Item #1:

Ordinance Approving Special Use Permit For Cell Antenna – 1190

VILLAGE OF LONG GROVE

ORDINANCE NO. 2010-O-__

AN ORDINANCE GRANTING A SPECIAL USE PERMIT TO AUTHORIZE THE ESTABLISHMENT OF PERSONAL WIRELESS SERVICE FACILITIES WITHIN THE EXISTING STUCTURE AT 1190 OLD MCHENRY ROAD

Adopted by the
President and Board of Trustees
of
the Village of Long Grove
this __ day of _____, 2010

Published in pamphlet form by direction
and authority of the Village of Long Grove,
Lake County, Illinois
this __ day of _____, 2010

VILLAGE OF LONG GROVE

ORDINANCE NO. 2010-O-__

AN ORDINANCE GRANTING A SPECIAL USE PERMIT TO AUTHORIZE THE ESTABLISHMENT OF PERSONAL WIRELESS SERVICE FACILITIES WITHIN THE EXISTING STUCTURE AT 1190 OLD MCHENRY ROAD

WHEREAS, in 1979 the Village of Long Grove (the "***Village***") passed Ordinance No. 79-O-28 and Resolution No. 79-R-15 approving the Fairfield Village planned unit development, granting a special use permit, and establishing related requirements and limitations (the "***Fairfield PUD***"); and

WHEREAS, the property commonly known as 1190 Old McHenry Road, Long Grove Illinois (the "***Subject Property***") is located within the Fairfield PUD and the R-2 PUD Residential District under the Zoning Code; and

WHEREAS, the Fairfield PUD authorized office uses on the Subject Property, including the building commonly known as the Midwest Bank Building that currently sits on the Subject Property (the "***Existing Structure***"); and

WHEREAS, the Zoning Code authorizes personal wireless services antennae and related accessory facilities in the R-2 Single Family Residence District, but such personal wireless services antennae are authorized only pursuant to a special use permit and only subject to the special procedures and standards contained in Section 5-9-6 of the Zoning Code; and

WHEREAS, T-Mobile Central, LLC (the "***Applicant***") proposes to locate personal wireless services antennas for cellular communications ("***Antenna***") and to construct related equipment ("***Equipment***") on the Subject Property (collectively, "***Antenna Facilities***") that will be wholly enclosed within the Existing Structure; and

WHEREAS, the Applicant has or will enter into a lease with the owner of the Subject Property and the owner of the Existing Structure (collectively, the "***Owner***") to permit the installation of the Antenna Facilities on the Subject Property ("***Lease***"); and

WHEREAS, the Applicant has requested a Special Use Permit to install the Antenna Facilities; and

WHEREAS, the Applicant has applied to the Village for a special use permit pursuant to Section 5-11-17 of the Zoning Code to authorize the installation and maintenance of the Antenna Facilities on the Subject Property; and

WHEREAS, pursuant to notice duly published in the *Daily Herald*, the Plan Commission commenced a public hearing on August 3, 2010, regarding the Antenna Facilities; and

WHEREAS, during the public hearing the Plan Commission made the following findings:

1. According to the testimony submitted by the Applicant, the Applicant intends to construct and maintain the Antenna Facilities on the Subject Property.

2. The evidence presented demonstrates that, subject to the conditions hereinafter set forth, the construction and maintenance of the Antenna Facilities on the Subject Property:

   (a) are deemed necessary for the public convenience at the Subject Property;

   (b) are designed, located, and proposed to be operated to protect the public health, safety, and welfare; and

   (c) have not been shown to cause substantial injury to the value of other property in the neighborhood of the Subject Property.

3. The evidence presented demonstrates that the Applicant's proposal satisfies the requirements for granting a special use permit for the construction and maintenance of the Antenna Facilities on the Subject Property, subject to the terms and conditions hereinafter set forth;

WHEREAS, based on these findings, the Plan Commission recommended that the Applicant be granted a special use permit to permit the construction and maintenance of the Antenna Facilities on the Subject Property subject to the terms and conditions of this Ordinance; and

WHEREAS, since the Antenna Facilities will be wholly enclosed within the Existing Structure, the Plan Commission recommended that the Village Board waive the general requirement in Subsection 5-9-6(B)(1) of the Zoning Code that personal wireless services

facilities shall not be located within five hundred feed from the nearest outside wall of any single-family dwelling in existence prior to the commence of the construction of such personal wireless services facilities; and

WHEREAS, the President and Board of Trustees, having considered the recommendations of the Plan Commission and being fully advised in the premises, have determined that it is in the best interests of the Village and its residents to grant the Applicant a special use permit to allow the construction and maintenance of the Antenna Facilities on the Subject Property, subject to the terms and conditions of this Ordinance as hereinafter set forth;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LONG GROVE, COUNTY OF LAKE, STATE OF ILLINOIS, as follows:

SECTION ONE: Recitals. The foregoing recitals are hereby incorporated into and made a part of this Ordinance as if fully set forth.

SECTION TWO. Grant of Special Use Permit for Antenna Facilities; Waiver of Distance Requirements. Pursuant to various provisions of the Zoning Code, and subject to the limitations therein and the conditions set forth in this Ordinance, a special use permit is hereby granted to the Applicant to permit the Applicant to construct and maintain the Antenna Facilities on the Subject Property. Pursuant to Subsection 5-9-6(C)(2) of the Zoning Code and the terms and conditions of this Ordinance, the Village waives with respect to the Antenna Facilities the general requirement in Subsection 5-9-6(B)(1) of the Zoning Code that personal wireless services facilities shall not be located within five hundred feed from the nearest outside wall of any single-family dwelling in existence prior to the commence of the construction of such personal wireless services facilities.

SECTION THREE: Conditions on Approval. The special use permit granted pursuant to Section Two of this Ordinance permitting the construction and maintenance of the Antenna Facilities on the Subject Property, shall be, and it is hereby, conditioned upon and limited by the

following conditions, the violation of any of which shall, in the reasonable discretion of the President and Board of Trustees, be grounds for the repeal and revocation of the special use permit without further notice or hearing:

A. Approval of Lease Agreement. Prior to issuance of any permits or approvals for undertaking any work related to the Antenna Facilities on the Subject Property, the Applicant shall enter into a lease for the location of the Antenna and construction of the Equipment within the Existing Structure on the Subject Property (the "***Lease***") under such terms and conditions that will be sufficient to permit the Applicant to construct, maintain, and operate the Antenna Facilities on the Subject Property in accordance with this Ordinance and other applicable codes, ordinances, and regulations. The Lease, including all authorized extensions, may not exceed a maximum duration of 25 years.

B. Compliance with Plans. The Applicant shall construct the Antenna Facilities in strict conformity with the Plans attached to this Ordinance as Exhibit B. In no case may the Antenna Facilities be located anywhere other than wholly enclosed within the Existing Structure.

C. Engineering Study. Prior to the issuance of any permit for the construction of the Antenna Facilities on the Subject Property, the Applicant shall submit an engineering report, which report shall demonstrate that the Antenna Facilities are properly grounded and otherwise conforms with applicable construction and safety standards.

D. Licenses and Permits. Prior to commencing any work on the Subject Property in connection with the Antenna Facilities, the Applicant shall be required to obtain all necessary licenses, permits, and approvals from the Village and any other governmental agency having jurisdiction over the Antenna Facilities. The Applicant shall maintain all such licenses, permits, and approvals and shall provide copies of such licenses, permits, and approvals to the Village, and evidence of renewal or extension thereof, when requested by the Village Manager. All work relating to the installation and maintenance of the Antenna Facilities shall be performed in accordance with all applicable laws, codes, ordinances, and regulations, including the terms and provisions of this Ordinance.

E. Equipment. The Equipment must be fully enclosed within the Existing Structure and be used exclusively for the operation and maintenance of the Antenna Facilities.

F. Term; Review. The special use permit and other approvals granted in this Ordinance shall be limited to either the term of any lease agreement for the Antenna Facilities on the Subject Property (including any extension thereof), but in no event for more than 25 years after the passage of this Ordinance. Further, the special use permit and other approvals granted in this Ordinance shall be subject to review by the Board of Trustees, at 10-year intervals, to determine whether changed circumstances exist to require the termination or modification of such special use permit and other approvals. Should the Existing Structure

undergo a significant renovation, demolition and rebuild, or substantial change from the plans originally approved by the Village, this special use permit and other approvals granted in this Ordinance shall automatically expire.

G. Abandonment and Removal. If the Antenna is not operated for a continuous period of 12 months or more, regardless of any intent to re-commence use or not to abandon, then such Antenna shall be deemed to be abandoned and the special use permit therefor will immediately terminate. Under such circumstance, the Applicant shall be required to remove the Antenna and its Equipment from the Subject Property within 90 days after notice to the Applicant from the Village that such removal is required.

H. Fees and Costs. The Applicant shall be responsible for paying all applicable fees relating to the granting of the approvals set forth herein in accordance with the Zoning Code. In addition, the Applicant shall reimburse the Village for all of its costs (including without limitation engineering, planning, and legal expenses) incurred in connection with the review, consideration, approval, implementation, or enforcement of this Ordinance. Any amount not paid within 30 days after delivery of a demand in writing for such payment shall, along with interest and the costs of collection, become a lien upon the Subject Property, and the Village shall have the right to foreclose such lien in the name of the Village as in the case of foreclosure of liens against real estate.

I. Transferees. The rights and obligations set forth in this Ordinance shall be binding on the Applicant, any and all of the Applicant's heirs, successors, and assigns, the Owner, and any and all successor legal or beneficial owners of all or any portion of the Subject Property. To the extent that a successor becomes bound to the obligation created herein pursuant to a transferee assumption agreement acceptable to the Village, and such successor demonstrates to the Village that it has the financial viability to meet the obligations herein, the Applicant shall be released from its obligations under this Ordinance to the extent of the transferee's assumption of such liability. The failure of the Applicant to provide the Village with an enforceable transferee assumption agreement as herein provided shall result in the Applicant remaining fully liable for all of its obligations under this Ordinance but shall not relieve the transferee of its liability for all such obligations as a successor to Applicant.

In addition, any violation of this Ordinance shall be deemed a violation of the Zoning Code and shall subject the Applicant to enforcement proceedings accordingly.

SECTION FOUR. Termination or Repeal; Site Restoration. If this Ordinance is terminated or repealed, then within 35 days after such termination or repeal the Applicant shall be responsible for (a) removing the Antenna from the Subject Property, (b) removing the Equipment from the Subject Property, and (c) restoring the Subject Property to its condition prior to the Applicant's installation of the Antenna or the Equipment.

SECTION FIVE: Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form in the manner provided by law; provided, however, that this Ordinance shall be of no force or effect unless and until the Applicant and Owner have (i) caused a duly authorized person to execute and (ii) thereafter file with the Village the unconditional agreement and consent in the form attached hereto as Exhibit C and by this reference incorporated herein and made a part hereof; provided further that, if the Applicant and Owner do not so file its unconditional agreement and consent within 30 days following the passage of this Ordinance, the Village Board may, in its discretion and without public notice or hearing, deem such failure as a withdrawal of the application, and repeal this Ordinance and thereby revoke the special use permits granted in this Ordinance. Upon this Ordinance having full force and effect, the Village Clerk shall cause it to be recorded in the Office of the Lake County, Illinois Recorder of Deeds.

PASSED this ____ day of _____, 2010.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of _____, 2010.

_____
Village President

ATTEST:

_____
Village Clerk

EXHIBIT A

LEGAL DESCRIPTION OF THE SUBJECT PROPERTY

[Staff to insert legal description]

EXHIBIT B

PLANS

[Staff to insert Plans]

EXHIBIT C

UNCONDITIONAL AGREEMENT AND CONSENT

Pursuant to Section Four of Long Grove Ordinance No. 2010-O-____, and to induce the Village of Long Grove to grant the approvals provided for in such Ordinance, the undersigneds acknowledge for themselves and their successors and assigns in title to the Subject Property that they

1. have read and understand all of the terms and provisions of said Ordinance No. 2010-O-____;

2. hereby unconditionally agree to accept, consent to, and abide by all of the terms, conditions, restrictions, and provisions of this Ordinance, the Zoning Code, and all other applicable codes, ordinances, rules, and regulations;

3. acknowledge and agree that the Village is not and shall not be, in any way, liable for any damages or injuries that may be sustained as a result of the Village's issuance of any permits for the use of the Subject Property, and that the Village's issuance of any permit does not, and shall not, in any way, be deemed to insure the Applicant and Owner against damage or injury of any kind and at any time;

4. acknowledge that the public notices and hearings have been properly given and held with respect to the adoption of the Ordinance, has considered the possibility of the revocation provided for in the Ordinance, and agrees not to challenge any revocation on the grounds of any procedural infirmity or any denial of any procedural right;

5. agree to and does hereby hold harmless and indemnify the Village, the Village's corporate authorities, and all Village elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of these parties in connection with the Village's adoption of the Ordinance granting the approvals to the Applicant pursuant to the Ordinance; and

6. represent and acknowledge that the persons signing this Unconditional Agreement and Consent are duly authorized to do so on behalf of the Applicant and Owner of the Subject Property.

CRICKETT COMMUNICATIONS

By:_____

Its:_____

OWNER:_____

By:_____

Its:_____

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