

RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement (“Agreement”) dated this 10th day of April, 2023, is between the **CITY OF PORT ST. LUCIE**, a Florida municipal corporation (“**City**” or “**Owner**”), whose address is 121 S.W. Port St. Lucie Blvd., Port St. Lucie, Florida 34984, and Crown Castle South, LLC, a Delaware limited liability company (“**Crown Castle**”), whose address is c/o Crown Castle USA, Inc., a Pennsylvania corporation, Attn: Legal Department, 200 Corporate Drive, Canonsburg, Pennsylvania 15317. City and Crown Castle may be referred to individually as a “party” or collectively as “the parties.”

WHEREAS, Crown Castle requests this Agreement authorizing Crown Castle to enter onto Owner’s real property lying, located and being in St. Lucie County, Florida, and known as 450 SW Thornhill Drive, Port St. Lucie, Florida (the “**Property**”); and

WHEREAS, Crown Castle has requested to enter upon the Property for the sole purpose of locating a crane on the Property, which will be used to remove a building from Crown Castle’s leased cell tower site.

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

1. **Recitals.** The foregoing “whereas” clauses are hereby incorporated by reference.
2. **Definitions.**
3. “Effective Date”. The date that this Agreement is signed by the last party to sign it, as indicated by the date below each party’s signature.
4. “Governmental Authority”. Any federal, state, county, municipal, or other governmental department, entity, authority, commission, board, bureau, court, or agency; any insurance underwriting board or insurance inspection bureau; and any other body exercising similar functions.
5. “Governmental Requirement”. Any law, enactment, statute, code, ordinance, rule, regulation, judgment, decree, writ, injunction, order, permit, certificate, license, authorization, agreement, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered, or issued, applicable to the Property or this Agreement.
6. **Terms.** Owner permits Crown Castle to access and enter upon the Property for the sole purpose of locating a crane on the Property, which will be used to remove a building from Crown Castle’s leased cell tower site. This Agreement is effective commencing on the Effective Date and shall automatically terminate four-five (45) days after the Effective Date.

7. **Right of Entry.** Crown Castle’s entry upon the Property shall at all times comply with all applicable Governmental Requirements. Upon the termination of this Agreement, Crown Castle shall restore and repair any damage caused by Crown Castle’s entry upon the Property, including but not limited to, the filling in of any excavations or holes, repairing or replacing any landscaping, and the removal of all tools and equipment. Crown Castle’s obligation to restore the Property and repair any damage shall survive the termination of this Agreement.

8. **Insurance Required.** Prior to any entry upon the Property, Crown Castle must provide the City with a certificate of insurance and endorsement satisfactory to the City, in its sole discretion. Crown Castle shall, on a primary basis and at its sole expense, agree to maintain in full force and effect at all times during this Agreement, insurance coverage, limits, including endorsements, as described herein. The requirements contained herein are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Crown Castle under this Agreement. The parties agree and recognize that it is not the intent of the City that any insurance policy/coverage that it may obtain pursuant to any provision of this Agreement will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City of Port St. Lucie and the City shall not be obligated to provide any insurance coverage other than for the City of Port St. Lucie or extend its sovereign immunity pursuant to Section 768.28, Florida Statutes, under its self-insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage, any obligation to name the City of Port St. Lucie as an additional insured under any other insurance policy, or otherwise protect the interests of the City of Port St. Lucie as specified in this Agreement.

8.1 **Workers’ Compensation Insurance & Employer’s Liability.** Crown Castle shall procure and maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers’ Liability must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, and \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Should scope of work performed by Crown Castle qualify its employee for benefits under Federal Workers’ Compensation Statute (example, U.S. Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.

8.2 **Commercial General Liability Insurance.** Crown Castle shall maintain Commercial General Liability insurance issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage	\$100,000 any 1 fire
Medical expense	\$10,000 any 1 person

8.3 Additional Insured. The Certificate(s) and policies shall clearly state that coverage required by this Agreement has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents and employees as Additional Insured added to its Commercial General Liability policy. The name for the Additional Insured endorsement issued by the insurer shall read "**the City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents.**" The policies shall be specifically endorsed to provide thirty (30) day written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the City is amended during this Agreement to exceed the above limits, Crown Castle shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City. Copies of the Additional Insured endorsements including Completed Operations coverage shall be attached to the Certificate of Insurance.

8.4 Policy Endorsements. Except as to Workers' Compensation and Employers' Liability, An Additional Insured endorsement must be attached to the certificate of insurance and must include coverage for on-going and Completed Operations (should be ISO CG2037 & CG2010) under the General Liability policy. Products & Completed Operations coverage to be provided for a minimum of five (5) years from the date of the termination of this Agreement (as hereafter defined). Coverage is to be written on an occurrence form basis. Coverage shall apply on a primary and non-contributory basis. A per project aggregate limit endorsement should be attached. Defense costs are to be in addition to the limit of liability. A waiver of subrogation shall be provided in favor of the City. Coverage for the hazards of explosion, collapse, and underground property damage (XCU) must also be included when applicable to the work performed. No exclusion for mold, silica or respirable dust or bodily injury/property damage arising out of heat, smoke, fumes, or hostile fire shall apply. Coverage shall extend to independent contractors and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

8.5 Waiver of Subrogation. Crown Castle shall agree, by entering into this Agreement, to a Waiver of Subrogation for each required policy. When required by the insurer or should a policy condition not permit an Insured to enter into a pre-loss contract to waive subrogation without an endorsement, then Crown Castle shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy where a condition to the policy specifically prohibits such an endorsement, or voids coverage should Crown Castle enter into such a contract on a pre-loss basis.

8.6 Deductibles. All deductible amounts shall be paid for and be the responsibility of Crown Castle for any and all claims under this Agreement. Where an SIR or deductible exceeds \$5,000, the City reserves the right, but not obligation, to review and request a copy of the bidder's most recent annual report or audited financial statement.

8.7 Contracts and Subcontractors. It shall be the responsibility of Crown Castle to ensure that all independent contractors and/subcontractors comply with the same insurance requirements as listed herein, including Products & Completed Operations coverage for a minimum of five (5) years from the date of the termination of this Agreement (as herein defined). It will be the responsibility of Crown Castle to obtain Certificates of Insurance from all contractors and

subcontractors listing the City as an Additional Insured, without the language when required by written contract. If contractor, independent contractor, or subcontractor maintain higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by contractor/independent contractor/subcontractor.

8.8 **Umbrella.** Crown Castle may satisfy the minimum limits required above for either Commercial General Liability or Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit. When required by the insurer, or when Umbrella or Excess Liability is written on Non-Follow Form," the City shall be endorsed as an "Additional Insured.

9. **Indemnification.** Crown Castle agrees to indemnify, defend and hold harmless the City, its officers, directors, employees, contractors, subcontractors, agents from any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees and court costs), brought forth on account of injuries to or the death of any person or damage to property, or both, arising from or connected with Crown Castle's or its partners, members, agents, officers, employees and contractors (collectively "Crown Castle Parties"), entry upon the Property, or any other act or omission of Crown Castle or Crown Castle Parties pertaining to any entry upon the Property. Nothing in this paragraph shall be considered to increase or waive any limits of liability or waive any immunity afforded to the City by the Florida Statutes, case law, or any other Governmental Requirement. The provisions of this section shall survive the termination of this Agreement.

10. **Release.** Crown Castle hereby releases and forever discharges the City, its elected officials, officers, directors, employees, contractors, assigns and agents, from any and all liabilities, claims, demands, damages, actions, costs or expenses of any kind or nature (including but not limited to all attorney and expert fees and costs) arising out of or in any way connected with Crown Castle's entry upon the Property.

11. **Miscellaneous.**

11.1 This Agreement constitutes the entire agreement between the City and Crown Castle, and neither party is relying upon any statements made by any person which are not expressly reflected in this Agreement.

11.2 This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in the Nineteen Judicial Circuit in and for St. Lucie County, Florida.

11.3 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the signatories are duly authorized agents of the City and Crown Castle and have executed and delivered this Agreement as of the date set forth above.

CROWN CASTLE

By: Edmund Gilmore

Print Name: Edmund Gilmore

Title: Priject Manager - Verticals

Date: 4/10/2023

CITY OF PORT ST. LUCIE,
a Florida municipal corporation

By: _____
Jesus Merejo, City Manager

Date: _____