

City of Willoughby Hills

ORDINANCE NO. 2018-32

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO THE SECOND AMENDMENT TO THE OPTION AND GROUND LEASE AND AMENDED MEMORANDUM OF LEASE; REPEALING CERTAIN ORDINANCES AND DECLARING AN EMERGENCY.

WHEREAS, the City of Willoughby Hills and TOWERCO 2013 LLC, a Delaware limited liability company entered into that certain Lease Agreement dated June 28, 2016, for certain real property and easements for that certain parcel of real property owned by the City of Willoughby Hills located in the County of Lake, State of Ohio; and

WHEREAS, the City of Willoughby Hills and TOWERCO 2013 LLC, a Delaware limited liability company executed a Memorandum of Lease effective June 28, 2016 with the Lake County Recorder with an Instrument Number 2016R017098 ("Original Memorandum"); and

WHEREAS, on January 11, 2018, Council adopted Ordinance No. 2017-81, authorizing and directing the Mayor to enter into the First Amendment to the Option and Ground Lease and Amended Memorandum of Lease, modifying the legal description for the Premises to the Lease and the Original Memorandum; and

WHEREAS, the Agreement has an Option Initial Term of twelve (12) months with two (2) additional Option Renewal Terms of six (6) months, and the City of Willoughby Hills and TOWERCO 2013 LLC, a Delaware limited liability company desire to amend the term of the Agreement to provide for two (2) additional Option Renewal Terms, and provide for certain other changes as more particularly set forth in the Second Amendment to Option and Ground Lease Agreement and the Amended Memorandum of Lease, consisting of six (6) pages, attached hereto and marked as the "Exhibit A".

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILLOUGHBY HILLS, COUNTY OF LAKE, STATE OF OHIO THAT:

SECTION 1. The Mayor is hereby authorized and directed to enter into ***The Second Amendment to the Option and Ground Lease and Amended Memorandum of Lease*** by and between the City of Willoughby Hills and TOWERCO 2013 LLC, a Delaware limited liability company, consisting of six (6) pages, attached hereto and marked as the "Exhibit A", to provide for certain changes as set forth in Section 2, Section 3, Section 4, Section 5, Section 6, Section 7, Section 8 and Section 9.

SECTION 2. ***Extension of Option.*** In addition to the Option Renewal Terms presently set forth in the Agreement, the parties hereby agree that the Option can be extended at the discretion of TOWERCO 2013 LLC, a Delaware limited liability company, for two (2) additional periods of six (6) months each by paying to the City of Willoughby Hills the additional consideration of Five Hundred and No/100 Dollars (\$500.00) prior to the expiration of the then existing Option Renewal term.

Subject to the terms of the Agreement, the final expiration date of the Option would be **June 27, 2019.**

SECTION 3. ***Agreement in Full Force.*** Except as expressly amended hereby, all terms and conditions of the Agreement shall remain in full force and effect, and, in the event of any inconsistencies between this Second Amendment and the terms of the Agreement, the terms set forth in this Second

Amendment shall govern and control. The covenants, representations and conditions in the Agreement are mutual and dependent.

SECTION 4. *Recording of Agreement.* The City of Willoughby Hills agrees to promptly execute and deliver to TOWERCO 2013 LLC, a Delaware limited liability company, an amended memorandum of the Agreement in recordable format upon request of TOWERCO 2013 LLC, a Delaware limited liability company.

SECTION 5. *Counterparts.* This Second Amendment may be executed in one or more counterparts which shall be construed together as one document.

SECTION 6. *Defined Terms.* Unless otherwise defined, all defined terms used in this Second Amendment shall have the meanings ascribed to them under the Agreement.

SECTION 7. *Successors and Assigns.* Upon full execution by TOWERCO 2013 LLC, a Delaware limited liability company and the City of Willoughby Hills, this Second Amendment (i) shall be binding upon and shall inure to the benefit of each of the parties and their respective successors, assigns, receivers and trustees; and (ii) may be modified or amended only by a written agreement executed by each of the parties.

SECTION 8. *Non-Binding Until Fully Executed.* This Second Amendment is for discussion purposes only and does not constitute a formal offer by either party. This Second Amendment is not and will not be binding on either party until and unless it is fully executed by both parties.

SECTION 9. *Recitals.* The recitals at the beginning of this Second Amendment are incorporated in and made a part of this Second Amendment.

SECTION 10. 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 held in compliance with all legal requirements, including Chapter 107 of the Codified Ordinances of the City of Willoughby Hills.

SECTION 11. This Ordinance constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the City of Willoughby Hills insofar as it provides for the usual daily operation of a municipal department, and further provides for the facilitation of the Option and Ground Lease Agreement dated June 28, 2016 for the purposes of constructing and operating a telecommunication tower and appurtenances for the vacant platted lot located on Miller Road (PPN 31-A-025-0-00-003-0), acquired by the City in November of 2015. Wherefore, this ordinance shall be in full force and take effect from and after its adoption and approval by the Mayor.

PASSED: June 14, 2018

Submitted to the Mayor for his approval
on this 14 day of June, 2018

ATTEST:
Victoria Ann Savage, CMC
Victoria Ann Savage, CMC
Clerk of Council

Nancy E. Fellows
Nancy E. Fellows
President of Council

Approved by the Mayor
June 14, 2018

Robert M. Weger
Robert M. Weger
Mayor