



CITY COUNCIL AGENDA REPORT

Meeting Date: February 20, 2020

From: Director of Public Works/City Engineer

Subject: Cell Site Lease Extension

Community Goal/Result

Economic Development - Brisbane will work with the businesses and residents to provide for economic vitality/diversity

Purpose

To formally extend the lease for the property at City Hall currently occupied by a monopole and communication antennas.

Recommendation

Approve Resolution No. 2020-15 approving the "Second Amendment to Communications Site Lease Agreement with SpectraSite Communications, LLC," and authorize the Mayor to sign the amendment on the city's behalf.

Background

The city signed a lease with MetroPCS on May 26, 2004, to lease a portion of city property at 50 Park Place for a communications site, which included the right to install a cell site monopole and communication antennas at a location immediately to the right of the sidewalk leading to the Dog Park from City Hall's parking lot. As is common in the very fluid communications business, the lease went through a number of successors, including Capital Strategies International, Florida Tower Partners, American Tower Corporation, and now, SpectraSite Communications.

The City approved a First Amendment to Communications Site Lease Agreement on 9/13/10. The city released its right to the use of the top position of the monopole in this amendment, and in exchange negotiated one-time payments of \$20,000 whenever the lessee/tenant subleased a portion of the monopole for another communication company's antennas.

Discussion

The current lease is set to expire on July 15, 2029. By approving this amendment, the tenant will be given the option to extend the lease for six (6) additional five (5) year renewal terms, with the latest term end date being July 15, 2059. Additionally, this amendment grants the tenant the right to add an additional five hundred (500) square feet to the existing footprint at

a mutually agreeable location (staff understands this reservation is anticipated to be for siting of a standby generator).

Once approved, tenant will make a one-time payment in the amount of \$100,000 to city. Also, the monthly rent will have a fixed five (5) percent per year increase as shown in Exhibit B to the amendment.

Fiscal Impact

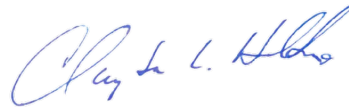
As noted in discussion.

Attachments

1. Second Amendment to Communications Site Lease Agreement
2. Resolution No. 2020-15



Randy Breault, Public Works Director



Clay Holstine, City Manager

THE SECOND AMENDMENT TO COMMUNICATIONS SITE LEASE AGREEMENT

This Second Amendment to Communications Site Lease Agreement (this "**Amendment**") is made effective as of the latter signature date hereof (the "**Effective Date**") by and between the **City of Brisbane, a municipal corporation ("Landlord")** and **SpectraSite Communications, LLC, a Delaware limited liability company ("Tenant")** (Landlord and Tenant being collectively referred to herein as the "**Parties**").

RECITALS

WHEREAS, Landlord owns the real property described on **Exhibit A** attached hereto and by this reference made a part hereof (the "**Parent Parcel**"); and

WHEREAS, Landlord (or its predecessor-in-interest) and Tenant (or its predecessor-in-interest) entered into that certain Communications Site Lease Agreement dated May 26, 2004 (as the same may have been amended from time to time, collectively, the "**Lease**"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Lease (such portion of the Parent Parcel so leased along with such portion of the Parent Parcel so affected, collectively, the "**Leased Premises**"), which Leased Premises are also described on **Exhibit A**; and

WHEREAS, Landlord and Tenant desire to amend the terms of the Lease to extend the term thereof, to make adjustments to rental payments as further detailed in Section 3 below and as illustrated in **Exhibit B**, and to otherwise modify the Lease as expressly provided herein.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **One-Time Payment.** Tenant shall pay to Landlord a one-time payment in the amount of **One Hundred Thousand and No/100 Dollars (\$100,000.00)**, payable within thirty (30) days of the Effective Date and subject to the following conditions precedent: (a) Tenant's receipt of this Amendment executed by Landlord, on or before February 28, 2020; (b) Tenant's confirmation that Landlord's statements as further set forth in this Amendment are true, accurate, and complete, including verification of Landlord's ownership; (c) Tenant's receipt of any documents and other items reasonably requested by Tenant in order to effectuate the transaction and payment contemplated herein; and (d) receipt by Tenant of an original Memorandum (as defined herein) executed by Landlord.
2. **Lease Term Extended.** Notwithstanding anything to the contrary contained in the Lease or this Amendment, the Parties agree the Lease originally commenced on July 16, 2004 and, without giving effect to the terms of this Amendment but assuming the exercise by Tenant of all remaining renewal options contained in the Lease (each an "**Existing Renewal Term**" and, collectively, the "**Existing Renewal Terms**"), the Lease is otherwise scheduled to expire on July 15, 2029. In addition to any Existing Renewal Term(s), the Lease is hereby amended to provide Tenant with the option to extend the Lease for each of six (6) additional five (5) year renewal terms (each a "**New Renewal Term**" and, collectively, the "**New Renewal Terms**"). Notwithstanding anything to the contrary contained in the Lease, (a) all Existing Renewal Terms and New Renewal Terms shall automatically renew unless Tenant notifies Landlord that Tenant elects not to renew the Lease, as amended herein, at least sixty (60) days prior to the commencement of the next Renewal Term (as defined below) and (b) Landlord shall be able to terminate the Lease, as amended herein, only in the event of a material default by Tenant, which default is not cured within sixty (60) days of Tenant's receipt of written notice thereof, provided, however, in the event that Tenant has diligently commenced to cure a material default within sixty (60) days of Tenant's actual receipt of notice thereof and reasonably requires additional time beyond the sixty (60) day cure period described herein to effect such cure, Tenant shall have such additional time as is necessary

(beyond the sixty [60] day cure period) to effect the cure. References in this Amendment to "**Renewal Term**" shall refer, collectively, to the Existing Renewal Term(s) and the New Renewal Term(s). The Landlord hereby agrees to execute and return to Tenant an original Memorandum of Lease in the form and of the substance attached hereto as **Exhibit C** and by this reference made a part hereof (the "**Memorandum**") executed by Landlord, together with any applicable forms needed to record the Memorandum, which forms shall be supplied by Tenant to Landlord.

3. **Rent and Escalation.** The Parties hereby acknowledge and agree that the rent payable from Tenant to Landlord under the Lease is currently and shall remain **Two Thousand Three Hundred Ninety Three and 60/100 Dollars (\$2,393.60)** per month (the "**Rent**"). Commencing on July 16, 2020, and on each successive annual anniversary thereof, Rent due under the Lease, as amended herein, shall increase by an amount equal to **five percent (5%)** of the then current Rent. In the event of any overpayment of Rent prior to or after the Effective Date, Tenant shall have the right to deduct from any future Rent payments an amount equal to the overpayment amount. Notwithstanding anything to the contrary contained in the Lease, all Rent and any other payments expressly required to be paid by Tenant to Landlord under the Lease and this Amendment shall be paid to CITY OF BRISBANE. The escalations in this Section shall be the only escalations to the Rent and any/all rental escalations otherwise contained in the Lease are hereby null and void and are of no further force and effect. For illustration purposes only and assuming the Lease, as amended herein, is not terminated, not renewed or otherwise canceled as provided in the Lease, as amended, the rental schedule would be as provided in **Exhibit B**.
4. **Tenant's Right to Expand Leased Premises.** Landlord hereby grants to Tenant an irrevocable option to expand the Leased Premises to include an additional five hundred (500) square feet contiguous to the Leased Premises, the shape and location of which shall be mutually agreeable to the Parties (the "**Expansion Area**"). The Parties further agree that, should Tenant exercise this option, Tenant shall pay Landlord, as increased Rent, an amount equal to the price per square foot of the Leased Premises for each square foot of the Expansion Area. In connection with this option to expand, Tenant, its agents, employees and independent contractors, shall have the right to enter upon that portion of the Parent Parcel lying beyond the Leased Premises at any time for purposes of evaluating the land and to perform (or cause to be performed) test borings of the soil, environmental audits, engineering studies and to conduct a boundary, as-built or similar survey of all (or any portion of) the Expansion Area to be prepared by a surveyor duly licensed under the laws of the state in which the Expansion Area is located. Said right of Tenant shall include, without limitation, the right to clear trees, brush and other obstructions which may interfere, in Tenant's sole discretion, with Tenant's ability to conduct such evaluation activities. Landlord agrees to execute an amendment to the Lease to reflect the addition of the Expansion Area to the Leased Premises, within thirty (30) days of receipt by Landlord, in a form which is recordable in the jurisdiction in which the Leased Premises is located. Until such time as Tenant exercises said option, if ever, Landlord hereby agrees to give Tenant no less than ninety (90) days prior notice prior to entering into a lease or other use or occupancy agreement pertaining to any portion of the Parent Parcel. During the foregoing ninety (90) day period, Tenant may elect to designate the Expansion Area by written notice to Landlord, in which case such Expansion Area would no longer be available for Landlord to lease to a third party.
5. **Landlord and Tenant Acknowledgments.** Except as modified herein, the Lease and all provisions contained therein remain in full force and effect and are hereby ratified and affirmed. In the event there is a conflict between the Lease and this Amendment, this Amendment shall control. The Parties hereby agree that no defaults exist under the Lease. To the extent Tenant needed consent and/or approval from Landlord for any of Tenant's activities at and uses of the site prior to the Effective Date, Landlord's execution of this Amendment is and shall be considered consent to and approval of all such activities and uses. Landlord hereby acknowledges and agrees that Tenant shall not need consent or approval from, or

to provide notice to, Landlord for any future activities at or uses of the Leased Premises, including, without limitation, subleasing and licensing to additional customers, installing, modifying, repairing, or replacing improvements within the Leased Premises, and/or assigning all or any portion of Tenant's interest in this Lease, as modified by this Amendment. Tenant and Tenant's sublessees and customers shall have vehicular (specifically including truck) and pedestrian access to the Leased Premises from a public right of way on a 24 hours per day, 7 days per week basis, together with utilities services to the Leased Premises from a public right of way. Upon request by Tenant and at Tenant's sole cost and expense but without additional consideration owed to Landlord, Landlord hereby agrees to promptly execute and return to Tenant building permits, zoning applications and other forms and documents, including a memorandum of lease, as required for the use of the Leased Premises by Tenant and/or Tenant's customers, licensees, and sublessees. Landlord hereby appoints Tenant as Landlord's attorney-in-fact coupled with an interest to prepare, execute and deliver land use and zoning and building permit applications that concern the Leased Premises, on behalf of Landlord with federal, state and local governmental authorities, provided that such applications shall be limited strictly to the use of the Leased Premises as a wireless telecommunications facility and that such attorney-in-fact shall not allow Tenant to re-zone or otherwise reclassify the Leased Premises or the Parent Parcel. The terms, provisions, and conditions of this Section shall survive the execution and delivery of this Amendment.

6. **Non-Compete.** During the original term, any Existing Renewal Terms, and/or any New Renewal Terms of this Lease, Landlord shall not sell, transfer, grant, convey, lease, and/or license by deed, easement, lease, license or other legal instrument, an interest in and to, or the right to use or occupy any portion of the Parent Parcel to any person or entity directly or indirectly engaged in the business of owning, acquiring, operating, managing, investing in or leasing wireless telecommunications infrastructure (any such person or entity, a "**Third Party Competitor**") without the prior written consent of Tenant, which may be withheld, conditioned, and/or delayed in Tenant's sole, reasonable discretion.
7. **Limited Right of First Refusal.** Notwithstanding anything to the contrary contained herein, this paragraph shall not apply to any fee simple sale of the Parent Parcel from Landlord to any prospective purchaser that is not a Third Party Competitor. If Landlord receives an offer or desires to offer to: (i) sell or convey any interest (including, but not limited to, leaseholds or easements) in any real property of which the Leased Premises is a part to a Third Party Competitor or (ii) assign all or any portion of Landlord's interest in the Lease, as modified by this Amendment, to a Third Party Competitor (any such offer, the "**Offer**"), Tenant shall have the right of first refusal to purchase the real property or other interest being offered by Landlord in connection with the Offer on the same terms and conditions. If Tenant elects, in its sole and absolute discretion, to exercise its right of first refusal as provided herein, Tenant must provide Landlord with notice of its election not later than forty-five (45) days after Tenant receives written notice from Landlord of the Offer. If Tenant elects not to exercise Tenant's right of first refusal with respect to an Offer as provided herein, Landlord may complete the transaction contemplated in the Offer with the Third Party Competitor on the stated terms and price but with the express condition that such sale is made subject to the terms of the Lease, as modified by this Amendment. Landlord hereby acknowledges and agrees that any sale or conveyance by Landlord in violation of this Section is and shall be deemed to be null and void and of no force and effect. The terms, provisions, and conditions of this Section shall survive the execution and delivery of this Amendment.
8. **Landlord Statements.** Landlord hereby represents and warrants to Tenant that: (i) to the extent applicable, Landlord is duly organized, validly existing, and in good standing in the jurisdiction in which Landlord was organized, formed, or incorporated, as applicable, and is otherwise in good standing and authorized to transact business in each other jurisdiction in which such qualifications are required; (ii) Landlord has the full power and authority to enter into and perform its obligations under this Amendment, and, to the extent applicable, the person(s) executing this Amendment on behalf of

Landlord, have the authority to enter into and deliver this Amendment on behalf of Landlord; (iii) no consent, authorization, order, or approval of, or filing or registration with, any governmental authority or other person or entity is required for the execution and delivery by Landlord of this Amendment; (iv) Landlord is the sole owner of the Leased Premises and all other portions of the Parent Parcel; (v) to the best of Landlord's knowledge, there are no agreements, liens, encumbrances, claims, claims of lien, proceedings, or other matters (whether filed or recorded in the applicable public records or not) related to, encumbering, asserted against, threatened against, and/or pending with respect to the Leased Premises or any other portion of the Parent Parcel which do or could (now or any time in the future) adversely impact, limit, and/or impair Tenant's rights under the Lease, as amended and modified by this Amendment; (vi) so long as Tenant performs its obligations under the Lease, Tenant shall peaceably and quietly have, hold and enjoy the Leased Premises, and Landlord shall not act or permit any third person to act in any manner which would interfere with or disrupt Tenant's business or frustrate Tenant or Tenant's customers' use of the Leased Premises and (vii) the square footage of the Leased Premises is the greater of Tenant's existing improvements on the Parent Parcel or the land area conveyed to Tenant under the Lease. The representations and warranties of Landlord made in this Section shall survive the execution and delivery of this Amendment. Landlord hereby does and agrees to indemnify Tenant for any damages, losses, costs, fees, expenses, or charges of any kind sustained or incurred by Tenant as a result of the breach of the representations and warranties made herein or if any of the representations and warranties made herein prove to be untrue. The aforementioned indemnification shall survive the execution and delivery of this Amendment.

9. **Notices.** The Parties acknowledge and agree that Section 22 of the Lease is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date the notice address and requirements of the Lease, as modified by this Amendment, shall be controlled by this Section of this Amendment. All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein: to Landlord at: 50 Park Pl, Brisbane, CA 94005; to Tenant at: Attn.: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn.: Legal Dept., 116 Huntington Avenue, Boston, MA 02116. Any of the Parties, by thirty (30) days prior written notice to the others in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.
10. **Counterparts.** This Amendment may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the same counterpart. Furthermore, the Parties may execute and deliver this Amendment by electronic means such as .pdf or similar format. Each of the Parties agrees that the delivery of the Amendment by electronic means will have the same force and effect as delivery of original signatures and that each of the Parties may use such electronic signatures as evidence of the execution and delivery of the Amendment by all Parties to the same extent as an original signature.
11. **Governing Law.** The Parties acknowledge and agree that Section 23(d) of the Lease is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date and notwithstanding anything to the contrary contained in the Lease and in this Amendment, the Lease and this Amendment shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.

12. **Waiver.** Notwithstanding anything to the contrary contained herein or in the Lease, in no event shall Landlord or Tenant be liable to the other for, and Landlord and Tenant hereby waive, to the fullest extent permitted under applicable law, the right to recover incidental, consequential (including, without limitation, lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.
13. **Tenant's Securitization Rights; Estoppel.** The Parties acknowledge and agree that the fourth and fifth sentence of Section 9(a), the last sentence of Section 17, and Section 19(c) of the Lease are hereby deleted in their entirety and are of no further force and effect. From and after the Effective Date the obligations of the Parties with respect to Tenant's securitization rights shall be controlled by this Section of this Amendment. Landlord hereby consents to the granting by Tenant of one or more leasehold mortgages, collateral assignments, liens, and/or other security interests (collectively, a "**Security Interest**") in Tenant's interest in the Lease, as amended, and all of Tenant's property and fixtures attached to and lying within the Leased Premises and further consents to the exercise by Tenant's mortgagee ("**Tenant's Mortgagee**") of its rights to exercise its remedies, including without limitation foreclosure, with respect to any such Security Interest. Landlord shall recognize the holder of any such Security Interest of which Landlord is given prior written notice (any such holder, a "**Holder**") as "Tenant" hereunder in the event a Holder succeeds to the interest of Tenant hereunder by the exercise of such remedies. Landlord further agrees to execute a written estoppel certificate within thirty (30) days of written request of the same by Tenant or Holder.
14. **Taxes.** The Parties acknowledge and agree that Section 12 of the Lease is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date the obligations of the Parties with respect to taxes shall be controlled by this Section of this Amendment. During the term of the Lease, as modified by this Amendment, Landlord shall pay when due all real property, personal property, and other taxes, fees and assessments attributable to the Parent Parcel, including the Leased Premises. Tenant hereby agrees to reimburse Landlord for any personal property taxes in addition to any increase in real property taxes levied against the Parent Parcel, to the extent both are directly attributable to Tenant's improvements on the Leased Premises (but not, however, taxes or other assessments attributable to periods prior to the Effective Date), provided, however, that Landlord must furnish written documentation (the substance and form of which shall be reasonably satisfactory to Tenant) of such personal property taxes or real property tax increase to Tenant along with proof of payment of same by Landlord. Anything to the contrary notwithstanding, Tenant shall not be obligated to reimburse Landlord for any applicable taxes unless Landlord requests such reimbursement within one (1) year after the date such taxes became due. Landlord shall submit requests for reimbursement in writing to: *American Tower Corporation, Attn: Landlord Relations, 10 Presidential Way, Woburn, MA 01801* unless otherwise directed by Tenant from time to time. Subject to the requirements set forth in this Section, Tenant shall make such reimbursement payment within forty-five (45) days of receipt of a written reimbursement request from Landlord. Tenant shall pay applicable personal property taxes directly to the local taxing authority to the extent such taxes are billed and sent directly by the taxing authority to Tenant. If Landlord fails to pay when due any taxes affecting the Parent Parcel as required herein, Tenant shall have the right, but not the obligation, to pay such taxes on Landlord's behalf and: (i) deduct the full amount of any such taxes paid by Tenant on Landlord's behalf from any future payments required to be made by Tenant to Landlord hereunder; (ii) demand reimbursement from Landlord, which reimbursement payment Landlord shall make within thirty (30) days of such demand by Tenant; and/or (iii) collect from Landlord any such tax payments made by Tenant on Landlord's behalf by any lawful means.
15. **Conflict/Capitalized Terms.** The Parties hereby acknowledge and agree that in the event of a conflict between the terms and provisions of this Amendment and those contained in the Lease, the terms and

provisions of this Amendment shall control. Except as otherwise defined or expressly provided in this Amendment, all capitalized terms used in this Amendment shall have the meanings or definitions ascribed to them in the Lease. To the extent of any inconsistency in or conflict between the meaning, definition, or usage of any capitalized terms in this Amendment and the meaning, definition, or usage of any such capitalized terms or similar or analogous terms in the Lease , the meaning, definition, or usage of any such capitalized terms in this Amendment shall control.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

LANDLORD:

**The City of Brisbane,
a municipal corporation**

Signature: _____

Print Name: _____

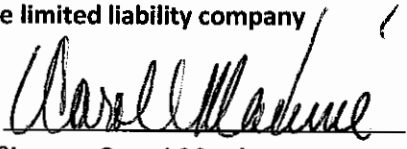
Title: _____

Date: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

TENANT:

SpectraSite Communications, LLC,
a Delaware limited liability company

Signature: 

Print Name: **Carol Maxime**

Title: _____

Date: **Senior Counsel, US Tower**

2/11/2020

EXHIBIT A

This Exhibit A may be replaced at Tenant's option (with Landlord's approval, which shall not be unreasonably withheld, delayed, or conditioned upon any additional consideration) as described below.

PARENT PARCEL

Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's improvements thereon (with Landlord's approval, which shall not be unreasonably withheld, delayed, or conditioned).

The Parent Parcel consists of the entire legal taxable lot owned by Landlord as described in a deed (or deeds) to Landlord of which the Leased Premises is a part thereof with such Parent Parcel being described below.

SITUATE IN THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA:

PARENT PARCEL: PROVIDED PER OLD REPUBLIC TITLE COMMITMENT NO.

01-11068635-01T EFFECTIVE DATE 11/5/2010. (AS SURVEYED)

LOT 1 AND PORTIONS OF LOTS 2, 5 AND 6, BLOCK "B", MAP OF TRACT NO. 778 CROCKER INDUSTRIAL PARK, UNIT NO. 1, FILED JUNE 5, 1959 IN BOOK 51 OF MAPS,

PAGE 35, SAN MATEO COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWESTERLY LINE OF LOT 1, BLOCK "B" WITH THE SOUTHWESTERLY LINE OF VALLEY DRIVE, AS SAID LDT, BLOCK AND DRIVE ARE SHOWN ON THE MAP ABOVE REFERRED TO; THENCE ALONG THE SOUTHWESTERLY LINE OF VALLEY DRIVE, NORTH 61° 17' 44" WEST 97.00 FEET TO THE OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS "PARCEL ONE" IN DEED FROM FOREMOST-MCKESSON, INC. TO CONNECTICUT GENERAL MORTGAGE AND REALTY INVESTMENTS, RECORDED APRIL 21, 1972, IN BOOK 6133, OFFICIAL RECORDS, PAGE 350; THENCE LEAVING SAID LINE OF VALLEY DRIVE, ALONG THE SOUTHEASTERLY LINE OF SAID "PARCEL ONE" AND THE SOUTHWESTERLY EXTENSION THEREOF, SOUTH 28°42'16" WEST 250.00 FEET TO THE INTERSECTION THEREOF WITH THE NORTHEASTERLY LINE OF "PARCEL TWO," AS DESCRIBED IN AFORESAID DEED; THENCE S 61°17'44" EAST ALONG SAID NORTHEASTERLY LINE (SAID LINE BEING PARALLEL WITH AND DISTANT 10 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM THE SOUTHWESTERLY LINE OF LOTS 2 AND 1 IN SAID BLOCK "B"), 272.00 FEET TO THE: NORTHEASTERLY CORNER OF SAID "PARCEL TWO" IN THE NORTHWESTERLY LINE OF PARK LANE, AS SAID LANE IS SHOWN ON AFORESAID MAP; THENCE ALONG SAID NORTHWESTERLY LINE OF PARK LANE, NORTH 28° 42' 16" EAST 230.00 FEET; THENCE ALONG A CURVE TO THE LEFT, WITH A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 90° 00' 00" FOR AN ARC DISTANCE OF 31.92 FEET TO A POINT IN THE AFORESAID SOUTHWESTERLY LINE OF VALLEY DRIVE; THENCE ALONG LAST SAID SOUTHWESTERLY LINE, NORTH 61° 17' 4 4" WEST 252.00 FEET TO THE POINT OF BEGINNING.

LEASED PREMISES

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant (with Landlord's approval, which shall not be unreasonably withheld, delayed, or conditioned upon any additional consideration).

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements. The square footage of the Leased Premises shall be the greater of: (i) the land area conveyed to Tenant in the Lease; (ii) Tenant's (and Tenant's customers) existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

ACCESS AND UTILITIES

The access and utility easements include all easements of record as well that portion of the Parent Parcel currently utilized by Tenant (and Tenant's customers) for ingress, egress and utility purposes from the Leased Premises to and from a public right of way.

Exhibit B

Rent Schedule

<u>Term Begin</u>	<u>Term End</u>	<u>Monthly Rent</u>
7/16/2019	7/15/2020	\$2,393.60
7/16/2020	7/15/2021	\$2,513.28
7/16/2021	7/15/2022	\$2,638.94
7/16/2022	7/15/2023	\$2,770.89
7/16/2023	7/15/2024	\$2,909.44
7/16/2024	7/15/2025	\$3,054.91
7/16/2025	7/15/2026	\$3,207.65
7/16/2026	7/15/2027	\$3,368.04
7/16/2027	7/15/2028	\$3,536.44
7/16/2028	7/15/2029	\$3,713.26
7/16/2029	7/15/2030	\$3,898.92
7/16/2030	7/15/2031	\$4,093.87
7/16/2031	7/15/2032	\$4,298.56
7/16/2032	7/15/2033	\$4,513.49
7/16/2033	7/15/2034	\$4,739.16
7/16/2034	7/15/2035	\$4,976.12
7/16/2035	7/15/2036	\$5,224.93
7/16/2036	7/15/2037	\$5,486.18
7/16/2037	7/15/2038	\$5,760.48
7/16/2038	7/15/2039	\$6,048.51
7/16/2039	7/15/2040	\$6,350.93
7/16/2040	7/15/2041	\$6,668.48
7/16/2041	7/15/2042	\$7,001.90
7/16/2042	7/15/2043	\$7,352.00
7/16/2043	7/15/2044	\$7,719.60
7/16/2044	7/15/2045	\$8,105.58
7/16/2045	7/15/2046	\$8,510.86
7/16/2046	7/15/2047	\$8,936.40
7/16/2047	7/15/2048	\$9,383.22
7/16/2048	7/15/2049	\$9,852.38
7/16/2049	7/15/2050	\$10,345.00
7/16/2050	7/15/2051	\$10,862.25
7/16/2051	7/15/2052	\$11,405.36
7/16/2052	7/15/2053	\$11,975.63
7/16/2053	7/15/2054	\$12,574.41
7/16/2054	7/15/2055	\$13,203.13
7/16/2055	7/15/2056	\$13,863.29
7/16/2056	7/15/2057	\$14,556.46
7/16/2057	7/15/2058	\$15,284.28
7/16/2058	7/15/2059	\$16,048.49

EXHIBIT C

FORM OF MEMORANDUM OF LEASE

Prepared by and Return to:

American Tower
10 Presidential Way
Woburn, MA 01801
Attn: Land Management/Anthony G. DePasquale, Esq.
ATC Site No: 311013
ATC Site Name: BRISBANE CA
Assessor's Parcel No(s): 005-201-130

Prior Recorded Lease Reference:

Book _____ Page _____
Document No: _____
State of California
County of San Mateo

NO Prior Recorded Reference

MEMORANDUM OF LEASE

This Memorandum of Lease (the "**Memorandum**") is entered into as of the latter signature date hereof, by and between **the City of Brisbane, a municipal corporation ("Landlord")** and **SpectraSite Communications, LLC, a Delaware limited liability company ("Tenant")**.

NOTICE is hereby given of the Lease (as defined and described below) for the purpose of recording and giving notice of the existence of said Lease. To the extent that notice of such Lease has previously been recorded, then this Memorandum shall constitute an amendment of any such prior recorded notice(s).

1. **Parent Parcel and Lease.** Landlord is the owner of certain real property being described in **Exhibit A** attached hereto and by this reference made a part hereof (the "**Parent Parcel**"). Landlord (or its predecessor-in-interest) and Tenant (or its predecessor-in-interest) entered into that certain Communications Site Lease Agreement dated May 26, 2004 (as the same may have been amended from time to time, collectively, the "**Lease**"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Lease (such portion of the Parent Parcel so leased along with such portion of the Parent Parcel so affected, collectively, the "**Leased Premises**"), which Leased Premises is also described on **Exhibit A**.
2. **Expiration Date.** Subject to the terms, provisions, and conditions of the Lease, and assuming the exercise by Tenant of all renewal options contained in the Lease, the final expiration date of the Lease would be July 15, 2059. Notwithstanding the foregoing, in no event shall Tenant be required to exercise any option to renew the term of the Lease.
3. **Leased Premises Description.** Tenant shall have the right, exercisable by Tenant at any time during the original or renewal terms of the Lease, to cause an as-built survey of the Leased Premises to be prepared and, thereafter, to replace, in whole or in part, the description(s) of the Leased Premises set forth on **Exhibit A** with a legal description or legal descriptions based upon such as-built survey. Upon Tenant's request, Landlord shall execute and deliver any documents reasonably necessary to effectuate such replacement, including, without limitation, amendments to this Memorandum and to the Lease.

Site No: 311013
Site Name: BRISBANE CA

4. **Right of First Refusal.** There is a right of first refusal in the Lease.
5. **Effect/Miscellaneous.** This Memorandum is not a complete summary of the terms, provisions and conditions contained in the Lease. In the event of a conflict between this Memorandum and the Lease, the Lease shall control. Landlord hereby grants the right to Tenant to complete and execute on behalf of Landlord any government or transfer tax forms necessary for the recording of this Memorandum. This right shall terminate upon recording of this Memorandum.
6. **Notices.** All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein: to Landlord at: 50 Park Pl, Brisbane, CA 94005; to Tenant at: Attn.: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn.: Legal Dept., 116 Huntington Avenue, Boston, MA 02116. Any of the parties hereto, by thirty (30) days prior written notice to the other in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.
7. **Counterparts.** This Memorandum may be executed in multiple counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.
8. **Governing Law.** This Memorandum shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.
9. **Option to Expand.** There is an option to expand the Leased Premises in the Lease.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have each executed this Memorandum as of the day and year set forth below.

LANDLORD

**The City of Brisbane,
a municipal corporation**

Signature: _____
Print Name: _____
Title: _____
Date: _____

ALL CAPACITY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____

On _____, before me, _____, personally
(print name of notary)
appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of officer

[SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

TENANT

SpectraSite Communications, LLC,
a Delaware limited liability company

Signature: *Carol Maxime*

Print Name: Carol Maxime

Title: _____

Date: Senior Counsel, US Tower
2/11/2020

WITNESS

Signature: *Will Snider*

Print Name: Will Snider

Signature: *Justin Tompkins*

Print Name: Justin Tompkins

WITNESS AND ACKNOWLEDGEMENT

Commonwealth of Massachusetts

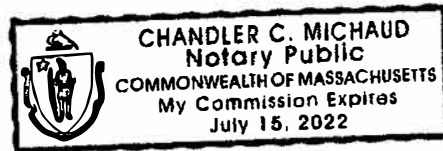
County of Middlesex

On this 11th day of February, 2020, before me, the undersigned Notary Public, personally appeared Carol Maxime, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Chandler C. Michaud
Notary Public
Print Name: Chandler C. Michaud
My commission expires: 7/15/2022



[SEAL]

EXHIBIT A

This Exhibit A may be replaced at Tenant's option (with Landlord's approval, which shall not be unreasonably withheld, delayed, or conditioned upon any additional consideration) as described below.

PARENT PARCEL

Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's improvements thereon (with Landlord's approval, which shall not be unreasonably withheld, delayed, or conditioned).

The Parent Parcel consists of the entire legal taxable lot owned by Landlord as described in a deed (or deeds) to Landlord of which the Leased Premises is a part thereof with such Parent Parcel being described below.

SITUATE IN THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA:

PARENT PARCEL: PROVIDED PER OLD REPUBLIC TITLE COMMITMENT NO.

01-11068635-01T EFFECTIVE DATE 11/5/2010. (AS SURVEYED)

LOT 1 AND PORTIONS OF LOTS 2, 5 AND 6, BLOCK "B", MAP OF TRACT NO. 778 CROCKER INDUSTRIAL PARK, UNIT NO. 1, FILED JUNE 5, 1959 IN BOOK 51 OF MAPS,

PAGE 35, SAN MATEO COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWESTERLY LINE OF LOT 1, BLOCK "B" WITH THE SOUTHWESTERLY LINE OF VALLEY DRIVE, AS SAID LDT, BLOCK AND DRIVE ARE SHOWN ON THE MAP ABOVE REFERRED TO; THENCE ALONG THE SOUTHWESTERLY LINE OF VALLEY DRIVE, NORTH 61° 17' 44" WEST 97.00 FEET TO THE OF THAT CERTAIN PARCEL OF LAND DESCRIBED AS "PARCEL ONE" IN DEED FROM FOREMOST-MCKESSON, INC. TO CONNECTICUT GENERAL MORTGAGE AND REALTY INVESTMENTS, RECORDED APRIL 21, 1972, IN BOOK 6133, OFFICIAL RECORDS, PAGE 350; THENCE LEAVING SAID LINE OF VALLEY DRIVE, ALONG THE SOUTHEASTERLY LINE OF SAID "PARCEL ONE" AND THE SOUTHWESTERLY EXTENSION THEREOF, SOUTH 28° 42' 16" WEST 250.00 FEET TO THE INTERSECTION THEREOF WITH THE NORTHEASTERLY LINE OF "PARCEL TWO," AS DESCRIBED IN AFORESAID DEED; THENCE S 61° 17' 44" EAST ALONG SAID NORTHEASTERLY LINE (SAID LINE BEING PARALLEL WITH AND DISTANT 10 FEET SOUTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM THE SOUTHWESTERLY LINE OF LOTS 2 AND 1 IN SAID BLOCK "B"), 272.00 FEET TO THE: NORTHEASTERLY CORNER OF SAID "PARCEL TWO" IN THE NORTHWESTERLY LINE OF PARK LANE, AS SAID LANE IS SHOWN ON AFORESAID MAP; THENCE ALONG SAID NORTHWESTERLY LINE OF PARK LANE, NORTH 28° 42' 16" EAST 230.00 FEET; THENCE ALONG A CURVE TO THE LEFT, WITH A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 90° 00' 00" FOR AN ARC DISTANCE OF 31.92 FEET TO A POINT IN THE AFORESAID SOUTHWESTERLY LINE OF VALLEY DRIVE; THENCE ALONG LAST SAID SOUTHWESTERLY LINE, NORTH 61° 17' 4 4" WEST 252.00 FEET TO THE POINT OF BEGINNING.

LEASED PREMISES

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant (with Landlord's approval, which shall not be unreasonably withheld, delayed, or conditioned upon any additional consideration).

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements. The square footage of the Leased Premises shall be the greater of: (i) the land area conveyed to Tenant in the Lease; (ii) Tenant's (and Tenant's customers) existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

ACCESS AND UTILITIES

The access and utility easements include all easements of record as well that portion of the Parent Parcel currently utilized by Tenant (and Tenant's customers) for ingress, egress and utility purposes from the Leased Premises to and from a public right of way.

RESOLUTION NO. 2020-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE APPROVING THE SECOND AMENDMENT TO A COMMUNICATION SITE LEASE AGREEMENT WITH SPECTRASITE COMMUNICATIONS, LLC AND AUTHORIZING THE MAYOR TO SIGN THE SECOND AMENDMENT

Whereas, on May 26, 2004, the City entered into a lease with MetroPCS for a portion of City property at 50 Park Place for a communication site, which lease included the right of the lessee to install a cell site monopole and communication antennae at a location immediately to the right of the sidewalk leading to the Dog Park from the City Hall's parking lot; and

Whereas, the City approved a First Amendment to the lease in 2010 that, in part, permitted the lessee to sublease a portion of the monopole for other communication companies' antennae in exchange for a \$20,000 payment to the City; and

Whereas, the lease has now been assigned to SpectraSite Communications, LLC ("SpectraSite"); and

Whereas, SpectraSite has requested options to extend the lease from 2029 to 2059 (should all the options be exercised) and has requested an additional 500 square feet of leased property, in exchange for a one-time payment of \$100,000 and a fixed, annual five percent rent increase over the term of the lease; and

Whereas, one of the City's Community Goals is to work with businesses to provide for the City's economic vitality; and

Whereas, the leased area and the area to be leased if the Second Amendment is approved will not impact City operations; and

Whereas, the City will receive valuable consideration if it approves the Second Amendment given the \$100,000 payment that the City will receive and the guaranteed five percent annual rent increases for the leased area that the City will receive.

NOW, THEREFORE, the City Council of the City of Brisbane resolves as follows:

Section 1: The City consents to, approves, and authorizes the Mayor to sign the Second Amendment to Communications Site Lease Agreement with SpectraSite Communications, LLC, a copy of which is on file with the City Clerk's Office.

Section 2. The City Clerk is authorized to record the Memorandum of Lease, a copy of which is attached to this Resolution.

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Section 3. This Resolution shall be effective immediately upon its adoption.

Terry O'Connell, Mayor
City of Brisbane

* * * *

I, the undersigned, hereby certify that the foregoing Resolution No. 2020-15 was adopted by the City Council of the City of Brisbane at a regular meeting held on February 20, 2020 by the following vote:

AYES;

NOES:

ABSENT:

ABSTAIN:

Ingrid Padilla, City Clerk
City of Brisbane