



January 28, 2020

Alachua County
Ms. Michele Lieberman, County Manager
12 SE 1st Street
Gainesville, Florida 32601

RE: Antenna Site Lease Agreement Commencement Notification

Exhibit E, Sublease to County for Public Communications Facilities, dated June 27, 2018 between NextTower Development Group, LLC and Alachua County; Site Number: NXFL-125, Site Address: 913 SE 5th Street, Gainesville, Florida 32601.

Dear Ms. Lieberman:

Please be advised that NextTower Development Group, LLC is providing this Tenant Commencement Notification for the above referenced tower site. In accordance with Exhibit E-1, 1.2 of the above referenced Lease Agreement, installation of Alachua County's equipment was complete on January 15, 2020, and the rent commencement date is January 15, 2020.

If you need anything else, please feel free to call me at 352-363-5560, extension 702.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel Rousseau", with a long horizontal line extending to the right.

Joel Rousseau
Director of Project Management

cc: Todd Hutchinson, Director Alachua County Finance & Accounting
Keith Godwin, 911 Coordinator

Grants & Contracts - Transmittal Memo

DATE: June 27, 2018

FROM: Purchasing Division, Contracts

TO: Keith Godwin

CONTRACT #: 10941

VENDOR: NexTower Development Group

DESCRIPTION: #10941 Agreement with NexTower for Tower Construction at ACFR

APPROVED BY: Board of County Commissioners

APPROVAL DATE: 6/26/2018

RECEIVED ON: June 27, 2018

TERM START: 6/26/2018

TERM END: 6/25/2048

AMOUNT: \$25,128.00

RFP/BID #: 17-670

POR #
(ENCUMBERANCE):

ACTIONS REQUIRED: Please forward a copy to the vendor & retain a copy for your files.

**OPTION AND GROUND LEASE AGREEMENT BETWEEN
ALACHUA COUNTY AND
NEXTOWER DEVELOPMENT GROUP, LLC**

RFP 17-660

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**OPTION AND GROUND LEASE AGREEMENT BETWEEN
ALACHUA COUNTY AND
NEXTOWER DEVELOPMENT GROUP, LLC.**

THIS OPTION AND GROUND LEASE (hereinafter "Lease") is entered into this 27 day of June, 2018, by and between Alachua County, a charter county and political subdivision of the State of Florida, hereinafter "County" and NexTower Development Group LLC, a Delaware limited liability company, with its principal office located at 4210 NW 37th Place, Suite 600, Gainesville, Fl., 32606, hereinafter "Lessee" (collectively referred to as the "Parties").

WITNESSETH:

WHEREAS, County is the owner in fee simple of a parcel of land located in Alachua County, State of Florida, whose legal description is set forth on the attached **Exhibit A**; and

WHEREAS, County issued Bid # 17-660 seeking proposals from interested, qualified entities for the provision of Alachua County Fire rescue New Tower Construction for the benefit of the Public Safety, Fire rescue Department on the parcel of land identified in **Exhibit A**; and

WHEREAS, after evaluating and considering all timely responses to RFP 17-660, the County identified the Lessee as the top ranked firm; and

WHEREAS, Lessee desires to lease the site described in **Exhibit A** from County and to construct on such site a 379- foot high guyed- type tower structure with a top-mounted antenna and lightning rod for use in connection with such business (the "Tower") in accordance with the specifications in **Exhibit C** ; and

WHEREAS, County desires to sublease space on the Tower from the Lessee for the purpose of installing, mounting and operating the public safety communications equipment described herein below; and

WHEREAS, Lessee desires to sublease space on the Tower to third parties for the purpose of installing, operating, and maintaining various types of communications equipment and conducting related communications activities; and

WHEREAS, the parties are entering into this Lease on the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration the receipt and sufficiency of is acknowledged by the Parties, the Parties hereto do mutually agree as follows:

1. Option to Lease.

a. In consideration of the payment of one thousand two hundred dollars (\$1,200.00) (the "Option Fee") by Lessee to County, County hereby grants to Lessee an option to lease a certain parcel of the Real Property, more particularly described in **Exhibit A** (the "Property") on the terms and conditions set forth herein (the "Option"). The Option shall be for an initial term of twelve (12) months, commencing on the Effective Date (the "Initial Option Period"). The Initial Option Period may be extended by Lessee for an additional three (3) months upon written notice to County and payment of the sum of six hundred and no/100 dollars (\$600.00) at any time prior to the end of the Initial Option Period.

b. During the Initial Option Period and any extension thereof, and during the Initial Term and any Renewal Term (as those terms are defined below) of the Lease, County agrees to cooperate with Lessee in obtaining, at Lessee's expense, all licenses and permits or authorizations required for Lessee's use of the Premises from all applicable government and/or regulatory entities (including, without limitation, zoning and land use authorities, and the Federal Communications Commission ("FCC") ("Governmental Approvals"), including all land use and zoning permit applications, and County agrees to cooperate with and to allow Lessee, at no cost to County, to obtain a title report, zoning approvals and variances (if any), and land-use permits. County expressly grants to Lessee a right of access to the Property during normal business hours to perform any surveys, soil tests, and other engineering procedures or environmental investigations ("Tests") on the Property deemed necessary or appropriate by Lessee to evaluate the suitability of the Property for the uses contemplated under this Lease. Notice shall be provided to the Alachua County Fire Rescue Department 24 hours in advance of exercising right of access to the site. During the Option Period and any extension thereof, Lessee may exercise the Option by so notifying County in writing, at County's address as set forth in this Lease. Lessee shall, at Lessee's sole cost and expense, have a metes and bounds survey (Florida Category 1 or ATLA/ACSM Urban Survey) prepared of the leased premises and the easements, for ingress, egress, electrical and communication utilities and for tower guy wires and anchors prepared prior to the expiration of the option period. Lessee shall provide County a copy of the survey for its review and approval.

c. If Lessee exercises the Option, then County hereby leases to Lessee that portion of the Property, together with all necessary space and easements for access and utilities, as generally described and depicted in the attached **Exhibit B** (collectively referred to hereinafter as the "Premises"). The Premises, located at 911 SE 5th Street, Gainesville, Florida, comprises approximately 8,075 square feet.

d. Contingent on regulatory approval, the tower shall will meet the specifications set forth in **Exhibit C**.

e. In the event of default or breach of this option provision by County, Lessee's damages shall be fixed and liquidated to the sums paid by Lessee to County as consideration for this option, which shall be refunded by County to Lessee. In the event of default or breach of this provision by Lessee, County's damages shall be fixed and liquidated to the sums paid by Lessee to County as consideration for this option. County and Lessee hereby expressly waive any other

remedies it may have for a default or breach of this option by the other including specific performance and damages for breach of contract not contemplated hereby.

f. Consideration for the option initial term shall be one thousand two hundred dollars and no cents (\$1,200.00).

g. Inspections and Investigations. County hereby grants to Lessee, its officers, agents, employees and independent contractors the right and privilege to enter upon the Leased Premises and the Easement(s) at any time after the date of this Option to perform, or cause to be performed site inspections, which shall include but not be limited to, test borings of the soil, environmental audits, engineering studies and to conduct a survey of the Leased Premises and the Easement(s). Lessee shall coordinate its visits to the Leased Premises with County and County shall provide Lessee with any necessary keys or access codes to the Leased Premises and the Easement(s) if needed for ingress and egress. Lessee shall not unreasonably interfere with County's use of the Leased Premises or the Easement(s) in conducting these activities and Lessee shall repair any damage caused by Lessee, its employees, agents and contractors to the County's property adjacent to the Leased Premises and if Lessee does not exercise the Option, damage caused by Lessee, its employees, agents and contractors to the Leased Premises during the Option Term, which obligation shall survive termination of this Option. Lessee shall have the right, at its cost and expense, to obtain a title report or commitment for a leasehold title policy covering the Leased Premises and the Easement(s) from the title insurance company of its choice.

h. As Is Where Is. Except as otherwise expressly provided in this Lease, Lessee acknowledges and agrees that (i) County has not made and is not making any representations, warranties, assurances or guarantees to Lessee regarding the Leased Premises or Easement(s), express or implied, except as provided in Paragraph 5 and (ii) is leasing the Leased Premises and receiving the Easements in their present condition, AS IS, WHERE IS.

2. Lease Area.

a. County hereby leases to Lessee, and Lessee hereby leases from County, the Premises for the purpose of operating a wireless communications facility and for no other purpose, together with easements for vehicular and pedestrian access and the installation, maintenance and replacement of necessary utilities, wiring, cables and other conduits for the purpose of constructing, maintaining and operating wireless facilities, including a telecommunications tower, with antennas, connecting cables and appurtenances (collectively, the "Attached Facilities") and for the construction, maintenance and operation of related facilities to be used in conjunction with the Attached Facilities (the "Ground Facilities"). This Lease permits the Lessee or its other wireless service providers to provide standby power from diesel or propane generators. Any fuel located on the Premises must be placed within a secure metal cabinet on a concrete pad and meet all of the containment criteria of the County's Hazardous Materials Code. The Attached Facilities and Ground Facilities shall be referred to as the "Lessee Facilities," except for the County Public Communication Facilities. In the event of any spill or environmental degradation due to the Lessee's use of the Lessee Facilities, Lessee will be required and will be responsible for all clean up expenses incurred to completely remediate the

situation to the extent required by applicable law and return the Property to the condition which existed prior to the incident.

b. Lessee shall, at its sole cost and expense (which shall include the cost and expense of obtaining any permits or other regulatory approvals from any governmental entity), construct a telecommunications tower or pole in accordance with the requirements set forth in **Exhibit "C"** and Ground Facilities housing equipment to be used in conjunction with the Attached Facilities. The Lessee Facilities shall be developed in compliance with the Site Plan.

c. Ownership and title to the Lessee Facilities shall at all times during the term of this Lease vest in Lessee, and County shall have no rights or duties with respect thereto. Notwithstanding the foregoing, upon the expiration of the terms of this lease, or the County's termination for default pursuant to paragraph 16, herein, County may, within forty-five (45) days thereof request in writing that Lessee leave the tower or pole on the Premises whereupon ownership of, and title to, such tower or pole shall automatically transfer in its "AS IS" and "WHERE IS" condition to County. County and Lessee will coordinate the execution of documents that are customarily used to transfer ownership of a tower used for communication facilities. Following such transfer, County will be solely responsible for the ongoing maintenance and upkeep of the tower or pole, as the case may be, and Lessee shall have no further responsibility in relation thereto.

d. Lessee shall not grant, or allow to be placed, any lien or other form of security upon the Lessee Facilities, except as collateral used for financing.

3. **Sublease to County.** As more particularly described in a separate sublease between the parties, the parties contemplate County using the Tower for a public communications facility as specified in **Exhibit D** ("Public Communications Equipment") and Lessee coordinating with County (and any subcontractor of County) the installation of the public communications facilities on the Tower. The County's public communications equipment shall be considered the initial antenna placed on the tower. This Lease shall not take effect unless or until the parties have executed a sublease from Lessee to County for the foregoing purposes. The form of the Sublease is attached as County **Exhibit E** ("Sublease Agreement").

4. **Term.** This Lease shall commence on the date Lessee notifies County in writing that Lessee exercises its option to lease the property described in **Exhibit "B"** ("Commencement Date"), which will be documented in a Memorandum of Lease and continue for a period of five (five) years (the "Initial Term"). Upon expiration of the Initial Term, this Lease shall automatically renew for up to five (5) additional terms of five (5) years each (each a "Renewal Term"), unless Lessee provides the County written notice of intention not to renew not less than ninety (90) days prior to the expiration of the current term. Rent shall be increased annually as described herein. The parties agree that a Memorandum of Lease in the form attached hereto as **Exhibit F**, evidencing the commencement date and other matters, shall be executed by all parties and recorded by Lessee, at Lessee's cost and expense, not prior to, but within thirty (30) days of the commencement date.

5. **Rent.**

a. Lessee shall pay County as rent for the Site each year during the term of this Lease the sum of \$10.00 per year ("Base Rent"). Lessee shall pay Base Rent for the first year on the Commencement Date, and Lessee shall pay County Base Rent annually in advance on each anniversary of the Commencement Date. Base rent shall be due within 30 days of the commencement date of the lease.

a. Lessee shall pay County a late payment charge equal to five percent (5%) of the late payment for any payment not paid when due. Any amounts not paid when due shall also bear interest until paid at the lesser of the rate of one percent (1%) per month or the highest rate permitted by law. The parties agree that such charge is a fair and reasonable estimate of the County's administrative expenses incurred because of late payment. It shall be the sole responsibility of the Lessee to pay any required federal, state, or County sales or use tax.

b. The Base Rent and Additional Rent shall be increased annually effective as of each anniversary of the Commencement Date by an amount equal to the greater of one and one half percent (1.5%) or the percentage increase in the CPI over the CPI for the month 12 months prior to the adjustment date. CPI means the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, issued by the Bureau of Labor Statistics for the United States Department of Labor (1982-84 = 100). If the CPI is converted to a different standard reference base or otherwise revised, the adjustment set forth in this paragraph shall be made with the use of the conversion formula published by the Bureau of Labor Statistics.

c. Rent shall be prorated as of the date of termination and, in the event of termination for any reason other than Lessee's default; all prepaid Rents shall be refunded to the Lessee.

d. Base Rent, Additional Rent and all other consideration to be paid or provided by Lessee to County shall constitute "Rent" hereunder and shall be paid or provided without offset.

6. **Use of Site.** Lessee shall use the Site for the construction and operation of the Tower and the placement and operation thereon of FCC licensed communications systems wireless communication service and facilities, including but not limited to, cell/pcs carriers, 2-way radio users, broadband carriers, and County's "Public Communications Equipment" specifically described in the sublease between the parties and for no other purpose. Lessee shall, at its expense, comply with all present and future federal, state, and local laws, ordinances, rules and regulations (including laws and ordinances relating to lighting of tower, health, safety, radio frequency emissions, and radiation) in connection with the use, operation, maintenance, construction and/or installation of the Site.

7. **Lessee Improvements, Plans, Bonds.**

a. Lessee shall improve the Site by constructing the Tower that meets the

requirements of **Exhibit "C"** and any related ancillary support facilities and structures on the Site. No improvement, construction, installation or alteration shall be commenced until plans for such work have been approved by the County and all necessary permits have been properly issued.

b. Such plans shall include: Fully dimensioned site plans that are drawn to scale and show (i) the proposed location of the antennas, equipment shelter, driveway and parking areas, (ii) the proposed changes in the landscape, (iii) the proposed type and height of fencing, (iv) the proposed color of all structures, including fencing, (v) the proposed type of construction material for all structures, including fencing, and any other details that the County may request.

c. Prior to commencing construction, Lessee shall also provide County with the name of the contractor that will be constructing the improvements. The contractor is subject to the prior written approval of County. Such County approval shall be provided within fifteen (15) business days of lessee's written notice to County or be deemed approved by the County. All improvements shall be constructed in a competent manner without the attachment of any liens to the Site and shall be completed in compliance with all applicable laws, rules, ordinances and regulations.

d. No improvements or modifications to the Tower or the leased facilities shall be made without the County's consent, which consent shall not be unreasonably withheld. Lessee shall provide the County a signed copy of the antenna attachment lease. However, "improvements or modifications to the tower" shall not include addition of new Lessee's tenants' equipment on the leased ground area of the tower. Lessee shall not be required to have County's consent for leasing space on the leased premises ground area of the tower, or on the tower, providing the tower meets structural code specifications and does not cause interference to defined County equipment on the tower. Such interference on the tower shall be on a first come, first serve basis. The County's original installation of equipment and frequencies on the tower (see **Exhibit "E"**) shall be the first on the tower by which all future frequencies of Other Providers must not cause interference.

e. The Tower shall remain the property of Lessee and Lessee shall, at County's request, remove the Tower upon termination of the Lease unless the County requests ownership of the tower pursuant to paragraph 2.c, above. Such removal shall be done in a workmanlike and careful manner and without interference or damage to any other equipment, structures or operations on the Site, including use of the Site by County or any of County's assignees or lessees. If, however, Lessee requests permission not to remove all or a portion of the improvements, and County consents to such non-removal, title to the affected improvements shall thereupon transfer to County and the same thereafter shall be the sole and entire property of County, and Lessee shall be relieved of its duty to otherwise remove same. All other alterations, improvements and structures located or constructed on the Site, excluding licensees and other tenant equipment and fixtures, shall become the property of County upon termination of the Lease, except that County may, by written notice to Lessee, require Lessee to remove all such improvements upon termination of the Lease. Any personal property, equipment or other improvements, which are not removed prior to the termination of this Lease, excluding licensees

and other tenant equipment and fixtures, shall become the property of County, at County's option. However, property owned by other wireless providers located on the tower shall not be considered Lessee property.

f. Upon removal of the improvements (or portions thereof) as provided above in paragraph e above, Lessee shall restore the affected area of the Site to the reasonable satisfaction of County.

g. All costs and expenses for the removal and restoration to be performed by Lessee pursuant to subparts 1 and 2 above shall be borne by Lessee, and Lessee shall hold County harmless from any portion thereof.

i. Lessee shall annually post a surety bond (or, at Lessee's option, a letter of credit) from a surety or bank reasonably acceptable to County in an amount of \$25,000.00, to assure that the funds will be available at the termination of the Lease for removal of the Tower.

j. Lessee shall keep the Site free from any liens arising from any work performed, materials furnished, or obligations incurred by or at the request of Lessee. If any lien is filed against the Site as a result of acts or omission of Lessee or Lessee's employees, agents or contractors, Lessee shall discharge the lien or bond the lien off in a manner reasonably satisfactory to County within ninety (90) days after Lessee receives written notice that the lien has been filed.

k. Lessee shall complete construction of the tower, purchase and install County's public communication facilities described in Exhibit "A" ("Public Communications Facilities") on the tower within 180 days of the commencement date of the ground lease.

8. Use by County and Other Providers.

a. Lessee may allow another person or entity to use the Tower provided that Lessee reduces County's rent as set forth in section 6 of the Antenna Site Lease agreement.

b. Lessee shall design and construct the Tower to accommodate County's use and other telecommunications providers ("Other Providers"). Toward this end, Lessee shall design and construct the Tower so that at least four (4) additional personal wireless cell communications facilities may be placed on it.

c. Lessee shall cooperate with each new Other Provider in connection with their locating and placing their antennas and other facilities on the Tower and in the ancillary support facilities.

d. Each Other Provider shall also be responsible for any liabilities that arise from the Other Provider's use of the Tower.

e. Within fifteen (15) business days after receipt, Lessee shall notify County in writing of all assignment requests or proposals, which Lessee receives for use of the Tower. Lessee shall also immediately provide County with a copy of the actual or proposed lease to an Other Provider. Failure to comply with this provision following written notice from County to Lessee of such default and Lessee not curing such default within 15 days shall place Lessee in default and give County the option of exercising any of the rights described in Section 17.

f. Within fifteen (15) business days, prior to installation of Lessee Tenant's approved and permitted equipment on the ground and/or on the tower, Lessee shall provide County a copy of the Tenant Lease Agreement between Tenant and Lessee, including frequencies and plans. Failure to comply with this provision following written notice from County to Lessee of such default and Lessee not curing such default within 15 days shall place Lessee in default and give County the option of exercising any of the rights described in Section 17.

g. The Lessee will arrange for interference studies indicating whether Lessee's Sublessee's use of the Tower will interfere with the County's proposed use of the Tower. In the event that such a study indicates that Lessee's Sublessee's use will potentially interfere with the County's initial use of the Tower, the County may require Lessee to relocate Sublessee's antenna and other equipment so as to remove or minimize the interference, to the extent County deems necessary. If County changes frequencies for its public safety communications facilities and the new County use interferes with Lessee's Sublessee's use, County must cure the interference.

9. **Net Lease.** County shall not be required to make any expenditures of any kind in connection with this Lease or to make any repairs or improvements to the Site. The parties agree that this is a net Lease intended to assure County the rent reserved on an absolute net basis. In addition to the Rent reserved above, Lessee shall pay to the parties entitled thereto all applicable taxes, assessments, insurance premiums, maintenance charges, and any other charges, costs and expenses against the Site which may be contemplated under any provisions of this Lease.

10. **Signs/Graffiti.** Lessee may place signs on the Site subject to applicable governmental regulations (including FCC registration numbers); however, Lessee shall first obtain the County's written consent to sign design, size and location. County at any time may enter the Site and undertake any activities necessary to abate or remove graffiti located therein. Lessee shall reimburse County all costs incurred by County in connection with such abatement or renewal within 30 days of County's presenting Lessee with a statement of such costs.

11. **Maintenance.** Lessee shall, at its own expense, maintain the Site and all improvements, equipment and other personal property on the Site in good working order, condition and repair. Lessee shall keep the Site free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or source of undue vibration, heat, noise or interference.

12. **Access.** County and its agents shall have the right to enter the Site 24 hours per day, 7 days per week, to examine and inspect the Site.

13. **Utilities.** Lessee shall be responsible for obtaining any utility service to the Site that it

desires. Lessee shall pay when due all charges for utilities to the Site during the term of the Lease. However, County shall be responsible for paying utility bills for its equipment on the property. Lessee shall bring master utilities to the site and provide County an electrical meter on the h-frame within the compound for its equipment, not to exceed 200 amps, single phase. The County shall pay its utilities costs including an recurring expense or deposit charges.

14. **License Fees.** Lessee shall pay, as they become due and payable, all applicable fees, charges, taxes and expenses required for licenses and/or permits required for or occasioned by Lessee's use of the Site.

15. **Governmental Approvals.**

a. Lessee agrees that all construction upon and use of the Premises shall comply with all terms and conditions of any Government Approval (defined below), permit or any modifications or amendments thereof made by Lessee.

b. Lessee's right to use the Premises is contingent upon Lessee obtaining all Government Approvals (whether discretionary or ministerial), specifically including, without limitation, site plan approval and a building permit, that may be required by any federal, state, or local authority, for Lessee's use to take place at the Premises ("Governmental Approvals"). It shall be the sole and entire responsibility of Lessee to determine which Governmental Approvals are needed for the construction and operation of the Lessee Facilities. County agrees to reasonably cooperate with Lessee (at no cost to County) in its efforts to obtain such approvals; provided, however, that County's agreement to cooperate shall not in any way limit or otherwise affect the authority or discretion of County or County's governing body, or any department, division, officer or employee of the County, in the conduct of its or his duties with respect to any such Governmental Approval and provided further, that County shall not be required to join, be joined, or otherwise participate as a party in any judicial or administrative action brought by Lessee, or any person or entity claiming under Lessee, in which the denial or conditioning of any Governmental Approval is in issue. Lessee hereby expressly acknowledges and agrees that neither the execution of this Lease by County nor any act by County or any of County's officers, agents or employees or, those of County, in anticipation or in furtherance of the execution of this Lease, shall entitle Lessee to any Governmental Approval, whether discretionary or ministerial, and Lessee shall not be entitled to reimbursement of any costs or expenses of any kind or nature made or incurred in expectation of, or preparation for, receiving any such Governmental Approval.

c. Copies of all Government Approvals shall be provided to the County within thirty (30) days of receipt of each Government Approval.

d. If any application for a necessary Governmental Approval is denied, or if any certificate, permit, license, or other Governmental Approval issued to Lessee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority so that Lessee, in its reasonable discretion, will be unable to use the Premises for Lessee's intended purpose, and all

administrative and judicial appeals of such action have been exhausted or the time for filing of such appeals has expired, both County and Lessee shall have the right to terminate this Lease by written notice to the other, and upon such termination, this Lease shall become null and void subject to the termination provisions set forth above.

e. Notwithstanding the provisions of subparagraph d. above, in the event of termination by Lessee pursuant to subparagraph d., Lessee shall be liable to County for Rent for a period of one hundred twenty (120) days from the date of such termination, unless such termination is by reason of the denial of a conditional use permit or other approval of a discretionary nature.

f. Lessee warrants that it has performed, or will cause to be performed, a radio frequency propagation study ("RF Study") showing that Lessee's intended use will not interfere with any existing or added public communications facilities, and that such RF Study was, or will be, conducted by a qualified engineer licensed to practice in the State of Florida, Lessee shall, prior to the issuance of a building permit for any of the Lessee Facilities, deliver a copy of such RF Study to County. County shall, upon request of Lessee, provide such information regarding County's existing wireless facilities, if applicable, as is necessary for Lessee to avoid interference with such facilities.

16. **Default and County's Remedies.**

a. It shall be a default if Lessee defaults in the payment or provision of Rent or any other sums to County when due, and does not cure such default within ninety (90) days; or if Lessee defaults in the performance of any other covenant or condition of this Lease and does not cure such other default within forty five (45) days after written notice from County specifying the default complained of; or if Lessee abandons or vacates the Site; or if Lessee is adjudicated as bankrupt or makes any assignment for the benefit of creditors; or if Lessee becomes insolvent or County reasonably believes itself to be insecure.

b. In the event of a default, and Lessee not curing such default within stated notice and cure period,, the County shall have the right, at its option, in addition to and not exclusive of any other remedy County may have by operation of law, without any further demand or notice, to re-enter the Site and eject all persons therefrom, and either (a) declare this Lease at an end, in which event Lessee shall immediately remove the Tower (and proceed as set forth in Section 5b) and pay County a sum of money equal to the total of (i) the amount of the unpaid rent accrued through the date of termination; (ii) the amount by which the unpaid rent reserved for the balance of the term exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided (net of the costs of such reletting); and (iii) any other amount necessary to compensate County for all detriment proximately caused by Lessee's failure to perform its obligations under the Lease; or (b) without terminating this Lease, relet the Site, or any part thereof, for the account of Lessee upon such terms and conditions as County may deem advisable, and any monies received from such reletting shall be applied first to the expenses of such reletting and collection, including reasonable attorneys' fees, any real estate commissions paid, and thereafter toward payment of all sums due or to become due County hereunder, and if a sufficient sum shall not be

thus realized to pay such sums and other charges, Lessee shall pay County any deficiency monthly, notwithstanding that County may have received rental in excess of the rental stipulated in this Lease in previous or subsequent months, and County may bring an action therefor as such monthly deficiency shall arise.

c. No reentry and taking of possession of the Site by County shall be construed as an election on County's part to terminate this Lease, regardless of the extent of renovations and alterations by County, unless a written notice of such intention is given to Lessee by County. Notwithstanding any reletting without termination, County may at any time under written notice provisions noted in this Paragraph thereafter elect to terminate this Lease for such previous breach.

b. If suit shall be brought by County for recovery of possession of the Site, for the recovery of any rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant, the Lessee shall pay to the County all expenses incurred therefor, including reasonable attorney fees.

17. **Cure by County.** In the event of any default of this Lease by Lessee, the County may at any time, after notice, cure the default for the account of and at the expense of the Lessee. If County is compelled to pay or elects to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorney fees in instituting, prosecuting or defending any action to enforce the County's rights under this Lease, the sums so paid by County, with all interest, costs and damages shall be deemed to be Rent otherwise due and shall be added to the Rent and shall be due from the Lessee to County on the first day of the month following the incurring of the respective expenses.

18. **Damage or Destruction.** If the Tower or any portion of the tower is destroyed or damaged so as to materially hinder effective use of the tower through no fault or negligence of Lessee, Lessee may elect to terminate this Lease upon thirty (30) days' written notice to County. In such event, Lessee shall promptly remove the Tower from the Site and the parties shall proceed as set forth in Section 7b above. This Lease (and Lessee's obligation to pay rent) shall terminate upon Lessee's fulfillment of the obligations set forth in the preceding sentence, at which termination Lessee shall be entitled to the reimbursement of any Rent prepaid by Lessee. County shall have no obligation to repair any damage to any portion of the Site.

19. **Condemnation.** In the event the Site is taken by eminent domain, this Lease shall terminate as of the date title to the Site vests in the condemning authority. In the event a portion of the Site is taken by eminent domain so as to materially hinder effective use of the Site by Lessee, either party shall have the right to terminate this Lease as of said date of title transfer, by giving thirty (30) days' written notice to the other party. In the event of any taking under the power of eminent domain, Lessee shall not be entitled to any portion of the reward paid for the taking and the County shall receive full amount of such award. Lessee hereby expressly waives any right or claim to any portion thereof although all damages, whether awarded as compensation for diminution in value of the leasehold or to the fee of the Site, shall belong to County. Lessee shall have the right to claim and recover from the condemning authority, but not from County,

such compensation as may be separately awarded or recoverable by Lessee on account of any and all damage to Lessee's business and any costs or expenses incurred by Lessee in moving/removing its equipment, personal property, and leasehold improvements. If, under the provisions of this Paragraph, the tower must be removed, County may cooperate and provide, if possible, an alternative location under the same terms and conditions of this Agreement.

20. **Indemnity and Insurance.**

a. **Disclaimer of Liability:** County 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 Tower or Site.

b. **Indemnification:** Lessee shall, at its sole cost and expense, indemnify and hold harmless County and all associated, affiliated, allied and subsidiary entities of County, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors, elected or appointed (hereinafter referred to as Indemnitees), from and against:

(1) Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of Lessee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Site or the Lessee's failure to comply with any federal, state or local statute, ordinance or regulation.

(2) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), which are imposed upon, incurred by or asserted against the Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to Lessee, its contractors or subcontractors, for the installation, construction, operation, maintenance or use of the Tower or Site and, upon the written request of County, Lessee shall cause such claim or lien covering County's property to be discharged or bonded within thirty (30) days following such request.

(3) Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any financing or securities offering by Lessee or its affiliates for violations of the common law or any laws, statutes, or regulations of the State of

Florida or United States, including those of the Federal Securities and Exchange Commission, whether by Lessee or otherwise.

(4) Lessee's obligation to indemnify Indemnitees under this Lease shall extend to claims, losses, and other matters covered hereunder that are caused or contributed to by the negligence of one or more Indemnitees.

c. **Assumption of Risk:** Lessee undertakes and assumes for its officers, agents, affiliates, contractors and subcontractors and employees (collectively "Lessee" for the purpose of this Section), all risk of dangerous conditions, if any, on or about the Site, and Lessee hereby agrees to indemnify and hold harmless the Indemnitees against and from any claim asserted or liability imposed upon the Indemnitees for personal injury or property damage to any person arising out of the Lessee's installation, operation, maintenance, condition or use of the Site or Lessee's failure to comply with any federal, state or local statute, ordinance or regulation.

d. **Defense of Indemnitees:** In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Lessee shall, upon notice from any of the Indemnitees, at Lessee's sole cost and expense, resist and defend the same with legal counsel mutually selected by Lessee and County; provided however, that Lessee shall not admit liability in any such matter on behalf of the Indemnitees without the written consent of County and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Lessee.

e. **Notice, Cooperation and Expenses:** County shall give Lessee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of the preceding Section. Nothing herein shall be deemed to prevent County from cooperating with Lessee and participating in the defense of any litigation by County's own counsel. Lessee shall pay all expenses incurred by County in response to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by the County's attorney, and the actual expenses of County's agents, employees or expert witnesses, and disbursements and liabilities assumed by County in connection with such suits, actions or proceedings but shall not include attorney's fees for services that are unnecessarily duplicative of services provided County by Lessee.

If Lessee requests County to assist it in such defense then Lessee shall pay all expenses incurred by County in response thereto, including defending itself with regard to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the costs of any services rendered by the County's attorney, and the actual expenses of County's agents, employees or expert witnesses, and disbursements and liabilities assumed by County in connection with such suits, actions or proceedings.

f. **Insurance:** During the term of the Lease, Lessee shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

(1) Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of Five Hundred Thousand Dollars (\$500,000) for each accident, five hundred thousand dollars (\$500,000) disease policy limit, and five hundred thousand dollars (\$500,000) disease limit per employee.

(2) Comprehensive commercial general liability insurance with minimum limits of One Million Dollars (\$1,000,000.00) as the combined single limit for each occurrence of bodily injury, personal injury, death and property damage. The policy shall provide blanket contractual liability insurance for all written contracts, and shall include Two Million Dollars (\$2,000,000) coverage for products and completed operations liability, independent contractor's liability; coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.

(3) Lessee shall provide a separate owner's contractors protective policy meeting the preceding requirements with County as a named insured.

(4) Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Million Dollars (\$5,000,000) and providing coverage for claims discovered within three (3) years after the term of the policy.

(5) Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Lessee, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of state law with minimum limits of One Million Dollars (\$1,000,000) as the combined single limit for each occurrence for bodily injury and property damage.

(6) Professional liability and errors and omissions liability for bodily injury and property damage, \$1,000,000 each claim, \$1,000,000 policy aggregate.

(7) At the start of and during the period of any construction, builders all-risk insurance, together with an installation floater or equivalent property coverage covering cables, materials, machinery and supplies of any nature whatsoever which are to be used in or incidental to the installation of the Tower. Upon completion of the installation of the Tower, Lessee shall substitute for the foregoing insurance policies of fire, extended coverage and vandalism and malicious mischief insurance on the Site. The amount of insurance at all times shall be representative of the insurable values installed or constructed.

(8) Business interruption insurance coverage in an amount sufficient to cover such loss of revenues, for the period of time which it would take, under normal circumstances, to repair or replace that part(s) of the Site which is damaged and caused the loss of revenue.

(9) All policies shall have a common renewal date and other than those for Worker's Compensation and environmental contamination shall be written on an occurrence and not on a claims made basis.

(10) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

g. **Named Insureds:** All policies, except for business interruption and worker's compensation policies, shall name County and all associated, affiliated, allied and subsidiary entities of County, now existing or hereafter created, and their respective officers, boards, commissions, employees, agents and contractors, as their respective interests may appear as additional insureds (herein referred to as the "Additional Insureds"). Each policy which is to be endorsed to add Additional Insureds hereunder, shall contain cross-liability wording, as follows:

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."

h. **Evidence of Insurance:** Certificates of insurance for each insurance policy required to be obtained by Lessee in compliance with this paragraph, along with written evidence of payment of required premiums shall be filed and maintained with County annually during the term of the Lease. Lessee shall immediately advise County of any claim or litigation that may result in liability to County.

i. **Cancellation of Policies of Insurance:** All insurance policies maintained pursuant to this Lease shall contain the following endorsement:

"At least sixty (60) days prior written notice shall be given to County by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the parties named in this paragraph of the Lease."

j. **Insurance Companies:** All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of Florida or surplus line carriers on the State of Florida Insurance Commissioner's approved list of companies qualified to do business in the State of Florida. All insurance carriers and surplus line carriers shall be rated A+ or better by A.M. Best Company.

k. **Deductibles:** All insurance policies may be written with deductibles and retainages, not to exceed \$50,000 unless approved in writing in advance by County. Lessee agrees to indemnify and save harmless County, the Indemnitees and Additional Insureds from

and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Lease.

l. **Contractors**: Lessee shall require that each and every one of its contractors and their subcontractors who perform work on the Site to carry, in full force and effect, workers' compensation, comprehensive public liability and automobile liability insurance coverages of the type and in the amounts which Lessee is required to obtain under the terms of this Lease or the alternative, Lessee shall require that such contractors and subcontractors be named as additional insured parties on Lessee's insurance policies.

m. **Review of Limits**: Once during each calendar year during the term of this Lease, County may review the insurance coverages to be carried by Lessee. If County determines that higher limits of coverage are necessary to protect the interests of County or the Additional Insureds, Lessee shall be so notified and shall obtain the additional limits of insurance, at its sole cost and expense.

21. **Hazardous Substance Indemnification**. Lessee represents and warrants that its use of the Site herein will not generate any hazardous substance, and it will not store or dispose on the Site nor transport to or over the Site any hazardous substance, other than fuels necessary for the operation of on-site generators. Lessee further agrees to hold County harmless from and indemnify County against any release of any such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the negligence of County, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

22. **Holding Over**. Any holding over after the expiration of the term hereof, with the consent of the County, shall be construed to be a tenancy from month to month at two times the rents herein specified (prorated on a monthly basis) and shall otherwise be for the term and on the conditions herein specified, so far as applicable.

23. **Acceptance of Site**. By taking possession of the Site, Lessee accepts the Site in the condition existing as of the Commencement Date. County makes no representation or warranty with respect to the condition of the Site and County shall not be liable for any latent or patent defect in the Site.

24. **Estoppel Certificate**. Lessee shall, at any time and from time to time upon not less than ten (10) days prior request by County, deliver to County a statement in writing certifying that (a) the Lease is unmodified and in full force (or if there have been modifications, that the Lease is in

full force as modified and identifying the modifications); (b) the dates to which rent and other charges have been paid; (c) so far as the person making the certificate knows, County is not in default under any provisions of the Lease; and (d) such other matters as County may reasonably request.

25. **Notices.** Except as otherwise provided in this Lease any notice of default or termination from either party to the other party must be in writing and sent by certified mail, return receipt requested, or by personal delivery with receipt. All notices shall be deemed delivered two (2) business days after mailing, unless delivered by personal delivery in which case delivery shall be deemed to occur upon actual receipt by the other party. For purposes of all notices, Contractor's and County representative are:

If to County, to: County Manager, Alachua County
P O Box 5477
Gainesville, FL 32627-5477

With a copy to: Todd Hutchinson, Director, Alachua County
Finance and Accounting
12 SE First Street, 4th Floor
Gainesville, FL 32601

If to Lessee, to: NexTower Development Group, LLC
4210 NW 37th Place, Suite 600
Gainesville, FL 32606

26. **Assignment and Subletting; Security Interest.**

a. Subject to the provisions of Section 8, Lessee shall not assign this Lease in whole or in part, or sublet all or any part of the Site without the County's prior written consent, such consent shall not be unreasonably withheld or denied. Consent by County to any assignment or subletting shall not constitute a waiver of the necessity of such consent to any subsequent assignment or subletting. This prohibition against any assignment or subletting shall be construed to include a prohibition against any subletting or assignment by operation.

b. If direct or indirect control of Lessee changes at any time during the term of this Lease, then County at its option may, by giving ten (10) days prior written notice to Lessee, declare such change a breach of this paragraph unless County has previously approved the new controlling party. The control of the Lessee shall be deemed to have changed at any point in time when there is any change in the identity of the entities, individuals, or group which directly or indirectly, directs, or has the power to direct, the management and policies of the Lessee, whether through the ownership or voting securities or other equity interest, by contract, or otherwise. Without limiting the generality of the foregoing, for the purposes hereof, such a change shall be deemed to have occurred at any point in time when there is a change (i) in actual working control of the Lessee (by whatever means exercised) or (ii) in the effective control of the Lessee.

c. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, 11 USC Sections 101, et seq., shall be deemed without further act to have assumed all of the obligations of Lessee arising under this Lease on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to County an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to County, shall be the exclusive property of County, and shall not constitute property of the Lessee or of the estate of Lessee within the meaning of the Bankruptcy Code. Any monies or other considerations constituting County's property under the preceding sentence not paid or delivered to County shall be held in trust for the benefit of County and be promptly paid to County.

d. Lessee shall have the right to sublease or assign its rights under this Lease, with the consent of County, which shall not be unreasonably withheld, delayed, or conditioned. Provided however, the County's consent shall not be required for any of the following:

(1) any conditional assignment of this Lease to Secured Parties as described in subparagraph (a) above;

(2) any sublease of a portion of the Tower Facilities in the ordinary course of Lessee's business;

(3) an assignment or sublease to an affiliate entity of Lessee;

(4) an assignment to an entity in the business of developing or owning telecommunication towers, provided that any such assignee shall have a net worth equal to or greater than Lessee's.

27. **Successors and Assigns.** This Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors and assigns.

28. **Non-Waiver.** Failure of County to insist on strict performance of any of the conditions, covenants, terms or provisions of this Lease or to exercise any of its rights hereunder shall not waive such rights, but County shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Lessee to County after a breach of this Lease shall not be deemed a waiver of such breach unless expressly set forth in writing.

29. **Taxes.**

a. Lessee shall pay all real and personal property taxes (or payments in lieu of taxes) and assessments for the Site, if any, which become due and payable during the term of this Lease. All such payments shall be made, and evidence of all such payments shall be provided to County, at least ten (10) days prior to the delinquency date of the payment. Lessee shall pay all taxes on its personal property on the Site. Lessee shall only pay property tax increases attributable to Lessee's improvements to the leased premises.

b. Lessee shall indemnify County from any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against Lessee in relation to the taxes owed or assessed on the Site.

c. If the methods of taxation in effect at the Commencement Date of the Lease are altered so that in lieu of or as a substitute for any portion of the property taxes and special assessments now imposed on property there is imposed a tax upon or against the rentals payable by Lessee to County, Lessee shall pay those amounts in the same manner as provided for the payment of real and personal property taxes.

d. Failure to pay taxes resulting in issuance of a tax certificate shall be cause to terminate this lease for the default of the Lessee and the County shall have all of its rights as would otherwise exist upon default.

30. **Dispute Resolution:** Except as otherwise provided in this Lease, any controversy between the parties arising out of this Lease or breach thereof, is subject to the mediation process described below.

a. A meeting will be held promptly between the parties to attempt in good faith to negotiate a resolution of the dispute. Individuals with decision-making authority will attend the meeting regarding the dispute. This meeting shall be noticed and held in accordance with Florida Statute 286.

b. If within twenty (20) days after such meeting the parties have not succeeded in resolving the dispute, they will, within twenty (20) days thereafter submit the dispute to a mutually acceptable third party mediator who is acquainted with dispute resolution methods. County and Lessee will participate in good faith in the mediation and in the mediation process. The mediation shall be nonbinding. Neither party is entitled to seek or recover punitive damages in considering or fixing any award under these proceedings. Participation in a mediation effort is a pre-requisite for either party filing suit.

c. The costs of mediation, including any mediators fees, and costs for the use of the facilities during the meetings, shall be born equally by the parties. Each party's costs and expenses will be born by the party incurring them.

31. **Treatment in Bankruptcy.** The parties to this Lease hereby expressly agree and acknowledge that it is the intention of both parties that in the event that during the term of this Lease, Lessee shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a "Proceeding") under the United States Bankruptcy Code, 11 U.S.C. 101, et seq. (the "Code"), this Lease is and shall be treated as an unexpired lease of nonresidential real property for purposes of Section 365 of the Code, 11 U.S.C. 365, and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said Section 365.

32. **Force Majeure.** If a party is delayed or hindered in, or prevented from the performance required under this Lease (except for payment of monetary obligations) by reason of earthquakes, landslides, strikes, lockouts, labor troubles, failure of power, riots, insurrections, war, acts of God or other reasons of like nature, not the fault of the party delayed in performing work or doing acts, such party is excused from such performance for the period of delay. The period for the performance of any such act shall then be extended for the period of such delay. In the event that Lessee invokes this provision because damage to the Site has hindered, delayed, or prevented Lessee from using the Site, Lessee may immediately erect any temporary facilities on the Site necessary to resume service, provided that such temporary facilities do not unreasonably interfere with County's ability to repair or restore the Site. If, in County's sole and absolute discretion, it elects to repair or restore the Site, upon completion of such repair or restoration, Lessee is entitled to repair or rebuild the Tower and/or related facility in accordance with the terms agreed upon in this Lease.

33. **No Lien on Pledge of Ad Valorem Revenues.** This lease agreement shall not constitute nor create a lien, either legal or equitable, on any of the COUNTY's ad valorem tax revenues or funds. The COUNTY shall not ever be required to levy ad valorem taxes on any property within its boundaries to pay its obligations under this Lease.

34. **Project Records.**

a. **General Provisions:**

(1) Any document submitted to the County may be a public record and is open for inspection or copying by any person or entity. "Public records" are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency per Section 119.011(12), Florida Statutes. Any document is subject to inspection and copying unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law.

(2) The Lessee (referred hereinafter in all of the "Project Records" section collectively as "Professional"), when acting on behalf of the County, shall keep and maintain public records as required by law and retain them as provided by the General Record Schedule established by the Department of State. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law. Additionally, the Professional shall provide the public records at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

(3) The Professional shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as

authorized by law for the duration of this Lease and following completion of this Lease if the Professional does not transfer the records to the County.

a. Confidential Information:

(1) During the term of this Lease or license, the Professional may claim that some or all of Professional's information, including, but not limited to, software documentation, manuals, written methodologies and processes, pricing, discounts, or other considerations (hereafter collectively referred to as "Confidential Information"), is, or has been treated as confidential and proprietary by Professional in accordance with Section 812.081, Florida Statutes, or other law, and is exempt from disclosure under the Public Record Act. Professional shall clearly identify and mark Confidential Information as "Confidential Information" or "CI" and the County shall use its best efforts to maintain the confidentiality of the information properly identified by the Professional as "Confidential Information" or "CI."

(2) The County shall promptly notify the Professional in writing of any request received by the County for disclosure of Professional's Confidential Information and the Professional may assert any exemption from disclosure available under applicable law or seek a protective order against disclosure from a court of competent jurisdiction. Professional shall protect, defend, indemnify, and hold the County, its officers, employees and agents free and harmless from and against any claims or judgments arising out of a request for disclosure of Confidential Information. Professional shall investigate, handle, respond to, and defend, using counsel chosen by the County, at Professional's sole cost and expense, any such claim, even if any such claim is groundless, false, or fraudulent. Professional shall pay for all costs and expenses related to such claim, including, but not limited to, payment of attorney fees, court costs, and expert witness fees and expenses. Upon completion of this Lease or license, the provisions of this paragraph shall continue to survive. Professional releases County from claims or damages related to disclosure by County.

d. Project Completion: Upon completion of, or in the event this Lease is terminated, the Professional, when acting on behalf of the County, shall transfer, at no cost, to the County all public records in possession of the Professional or keep and maintain public records required by the County to perform the service. If the Professional transfers all public records to the County upon completion or termination of the Lease, it must destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Professional keeps and maintains public records upon the completion or termination of the Lease all applicable requirements for retaining public records shall be met. All records stored electronically shall be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

e. Compliance

The Professional may be subject to penalties, including but not limited to those under Section 119.10, Florida Statutes, for its failure to provide the public records to the County within a reasonable time period.

IF THE PROFESSIONAL OR CONTRACTOR HAS QUESTIONS

REGUARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE COUNTY REPRESENTATIVE AT E-MAIL kgodwin@alachuacounty.us, PHONE AT (352).338-3285, OR U.S. MAIL AT 911 se 5TH STREET, GAINESVILLE FL, 32601

35. **Miscellaneous.**

a. This Lease is not a franchise pursuant to Florida law, nor is it a permit to use the publicly-owned rights-of-way. Any such franchise or permit must be obtained separately from County.

b. County and Lessee each represent and warrant to the other that all necessary authorizations and approvals required for execution and performance of this Lease have been given and that the undersigned individual is duly authorized to execute this Lease and bind the party for which it signs.

c. This Lease [and the Sublease] constitutes the entire Lease and understanding of the parties and supersedes all offers, negotiations, and other Leases of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties.

d. This Lease and performance hereunder shall be governed, interpreted, construed and regulated by the laws of the State of Florida. Sole and exclusive venue for all action arising from this Lease shall be in the 8th Judicial Circuit of the State of Florida, located in and for Alachua County, Florida.

e. If any term, covenant, condition or provision of this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and shall be valid and enforceful to the fullest extent permitted by law.

f. County hereby expressly disclaims all Warranties of Merchantability and Fitness for a Particular Purpose associated with the Site. Lessee accepts the Site "As Is."

g. Lessee shall use the utmost good faith to apply for, obtain, and keep in full force and effect all certificates, permits, licenses, and approvals affecting Lessee's ability to use the Site.

h. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

i. This Lease does not and shall not be construed to establish or create a partnership, joint venture, franchise or other form of business association between County and Lessee.

j. Counterparts. This Lease may be executed in any number of and by the different Parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument. Receipt via fax or email with pdf attachment by a party or its designated legal counsel of an executed counterpart of this Lease shall constitute valid and sufficient delivery in order to complete execution and delivery of this Lease and bind the Parties to the terms hereof.

This Lease was executed as of the date first set forth above.

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IN WITNESS WHEREOF, the parties have caused this Lease to be executed for the uses and purposes therein expressed on the day and year first above-written.

COUNTY:

BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA

ATTEST:

By: [Signature]
Lee Pinkoson, Chair, Alachua County Board of County Commissioners

[Signature]
Jesse K. Irby II, Clerk

APPROVED AS TO FORM

(SEAL)

[Signature]
Alachua County Attorney

LESSOR



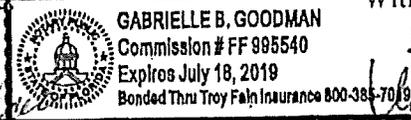
NEXTOWER DEVELOPMENT GROUP, LLC
a Delaware limited liability company

By: [Signature]
David H. Boeff, President, CEO

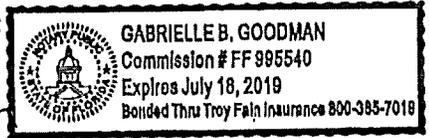
Witnesses as to Lessor

Witnesses as to Lessee:

[Signature]
Signature



[Signature]
Signature



Michelle Clark
Printed Name

William Paulson
Printed Name

- Attachments:
- Exhibit A, Legal Description of Land
 - Exhibit B, Legal Description of Leased Area and Ingress Egress Easement
 - Exhibit C, Tower Specifications
 - Exhibit D, Public Communication Facilities
 - Exhibit E, Sublease to County for Public Communications Facilities
 - Exhibit F, Small Scale Site Plan Design
 - Exhibit G, Memorandum of Lease

Exhibit A, Legal Description of Land

WARRANTY DEED

DREW'S FORM R. E. 4

Manufactured and for sale by The H. A. W. A. Drew Company
Tallahassee, Florida

26036

BOOK 255 PAGE 359

This Indenture, Made this 3rd day of July, A. D. 1951.

Between WILLIAM B. WATSON, JR., as Receiver for Gainesville Gas Company, a Florida corporation.

of the County of Alachua and State of Florida
party of the first part, and ALACHUA COUNTY, FLORIDA,
whose mailing address is

of the County of Alachua and State of Florida

part y of the second part. **Witnesseth**, that the said part y of the first part, for and in consideration of the sum of Ten and No/100 (\$10.00) Dollars, and other good and valuable considerations to him in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents do as grant, bargain, sell, convey and confirm unto the said part y of the second part and its heirs and assigns forever, all that certain parcel of land lying and being in the County of Alachua and State of Florida, more particularly described as follows:



Commence at the Northwest corner of Section Nine (9), Township Ten (10) South, Range Twenty (20) East, thence run East 400 feet, thence run South 23°15' East 498.4 feet to the point of beginning; thence run North 69°25' East 273.9 feet, thence run South 23°0' East 40 feet; thence run South 69°25' West 273.9 feet, thence run North 23°15' West 40 feet to point of beginning. All being and lying in the Northwest Quarter (NW¹/₄) of Section Nine (9), Township Ten (10) South, Range Twenty (20) East, Alachua County, Florida.

This deed has been executed and delivered by the party of the first part by authority of order dated June 26, 1951, by the Honorable Dozier A. DeVane, District Judge of the United States District Court for the Northern District of Florida, in Gainesville Civil Action No. 119.

By the acceptance of this deed the party of the second part, as consideration therefor, agrees to pave and improve the above described right of way for street purposes within a reasonable time and also agrees to make and secure the dedication of an additional 40 foot right of way extending approximately 834.17 feet from the North boundary of Section 9 in a Southeasterly direction parallel to Southeast Fourth Street, as per plat of survey and improvements dated March 19, 1951, prepared by Perry C. McGriff setting out the location of a proposed new County Jail in said Section 9, Township 10 South, Range 20 East.

This deed is made expressly subject to taxes for the year 1951 which party of the second part assumes and agrees to pay.

Together with all the tenements, hereditaments and appurtenances, with every privilege, right, title, interest and estate, dower and right of dower, reversion, remainder and easement thereto belonging or in anywise appertaining: **To Have and to Hold** the same in fee simple forever.

And the said part y of the first part do as covenant with the said part y of the second part that he is lawfully seized of the said premises, that they are free from all encumbrances and that he has good right and lawful authority to sell the same; and the said part y of the first part do as hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever, claiming by, through or under party of the first part.

In Witness Whereof, the said part y of the first part has hereunto set his hand and seal the day and year above written.

Signed, sealed and delivered in our presence:

James L. Summers
James L. Summers

W. B. Watson, Jr.
AS Receiver of Gainesville Gas Company



Exhibit A, Legal Description of Land (cont.)

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BOOK 292 PAGE 1

THIS DEED, Made this 29th day of AUGUST, 1951, between Seaboard Air Line Railroad Company, a corporation duly created and existing pursuant to and by virtue of the laws of the Commonwealth of Virginia, hereinafter called "Grantor"; and Alachua County, a political subdivision of the State of Florida, hereinafter called "Grantee"; and in the execution and delivery of which the undersigned Mercantile Trust Company of Baltimore and Nelson H. Stritehoff, as Trustees, and Guaranty Trust Company of New York and Arthur E. Burko, as Trustees, join for the respective purposes hereinafter stated;

WITNESSETH:

That for and in consideration of the sum of Four Thousand Three Hundred Sixty Two Dollars and Fifty Cents (\$4,362.50), and other good and valuable considerations to it in hand paid by the Grantee, the receipt whereof is hereby acknowledged, the Grantor has granted, bargained, sold and conveyed, and does by these presents grant, bargain, sell and convey unto the Grantee, its successors and assigns, in fee simple forever, all that certain lot or parcel of land situate, lying and being in Section 9, Township 10 South, Range 20 East, Alachua County, Florida, more particularly described as follows:

Commence at northwest corner of Lot 14, Block 3, Range 1, of Ropers Addition, a subdivision as per plat thereof recorded in the Public Records of Alachua County, Florida, and run thence south 38 feet; thence run west 30 feet; thence run south 362 feet; thence run west 161.4 feet to the northeast corner of the northwest quarter of northwest quarter (NW $\frac{1}{4}$ of NW $\frac{1}{4}$) of Section 9, Township 10 South, Range 20 East, thence continue west along the section line 619 feet to a railroad iron located upon the north line of Section 9, Township 10 South, Range 20 East, and on the western boundary of the lands acquired by Grantor from Gainesville Gas Company by deed dated January 21, 1947, recorded in Deed Book 234, Page 20, Public Records of Alachua County, Florida, and being the point of beginning of the lands herein described; from said point of beginning run south 23 degrees east along the western boundary of Grantor's property 934.17 feet, more or less, to the southwest corner of Grantor's land; thence run north 71 degrees 37 minutes east along the southerly boundary of Grantor's land 452.82 feet, more or less, to the southeast corner of Grantor's land; thence run north 1 degree 53 minutes west along the eastern boundary of Grantor's property 405.5 feet; thence run north 88 degrees 33 minutes west 174.05 feet; thence run north 76 degrees 27 minutes west 464.90 feet; thence run north 50 degrees west 56 feet; thence run north 34 degrees 46 minutes west 197 feet to the point of beginning, all lying and being in Section 9, Township 10 South, Range 20 East Alachua County, Florida, and containing 6.98 acres, more or less, and being a portion of the land acquired by Grantor under the aforesaid deed dated January 21, 1947, TOGETHER with a perpetual easement for purposes of ingress and egress, in common with others, in a strip of land 55 feet wide extending southerly along the western boundary of the lands acquired by Grantor under the aforementioned deed of January 21, 1947, from the southerly right of way boundary of Grantor to the northerly boundary of the property herein conveyed.

The land herein conveyed and the perpetual easement herein granted being shown outlined in RED and GREEN, respectively, on photostat copy of map of survey prepared by Perry C. McGriff, Surveyor, dated March 19,

RECEIVED

Exhibit C, Tower Specifications

1. Tower must be (3) anchor design, likely caisson foundations
2. Tower and all accompanying steel to be hot-dipped galvanized
3. Tower must accommodate all loading as per attached Tower Loading Specifications
4. Tower must meet EIA/TIA222G standards or Florida Builders Association Code, whichever is greater, plus items f - k below.
5. Design wind load of 105 mph or greater
6. Exposure Category B
7. Structural Class III
8. Topographic Category I
9. Tower base and guy points must be grounded per EIA specifications
10. Tower must be solid rod leg, minimum of 48 inch face width
11. The vendor will provide an ice bridge for the County's transmission lines extending from the tower to the County's equipment structure
12. Tower must have dual lighting system (medium intensity strobe-day, red lights-night)
13. Lighting system must have FAA-approved remote monitoring device and must be monitored by industry-recognized remote monitoring company at vendor's sole expense
14. Provide lighting kit monitoring device
15. Provide climbing legs
16. OSHA approved safety climbing device
17. Waveguide attachment to accept snap-ins or butterflies for all specified transmission lines
18. Supply 20' lightning rod
19. If the tower is privately owned, vendor must maintain tower, guy anchors, guy wires, and keep the compound and anchor points weed-free and manicured.
20. If the tower is privately owned, vendor must provide Single-Phase 800 amp meter panel including Telco for future tenants to be located within the new tower's leased compound area.
21. All transmission lines shall be snap-ins with hose clamps, hosting grips, grounded and no wire ties utilized.
22. All tower construction and site work to be performed by a Florida Certified General Contractor.
23. All such antennas and lines must be "swept" once installed on the new tower at vendor's sole cost.
24. Must provide tower manufacturer tower drawings included being stamped and sealed by a Florida Certified Structural Engineer.
25. Tower compound to be fenced with no less than 6 ft chain link security fencing with 12 ft entry gate, Stymie-Lock locking device and pad locked.
26. Guy anchor areas to be security fenced per above (less Stymie-Lock device)
27. If the tower is privately owned, all tower fixtures and installation for the vendor and its sub-lessees' equipment shall be the sole responsibility and cost of the vendor and its sub-lessees.
28. If the tower is privately owned, all above provisions are at vendor's sole expense.
29. All Alachua County's equipment on the tower is the sole responsibility and maintenance cost

- of Alachua County.
30. The vendors leased compound area shall provide unrestricted 24 X 7 X 365 access to the County.

Exhibit D, Public Communications Facilities and Equipment

*Antenna heights are approximate

<u>Transmitter/Purpose</u>	<u>Antenna</u>	<u>Height AGL</u>
VHF TAC-4 Tx County Fire & EMS Primary Paging	4 bay; Decibel 224 approximately 22' long	Top
VHF ACFR Paging Rx County Fire Paging	4 bay; Decibel 224 approximately 22' long	Appropriate 6' offset from TX antenna
700/800MHz Rx & Tx antennae *antenna heights to be agreed upon by vendor & County	Bomar-10, 4 each 1 5/8" Tx line	_____*
24 GHz Point-to-Point Dish Note: Dish antenna and cabling provide by County. Hardware and brackets for mounting provided by NexTower.	airFiber 24 Model AF-24	120'

Note: all antenna heights may be adjusted based on calculations conducted by a professional engineer and the needs of the tower owner, subsequent tenants, and needs of the County.

*** See attached Tower Loading Specifications. County is allowed, under the pricing schedule in Paragraph 6. RENT, such loading above 320' and for a 4" microwave dish at the 120' level as shown on this Tower Loading Specification document providing no RF interference is caused to existing communications equipment on the tower present on the tower at time of County's installation.

The existing County block equipment shelter must be refurbishment. Must include a minimum 200 Amp single phase electrical service, transfer switch, halo grounding, dual AC units, UPS, and connection to the County provided generator which is located in a brick structure vicinity the block equipment shelter.

Exhibit E, Sublease to County for Public Communications Facilities

ANTENNA SITE LEASE AGREEMENT

THIS SITE SUBLEASE AGREEMENT ("Agreement") is entered into this 27 day of June, 2018, by and between Alachua County, a charter county and political subdivision of the State of Florida, hereinafter "County" and NexTower Development Group, LLC, a Delaware limited liability company, with its principal office located at 4210 NW 37th Place, Suite 600, Gainesville, Fl., 32606, hereinafter "NexTower".

Agreement

NOW THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereby agree as follows:

1. Definitions. For purposes of this Agreement, certain terms shall have the meanings as set forth in the attached **Exhibit E-1**. Public Safety Communications Facilities are specifically described in **Exhibit E-2**. The lease premises are defined in the Ground Lease to which this Antenna Site Lease Agreement is attached.

2. Leased Premises. NexTower hereby subleases to County, and County subleases from NexTower a portion of the Leased Premises. NexTower holds a leasehold interest in certain property located at 911 SE 5th Street, City of Gainesville, Florida.

3. Permitted Use of Site. County shall have the non-exclusive right to use the Leased Premises (the tower and allocated ground space) for the purpose of installing, operating, maintaining, upgrading, replacing and removing County's Public Communications Equipment, including such modifications, improvements, upgrades and alterations thereto as may result from changes or improvements in technology. In addition, County shall also have the non-exclusive right to use the Leased Premises for other public communications purposes which do not materially interfere with NexTowers usage of the Leased Premises.

Notwithstanding the foregoing, NexTower shall (and any subcontractor of the County) install the County's initial Communications Equipment on the Tower as specified in Exhibit A. Such installation shall occur within ninety (90) Days of the completion of the Tower or as otherwise provided in the Lease.

NexTower agrees to reserve space on the tower above the 320-foot level for public communications equipment procured solely by the County subsequent to the date of this lease for new public communications facilities as specified in Exhibit A.

4. Lease. This Agreement shall be subject and subordinate to all of the terms and conditions of the Lease.

5. Term. The term of this lease shall commence on the date NexTower completes installation of the County's communications facilities on the leased premises and end the latest date of:

a. The "Initial Term" of the Lease (as defined in that Ground Lease between NexTower and County);

b. The "Renewal Term(s)" of the Lease (as defined therein), such that any notice given by the NexTower to extend the Lease concurrently extends the term of this Agreement for the same time period; or

c. Any period of time during which NexTower "holds over" beyond the then applicable "Initial Term" or "Renewal Term(s)" of the Lease, including but not limited to, any longer or additional period of time attendant to, or resulting in whole or in part from:

(1) The filing by or against NexTower of any petition under the Bankruptcy Code, or; any other insolvency, liquidation or reorganization proceeding; or

(2) The appointment of a receiver for any of NexTower's assets, or if NexTower shall make any assignment for the benefit of creditors.

6. Rent. County shall pay rent at a rate of \$25,128 per year (\$2,094 per month). As part of the consideration for County, as landlord, entering into the Ground Lease with NexTower, when NexTower signs an antenna site attachment sublease agreement, for each additional tenant (the County is the first wireless/personal communications facility tenant attached to the tower), the County rent shall be reduced by an amount of \$4,800 annually.

6.1 Annual Rent Increase. County's rent shall increase by an amount of 1.5% annual on the anniversary of the commencement date.

6.2 Rent Reduction. Upon expiration of the second five (5) year term, should no wireless/personal communications tenant have been added to the tower in which the County received a reduction in annual rent, the County annual rent shall be reduced by an amount of \$4,800.00. If anew tenant is added within the first ten (10) years, the \$4,800.00 reduction in annual rent does not apply.

7. Taxes, Assessments and Fees. County shall pay all taxes, assessments, fees and charges of whatever nature levied on County's Communications Equipment.

8. Improvements.

a. NexTower's Duty to Coordinate and Install County Public Communications Facilities and Equipment. NexTower shall, as is set forth in the Lease, coordinate the purchase and installation of County's Communications Facility and Equipment

identified in Exhibit "A".

b. Construction Plans. County shall furnish to NexTower plans and specifications for the construction and installation of County's Communications Facility and Equipment. Within fifteen (15) Days of receipt of the proposed plans and specifications, NexTower shall send written notice of disapproval to County therefore, such approval not to be unreasonably withheld, conditioned or denied, otherwise such plans and specifications shall be deemed approved by NexTower. At the end of the fifteen (15) day period, NexTower shall commence installation of the County's equipment.

c. Structural Changes & Analysis. NexTower shall be responsible for paying the cost of any structural enhancements to be made to the Tower to accommodate the Communications Equipment. Such structural enhancements shall become part of the Tower to such end. NexTower may conduct at its sole cost and expense a structural analysis and wind load analysis of the Tower, which includes any Prior Users' existing loads as well as the proposed load of County's Communications Equipment.

d. Initial RF Analysis. Not later than the completion of construction of County's Communications Facility and installation of County's Communications Equipment and prior to County initiating transmissions from the Tower, NexTower may conduct at its sole cost and expense, an RF Analysis of County's Communications Equipment and all other equipment that is installed on the Tower as of the Commencement Date.

e. Construction Permits. NexTower shall be responsible for securing all building and construction permits from any and all applicable governmental authorities necessary for the construction and installation of the Communications Facility and Equipment.

f. NexTower Supervision of Construction. NexTower may, in its sole discretion, require all construction or repair activities, including any post-construction inspections, to be supervised by a NexTower representative or contracted third party at NexTower's cost. Any future County work on the tower including installation, maintenance, repair, modifications or changes must be approved by NexTower five (5) days prior to such work or performed by one of its affiliates.

g. Facility, Equipment. Except for the initial installation of the Communications Equipment, County shall be responsible for the cost of installing, operating, maintaining, upgrading, replacing and removing the County's Communication Facilities and Communication Equipment. County shall not materially alter the RF Emissions or operation of the Communications Equipment nor shall County install or have installed additional equipment (other than replacements or upgrades to the Communications Equipment) on the Tower without first obtaining the prior consent of NexTower, which consent may not be unreasonably withheld, providing such County's equipment on the tower and the ground not exceed specifications provided under Exhibit A and the tower loading plans attached. Before installing replacements or upgrades to the Communications Equipment the County shall notify NexTower. The Communications Equipment and Communications Facility, except for such structural

enhancements that have become part of the Tower, shall remain County's exclusive personal property throughout the Term. Upon the termination of this Agreement, County shall have the right to remove its Communications Equipment and Facility at County's sole expense on or before the expiration or earlier termination of the Agreement; provided County repairs any damage to the Site or the Leased Premises caused by such removal.

h. Compliance with Governmental Rules. County and County's employees, contractors or agents shall perform all work in a good and skillful manner. NexTower or NexTower's employees, contractors, or agents shall perform all work in a good and skillful manner. All construction, installations and operations by County and NexTower in connection with this Agreement must comply with all laws, orders, ordinances, regulations and directives of applicable federal, state, County, and municipal authorities or regulatory agencies.

i. Prevention of Interference. County agrees to cooperate and work together in good faith with NexTower and other Prior Users and subsequent users to prevent and/or eliminate interference from its Communications Equipment.

10. Access.

a. General Access. NexTower hereby grants County reasonable access to the Site and the Leased Premises for the purpose of maintaining, upgrading, replacing, and removing the Communications Equipment and Facility.

b. Routine Access. As of the Effective Date, NexTower hereby grants to County and its agents and contractors, subject to the limitations set forth herein, in the underlying Lease, and any other reasonable rules and limitations established by NexTower, non-exclusive easement to access the Site and Leased Premises by vehicle or on foot, on a twenty four (24) hours per day, seven (7) Days per week.

c. Emergency Access. The foregoing notwithstanding, County shall have access to the Site and County's Communications Equipment and Communication Facility immediately and without notice in the event of an emergency. County shall notify NexTower as soon as practicable of County's access during such emergency.

d. Rules. NexTower may, from time to time, establish reasonable rules relating to access to and from the Site. County agrees to comply with such rules after receipt of written notice thereof. Such rules shall not materially impede County's access rights described herein and in the Addendum.

11. Utility Service to the Leased Premises. NexTower grants County the right to place any utility and cable runs on the Leased Premises (including the Communications Facility and the Tower), each run to be according to plans and specifications approved by NexTower, which approval may not unreasonably be withheld. County shall pay the cost of all utility service necessary to install, maintain and operate County's Communications Equipment and Facility.

12. County's Covenants

a. County's Covenants. County covenants that from and after the Effective Date, as to the Communications Equipment and County's portion of the Facility and all associated installations, operations, modifications, relocations and maintenance:

- (1) County will keep the Communications Equipment and County's portion of the Facility in a good state of repair.
- (2) County will identify its Equipment with metal tags fastened securely to its bracket on the Tower, to each transmission line and, as applicable, to the Facility.
- (3) County will comply with all applicable laws and ordinances and promptly discharge or bond off any lien for labor or material within thirty (30) Days of filing same.

13. NexTower's Covenants & Warranty

a. NexTower's Warranty. NexTower hereby represents, covenants and warrants that, pursuant to the Lease between NexTower and the fee owner of the Site, NexTower has a leasehold interest in the Site and has the right to enter into this Sublease with County.

b. NexTower's Covenants. NexTower further covenants that during the Term of this Agreement it shall:

- (1) Maintain the Site in a good and workmanlike condition.
- (2) Upon County's performance of its covenants, but subject to the terms of any Lease pursuant to which NexTower has rights in and to the Site, and subject to any prior lien or encumbrance on the tower improvements on the Site, ensure County's quiet use and enjoyment of the Site.
- (3) Comply with all applicable laws, rules and regulations of federal, state and local governmental bodies or agencies governing the Tower and Site.
- (4) Not permit any Prior User or Subsequent User to interfere with the operation of County's Communications Equipment, authorized frequency spectrum, or signal strength as specified in Exhibit "A".

14. Compliance With Laws.

a. FCC and FAA Compliance. NexTower acknowledges that it is aware of

its obligations under Section 303 of the Communications Act of 1934 (47 U.S.C. 303), as amended, to maintain the painting and illumination of towers as prescribed by the FCC. NexTower further acknowledges that it is aware that it is subject to forfeitures assessed by the FCC for violations of such rules and requirements. NexTower further acknowledges that it, and not County, shall be responsible for compliance with all tower or building marking and lighting requirements that may be required by the FAA, the FCC or other unit of government. NexTower shall indemnify and hold harmless County from any fines or other liabilities caused by NexTower's failure to comply with such requirements. Notwithstanding the foregoing, if FAA or FCC compliance requires the removal of the Tower, County's sole remedy shall be to terminate the Agreement and receive reimbursement from NexTower for all costs and expenses incurred by County in relocating and installing its Communication Equipment and its portion of the Communications Facility to another tower. NexTower shall not be required to construct a tower at another location as a result of its failure to comply with federal law at this site. Upon such termination, the parties shall be released from all duties, obligations, liabilities and responsibilities under the Agreement except for any indemnity obligations, including without limitation environmental indemnity and tax obligations, and County's obligation to remove the Communication Equipment and its portion of the Facility from the Site and NexTower's obligation to pay for such removal and relocation.

b. Environmental Hazards. County agrees that it will not use, store, dispose, or release any Environmental Hazards on the Site in violation of any applicable Environmental Law.

15. Assignment or Subletting; No Liens

a. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the legal representatives, heirs, successors, and assigns of NexTower and County.

b. Assignment by County. County may assign all or a portion of its rights, title or interests in this Agreement by operation of law or otherwise only upon NexTower's prior written consent, which consent shall not be withheld, conditioned or delayed if County's proposed assignee agrees in writing to be bound hereby and reasonably demonstrates its financial ability to perform the obligations of County hereunder. However, such assignment of the terms and conditions of this Agreement by the County, shall be to an entity only using the tower as specified. Such assignment grants no other intended use of the tower other than what is specified in Exhibit "A" and per the tower loading specification document attached.

c. Assignment by NexTower. NexTower shall have the right to assign this Agreement, subject to the approval of the County as set forth in the Ground Lease, which such approval shall not be unreasonably withheld, conditioned or delayed.

d. Assignment by County or NEXTOWER shall be under the same terms and conditions of this Agreement and the underlying Option and Ground Lease Agreement between Alachua County and NexTower Development Group, LLC and/or its assignees.

16. Insurance and Sovereign Immunity. Alachua County is self-insured for liability claims in accordance with the provisions of section 768.28, F.S. and can provide a certificate of self insurance upon request.

a. Third Parties. County and NexTower shall require their respective contractors and subcontractors to carry workers' compensation insurance and liability insurance in conformity with the minimum requirements listed in the Ground Lease between the County and NexTower.

17. Subrogation: Risk of Loss: Indemnification

a. Waiver of Subrogation. NexTower hereby releases County from liability for damage or destruction to any property damaged in connection with the conduct of activities contemplated in this Agreement, whether or not caused by the negligence of County; provided, however, such release shall only be in force and effect with respect to damage or destruction normally covered by standard policies of fire/casualty insurance with extended coverage. NexTower shall cause its fire/casualty insurance policies to contain a provision whereby the insurer either waives any right of subrogation against County or agrees that such a release shall not invalidate the insurance, whichever is obtainable.

b. Risk of Loss. Notwithstanding any provisions herein to the contrary, the parties shall not be liable for any direct, consequential, incidental or other damages incurred by the other party due to any malfunction, vandalism, acts of God (including, without limitation, lightning, wind, rain, hail, fire or storms) or any other resulting damage for any reason.

c. Indemnification. To the extent allowed by law, NexTower agrees to hereby indemnify, hold harmless, defend and release County and its respective employees, officers, directors, agents, boards, councils, commissions, elected officials, appointed officials, contractors and affiliates from any and all costs (including reasonable attorneys' fees and expenses) and actions, claims, liabilities, damages, obligations and liens which arise out of (i) the breach of this Agreement by NexTower, (ii) or the use and/or occupancy of the Leased Premises by NexTower. This indemnity shall survive the termination of this Agreement.

d. Limitation of Parties' Liability. Neither County nor NexTower shall assert any claim against the other for loss of anticipatory profits or any other direct, special, incidental or consequential damages incurred as a result of County's use of the Site or Leased Premises pursuant to this Agreement, except as set forth below:

- (1) NexTower's Liability: NexTower accepts liability, within the limits set forth in Section 768.28, F.S., for and all claims and damages including damage to the Tower, the Site or any equipment located on the Tower or the Site, and expenses arising from injury to persons or damage to property sustained by anyone in and about the Site or the Tower resulting from acts or omissions of NexTower's employee. This provision shall survive the expiration

or earlier termination of the Lease.

Nothing contained herein shall constitute a waiver by County of its sovereign immunity, the limits of liability, or the provisions of Section 768.28, Florida Statutes.

- (2) County's Liability: County accepts liability for damages to NexTower's equipment located on the Tower or the Site resulting from NexTower's use or occupancy of the Tower or the Site, or from any acts, omissions or negligence of NexTower, or NexTower's employees. In no event shall NexTower be liable for consequential damages, including lost revenue resulting from NexTower's inability to operate radio frequency equipment under any circumstances. This provision shall survive the expiration or earlier termination of the Lease.

18. Default and Termination.

a. If either party fails to fulfill its obligations under this Lease Agreement or if either party breaches any of the conditions or covenants of this Lease Agreement, the other party may terminate this Agreement. However, prior to such termination, written notice shall be given to the party in default stating the failure or breach and providing a ninety (90) day time period for correction of same. In the event the defect or default is not corrected within the allotted time, this Lease Agreement may be terminated upon sixty (60) days prior written notice without further notice or demand and without prejudice to any right or remedy that the parties may have.

b. Either party may terminate this Agreement prior to the expiration of the Term of the Agreement:

(1) On account of any condemnation of a material portion of the Site by any government authority, and/or

(2) On account of any substantial damage, destruction, or other casualty that renders the Site permanently unsuitable for County's intended use.

(3) Termination shall be effective (i) as of the end of the notice period in the case of any uncured material breach, (ii) as of the date of transfer of title in the case of any condemnation, and (iii) as of the date of occurrence thereof in the case of substantial damage, destruction or other casualty.

20. Subordination; Nondisturbance. This Agreement is and shall be subject to a security interest or mortgage granted by NexTower, which might now or hereafter constitute a lien upon the improvements on the Site except that so long as the County is not in material default hereunder beyond applicable cure periods, this Agreement shall remain in full force and effect, and County's use and occupancy pursuant to this Agreement shall not be disturbed. At

mortgagee's or security interest holder's option, this Agreement will be superior to the interest of such mortgagee or security interest holder. County shall execute any documents reasonably necessary to effect the provisions of this Section.

21. General Provisions.

a. Entirety. The Lease and this Agreement, including all Schedules and Exhibits hereto and thereto, constitute the entire agreement and understanding between NexTower and County and supersedes all offers, negotiations and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification to the Agreement, any Schedule or Exhibits hereto or thereto, must, in order to be effective, be in writing, signed by authorized representatives of each party.

b. Waiver. Failure or delay on the part of either party to exercise any right, power, privilege or remedy hereunder shall not operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right.

c. Binding Effect. This Agreement shall extend to and bind the heirs, personal representatives, successors, permitted assigns, or its successors in interest of the parties hereto.

d. Governing Law. This Agreement and performance hereunder shall be governed, interpreted, construed and regulated by the laws of the State of Florida. All litigation arising out of this Lease shall be held in the 8th Judicial Circuit of the State of Florida, In and For Alachua County.

e. Notice. Except as otherwise provided in this Lease any notice of default or termination from either party to the other party must be in writing and sent by certified mail, return receipt requested, or by personal delivery with receipt. All notices shall be deemed delivered two (2) business days after mailing, unless delivery is by personal delivery in which case delivery shall be deemed to occur upon actual receipt by the other party. For purposes of all notices, Contractor's and County representative are:

NexTower: NexTower Development Group, LLC
Attention: Real Estate Department
4210 NW 37th Place, Suite 600
Gainesville, Florida 32606

County: County Manager, Alachua County
P O Box 5477
Gainesville, FL 32627-5477

f. Captions. Section captions in this Agreement are included for the convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

g. Brokerage. County warrants and represents to NexTower that it has not dealt with a real estate agent or broker with respect to this Agreement. NexTower warrants and represents to County that it has not dealt with a real estate agent or broker with respect to this Agreement, and shall hold County harmless against all claims by any real estate agent or broker claiming a commission hereunder or thereunder on behalf of NexTower.

h. Memorandum of Lease. At the request of County, NexTower hereby agrees to execute a memorandum or short form of lease (a "Memorandum of Lease"), in a form satisfactory for recording, and County may file of record this Agreement or such Memorandum of Lease, at County's sole cost and option.

i. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

j. Corporate Authority. Each party hereby represents and warrants to the other that all necessary authorizations and approvals required for execution and performance of this Agreement have been given and that the undersigned individual is duly authorized to execute this Agreement and bind the party for which it signs.

k. Severability. If any term, covenant, condition or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

l. Disclaimer of Warranties. NexTower hereby expressly disclaims all Warranties of Merchantability and Fitness for a Particular Purpose associated with the Leased Premises or the Tower. County accepts the Leased Premises "AS IS."

m. Time is of the Essence. The parties agree that time is of the essence with respect to this Agreement.

n. Survivability. All representations, warranties and indemnities of both parties under this Agreement shall survive the termination or expiration of this Agreement.

o. No Lien on Pledge of Ad Valorem Revenues. This agreement shall not constitute nor create a lien, either legal or equitable, on any of the COUNTY's ad valorem tax revenues or funds. The COUNTY shall not ever be required to levy ad valorem taxes on any property within its boundaries to pay any of the payments herein provided.

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY:

BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA

ATTEST:

Jesse K. Irby II, Clerk
Jesse K. Irby II, Clerk

(SEAL)

By: [Signature]
Lee Pinkoson, Chair, Alachua County Board of County Commissioners

APPROVED AS TO FORM
[Signature]
Alachua County Attorney

NexTower

NEXTOWER DEVELOPMENT GROUP, LLC
a Delaware limited liability company

 GABRIELLE B. GOODMAN
Commission # FF 995540
Expires July 18, 2019
Bonded Thru Troy Fahn Insurance 800-385-7019

By: [Signature]
David H. Boeff, President, CEO

Witnesses as to NexTower

[Signature]
Signature

 GABRIELLE B. GOODMAN
Commission # FF 995540
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Witnesses as to NexTower

[Signature]
Signature

 GABRIELLE B. GOODMAN
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Expires July 18, 2019
Bonded Thru Troy Fahn Insurance 800-385-7019

Michelle Claude
Printed Name:

William Paulson
Printed Name

Exhibit E-1: DEFINITIONS

- 1.1 "Abandonment" means County has not maintained Communications Equipment on the Leased Premises or at the Site for three hundred sixty-five (365) consecutive Days. However, County shall comply with paragraph 19(c), herein.
- 1.2 "Commencement Date" means the date the installation of County's Communications Equipment on the Tower is completed.
- 1.3 "Communications Equipment" or "Equipment" means County's [Radio Repeater and the Tornado Siren including all related transmitters, receivers, antennas, cables, cable modular interface units, power supplies, control devices, protective cabinets or other related enclosures, and also all ancillary wiring, cabling, sheathing, fastenings, guy wires, mounting hardware, utility connections, fiber optic connections, metering equipment, circuit breakers, back-up power units and other ordinary and necessary hardware.]
- 1.4 "Communications Facility" or "Facility" means any building, ancillary support facility and related structures and easements that is (1) necessary for Communications Providers to provide service or (2) used by the County which is constructed on the Site adjacent to and in conjunction with the Tower, such facility not to extend beyond the perimeter of the Site and to be screened from view according to a landscaping design plan approved by County.
- 1.5 "Days" means calendar days.
- 1.6 "Effective Date" means the date of execution and delivery of this Agreement.
- 1.7 "Environmental Hazards" means hazardous substances, hazardous waste, pollutants, asbestos, polychlorinated biphenyl (PCB), petroleum, or other fuels, including crude oil or any fraction or derivative thereof) and underground storage tanks, as defined in Environmental Laws.
- 1.8 "Environmental Laws" means the Comprehensive Response, Compensation and Liability Act (ACERCLA"), 42 U.S.C. ' 9601 et. Seq., Resource Conservation Recovery Act, 42 U.S.C. ' 6901 et. seq., The Federal Water Pollution Control Act, 33 U.S.C. ' 1201 et. seq., the Clean Water Act, 33 U.S.C. ' 1321 et. seq., the Clean Air Act, 42 U.S.C. ' 7401 et. seq., the Toxic Substances Control Act, 33 U.S.C. ' 1251 et. seq., all as amended from time to time and any other Federal, state, local or other governmental statute, regulation, rule, law or ordinance promulgated pursuant thereto.
- 1.9 "FAA" means the Federal Aviation Administration or its successors.
- 1.10 "FCC" means the Federal Communications Commission or its successors.

- 1.11 "Lease" means the underlying agreement pursuant to which NexTower has rights to the Site
- 1.12 "Leased Premises" or "Premises" means that portion of the Site consisting of space on the Tower; space on the ground directly beneath or adjacent to the Tower and any non-exclusive easements necessary for County to construct its Communications Facility and install related Communications Equipment.
- 1.13 "Prime Landlord" means NexTower's Landlord under the Lease.
- 1.14 "Prior User" means any other County of the Tower to whom NexTower has subleased space prior to the Effective Date.
- 1.15 "RF Analysis" means an analysis of possible interference by RF Emissions.
- 1.16 "RF Emissions" means the power output in the form of radio frequency waves emitted by an antenna or antennas.
- 1.17 "Site" means the part of County's property leased by NexTower under the Lease.
- 1.18 "Subsequent User" means any other County of the Tower to whom NexTower subleases space subsequent to the Effective Date.
- 1.19 "Tower" means a self-supporting lattice, telecommunications structure, of not more than ____ feet in height.

EXHIBIT E-2: PUBLIC SAFETY COMMUNICATIONS FACILITIES AND EQUIPMENT

<u>Transmitter/Purpose</u>	<u>Antenna</u>	<u>Height AGL</u>
VHF TAC-4 Tx County Fire & EMS Primary Paging	4 bay; Decibel 224 approximately 22' long	Top
VHF ACFR Paging Rx County Fire Paging	4 bay; Decibel 224 approximately 22' long	Appropriate 6' offset from TX antenna
Potential Future Requirement 700/800MHz Rx & Tx antennae *antenna heights to be agreed upon by vendor & County	Bomar-10, 4 each 1 5/8" Tx line	_____*
24 GHz Point-to-Point Dish Note: Dish antenna and cabling provide by County. Hardware and brackets for mounting provided by NexTower.	airFiber 24 Model AF-24	120'

Note: all antenna heights may be adjusted based on calculations conducted by a professional engineer and the needs of the tower owner, subsequent tenants, and needs of the County.

*Antenna heights are approximate

*** See attached Tower Loading Specifications. County is allowed, under the pricing schedule in Paragraph 6. RENT, such loading above 320' and for a 4" microwave dish at the 120' level as shown on this Tower Loading Specification document providing no RF interference is caused to existing communications equipment on the tower present on the tower at time of County's installation.

The existing County block equipment shelter must be refurbishment. Must include a minimum 200 Amp single phase electrical service, transfer switch, halo grounding, dual AC units, UPS, and connection to the County provided generator which is located in a brick structure vicinity the block equipment shelter.

Exhibit G, Memorandum of Lease

MEMORANDUM OF LEASE

This Memorandum of Lease is made on _____ 2018, by and between Alachua County, a charter county and political subdivision of the State of Florida as Lessor, whose address is Gainesville, Florida, and NexTower Development Group, LLC, a Delaware limited liability company, with its principal office located at 4210 NW 37th Place, Suite 600, Gainesville, Fl., 32606

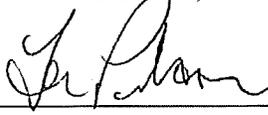
1. Lessor and Lessee are parties to an Option and Lease Agreement dated as of _____, (the Lease Agreement'); the terms and provisions of which are incorporated herein by reference. The premises covered by the Lease Agreement are located in Alachua County, Florida, as more fully described in the legal description attached hereto as Exhibit "A" ("Leased Premises").
2. Pursuant to the Lease Agreement, the Lessor has granted, and by these presents does grant, to the Lessee an easement for ingress, egress and utilities and for ground and air rights for guy wires and anchors (if applicable) for the duration of the Lease Agreement over those lands more particularly described on Exhibit "B" hereto.
3. The Lease Agreement provides for an initial term of five (5) years which commenced on (date), and which will expire on (date). The Lease also provides for five (5) year renewal terms, which shall occur automatically unless Lessee delivers written notice of intent not to renew to Lessor at least ninety (90) days prior to the expiration of the initial term, or the renewal term then in effect.
4. In accordance with Chapter 713.10 of the Florida Statutes, the Lease Agreement provides that the interest of the Lessor shall not be subject to liens for improvements made by the Lessee, and that the Lessee shall notify any contractor making such improvements of this provision of the Lease Agreement.

SIGNATURES ON NEXT PAGE

LESSOR (ALACHUA COUNTY):

BOARD OF COUNTY COMMISSIONERS OF
ALACHUA COUNTY, FLORIDA

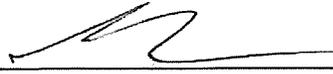
ATTEST:

By: 
Lee Pinkoson, Chair, Alachua County Board of
County Commissioners


Jesse K. Irby II, Clerk

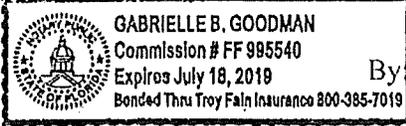
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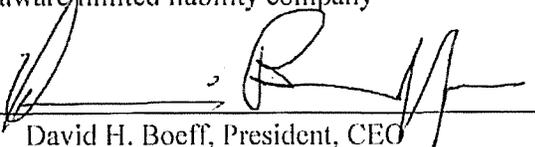
(SEAL)


Alachua County Attorney

TENANT

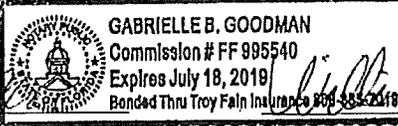
NEXTOWER DEVELOPMENT GROUP, LLC
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GABRIELLE B. GOODMAN
Commission # FF 995540
Expires July 18, 2019
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By: 
David H. Boeff, President, CEO

Witnesses as to Nextower:


Signature


GABRIELLE B. GOODMAN
Commission # FF 995540
Expires July 18, 2019
Bonded Thru Troy Falg Insurance 800-385-7019


Signature


GABRIELLE B. GOODMAN
Commission # FF 995540
Expires July 18, 2019
Bonded Thru Troy Falg Insurance 800-385-7019

Michelle Clark
Printed Name

William Paulson
Printed Name


 GABRIELLE B. GOODMAN
 Commission # FF 982340
 Expires July 18, 2019
 Board # 1001 1001 1001 1001 1001


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 Board # 1001 1001 1001 1001 1001

Handwritten signature or scribble

