

**MINUTES  
REPRESENTATIVE TOWN MEETING  
SPECIAL MEETING  
APRIL 23, 2018**

**RECEIVED  
APR 30 2018  
TOWN CLERK'S OFFICE  
DARIEN CT.**

**CALL TO ORDER**

A Special Meeting of the Representative Town Meeting was called to order at 8:05 p.m. by Donna Rajczewski, Town Clerk, who noted that there was now a full complement of 100 members on the RTM. There are two new members of District I: Casey Haverstick and Ashley Aymonier. She also noted that the budget books would be ready by next Monday.

Upon Roll Call, the following members were present:

From District I, there were 14 members present, 3 absent.  
From District II, there were 13 members present, 3 absent.  
From District III, there were 15 members present, 1 absent.  
From District IV, there were 12 members present, 4 absent.  
From District V, there were 15 members present, 3 absent.  
From District VI, there were 14 members present, 3 absent.

From District I, the absentees were: Aymonier, Barsanti, Ezbiansky.  
From District II, the absentees were: Aponte, Goertel, Pommernelle.  
From District III, the absentee was: Mitchell.  
From District IV, the absentees were: Banks, Joan Davis, P. Hawkins, Montanaro.  
From District V, the absentees were: Costa, Fiveson, Kelly.  
From District VI, the absentees were: Cantavero, Chickles, M. Handler.

The Moderator, Seth Morton, assumed the Chair.

**ACCEPTANCE OF THE AGENDA**

**\*\* THE AGENDA WAS ACCEPTED BY UNIVERSAL CONSENT.**

**APPROVAL OF THE MINUTES OF THE FEBRUARY 26, 2018 REGULAR MEETING**

**\*\* THE MINUTES WERE ACCEPTED BY UNIVERSAL CONSENT.**

**ANNOUNCEMENTS**

The Moderator announced that District I would hold an open forum on Monday night at 7:30 in the Auditorium.

CONSIDERATION AND ACTION ON 8TH AMENDMENT TO THE LEASE  
BETWEEN TOWN OF DARIEN AND CROWN ATLANTIC COMPANY, LLC

\*\* MARK ADILETTA, DISTRICT V, CHAIRMAN OF THE PUBLIC WORKS  
COMMITTEE, MOVED:

**WHEREAS**, the Town of Darien; and the Crown Atlantic Company LLC wish to enter into an extension of the existing lease for the 1,800 sq. feet of property located at 126 Ledge Road; and

**WHEREAS**, any such lease requires the approval of the Board of Selectman and the Representative Town Meeting; and

**WHEREAS**, the Planning and Zoning Commission has issued a positive report pursuant to §8-24 of the Connecticut General Statutes;

**NOW THEREFORE, BE IT RESOLVED THAT** the RTM of the Town of Darien hereby approves the amendment to said lease, which is attached hereto or made part of.

EIGHTH AMENDMENT TO CELLULAR PROPERTY LEASE  
(BU 806352)

THIS EIGHTH AMENDMENT TO CELLULAR PROPERTY LEASE ("Eighth Amendment") is made effective this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between TOWN OF DARIEN, CONNECTICUT, a Connecticut municipal corporation ("Lessor"), and CROWN ATLANTIC COMPANY LLC, a Delaware limited liability company ("Lessee").

WHEREAS, Lessor and Metro Mobile CTS of Fairfield County, Inc., a Connecticut corporation ("Metro"), entered into a Cellular Property Lease dated June 16, 1992 (as amended and assigned, the "Lease"), whereby Lessor leased to Metro a portion of land being described as an approximately 1,800 square feet portion of that property (said leased portion, together with those certain access, utility and/or maintenance easements and/or rights of way granted in the Lease being the "Premises") located at 126 Ledge Road (Tax Parcel #DARI-000039-000000-000020-000021), Town of Darien, Fairfield County, State of Connecticut, and being further described in Volume 190, Page 37 in the Clerk's Office for the Town of Darien ("Clerk's Office"). Notice of the Lease is provided by, and the Premises is described in that certain Memorandum of Option-Lease Agreement ("Memorandum"), recorded in Volume 679, Page 289 in the Clerk's Office; and

WHEREAS, Metro assigned its right, title and interest in the Lease to Cellco Partnership ("Cellco") pursuant to that Assignment and Assumption Agreement dated July 1, 1995, and recorded in Volume 831, Page 188 in the Clerk's Office; and

WHEREAS, Lessor and Cellco entered into that Amendment No. #1 to Cellular Property Lease dated May 1, 1997 ("First Amendment"), that Second Amendment to Cellular Property Lease dated May 18, 1998 ("Second Amendment"), and that Third Amendment to Cellular Property Lease dated March 3, 1999 ("Third Amendment"); and

WHEREAS, Cellco assigned its right, title and interest on the Lease to Lessee pursuant to that assignment agreement dated March 31, 1999, a memorandum of which is recorded in Volume 906, Page 178 in the Clerk's Office; and

WHEREAS, Lessor and Lessee entered into that Fourth Amendment to Cellular Property Lease dated July 21, 2006 ("Fourth Amendment"), which extended the term of the Lease to April 30, 2018, among other changes, a memorandum of which is recorded in Volume 1266, Page 434 in the Clerk's Office; and

WHEREAS, Lessor and Lessee entered into that Fifth Amendment to Cellular Property Lease dated November 7, 2008 ("Fifth Amendment"), which increased the size of the Premises to be 2,130 square feet, among other changes, a memorandum of which is recorded in Volume 1342, Page 21 in the Clerk's Office; and

WHEREAS, Lessor and Lessee entered into that Sixth Amendment to Cellular Property Lease dated July 7, 2010 ("Sixth Amendment"), and that Seventh Amendment to Cellular Property Lease dated November 8, 2013 ("Seventh Amendment"), which expanded the size of the Premises to 2,355 square feet, among other changes; and

WHEREAS, the term of the Lease commenced on May 1, 1993, and has an original term, including all renewal terms, that will expire on April 30, 2018 ("Original Term"), and Lessor and Lessee now desire to amend the terms of the Lease to provide for additional renewal terms beyond the Original Term, and to make other changes.

NOW THEREFORE, in exchange for the mutual promises contained herein, Lessor and Lessee agree to amend the Lease as follows:

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

2. Section 5 of the Lease, as amended by the Fourth Amendment, is deleted in its entirety and replaced with the following:

5. Options to Renew. Upon expiration of the Base Term, this Lease shall automatically be extended, without need of any further documentation, for six (6) additional five (5) year terms (the "Renewal Terms") unless Lessee or Lessor provides the other party with notice at least ninety (90) days prior to the expiration of the then current Renewal Term of its desire for this Lease to terminate at the end of the then-current Renewal Term. Unless sooner terminated as provided for herein, this Lease shall expire on April 30, 2028.

3. Commencing on May 1, 2018, in lieu of any rent obligations currently in the Lease, Lessee shall pay Lessor the greater of: (i) Eight Thousand Dollars (\$8,000.00) per month; or (ii) sixty percent (60%) of the rental payments (excluding any reimbursement of taxes, construction costs, installation costs, or revenue share reimbursement) received by Lessee for the preceding month from all unaffiliated third parties, excluding Verizon Wireless, to which Lessee subleases, licenses or grants a similar right of use or occupancy in the Premises (each a "Subtenant") ("Revenue Share"). Lessee shall have sole discretion as to whether, and on what terms, to sublease, license or otherwise allow occupancy of the Premises and there shall be no express or implied obligation for Lessee to do so. The Revenue Share shall include all rental, license or similar payments due to be paid from a Subtenant whether or not Lessee actually receives such payments until the agreement with the Subtenant has expired or is otherwise terminated, at which time the inclusion of such payments in the Revenue Share calculation shall cease. Non-payment of such rental, license or other similar payment by a Subtenant shall not be an event of default under the Lease. Lessee shall have sole discretion as to whether, and on what terms, to sublease, license or otherwise allow occupancy of the Premises and there shall be no express or implied obligation for Lessee to do so; provided, however, that Lessee shall not enter into an agreement with a Subtenant containing language meant to circumvent Lessee's obligation to pay Revenue Share to Lessor under this Section. Lessor acknowledges that Lessor shall have no recourse against Lessee as a result of the failure of payment or other obligation by a Subtenant; provided, however, that Lessor shall retain all rights to seek recourse against Lessee should Lessee fail to pay to Lessor the Revenue Share due to Lessor in accordance with this Section. For clarity, commencing on May 1, 2018, the foregoing shall also replace any existing monthly rental provisions and revenue sharing provisions currently existing in the Lease, as amended.

4. Annually, no later than March 1, Lessee will submit to Lessor a business summary report pertaining to Lessee's rent obligations for the prior twelve (12) month period, as well as all other Subtenant revenue earned by Lessee. Lessor may at any time submit a written request for an interim business summary report containing the aforementioned information and Lessee shall provide such written accounting to Lessor within sixty (60) days after Lessee's receipt of such written request.

5. Notwithstanding anything in the Lease to the contrary, Lessee and its sublessees and/or licensees shall have the right to modify, alter, add, replace, remove, and maintain wireless communications facilities located within the Premises without the consent or approval of Lessor.

6. Section 20 of the Lease is amended by deleting Lessee's notice address and inserting the following:

Lessee: Crown Atlantic Company LLC  
c/o Crown Castle USA Inc.  
General Counsel  
Attn: Legal-Real Estate Department  
2000 Corporate Drive  
Canonsburg, Pennsylvania 15317-8564

7. The Lease is amended by adding a new Section 30 to the end thereto:

30. Right of First Refusal. If Lessor receives an offer that Lessor intends on accepting from any person or entity that owns towers or other wireless telecommunications facilities (or is in the business of acquiring Lessor's interest in this Lease) to purchase fee title, an easement, a lease, a license, or any other interest in the Premises, or Lessor's interest in this Lease, or an option for any of the foregoing, Lessor shall provide written notice to Lessee of said offer, and Lessee 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 that are (a) not imposed in good faith; or (b) directly or indirectly designed to defeat or undermine Lessee's possessory or economic interest in the Premises. Lessor'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 Lessor'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 Lessee does not exercise its right of first refusal by written notice to Lessor given within thirty (30) days after Lessee's receipt of Lessor's notice, Lessor may convey the property as described in the Lessor's notice. If Lessee declines to exercise its right of first refusal, then the Lease shall continue in full force and effect and Lessee's right of first refusal shall survive any such conveyance. Lessee 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 Lease or as part

of an assignment of this Lease. Such assignment may occur either prior to or after Lessee's receipt of Lessor's notice and the assignment shall be effective upon written notice to Lessor.

8. As additional consideration for amending the Lease in accordance with this Eighth Amendment, Lessee agrees to pay to Lessor \$15,000.00 upon full execution of this Eighth Amendment by both parties.

9. Representations, Warranties and Covenants of Lessor. Lessor represents, warrants and covenants to Lessee as follows:

(a) Lessor is duly authorized to and has the full power and authority to enter into this Eighth Amendment and to perform all of Lessor's obligations under the Lease as amended hereby.

(b) Except as expressly identified in this Eighth Amendment, Lessor owns the Premises free and clear of any mortgage, deed of trust, or other lien secured by any legal or beneficial interest in the Premises, 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 Lessee arising under the Lease as amended hereby and the rights of utility providers under recorded easements.

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

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

(e) Lessee is not currently in default under the Lease, and to Lessor'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 Lessee under the Lease.

(f) To the extent permissible under applicable law, Lessor agrees to execute and deliver such further documents and provide such further assurances as may be requested by Lessee 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 Lease as amended hereby, and ensure Lessee's continuous and uninterrupted use, possession and quiet enjoyment of the Premises under the Lease as amended hereby.

10. Lessee reserves the right, at its discretion and at its sole cost, to obtain a survey ("Survey") specifically describing the Premises and any access and utility easements associated therewith. Lessee shall be permitted to attach the Survey as an exhibit to this Eighth Amendment and any related memorandum for recording, which shall update and replace the existing description, at any time prior to or after closing of this Eighth Amendment.

11. IRS Form W-9. Lessor agrees to provide Lessee with a completed IRS Form W-9, or its equivalent, upon execution of this Eighth Amendment and at such other times as may be reasonably requested by Lessee. In the event the Premises is transferred, the succeeding Lessor shall have a duty at the time of such transfer to provide Lessee with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in rent to the new Lessor. Lessor's failure to provide the IRS Form W-9 within thirty (30) days after Lessee's request shall be considered a default and Lessee may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from rent payments.

12. In all other respects, the remainder of the Lease shall remain in full force and effect. Any portion of the Lease that is inconsistent with this Eighth Amendment is hereby amended to be consistent with this Eighth Amendment. This Eighth Amendment supersedes that certain Letter Agreement by and between Lessor and Lessee dated March 11, 2016, and in case of any conflict or inconsistency between the terms and conditions contained in the Letter Agreement and the terms and conditions contained in this Eighth Amendment, the terms and conditions in this Eighth Amendment shall control. All of the provisions hereof shall inure to the benefit of and be binding upon Lessor and Lessee, and their personal representatives, heirs, successors and assigns. This Eighth Amendment may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, it being understood that all parties need not sign the same counterparts.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]



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

Signed Sealed and Delivered  
in the Presence of:

LESSEE

Crown Atlantic Company LLC,  
a Delaware limited liability company

\_\_\_\_\_  
Witness #1

By: \_\_\_\_\_ (SEAL)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Witness #2

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

) SS:

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the \_\_\_\_\_ of Crown Atlantic Company LLC, a Delaware limited liability company, and that he/she as such \_\_\_\_\_, being authorized so to do executed the foregoing Eighth Amendment to Cellular Property Lease for the same for the purposes therein contained, by signing the name of the limited liability company, by himself/herself as \_\_\_\_\_.

In witness whereof I hereunto set my hand.

\_\_\_\_\_  
Signature of notary public

Print name: \_\_\_\_\_

Date commission expires: \_\_\_\_\_

[affix stamp or seal]

Prepared out of State.

Return to:

Crown Castle

1220 Augusta, Suite 500

Houston, Texas 77057

Cross Index with Volume 679, Page 289  
Volume 1266, Page 434  
Volume 1342, Page 21

Tax Map #: DARI-000039-000000-000020-000021

#### MEMORANDUM OF EIGHTH AMENDMENT TO CELLULAR PROPERTY LEASE

THIS MEMORANDUM OF EIGHTH AMENDMENT TO CELLULAR PROPERTY LEASE ("Amended Memorandum") is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between TOWN OF DARIEN, CONNECTICUT, a Connecticut municipal corporation ("Lessor"), with a mailing address of 2 Renshaw Drive, Darien, Connecticut 06820, and CROWN ATLANTIC COMPANY LLC, a Delaware limited liability company ("Lessee"), with a mailing address of c/o Crown Castle USA Inc., 2000 Corporate Drive, Canonsburg, Pennsylvania 15317-8564.

WHEREAS, Lessor and Metro Mobile CTS of Fairfield County, Inc., a Connecticut corporation ("Metro"), entered into a Cellular Property Lease dated June 16, 1992 (as amended and assigned, the "Lease"), whereby Lessor leased to Metro a portion of land being described as an approximately 1,800 square feet portion of that property (said leased portion, together with those certain access, utility and/or maintenance easements and/or rights of way granted in the Lease being the "Premises") located at 126 Ledge Road (Tax Parcel #DARI-000039-000000-000020-000021), Town of Darien, Fairfield County, State of Connecticut, and being further described in Volume 190, Page 37 in the Clerk's Office for the Town of Darien ("Clerk's Office"). Notice of the Lease is provided by, and the Premises is described in that certain Memorandum of Option-Lease Agreement ("Memorandum"), recorded in Volume 679, Page 289 in the Clerk's Office; and

WHEREAS, Metro assigned its right, title and interest in the Lease to Cellco Partnership ("Cellco") pursuant to that Assignment and Assumption Agreement dated July 1, 1995, and recorded in Volume 831, Page 188 in the Clerk's Office; and

Site Name: BRG 302 943052  
BU: 806352  
PPAB 3469012v5

WHEREAS, Lessor and Cellco entered into that Amendment No. #1 to Cellular Property Lease dated May 1, 1997 ("First Amendment"), that Second Amendment to Cellular Property Lease dated May 18, 1998 ("Second Amendment"), and that Third Amendment to Cellular Property Lease dated March 3, 1999 ("Third Amendment"); and

WHEREAS, Cellco assigned its right, title and interest on the Lease to Lessee pursuant to that assignment agreement dated March 31, 1999, a memorandum of which is recorded in Volume 906, Page 178 in the Clerk's Office; and

WHEREAS, Lessor and Lessee entered into that Fourth Amendment to Cellular Property Lease dated July 21, 2006 ("Fourth Amendment"), which extended the term of the Lease to April 30, 2018, among other changes, a memorandum of which is recorded in Volume 1266, Page 434 in the Clerk's Office; and

WHEREAS, Lessor and Lessee entered into that Fifth Amendment to Cellular Property Lease dated November 7, 2008 ("Fifth Amendment"), which increased the size of the Premises to be 2,130 square feet, among other changes, a memorandum of which is recorded in Volume 1342, Page 21 in the Clerk's Office; and

WHEREAS, Lessor and Lessee entered into that Sixth Amendment to Cellular Property Lease dated July 7, 2010 ("Sixth Amendment"), and that Seventh Amendment to Cellular Property Lease dated November 8, 2013 ("Seventh Amendment"), which expanded the size of the Premises to 2,355 square feet, among other changes; and

WHEREAS, the term of the Lease commenced on May 1, 1993, and has an original term, including all renewal terms, that will expire on April 30, 2018 ("Original Term"), and Lessor and Lessee now desire to amend the terms of the Lease to provide for additional renewal terms beyond the Original Term, and to make other changes; and

WHEREAS, Lessor and Lessee made and entered into an Eighth Amendment to Cellular Property Lease of even date herewith ("Eighth Amendment") and pursuant to the terms of, and for that consideration recited in, the Eighth Amendment, the parties wish to hereby amend certain provisions of the Lease, and provide this Amended Memorandum as notice thereof, as follows:

1. Lessor does hereby lease and grant unto Lessee, its successors and assigns, the Premises for two (2) additional five (5) year renewal terms beyond the Original Term, such that the Original Term and all renewal terms of the Lease may last for a term of thirty-five (35) years, expiring on April 30, 2028, unless sooner terminated as provided in the Lease.

2. The description of the Premises is as provided on Exhibit A attached hereto.

3. If Lessor receives an offer that Lessor intends on accepting from any person or entity that owns towers or other wireless telecommunications facilities (or is in the business of acquiring Lessor's interest in the Lease) to purchase fee title, an easement, a lease, a license, or any other interest in the Premises, or Lessor's interest in the Lease, or an option for any of the foregoing, Lessor shall provide written notice to Lessee of said offer, and Lessee 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 that are (a) not imposed in good faith; or (b) directly or indirectly designed to defeat or undermine Lessee's possessory or economic interest in the Premises. The details of the right of first refusal granted to Lessee in the Eighth Amendment are provided in the Eighth Amendment.

4. This Amended Memorandum contains only selected provisions of the Eighth Amendment, and reference is made to the full text of the Lease and the Eighth Amendment for their full terms and conditions, which are incorporated herein by this reference. Except as otherwise provided in the Eighth Amendment and this Amended Memorandum, the terms and conditions of the Lease remain in full force and effect. This Amended Memorandum may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, it being understood that all parties need not sign the same counterparts. A copy of the Lease and its amendments are located at the office of the Lessee.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

Signed Sealed and Delivered  
in the Presence of:

LESSOR:

Town of Darien, Connecticut,  
a Connecticut municipal corporation

\_\_\_\_\_  
Witness #1

By: \_\_\_\_\_ (SEAL)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Witness #2

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

SS:

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the \_\_\_\_\_ of The Town of Darien, Connecticut, a Connecticut municipal corporation, and that he/she as such \_\_\_\_\_, being authorized so to do executed the foregoing Memorandum of Eight Amendment to Cellular Property Lease for the same for the purposes therein contained, by signing the name of the Town, by himself/herself as \_\_\_\_\_.

In witness whereof I hereunto set my hand.

\_\_\_\_\_  
Signature of notary public

Print name: \_\_\_\_\_

Date commission expires: \_\_\_\_\_

[affix stamp or seal]

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

Signed Sealed and Delivered  
in the Presence of:

LESSEE

Crown Atlantic Company LLC,  
a Delaware limited liability company

\_\_\_\_\_  
Witness #1

By: \_\_\_\_\_ (SEAL)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Witness #2

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

) SS:

On this the \_\_\_\_ day of \_\_\_\_\_, 2018, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the \_\_\_\_\_ of Crown Atlantic Company LLC, a Delaware limited liability company, and that he/she as such \_\_\_\_\_, being authorized so to do executed the foregoing Memorandum of Eighth Amendment to Cellular Property Lease for the same for the purposes therein contained, by signing the name of the limited liability company, by himself/herself as \_\_\_\_\_.

In witness whereof I hereunto set my hand.

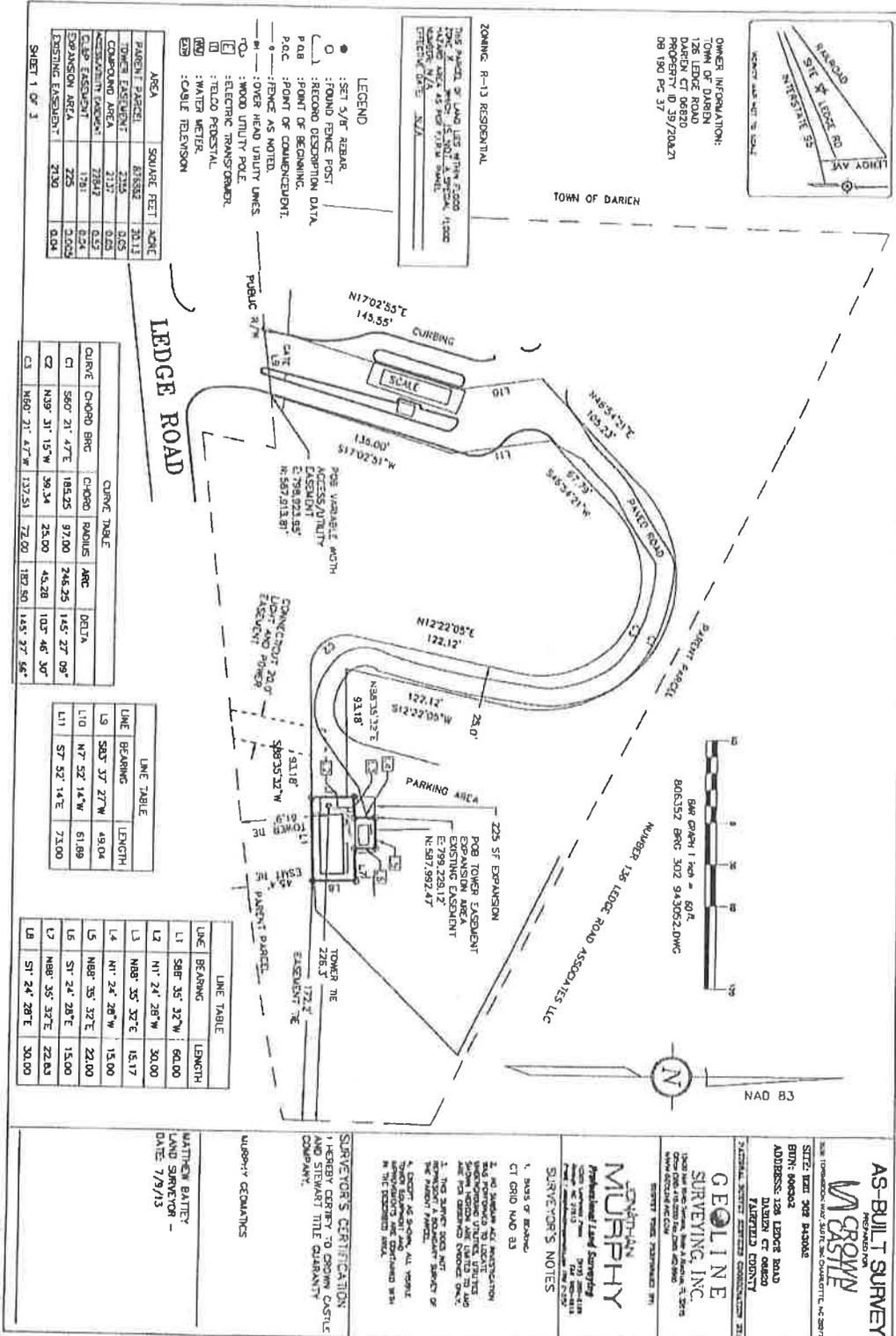
\_\_\_\_\_  
Signature of notary public

Print name: \_\_\_\_\_

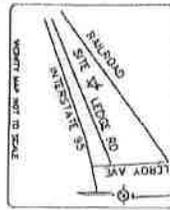
Date commission expires: \_\_\_\_\_

[affix stamp or seal]

EXHIBIT A



Site Name: BRG 302 943052  
 BU: 806352  
 PPAB 3469012v5



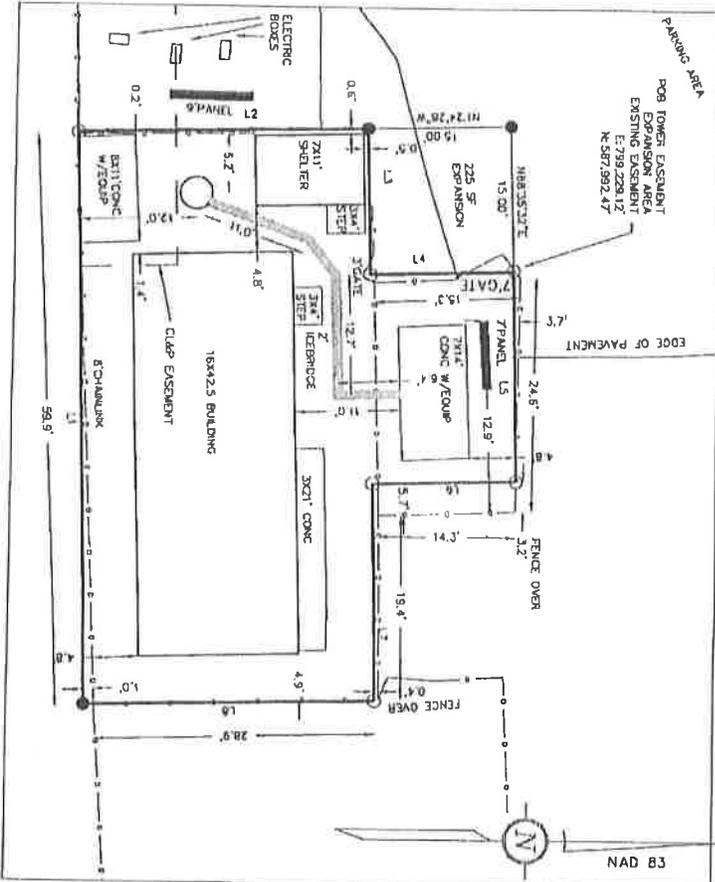
THE PARCEL OF LAND IS A 15' X 100' ZONING: R-13 RESIDENTIAL

**LEGEND**

- SET 5/8" REBAR
- FOUND FENCE POST
- RECORD DESCRIPTION DATA
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- FENCE AS NOTED
- OVER HEAD UTILITY LINES
- WOOD UTILITY POLE
- ELECTRIC TRANSFORMER
- TELECOM PEDESTAL
- WATER METER
- CABLE TELEVISION

AREA	SQUARE FEET	ACRE
PARSON SPACES	878802	20.13
POB TOWER EXPANSION	2205	0.05
EXISTING EXPANSION	2137	0.05
CLAP EXPANSION	22842	0.52
EXPANSION AREA	1781	0.04
EXPANSION AREA	225	0.005
EXISTING EXPANSION	2130	0.04

Sheet 2 of 3



**AS-BUILT SURVEY**  
 PREPARED FOR  
**MATTHEW BATEY**  
 SURVEYOR  
 124 LACEY ROAD  
 MARYLENE, WASHINGTON  
 DISTRICT OF COLUMBIA

**GEOLINE SURVEYING, INC.**  
 11800 118th Ave, N  
 Redmond, WA 98073  
 (206) 881-1180  
 WWW.GEOLINE.COM

**MURPHY'S NOTES**

1. BASIS OF BEARING: C1 DMD NAD 83
2. NO SURVEYOR'S INTERPRETATION WAS MADE TO LOCATE THE POINTS SHOWN HEREIN. THE POINTS SHOWN HEREIN ARE LIMITED TO THE DATA PROVIDED BY THE CLIENT.
3. THE SURVEY DOES NOT REPRESENT THE SURVEYOR'S OPINION OF THE PROPERTY'S VALUE.
4. EXCEPT AS SHOWN, ALL POINTS, DIMENSIONS, AND BEARINGS SHOWN ON THIS DEEDING ARE AS PROVIDED BY THE CLIENT.

**SURVEYOR'S CERTIFICATION**  
 I HEREBY CERTIFY TO GROWING CUSTE AND STEWART TITLE COMPANY THAT THIS IS A TRUE AND CORRECT COPY OF THE DEEDING.

**MATTHEW BATEY**  
 LAND SURVEYOR -  
 DATE 7/9/13

**MURPHY'S COMMENTS**

Site Name: BRG 302 943052  
 BU: 806352  
 PPAB 3469012v5

**Premises (As Expanded)**

From the POINT OF BEGINNING Having Connecticut State Plane Coordinates: E:799,229.12' -and-

N:587,992.47'; Thence, N 88° 35' 32" E for a distance of 22.00 feet to a point; Thence, S 01° 24' 28" E for a distance of 15.00 feet to a point; Thence, N 88° 35' 32" E for a distance of 22.83 feet to a point; Thence, S 01° 24' 28" E for a distance of 30.00 feet to a point; Thence S 88° 35' 32" W a distance of 60.00 feet to a point; Thence, N 01° 24' 28" W for a distance of 45.00 feet to a point; Thence, N 88° 35' 32" E for a distance of 15.00 feet to the POINT OF BEGINNING, Containing 2,355 SQFT -and- 0.05 Acres.

**Variable Width Access/Utility Easement**

From the POINT OF BEGINNING Having Connecticut State Plane Coordinates E:798,923.95' -and- N:587,913.81'; Thence, S 83° 37' 27" W for a distance of 49.04 feet to a point; Thence, N 17° 02' 55" E for a distance of 145.55 feet to a point; Thence, N 07° 52' 14" W for a distance of 61.89 feet to a point;

Thence, N 46° 54' 21" E for a distance of 105.23 feet to the beginning of a curve, Said curve turning to the right through an angle of 145° 27' 09", having a radius of 97.00 feet, and whose long chord bears S 60° 21' 47" E for a distance of 185.25 feet. Thence, S 12° 22' 05" W for a distance of 122.12 feet to a point; Thence, N 88° 35' 32" E for a distance of 93.18 feet to a point; Thence, S 01° 24' 28" E for a distance of 25.00 feet to a point; Thence, S 88° 35' 32" W for a distance of 93.18 feet to the beginning of a curve, Said curve turning to the right through an angle of 103° 46' 30", having a radius of 25.00 feet, and whose long chord bears N 39° 31' 15" W for a distance of 39.34 feet. Thence, N 12° 22' 05" E for a distance of 122.12 feet to the beginning of a curve, Said curve turning to the left through an angle of 145° 27' 56", having a radius of 72.00 feet, and whose long chord bears N 60° 21' 47" W for a distance of 137.51 feet. Thence, S 46° 54' 21" W for a distance of 67.79 feet to a point; Thence, S 07° 52' 14" E for a distance of 73.00 feet to a point; Thence S 17° 02' 51" W a distance of 136.00 feet to the POINT OF BEGINNING, Containing 22,842 SQFT -and- 0.52 Acres.

**\*\* THE MOTION WAS SECONDED FROM THE FLOOR.**

Mark Adiletta, District V, Chairman of the Public Works Committee, read the committee report (attached).

Jack Davis, District III, Chairman of the Finance & Budget Committee, read the committee report (attached).

**\*\* ITEM 18-4 CARRIED ON A RISING TALLY VOTE OF 82 IN FAVOR, 0 OPPOSED AND 0 ABSTENTIONS.**

**\*\* UPON MOTION MADE AND SECONDED FROM THE FLOOR, IT WAS UNANIMOUSLY VOTED TO ADJOURN AT 8:30 P.M.**

Respectfully submitted,

Cheryl Telesco Blois  
Telesco Secretarial Services

APPENDIX

<u>DISTRICT I</u>	<u>(18-4)</u>
Aymonier	absent
Baldwin	yes
Barsanti	absent
Bumgardner	yes
Butler	yes
Carter	yes
Conologue	yes
Ezbiansky	absent
Haverstick	yes
Keane	yes
Kelly, C.	yes
Lee	yes
Lublin	yes
Muchhal	yes
Pattelli	yes
Schneider	yes
von Stuelpnagel	yes

<u>DISTRICT II</u>	
Aponte	absent
Bacon	yes
Cusack	yes
Goertel	absent
Handler, S.	yes
Howe	yes
McNally	yes
Miller	yes
Mix	yes
Pommernelle	absent
Russell	yes
Sartori	yes
Thorne, B.	yes
Tie	yes
Wheeler	yes
Wilson	yes

<u>DISTRICT III</u>	
Conniff	yes
Jack Davis	yes
Feldman	yes
Giordano	yes
Marousek	yes
McGoey	yes
Mitchell	absent
Moore	yes
Morton	DOES NOT VOTE
Riordan	yes
Sload	yes
Vitale	yes
Washecka	yes
Woodbury	yes
Yarnell	yes
Zimmerman	yes

<u>DISTRICT IV</u>	<u>18-3</u>
Banks	absent
Cameron	yes
Joan Davis	absent
Fiore	yes
Hardison	yes
P. Hawkins	absent
Heitz	yes
Kemp	yes
Miceli	yes
Millar	yes
Montanaro	absent
Obin	yes
Rayhill	yes
Savage	yes
Terhune	yes
Whittier	yes

<u>DISTRICT V</u>	
Adiletta	yes
Bayne, C.	yes
Bayne, D.	yes
Boulton	yes
Costa	absent
Duffy	yes
Fiveson	absent
Hebert	yes
Hennessy	yes
Kelly	absent
Martin	yes
McLachlin	yes
Moller	yes
Mosher	yes
Parent	yes
Patrick	yes
Reed	yes
Smith	yes

<u>DISTRICT VI</u>	
Adelman	yes
Cantavero	absent
Chickles	absent
Grogan	yes
Handler, M.	absent
Ted Hawkins	yes
Lauritzen	yes
Lewis	yes
Luz	yes
McDermott	yes
Orphanos	yes
Poli	yes
Silsby	yes
Swenson	yes
Van Loan	yes
Vogt	yes
Werner	yes

Good evening.

My name is *Mark Adiletta* and I am Chair of the Public Works Sub-Committee to the RTM.

At this time I would like to move Item 18-4 **“Consideration and action on the 8<sup>th</sup> amendment to the cell tower lease between the Town of Darien and Crown Atlantic Company, LLC”**.

Without objection I move to waive the reading of the Resolution.

At a special session of the PWC held April 16<sup>th</sup>, with 11 of 14 members present, the PWC considered and voted **“unanimously”** to recommend approval of this item to the full RTM.

This 8<sup>th</sup> amendment is the latest on a lease first entered into between the Town and Metro Mobile CTS d/b/a Bell Atlantic Mobile Systems in 1992. The lease then involved a 60' by 30' parcel at the Recycle Center. The original term was 5 years with (3) successive 5-year renewals. The original rent was \$3,800/month.

Over the years the lease was amended and assigned a number of times. By way of example, in 1997 Metro Mobile CTS assigned its rights under the original Lease to CELLCO PARTNERSHIP. Subsequent amendments granted the right to install additional support equipment at the site (amendment #2), increased the rents, extended the term, allowed the Town to participate in the sub-tenant revenues, or increased the parcel /slab subject to the Lease marginally.

By the time of the 6<sup>th</sup> amendment in 2010, Crown Atlantic was the successor Lessee, the base rent was up to \$9,600/month and there were 5 wireless carries and one wireless internet service provider using the tower as Subtenants.

In July 2014 the Town received a Cell Tower Assessment from consultant “Steel In The Air”. Among the findings of the report were: 1) there is a small risk Crown would terminate this lease given the number of carriers relying on this location, 2) Crown could agree to a conversion to a “rent & revenue share” arrangement and finally 3) to the extent the Town is willing

to take on the administrative and management responsibilities of the site, revenue generated should exceed \$100,000/year.

It is with this history that item 18-4 is before us. This amendment does four main things:

1. Effective May 1, 2018 it sets the Lessee's obligations equal to the **greater** of \$8,000/month OR 60% of the Subtenant revenues. In doing this it is expected the Town should participate significantly to the upside in revenues generated by the Subtenants, as suggested in the 2014 assessment, while minimizing the downside to the \$8,000/month floor.
2. Modifies the Options to Renew. It now shall automatically be extended for **six (6)** additional five (5) year terms provided prior to the expiration of the then current Renewal Term it is not terminated. This Lease shall now expire on **April 30, 2028**.
3. Adds a reporting requirement that no later than March 1, Lessee will submit to Lessor a business summary report pertaining to Lessee's rent obligations for the prior twelve (12) month period, as well as all other Subtenant revenue earned by Lessee.
4. Grants the Lessee a Right of First Refusal in the event Lessor receives an offer to purchase an interest in this facility from any entity that owns towers or other wireless telecommunications facilities.

In summary, the PWC views this 8<sup>th</sup> amendment as a fair arrangement striking a balance between allowing the Town to participate greater in the revenues of this very valuable Town asset, while substantially protecting the down side should the expectations, as summarized by the 2014 Cell Tower Assessment, prove inaccurate.

The PWC voted unanimously in favor of this amendment, with 11 of 14 members present, and asks for your support as well.

**(18-4) Consideration and action on 8<sup>th</sup> amendment to the lease  
between the Town of Darien and Crown Atlantic Company, LLC  
RTM Finance & Budget Committee Report**

I am Jack Davis, District 3 and Chair of the Finance and Budget Committee.

The RTM Finance & Budget committee has discussed this resolution at several meetings and there have been multiple conversations with other RTM committee members on this lease throughout this process. On April 9<sup>th</sup>, with 8 of 15 members present, constituting a quorum, the committee took action on this resolution.

The lease is for land owned by the Town where a cell tower is placed. This lease represents the 8<sup>th</sup> amendment to said lease. The lease was originally with BellAtlantic which through acquisitions was transferred to CellCo which d/b/a Verizon Wireless and then to Crown Atlantic. We believe the last assignment was a sale/leaseback where Verizon is the main tenant of the tower.

Crown Atlantic is one of the big three cell tower companies.

The last lease had a base rent of \$9600 per month or \$115.2m annual rental. The new lease's monthly rental is the greater of \$8m per month base rent or 60% of the sub lessee's monthly rental – whichever is greater. As previously stated, Verizon's monthly rental income is excluded as they are a tenant not a sub-lessee.

The committee discussed the risk associated with this rental – downside being approximately \$19m annual rental reduction versus a greater upside over the life of the lease. There was discussion and reservations concerning the following:

- Not receiving expected business analysis in the executive summary
- Not having the exact amount of sub-lessee rental during our discussions
- The 3<sup>rd</sup> party consultant report was from 2014 – and not considered timely although it did provide information on the desirability of the tower (servicing both 95 and MetroNorth) and the upside of sharing the sublet revenue
- Concerns regarding certain clauses in the agreement – all of which have been addressed with the final lease
- Needed information regarding a CIO – Crown is required to have a \$1mm general liability policy and there is an indemnification clause to the Town in the lease.

After multiple analysis, the difference between a 2% annual rental escalation lease versus only receiving the minimum base rent was approximately \$325,000 over the life of the lease. This approximates 3bp over the entire lease.

To offset that risk, there are clauses in the lease where the Town could cease this lease if the finances are deemed to be significantly unfavorable.

The proposed 2018/19 budget which we will address at our next meeting, has the \$115.2m not the lower base rental.

The committee voted 6 in favor, 2 opposed and no abstentions to recommend the full RTM approve this lease.

The majority of the committee felt that the upside benefits were greater than the downside. The minority felt we should have been provided with an executive summary – outlining current contract conditions, impetus behind switching to a sales based lease and the potential upside/downside to the lease. The minority opinion was shared by several who voted for the lease's approval.

It should be noted that subsequent to the committee's vote, the Town Administrator provide the committee was the current sublet monthly revenue sans one sublet lease. That current amount totals over \$17m which would yield at the very least \$10,200 monthly and \$122m annual rental – again this is missing one of the sublet agreements – and higher than the amount in next year's budget.

Respectfully submitted,  
Jack Davis  
RTM Finance and Budget, Chair