**OPTION AND GROUND LEASE AGREEMENT**

 **THIS OPTION AND GROUND LEASE AGREEMENT** (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2016 (“Option Date”), between the **CITY OF PALM COAST** (“Optionor” or “Lessor”), at 160 Lake Avenue, Palm Coast, Florida, 32164,and **AMERICAN TOWERS LLC** (“Optionee” or “Lessee”), a Delaware limited liability company, at 10 Presidential Way, Woburn, Massachusetts 02138. Collectively, the Optionor/Lessor and the Optionee/Lessee may be the “Parties.”

1. **Grant of Option**. For good and valuable consideration and mutual promises, Optionor grants unto Optionee and its assigns, an exclusive and irrevocable option to lease (“Option”) a certain parcel of real property, at the City of Palm Coast Water Treatment Plant #1 (“Site”) as more particularly described in Exhibit “A,” attached and incorporated by reference.

2. **Option Initial Term**. The initial term of the Option is for six (6) months from the Option Date (“Option Initial Term”).

3. **Consideration for Option**. Consideration for the Option Initial Term is One Thousand and 00/100 Dollars ($1,000.00) plus applicable taxes (“Option Consideration”) to be paid by the Optionee to the Optionor within fourteen (14) days of execution of this Agreement.

4. **Extension of Option**. This Option will be automatically extended by Optionee for each of two (2) additional six (6) month periods (“Option Renewal Term(s)”) unless Optionee notifies Optionor of its intent not to extend the Option. Additional consideration of One Thousand and 00/100 Dollars ($1,000.00) plus applicable taxes is due within fourteen (14) days of the commencement of any Option Renewal Term.

5. **Exercise of Option**. Optionee may, at its sole discretion, exercise its option and commence the Ground Lease by delivery of written notice to Optionor at any time during the Option Initial Term or any Option Renewal Term (the “Commencement Date”). The exercise of the Option may not be later than eighteen (18) months following the date of execution of this Agreement. Optionee must notify Optionor in writing, following the requirements of Section 19 of the Ground Lease, of the recordation of the Memorandum of Lease. Upon Optionor’s receipt of Optionee’s notice of exercise of option and recording of the Memorandum, the terms of the Ground Lease (“Lease”), beginning on page 3, will govern the relationship of the Parties.

6. **Optionor’s Representations and Warranties.** As an inducement for Optionee to enter into and be bound by the terms of this Option, Optionor represents and warrants to Optionee and Optionee’s successors and assigns that:

1. Optionor has good and marketable title to the Site, free and clear of all liens and encumbrances;
2. Optionor has the authority to enter into and be bound by the terms of this Option;
3. Optionor is not aware of any pending or threatened administrative actions, including bankruptcy or insolvency proceedings under state or federal law, suits, claims or causes of action against Optionor which may otherwise affect Optionor’s rights to the Site; and
4. The Site is not subject to an option, lease, or other contract which may adversely affect Optionor’s ability to fulfill its obligations under this Option, and Optionor covenants it will not enter into any contract which will affect the Site until this Option expires or is terminated by Optionee.

These representations and warranties will survive the exercise of the Option and the term of the Lease.

7. **Inspections and Investigations**. Optionor grants to Optionee, its officers, agents, employees, and independent contractors, the right and privilege to enter upon the Site at any reasonable time after the Option Date to perform site inspections, which may include test borings of the soil, environmental audits, engineering studies and to conduct a survey of the Site. Optionor will provide Optionee with keys and access codes to the Site, if needed, for ingress and egress. The right to access the Site is for the limited purpose of evaluating the feasibility of the Site. Optionee is not an owner or operator of the land and will have no ownership or control of any portion of the Site prior to the execution of this Option. Optionee may not unreasonably interfere with Optionor’s use of the Site in conducting these activities. Optionee has the right, at its cost and expense, to have the Site surveyed and to obtain, from a title company of its choice, a title report of commitment for a leasehold and title policy covering the Site. Optionor will remove any survey or title defects that may adversely affect Optionee’s leasehold title or its ability to mortgage the leasehold interest. In the event Optionor fails to cure any such defects, Optionee’s sole remedy will be to declare this Option to be void and of no further effect. In which case, there will be no further liability by Optionee to Optionor. Optionee will indemnify Optionor against all liability, damage, claim, cost and expense resulting from Optionee’s exercise of this right of entry. Optionee agrees to restore the Site to substantially the same condition it was in prior to investigating.

8. **Further Acts.** Optionor will cooperate with Optionee in executing or filing of any documents necessary to protect Optionee’s rights under this Option, to allow Optionee’s use of the Site, and to affect the intent of this Option.

# 9. Successors and Assigns. This Option is binding upon and inure to the benefit of the Parties, their respective heirs, successors, personal representatives and assigns.

10. **Third-Party Beneficiaries.** This Option benefits Optionor and Optionee only. It is not intended for the benefit of any other party.

11. **Non-Assignability.** This Option may not be assigned by either Party without the other Party’s prior written consent; provided, however, this Agreement may be sold, assigned, licensed, or transferred at any time by Optionee to any business entity which (a) is a parent, subsidiary or affiliate of Optionee, (b) controls or is controlled by or under common control of Optionee, (c) is merged or consolidated with Optionee, or (d) purchases more than 50% ownership interest in or to the assets of Optionee to which this applies. Upon assignment, Optionee shall be relieved of all liabilities and obligations hereunder and Optionor shall look solely to the assignee for performance under this Agreement and all obligations hereunder. Notwithstanding anything contained in this Agreement to the contrary, if Optionee or a corporation or other entity which directly or indirectly (through one or more subsidiaries) controls Optionee is a corporation or other entity whose equity interests are listed and traded on a nationally recognized securities exchange or over-the-counter market, the transfer, sale or other disposition (including issuance) of stock or other equity interests in such corporation or other entity shall not be deemed an assignment of this Agreement..

12. **Waiver of Claim.**  Except as specifically provided in this Agreement, in no event will Optionor or Optionee be liable to the other for, and Optionee and Optionor each hereby waive the right to recover, incidental, consequential (including, but not limited to, lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.

13. **Applicability of the Ground Lease.** The terms of the Ground Lease, beginning on Page 3, will be effective upon Optionee’s exercise of this Option.

**GROUND LEASE GOVERNING THE RELATIONSHIP OF THE PARTIES**

**UPON THE EXECUTION OF THE OPTION**

1. **Leased Premises**. Lessor will lease the property and grant a non-exclusive easement for ingress, egress and utilities for the duration of the Lease.

(a) The leased area is depicted in and attached as Exhibit “A” (the “Leased Premises”),

(b) The non-exclusive easement is depicted in and attached as Exhibit “B” (the “Easement(s)”).

(c) Within \_\_\_\_ days of the Commencement Date, the Parties will mutually agree to the exact location and configuration of the Leased Premises, which will be depicted in a survey at Lessee’s expense. The surveyed location must meet zoning and other legal requirements. The Survey will automatically replace Exhibit “A” and be made a part of this Agreement. The Agreement and Survey will be rerecorded as a superseding document with the Flagler County Clerk of Courts. If any discrepancy arises between the description of the Leased Premises and the Survey, the Survey will control.

(d) The Leased Premises will be utilized to construct, support and operate a wireless communications facility. The facility will include a communication tower, antennas, cables, and related structures and improvements (the **“Tower Facilities**”). Lessee’s utilization of the Leased Space must be consistent with Sections 5 and 9 of this Lease; and for other purposes which are ancillary and appurtenant, with Lessor’s prior-written consent, which will not be unreasonably withheld or delayed.

2. Initial Term. The term of this Lease is five (5) years commencing on the Commencement Date, and terminating on the fifth (5th) anniversary of the Commencement Date (“Initial Term”). The Parties agree that a Memorandum of Lease, attached as Exhibit “C,” will be executed and recorded in the public records, setting forth the Lease Commencement Date and other matters. The Parties agree that Lessee will record the Memorandum of Lease in the public records. Lessee will notify Lessor in writing of the recordation of the Memorandum and Exercise of Option as noted in Section 19.

3. Renewal Terms. This Lease may be renewed for five (5) additional five (5) year terms (“Renewal Terms”). Each Renewal Term will be on the same terms and conditions as noted in this Lease. The Lease will automatically renew for each successive Renewal Terms unless Lessee notifies Lessor, thirty (30) days prior to the expiration of the Initial Term or the Renewal Term then in effect, of its intention not to renew the Lease.

4. Rent. Commencing on the first day of the calendar month following the Commencement Date, Lessee will pay to Lessor the rent (“Rent”) provided in the Rent Schedule attached as Exhibit “D,” which will include applicable State, County and local sales, rent or use tax.

(a) Rent must be paid by the tenth (10th) day of each calendar month, and must be remitted to the address shown for Lessor in the Lease, or such other address as Lessor may direct by written notice to Lessee.

(b) If the Commencement Date, or the date of termination (the “Termination Date”), of this Lease is other than the first (1st) day of the month, rent will be prorated. If termination of this Lease occurs for any reason, other than for nonpayment of Rent, all Rent paid before the Termination Date for a periodafter the Termination Date, will be refunded to Lessee.

5. **Use**.

1. The Leased Premises may be used by Lessee for the transmission and receipt of wireless communication signals in all lawfully authorized frequencies and other uses as permitted under applicable zoning regulations to accommodate four (4) broadband wireless cellular carriers.
2. Lessee may construct and maintain a 150’ monopine telecommunications tower (the “***Tower***”), structural tower base(s), communications equipment, one or more buildings or equipment cabinets, radio transmitting and receiving antennas, personal property and related improvements and facilities (the “Tower Facilities”).
3. Lessee agrees that the Tower will comply with FAA rules and regulations regarding lighting of the Tower.
4. Lessee may construct additional improvements, demolish and reconstruct improvements, or restore, replace and reconfigure improvements during the term of this Lease, provided it complies with all applicable regulations.
5. Lessor agrees to cooperate with Lessee in obtaining, at Lessee’s expense, licenses and permits required for Lessee’s use of the Leased Premises (the “Governmental Approval”).

# 6. Lessor’s Representation and Warranties. Lessor represents and warrants that:

# To the best of its knowledge, Lessee’s intended use as noted in Section 5 is not prohibited by covenants, restrictions, reciprocal easements, servitudes, subdivision rules or regulations;

1. It will not use, nor permit its lessees, licensees, invitees or agents to use, any portion of adjacent real property owned by Lessor in any way which interferes with the wireless communications operation of Lessee;
2. To the best of its knowledge, no Hazardous Materials, as defined below, have been generated, stored, disposed of or are present on or under the Leased Premises and the Easement(s) prior to the Commencement Date of this Lease;
3. It has the full right, power, and authority to execute this Lease;
4. It has good and marketable fee simple title to the Leased Premises and the Easement(s); and
5. The Leased Premises constitutes a legal lot that may be leased without the need for any subdivision or platting approval.

7. **Lessee’s Representations and Warranties.** Lessee represents and warrants that:

1. It will not operate, or allow its tenants to operate any frequencies that would interfere with any governmental or Federal Aviation Administration (FAA) frequencies or equipment, or emergency services frequencies or equipment;
2. All licensed contractors and subcontractors used by Lessee are authorized to work in the City of Palm Coast, Florida;
3. It will keep current all licenses, permits, or certificates required for the operation and maintenance of the Leased Premises; and
4. It is duly authorized to conduct business within the state of Florida.

8. **Improvements, Utilities, Access, Maintenance**.

# (a) Lessee may, at Lessee’s expense, erect and maintain on the Leased Premises the Tower Facilities and other structures as noted in Section 5. The Tower Facilities are the exclusive property of the Lessee.

# (b) Lessor grants Lessee an easement in other real property owned by Lessor as reasonably required to construct the Tower Facilities. Said easement will be for the duration of construction of the Tower Facilities, and will be in a location selected by Lessor.

# (c) Lessee may install utilities and improve present utilities on the Leased Premises (including but not limited to the installation of emergency power generators), at Lessee’s expense. Lessee has the right to permanently place utilities on the Easement(s) to service the Leased Premises and Tower Facilities, except that emergency power generators may not be placed on the Easement(s). If utilities necessary to serve the equipment of Lessee or the equipment of Lessee’s licensee(s) or sublessee(s) cannot be located within the Easement(s), Lessor agrees to cooperate with Lessee and to act reasonably in allowing the location of utilities (other than emergency power generators) on other real property owned by Lessor without requiring additional compensation from Lessee or Lessee’s licensee(s) or sublessee(s), provided that such alternative locations are reasonably available, and acceptable to Lessor. In which case, Lessor will, upon Lessee’s request, execute a separate written easement to be recorded by Lessee evidencing this right.

# Lessee must pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. Lessee may draw electricity and other utilities from the existing utilities on the Site or obtain separate utility service from any utility company that will provide service to the Site (including a standby power generator for Lessee’s exclusive use). Lessor agrees to sign such documents or easements as required by the utility company to provide service to the Leased Premises.

# (d) Lessee will, during this Lease, enjoy ingress, egress, and access from the Leased Premises to an open and improved public road which presently exists. If the public road ceases to exist, Lessor will grant, if reasonably available, an easement to Lessee, and Lessee’s sublessees and assigns, so they may, at their own expense, construct a suitable private access drive to the Leased Premises. To the degree such access is across other property owned by Lessor, Lessor will execute a non-exclusive easement evidencing this right. Lessor will not engage in activities on the Easement(s) that will interfere with Lessee, its licensees, invitees, sublessees or agents’ utilization of the Easement(s), and Lessee will not interfere with Lessor’s use of the Easement(s). Such access will be provided twenty-four (24) hours per day, seven (7) days per week.

(e) Lessor grants Lessee the right to clear all trees, undergrowth, or other obstructions and to trim, cut, and keep trimmed all tree limbs which may interfere with or fall upon Lessee’s Tower Facilities and Easement(s) rights. Subject to Lessee obtaining all required permits.

# (f) Lessee must maintain, at its own expense and in a manner consistent with good business practice, the Leased Premises in good overall appearance, repair and safe condition.

# (i) Lessee must repair all damages to the Leased Premises or Easement(s) caused by Lessee’s employees, agents, patrons or others. The quality of the repairs, replacements, and maintenance must be equivalent to the original in material and workmanship.

# (ii) All paint color and exterior signage, except for any paint color or signage required by applicable laws, regulations or permit conditions, must be submitted to and approved in writing by Lessor prior to application.

# (iii) Lessee must maintain the tower in good working order and appearance and must maintain the structural integrity of the Tower.

# (iv) Lessee must, at its own expense, keep the Leased Premises mowed and groomed and not allow the accumulation of trash or debris. The landscaping must be maintained in a manner consistent with good horticultural practices, and free of unsightly conditions.

# 9. Termination. Except as otherwise provided, this Lease may be terminated with no penalty or further liability upon written notice as follows:

# (a) Upon thirty (30) days written notice by Lessee to Lessor, if Lessee cannot obtain or maintain despite commercially reasonable efforts, any license, permit or other Governmental Approval for the construction and operation of the Tower Facilities or Lessee’s business;

# (b) By Lessee, for any reason upon one (1) year’s advance written notice;

(c) By either Party upon default of any covenant or term, which default is not cured within sixty (60) days of receipt of written notice of default (without however, limiting any other rights available to the Parties under any other provisions). However, if the defaulting party commences efforts to cure the default within such period and diligently pursues curing of the default to completion within a reasonable time period, the non-defaulting Party may not declare a default;

(d) Lessor may terminate this Lease, upon 30 days written notice to Lessee, if:

(i) Lessee defaults in the payment of Rent, other charges or expenses, or any installment which has not been paid within forty five (45) days after Lessor’s written notice to Lessee that payment is due;

(ii) Lessee files a voluntary petition in bankruptcy; or proceedings in bankruptcy are instituted against Lessee and Lessee is adjudicated bankrupt under such proceedings;

 (iii) A receiver or trustee is appointed over the property of Lessee; or

 (iv) A levy is issued or entered against leasehold interests of Lessee.

10. **Surrender.**

(a) Upon termination or expiration of this Lease, Lessee will:

(i) Within one hundred twenty (120) days, remove the Tower Facilities and all other personal property and improvements which Lessee has installed on the Leased Premises and Easement(s) (except for portions of foundations eighteen inches (18”) below ground level);

(ii) Peaceably and quietly deliver possession of the Leased Premises to Lessor;

(iii) Repair, at its sole cost, damage to the Leased Premises or adjacent land owned by Lessor due to Lessee’s removal of its equipment or personal property to Lessor’s reasonable satisfaction.

(b) Removal Bond. Lessee will provide Lessor with a copy of a construction or removal bond procured by Lessee in the amount of thirty thousand and 00/100 Dollars ($30,000.00), naming Lessor as obligee thereunder, which bond may be used by Lessor toward the reasonable cost of removing and storing any Tower Facilities not removed by Lessee upon the expiration or termination of this Agreement and restoring the Lease Premises. Lessee will be obligated to timely pay required bond premiums in order to ensure that the bond remains in full force and effect during the Term and any Renewal Term of this Agreement, until such time as Lessee’s obligations to remove the Tower Facilities and make any repairs to the extent required under this Agreement are satisfied.

(c) Upon a termination by Lessor pursuant to Section 9(d), Lessor will have the right at its option and with thirty (30) days prior-written notice to Lessee of the termination to:

(i) Remove Lessee and anyone claiming rights to the Leased Premises by summary proceedings or by any other lawful manner;

(ii) Repossess and enjoy the Leased Premises; and

(iii) Recover immediately from Lessee:

1. Unpaid rent;

2. Rent for the remainder of the then current Lease term, reduced to present value; and

3. Any other damages caused by or resulting from the termination of the Lease.

NOTE: The rights of Lessor are cumulative. The exercise of rights under this Section will not exclude other rights and remedies authorized by law. No waiver by Lessor will operate as a waiver of any future default. Lessee expressly waives any right of redemption under any laws if Lessee is evicted or dispossessed for any cause.

11. **Sublessee’s Improvements.** Lessee’s assignee(s) and sublessee(s) may modify and erect additional improvements on the Leased Premises, including antennas, dishes, cabling, additional storage buildings or equipment shelters as are reasonably required for the operation and maintenance of the communications equipment. The Lessee’s assignee(s) and sublessee(s) have rights of ingress and egress to the Leased Premises and to install utilities to and on the Leased Premises and Easement(s) as if they were the Lessee under this Lease. Said assignee(s) and sublesee(s) are subject to all terms and conditions of this Lease. All assignees and sublessees must sign the agreement, attached as Exhibit “E,” agreeing to be bound by the terms of the lease.

12. **Permits and Taxes.**

(a) Lessee must acquire and keep current all licenses, permits, and certificates (City, County, State and Federal) required for the conduct of its activities at the Leased Premises. Lessee agrees not to allow any of the licenses, permits, or certificates to become delinquent.

# (b) Lessee must pay all personal property taxes assessed on, or any portion of such taxes attributable to, the Tower Facilities. Lessee must pay any increase in real property taxes levied against the Leased Premises directly attributable to Lessee’s use of the Leased Premises. Lessor agrees to furnish proof of such increase to Lessee. Should Lessee fail to pay, when due, any personal property taxes affecting the Leased Premises or the Easement(s), Lessor may, but not obligated, pay the taxes and increase future installments of rent by the amount of taxes paid by Lessor on Lessee’s behalf.

13. **Compliance with Laws.** Lessee must, at its own expense, and at no expense to Lessor, fully comply with all laws, regulations, rules, ordinances, and requirements (enacted or may be enacted during this Lease) of the City, County, State and Federal authorities and agencies, which affect this Lease, the land granted by this Lease, and any improvements or operations on the Leased Premises. These include all lawful rules and regulations relating to Stormwater Pollution, Spill Prevention Control, and Countermeasure Program which may be promulgated by Lessor. Nothing in this Lease may be deemed to create an affirmative duty of Lessor to abrogate its sovereign right to exercise its police powers which includes the power to act under its zoning and land use codes.

14. **Destruction of Premises.** If the Leased Premises or the Tower Facilities are destroyed or damaged, to hinder the effective use of the Tower Facilities in Lessee’s judgment, based on reasonable standards used by similar types of businesses, Lessee may elect to terminate this Lease as of the date of the damage or destruction by notifying the Lessor in writing. All rights and obligations of Lessee to Lessor and vice versa will cease as of the date of the damage or destruction, except for Lessee’s obligation to remove Lessee’s improvements; pay any Rent due up to that date; and any other provisions of this Lease that may survive the termination of this Lease. Lessee will be entitled to the reimbursement of any Rent prepaid by Lessee.

# 15. Condemnation. If a condemning authority takes all of the Leased Premises or Easement(s), or a portion sufficient to render the Leased Premises or Easement(s), in the opinion of the Lessee, using reasonably acceptable standards for the profession, unsuitable for uses consistent with Section 5, this Lease will terminate as of the date the title vests in the condemning authority. Lessee may file its own claims against the condemning authority for the value of its Tower Facilities, moving expenses, prepaid rent and business dislocation expenses. A sale of all or part of the Leased Premises or Easement(s) to a purchaser with the power of eminent domain, in the face of the exercise of eminent domain power, will be treated as a taking by condemnation.

# 16. Insurance. Lessee must purchase and maintain in full force and effect throughout the term of this Lease insurance against claims for injuries to persons or damages to properties, which may arise from Lessee’s operation, use or improvement of the Leased Premises or Easement(s). Lessee must continuously maintain the following insurance, naming Lessor as an additional insured, proof of which must be provided to Lessor:

(a) Commercial General Liability. Coverage must be afforded under a per occurrence policy for a limit of $2,000,000.00 general aggregate, $2,000,000.00 products/completed operations aggregate, $1,000,000.00 personal and advertising injury liability, $1,000,000.00 per occurrence.

(b) Workers Compensation. Coverage that applies to all employees at statutory limits in compliance with applicable state and federal laws.

(c) Employer’s Liability. Coverage must be afforded under a per occurrence policy for a limit of $500,000.00 per accident, $500,000.00 disease-policy and $500,000.00 disease-policy per employee.

17. **Lessee’s Environmental Covenants and Indemnity.** As used in this Lease, the term “Hazardous Materials” means any hazardous or toxic substance, material or waste which is, or becomes designated as such, including those designated as a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act and the Clean Water Act.

(a) During the term of this Lease, Lessee must ensure the presence, use, storage, and disposal of any Hazardous Material, on or under the Leased Premises by Lessee, its agents, employees, business invitees, contractors or sublessees, comply with all laws, rules, regulations and orders. Lessee may not install or permit the installation of any underground storage tanks on the Leased Premises.

(b) Lessee, its grantees, successors, and assigns will indemnify, defend, reimburse and hold harmless Lessor from and against environmental damages caused by the presence of Hazardous Materials on the Leased Premises in violation of any applicable environmental laws and arising as the result of Lessee’s activities after the execution of this Agreement. The warranty and indemnity of Lessor described in this Section will survive the termination of this Lease.

# 18. Notices. All notices required or permitted under this Lease must be in writing and is deemed effective upon personal delivery, or three (3) days after being deposited in the U.S. Mail, registered or certified, and postage prepaid, or one (1) day after being deposited with a recognized overnight delivery service. Such notices must be addressed to the Party at the addresses shown below, or at such other address or addresses as either Party designates to the other in writing under this Section:

As to Lessor: City of Palm Coast

 Attn: IT Department

 160 Lake Avenue

 Palm Coast, Florida 32164

 (386) 986-3735

 (386) 986-4775 fax

As to Lessee: American Tower LLC

 Attn: Land Management

 10 Presidential Way

 Woburn, MA 01801

With a copy to: American Towers LLC

 Attn: Law Department

 116 Huntington Avenue

 Boston, MA 02116

19. **Warranties, Covenants, and Guarantees.** Lessor makes no warranty, guarantee, or covenant of any nature, including covenants of quiet enjoyment, title or averment, or any warranty or representation concerning the condition of the Leased Premises. Lessor will not be responsible for any loss, damage, or costs which may be incurred by Lessee by any such condition. Lessee must take the Site and Leased Premises in as-is condition.

20. (RESERVED) **Subordination and Non-Disturbance.**

[NOTE: THE CITY CANNOT MORTGAGE PROPERTY BY LAW]

21. **Assignments and Subleases.**

# (a) Lessee may, upon written notice to Lessor, mortgage or grant a security interest in the Lease and Tower Facilities, and may assign this Lease and Tower Facilities to any such mortgagees or holders of security interests, including their successors and assigns (collectively “Secured Parties”). Lessor will execute such consent to leasehold financing as may reasonably be required by Secured Parties, provided the terms of the financing:

# (i) Do not exceed the Term (including all Renewal Terms) of this Lease; and

# (ii) The Secured Parties are subjected to the terms of this Lease.

# Lessor agrees to notify Lessee and Lessee’s Secured Parties simultaneously of any default by Lessee, and to give Secured Parties the same right to cure the default as Lessee. The cure period for any Secured Party must be at least ten (10) days after the receipt of the default notice.

# (b) Lessee shall not sell, assign, or transfer this Agreement without the express written consent of Lessor, which shall not be unreasonably withheld, conditioned or delayed or made the subject of a demand for additional fees or compensation; provided, however, this Agreement may be sold, assigned, licensed, or transferred at any time by Lessee to any business entity which (a) is a parent, subsidiary or affiliate of Lessee, (b) controls or is controlled by or under common control of Lessee, (c) is merged or consolidated with Lessee, or (d) purchases more than 50% ownership interest in or to the assets of Lessee to which this applies. Upon assignment, Lessee shall be relieved of all liabilities and obligations hereunder and Lessor shall look solely to the assignee for performance under this Agreement and all obligations hereunder. Notwithstanding anything contained in this Agreement to the contrary, if Lessee or a corporation or other entity which directly or indirectly (through one or more subsidiaries) controls Lessee is a corporation or other entity whose equity interests are listed and traded on a nationally recognized securities exchange or over-the-counter market, the transfer, sale or other disposition (including issuance) of stock or other equity interests in such corporation or other entity shall not be deemed an assignment of this Agreement. Any assignments will be subject to the terms of this Lease. Lessee will provide to Lessor a copy of the assignee’s executed copy of Exhibit E within thirty (30) days of the assignment.

(c) Any sublease will be subject to terms of this Lease. Lessee will provide to Lessor a copy of the sublessee’s executed copy of Exhibit E within thirty (30) days of commencement of the sublease.

22. **Successors and Assigns.** This Lease runs with the Leased Premises described on Exhibit “A” and is binding upon and inure to the benefit of the Parties, their respective heirs, successors, personal representatives, and assigns.

23. **Waiver of Incidental and Consequential Damages.** Except as specifically provided in this Agreement, in no event will Optionor or Optionee be liable to the other for, and Optionee and Optionor each hereby waive the right to recover incidental, consequential (including, but not limited to, lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.

24. **Certifications.** Either Party may request, in writing, that the other Party certify information to a prospective mortgagee or purchaser. Such certification:

(a) Must be transmitted within ten (10) days after receipt of a written request;

(b) May be relied upon by the Party requesting it;

(c) Is binding on the Party executing it; and

(d) May include:

 (i) the validity, force and effect of this Lease;

 (ii) the extent to which this Lease has been supplemented or amended;

(iii) the existence of any default;

(iv) the existence of any offsets, counter-claims or defenses by the other Party;

(v) the commencement and expiration dates of the term;

(vi) any prepaid rent; and

(vii) any other matter as may reasonably be requested.

# 25. Site Requirements. Lessee agrees that:

1. It will conduct its operation on the Leased Premises in strict compliance with this Lease and with the rules and regulations of the City of Palm Coast and all other governmental agencies.
2. It will transact its business in such a manner as to develop and maintain the good will and active interest of those enjoying the use of the Site and who have or may have occasion to use its facilities or to come into relations with the Site.
3. It will not use nor permit the use of the Leased Premises for any unlawful or immoral purpose.
4. It will not permit a nuisance to be created on the Leased Premises.
5. It will prevent any use of the Leased Premises that would interfere with or adversely affect the operation or maintenance of the Site, or otherwise constitute a hazard.
6. It will design the Structures so that the City’s Emergency Services, including fire, police, rescue, emergency management, 911 and related personnel, will have space on the tower and within the Leased Space, to support and facilitate:

(i) Up to three (3) DB-810 or equivalent antennas;

(ii) Up to three (3) one and five eights inch (1 5/8”) transmission lines for an 800 MHz radio repeater system, a P-25 system standard or any other emergency services equipment the Lessor may deem necessary for public safety; and

(iii) The City of Palm Coast’s installation of equipment relating to tourism/marketing such as cameras or other observational or data gathering equipment. The exact height on the tower and location within the Leased Space will be determined at a later date. The Parties agree to enter into an Antenna Sublease Agreement prior to the Lessee installing any equipment on the Structures.

(iv) NOTE: The space allocated to the City for the installation of their equipment is subject to the following conditions:

1. The city’s emergency services equipment may not exceed three (3) DB-810 or equivalent antennas and three (3) one and five eights inch (1 5/8”) transmission lines.

2. The space must be greater than one hundred (100) feet AGL and the antennas cannot be more than fifteen (15) vertical feet.

3. The ground space required for such equipment must be in a location that does not impede existing and reasonably anticipated future additional licensees.

4. There is no monthly rent.

5. The cost of installing the equipment is at the sole cost of the Lessor.

26. **Right of Lessor to Inspect Leased Premises.** Lessor or its representative may, upon twenty-four (24) hours’ notice to, and accompanied by a representative of Lessee, enter the Leased Premises to examine it and for any other lawful purpose.

27. **Taxes.**

(a) If ad valorem taxes are assessed, Lessee must pay the portion of taxes directly attributable to the Leased Premises.

(i) Lessor will provide to Lessee a copy of any notice, assessment or billing relating to ad valorem taxes for which Lessee is responsible under this Agreement within thirty (30) days of receipt of the same by Lessor.

(ii) Lessee will have no obligation to pay any ad valorem taxes until Lessee has received the notice, assessment or billing relating to such payment.

(iii) Lessee has the right, at its option and cost, to appeal, challenge or seek modification of any ad valorem tax assessment or billing for which Lessee is wholly or partly responsible for payment.

(iv) Lessor will reasonably cooperate with Lessee in filing, prosecuting and perfecting any appeal or challenge to ad valorem taxes including executing any consent to appeal or other similar document.

(b) NOTE: Lessor is a Florida Municipality and therefore, is a tax-exempt entity.

28. **Other Rights Reserved by Lessor.** Besides all other rights reserved by Lessor in the Leased Premises, Lessor expressly reserves the right of ingress and egress for Lessor and its designees over the Easement(s).

29. **Lien for Lessee Improvements.**  Under Section 713.10, Florida Statutes, no interest of the Lessor will be subject to liens for improvements made by Lessee. Lessee must notify the contractor or subcontractor making improvements to the Leased Premises of this provision. The knowing or willful failure of Lessee to provide such notice to the contractor will render the contract between the Lessee and contractor voidable at the option of the contractor. No party, including materialmen, contractors, and subcontractors, may file a mechanic’s or materialmen’s lien, for performing labor or furnishing materials for the benefit of Lessee, to the Leased Premises. If a lien is filed, Lessee is obligated to:

(a) Within thirty (30) days of receipt of notice from Lessor of such lien, discharge, bond or otherwise remove the lien. Without obviating its obligation in the preceding sentence, Lessee may contest such lien by instituting appropriate legal proceedings;

(b) Indemnify, defend, and hold harmless Lessor, at Lessee’s cost and expense, any action, suit, or proceeding which may be brought to enforce any such lien; and

(c) Pay any damages and attorney’s fees incurred by Lessor and satisfactorily discharge any judgment entered.

Lessor will give Lessee notice of any such action, suit, or proceeding and Lessee may assert all defenses, counterclaims, offsets or any other claim of any nature. The terms and provisions of this Section will survive the termination of this Lease.

30. **Responsibility of Lessee/Lessor.**

(a) Lessee is in control or possession only of portions of the Site as noted in Exhibit “A.” Lessee does not assume responsibility for the conduct, operation, or condition of portions of the Site not included within the terms of this Lease.

(b) Lessor is not responsible for the actions of Lessee, its employees, agents, contractors, or subcontractors. Lessee will indemnify and hold harmless Lessor against all liabilities, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions, appeals and causes of action, including attorney’s fees and costs arising out of Lessee’s negligent acts or omissions with respect to the Leased Premises (except for injuries, damages or claims which result solely from the negligence of the Lessor). Lessee must promptly reimburse Lessor for any proration of insurance as required.

31. **Further Acts.** Lessor will cooperate with Lessee in executing any documents to protect Lessee’s use of the Leased Premises and Easement(s) and to take such action as may be reasonably required to implement this Lease. Lessor will cooperate with and join in filing any applications on behalf of Lessee with Federal, State and local governmental authorities to enable Lessee to perpetuate the intended use of the Leased Premises.

32. **Miscellaneous.**

1. The substantially prevailing party in any litigation arising under this Lease will be entitled to its reasonable attorney’s fees and court costs, including appeals, if any.

(b) Each Party agrees to furnish to the other, within ten (10) days after request, such truthful estoppel information as the other may reasonably request.

(c) This Lease constitutes the entire agreement and understanding of Lessor and Lessee regarding the subject of this Option and Ground Lease, and supersedes all offers, negotiations and other agreements. There are no other representations or understandings of any kind. Any amendments to the Lease must be in writing and executed by Lessor and Lessee.

(d) If either Lessor or Lessee is represented by a broker in this transaction, that Party is responsible for any fees due such broker and must hold the other Party harmless from any claims for commission.

(e) This Lease is construed under the laws of the state of Florida. Venue will be in the courts of Flagler County, Florida, and for federal actions, in Orlando, Florida.

(f) If any term of this Lease is void or invalid, such invalidity will not affect the remaining terms of this Lease, which will continue in full force and effect.

(g) This Lease may be executed in two or more counterparts, all of which will be one and the same agreement and will become effective when one or more counterparts have been signed by each of the Parties.

(h) Each of the Parties represent and warrant they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Agreement.

33. **Indemnification.**  Lessee agrees to protect, defend, reimburse, indemnify and hold harmless Lessor, its agents, employees and officers (the “Indemnified Parties”), against all claims, causes of actions, liabilities, expenses, losses, costs, fines and damages, including reasonable attorneys’ fees at trial and on appeal, to the extent allowed by law, arising out of Lessee’s negligent or intentional acts or omissions with respect to the Leased Premises, Site, or Easement(s), excluding injuries caused by the negligent or willful misconduct of the Indemnified Parties. This Section also applies to claims arising out of contamination caused to the Site after the Commencement Date by the negligent or intentional acts or omissions of Lessee, its agents, or employees, including contamination of the soil or storm water by fuel, gas, chemicals, or other substances deemed by the Environmental Protection Agency to be environmental contaminants. Nothing in this Lease may be construed as a waiver of Lessor’s limitation of liability as noted in Section 768.28(5), Florida Statutes.

34. **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

**IN WITNESS WHEREOF**, this Agreement is entered into the date first written above. **OPTIONOR/LESSOR:**

 CITY OF PALM COAST, FLORIDA

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTEST: Jim Landon, City Manager

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Virginia A. Smith, City Clerk

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

Approved as to form and legal sufficiency:

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 William E. Reischmann, Jr. City Attorney

**OPTIONEE/LESSEE:**

 American Tower

Witness:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:

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

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

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**EXHIBIT “A”**

**Description of Real Property**

**EXHIBIT “B”**

Description of Easement(s)

(Page 1 of 2)

INGRESS/EGRESS & UTILITIES EASEMENT

**EXHIBIT “B”**

Description of Easement(s)

(Page 2 of 2)

 **EXHIBIT “C”**

See attached Memorandum of Lease

**Site:** Palm Coast Water Treatment Plant #1

**MEMORANDUM OF LEASE**

 This Memorandum of Lease is made on , 2016, by and between the CITY OF PALM COAST, as Lessor, at 160 Lake Avenue, Palm Coast, Florida, 32164, and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, as Lessee, at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

1. Lessor and Lessee are parties to an Option and Ground Lease Agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2016 (the "Lease Agreement"); the terms and provisions of which are incorporated by this reference. The premises covered by the Lease Agreement are in the **City of Palm Coast, Florida,** as described in the legal description attached as **Exhibit "A"** (“Leased Premises”).

2. Under the Lease Agreement, Lessor has granted to Lessee an easement for ingress, egress and utilities for the duration of the Lease Agreement over those lands more particularly described on **Exhibit “B,”** as attached. The easement rights include the right and authority of Lessee to grant or assign to third parties all or some of the easement rights granted to Lessee, subject to the written consent of Lessor.

3. The Lease Agreement provides for an initial term of five (5) years which commenced on \_\_\_\_\_\_\_\_\_\_\_\_\_. The Lease provides for five (5) additional five (5) year renewal terms, which will occur automatically, unless Lessee delivers written notice of intent not to renew to Lessor thirty (30) days prior to the expiration of the initial term, or the renewal term then in effect.

4. Under Section 713.10, Florida Statutes, the Lease Agreement provides that the interest of the Lessor is not subject to liens for improvements made by Lessee, and that Lessee must notify any contractor making such improvements of this provision of the Lease Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Memorandum of Lease as of the date first written above.

**ATTEST:**  **LESSOR**

 **CITY OF PALM COAST**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Virginia A. Smith, City Clerk Jim Landon, City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

William E. Reischmann, Jr. City Attorney

STATE OF FLORIDA

COUNTY OF FLAGLER

I, the undersigned Notary Public for the County and State, do certify that *Jim Landon*, as *City Manager of the City of Palm Coast*, appeared before me this day, and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and notarial seal, this day of 2016.

Notary Public:

Print Name: *{affix notary stamp/seal}*

My Commission Expires:

**LESSEE:**

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witnesses: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

STATE OF FLORIDA

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

I, the undersigned Notary Public for the County and State, do certify that *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* as *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* of *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*, appeared before me this day, and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and notarial seal, this day of 2016.

Notary Public:

Print Name: *{affix notary stamp/seal}*

My Commission Expires:

**EXHIBIT “D”**

**Rent Schedule**

Rent will escalate 3% annually on the anniversary of the Commencement Date and on every anniversary of the Commencement Date during the initial Term and each Renewal Term.

Base Rent: Two Thousand Dollars ($2000) per month. Rent will be due and payable monthly upon the Commencement Date. Partial months will be pro-rated.

Additional Tenant Rent: Besides the Base Rent, Lessee must pay Lessor One Thousand Dollars ($1,000) each month for each Additional Tenant that co-locates on the tower or contracts with Lessee to locate equipment within the Leased Premises.

 Additional Tenant Rent will be due monthly upon the Commencement Date. Partial months shall be pro-rated. Lessee must provide a copy of each Additional Tenant lease to Lessor.

 Any other users, locators or services provided or facilitated by the tower and related improvements, whether in existence or future technology, will be subject to this additional tenant rent provision, equaling forty percent (40%) of the amount paid to Lessee.

Rent is payable to the City of Palm Coast, Florida. Lessor must provide Lessee with an accurate and executed W-9 Form to facilitate payment.

Broadband Tenants are defined as Cellular/PCS providers such as Alltel, AT&T, Cingular, Sprint, Nextel, T-Mobile, MetroPCS and Verizon.

Non-Broadband Tenants are defined as 2-way, paging, and internet providers.

**EXHIBIT “E”**

**FORM OF TRANSFER AGREEMENT**

AGREEMENT OF ASSIGNEE/SUBLESSEE

 Under this Agreement of Assignee/Sublessee, made this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Assignee/Sublessee”) acknowledges and agrees as follows:

 1. Assignee/Sublessee acknowledges that American Towers is transferring a portion of its interest in the Leased Premises to Assignee/Sublessee as reflected in Exhibit \_\_\_\_\_\_\_.

 2. Assignee/Sublessee acknowledges that American Towers and the City of Palm Coast, have entered into an Option and Ground Lease Agreement dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ , (copy attached) which governs the Leased Premises and Easement(s). The Memorandum of Lease (not the Option and Ground Lease Agreement) is recorded in O.R. Book \_\_\_\_\_\_, Page \_\_\_\_\_\_, Public Records of Flagler County, Florida. Assignee/Sublessee acknowledges having received a copy of said Option and Ground Lease Agreement and understands all of the terms, provisions, conditions, and limitations of that Agreement.

 3. In consideration for receiving the benefits of the transfer of a portion of the Leased Premises and the accompanying Easement(s) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignee/Sublessee agrees to be bound by all of the terms, provisions, conditions, and limitations of that Agreement as the same may apply to the Leased Premises and the accompanying Easement(s) owned by American Towers or in which American Towers may have an interest, including the condition that the undersigned Assignee/Sublessee obtained this same agreement from any subsequent Assignee/Sublessee.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (print name)