

ORDINANCE NO. 2018-002

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO A GROUND LEASE WITH CCATT LLC., A DELAWARE LIMITED LIABILITY COMPANY, TO LEASE A SITE LOCATED AT MCDONALD PARK, 1185 WEST 74 STREET, HIALEAH, FLORIDA FOR THE CONTINUED USE OF A MONOPOLE WIRELESS COMMUNICATIONS TOWER FOR A TERM OF FIVE YEARS, BEGINNING ON THE COMMENCEMENT DATE OF THE LEASE TERM OF NOVEMBER 20, 2017 AND ENDING FIVE YEARS THEREAFTER, WITH FOUR CONSECUTIVE OPTIONAL RENEWAL TERMS OF FIVE YEARS, FOR AN ANNUAL BASE RENT OF \$55,000 WITH AN ANNUAL INCREASE OF 5% EACH YEAR, 30% OF ANY COLLOCATOR RENT, BUT NOT LESS THAN \$850 PER MONTH, A CAPITAL CONTRIBUTION OF \$15,000, TOGETHER WITH SUCH RIGHTS AND DUTIES AS MORE FULLY DESCRIBED IN THE GROUND LEASE, A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1"; AND GRANTING A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS IN CONNECTION WITH THE OPERATION OF THE COMMUNICATIONS TOWER; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on June 27, 2017, the City adopted Ordinance No. 2017-036 (“Wireless Ordinance”), which provides for the placement of wireless facilities that are seeking to be located within the City, and an application process for locating wireless towers and antennas and placement of ground equipment within the City; and

WHEREAS, CCATT LLC, a Delaware limited liability company authorized to do business in the State of Florida, d/b/a/ (“Crown Castle”), has placed a one hundred foot (100’) wireless communications monopole tower (“Tower”), wireless antennas and ground equipment in an area of approximately One Thousand Three Hundred (1,300) square feet of space on City-owned property located at 1185 W. 74th Street a/k/a McDonald Park (“Leased Premises”), pursuant to a lease agreement between the City and BellSouth Mobility, Inc., Crown Castle’s predecessor, which expired November 19, 2017; and

WHEREAS, Crown Castle wants to continue to maintain the Tower, wireless antennas and ground equipment at the Leased Premises; and

WHEREAS, the City Council deems it to be in the best interest of the citizens and residents of the City to approve the Wireless Site Lease Agreement (“Agreement”) between the City of Hialeah and Crown Castle for a term of five (5) years with an option to renew the Agreement for four (4) additional five-year terms, to continue to place the Tower, wireless antenna, and ground equipment on City-owned property located on the Leased Premises, at a rent of Fifty-Five Thousand and 00/100 Dollars (\$55,000.00) for the first year, with annual increases of (5%), and additional rent for current and future wireless providers that place their equipment on the Lease Premises; and

WHEREAS, it is in the best interest of the City to allow for the use of wireless communication towers on public property and obtain revenue through a ground lease; and

WHEREAS, communications towers deploy various technologies to a subscriber base, such as telephony, mobile data, television and radio.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The City of Hialeah, Florida hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into a ground lease with CCATT LLC., a Delaware limited liability company, to lease a site located at McDonald Park, 1185 West 74 Street Hialeah, Florida, in order to operate a wireless 100-foot high monopole communications tower, beginning on the commencement date of the lease term of November 20, 2017 and ending five years thereafter, with four consecutive renewal terms of five years, for a base annual rent of \$55,000 with an annual increase of 5% each year, 30% of any collocator rent, but not less than \$850 per month, a capital contribution of \$15,000, together with such rights and duties as more fully described in the ground lease, a copy of which is attached hereto and made a part hereof as Exhibit "1".

Section 2: The City of Hialeah, Florida hereby grants a non-exclusive easement for ingress, egress and utilities in connection with the construction and operation of the communications tower.

Section 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: Penalties.

Every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty described above, the City may pursue

other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

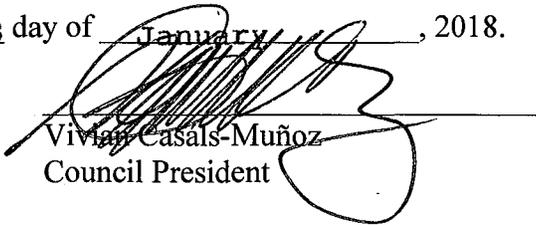
Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 23 day of January, 2018.

THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 103.041
PRIOR TO FINAL READING.

Attest:


Vivian Casals-Muñoz
Council President

Approved on this 8 day of February, 2018.


Marbelys Fatjo, City Clerk


Mayor Carlos Hernandez

Approved as to legal sufficiency and form:


Lorena E. Bravo, City Attorney

Ordinance was adopted by a (7-0) vote with Councilmembers, Caragol, Zogby, Casals-Munoz, Cue-Fuente, Garcia-Martinez, Lozano and Hernandez voting "Yes".

**WIRELESS SITE LEASE AGREEMENT BETWEEN
THE CITY OF HIALEAH, FLORIDA AND CCATT, LLC**

This Wireless Site Lease Agreement ("Agreement") made and entered into the ___ day of _____, 2017, by which the City of Hialeah, Florida, with an address of 501 Palm Avenue, Hialeah, Florida 33010 ("Owner"), leases to CCATT LLC, a Delaware limited liability company, with a mailing address of c/o Crown Castle USA Inc., 2000 Corporate Drive, Canonsburg, Pennsylvania 15317-8564 ("Lessee"), the Leased Premises (as described below), which is part of that certain real property owned by Owner (the "Property") and is more fully described in Exhibit "A" attached hereto, for the purpose of constructing, operating and maintaining a wireless communications tower and related facilities.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. **Termination of Original Agreement.** Owner is the current lessor and Lessee is the current lessee under that certain Lease Agreement Between the City of Hialeah and BellSouth Mobility Inc. dated April 28, 1992 (as amended and assigned the "Original Agreement"). Owner and Lessee acknowledge and agree that the Original Agreement and all obligations and liabilities set forth therein shall automatically terminate as of the Commencement Date (as defined below), unless otherwise stated herein, except for any obligations that may expressly survive. Owner and Lessee agree that as of the Commencement Date, this Agreement contains the entire agreement between the parties with respect to the subject matter hereof.

2. **Premises and Use.** Owner hereby leases to Lessee that certain parcel of land consisting of approximately 1,300 square feet (the "Leased Premises") upon which Lessee will construct and place a one hundred foot (100') wireless communications monopole tower ("Tower") located within the Leased Premises on Property at McDonald Park, located at 1185 W. 74th Street, within the City of Hialeah. Lessee shall install hedge fence slats of at least eight (8) feet in height along the perimeter of the Leased Premises to screen Lessee's Facilities located within the Leased Premises, subject to approval of the Owner's Planning and Zoning Department,

The Leased Premises described above are situated in the location(s) shown on Exhibit "B" attached hereto and made a part hereof, and are being leased to Lessee together with a non-exclusive use of an area, extending from the nearest public right-of-way, to the Leased Premises, for reasonable access 24 hours per day, 7 days per week, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along such area as permitted. Such access and utility area ("Access Area") is as described on Exhibit "B". The Leased Premises will be used by Lessee for no other purpose other than installing, removing, replacing, modifying, maintaining and operating, at its expense, a communications facility ("Lessee's Facilities"), including, without limitation, antennas and communications equipment, cable, wiring, back-up power sources (including generators and fuel storage tanks), related fixtures and appurtenances and the Tower, all in accordance with Owner's applicable ordinances (the "Equipment"). Owner and Lessee acknowledge that this Agreement pertains to an existing Lessee's Facilities and existing Equipment and all required plans have been submitted to, and approved by, Owner, and any approvals required from Owner and under the Code of the City of

Hialeah have been previously provided for the Lessee's Facilities and Equipment and no further approval is necessary. The replacement of or modification to Lessee's Facilities and Equipment, except the telecommunications Tower, that results in Lessee's Facilities or Equipment being not readily discernibly different in size, type, and appearance when viewed from ground level from surrounding properties, and the replacement or modification of Lessee's Facilities or Equipment that is not visible from surrounding properties, all as reasonably determined by the city, are subject to no more than applicable building permit review. All other modifications shall require approval by the city's planning and zoning division.

3. **Term.** This Agreement shall be effective ("Effective Date") as of the date of execution by both parties; provided, however, the initial term of this Agreement (the "Initial Term") is five (5) years, commencing on November 20, 2017 (the "Commencement Date"). Lessee has the option to renew this Agreement for four (4) additional terms (each a "Renewal Term") of five (5) years each, by providing written notice to Owner not less than ninety (90) days prior to the expiration of the Initial Term or any Renewal Term. If at the end of the fourth (4th) five (5) year Renewal Term this Agreement has not been terminated by either party by giving to the other written notice of an intention to terminate the Agreement at least six (6) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year and for one (1) year terms thereafter until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of such Renewal Term. Annual rental for each such additional one (1) year term shall be increased by five percent (5%) with respect to the immediately preceding one (1) year term. Nothing herein contained shall obligate the Owner to replace any of Lessee's Equipment, including, but not limited to, Lessee's Facilities shown on the plans attached as Exhibit "B" hereto if said Lessee's Facilities are destroyed or damaged.

4. **Rent.** The Lessee's rental obligation of Fifty-Five Thousand and 00/100 Dollars (\$55,000.00) per year shall become due and owing on the Commencement Date. On the Commencement Date, Lessee shall pay Owner a lump sum payment in the amount of Twenty-Seven Thousand Five Hundred and 00/100 Dollars (\$27,500.00) as rent for the first six (6) months of the first year of this Agreement. Lessee shall pay the remaining Twenty-Seven Thousand Five and 00/100 Dollars (\$27,500.00) due for the first year of the Agreement on the six (6) month anniversary of the Commencement Date. Thereafter the annual rent will be paid by Lessee to Owner in advance in equal monthly installments, with the first such installment due on the first anniversary of the Commencement Date and all subsequent installments shall be due by the first day of each month during the remainder of the Initial Term and any Renewal Terms, and the rent for any partial months will be prorated, in advance. On each annual anniversary of the Commencement Date during the Initial Term and any Renewal Terms, the annual rent will increase by five percent (5%) of the annual rental payable with respect to the immediately preceding one (1) year term. Lessee shall pay all rent without Owner submitting invoices.

5. **Revenue Sharing.** In addition to the annual rent, the Lessee will pay the Owner a percentage of revenue earned by collocation of the Tower and Leased Premises by other tenants. Lessee shall pay Owner thirty percent (30%) of the monthly rent on each tenant that places its antennas and ground equipment on the Leased Premises ("Additional Rent"), except as provided below. Lessee is required to make quarterly (four (4) times per year) payments to the Owner for the Additional Rent within thirty (30) days of the end of each quarter. For example, for all

revenue earned from January 1-March 31 (the 1st quarter), payment to the Owner is due on and before April 30 of that same year. Lessee shall make all payments due without the Owner submitting invoices. Owner may submit a written request to Lessee for a business summary report pertaining to Lessee's rent obligations including, but not limited to, the amount of rent paid to Lessee by all collocators on the Tower (with that exception provided for below) for the prior twelve (12) month period, and Lessee shall provide such written accounting to Owner within sixty (60) days after Lessee's receipt of such written request. Collocation rent shall be reasonably consistent with other rent paid to Lessee by other collocators on similarly situated sites in Florida, but in any event shall be no less than \$850.00 per month. Notwithstanding the foregoing, Lessee shall not have any obligation to pay Additional Rent for Lessee or any affiliates of Lessee using the Leased Premises.

6. **Inspections.** Commencing on the Effective Date, Owner shall permit Lessee and Lessee's sublessees and each of their employees, agents, and contractors, during this Agreement, free ingress and egress to the Leased Premises to conduct subsurface boring tests, radio frequency tests, and such other tests, investigations, and similar activities as Lessee and its sublessees may deem necessary (collectively the "Inspections"), at the sole cost of the party performing the Inspections. Lessee understands that Owner uses the Leased Premises for public safety purposes and Lessee's use of the Leased Premises shall not interfere with Owner's use of the Leased Premises. The sequence and timing of the Inspections shall require Owner's prior consent giving public safety considerations paramount importance. Lessee and Lessee's sublessees and each of their employees, agents and contractors shall also require Owner's prior consent to bring the necessary vehicles and equipment onto the Leased Premises to conduct any Inspections. Lessee shall indemnify, release, and hold Owner harmless against any loss or damage for personal injury or physical damage to the Leased Premises or the Property, or the property of third parties resulting from any Inspections. Upon written request, Lessee shall furnish to Owner copies of Lessee's environmental findings. Prior to the commencement of the Inspections, Lessee shall furnish Owner with evidence of the insurance required under this Agreement.

7. **Title and Quiet Possession.** Owner represents and agrees (a) that it is the owner of the Property and has the legal right to use the Leased Premises and the Access Area and to grant Lessee the right to use the Leased Premises and the Access Area as set forth in this Agreement; (b) that it has the right to enter into this Agreement; (c) that the person signing this Agreement has the authority to sign; and (d) that Lessee is entitled to access to the Leased Premises at all times subject to the terms of this Agreement and to the quiet possession of the Lease Premises throughout the Initial Term and each Renewal Term so long as Lessee is not in default beyond the expiration of any cure period. Lessee represents and agrees that it has the right to enter into this Agreement; and that the person signing this Agreement has the authority to sign.

8. **Assignment/Subletting.** Lessee will not assign or transfer this Agreement without the prior written consent of Owner; provided, however, Lessee may assign or transfer this Agreement without Owner's prior written consent to Lessee's principal(s), affiliates, subsidiaries of its principal(s) and affiliates or to any entity which acquires all or substantially all of Lessee's assets in the market defined by the Federal Communications Commission in which the Leased Premises is located by reason of a merger, acquisition or other business

reorganization. Lessee may not sublet or license all or any portion of the Leased Premises without the Owner's prior written consent. No assignment, transfer, sublease or license shall release Lessee from its obligations hereunder unless expressly agreed to in writing by Owner.

9. **Notices.** All notices must be in writing and are effective only when deposited in the U.S. mail, certified, return receipt requested and postage prepaid, or when sent via overnight delivery (provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender). Notices to Lessee are to be sent to: CCATT LLC, c/o Crown Castle USA Inc., General Counsel, Attn: Legal-Real Estate Department, 2000 Corporate Drive, Canonsburg, Pennsylvania 15317-8564. Notices to Owner must be sent to the City of Hialeah, 501 Palm Avenue, Hialeah, Florida 33010, Attention: City Attorney's Office.

10. **Improvements.** Except for improvements which do not require Owner's consent as set forth in Paragraph 2 above, Lessee may, at its expense and upon the prior written consent of Owner, make such other improvements on the Leased Premises as it deems necessary from time to time for the operation of the Lessee's Facilities (the "Improvements"). If such Improvements will materially affect the Tower structure, upon receipt of Owner's consent, Lessee shall make the necessary structural modifications to the Tower structure. Owner agrees to reasonably cooperate with Lessee with respect to obtaining any required governmental approvals for the Leased Premises and the Improvements, at no cost to Owner, and Owner shall take no action which would adversely affect the status of the Leased Premises with respect to the proposed use by Lessee. Lessee is liable for damage to the Leased Premises caused by the Improvements or the installation, removal or replacement thereof. After the last renewal period when this Agreement will terminate, Owner and Lessee will have the ability to negotiate another lease or an amendment to this Agreement. If an agreement cannot be reached within ninety (90) days after the termination or expiration of this Agreement, Lessee shall remove all above-ground Equipment and Improvements, and will restore the Leased Premises to substantially the same condition existing on the Commencement Date except for ordinary wear and tear. If such time for removal causes Lessee to remain on the Leased Premises after termination of this Agreement, Lessee shall pay rent at the then existing monthly rate until such time as the removal of the Equipment is completed, up to a period not to exceed an additional one hundred twenty (120) days. In the event Lessee does not remove such items within the time period provided in this Paragraph, Owner will give Lessee written notice of such failure and, if Lessee thereafter fails to remove such items within thirty (30) days then the personal property remaining on the Leased Premises shall be deemed the property of Owner. Lessee agrees that once the equipment, fixtures and/or personal property remaining is deemed the Owner's property, that Owner shall have the option to remove said items and to charge Lessee for the costs associated with the removal of said items.

11. **Compliance with Laws.** To the best of Owner's knowledge, without inquiry, Owner represents that the Property, and all improvements located thereon, are in substantial compliance with laws, codes and regulations of applicable governmental authorities. Lessee covenants that it will keep the Tower, Equipment, and Lessee's Facilities in good repair as required by all federal, state, county and local laws, as amended, including without limitation any federal rules and regulations, as amended, with regard to the lighting, marking and painting of

towers. Lessee will further comply with all applicable laws, ordinances and regulations, as amended, relating to its specific use of the Leased Premises.

12. **Interference.** Where applicable, Lessee agrees to have installed radio equipment of the type and frequency which will not cause technical interference problems with any of the Owner's public safety equipment located within a one thousand (1,000) foot radius of the Leased Premises ("Owner's Equipment") as of the effective date of this Agreement. In the event Lessee desires to add equipment to the Leased Premises at any future date pursuant to the terms of this Agreement, Lessee agrees that such future installations shall not cause technical interference problems with Owner's Equipment. Lessee and Owner agree, within 72 hours after receipt of written notice from the other party, to resolve, at their sole cost and expense, any technical interference arising out of a violation of the provisions of this paragraph. In the event the interfering party is unable to resolve any technical interference within said 72 hours, the interfering party agrees to turn off its equipment or portion thereof; provided, however, the interfering party shall have the right to briefly turn on its equipment for testing purposes. Owner and Lessee acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this Paragraph and therefore, either party hereto shall have the right to specifically enforce the provisions of this Paragraph in a court of competent jurisdiction.

13. **Utilities.** Lessee will pay for all utilities used by it at the Leased Premises. Owner will reasonably cooperate, at no cost to Owner, with Lessee in Lessee's efforts to obtain utilities from any location provided by Owner or the servicing utility, including signing any easement or other instrument reasonably required by the utility company. In the event Owner desires to relocate the utilities and utility easement(s), Owner agrees to not relocate the utilities unless the following conditions are satisfied: (a) Owner shall obtain the prior consent of the applicable utility provider; (b) the utility provider will perform any relocation of its utility lines and facilities at a cost and expense determined by utility provider and Owner, at no cost to Lessee; (c) Lessee shall have uninterrupted utility service to the Leased Premises throughout the relocation process, which may include the use of generators and/or other power systems being located on the Property during the relocation process, at no cost to Lessee; (d) there are no conditions, restrictions, encumbrances, easements, or third party interests that could result in reduction or termination of Lessee's utility services being provided over the new non-exclusive easement for utilities; and (e) Owner provides Lessee with a legal description at least ninety (90) days prior to the relocation of the utilities

14. **Termination.**

(a) Lessee may terminate this Agreement upon sixty (60) days prior written notice to Owner without further liability (1) if Lessee does not obtain all permits or other approvals (collectively, "approval") required from any governmental authority or any easements required from any third party to operate the Lessee's Facilities or if any such approval is subsequently canceled, expires or terminated through no fault of Lessee, or (2) if Owner fails to have proper ownership of the Leased Premises or authority to enter into this Agreement, or (3) if Lessee determines that the Leased Premises is no longer technically compatible for its intended use or in the manner intended by Lessee due to imposed zoning conditions or requirements, or (4) if after the Effective Date and before the Commencement Date, Lessee determines for any reason or for no reason to so terminate, provided Lessee delivers written notice of early termination to Owner

no later than sixty (60) days prior to the Commencement Date; or (5) in the event that after the Commencement Date, any necessary certificate, permit, license, or approval is finally rejected or any previously issued certificate, permit, license, or approval is canceled, expires, lapses, or is otherwise withdrawn or terminated by the applicable governmental authority through no fault of Lessee, or (6) if Lessee is unable to utilize the Lease Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies. Upon termination, all prepaid rent will be retained by Owner unless such termination is due to Owner's failure of proper ownership or authority, or such termination is a result of Owner's default, or such termination results from Lessee's interference with Owner's Equipment in which event Lessee shall receive a prorated reimbursement of said prepaid rent.

(b) In addition to and not in limitation of any other provisions of this Agreement, both parties shall have the right to terminate this Agreement with thirty (30) days prior written notice thereof to the other party, in the event either party shall violate or breach, or shall fail fully and completely to observe, keep, satisfy, perform and comply with any agreement, term, representation, or covenant, and shall not cure such violation, breach or failure within sixty (60) days after written notice regarding the breach has been provided. If such violation, breach or other failure is incapable of cure within sixty (60) days, and the breaching party does not commence to cure such failure within such sixty (60) day period and continuously prosecute the performance of the same to completion with due diligence, then the non-breaching party may move to terminate upon the expiration of such sixty (60) day period or anytime thereafter until same has been cured.

(c) If Lessee remains on the Leased Premises after termination of this Agreement and after all time periods provided for the removal of the Lessee's Facilities, Equipment and Improvements, pursuant to Paragraph 10, have expired, and Owner is forced to pursue eviction proceedings, Lessee shall pay rent at the then existing monthly rate until such time as the Lessee is evicted and all attorney's fees and costs associated with such eviction proceedings.

15. **Default.** If either party is in default under this Agreement for a period of (a) fifteen (15) days following receipt of written notice from the non-defaulting party with respect to a monetary default; or (b) sixty (60) days following receipt of notice from the non-defaulting party with respect to a default which may not be cured solely by the payment of money, then, in either event, the non-defaulting party may pursue any remedies available to it against the defaulting party under applicable law, including, but not limited to, the right to terminate this Agreement, pursuant to Paragraph 14(b). If the non-monetary default may not reasonably be cured within a sixty (60) day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within such sixty (60) day period and proceeds with due diligence to fully cure the default. Neither party hereto may maintain any action or effect any remedies for default against the other party unless and until the defaulting party has failed to cure the same within the time periods provided in this Paragraph.

16. **Indemnity.** Lessee indemnifies the Owner against and holds the Owner harmless from any and all costs (including reasonable attorneys' fees) and claims of liability or loss from personal injury or property damage which arise out of the Lessee's construction, ownership, use, subleasing, and/or occupancy of the Leased Premises or the Lessee's Facilities by Lessee; provided, however, this indemnity does not apply to the extent of any claims arising from the

negligent acts or willful misconduct of Owner, its employees, council members or any outside counsel. The indemnity obligations under this paragraph will survive for one (1) year following termination of this Agreement.

17. **Hazardous Substances.**

(a) As of the Effective Date of this Agreement: (1) Lessee represents and warrants that neither it nor its subtenants, licensees and customers shall use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon or affecting the Property or surrounding property in violation of any Environmental Law (as defined below), and (2) Owner represents, to the best of Owner's knowledge that (i) it has no knowledge of the presence of any Hazardous Material located in, on, under, upon or affecting the Property in violation of Environmental Law; (ii) no notice has been received by or on behalf of Owner from, any governmental entity or any person or entity claiming any violation of, or requiring compliance with any Environmental Law for any environmental damage (or the presence of any Hazardous Material) in, on, under, upon or affecting the Property; and (iii) it will not permit itself or any third party to use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon, or affecting the Property in violation of any Environmental Law.

(b) **"Hazardous Material"** means any solid, gaseous, or liquid wastes (including hazardous wastes), regulated substances, pollutants or contaminants or terms of similar import, as such terms are defined in any Environmental Law, and shall include, without limitation, any petroleum or petroleum products or by-products, flammable explosives, radioactive materials, asbestos in any form, polychlorinated biphenyls and any other substance or material which constitutes a threat to health, safety, property or the environment or which has been or is in the future determined by any governmental entity to be prohibited, limited or regulated by any Environmental Law.

(c) **"Environmental Law"** means any and all present or future federal, state or local laws, rules, regulations, codes, ordinances, or by-laws, and any judicial or administrative interpretations thereof, including orders, decrees, judgments, rulings, directives or notices of violation, which create duties, obligations or liabilities with respect to: (i) human health; or (ii) environmental pollution, impairment or disruption, including, without limitation, laws governing the existence, use, storage, treatment, discharge, release, containment, transportation, generation, manufacture, refinement, handling, production, disposal, or management of any Hazardous Material, or otherwise regulation or providing for the protection of the environment.

18. **Taxes and Assessments.** Lessee shall pay, on or before their respective due dates, to the appropriate collecting authority, or Owner upon Owner's notice, all real estate taxes, assessments and fees, which are now or may hereafter be levied upon the Leased Premises as a result of installation of the Lessee's Facilities, or upon Lessee, or upon any of Lessee's property used in connection therewith, or upon any rentals or other sums payable hereunder, including, but not limited to, any applicable ad valorem, sales or excise taxes and shall maintain in current status all federal, state, county and local licenses and permits, now or hereafter required for the operation of the business conducted by Lessee. Lessee shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any real estate tax assessment or billing for which Lessee is wholly or partly responsible for payment under this

Agreement. Owner shall reasonably cooperate, to the extent it does not create a conflict with Owner's own interests, with Lessee in filing, prosecuting and perfecting any appeal or challenge to real estate taxes as set forth in the preceding sentence, including but not limited to, executing any consent to appeal or other similar document.

19. **Insurance.** Lessee will procure and maintain commercial general liability insurance, including fire damage, medical expense and completed operations with liability limits of not less than \$2,000,000 combined single limit for injury to or death of one or more persons in any one occurrence and for damage or destruction to property in any one occurrence, including automobile liability with a combined single limit of \$1,000,000 including bodily injury and property damage, with a certificate of insurance to be furnished to Owner naming Owner as an additional insured under such liability policy within thirty (30) days of Owner's approval of this Agreement. Such policy will provide thirty (30) days prior written notice of cancellation to Owner, except for nonpayment of premium.

20. **Maintenance.** Lessee, at its sole cost and expense, will be responsible for repairing and maintaining Lessee's Facilities, Equipment and any other Improvements installed by Lessee at the Leased Premises in a proper operating and reasonably safe condition and in compliance with applicable laws and regulations, as amended. Lessee shall be responsible for restoring its Equipment and the Leased Premises to reasonably safe conditions.

Notwithstanding anything to the contrary in this Agreement, Lessee acknowledges and agrees to allow Owner, if space is available, if Owner's equipment is compatible with the existing facilities, and if Owner is not in default of this Agreement, to place on the Tower communications equipment for Owner's Fire, Police, Community Service and Public Works/Utilities departments (hereafter "Owner's Equipment") at the height and location necessary for the provision of Public Safety Services and approved by the Lessee, provided Owner's Equipment shall take up no more than one (1) attachment location on the Tower. The installation shall be permitted provided that such Owner's Equipment shall not cause any interference or conflict with the operations and improvements of the Lessee. Owner shall notify Lessee of its desire to install the Owner's Equipment and Lessee shall manage such installation. All costs associated with installation, maintenance and decommissioning of Owner's Equipment will be at the sole cost and expense of Owner. Owner shall not be required to pay a monthly rental fee for the use of space on the Tower, but will be responsible for any reasonable fees incurred by Lessee relating to installation or use of Owner's Equipment, including but not limited to, reasonable fees related to any structural analysis or other required studies or testing. It is understood that Lessee shall not be required to make any modifications to the Tower or the Leased Premises to provide such space to Owner, but will use good faith efforts to accommodate Owner's Equipment provided it can do so at no cost to itself or interference with its other customers on the Tower. Prior to installing Owner's Equipment, Owner shall provide notice and plans to Lessee for its engineering approval which approval shall be at Lessee's sole discretion. Owner agrees to comply with Lessee's standard and customary term and conditions relating to the use of the Leased Premises and the installation, operation, maintenance, repair and replacement of Owner's Equipment on the Leased Premises and Tower. In the event Lessor requires to place any of Owner's Equipment on the ground within the Leased Premises, Lessor shall make such a request to Lessee and Lessee shall only be obligated to provide same if space is available and there are no pending applications for which Lessee will need to use such ground

space for its commercial customers based on said pending applications. In the event that Lessee should ever run out of ground space and a commercial customer requires ground space, upon notice from Lessee, Lessor shall be required, at Lessor's cost, to relocate its equipment located on the ground to a location outside of the Leased Premises onto Lessor's property. The parties shall work to complete such relocation as soon as possible after Lessee provides notice of same to Lessor, but not to exceed ninety (90) days.

21. **Condemnation.** If the whole of the Leased Premises, or such portion thereof as will make the Leased Premises unusable for the purposes herein leased, is condemned by any legally constituted public authority, then this Agreement, and the term hereby granted, shall cease from the time when possession thereof is taken by the public authority, and rent shall be accounted for as between Owner and Lessee as of that date. Any lesser condemnation shall in no way affect the respective rights and obligations of Owner and Lessee hereunder; provided however, in the event of any condemnation of the Property, Lessee may terminate this Agreement upon fifteen (15) days written notice to Owner if such condemnation may reasonably be expected to disrupt Lessee's operations at the Leased Premises for more than sixty (60) days. Lessee may on its own behalf make a claim in any condemnation proceeding involving the Leased Premises for losses related to the Equipment, Improvements, its relocation costs and its damages and losses including, without limitation, its leasehold interest. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement.

22. **Co-Location.** Owner encourages co-location of wireless facilities on existing towers in accordance with Paragraph 8 herein.

23. **Additional Rent.** In the event of any default of this Agreement by Lessee beyond any applicable cure period(s) as described herein, Owner may, at any time after notice, cure the default for the account of and at the expense of Lessee; provided, however, unless Lessee's Facilities and Equipment are deemed to have become Owner's property pursuant to Paragraph 10 hereof or Lessee fails to timely remove Lessee's Facilities and Equipment pursuant to Paragraph 10 hereof, under no circumstances is Owner (or anyone on behalf of Owner) permitted to move, alter, relocate or remove Lessee's Facilities or Equipment. If Owner elects to cure such default, then any sum of money so expended by Owner in connection with such cure, including reasonable attorney's fees, shall be deemed to be additional rent and shall be due from the Lessee to Owner on the first day of the month following the incurring of the respective expenses.

24. **No Waiver of Police Power.** Owner cannot and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to governmental regulations of general applicability which may govern the Leased Premises, any improvements thereon, or any operations at the Leased Premises. Nothing in this Agreement shall be deemed to create an affirmative duty of Owner to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes,

ordinances, rules and regulations, federal laws and regulations, state laws and regulations, and grant agreements. In addition, nothing herein shall be considered zoning by contract.

25. **Late Fees.** Lessee shall pay Owner a late payment charge equal to five percent (5%) of the late payment for any payment not paid within ten (10) business days of its due date. Any amounts not paid within ten (10) business days of its due date shall also bear interest until paid at the lesser of the rate of twelve percent (12%) per month or the highest rate permitted by law.

26. **As-Is.** By taking possession of the Leased Premises, Lessee accepts the Leased Premises in the condition existing as of the date of execution of this Agreement. Except as otherwise expressly provided herein, Owner makes no representation or warranty with respect to the condition of the Leased Premises and Owner shall not be liable for any latent or patent defect in the Leased Premises. Notwithstanding anything to the contrary herein, Owner shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Lessee's construction, maintenance, repair, use, operation, condition or dismantling of the Leased Premises.

27. **Cost-Recovery.** Owner and Lessee acknowledge that Lessee shall pay Owner for Owner's costs and expenses, including reasonable legal fees incurred by Owner in connection with the negotiation of this Agreement, which amount shall not exceed Five Thousand Dollars (\$5,000.00), to be paid within thirty (30) days after receiving an invoice from Lessor.

28. **Miscellaneous.**

(a) This Agreement applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this Agreement;

(b) This Agreement is governed by the laws of the state of Florida;

(c) If requested by Lessee, Owner agrees promptly to execute and deliver to Lessee a recordable Memorandum of this Agreement;

(d) This Agreement (including the Exhibits) constitutes the entire agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties;

(e) Any amendments to this Agreement must be in writing and executed by both parties;

(f) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, will not be affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law;

(g) The prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Agreement is entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing

party, including all costs and expense incurred through all appeals. Venue for any actions or proceedings shall be brought in Miami-Dade County, Florida;

(h) The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, either in law or in equity;

(i) The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement and they shall not affect or be utilized in the construction or interpretation of the Agreement; and

(j) If any approval or consent is required of a party hereunder, such approval or consent shall not be unreasonably withheld, conditioned or delayed unless otherwise stated.

29. **Non-Binding Until Fully Executed.** This Agreement is not and shall not be binding on either party until and unless it is fully executed by both parties.

30. **Surveys.** Owner hereby grants to Lessee the right to survey the Leased Premises and said survey shall then become Exhibit "C" which shall be attached hereto and made a part hereof, and shall control in the event of boundary and access discrepancies between it and Exhibit "B". Cost for such work shall be borne by the Lessee. The parties hereto agree that in the event that a sketch of survey depicting the as-built equipment on the Leased Premises is not available as of the date of execution of this Agreement, said sketch of survey showing the as-built equipment shall in the future replace the existing Exhibit "B" attached hereto.

31. **Rights Upon Sale.** Should Owner at any time during the term of this Agreement decide to sell all or any part of the Leased Premises to a purchaser other than Lessee, such sale shall be under and subject to this Agreement and Lessee's rights hereunder, and any sale by the Owner of the portion of the Property underlying the Access Area herein granted shall be under and subject to the right of Lessee in and to the Access Area. Owner agrees not to sell or lease to any third party all or any portion of the Property or any surrounding property for the installation, operation, or maintenance of other wireless communications facilities if such installation, operation, or maintenance would interfere with the Tower, Lessee's Facilities or Equipment as determined by radio propagation tests performed by Lessee at purchasing parties' expense, unless the sale is for the use of a communications system to be used for public safety, in which case the Owner may sell or lease such property for such use. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Lessee, the sale or lease to the third party shall be conditioned upon the third party undertaking any and all steps to prevent interference with the Tower, Equipment and Lessee's Facilities. Owner shall not be prohibited from the selling, leasing, or using of any of the Property or surrounding property for non-wireless communication use, provided such other use does not interfere with the Tower, Equipment and Lessee's Facilities.

32. **Casualty.** In the event of damage by fire or other casualty to the Leased Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Leased Premises is damaged by fire or other casualty so that such damage may reasonably

be expected to disrupt Lessee's operations at the Leased Premises for more than forty-five (45) days, then Lessee may at any time following such fire or other casualty, terminate this Agreement upon fifteen (15) days written notice to Owner. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement through the date of termination. Lessee shall dismantle the Tower, remove all Equipment, Improvement and debris, and will restore the Leased Premises to substantially the same condition existing on the Commencement Date except for ordinary wear and tear within ninety (90) days after Owner receives the date of termination.

In the event of casualty, or total destruction of the Tower, Owner agrees to use its reasonable efforts to permit Lessee to place temporary transmission facilities on the Property until such time as Lessee is able to secure a replacement transmission location for the Lessee's Facilities. The placement of any temporary transmission facilities shall be subject to Owner's prior written consent and all other necessary government approvals in accordance with the Owner's zoning and land use codes, administrative codes, ordinances, rules and regulations. Lessee agrees that it will avoid interfering with Owner's efforts to redevelop the Property. Notwithstanding the foregoing, all rental payments shall abate during the period of such fire or other casualty, so long as the fire or other casualty is not the fault of the Lessee.

33. **Security Bond.** To ensure compliance with the terms of this Agreement, within thirty (30) days of the full execution of this Agreement, Lessee shall submit a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00). Lessee and the surety shall be jointly and severally liable under the terms of the bond. The bond shall be issued by a surety having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition, shall be subject to the approval of the city attorney for Owner, and shall provide that "This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the city, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

34. **Capital Contribution.** Lessee agrees to pay Owner the sum of Fifteen Thousand Dollars (\$15,000.00) on the Commencement Date. Lessee acknowledges that the capital contribution is in addition to any other review fee or rental amount due or rent abatement granted under this Agreement. This one-time contribution is intended to be used for the beautification of the area surrounding the Leased Premises over the life of this Agreement.

35. **Future Expansion.** If additional land is requested beyond the Leased Premises of 1,300 square feet, a formal plan would need to be presented to and approved by Owner. If the plan is approved by Owner, Owner agrees to set the rental rate for the expanded area equal to the current escalated dollar per square foot rate that Owner is receiving from Lessee at the time of the approval.

36. **Survival.** The provisions of the Agreement relating to indemnification from one party to the other party shall survive termination or expiration of this Agreement for the duration of the applicable statute of limitations. Additionally, any provisions of this Agreement which

require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

The following Exhibits are attached to and made a part of this Agreement: Exhibits A, B and C.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: City of Hialeah through its Mayor, signing by and through its Mayor, authorized to execute same by Commission action on the ____ day of _____, 2017; and _____ authorized to execute same, through its _____.

Attest: Approved on this ____ day of _____, 2017.

Marbelys Fatjo, City Clerk

Mayor Carlos Hernandez

Approved as to form and legality:

Lorena E. Bravo, City Attorney
____ day of _____, 2017

(CITY SEAL)

WITNESSES:

CCATT LLC, a
a Delaware limited liability company

By: _____

Print Name

Print Name

Title

____ day of _____, 2017

(CORPORATE SEAL)

Print Name

State of Florida)

SS:

County of Miami-Dade)

THIS IS TO CERTIFY, that on this ___ day of _____, 20___, before me, an officer duly authorized to take acknowledgements in the State and County aforesaid, personally appeared CARLOS HERNANDEZ, as Mayor of the CITY OF HIALEAH, a Florida municipal corporation, who (check one) [] is personally known to me or [] produced _____ as identification.

Notary Public, State of Florida

Print Name: _____

My Commission expires:

State of Florida)

SS:

County of Miami-Dade)

THIS IS TO CERTIFY, that on this ___ day of _____, 20___, before me, an officer duly authorized to take acknowledgements in the State and County aforesaid, personally appeared _____, as _____ of CCATT LLC, a Delaware limited liability company, who is (check one) [] is personally known to me or [] produced _____ as identification.

Notary Public, State of Florida

Print Name: _____

My Commission expires:

EXHIBIT A

DESCRIPTION OF PROPERTY

To the Agreement dated _____, 2017, by and between the City of Hialeah, as Owner, and CCATT LLC, as Lessee.

The Property is described and/or depicted as follows (metes and bounds description)

EXHIBIT B

DESCRIPTION OF LEASED PREMISES AND ACCESS AREA

To the Agreement dated _____, 2017, by and between the City of Hialeah, as Owner, and CCATT LLC, as Lessee.

The Leased Premises are a 1,300 square foot portion of the Property. The Leased Premises is generally depicted in the site sketch below, which may be replaced by a survey obtained by Lessee pursuant to the terms of the Agreement.

The Access Area is not shown in the sketch below but provides access and for the provision of utilities to the nearest public right of way and will be shown on said survey.

[see site sketch on next page]

EXHIBIT C

SURVEY

to the Agreement dated _____, 2017, by and between the City of Hialeah, as Owner, and CCATT LLC, as Lessee

A COPY OF THE SURVEY SHALL BE ATTACHED HERETO