

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY **BLUE SHEET NO: 20030438-UTL**

1. REQUESTED MOTION:

ACTION REQUESTED:

Authorize the Chairman, on behalf of the BOCC, to execute a "Memorandum of Lease", a W-9 Form, a "Letter of Authorization" required by County Zoning, and a "Tower Lease with Option" by and between Lee County (Landlord), and Omnipoint Holdings, Inc., a Delaware Corporation (Tenant), to allow T-Mobile USA, Inc. of Bellevue, Washington use of the Tice Water Tower (also known as the Menocal Avenue Tower).
 Approve budget amendment resolution in the amount of \$12,000 for remaining portion of FY03.

WHY ACTION IS NECESSARY:

This lease conveys only the right to use the property pursuant to the terms of the lease and does not convey any rights in the real property itself.

WHAT ACTION ACCOMPLISHES:

Allows T-Mobile USA, Inc. to place antennas and related equipment near and upon the water tower to provide personal telephonic communication opportunities to local consumers.

2. DEPARTMENTAL CATEGORY: 10 - UTILITIES
COMMISSION DISTRICT #: 5

C10B

3. MEETING DATE:

04-29-2003

4. AGENDA:

- X CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED: _____

5. REQUIREMENT/PURPOSE:

- (Specify)
- STATUTE _____
 - ORDINANCE _____
 - ADMIN. CODE _____
 - X OTHER Tower Lease

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER: _____
- B. DEPARTMENT: Lee County Public Works
- C. DIVISION/SECTION: Utilities Division
- BY: Rick Diaz, Utilities Director

DATE: 4/11/03

7. BACKGROUND:

Lee County has been contacted by T-Mobile USA, Inc. regarding the use of the Tice Water Tower and property (a/k/a Menocal Avenue Tower) on which to co-locate antennas and other related equipment for wireless telephonic communications, thereby allowing availability of enhanced communication opportunities within Lee County which will assist business and individual consumers in an area of increasing service demand.

Funds will be deposited in: 005360048700.362000.9005 *Q.M.*

(CONT'D.)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL

(A) DEPARTMENT DIRECTOR	(B) PURCH. OR CONTRACTS	(C) HUMAN RESOURCES	(D) OTHER	(E) COUNTY ATTORNEY	(F) BUDGET SERVICES				(G) COUNTY MANAGER
					OA	OM	Risk	GC	
<i>J. Lavender</i> Date: <u>4/10/03</u>	N/A <i>Lee C. Logant</i> Date: _____	N/A Date: _____	 Date: _____	Date: _____ 4/14/03 P.M. 4/15/02	Date: _____ 4/17/03	Date: _____ 4/15/03	Date: _____ 4/15/03	Date: _____ 4/10/03	Date: _____

10. COMMISSION ACTION:

- _____ APPROVED
- _____ DENIED
- _____ DEFERRED
- _____ OTHER

Rec. by CoAtty
 Date: 4/14/03
 Time: 11:40 am

Forwarded To:
Budget
4/14/03 2:30pm

RECEIVED BY
 COUNTY ADMIN. *PM*
4-14 3:45

COUNTY ADMIN.
 RECOMMENDATION:
4/15/03

RESOLUTION

Amending the Fund 48700 Lee County Utilities Fund budget to incorporate the unanticipated receipts into Estimated Revenues and Appropriations for the fiscal year 2002-2003.

WHEREAS, in compliance with the Florida Statutes 129.06(2), it is the desire of the Board of County Commissioners of Lee County, Florida, to amend Fund 48700 Lee County Utilities Fund budget for \$12,000 of the unanticipated revenue from Tice Tower lease contract and an appropriation of a like amount into reserve account and;

WHEREAS, the Fund 48700 General Fund budget shall be amended to include the following amounts which were previously not included.

ESTIMATED REVENUES

Prior Total:		\$62,936,980
Additions		
OD5360048700.362000.9005	Tice Tower Rental	\$12,000
Amended Total Estimated Revenues		\$62,948,980

APPROPRIATIONS

Prior Total:		\$62,936,980
Additions		
GC5890148700.509910	Reserve for Contingencies	\$12,000
Amended Total Appropriations		\$62,948,980

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Lee County, Florida, that the Fund 48700 Lee County Utilities Fund budget is hereby amended to show the above additions to its Estimated Revenue and Appropriation accounts.

Duly voted upon and adopted in Chambers at a regular Public Hearing by the Board of County Commissioners on this ____ day of _____, 2003.

ATTEST:
CHARLIE GREEN, EX-OFFICIO CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

BY: _____
DEPUTY CLERK

CHAIRMAN

APPROVED AS TO FORM

OFFICE OF COUNTY ATTORNEY

DOC TYPE YB
LEDGER TYPE BA

TOWER LEASE WITH OPTION

THIS TOWER LEASE WITH OPTION (this "Lease") is by and between Lee County, Florida, a political subdivision of the State of Florida ("Landlord"), and Omnipoint Holdings, Inc., a Delaware Corporation ("Tenant").

1. Option to Lease

(a) In consideration of the payment of five hundred and no/100 dollars (\$500.00) (the "Option Fee") by Tenant to Landlord, Landlord hereby grants to Tenant an option to lease the use of a portion of the real property described in the attached Exhibit A (the "Property"), together with the right to use the tower located thereon ("Tower") on the terms and conditions set forth herein (the "Option"). The Option shall be for an initial term of three (3) months, commencing on the Effective Date (as defined below) (the "Option Period"). The Option Period may be extended by Tenant for an additional three (3) months upon written notice to Landlord and payment of the sum of five hundred and no/100 dollars (\$500.00) ("Additional Option Fee") at any time prior to the end of the Option Period.

(b) During the Option Period and any extension thereof, and during the term of this Lease, Landlord agrees to cooperate with Tenant in obtaining, at Tenant's expense, all licenses and permits or authorizations required for Tenant's use of the Premises (as defined below) from all applicable government and/or regulatory entities (including, without limitation, zoning and land use authorities, and the Federal Communication Commission ("FCC") ("Governmental Approvals"), including appointing Tenant as agent for all land use and zoning permit applications, and Landlord agrees to cooperate with and to allow Tenant, at no cost to Landlord, to obtain a title report, zoning approvals and variances, land-use permits, and Landlord expressly grants to Tenant a right of access to the Property to perform surveys, soils tests, and other engineering procedures or environmental investigations on the Property necessary to determine that Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system design, operations and Governmental Approvals. Notwithstanding the foregoing, Tenant may not change the zoning classification of the Property without first obtaining Landlord's written consent. During the Option Period and any extension thereof, Landlord agrees that it will not interfere with Tenant's efforts to secure other licenses and permits or authorizations that relate to other property. During the Option Period and any extension thereof, Tenant may exercise the Option by so notifying Landlord in writing, at Landlord's address in accordance with Section 12 hereof.

(c) If Tenant exercises the Option, then, subject to the following terms and conditions, Landlord hereby leases to Tenant the use of that portion of the Tower and Property, together with easements for access and utilities, generally described and depicted in the attached Exhibit B (collectively referred to hereinafter as the "Premises"). The Premises, located at Menocal Avenue, Tice, Lee County, Florida, comprises approximately 200 square feet. Tenant's location on the Tower shall be at 126 feet above ground level.

2. Term. The initial term of the Lease shall be five (5) years commencing on the date of exercise of the Option (the "Commencement Date"), and terminating at midnight on the last day of the initial term (the "Initial Term").

3. Permitted Use. The Premises may be used by Tenant for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, removal or replacement of related facilities, tower and base, antennas, microwave dishes, equipment shelters and/or cabinets and related activities.

4. Rent. Tenant shall pay Landlord, as rent, Two Thousand and no/100 dollars (\$2,000.00) per month ("Rent"). Rent shall be payable within twenty (20) days following the Commencement Date prorated for the remainder of the month in which the Commencement Date falls and thereafter Rent will be payable monthly in advance by the fifth day of each month to Lee County at Landlord's address specified in Section 12 below. If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination for any reason (other than a default by Tenant) and all prepaid Rent shall be immediately refunded to Tenant. During the Initial Term and all Renewal Terms (as defined below), Rent shall increase annually by three percent (3%), and such increases shall be effective on each anniversary of the Commencement Date.

5. Renewal. Tenant shall have the right to extend this Lease for successive and additional renewal terms of one (1) year each (each a "Renewal Term"). Each Renewal Term shall be on the same terms and conditions as set forth herein, except that Rent shall be increased as described above. This Lease shall automatically renew for each successive Renewal Term unless either party notifies the other party in writing of such party's intention not to renew this Lease, at least Two Hundred Seventy (270) days prior to the expiration of the Initial Term five (5) year term or any Renewal Term. If Tenant shall remain in possession of the Premises at the expiration of this Lease or any Renewal Term without a written agreement, such tenancy shall be deemed a month-to-month tenancy under the same terms and conditions of this Lease.

6. Interference. Tenant shall not use the Premises in any way which interferes with the use of the Property by Landlord or lessees or licensees of Landlord, with rights in the Property prior in time to Tenant's (subject to Tenant's rights under this Lease, including, without limitation, non-interference). Similarly, Landlord shall not use, nor shall Landlord permit its

lessees, licensees, employees, invitees or agents to use, any portion of the Property in any way which interferes with the operations of Tenant. Such interference shall be deemed a material breach by the interfering party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Lease immediately upon written notice.

7. Improvements; Utilities; Access.

(a) Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities necessary to operate its communications system, including, without limitation, radio transmitting and receiving antennas, microwave dishes, tower and base, equipment shelters and/or cabinets and related cables and utility lines and a location based system, including, without limitation, antenna(s), coaxial cable, base units and other associated equipment (collectively, the "Antenna Facilities"), as such location based system may be required by any county, state or federal agency/department. Tenant shall have the right to alter, replace, expand, enhance and upgrade the Antenna Facilities at any time during the term of this Lease. Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. Landlord acknowledges that it shall not interfere with any aspects of construction, including, without limitation, attempting to direct construction personnel as to the location of or method of installation of the Antenna Facilities and the Easements (as defined below) ("Construction Interference"). Landlord further acknowledges that it will be responsible for any costs and damages (including, fines and penalties) that are directly attributable to Landlord's Construction Interference. The Antenna Facilities shall remain the exclusive property of Tenant. Tenant shall have the right to remove the Antenna Facilities at any time during and upon the expiration or termination of this Lease.

(b) Tenant, at its expense, may use any and all appropriate means of restricting access to the Antenna Facilities, including, without limitation, the construction of a fence.

(c) Tenant shall, at Tenant's expense, keep and maintain the Antenna Facilities now or hereafter located on the Property in commercially reasonable condition and repair during the term of this Lease, normal wear and tear and casualty excepted. Upon termination or expiration of this Lease, the Premises shall be returned to Landlord in good, usable condition, normal wear and tear and casualty excepted.

(d) Tenant shall have the right to install utilities, at Tenant's expense, and to improve the present utilities on the Property (including, but not limited to, the installation of battery backup). Landlord agrees to use reasonable efforts in assisting Tenant to acquire necessary utility service. Tenant shall install separate meters for utilities used on the Property by Tenant. Tenant shall pay the periodic charges for all utilities attributable to Tenant's use. Landlord shall diligently correct any variation, interruption or failure of utility service.

(e) As partial consideration for Rent paid under this Lease, Landlord hereby grants Tenant an Easements in, under and across the Property for ingress, egress, utilities and access (including access for the purposes described in Section 1) to the Premises adequate to install and maintain utilities, which include, but are not limited to, the installation of power and telephone service cable, and to service the Premises and the Antenna Facilities at all times during the Initial Term of this Lease and any Renewal Term (collectively, the "Easements"). The Easements provided hereunder shall have the same term as this Lease.

(f) Tenant shall have 24-hours-a-day, 7-days-a-week access to the Premises ("Access") at all times during the Initial Term of this Lease and any Renewal Term. In the event Landlord, its employees or agents impede or deny Access to Tenant, its employees or agents, Tenant shall, without waiving any other rights that it may have at law or in equity, deduct from Rent amounts due under this Lease an amount equal to five hundred and no/100 Dollars (\$500.00) per day for each day that Access is impeded or denied.

8. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability as follows:

(a) upon thirty (30) days' written notice by Landlord if Tenant fails to cure a default for payment of amounts due under this Lease within that thirty (30) day period;

(b) immediately if Tenant notifies Landlord of unacceptable results of any title report, environmental or soil tests prior to Tenant's installation of the Antenna Facilities on the Premises, or if Tenant is unable to obtain, maintain, or otherwise forfeits or cancels any license (including, without limitation, an FCC license), permit or any Governmental Approval necessary to the installation and/or operation of the Antenna Facilities or Tenant's business;

(c) upon ninety (90) days' written notice by Tenant if the Property or the Antenna Facilities are, or become unacceptable under Tenant's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong;

(d) immediately upon written notice by Tenant if the Premises or the Antenna Facilities are destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then all Rent shall abate until the Premises and/or the Antenna Facilities are restored to the condition existing immediately prior to such damage or destruction; or

(e) at the time title to the Property transfers to a condemning authority pursuant to a taking of all or a portion of the Property sufficient in Tenant's determination to render the Premises unsuitable for Tenant's use. Landlord and Tenant shall each be entitled to pursue their own separate awards with respect to such taking. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation.

9. Default and Right to Cure. Notwithstanding anything contained herein to the contrary and without waiving any other rights granted to it at law or in equity, each party shall have the right, but not the obligation, to terminate this Lease on written notice pursuant to Section 12 hereof, to take effect immediately, if the other party (i) fails to perform any covenant for a period of thirty (30) days after receipt of written notice thereof to cure or (ii) commits a material breach of this Lease and fails to diligently pursue such cure to its completion after sixty (60) days' written notice to the defaulting party.

10. Taxes. Landlord shall pay when due all real property taxes for the Property, including the Premises. In the event that Landlord fails to pay any such real property taxes or other fees and assessments, Tenant shall have the right, but not the obligation, to pay such owed amounts and deduct them from Rent amounts due under this Lease. Notwithstanding the foregoing, Tenant shall pay any personal property tax, real property tax or any other tax or fee which are directly attributable to the presence or installation of Tenant's Antenna Facilities, only for so long as this Lease has not expired of its own terms or is not terminated by either party. Landlord hereby grants to Tenant the right to challenge, whether in a Court, Administrative Proceeding, or other venue, on behalf of Landlord and/or Tenant, any personal property or real property tax assessments that may affect Tenant. If Landlord receives notice of any personal property or real property tax assessment against the Landlord, which may affect Tenant and is directly attributable to Tenant's installation, Landlord shall provide timely notice of the assessment to Tenant sufficient to allow Tenant to consent to or challenge such assessment. Further, Landlord shall provide to Tenant any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section 10. In the event real property taxes are assessed against Landlord or Tenant for the Premises or the Property, Tenant shall have the right, but not the obligation, to terminate this Lease without further liability after thirty (30) days' written notice to Landlord, provided Tenant pays any real property taxes assessed as provided herein.

11. Insurance and Subrogation and Indemnification.

(a) Tenant will provide Commercial General Liability Insurance in an aggregate amount of One Million and no/100 Dollars (\$1,000,000.00). Tenant may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Tenant may maintain. The Certificate of Insurance evidencing Tenant's Commercial Liability Insurance Policy shall name Landlord as an additional insured.

(b) Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other. To the extent loss or damage is not covered by their first party property insurance policies, Landlord, to the extent permitted by Section 768.28, Florida Statutes, and Tenant each agree to indemnify and hold harmless the other party from and against any and all claims, damages, cost and expenses, including reasonable attorney fees, to the extent caused by or arising out of (a) the negligent acts or omissions or willful misconduct in the operations or activities on the Property by the indemnifying party or the employees, agents, contractors, licensees, tenants and/or subtenants of the indemnifying party, or (b) a breach of any obligation of the indemnifying party under this Lease. Notwithstanding the foregoing, this indemnification shall not extend to indirect, special, incidental or consequential damages, including, without limitation, loss of profits, income or business opportunities to the indemnified party or anyone claiming through the indemnified party. The indemnifying party's obligations under this section are contingent upon (i) its receiving prompt written notice of any event giving rise to an obligation to indemnify the other party and (ii) the indemnified party's granting it the right to control the defense and settlement of the same. Tenant agrees to indemnify and hold harmless the other party from and against any and all claims, damages, cost and expenses, including reasonable attorney fees, to the extent caused by or arising out of (a) the negligent acts or omissions or willful misconduct in the operations or activities on the Property by the indemnifying party or the employees, agents, contractors, licensees, tenants and/or subtenants of the indemnifying party, or (b) a breach of any obligation of the indemnifying party under this Lease. Notwithstanding the foregoing, this indemnification shall not extend to indirect, special, incidental or consequential damages, including, without limitation, loss of profits, income or business opportunities to the indemnified party or anyone claiming through the indemnified party. Notwithstanding anything to the contrary in this Lease, the parties hereby confirm that the provisions of this section shall survive the expiration or termination of this Lease. Tenant shall not be responsible to Landlord, or any third-party, for any claims, costs or damages (including, fines and penalties) attributable to any pre-existing violations of applicable codes, statutes or other regulations governing the Property.

c. Landlord, to the extent permitted by Section 768.28, Florida Statutes, agrees to indemnify, defend, save and hold harmless Tenant, its officers, agents and employees, from all suits, claims, demands and liabilities of any nature whatsoever arising out of, because of, or due to breach of this Lease by Landlord, or due to any act or occurrence of omission or commission of the Landlord, its agents or employees. Landlord and Tenant agree that this paragraph shall not waive sovereign immunity of the Landlord nor waive the benefits of Sections 768.28 and 335.055, or any similar provision.

12. Notices. All notices, requests, demands and other communications shall be in writing and are effective three (3) days after deposit in the U.S. mail, certified and postage paid, or upon receipt if personally delivered or sent by next-business-day delivery via a nationally recognized overnight courier to the addresses set forth below. Landlord or Tenant may from time to time designate any other address for this purpose by providing written notice to the other party.

If to Tenant, to:

T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
Attn: PCS Lease Administrator
With a copy to: Attn: Legal Dept.

With a copy to:

T-Mobile USA, Inc
3111 W. Dr. Martin Luther King Drive
Suite 400
Tampa, FL 33607
Attn: Lease Administration Manager

If to Landlord, to:

Lee County Board of Commissioners
2115 Second Street
Fort Myers, FL, 33902

With a copy to:

Mr. Tom Hill
Olga Water Plant
1450 Werner Dr.
Alva, FL, 33920

13. Quiet Enjoyment, Title and Authority. Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute this Lease; (ii) it has good and unencumbered title to the Property and the Tower free and clear of any liens or mortgages, except those disclosed to Tenant and which will not interfere with Tenant's rights to or use of the Premises; and (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord. Landlord covenants that at all times during the term of this Lease, Tenant's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

14. Environmental Laws. Landlord represents that it has no knowledge of any substance, chemical or waste (collectively, "Hazardous Substance") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Landlord and Tenant shall not introduce or use any Hazardous Substance on the Property in violation of any applicable law. Landlord shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, all spills or other releases of any Hazardous Substance not caused solely by Tenant, that have occurred or which may occur on the Property. Each party agrees to defend, indemnify and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability (collectively, "Claims") including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the indemnitee may suffer or incur due to the existence or discovery of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment (collectively, "Actions"), that relate to or arise from the indemnitor's activities on the Property. Landlord agrees to defend, indemnify and hold Tenant harmless from Claims resulting from Actions on the Property not caused by Landlord or Tenant prior to and during the Initial Term and any Renewal Term of this Lease. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This Section 14 shall survive the termination or expiration of this Lease.

Landlord, to the extent permitted by section 768.28, Florida Statutes, agrees to indemnify, defend, save and hold harmless Tenant, its officers, agents and employees, from all suits, claims, demands and liabilities of any nature whatsoever arising out of, because of, or due to breach of this Lease by Landlord, or due to any act or occurrence of omission or commission of the Landlord, its agents or employees. Landlord and Tenant agree that this paragraph shall not waive sovereign immunity of the Landlord nor waive the benefits of Sections 768.28 and 335.055 or any similar provision.

15. Assignment and Subleasing. Tenant shall have the right to assign or otherwise transfer this Lease and the Easements (as defined above) to any person or business entity which is authorized pursuant to and FCC licensed to, operate a wireless communications business, is a parent, subsidiary or affiliate of Tenant, is merged or consolidated with Tenant or purchases more than fifty percent (50%) of either an ownership interest in Tenant or the assets of Tenant in the "Metropolitan

Trading Area" or "Basic Trading Area" (as those terms are defined by the FCC) in which the Property is located. Upon such assignment, Tenant shall be relieved of all liabilities and obligations hereunder and Landlord shall look solely to the assignee for performance under this Lease and all obligations hereunder. Tenant may sublease the Premises, upon written notice to Landlord. Tenant may otherwise assign this Lease upon written approval of Landlord, which approval shall not be unreasonably delayed, withheld, conditioned or denied.

Additionally, Tenant may, upon notice to Landlord, mortgage or grant a security interest in this Lease and the Antenna Facilities, and may assign this Lease and the Antenna Facilities to any mortgagees or holders of security interests, including their successors or assigns (collectively "Mortgagees"), provided such Mortgagees agree to be bound by the terms and provisions of this Lease. In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. Landlord agrees to notify Tenant and Tenant's Mortgagees simultaneously of any default by Tenant and to give Mortgagees the same right to cure any default as Tenant or to remove any property of Tenant or Mortgagees located on the Premises, except that the cure period for any Mortgagees shall not be less than thirty (30) days after receipt of the default notice, as provided in Section 9 of this Lease. All such notices to Mortgagees shall be sent to Mortgagees at the address specified by Tenant. Failure by Landlord to give Mortgagees such notice shall not diminish Landlord's rights against Tenant, but shall preserve all rights of Mortgagees to cure any default and to remove any property of Tenant or Mortgagees located on the Premises as provided in Section 17 of this Lease.

16. Successors and Assigns. This Lease and the Easements granted herein shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

17. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities or any portion thereof, which shall be deemed personal property for the purposes of this Lease, whether or not the same is deemed real or personal property under applicable laws, and Landlord gives Tenant and Mortgagees the right to remove all or any portion of the same from time to time, whether before or after a default under this Lease, in Tenant's and/or Mortgagee's sole discretion and without Landlord's consent.

18. Miscellaneous.

(a) The prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

(b) Each party agrees to furnish to the other, within twenty (20) days after request, such truthful estoppel information as the other may reasonably request.

(c) This Lease constitutes the entire agreement and understanding of the parties, and supercedes all offers, negotiations and other agreements, with respect to the subject matter and property covered by this Lease.

(d) Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease in substantially the form attached hereto as Exhibit C necessary to protect its rights or use of the Premises. The Memorandum of Lease may be recorded in place of this Lease, by either party. In the event the Property is encumbered by a mortgage or deed of trust, Landlord agrees, upon request of Tenant, to obtain and furnish to Tenant a non-disturbance and attornment agreement for each such mortgage or deed of trust, in a form reasonably acceptable to Tenant. Tenant may obtain title insurance on its interest in the Premises. Landlord agrees to execute such documents as the title company may require in connection therewith.

(e) This Lease shall be construed in accordance with the laws of the state in which the Property is located.

(f) If any term of this Lease is found to be void or invalid, such finding shall not affect the remaining terms of this Lease, which shall continue in full force and effect. The parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable. Any questions of particular interpretation shall not be interpreted against the draftsman, but rather in accordance with the fair meaning thereof. No provision of this Lease will be deemed waived by either party unless expressly waived in writing signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.

(g) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their individual or representative capacity as indicated.

(h) This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(i) All Exhibits referred to herein and any Addenda are incorporated herein for all purposes. The parties understand and acknowledge that Exhibit A (the legal description of the Property) and Exhibit B (the Premises location within the Property),

may be attached to this Lease and the Memorandum of Lease, in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, Exhibits A, and/or B, as the case may be, which may have been attached hereto in preliminary form, may be replaced by Tenant with such final, more complete exhibit(s). The terms of all Exhibits are incorporated herein for all purposes.

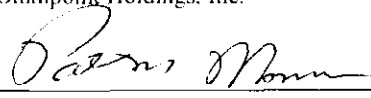
(j) If Landlord is represented by any broker or any other leasing agent, Landlord is responsible for all commission fee or other payment to such agent, and agrees to indemnify and hold Tenant harmless from all claims by such broker or anyone claiming through such broker. If Tenant is represented by any broker or any other leasing agent, Tenant is responsible for all commission fee or other payment to such agent, and agrees to indemnify and hold Landlord harmless from all claims by such broker or anyone claiming through such broker.

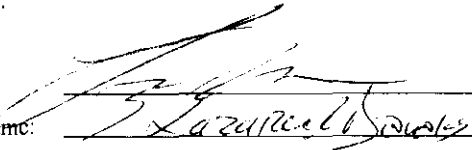
The effective date of this Lease is the date of execution by the last party to sign (the "Effective Date").

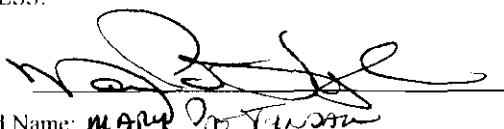
LANDLORD: Lee County Board of Commissioners

By: _____
Printed Name: Mr. Ray Judah
Its: Chairman
Date: _____
WITNESS: _____

WITNESS: _____
By: _____
Printed Name: _____
Date: _____

TENANT: Omnipoint Holdings, Inc.
By:  3/21/03
Printed Name: Patrick Monroe
Its: Director of Engineering and Operations
Date: 3/21/03

WITNESS: _____
By: 
Printed Name: Elizabeth D. Judah
Date: 3/21/03

WITNESS: _____
By: 
Printed Name: MARY O. TINSMAN
Date: 3/21/03

Approved as to form

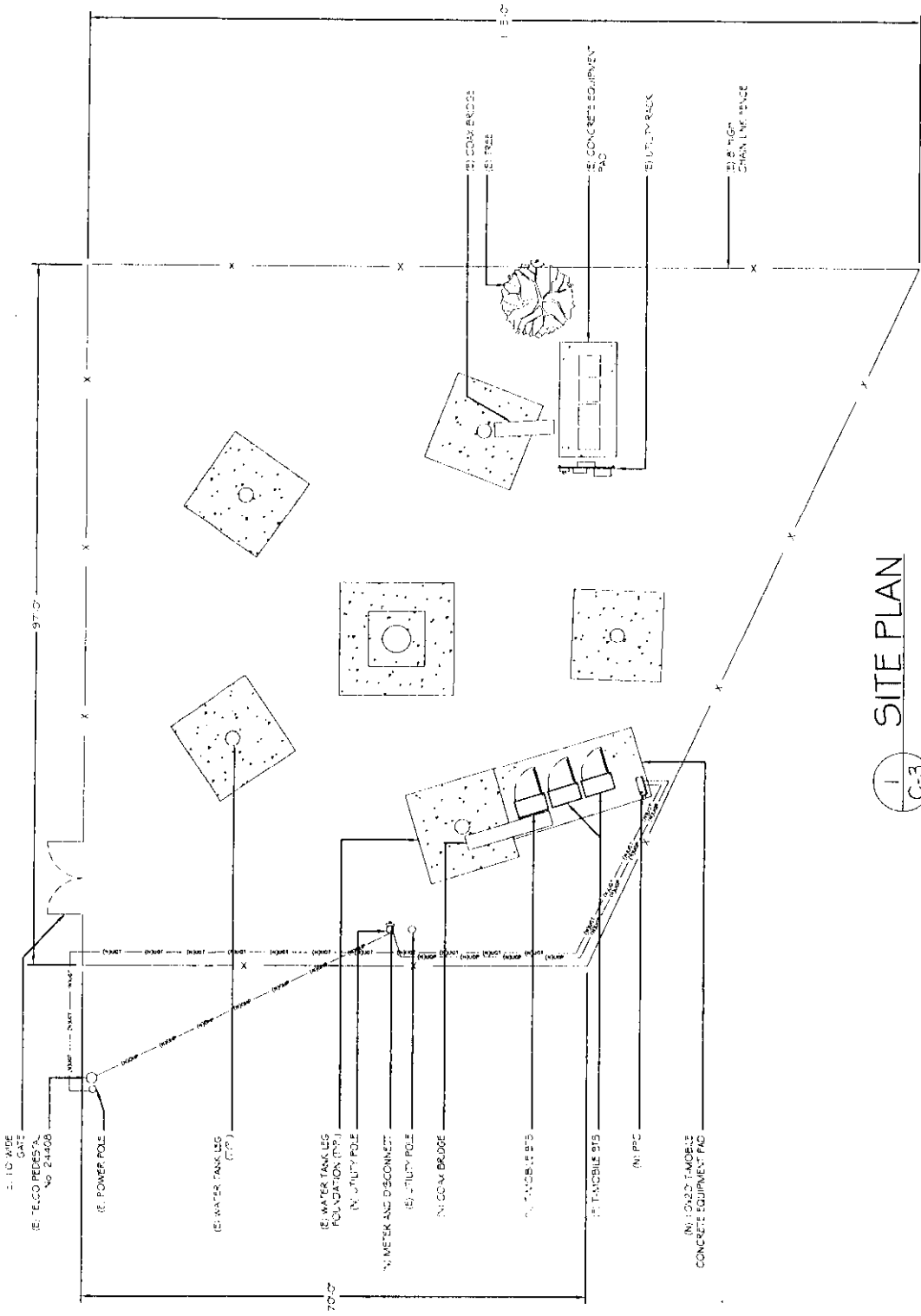
EXHIBIT A
Legal Description

The Property is legally described as follows:

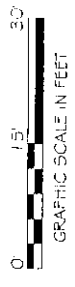
Lots 6 and 7 and the Southeastely 10 feet of Lot 5 (as measured on a perpendicular to the Southeastery line of said Lot 5) Block 7, PARQUE IM-
LEON SUBDIVISION according to the map or plat thereof as recorded in
Plat Book 6, Page(s) 77, Public Record, of Lee County, Florida

EXHIBIT B

**The location of the Premises within the Property (together with access and utilities)
is more particularly described and depicted as follows:**



1 SITE PLAN
C-3



J-Mobile
 5100 S. DIXIE HWY.
 SUITE 100
 JACKSONVILLE, FL 32218
 PHONE: 904-455-1122
 FAX: 904-455-1123

MACTEC
 MACTEC INDUSTRIES, INC.
 10000 W. STATE ROAD 10
 SUITE 100
 JACKSONVILLE, FL 32218
 PHONE: 904-455-1122
 FAX: 904-455-1123

PROJECT NO. 00007-10007-001

NO.	DATE	DESCRIPTION
1	10/10/07	PRELIMINARY
2	10/10/07	FINAL

DESIGNED BY: M. ASHER
 PROFESSIONAL ENGINEER

SOURCE: MCTEAL WATER TANKS, INC.
 DATE: 10/10/07
 NAME: MCTEAL WATER TANKS, INC.
 PROJECT: MCTEAL WATER TANKS, INC.
 JOB NO.: 00007-10007-001
 SHEET NO.: 00007-10007-001

MCTEAL WATER TANKS
 FM 1000A
 MCTEAL WATER TANKS, INC.
 10000 W. STATE ROAD 10
 SUITE 100
 JACKSONVILLE, FL 32218

SHEET NAME
 SITE PLAN
 SHEET NUMBER
 C-3

EXHIBIT C

**Memorandum
of
Lease**

Memorandum of Lease

Assessor's Parcel Number:

Between LeeCounty, a Florida municipal eCororation ("Landlord")
and Omnipoint Holdings, Inc. ("Tenant")

A Tower Lease with Option (the "Lease") by and between Lee County, a Florida municipal corporation (Landlord") and Omnipoint Holdings, Inc., a Delaware Corporation ("Tenant") was made regarding a portion of following the property:

See Attached Exhibit "A" incorporated herein for all purposes

The Option is for a term of three (3) months after the Effective Date of the Lease (as defined under the Lease), with up to one additional three (3) month renewal ("Optional Period").

The Lease is for a term of five (5) years and will commence on the date as set forth in the Lease (the "Commencement Date") Tenant shall have the right to extend this Lease successive and renewal one -year terms.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum effective as of the date of the last party to sign

LANDLORD:

By: _____
Printed Name: _____
Its: _____
Date: _____

WITNESS:

WITNESS:

By: _____
Printed Name _____
Date _____

By: _____
Printed Name _____
Date _____

TENANT: Omnipoint Holdings, Inc

By: _____
Printed Name: _____
Its: _____
Date: _____

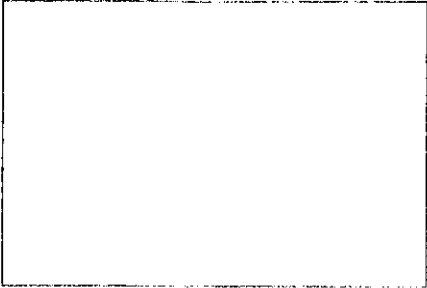
WITNESS:

WITNESS:

By: _____
Printed Name: _____

By: _____
Printed Name: _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by _____ of _____ a _____, on behalf of said corporation. He/she is _____ personally known to me or has produced _____ as identification.



(Use this space for notary stamp/seal)

(Signature of Notary Public)

Print Name _____
Notary Public, State of Florida

Commission No. _____
My commission expires _____

Memorandum of Lease XXXXX/A
Legal Description

The Property is legally described as follows:

1.0000 Acres, more or less, being the NW 1/4 of Section 10, Township 10N, Range 10E, County of [County Name], State of [State Name], as shown on the plat recorded in the Public Records of [County Name], [Date], and as more fully described in the plat recorded in the Public Records of [County Name], [Date].

Mobile

8100 S. W. 10th Ave
Suite 1000, Boca Raton, FL 33433
Office: (561) 991-7121
Fax: (561) 991-7297

MACTEC

MACTEC ENGINEERING CONSULTING INC.
1000 N. W. 10th Ave, Suite 1000
Boca Raton, FL 33433
Tel: (561) 341-1158 Fax: (561) 341-1199

CERTIFICATE OF AUTHORIZATION # 7-529

PROJECT NO. 0009 1000 000

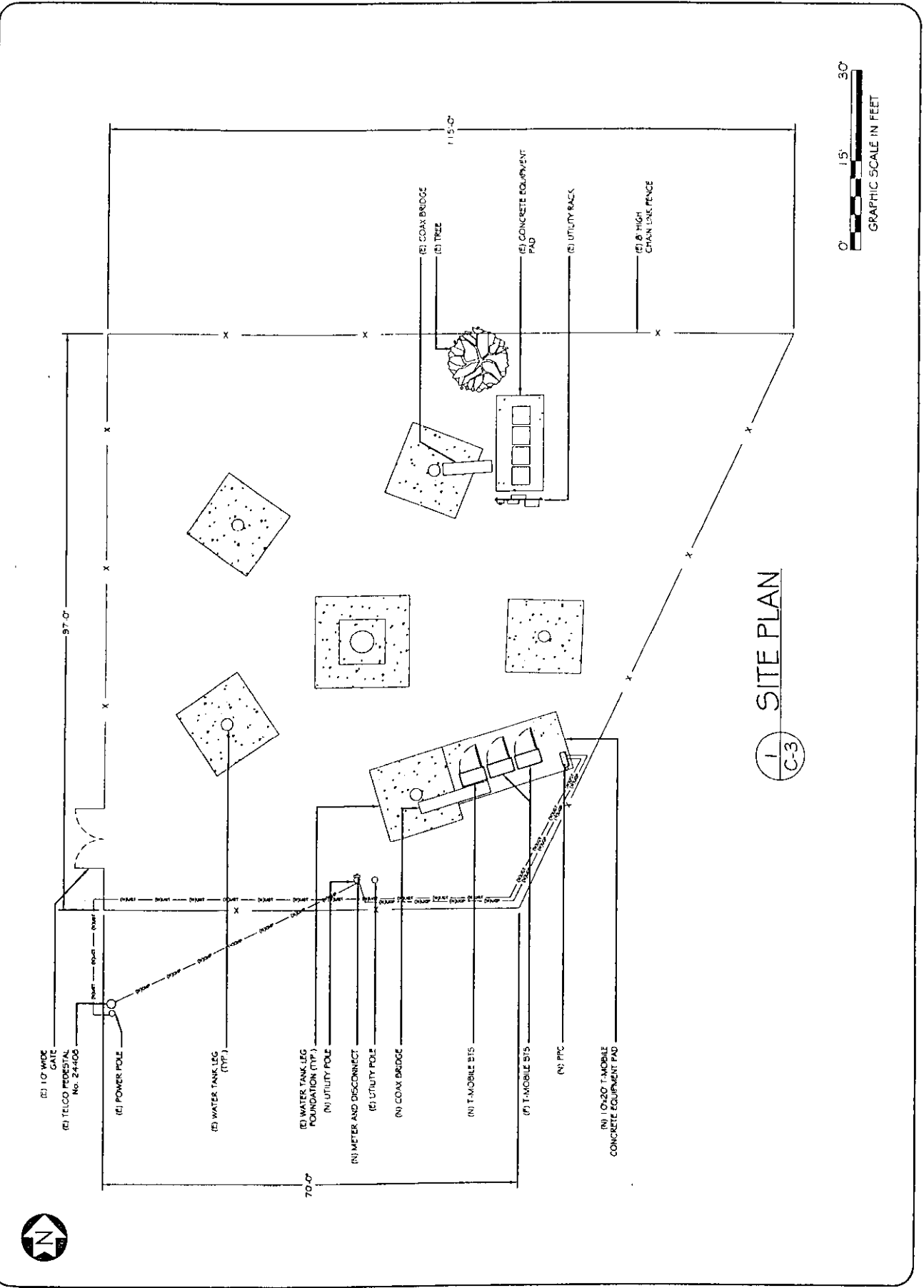
ID	UTILIZATION	PRELIMINARY
REV	DATE	DESCRIPTION

DESIGNED BY: P. DUNCAN
PROFESSIONAL ENGINEER

DATE: 02/28/03
SHEET NO.: 27/37
PROJECT NO.: 002603

OWNER: MENOCAL WATER TANK
PROJECT: FM10008A
LOCATION: MENOCAL AVENUE
TCE #10008-11005

SHEET NAME: SITE PLAN
SHEET NUMBER: C-3



Memorandum of Lease

Assessor's Parcel Number: 04-44-25-16-00007.0060

Between LeeCounty, a Florida municipal Cororation ("Landlord")
and Omnipoint Holdings, Inc. ("Tenant")

A Tower Lease with Option (the "Lease") by and between Lee County, a Florida municipal corporation ("Landlord") and Omnipoint Holdings, Inc., a Delaware Corporation ("Tenant") was made regarding a portion of following the property:

See Attached Exhibit "A" incorporated herein for all purposes

The Option is for a term of three (3) months after the Effective Date of the Lease (as defined under the Lease), with up to one additional three (3) month renewal ("Optional Period").

The Lease is for a term of five (5) years and will commence on the date as set forth in the Lease (the "Commencement Date"). Tenant shall have the right to extend this Lease successive and renewal one -year terms.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum effective as of the date of the last party to sign.

LANDLORD: Board of County Commissioners of Lee County, Florida

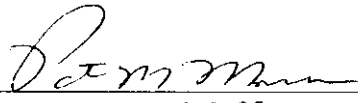
By: _____
Printed Name: Ray Judah
Its: Chairman
Date: _____

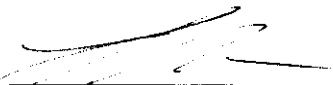
WITNESS: WITNESS:


By: _____
Printed Name: _____
Date: _____

By: _____
Printed Name: _____
Date: _____

TENANT: Omnipoint Holdings, Inc.

By:  3/21/03
Printed Name: Patrick Monroe
Its: Director of Engineering and Operations
Date: _____

WITNESS:
By: 
Printed Name: Lacorel Jovels

WITNESS:
By: 
Printed Name: Raymond J. Judah

Date: 3/21/03

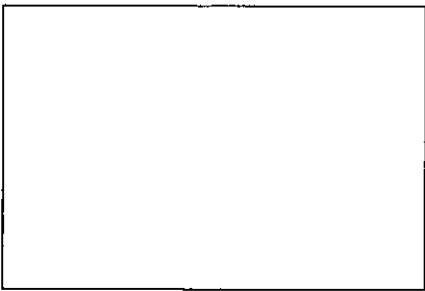
Date: 3/21/03

[Notary block for Landlord]

[Notary block for Corporation, Partnership, Limited Liability Company]

STATE OF FLORIDA)
) ss.
COUNTY OF LEE)

This instrument was acknowledged before me on _____ by _____, [title]
of _____ a _____ [type of entity], on behalf of
said _____ [name of entity].



(Use this space for notary stamp/seal)

(Signature of Notary Public)
Print Name _____
Notary Public, State of Florida
Commission No. _____
My commission expires _____



[Notary block for Tenant]

STATE OF FLORIDA)
) ss.
COUNTY OF BREVARD)

(CONT'D. ON NEXT PAGE)

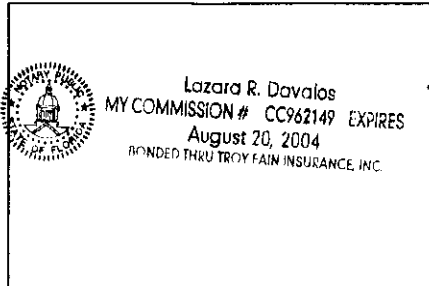
State of Florida)
County of Broward) ss.

The foregoing instrument was acknowledged before me this 21 day of March, 2005 by

Rubén M. Manó Managing Operations Director
of Compania de Servicios de Agua y Saneamiento

, on behalf of said corporation.

He/she is personally known to me or has produced _____ as identification.



(Use this space for notary stamp/seal)

(Signature of Notary Public)

Print Name

Lazara R. Davalos
Notary Public, State of Florida

Commission #

CC962149 EXPIRES

My commission expires

August 20, 2004
BONDED THRU TROY FAIN INSURANCE, INC.

**Memorandum of Lease EXHIBIT A
Legal Description**

The Property is legally described as follows:

Lot 6 and 7, and the Southeastely 10 feet of Lot 5 (as measured on a perpendicular to the Southeastely line of said Lot 5) Block 7, PARQUE DE LEON SUBDIVISION according to the map or plat thereof as recorded in Plat Book 6, Pages 77, Public Records of Lee County, Florida

EXHIBIT I-C

LETTER OF AUTHORIZATION
(REQUIRED BY ZONING)

The undersigned do hereby swear or affirm that they are the fee simple title holders and owners of record of property commonly known as Menocal Water Tank and legally described in exhibit A attached hereto.

The property described herein is the subject of an application for zoning or development. We hereby designate Patrick Monroe as the legal representative of the property and as such, this individual is authorized to legally bind all owners of the property in the course of seeking the necessary approvals to develop. This authority includes but is not limited to the hiring and authorizing of agents to assist in the preparation of applications, plans, surveys, and studies necessary to obtain zoning and development on the site. This representative will remain the only entity to authorize development activity on the property until such time as a new or amended authorization is delivered to Lee County.

Owner

Printed Name

STATE OF FLORIDA
COUNTY OF LEE

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 200____, by _____, who is personally known to me or who has produced _____ as identification.

Notary Public

(Name typed, printed or stamped)

Exhibit A

(TO LETTER OF AUTHORIZATION)

Lots 6 and 7, and the Southeasterly 10 feet of Lot 5 (as measured on a perpendicular to the Southeasterly line of said Lot 5) Block 7, PARQUE DE LEON SUBDIVISION, according to the map or plat thereof as recorded in Plat Book 6, Page(s) 72, Public Records of Lee County, Florida.

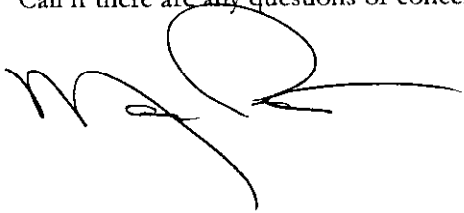
MEMORANDUM

TO: CHAD DENNING
FROM: MARY PAT TYNDALL
SUBJECT: MENDOCAL WATER TANK LEASE
DATE: 04/02/2003

Good Morning!

Enclosed are three executed copies of the Lease, a W-9 form and the Letter of Authorization that zoning requires to be submitted with the application. Could you please put us on the April 15th Commission Agenda. We are already very far behind in the zoning and leasing with the launch of the system planned for the end of April. Could you possibly have the Authorization executed now and let us submit to zoning to get ahead of the Lease signing? That would be a great help.

Call if there are any questions or concerns.



.....**T**.....**Mobile**.....

MARY PAT TYNDALL
SITE ACQUISITION AGENT
Tyndall Management Corporation

T-Mobile USA, Inc.
PCS: (954) 401-7990
8100 SW 10TH STREET #1000
PLANTATION, FL 33324
email: mary.tyndall@t-mobile.com

W-9 (Rev. June 2002 by VoiceStream)	Request for Taxpayer Identification Number and Certification	Return to requestor: VoiceStream Wireless Corp./ DBA T-Mobile 12920 SE 38 th Street, Bellevue, WA 98006 Fax: 425-378-4560 Attn: _____
--	--	--

Please complete the following information. We are required by law to obtain this information from you when making a reportable payment to you. If you do not provide us with this information, your payments may be subject to 31% federal income tax backup withholding. Also, if you do not provide us with this information, you may be subject to a \$50 penalty imposed by the Internal Revenue Service under section 6723. If you do not furnish a valid TIN, or if you are subject to backup withholding, the payee is required to withhold 31% of its payment to you. Backup withholding is not a failure to pay you. It is an advance tax payment. You should report all backup withholding as a credit for taxes paid on your federal income tax return.

Use this form only if you are an U.S. company or individual. If you are a foreign entity, use the appropriate form W-8BEN.

Fill out this section completely. Please print or type.	Business name (Include Sole Proprietor name if applicable)	
	Doing Business As (DBA)	
	Address (number, street, and apt. or suite no.)	Phone number
	City, State, and ZIP code	Fax number
	E-mail address	Web-site address

Check the appropriate box for your organization and provide the assigned Tax Identification Number.

<input type="checkbox"/> Corporation, Exempt, Government <input type="checkbox"/> Employer Identification Number	<input type="checkbox"/> Sole Proprietor/ Individual Social Security Number OR Employer Identification Number
<input type="checkbox"/> Partnership Partnership's Employer Identification Number	<input type="checkbox"/> Other Employer Identification Number

EXEMPTION: IF EXEMPT FROM 1099 REPORTING, PLEASE CHECK YOUR QUALIFYING EXEMPT REASON BELOW.

- Corporation, except there is no exemption for medical and healthcare payments or payments for legal services
- Tax exempt charity under 501(a), or IRA
- The United States or any of its agencies or instrumentalities
- A state, the District of Columbia, a possession of the United States, or any of their political subdivisions
- A foreign government or any of its political subdivisions

CERTIFICATION

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding and
3. I am a U.S. person (including a U.S. resident alien).

Certification Instructions You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

Person completing this form (please print): _____

Signature: _____ **Date:** ___/___/___ **Phone:** _____