the Second Amendment, the parties wish to hereby amend certain provisions of the Agreement, and provide this Amended Memorandum as notice thereof, as follows:

1. Landlord does hereby lease unto Tenant, its successors and assigns, the Property for five (5) additional five (5)-year extension terms beyond the Original Term, such that the Original Term and all extension terms of the Agreement may last for a term of fifty (50) years, expiring on July 11, 2040, unless sooner terminated as provided in the Agreement.

2. If Landlord receives an offer to purchase fee title, an easement, a lease, a license, or any other interest in the Property, or Landlord's interest in the Agreement, or an option for any of the foregoing, Landlord shall provide written notice to Tenant of said offer, and Tenant shall have a right of first refusal to acquire such interest on the same terms and conditions in the offer, excluding any terms or conditions which are (i) not imposed in good faith or (ii) directly or indirectly designed to defeat or undermine Tenant's possessory or economic interest in the Property. The details of the right of first refusal granted to Tenant in the Second Amendment are provided in detail in the Second Amendment.

3. This Amended Memorandum contains only selected provisions of the Second Amendment, and reference is made to the full text of the Agreement and the Second Amendment for their full terms and conditions, which are incorporated herein by this reference. Except as otherwise provided in the Second Amendment and this Amended Memorandum, the terms and conditions of the Agreement remain in full force and effect. This instrument may be executed in

any number of counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Landlord and Tenant have signed this instrument under seal, and have caused this Amended Memorandum to be duly executed on the day and year first written above.

LANDLORD:

VILLAGE OF EVERGREEN PARK,
an Illinois municipal corporation

By: _____(SEAL)
James J. Sexton, Mayor

STATE OF ILLINOIS)

) ss.

COUNTY OF COOK)

On this, the 18th day of August, 2014, before me, Vincent Cainkar, Notary Public, the undersigned officer, personally appeared James J. Sexton, who acknowledged himself to be the Mayor of the Village of Evergreen Park, an Illinois municipal corporation, and that he being authorized to do so, executed the foregoing Memorandum of Second Amendment to Option and Lease Agreement for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, State of Illinois, County of Cook

My Commission expires: 9/4/2017

IN WITNESS WHEREOF, Landlord and Tenant have signed this instrument under seal, and have caused this Amended Memorandum to be duly executed on the day and year first written above.

TENANT:

CROWN CASTLE GT COMPANY LLC,
a Delaware limited liability company

By: _____ (SEAL)
Print Name: _____
Title: _____

STATE OF TEXAS)

) ss.

COUNTY OF HARRIS)

On this, the _____ day of _____, 2014, before me _____, Notary Public, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of Crown Castle GT Company LLC, a Delaware limited liability company, and that he/she being authorized to do so, executed the foregoing Memorandum of Second Amendment to Option and Lease Agreement for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, State of Texas, County of Harris

My Commission expires: _____

[SEAL REQUIRED]