

# City of Palm Coast, Florida Agenda Item

**Agenda Date:** September 10, 2024

<b>Department</b> INFORMATION TECHNOLOGY	<b>Amount</b>
<b>Division</b>	<b>Account #</b>
<b>Subject:</b> RESOLUTION 2024-XX APPROVING AN OPTION AND GROUND LEASE AGREEMENT WITH DIAMOND TOWERS V, LLC FOR THE CONSTRUCTION OF A TELECOMMUNICATIONS TOWER AT 100 PARK SQUARE	
<b>Presenter:</b> Doug Akins, Director of Information Technology	
<b>Attachments:</b> <ol style="list-style-type: none"><li>1. Presentation</li><li>2. Resolution</li><li>3. Option and Ground Lease</li><li>4. AT&amp;T Letter of Interest</li></ol>	
<b>Background:</b> <p>Diamond Towers V, LLC has requested to lease City property located at 100 Park Square (Parcel # 28-10-30-4290-00000-0130) for the purpose of constructing a 150-foot high, telecommunications facility (structure). The tower will be a monopole style tower with a full antennae array. This facility will have the capacity to accommodate at least four (4) carriers.</p> <p>This site is not identified in the Wireless Master Plan and will have to go before the Planning and Land Development Regulation Board for a special exception.</p> <p>Some of the highlights of the agreements are as follows:</p> <ol style="list-style-type: none"><li>1. The initial Option term is eighteen months and may be extended by two additional six-month periods.</li><li>2. Initial lease term will be five years with the option to extend for five, five-year periods, for a total of thirty years.</li><li>3. A Site Development Fee of \$50,000 shall be paid to the City upon the commencement of construction of the tower (an increase of \$25,000 from previous agreements).</li><li>4. The City will receive 40% of any sublease fees generated by the first tenant, and 50% for all subsequent tenants (an increase from 40% of all revenue in previous agreements).</li><li>5. Diamond Towers V, LLC will have access to the land to build a 150-foot structure and house ground equipment on the site.</li></ol>	
<b>Recommended Action:</b> <b>ADOPT RESOLUTION 2024-XX APPROVING AN OPTION AND GROUND LEASE AGREEMENT WITH DIAMOND TOWERS V, LLC FOR THE CONSTRUCTION OF A TELECOMMUNICATIONS TOWER AT 100 PARK SQUARE</b>	





**Cell Tower Ground Lease Request**  
September 2024



# About Diamond

**Diamond is a U.S. leader in the development and management of wireless and broadband communications infrastructure**

- Proven track record of management programs
- Highly-experienced team with operational, engineering, legal and financial expertise
- Strong understanding of regulatory and wireless infrastructure development environment
- Experience incorporating emergency networks into our tower development
- Unique capabilities for indoor and outdoor distributed antenna system solutions, WIFI and broadband connectivity



Diamond is management-controlled with additional financing provided by both individual and institutional sources, including Sculptor Capital Management, Manulife Investment Management and the Ontario Teachers' Pension Plan Board

# Third Party Management Approach with its Managed Portfolio

## Key Features of Diamond's Management Approach

- Direct involvement of senior management
- Approval processes that protect our clients' interests (operational, aesthetic, etc.)
- Real time communication
- Complete transparency
- Scalability
- Multi-dimensional – working with clients to execute operational wireless objectives
- Active community outreach to address any operational or health and safety concerns

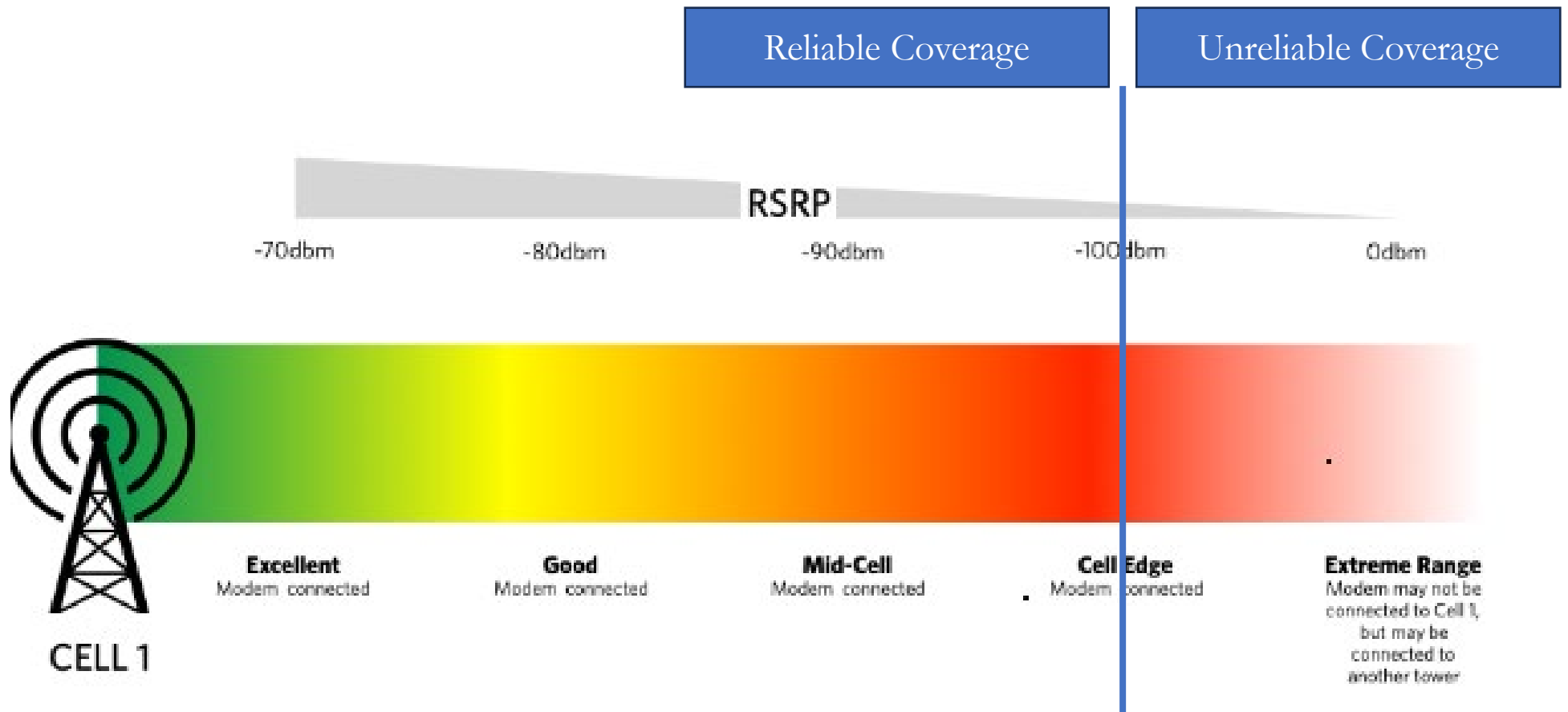
## Our 400,000 assets under management include...



# Carrier Coverage in Palm Coast

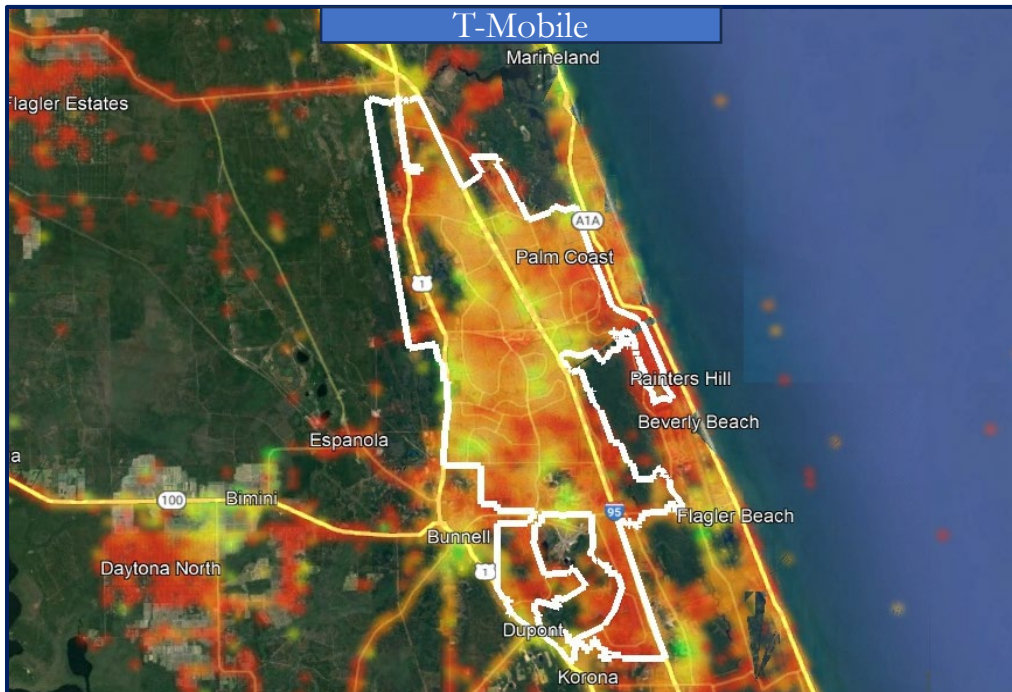
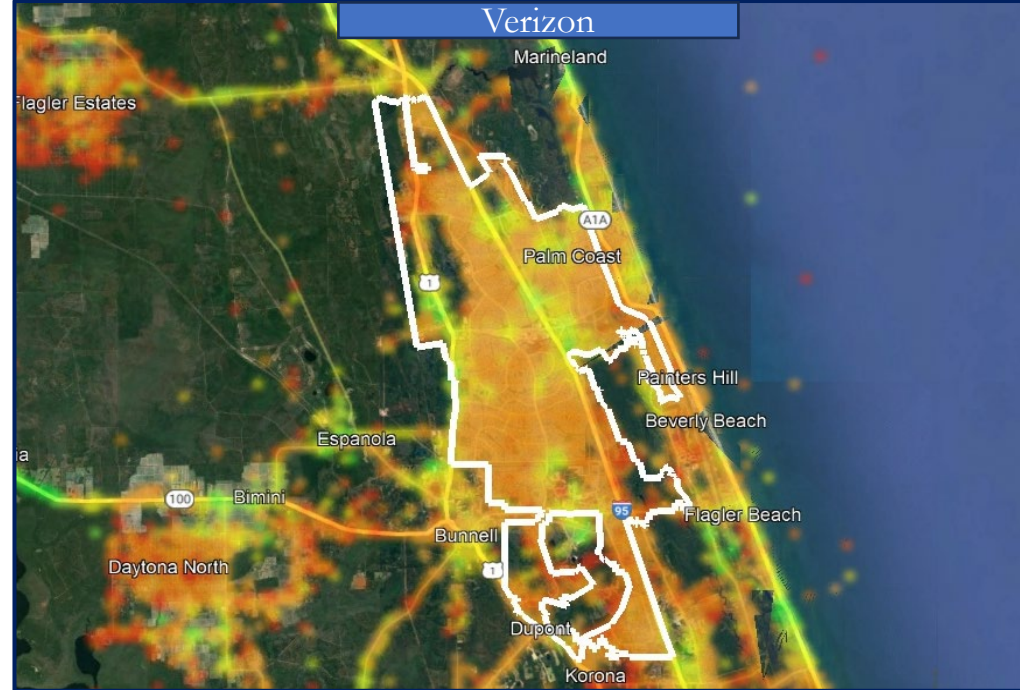
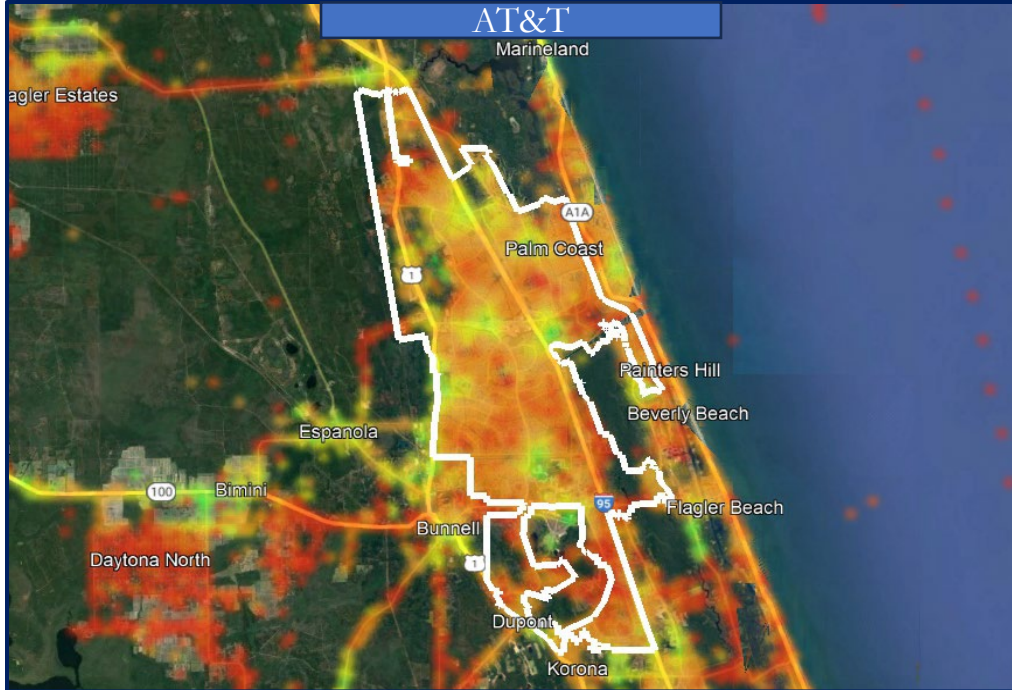
- Three Views
  - Overall Coverage Areas
  - Reliable Coverage Areas  $> -100\text{dBm}$
  - Unreliable Coverage Areas  $< -100\text{dBm}$
- AT&T service above or below  $-100\text{dBm}$  threshold
- Verizon service above or below  $-100\text{dBm}$  threshold
- T-Mobile service above or below  $-100\text{dBm}$  threshold

# Explanation of RSRP





# Palm Coast Coverage Areas

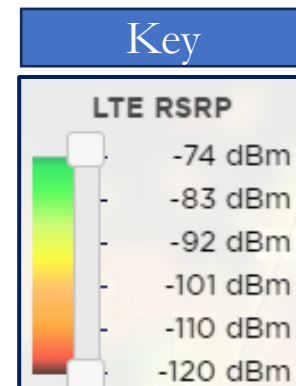


LTE RSRP

Percent	Verizon Wireless	T-Mobile US	AT&T US	FirstNet US	DISH
100	10%	13%	18%	13%	
90	19%	22%	26%	16%	
80	30%	31%	28%	32%	100%
70	26%			18%	
60		17%	10%		
50					
40					
30					
20					
10					

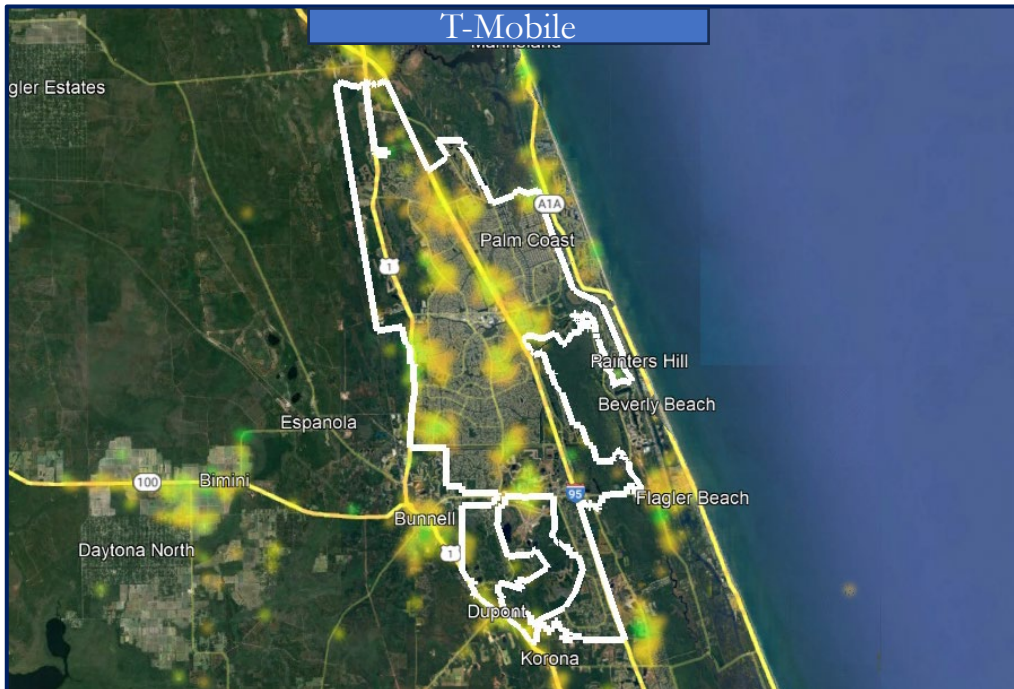
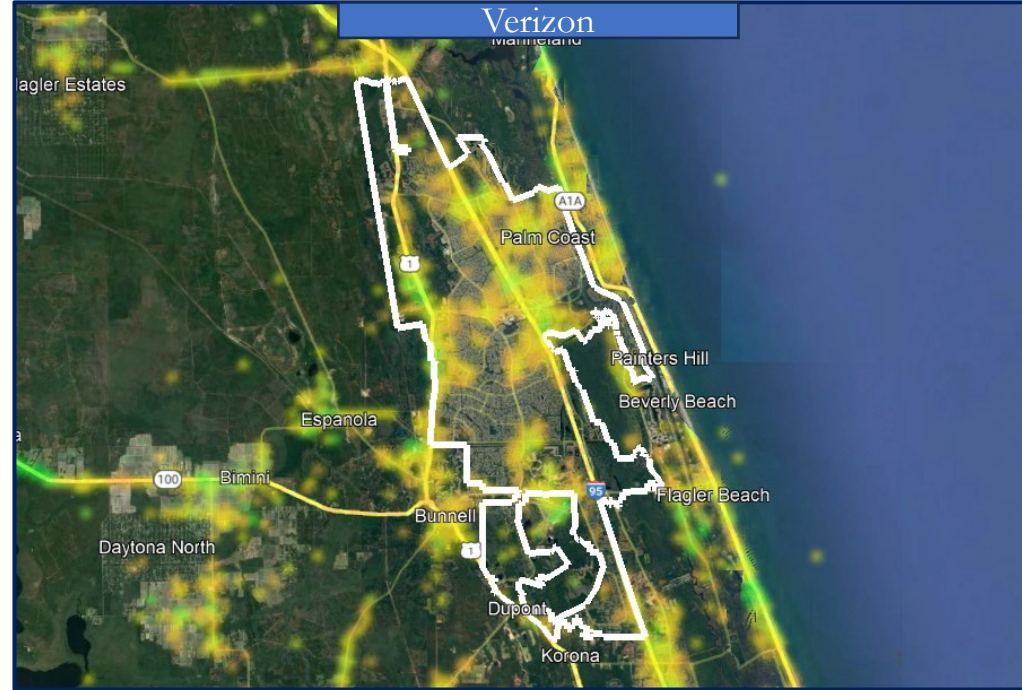
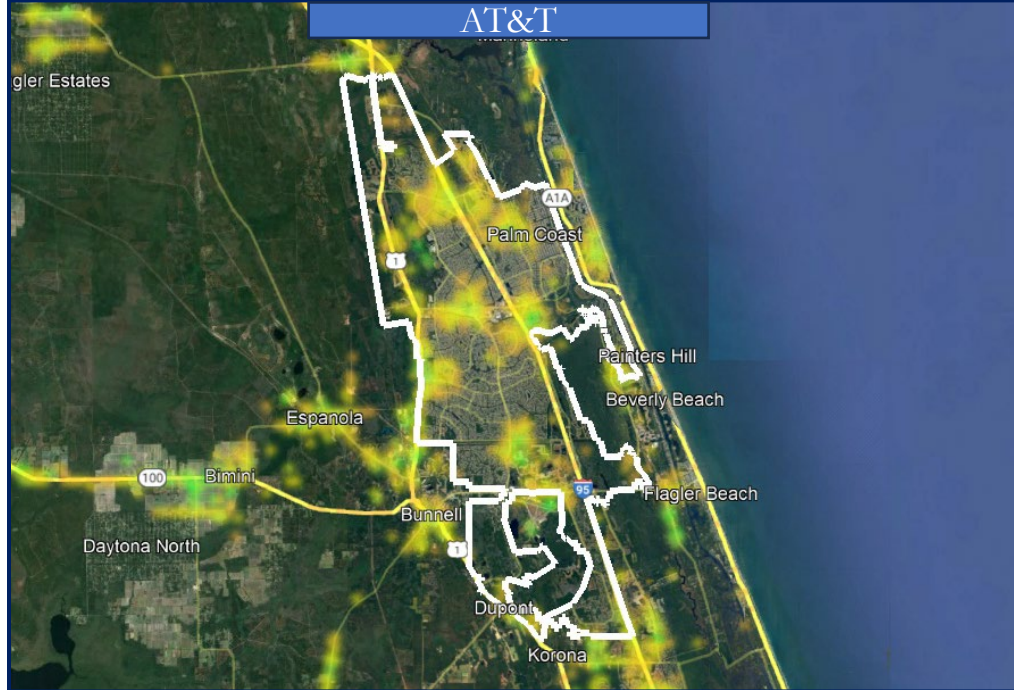
**Averages**

Verizon Wireless	-102 dBm
T-Mobile US	-106 dBm
AT&T US	-103 dBm
FirstNet US	-101 dBm
DISH	-123 dBm

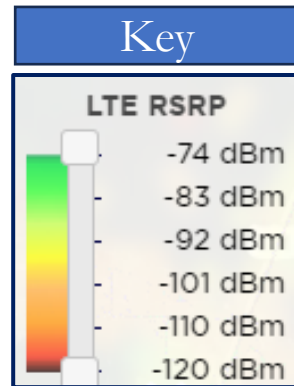




# Palm Coast Reliable Coverage Areas

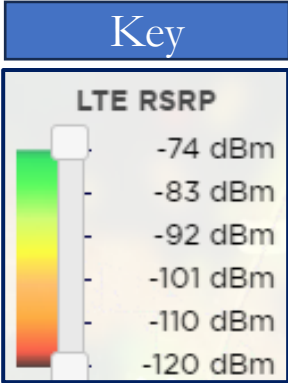
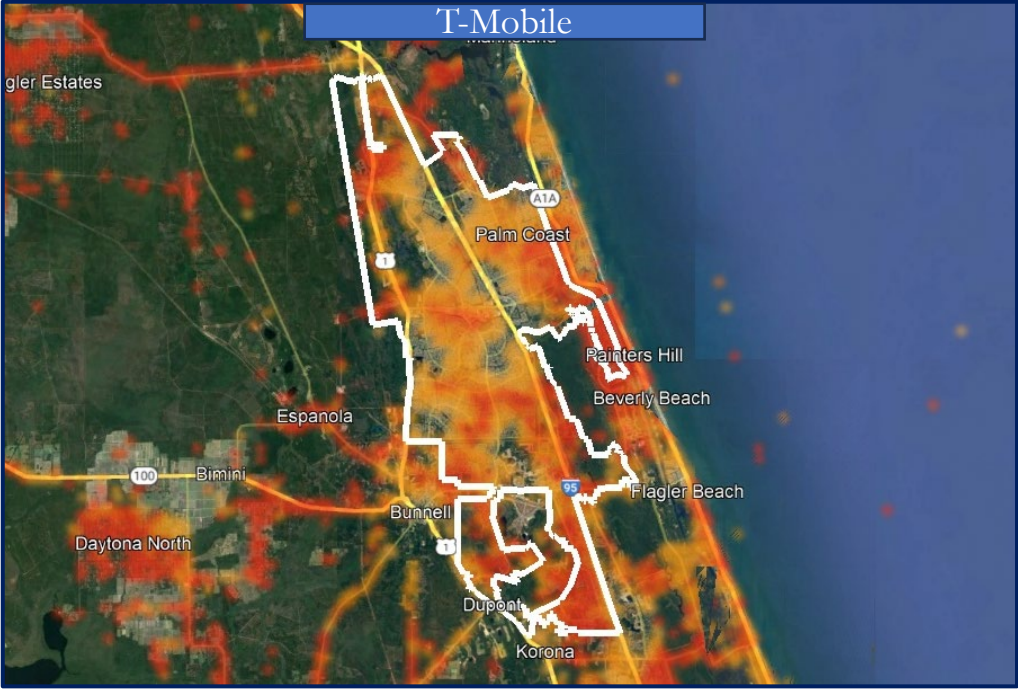
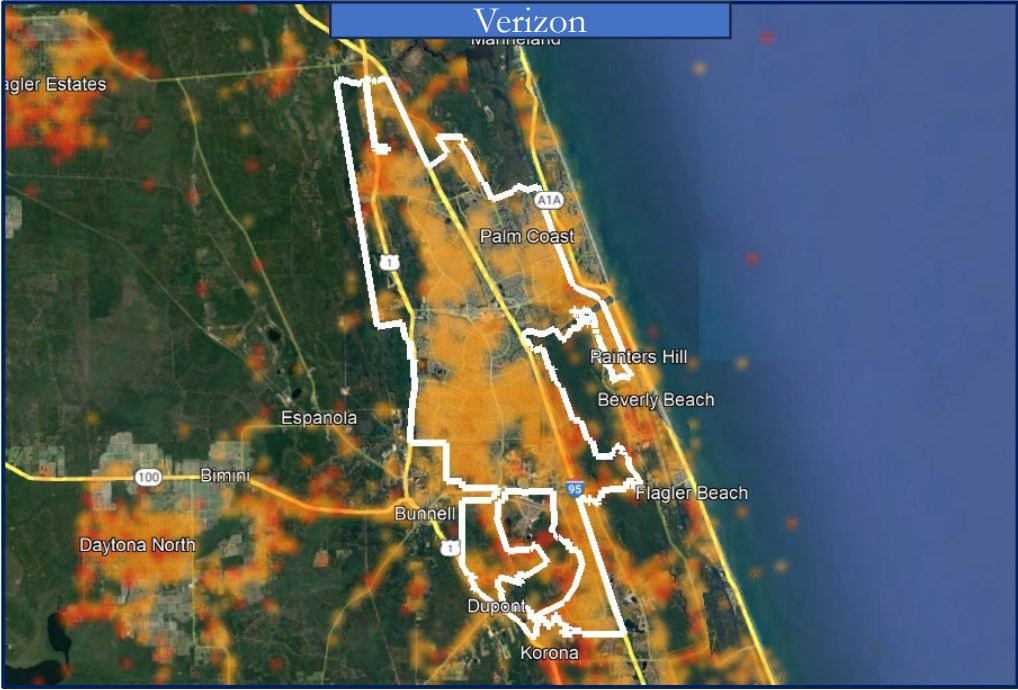
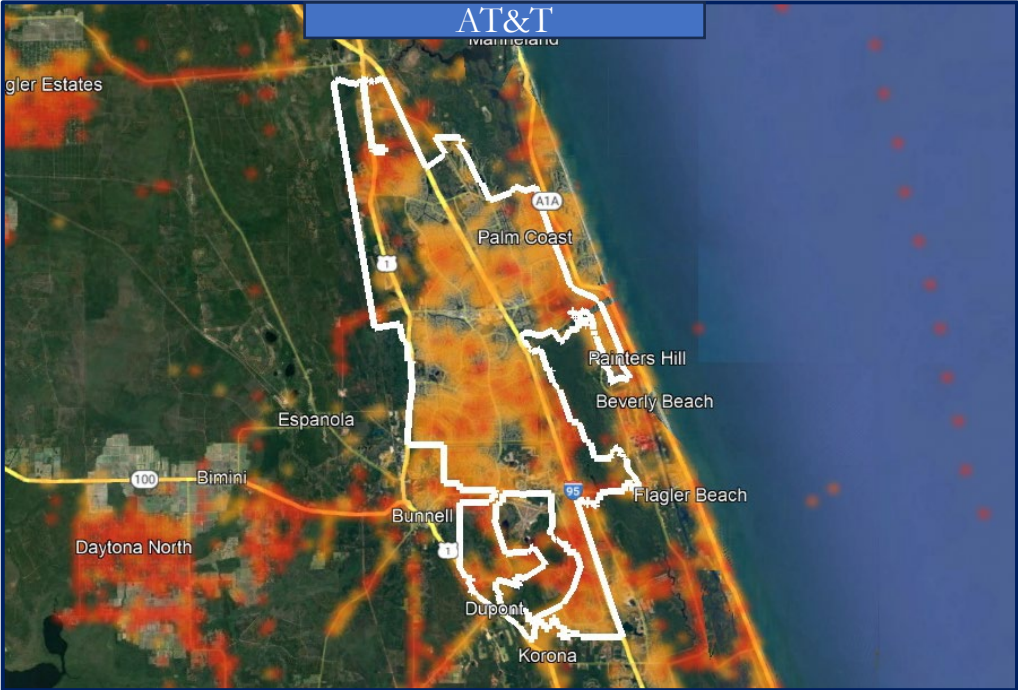


- Green or yellow areas signify strong carrier coverage





# Palm Coast Unreliable Coverage Areas

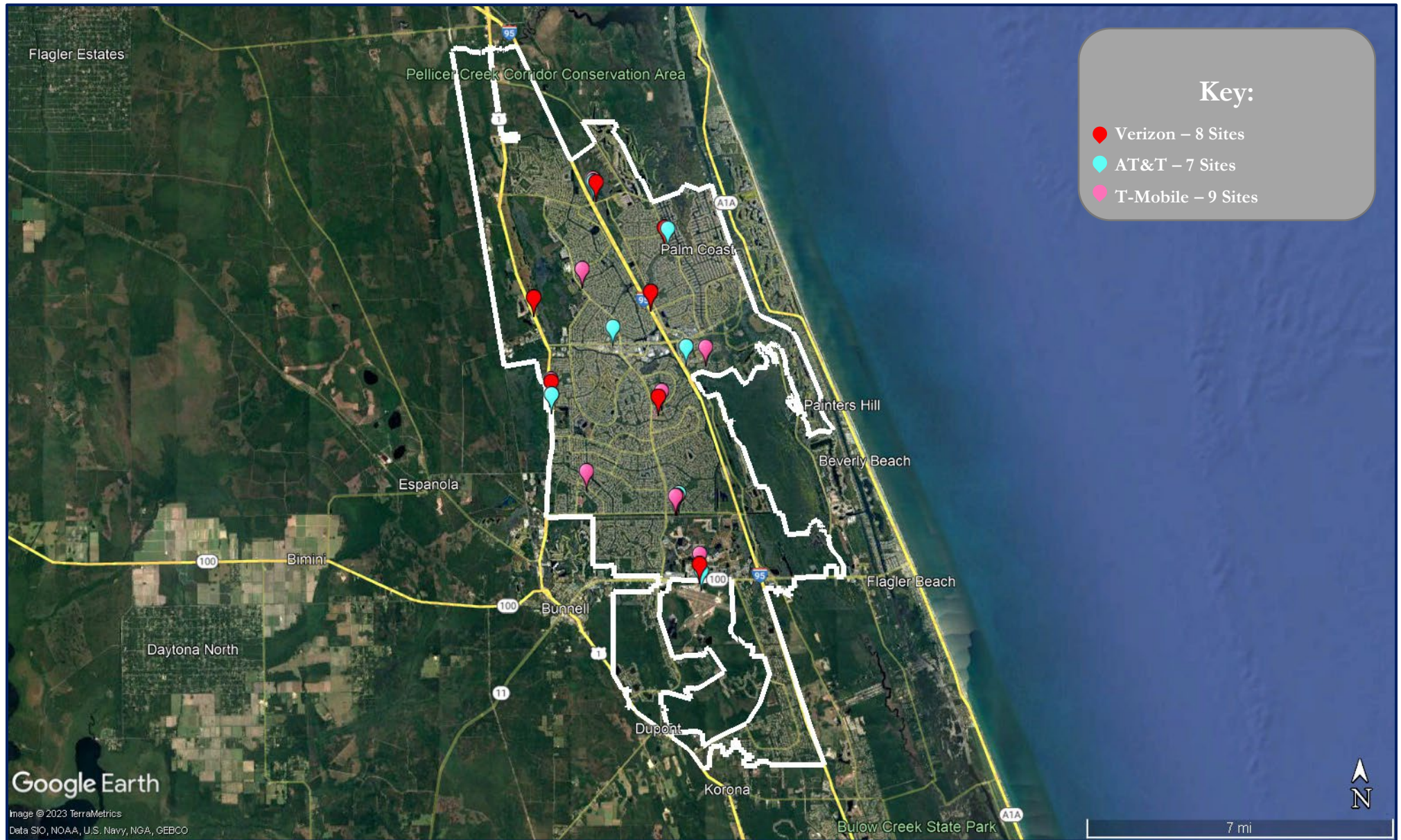


- Orange or red areas signify weak carrier coverage

Based on crowd-sourced data provided by Ookla from May 1, 2023 - April 30, 2024.



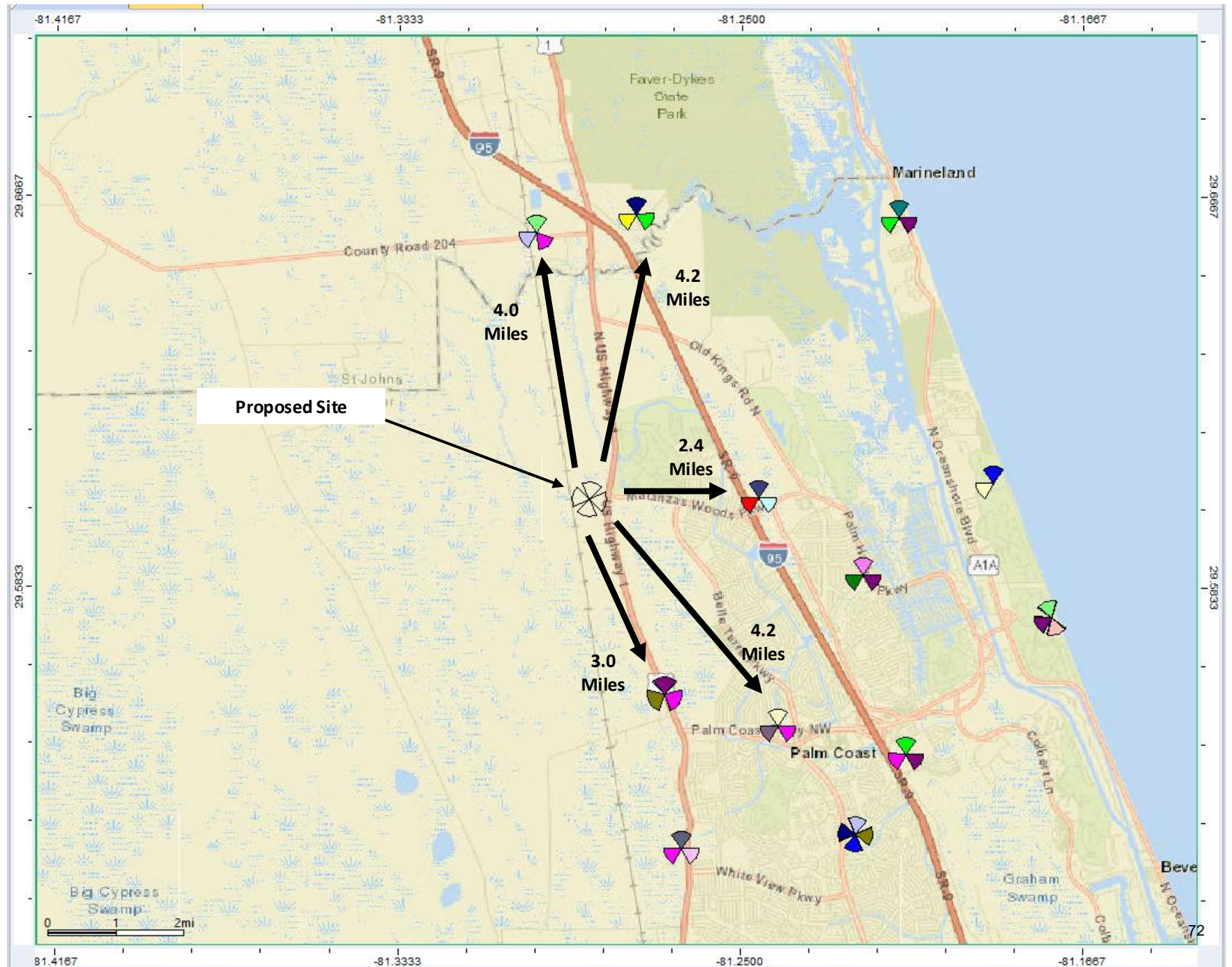
# Palm Coast Current Carrier Assets





# Area of Interest

Distances to existing AT&T network sites

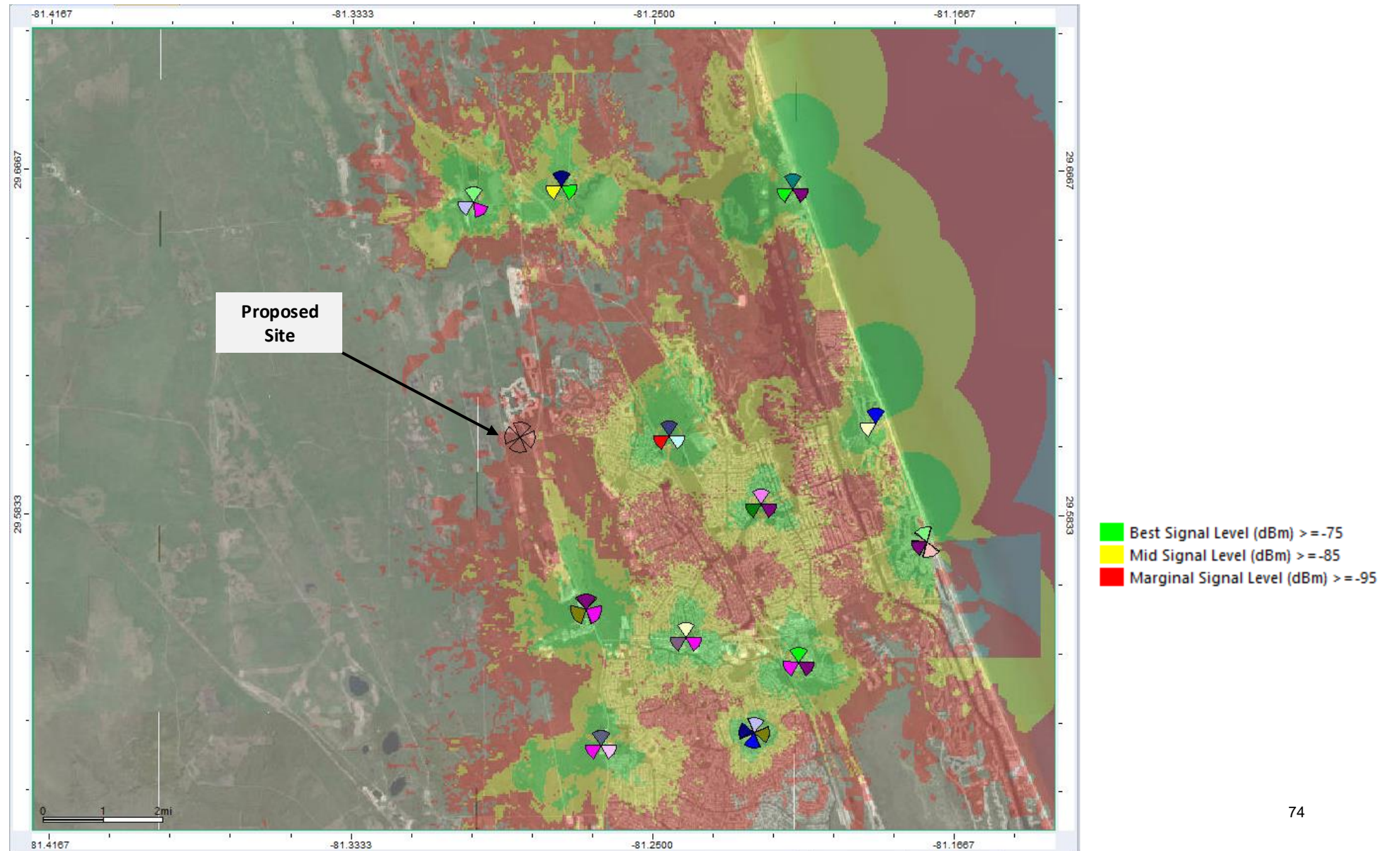


# Lease Terms Comparison

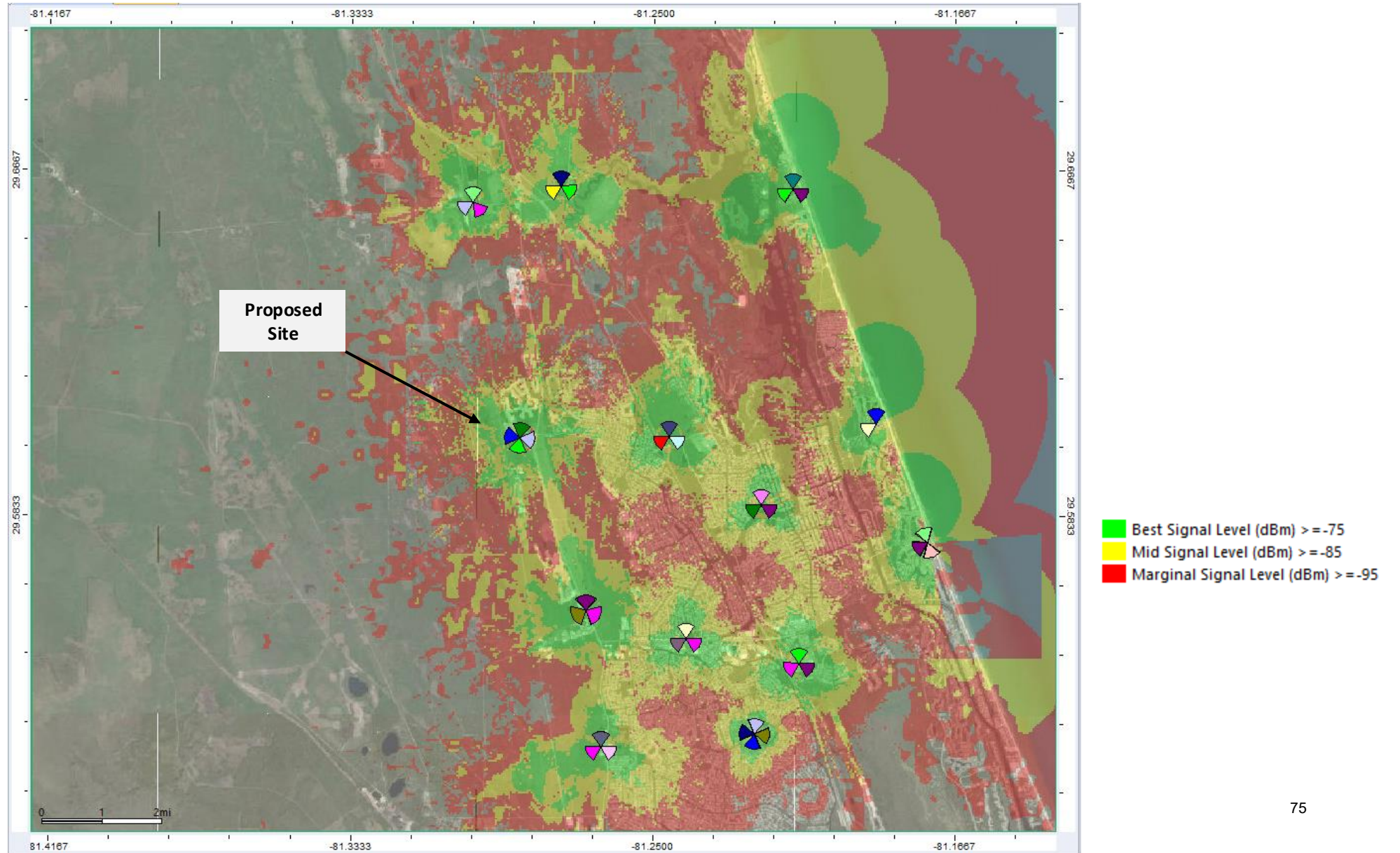
Term	Previous Leases	Current Lease
Site Development Fee	\$25,000	\$50,000
Revenue Share to City	40%	The greater of 40% or \$1,000/month for first carrier, 50% on all other carriers



# Current AT&T Coverage

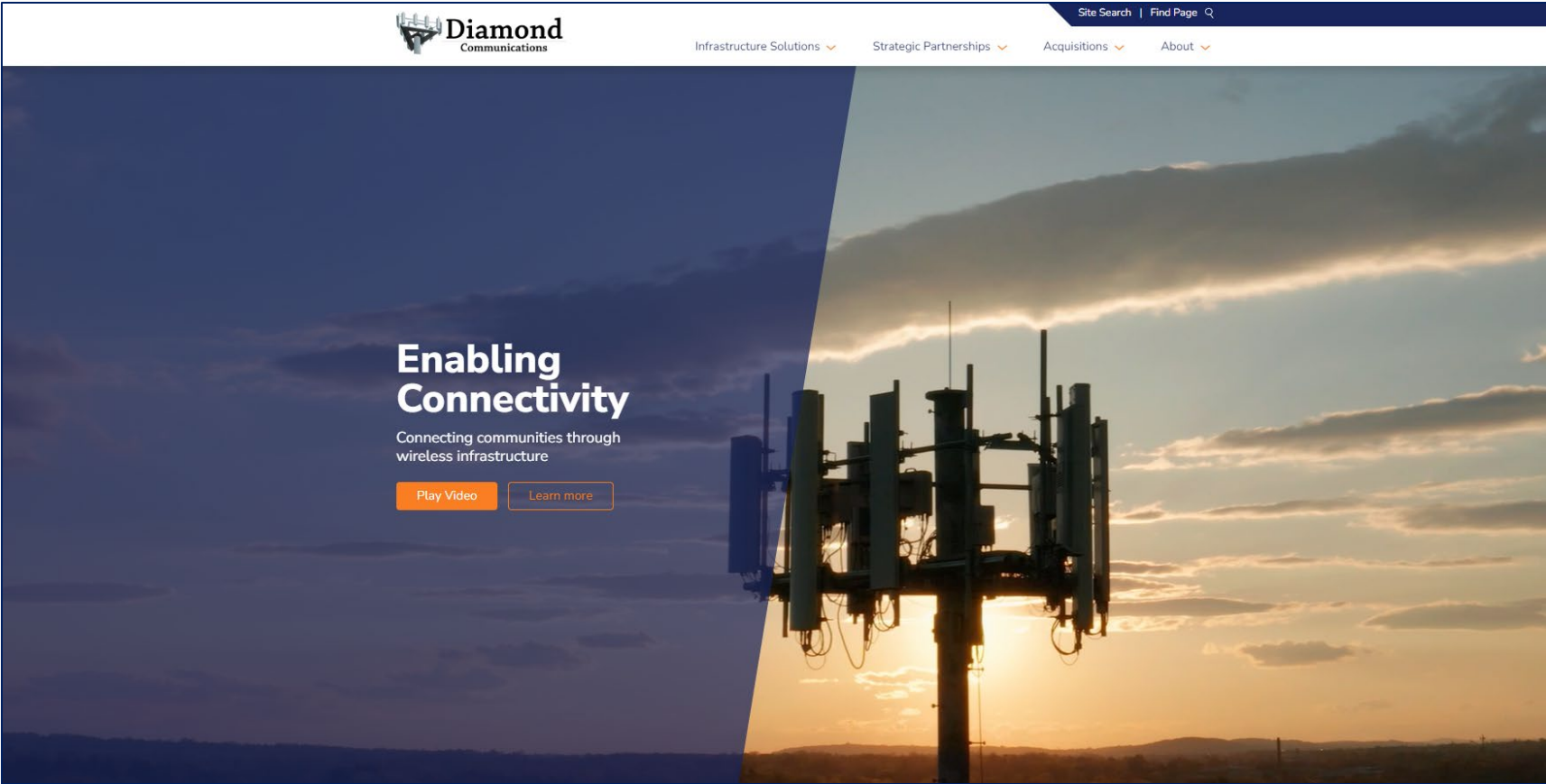


# Planned AT&T Coverage





# For More Information



**RESOLUTION 2024 - \_\_\_\_**  
**OPTION AND GROUND LEASE AGREEMENT**  
**WITH DIAMOND TOWERS V, LLC**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING OPTION AND GROUND LEASE AGREEMENT WITH DIAMOND TOWERS V, LLC FOR CONSTRUCTION OF WIRELESS TELECOMMUNICATIONS TOWER AT 100 PARK SQUARE; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE SAID AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Diamond Towers V, LLC desires to construct a monopole style tower facility at 100 Park Square, Parcel Number 28-10-30-4290-00000-0130, which will have the potential to accommodate at least four carriers; and

**WHEREAS**, Diamond Towers V, LLC has expressed a desire to lease City property located at 100 Park Square for construction of a wireless communication facility; and

**WHEREAS**, the City of Palm Coast desires to promote better cellular coverage and capacity within the City and has codified that intent in its Wireless Master Plan; and

**WHEREAS**, the City of Palm Coast desires to enter into an option and ground lease agreement with the Diamond Towers V, LLC for the construction of a wireless communication facility at the 100 Park Square site.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA AS FOLLOWS:**

**SECTION 1. APPROVAL OF OPTION AND GROUND LEASE AGREEMENT.**

The City Council of the City of Palm Coast hereby approves the terms and conditions of the Option and Ground Lease Agreement with Diamond Towers V, LLC for the 100 Park Square location, as attached hereto and incorporated herein by reference as Exhibit "A."

**SECTION 2. AUTHORIZATION TO EXECUTE.** The City Manager, or designee, is hereby authorized to execute the Option and Ground Lease Agreement as depicted in Exhibit "A,"



and any temporary easements needed for construction of the wireless communication facility located at 100 Park Square.

**SECTION 3. SEVERABILITY.** If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

**SECTION 4. CONFLICTS.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

**SECTION 5. IMPLEMENTING ACTIONS.** The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

**SECTION 6. EFFECTIVE DATE.** This Resolution shall take effect immediately upon adoption by the City Council.

**DULY PASSED AND ADOPTED** by the City Council of the City of Palm Coast, Florida, on this 17<sup>th</sup> day of September 2024.

ATTEST:

CITY OF PALM COAST

\_\_\_\_\_  
KALEY COOK, CITY CLERK

\_\_\_\_\_  
DAVID ALFIN, MAYOR

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
MARCUS DUFFY, CITY ATTORNEY

Attachment: Exhibit "A" – Option and Lease Agreement

## OPTION AND GROUND LEASE AGREEMENT

**THIS OPTION AND GROUND LEASE AGREEMENT** (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 202\_ (“Option Date”), between the **CITY OF PALM COAST** (“Optionor” or “Lessor”), at 160 Lake Avenue, Palm Coast, Florida, 32164, and **DIAMOND TOWERS V LLC** (“Optionee” or “Lessee”), a Delaware limited liability company, at 120 Mountain Ave., Springfield, NJ 07081. Collectively, the Optionor/Lessor and the Optionee/Lessee may be the “Parties.”

1. **Grant of Option.** For good and valuable consideration and mutual promises, Optionor grants unto Optionee and its assigns, an exclusive and irrevocable option to lease (“Option”) a portion of a certain parcel of real property located at 100 Park Square, Palm Coast, Flagler County, Florida (“Site”) as more particularly described in Exhibit “A,” attached and incorporated by reference.
2. **Option Initial Term.** The initial term of the Option is for eighteen (18) months from the Option Date (“Option Initial Term”).
3. **Consideration for Option.** Consideration for the Option Initial Term is Twenty Cents (\$0.20) per square foot square foot being Optioned plus applicable taxes (“Option Consideration”) to be paid by the Optionee to the Optionor within fourteen (14) days of execution of this Agreement.
4. **Extension of Option.** This Option may be extended by Optionee for each of two (2) additional six (6) month periods (“Option Renewal Term(s)”) upon written request by Optionee and approval by Optionor. Additional consideration of Twenty Cents (\$0.20) per square foot is due within fourteen (14) days of the commencement of any Option Renewal Term.
5. **Exercise of Option.** Optionee may exercise its option and commence the Ground Lease by delivery of written notice to Optionor at any time during the Option Initial Term or any Option Renewal Term (the “Commencement Date”) if Optionee has obtained all required governmental approvals for the Tower, as defined below. If the Option has not been exercised before the expiration of an active Initial or Renewal Term, this Option and Ground Lease Agreement shall automatically terminate. If all required approvals have been obtained, Optionee must notify Optionor in writing, following the notice requirements of Section 19 of the Ground Lease, of the recordation of the Memorandum of Lease. Upon Optionor’s receipt of Optionee’s notice of exercise of option and recording of the Memorandum, the terms of the Ground Lease (“Lease”), beginning on page 3, will govern the relationship of the Parties.
6. **Optionor’s Representations and Warranties.** As an inducement for Optionee to enter into and be bound by the terms of this Option, Optionor represents and warrants to Optionee and Optionee’s successors and assigns that:
  - (a) Optionor has good and marketable title to the Site, free and clear of all liens and encumbrances;
  - (b) Optionor has the authority to enter into and be bound by the terms of this Option;
  - (c) Optionor is not aware of any pending or threatened administrative actions, including bankruptcy or insolvency proceedings under state or federal law, suits, claims or causes of action against Optionor which may otherwise affect Optionor’s rights to the Site; and



(d) The Site is not subject to an option, lease, or other contract which may adversely affect Optionor's ability to fulfill its obligations under this Option, and Optionor covenants it will not enter into any contract which will affect the Site until this Option expires or is terminated by Optionee.

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

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

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

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

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

11. **Assignability.** This Option shall not be assigned by any party except as follows: 1) Optionee may assign this Option or any portion thereof to an affiliate or subsidiary of Optionee in which subsidiary or affiliate of Optionee or Optionee's direct or indirect parent retains at least a 50% ownership, and shall provide prior written notice of such assignment to Optionor, 2) to a party who acquires a majority of the assets of Optionee, or 3) Optionee may grant a security interest in this Option and the Tower Facilities, and may assign this Option and the Tower Facilities to any such holders of security interests, including their successors and assigns (hereinafter, collectively referred to as "Secured Parties"). In such event, Optionor shall execute such consent as may reasonably be required by Secured Parties. Optionee shall have the right, without Optionor's consent, to sublease or assign its rights under this Option and to permit any of its sublessees to in turn sublicense or sublease its interests, but any such sublease or assignment shall be subject to all terms and conditions of this Option. Upon assignment of all of its rights pursuant to this Option, and the execution of a written assumption of all of the terms and conditions of the Option by the assignee, Optionee shall be released from any further liability under this Option. Optionee shall have the right,

without Optionor's consent, to sublease its rights under leases of Tower Facilities if allowed in the lease, but any such sublease shall be subject to all terms and conditions of this Option and the lease.

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

13. Paragraph No. 33, Miscellaneous, of the Ground Lease, applies to this Option Agreement.

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

### **GROUND LEASE GOVERNING THE RELATIONSHIP OF THE PARTIES UPON THE EXECUTION OF THE OPTION**

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

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

(b) The Leased Premises will be utilized to construct, support, and operate a wireless communications facility. The facility will include a communication tower, antennas, cables, and related structures and improvements. The Tower Facilities (defined below) will be in the location shown in Exhibit "A". Lessee's utilization of the Leased Space must be consistent with Sections 5 and 8 of this Lease; and for other purposes which are ancillary and appurtenant, with Lessor's prior-written consent, which will not be unreasonably withheld or delayed.

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

3. **Renewal Terms.** This Lease may be renewed for five (5) additional five (5) year terms, ("Renewal Terms"). Each Renewal Term will be on the same terms and conditions as noted in this Lease. The Lease will automatically renew for each successive Renewal Terms unless Lessee notifies Lessor, one hundred twenty (120) days prior to the expiration of the Initial Term or the Renewal Term then in effect, of its intention not to renew the Lease.

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

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



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

(c) Lessee shall pay Lessor a Site Development Fee of Fifty Thousand and 00/100 Dollars (\$50,000.00) upon the commencement of construction of the Tower, as defined herein.

5. **Use.**

(a) The Leased Premises may be used by Lessee for the transmission and receipt of wireless communication signals in all lawfully authorized frequencies and other uses as permitted under applicable zoning regulations to accommodate Tenants, as defined in Exhibit "D" to this Agreement. The number of tenants on the tower shall be determined by the structural integrity of the tower through engineered analysis and other supporting construction details that illustrate the tower can structurally support additional tenants and associated components.

(b) Lessee may construct and maintain a one hundred fifty-foot (150') monopole telecommunications tower (the "Tower"), structural tower base(s), communications equipment, one or more buildings or equipment cabinets, radio transmitting and receiving antennas, personal property and related improvements and facilities (the "Tower Facilities"). Lessee's Tower Facilities will be subject to applicable permitting, laws, regulations, and ordinances.

(c) Lessee agrees that the Tower will comply with FAA rules and regulations regarding lighting of the Tower.

(d) Lessee may construct additional improvements, demolish and reconstruct improvements, or restore, replace and reconfigure improvements during the term of this Lease, provided it complies with all applicable permitting, laws, regulations and ordinances and any additions, beyond what is contemplated for the Leased Premises herein, is approved in writing by Lessor, such approval not to be unreasonably withheld, conditioned, delayed or denied.

(e) Lessor agrees to cooperate with Lessee in obtaining, at Lessee's expense, licenses and permits required for Lessee's use of the Leased Premises, and will provide those to Lessor (the "Governmental Approval").

6. **Lessor's Representation and Warranties.** Lessor represents and warrants that:

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

(b) It will not use, nor permit its lessees, licensees, invitees or agents to use, any portion of adjacent real property owned by Lessor which interferes with the wireless communications operation of Lessee;

- (c) To the best of its knowledge, no Hazardous Materials, as defined below, have been generated, stored, disposed of or are present on or under the Leased Premises and the Easement(s) prior to the Commencement Date of this Lease;
- (d) It has the full right, power, and authority to execute this Lease;
- (e) It has good and marketable fee simple title to the Leased Premises and the Easement(s); and
- (f) The Leased Premises constitutes a legal lot that may be leased without the need for any subdivision or platting approval.

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

- (a) It will not operate, or allow its tenants to operate any frequencies that would interfere with any governmental or Federal Aviation Administration (FAA) frequencies or equipment, or emergency services frequencies or equipment;
- (b) All licensed contractors and subcontractors used by Lessee will be authorized to work in the City of Palm Coast, Florida;
- (c) It will keep current all licenses, permits, or certificates required for the operation and maintenance of the Leased Premises; and
- (d) It is duly authorized to conduct business within the state of Florida.
- (e) **Mechanic's Liens.** Lessee shall keep the Tower and the Site free and clear of all mechanic's and materialmen's liens arising from or relating to the installation, repair, maintenance, or removal of the Lessee's Tower Facilities on or from the Tower or the Site and Lessee's structural enhancement of the Tower, if any, and for a one hundred twenty (120) day period after completion of the installation, repair, maintenance, or removal of the Lessee's Tower Facilities on or from the Tower or the Site or any structural enhancements to the Tower. If an installation, repair, maintenance, or removal of the Lessee's Tower Facilities on or from the Tower or the Site or structural enhancement of the Tower, Lessee shall cause any such lien to be bonded or discharged of record within sixty (60) days of being notified of the lien. If Lessee fails to bond or discharge the lien within such sixty (60) day period, Lessor, in addition to any other rights or remedies available at law or equity, shall have the right to discharge the lien by paying the amount claimed to be due or to bond the lien. Any amount paid by Lessor in discharging or bonding any lien together with all reasonable; costs and expenses, including, without limitation, reasonable attorney's fees and costs, shall be immediately due and payable to Lessor upon demand from Lessor, and Lessee agrees to indemnify and hold harmless Lessor from all such amounts.
- (f) Lessee shall use commercially reasonable efforts to minimize interruptions and interference with Lessor's use of Lessor's adjacent property.



(g) Lessee agrees not to bring or store hazardous materials on the Leased Premises. The term “Hazardous Material” as used in this Lease shall include, without limitation, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCB’s), and chemicals known to cause cancer or reproductive toxicity. Notwithstanding the forgoing, Lessee or Lessee’s tenants may install, operate and maintain, in accordance with applicable law, backup power generator(s) and ancillary above ground storage tanks for use during emergency situations.

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

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

(b) Lessor grants Lessee a temporary easement in other real property owned by Lessor in form to be approved by the Parties as reasonably required to construct, maintain, and operate the Tower Facilities. Said easement will be for the duration of construction of the Tower Facilities, and during subsequent maintenance and equipment installations, and will be in a location selected by Lessor.

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

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

(d) Lessee will, during this Lease, enjoy ingress, egress, and access from the Leased Premises to an open and improved public road which presently exist pursuant to the easement form attached as Exhibit “B” to this Agreement. If the public road ceases to exist, Lessor will grant, if reasonably available, an easement to Lessee in a form acceptable to the Parties, and Lessee’s sublessees and assigns, so they may, at their own expense,

construct a suitable private access drive to the Leased Premises. To the degree such access is across other property owned by Lessor, Lessor will execute a non-exclusive easement in a form to be approved by the Parties evidencing this right. Lessor will not engage in activities on the Easement(s) that will interfere with Lessee, its licensees, invitees, sublessees or agents' utilization of the Easement(s), and Lessee will not interfere with Lessor's use of the Easement(s). Such access will be provided twenty-four (24) hours per day, seven (7) days per week.

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

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

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

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

(iii) Lessee must maintain the Tower and Tower Facilities in good working order and appearance and must maintain the structural integrity of the Tower, in accordance with all industry standards, building and safety codes.

(iv) In accordance with industry standards, Lessee shall perform all Electronic Industries Alliance/Telecommunications Industry Association inspections ("EIA/TIA Inspection") on the Tower Facilities. Lessee will provide copies of same reports to Lessor upon request. If Lessor determines (in Lessor's reasonable judgement) that there are safety or maintenance concerns on the Tower, at Lessor's full cost and expenses (and at no expense to Lessee and upon written notice by Lessor, Lessee shall perform an EIA/TIA Inspection of the Tower. In the event that such inspection shall detect a safety or maintenance deficiency on the Tower the Lessee shall (using commercially reasonable efforts) have thirty (30) days to cure all such deficiencies or the Lessor shall have the right to cure same. Any expenses (except the cost of an EIA/TIA Inspection) incurred by the Lessor in remedying such deficiencies on the Tower required to be performed by the Lessee may be recovered by Lessor.

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

(vi) Interruptions. Lessor and Lessee agree that (subject to Lessor's negligence, gross negligence, or willful misconduct), Lessor shall have no responsibility or liability whatsoever for interruptions, disruptions, or failures in the Lessee's Tower Facilities or the operation of the Lessee's Tower Facilities including, without limitation, equipment failures, utility failures, structural failures, or otherwise. Lessor shall not give any unauthorized access to Lessee's Equipment; however, Lessor shall not be responsible to Lessee for any unauthorized access by third parties. In all maintenance, repair, or replacement work performed by Lessor on Lessor's equipment located on the Tower or Leased Premises, Lessor shall take all reasonable steps to not interrupt or interfere with the operation of Lessee or Lessee's sublessees', Tower Facilities, communications system or equipment without Lessee's written agreement.

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

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

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

(c) By either Party upon default of any covenant or term, which default is not cured within forty-five (45) days of receipt of written notice of default (without however, limiting any other rights available to the Parties under any other provisions). However, if the defaulting party commences efforts to cure the default within such period and diligently pursues curing of the default to completion within a reasonable time period, the non-defaulting Party may not declare a default;

(d) So long as Lessee is not diligently pursuing a cure of the below defaults (within a reasonable time period), Lessor may terminate this Lease, upon 30 days written notice to Lessee, if:

(i) Lessee defaults in the payment of Rent, other charges or expenses, or any installment which has not been paid within thirty (30) days after Lessor's written notice to Lessee that payment is due;

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

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

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

(e) Three years from the date that Lessee's last paying sublessee terminates the sublease or three years from the Commencement Date if the Lessee hasn't signed any paying subleases, if Lessor desires to terminate this agreement, Lessor shall provide Lessee with one hundred and twenty (120) days ("Notice Period") prior written notice ("Notice"). If during the Notice Period a new



sublessee signs a sublease, Lessor's Notice shall be invalidated and this Agreement shall continue in full force and effect.

10. **Surrender.**

- (a) Upon termination or expiration of this Lease, Lessee will:
- (i) Within one hundred twenty (120) days, remove the Tower Facilities and all other personal property and improvements which Lessee has installed on the Leased Premises and Easement(s) (except for portions of foundations eighteen inches (18") below ground level);
  - (ii) Peaceably and quietly deliver possession of the Leased Premises to Lessor; and
  - (iii) Repair, at its sole cost, damage to the Leased Premises or adjacent land owned by Lessor due to Lessee's removal of its equipment or personal property to Lessor's reasonable satisfaction.
- (b) Upon a termination by Lessor pursuant to Section 9(d), Lessor will have the right at its option and with thirty (30) days prior-written notice to Lessee of the termination to:
- (i) Remove Lessee and anyone claiming rights to the Leased Premises by summary proceedings or by any other lawful manner;
  - (ii) Repossess and enjoy the Leased Premises; and
  - (iii) Recover immediately from Lessee:
    - 1. Unpaid rent;
    - 2. Rent for the remainder of the then current Lease term, reduced to present value; and
    - 3. Any other damages caused by or resulting from the termination of the Lease.

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

11. **Removal Bond.** Lessee will provide Lessor with a copy of a construction or removal bond procured by Lessee in the amount of Thirty Thousand and 00/100 Dollars (\$30,000.00), naming Lessor as obligee thereunder, which bond may be used by Lessor toward the reasonable cost of removing and storing any Tower Facilities not removed by Lessee upon the expiration or termination of this Agreement and restoring the Lease Premises. Lessee will be obligated to timely pay required bond premiums in order to ensure that the bond remains in full force and effect during the Term and any Renewal Term of this Agreement, until

such time as Lessee's obligations to remove the Tower Facilities and make any repairs to the extent required under this Agreement are satisfied.

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

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

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

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

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

17. **Insurance.** Lessee must purchase and maintain in full force and effect throughout the term

of this Lease insurance pursuant to Exhibit “F” attached hereto.

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

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

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

19. **Notices.** All notices required or permitted under this Lease must be in writing and are deemed effective upon personal delivery to a Party’s employee, or upon certified U.S. Mail with return receipt signed by a Party’s employee, or via overnight delivery upon signature receipt of a Party’s employee. Such notices must be addressed to the Party at the addresses shown below, or at such other address or addresses as either Party designates to the other in writing under this Section:

As to Lessor: City of Palm Coast  
Attn: IT Department and City Manager  
160 Lake Avenue  
Palm Coast, Florida 32164  
(386) 986-3735  
(386) 986-4775 fax

As to Lessee: Diamond Towers V LLC  
Attn: Lease Administration  
120 Mountain Ave.  
Springfield, NJ 07081

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

21. (RESERVED)



22. **Assignments and Subleases.**

This Agreement shall not be assigned by any party except as follows: 1) Lessee may assign this Agreement or any portion thereof to an affiliate or subsidiary of Lessee in which subsidiary or affiliate Lessee or Lessee's direct or indirect parent retains at least a 50% ownership, and shall provide prior written notice of such assignment to Lessor, 2) to a party who acquires a majority of the assets of Lessee, or 3) Lessee may grant a security interest in this Agreement and the Tower Facilities, and may assign this Agreement and the Tower Facilities to any such holders of security interests, including their successors and assigns (hereinafter, collectively referred to as "Secured Parties"). In such event, Lessor shall execute such consent as may reasonably be required by Secured Parties. Lessee shall have the right, without Lessor's consent, to sublease or assign its rights under this Agreement and to permit any of its sublessees to in turn sublicense or sublease its interests, but any such sublease or assignment shall be subject to all terms and conditions of this Agreement. Upon assignment of all of its rights pursuant to this Agreement, and the execution of a written assumption of all of the terms and conditions of the Agreement by the assignee, Lessee shall be released from any further liability under this Agreement. Lessee shall have the right, without Lessor's consent, to sublease its rights under leases of Tower Facilities if allowed in the lease, but any such sublease shall be subject to all terms and conditions of this Agreement and the lease.

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

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

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

- (a) Must be transmitted within ten (10) days after receipt of a written request;
- (b) May be relied upon by the Party requesting it;
- (c) Is binding on the Party executing it; and
- (d) May include:
  - (i) the validity, force and effect of this Lease;
  - (ii) the extent to which this Lease has been supplemented or amended;
  - (iii) the existence of any default;
  - (iv) the existence of any offsets, counter-claims or defenses by the other Party;
  - (v) the commencement and expiration dates of the term;

- (vi) any prepaid rent; and
- (vii) any other matter as may reasonably be requested.

26. **Site Requirements.** Lessee agrees that:

- (a) It will conduct its operation on the Leased Premises in strict compliance with this Lease and with the rules and regulations of the City of Palm Coast and all other governmental agencies.
- (b) It will transact its business in such a manner as to develop and maintain the good will and active interest of those enjoying the use of the Site and who have or may have occasion to use its facilities or to come into relations with the Site.
- (c) It will not use nor permit the use of the Leased Premises for any unlawful or immoral purpose.
- (d) It will not permit a nuisance to be created on the Leased Premises.
- (e) It will prevent any use of the Leased Premises that would interfere with or adversely affect the operation or maintenance of the Site, or otherwise constitute a hazard.
- (f) It will design the Tower and Tower Facilities so that the City's Emergency Services, including fire, police, rescue, emergency management, 911 and related personnel, will have space on the tower and within the Leased Premises, to support and facilitate:
  - (i) Up to three (3) DB-810 or equivalent antennas;
  - (ii) Up to three (3) one and five eights inch (1 5/8") transmission lines for an 800 MHz radio repeater system, a P-25 system standard or any other emergency services equipment the Lessor may deem necessary for public safety; and
  - (iii) The City of Palm Coast's installation of equipment relating to tourism/marketing such as cameras or other observational or data gathering equipment. The exact height on the tower and location within the Leased Space will be determined at a later date. The Parties agree to enter into an Antenna Sublease Agreement prior to the Lessor installing any equipment on the Tower or Tower Facilities.
  - (iv) NOTE: The space allocated to the City for the installation of their equipment is subject to the following conditions:
    - 1. The city's emergency services equipment may not exceed three (3) DB-810 or equivalent antennas and three (3) one and five eights inch (1 5/8") transmission lines.
    - 2. The space must be greater than one hundred (100) feet AGL and the antennas cannot be more than fifteen (15) vertical feet.

3. The ground space required for such equipment must be in a location that does not impede existing and reasonably anticipated future additional licensees.
4. There is no monthly rent.
5. The cost of installing the equipment is at the sole cost of the Lessor.

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

28. **Taxes.**

(a) If ad valorem taxes are assessed following any adjustment or reversal to the Sales and Use Tax Section 212.031 Florida Statutes whereby Lessee, as a renter of real property on which the following are placed: towers, antennas, cables, accessory structures, or equipment used in the provision of mobile communications services; is exempt from sales and use taxes, Lessee must pay the portion of taxes directly attributable to the Leased Premises.

(i) Lessor will provide to Lessee a copy of any notice, assessment, billing, pro-rata allocation calculation, if necessary, and any other documentation reasonably requested by Lessee to allow Lessee to evaluate the payment relating to ad valorem taxes for which Lessee is responsible under this Agreement within thirty (30) days of receipt of the same by Lessor.

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

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

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

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

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



29. **Other Rights Reserved by Lessor.** Besides all other rights reserved by Lessor in the Leased Premises, Lessor expressly reserves the right of ingress and egress for Lessor and its designees over the Easement(s) and the Site, but excluding the exclusive Leased Premises (except in the event of emergencies or with prior written consent of Lessee).

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

- (a) Within thirty (30) days of receipt of notice from Lessor of such lien, discharge, bond or otherwise remove the lien. Without obviating its obligation in the preceding sentence, Lessee may contest such lien by instituting appropriate legal proceedings;
- (b) Indemnify, defend, and hold harmless Lessor, at Lessee's cost and expense, any action, suit, or proceeding which may be brought to enforce any such lien; and
- (c) Pay any damages and attorney's fees incurred by Lessor and satisfactorily discharge any judgment entered.

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

31. **Responsibility of Lessee/Lessor.**

- (a) Lessee is in control or possession only of portions of the Site as noted in Exhibit "A." Lessee does not assume responsibility for the conduct, operation, or condition of portions of the Site not included within the terms of this Lease.
- (b) Lessor is not responsible for the actions of Lessee, its employees, agents, contractors, or subcontractors. Lessee will indemnify and hold harmless Lessor against all liabilities, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions, appeals and causes of action, including reasonable attorney's fees and costs arising out of Lessee's negligent or intentional acts or omissions with respect to the Leased Premises (except for injuries, damages or claims which result from the negligence of the Lessor). Lessee must promptly reimburse Lessor for any proration of insurance as required.

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

33. **Miscellaneous.**

- (a) The substantially prevailing party in any litigation arising under this Lease will be entitled to its reasonable attorney's fees and court costs, including appeals, if any.
- (b) Each Party agrees to furnish to the other, within ten (10) days after request, such truthful estoppel information as the other may reasonably request.
- (c) This Lease constitutes the entire agreement and understanding of Lessor and Lessee regarding the subject of this Option and Ground Lease, and supersedes all offers, negotiations and other agreements. There are no other representations or understandings of any kind. Any amendments to the Lease must be in writing and executed by Lessor and Lessee.
- (d) If either Lessor or Lessee is represented by a broker in this transaction, that Party is responsible for any fees due such broker and must hold the other Party harmless from any claims for commission.
- (e) This Lease is construed under the laws of the state of Florida. Venue will be in the courts of Flagler County, Florida, and for federal actions, in Orlando, Florida. In the event of any dispute, the parties agree to waive all rights to demand a jury trial.
- (f) If any term of this Lease is void or invalid, such invalidity will not affect the remaining terms of this Lease, which will continue in full force and effect.
- (g) This Lease may be executed in two or more counterparts, all of which will be one and the same agreement and will become effective when one or more counterparts have been signed by each of the Parties.
- (h) Each of the Parties represent and warrant they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Agreement.
- (i) Waiver of Compliance. Any failure of Lessee to comply with any obligation, covenant, agreement or condition herein may be expressly waived by Lessor, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

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

Section 768.28(5), Florida Statutes.

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

[remainder of page intentionally left blank]

DRAFT



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

**OPTIONOR/LESSOR:**

CITY OF PALM COAST, FLORIDA

By: Draft Only - Not for Signature

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

Title: \_\_\_\_\_

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

**OPTIONEE/LESSEE:**

DIAMOND TOWERS V LLC

By: Draft Only - Not for Signature

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

Title: \_\_\_\_\_

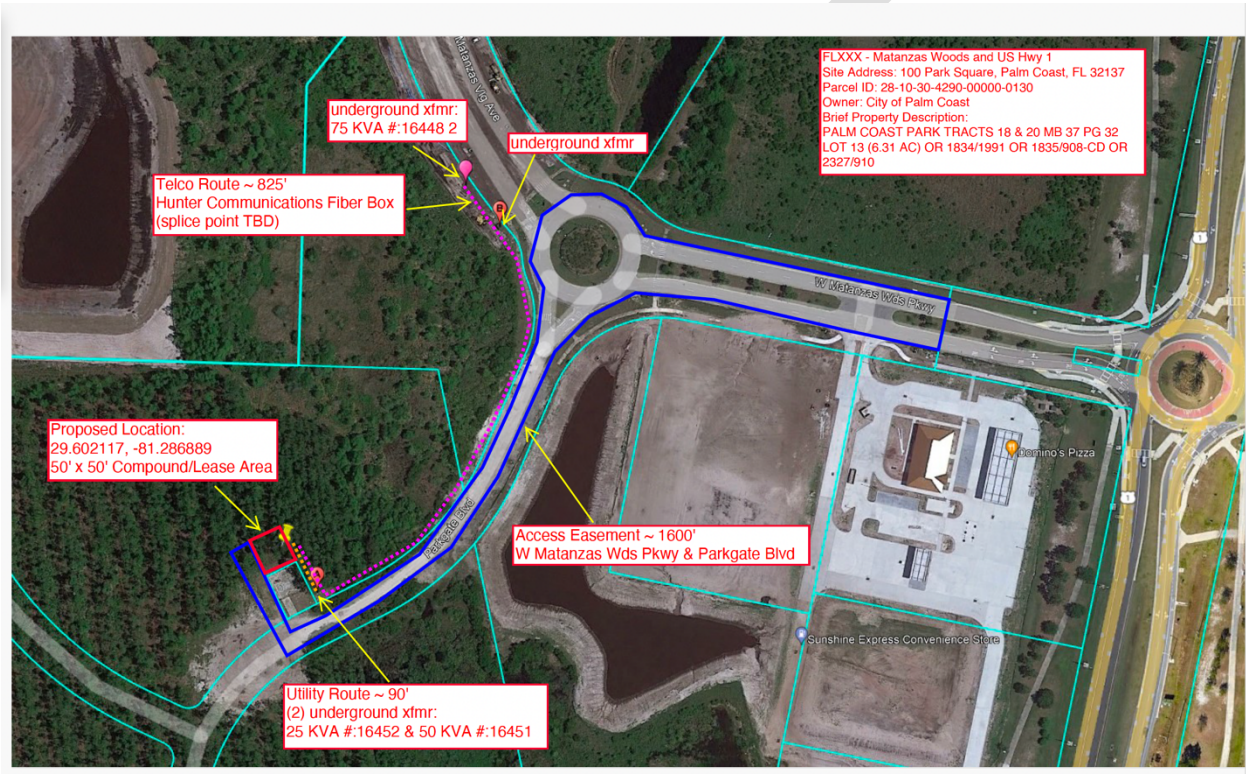
Date: \_\_\_\_\_

# EXHIBIT "A"

## Description of Real Property

100 Park Square  
28-10-30-4290-00000-0130

(Tower compound and easement locations to be determined)



**EXHIBIT "B"**

Easement Agreement

PREPARED BY AND RETURN TO:  
Diamond Towers V LLC  
Attention: Legal Department  
820 Morris Turnpike, Suite 104  
Short Hills, New Jersey 07078

Site Name:  
Parcel:

Cross Reference:  
Deed Book: \_\_\_; Page \_\_\_, et. seq.  
\_\_\_\_\_ County Clerk

**ACCESS AND UTILITIES EASEMENT AGREEMENT**

This Access and Utilities Easement Agreement (the "**Agreement**") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ ("**Effective Date**") is among CITY OF PALM COAST, FLORIDA ("**Grantor**"), and DIAMOND TOWERS V LLC, a Delaware limited liability company ("**Grantee**").

**WHEREAS**, the Grantor is the owner of certain property located in the City of Palm Coast, County of Flagler, State of Florida, which property is more particularly described on **Exhibit "A"** hereto ("**Grantor's Property**"). Grantee is leasing a portion of that certain property located adjacent to Grantor's Property ("**Grantee's Leased Property**"). Grantor and Grantee desire to enter into this Agreement for the purpose of creating certain easements to benefit the Grantee's Leased Property, as more particularly described hereinafter.

For and in consideration of One and No/100 Dollars (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee, intending to be legally bound, hereby agree as follows:

1. Grantor hereby grants, transfers and conveys to Grantee a nonexclusive easement (the "**Access Easement**"), for the benefit of the Grantee's Leased Property, over and across a portion of Grantor's Property (the "**Easement Area**"), to and from Grantee's Leased Property and a public right of way, for the purpose of providing access, ingress and egress to Grantee's Leased Property to and from a public right of way. The Easement Area is in the location shown on **Exhibit "B"**. The easement rights granted hereunder by Grantor to Grantee shall expressly include, without limitation, the right to free and unencumbered ingress and egress over and across the Easement Area.
2. Grantor hereby grants, transfers and conveys to Grantee a nonexclusive easement (the "**Utilities Easement**", and together with the Access Easement, collectively, the "**Easements**"), for the benefit of Grantee's Leased Property, over and across the Easement Area, for the purpose of installing, operating, maintaining and repairing communication and power utility lines and other such necessary utilities (the "**Facilities**") to service Grantee's Leased



Property. The easement rights granted hereunder by Grantor to Grantee shall expressly include, without limitation, the right to unencumbered ingress and egress over and across Grantor's Property to access the Facilities and the right to use, repair, replace, and maintain all Facilities hereafter placed in the Easement Area.

3. Reservation of Rights. Grantor hereby expressly reserves unto itself, its successors, assigns, grantees and invitees, the right, in its sole discretion, to use the Easement Area for any purpose not inconsistent with the rights herein granted to Grantee. In addition and not by limitation, but way of example, Grantor its successors, grantees, invitees and assigns, reserve the right from time to time to improve the Easement Area with pavement, curbing and landscaping and grant additional easements and licenses for access, and utilities or any other purposes as it may deem necessary, over, upon, across and under the Easement Area, provided that such easements or licenses do not unreasonably interfere with Grantee's use of the Easement Area pursuant to the terms hereof. No structures of any kind will be constructed in the Easement Area without the mutual agreement of the parties (not to be unreasonably withheld).

4. The Grantee and its assigns realize that the Grantor may request and obtain a relocation of the Easements. In the event the Grantor does request a relocation of the Easements, the Grantor must provide a substitute access easement and utility easement and must record said new easements in the public records of Flagler County, Florida, and shall improve the path located on said new easements to the current level of improvement enjoyed by the current Easements. Thereafter, Grantee, or its successors and assigns, shall remove by recordable release or quit-claim deed their interest in these current Easements if requested by the Grantor. Notwithstanding the above, all of Grantee's costs and expenses associated with relocating the Easements (including but not limited to costs and expenses associated with equipment removal and reconstruction) shall be paid in full by Grantor, and any said relocation of the Easements shall be conducted with minimal disruption to Grantee.

5. Assignment. Grantee may assign this Agreement under the following terms: 1) to an affiliate or subsidiary of Grantee in which subsidiary or affiliate Grantee or Grantee's direct or indirect parent retains at least a 50% ownership, and shall provide prior written notice of such assignment to Grantor, 2) to a party who acquires a majority of the assets of Grantee, or 3) Grantee may grant a security interest in this Agreement and the Tower Facilities, and may assign this Agreement and the Tower Facilities to any such holders of security interests, including their successors and assigns (hereinafter, collectively referred to as "Secured Parties"). In such event, Grantor shall execute such consent as may reasonably be required by Secured Parties. Grantee shall have the right, without Grantor's consent, to sublease or assign its rights under this Agreement and to permit any of its sublessees to in turn sublicense or sublease its interests, but any such sublease or assignment shall be subject to all terms and conditions of this Agreement. Upon assignment of all of its rights pursuant to this Agreement, and the execution of a written assumption of all of the terms and conditions of the Agreement by the assignee, Grantee shall be released from any further liability under this Agreement. Grantee shall have the right, without Grantor's consent, to sublease its rights under leases of Tower Facilities if allowed in the lease, but any such sublease shall be subject to all terms and conditions of this Agreement and the lease.

6. Termination and Amendments. This Agreement may be cancelled, changed, modified or amended, in whole or in part, in writing signed by the parties hereto or their respective successors and assigns.

7. Entire Agreement. Notwithstanding any verbal representation, this Easement constitutes the entire agreement between the parties. This Easement supersedes any and all prior representations, written or oral heretofore made by the parties concerning the subject matter of the Easement, and any such representations are null and void and of no force or effect whatsoever.

8. The Term of this Agreement shall be continuous, uninterrupted, and shall only expire: (a) upon notification from Grantee of termination of the Agreement; or (b) one (1) year after the Grantee, or its successors or assigns: (i) fails to have an interest in Grantee's Leased Property; (ii) does not have facilities or equipment located within Grantee's Leased Property, and (iii) no longer conducts operations within the Grantee's Leased Property.

9. Any notice sent pursuant to this Agreement shall be in writing and sent by telecopy, personal delivery or by reputable courier, or by depositing it with the United States Postal Service, certified or registered mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party. The initial addresses of the parties shall be as set forth below:

To Grantor:

City of Palm Coast  
Attn: City Manager  
160 lake Avenue  
Palm Coast, FL 32164

To Grantee:

Diamond Towers V LLC  
Attention: Legal Department  
210 Mountain Ave., Unit 619  
Springfield, NJ 07081

10. The Easements granted herein shall be appurtenant to and shall run with Grantee's Leased Property, and shall be binding upon and inure to the benefit of each party hereto, its successors, assigns, mortgagees, tenants, lessees, licensees, contractors, subcontractors, agents, representatives and invitees.

11. This Agreement shall be governed by and enforced in accordance with the laws of the State of Florida. In the event of any dispute, the parties agree to waive all rights to demand a jury trial.



Witness:

“GRANTEE”

Diamond Towers V LLC

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

*Exhibit Only – Not for Signature*

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

Title: \_\_\_\_\_

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

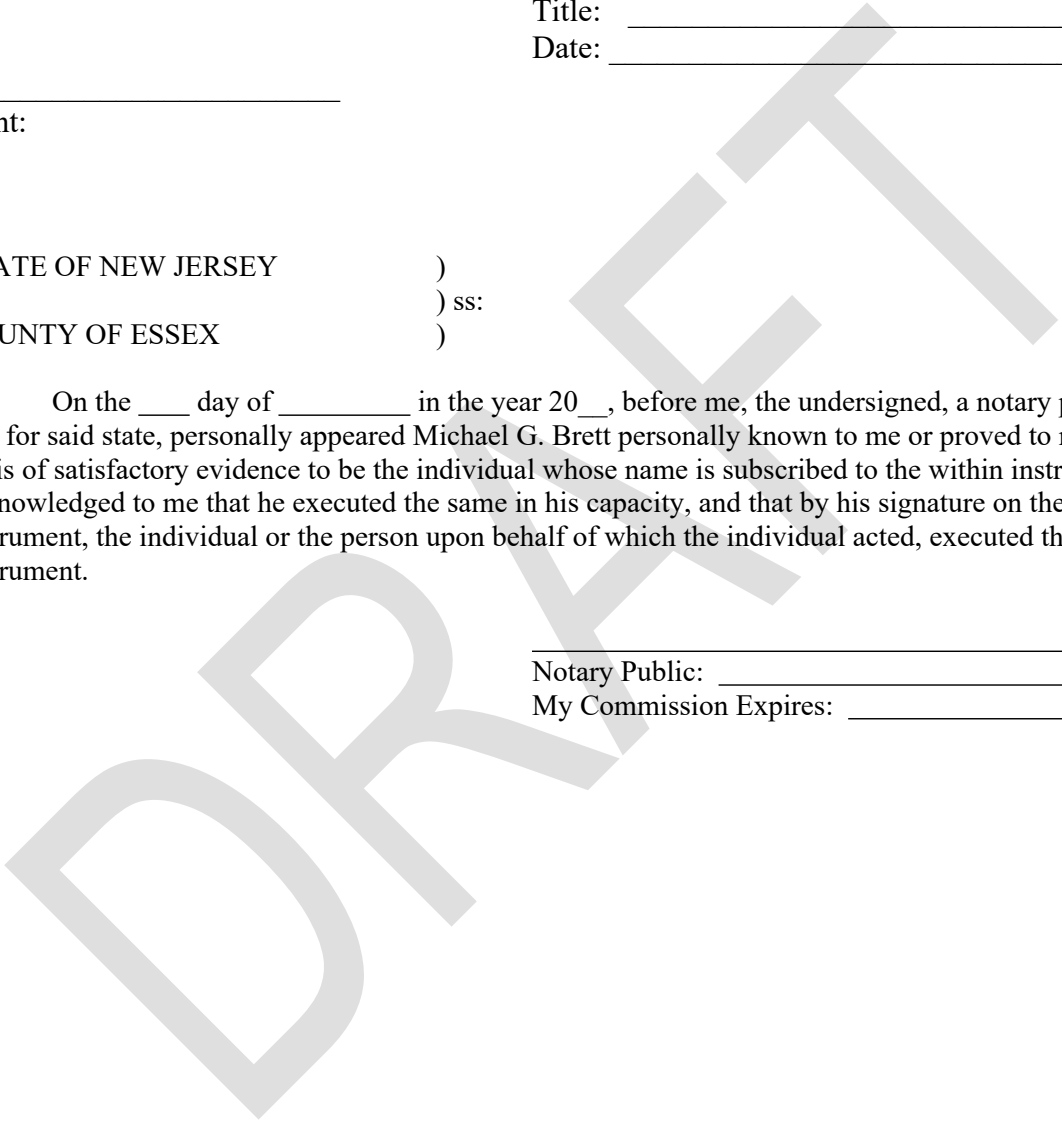
\_\_\_\_\_  
Print:

STATE OF NEW JERSEY            )  
  ) ss:  
COUNTY OF ESSEX                )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_, before me, the undersigned, a notary public in and for said state, personally appeared Michael G. Brett personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_





## EXHIBIT "C"

Site:

### MEMORANDUM OF LEASE

This Memorandum of Lease is made on \_\_\_\_\_, 201\_, by and between the CITY OF PALM COAST, as Lessor, at 160 Lake Avenue, Palm Coast, Florida, 32164, and DIAMOND TOWERS V LLC, as Lessee, at 120 Mountain Ave., Springfield, NJ 07081.

1. Lessor and Lessee are parties to an Option and Ground Lease Agreement dated \_\_\_\_\_, 201\_ (the "Lease Agreement"); the terms and provisions of which are incorporated by this reference. The premises covered by the Lease Agreement are in the \_\_\_\_\_, as described in the legal description attached as **Exhibit "A"** ("Leased Premises").
2. Under the Lease Agreement, Lessor has granted to Lessee an easement for ingress, egress and utilities for the duration of the Lease Agreement over those lands more particularly described on **Exhibit "B,"** as attached. The easement rights include the right and authority of Lessee to grant or assign to third parties all or some of the easement rights granted to Lessee, subject to the written consent of Lessor.
3. The Lease Agreement provides for an initial term of five (5) years which commenced on \_\_\_\_\_. The Lease provides for nine (9) additional five (5) year renewal terms, which will occur automatically, unless Lessee delivers written notice of intent not to renew to Lessor thirty (30) days prior to the expiration of the initial term, or the renewal term then in effect.
4. Under Section 713.10, Florida Statutes, the Lease Agreement provides that the interest of the Lessor is not subject to liens for improvements made by Lessee, and that Lessee must notify any contractor making such improvements of this provision of the Lease Agreement.

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

**LESSOR:**

Witness:

\_\_\_\_\_

Witness:

\_\_\_\_\_

CITY OF PALM COAST, FLORIDA

By: Exhibit Only – Not for Signature

Name:

Title:

Date:

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

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

WITNESS my hand and notarial seal, this \_\_\_\_ day of \_\_\_\_\_ 201\_.

Notary Public: \_\_\_\_\_

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

*{affix notary stamp/seal}*

My Commission Expires: \_\_\_\_\_

**LESSEE:**

DIAMOND TOWERS V LLC

By: Exhibit Only – Not for Signature

Name:

Title:

Date:

Witness:

\_\_\_\_\_

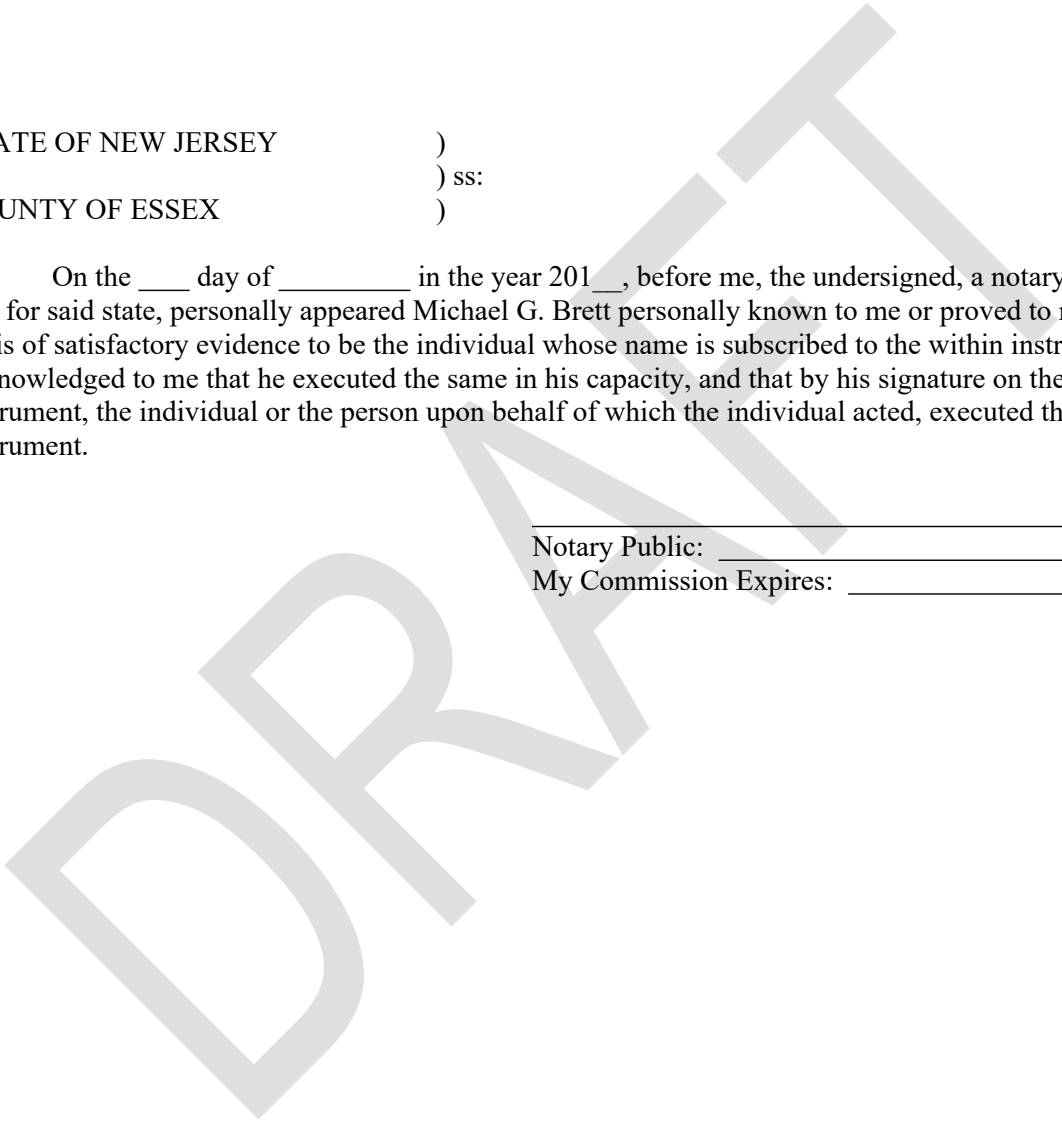
Witness:

\_\_\_\_\_

STATE OF NEW JERSEY            )  
  ) ss:  
COUNTY OF ESSEX                )

On the \_\_\_ day of \_\_\_\_\_ in the year 201\_\_, before me, the undersigned, a notary public in and for said state, personally appeared Michael G. Brett personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



## **EXHIBIT "D"**

### **Rent Schedule**

Rent: Lessee shall pay to Lessor as rent the greater of One Thousand and 00/100 Dollars (\$1,000.00) per month or forty percent (40%) of any Sublease Fees received by Lessee from the first Tenant installed upon the Leased Premises and/or the Tower Facilities. In addition, Lessee shall pay to Lessor as rent fifty percent (50%) of any Sublease Fees received by Lessee from the second and all subsequent Tenants installed upon the Leased Premises and/or the Tower Facilities.

Beginning two (2) years after Commencement Date, Lessee shall pay Lessor Ten Cents (\$0.10) per square foot leased per month for any month that Lessee does not have a paying Tenant installed on the Leased Premises, regardless of if a tower has been constructed. This fee will not apply if the Lessor has equipment installed on the Tower Facilities per Section 26f.

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

"Sublease Fees" shall mean all rents, licenses and other fees (but excluding utilities, taxes and similar expense reimbursements to Lessee which are specifically identified in a sublease as being charged in addition to rent or license fees) actually received by the Lessee pursuant to a particular Sublease during the applicable month. In no event, shall Lessee have the right to deduct expenses from Sublease Fees.

"Tenant" shall mean co-locators on the tower including Cellular/PCS providers such as Alltel, AT&T, Cingular, Sprint, Nextel, T-Mobile, MetroPCS and Verizon, as well as 2-way, paging, micro data centers, and internet providers.



**EXHIBIT “E”**

**FORM OF TRANSFER AGREEMENT**

**AGREEMENT OF ASSIGNEE/SUBLESSEE**

Under this Agreement of Assignee/Sublessee, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ (“Assignee/Sublessee”) acknowledges and agrees as follows:

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

2. Assignee/Sublessee acknowledges that Diamond Towers V LLC and the City of Palm Coast, have entered into an Option and Ground Lease Agreement dated as of \_\_\_\_\_, 20\_\_, (copy attached) which governs the Leased Premises and Easement(s). The Memorandum of Lease (not the Option and Ground Lease Agreement) is recorded in O.R. Book \_\_\_\_\_, Page \_\_\_\_\_, Public Records of Flagler County, Florida. Assignee/Sublessee acknowledges having received a copy of said Option and Ground Lease Agreement and understands all of the terms, provisions, conditions, and limitations of that Agreement.

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

Exhibit Only – Not for Signature

\_\_\_\_\_

(print name)

**Exhibit "F"**  
**INSURANCE**

(a) The Lessee shall obtain or possess and continuously maintain the following insurance coverage, from a company or companies, with a Best Rating of A- or better, authorized to do business in the State of Florida and in a form acceptable to the Lessor and with only such terms and conditions as may be acceptable to the Lessor:

(1) Workers Compensation/Employer Liability: The Lessee shall provide Worker Compensation insurance for all employees engaged in the work under this Agreement in accordance with the laws of the State of Florida. Employers' Liability Insurance at limits not less than the following:

\$500,000 Each Accident  
\$500,000 Disease Each Employee  
\$500,000 Disease (Policy Limit)

(2) Comprehensive General Liability: The Lessee shall provide coverage for all operations including, but not limited to, contractual, independent contractor, products and complete operations and personal injury with limits not less than the following:

\$1,000,000 Bodily Injury & Property Damage - each occurrence  
\$2,000,000 General Aggregate

(3) Comprehensive Business Automobile Liability: The Lessee shall provide complete coverage with a combined single limit of not less than \$1,000,000 Bodily Injury and Property Damage in accordance with the laws of the State of Florida, as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles.

(4) Professional Liability: The Lessee shall provide professional liability insurance as well as errors and omission insurance in a minimum amount of \$1,000,000 CSL or its equivalent, with a combined single limit of not less than \$1,000,000, protecting the Lessee against claims of the City for negligence, errors, or omissions in the performance of services to be performed and furnished by the Lessee.

(5) Other Required Insurance Coverage: Where unusual operations are necessary to complete the work, such as use of aircraft or watercraft, use of explosives, and any high-risk circumstances. No aircraft, watercraft or explosives shall be used without the express advance written approval of the Lessor which may, thereupon, required additional insurance coverage's.

(b) All insurance other than Workers Compensation and Professional Liability that must be maintained by the Lessee shall specifically include the Lessor as an additional insured. All insurance minimum coverages extend to any subcontractor, and the Lessee shall be responsible for all subcontractors.

(c) The Lessee shall provide Certificates of Insurance to the Lessor evidencing that all such insurance is in effect prior to the issuance of the first Work Order under this Agreement. These

Certificates of Insurance shall become part of this Agreement. Neither approval by the Lessor nor failure to disapprove the insurance furnished by a Lessee shall relieve the Lessee of the Lessee's full responsibility for performance of any obligation including the Lessee's indemnification of the Lessor under this Agreement. If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: (1) lose its Certificate of Authority, (2) no longer comply with Section 440.57, Florida Statutes, or (3) fail to maintain the requisite Best's Rating and Financial Size Category, the Lessee shall, as soon as the Lessee has knowledge of any such circumstance, immediately notify the Lessor and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as the Lessee has replaced the unacceptable insurer with an insurer acceptable to the Lessor, the Lessee shall be deemed to be in default of this Agreement.

(d) Intentionally Deleted.

(e) The Lessee shall provide Certificate of Insurance directly to the City's Designated Representative. The certificates shall clearly indicate that the Lessee has obtained insurance of the type, amount, and classification required by this Agreement.

(f) Nothing in this Agreement or any action relating to this Agreement shall be construed as the Lessor waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes.

(g) The Lessor shall not be obligated or liable under the terms of this Agreement to any party other than the Lessee. There are no third-party beneficiaries to this Agreement.

(h) The Lessee is an independent Agreement or and not an agent, representative, or employee of the Lessor. The Lessor shall have no liability except as specifically provided in this Agreement.

(i) All insurance shall be primary to, and not contribute with, any insurance or self-insurance maintained by the Lessor.



August, 1 2024

City of Palm Coast  
C/o City Council Members  
160 Lake Avenue  
Palm Coast, FL 32164

To Whom it may Concern:

I respectfully submit this letter as an explanation of our need for a new telecommunications site in the county of Flagler, Florida. As the system design engineer for AT&T Mobility responsible for this area, I have performed a thorough analysis of the desired coverage need in area and the interaction of existing AT&T sites within the immediate coverage area. The search area was based on the proposed site's location relative to the current surrounding sites and capacity enhancements needed within the county. After running several propagation modeling, the location and design height was selected as optimal to provide maximum outdoor/indoor coverage and handoff capabilities between the surrounding AT&T sites, based on their location and antenna centerlines.

My study may include field visits and computer analysis with sophisticated RF modeling that takes into account the following variables: (A) The physical characteristics of the frequencies allotted by the FCC to AT&T; (B) The allowable power outputs of those frequencies; (C) The AT&T Mobility equipment specifications; (D) The location of existing AT&T Mobility and other facilities; (E) The topography and building density of the area; (F) The optimum coverage using the minimum use of new tower sites. After this review, it was determined that there is an existing structure within the area to meet AT&T Mobility's engineering objectives. These factors were quantified, and values extrapolated using RF modeling software to arrive at a design location and minimum requirement for antenna height. The site candidate, located at 100 Park Square, Palm Coast, Florida, Flagler County, 32137, identified as AT&T Mobility's Mantanzas Woods Pwy site, and meets the coverage objective. Existing neighboring cell site locations on the network are located approximately 2.4, 4.0, 4.2, 3.0, and 4.2 miles away. This new network node will shorten the distances, offering much improved levels of service including FirstNet, to target business and residential areas while maintaining the zoning regulations in the area.

The frequency plan for this site is also in accordance with FCC requirements and will not interfere with the Public Safety bands assigned by the FCC. AT&T is licensed by the FCC to use the Cellular A&B bands, FirstNet, PCS band, 700 B, C&D bands, AWS-3 bands, WCS A, B, C, and D bands and C-Band 77D and G, in Flagler County.

In summary, it is my professional opinion as the radio frequency design engineer This existing facility, is in the proper location and at the required height, which will provide the coverage to meet our requirement of providing excellent wireless services to your citizens in this area.

Sincerely,

New Cingular Wireless PCS, LLC

By: AT&T Mobility Corporation, its Manager

By: Frank Tagliani

Frank Tagliani

Principal Engineer – AT&T Mobility

407-920-0000