

City of South Daytona

Office of the City Manager

Post Office Box 214960 • South Daytona, FL 32121 • 386/322-3010 • Fax 386/322-3008



AGENDA ITEM

Item # 11

Date: December 14, 2021

MEMORANDUM

To: The Honorable Mayor and Members of the City Council

From: James L. Gillis, Jr., City Manager

Re: Consideration of approving Resolution No. 2021-30 to declare the Wireless Communication Facility (Cell Tower) at 1770 Segrave Street as surplus and authorizing the Mayor and City Manager to execute the necessary closing documents and perpetual easement to complete the transfer to American Tower Company

Date: December 6, 2021

In September, the City Council authorized staff to negotiate an acceptable purchase agreement for the sale of the Wireless Communication Facility (Cell Tower) at 1770 Segrave Street to American Tower Company for the amount of \$2,725,000.

The City Manager and City Attorney have worked with American Tower on an acceptable purchase agreement. American Tower is finishing their Due Diligence and inspections on the site. In order to complete the closing, an authorization from the City Council to officially declare the Wireless Communication Facility (Cell Tower) at 1770 Segrave Street as surplus is required. The attached Resolution declares the cell tower site as surplus and authorizes the Mayor and City Manager to execute all necessary closing documents and a perpetual easement to complete the transfer.

Staff recommends Council approve Resolution No. 2021-30 as written. If the Resolution is approved and the Asset Purchase Agreement is executed, the closing will take place within forty-five days per contract. All closing costs will be paid by American Tower in accordance with Section 2-143(b)(4) of our Code of Ordinances. Once the funds are transferred, they will be set aside for future capital improvement to be determined by the City Council.

RESOLUTION 2021-30

A RESOLUTION OF THE CITY OF SOUTH DAYTONA, FLORIDA, DECLARING THE WIRELESS COMMUNICATION FACILITY (CELL TOWER) AT 1770 SEGRAVE STREET AS SURPLUS; APPROVING THE SALE OF THE WIRELESS COMMUNICATION FACILITY AND AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE THE NECESSARY CLOSING DOCUMENTS AND PERPETUAL EASEMENT TO COMPLETE THE TRANSFER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 1992, the city leased portion of 1770 Segrave Street to Bell South Mobility for construction of a Wireless Communication Facility, and;

WHEREAS, in 2017, the city assumed ownership of the tower after lease expiration with BellSouth Mobility; and

WHEREAS, the Wireless Communication Facility located at 1770 Segrave Street, South Daytona is no longer necessary, useful or suitable for municipal purposes; and

WHEREAS, per Section 2-150 of the City of South Daytona Code of Ordinances, should the City Council find the property is surplus and authorize the sale, “all costs incurred by the city associated with the sale or lease of city property, including but not limited to attorney fees, appraisal costs, engineering fees, shall be paid by the purchaser or lessee, unless the city council waives this requirement,” and;

WHEREAS, five (5) bids were received on Tuesday, August 17, 2021 where they were publicly opened in City Hall Council Chambers; and

WHEREAS, a staff selection committee comprised of the Finance Director, City Manager and City Attorney met at a publicly advertised, open meeting on Wednesday, August 25, 2021 at 3:30pm where they unanimously decided to request presentations from the two top ranking respondents, American Tower Corporation and TowerCo; and

WHEREAS, presentations were heard on Tuesday, August 31, 2021 at 1:00pm and the selection committee unanimously recommended the City Council enter into an agreement with American Tower Corporation for a sale price of \$2,725,000; and

WHEREAS, On Monday, September 13, 2021 the City Council awarded the sale of the Wireless Communication Facility (Cell Tower) to American Tower Corporation in the amount of \$2,725,000 contingent on the successful negotiation of an acceptable purchase agreement; and

WHEREAS, Staff has successfully negotiated an acceptable purchase agreement and recommends the City Council proceed with the Sale to American Tower Corporation.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA:

SECTION 1. The City Council of the City of South Daytona hereby:

- (1) Authorizes the conveyance of the Wireless Communication Facility at 1770 Segrave Street, South Daytona, Florida to American Tower Corporation, for a sum of \$2,725,000, pursuant to the terms of that certain Asset Purchase Agreement attached hereto as Exhibit "A", and authorizes the Mayor and City Manager to execute the Asset Purchase Agreement.
- (2) Authorizes the Mayor and City Manager to attend the closing on the sale of the Wireless Communication Facility and to execute the necessary closing documents on behalf of the City, including but not limited to the Easement Agreement that is an exhibit to the Asset Purchase Agreement.

SECTION 2. If any section, subsection, sentence, clause, phrase, or portion of this Resolution, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.

SECTION 3. That all resolutions made in conflict with this Resolution are hereby repealed.

SECTION 4. Effective Date. This resolution shall take effect immediately upon its passage and adoption.

THIS RESOLUTION APPROVED ON FIRST AND ONLY READING this 14th day of December 2021 by the City Council of the City of South Daytona, Florida.

CITY OF SOUTH DAYTONA, FLORIDA

William C. Hall, Mayor

ATTEST: _____
James L. Gillis Jr, City Manager

APPROVED AS TO FORM AND LEGALITY:

Wade Vose, City Attorney

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement") is entered into as of _____, 2021 ("Effective Date") by and between CITY OF SOUTH DAYTONA, a Florida municipality ("Seller") and AMERICAN TOWERS LLC, a Delaware limited liability company ("American Tower").

WHEREAS, Seller owns real property as more specifically described in Schedule 1 (the "Property") upon which Seller owns certain improvements used for a multi-user wireless communications tower facility set forth on Schedule 1(a) (the "Site"), including, but not limited to the telecommunications tower set forth on Schedule 1(b) (the "Tower"); and

WHEREAS, American Tower desires to purchase, and Seller desires to assign, sell and convey to American Tower the Assets (as defined below) as set forth in this Agreement,

NOW, THEREFORE, for good and valuable consideration, Seller and American Tower do hereby agree as follows:

1. **Purchased Assets.** Seller agrees to sell and convey to American Tower and American Tower agrees to purchase from Seller, on the terms and conditions set forth in this Agreement, Seller's entire right, title and interest in and to the following (collectively, the "Assets"):

(a) an exclusive perpetual easement within the Property and comprising the Site and consisting of a 3,679 square foot area, as set forth in Schedule 1(a), together with any and all easements for ingress, egress and utilities;

(b) the Tower, together with all tower foundations, equipment shelters, detuning equipment, generators, grounding, waveguides, light monitoring systems, security systems or alarms, power protection, utilities, fences, landscaping and other related improvements (collectively the "Tower Facilities");

(c) all of those leases, subleases, licenses and other agreements which grant others a right to use or occupy any portion of the Tower or Site, set forth in Schedule 1(c) of this Agreement (the "Collocation Agreements"), and any related correspondence or documentation;

(d) to the extent assignable, all of the Due Diligence Items that are delivered pursuant to Section 2 of this Agreement. Upon Closing, Seller will provide American Tower with original versions, where available, of all assigned Due Diligence Items.

2. **Due Diligence Deliverables.** The Seller will deliver the items relating to the Assets set forth in this Section 2, together with any additional information concerning Seller's ownership or operation of the Assets as American Tower may reasonably request (collectively, the "Due Diligence Items") within 48 hours of the Effective Date. The Due Diligence Items include the following:

(a) all Federal Aviation Administration and Federal Communications Commission applications, responses, approvals and registration numbers submitted or received, excluding any

FCC licenses, if any, held by Seller related to transmitting or receiving telecommunication signals at the Site;

(b) any zoning permits and approvals, variances, building permits and such other federal, state or local governmental approvals (including any notices of violation or termination) relating to the Site which have been granted, received or for which Seller has made application;

(c) any environmental assessments including Phase I reports, any environmental reports involving contemporaneous or subsequent intrusive testing, the “FCC Checklist” or related documents performed pursuant to National Environmental Policy Act requirements and any other information which may have been produced regarding the environmental condition of the Site or neighboring real property together with all related correspondence;

(d) any construction, engineering and architectural drawings and related site plans and surveys, including design drawings and specifications pertaining to the construction of the Tower Facilities;

(e) any geotechnical reports;

(f) sufficient data, and access to personnel and documentation, to perform a detailed proof of cash receipts and disbursements for the three most recent monthly periods;

(g) any non-disturbance and attornment agreements or similar agreements; and

(h) any title reports, commitments for title insurance, ownership and encumbrance reports, title opinion letters, copies of instruments in the chain of title or any other information which may have been produced regarding title.

3. **Purchase Price.**

(a) **Purchase Price.** The purchase price for the Assets will be **Two Million, Seven Hundred Twenty-Five Thousand and 00/100 U.S. Dollars (\$2,725,000.00)** (the “Purchase Price”).

(b) **Prorations.**

(i) Pre-paid rent and direct expenses, including but not limited to utilities, personal property taxes, rents, and real property taxes will be prorated between the parties as of 12:01 AM on the Closing Date, the proration to be made and paid on the Closing Date, with settlement of any remaining items to be made within 60 days following the Closing Date.

(ii) Notwithstanding the foregoing, in order to facilitate the transition of the Assets and Assumed Liabilities from Seller to American Tower, the closing statement for the purchase and sale of the Assets will reflect, and the Purchase Price will be adjusted accordingly, that for the two monthly periods following the Closing Date, Seller will collect any amounts due under the Collocation Agreements.

(c) Closing Costs. American Tower will pay any transfer taxes and recording fees associated with recording the Easement in the applicable real property recorder's office.

(d) Operation of Assets. The operation of the Assets through the Closing Date will be for the account of Seller and thereafter for the account of American Tower, provided that Seller will continue to manage the Assets through the Closing Date.

4. **Due Diligence Investigation of Site.** From the Effective Date to the Closing Date (the "Due Diligence Period"), at its own cost, American Tower and its representatives will have continued access to all of the Assets, the opportunity to satisfy itself that the Assets are suitable for American Tower's intended purposes, and Seller's consent to American Tower seeking additional information regarding the Assets from third parties including governmental agencies and entities.

5. **Seller's Operation Prior to Closing.** Seller agrees that, prior to Closing, Seller will:

(a) continue to operate the Site in the usual and ordinary course and in conformity in all material respects with all applicable laws, ordinances, regulations, rules, or orders, and will use its best efforts to preserve both the continued operation of the Assets and Seller's relationships with its customers, suppliers, and others having business relations with Seller related to the Assets;

(b) not sell or otherwise transfer or encumber any Assets, including any Assets acquired after entering into this Agreement, without American Tower's prior written approval;

(c) not amend any existing Collocation Agreement or enter into any new leases, subleases, licenses, sublicenses or other agreements for the use or occupancy of any space on the Site without American Tower's prior written approval;

(d) not cancel any debts or claims owed Seller with respect to any of the Assets without American Tower's prior written approval;

(e) not permit any liens, restrictions or encumbrances to attach to the Assets;

(f) maintain all of the Assets in their present condition, reasonable wear and tear and ordinary usage excepted and refrain from any addition, reconfiguration or relocation of equipment or other change to the Site without American Tower's prior written approval; and

(g) maintain all governmental permits and approvals affecting the Site or the operation of the Tower Facilities.

6. **Closing.**

(a) Time and Place. Subject to the satisfaction or waiver of the conditions set forth in Sections 11 and 12 hereof, the closing ("Closing") of the sale and purchase of the Assets and assumption of any Assumed Liabilities will take place on or before the date which is forty-five

(45) days from the full execution of this Agreement, or upon such other date that is mutually acceptable to the parties ("Closing Date"), by execution and delivery of all necessary documents by overnight mail, electronic mail or such other method mutually agreed to by the parties.

(b) Seller's Closing Deliverables. At the Closing, Seller will deliver to American Tower the following (the "Seller Deliverables"):

(i) Easement. A perpetual easement granting certain exclusive easement and non-exclusive access and utility easement rights to American Tower, in substantially the same form as set forth in Attachment A (the "Easement") (the Parties acknowledge that the Easement contains language permitting Seller to install equipment on the Tower and on the surface of the land area being conveyed by the Easement as more fully set forth in the Easement.);

(ii) Bill of Sale. A bill of sale from Seller conveying all of the Tower Facilities and Due Diligence Items to American Tower, in substantially the same form as set forth in Attachment B (the "Bill of Sale");

(iii) Assignment of Leases. One or more assignments of leases and licenses conveying all of the Collocation Agreements to American Tower in substantially the same form as set forth in Attachment C (the "Tenant Lease Assignment");

(iv) Authority Certificate. In a form reasonably acceptable to American Tower and its title company, a certificate of the secretary of Seller attesting to: (A) the organizational documents of Seller; (B) the resolutions or consents adopted by the board of directors of Seller or each of its members, as applicable, duly authorizing the execution, delivery and performance of this Agreement by Seller and the execution and delivery of Seller of all related instruments and documents; and (C) the signatures of the officers or authorized representatives of Seller who have been duly authorized on behalf of Seller to execute and deliver this Agreement and any related agreements;

(v) Third Party Consents. All required consents of third parties, including without limitation, the consent of the tenants, users or licensees under the Collocation Agreements to be assigned to and assumed by American Tower pursuant to the Tenant Lease Assignment, in form and substance reasonably acceptable to American Tower, (collectively, the "Consents");

(vi) FIRPTA Affidavit. An affidavit certifying that Seller is not a "foreign person" under Section 1445(f)(3) of the Code;

(vii) Lien Releases. All releases of liens, mortgages, financing statements, security interests and other encumbrances necessary to convey clear title to the Assets, except for the Permitted Liens;

(viii) Seller Bringdown Certificate. A certificate from a duly authorized officer of Seller certifying that the condition specified in item (e) of Section 11 of this Agreement is satisfied on the Closing Date; and

(ix) Miscellaneous. Any other documents as may reasonably be requested by American Tower prior to or post Closing in order to effectuate the transactions contemplated by this Agreement and to vest in American Tower the full legal and equitable title to all the Assets, including, without limitation, such customary affidavits, certificates and agreements as may be required for American Tower to obtain owners or lessee's title insurance coverage.

(c) American Tower's Closing Deliverables. At the Closing, American Tower will deliver or cause to be delivered to Seller (the "American Tower Deliverables"):

(i) Purchase Price. The Purchase Price by wire transfer subject to the adjustments and pro-rations set forth in this Agreement;

(ii) Tenant Lease Assignment. The Tenant Lease Assignment; and

(iii) American Tower Bringdown Certificate. A certificate from a duly authorized officer of American Tower certifying that the condition specified in item (b) of Section 12 of this Agreement is satisfied on the Closing Date.

7. **Liabilities**.

(a) Assumed Liabilities. American Tower agrees at Closing to assume and pay, discharge or perform, as appropriate, all obligations and liabilities that relate to the Assets transferred to American Tower at Closing to the extent that such obligations and liabilities arise out of or related to periods beginning on or following the Closing Date (the "Assumed Liabilities"), including:

(i) all insurance costs, taxes, charges and levies related to the Assets;

(ii) all obligations and liabilities of Seller in connection with the Collocation Agreements, subject to the terms and conditions of the Tenant Lease Assignment; and

(iii) those other liabilities and obligations of Seller specifically itemized on Schedule 7(a) of this Agreement.

(b) Excluded Liabilities. American Tower will not assume, agree to pay, discharge or perform, or incur, as the case may be, any liabilities that are not specifically included in the Assumed Liabilities (the "Excluded Liabilities"), including, without limitation:

(i) any liabilities or obligations arising out of the ownership and operation of the Assets prior to Closing;

(ii) any liabilities arising out of any breach, default or violation by Seller or its affiliates or representatives of any law or any provision of any agreement assumed by American Tower;

(iii) any liabilities of Seller or any of its affiliates related to its employees in their capacity as such;

(iv) taxes arising from or attributable to the ownership or operation of the Assets for any pre-Closing period;

(v) any taxes of the Seller for any period (except as otherwise expressly provided herein); or

(vi) any fines, interest or penalties incurred due to Seller's failure to timely satisfy the requirements related to liabilities not being assumed by American Tower.

8. **No Solicitation.** Prior to the earlier of the Closing Date or the termination of this Agreement in its entirety by American Tower, neither Seller, nor Seller's executive officers, nor any of its direct or indirect representatives or agents, will:

(a) solicit, initiate or encourage any other bid or offer for any of the Assets;

(b) enter into any agreement with respect to any other bid or offer for any of the Assets; or

(c) take any other action that may facilitate any inquiry or proposal that constitutes, or may lead to, any other bid or offer for any of the Assets.

9. **Representations and Warranties of Seller.** Seller represents and warrants to American Tower as follows:

(a) **Existence.** Seller is now, and on the Closing Date will be, a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Florida, with all requisite power and authority to own its properties and assets and carry on its business and is in good standing in each jurisdiction in which such qualification is required.

(b) **Power and Authorization.** Seller has full authority to execute and deliver this Agreement and any other agreement to be executed and delivered by Seller in connection with this Agreement and to carry out the transactions contemplated by this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary company and member action. No other proceedings by Seller are necessary to authorize this Agreement or to carry out the transactions contemplated by this Agreement. This Agreement constitutes a valid and binding agreement of Seller in accordance with its terms.

(c) **Conflict with Other Agreements, Consents and Approvals.** The execution and delivery by Seller of this Agreement and any related agreement and the consummation of the transactions contemplated by this Agreement will not:

(i) result in any violation, conflict or default, under: (A) the organizational documents of Seller, (B) any applicable law, statute, rule or regulation, (C) any contract to which

Seller is a party or may be bound, or (D) any judgment, order, injunction, decree or ruling of any court or governmental authority to which Seller is a party or subject;

(ii) give to others any interest or rights, including rights of termination, cancellation or acceleration; or

(iii) require any authorization, consent, approval, exemption or other action by any third party, any court or administrative or governmental body which has not been obtained or will not be obtained by the Closing Date, or any notice to or filing with any court or administrative or governmental body which has not been given or done.

(d) Compliance with Laws.

(i) Seller's use and occupancy of the Assets, wherever located, has been and is currently in compliance with all applicable federal, state, local or other governmental laws or ordinances, and all required permits and approvals have been obtained for the Site and the Tower Facilities, the non-compliance with which, or the violation of which, might have a material adverse effect on the Assets, the Assumed Liabilities or the financial condition, results of operations or anticipated business prospects of American Tower, and Seller has received no claim or notice of violation with respect thereto.

(ii) Without in any way limiting the generality of the foregoing, Seller has not been notified that it is a "potentially responsible party" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Resource Recovery Conservation and Recovery Act, as amended, or any similar federal or state law. Seller has not installed or used any above ground or underground storage tanks on the Site. Seller is in compliance with, and is subject to no liabilities under, any and all applicable laws, governmental rules, ordinances, regulations and orders pertaining to the presence, management, release, discharge, or disposal of toxic or hazardous waste material or substances, pollutants (including conventional pollutants) or contaminants, and the Site, the Tower Facilities, and the easements appurtenant thereto are free of any such waste, substances, pollutants or contaminants that are not in compliance with such laws, regulations, orders, rules or ordinances.

(e) No Bankruptcy. Seller has not: (i) made any assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors; (iii) suffered the appointment of a receiver to take possession of any of its assets; (iv) suffered the attachment or other judicial seizure of any of its assets; (v) admitted in writing its inability to pay its debts as they come due; or (vi) made an offer of settlement, extension or composition to its creditors generally.

(f) No Litigation. No claim, litigation, proceeding, or investigation is pending or, to Seller's knowledge, threatened against Seller that could affect any of the Assets being conveyed under this Agreement. If there has been any litigation (including pending or threatened) related to any of the Assets within the last three (3) years, Seller has provided American Tower with any correspondence, demands, summons, pleadings, judgments, settlement agreements and other documentation to describe such litigation and the disposition thereof. With respect to any of the

Assets, Seller has not entered into or received any consent decree, compliance order or administrative order issued pursuant to any and all applicable laws, governmental rules, ordinances, and regulations, including those pertaining to the presence, management, release, discharge, or disposal of toxic or hazardous waste material or substances, pollutants (including conventional pollutants) and contaminants.

(g) Validity and Enforceability of Collocation Agreements.

(i) Each current sublessee, licensee, user or occupant of the Site (each a “Collocator”) is bound by a Collocation Agreement;

(ii) the Collocation Agreements are valid, binding and enforceable agreements for a definite term;

(iii) neither the Seller nor any Collocator is in default under any of the terms of the Collocation Agreements and Seller has not received actual or constructive notice of the existence of any event which, with the passage of time or the giving of notice or both, would constitute a default under any of the Collocation Agreements;

(iv) all applicable rent and other charges and payments due Seller from each Collocator have been paid in full through the date hereof (except reimbursements for real estate taxes, insurance, utilities or other reimbursements, if any, due for fiscal periods to the extent not yet payable);

(v) no rent has been paid in advance on any Collocation Agreement;

(vi) each Collocator is making payment under the terms of a Collocation Agreement, and no rent aged over 30 days is due and owed to Seller by a Collocator;

(vii) no Collocator has provided any notice, whether oral, written or otherwise, that it intends to terminate its Collocation agreement;

(viii) no Collocation Agreement has been assigned or pledged as collateral by Seller;

(ix) Seller has no knowledge that any Collocator has any defenses, or rights to off-set against Seller; and

(x) the Collocation Agreements have not been amended, modified or assigned in any manner other than as disclosed to American Tower.

(h) Revenue and Expenses.

(i) as of the Closing Date, the annualized rent revenue (the “Rent Revenue”) due to the lessors or licensors pursuant to the Collocation Agreements will be a minimum of

Eighty-Seven Thousand Seven Hundred Seventy-Eight and 80/100 U.S. Dollars (\$87,778.80) as more specifically set forth on Schedule 1(c) of this Agreement;

(ii) except as specifically set forth in the Collocation Agreements, or pursuant to any agreement entered into with American Tower's consent pursuant to Sections 5(b) and 5(c) of this Agreement, there are no other agreements or understandings, whether written, oral or otherwise, which would result in the annualized gross revenue generated from the operation of the Assets being materially less than the Rent Revenue, or the annualized direct expenses of the Assets incurred to operate the Site being materially greater than the amounts customarily paid by Seller, and other than the Collocation Agreements, there are no expenses, agreements, obligations or understandings, whether written, oral or otherwise, related to the Assets other than those routine and customary expenses for utilities provided under customary rates and tariffs, insurance, personal property tax, real property tax, and standard monthly maintenance.

(i) Title.

(i) Seller has good and marketable fee simple title to the Site, subject only to liens, encumbrances or mortgages which will be discharged at or prior to the Closing and to such other encumbrances of record as do not individually or in the aggregate adversely impact the value or operation of any Site, the Assets or the Tower Facilities for American Tower's intended use (the "Permitted Liens");

(ii) Seller has good and marketable title to the Tower, Tower Facilities and all other Assets free and clear of any monetary liens, encumbrances or mortgages, subject only to the Permitted Liens;

(iii) Seller enjoys peaceful and undisturbed possession of the Assets; and

(iv) Seller has paid in full as of the date of this Agreement all sums due and owing those vendors which have performed services or provided materials in conjunction with the Site including but not limited to the costs incurred in the preparation of the Due Diligence Items.

(j) Brokerage. Seller has not employed any broker, finder or similar agent in connection with the transactions contemplated by this Agreement, or taken action that would give rise to a valid claim against American Tower for a brokerage commission, finder's fee, or similar compensation.

(k) Structure. To the best of Seller's knowledge, the Tower is free from any structural defects or limits which would prevent or materially obstruct the ability to either: (i) add at least one additional Collocator to the Tower; or (ii) use the Tower as a multi-user telecommunications tower.

(l) Other Matters.

(i) the access, easements, and the electricity or other utility services currently available to the Site are adequate for the present use of the Site and for any other use permitted by any

existing Collocation Agreement, and there is no existing condition, individually or in the aggregate, which may result in the termination of access, easements or utility services related to the Site;

(ii) the access route used to access the Site is sufficient to allow passage of normal vehicular traffic, including vehicular mounted cranes, without further modification or repair and Seller has full right and authority to utilize such route over all land between the Site and a public right of way;

(iii) the Assets include all rights, site documentation, assets and property necessary, material or currently primarily used to operate the Site and its associated Tower Facilities as currently operated;

(iv) the Site is not located within an area that has been designated by the Federal Insurance Administration, the Army Corps of Engineers, the Federal Emergency Management Administration or any other Governmental Authority as being subject to any special or increased flooding hazards;

(v) the Assets do not constitute substantially all of Seller's assets; and

(vi) Seller has delivered to American Tower the latest and binding versions of all contracts, documents, reports, deeds, leases, title insurance policies, title opinions, permits, authorizations, surveys, and Due Diligence Items relating to the Site and all such items are originals or true, correct and complete copies of originals.

(m) Description of the Assets. The information set forth on the schedules attached to this Agreement is accurate and complete.

(n) Changes in Condition. Between the Effective Date and the Closing Date, Seller will promptly disclose to American Tower in writing: (i) if any of the representations and warranties are no longer accurate; (ii) if the schedules to this Agreement are no longer accurate; (iii) any facts that would render any representations, warranties or schedules inaccurate; and (iv) any breach of any covenant of Seller contained herein.

10. **Representations and Warranties of American Tower.** American Tower represents and warrants as follows:

(a) Corporate Existence. American Tower is now, and on the Closing Date will be, a limited liability company duly organized, validly existing and in good standing under the laws of the Commonwealth of Delaware, with all requisite power and authority to enter into this Agreement and perform its obligations hereunder.

(b) Authorization. American Tower has full authority to execute and deliver this Agreement and any other agreement to be executed and delivered by American Tower in connection herewith and to carry out the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action. No other proceedings by American Tower

will be necessary to authorize this Agreement or the carrying out of the transactions contemplated hereby. This Agreement constitutes a valid and binding Agreement of American Tower in accordance with its terms.

(c) Conflict with Other Agreements, Consents and Approvals. With respect to: (i) the organizational documents of American Tower, (ii) any applicable law, statute, rule or regulation, (iii) any contract or agreement to which American Tower is a party; or (iv) any judgment, order, injunction, decree or ruling of any court or governmental authority to which American Tower is a party or subject, the execution and delivery by American Tower of this Agreement and any other agreement to be executed and delivered by American Tower in connection herewith and the consummation of the transactions contemplated hereby will not: (A) result in any material violation, conflict or default, or give to others any interest or rights, including rights of termination, cancellation or acceleration, or (B) require any authorization, consent, approval, exemption or other action by any court or administrative or governmental body which has not been obtained, or any notice to or filing with any court or administrative or governmental body which has not been given or done.

(d) Brokerage. American Tower has not employed any broker, finder or similar agent in connection with the transactions contemplated by this Agreement or taken action that would give rise to a valid claim against any party for a brokerage commission, finder's fee, or similar compensation. Notwithstanding anything in this Agreement to the contrary, American Tower will indemnify and hold Seller harmless for any breach of American Tower's representations, covenants or obligations in this Section 10(d), which representations, covenants and obligations will survive this Agreement.

(e) No Bankruptcy. American Tower has not: (i) made any assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors; (iii) suffered the appointment of a receiver to take possession of any of its assets; (iv) suffered the attachment or other judicial seizure of any of its assets; (v) admitted in writing its inability to pay its debts as they come due; or (vi) made an offer of settlement, extension or composition to its creditors generally.

11. Conditions Precedent to American Tower's Obligations. The obligations of American Tower to purchase the Assets is subject to the fulfillment, prior to or at the Closing Date, of each of the following conditions, any one or portion of which may be waived in writing by American Tower:

(a) Seller will have provided American Tower with the Due Diligence Items and American Tower will have completed its due diligence investigation of the Assets in accordance with Section 4 to its sole satisfaction;

(b) American Tower will have secured any and all other third party approvals necessary for it to close under this Agreement;

(c) between the Effective Date and the Closing Date, there will not have occurred and be continuing any material adverse change in the Assets;

(d) Seller will have delivered to American Tower the Seller Deliverables; and

(e) the representations and warranties of Seller will be true and correct as of the Closing Date and each of the agreements and covenants to be performed by Seller hereunder at or prior to the Closing Date will have been duly performed or satisfied in all material respects.

12. **Conditions Precedent to Seller's Obligations.** The obligations of Seller to sell the Assets is subject to the fulfillment, prior to or at the Closing Date, of each of the following conditions, any one or portion of which may be waived in writing by Seller:

(a) American Tower will have delivered to Seller the American Tower Deliverables; and

(b) The representations and warranties of American Tower will be true and correct until and as of the Closing Date and each of the agreements and covenants to be performed by American Tower hereunder at or prior to the Closing Date will have been duly performed or satisfied in all material respects.

13. **Risk of Loss.** The risk of loss, damage, or destruction to the Assets including any of the equipment, inventory, or other personal property to be conveyed to American Tower under this Agreement will be borne by Seller to the time of Closing. In the event of such loss, damage, or destruction, at American Tower's sole option and direction, Seller will replace the lost property or repair or cause to be repaired the damaged property to its condition prior to the damage or Seller will assign all insurance proceeds or policies to American Tower at Closing. Seller agrees to maintain fire and extended coverage casualty insurance through and including the Closing covering all of the Tower Facilities in an amount not less than the full replacement value of all of the Tower Facilities.

14. **Indemnification by Seller.**

(a) **Indemnification.** Seller hereby agrees to defend, indemnify, reimburse and hold American Tower, its successors and assigns (the "Indemnified Purchaser Parties"), harmless from and against any and all costs, damages, judgments, losses, claims, liabilities, deficiencies, diminution in value, lost profits, and any other expenses or obligations (including, without limitation, reasonable audit, expert and attorney's fees), but not including any incidental, special, punitive, or exemplary damages payable to third parties (each a "Loss" and collectively the "Losses") incurred by the Indemnified Purchaser Parties resulting from, related to or arising out of:

(i) the Excluded Liabilities;

(ii) any breach of any representation or warranty made by the Seller in this Agreement or in any certificate, schedule, statement, document or instrument delivered pursuant to this Agreement;

(iii) any breach or non-fulfillment of any agreement or covenant on the part of Seller under this Agreement; or

(iv) the business or operation of the Assets before 12:01 a.m. on the Closing Date.

(b) Notice. If any claim is asserted against any of the Indemnified Purchaser Parties that would give rise to a claim by any Indemnified Purchaser Party against Seller for indemnification under the provisions of this Section 14, then American Tower will promptly give written notice to Seller concerning such claim and Seller will, at no expense to the Indemnified Purchaser Parties, defend the claim.

(c) Compliance/Consistency with Sec. 768.28, Fla. Stat. The obligations of this Section 14, and any other indemnification, agreement to defend or hold harmless, or the like, by Seller provided in this Agreement, shall not be construed as a waiver of Seller's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Sec. 768.28, Fla. Stat., and subject to the procedural requirements set forth therein. Any other purported indemnification, agreement to defend or hold harmless, or the like, by Seller provided in this Agreement in derogation hereof shall be void and of no force or effect.

15. **Indemnification by American Tower.**

(a) Indemnification. American Tower agrees to defend, indemnify, and hold harmless Seller from and against any Losses resulting from, related to or arising out of:

(i) the Assumed Liabilities;

(ii) any breach of any representation or warranty made by American Tower in this Agreement or in any certificate, schedule, statement, document or instrument delivered pursuant to this Agreement;

(iii) any breach or non-fulfillment of any agreement or covenant on the part of American Tower under this Agreement; or

(iv) the business or operation of the Assets after 12:01 a.m. on the Closing Date.

(b) Notice. If any claim is asserted against Seller that would give rise to a claim by Seller against American Tower for indemnification under the provisions of this Section 15, then Seller will promptly give written notice to American Tower concerning such claim and American Tower will, at no expense to Seller, defend the claim.

16. **Survival of Representations, Warranties and Indemnities.** All representations, warranties and indemnities made in this Agreement or in any certificate, schedule, statement, document or instrument delivered pursuant to this Agreement will survive Closing.

17. **Confidential Information.** Neither party will disclose to third parties any confidential information received from the other in the course of investigating, negotiating, and

performing the transactions contemplated by this Agreement except as required by law, regulations or in accordance with the rules of a national securities exchange. In the event that there is no Closing, each party will promptly destroy all documents or other materials furnished by the other party or the other party's representatives constituting confidential information, together with all copies and summaries thereof in the possession or under their control, except as required by law.

18. **Miscellaneous Provisions.**

(a) **Notices.** Any notice under this Agreement will be in writing and will be effective when actually delivered in person or three days after being deposited in the U.S. mail, registered or certified, postage prepaid, one day after being deposited with a nationally recognized carrier service for overnight delivery, and addressed to the party(ies) at the address(es) stated in this Agreement or such other address as a party may designate by written notice to the other given in compliance with this section.

American Tower: American Towers LLC
 116 Huntington Avenue
 11th Floor
 Boston, MA 02116
 Attention: Legal Department

With a copy to: American Towers LLC
 10 Presidential Way
 Woburn, MA 01801
 Attention: Tower Acquisitions

Seller: City of South Daytona
 1672 South Ridgewood Avenue
 South Daytona, FL 32119
 Attn: City Manager

(b) **Time.** Time is of the essence of this Agreement.

(c) **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement will not limit that party's right to enforce the provision, nor will any waiver of any breach of any provision be a waiver of any succeeding breach of any provision or a waiver of the provision itself for any other provision.

(d) **Assignment.** Except as otherwise provided within this Agreement, no party may transfer or assign this Agreement without the prior written consent of the other party. Notwithstanding the forgoing, American Tower may freely assign this Agreement to its parent, or any of its subsidiaries or affiliates.

(e) **Law Governing; Venue.** This Agreement will be governed by and construed in accordance with the laws of the Florida without reference to conflicts of laws principles. Any

action or proceeding seeking to enforce any provisions of, or based on any right arising out of, this Agreement may only be brought against any of the parties in the courts of the state of Florida.

(f) Attorney Fees. In the event an arbitration, suit or action is brought by any party under this Agreement to enforce any of its terms, or in any related appeal, it is agreed that the prevailing party will be entitled to its reasonable attorneys' fees and costs to be fixed by the arbitrator, trial court, and/or appellate court.

(g) Cooperation. The parties will cooperate with each other in the preparation of all tax returns, questionnaires, applications, filings or other documents or fees payable in connection to filings and recordings related to this Agreement and the consummation thereof.

(h) Presumption. This Agreement will not be construed against any party due to the fact that the Agreement or any section thereof was drafted by or on behalf of such party.

(i) Titles and Captions. All article, section and paragraph titles or captions contained in this Agreement are for convenience only and will not be deemed part of the context nor affect the interpretation of this Agreement.

(j) Pronouns and Plurals. All pronouns and any variations will be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require.

(k) Entire Agreement. This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement.

(l) Agreement Binding. This Agreement will be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

(m) Further Action. The parties will execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement.

(n) Good Faith. The parties covenant, warrant and represent to each other good faith, and honesty in fact in the performance of all obligations of the parties pursuant to this Agreement. All material promises and covenants are mutual and dependent.

(o) Counterparts. This Agreement may be executed in several counterparts and all so executed will constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart. Furthermore, the parties may sign and deliver this Agreement by electronic means such as .pdf or similar format. Each party agrees that the delivery of the Agreement by electronic means will have the same force and effect as delivery of original signatures and that each party may use such electronic signatures as evidence of the execution and delivery of the Agreement by all parties to the same extent as an original signature.

(p) Parties in Interest. Nothing herein will be construed to be to the benefit of any third party, nor is it intended that any provision will be for the benefit of any third party.

(q) Savings Clause. If any provision of this Agreement, or the application of such provision to any person or circumstance, will be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, will not be affected thereby.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, American Tower and Seller have executed this Asset Purchase Agreement as of the date and year first above written.

AMERICAN TOWER:

AMERICAN TOWERS LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

SELLER:

CITY OF SOUTH DAYTONA,
a Florida Municipality

By: _____

Name: William C. Hall

Title: Mayor

Attest:

James L. Gillis, Jr., City Manager

SCHEDULE 1 THE PROPERTY

The following lots, pieces or parcels of land, lying and being in the County of Volusia and State of Florida, described as follows, to-wit:

All that part of Lots Sixty-eight (68) and sixty-nine (69) and the Southerly one-half (1/2) of Lot Seventy (70), Town of Blake as recorded in Plan Book One (1), Page Thirty-eight (38), Public records of Volusia County, Florida, as lies within twenty-five (25) feet at right angles and/or radially from the center line of a street to be known as Segrave Street, said center line being described as follows:

Beginning at a point in the North line of the South one-half (1/2) of said Lot Seventy (70), said point being one hundred twenty (120) feet Easterly from the East line of the one hundred (100) foot right-of-way of the Florida East Coast Railway as the same is now established; thence Southerly along a curve to the left, said curve having a radius of ninety-four and nine-tenths (94.9) feet, for an arc length of thirty-two and forty-six one-hundredths (32.46) feet and/or a central angle of nineteen degrees (19°), thirty-six minutes (36'), ten second (10"), to a point; the said point being thirty-three and eight-tenths (33.8) feet Southerly from the aforesaid North line of the South one-half (1/2) of Lot Seventy (70), and one hundred fourteen and seventeen one-hundredths (114.17) feet Easterly from the aforesaid right-of-way of the Florida East Coast Railway, as measured parallel to the said North line of the South one-half (1/2) of Lot Seventy (70), the said line bearing South sixty-four degrees (64°), fifty-eight minutes (58'), fifty seconds (50") West; thence South twenty-five degrees (25°), one minute (01'), ten seconds (10") East, a distance of four hundred (400) feet, more or less, to the point of a curve; thence Southerly along a curve to the left, having a radius of ninety-one and forty-three one-hundredths (91.43) feet, for an arc length of ninety-five and twenty-seven one-hundredths (95.27) feet, and/or a central angle of fifty-eight degrees (58°), forty-two minutes (42'), twenty seconds (20"), to a point in the South line of aforesaid Lot Sixty-eight (68); the said point being one hundred seventy-seven (177) feet Easterly from the aforesaid Easterly right-of-way line of the Florida East Coast Railway; and all that piece and parcel of land lying now on the above and foregoing parcel and the Florida East Coast Railway right-of-way.

Parcel ID#: 534416000681 (3559282)

This being the same property conveyed to the City of South Daytona, a municipal corporation from Florida Land Estates, Inc., et al., in a Quit Claim Deed dated June 23, 1955 and recorded September 22, 1955 in Book 538 Page 592 in Volusia County, Florida.

SCHEDULE 1(a)
THE SITE

[TO BE ATTACHED UPON COMPLETION OF SURVEY]

CONSISTS OF A 3,679 SQUARE FOOT AREA

SCHEDULE 1(b)
TOWER

Site Number	Tower Name	Land Tenure	State (Abbreviation)	Structure Type	Height	Latitude	Longitude
211196	South Daytona 2	Easement	FL	Self-Support	190 ft.	29.178526	-81.009131

SCHEDULE 1(c)

COLLOCATION AGREEMENTS

*Licensor under each Collocation Agreement is Seller

Site Name	Site #	Licensee	Agreement Date	Commencement Date	Monthly Rent at Closing	Annual Rent at Closing
South Daytona 2	211196	T- Mobile South LLC	November 8, 2017	September 1, 2017	\$3,278.20	\$39,338.20
South Daytona 2	211196	New Cingular Wireless PCS, LLC	December 12, 2017	December 12, 2017	\$4,036.70	\$48,440.60
					\$7,314.90	\$87,778.80

SCHEDULE 7(a)
ASSUMED LIABILITIES

NONE

ATTACHMENT A
FORM OF EASEMENT

[See Form on Following Page]

Prepared by and Return to:
Land Management
Site No: 211196
Site Name: South Daytona 2
c/o American Tower
10 Presidential Way
Woburn, MA 01801

Prior Recorded Lease
Reference:
Book _____, Page _____
Document No: _____
State of Florida
County of Volusia

(Recorder's Use Above this Line)

STATE OF FLORIDA

Assessor's Parcel No.: 44-15-33-16-00-0681

COUNTY OF VOLUSIA

EASEMENT AGREEMENT

This Easement Agreement ("***Agreement***") dated as of _____, 2021 (the "***Effective Date***"), by and between CITY OF SOUTH DAYTONA, a Florida municipality, with a mailing address of 1672 South Ridgewood Avenue, South Daytona, FL 32119 ("***Grantor***") and AMERICAN TOWERS LLC, a Delaware limited liability company with a mailing address of American Towers LLC, 10 Presidential Way, Woburn, MA 01801, Attn: Land Management ("***Grantee***").

BACKGROUND

Grantor is the owner of the real property described in **Exhibit "A"** attached hereto and by this reference made a part hereof (the "***Premises***"). Grantor desires to grant to Grantee certain easement rights with respect to the Premises, as more particularly described below, and subject to the terms and conditions of this Agreement.

AGREEMENTS

For and in consideration of the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Grant of Easements.** Grantor, for itself and its heirs, personal representatives, successors and assigns, hereby grants, bargains, sells, transfers and conveys to Grantee, its successors and/or

assigns: (i) a perpetual, exclusive easement (the “***Exclusive Easement***”) in and to that portion of the Premises more particularly described on **Exhibit “B”** attached hereto and by this reference made a part hereof (the “***Exclusive Easement Area***”); and (ii) a perpetual, non-exclusive easement (the “***Access and Utility Easement***”; the Exclusive Easement and Access and Utility Easement, collectively, the “***Easements***”) in and to that portion of the Premises more particularly described on **Exhibit “C”** attached hereto and by this reference made a part hereof (the “***Access and Utility Easement Area***”; the Access and Utility Easement Area and Exclusive Easement Area, collectively, the “***Easement Areas***”). The Easement Areas shall be used for the purposes set forth herein and shall expressly include that portion of the Premises upon which any of Grantee’s fixtures, structures, equipment or other personal property are located as of the date of this Agreement.

2. **Private Easement.** Nothing in this Agreement shall be deemed to be a dedication of any portion of the Easement Areas for public use. All rights, easements and interests herein created are private and do not constitute a grant for public use or benefit.

3. **Successors Bound.** This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, personal representatives, lessees, successors and assigns. It is the intention of the parties hereto that all of the various rights, obligations, restrictions and easements created in this Agreement shall run with the affected lands and shall inure to the benefit of and be binding upon all future owners and lessees of the affected lands and all persons claiming any interest under them.

4. **Duration.** The duration of this Agreement and the Easements granted herein (the “***Term***”) shall be perpetual, unless Grantee provides written, recordable notice of Grantee’s intent to terminate this Agreement and the Easements described herein, in which event this Agreement, the Easements, and all obligations of Grantee hereunder shall terminate upon Grantee’s recordation of any such notice. For the avoidance of doubt, Grantee may, in its sole and absolute discretion, unilaterally terminate this Agreement, the Easements, and all of Grantee’s obligations hereunder without the approval of or consent of Grantor as provided in the immediately preceding sentence.

5. **Easement Consideration.** Grantor hereby acknowledges the receipt, contemporaneously with the execution hereof, of all consideration due hereunder. Accordingly, no additional consideration shall be due during the Term.

6. **Use of Easement Areas.**

a. **Exclusive Easement.** The Exclusive Easement Area may be used by Grantee and any of its affiliates, customers, tenants, subtenants, lessees, licensees, successors, and/or assigns together with any of the employees, contractors, consultants, and/or agents of the foregoing (collectively, the “***Permitted Parties***”) for the purposes of installing, constructing, maintaining, operating, modifying, repairing and/or replacing improvements, equipment, structures, fixtures, a communications tower, antennae and other personal property as Grantee may deem necessary or appropriate, which may be located on or in the Exclusive Easement Area from time to time, for the facilitation of communications and other related uses. Any such property, including any equipment, structures, fixtures and other personal property currently on or in the Exclusive Easement Area, shall not be deemed to be part of the Premises, but instead shall remain the property of Grantee or the applicable Permitted Parties. At any time during the Term and at any time within 180 days after the termination of this Agreement, Grantee and/or any applicable Permitted Parties may remove their equipment, structures, fixtures and other personal property

from the Easement Areas. Grantee may make, without the consent or approval of Grantor, any improvements, alterations or modifications to the Exclusive Easement Area as are deemed appropriate by Grantee, in its sole and absolute discretion. Grantee shall have the unrestricted and exclusive right, exercisable without the consent or approval of Grantor, to lease, sublease, license, or sublicense any portion of the Exclusive Easement Area, but no such lease, sublease or license shall relieve or release Grantee from its obligations under this Agreement. Grantor shall not have the right to use the Exclusive Easement Area for any reason and shall not disturb Grantee's nor any Permitted Parties' right to use the Exclusive Easement Area in any manner. Grantee may, at Grantee's sole and exclusive option, construct a fence around all or any part of the Exclusive Easement Area and shall have the right to prohibit anyone, including Grantor, from entry into such Exclusive Easement Area.

b. Access and Utility Easement. The Access and Utility Easement shall be used by Grantee and the Permitted Parties for pedestrian and vehicular (including trucks) ingress and egress to and from the Exclusive Easement Area at all times during the Term on a seven (7) days per week, twenty-four (24) hours per day basis. Grantee shall have the non-exclusive right to construct, reconstruct, add, install, improve, enlarge, operate, maintain and remove overhead and underground utilities, including, without limitation, electric, fiber, water, gas, sewer, telephone, and data transmission lines (including wires, poles, guys, cables, conduits and appurtenant equipment) in, on, or under the Access and Utility Easement Area in order to connect the same to utility lines located in a publicly dedicated right of way. Notwithstanding the foregoing, Grantor shall not in any manner prevent, disturb, and/or limit access to the Access and Utility Easement Area or use of the Access and Utility Easement by Grantee or any of the Permitted Parties, and Grantor shall not utilize the Access and Utility Easement Area in any manner that interferes with Grantee's or any of the Permitted Parties' use of such area as expressly provided herein. In the event the Access and Utility Easement Area cannot, does not, or will not fully accommodate the access and utility needs of the Grantee during the Term, or if it is reasonably determined by Grantor or Grantee that any utilities that currently serve the Exclusive Easement Area are not encompassed within the description of the Access and Utility Easement Area as set forth herein, Grantor and Grantee agree to amend the description of the Access and Utility Easement Area provided herein to include the description of such areas and/or to relocate the Access and Utility Easement, for no additional consideration, and to create a revised legal description for the Access and Utility Easement Area that will reflect such relocation. The Access and Utility Easement and the rights granted herein with respect to the same shall be assignable by Grantee to any public or private utility company to further effect this provision without the consent or approval of Grantor.

7. Assignment. Grantee may assign this Agreement, in whole or in part, to any person or entity at any time without the prior written consent or approval of, or notice to, Grantor, including, but not limited to, an affiliate of Grantee. If any such assignee agrees to assume all of the obligations of Grantee under this Agreement, then Grantee will be relieved of all of its obligations, duties and liabilities hereunder.

8. Covenants; Representations; Warranties.

a. Grantor hereby represents and warrants to Grantee the following: (i) Grantor is the owner in fee simple of the Easement Areas, free and clear of all liens and encumbrances; (ii) Grantor has the full authority and power to enter into and perform its obligations under this Agreement, and, to the extent applicable, the person or persons executing this Agreement on behalf of Grantor have the authority to enter into and deliver this Agreement on behalf of Grantor; (iii) to the best of

Grantor's knowledge, there is no condemnation proceeding pending or threatened against all or any portion of the Premises; (iv) no claim, litigation, proceeding, or investigation is pending or, to the best of Grantor's knowledge, threatened against Grantor or all or any portion of the Premises that could affect Grantee's use of the Easement Areas as contemplated herein; (v) Grantor has not filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors or suffered the appointment of a receiver to take possession of substantially all of its assets; (vi) to the best of Grantor's knowledge, the Premises is in compliance with all applicable laws, ordinances and regulations, including those governing Hazardous Materials (as defined below); (vii) to the best of Grantor's knowledge, there is no proceeding pending or threatened to change the zoning status of the Premises; (viii) Grantor is not indebted to any party, including, without limitation, any local or state or the federal government for which a lien or claim of lien has been or could be asserted against the all or any portion of the Premises; (ix) there are no leases, written or oral, affecting all or any portion of the Easement Areas, except for any agreements entered into between Grantee or its affiliates and third parties; (x) the Easement Areas do not constitute or form a part of Grantor's homestead, or, in the event that the Easement Areas are located upon homestead property, then Grantor's spouse (if applicable) shall join in the execution of this Agreement; (xi) Grantor has paid all taxes, assessments, charges, fees, levies, impositions and other amounts relating to the Premises due and payable prior to the Effective Date; and (xii) Grantee shall peaceably and quietly hold, exercise, and enjoy the Easements during the Term without any hindrance, molestation or ejection by any party whomsoever.

b. During the Term, Grantor shall pay when due all real property, personal property, and other taxes, fees and assessments attributable to the Premises, including the Easement Areas. Grantee hereby agrees to reimburse Grantor for any personal property taxes in addition to any increase in real property taxes levied against the Premises, to the extent both are directly attributable to a change in the tax exempt status of the Premises, or to Grantee's improvements on the Easements (but not, however, taxes or other assessments attributable to periods prior to the date of this Agreement), provided, however, that Grantor must furnish written documentation (the substance and form of which shall be reasonably satisfactory to Grantee) of such personal property taxes or real property tax increase to Grantee along with proof of payment of same by Grantor. Anything to the contrary notwithstanding, Grantee shall not be obligated to reimburse Grantor for any applicable taxes unless Grantor requests such reimbursement within one (1) year after the date such taxes became due. Grantor shall submit requests for reimbursement in writing to: *American Tower Corporation, Attn: Landlord Relations, 10 Presidential Way, Woburn, MA 01801* unless otherwise directed by Grantee from time to time. Subject to the requirements set forth in this Section, Grantee shall make such reimbursement payment within forty-five (45) days of receipt of a written reimbursement request from Grantor. Grantee shall pay applicable personal property taxes directly to the local taxing authority to the extent such taxes are billed and sent directly by the taxing authority to Grantee. If Grantor fails to pay when due any taxes affecting the Premises as required herein, Grantee shall have the right, but not the obligation, to pay such taxes on Grantor's behalf and: (i) deduct the full amount of any such taxes paid by Grantee on Grantor's behalf from any future payments required to be made by Grantee to Grantor hereunder; (ii) and demand reimbursement from Grantor, which reimbursement payment Grantor shall make within ten (10) days of such demand by Grantee; and/or (iii) collect from Grantor any such tax payments made by Grantee on Grantor's behalf by any lawful means.

c. Without Grantee's prior written consent, which consent may be withheld or conditioned in Grantee's sole and absolute discretion, Grantor shall not (i) cause any portion of the Easement Areas to be legally or otherwise subdivided from any master tract of which it is currently a part, or (ii) cause any portion of the Easement Areas to be separately assessed for tax purposes.

d. Grantor shall not suffer, grant, create, transfer, or convey (or cause to be suffered, granted, created, transferred, or conveyed) any claim, lien, encumbrance, easement, interest, restriction or other charge or exception to title to the Easement Areas or any other portion of the Premises that would adversely affect Grantee's use of the Easement Areas as contemplated herein.

e. Grantor shall not, and shall not permit any third party to use, generate, store, or dispose of any Hazardous Materials on, under, about, or within the Premises in violation of any Environmental Laws (as defined below). As used herein, "**Hazardous Materials**" shall mean any: contaminants, oils, asbestos, PCBs, hazardous substances, or wastes as defined by federal, state, or local environmental laws, regulations, or administrative orders or other materials the removal of which are required or the maintenance of which are prohibited or regulated by any federal, state, or local governmental authorities having jurisdiction over all or any portion of the Premises. As used herein, "**Environmental Laws**" shall mean any laws, regulations, ordinances, and/or administrative orders applicable to all or any portion of the Premises, which govern Hazardous Materials.

f. Grantee shall not, and shall not permit any third party to use, generate, store, or dispose of any Hazardous Materials on, under, about, or within the Easement Areas in violation of any Environmental Laws.

g. Grantor hereby agrees to and does indemnify and shall defend and hold harmless Grantee and its officers, directors, shareholders, agents, contractors, and attorneys for, from, and against all damages asserted against or incurred by any of them by reason of or resulting from a breach by Grantor of any representation, warranty or covenant of Grantor contained herein. The obligations of this paragraph, and any other indemnification, agreement to defend or hold harmless, or the like, by Grantor provided in this Agreement, shall not be construed as a waiver of Grantor's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Sec. 768.28, Fla. Stat., and subject to the procedural requirements set forth therein. Any other purported indemnification, agreement to defend or hold harmless, or the like, by Grantor provided in this Agreement in derogation hereof shall be void and of no force or effect.

h. The representations, warranties, covenants, agreements, and indemnities contained in this section shall survive the execution and delivery of this Agreement indefinitely.

9. Non-Disturbance. During the Term, Grantor will not improve or alter the Premises or grant, convey, transfer, or otherwise enter into any other easement, ground lease, lease, license, or similar agreement or contract with respect to any portion of the Premises if the same would interfere with, disturb, limit, or impair Grantee's permitted use of the Easement Areas. Grantor hereby acknowledges that Grantee and the Permitted Parties are currently utilizing the Exclusive Easement Area for the purpose of transmitting and receiving communication signals, including, but not limited to, wireless telecommunications signals. Grantor and Grantee recognize and acknowledge that Grantee's use of the Easement Areas set forth in this Agreement would be materially frustrated if the communications signals were blocked or otherwise interfered with, or if access and/or utilities to and from the Exclusive Easement Area were inhibited, even if temporarily. Grantor, for itself, its successors and assigns, hereby agrees to use its best efforts to

prevent the occurrence of any of the foregoing and shall promptly undertake any remedial action necessary to comply with the terms and provisions of this Section. Grantee shall have the express right, among others, to seek an injunction to prevent any of the activities prohibited by this Section.

10. Grantee's Securitization Rights; Estoppel. Grantor hereby consents to the granting by Grantee of one or more leasehold mortgages, collateral assignments, liens, and/or other security interests (collectively, a “**Security Interest**”) in Grantee's interest in this Agreement and all of Grantee’s property and fixtures attached to and lying within the Exclusive Easement Area and further consents to the exercise by Grantee's mortgagee (“**Grantee’s Mortgagee**”) of its rights to exercise its remedies, including without limitation foreclosure, with respect to any such Security Interest. Grantor shall recognize the holder of any such Security Interest of which Grantor is given prior written notice (any such holder, a “**Holder**”) as “Grantee” hereunder in the event a Holder succeeds to the interest of Grantee hereunder by the exercise of such remedies. Grantor further agrees to execute a written estoppel certificate within thirty (30) days of written request of the same by Grantee or Holder.

11. Notices. All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth below:

To Grantee: American Towers, LLC
c/o American Tower
10 Presidential Way
Woburn, MA 01801

To Grantor: City of South Daytona
1672 South Ridgewood
Avenue
South Daytona, FL 32119
Attn: City Manager

With copy to: American Towers, LLC
c/o American Tower
116 Huntington Avenue
Boston, MA 02116
Attn: Legal Department

Grantor or Grantee, by thirty (30) days prior written notice to the other in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.

12. Force Majeure. The time for performance by Grantor or Grantee of any term, provision, or covenant of this Agreement shall automatically be deemed extended by time lost due to delays resulting from strikes, civil riots, floods, labor or supply shortages, material or labor restrictions by governmental authority, litigation, injunctions, and any other cause not within the control of Grantor or Grantee, as the case may be.

13. Miscellaneous. This Agreement shall be recorded at the sole expense of Grantee and shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth. The captions and headings herein are for convenience and shall not be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions, scope or intent of this Agreement. This

Agreement and any other documents executed in connection herewith, constitute the entire understanding between the parties with regard to the subject matter hereof and there are no representations, inducements, conditions, or other provisions other than those expressly set forth herein. Grantee has not provided any legal or tax advice to Grantor in connection with the execution of this Agreement. This Agreement may not be modified, amended, altered or changed in any respect except by written agreement that is signed by each of the parties hereto.

14. Cumulative Remedies. Except as otherwise expressly provided herein, each and every one of the rights, benefits and remedies provided to Grantor or Grantee in this Agreement, or in any instrument or documents executed pursuant to this Agreement, are cumulative and shall not be exclusive of any other of said rights, remedies and benefits allowed by law or equity to Grantor or Grantee.

15. Counterparts. This Agreement may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though Grantor and Grantee are not signatories to the original or the same counterpart.

16. Severability. Should any part or provision of this Agreement be rendered or declared invalid by a court of competent jurisdiction, such invalidation of such part or provision shall not invalidate the remaining portions of the Agreement, and they shall remain in full force and effect and this Agreement shall be construed as if such part or provision had been so limited or as if such provision had not been included herein, as the case may be. Additionally, if any laws, rules or regulations promulgated by any state, county or local jurisdiction, including without limitation those concerning zoning, subdivision or land use, or should any court of competent jurisdiction, make the sale of the Easements herein either void or voidable, Grantor agrees that upon the written request of Grantee, the parties shall execute a reasonably acceptable ground lease between Grantor, as landlord, and Grantee, as tenant (with the Exclusive Easement area being the leased premises therein, and the Access and Utility Easement area remaining a non-exclusive easement for access and utility purposes) for uses consistent with those set forth herein. The parties agree that no additional consideration shall be paid to Grantor for entering into such a lease and said lease must (a) expressly provide that Grantee shall not be required to obtain the consent of Grantor to enter into any sublease or license of any portion of the leased premises or to permit sublessees or licensees to utilize the non-exclusive easement for access and utilities, (b) be for a term of ninety-nine (99) years, or as long as permitted by applicable law.

17. Attorney's Fees. If there is any legal action or proceeding between Grantor and Grantee arising from or based on this Agreement, the non-prevailing party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorney's fees and disbursements, actually incurred by such prevailing party in connection with such proceeding and in any appeal in related thereto. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorney's fees and disbursements shall be included in and as a part of such judgment.

18. Government Approvals/Applications. Grantor hereby covenants and agrees that, acting solely in its capacity as owner of the Premises, (a) neither Grantor nor any affiliate of Grantor shall at any time oppose in any manner (whether at a formal hearing, in written documentation, or otherwise) any zoning, land use or building permit application of Grantee and (b) Grantor shall

promptly cooperate with Grantee in making application for and/or otherwise obtaining all licenses, permits, and any other necessary approvals that may be required for Grantee's intended use of the Easement Areas. The parties acknowledge and agree that Grantor is also the local government entity possessing zoning, land use, and permitting authority over the Premises, and that under Florida law, local governments may not contract away their police powers. As such, this section shall not be construed to limit Grantor in the exercise of its police powers or regulatory authority, or to guarantee or require that Grantor approve a given permit application.

19. Further Acts; Attorney-In-Fact. Grantor, at Grantee's sole cost and expense, shall cooperate with Grantee in executing any documents necessary to protect Grantee's rights under this Agreement or Grantee's use of the Easements and to take such action as Grantee may be reasonably required to effect the intent of this Agreement. Grantor hereby irrevocably appoints Grantee as Grantor attorney-in-fact coupled with an interest to prepare, execute, deliver, and submit land-use, building permit and zoning applications related to Grantee's permitted use of the Easement Areas, on behalf of Grantor, to federal, state and local governmental authorities.

20. Survey. Grantee may elect, at Grantee's expense, to cause a boundary, as-built or similar survey of all or any portion of the Easement Areas (the "**Survey**") to be prepared by a surveyor duly licensed under the laws of the state in which the Premises is located. Grantor further agrees that upon written notice from Grantee to Grantor, Grantee may elect, in Grantee's sole and absolute discretion, to replace Exhibit B and Exhibit C with a revised Exhibit B and Exhibit C depicting and/or describing the Exclusive Easement Area and Access and Utility Easement Area, as applicable, in accordance with the Survey prepared at Grantee's election.

21. Waiver. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL GRANTOR OR GRANTEE BE LIABLE TO THE OTHER FOR, AND GRANTOR AND GRANTEE HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, THE RIGHT TO RECOVER INCIDENTAL, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE OR LOSS OR BUSINESS OPPORTUNITY), PUNITIVE, EXEMPLARY, AND SIMILAR DAMAGES.

22. Condemnation. In the event Grantor receives notification of any condemnation proceeding affecting the Easement Areas, or any portion thereof, Grantor shall provide notice of the proceeding to Grantee within forty-eight (48) hours. If a condemning authority takes all of the Easement Areas, or any portion thereof, Grantee shall be entitled to pursue Grantee's own award in the condemnation proceeds, which for Grantee will include, where applicable, the value of its communications facility, moving expenses, consideration paid to Grantor for the Easements, and business dislocation expenses.

23. Grantor's Use of Grantee's Tower and Exclusive Easement Area. Subject to the terms set forth herein, Grantee hereby grants to Grantor (for no rental charge, occupancy or license fee owed to Grantee) a non-exclusive license to install, maintain, and operate radio equipment on the communications tower owned by Grantee (the "**Tower**") together with any required equipment cabinets and improvements required on the ground within the Exclusive Easement Area for the

sole purpose of Grantor providing municipal public services. Grantor's right to install such equipment is subject to the following conditions:

- a. Grantor must first provide a detailed list of all proposed equipment to be installed on the Tower and all equipment/improvements to be installed in the Exclusive Easement Area using Grantee's application forms and system;
- b. At the time of Grantor's request to install equipment, there is vacant space available on the Tower and within the Exclusive Easement Area to accommodate Grantor's proposed equipment;
- c. Grantor's proposed equipment must not present risk of interference with any then-existing equipment of any other party located on the Tower and within the Exclusive Easement Area (including without limitation, radio frequency interference);
- d. Grantor's proposed equipment must not result in structural alterations or improvements to the Tower being required in order to accommodate Grantor's proposed equipment (as determined by American Tower in its sole and absolute discretion and where applicable, utilizing industry-standard engineering guidelines), or if structural alterations are required, Grantor shall agree to pay for all costs associated with such structural alterations required to accommodate Grantor's equipment;
- e. The acquisition, installation, maintenance, repair, operation and removal of all equipment installed by Grantor on the Tower and in the Exclusive Easement Area will be at Grantor's sole cost and expense and Grantor must utilize contractors pre-approved by Grantee;
- f. Grantor executes a license agreement (with no rental or license fees due and payable to Grantee) for the equipment to be installed on the Tower and within the Exclusive Easement Area and Grantor must follow all terms and conditions in said license agreement (as revised to be consistent with Sec. 768.28, Fla. Stat.) including, without limitation, those provisions addressing access and reconfiguration of Grantor's equipment.

[END OF DOCUMENT – SIGNATURE PAGES AND EXHIBITS TO FOLLOW]

AMERICAN TOWERS LLC,
a Delaware limited liability company

Witnesses:

By: _____
Name:
Title:

Name:

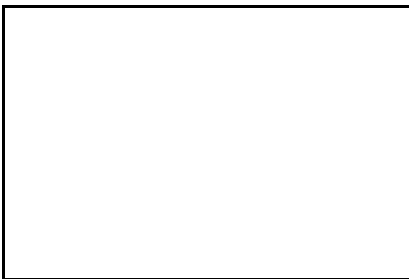
Name:

COMMONWEALTH OF MASSACHUSETTS

)
) ss.
)

COUNTY OF MIDDLESEX

On this _____ day of _____, 202____, before me, the undersigned notary public, personally appeared _____, _____ of American Towers LLC proved to me through satisfactory evidence of identification, which was a driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



(Use this space for notary stamp/seal)

Notary Public

Print Name: _____

My commission expires _____

EXHIBIT “A”
The Premises

This Exhibit A may be replaced by descriptions and/or depictions from an As-Built Survey conducted by Grantee at Grantee’s option that depict and/or describe the Premises

[TO BE ATTACHED UPON COMPLETION OF SURVEY]

EXHIBIT “B”
Exclusive Easement Area

This Exhibit B may be replaced with descriptions and/or depictions from an As-Built Survey conducted by Grantee at Grantee’s option that depict and/or describe the Exclusive Easement Area, and if applicable, guy wire and guy anchor easements

[TO BE ATTACHED UPON COMPLETION OF SURVEY]

EXHIBIT “C”
Access and Utility Easement Area

This Exhibit C may be replaced with descriptions and/or depictions from an As-Built Survey conducted by Grantee at Grantee’s option that depict and/or describe the Access and Utility Easement Area

All existing utility and access easements from Exclusive Easement Area to a public right of way including but not limited to:

[TO BE ATTACHED UPON COMPLETION OF SURVEY]

ATTACHMENT B
FORM OF BILL OF SALE

[See form on following pages]

BILL OF SALE

THIS BILL OF SALE is executed and delivered effective as of _____, 2021 (the "Effective Date") by and among **CITY OF SOUTH DAYTONA**, a Florida municipality ("Seller") and **AMERICAN TOWERS LLC**, a Delaware limited liability company ("American Tower").

WHEREAS, pursuant to the terms of that certain Asset Purchase Agreement dated as of _____, 2021 (the "Agreement") by and among the parties to this Bill of Sale, the Seller agreed to sell, convey, assign, transfer and deliver to American Tower the Assets (as defined in the Agreement).

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt of which is hereby acknowledged, the Seller, by these presents, does hereby sell, convey, assign, transfer, and deliver to American Tower all of the Seller's right, title and interest in and to the Assets. The Assets include, without limitation:

(i) Permits. All permits issued by any governmental authority ("Permits") that are necessary for, or were otherwise obtained in connection with, the construction, use, or operation of the Assets issued to or held by any Seller, to the extent that such Permits may be assigned.

(ii) Contracts, Records and Documentation. All of Seller's interest in any contracts, records and documentation relating to the Assets.

(iii) Improvements. All improvements related to the Assets, including without limitation, the Tower listed on Schedule 1 to this Bill of Sale.

The Assets also include certain other real property interests and tenant leases and licenses being transferred simultaneously herewith.

Seller hereby represents and warrants that the Assets are free from all liens, encumbrances, security interests and adverse claims.

[Remainder of Page Intentionally Left Blank]

TO HAVE AND TO HOLD the Assets unto American Tower, its successors and assigns to and for its and their use and benefit forever.

IN WITNESS WHEREOF, the Seller has executed and delivered this Bill of Sale effective as of the Effective Date.

SELLER:

CITY OF SOUTH DAYTONA,
a Florida municipality

By: _____

Name: William C. Hall

Title: Mayor

Attest:

James L. Gillis, Jr., City Manager

SCHEDULE 1

Tower

Site Number	Tower Name	Land Tenure	State (Abbreviation)	Structure Type	Height	Latitude	Longitude
211196	South Daytona 2	Easement	FL	Self-Support	190 ft.	29.178526	-81.009131

ATTACHMENT C

FORM OF ASSIGNMENT OF LEASES AND LICENSES AGREEMENT

[see form on following pages]

ASSIGNMENT OF LEASES AND LICENSES AGREEMENT

This Assignment of Leases and Licenses Agreement ("Assignment") is made and entered into effective as of the ____ day of _____, 2021 (the "Effective Date"), by and between **CITY OF SOUTH DAYTONA**, a Florida municipality ("Assignor"), and **AMERICAN TOWERS LLC**, a Delaware limited liability company ("American Tower").

WITNESSETH:

WHEREAS, Assignor and American Tower have entered into an Asset Purchase Agreement dated _____, 2021, as amended (the "Agreement"), which contemplates, inter alia, the conveyance, assignment, transfer and delivery of certain of Assignor's tower assets, including leases, licenses and other similar agreements with third parties granting such parties the right to install certain communications antennas and other equipment on the tower assets, including ground space in the vicinity of the tower facilities including, but not limited to, the Collocation Agreements listed on Exhibit A attached hereto and incorporated herein by reference (collectively, the "Collocation Agreements"); and

WHEREAS, Assignor desires to assign the Collocation Agreements to American Tower, and American Tower desires to acquire and assume Assignor's rights and obligations under such Collocation Agreements in connection with closing under the Agreement.

NOW, THEREFORE, for and in consideration of the foregoing, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereto agree as follows:

1. Recitals. The recitals set forth above are incorporated herein by reference and made a part of this Assignment.
2. Assignment and Assumption. Assignor does hereby assign, transfer, set over, and deliver to American Tower all of Assignor's rights, title and interests in and to the Collocation Agreements. American Tower does hereby accept, assume and agree to be bound by all the terms and conditions which are the responsibility of the lessor or licensor under the Collocation Agreements, and which arise, are incurred, or are required to be performed from and after the date of this Assignment. In the event a Collocation Agreement is not listed on Exhibit A, Assignor also hereby assigns, transfers, sets over, and delivers to American Tower all of Assignor's rights, title and interest in and to such Collocation Agreements, and American Tower does hereby accept, assume and agree to be bound by all the terms and conditions which are the responsibility of Assignor under such Collocation Agreements.
3. Further Assurances. The parties hereby agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered any and all such further acts and assurances as may reasonably be required to confirm the transfers made pursuant to this Assignment.

4. Counterparts. This Assignment may be executed in two or more counterparts, all of which taken together will constitute one and the same instrument.

5. Governing Law. This Assignment will be governed and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to its conflicts of laws principles.

6. Successors and Assigns. The terms and conditions of this Assignment will run with the property and will be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have signed this Assignment as of the Effective Date.

Assignor:

CITY OF SOUTH DAYTONA,
a Florida municipality

By: _____

Name: William C. Hall

Title: Mayor

Attest:

James L. Gillis, Jr., City Manager

American Tower:

AMERICAN TOWERS LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

Exhibit A

Collocation Agreements

*Assignor is Licensor/Landlord under each Collocation Agreement

Site Name	Site Number	Licensee/Tenant	Agreement Date
South Daytona 2	211196	T-Mobile South LLC	11/8/2017
South Daytona 2	211196	New Cingular Wireless PCS, LLC	12/12/2017