

install, maintain, remove, or repair TENANT'S Communications Equipment will be covered by the liability policy described in Paragraph 7 of this Agreement. TENANT is responsible for the cost of such activities.

If LANDLORD proposes to lease roof space and/or a room to another vendor, said vendor shall conduct, at its sole cost and expense, an engineering study to determine if vendor's equipment transmits radio waves which interferes with TENANT'S fully licensed Public Safety Radio Systems and their supporting infrastructure, 800/700 MHz, UHF, as well as any future Public Safety LTE band 14 equipment. If the study reveals that such interference occurs or is likely to occur, the vendor will not be allowed to set up his equipment on the premises. If the study reveals no interference and the vendor is allowed to operate equipment on the premises, but later vendor's equipment is found to interfere with TENANT'S equipment, the vendor's equipment will be shut down until the vendor corrects the interference problem. Said vendor(s), at its sole cost and expense, shall take all necessary steps to correct and eliminate such interference, which may include the addition of nonperformance degrading equipment to the vendor's equipment causing said interference. If such interference cannot be eliminated, TENANT may terminate the Agreement without further obligation on either party with respect to such equipment.

All other vendors, if there are any, must operate all of their equipment under the guidelines of the Federal Communications Commission (FCC) and be in compliance with all the applicable rules and regulations, including obtaining an FCC license prior to operating said equipment.

TENANT shall be responsible to the LANDLORD for payment of electricity utilized by the TENANT. Payment of electricity utilized during the previous month shall be made to the LANDLORD with the current monthly rent payment. Calculation of the payment shall be based on the actual kilowatt hours used times an average rate per kilowatt hour and any applicable demand charges.

An electrical sub-meter installed by the TENTANT will determine the actual usage. The rate per kilowatt hour will be determined annually as of October 1st, using Florida Power & Light (FP&L) current billing rates and billing structure for the LANDLORD'S building. The TENANT will notify the LANDLORD in writing, in the format prescribed in Exhibit "B", of the average rate per kilowatt based on FP&L's information. TENANT agrees to provide for the installation and maintenance of air conditioning equipment of the approximate size of 14" by 36" by 72". Said air conditioning equipment shall be installed from the ceiling of the laundry room adjacent to the Equipment Room Space and shall be used to condition the air of both the laundry room and TENANT'S Equipment Room Space.

Tenant shall also be responsible for payments of any other utilities and other expenses whatsoever which are incurred by either Tenant or Landlord relative to Tenant's installation and usage of the reserved site.

2. **TERM:** The term of this Agreement shall be for seven (7) years beginning retroactively on the **1st of January 2017** and ending on **the 31st day of December 2024** (The "Term").

3. **RENT:**

A. During the first (1st) year of this Agreement, TENANT shall pay the annual rental of Twenty Thousand and 00/100 Dollars (\$20,000.00), in equal monthly installments of One Thousand Six

Hundred and Sixty-Six and 67/100 Dollars (\$1,666.67), plus applicable sales tax, to be paid on or before the first (1st) day of the month, in advance, to LANDLORD.

- B. Beginning with the second year of this Agreement, and for each successive year that this Agreement shall remain in effect, the monthly rental payment for each successive year shall be increased by three (3) percent, at the commencement of each such year.

4. **USE:**

A. LANDLORD hereby grants permission to TENANT to install and operate the following and associated communication equipment on or in the Leased Site for the purposes of constructing, maintaining, and operating a Communications Facility and uses incidental thereto, as follows:

1. Transmitters, antennas, UPS System, UPS Batteries and Battery Chargers, microwaves dish(es), and similar devices to be in, on or: over the Rooftop Space, now or any time during the Term of this Agreement². Flexible coaxial transmission lines between antennas and communications equipment, to be anchored and installed on the Leased Site in accordance with good and accepted engineering practices, together with the right to run such lines and other necessary lines between the Rooftop Space and the Equipment Room Space.

3. Radio communications, equipment consisting of transmitter, receiver, accessories, and other property to be installed in the Equipment Room Space.

4. At TENANT'S option, TENANT shall have the right to locate an emergency generator at a place mutually acceptable with LANDLORD on the Parent Tract. Further, LANDLORD agrees that, in an emergency, TENANT shall be permitted to run temporarily lines between the Rooftop Space and the Equipment Room Space necessary to provide temporary emergency electrical power.

For the purposes of this Agreement, all of TENANT's equipment building, panels, generator, cables, wires, antennas, microwave dishes and accessories shall hereinafter collectively be referred to as the "Communications Facility" and any improvements made by the TENANT to the Leased Site pursuant to the Terms of this Agreement are hereinafter referred to as the "Improvements".

B. LANDLORD hereby acknowledges and agrees that the Communications Facility and Improvements placed upon the Leased Site by the TENANT are and shall remain the property of the TENANT and shall not be deemed to be a fixture upon the Leased Site. LANDLORD grants TENANT a non-exclusive easement in, over, across and through the Parent Tract as may be reasonably required during construction, installation, maintenance, repair, replacement and operation of the Communications Facility and the Improvements.

C. Upon termination of this Agreement, TENANT shall, remove its Communications Facility and Improvements from the Leased Site within ninety (90) days of the termination date and, in the event that the Communication Facility is transferred to another site, then within ninety (90) days of Tenant's Final acceptance of the substitute site. Tenant shall also restore the Leased Site to, as near as practical, to a reasonable condition under the circumstances, except normal wear and tear, and except for enhancements made by the TENANT to the Building pursuant to the terms of this Agreement.

5. Right to Terminate by Tenant. TENANT shall have the right to terminate this Agreement at any time upon the occurrence of any of the following events;

- A. If the approval of or issuance of a license or permit by any agency, board, court, or other governmental authority necessary for the construction and/or operation of the Communications Facility as now or hereafter intended by the TENANT (the Approvals) cannot be obtained, or is revoked, or public opposition is unreasonable under the circumstances, as determined by TENANT, or TENANT determines the cost of obtaining and retaining such approval is unreasonable in TENANT'S sole discretion.
- B. **TERMINATION FOR CONVENIENCE:** TENANT shall have the right to cancel this Agreement, at its sole discretion, without cause and for convenience, at any time by giving LANDLORD three hundred sixty (360) days written notice in advance of said cancellation.

6. **LIABILITY AND INDEMNITY:** Subject to and limited by Paragraphs 7 and 24, TENANT agrees to indemnify and to hold LANDLORD harmless from all claims (including costs and expenses of defending against such claims, through counsel designated by TENANT) arising from the negligence or willful misconduct of TENANT or TENANTS agents or employees in or about the Leased Site.

LANDLORD agrees to indemnify and hold TENANT harmless from all claims (including costs and expenses of defending against such claims) arising from the acts or omissions of LANDLORD, LANDLORD'S agents, employees, contractors, or other tenants of LANDLORD occurring in or about the Leased Site.

7. **DEFAULTS AND REMEDIES:** Notwithstanding anything in this Agreement to the contrary, TENANT shall not be in default under this Agreement until;

- A. Fifteen (15) days after actual receipt of written notice thereof from LANDLORD of the non-payment of rent or other sums due under this Agreement; or
- B. Thirty (30) days after actual receipt of written notice of any other default from LANDLORD; provided, however, where any such default cannot reasonably be cured within said period, TENANT shall not be deemed to be in default under this Agreement if TENANT commences to cure such default within said period and thereafter diligently pursues such cure to completion (an Event of Default).

8. **INSURANCE:** The TENANT is self-insured for all potential liability resulting from the TENANT'S negligence in accordance with and subject to the limitations of Section 768.28, Florida Statutes. The TENANT maintains a self-insurance program that will provide coverage for all bodily injury and property damage claims which may, as it relates to the TENANT'S use occupancy or maintenance of the Leased Site, arise from the negligent acts of the TENANT'S employees or agents. Tenant agrees to provide Landlord with a notarized letter evidencing the extent of its insurance coverage.

9. **SALE OF THE PARENT TRACT:** Should the LANDLORD at any time during the Term of this Agreement decide to sell or lease all or any part of the Building or the Parent Tract, it is hereby agreed that this Agreement shall in no way be affected. The Agreement will be binding and in full force and effect. LANDLORD agrees; not to sell, lease, use, or permit to be used any other portions of the Building or the Parent Tract, or property contiguous thereto owned or controlled by the LANDLORD, for the

placement of other communications facilities or for any other purposes if, such other communication facilities or other use would interfere with the use of the Leased Site by TENANT. Notwithstanding anything contained herein to the contrary, if any communications equipment hereafter affixed to the Building or the Parent Tract interferes with the TENANT'S Communication Facility, the LANDLORD Shall cause such interfering communications equipment to be removed on an emergency basis.

10. **COVENANT OF QUIET ENJOYMENT:** LANDLORD covenants that the TENANT shall, upon paying the rent and performing the covenants and conditions herein, shall peaceably and quietly hold and enjoy the Leased Site during the Term of this Agreement. LANDLORD covenants that LANDLORD is seized of good and sufficient title and interest to the Parent Tract, including the Leased Site, and has full authority to enter into and execute this Agreement.

11. **SUBORDINATION AND NON-DISTURBANCE:** At LANDLORD'S option, this Agreement shall be subordinate to any deed to secure debt, deed of trust, mortgage, or similar instrument (collectively Mortgage) by LANDLORD which from time to time may encumber all or part of the Leased Site; provided however, the holder of every such Mortgage shall recognize the validity of this Agreement in the event of a foreclosure of LANDLORD'S interest, and TENANT'S right to remain in occupancy of the Leased Site as long as TENANT is not in default of this Agreement, by executing a non-disturbance agreement in a form reasonably acceptable to the TENANT. TENANT agrees to execute in a timely manner whatever instruments as may reasonably be required to evidence this subordination clause. In the event the Leased Site is currently encumbered by a Mortgage, the LANDLORD, not later than thirty (30) days after this Agreement is fully executed, and as a condition precedent to TENANT'S obligation to pay rent hereunder, shall obtain and furnish to TENANT a non-disturbances instrument in a form acceptable to TENANT.

12. **TITLE INSURANCE:** TENANT, at TENANT'S option, may obtain title insurance on the Leased Site. LANDLORD, at LANDLORD'S expense, shall cooperate with TENANT'S efforts to obtain such title insurance policy by executing documents or obtaining requested documentation as required by the title insurance company. At TENANT'S option, should the LANDLORD fail to provide the requested documentation within thirty (30) days of TENANT'S request, or fail to provide the non-disturbance instrument (s) as noted in Paragraph 11 of this Agreement, TENANT may withhold and accrue the monthly rental until the requested document(s) is received or TENANT may terminate this Agreement.

13. **HAZARDOUS SUBSTANCES:** In the event Hazardous Substances, as said term is hereinafter defined, are discovered on, in or under the Leased Site as of the date of commencement of this Agreement or thereafter, except as a result of any act or omission of the TENANT, the landlord, at its sole expense, shall, without interference with TENANT'S use and occupancy of the Leased Site, remove all such Hazardous Substances in accordance with all applicable laws, rules, ordinances, and regulations the ("**Removal**"). Unless such Hazardous Substances are deposited in, on, or under the Leased Site by an act or omission of the TENANT, the LANDLORD shall indemnify and hold the TENANT harmless against any claims arising out of such Hazardous Substances including all of TENANT'S attorney's fees and costs (the Indemnity). In the event, Hazardous Substances are discovered on, in or under the Leased Site solely because of any act or omission of the TENANT, the TENANT shall be obligated to conduct the Removal and indemnify LANDLORD as to any claims arising out of such Hazardous Substances. For the purposes hereof, the term "Hazardous Substances" shall mean pollutants, contaminants, toxic or hazardous substances or wastes, oil or petroleum products, flammable or any other substances whose nature and/or quantity of existence, use, release, manufacture or effect renders it subject to Federal, state or local environmental, health, community

awareness or safety laws or regulations, now or hereafter enacted or promulgated by any governmental authority or court ruling, or any investigation, remediation or removal. Further, Hazards Substances shall be required to be removed from the Leased Site only if required by the proper governmental authorities.

14. **ASSIGNMENT AND SUBLETTING:** With the exception, of TENANT'S principal, affiliates, or subsidiaries of its principal or to any company upon which TENANT is merged or consolidated, TENANT shall not assign or encumber its interest in this Agreement or in the Leased Site, or sublease all or any part of the Leased Site, without LANDLORD'S prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Consent by LANDLORD to assignment or subletting shall be deemed to be unreasonably withheld if the proposed assignee is of such financial standing and responsibility at the time of such assignment as to give reasonable assurance of the payment of all rent and other amounts reserved in this Agreement and compliance with all the terms, covenants, provisions, and conditions of this Agreement. Should this Agreement be assigned to any entity other than the Tenant's principal, affiliates, or subsidiaries. Landlord shall be free to renegotiate the lease terms and the rent amount. If the assignment of this Agreement results in remuneration to the Tenant by the assignee, the Landlord shall be free to renegotiate the rent payment due it.

15. **NOTICES:** All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or by courier or by overnight delivery, addressed as follows (or to any other address that the party to be notified may have designated to the sender by like notice);

TENANT: City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139
With copy to, City Attorney

LANDLORD: Tower 41 Association, Inc.
4101 Pine Tree Drive
Miami Beach, FL 33140
With copy to: Property Manager

16. **TENANT MORTGAGE:** LANDLORD covenants and agrees that, at all times during the continuance of this Agreement, and subject to Landlord's prior written approval, which approval shall not be unreasonably withheld, TENANT shall have the right to mortgage or convey by deed or trust or other instrument adequate tor the purpose of securing any bona fide indebtedness of TENANT, this Agreement or the leasehold interest of the TENANT created hereby, together with all of the TENANT'S right, title and interest in and to the Communications Facility, Improvements, and any other equipment, towers or trade fixtures placed on the Leased Site by TENANT, provided always that not such mortgage, conveyance or encumbrance, nor any foreclosure thereof, nor any purchase thereunder, shall impair or abridge the rights of the LANDLORD. In the event of any such mortgage conveyance or assignment, landlord's lien shall be superior and shall not be subordinate to any such debtor's lien on such improvements, equipment, towers, or trade fixtures.

17. **CONDEMNATION:** If the whole of the Leased Site or such portion thereof as will, in TENANT'S sole judgment, make the Leased Site unusable for the purposes herein leased, are condemned by any legally constituted authority for any public use or purpose in either of said events the Term hereby granted shall cease from the time when possession thereof is taken by public authorities, and rental shall be accounted for as between TENANT and LANDLORD as of the date. Any lesser condemnation shall cause the rental payable hereunder to be reduced by such percentage as the area so condemned bears to the entire Lease Site. Nothing in this provision shall be construed to limit or affect TENANT'S right to an award of compensation of any eminent domain proceeding for the improvements or TENANT'S leasehold interest hereunder.

18. **CONDITION OF THE BUILDING:**

- A. Exclusive of the obligations and responsibilities of TENANT as set forth elsewhere in this Agreement, LANDLORD shall be solely responsible, at its sole cost and expense, for operating, maintaining, and repairing the Building, such that TENANT is able to utilize the Building and the Leased Site for the purposes stated herein. LANDLORD shall comply with all applicable federal, state, and local laws, ordinances, codes, rules, and regulations pertaining to the Building, effective at the time of execution and as enacted thereafter, the violation of which will in any way negatively affect the rights and use of Tenant under this Agreement. LANDLORD shall be solely responsible for any fines, penalties, levies, and/or other additional expenses imposed because of non-compliance with the requirements of such authorities.

Any default by Landlord in its obligation under this section shall provide Tenant with the right to remedies at law or in equity, or to terminate the Agreement pursuant to the notice provisions set forth above.

- B. LANDLORD covenants and agrees that TENANT'S Communications Equipment, its installation, operation, and maintenance will;

(1) Not irreparably damage the Building structure and accessories thereto.

(2) Comply with all applicable rules and regulations of the Federal Communications Commission and the City and State which has authority with respect to the Communications Facility.

- C. If the Building is damaged for any reason to render it substantially unusable for TENANT'S use, rent shall abate for such period while LANDLORD, at its expense, restores the Building to its condition prior to such damage; provided however, in the event LANDLORD fails to repair the Leased Site within thirty (30) days from the date of such damage, TENANT shall have the right to terminate this Agreement with no further obligations hereunder. LANDLORD covenants and agrees that it shall repair such damage as soon as possible after the occurrence of such damage. Throughout the Term, LANDLORD shall insure the Building against all casualties in an amount equal to the replacement cost of the Building.

19. **MISCELLANEOUS:**

- A. This Agreement contains all agreements, promises and understandings between the LANDLORD and TENANT and no verbal or oral agreement, promise or understandings relating to the Leased Site or the Parent Tract shall be binding upon either the LANDLORD or TENANT in any dispute, controversy or proceeding at law. Any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing and signed by the parties. If any

term or provision, or any portion thereof, of this Agreement, or the application thereof to any person or circumstances shall, to the extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced fully permitted by law.

- B. This Agreement and the performance thereof shall be governed, interpreted, constructed, and regulated by the laws of the State of Florida.
 - C. This Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto. Time is of the essence in this Agreement.
 - D. Both LANDLORD and TENANT agree that upon the request of either party, at such party's sole expense, each party will execute and deliver a Memorandum of Lease, which Memorandum of Lease or this Agreement may be recorded of record in the County where the Leased Site is located.
 - E. Whenever under this Agreement the consent or approval of either party is required or a determination must be made by either party, no such consent or approval shall be unreasonably withheld or delayed, and all such determinations shall be made on a reasonable basis and in a reasonable manner, if a party hereunder does not actually receive a written response from the other party hereunder to the request for an approval within thirty (30) days after the request for the approval is delivered to the other party, the other party shall be conclusively deemed to have approved the request.
 - F. If any paragraph, section, provision, sentence, clause, or portion of this Agreement is determined to be illegal, invalid or unenforceable, such determination shall in no way affect the legality, validity or enforceability of any paragraph, section, provision, sentence, clause or portion of this Agreement and any such affected portion or provision shall be modified, amended, or deleted to the extent possible and permissible to give the fullest effect to the purposes of the parties and of this Agreement, and the parties hereby declare that they would have agreed to the remaining parts of this Agreement if they had known that such provisions or portions thereof would be determined to be illegal, invalid, or unenforceable.
 - G. Paragraphs captions and headings are for convenience of reference only and in no way, shall be used to construe or modify the provisions set forth in this Agreement.
 - H. original, and such counterpart shall constitute but the same Agreement.
20. **RADON GAS:** Florida law requires that the following notice be provided on at least one document, form or application executed at the time of, or prior to execution of a rental agreement of any building: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your county public health unit.

21. **GOVERNING LAW:** This Lease and the obligations of the parties shall be governed by the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and their seals to be affixed; all as of the day any year first above written.

TENANT

CITY OF MIAMI BEACH, FLORIDA

CLERK

MAYOR

DATE

DATE

WITNESSES:

LANDLORD

TOWER FORTY ONE ASSOCIATION, INC.

Print Name

BY: _____

Print Name

DATE: _____