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VIA CERTIFIED MAIL W/RR & U.S. REGULAR MAIL

September 20, 2016

Town of Lake Park c/o  
The Gehring Group  
11505 Fairchild Gardens Avenue #202  
Palm Beach Gardens, FL 33410  
Attn: Valerie Ensinger, Claims Administrator

**Re: Member: Town of Lake Park**  
**Claimant: RG Towers, LLC**  
**File: GO-1240/296203**

Dear Ms. Ensinger:

Summit Risk Services has partnered with Preferred Governmental Claim Services (PGCS) as Third Party Administrators on behalf of the Preferred Governmental Insurance Trust (Preferred).

We acknowledge receipt of a Complaint filed on behalf of Plaintiff RG Towers, LLC (the "Company"). The action was filed on September 1, 2016 in the Circuit Court of the Fifteenth Judicial Circuit in Palm Beach County Florida. Plaintiff names as Defendant the Town of Lake Park ("Town"). We received the Complaint on September 2, 2016 from PGCS.

Plaintiff asserts it constructs and maintains telecommunications towers. Plaintiff avers that the Company identified a "dead zone" in the Town and located property owned by the Town at Lake Park Marina that was available for lease and construction of a telecommunications tower that would eliminate the "dead zone." Plaintiff alleges that the property was subject to a Site Lease With Option between the Town and T-Mobile South, LLC (the "Lease"). Plaintiff avers that T-Mobile assigned the Lease to the Company and that subsequent to the assignment the company entered into an Amendment to the Lease with the Town.

Plaintiff alleges that the Lease Amendment expanded the property subject to the Lease and substituted a new site plan to the Lease. Plaintiff asserts that in the Lease, the Town represented and warranted that the property could be used for the construction of a telecommunications tower and that the execution of the Lease would not violate any laws or ordinances. Plaintiff avers that it relied on the Town's representations and warranties in the Lease and Lease Amendment and expended substantial sums of money entering into the assignment from T-Mobile, entering into the Lease Amendment, designing a "stealth" telecommunications tower and in processing the application for approval of the tower. Plaintiff asserts that on March 21, 2016 the company applied to the Town for approval of its tower and presented its application for approval to the Town at a meeting of the Town Commission. Plaintiff alleges that the Town denied its application because the Town found that the tower could not be constructed in accordance with the Town laws and ordinances. Plaintiff sues the Town for Breach of Contract.

We are evaluating this tender for insurance coverage to Preferred on behalf of the individual and/or entity to whom this letter is addressed. Unless we hear from you to the contrary we will assume that coverage is being tendered to Preferred only under the under referenced Coverage Agreement and is being tendered on behalf of only those

to whom our coverage letter is addressed. The Town of Lake Park is the Covered Party with Public Officials and Employment Practices Liability insurance coverage under Coverage Agreement Number PK2FL1050201215-01 (the "Coverage Agreement"), issued by Preferred with a Coverage Agreement Period from October 1, 2015 to October 1, 2017. The Coverage Agreement carries a per claim Limit of Liability of \$2,000,000 subject to a Coverage Agreement Aggregate Limit of \$2,000,000. The Coverage Agreement also includes a \$25,000 deductible or self-Member retention.

We have determined that there is no coverage for this loss under the Public Officials Liability Coverage Part. Please refer to the following sections of this Agreement:

**PUBLIC ENTITY  
PUBLIC OFFICIALS LIABILITY AND  
EMPLOYMENT PRACTICES LIABILITY COVERAGE FORM  
(Claims Made and Reported)**

In consideration of the payment of the premium, in reliance upon the **Application**, and subject to the Declarations and the terms and conditions of this **Coverage Agreement**, the **Covered Parties** and the **Trust** agree as follows:

**SECTION I - COVERAGE AGREEMENTS**

**A. Public Officials' Liability**

The **Trust** will pay on behalf of the **Covered Party** all sums in excess of the Deductible that the **Covered Party** shall become legally obligated to pay as **Damages** and **Claim Expenses** because of a **Claim** first made against the **Covered Party** and reported to the **Trust** during the **Agreement Period** or, if exercised, the **Extended Reporting Period**, by reason of a **Wrongful Act** in the performance of or failure to perform duties for the **Public Entity**. The **Wrongful Act** must have been committed on or subsequent to the **Retroactive Date** specified in the Declarations and before the end of the **Agreement Period**.

\* \* \*

**SECTION II – SUPPLEMENTAL PAYMENTS**

**B. Non-Monetary claims**

The **Trust** shall defend a claim seeking relief or redress in any form other than monetary damages provided said claim is not otherwise excluded, or **Claims Expenses** for a Claim seeking such non-monetary relief, subject to the following conditions:

1. Defense costs under this section have an annual aggregate limit of liability of \$100,000;
2. The Trust defends the Claim from first notice to **Covered Party**.

**SECTION III - DEFINITIONS**

**F. Claim means:**

1. a civil proceeding against any **Covered Party** seeking monetary damages or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading; and

2. an administrative proceeding including but not limited to EEOC or other regulatory proceeding against any **Covered Party**, commenced by the filing of a notice of charges, investigative order or similar document.

**H. Covered Party** means:

1. the Public Entity;
2. all persons who were, now are or shall be lawfully elected or appointed officials or employees while acting for on behalf of the Public Entity; \* \* \*

**D. Bodily Injury** means injury to the body, sickness, or disease, including death resulting from such injuries. **Bodily Injury** also means mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock, whether or not resulting from injury to the body, sickness, disease or death of any person.

**K. Personal Injury** means injury arising out of one or more of the following offenses:

1. false arrest, detention or imprisonment;
2. Malicious prosecution;
3. libel, slander or other defamatory or disparaging material;
4. publication or an utterance in violation of an individual's right to privacy; and wrongful entry or eviction, or other invasion of the right to private occupancy.

**M. Property Damage** means:

1. physical injury to, or loss or destruction of, tangible property, including the loss of use thereof; and
2. loss of use of tangible property which has not been physically injured, damaged or destroyed.

**SECTION IV - EXCLUSIONS**

The **Trust** shall not be liable for **Damages** or **Claims Expenses** on account of any **Claim**:

- A. based upon, arising out or attributable to any actual dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law by a **Covered Party**.
- B. seeking relief or redress in any form other than monetary damages, or Claims Expenses for a Claim seeking such non-monetary relief, except as provided in the Supplementary Payments above.
- C. alleging, based upon, arising out or attributable to any:
  1. **Bodily Injury**;
  2. **Property Damage**;
  3. **Personal Injury**;
  4. **Advertising Injury**;
  5. any allegation that a **Covered Party** negligently employed, investigated, supervised or retained any person who is liable or responsible for such injury or damage, as it relates to items C 1, 2, 3 and 4 above; or
  6. any willful violation of any statute, ordinance or regulation committed by you or with your knowledge or consent as it relates to items C 1, 2, 3 and 4 above.

**D.** alleging, based upon, arising out or attributable to inverse condemnation, eminent domain, temporary or permanent taking, adverse possession, dedication by adverse use, condemnation proceedings, or claims brought under Florida Statute 70.001, the "Bert J. Harris, Jr., Private Property Rights Protection Act," or any similar claim by whatever name called.

**G.** alleging, based upon, arising out or attributable to the gaining in fact of any profit or financial advantage to which the **Covered Party** was not legally entitled.

**M.** alleging, based upon, arising out or attributable to breach of contract, warranty, guarantee or promise unless such liability would have attached to the **Covered Party** even in the absence of such contract, warranty, guarantee or promise. However, this exclusion shall not apply to any **Claim** alleging any **Wrongful Employment Practices**.

**N.** alleging, based upon, arising out or attributable to any actual or alleged liability assumed by the **Covered Party** under any contract or agreement, unless such liability would have attached to the **Covered Party** even in the absence of such contract.

Pursuant to Exclusions "M" and "N" there is no coverage for claims arising out of breach of contract. Since this claim arises out of a breach of contract between the Plaintiff and Defendant there is no coverage for this matter under your Public Officials and Employment Liability coverage part.

Pursuant to Exclusion "D" there is no coverage for inverse condemnation and the taking of property. We are also denying coverage under this exclusion as well. Please note that the Coverage Agreement specifically excludes coverage for property damage. The definition of property damage includes the loss of use of property.

If you have any facts or additional information in your possession which would change or alter the facts on which we have based our decision, please forward it to my attention immediately.

Preferred reserves its rights to further supplement or alter our coverage position due to any new or additional information.

Very truly yours,

Summit Risk Services

By: 

Edward A. Kron  
(215) 443-3597  
kron@summitrisk.com

Copy: David Smyth  
PGCS Claim Services