

McCULLOUGH, GOLDBERGER & STAUDT, LLP  
ATTORNEYS AT LAW  
1311 MAMARONECK AVENUE, SUITE 340  
WHITE PLAINS, NEW YORK

FRANK S. McCULLOUGH, JR.  
JAMES STAUDT  
LINDA B. WHITEHEAD  
SETH M. MANDELBAUM  
PATRICIA W. GURAHIAN  
KEVIN E. STAUDT  
STEVEN M. WRABEL

10605

(914) 949-6400

FAX (914) 949-2510

WWW.MCCULLOUGHGOLDBERGER.COM

FRANK S. McCULLOUGH (1905-1998)  
EVANS V. BREWSTER (1920-2005)

AMANDA L. BROSY  
MEREDITH A. LEFF

November 8, 2021

CHARLES A. GOLDBERGER  
EDMUND C. GRAINGER, III  
MICHAEL A. ZAMAT  
COUNSEL

Honorable Chairman Robert Boyles and Members of the Planning Board  
Honorable Chairman Terry Metcalfe and Members of the Zoning Board of Appeals  
Town of Amenia Town Hall  
4988 Route 22  
Amenia, New York 12501

Re: SBA 2012 TC Assets, LLC  
Telecommunications Tower Renewal  
Route 44, Amenia, NY

Dear Members of the Planning Board and Zoning Board of Appeals:

This firm represents SBA 2012 TC Assets, LLC (“SBA”, or the “Applicant”), with respect to its Special Use Permit, area variance and Site Plan renewal requests for the existing telecommunications tower and facility (the “Facility”) located on an approximately 10.5-acre parcel at Route 44<sup>1</sup> within the RA “Rural Agricultural” Zoning District and identified as Grid Number 13200-7067-00-572230-0000. SBA is the lessee of the Property.

By resolution dated January 9, 2002, the Zoning Board of Appeals (the “Zoning Board”) granted a Special Use Permit to Nextel of New York, Inc., for installation of the Facility and an area variance to permit construction of a one-hundred twenty (120’) foot monopole, fifty (50’) feet higher than the maximum height permitted under the Zoning Law of the Town of Amenia (the “Zoning Law”). The Planning Board followed by granting site plan approval for the Facility on February 7, 2002.

Pursuant to the Zoning Ordinance of the Town of Amenia (the “Zoning Ordinance”) as well as the terms of the aforementioned resolutions, the approvals were granted for a period of ten (10) years. Accordingly, approval renewals were sought and granted by both boards on December 15, 2011 for TowerCo Assets LLC (“TowerCo”), Nextel’s successor in interest. SBA subsequently acquired the TowerCo Asset LLC entity on October 1, 2012.

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<sup>1</sup> The Facility is situated in the wooded area just north of the “hairpin” turn on Route 44.

Since its installation, the Facility has enabled Nextel (now Sprint Spectrum L.P., d/b/a “T-Mobile Sprint”) to provide federally licensed wireless telecommunications services to the Town of Amenia. To maintain these essential public services, the Applicant respectfully requests renewal of its Special Use Permit, Site Plan, and area variance approvals for an additional ten-year period.

In support of our client’s request, we are providing to you the following documents for your consideration<sup>2</sup>, together with checks for the required application fee and escrow account:

- 1) 2002 resolutions of approval from the Planning Board and Zoning Board of Appeals;
- 2) 2011 renewal resolutions from the Planning Board and Zoning Board of Appeals;
- 3) Authorization of Agent;
- 4) Special Permit / Site Plan Application;
- 5) Land Use Application;
- 6) Agricultural Data Statement;
- 7) Escrow Agreement;
- 8) Landscaping Inspection Report from Taconic Site Design & Landscape Architecture, dated October 1, 2012 (the “Landscaping Inspection Report”);
- 9) Photographs of the Property showing current conditions;
- 10) Reclamation Agreement, dated November 18, 2012 by and between Carlton P. Bates and Merium B. Bates as tenants by entirety (the Property owners), and the Town of Amenia, recorded as document number 02-2011-6002 on December 21, 2011; and
- 11) Copy of the \$30,000 bond, dated January 4, 2012.

For the reasons set forth herein, the Applicant respectfully submits that the requested renewals should be granted.

### **Site Plan Approval Renewal**

A Site Plan determination requires the Planning Board to consider the following relevant criteria: (1) layout and design of the project area to preserve the natural features of the site to the maximum extent practicable; (2) landscaping to buffer or integrate the site with the surrounding area, as appropriate; (3) parking and circulation to minimize traffic entering existing roads; and (4) miscellaneous standards, including the location of structures to avoid causing noise and light from interfering with the use of adjacent properties. Zoning Ordinance §121-65.D.

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<sup>2</sup> An affidavit from a licensed radio frequency engineer, as well as as-built drawings are being generated and shall be provided in the coming weeks.

The Planning Board granted initial Site Plan approval on February 11, 2002, noting that “the applicant has complied with all requirements of the Town of Amenia Code.” February 7, 2002 Planning Board Resolution, p.1-2. There have been no changes to the Facility that would give cause for any change in this finding.

### **Special Use Permit Renewal**

Section 121-46 of the Town of Amenia Zoning Ordinance (the “Zoning Ordinance”) regulates telecommunication towers and facilities, and imposes a number of regulations and restrictions on such a Special Permit use in order to protect the Town’s character while allowing for the safe provision of wireless services to the community. See Zoning Ordinance §121-46.A.

In approving the Facility in 2002, the Planning and Zoning Boards undertook a thorough analysis of the proposed improvements in accordance with the Town Code. Following a period of extensive research and investigation, including the adoption of a Negative Declaration under SEQRA by the Planning Board as Lead Agency, the Zoning Board granted Special Permit approval for the Facility, citing a list of factual findings on which it based its approval, including the Facility’s remote location within a densely wooded area, the ability of the Facility to blend into its natural surroundings, the absence of environmental pollution or waste produced on site, and the Facility’s compliance with all applicable FCC health and safety standards. See January 9, 2002 Zoning Board Resolution, p. 6-10. These findings led the Zoning Board to conclude that the Facility would “not impair the public health, safety and general welfare of the Town”, and would “encourage appropriate use of land consistent with the purpose of the Telecommunications Law.” Id., p. 14.

The factors upon which the Zoning Board relied in its grant of Special Permit approval support renewal of said permit for the Facility. There remains a strong need for the Facility to continue providing essential and reliable wireless service to the Town of Amenia. The Facility currently provides service to areas along Route 44, Route 22, Route 343, and West Main Street in Amenia, and hands off to existing sites within the wireless network, including sites in Millerton to the north and Wassaic to the south.

The Facility continues to be operated in a manner that protects the public health, safety, and welfare of the community, and causes minimal inconvenience to the environment. There is no environmental pollution, such as noise, light, vibration, odors, smoke or hazardous waste generated by the Facility. The Facility produces minimal visual impact due to the dense vegetation and natural topography of the area. In addition, there is no traffic impact attributable to the unmanned Facility, as maintenance visits are infrequent. These findings were made by the Zoning Board in its 2002 approvals and were again incorporated into its 2011 renewal. See December 15, 2011 Zoning Board Resolution, p. 4-5. Additionally, the Facility remains in full compliance with the applicable standards and regulations set forth in the Zoning Ordinance.

Renewal of the Special Permit will further the goals of the Zoning Ordinance by preserving the “character and appearance of the Town, while simultaneously providing . . . for the safe provision . . . of wireless telecommunications towers . . .” Zoning Ordinance § 121-46.A. The Applicant respectfully submits that, for the foregoing reasons, a second ten-year renewal of its Special Permit should be granted, so that wireless telecommunication services may continue to be provided to the Town.

The Facility remains in compliance with the applicable Zoning Ordinance requirements, and has complied with all of criteria of the 2002 approvals. The design and layout of the Facility is minimally intrusive to the environment and preserves the natural surroundings and on-site vegetation to the maximum extent practicable while simultaneously meeting the wireless service needs of the community. Supplementary landscaping and screening techniques have adequately integrated the Facility into the surrounding densely wooded area. The on-site parking and gravel access road connecting to Route 44 have provided access to the unmanned Facility for maintenance and emergency response vehicles while causing no adverse impact on pedestrian or vehicular traffic. Finally, the Facility does not produce any “smoke, gas, odor, heat, dust, noise above ambient levels, fumes, vibrations, or flashing lights.” See January 9, 2002 Zoning Board Resolution.

The Facility is also largely compliant with the conditions of the 2011 Site Plan, Special Permit and variance renewals as follows:

1. *The Condition contained in the 2002 Approval requiring installation of permahedge material and/or green winged slats in the chain link fence and gate is hereby rescinded . . . . The ZBA and Planning Board concur that more effective screening of the Facility can be obtained through the natural plantings required under the original landscaping plan, as modified and supplemented by this Resolution.*
2. *Within 90 days from the date of this Resolution, Applicant shall file a supplemental landscaping plan with the ZBA and Planning Board. That plan shall include: (a) replacement of all dead or dying plantings depicted on the original landscape plan, and (b) additional natural landscaping and plantings designed to improve the screening of the Facility . . . . The Applicant shall complete the work required by that plan within a reasonable time period to be specified by the ZBA and Planning Board.*

With regard to conditions 1 and 2 above, the Applicant’s predecessor submitted a Landscape Plan, which was subsequently approved by the Town. The Property has been naturally planted as required. See Landscaping Inspection Report.

Landscaping has generally been maintained on the Property. However, in SBA’s most recent visit to the site, it was determined that certain existing plantings will need to be replaced. See enclosed photographs of the Property. The Applicant plans to address this during the next possible planting season, to ensure newly installed landscaping will survive.

3. *Applicant shall cause a generator to be installed on the Property within one year of the date of this Resolution. The generator shall have sufficient capacity. Within 90 days the Applicant shall file written specifications with the Planning Board and ZBA.*

TowerCo provided the Town with specifications for a generator on the Property, which were approved. A permit application was then filed by TowerCo on behalf of Nextel-Sprint (now T-Mobile Sprint), which permit was subsequently issued on May 7, 2012, prior to SBA's involvement with the Property. A concrete generator pad and generator were subsequently installed on the Property.

However, in inspecting the Property for this renewal, it has come to SBA's attention that the generator has been removed from the Property. Now that this issue has been identified, SBA is working to have the required generator re-installed on the Property.

4. *Within 30 days from the date of this Resolution, the Applicant shall cause the November 18, 2011 Reclamation Agreement between Carlton Bates, Merum Bates, and the Town to be recorded in the County Clerk's office. The Applicant shall provide the Town with proof of such recording.*
5. *The Applicant shall pay a \$30,000 reclamation bond. Applicant shall file the bond in form acceptable to the Town Attorney within 60 days of this Resolution.*

As required by conditions 4 and 5, the Reclamation Agreement was recorded, and a \$30,000 reclamation bond was put in place. See enclosed copies of the Reclamation Agreement and bond.

It is respectfully submitted that for the foregoing reasons, the Applicant is entitled to renewal of its Site Plan and Special Permit approvals to continue meeting the wireless service needs of the public.

### **Area Variance Renewal**

#### **Governing Law**

The role of the Zoning Board of Appeals is to provide a safety valve and flexibility from the rigid enforcement of the zoning ordinance. Salkin, New York Zoning Law and Practice §§ 27:08 & 27:09 [4<sup>th</sup> ed. 2021]. The New York Court of Appeals has held the standard for granting an area variance is a balancing test, weighing the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood or community. Sasso v. Osgood, 86 N.Y.2d 374 [Ct App 1995].

Section 267-b of New York Town Law sets forth the elements that a zoning board is to consider in determining whether an area variance should be granted, as follows:

1. whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
2. whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

3. whether the requested area variance is substantial;
4. whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
5. whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

The law further requires that after an analysis of the application considering the five factors, the Zoning Board is to undertake a balancing test, taking into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community, if any.

Further, the Zoning Board is to review each application on its own facts on a case-by-case basis. This case has a combination of facts that makes it unique. It is clear in this instance that when the Zoning Board balances the benefit to the Applicant in this matter against any detriment to the surrounding neighborhood, the benefits must prevail as there is no detriment to the community by the granting of the requested variance.

#### Analysis of the Request for Area Variance Renewal

1. No Undesirable Change to the Character of the Neighborhood.

There will be no negative change to the neighborhood from granting the requested variance. The monopole has existed at its current height of one-hundred twenty (120') feet since the Facility was initially installed nearly 20 years ago to provide wireless telecommunications service to the Town of Amenia. The Facility is tucked into a remote and heavily wooded area and is blended into the natural surroundings of the Property to the maximum extent practicable so as to minimize visual impact. In fact, if the variance were to be denied, wireless services provided to the Town would be significantly impaired, resulting in a negative impact to Amenia residents. Thus, maintaining the monopole at its existing height would not produce an undesirable change to the character of the neighborhood, but will serve to maintain the services provided to the residents of the Town.

2. No Feasible Alternative.

The additional fifty (50') feet above the maximum permitted height in an RA zone of seventy (70') feet is imperative for the Facility to remain technically feasible. A seventy (70') foot monopole would be incapable of transmitting radio frequency signals over the tall trees and rolling hills surrounding the Facility and would cause gaps in wireless coverage.<sup>3</sup> In addition, an exhaustive analysis of alternative locations conducted prior to the Zoning Board's approval of the area variance demonstrated the site on Route 44 to be the only feasible location that would meet Sprint Nextel's service needs. See January 9, 2002 Zoning Board Resolution, p.4-5. The variance requested is thus the minimum necessary to enable the Applicant to continue its provision of

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<sup>3</sup> SBA has engaged a radio frequency engineer to confirm this analysis. The RF engineer's report shall be submitted to the Town prior to the opening of the public hearing on this matter.

wireless services to the public, and there is therefore no feasible alternative to pursue other than renewal of the area variance.

3. The Requested Area Variance Renewal Is Not Substantial.

The Board must consider the magnitude of a requested variance in light of the relative impact of the variance. When determining if a variance is substantial, the actual circumstances and effects of the proposed variances shall be considered, rather than reliance on general statistics or measurements. See Niceforo v. Zoning Board of Appeals of Appeals of the Town of Huntington, 537 N.Y.S.2d 579 [2d Dept. 1989]; Kleinhaus v. Zoning Board of Appeals of the Town of Cortlandt, N.Y.L.J. March 26, 1996, p. 37, col. 7 [Sup Ct Westchester Co. 1996]. The totality of the actual facts is the relevant gauge that must be employed.

In both 2002 and 2011, the Zoning Board found that there would be no undesirable change or detriment to nearby properties. There has been no change in circumstances that would change this analysis. As such, there are no impacts that would cause the requested variance to be considered substantial.

4. No Adverse Impact on the Environmental Conditions of the Neighborhood.

The Facility does not generate any kind of waste, nor any type of environmental pollution, such as vibrations, noise, light, electrical discharges, odors, smoke, or dirt. See January 9, 2002 Zoning Board Resolution, p. 7. The Facility is also unmanned, and thus produces no impact on pedestrian or vehicular traffic in the area. Id., p. 9. Moreover, the Facility already exists on the Property, so there will not even be temporary impacts from construction work. Therefore, renewal of the area variance will not adversely impact the environmental conditions in the neighborhood.

5. The Difficulty is Not Self-Created.

The necessity of a variance is created by the topographical characteristics of the area, which limit the locations in which a telecommunications facility can functionally operate. The Facility is surrounded by dense vegetation, tall mature trees, and various hills, requiring the monopole to maintain its existing height in order to provide wireless service to the entire community. Therefore, the difficulty is not self-created.

Furthermore, even if the difficulty were deemed to be self-created, statutory law specifically provides that this factor alone “shall not necessarily preclude the granting of the area variance”. Town Law § 267-b; see also Quintana v Bd. of Zoning Appeals of Inc. Vil. of Muttontown, 120 AD3d 1248, 1249 [2d Dept 2014](finding that even though there was evidence that an applicant’s hardship was self-created and that the requested variance was significant, there was no evidence that granting the variance would result in a detriment to the neighborhood).

The Applicant respectfully submits that, for the foregoing reasons, it is entitled to a renewal of its area variance, since the required balancing of the benefit to the Applicant against any detriment to the neighborhood tips in Applicant's favor. As revealed in the foregoing analysis, there will be no detriment, and in fact no change at all, to the neighborhood if the variance is renewed.

We look forward to discussing this matter at the joint Zoning Board of Appeals and Planning Board Meeting on November 15, 2021, at which we respectfully request that a joint public hearing be scheduled for a mutually convenient date in December.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steve Wrabel". The signature is written in a cursive, somewhat stylized font.

Steven Wrabel

Encl.

cc: Paul Van Cott, Esq.  
SBA 2012 TC Assets, LLC

**TOWN OF AMENIA ZONING BOARD OF APPEALS  
NEXTEL OF NEW YORK, INC.  
SPECIAL USE PERMIT  
AREA VARIANCE - HEIGHT  
January 9, 2002**

WHEREAS, Nextel of New York, Inc. d/b/a Nextel Communications (the "Applicant"), has submitted an application to the Town of Amenia Zoning Board of Appeals on April 12, 2001 for a special use permit and area variance approval for a telecommunications tower pursuant to §6.60 *et seq.* "Telecommunications Towers and Telecommunication Facilities" (Telecommunications Law) and §6.70 *et seq.* of the Town of Amenia Zoning Code ("Zoning Code"); and

WHEREAS, under the laws of the State of New York, cellular telephone companies are afforded the status of public utilities and are therefore judged against a unique standard than that applied to the usual application ; and

WHEREAS, under current case law a zoning board may not exclude a utility from a community when the utility has shown a need for its facilities; and

WHEREAS, the approximately 10.53 acre premises is located in the R-A (Agricultural Density) Zoning District, and is known as Section 7067, Block 00, Lot 572230 on property owned by Carlton P. Bates and Merium R. Bates and is situated at Route 44 just north of the "hairpin" turn; and

WHEREAS, the property is currently undeveloped and wooded; and

WHEREAS, applicant proposes to construct a 120-foot monopole with antennas

mounted thereon and related equipment and improvements at the base thereof (the "Facility"), for the provision of personal wireless services to the Town of Amenia; and

WHEREAS the action is a Type I action pursuant to SEQR and the Planning Board was designated lead agency; and

WHEREAS the proposed facility is permitted in the R-A Zone by special use permit from the Zoning Board of Appeals and site plan approval from the Planning Board; and

WHEREAS the proposed exceeds the 70-foot height limitation provided for in the Telecommunications Law for the R-A zone; and

WHEREAS, on August 20, 2001 and September 24, 2001, a duly noticed joint public hearing was held by the Planning Board and Zoning Board of Appeals as required by the Town of Amenia Zoning Code, at which time all persons wishing to speak on the application were provided an opportunity to speak; and

WHEREAS, on June 5, 2001, the Dutchess County Department of Planning and Development issued a response to the Zoning Referral pursuant to New York State General Municipal Law §239-m, indicating that the proposal for the Facility was a "matter of local concern"; and

WHEREAS, the Town of Amenia retained Mark Hutchins, an independent telecommunications consultant, to review the technical aspects of the proposed Facility and he submitted a reported dated August 8, 2001 supplemented in letters dated August 23, 2001 and October 12, 2001 (collectively the "Hutchins Report"), attached as Exhibit 1, that "the Nextel proposal is reasonable for meeting a demonstrated need for personal wireless services"; and

WHEREAS, a duly noticed, public crane test was held on April 28, 2001, in order to assess the visual impact of the proposed Facility from 12 viewpoints in the surrounding area, and a Visual Analysis, dated April 2001, including photos from the crane test and computer-generated renderings of the proposed Facility, was reviewed by the Planning Board and Zoning Board of Appeals; and

WHEREAS, in support of its application, the Applicant has submitted the following materials: An "Environmental Assessment Form" (EAF) Parts 1 and 2; a Visual EAF Addendum for the project dated 2/7/2001 and revised 5/6/01, 6/25/01, and 7/19/01; a Part 3 EAF dated 7/01; a Memorandum in Support of Application dated 4/10/01; an Affidavit from Radio Frequency Engineer Timothy Mulverhill, dated 4/10/01, including a copy of Nextel's FCC License and computer-generated coverage maps demonstrating the Applicant's significant gap in coverage in the Town of Amenia and documentation that the proposed Facility would remedy said gap in coverage; an Affidavit of real estate consultant Fred Krinsky dated 2/26/01; a Correspondence of Nextel Real Estate Manager Esme Lombard, dated 01/01/01; an Analysis of the Radio Frequency Environment in the Vicinity of the Site prepared by Bell Laboratories and dated December 11, 2000; a Pre-Filing FAA Summary Report dated 2/9/01; a Structural Analysis from Structural Engineer Antonio A. Gualtieri, P.E. dated 2/9/01; a Summary of Findings regarding noise emissions from Tectonic Engineering Consultants, P.C., dated 01/01/01, and updated 6/26/01 and 7/26/01; a Site Plan dated 2/7/01 and revised 7/5/01 and 10/3/01; a Visual Analysis dated 4/01 and revised 7/01 to include alternative designs; supplementary radio frequency

data dated 7/5/01; an Agricultural Data Statement dated 7/18/01; a revised A/C Noise Location Report prepared by Tectonic Engineering Consultants P.C. dated 7/18/01; various newspaper articles and press releases regarding the positive impact of cell phone technology on emergency 911 communications; a report from Edward J. Ferrarone, MAI of Lane Appraisals, Inc., Real Estate Valuation Consultants dated 9/12/01; a Pre-Filing FAA Summary Report dated 9/6/01; an Affidavit of Radio Frequency Engineer Timothy Mulverhill dated 9/14/01; an Affidavit of Real Estate Consultant, Fred Krinsky, dated 9/14/01; a supplementary submission on alternative locations and a revised landscape plan dated 10/04/01; a correspondence from Real Estate Consultant Fred Krinsky, dated 9/26/01; an Affidavit of Radio Frequency Engineer Timothy Mulverhill dated 10/3/01, including additional computer-generated maps demonstrating coverage from alternative locations; a tall-structures inventory; a Revised Landscaping Plan dated 10/3/01; correspondence from Tectonic Engineering Consultants, P.C. regarding alternative locations on properties owned by John Segalla and Higher Ground Country Club Funding dated 10/04/01; and correspondence dated 11/29/01, regarding the infeasibility of additional alternative locations, and approvals received from the New York State Department of Transportation and State Historic Preservation Office; and

WHEREAS, the Applicant did an exhaustive analysis of alternative locations for the Facility, including but not limited to: (1) the existing power lines which cross Route 44; (2) the cement silos on Route 44 (west Route 22); (3) the "blue silos" on Route 343; (4) Welsh Sanitation on Route 44 (west of Route 22); (5) Karmann Auto body on Route 343 (east of

Route); (6) the Sheriff's Substation on Route 22; (7) the Old Town Dump/Transfer Station Site on Route 22; (8) the "Troutbeck" property on Rattlesnake Mountain (east of Route 22), off of Yellow City Road; (9) the existing tower on Silver Mountain, off of Perrotti Road in the Town of Northeast; (10) the "Segalla" property on Silo Ridge; and (11) the Silo Ridge Country Club property on Silo Ridge. These alternative sites were all infeasible due to topography, lack of road access, and/or the unwillingness of landowners, or due to greater potential environmental impacts than the proposed site; and

WHEREAS, the Amenia Fire Company expressed its "support for the proposed cell tower to be placed on the Carlton Bates property on Route 44 (DeLavargne Hill) in the Town of Amenia NY," and Nextel has agreed to provide space on the tower for the Amenia Fire Company's emergency communications antenna. (See Fire Company letter dated August 20, 2001); and

WHEREAS, the New York State Office of Historic Preservation concluded that the proposed Facility "will have No Effect upon cultural resources in or eligible for inclusion in the National Register of Historic Places" (See letter dated October 26, 2001); and

WHEREAS, on December 6, 2001, the Town of Amenia Planning Board, as Lead Agency under the State Environmental Quality Review Act, did issue a Negative Declaration, determining that the proposed action will not have a significant effect on the environment. A copy of the Negative Declaration is attached hereto and made a part hereof as Exhibit 2; and

WHEREAS, the Zoning Board of Appeals has considered the requirements of Section 6.52 of the Amenia Zoning Code and Section 6.55 of the Zoning Code and the Telecommunications Law;

NOW THEREFORE BE IT RESOLVED, that the Amenia Zoning Board of Appeals finds that the Applicant has submitted all applicable materials and met all applicable submission requirements as set forth in §6.64 and §6.65 and hereby grants the Special Use Permit and Area Variance and makes the following Findings of Fact:

#### **FINDINGS OF FACT**

1. The application has established the present need for the proposed tower in the various submissions and as confirmed in the Mark Hutchins' report.
2. The proposed Facility will be located in a remote area on the 10.5 acre wooded Property. The monopole will be painted brown below the tree line and remain galvanized steel above the tree line to incorporate the facility into the landscape. This will have less visual impact than other designs. The Applicant's landscaping plan will incorporate new evergreen plantings to provide additional screening along the north and south perimeter of the leased portion of the site containing the tower and related equipment cabinets, and the Applicant has agreed to plant a reasonable number of additional trees or provide additional screening on or near Mr. Murphy's property if Mr. Murphy so chooses. Proposed utility lines will be installed underground so as not to obstruct the overhead visual approach on Route 44.
3. The Facility will be in complete compliance with all applicable FCC health and safety standards. See Hutchins Report at p. 2. In addition, the Facility will not interfere with

existing household television or radio signals. See Hutchins Report at p.6 (concluding that interference "will be unlikely at this location.").

4. The report from Edward J. Ferrarone, MAI of Lane Appraisals, Inc., Real Estate Valuation Consultants ("Lane Report"), dated September 12, 2001, establishes based on sales data from homes in the vicinity of several existing wireless communications facilities (ranging in height from 120 to 185 feet) in Dutchess County, New York, "that the installation, presence and/or operation of the proposed facility, will not result in the diminution of property values or reduce the marketability of properties in the immediate area."

5. The proposed use will not generate any type of environmental pollution, including vibration, noise, light, electrical discharges, odors, smoke, dirt, refuse or irritants, on the property or adjacent properties or streets.

6. Adequate landscaping and screening to camouflage the Facility has been provided. As proposed on the Site Plan, green winged slats will be installed in the chain link fence and double gate securing the Facility, to further blend the base of the Facility into the existing vegetation. The base of the Facility will be screened because it is sited in a heavily wooded area and due to the topography of the area. Additional landscaping has also been proposed as noted in the Supplemental Landscaping Plan, prepared by Tectonic Engineering Consultants, P.C., dated 10/3/01, and as required by the Negative Declaration.

7. The proposed Facility will be located on a single parcel and will comply with the

minimum setback requirements of the R-A district, including the additional setback requirement necessary to preserve a safe "fall zone," equal to the height of the monopole.

8. The proposed Facility location is sited in an area of existing mature dense tree growth and understory vegetation in all directions, as well as in an area with a relatively steep topography of the Property and the surrounding area, which will effectively screen the facility from the surrounding area. See Negative Declaration at p. 2-3.

9. The proposed new telecommunications tower has been designed to accommodate future shared use by up to four (4) other providers of federally licensed wireless communications and local emergency services in order to minimize the overall number of new towers in the Town of Amenia. No FAA lighting or marking is required for the Facility.

10. The proposed one hundred twenty (120') foot height of the proposed Facility exceeds the 70-foot permitted, however, the proposed height is required to meet the service needs for Nextel and promote co-location. The Hutchins Report further supports this proposition in noting that lowering the antenna to any significant degree "seems unwise since so much of the communication path is through trees and other obstacles." See Hutchins Report at p. 4 and Figures A7-A9.

11. The proposed equipment shelter will have a neutral stone aggregate finish to blend with the natural surroundings, and complies with the 12 foot height restriction set forth in §6.66(3)(f). The emergency sign for the proposed Facility meets the requirements set forth in §6.66(3)(g). Additionally, there is no retail or commercial signage proposed in connection with the Facility.

12. As confirmed by the letter dated February 9, 2001, from Antonio A. Gualtieri, P.E. of Tectonic Engineering Consultants P.C., the proposed Facility has been designed to withstand overturning and failure, while supporting the antennas of Nextel and four (4) other federally licensed wireless carriers.
13. Existing on-site vegetation will be preserved to the maximum extent possible. Existing large trees will be protected during construction.
14. The Facility will not generate noise levels that are incompatible with a residential neighborhood. The distance from the required air conditioning units in the equipment shelter to the nearest residential structure of over 475 feet (located across Route 44), as well as the natural buffer provided by the existing vegetation on the Property, will prevent incompatible noise levels. See letter from Tammy L. Rossie of Tectonic Engineering Consultants P.C., dated 1/2/01, and the revised A/C Noise Location Report prepared by Tectonic Engineering Consultants P.C. dated 7/18/01.
15. Lighting will not be detected off site, since no FAA marking nor lighting is required. The only proposed exterior lighting consists of one (1) emergency light which shall be operated by motion detection, and the area of light coverage falls solely upon the Property.
16. The facility is unmanned and requires infrequent maintenance visits. Two parking spaces will be required and are adequate for the parking needs and provides adequate emergency and service access. By letter dated November 6, 2001, the State of New York Department of Transportation granted a Highway Work Permit for the new curb cut off of Route 44 for the access to the Facility. The Applicant proposes an improved gravel

access drive (in the current location of an existing unimproved drive) from Route 44, which shall be no less than twelve (12) feet in width in order to ensure safe passage by emergency response vehicles. Road construction will minimize ground disturbance and vegetation to minimize visual disturbance and soil erosion.

17. Utilities servicing the Facility are proposed to be installed underground as required by the Town of Amenia Code, and the proposed electrical and telephone hookups at the Facility will be installed to accommodate up to five (5) wireless carriers.

18. An 8 foot high security fence with 1 inch mesh, and a locked gate around the telecommunications tower and the accessory equipment at the base thereof, will be adequate to enclose and secure the Facility. In addition, the monopole climbing pegs will be removed up to 15 feet to further secure the Facility and prevent unauthorized access thereto.

AFTER CONSIDERING THE FOREGOING FACTS, NOW THEREFORE BE IT RESOLVED THAT THE ZONING BOARD OF APPEALS ADOPTS THE FOLLOWING CONCLUSIONS:

#### THE AREA VARIANCE

The Zoning Board of Appeals in making the determination hereby finds that the application meets the standards for the grant of a height variance as set forth in Section 267-b(3) of the New York State Town Law and Section 8.22 of the Town of Amenia Code to the extent that the same is not otherwise superseded by the State Town Law with respect to

area variances as well as the relaxed standard applicable to public utilities as set forth in the current case law.

The Board has weighed the benefit to the applicant to the variance permitting a 120-foot pole in the zone where only a 70 foot pole is permitted with respect to the detriment to the neighborhood or nearby properties and concludes:

1. An undesirable change in the character of the neighborhood will not be created nor will there be a detriment to the nearby properties for the following reasons:

A. The visual impact has been minimized due to landscaping, screening and topography as well as other measures such as the aforementioned underground utilities.

B. The Facility will comply with all applicable laws and standards, and will not adversely affect the public health, safety or the general welfare.

C. The Facility will not cause any interference with the frequencies of any radio, television, telephone or other uses. See Hutchins Report of August 8, 2001, at p.6 (concluding that interference "will be unlikely at this location.").

D. The Facility will serve the neighborhood and benefit the entire community, by offering a wireless telecommunications alternative, which is particularly well suited for responding to accidents, natural disasters, and for reporting medical emergencies and other dangers such as potential criminal activity.

E. The proposal will have no impact on pedestrian or vehicular traffic, since the proposed use is unmanned requiring infrequent maintenance visits.

F. The Facility will not produce any smoke, gas, odor, heat, dust, noise above

ambient levels, fumes, vibrations or flashing lights. The Facility will not generate solid waste, waste water or sewage, will not require water supply or waste disposal, and will not attract insects, vermin or other vectors.

G. No commercial nor retail signs are proposed.

H. There will be no substantial economic injury to the neighboring property due to the unique nature of the site in an area of mature trees, due to the distance from the neighboring properties and due to the steps taken to mitigate the visual impacts.

2. The benefit sought by the applicant cannot be achieved by any other method since the height of the Tower is necessary to provide an adequate level of service and will be necessary to foster the co-location as contemplated by the Telecommunications Law.

3. The variance requested is not substantial in light of the nature of the area and the minimal adverse effect it will have on adjoining properties. See Terry Rice, McKinney's Practice Commentaries, Town Law §267-b (McKinney's 1997-98 Supp.).

4. The proposed variance will not have an adverse effect or impact on the physical or environmental condition in the neighborhood or district due to the items mentioned above.

5. The proposed variance is clearly not self-created, but rather due to topographical factors, which limit the locations in which the Facility can be installed in order for Applicant to provide its mandated service. As set forth in the Mulverhill Affidavit, due to the height of the existing mature trees on the Property and the topography of the area, the Facility cannot comply with the 70 foot height restriction in the R-A district and still remedy Nextel's significant gap in coverage in Armenia.

6. This is the minimum variance necessary and adequate to accomplish the applicant's goals and to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

7. There are no methods for the Applicant to pursue, other than a variance, since the Mulverhill Affidavit demonstrates that at a permitted height of 70 feet, the Facility would not remedy the significant gap in Nextel's coverage due to topography of the area and the height of the existing trees on the Property. This conclusion is also reflected in the Hutchins Report, which states that, "[t]he height appears to be justified, particularly taking into account the goal of collocation." See Hutchins Report of August 8, 2001, at page 6 and Figures A7-A9. Therefore, the height of the monopole cannot be reduced to meet the height restriction imposed by §6.66(3)(d), which provides that the height of a telecommunication tower in a R-A district shall not exceed 70 feet from the natural ground level. Nor are there any other available alternative sites which would be feasible to pursue among the numerous alternatives, including existing structures and raw land evaluated by the Applicant. None of the alternative sites evaluated were feasible, due to topography, lack of road access, and/or the unwillingness of landowners, or due to greater potential environmental impacts than the proposed site as determined by the Planning Board.

#### SPECIAL USE PERMIT

The Zoning Board of Appeals finds that the Applicant meets the supplementary standards and regulations regarding special uses set forth in set forth in Section 6.52, 6.55 of the Amenia Zoning Code and the requirements of the Telecommunications Law based

on the following:

- A. The proposed use is a permitted special use.
- B. The proposed Facility has been designed, located and proposed to be operated so that the public health, safety, welfare and convenience is protected. The Facility will not impair the public health, safety and general welfare of the Town, since the Facility will be in complete compliance with all applicable FCC health and safety standards.
- C. The Facility will not cause substantial injury to the value of other property in the neighborhood where it is to be located.
- D. Adequate landscaping and screening is provided.
- E. Adequate off-street parking and loading is provided and egress is so designed as to cause minimum interference with traffic on abutting streets.
- F. The proposed Facility complies with all of the applicable regulations governing the R-A Zoning District (with the exception of the maximum tower height of 70 feet, from which the Applicant seeks an area variance as set forth above).
- G. The proposed Facility will encourage appropriate use of land consistent with the purpose of the Telecommunications Law.

#### CONDITIONS

As a condition of approval, the Applicant has agreed to submit the documents regarding removal and proof of insurance required by §6.66(11) and §6.66(12) of the Wireless Law prior to issuance of any building permit. The Applicant has agreed to the maintenance and inspection requirements set forth in §6.66(13) thereof.

Any increase in height of the tower, including addition of a whip antenna, requires a further variance.

Nextel will confer with Mr. Rosendale regarding additional, reasonable screening on or near his property if he so chooses. This will be addressed during site plan.

NOW THEREFORE BE IT RESOLVED, that the application of Nextel of New York, Inc. d/b/a Nextel Communications for a 50 foot height variance and for a special use permit is hereby granted for a period of (10) ten years as set forth in the Telecommunications Law and hereby authorizes issuance of a Building Permit and Certificate of Occupancy to the Applicant for such above described premises upon receipt by the Applicant of final site plan approval from the Planning Board, and compliance with all other local laws and ordinances of the Town of Amenia, including the conditions as set forth herein.

Motion made by Katie Loughlin, seconded by James Devine.

Harry Clark, Chairman	<u>yes</u>
Norm Cayea	<u>yes</u>
James Devine	<u>yes</u>
E. John Quinn	<u>yes</u>
Katie Loughlin	<u>yes</u>

AYES \_\_\_\_\_  
NAYS \_\_\_\_\_

Whereupon the resolution was declared adopted by the Town of Amenia Zoning Board.

By: *Harry Clark*  
*Harry Clark/Chairman*

11.1.02  
Date

**received**  
 1/14/02  
*LA...*  
 filed with the Town Clerk 1/14/02  
 CC: CEO  
 T.B.

AMENIA PLANNING BOARD  
RESOLUTION GRANTING SITE PLAN APPROVAL  
NEXTEL OF NEW YORK INC.

FILE COPY  
ORIGINAL

Resolution offered by Planning Board Member Annie Sariford

WHEREAS, NEXTEL OF NEW YORK, Inc. d/b/a Nextel Communications has applied to the Town of Amenia Planning Board for site plan approval for a telecommunications tower on wooded and undeveloped property known as Section 7067, Block 00, Lot 572230, on property in the R-A zone owned by Carlton P. Bates and Merium R. Bates situated at Route 44 just north of the "hairpin turn"; and

WHEREAS, the applicant plans to install a 120-foot monopole with antennas and related equipment at the base thereof to provided personal wireless services to the Town of Amenia; and

WHEREAS, the Planning Board as Lead Agency in the review of this application, after examining the environmental impacts and considering any feasible alternatives, issued a negative declaration on December 6, 2001; and

WHEREAS, prior to issuance of the negative declaration, the Planning Board and Zoning Board held combined public hearings on the site plan, special use permit and area variance on August 20, 2001 and September 24, 2001, at which time all persons wishing to speak on the application were provided an opportunity to speak; and

WHEREAS, the Zoning Board of Appeals has granted the Special Use Permit and Area Variance on January 9, 2002; and

WHEREAS, the applicant has complied with all requirements of the Town of

Amenia Code,

NOW THEREFORE, BE IT RESOLVED, that the Planning Board hereby grants approval of the Site Plan subject to the conditions set forth in this resolution:

1. The applicant should supply documents to be approved by the Town Attorney, including any agreements to be recorded, regarding the removal and proof of insurance required by § 6.66(11) of the Town of Amenia Telecommunications Law.
2. The applicant's reclamation plan must be approved by the Town Engineer.
3. The following changes should be shown on the Site Plan"
  - A. Painting of the monopole (brown below the tree line, with galvanized steel remaining above the tree line);
  - B. Based on the advice of the Town Engineer, instead of green winged slats to be installed in the chain link fence and double gate securing the facility, a less visually disruptive "perma hedge" material should be used in the chain link fence and gate.
  - C. A neutral stone aggregate finish should be specified for the equipment shelter.
4. The applicant will provide a bond to secure removal and reclamation.
5. The applicant will provide a certificate of insurance pursuant to §6.66(12) with the Town and the owner named as additional insured.
6. Nextel will post a \$10,000.00 bond to secure additional reasonable on site landscaping in the vicinity of the compound to screen the Murphy and Rosendale

properties. The landscaping will be determined prior to issuance of a Certificate of Occupancy. Upon application for the Certificate of Occupancy, Mr. Murphy and Mr. Rosendale will have 30 days to work with Nextel to agree upon any landscaping modifications. In the event the application for the Certificate of Occupancy is made and it is not the planting season, the applicant will return to the Planning Board for a modification of the landscaping plan. The performance bond will be held to insure maintenance of the landscaping and will be released one year from the issuance of the Certificate of Occupancy. A note will be added to C-2 to refer to this condition.

NOW THERE BE IT FURTHER RESOLVED that the Planning Board Chairman shall not sign the final site plan until all requirements have been met.

RESOLUTION SECONDED BY PLANNING BOARD MEMBER JAMES WALSH.

The votes were as follows:

- Mr. Chris Coon            YES
- Mr. Jay Dedrick         ABSENT
- Mr. William Flood      YES
- Ms. Anne Sanford      YES
- Mr. James Walsh        YES
- Mr. Anthony Robustelli YES
- Mr. George Fenn, Chairman YES

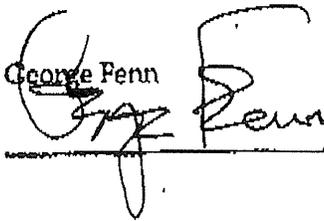
WHEREUPON, the resolution was declared adopted by the Town Planning Board of the Town of Amenia.

CERTIFICATION

I, George Fenn, the duly qualified and acting Chairman for the Planning Board of the Town of Amenia, Dutchess County, New York, do hereby certify that attached hereto is a true and correct copy of an extract from the minutes of a regular adjourned meeting of the Planning Board of the Town of Amenia, held on the 7<sup>th</sup> day of February, 2002, and that the resolution set forth herein is a true and correct copy of the resolution of the Planning Board of said Town adopted at said meeting.

I FURTHER CERTIFY that, pursuant to Section 103 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the said Town, this 11<sup>th</sup> day of February, 2002.

George Fenn  
  
Chairman

*[Faint handwritten notes]*

**RESOLUTION**

TOWN OF AMENIA ZONING BOARD OF APPEALS  
SPECIAL USE PERMIT AND HEIGHT VARIANCE  
RENEWAL APPLICATION

December 15, 2011

**WHEREAS**, on or about January 9, 2002, the Town of Amenia ZBA granted a special use permit and area variance authorizing Nextel of New York, Inc., to construct a telecommunications tower and related facilities on a wooded portion of a 10.53 acre parcel of land abutting Route 44, owned by Carlton P. Bates and Merium R. Bates, bearing Tax ID No. 7067-00-572230 (the "Property");

**WHEREAS**, the approved telecommunications tower and related facilities include a 120-foot monopole with antennas mounted thereon, and related equipment and improvements at the base thereof, subject to the conditions of approval set forth therein (the "Facility"); and

**WHEREAS**, on or about February 7, 2002, the Town of Amenia Planning Board granted site plan approval authorizing construction of the Facility on the Property, subject to the conditions of approval set forth therein; and

**WHEREAS**, the 2002 special use permit, area variance, and site plan approval are hereinafter collectively referred to as the "2002 Approval", a copy of which is annexed hereto as Exhibit "A"; and

**WHEREAS**, the 2002 Approval was granted for a period of ten (10) years, as provided by the Town of Amenia Telecommunications Tower and Telecommunications Facilities Law (now codified as section 121-46 of the Town of Amenia Town Code); and

**WHEREAS**, Nextel's successor-in-interest to the Facility is TowerCo Assets, LLC, d/b/a TowerCo ("Applicant") and

**WHEREAS**, Applicant has filed an application with the ZBA and Planning Board seeking renewal of the 2002 Approval (the "Renewal Application"); and

**WHEREAS**, the 2002 Approval runs with the land, and Applicant has submitted a written Authorization of Agent executed by Carlton P. Bates and Merium R. Bates as the owners of the Property, authorizing Applicant to make this Renewal Application; and

**WHEREAS**, the Applicant has submitted the following materials in support of the Renewal Application,: Land Use Application; Project Description; Authorization of Agent; Agricultural Data Statement and Map; Short Environmental Assessment Form dated October 14, 2011; Introductory correspondence of October 14, 2011 from McCullough, Goldberger & Staudt, LLP, as attorneys for Applicant; Affidavit of radio frequency engineer Robert Bertona dated October 11, 2011; Supplemental

correspondence of November 10, 2011 from McCullough, Goldberger & Staudt, LLP, as attorneys for Applicant; Supplement Affidavit of radio frequency engineer Robert Bertona dated November 9, 2011; Coverage plot results demonstrating the telecommunications coverage provided by the Facility at the current tower height of 120', and of a reduced tower height of 70'; Coverage plot results demonstrating the telecommunications coverage provided by the municipal cell tower owned by the Town of Amenia at that maximum height available; and a set of 12 "As-Built" project plans signed by a licensed professional engineer or land surveyor and printed by Tectonic Engineering and Surveying Consultants, P.C.; and

**WHEREAS**, the ZBA and Planning Board retained radio frequency engineer Mark Hutchins as an independent consultant to review the Renewal Application for conformity with FCC Guidelines, and for an analysis of whether there were any changes in circumstances relating to technology and/or coverage areas that would have an impact on the Renewal Application, including whether it would be possible to utilize the municipal cell tower owned by the Town of Amenia rather than granting the Renewal Application, and whether it would be possible to reduce the existing tower to a height of 70-feet; and

**WHEREAS**, Mark Hutchins acted as the Town's independent consultant during the review of the project application that was the subject of the 2002 Approval, and conducted an extensive study of terrain and propagation as outlined in his August 8, 2001 "Amenia, New York Wireless Facility Analysis"; and

**WHEREAS**, Mark Hutchins produced an updated report dated November 23, 2011 based upon his review of the Renewal Application, his August 8, 2001 report, and his substantial expertise in the fields of radio frequency design and analysis and FCC guidelines; and

**WHEREAS**, the November 23, 2011 Hutchins report concludes that: (a) the Applicant has shown continued need to provide coverage using the Facility, (b) the Applicant is unable to provide adequate coverage using a 70-foot tower on the Property, (c) the Applicant cannot utilize the municipal cell tower either by itself or in combination with a shorter tower on the Property, and (d) the Applicant has demonstrated that it will comply with FCC radio frequency guidelines; and

**WHEREAS**, on or about October 24, 2011, the ZBA and Planning Board referred the Renewal Application to the Dutchess County Department of Planning Development as required by General Municipal Law section 239-m; and

**WHEREAS**, on or about November 1, 2011, the Dutchess County Department of Planning Development reported that the Renewal Application is a "Matter of Local Concern" that has no significant county-wide or inter-community impact; and

**WHEREAS**, on or about October 19, 2011, the Planning Board declared its intent to act as lead agency for the coordinated review of the Renewal Application pursuant to the State Environmental Quality Review ACT ("SEQRA"); and

**WHEREAS**, on or about October 19, 2011, the ZBA consented to the Planning Board declaration of intent to act as lead agency for the SEQRA review of the Renewal Application; and

**WHEREAS**, on or about December 1, 2011, the Planning Board and ZBA conducted a properly noticed joint public hearing to review the Renewal Application; and

**WHEREAS**, prior to such joint public hearing, the Planning Board and ZBA caused notice of that public hearing to be published, posted, circulated and/or mailed as required by the Town of Amenia Town Code, the New York State Town Law, and the New York State Agriculture and Markets Law; and

**WHEREAS**, at and prior to such joint public hearing, the Planning Board and ZBA accepted such written and/or verbal comments regarding the Renewal Application as members of the public might seek to make, including without limitation the concerns and objections of a neighboring property owner documented in his written submissions and in the minutes of the Planning Board and ZBA proceedings; and

**WHEREAS**, on or about December 8, 2011, the Planning Board, as lead agency for the SEQRA review of the Renewal Application, issued a negative declaration based upon its determination that the Renewal Application will not have any significant adverse impacts on the environment; and

**WHEREAS**, the ZBA has carefully reviewed and considered the Renewal Application in the context of: the 2002 Approval; the personal observations of the members of the ZBA; the comments and recommendations that the ZBA has received from its radio frequency consultant, engineering consultant, and legal consultant; the written comments that the ZBA has received and the comments that were made at the public hearing and other meetings of the ZBA and Planning Board; the comments and recommendations made by members of the Planning Board during the joint review process; and the response that the ZBA has received from the Dutchess County Department of Planning and Development; and

**WHEREAS**, the ZBA has thoroughly reviewed the Renewal Application, and has considered it in the context of the requirements of the applicable Town of Amenia Zoning Law and the New York State Town Law, including without limitation the provisions of the Zoning Law relating to special use permit for a telecommunications tower and facilities, and the standards of the Zoning Law and Town Law for granting an area variance; and

**WHEREAS**, the Town Engineer has reviewed the Renewal Application and the existing \$18,700 reclamation bond, and has evaluated the adequacy of that bond in light of (1) the increase in reclamation costs over the last ten (10) years, and (2) the additional reclamation costs associated with the removal of the generator required by this Resolution; and

**WHEREAS**, the Town Engineer has concluded that the amount of the reclamation bond should be increased to \$30,000; and

**WHEREAS**, the ZBA concludes that there has been no material change in circumstances since the 2002 Approval was granted, and that the reliable evidence presented during the ZBA's review of the Renewal Application confirms that coverage gaps would result if the existing tower height was reduced or the existing antennas were co-located on the municipal cell tower; and

**WHEREAS**, the ZBA concludes that there is no evidence of any repeated, willful violations of the 2002 Approval that would create an unacceptable threat of future injury to health or the environment; and

**WHEREAS**, the ZBA concludes that the Applicant has demonstrated substantial compliance with the conditions of the 2002 Approval, and that the Applicant has also provided adequate assurances of compliance with the Conditions contained in the 2002 Approval, as modified or supplemented by the Conditions contained in this Resolution; and

**WHEREAS**, the ZBA concludes that the Conditions contained in the 2002 Approval, as modified or supplemented by this Resolution, are reasonable conditions and restrictions that are directly related to and incidental to the special use permit and area variance,

**NOW THEREFORE BE IT RESOLVED**, that the ZBA hereby adopts and incorporates by reference the January 9, 2002 special use permit and area variance, including without limitation the "Findings of Fact", the "Area Variance" and "Special Use Permit" conclusions, and the "Conditions", except as modified or supplemented by this Resolution.

**BE IT FURTHER RESOLVED**, that the ZBA hereby renews the existing special use permit and area variance requested in the Renewal Application, for the reasons stated in this Resolution, in the November 23, 2011 Hutchins Report, and in the 2002 Approval, including without limitation the Findings and Conclusions set forth in the 2002 Approval, as supplemented by this Resolution.

**BE IT FURTHER RESOLVED**, that in addition to the "Findings of Fact" and "Special Use Permit" and "Area Variance" conclusion contained in the 2002 Approval, the ZBA hereby adopts the following Supplemental Findings of Fact and Conclusions in support of its determination to grant the special use permit and area variance renewals requested in the Renewal Application:

1. There is a present need to provide continued coverage using the existing Facility.
2. Adequate coverage can not be provided by reducing the height of the existing tower.
3. Adequate coverage can not be provided by requiring co-location of antennas on the municipal cell tower, whether such co-location is on the

municipal tower alone or in combination with a reduced-height tower on the Property.

4. The Applicant has adequately demonstrated that it will comply with FCC radio frequency guidelines.

5. The Applicant has substantially complied with the Conditions of the 2002 Approval. There is no evidence of any repeated, willful violations that would create an unacceptable threat of future injury to health or the environment.

6. The Applicant has adequately demonstrated that it will comply with the Conditions contained in the 2002 Approval, as modified or supplemented by the Conditions contained in this Resolution.

7. The "As-Built" plans signed by a licensed professional engineer or land surveyor and printed by Tectonic Engineering and Surveying Consultants, P.C. demonstrate that the base of the existing tower is more than 120-feet from the neighboring property lines. Inadequate evidence was produced in support of assertions that were made to the contrary during the public review process.

8. The building permit was issued for the existing tower no later than June 2003. The time in which to file an appeal to the ZBA from the issuance of that permit has long since expired, whether measured from: (a) the date the building permit was actually issued, or (b) the date that neighboring property owners were on constructive notice that this permit had been issued, or (c) the May 16, 2007 Decision and Order of United States Court of Appeals for the Second Circuit in Rosendale v. Lejeune (Rosendale II), or (d) the August 9, 2007 complaint letter of Mr. Rosendale. Inadequate evidence was produced in support of assertions that were made to the contrary during the public review process.

9. The Applicant has substantially complied with the Conditions of the 2002 Approval designed to reduce any potential visual impacts of the Facility, including without limitation placement of the Facility on a densely wooded and relatively steep portion of the Property, painting the Facility in a manner designed to incorporate it into the background, planting of additional trees such as evergreens to increase the natural screening provided by the wooded Property, installing utility lines underground, and using natural finish materials to blend the equipment shelter with the natural surroundings. The Applicant will also comply with the additional landscaping and screening Conditions set forth in this Resolution.

**BE IT FURTHER RESOLVED**, that the ZBA hereby determines that the benefit to the Applicant if the Area Variance is renewed outweighs the detriment to the health, safety and welfare of the neighborhood or community associated with that renewal, subject to compliance with the Conditions of the 2002 Approval as modified and supplemented by this Resolution. In making this determination, the ZBA concludes:

1. There will be no undesirable change in the character of the neighborhood or detriment to nearby properties by renewing the area variance. The Facility has been constructed and located on the Property in a manner designed to minimize its impact on the neighborhood and nearby properties. Inadequate evidence was produced in support of assertions that were made to the contrary during the public review process.

2. The benefit sought by the Applicant can not be achieved by some method, feasible for the Applicant to pursue, other than renewal of the area variance. This is an application for the renewal of an area variance for an existing Facility that is already in operation. The radio frequency engineer retained by the Applicant has submitted two sworn affidavits demonstrating that adequate coverage can not be provided by requiring co-location of antennas on the municipal cell tower and/or by reducing the height of the existing tower. The highly-qualified independent expert retained by the ZBA and Planning Board has confirmed those findings. The Applicant's investment in that Facility pursuant to the existing area variance is also a relevant factor in assessing the feasibility of alternative locations.

3. The requested area variance renewal is not substantial. The substantiality of a variance cannot be judged "in the abstract. The totality of the relevant circumstances must be evaluated in determining whether a deviation truly is substantial. The effect of a variance on the neighborhood, its true impact and the necessity for compliance with a regulation's mandate are all highly significant considerations in undertaking such an analysis." *McKinney's Practice Commentaries Town Law* section 267-b. The 120-foot tower has operated on the Property for a number of years. It has been located in a densely wooded and relatively steep portion of the Property, and has been constructed and screened in a manner designed to incorporate it into the background. The overall effect of renewing the area variance is not substantial.

4. The proposed area variance renewal will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. This is an application for the renewal of an area variance for an existing Facility that is already in operation. The Applicant has adequately demonstrated that it will comply with FCC radio frequency guidelines. The Facility is unmanned, and will not generate solid or liquid waste or any type of environmental pollution.

5. The need for the area variance is not self-created, but rather is due to topographical factors that limit the locations in which the Facility can be installed in order for Applicant to provide its mandated service. Adequate coverage can not be provided by requiring co-location of antennas on the municipal cell tower and/or by reducing the height of the existing tower.

**BE IT FURTHER RESOLVED**, that supplementing and modifying the "Conditions" set forth in the 2002 Approval, the ZBA hereby adopts the following additional Conditions of Approval as reasonable conditions and restrictions that are directly related to and incidental to the special use permit and area variance

1. The Condition contained in the 2002 Approval requiring installation of permahedge material and/or green winged slats in the chain link fence and gate is hereby rescinded. The ZBA and Planning Board concur that installing this artificial material would draw attention to and heighten the visibility of the Facility, rather than serving its intended purpose of screening the Facility. The Planning Board and ZBA concur that more effective screening of the Facility can be obtained through the natural plantings required under the original landscaping plan, as modified and supplemented by this Resolution.
2. Within ninety (90) days from the date of this Resolution, Applicant shall file a supplemental landscaping plan with the ZBA and Planning Board. That supplemental landscaping plan shall include: (a) replacement of all dead or dying plantings depicted on the original landscape plan, and (b) additional natural landscaping and plantings designed to improve the screening of the Facility from Route 44 and the Rosendale and Murphy properties, including without limitation improved screening of the utility pedestals. Following approval of a supplemental landscaping plan by the ZBA and Planning Board, the Applicant shall complete the work required by that plan within a reasonable time period to be specified by the ZBA and Planning Board as part of that approval, taking into account the time of the year and appropriate planting season for the vegetation to be planted pursuant to the supplemental landscaping plan.
3. Applicant shall cause a generator to be installed on the Property within one year of the date of this Resolution. The generator shall have sufficient capacity to serve the existing equipment on the Facility, consistent with the customary industry standards and practices for emergency generators installed at similar telecommunication facilities in this region. Within ninety (90) days from the date of this Resolution, Applicant shall file written specifications with the Planning Board and ZBA identifying the generator that will be installed on the Property within the time provided by this Application.
4. Within thirty (30) days from the date of this resolution, the Applicant shall cause the November 18, 2011 Reclamation Agreement between Carlton P. Bates, Merium R. Bates, and the Town of Amenia to be recorded in the Dutchess County Clerk's Office. The Applicant shall provide the Town with proof of such recording.
5. The Applicant shall post a \$30,000 reclamation bond to secure the costs of removing the Facility from the Property. Applicant shall file the \$30,000 reclamation bond in form acceptable to the Town Attorney within sixty (60) days of the date of this Resolution.

6. Failure to timely comply with any of the Conditions of the 2002 Approval as modified or supplemented by the Conditions of this Resolution shall provide the ZBA with grounds to revoke the special use permit and area variance renewals granted herein, subject to any extensions of time that the ZBA may grant upon good cause shown.

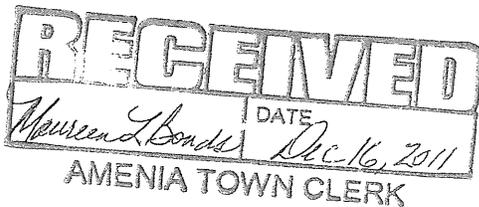
**BE IT FURTHER RESOLVED**, that the special use permit and area variance granted by this Resolution shall expire ten (10) years after the date of this Resolution, unless reissued by the ZBA prior to that expiration date.

**BE IT FURTHER RESOLVED**, that a copy of this Resolution shall be filed immediately in the Town Clerk's Office, and shall be mailed to the Applicant.

The foregoing resolution was voted upon with all members voting as follows:

	YES	NO	ABSTAIN	RECUSED	ABSENT
Member Blackman					X
Member Cassone	X				
Member Menegat	X				
Member Rosenberg	X				
Member Velletri	X				

DATED: Amenia, New York  
December 15, 2011



**RESOLUTION**

**TOWN OF AMENIA PLANNING BOARD  
SITE PLAN APPROVAL  
RENEWAL APPLICATION**

December 15, 2011

**WHEREAS**, on or about January 9, 2002, the Town of Amenia ZBA granted a special use permit and area variance authorizing Nextel of New York, Inc., to construct a telecommunications tower and related facilities on a wooded portion of a 10.53 acre parcel of land abutting Route 44, owned by Carlton P. Bates and Merium R. Bates, bearing Tax ID No. 7067-00-572230 (the "Property");

**WHEREAS**, the approved telecommunications tower and related facilities include a 120-foot monopole with antennas mounted thereon, and related equipment and improvements at the base thereof, subject to the conditions of approval set forth therein (the "Facility"); and

**WHEREAS**, on or about February 7, 2002, the Town of Amenia Planning Board granted site plan approval authorizing construction of the Facility on the Property, subject to the conditions of approval set forth therein; and

**WHEREAS**, the 2002 special use permit, area variance, and site plan approval are hereinafter collectively referred to as the "2002 Approval", a copy of which is annexed hereto as Exhibit "A"; and

**WHEREAS**, the 2002 Approval was granted for a period of ten (10) years, as provided by the Town of Amenia Telecommunications Tower and Telecommunications Facilities Law (now codified as section 121-46 of the Town of Amenia Town Code); and

**WHEREAS**, Nextel's successor-in-interest to the Facility is TowerCo Assets, LLC, d/b/a TowerCo ("Applicant") and

**WHEREAS**, Applicant has filed an application with the ZBA and Planning Board seeking renewal of the 2002 Approval (the "Renewal Application"); and

**WHEREAS**, the 2002 Approval runs with the land, and Applicant has submitted a written Authorization of Agent executed by Carlton P. Bates and Merium R. Bates as the owners of the Property, authorizing Applicant to make this Renewal Application; and

**WHEREAS**, the Applicant has submitted the following materials in support of the Renewal Application,: Land Use Application; Project Description; Authorization of Agent; Agricultural Data Statement and Map; Short Environmental Assessment Form dated October 14, 2011; Introductory correspondence of October 14, 2011 from McCullough, Goldberger & Staudt, LLP, as attorneys for Applicant; Affidavit of radio frequency engineer Robert Bertona dated October 11, 2011; Supplemental correspondence of November 10, 2011 from McCullough, Goldberger & Staudt, LLP, as attorneys for Applicant; Supplement Affidavit of radio frequency engineer Robert Bertona dated November 9, 2011; Coverage plot results demonstrating the telecommunications coverage provided by the Facility at the current tower height of 120', and of a reduced tower height of 70'; Coverage plot results demonstrating the telecommunications coverage provided by the municipal cell tower owned by the Town of Amenia at that maximum height available; and a set of 12 "As-Built" project plans signed by a licensed professional engineer or land surveyor and printed by Tectonic Engineering and Surveying Consultants, P.C.; and

**WHEREAS**, the ZBA and Planning Board retained radio frequency engineer Mark Hutchins as an independent consultant to review the Renewal Application for conformity with FCC Guidelines, and for an analysis of whether there were any changes in circumstances relating to technology and/or coverage areas that would have an impact on the Renewal Application, including whether it would be possible to utilize the municipal cell tower owned by the Town of Amenia rather than granting the Renewal Application, and whether it would be possible to reduce the existing tower to a height of 70-feet; and

**WHEREAS**, Mark Hutchins acted as the Town's independent consultant during the review of the project application that was the subject of the 2002 Approval, and conducted an extensive study of terrain and propagation as outlined in his August 8, 2001 "Amenia, New York Wireless Facility Analysis"; and

**WHEREAS**, Mark Hutchins produced an updated report dated November 23, 2011 based upon his review of the Renewal Application, his August 8, 2001 report, and his substantial expertise in the fields of radio frequency design and analysis and FCC guidelines; and

**WHEREAS**, the November 23, 2011 Hutchins report concludes that: (a) the Applicant has shown continued need to provide coverage using the Facility, (b) the Applicant is unable to provide adequate coverage using a 70-foot tower on the Property, (c) the Applicant cannot utilize the municipal cell tower either by itself or in combination with a shorter tower on the Property, and (d) the Applicant has demonstrated that it will comply with FCC radio frequency guidelines; and

**WHEREAS**, on or about October 24, 2011, the ZBA and Planning Board referred the Renewal Application to the Dutchess County Department of Planning Development as required by General Municipal Law section 239-m; and

**WHEREAS**, on or about November 1, 2011, the Dutchess County Department of Planning Development reported that the Renewal Application is a “Matter of Local Concern” that has no significant county-wide or inter-community impact; and

**WHEREAS**, on or about October 19, 2011, the Planning Board declared its intent to act as lead agency for the coordinated review of the Renewal Application pursuant to the State Environmental Quality Review ACT (“SEQRA”); and

**WHEREAS**, on or about October 19, 2011, the ZBA consented to the Planning Board declaration of intent to act as lead agency for the SEQRA review of the Renewal Application; and

**WHEREAS**, on or about December 1, 2011, the Planning Board and ZBA conducted a properly noticed joint public hearing to review the Renewal Application; and

**WHEREAS**, prior to such joint public hearing, the Planning Board and ZBA caused notice of that public hearing to be published, posted, circulated and/or mailed as required by the Town of Amenia Town Code, the New York State Town Law, and the New York State Agriculture and Markets Law; and

**WHEREAS**, at and prior to such joint public hearing, the Planning Board and ZBA accepted such written and/or verbal comments regarding the Renewal Application as members of the public might seek to make, including without limitation the concerns and objections of a neighboring property owner documented in his written submissions and in the minutes of the Planning Board and ZBA proceedings; and

**WHEREAS**, on or about December 8, 2011, the Planning Board, as lead agency for the SEQRA review of the Renewal Application, issued a negative declaration based upon its determination that the Renewal Application will not have any significant adverse impacts on the environment; and

**WHEREAS**, the Planning Board has carefully reviewed and considered the Renewal Application in the context of: the 2002 Approval; the personal observations of the members of the Planning Board; the comments and recommendations that the Planning Board has received from its radio frequency consultant, engineering consultant, and legal consultant; the written comments that the Planning Board has received and the comments that were made at the public hearing and other meetings of the ZBA and Planning Board; the comments and recommendations made by members of the ZBA during the joint review process; and the response that the Planning Board has received from the Dutchess County Department of Planning and Development; and

**WHEREAS**, the Planning Board has thoroughly reviewed the Renewal Application, and has considered it in the context of the requirements of the applicable Town of Amenia Zoning Law and the New York State Town Law, including without limitation the provisions of the Zoning Law relating to site plan approval for a telecommunications tower and facilities; and

**WHEREAS**, the Town Engineer has reviewed the Renewal Application and the existing \$18,700 reclamation bond, and has evaluated the adequacy of that bond in light of (1) the increase in reclamation costs over the last ten (10) years, and (2) the additional reclamation costs associated with the removal of the generator required by this Resolution; and

**WHEREAS**, the Town Engineer has concluded that the amount of the reclamation bond should be increased to \$30,000; and

**WHEREAS**, although the 2002 Approval was granted prior to the 2007 amendment of the Town of Amenia Zoning Law that formed the scenic protection overlay (“SPO”) zoning use district, and is therefore exempt or otherwise excused from compliance with the formal review requirements of the SPO law pursuant to sections 121-14.1(E) and/or 121-27 of the Town of Amenia Zoning Law; and

**WHEREAS**, although the 2002 Approval was granted prior to the 2007 formation of the SPO district, the Planning Board was cognizant of and sensitive to the scenic nature of the Property, and thoroughly studied and carefully considered the visual impacts of the proposed Facility prior to granting the 2002 site plan approval, including without limitation an Environmental Assessment Form (“EAF”) Parts 1 and 2; a Visual EAF Addendum dated February 7, 2001 and revised May 6, 2001, June 25, 2001, and July 19, 2001; a Part 3 EAF dated July 2001; and a Visual Analysis dated April 2001 and revised July 2001; and

**WHEREAS**, the Planning Board concludes that the Facility protects the Town’s scenic beauty and rural character in a manner consistent with the goals and purposes of the SPO district, including without limitation locating the Facility in a densely wooded and relatively steep portion of the Property, and constructing and screening the Facility in a manner designed to incorporate it into the background; and

**WHEREAS**, the Planning Board concludes that granting the Renewal Application a waiver from the requirements of the SPO law will not impair the scenic preservation purposes of the SPO District; and

**WHEREAS**, the Planning Board concludes that there has been no material change in circumstances since the 2002 Approval was granted, and that the reliable evidence presented during the Planning Board’s review of the Renewal Application confirms that coverage gaps would result if the existing tower height was reduced or the existing antennas were co-located on the municipal cell tower; and

**WHEREAS**, the Planning Board concludes that there is no evidence of any repeated, willful violations of the 2002 Approval that would create an unacceptable threat of future injury to health or the environment; and

**WHEREAS**, the Planning Board concludes that the Applicant has demonstrated substantial compliance with the conditions of the 2002 Approval, and that the Applicant has also provided adequate assurances of compliance with the Conditions contained in the 2002 Approval, as modified or supplemented by the Conditions contained in this Resolution; and

**WHEREAS**, the Planning Board concludes that the Conditions contained in the 2002 Approval, as modified or supplemented by this Resolution, are reasonable conditions and restrictions that are directly related to and incidental to the site plan approval renewal requested in the Renewal Application.

**NOW THEREFORE BE IT RESOLVED**, that the Planning Board hereby adopts and incorporates by reference the February 7, 2002 site plan approval, except as modified or supplemented by this Resolution.

**BE IT FURTHER RESOLVED**, that the Planning Board hereby renews the existing site plan approval requested in the Renewal Application, for the reasons stated in this Resolution, in the November 23, 2011 Hutchins Report, and in the 2002 Approval.

**BE IT FURTHER RESOLVED**, that the Planning Board hereby waives the requirements of the SPO law, on the grounds that the Renewal Application is exempt or otherwise excused from compliance with the formal review requirements of the SPO law pursuant to sections 121-14.1(E) and/or 121-27 of the Town of Amenia Zoning Law; and

**BE IT FURTHER RESOLVED**, that the Planning Board hereby waives the requirements of the SPO law, on the alternate grounds that granting such a waiver for this Renewal Application will not impair the scenic preservation purposes of the SPO District; and

**BE IT FURTHER RESOLVED**, that the Planning Board hereby adopts the following Supplemental Findings of Fact and Conclusions in support of its determination to grant the site plan approval renewal requested in the Renewal Application:

1. There is a present need to provide continued coverage using the existing Facility.
2. Adequate coverage can not be provided by reducing the height of the existing tower.
3. Adequate coverage can not be provided by requiring co-location of antennas on the municipal cell tower, whether such co-location is on the municipal tower alone or in combination with a reduced-height tower on the Property.
4. The Applicant has adequately demonstrated that it will comply with FCC radio frequency guidelines.

5. The Applicant has substantially complied with the Conditions of the 2002 Approval. There is no evidence of any repeated, willful violations that would create an unacceptable threat of future injury to health or the environment.

6. The Applicant has adequately demonstrated that it will comply with the Conditions contained in the 2002 Approval, as modified or supplemented by the Conditions contained in this Resolution.

7. The "As-Built" plans signed by a licensed professional engineer or land surveyor and printed by Tectonic Engineering and Surveying Consultants, P.C. demonstrate that the base of the existing tower is more than 120-feet from the neighboring property lines. Inadequate evidence was produced in support of assertions that were made to the contrary during the public review process.

8. The building permit was issued for the existing tower no later than June 2003. The time in which to file an appeal to the ZBA from the issuance of that permit has long since expired, whether measured from: (a) the date the building permit was actually issued, or (b) the date that neighboring property owners were on constructive notice that this permit had been issued, or (c) the May 16, 2007 Decision and Order of United States Court of Appeals for the Second Circuit in Rosendale v. Lejeune (Rosendale II), or (d) the August 9, 2007 complaint letter of Mr. Rosendale. Inadequate evidence was produced in support of assertions that were made to the contrary during the public review process.

9. The Applicant has substantially complied with the Conditions of the 2002 Approval designed to reduce any potential visual impacts of the Facility, including without limitation placement of the Facility on a densely wooded and relatively steep portion of the Property, painting the Facility in a manner designed to incorporate it into the background, planting of additional trees such as evergreens to increase the natural screening provided by the wooded Property, installing utility lines underground, and using natural finish materials to blend the equipment shelter with the natural surroundings. The Applicant will also comply with the additional landscaping and screening Conditions set forth in this Resolution.

**BE IT FURTHER RESOLVED**, that supplementing and modifying the site plan approval provided in the 2002 Approval, the Planning Board hereby adopts the following additional Conditions of Approval as reasonable conditions and restrictions that are directly related to and incidental to the site plan approval renewal:

1. The Condition contained in the 2002 Approval requiring installation of permahedge material and/or green winged slats in the chain link fence and gate is hereby rescinded. The ZBA and Planning Board concur that installing this artificial material would draw attention to and heighten the visibility of the Facility, rather than serving its intended purpose of screening the Facility. The Planning Board and ZBA concur that more effective screening of the Facility can

be obtained through the natural plantings required under the original landscaping plan, as modified and supplemented by this Resolution.

2. Within ninety (90) days from the date of this Resolution, Applicant shall file a supplemental landscaping plan with the ZBA and Planning Board. That supplemental landscaping plan shall include: (a) replacement of all dead or dying plantings depicted on the original landscape plan, and (b) additional natural landscaping and plantings designed to improve the screening of the Facility from Route 44 and the Rosendale and Murphy properties, including without limitation improved screening of the utility pedestals. Following approval of a supplemental landscaping plan by the ZBA and Planning Board, the Applicant shall complete the work required by that plan within a reasonable time period to be specified by the ZBA and Planning Board as part of that approval, taking into account the time of the year and appropriate planting season for the vegetation to be planted pursuant to the supplemental landscaping plan.

3. Applicant shall cause a generator to be installed on the Property within one year of the date of this Resolution. The generator shall have sufficient capacity to serve the existing equipment on the Facility, consistent with the customary industry standards and practices for emergency generators installed at similar telecommunication facilities in this region. Within ninety (90) days from the date of this Resolution, Applicant shall file written specifications with the Planning Board and ZBA identifying the generator that will be installed on the Property within the time provided by this Application.

4. Within thirty (30) days from the date of this Resolution, the Applicant shall cause the November 18, 2011, Reclamation Agreement between Carlton P. Bates, Merium R. Bates, and the Town of Amenia to be recorded in the Dutchess County Clerk's Office. The Applicant shall provide the Town with proof of such recording.

5. The Applicant shall post a \$30,000 reclamation bond to secure the costs of removing the Facility from the Property. Applicant shall file the \$30,000 reclamation bond in form acceptable to the Town Attorney within sixty (60) days of the date of this Resolution.

6. Failure to timely comply with any of the Conditions of the 2002 Approval as modified or supplemented by the Conditions of this Resolution shall provide the Planning Board with grounds to revoke the site plan approval renewal granted herein, subject to any extensions of time that the Planning Board may grant upon good cause shown.

**BE IT FURTHER RESOLVED**, that the site plan approval granted by this Resolution shall expire ten (10) years after the date of this Resolution, unless reissued by the Planning Board prior to that expiration date.

**BE IT FURTHER RESOLVED**, that a copy of this Resolution shall be filed immediately in the Town Clerk's Office, and shall be mailed to the Applicant.

The foregoing resolution was voted upon with all members voting as follows:

William Flood, Chairman

Yes    No

*[Handwritten signature]*

Peter Clair

Yes    No

*[Handwritten signature]*

Joseph Fontaine

Yes    No

*absent*

Lawrence Moore

Yes    No

*[Handwritten signature]*

Nina Peek

Yes    No

*[Handwritten signature]*

Tony Robustelli

Yes    No

*absent*

James Walsh

Yes    No

*absent*

DATED:        Amenia, New York  
                  December 15, 2011

**RECEIVED**  
DATE *Dec 16, 2011*  
*Maura Landa*  
AMENIA TOWN CLERK



# TOWN OF AMENIA

4988 Route 22, AMENIA, NY 12501  
TEL: 845-373-8860, x106 FAX: 845-373-9147

## TOWN OF AMENIA PLANNING BOARD AUTHORIZATION OF AGENT

I, Carlton P. Bates and Merium R. Bates, am the owner of the property  
located at Route 44, Amenia, New York, identified as  
Grid Number 13200-7067-00-572230-0000.

I hereby authorize SBA 2012 TC Assets, LLC to act as my agent in an  
and Zoning Board of Appeals  
Application to the Town of Amenia Planning Board for Telecommunications Tower Renewal  
(Name of Project)

Print Name CARLTON BATES

Signature Carlton Bates

Date 10-27-21

Print Name MERIUM R BATES

Signature Merium Bates



# TOWN OF AMENIA

4988 Route 22, AMENIA, NY 12501  
TEL: 845-373-8860, x106 FAX: 845-373-9147

## SITE PLAN & SPECIAL USE APPLICATION PROJECT DESCRIPTION

**APPLICANT:** SBA 2012 TC Assets, LLC

**OWNER:** Carlton P. Bates and Merium R. Bates

**PROPERTY ADDRESS:** Route 44, Amenia, NY

**GRID NUMBER(S):** 132000-7067-00-572230-0000

**PROJECT NAME:** Telecommunications Tower Renewal

**PROJECT SITE DESCRIPTION:** Provide a description of the Project Site, include the existing conditions of the site, the natural resources and environmental features of the site (e.g., wetlands and watercourses, vernal pools, steep slopes, forest, wildlife habitat, prime and statewide important agricultural soils, active farmland, and scenic viewsheds), current use/development of property (e.g., structures, roads, fences), and known past uses of the site. A conservation analysis complying with section 121-20(A) of the Zoning Law may be substituted for this Project Site Description.

The property is approximately 10.5 acres in size, located in the R-a "Rural Agricultural" District.

The property is improved with a 120-foot tall telecommunications tower, consisting of a 120-foot monopole,

with attached panel antennas and a one-story, 200 square foot equipment shelter. There is an eight-foot

tall chainlink fence and 12-foot tall gate that encloses the telecommunications facility. There is also a 12-foot

wide gravel drive leading to the facility, ending in a turnaround with two parking spaces for maintenance

and emergency access.



# Town of Amenia Planning Board

Town of Amenia  
4988 Route 22  
Amenia, NY 12501

(845) 373-8860 / (845) 373-9147 fax

## LAND USE APPLICATION

Type of Application: Check all that apply

Site Plan

Special Permit

Zoning Permit

Subdivision

**Grid Number(s):**

132000-7067-00-572230-000

**Name of Project:** Telecommunications Tower Renewal

**Property Address:**  
Route 44

Amenia, NY 12501

**Primary Contact Person:**

Steven Wrabel, McCullough, Goldberg & Staudt, LLP

**Address:** 1311 Mamaroneck Avenue, Suite 340  
White Plains, NY 10605

**Telephone Number:** 914-949-6400

**Email:** swrabel@mgslawyers.com

**Name of Property Owner:**

Carlton P. Bates and Merium R. Bates

**Address:** 834 Durchase Tpke.  
Poughkeepsie, NY 21603

**Telephone Number:**

**Name of Applicant (if different):**

SBA 2012 TC Assets, LLC

**Address:** 8051 Congress Avenue  
Boca Raton, FL 33487

**Telephone Number:** 561-322-7817

**Email:** amasuda@sbsite.com

**Relationship of Applicant to Owner (e.g. contract vendee, option holder, lessee):** Lessee

**Plans Prepared By:**

**Name:** Geoline Surveying Inc.

**Address:** 13430 NW 104th Terrace  
Alachua, FL 32615

**Telephone Number:** 386-418-0500

**E-mail:**

**Zoning District(s):** RA , RR \_\_, HM \_\_, HR \_\_, SR \_\_, HC \_\_,  
OC \_\_, M \_\_

**Overlay District(s) (if any):** Floodplain \_\_, Stream Corridor \_\_,  
Scenic Protection , Aquifer , Mixed-Use Institutional \_\_,  
Soil Mining \_\_, Historic Preservation \_\_, Mobile Home Park \_\_,  
Resort Development \_\_

**Current Use(s):** Telecommunications tower and facility

**Proposed Use(s):** Renewal of existing tower approvals

**Parcel Size:** +/-10.5 Acres

**Type of Activity:** New structure \_\_, Alteration of existing structure \_\_, Expansion of use or structure \_\_, Renewal of Permit

**Change of use in existing structure** \_\_, **Subdivision** \_\_

**Total Square Footage of Structures:**

**Current** <sup>200 SF shelter,</sup> 120 ft. monopole **Proposed** No Change

**Footprint of Structures:** 200 SF shelter

**Deed Reference:** Liber 2002

Page 587

Date 12/08/1997

**Filed Map Reference:** Lot # N/A Map # N/A  
Does the property contain a farm operation located within an agricultural district or is the property boundary within 500 feet of a farm operation located in an agricultural district:

yes  no

If yes, submit an Agricultural Data Statement.

Will the development be phased? Yes N/A No

If yes, how many phases? \_\_\_\_\_

Is there an existing Special Permit, Site Plan and/or Subdivision approval for the property? Yes  No

If yes, provide certified copies of those existing approvals with this application.

Error! No property name supplied.

# Town of Amenia Planning Board

Town of Amenia  
4988 Route 22  
Amenia, NY 12501

(845) 373-8860  
(845) 373-9147 fax

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*The undersigned hereby makes application in accordance with all applicable laws and other requirements of the Town of Amenia, Dutchess County, New York. All owners of record must sign.*

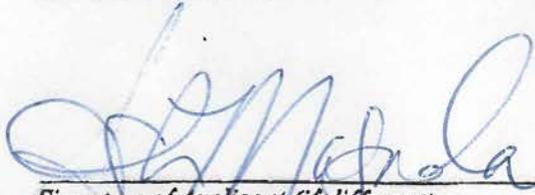
See Owner Authorization

\_\_\_\_\_  
*Signature of Record Owner*

\_\_\_\_\_  
*Signature of Record Owner*

Date: \_\_\_\_\_

Date: \_\_\_\_\_



\_\_\_\_\_  
*Signature of Applicant (if different)*

Date: 11/3/2021

---

Date stamp of submission  
(Office Use Only)



# TOWN OF AMENIA

4988 Route 22, AMENIA, NY 12501  
TEL: 845-373-8860, x106 FAX: 845-373-9147

## AGRICULTURAL DATA STATEMENT

**Applicant Name:** SBA 2012 TC Assets, LLC

**Address:** 8051 Congress Avenue  
Boca Raton, FL 33487

**Application Type (check all that apply)**

- Subdivision  
 Site Plan  
 Special Use Permit

Does the application include land that contains a farm operation\* within an Agricultural District?

Yes  No

Does the application include lands within 500 feet of a farm operation\* within an Agricultural District?

Yes  No

If you answered yes to any of the two questions above, provide the name and address of the owners of land containing the farm operation below and attach a tax or other map to this sheet with the farm operation indicated, along with the Section, Block and Lot number for the farm operation.

Donald P. Rosendale

4848 Route 44, Amenia NY 12501

Parcel # 132000-707-67-00-484806-00 (see attached tax map)

Provide a description of your project and attach a separate map showing the entire property that is included in your application.

The property is currently being used by T-Mobile Sprint as an unmanned Telecommunications facility for the provision of federally licensed wireless telecommunications services to the entire community. The Applicant is seeking a second renewal of its Site Plan, Special Use Permit, and area variance approvals in order to continue providing these essential services.

\*Farm operation means the land used in agricultural production, farm buildings, equipment and farm residence buildings.



## Parcel Lines

Dutchess County, NY

Printed by:  
ParcelAccess



TOWN OF AMENIA  
ESCROW FOR PROFESSIONAL SERVICES

Date: October 27, 2021

Applicant: SBA 2012 TC Assets, LLC

Project Name: Telecommunications Tower Renewal

Location: Route 44, Amenia, NY. Grid No. 13200-7067-00-572230-0000

Description of Project: Renewal of Existing Telecommunications Tower (NY47406).

Amount Requested: \$ 2,500.00 Minimum Balance: \$ 500.00

The Town of Amenia ZBA & Planning Board is currently reviewing your application for Telecommunications Tower Renewal. This Board is requesting that you place in escrow sufficient funds to be used to defray reasonable costs incurred by the Town for professional services and inspections required throughout the entire review process, as authorized by the Town Code of the Town of Amenia.

Based on estimated review costs, you are requested to deposit \$ 2,500.00 in the escrow account. Should the balance of this account fall below \$ 500.00, you will be notified and requested to replenish the account to the requested amount.

This escrow account does not provide for the other development, application and filing fees set forth in the Town of Amenia Town Code and Schedule of Fees. The applicant must make timely, direct payment of those other fees as a prerequisite to continued review of the application.

All parties agree to the terms and conditions stated herein.

Town of Amenia \_\_\_\_\_ Board  
By:

By:   
Applicant: SBA 2012 TC Assets, LLC  
By Name: Ed Roach, Vice President

Amenia / NY 47406-A

ZONE RENEWAL  
NY-47406-A



October 1, 2012

Town of Amenia Planning Board  
Amenia Town Hall  
P.O. Box 126  
Amenia, NY 12501

RE: Telecommunications Tower Renewal Application  
Tower Entity 9, LLC

Dear Chairwoman Peek and Members of the Board,

At the request of the Board, TSD has performed a landscape compliance site inspection for the above referenced application. Below is our summary:

- TSD is in receipt of Drawing L-1, Landscape Plan, prepared by Brusseau Design Group, LLC, last revised 02/24/12 (attached).
- A physical site inspection was performed on Friday September 28, 2012 by Peter Karis, RLA.
- TSD confirms that all proposed landscaping was installed as approved and all plant material is in good, healthy condition.

Attached are pictures from our site inspection showing the new wood screening fence and landscaping for reference.

Should you have any questions or comments, please feel free to contact my office.

Sincerely,

Peter A. Karis, RLA  
Principal Landscape Architect

Enclosures

100112\_AmeniaPBMemo\_TowerEntity9LLC.doc

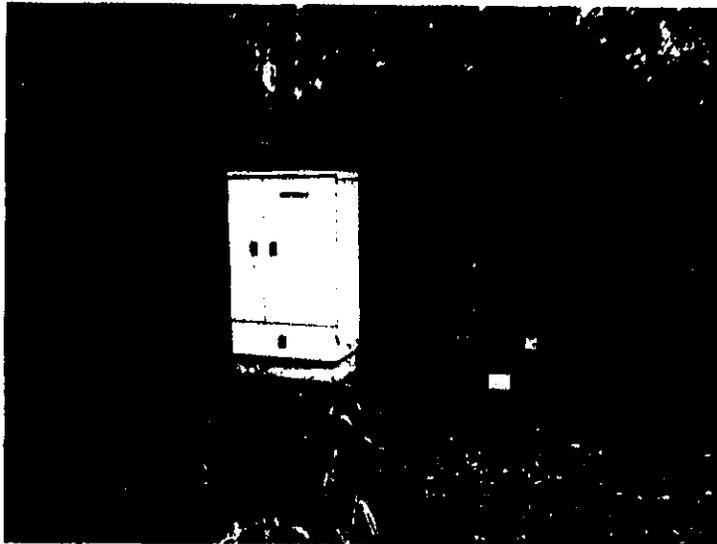
99 Rossway Road, Pleasant Valley, NY 12569 p: 845.489.5401 f: 270.596.2393

[www.TaconicSiteDesign.com](http://www.TaconicSiteDesign.com)



Tower Entity 9, LLC - Site Inspection Pictures

September 28, 2012



New fence at equipment pads.



New shrubs in row to left of chain link fence.



New shrubs in row along tree line.



New shrub in front of small pine tree.



New shrub to left of old shed.



New shrubs in row along chain link fence.



All bayberry shrubs in good condition and installed at specified size and number.

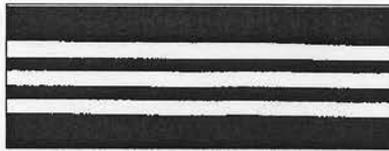
100112\_AmericaPBMemo\_TowerEntity9LLC.doc











## Dutchess County Clerk Recording Page

Record & Return To :

BENCHMARK RESEARCH LLC  
222 BLOOMINGDALE RD  
White Plains, NY 10605

Date Recorded : 12/21/2011

Time Recorded : 9:10:00

Document # : 02 2011 6002

Received From : BENCHMARK TITLE

Grantor : BATES CARLTON P

Grantee : AMENIA TOWN

Recorded In : Deed

Instrument Type : AGMT

Tax District : Amenia

### Examined and Charged As Follows :

Recording Charge : \$80.00

Transfer Tax Amount : \$0.00

Transfer Tax Number : #2156

Red Hook Transfer Tax :

E & A Form: N

TP-584 : Y

Number of Pages : 7

\*\*\* Do Not Detach This Page

\*\*\* This Is Not A Bill

County Clerk By : ace / \_\_\_\_\_

Receipt # : R65930

Batch Record : D131

Bradford Kendall  
County Clerk



0220116002



B7A099988

132000-7067-00-

572230

709

+ 1 Amenia (01) 75  
5

80

AGREEMENT

THIS AGREEMENT, dated as of this 15<sup>th</sup> day of November, 2011, made by Carlton P. Bates and Merium B. Bates, as tenants by the entirety, having an address at 834 Dutchess Turnpike, Poughkeepsie, New York 12603 (the "Property Owners"), in favor of the Town of Amenia, a municipal corporation, with its offices located at 36B Mechanic Street, P.O. Box 126, Amenia, New York 12501 (the "Town").

WITNESSETH

WHEREAS, on April 12, 2001, Nextel of New York, Inc. d/b/a Nextel Communications ("Nextel"), filed an application with the Town of Amenia Zoning Board of Appeals to install a new wireless telecommunications services facility (the "Facility") on certain property located at Route 44, Amenia, New York and known as Grid Number 132000-7067-00-572230-0000 (the "Route 44 Site"); and

WHEREAS, the Route 44 Site is owned by the Property Owners, and a portion thereof was leased to Nextel for purposes of installing and operating the Facility by that certain Communications Site Lease Agreement (Ground), executed by Nextel on February 26, 2001 (the "Lease"), which was amended by that certain Amendment No. #1, executed by Nextel on March 4, 2003 (the "First Amendment"), and further amended by that certain Amendment No. #2 To Communications Site Lease Agreement (Ground), executed by Nextel on January 16, 2007 (the "Second Amendment") (the Lease, the First Amendment, and the Second Amendment shall collectively be referred to herein as the "Nextel Lease"); and

WHEREAS, on January 9, 2002, the Town of Amenia Zoning Board of Appeals adopted a Resolution of Area Variance and Special Permit Approval (the "Zoning Board Approvals") authorizing the installation of the Facility, consisting of a 120 foot monopole with antennas mounted thereon and related equipment and improvements at the base thereof, at the Route 44 Site, subject to certain conditions; and

WHEREAS, on February 7, 2002, the Town of Amenia Planning Board adopted a Resolution Granting Site Plan Approval subject to certain conditions (the "Planning Board Approval") (the "Zoning Board Approvals" and the "Planning Board Approval" shall collectively be referred to herein as the "Approvals"); and

WHEREAS, Nextel assigned its right, title, and interest to the Nextel Lease and all towers and tower related buildings and equipment located on the Route 44 site to Tower Entity 9 LLC a/k/a TowerCo Assets LLC d/b/a TowerCo, having an address at 5000 Valleytone Drive, Cary, North Carolina 27519 (the "Applicant"), by that certain Assignment and Assumption of Ground Lease agreement dated September 23, 2008; and

WHEREAS, the Applicant seeks renewal of the Approvals; and

WHEREAS, the Town of Amenia Zoning Code Section 121-46 *et seq.* "Telecommunication Towers and Telecommunication Facilities" (the "Telecommunications

Law”) requires as a condition of approval for the construction of new telecommunications towers and facilities that property owners provide a recordable instrument granting the Town the right to enter upon the premises to dismantle or remove the tower or facilities consistent with Section 121-46(F)(11) of the Telecommunications Law, which shall run with the land; and

WHEREAS, the Property Owners have agreed to execute this Agreement in order for the Applicant to obtain the necessary renewals to continue its operation of the Facility at the Route 44 Site.

NOW, THEREFORE, as a condition for the Applicant obtaining all necessary renewals to operate the Facility at the Route 44 Site, the agreements are as follows:

- A) The Property Owners, and their successors in interest:
  - (i) Grant the Town the right to enter upon the Route 44 Site to dismantle and to remove the Facility in the event of the Applicant’s and Property Owners’ failure to comply within three (3) months with a lawful written directive to do so by the Code Enforcement Officer, sent to the Applicant and the Property Owners by first-class United States mail to the respective addresses set forth above; and
  - (ii) Give the Town the right, after fair notice and opportunity to be heard before the Town Board by the Property Owners and the Applicant, to charge the actual costs associated with disassembly or demolition and of removal, including any necessary and reasonable engineering or attorneys’ fees incurred to carry out its rights hereunder, by adding that charge to and making it a part of the next annual real property assessment roll of the Town of Amenia to be levied and collected in the same manner and at the same time as Town-assessed real property taxes.
- B) This Agreement shall be governed by the laws of the State of New York and shall be effective in accordance with the Telecommunications Law.
- C) This Agreement shall run with the Route 44 Site, and may be recorded in the Dutchess County Clerk’s office by any party hereto at that party’s sole cost and expense.

IN WITNESS WHEREOF, the parties have herein set their hands and seals the day and year first above written.

PROPERTY OWNERS:  
CARLTON P. BATES AND MERIUM B. BATES,  
as tenants by the entirety

BY: Carlton P. Bates  
Carlton P. Bates

CARLTON P. BATES AND MERIUM B. BATES,  
as tenants by the entirety

BY: Merium B. Bates  
Merium B. Bates

TOWN:  
TOWN OF AMENIA

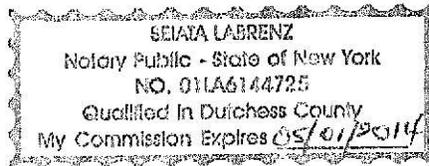
BY: Wayne  
Name:  
Title: Survivor

ACKNOWLEDGEMENTS

State of New York )  
County of Dutchess ) ss:

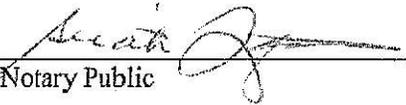
On the 18<sup>th</sup> day of November in the year 2011 before me, the undersigned personally appeared Carlton P. Bates personally known to me or proved on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

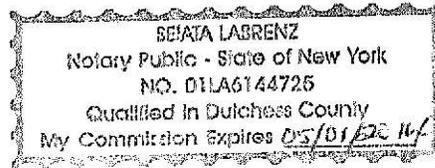
  
\_\_\_\_\_  
Notary Public



State of New York )  
 ) ss:  
County of Dutchess )

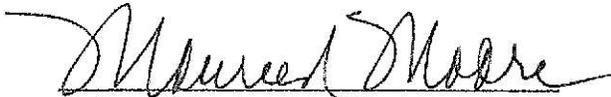
On the 18<sup>th</sup> day of November in the year 2011 before me, the undersigned personally appeared Merium B. Bates personally known to me or proved on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

  
Notary Public



State of New York )  
County of Dutchess ) ss:

On the 8th day of DECEMBER in the year 2011 before me, the undersigned personally appeared WAYNE ENVRARD personally known to me or proved on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the individuals, or the person upon behalf of which the individuals acted, executed the instrument.

  
Notary Public

Notary Public  
Maureen Moore  
Qualified in Dutchess County  
No. 01M04647414  
Commission Expires December 31, 2013

SURETY RIDER

To be attached to and form a part of

Bond No. CMS249160

Type of Tower Removal  
Bond:

dated  
effective March 10, 2009  
(MONTH-DAY-YEAR)

executed by TowerCo Assets, LLC , as Principal,  
(PRINCIPAL)

and by RLI Insurance Company , as Surety,  
(SURETY)

in favor of Town of Amenia  
(OBLIGEE)

in consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to changing

**Bond Amount:**

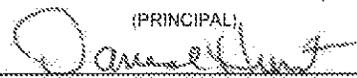
From: \$18,700.00  
To: \$30,000.00

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

This rider is effective December 15, 2011  
(MONTH-DAY-YEAR)

Signed and Sealed January 04, 2012  
(MONTH-DAY-YEAR)

TowerCo Assets, LLC  
(PRINCIPAL)

By:   
(PRINCIPAL)

RLI Insurance Company  
(SURETY)

By:   
Debra C. Schneider, Attorney-in-Fact

ACKNOWLEDGMENT BY SURETY

STATE OF Missouri  
City of St. Louis } ss.

On this 4th day of January, 2012, before me personally appeared Debra C. Schneider, known to me to be the Attorney-in-Fact of RLI Insurance Company

\_\_\_\_\_, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

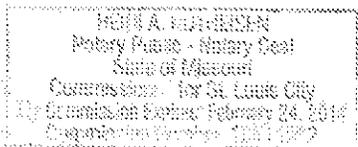
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the aforesaid County, the day and year in this certificate first above written.

My Commission Expires: February 24, 2014



Heidi A. Notheisen  
Notary Public in the State of Missouri  
City of St. Louis

(Seal)





RLI Surety  
 P.O. Box 3967 | Peoria, IL 61612-3967  
 Phone: (800)645-2402 | Fax: (309)689-2036  
 www.rlicorp.com

# POWER OF ATTORNEY

## RLI Insurance Company

**Know All Men by These Presents:**

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That **RLI Insurance Company**, an Illinois corporation, does hereby make, constitute and appoint:

Pamela A. Beelman, Cynthia L. Choren, Heidi A. Notheisen, Debra C. Schneider, JoAnn R. Frank, Karen L. Roeder, Sandra L. Ham,  
 (jointly or severally)

in the City of Saint Louis, State of Missouri its true and lawful Agent and Attorney in Fact, with full power and authority hereby conferred, to sign, execute, acknowledge and deliver for and on its behalf as Surety, the following described bond.

**Any and all bonds provided the bond penalty does not exceed Twenty Five Million Dollars (\$25,000,000.00).**

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon this Company as if such bond had been executed and acknowledged by the regularly elected officers of this Company.

The **RLI Insurance Company** further certifies that the following is a true and exact copy of the Resolution adopted by the Board of Directors of **RLI Insurance Company**, and now in force to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

IN WITNESS WHEREOF, the **RLI Insurance Company** has caused these presents to be executed by its Vice President with its corporate seal affixed this 6th day of July, 2011.



**RLI Insurance Company**

By: [Signature]  
 Roy C. Die Vice President

State of Illinois }  
 County of Peoria } SS

**CERTIFICATE**

On this 6th day of July, 2011, before me, a Notary Public, personally appeared Roy C. Die, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and acknowledged said instrument to be the voluntary act and deed of said corporation.

I, the undersigned officer of **RLI Insurance Company**, a stock corporation of the State of Illinois, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** this 4th day of January, 2012.

By: [Signature]  
 Cherie L. Montgomery Notary Public

**RLI Insurance Company**

By: [Signature]  
 Roy C. Die Vice President

