

This instrument was prepared by:
Return to:
Raul J. Aguila, City Attorney
City of Miami Beach
Office of the City Attorney, 4th Floor
1700 Convention Center Drive
Miami Beach, Florida 33139

FOLIO#: 02-3211-007-0720

EASEMENT

THIS EASEMENT AGREEMENT (the "Agreement") is made effective this ____ day of _____, 2019, by and between the **CITY OF MIAMI BEACH, FLORIDA**, a Florida municipal corporation, with an address of 1700 Convention Center Drive, Fourth Floor, Miami Beach, Florida 33139 ("Grantor") and **CROWN CASTLE FIBER LLC**, a New York limited liability company, with an address of 2000 Corporate Drive, Canonsburg, PA 15317 ("Grantee").

WHEREAS, Grantor owns a parcel of real property located in the City of Miami Beach, Florida, bearing Folio No. 02-3211-007-0720, and being the remainder of Lot 1, Block 3 Second Ocean Front Subdivision, Plat Book 28, Page 28, of the Public Records of Miami-Dade County, Florida ("Property"), and

WHEREAS, Grantee is a wireless infrastructure provider, which builds and installs wireless communication transmission equipment; and

WHEREAS, Grantee desires to obtain a non-exclusive underground utility easement, over, across and through a portion of the Property (the "Easement Area") (as defined in Paragraph 2 below) for the installation, replacement and maintenance of wireless communications facility equipment ("Facilities") ("Permitted Uses"), pursuant to the terms and conditions set forth herein; and

WHEREAS, Grantee will be installing four (4) 1.5 inch conduits, of which one (1) will be used to house fiber and related communication transmission equipment within the Easement Area, reserving the other three (3) conduits for future use (the "Initial Facilities").

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitals.** The above recitals and findings set forth in the preamble of this Agreement are hereby adopted by reference thereto and incorporated herein as if fully set forth in this Section.
2. **Grant.** Grantor grants unto Grantee, its lessees and licensees, a non-exclusive underground utility easement, having ten (10) feet in width and approximately 813 square feet, in, on, over, across and under that portion of the Property being described more specifically on Exhibit "A" attached (the "Easement Area") to install, replace and maintain utility service wires, fiber optics, cables, conduits, pipes and/or other related utility, and communications facilities, together with the non-exclusive right of ingress, egress and regress over the Property for general

EXHIBIT "1"

construction purposes, subject to the prior coordination and consent of Grantor, which consent will not be unreasonably withheld or delayed.

3. **Use of Easement Area.** During the term of this Agreement, the Easement Area shall be used for only the Permitted Uses. Grantee will cause plans and specifications to be prepared for any construction work related to the installation of any Facilities (the "Work") and obtain any and all governmental permits and approvals which may be required by any and all federal, state and local laws ("Laws") applicable to the Work (the "Permits"). While the Initial Facilities have been approved by Grantor, in its proprietary capacity, all subsequent Work, which does not involve the use, maintenance, repair or installation within the Initial Facilities, shall be subject to the consent of Grantor, which consent shall not be unreasonably withheld or delayed, provided said Facilities shall not unreasonably impair the Grantor's use of its Property and is contained within the Easement Area. After completion of the Work in the Easement Area by the Grantee, Grantee, at its sole expense, shall be required to restore the surface area of the Easement Area and the surrounding area to its original or better condition, ensuring that any hardscape or landscape that was disturbed during the construction process, including other adjoining areas, to look uniform and not patched up. Grantee shall be responsible for maintaining its Facilities located within the Easement Area in good condition at all times, and in compliance with all Laws.

In connection with any approved Work, Grantor, in its proprietary capacity, agrees to execute any Permit documents as may be necessary to obtain and thereafter maintain the Permits.

4. **Use by Grantor of Property.** Grantee realizes that this is a nonexclusive utility Easement Area and that Grantor may continue to use the Easement Area, provided that Grantor does not unreasonably impede Grantee from using the Easement Area for the Permitted Uses. Grantee, at its own expense, may be required to move or modify the Facilities, as may be deemed necessary in connection with Grantor's use and operation of the Property or in connection with a governmental interest of the City of Miami Beach. In the event of a request for relocation, Grantor shall provide an alternate location as close as reasonably possible to the existing Easement Area. Unless caused by the gross negligence of Grantor, its employees, or agents, Grantor shall not be liable for injury, loss or damage to any of Grantee's facilities that may be present in or outside the Easement Area from time to time, however occurring.

5. **Easement Term.** This Agreement and Grantee's rights and privileges hereunder shall be for a period of nine (9) years and three hundred sixty-four (364) days and may be terminated only as provided for herein. The Term shall commence upon commencement of construction activities in the Easement Area. Grantee shall send written notice to Grantor indicating the date that construction commences.

6. **Consideration.** Grantee will pay to Grantor an annual fee for use of the Easement in the amount of Five Thousand Nine Hundred Forty-Five and 00/100 Dollars (\$5,945.00) per year for the first year, with three percent (3%) annual increases thereafter. The annual fee shall be payable within sixty (60) days of the full execution of this Agreement and payable each year thereafter within ten (10) days of the annual anniversary of the commencement date of this Agreement.

7. **Insurance.** At all times during the term of this Agreement, Grantee, at its sole expense, shall obtain and keep in force insurance which may be required by applicable Laws governing Grantee's operations upon the Easement Area, and at minimum shall include the following:

- A. Commercial General Liability Insurance on an occurrence basis, to include: Premises Operations; Independent Contractors; Contractual Liability; Personal &

Advertising Injury; Products-Completed Operations; Broad Form Property Damage including Completed Operations; and Underground, Explosion and Collapse Property Damage, with limits no less than \$1,000,000 per occurrence and \$2,000,000 aggregate, for bodily injury and property damage. **City of Miami Beach must be included as an additional insured by endorsement with respect to this coverage.**

- B. Workers' Compensation Insurance for all employees of the Grantee, and Grantee shall require subcontractors at all tiers to carry Workers' Compensation Insurance, as required by Florida Statute Chapter 440 and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.

Waiver of Subrogation – Grantee agrees to obtain any endorsement that may be necessary to affect the waiver of subrogation on the coverages required. However, this provision applies regardless of whether the Grantor has received a waiver of subrogation endorsement from the insurer.

Acceptability of Insurers – Insurance must be placed with insurers with a current A.M. Best rating of A:VII or higher. If not rated, exceptions may be made for members of the Florida Insurance Funds (i.e. FWCIGA, FAJUA). Carriers may also be considered if they are licensed and authorized to do insurance business in the State of Florida.

Verification of Coverage – Grantee shall furnish the Grantor with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this Agreement. All certificates and endorsements are to be received and approved by the Grantor before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Grantor reserves the right to review complete, copies of all required insurance policies, including endorsements, required by these specifications, at any time at a mutually agreeable location.

**CERTIFICATE HOLDER MUST READ:
CITY OF MIAMI BEACH
1700 CONVENTION CENTER DRIVE
3rd FLOOR
MIAMI BEACH, FL 33139**

Compliance with the foregoing requirements shall not relieve Grantee of his liability and obligation under this section or under any other section of this agreement.

8. **Grantee's Right to Terminate; Removal of Grantee's Improvements.** Grantee shall have the right to terminate this Agreement, at any time, without cause, by providing Grantor with one hundred eighty (180) days' prior written notice. Upon such termination, this Agreement shall become null and void and neither party shall have any further rights or duties hereunder, except as to provisions which are intended to survive expiration or termination of the Agreement. Prior to the expiration or termination of this Agreement, Grantee shall remove all of Grantee's Facilities from the Easement Area and restore the Property to the condition it was in before this Agreement, reasonable wear and tear excepted.

9. **Recording.** Grantee or Grantor shall have the right to record this Agreement or a memorandum of this Agreement with the appropriate recording officer. The non-requesting party

shall execute and deliver such a memorandum, in the form acceptable to Grantor, for no additional consideration, promptly upon request by the other party.

10. **Hold Harmless.** Grantee shall indemnify, defend and hold harmless Grantor, and its officers, employees, agents, and contractors ("Indemnified Parties") from and against any and all actions (whether at law or in equity), claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees and costs for personal, economic or bodily injury, wrongful death, loss of or damage to property, which may arise or be alleged to have arisen from the use, construction on, and occupancy of the Easement Area by Grantee, its employees, contractors, servants, lessees, licensees or agents, or any other person or entity acting under Grantee's control or supervision, except to the extent such claims are caused by the intentional misconduct or grossly negligent acts or omissions of the Grantor, its officers, employees, agents and contractors. To that extent, Grantee shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by Grantor in the defense of such claims and losses, including appeals. Grantee expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Grantee shall in no way limit Grantee's responsibility to indemnify, keep and save harmless and defend the Indemnified Parties as herein provided.

The provisions of this Section 10 and of this indemnification shall survive termination or expiration of this Agreement.

11. **Hazardous Substances.** For the purposes of this Agreement, "Hazardous Substances" shall mean, without limitation, all hazardous toxic substances, wastes and materials, all pollutants and contaminants and any other similar substances or materials which are included under or regulated by any present or future Environmental Laws. The term "Environmental Laws" means any local, state or federal law, rule or regulation pertaining to protection of human health and the environment, or environmental contamination, clean-up or disclosure including, without limitation, the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, the federal Resource Conservation and Recovery Act of 1976, and any applicable law concerning waste management for the state where the Premises is located, and amendments thereto, and regulations adopted pursuant to all such statutes, as amended.

Grantee shall not (either with or without negligence) cause or permit the use, storage, generation, escape, disposal or release of any Hazardous Substances or Hazardous Wastes in any manner not sanctioned by law. In all events, Grantee shall indemnify and hold and hold Grantor harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, and consultants' and experts' fees) from the presence or release of any Hazardous Substances or Hazardous Wastes on the Easement Area if caused by Grantee or persons acting under Grantee. Grantee shall execute such affidavits, representations and the like from time to time as Grantor may reasonably request concerning Grantee's best knowledge and belief as to the presence of Hazardous Substances or Hazardous Wastes within the Easement Area or otherwise affecting the Property.

12. **Interference.** Subject to the requirements of Paragraph 4, from and after the date hereof and continuing until the Agreement is terminated, Grantee shall have the non-exclusive right to

use the Easement Area in any manner which is consistent with the Permitted Uses and that will not interfere the Grantor's use of the Property.

13. **Performance Bond.**

Grantee shall, within thirty (30) days from the Effective Date, furnish to the Grantor a Performance Bond in the sum stated below for the payment of which Grantee shall bind itself for the faithful performance of the terms and conditions of this Agreement. A Performance Bond, in the amount of Twenty Thousand and 00/100 (\$20,000.00) Dollars, shall be provided by the Grantee in faithful observance of this Agreement. A cash deposit, irrevocable letter of credit, or certificate of deposit may also suffice, as determined by the Grantor, in its reasonable discretion. The form of the Performance Bond or alternate security shall be approved by the Grantor. Grantee shall be so required to maintain said Performance Bond or alternate security in full force and effect throughout the Term of this Agreement. Grantee shall have an affirmative duty to notify the Grantor, in writing, in the event said Performance Bond or alternate security lapses or otherwise expires. All interest that accrues in connection with any financial instrument or sum of money referenced above shall be the property of Grantee, except in an event of default, in which case the Grantor shall be entitled to all interest that accrues after the date of default.

14. **Notices.** All notices hereunder shall be in writing and shall be given by (i) established national courier service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested to the addresses contained herein. Notices are effective upon receipt, or upon attempted delivery if delivery is refused.

If to Grantor:

City of Miami Beach, Florida
1700 Convention Center Drive
Fourth Floor
Miami Beach, Florida 33139
Attention: Public Works Director

With copy to:

Raul J. Aguila, Esq
RDA Attorney
City of Miami Beach
1700 Convention Center Drive
Fourth Floor
Miami Beach, Florida 33139

If to Grantee:

Crown Castle Fiber LLC
General Counsel
Attn: Legal – Real Estate Dept.
2000 Corporate Drive
Canonsburg, PA 15317

15. **Default/Remedies.** In the event either Grantor or Grantee (1) fails to make any payments due under the Agreement within thirty (30) days, after written notice from the other party (“monetary default”) or (2) fail to fulfill, in a timely manner, or otherwise violates, any of the covenants, agreements, or stipulations material to this Agreement within thirty (30) days, after written notice from the other party (“non-monetary default”), such other party shall have the right to terminate the Agreement for cause. The timeframe to cure a non-monetary default shall be reasonably extended if the defaulting party has commenced the curative actions and the timeframe to cure will take longer than thirty (30) days to complete, but for no longer than sixty (60) days. Additionally, such other party shall have the right to seek injunctive relief, to require specific performance of this Agreement, to collect damages from the defaulting party, and to take such actions as may be necessary in such other party’s discretion to cure such violation and charge the defaulting party with all reasonable costs and expenses incurred by such other party as a result of such violation (including, without limitation, such other party’s reasonable attorneys’ fees). All rights and remedies provided under this Agreement are cumulative and may be pursued singularly, in any combination, and in any order. The failure to enforce any of the terms and provisions contained herein shall in no event be deemed to be a waiver of the right to thereafter strictly enforce the terms and provisions hereof.

Interest. Any sums which remain unpaid shall accrue interest at the rate of one percent (1%) per month from the due date until paid in full.

16. **Miscellaneous.**

a. **Authority.** Grantor represents that it owns the referenced property in fee simple and has the right and authority to execute this Agreement.

b. **Partial Invalidity.** If any term of this Agreement is found to be void or invalid, then such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

c. **Successors and Assigns.** Except as otherwise provided herein, this Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of the parties hereto.

d. **Entire Agreement.** Grantor and Grantee agree that this Agreement contains all of the agreements, promises and understandings between Grantor and Grantee. Any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing and signed by the parties hereto.

e. **Construction of Document.** Grantor and Grantee acknowledge that this document shall not be construed against the drafter by virtue of said party being the drafter.

f. **Applicable Law.** This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State where the Easement Area is located.

Remainder of Page Left Blank; Signature page follows

IN WITNESS WHEREOF, Grantor and Grantee having read the foregoing and intending to be legally bound hereby, have executed this Agreement as of the day and year first written above.

GRANTOR:

CITY OF MIAMI BEACH, FLORIDA

By: _____

Print Name: _____

Print Title: _____

ACKNOWLEDGEMENT

State/Commonwealth of _____
County of _____

On this, the ____ day of _____, 20____, before me, the undersigned officer in and for the above-stated jurisdiction, personally appeared _____ [signer's name], who acknowledged him/herself to be the _____ [title] of Miami Beach Redevelopment Agency, a Florida public body corporate and politic, and that he/she, being authorized to do so, executed the foregoing Easement for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

GRANTEE:

**CROWN CASTLE FIBER LLC, a New York
limited liability company,**

By: _____

Print Name: _____

Print Title (if any): _____

ACKNOWLEDGEMENT

State/Commonwealth of _____

County of _____

On this, the ____ day of _____, 20____, before me, the undersigned officer in and for the above-stated jurisdiction, personally appeared _____ [signer's name], who acknowledged him/herself to be the _____ [title] of Crown Castle Fiber LLC, a New York Limited Liability Company, and that he/she, being authorized to do so, executed the foregoing Easement for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public