



ADDED ITEM

# AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ITEM No.:	MEETING DATE	2017-12-19 10:05 - Regular School Board Meeting	Special Order Request <input type="radio"/> Yes <input checked="" type="radio"/> No
	AGENDA ITEM	ITEMS	
	II-1.	CATEGORY	II. OFFICE OF THE SUPERINTENDENT
	DEPARTMENT	BECON	

TITLE:  
Revision to Tower Lease Agreement with American Tower Company (ATC)

REQUESTED ACTION:  
Approve First Amendment to License Agreement with American Tower Company (ATC) to reduce lease payments and annual escalator rate.

SUMMARY EXPLANATION AND BACKGROUND:  
WBEC-TV's current FCC-mandated repack project (changing from Channel 40 to Channel 25) presented a unique opportunity to renegotiate the terms of our existing lease agreement with American Tower Company (ATC). ATC has agreed to reduce current monthly payments by 52% from \$27,400 to \$13,500, and to reduce the annual escalator rate from 5% to 3%.  
This agreement has been reviewed and approved as to form and legal content by the office of General Counsel.

SCHOOL BOARD GOALS:  
 Goal 1: High Quality Instruction  Goal 2: Continuous Improvement  Goal 3: Effective Communication

FINANCIAL IMPACT:  
There is a positive financial impact to the District via a reduction in lease payments. Reduction in monthly lease payments and the annual escalator rate will begin January 1, 2018. See supporting Docs for continuation of Financial impact.

EXHIBITS: (List)  
(1) Continuation of Financial Impact (2) American Tower First Amendment (3) SBBC Original American Tower Agreement 2006

<b>BOARD ACTION:</b>  (For Official School Board Records Office Only)	SOURCE OF ADDITIONAL INFORMATION:	
	Name: Rick Reynolds	Phone: 754-321-1000
	Name:	Phone:

## THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

Senior Leader & Title

Tracy Clark - Chief Public Information Officer

Signature  
Tracy A. Clark  
12/15/2017, 9:12:11 AM

Approved In Open Board Meeting On: DEC 19 2017

By:   
School Board Chair

**FIRST AMENDMENT TO LICENSE AGREEMENT**

This First Amendment (the "First Amendment") to that certain License Agreement dated June 6, 2006 by and between American Tower, L.P. and The School Board of Broward County, Florida, (collectively, the "Agreement") is made and entered into as of the latter signature date hereof, by and between American Tower, L.P., a Delaware limited partnership, (the "Licensor") and The School Board of Broward County, Florida, a Florida government entity (the "Licensee") (collectively, the "Parties").

**RECITALS**

WHEREAS, Licensor owns a certain communications tower and leases a certain parcel of land located at 4991 SW 28<sup>th</sup> Street, Hollywood, FL more commonly known to Licensor as the PEMBROKE 2 FL tower site (the "Tower Facility"); and

WHEREAS, Licensor and Licensee entered into the Agreement for the use of a certain portion of the Tower Facility; and

WHEREAS, Licensee desires to modify its equipment at the Tower Facility and to replace its existing Channel 40 antenna with a new Channel 25 antenna ("Modified Equipment"); and

WHEREAS, Licensee, as part of the Federal Communications Commission's ("FCC") "Spectrum Incentive Auction" authorized by the United States Congress under the Middle Class Tax Relief and Job Creation Act of 2012 under Public Law 112-96, is changing WBEC-TV's current Channel of 40 (626-632 MHz) to 25 (536-542 MHz), Facility ID 51349; and

WHEREAS, Licensee desires to install equipment in addition to the Approved Equipment at the Tower Facility ("Additional Equipment"); and

WHEREAS, the Parties desire to memorialize additional changes to certain Agreement terms.

NOW THEREFORE, in consideration of the foregoing promises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

- 1) Licensee shall modify its Approved Equipment for a final installed configuration pursuant to Exhibit A-1.
- 2) As of the date this First Amendment is fully executed, Licensee's equipment information set forth in Exhibit A to the Agreement shall hereby be deleted in its entirety and shall be replaced with Exhibit A-1 attached hereto and incorporated by this reference. In the event of inconsistency or discrepancy between the Exhibit A-1

and Exhibit A to the Agreement, then Exhibit A-1 shall control.

- 3) Exhibit B to the Agreement is hereby deleted in its entirety as of the date this First Amendment is fully executed and shall be replaced with Exhibit B-1 attached hereto and incorporated by this reference. In the event of inconsistency or discrepancy between the Exhibit B-1 and Exhibit B, Exhibit B-1 shall control.
- 4) Effective upon January 1, 2018, the License Fee shall be adjusted to Thirteen Thousand Five Hundred and 00/100 Dollars (\$13,500.00) per month ("Modified Fee"). The Modified Fee for any fractional month at the beginning or end of the period shall be appropriately prorated.
- 5) To the extent of actual reimbursement by the FCC, Licensee acknowledges its obligation to reimburse those of Licensor's incurred costs pertaining to the change of Licensee's equipment on the tower as they relate to the current FCC mandated TV Repack process, as previously estimated to be incurred in the "Customer Project Cost Estimation" ("CPCE"), presented to Licensee by Licensor on July 11, 2017. Estimated costs contained in the CPCE will be replaced with actual costs as milestones are completed.
- 6) The current term of the Agreement, whether in its initial, primary, renewal or extension term, is hereby extended such that the modified current term end date shall be December 31, 2028 (the "Extended Current Term"), and shall automatically renew thereafter, on the same terms and conditions contained in the Agreement, for four (4) additional periods of five (5) years, unless either party hereto provides written notice to the other party of its intent not to so renew the term of this License at least one hundred eighty (180) days prior to end of the then current term.
- 7) The Annual Escalator shall be modified to three percent (3%) effective as of January 1, 2019, and shall be applied on each anniversary thereafter during the Extended Current Term and any Renewal Terms.
- 8) The following provisions shall be added to page 2, "Other Provisions:"
  - (f) Nothing herein is intended to serve as a waiver of sovereign immunity by Licensee to which sovereign immunity may be applicable or of any rights or limits to liability applicable to Licensee that are existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.
  - (g) To the extent required to comply with Florida Statutes, Licensee may terminate this Agreement for convenience at any time during the then current Term upon one hundred eighty (180) days prior written notice. If Licensee terminates this Agreement pursuant to this Section, Licensee shall pay to Licensor, together with such termination notice, a termination fee equal to twelve (12) months of the monthly License Fee then in

effect under this Agreement. Notwithstanding the foregoing, the effective date of any such termination shall in no instance pre-date receipt of the notice of such termination by Licensor from Licensee.

(h) To the extent required to comply with Florida Statutes, the performance and obligations of Licensee under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. Notwithstanding any other provision contained herein, if Licensee's governing body does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by Licensee at the end of Licensee's budget period for which funds have been allocated. Licensee shall notify Licensor at the earliest possible time before any such termination. No penalty shall accrue to Licensee in the event this provision is exercised, and Licensee shall not be obligated or liable for any future payments due or any damages as a result of termination under this section. Notwithstanding the foregoing, the effective date of any such termination shall in no instance pre-date receipt of the notice of such termination by Licensor from Licensee.

9) The following language shall be added to Section 10 (d), "No Illegal, Unpermitted Use or Unlicensed Frequency Protection," in the Agreement:

"Notwithstanding anything to the contrary herein, Licensee shall be permitted to transmit on Channel 40 (626-632 MHz), until Channel 25 (536-542 MHz), becomes Licensee's sole channel in use at which time permitted use rights associated with Channel 40 shall expire."

10) The following language shall be added to Section 17, "Assignment; Subleasing," in the Agreement:

"Notwithstanding anything to the contrary herein, Licensee is permitted to use its spectrum (currently Channel 40, 626-632 MHz, and future channel 25, 536-542 MHz) to broadcast additional programming streams over Licensee's Approved Equipment. However, to the extent that Licensee wishes to engage in any subleasing or sublicensing of its spectrum, diplexing, or combining, with any unaffiliated third party at the Tower Facility, then Licensee shall seek Licensor's prior consent, which shall be given in Licensor's sole discretion."

11) The last sentence of Section 17, "Assignment; Subleasing," in the Agreement shall be deleted and replaced with the following:

"Notwithstanding anything to the contrary, Licensor may condition its consent to any assignment, on among other things, requiring that the assignee execute a new form of license agreement so long as the material terms of such agreement are consistent with those set forth in this Agreement."

12) Exhibit C-1 to the Agreement, ("Insurance"), shall be stricken in its entirety and replaced with the attached Exhibit C-1.


- 13) Notwithstanding anything to the contrary in the Agreement, the offer to Licensee expressed in this First Amendment shall automatically become null and void with no further obligation by either party hereto if a structural analysis of the Tower Facility completed after the execution of this First Amendment by Licensor but before the Commencement Date of the installation of Licensee's Additional Equipment indicates that the Tower Facility is not suitable for Licensee's Additional Equipment unless Licensor and Licensee mutually agree that structural modifications or repairs shall be made to the Tower Facility on mutually agreeable terms.
- 14) Capitalized terms contained herein, unless otherwise defined, are intended to have the same meaning and effect as that set forth in the Agreement.
- 15) All other terms and provisions of the Agreement remain in full force and effect.

[SIGNATURES APPEAR ON THE NEXT PAGE]

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

**IN WITNESS WHEREOF**, the Parties hereto have set their hands to this First Amendment to that certain License Agreement as of the day and year written below:

**LICENSOR:  
American Tower, LP**

By: 

Name: Margaret Robinson

Title: Senior Counsel

Date: 12/14/17

  
Witness

  
Witness

**The Following Notarization is Required for Every Agreement**

STATE OF Massachusetts

COUNTY OF Middlesex

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of December, 2017 by Margaret Robinson, Senior Counsel of American Tower, LP, on behalf of the corporation/agency.




**LISA A. GIUFFRIDA**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
November 26, 2021

**LICENSEE:**

(Corporate Seal)

THE SCHOOL BOARD OF  
BROWARD COUNTY, FLORIDA

By   
Nora Rupert, Chair

\_\_\_\_\_  
Date

ATTEST:



Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal  
Content:

**Janette M. Smith**

Digitally signed by Janette M.  
Smith

Date: 2017.12.14 15:06:13 -05'00'

\_\_\_\_\_  
Office of the General Counsel

Licensor Site Name/Number: Pembroke 2 FL / 23665

Licensor Contract Number: 202813

Licensee Site Name/Number: WBEC-TV, Channel 25/FID: 51349/ASR:1224225

**EXHIBIT A-1**



Exhibit A-1						
Customer Name: BROWARD COUNTY SCHOOL BOARD		ATC Asset Name: PEMBROKE 2 FL		ATC Asset #: 23665		
Customer Site Name: WBEC-TV Channel 25 Phase 2				Customer Site #: FID 51349		
GROUND SPACE REQUIREMENTS						
<u>Total Lease Area</u>	Sq. Ft: 1987.00'	<u>Primary Contiguous Lease Area</u>		L:40.00'	W:40.00'	H: Sq. Ft: 1600.00
	ATC Building			40.00'	40.00'	N/A 1600.00
	<u>Outside Primary Lease Area</u>			N/A	N/A	N/A Sq. Ft: 387.00
	ATC Building			10.00'	10.00'	N/A 100.00
	Concrete Pad			4.00'	11.00'	N/A 44.00
	Concrete Pad			3.00'	4.00'	N/A 12.00
	ATC Building			10.00'	10.00'	N/A 100.00
	Concrete Pad			3.00'	4.00'	N/A 12.00
	Concrete Pad			4.00'	11.00'	N/A 44.00
	Generator AREA			5.00'	15.00'	N/A 75.00
BACKUP POWER REQUIREMENTS						
Generator: Stand Alone		Fuel Tank Size(gal): 900.0		Fuel Type: Diesel		Fuel Tank Setback(radius): N/A
UTILITY REQUIREMENTS						
Power Provided By: Utility Company Direct						
Telco/Interconnect: N/A						
TRANSMITTER & RECEIVER SPECIFICATIONS						
Type: N/A	Quantity: N/A		TX Power(watts): N/A		ERP(watts): N/A	
ANTENNA EQUIPMENT SPECIFICATIONS						
Type	TV	TV	DISH-HP	N/A	N/A	N/A
Manufacturer	ERI	ERI	Andrew Microwaves	N/A	N/A	N/A
Model #	ATW14HS3-ETP4-25H	ATW14HS3-HSP4-25H	HP8-65	N/A	N/A	N/A
Dimensions HxWxD	422.4" x 15.8" x 15.8"	422.4" x 14.4" x 14.4"	8.88' x 8.88' x 3.48'	N/A	N/A	N/A
Weight(lbs.)	6315.0	1425.0	500.0	N/A	N/A	N/A
Location	Tower	Tower	Tower	N/A	N/A	N/A
RAD Center AGL	930.0'	796.0'	197.5'	N/A	N/A	N/A
Antenna Tip Height	947.6'	813.6'	201.9'	N/A	N/A	N/A
Antenna Base Height	912.4'	778.4'	193.1'	N/A	N/A	N/A
Mount Type	N/A	Leg/Flush	Leg/Flush	N/A	N/A	N/A
Quantity	1	1	1	N/A	N/A	N/A
Azimuths/Dir. of Radiation	0	0	330	N/A	N/A	N/A
Quant. Per Azimuth/Sector	1	1	1	N/A	N/A	N/A
TX/RX Frequency Units	MHz	MHz	GHz	N/A	N/A	N/A
TX Frequency	CH. 25(536-542Mhz)	Ch.25(536-542Mhz)		N/A	N/A	N/A
RX Frequency	N/A	N/A	7000-7025	N/A	N/A	N/A
Using Unlicensed Frequencies?	No	No	No	N/A	N/A	N/A
Antenna Gain	N/A	N/A	39.8/ 40.2/ 40.7	N/A	N/A	N/A
Total # of Lines	1	1	1	N/A	N/A	N/A
Line Quant. Per Azimuth/Sector	1	1	1	N/A	N/A	N/A
Line Type	Hard Line	Hard Line	Elliptical	N/A	N/A	N/A

Line Diameter Size	6 1/8" Hard Line	4 1/16" Hard Line	EW63	N/A	N/A	N/A
Line Configuration	N/A	N/A	N/A	N/A	N/A	N/A

Revision#5-OAA719227

Licensor Site Name/Number: Pembroke 2 FL / 23665

Licensor Contract Number: 202813

Licensee Site Name/Number: WBEC-TV, Channel 25/FID: 51349/ASR:1224225

**EXHIBIT B-1**



**AMERICAN TOWER®**  
 A.T. ENGINEERING SERVICE, PLLC  
 3500 REGENCY PARKWAY  
 SUITE 100  
 CARY, NC 27518  
 PHONE: (919) 466-0112

THESE DRAWINGS AND/OR THE ACCOMPANYING SPECIFICATIONS SHALL BE THE SOLE AND EXCLUSIVE PROPERTY OF LESSOR/SITE OWNER AND THE ORIGINAL SET FOR WHICH THEY ARE PREPARED. NO REUSE, REPRODUCTION OR PUBLICATION BY ANY PARTY IS PERMITTED WITHOUT THE WRITTEN PERMISSION OF LESSOR/SITE OWNER. THESE DRAWINGS AND/OR SPECIFICATIONS SHALL BE VOID AND VOIDABLE WITHOUT WRITTEN AND VISUAL CONTACT WITH THEM SHALL CONSTITUTE A MATERIAL BREACH OF CONTRACT AND SHALL BE SUBJECT TO THE EXISTING RESTRICTIONS.

ALL REPRESENTATIONS AND WARRANTIES MADE IN THESE DRAWINGS, SPECIFICATIONS AND LESSOR/SITE OWNER'S MAKE NO REPRESENTATIONS OR WARRANTIES AS TO THE ACCURACY, COMPLETENESS, OR LIMITED TO UTILITIES, ROCK FORMATIONS, ETC. THIS SITE DESIGN SHALL NOT BE USED FOR CONSTRUCTION WITHOUT THE WRITTEN PERMISSION OF A UTILITY LOCATOR SERVICE PRIOR TO COMMENCING CONSTRUCTION TO AVOID SERVICE DISRUPTION TO OTHER UTILITIES AND/OR EQUIPMENT.

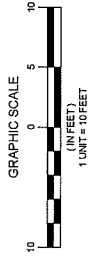
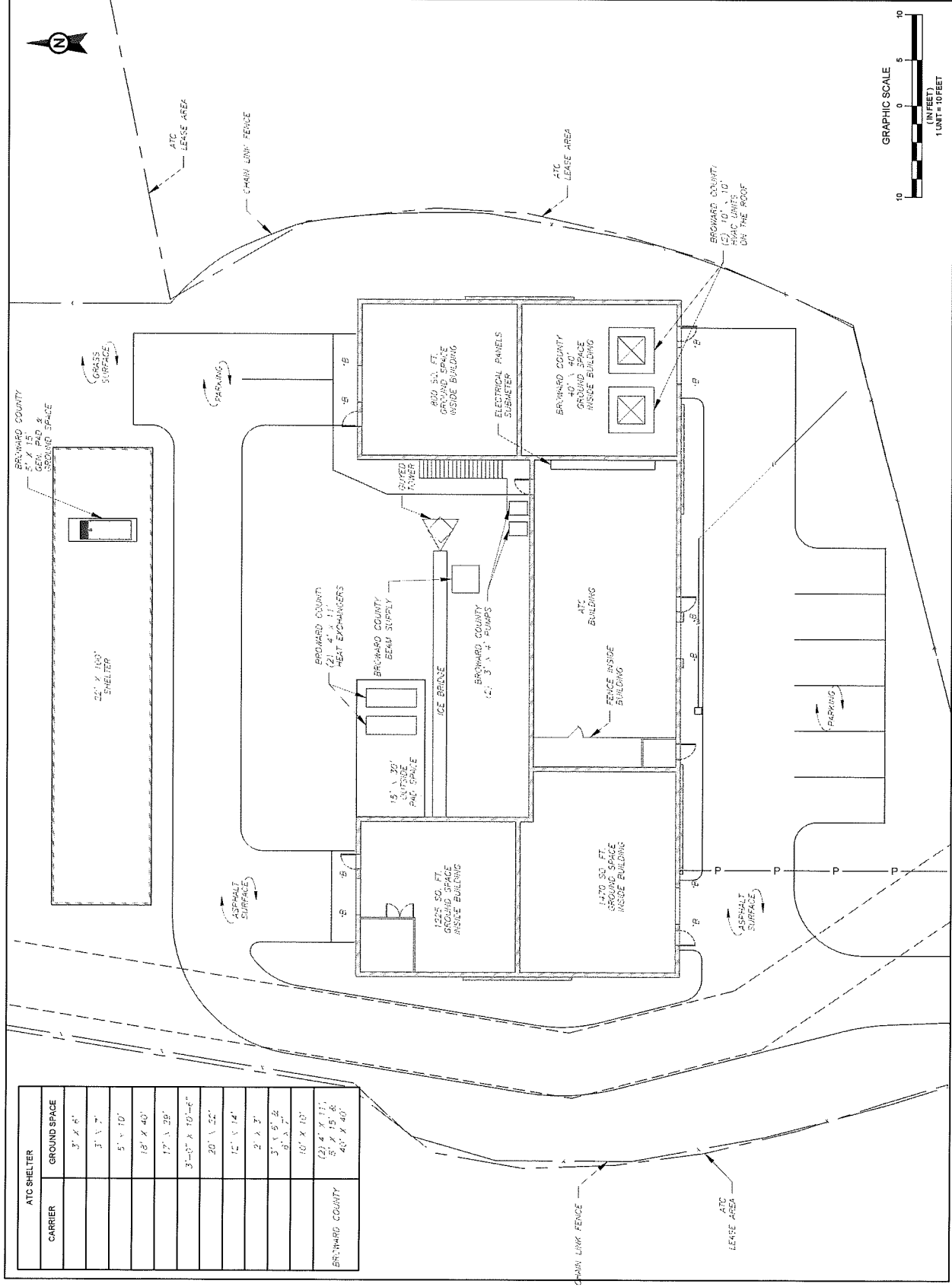
ATC SITE NUMBER:  
**23665**  
 ATC SITE NAME:  
**PEMBROKE 2 FL**  
**FLORIDA**

- LEGEND**
- ⊙ ANV
  - ⊙ ANTS
  - ⊙ AUTOMATIC TRANSFER SWITCH
  - ⊙ BOLLARD
  - ⊙ CABINET
  - ⊙ CELL SITE CABINET
  - ⊙ DISCONNECT
  - ⊙ ELECTRICAL
  - ⊙ GENERATOR
  - ⊙ GENERATOR RECEPTACLE
  - ⊙ HAND HOLE VAULT
  - ⊙ HYDROGEN FUEL CELL
  - ⊙ ICE BRIDGE
  - ⊙ ICE STORAGE MATERIAL
  - ⊙ KENTROX BOX
  - ⊙ LIGHTING CONTROL
  - ⊙ PROPANE GAS
  - ⊙ METER
  - ⊙ OVERHEAD WIRE
  - ⊙ POWER
  - ⊙ POWER POLE
  - ⊙ TELCO
  - ⊙ TRANSFORMER
  - ⊙ UTILITY SPACE (LEASE AREA)
  - ⊙ EASEMENT

DRAWN BY: M. GOOCH  
 DATE DRAWN: 12/11/2017  
 CUSTOMER: BROWARD COUNTY  
 ATC PROJECT NO.: 00A719227

**SITE PLAN LAYOUT**  
 SFU

SHEET NUMBER: **SITE-1**  
 AUDITED BY: ON



ATC SHELTER	
CARRIER	GROUND SPACE
	3' x 6'
	3' x 7'
	5' x 10'
	16' x 40'
	17' x 39'
	3'-0" x 10'-6"
	20' x 22'
	12' x 14'
	2 x 3'
	3' x 6' & 6' x 7'
	16' x 10'
BROWARD COUNTY	(2) 4' x 11', 5' x 15' & 4' x 40'

**EXHIBIT C-1**  
**Insurance**

LICENSOR shall maintain in full force during the term of this Agreement the following insurance:

1. Worker's Compensation Insurance with statutory limits in accordance with all applicable state, federal and maritime laws, and Employers' Liability Insurance with minimum limits of \$500,000.00 per accident/occurrence, or in accordance with all applicable state, federal and maritime laws.
2. Commercial General Liability Insurance (Bodily Injury and Property Damage), the limits of liability of which shall not be less than \$1,000,000.00 per occurrence.
3. An umbrella policy of not less than Five Million Dollars (\$5,000,000.00). The above insurance shall provide that LICENSEE will receive not less than 30 days written notice prior to any cancellation of, or material change in coverage. The insurance specified in this Item A shall contain a waiver of subrogation against LICENSEE and shall name LICENSEE as an additional insured, and shall be primary over any insurance coverage in favor of LICENSEE but only with respect to and to the extent of the insured liabilities assumed by LICENSOR under this Agreement and shall contain a standard cross-liability endorsement.

B. LICENSEE shall maintain in full force during the term of this Agreement

1. Commercial General Liability Insurance policy, with limits of liability of which shall not be less than \$700,000 per occurrence.
2. Worker's Compensation Insurance at statutory limits and \$1,500,000 in excess coverage, along with Employer's Liability Insurance with minimum limits of \$3,000,000.
3. Licensee's insurance need not include a waiver of subrogation.
4. Licensee agrees and acknowledges that, in consideration of Licensor's acceptance of these reduced insurance policy types and limits, Licensee's employees shall not climb the tower for any reason whatsoever, and Licensee employee's maintenance of Licensee's Equipment shall be limited to equipment located on the ground or in Licensee's shelter, if any. Licensor and Licensee further agree and acknowledge that any and all contractor/subcontractors engaged by, or on behalf of Licensee shall not be permitted to perform any work, maintenance, and/or repairs to Licensee's Equipment located on the communications tower absent proof of maintaining insurance limits meeting those set forth in Sections C(1)-C(3) in this Exhibit C-1.

The above insurance shall provide that LICENSOR will receive not less than 30 days

written notice prior to any cancellation of, or material change in coverage. The insurance specified in this Item B shall name LICENSOR as additional insured, and shall be primary over any insurance coverage in favor of LICENSOR but only with respect to and to the extent of the insured liabilities assumed by LICENSEE under this Agreement and shall contain a standard cross-liability endorsement.

C. LICENSEE shall cause all contractors or subcontractors performing Work on any Licensed Site prior to the commencement of any such Work on behalf of Licensee to maintain the following insurance:

1. Worker's Compensation Insurance with statutory limits in accordance with all applicable state, federal and maritime laws, and Employers' Liability Insurance with minimum limits of \$500,000.00 per accident/occurrence, or in accordance with all applicable state, federal and maritime laws.

2. Commercial General Liability Insurance (Bodily Injury and Property Damage), the limits of liability of which shall not be less than \$1,000,000.00 per occurrence.

3. An umbrella policy of not less than Five Million Dollars (\$5,000,000.00).

The above insurance shall provide that LICENSOR will receive not less than 30 days written notice prior to any cancellation of, or material change in coverage. The insurance specified in this Item C shall contain a waiver of subrogation against LICENSOR and shall name LICENSOR as additional insured, and shall be primary over any insurance coverage in favor of LICENSOR but only with respect to and to the extent of the insured liabilities assumed by LICENSEE under this Agreement and shall contain a standard cross-liability endorsement.

D. Notwithstanding the foregoing insurance requirements, (a) the insolvency, bankruptcy, or failure of claims insurance company carrying held insurance for either party, or failure of any such insurance company to any pay accruing, shall not be to waive of the provisions of this Agreement or relieve either party from any obligations under this Agreement, and (b) the Licensor reserves the right, from time to time, to increase the required liability limits described above in Items A and/or C in accordance with then-current customary insurance requirements in the tower industry nationally.