

CITY OF VINELAND

RESOLUTION NO. 2014- 12

RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE TERMINATION AGREEMENT AND GENERAL RELEASE BY AND BETWEEN NEXTEL COMMUNICATIONS OF MID-ATLANTIC, INC., AND THE CITY OF VINELAND.

WHEREAS, the City of Vineland owns certain property located at 382 West Butler Avenue (Property), upon which is located a water tower; and

WHEREAS, Nextel Communications of the Mid-Atlantic, Inc., (Nextel) has leased a portion of the water tower for the placement of communication equipment under the terms of a Lease dated September 29, 2000 (the Lease); and

WHEREAS, during the term of the Lease Nextel has constructed an equipment room or shelter and pad on the Property servicing the Nextel antenna; and

WHEREAS, in accordance with Paragraph Four (4) of the Lease dated September 29, 2000, the term of the Lease shall be ten (10) years commencing February 1, 2001, and expiring January 31, 2011, with the Lease providing for an additional three (3) successive five (5) year periods. Therefore, the present term will expire January 31, 2016; and

WHEREAS in accordance with Paragraph Ten (10) of the said Lease, the same may be terminated without liability upon thirty (30) days prior written notice for any reason or no reason; and

WHEREAS, Nextel has provided adequate notice of termination in accordance with Paragraph Ten (10) of the Lease to be effective November 30, 2013, (Termination Date); and

WHEREAS, upon termination, Nextel is to return the Property to its original condition making all repairs for any damage to the Property as well as the removal of all of its equipment; and

WHEREAS, Nextel has abandoned certain property located on site described as the equipment room, shelter and pad and has agreed to reimburse the City of Vineland for the cost and expenses for the removal of same in exchange for the payment of Four Thousand, Eight Hundred Forty-Seven Dollars and Fifty-Nine Cents (\$4,847.59); and

WHEREAS, Nextel has issued a payment to the City of Vineland in the amount of Twenty-Nine Thousand, Eighty-Five Dollars and Fifty-Two Cents (\$29,085.52) representing annual rent payment for the period of February 1, 2013, through January 31, 2014, which would reflect the reimbursement due Nextel in the amount of Four Thousand, Eight Hundred Forty-Seven Dollars and Fifty-Nine Cents (\$4,847.59); and

WHEREAS, Nextel has agreed to waive the said amount of Four Thousand, Eight Hundred Forty-Seven Dollars and Fifty-Nine Cents (\$4,847.59) reimbursement in lieu of the payment of Four Thousand, Eight Hundred, Forty-Seven Dollars and Fifty-Nine Cents (\$4,847.59) for the removal of the aforementioned property.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Vineland as follows:

1. The Mayor and Clerk are authorized to execute a Termination and General Release Agreement terminating the Lease by and between the City of Vineland and Nextel Communications of the Mid-Atlantic, Inc., as of November 30, 2013.

Reid Wanda

From: Padreza, Marie [NTK] <Marie.Padreza@sprint.com>
Sent: Friday, October 11, 2013 9:08 AM
To: Reid Wanda
Subject: RE: Sprint Nextel Site NJ5766-A 382 West Butler Avenue Water Tower

Thank you, Wanda. I understand. I will wait to hear from you.

From: Reid Wanda [mailto:wreid@vinelandcity.org]
Sent: Friday, October 11, 2013 8:51 AM
To: Padreza, Marie [NTK]
Subject: RE: Sprint Nextel Site NJ5766-A 382 West Butler Avenue Water Tower

Thanks for forwarding the request in writing. As I stated I will give everything to Mr. Lutz, who will contact our Legal Department. Also with regard to the shelter, as I indicated the Superintendent of the Water Utility does not have final say on that request.

*Wanda Reid
Secretarial Assistant
City of Vineland Business Administration
856-794-4000, ext. 4140*

From: Padreza, Marie [NTK] [mailto:Marie.Padreza@sprint.com]
Sent: Thursday, October 10, 2013 7:21 PM
To: Reid Wanda
Subject: Sprint Nextel Site NJ5766-A 382 West Butler Avenue Water Tower

Hi Wanda,

As we discussed, Sprint Nextel would like to terminate the attached Lease. Sprint's records show that all of the equipment covered under this Lease, with the exception of the shelter, has been removed. (As you confirmed and as is my understanding, the Superintendent of the Water Tower agreed to keep the Sprint Nextel shelter in exchange for a \$5,000.00 payment.) For ease of administration, I am proposing a November 30, 2013 termination date and that the rent overpayment for the period of December 1, 2013 through January 31, 2014 (\$4,847.59) which Sprint Nextel is entitled to, as per Section 5 a. of the Lease, be considered compensation for the City's willingness to keep the shelter. (Sprint Nextel issued a \$29,085.52 annual rent payment for the period of February 1, 2013 through January 31, 2014, on January 29, 2013 (check reference # 12520415). A November 30, 2013 termination date will allow plenty of time for the City's Legal Department to review the attached documents and to provide me with their approval. This will also be administratively easier as there will be no need for the City to issue a rent overpayment refund check or wait for the \$5,000.00 check from Sprint Nextel.

Please let me know if you agree with the above approach, and, if so, please pass the attached documents along to your Legal Department for review. Once your Legal Department approves these documents, please let me know. I will then secure Sprint Nextel's approval and send the signed documents to Mr. Lutz.

Thank you for all of your assistance in this matter.

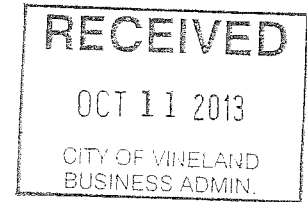
MARIE PADREZA
Real Estate Manager II

Go Back to Agenda

Sprint
Property Services
Desk: 908-660-0486
Cell: 201-397-7673
marie.padreza@sprint.com

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Sprint Property Services
Mailstop KSOPHT0101-Z2650
6391 Sprint Parkway
Overland Park, KS 66251-2650
Toll Free: (800) 357-7641
Facsimile: (913) 523-9735
Email: LandlordSolutions@Sprint.com

Date: TBD

Via UPS Tracking #:

William Lutz
Business Administrator
City of Vineland
640 East Wood Street
Vineland, NJ 08362-1508

Re: Termination of Communications Site Lease Agreement (Water Tower) dated September 29, 2000, as amended by Amendment No. 1, dated January 26, 2007, (collectively, the “Lease”) between Nextel Communications of the Mid-Atlantic, Inc. and The City of Vineland

Landlord: The City of Vineland, a municipal corporation (“Lessor”)
Tenant: Nextel Communications of the Mid-Atlantic, Inc., a Delaware corporation (“Nextel”)
Sprint Site ID: NJ5766-A / Clayville
Site Address: 382 West Butler Avenue, Vineland, NJ

Dear Mr. Lutz:

Pursuant to Section 10 (v) of the above-referenced Lease, this letter will serve as notice that Nextel is exercising its right to terminate the Lease effective November 30, 2013.

Our records reflect that a Memorandum of Agreement has not been filed and that Nextel has made no other public filings regarding the above-referenced site (“Site”). In the event that any filings have been made by Nextel and are discovered that encumbers your title to the Site, Nextel agrees to cooperate in taking actions necessary to remove the encumbrance.

If you have any questions, please contact me at 201-397-7673 or call our toll-free Landlord Solutions Hotline at 800-357-7641. When calling, please have the Nextel Site ID (NJ5766-A) available for reference.

Sincerely,

Marie Padreza
Real Estate Manager II

cc: File

LEASE TERMINATION AGREEMENT
AND
GENERAL RELEASE

This LEASE TERMINATION AGREEMENT AND GENERAL RELEASE (the "Agreement") is made as of _____, 2013, by and between Nextel Communications of the Mid-Atlantic, Inc., a Delaware corporation, ("Nextel") and The City of Vineland, a municipal corporation, ("Lessor") with reference to the following facts, understandings and intentions:

RECITALS

A. Lessor owns certain property located at 382 West Butler Avenue, in the City of Vineland, County of Cumberland, State of New Jersey ("Lessor's Property"). Nextel, as tenant, and Lessor, as landlord, are parties to that Communications Site Lease Agreement (Water Tower) dated as of September 29, 2000 (the "Lease") whereby Lessor leased to Nextel a portion of Lessor's Property, as further described in the Lease (the "Site").

B. Nextel used the Site for a communications facility that, pursuant to the Lease, may have included among other things, an antenna tower or pole and foundation, utility lines, transmission lines, an air conditioned equipment room or shelter and pad, cable wiring, conduit runs, radios and other electronic equipment, transmitting and receiving antennas and microwave dishes, batteries and other power sources (possibly including a generator and pad), related fixtures and supporting equipment, and structures therefore (collectively, the "Communications Facility").

C. By letter dated _____, 2013, as permitted by the terms of the Lease, Nextel notified Lessor of Nextel's election to terminate the Lease, effective as of the Termination Date (as defined below) ("Notice"). Lessor acknowledges that Nextel's written Notice was properly given and effective.

D. Nextel and Lessor are willing to so terminate the Lease, pursuant to the provisions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Date of Termination; Final Payment.

a. The Lease is hereby canceled and terminated effective at 11:59 p.m. on November 30, 2013 ("Termination Date"). From and after the Termination Date, neither Lessor nor Nextel will have any further rights or obligations under the Lease, and Nextel will have no further right or interest with respect to the Site.

b. In full and final payment of any and all sums due by Nextel to Lessor under the Lease or otherwise in connection with Lessor's Property or the Site, Nextel made a final payment of Twenty-nine Thousand, Eighty-five and 52/100 Dollars (\$29,085.52), in the same time manner as rent was being paid by Nextel, constituting Rent and other charges (if applicable) for the final year of the Lease.

2. Vacation and Surrender of the Site; Site Acceptance.

a. Lessor and Nextel expressly agree that, on or before the Termination Date, Nextel vacated and surrendered the Site to Lessor in its current "AS-IS" condition. Nextel will have no further obligation (notwithstanding anything to the contrary contained in the Lease or otherwise) to remove any further portion of the Communications Facility, which will be deemed abandoned by Nextel and accepted by Lessor, or otherwise repair or restore the Site or any other portion of Lessor's Property

b. Upon Nextel's vacation of the Site, Lessor and Nextel will each execute duplicate originals of the "Site Acceptance and Release" in the form attached hereto as Exhibit A ("Site Acceptance"). Lessor's execution of the Site Acceptance will constitute conclusive evidence and proof that Nextel has vacated and surrendered the Site to Lessor in the condition required by the Lease and this Agreement, and that any portion of the Communications Facility (and any other equipment or property) remaining on Lessor's Property will be deemed abandoned by Nextel and accepted by Lessor, on the terms set forth therein.

3. Release of Obligations. Except for Lessor's and Nextel's respective rights to enforce the provisions of this Agreement and the Site Acceptance, effective as of the Termination Date, Lessor and Nextel, for themselves and their respective parent, subsidiary and related corporations, partners, affiliates, heirs, successors and assigns, do each hereby release and forever discharge each other and their present and former directors, officers, shareholders, managers, agents, trustees, beneficiaries, attorneys and employees (the "Released Parties") from all obligations, damages, losses, costs, expenses and liabilities whether known or unknown, contingent or direct, liquidated or unliquidated, and from any claims, demands, judgments, actions or suits of any kind (collectively, "Claims") which they may have against one another arising out of or relating to the Lease, and the use and occupancy of Site, the Communications Facility and/or Lessor's Property, including without limitation, any attorneys' fees incurred in connection therewith. Each party acknowledges the possibility that the other party may have unknown Claims against the other arising out of or related to the Lease, and the use and occupancy of Site, the Communications Facility and/or Lessor's Property, and that by signing

this Agreement, each party expressly waives such Claims. The parties further acknowledge that the consideration for this mutual release takes into account the possibility of such further Claims.

4. Voluntary Agreement. The parties have read this Agreement and the releases contained herein and, on advice of counsel, have freely and voluntarily entered into this Agreement with full understanding of its terms.

5. Recitals. The above recitals are an integral and substantive part of this Agreement and are incorporated herein.

6. Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party will be entitled to recover attorneys' fees and expenses from the other.

7. Successors. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

8. Counterparts. This Agreement may be executed in any number of duplicate originals or counterparts, each of which will be deemed to be an original, and all of which taken together will constitute one and the same agreement. The parties agree that their signatures may be delivered by fax or email.

9. Governing Law. The validity, interpretation, construction and performance of this Agreement will be controlled by and construed under the laws of the state in which the Site is located.

IN WITNESS WHEREOF, the parties have executed this Lease Termination Agreement and General Release as of the date and year first above written.

“LESSOR”

“NEXTEL”

The City of Vineland,
a municipal corporation

Nextel Communications of the Mid-Atlantic,
Inc., a Delaware corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Exhibit A

SITE ACCEPTANCE and RELEASE

This SITE ACCEPTANCE and RELEASE is made as of _____, 2013 ("Effective Date"), by and between Nextel Communications of the Mid-Atlantic, Inc., a Delaware corporation, ("Nextel") and The City of Vineland, a municipal corporation, ("Lessor") with reference to the following facts, understandings and intentions:

A. Lessor and Nextel are parties to that LEASE TERMINATION AGREEMENT and GENERAL RELEASE dated _____, 2013 (the "Agreement"), that terminated a Lease for a Site on Lessor's Property located at 382 West Butler Avenue, in the City of Vineland, County of Cumberland, State of New Jersey, (Nextel Site ID: NJ5766-A) all terms of which are incorporated herein. Capitalized terms used but not defined herein have the meanings set forth in the Agreement.

B. Nextel used the Site for a communications facility that may have included, among other things, an antenna tower or pole and foundation, utility lines, transmission lines, an air conditioned equipment room or shelter and pad, cable wiring, conduit runs, radios and other electronic equipment, transmitting and receiving antennas and microwave dishes, batteries and other power sources (possibly including a generator and pad), related fixtures and supporting equipment, and structures therefor (collectively, the "Communications Facility").

C. Nextel removed some or all of the Communications Facility and restored the Site and Lessor's Property to the condition required by the Lease and the Agreement, and Nextel vacated and surrendered the Site to Lessor as of the Effective Date. The parties now desire to execute this Site Acceptance and Release, pursuant to the Agreement.

NOW, THEREFORE, in consideration of the foregoing, the provisions set forth below, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Lessor hereby acknowledges that, as of the Effective Date, Nextel has vacated, surrendered and restored the Site and Lessor's Property to the condition required by the Lease and the Agreement and that any portion of the Communications Facility (and any other equipment or property) remaining on Lessor's Property shall be deemed abandoned by Nextel (collectively, the "Abandoned Property"); Lessor accepts any such Abandoned Property in its present condition "AS-IS", "WHERE-IS" and "WITH ALL FAULTS", and without any representations, warranties, promises, covenants or guaranties whatsoever, express, implied, oral, written, statutory or otherwise (including, without limitation, no warranties of merchantability, marketability, profitability, fitness for a particular purpose or conformity to models or materials); and Lessor fully and forever releases Nextel and the Released Parties from all Claims and any and all liability whatsoever in connection with the foregoing and the Lease, and agrees to indemnify, defend and hold Nextel and the Released Parties harmless from and against all Claims and any and all losses, costs, liabilities, damages, claims, actions and causes of action (including attorneys' fees and court costs) arising out of or relating in any way to any such Abandoned Property.

Executed on _____, 2013

"LESSOR"

"NEXTEL"

The Mayor and Council of New Windsor,
a municipal corporation

Nextel Communications of the Mid-Atlantic, Inc.,
a Delaware corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

CITY OF VINELAND

2. The City of Vineland shall accept the sum of Four Thousand, Eight Hundred Forty-Seven Dollars and Fifty-Nine Cents (\$4,847.59) as damages for the cost of the removal of property abandoned by Nextel.

3. The parties release and relinquish any and all rights, title and interest that each may have against the other as of November 30, 2013, and the City of Vineland accepts the Property in an “as is” condition.

Adopted:

President of Council

ATTEST:

City Clerk