

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) is made and entered into this _____ day of September 2016, by and between the **CITY OF DUNNELLON, FLORIDA**, a Florida municipal corporation (the “City”), whose address is 20750 River Drive, Dunnellon, Florida 34431, and **FLORIDA FIBER NETWORKS, LLC** (“FFN”), 301 South Collins Street, Suite 105, Plant City, Florida 33563, collectively known as (the “Parties”).

WHEREAS, in September of 2015, FFN came into possession of approximately 978 sq. ft of the City-owned property located at _____ without a lease; and

WHEREAS, the parties agree that FFN owes the City rent for use of the property, building-related expenses and ~~Duke Energy deposit~~other charges; and

WHEREAS, the parties agree that the City owes FFN for communication services provided to the City prior to and up to June 30, 2016; and

WHEREAS, on July 12, 2016, under the direction of City Council, the City’s finance officer sent a letter to Florida Fiber Networks, LLC to resolve all outstanding balances between the City and Florida Fiber Networks, LLC and set the amounts due to a zero balance. A copy of the letter is attached hereto as Exhibit “A;” and

WHEREAS, Florida Fiber wishes to accept the City’s offer as set out in the July 12, 2016 letter and set the balance due to each Party in the amount of \$0.00 as of June 30, 2016; and

WHEREAS, the parties have come to an agreement regarding balances due to each other for July and August 2016 and wish to make payment for these debts in full.

NOW, THEREFORE, in consideration of the premises hereof, the recitals above and of the mutual covenants set forth herein, the parties hereby agree as follows:

1. **Recitals:** The recitals above are true and correct and incorporated herein.
2. The Parties hereby agree that all debts owed or alleged to be owed to each other

incurred prior to June 30, 2016 are settled in full as of the date of June 30, 2016 and neither Party owes at this time, or shall owe any monetary balance to the other prior to this date.

3. Upon execution of this Agreement, City agrees to pay FFN \$599.90 for all communication services rendered in the months of July and August, 2016 in full.

4. Upon execution of this Agreement, FFN agrees to pay City \$1666.52 for use of the building in July and August, 2016 in full.

5. Upon execution of this Agreement and receipt of the sums specified herein, the Parties agree that ALL outstanding debts due to either Party from the other are fully satisfied as of August 31, 2016.

6. The Parties shall execute a mutual general release identical to the mutual general release form attached hereto as Exhibit "B" for any potential or future claims relating to any balances due which may be alleged to be due prior to August 31, 2016.

7. At all times that the City utilizes services from FFN in the future, FFN guarantees that it will offer the City communication services at prices consistent with service charges for other business customers.

7. **Entire Agreement:** This Agreement supersedes any other agreements, oral or written, and contains the entire agreement among the Parties as to the subject matter hereof.

8. **Third-Party Rights:** This Agreement is not a third-party beneficiary contract and shall not in any way whatsoever create any rights on behalf of any third-party.

IN WITNESS WHEREOF, the parties have caused these presents to be executed as of the date and year first above written.

[Signatures on following page]

CITY OF DUNNELLON, FLORIDA

NATHAN WHITT, MAYOR

Date signed: _____

ATTEST:

DAWN M. BOWNE, MMC, CITY CLERK

Approved as to form and legal sufficiency:

Andrew J. Hand, City Attorney

Witnesses:

Print name: _____

Operating Officer

Print name: _____

Florida Fiber Networks, LLC

DAVID ~~S. SUAREZ~~, CEO ORSHAN, Chief

Date signed: _____

LEASE AGREEMENT

#LEA2016-02

THIS LEASE AGREEMENT (“Lease” or “Agreement”) is entered into this ____ day of _____, 2016, by and between the City of Dunnellon (“Landlord” or “City”), whose address is 20750 River Drive, Dunnellon, Florida 34431, and Florida Fiber Networks, LLC, (“Tenant” or “FFN”), whose principal address is 301 South Collins Street, Suite 105, Plant City, Florida 33563.

1. **DURATION OF THE AGREEMENT.**

FFN’s lease of the Premises shall commence on September 1, 2016, and shall continue for a term of one (1) year until August 31, 2017, (“Term of Agreement”) unless sooner terminated as described in this Agreement.

2. **PREMISES.**

- a. In consideration of the rents, covenants, and agreements contained in this Lease, the sufficiency of which is hereby acknowledged by both parties, the City leases to FFN, and FFN leases from the City, portions of a building on real property owned by the City and located in Marion County, more particularly described as:

Lots 467, 468, and 484, of Plat Book A, Page 174, of the Public Records of Marion County, Florida.

- b. The portions of the building which are hereby leased to FFN are depicted as Exhibit “A” attached hereto and made a part of this Agreement. The portion of the building to be leased by FFN shall be referred to in this Agreement as “the Premises.”
- c. The Parties agree that the Premises comprises a total of approximately 978 sq.ft.
- d. FFN shall share with the City access to and use of the following parts of the building or property not located in the Premises: existing parking lot, restrooms, any air conditioning, electric, water, and wastewater components, and any access to the building to reasonably maintain the building in accordance with paragraph 11 of this Agreement.
- e. The City shall have reasonable access to the following portions located on the Premises: 8.75 sq.ft. air conditioning closet, 4 sq.ft. rack space reserved for the City’s exclusive use in the head-end room (unless the City’s equipment currently within the rack space is removed by City), restrooms, any electric, water, and wastewater components, and any access to the Premises to reasonably maintain the building in accordance with paragraph 11 of this Agreement.

3. **UNDERSTANDING OF THE PARTIES.**

The City and FFN have inspected the Premises, and the Parties agree that the Premises are in good and habitable condition prior to execution of this Agreement. The Parties understand that the building in which the Premises are located is currently intended to be used by the City for a variety of mixed uses. Therefore, it is the intent of the Parties to mutually cooperate with each other to share the space in a cooperative, cordial, and mutually beneficial manner.

4. **RENT.**

a. The rental payments provided for herein shall be due and payable by FFN in advance on the first day of each month for which said rentals are due. FFN shall pay the City Monthly Rent for the Premises in the amount of **\$782.40**. The first monthly rent payment shall therefore be due on September 1, 2016 or on the date that this Lease is fully executed.

b. If advance rental payment is not made payable to the City on or before the fifth day of any month that this lease is in effect, then the rental payment shall be considered late and the rental payment amount due for that month shall increase by 10% to **\$860.64**.

c. If advance rental payment is not made payable to the City on or before the tenth day of any month, then FFN shall be in material breach of this Lease.

d. ~~The City may, at its option, notify FFN at any time during the term of this Lease Agreement that the City shall deduct, on an on-going basis until further notice by the City, the amount of Monthly Rent from any payments due to FFN for use of FFN's services. Upon such notification, FFN shall ensure that its statements to the City reflect a credit for the Monthly Rent due. If the City notifies FFN that it no longer desires to have Monthly Rent deducted from the City's payments due to FFN, FFN shall pay the City the Monthly Rent pursuant to the terms of this Agreement, and the statements to the City will no longer reflect a credit for Monthly Rent.~~ **Other than this option exercisable by the City, No moneys due to either party for services or rent shall be netted.**

5. **NOTICE.**

All rent payable and notices given to the City under this Agreement shall be paid and given at 20750 River Drive, Dunnellon, Florida 34431, or such other address as the City shall specify in writing. All notices given under this Agreement to FFN or any successor, assignee, or sublessee shall be given at 301 South Collins Street, Suite 105, Plant City, Florida 33563, or such other address as FFN shall specify in writing.

Any notice properly mailed by registered mail, postage prepaid, shall be deemed delivered 48 hours after mailed, whether received or not. FFN shall notify the City in writing who the current Chief Executive Officer of FFN is and who the appropriate person to receive notices from the City is within thirty days of any change in such positions.

6. UTILITIES AND OPERATING EXPENSES.

FFN shall pay all operating expenses and utilities for the building in which the Premises are located regardless of additional occupancy, including but not limited to: water, electric, sewage, stormwater and waste removal during the Term of this Agreement.

7. INSURANCE.

a. The City shall keep the building in which the Premises are located insured against loss by fire or casualty with extended coverage in an amount of not less than the replacement value of the building.

b. FFN shall at all times and at its sole expense maintain public liability insurance policies on the Premises with limits of at least \$2,000,000.00 (Two Million Dollars) for personal injury, death and property damage, with waiver of subrogation against the City. The City shall be entitled to require an increase in the coverage limits required under this subparagraph by written notice to FFN, provided that any increase shall be reasonable and consistent with prevailing market coverage limits for similarly situated properties and activities. Said public liability policies shall carry both the names of the City and FFN as named insured. FFN shall provide the City with a certificate evidencing the public liability and insurance coverage at the time this Agreement is entered into and shall provide such certificate annually thereafter or upon the renewal dates of said policies. FFN shall keep all receipts showing payment of premiums were made on or before each premium due date. All policies required to be obtained by FFN shall contain a provision that the company writing said policy will provide the City thirty (30) days notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amounts of insurance. All policies shall be written as primary policies, not contributing with and not in excess of any coverage which the City may carry.

c. FFN shall be solely responsible for maintaining insurance against loss by fire and other casualty on its furniture, fixtures, inventory, equipment, supplies, and other personal property.

d. FFN agrees to, and shall at all times, indemnify, defend and hold the City harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which the City may suffer, sustain, incur, or in any way be subjected to, on account of death or injury to any person whomsoever and damage to or loss of or destruction of any property whatsoever, arising from, or in any way connected with, upon, or at the Premises, or the occupancy or use by FFN of the Premises or any part of the property upon which the Premises are located, or occasioned wholly or in part by any act or omission of FFN, its employees, customers, or other parties not under the direct supervision of the City. In case the City shall be made a party to any claim or litigation for death or injury to person or damage to or loss of property commenced by FFN or anyone else against the City arising out of FFN's use or occupancy, then FFN shall defend, indemnify, and hold the City harmless and shall pay all costs, expenses and reasonable attorneys' fees of the City's attorneys incurred or paid by the City in connection with such claim or litigation within thirty (30) days of receipt of any invoice pertaining thereto. Notwithstanding the foregoing, in no event shall FFN be required to

indemnify, defend or hold the City harmless from any liability, loss, claim, suit, damage, charge or expense that is proximately caused by the intentional or negligent act or omission of the City.

e. FFN will pay for any and all applicable workers' compensation insurance for any and all employees of FFN as may be required by Florida Law.

f. FFN, its successors, sublessees, and assigns, shall be responsible, at no cost to the City, for any remediation of any hazardous substances on the Premises or any part of the property upon which the Premises are located, caused by FFN, its agents, successors, sublessees and assigns. FFN shall use bonded contractors to perform any remediation work required by this section. Such remediation shall be completed promptly and in accordance with all applicable laws. In no event shall FFN be responsible for remediation of any hazardous substances on the Premises or any part of the property upon which the Premises are located, caused by the City, its agents, successors or assigns.

8. TAXES AND ASSESSMENTS.

Any sales, use, or rental tax on rents due hereunder and taxes charged or levied against FFN's personal property, including furniture, fixtures and equipment in the Premises shall be timely paid by FFN. In the event that any real property taxes shall become payable during the term of this Agreement, said taxes shall be timely paid by FFN.

9. BEST INTERESTS.

Notwithstanding anything to the contrary herein, FFN shall not perform any action that conflicts with the best interests of the City of Dunnellon as such interests are determined in the reasonable discretion of the City Council.

10. USE OF PREMISES.

a. FFN shall use the Premises to conduct business exclusively as a sales and office facility and system location for the fiber-to-home telecommunications network system ("System") to provide telecommunication services to customers in the City and certain unincorporated areas outside the corporate limits of the City.

b. Any use of the Premises by FFN other than the uses expressly described herein, without prior written consent of the City Council in writing, shall constitute a material breach under the terms of this Agreement.

c. FFN agrees to conduct its business in a proper manner and neither to do nor suffer anything to be done to the detriment of said Premises or any part of the property upon which the Premises are located, nor to permit any waste, reasonable wear and tear excepted, nor to permit said Premises or any part of the property upon which the Premises are located to be used for any illegal purpose. FFN shall not allow any restrictions or conditions which would run with the land to be placed on the Premises or any part of the property upon which the Premises are located without the prior written approval of the City Council.

11. REPAIR AND CARE OF PREMISES.

a. Maintenance by the City. Except to the extent responsible for all or a portion of 11.b. expressly assigned herein to FFN, the City shall be responsible for maintenance, repair and replacement of the following:

- (i) maintain, repair, and replace as necessary the lawn and landscaping, exterior lights for the Premises and any part of the property upon which the Premises are located;
- (ii) maintain, repair, and replace as necessary the grounds, pathways, driveways and parking area in a safe condition for the Premises and any part of the property upon which the Premises are located;
- (iii) maintain, repair, and replace as necessary the burglar and fire alarm systems of the property upon which the Premises are located, with the exception of those located within the Premises;
- (iv) incur all costs associated with insect and pest extermination including termite inspection and extermination.
- (v) repair roofs when there is evidence of leaks and replace same at the end of useful life;
- (vi) maintain, repair, and replace as necessary structural walls and other exterior and interior structural elements of the building (collectively, the “structural elements”); however, in the event that damage is caused and/or existing damage is discovered to any of the structural elements which damage would render the subject structure uninhabitable or would require repair or replacement costs totaling more than thirty percent of the tax-appraised value of the applicable structures, the City shall assess the nature and extent of the damage, the availability of insurance proceeds and the feasibility of remedying the damage by repair or replacement. After assessing the nature and extent of the damage and the availability of insurance proceeds, City Council may, in its reasonable discretion, determine if the structural elements or any portion thereof shall be repaired or replaced. Upon determination whether the structural elements or any portion thereof are to be repaired or replaced, the City shall notify FFN of such determination in writing.
- (vii) maintain, repair, and replace as necessary all exterior windows and exterior doors;
- (viii) repair or replace when necessary the main utility switches, lines, and valves serving the Premises and the property upon which the Premises are located;
- (viii) inspect all fire sprinklers and extinguishers;

- (ix) all interior and exterior components, elements and ducts of the heating and central air conditioning equipment, ventilation system, and replace as necessary controls, air handlers, and compressors.

b. Maintenance by FFN. During the term of this Agreement, FFN shall be responsible for maintenance, repair and replacement of the following:

- (i) all interior components and elements of the electrical system of the Premises and any part of the property upon which the Premises are located;
- (ii) all interior components and elements of the plumbing system of the Premises and any part of the property upon which the Premises are located;
- (iii) maintain, repair, and replace as necessary the burglar and fire alarm systems of the Premises in which the system is located.

12. RESPONSIBILITY FOR LOSS OF OR DAMAGE TO PERSONAL PROPERTY.

Loss of or damage to any personal property which belongs to FFN, or which FFN places or moves on the Premises, in the building, or on the property on which the Premises are located, shall be at the risk of FFN. The City shall not be responsible for any injury to any person related to FFN's use of its property or damage to FFN's property, including, but not limited to, injury or damages arising from the bursting or leaking of water pipes.

13. COMPLIANCE WITH LAWS AND REGULATIONS.

FFN shall comply with all applicable Federal, State, County, and City laws, ordinances, rules and regulations affecting or respecting the use or occupancy of the Premises and the building and property upon which the Premises are located. FFN shall comply with all applicable rules, which have been or may be adopted hereafter by the City.

14. HOLDING OVER.

a. Upon expiration of the lease, FFN's continued possession of the Premises without the City's permission shall be a default and the City shall be entitled to seek all legal and equitable remedies available to it. Prior to any treatment of FFN as a holdover tenant without permission, the City shall give ten (10) days written notice of the City's intent to invoke its rights contained in this subparagraph and to collect two times the Monthly Rent.

b. If FFN breaches this Agreement other than the nonpayment of rent, and the City gives ten (10) days written notice to FFN to either cure the material breach or surrender possession of the Premises, if FFN holds over after ten (10) days without curing the breach or surrendering possession, the City shall be entitled to seek all legal or equitable remedies available to it.

15. QUIET ENJOYMENT.

FFN, upon paying the sums herein, and keeping and performing the covenants of this Agreement, shall peacefully and quietly hold, occupy, and enjoy the Premises during the Agreement Term or any renewal thereof without any hindrance or molestation by the City or any persons lawfully claiming under the City.

16. ASSIGNMENT AND SUBLETTING.

a. FFN shall not assign this Agreement nor sublet all or any part of the Premises without first securing the City's written consent. Such consent shall be in the sole discretion of City Council. No assignment or sublease shall relieve the successor, assignor or sublessor of any obligation of this Agreement.

b. If City Council consents to an assignment or subletting, the assignee or sublessee shall first be obligated in writing to assume all the obligations of FFN under this Agreement and FFN shall, for the full term of this Agreement or any extensions or renewal thereof, continue to be jointly and severally liable with such assignee or sublessee for the payment of rent, shared expenses, and additional rent and the performance of all obligations required of FFN under this Agreement.

c. The consent of City Council to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting.

17. FIXTURES AND ALTERATIONS.

a. FFN covenants and agrees that all fixtures, equipment and improvements on the Premises, owned by the City or acquired with the City's funds, and all replaced fixtures, equipment, and property replaced by FFN under paragraph 11, including but not limited to all plumbing, and lighting, whether or not attached to or affixed to the Premises, the building, or the property upon which the Premises are located, shall be and remain the sole property of the City upon the expiration of the term of this Agreement.

b. FFN shall not, without the City's prior written consent, add additional buildings to the Premises or any part of the property on which the Premises are located, attach any permanent fixtures in or to the Premises or any part of the Premises, building, or property on which the Premises are located, or change, alter or make additions to the Premises, building, or any part of the property on which the Premises are located; nor shall FFN overload the floor, install any permanent construction or deface the Premises or any part of the property on which the Premises are located. FFN may not install temporary fixtures, dividers or walls and repurpose rooms within the Premises or any part of the property on which the Premises are located without prior written consent of the City. Any attached fixtures or any alterations, additions or improvements made or attached by FFN upon the property shall, on the expiration or termination of the Agreement, if requested by the City, be promptly removed at FFN's expense and the Premises restored by FFN at its expense to its original condition, ordinary wear and tear excepted. Upon the expiration or termination of this Agreement, the City shall take title and possession of any attached fixtures or alterations, additions or improvements made or attached by FFN and not removed pursuant to this subparagraph.

c. Notwithstanding the above, FFN may install such exterior signs as to notify the public of the identity of the facility, and may from time to time erect such signage as is deemed reasonably necessary to inform the public of the facility and may post signs for the safe parking of vehicular or pedestrian access and provide appropriate illumination. All signs must be in compliance with the City of Dunnellon Code of Ordinances and any necessary permits must be obtained prior to installation or erection.

18. REDELIVERY OF PREMISES.

FFN, upon the expiration of the Lease, shall deliver up the Premises in as good order and condition as it is at the signing of this Agreement, reasonable use and ordinary wear and tear thereof and damage by fire or other unavoidable casualty, condemnation or appropriation excepted, and FFN shall promptly surrender all keys to the Premises and the building in which the Premises are located to the City. FFN shall be responsible for any damage caused to the Premises by its officers, agents, employees, volunteers, guests and invitees whether through negligence or intentional acts or omissions.

19. CLEANLINESS OF PREMISES.

FFN will keep the interior of the Premises clean and will store all refuse or trash in or on the Premises in refuse containers provided by the City. Hazardous materials are not permitted anywhere on the Premises or in the building or on the property on which the Premises are located.

20. ACCESS BY THE CITY.

a. FFN shall not change the locks of the building in which the Premises are located or interfere in any way to the City's access to property or the building in which the Premises are located.

b. The City may inspect, enter, and make such repairs to the Premises pursuant to paragraph 11 of this Agreement or as the City may reasonably desire at all reasonable times, provided the City gives reasonable advance notice to FFN. In so doing, the City will not interfere with FFN's right to use the Premises.

21. FIRE OR OTHER CASUALTY.

a. In the event that the Premises, building, or property upon which the Premises are located is damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty, FFN shall notify the City in writing within seven (7) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to and to protect public safety, shall be undertaken by FFN without the City's prior written approval.

b. In the event the Premises or any portion of the property or building in which the Premises are located are damaged to an extent that would render the Premises uninhabitable or would require repair or replacement costs totaling more than thirty percent of the tax-appraised value of the applicable structures, the City shall assess the nature and extent of the damage, the

availability of insurance proceeds and the feasibility of restoring or reconstructing the Premises. After assessing the nature and extent of the damage and the availability of insurance proceeds, City Council may, in its sole discretion, determine if the Premises or any portion of the property or building in which the Premises are located shall be repaired or restored. Upon determining that the Premises or any portion of the property or building in which the Premises are to be repaired or restored, the City Council shall notify FFN of such determination in writing. If City Council determines not to repair or restore the Premises or any portion of the property or building in which the Premises are to be repaired or restored, the City shall provide FFN with a reasonable opportunity to secure funding to conduct the appropriate repair or restoration to the Premises or any portion of the property or building in which the Premises are to be repaired or restored, in order to conduct repairs or restoration in a manner that complies with all applicable codes and regulations. In the event that the City Council determines not to repair or restore the Premises or any portion of the property or building in which the Premises are located thereof and FFN is unable or unwilling to conduct the repair or restoration within a reasonable time, the City may terminate this Agreement as to any portion of any buildings or structures, or any portions thereof rendered uninhabitable.

22. LIENS.

FFN agrees to keep the Premises, building, and property on which the Premises are located free and clear of any lien or encumbrance of any kind whatsoever created by FFN's acts or omissions. FFN shall indemnify and defend the City against any claim or action brought to enforce any lien imposed on the City's property because of FFN's negligent acts or omissions. FFN shall have ten (10) days after receiving notice of any such lien or encumbrance to have such removed. If FFN fails to have such removed within that time, FFN shall be in material breach of this Agreement.

23. REMEDIES FOR FAILURE TO PAY.

All rent, utilities, expenses, insurance, or other sums payable by FFN as required by this Agreement are agreed to constitute the rental payment obligation of FFN. If any such amount is not paid on or before the tenth day after which it becomes due, the City shall have the option to:

- a. Terminate this Agreement, resume possession of the Premises for its own account and recover immediately from FFN the difference between the total amount due and the total amount already paid by FFN; or
- b. Resume possession and re-lease or rent the property for the remainder of the term for the account of FFN, and recover from FFN at the end of the term or at the time each payment of rent comes due under this Agreement, as the City may choose, the difference between the amount due pursuant to the Agreement and the amount received on the re-leasing or renting; or
- c. Pursue any other remedy allowed by law.

24. REMEDIES FOR BREACH OF AGREEMENT.

If either the City or FFN shall fail to perform, or shall breach any term of this Agreement other than failure to pay rent, and such failure or breach continues for ten (10) days after written

notice thereof to the other given, said party may terminate this Agreement in whole or in part as described in this Agreement.

It is expressly recognized by the parties that a breach of this Agreement involving the Premises, the property, or the building in which the Premises are located shall constitute a breach of the entire Agreement. In the event of such breach and after notice and failure to cure as provided above, the non-breaching party, at its sole option, may terminate this Agreement as it applies to the property or properties as to which the breach occurred or, in the alternative, may terminate this Agreement in its entirety provided such termination in the entirety is not unreasonable in comparison to the breach committed.

25. NO LIABILITY OR MONETARY REMEDY.

The parties hereby acknowledges and agree that, except as expressly provided in this Agreement, neither party shall bear liability for any direct, indirect or consequential damages. Except where monetary damages are expressly provided for herein, neither party shall be entitled to seek monetary damages for breach of this Agreement and the sole remedy available for breach shall be an action for specific performance.

26. TERMINATION.

a. Prior to expiration of the Lease, in the event the City Council determines that it no longer serves a valid public purpose to lease the Premises to FFN and that public policy requires that the Lease must be terminated, the City shall provide FFN sixty (60) days' written notice of its intent to terminate this Lease Agreement.

b. FFN may terminate the Lease prior to its expiration by giving the City at least sixty (60) days' written notice of its intent to terminate.

c. In addition to the remedies set forth in other sections of this Agreement, the City shall have the right and option to terminate this Agreement, said termination to be effective immediately upon the City's exercise of such option, in the event of any of the following: FFN is adjudicated as bankrupt or insolvent, or takes the benefit of a reorganization against creditors' actions; FFN's leasehold interest is levied upon and a timely appeal is not filed as to any order or judgment ordering such levy; or a receiver is appointed for FFN and a timely appeal is not filed as to any order or judgment appointing such receiver.

27. WAIVER.

No act of a party to this Agreement shall be deemed a waiver of any of the party's rights hereunder, unless such waiver is specifically made in writing. A party's forbearance to enforce any rights hereunder or to exercise any available remedy, or to insist upon strict compliance herewith, shall not be deemed a waiver or forfeiture of such rights, remedies, or strict compliance, nor shall such forbearance stop the party from exercising any available rights or remedies or from requiring strict compliance in the future. The City's acceptance of any late or inadequate performance including, but not limited to, late or insufficient payments of rent, shall not constitute a waiver or forfeiture of the City's right to treat such performance as an event of default or to require timely and adequate performance in the future.

28. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the parties and supersedes all prior oral or written agreements. No waiver, modifications, additions or addenda to this Agreement shall be valid unless in writing and signed by both the City and FFN.

29. WAIVER OF JURY TRIAL.

FFN hereby waives all right to a jury trial in any action brought to enforce the terms of this Agreement or otherwise arising from this Agreement. FFN understand that, as a result of this waiver, any judicial action brought in connection with this Agreement shall be decided by a judge, and FFN shall have no right to request or require that the action be decided by a jury.

30. PARTIES BOUND.

This Agreement shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties. In the event the City or any successor-owner of the Premises shall convey or otherwise dispose of the Premises, all liabilities and obligations of the City, or any successor-owner of the City, to FFN under this Agreement shall terminate upon such conveyance or disposal and the giving of written notice thereof to FFN.

31. SURVIVABILITY.

The parties agree that all of FFN's indemnities, representations, and warranties made herein shall, to the extent and limits permitted by law, survive the termination or expiration of this Agreement and that the termination or expiration hereof shall not release FFN from any accrued, unfulfilled or unsatisfied liabilities or obligation.

32. RECORDATION; COUNTERPARTS.

This Agreement shall not be recorded in Land Records of Marion County. This Agreement may be executed in counterparts, each of which shall be deemed an original. All such counterparts together shall constitute one and the same document.

33. MERGER.

No prior or present agreements or representations shall be binding upon the parties unless incorporated into this Agreement. No modification or change in this Agreement shall be valid or binding upon the parties unless a writing is executed by the parties.

34. ATTORNEYS' FEES AND COURT COSTS.

In the event that any party hereto shall bring an action or proceeding for an alleged breach of any provision of this Agreement, the prevailing party shall be entitled to recover, as part of such action or proceeding, reasonable attorneys' fees, paralegal fees, and court costs at both trial and appellate levels.

35. **STANDARDS OF CONDUCT.**

FFN shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement or violate any laws pertaining to civil rights, equal protection or discrimination.

36. **CONTROLLING LAWS AND VENUE.**

This Agreement is to be governed by the laws of the State of Florida. Venue for any legal proceeding related to this Agreement shall be in Marion County, Florida.

37. **AUTHORITY TO BIND.**

The person signing this Agreement on behalf of FFN certifies that (s)he has the authority to bind FFN to the terms of this Agreement.

38. **SEVERABILITY.**

If any paragraph, subparagraph, sentence, clause or phrase of this Lease Agreement is held to be invalid or unconstitutional by any court of competent jurisdiction, that holding in no way affects the remaining portions of this Lease Agreement, to the extent that the portion declared to be invalid is severable from the remaining Agreement.

39. **RADON GAS.**

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County Health Department.

IN WITNESS WHEREOF, by Resolution of the City Council, the City has caused this Agreement to be executed in its name by its Mayor and attested by its City Clerk, and FFN has caused this Agreement to be signed in its name by its CEO and attested by two witnesses. The undersigned have all necessary power, authority and capacity to enter into this Agreement and to bind their respective corporations. The execution and delivery of this Agreement, and this transaction have been duly authorized by all necessary corporate action on the part of the City and FFN.

[Signatures on following page]

Landlord:

CITY OF DUNNELLON, FLORIDA

NATHAN WHITT, MAYOR

Date signed: _____

ATTEST:

DAWN M. BOWNE, MMC, CITY CLERK

Approved as to form and legal sufficiency:

Andrew J. Hand, City Attorney

Witnesses:

Tenant:

Florida Fiber Networks, LLC

Print name: _____

Officer ~~S. SUAREZ, CEO~~

Print name: _____

DAVID ORSHAN, Chief Operating

Date signed: _____