

TO: MAYOR AND CITY COUNCIL
FROM: LANELL ENDRES, INTERIM CITY ADMIN/FINANCE DIRECTOR
SUBJECT: MEDIACOM ASSIGNMENT OF SITE LEASE AGREEMENT
MEETING DATE: APRIL 3, 2018

BACKGROUND

The City received a request to assign Mediacom's interest in the communication site lease agreement to CTI Towers Assets II, LLC (CTI). The property address shown on the letter is incorrect however the PID is correct. This is the old Midwest Wireless cable television tower site at the top of east Main Street.

The City Attorney has reviewed the documents and does not see any issues with them.

REQUESTED COUNCIL ACTION

Staff requests a motion to authorize Lanell Endres, as Interim City Administrator, to sign the Consent Form, Estoppel Certificate and Memorandum of Communications Site Lease Agreement for the assignment from Mediacom to CTI Towers Assets II, LLC.

Attachment(s):

Consent Form
Estoppel Certificate
Memorandum of Communications Site Lease Agreement



James McKnight
Director of Legal Affairs

March 9, 2018

City of Cannon Falls
Attn: Ron Johnson, City Administrator
918 River Road
Cannon Falls, MN 55009

RE: Consent to Assign Communication Site Lease Agreement

Site Address: ~~301 East Main Street~~, Cannon Falls, MN (the "Site") Parcel ID: 52-140-2400

Site ID: 21302 / Timberwolf

Dear Mr. Johnson:

Pursuant to that certain Communication Site Lease Agreement (the "Agreement") by and between the City of Cannon Falls, MN ("Landlord") and Mediacom Minnesota LLC, a Delaware limited liability company ("Tenant") dated May 9, 2003, as amended, Tenant hereby notifies Landlord of its intent to sell certain assets of Tenant related to the Site, including assigning Tenant's interest in the Agreement to CTI Towers Assets II, LLC ("CTI").

This transfer is part of a sale of assets by Tenant and will result in a seamless transition from your perspective. Upon assignment, CTI will become the tenant under the Agreement and CTI will assume all of Tenant's future performance, liabilities and obligations pursuant to the terms and conditions of the Agreement, including all rental payments due and owing under the Agreement. Pursuant to Section 14 of the Agreement, Tenant formally requests Landlord's consent to such assignment of the Agreement to CTI.

Please indicate your consent and agreement to the above by signing the enclosed consent and estoppel where indicated and returning them in the enclosed self-addressed and postage pre-paid envelope. Also enclosed, please find a proposed memorandum of lease. The purpose of the memorandum is simply to have a document to record with the county land records so that CTI may obtain title insurance for the Agreement. Please keep a copy of this letter, the estoppel and memorandum for your records.

Additionally, should you have any questions regarding this matter, do not hesitate to contact CTI's General Counsel, Carrie Ortolano, at (919) 893-2841 or cortolano@ctitowers.com.

Sincerely,

James McKnight

AGREED TO AND ACCEPTED this _____ day of _____, 2018.

City of Cannon Falls, MN



By: _____

Name: _____

Its: _____

Authorized Representative

ESTOPPEL CERTIFICATE

The undersigned City of Cannon Falls, MN ("**Landlord**"), is the landlord under that certain Communication Site Lease Agreement dated May 9, 2003 together with all amendments to such lease (such original lease with all amendments, if any, shall hereinafter be referred to as the "**Lease**") between Landlord and Mediacom Minnesota LLC, a Delaware limited liability company ("**Tenant**"), with respect to the telecommunications site located at 301 East Main Street, Cannon Falls, MN ("**Site**"). Tenant has informed Landlord that CTI TOWERS ASSETS II, LLC, a Delaware limited liability company, or an affiliate entity ("**Purchaser**") intends to purchase certain assets of Tenant related to the Site, including Tenant's interest, as tenant, under the Lease.

Landlord, acknowledging that Tenant and Purchaser are relying upon the truth, accuracy and completeness of the following statements, states that:

1. The Lease is in full force and effect and constitutes the entire agreement between Landlord and Tenant with respect to the Site.
2. Tenant is not in default or breach of the Lease and Landlord has not received written or, to the knowledge of Landlord, verbal notice of the existence of any event or condition that, with the passage of time or the giving of notice or both, would constitute a breach or default by Tenant under the Lease.
3. Neither Landlord nor Tenant has commenced any action to terminate the Lease.
4. All applicable Rent, fees and other charges and payments due Landlord from Tenant under the Lease have been paid in full through the date hereof (except reimbursements for real estate taxes, insurance, utilities or other reimbursements, if any, due for fiscal periods to the extent not yet payable).
5. The Commencement Date of the Lease was May 9, 2003 and the current term of the Lease will end on May 9, 2018.
6. This Estoppel Certificate satisfies all consent and/or notice requirements under the Lease with respect to the assignment of Tenant's interest in the Lease, and to the extent required by the terms of the Lease, constitutes Landlord's consent to the assignment of Tenant's interest, as tenant, under the Lease to Purchaser.
7. Landlord hereby consents to Purchaser using the Site for the purpose of providing wireless communications services and subleasing the Site for that purpose, notwithstanding the terms and conditions of the Lease.
8. Landlord owns the fee interest in the property on which the Site is located and Landlord has not conveyed any interest in the Lease to another party, except for (i) conveyances of record and (ii) the Lease.
9. The person signing this Estoppel Certificate is authorized to do so, and the signature binds Landlord.

10. Landlord's address for payment of rent is:

Phone: _____

11. This Estoppel Certificate shall be binding upon Landlord and Landlord's successors and assigns and shall inure to the benefit of and be enforceable by Tenant and Purchaser and their respective successors and assigns.

12. Landlord acknowledges that it will be estopped from raising any claim or term with respect to the Lease that is contrary to the certifications made by Landlord in this Estoppel Certificate.

IN WITNESS WHEREOF, Landlord has duly executed, acknowledged and delivered this Estoppel Certificate as of the date set forth below.

Dated: _____, 2018.

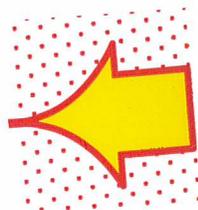
Landlord:

City of Cannon Falls, MN

BY: _____

NAME: _____

TITLE: _____



Tenant Site ID: 21302 / Timberwolf / MN 010
Address: 301 East Main Street, Cannon Falls, MN
Parcel ID: 52.140.2400

Upon recording return to:

Recording requested by,
and when recorded, return to:
Fidelity National Title Insurance Co.
7130 Glen Forest Drive, Suite 300
Richmond, VA 23226
Attn.: Ms. Giusy Hansen

MEMORANDUM OF COMMUNICATIONS SITE LEASE AGREEMENT

This Memorandum of Communications Site Lease Agreement (“Memorandum”) is made this _____ day of _____, 2018, between the City of Cannon Falls, a Minnesota municipal corporation, with a mailing address of ~~306 West Mill Street~~^{518 River Road}, Cannon Falls, MN 55009 hereinafter referred to as “Landlord”, and Mediacom Minnesota LLC, a Delaware limited liability company, with a mailing address of One Mediacom Way, Mediacom Park, NY 10918 hereinafter referred to as “Tenant”. Landlord and Tenant are at times collectively referred to hereinafter as the “Parties” or individually as the “Party”.

1. Landlord and Tenant entered into a Lease Agreement (the “Lease”) on May 9, 2003, for an initial term of twelve (12) years, subject to one (1) renewal for three (3) years.
2. Landlord, subject to the provisions and conditions of the Lease, has granted to Tenant, and Tenant has accepted from Landlord, a lease to use that portion of the Property, more particularly described in Exhibit A attached hereto, for a cable television and electronic control center for video programming and related broadband services.
3. The covenants of the Lease shall be binding upon the Parties, their respective heirs, executors, administrators and assigns.
4. The purpose of this Memorandum is to give record notice of the Lease and of the rights created thereby, all of which are hereby confirmed. This Memorandum is not intended to supersede, replace Tenant's or Landlord's rights under any prior recorded memorandum of the Lease. In the event of a conflict between the terms of this Memorandum and the terms of the Lease, the terms of the Lease shall prevail.
5. Within sixty (60) days of the expiration or termination of the Lease, Tenant shall record, at Tenant's sole cost and expense, a release of this Memorandum. If Tenant fails to record such release, upon Landlord sending Tenant written notice thereof, Tenant hereby authorizes Landlord to unilaterally record such release on Tenant's behalf.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURES ON THE FOLLOWING PAGE]

EXHIBIT A

All the tracts or parcels of land lying and being in the County of Goodhue, and State of Minnesota, described as follows, to-wit:

All of Block Ninety-five (95), except Lot Six (6), all in Cannon Falls City Addition to the City of Cannon Falls, County of Goodhue, State of Minnesota.

AND BEING the same property conveyed to The City of Cannon Falls, a Minnesota municipal corporation from State of Minnesota by Indenture dated February 10, 1961 and recorded May 22, 1961 in Deed Book C10, Page 288.

Tax Parcel No. 52.140.2400

The lease area is more particularly described as:

Lot 10, Block 95, Cannon Falls Addition to the City of Cannon Falls, Goodhue County, Minnesota.

