

1. REQUESTED MOTION:

ACTION REQUESTED: Approve the issuance of a Tower Antenna Site license to Omnipoint Holdings, Inc., d/b/a T-Mobile, for space on the Stockade Tower located at 2501 Ortiz Ave, Ft. Myers, FL 33905.

WHY ACTION IS NECESSARY: This license conveys the non-exclusive right to use the Stockade Tower at the 140' level and ground space beneath the tower.

WHAT ACTION ACCOMPLISHES: Allows Omnipoint Holdings, Inc., d/b/a T-Mobile to place antennas and related equipment near and upon the communications tower, so that it may provide personal telephonic communications opportunities to local consumers through co-location.

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT #:

C7B

3. MEETING DATE:

04-13-2004

4. AGENDA:

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

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
 - B. DEPARTMENT Independent
 - C. DIVISION Public Safety
 - BY: Michael C. Bridges, Deputy Director
- Michael C Bridges*

7. BACKGROUND:

Omnipoint Holdings, Inc., d/b/a T-Mobile contacted Lee County regarding the use of the Stockade Tower to place antennas for wireless telephonic communications. County Staff has negotiated the attached non-exclusive license for use of the tower. The term of the license is for five (5) years with four (4) five (5) year renewals. Lee County will receive \$23,000 annually with an annual fee increase of 4% each year over the prior year's fee. By agreement with the City of Fort Myers the city will receive \$11,500 of the \$23,000 revenue.

Revenue Account String: KF5290352000.369900.9012 (Stockade Tower) \$11,500
Expense Account String: KF5290352000.508150 (Grants @ Aid Local Govt.) \$11,500

Attachment 1 – Four (4) License Agreements

8. MANAGEMENT RECOMMENDATIONS: Recommends approval of the license.

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services OM Risk	G County Manager
<i>3-25-04 Michael Bridges</i>	<i>[Signature]</i>	N/A		<i>[Signature]</i>	OA <i>[Signature]</i> 3/30/04 OM <i>[Signature]</i> 3/30/04 Risk <i>[Signature]</i> 03/30/04	GC <i>[Signature]</i> 3/30/04 <i>[Signature]</i> 3/31/04

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: 3/29/04
Time: 3:15 PM
Forwarded To: [Signature]
3/29/04 3:55pm

RECEIVED BY COUNTY ADMIN: [Signature]
3/29/04
4:30pm
COUNTY ADMIN FORWARDED TO: [Signature]
3/31/04
2:30 PM

HS

ORTIZ CELLULAR TOWER SITE LICENSE AGREEMENT

This Ortiz Cellular Tower Antenna Site License Agreement ("Agreement") entered into this _____ day of _____, 2004, between Lee County, a political subdivision and charter county of the State of Florida (hereinafter referred to as "Owner" or "County") and Omnipoint Holdings, Inc., d/b/a T-Mobile, a Delaware corporation (hereinafter referred to as "Licensee").

RECITALS:

Whereas, County is the fee simple owner of certain real property located at 2501 Ortiz Avenue, Ft. Myers, Florida, in Lee County, and more particularly described and depicted in Exhibit "A" attached hereto, and County owns the communications tower (the "Tower") located on the Real Estate and depicted in Exhibit "A1" attached hereto (hereinafter, the Real Estate and Tower may be referred to collectively as the "Property"); and

Whereas, the Licensee desires to obtain a license from County to use portion of Owner's Property, together with a right of access and a right to install utility service thereto (the "Access/Utility License"). The portion of the Property being licensed to Licensee under this Agreement and the Access/Utility License are more particularly shown on Exhibit "B" attached hereto and by reference made a part hereof, and collectively identified as the "Licensed Premises." After the Licensed Premises has been surveyed, then such survey and/or construction drawings shall then replace Exhibit "B" and become a part hereof and shall control the description of the Licensed Premises if a discrepancy exists between the current Exhibit "B" and the survey and/or construction drawings.

Whereas, the Licensee understands that in using the Licensed Premises it may not do so in any way that materially interferes with the ability of the County to lease or grant a license of the said premises for the same uses to other operators of communications equipment or which interferes with County's use of its property, and that this understanding shall control the interpretation and application of this entire Agreement; and

Now, therefore, in consideration of the foregoing, the mutual terms, covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned parties acknowledge and agree as follows:

1. The above representations are true and correct and incorporated herein as a binding part of this Agreement.

2. **LICENSED PROPERTY:** County hereby grants a non-exclusive license to Licensee, and Licensee hereby accepts this license from County, to use the Licensed Premises. Licensee's antennas shall be located on the Tower, on a not to interfere basis with other antennas that may be located in proximity, at a height of 140 feet above ground level (the "Tower Space") and a portion of the Licensed Premises consisting of County's Property for parking, pedestrian and vehicular access to and from the Licensed Premises as may be required to construct, install, operate, maintain and

repairs antennas and associated equipment for its communications system (collectively, the "Equipment"), together with the right over, under and across said portion of Property for the purposes of providing and maintaining necessary utilities to Licensee's Equipment. Licensee's Equipment must be approved by the County in order to avoid interference with any of the County's equipment, cables, lines, antennas or any other property which the County may wish to reserve for future use, as may be applicable. County approvals shall not be unreasonably delayed, conditioned or withheld. Licensee's Equipment is more particularly described on Exhibit "C," attached hereto and by reference made a part hereof.

A) Ortiz Cellular Tower Site Space: County hereby licenses to Licensee the Tower Space to erect, maintain and operate a maximum of nine (9) antennas as part of its telecommunications system and for no other purposes. The exact location of the Tower Space must be approved by County, which approval shall not be unreasonably withheld, conditioned or delayed. County agrees (subject to the limitations set forth herein) that Licensee may attach as its sole cost, any necessary transmission lines, cables, antennas, fixtures, and other associated equipment from the adjacent Equipment on the ground within the Licensed Premises to the Tower Space to make said antennas operational. Licensee will provide all mounting hardware necessary for its installation.

B) Equipment Cabinet Space: Licensee shall install equipment cabinets within the ground space portion of the Licensed Premises to shelter its communications Equipment. Such Equipment shall be fully landscaped consistent with, and meet all requirements of, the Lee County Land Development Code.

C) Access: County agrees that Licensee shall have the right to non-exclusive access to the Licensed Premises, 24 hours a day, 7 days a week, as may be required to construct, install, operate, maintain and repair Licensee's equipment, provided that said access does not interfere with County's access, create a safety hazard, or materially interfere with access to the Property by others granted permission to use the Property.

D) Utility Service: Licensee shall be solely responsible for, and shall promptly pay all charges for utilities serving the Licensed Premises and for the cost of the installation, maintenance, and repair of all utility meters associated with such utility service. Licensee shall have an electric meter installed at the Licensed Premises and has the right to run necessary utility lines and other electrical equipment and may be necessary from the utility source to Licensee's equipment cabinets and the Tower Space. County shall cooperate with Licensee in its efforts to obtain utilities from any location provided by the County or the servicing utility.

E) Interference: In its use of the Licensed Premises, Licensee shall be subject to the provisions of Section 14 hereunder which shall govern all license rights granted hereunder.

3. TERM AND LICENSE FEE:

A) The initial term of this Agreement shall be for five (5) years.

B) The term of this Agreement shall begin on the date of the issuance of the building permit

(the "Commencement Date"). For a one (1) year period beginning on the Commencement Date and ending three hundred sixty-five (365) calendar days thereafter (the "Due Diligence Period"), Licensee shall have the right to satisfy itself as to the condition of the Licensed Premises and the suitability thereof for its intended use. Licensee shall utilize the Due Diligence Period to conduct its necessary tests and seek any approvals and/or permits from any governmental authority it may require in connection with its use of the Licensed Premises. County shall cooperate with Licensee by timely providing appropriate plans and documentation and shall execute such documents reasonably required to secure such approvals. If on or before the last day of the Due Diligence Period, Licensee elects, in its sole discretion, not to proceed with this transaction, Licensee may terminate this Agreement by written notice to County, whereupon this Agreement shall be terminated and both parties shall be released from all further obligations hereunder.

If this Agreement is not terminated by Licensee prior to the expiration of the Due Diligence Period, upon the earlier of the last day of the Due Diligence Period or the date that Licensee begins construction on the Licensed Premises (the "Fee Commencement Date"), Licensee shall pay to the County a fee of Twenty-Three Thousand Dollars (\$23,000). Subsequent payments of the license fee shall be payable on or before each anniversary of the Fee Commencement Date, and the license fee shall increase annually during the initial term and any extension terms by four percent (4%), and such increases shall be effective on each anniversary of the Fee Commencement Date.

C) Licensee shall have the right to extend the term of this Agreement for four (4) additional five (5) year extension periods. The Agreement shall automatically be extended for each successive extension period unless Licensee gives the County written notice of Licensee's intention not to extend at least ninety (90) days prior to the expiration of the then current term.

4. USE:

A) Use of the Licensed Premises by Licensee shall be for the purposes of (i) installing, removing, replacing, maintaining and operating, at its sole expense, its communications Equipment and uses incidental thereto, including, without limitation, PCS antenna array, cables, wires, equipment cabinets or shelters and accessories; and (ii) installing a concrete pad for the installation of its Equipment.

All equipment, antenna support structures and trade fixtures placed on the Licensed Premises, by Licensee are and shall remain the property of Licensee and shall not be deemed fixtures on the land. In the event that any modifications are needed to the Licensed Premises (including structural modifications to the Tower) to accommodate Licensee's Equipment, Licensee shall bear all costs associated therewith. Licensee shall submit plans and specifications to County for written approval prior to commencement of any modification. The County shall not unreasonably delay, condition or withhold approval. No use by Licensee may materially interfere with or hinder County's use of the Property. County and Licensee agree that in the event the Property is no longer needed for County's radio communications use, County shall allow Licensee and all other license agreement holders, with superior rights belonging to GTE who originally constructed the Tower, to maintain the Tower as an existing structure to the conclusion of any term, and Licensee shall have the right to remain on the

Licensed Premises for the purposes contemplated in this Agreement for the remainder of the term of this Agreement, including any extension terms.

B) Plans, Specifications and Governmental Approvals: Licensee, at its expense, shall prepare all plans and specifications of its intended use and shall obtain all certificates, permits, licenses and other approvals required by and applicable federal, state and local authorities (collectively "Governmental Approvals") for the use of the Licensed Premises. County shall have the right to approve, in County's reasonable discretion (consistent with County's use and desire to permit other use of the Property and to consider aesthetic concerns), the plans and specifications for the installation of Licensee's Equipment and any substantive modifications. To the extent feasible, County agrees to cooperate with Licensee to obtain the Governmental Approvals and to execute and deliver all applications and other documents required for Licensee to obtain the Governmental Approvals. Responsibility for obtaining permits remains solely with Licensee and County shall not be liable for any failure to obtain approvals.

Licensee shall maintain in a good state of repair and in good operating condition its Equipment, all in accordance with good engineering practices and applicable governmental rules and regulations. Licensee shall observe and comply with all applicable laws, statutes, ordinances, rules and regulations of the federal, state and local governments and of all other governmental authorities, affecting Licensee's Equipment or appurtenances thereto or any part thereof. Licensee shall provide County at the County's request with the documents necessary to assure County that it is meeting these requirements.

C) Access to County's Property: County hereby grants Licensee access to Licensed Premises (and areas adjacent thereto) to conduct, at Licensee's expense, such surveys, structural strength analysis tests, radio propagation tests, soils tests, environmental studies, wetlands studies, and other feasibility studies and tests Licensee deems necessary, in Licensee's sole and absolute discretion, for the use of the Licensed Premises by Licensee.

D) Modifications to Property: Licensee agrees to promptly pay, or reimburse (at County's option) County, for the cost of all necessary studies determining feasibility of the Tower loading due to Licensee's Equipment. Should modifications be required as a result of Licensee's use, the cost of all such modifications shall be borne by Licensee. Licensee shall submit plans and specifications to County for written approval prior to commencement of any substantial modification(s). County shall use reasonable efforts to promptly review all submittals. No modifications shall be approved which require material alterations to County's operation of its complex system or related equipment.

E) Construction and Installing: Licensee shall have the right to construct and install Licensee's Equipment on the Licensed Premises. Licensee, at Licensee's expense, shall cause Licensee's Equipment to be constructed and installed in good workmanlike manner and in accordance with all governmental codes and regulations. Licensee shall be responsible for all constructions methods, techniques, sequences and procedures and the coordination of all construction activities relating to Licensee's Equipment. After completion of the construction and installation of Licensee's Equipment, Licensee shall have the right to make modifications, additions and substitutions to Licensee's Equipment provided such modifications, additions, and substitutions

are consistent with the terms of this Agreement and are constructed and installed in a good and workmanlike manner.

5. RIGHTS TO EQUIPMENT; CONDITION ON SURRENDER:

A) Ownership. During the initial term and any extended terms of this Agreement, Licensee's antennas and Equipment shall remain personal to and the property of Licensee. Within thirty (30) days after the termination or expiration of this Agreement, Licensee shall remove its antennas and/or Equipment from the Licensed Premises at no cost to the County. Licensee shall repair any damage caused by such removal and shall surrender the Licensed Premises at the expiration of the term, as same may have been extended, or earlier termination thereof, in good condition, ordinary wear and tear, damage by fire and other casualty excepted. Any of Licensee's Equipment or other property that has not been removed from the Licensed Premises at the time this Agreement is terminated shall be deemed abandoned by Licensee and County shall be free to dispose of same in any manner County chooses and without any liability to Licensee therefor.

B) Any claims relating to the condition of the Licensed Premises must be presented by County in writing to Licensee within ninety (90) days after the termination of this Agreement or County shall be deemed to have irrevocably waived any and all such claims.

6. OWNER'S MAINTENANCE:

County and Licensee recognize that the Tower may require maintenance and painting. Except in cases of emergencies, County shall notify Licensee no less than sixty (60) days in advance of any maintenance that will or may affect Licensee's operations. County and Licensee agree to cooperate in arranging such maintenance to be performed in a manner to minimize interference with Licensee's Equipment. In the event Licensee shall be unable to operate at the Licensed Premises due to such maintenance for a period greater than twelve (12) hours, Licensee shall be given the right to locate and operate on County's adjacent property temporary emergency equipment, including, but not limited to, a portable antenna structure up to the height contemplated by this Agreement for placement of Licensee's temporary facilities on the adjacent property, necessary to maintain its telecommunications capability on the Licensed Premises.

7. MAINTENANCE:

A) Equipment shall be installed, constructed and maintained by Licensee at Licensee's sole cost and expense, in a good and workmanlike manner in accordance with Licensee's specifications as approved by County, such approval not to be unreasonably withheld, conditioned or delayed, and shall not cause any damage to County's facilities, equipment, or property. Licensee, at sole cost and expense, shall maintain Licensee's Equipment in good order and repair and keep the appearance in materially the form as approved.

B) County agrees that County's Property (including, without limitation, the Tower) and all improvements comply and during the term of the Agreement shall continue to comply with all

building, life/safety, disability and other laws, codes and regulations of any applicable governmental or quasi-governmental authority necessary, including, without limitation, FCC and FAA rules and regulations relating to tower lighting and marking. Licensee shall be responsible for any costs or expenses incurred for compliance with all building, life/safety, disability and other laws, codes and regulations of any governmental authority which results from its use of the Licensed Premises. All such compliance shall be accomplished at the responsible party's cost and expense, as stated above. Except for improvements made by Licensee, County at its sole cost shall maintain in good condition and repair, the Tower and other improvements located upon the Property.

8. DEFAULT:

A) The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder by :

1) The failure by Licensee to make any payment of the license fee or any other payment required to be made by Licensee hereunder, as and when due, where such failure shall continue for a period of thirty (30) days after written notice thereof is received by Licensee from County.

2) The failure by Licensee to observe or perform any of the covenants or provisions of this Agreement to be observed or performed by Licensee, other than as specified in Section 8(A)(1) above, where such failure shall continue for a period of thirty (30) days after written notice thereof is received by Licensee or by County, provided, however, that it shall not be deemed an Event of Default by either party if it shall commence to cure such failure within said thirty (30) day period and thereafter diligently and continuously prosecutes such cure to completion.

B) If there occurs an Event of Default by Licensee, in addition to any other remedies available to County at law or in equity, County shall have the option to terminate this Agreement and all rights of Licensee hereunder.

C) If there occurs an Event of Default by Licensee, County shall not have the right, prior to the termination of this Agreement by a court of competent jurisdiction, to remove Licensee's Equipment from the Licensed Premises and/or remove persons or property from the Licensed Premises. However, County shall have the absolute right to unrestricted access to the full use of all County Property and equipment and may take all reasonable actions necessary to protect said Property.

9. OWNER'S DEFAULT: In the event of a breach by County of any of the material covenants or provisions hereof and County's failure to cure any breach by County of any other provision of the Agreement after thirty (30) days written notice and demand, Licensee shall have the right of injunction or to terminate the Agreement upon ninety (90) days notice.

10. NOTICE: Any notice, request or demand required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if delivered by messenger at the

address of the intended recipient, sent prepaid by Federal Express (or comparable guaranteed overnight delivery service), or deposited in the United States first class mail (registered or certified, postage prepaid, with return receipt requested), addressed to the intended recipient at the address set forth below or at such other address as the intended recipient may have specified by written notice to the sender in accordance with the requirements of this paragraph. Any such notice, request, or demand so given shall be deemed given on the day it is delivered by messenger at the specified address, on the day after deposit with Federal Express (or a comparable overnight delivery service), or on the day that is three (3) days after deposit in the United States Mail, as the case may be.

Owner:

Michael C. Bridges, Deputy Director
Lee County Division of Public Safety
P.O. Box 398
Fort Myers, Florida 33902

With a Copy to: Andrea Fraser, Assistant County Attorney
Lee County Attorney's Office
P.O. Box 398
Fort Myers, Florida 33902

Licensee: Omnipoint Holdings, Inc., c/o T-Mobile
Attn: Lease Administrator
3111 W. Dr. MLK Jr. Blvd., Suite 400
Tampa, FL 33607

With a copy to: Omnipoint Holdings, Inc., c/o T-Mobile
12920 SE 38th Street
Bellevue, WA 98006
Attn: PCS Lease Administration and Legal Department

Any party may change his, her or its address for notice purposes by giving notice in accordance with this paragraph.

11. ASSIGNMENT: Assignment of the Agreement by Licensee may be made without County's consent to its parent, general partner or any affiliate or subsidiary of Licensee, any party that merges or consolidates with Licensee or its parent, or any party that purchases or otherwise acquires all or substantially all of Licensee's stock or assets. As to others, Licensee shall not assign this Agreement, or mortgage or pledge the same or the Licensed Premises, or any part thereof, without the prior written consent of County, such consent not to be unreasonably withheld, conditioned or delayed.

12. TERMINATION:

A) Termination of this Agreement may be exercised by Licensee at any time without further liability if Licensee cannot obtain all Governmental Approvals required from any governmental authority and/or any easements required from any third party to operate or access the Licensed Premises, or if any such approval is canceled or expires, or lapses, or withdrawn or terminated, or if County fails to have proper ownership of the Licensed Premises and/or authority to enter into this Agreement, or if for any other reason, Licensee, in its sole discretion, determines that it will be unable to use the Licensed Premises for its intended purpose. Notice of Licensee's exercise of its right to terminate shall be given to County in writing in accordance with Section 10, above. Upon such termination, this Agreement shall become null and void and all parties shall have no further rights or obligations hereunder, including the payment of money to each other. Licensee shall use its best efforts to obtain all approvals and keep them current and obtain and keep current all necessary easements. If Licensee terminate this Agreement pursuant to this Section 12, County shall be entitled to keep any prepaid license fees.

13. HAZARDOUS SUBSTANCES:

A) County warrants and agrees that neither County nor, to County's knowledge, any third party has used, generated, stored or disposed of, any Hazardous Material (as defined in Paragraph B, below) on, under, or within County's Property in violation of any law or regulation. County and Licensee each agree that they will not use, generate, store or dispose of any Hazardous Material on, under, about or within County's Property in violation of any applicable law or regulation.

B) County and Licensee each agree to defend and indemnify the other against any and all losses, liabilities, claims, judgments and/or costs (including reasonable attorneys fees and costs) arising from any breach of any warranty or agreement contained in Paragraph A, above. As used in Paragraph A, above, "Hazardous Material" shall mean any substance, chemical or waste identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation (including, petroleum and asbestos).

14. INTERFERENCE: Licensee agrees to install and operate communications Equipment of a type and frequency, and in a location which will not cause material interference with or damage to County's equipment. In the event Licensee's Equipment or its operation or use or maintenance of said Equipment causes damages or causes interference with County's equipment, facilities, or any of County's Property of whatsoever nature, Licensee shall immediately, upon notice from the County, take all steps necessary to correct and completely remedy such damage or eliminate such interference at Licensee's sole cost and expense. If the damage or interference requires repairs or alterations to County property, County shall make the repairs and Licensee shall reimburse the County for the entire cost within thirty (30) days of receipt of notice of the cost. This obligation on the part of Licensee supersedes and modifies all rights granted to Licensee hereunder. County agrees not to allow any future use of County's Property or addition and/or modification to any current use of the County's Property that may cause interference with or the improper operation of the Tower, Licensee's Equipment, or Licensee's communications signal or system. In the event that any addition

or modification to the County's Property or equipment causes interference with Licensee's Equipment or communications signal or system, County upon notification of such interference, agrees to promptly seek a remedy for such interference at County's expense until such interference is corrected to Licensee's sole satisfaction. In the event County and Licensee cannot resolve the interference problems, County and Licensee agree to resolve any interference disputes by arbitration which shall be performed in accordance with the Rules of the American Arbitration Association. The arbitration decision/award shall be binding upon County and Licensee and may be entered in any court having jurisdiction thereof. County and Licensee agree that the costs associated with any arbitration shall be borne by Licensee if Licensee is the cause of the interference or by County if County is the cause of the interference. In the case of an emergency, or failure by Licensee to promptly eliminate the damage or interference, the County may take any actions needed to resolve an emergency resulting from Licensee's use or Equipment and charge said costs to Licensee which shall pay said costs within thirty (30) days of receipt of documentation of said costs. County shall notify Licensee of such emergency and its actions to remedy said actions.

Licensee recognizes that other operators of communications equipment may be permitted to locate on the County Property or in the vicinity of the Licensed Premises. The County shall require said operators to take actions to remedy any material interference with Licensee's Equipment or operational capabilities upon written notice from Licensee. County shall enforce this obligation. If County is unable to remedy the material interference caused by another operation, County shall cause the interfering operator to cease its operations. If the County does not make a good faith effort to require other operators to remedy the material interference, Licensee shall have the additional remedy of specific performance to require the County to take reasonable available measures subject to sound and generally accepted engineering principles to remedy said material interference.

Licensee shall fully cooperate with any other existing operators of communications equipment on the County's Property (and associated equipment in the areas in the vicinity) to minimize interference with such operations and take such reasonable actions as are necessary to minimize or eliminate such interference. This obligation shall be undertaken by Licensee in good faith and with diligence to minimize any such interference. The County agrees to require any other licensees upon the Property to cooperate with Licensee to minimize interference.

15. INDEMNIFICATION:

A) By County: Subject to Section 768.28, Florida Statutes, and any other law, County shall indemnify and hold harmless against and from any and all liability, claims, demands, actions, losses, damages, orders, judgments and any all costs and expenses (including, without limitation, reasonable attorney's fees and expenses) incurred by Licensee or any affiliate or subsidiary of Licensee on account of or arising from County's use of the Property, or from any other activity of County on or about the County's Property resulting from the negligence or misconduct by County, its employees, agents or contractors. To the extent permitted by law, County, upon notice from Licensee, shall assist and defend at County's expense any such actions or proceedings. This indemnity shall not apply to any claims arising from any negligent or intentional misconduct of Licensee, its agents, employees, contractors or assigns, and shall not apply to conduct not permitted by this Agreement.

This indemnity shall survive any termination of this Agreement.

B) By Licensee: Licensee shall defend, indemnify and hold harmless County against and from any and all liability, claims, demands, actions, losses, damages, orders, judgments and any and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by County on account of or arising from Licensee's (i) the negligent acts or omissions or willful misconduct in the operations or activities on the Property by the Licensee's employees, agents, contractors, tenants and/or subtenants of the Licensee, or (ii) a breach of any obligation of the Licensee under this Agreement. Licensee, upon notice from County, shall assist and defend at Licensee expense any such actions or proceedings by counsel chosen by Licensee or its insurer. This indemnity shall not apply to any claims arising from any negligent or intentional misconduct of the County, its employees, agents or contractors. This indemnity shall survive any termination of this Agreement.

16. INSURANCE:

a) Licensee will provide the following:

Commercial General Liability Insurance shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability, and broad form property damage exposures with minimum limits of One Million and No/100 Dollars (\$1,000,000.00) per Bodily Injury per person (BI); One Million and No/100 (\$1,000,000.00) Property Damage (PD); an aggregate amount of One Million and No/100 Dollars (\$1,000,000.00); or Two Million and No/100 Dollars (\$2,000,000.00) Combined Single Limit (CSL) of BI and PD.

Workers' Compensation - Statutory benefits as defined by Chapter 440, Florida Statutes, encompassing all operations contemplated by this Agreement to apply to all owners, officers and employees, regardless of the number of employees. Employers' liability will have minimum limits of: One Million and No/100 Dollars (\$1,000,000.00) per accident; One Million and No/100 Dollars (\$1,000,000.00) disease limits; One Million and No/100 Dollars (\$1,000,000.00) disease limit per employee.

Licensee may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Licensee may maintain. However, the insurance or reinsurance carriers must be approved and licensed by the Insurance Department in the State of Florida and meet a minimum financial rating of no less than A:VII with A.M. Best & Company.

Ten (10) days prior to the commencement of construction or installation work under this Agreement, a Certificate of Insurance will be provided to the County's Risk Manager for review and approval. The Certificate shall provide the following: "Lee County, a political subdivision and charter county of the State of Florida, its agents, employees, and public officials and will be named as an "Additional Insured" on the General Liability policy."

17. LIENS: Licensee shall keep the Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for Licensee. Licensee shall, within twenty (20) days following the imposition of any such lien, upon notice, cause the same to be released of record by payment or posting of a proper bond. No work which County permits Licensee to perform on the Property shall be deemed to be for the use and benefit of County so that no mechanics or other lien shall be allowed against the County by reason of its consent to such work. County shall have the right to post notices that it is not responsible for payment for any such work and Licensee shall expressly state in any and all contracts entered into by Licensee or its agents that County is not responsible for any work performed, materials furnished or obligations incurred by Licensee.

18. SALE OR TRANSFER BY COUNTY: If County, at any time during the term or any extended term of this Agreement, sells, leases, transfers or otherwise conveys all or any part of County's Property to any transferee other than Licensee, such transfer shall be subject to the terms and provisions of this Agreement and all of Licensee's rights hereunder.

19. TAXES AND FEES: Licensee shall be liable for and shall pay to the applicable taxing authority if billed directly to Licensee, or to County if billed to County upon thirty (30) days prior written notice from County, any and all taxes and assessments levied against any personal property or trade or other fixtures placed by Licensee in or about the Property or on the Real Estate if such tax is imposed as a result of the Licensee's use of the Property.

Licensee shall pay any state sales tax due upon the license fee. Licensee shall include said tax in its payments to the County. All other taxes, including any personal property tax for Equipment located upon the Licensed Premises, remain Licensee's responsibility.

Licensee shall pay as an additional license fee any increase in real property taxes levied against the Property as a result of the improvement constructed by Licensee on the Property.

This Agreement shall not effect in any manner, the County's ability, subject to any relevant federal law, rule or regulation, to adopt or levy a telecommunications tax or franchise fee.

20. DAMAGE OR DESTRUCTION:

A) In the event that, at any time during the term of this Agreement, the Property shall be partially destroyed or damaged by any other party than, its agents, representatives, or employees, County, at its own cost and expense, shall cause the same to be repaired, replaced or rebuilt. In the event County has not commenced such repair, replacement or rebuilding within thirty (30) days after the date of such damage or destruction, Licensee may, upon written notice to County terminate this Agreement as of the date set forth in such notice and all license fees and other sums shall be accounted for between County and Licensee as of the date the Licensed Premises became unavailable

to Licensee. License fees shall abate to the extent that, and for the period that, the Licensed Premises are not usable for the conduct of Licensee's business.

B) In the event of any such damage or destruction which renders Licensee's Equipment non-operable for a period reasonably expected to exceed five (5) days, Licensee shall have, and County hereby grants to Licensee, the right to bring and maintain upon County's Property such temporary communications facilities as Licensee shall reasonably determine are the minimum necessary to continue to operate Licensee's communications system and provided (i) that such temporary facilities do not materially interfere with County's or any other tenant's or licensee's communications operations on County's Property or the repair or replacement of the damaged facilities; (ii) that Licensee obtains all necessary permits and authorizations for the construction and operation of such temporary facilities; (iii) that Licensee shall remove such temporary facilities upon the sooner of (a) the restoration of services by Licensee's Equipment, or (b) termination of this Agreement.

21. MISCELLANEOUS:

A) Licensee, upon paying the license fee, shall be able to quietly use and enjoy the Licensed Premises, subject to all terms and conditions set for herein. County shall not cause or permit any use of the County's Property to materially interfere with or impair the quality of the communications services being rendered by Licensee from the Licensed Premises, nor shall County have unsupervised access to the Licensee's Equipment. County's obligations, as set forth in this section, are subject to and governed by the rights and obligations set forth in Section 14, which supersedes all other sections.

B) County represents and warrants that County has full authority to enter into and sign this Agreement.

C) This Agreement contains all agreements, promises and understandings between the County and Licensee. All exhibits are incorporated by reference. This Agreement supersedes all prior discussions and negotiations and contains all agreements and understandings between the County and Licensee and Tenant. This Agreement may only be amended in writing signed by all parties. No provision of this Agreement will be deemed waived by either party unless expressly waived in writing 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 provisions of this Agreement shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision. This Agreement may be signed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

D) The terms and conditions of this Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of County and Licensee. Except to its affiliates or subsidiaries, Licensee may not permit any other use of Licensed Premises for any purpose except as expressed herein and may not permit or assign to any third party to use the Licensed Premises unless approved by County in accordance with Section 11, above.

E) The drafting of this Agreement has been a joint endeavor between the parties and shall not, solely as a matter of judicial construction, be interpreted more strictly against one party than the other.

F) The prevailing party in any action or proceeding in court to enforce any term of this Agreement shall be entitled to receive its reasonable attorneys fees and other reasonable enforcement costs and expenses from the non-prevailing party.

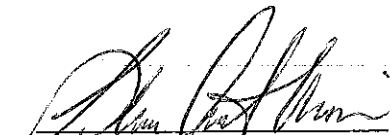
G) The validity of any provision hereof shall in no way affect or invalidate the remainder of the Agreement.


H) In no case shall either party be liable to the other for either consequential or special damages of any kind whatsoever, including, but not limited to, lost revenues, profits, or any other damages of any kind whatsoever in any way related to damage, interference, down time, or relocation of Licensee's Equipment resulting from any Licensee or County breach or default under this Agreement. Further County shall have no liability for damages or interference caused by parties other than the County.

I) All disputes arising under this Agreement shall be governed by the laws of the State of Florida.

J) County waives any lien rights it may have, statutory or otherwise, regarding Licensee's Equipment, all of which shall be deemed personal property, whether considered real or personal property under applicable state laws.

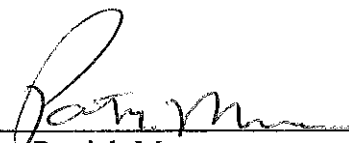
IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals the day and year below as written.



Witness
Steven A. Molin


Witness
SCOTT OJEDA

OMNIPOINT HOLDINGS, INC.

By: 

Name: Patrick Monroe

Title: Director, Engineering and Operations

Date: 3/22/4

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

Date: _____

APPROVED AS TO FORM:

By : _____

EXHIBIT LIST

- EXHIBIT "A"** - Legal Description and Sketch of Owner's Property
- EXHIBIT "A1"** - Depiction of Tower
- EXHIBIT "B"** - Description of Licensed Premises, Antennas and Equipment
- EXHIBIT "C"** - Insurance Requirements

EXHIBIT "A"

PINE CREST PB 5 PG 3
SEC 21 TWP 44 R 25 0C
LESS ROW OR 3324 PG 42
LESS OR 4138/424

See attached.

EXHIBIT "B"
(Example)

1. Tower Hardware Requirements:
 - a. antenna mounts, 9 antennas (EMS model # RR65-19-00DP), 6 Tower Amps (Ericsson model # KRY 11215), 18 coaxial cables and associated mounting hardware

11. Equipment Cabinets:
 1. Initial Installation: 2 Ericsson BTS (Model # 2102 or 2106)

111. Provisions for Future Installation: 1 Ericsson BTS (Model # 2102 or 2106)

EXHIBIT "C"

Commercial General Liability

Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability and broad form property damage with minimum limits of \$500,000 per occurrence and \$1,000,000 aggregate.

Property Insurance

"All Risk" coverage shall apply to damage by all perils, including wind, at full replacement cost value.

Certificate of Insurance

The Lee County Board of County Commissioners is to be shown as the certificate holder and shall be added as an additional insured with respect to the liability assumed by this Agreement. Each policy shall provide a 30 day notification clause in the event of cancellation, non-renewal or reduction in coverage.

A current and valid certificate of insurance shall be on file with an approved by Lee County Risk Management office during the term of this Agreement.

In the event the insurance coverage expires, a renewal certificate shall be on file with Risk Management at least 15 days prior to the expiration date.