



**INDIAN RIVER COUNTY, FLORIDA  
DEPARTMENT OF UTILITY SERVICES  
CONSENT AGENDA**

71

Date: Monday March 15, 2004

To: James E. Chandler, County Administrator

Thru: W. Erik Olson, Director of Utility Services 

Prepared & Staffed By: Steven J. Doyle, PE  
Assistant Director Utility Services 

Subject: License Agreement with Omnipoint Holdings Inc. (d/b/a T-Mobile) for Placing Wireless Communication Equipment and Occupying Space at the Gifford Elevated Water Tank

**BACKGROUND & ANALYSIS:**

T-Mobile representatives have been in negotiation with Staff concerning the use of the Gifford Elevated Water Storage Tank located just north of 49<sup>th</sup> Street along 28<sup>th</sup> Court. T-Mobile has requested permission to furnish and install antennas on the elevated structure and an equipment enclosure near the base.

On January 20, 2004, at a regular meeting of the Board of County Commissioners, staff presented statistical information on typical rates and charges for the use of County Elevated Water Tanks to serve cellular/wireless carriers. The Commissioners approved staff recommendation for an annual rate of \$20,000. The attached Agreement is with Omnipoint Holdings Inc for similar use of County facilities.

The proposed agreement with T-Mobile is for a five (5) year term with three (3) subsequent automatic five-year renewals that equates to a maximum period of 20-years. The initial annual license fee (revenue) shall be \$20,000.00 with an annual escalation cost of 4%.

**RECOMMENDATION:**

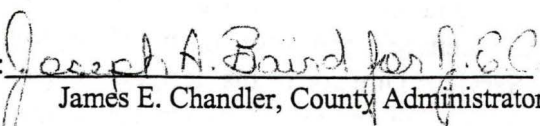
The staff of Utility Services and the General Services Department recommends that the Board of County Commissioners approve the following:

- a) Authorize the Chairman to execute the attached *Elevated Water Tank Space License Agreement* between Indian River County and Omnipoint Holdings Inc.





**ATTACHMENT:**

- a) *Elevated Water Tank Space License Agreement* Between Indian River County and Omnipoint Holdings Inc.

**APPROVED FOR AGENDA:**

By:   
James E. Chandler, County Administrator

For: 03-23-04  
Date

Indian River Co.	Approved	Date
Administration		3/15/04
Utilities		3/15/04
Budget		3/15/04
Legal		3/15/04
Risk Manager		

7.5.  
3-23-04

**ELEVATED WATER TANK SPACE LICENSE AGREEMENT between  
INDIAN RIVER COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF  
FLORIDA  
AND  
OMNIPOINT HOLDINGS INC**

This Elevated Water Tank Space License Agreement ("Agreement") is entered into this 23rd day of March, 2004, between **Indian River County**, a political subdivision of the State of Florida, whose address is 1840 25<sup>th</sup> Street, Vero Beach, FL 32960 (hereinafter "Licensor"), and **Omnipoint Holdings Inc.**, its affiliates, successors and assigns, having an address at 8100 SW 10<sup>th</sup> St., Building 3, Suite 1000, Plantation Fl. 33324 (hereinafter "Licensee").

**1. LOCATION.**

Licensor is the owner of a parcel of land (the "Land") and a steel elevated water storage tank (the "Elevated Tank") identified as Gifford Water Tank, located at 4690 28<sup>th</sup> Court (north of 49<sup>th</sup> Street) in Indian River County, Florida (the Elevated Tank and the Land are collectively, the "Property"). The Land is more particularly described in Exhibit "A" annexed hereto. Licensor hereby grants to Licensee a non-exclusive license to enter upon the Land and use space for the mounting of various antennas and associated equipment, including, but not limited to coaxial cables and supports on the exterior of the Elevated Tank, ground space for the installation of a prefabricated equipment shelter or construction of a communications building to be constructed on the Property, together with permission for access and to provide utilities (collectively, the "Premises") as described in Exhibit "B" attached hereto.

**2. USE.**

The Premises may be used by Licensee solely for installation, operation, and maintenance of a communications facility and uses incidental thereto, as determined by Licensee, now or in the future to meet Licensee's telecommunications needs on the exterior of the Elevated Tank and ground space for the installation of a prefabricated equipment shelter or construction of a communications enclosure to be constructed on approximately One hundred twenty square feet (120 sq. ft.), and Licensor acknowledges that Licensee will run flexible coaxial transmissions lines between the various antennas on the Elevated Tank and the radio equipment located in the equipment shelter, in accordance with all applicable laws, ordinances, and administrative regulations, and in accordance with the construction plans attached hereto as Exhibit "C". Licensor agrees to cooperate reasonably with Licensee, at Licensee's sole expense, in making application for and obtaining all licenses, permits and other necessary approvals that may be required for Licensee's above-described use of the Premises.

**3. TESTS AND CONSTRUCTION.**

Licensee may at any reasonable time during Licensor's regular business hours at the Elevated Tank following the full execution of this Agreement and Licensee's provision of proof of required insurance, and following notice to Licensor's Utility Services Director or his designee, enter upon the Premises for the purpose of making appropriate engineering and boundary surveys, structurals, environmental or other inspections, and constructing the Licensee Facilities (as defined in Paragraph 4(a) below).



#### **4. ANTENNA INSTALLATION.**

(a) Licensee may install, operate, and maintain on the Premises wireless antenna systems and associated equipment to be mounted on the Elevated Tank, an equipment shelter on the ground and flexible coaxial transmission lines between the antennas on the Elevated Tank and the radio equipment located in the equipment shelter ("Licensee Facilities"), as more fully described in Exhibit "D". In connection therewith, Licensee may install up to Nine (9) panel type antennas with dimensions no larger than 2' x 8'. All of Licensee's construction and installation work shall be performed at Licensee's sole cost and expense and in a good and workmanlike manner. Provided that Licensee is not in default under any covenant or agreement contained in this Agreement, Licensee may remove all Licensee Facilities at its sole expense on or before the expiration or earlier termination of the Agreement. At Licensor's option, Licensee shall repair or pay for any damage to the Premises or to the property caused by the removal of the Licensee Facilities.

(b) Licensee shall pay for the electricity it consumes in its operations. Licensee shall obtain separate utility service and install a separate meter from any utility company that will provide service to the Property (including any standby power generator for Licensee's exclusive use). Licensor agrees to sign such documents or easements as may reasonably be required by said utility companies to provide such service to the Premises, including the grant to Licensee or to the servicing utility company at no cost to the Licensee, of a non-exclusive easement in, over across or through the Land as reasonably required by such servicing utility company to provide utility services as provided herein.

(c) Licensee, Licensee's employees, agents, and subcontractors may reasonably access the Premises for installation, repair, or maintenance of Licensee's Facilities following notice to Licensor's Utility Services Director or his designee twenty-four (24) hours a day, seven (7) days a week, at no charge. In the event of an emergency, Licensee or its authorized agent(s) may access the Premises without prior notice but Licensee agrees to give notice to Licensor's Utility Services Director within twenty-four hours of such access. Licensor grants to Licensee, and its agents, employees, and contractors, a non-exclusive right and license for pedestrian and vehicular ingress and egress across that portion of the Land described in Exhibit "B".

(d) Licensor shall maintain all access roadways from the nearest public roadway to the Premises as customarily maintained for Licensor's ordinary use. Licensor shall be responsible for maintaining and repairing such roadway, at its sole expense, except for any damage caused by Licensee's use of such roadways the repairs of which shall be paid by Licensee.

(e) Before commencing operation of the Licensee Facilities Licensee shall provide to Licensor certification by a professional engineer licensed in the State of Florida that the design and installation of the Licensee Facilities meet or exceed AWWA standard D100 and all applicable building codes.

(f) Upon completion of the Licensee Facilities Licensee shall provide to Licensor as-built drawings of the Licensee Facilities showing the location and details of the Licensee Facilities. Licensee shall be solely responsible for obtaining all federal, state, and county approvals, licenses, certificates, and permits, including an Indian River utility construction permit, for the construction operation and maintenance of the Licensee Facilities.

(g) Licensee covenants and agrees that the Licensee Facilities and the installation, operation, and maintenance thereof shall not damage or impair the strength of the Elevated Tank and the



accessories thereto or any other Licensee's equipment nor interfere with Licensor's use of the Elevated Tank. Licensee, after receipt of written documentation, will be responsible for cost of repair, for any damage caused by Licensee or by its agents, employees or invitees to the Elevated Tank or its accessories or to any other Licensee's equipment.

(h) Licensee shall equip its Licensee Facilities with hurricane protection, lightning protection, and power surge protection.

(i) Licensee covenants and agrees that, in the event Licensee needs to install utility services underground on the Property, Licensee shall submit to Licensor for approval or disapproval construction plans showing the location and path of any proposed trench or other excavation prior to the commencement of any work. Licensee shall be responsible for obtaining all necessary permits, and shall perform any trenching or excavation in a proper, workmanlike manner to prevent any interference with Licensor's or any other Licensee's property or equipment or use of the Property.

## **5. TERM OF AGREEMENT.**

The initial term of this Agreement shall be five (5) years commencing upon commencement of construction of Licensee Facilities or one hundred eighty (180) days from full execution of this Agreement, whichever first occurs ("Commencement Date") and terminating on the day preceding the fifth anniversary of the Commencement Date (the "Term") unless otherwise terminated as provided herein. In the event Licensee is not in default in the performance of any term or condition of this Agreement, Licensee shall have the option to renew this Agreement for up three (3) successive five (5) year terms (the "Renewal Terms") on the same terms and conditions as set forth herein, except as otherwise agreed to by both parties. Each option for a Renewal Term shall be deemed automatically exercised without notice by Licensee to Licensor unless Licensee gives Licensor written notice of Licensee's intent not to renew to Licensor at least six (6) months prior to expiration of the then current term.

## **6. LICENSE FEE.**

(a) Beginning on the Commencement Date, Licensee shall pay an annual license fee of TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) to be paid in equal monthly installments of ONE THOUSAND SIX HUNDRED SIXTY SIX AND 67/100 DOLLARS (\$1,666.67) to be paid on the first day of each month to Licensor, in advance, without deduction or offset, at such place or places as may be designated in writing by Licensor at least thirty (30) days in advance of any rental payment date. Licensee shall pay all prevailing Florida sales taxes, if applicable, tangible property taxes associated with Licensee's Facilities, and intangible property taxes, as may be applicable. If the Commencement Date is on a date other than the first day of a calendar month, Licensee shall make a prorated payment of the installment of the annual rental payable for the first and last month of the term of this Agreement.

(b) The license fee shall increase on each annual anniversary of the Commencement Date by an amount equal to four percent (4%) of the License fee for the previous year.

(c) Licensee will have the right, at its sole cost and expense, to use a direct deposit system with regard to rent payments. Licensor agrees to cooperate with Licensee in providing requisite information to Licensee for such direct deposit.



## **7. SECURITY DEPOSIT.**

This section intentionally left blank and has been removed in its entirety.

## **8. TERMINATION BY LICENSOR.**

(a) The Licensor reserves the right to terminate this Agreement if Premises are needed for the use of Licensor upon one hundred eighty (180) days' prior written notice by Licensor to Licensee. Licensor may not terminate License for purpose of substituting a new or different licensee.

(b) If Licensee defaults under any of the conditions set forth herein, Licensor shall have the right to terminate this Agreement upon thirty (30) days' written notice to Licensee. The occurrence of any one or more of the following events *inter alia* shall constitute an "Event of Default" hereunder by Licensee:

- i. The failure by Licensee to make any payment of license fees or any other payment required to be made by Licensee hereunder, as and when due, where such failure shall continue for a period of 30 days after receipt of written notice thereof by Licensee.
- ii The failure by Licensee to observe or perform any of the covenants or provisions of this Agreement to be observed or performed by Licensee, where such failure shall continue for a period of 30 days after receipt of written notice by Licensee; provided, however, that it shall not be deemed an Event of Default by Licensee if Licensee shall commence to cure such failure within said 30 days and thereafter diligently cures the default within 60 days, unless written extension is granted by Licensor.
- iii The Licensee uses the Premises or the Property for any unauthorized or illegal purpose.
- iv The Licensee uses the Property for other than the use permitted by this Agreement.
- v The Licensee's or Licensee's employee's or agent's act or omission damages the Property or harms the environment and Licensee, after written notice from Licensor, has not repaired any damage or cured any failure within thirty (30) days after receipt of written notice by Licensee; provided, however, that it shall not be deemed an Event of Default by Licensee if Licensee shall commence to cure such failure within said 30 days and thereafter diligently cures the default within 60 days. Further written extensions may be granted by Licensor in its sole discretion.

If there occurs an Event of Default by Licensee, in addition to any other remedies available to Licensor at law or in equity, if Licensee has not cured any failure within thirty (30) days after receipt of written notice by Licensee, provided, however, that it shall not be deemed an Event of Default by Licensee if Licensee shall commence to cure such failure within said thirty (30) days and thereafter diligently cures the default within sixty (60) days, Licensor shall have the option to terminate immediately this Agreement and all rights of Licensee hereunder unless written extension is granted by Licensor.

(c) Licensor shall have the right to terminate this Agreement upon sixty (60) days' written notice if:

- i. Licensee defaults hereunder as described in paragraph 8; or

- ii. The Elevated Tank is wholly or partially destroyed by any cause and Licensor decides not to repair the Elevated Tank.

## **9. TERMINATION BY LICENSEE.**

The Licensee may terminate this Agreement upon sixty (60) days' prior written notice as follows:

(a) If Licensee, exercising due diligence, after appropriate applications, is unable to obtain all necessary governmental approvals for Licensee's intended use of and improvements to the Premises as set forth in this agreement; or

(b) If Licensee's application for any governmental approvals necessary for Licensee's use of the Premises and improvements contemplated by this agreement is denied; or

(c) If any governmental approvals necessary for Licensee's use of the Premises and/or improvements to the Premises are canceled or are otherwise withdrawn, terminated, or denied so that Licensee will no longer be able to use the Premises for Licensee's use contemplated by this agreement; or

(d) If Licensee is unable to utilize the Premises due to an action by the Federal Communications Commission ("FCC");

(e) If Licensor defaults on any covenant or term of this Agreement, which default is not cured within sixty (60) days of receipt of written notice of default;

(f) For any reason or no reason, provided Licensee delivers written notice of early termination to Licensor no later than thirty (30) days prior to the Commencement Date;

(g) If Licensee determines that the Premises are not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference; or

(h) The Elevated Tank is wholly or substantially destroyed from any cause and Licensor decides not to repair said Elevated Tank.

(i) Any termination notice rendered by Licensee pursuant to this paragraph shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement, if any.

## **10. TAXES.**

If personal property taxes are assessed, Licensee shall pay any portion of such taxes attributable to the Licensee's Facilities. Licensee shall pay any real property taxes and assessments attributable to Licensee's occupancy and use of the Premises.

## **11. ASSIGNMENT AND SUBLEASING.**

This Agreement may be sold, assigned or transferred at any time by Licensee to Licensee's parent



company or any affiliate or subsidiary of Licensee or its parent company or to any entity with or into which Licensee is merged or consolidated, or to any entity resulting from a reorganization of Licensee or its parent company. However, Licensee shall not assign, or otherwise transfer all or any part of its interest in this Agreement or in the Premises to a third party without the prior written consent of Licensor. Licensee shall not sublease or sublicense the Premises. This Agreement shall be binding upon the respective parties, their assigns, and successors. From and after the date the Agreement has been sold, assigned or transferred by Licensee to an approved third party agreeing to be subject to the terms hereof, Licensee shall immediately be released from any and all liability under this Agreement, including the payment of any rental or other sums due, without any further action.

## **12. AS IS.**

Licensee takes the facilities as is and Licensor does not warrant that the facility is sufficient for the use intended by Licensee. Notwithstanding the foregoing, Licensor warrants that there are no deeds to secure debt, mortgages, liens, recorded agreements or judgments encumbering the Property and no restrictive covenants, or other encumbrances on the title to the Property that would prevent Licensee from using the Premises for the uses intended by Licensee as set forth in this Agreement. Licensor further agrees and warrants that it shall provide and be responsible for maintenance and repairs to the Elevated Tank to preserve the Elevated Tank in good order and condition. Licensor shall maintain all common areas on the Property and Premises.

Licensor may allow Licensee to modify the facility to make the facility usable by Licensee. Such modification is subject to Licensor's prior written approval. All modifications, which are approved by Licensor, shall be made at the sole expense of Licensee.

## **13. LICENSOR'S ADDITIONAL DUTIES.**

(a) Licensor understands and agrees that the continuity of Licensee's services is of paramount importance to Licensee. Licensor shall at all times exercise the highest standard of care and judgment to prevent damage to Licensee's services. Licensor will cause any subsequent licensees to verify by frequency search that its signal will not interfere with Licensee's. In the event any of Licensor's other licensees' signals causes material interference with Licensee's Facilities, Licensor will exercise its best efforts to promptly and diligently resolve such problems after notice by Licensee to Licensor. In the event that material interference continues for a period of forty-eight (48) hours after Licensee sends written notice, Licensee shall so notify Licensor in writing, and Licensor shall cause the interfering operation to cease except for brief tests, which are necessary to determine the cause of the interference. If such interference cannot be eliminated, Licensee, in its discretion, has the right to (i) request Licensor to cause the interfering party to cease operations permanently or (ii) request Licensor, upon full agreement with Licensee, to allow Licensee to relocate at a different location on the Elevated Tank, at Licensee's expense or (iii) immediately terminate this Agreement without further obligation to Licensor. Material interference shall be deemed to be any interference, which violates the terms and conditions of transmitter licenses, and/or rules and regulations of the Federal Communications Commission. In no event will Licensor be liable for any consequential damages (including, without limitation, lost profits) arising from any such interference.

(b) Licensor agrees that Licensee shall have access to the Elevated Tank and the Premises on which the Elevated Tank is located 24 hours per day, seven days a week, following notice to Licensor's Utility Services Director or his designee for the purpose of maintaining and repairing



its equipment. In the event of an emergency, Licensee or its authorized agent(s) may access the Premises without prior notice but Licensee agrees to give notice to Licensors' Utility Services Director within twenty-four hours of such access. Subsequent to the initial installation of the directional antenna system, Licensee may install and remove its equipment on the Elevated Tank only with the prior written consent of the Director of Licensors' Utilities Services, which consent shall not be unreasonably withheld, conditioned or delayed. Licensors' or Licensors' authorized agent's failure to approve or disapprove any additional items within fourteen (14) days following the request therefor shall be deemed an approval. However, Licensee does not have to obtain prior written consent from Licensors, Licensors' Director of its Utilities Services, or from any of Licensors' authorized agents to maintain, install, replace or remove any equipment located within its equipment shelter.

(c) Nothing contained herein is intended nor shall be construed to waive Licensors' rights and immunities under the common law or Florida Statutes § 768.28, as amended from time to time.

(d) To the extent permitted by law, Licensors agrees to be responsible for any act or omission of Licensors, its agents, employees, licensees, or its independent contractors, which occurs during the term of this Agreement or alleged to arise from a breach of this Agreement by Licensors. If determined liable by a court of competent jurisdiction, Licensors shall pay all claims, losses, liens, settlements and judgments in connection, therewith, including, but not limited to, attorneys' fees and costs to defend all suits.

#### **14. LICENSEE'S ADDITIONAL DUTIES.**

(a) The installation, maintenance, repair, and removal of Licensee's equipment shall not damage the Premises or the Elevated Tank structure or the Property or interfere with the maintenance of the Property.

(b) Licensee shall comply with all rules and regulations of the Federal Communications Commission, and all other applicable laws, ordinances, and regulations.

(c) The Licensee shall, at least ten (10) days prior to Licensee's use or occupancy of the Premises, provide to the Licensors a certificate of commercial general liability insurance with a reputable insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the Licensors' risk manager, in an amount not less than \$3,000,000 combined single limit for bodily injury and property damage, including coverage for premises/operations, products/completed operations, contractual liability, and independent contractors, in accordance with the Licensors' Administrative Policy Manual. The Licensee shall, at least ten (10) days prior to Licensee's use or occupancy of the Premises, provide to the Licensors a certificate of business auto liability insurance with a reputable insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the Licensors' risk manager, in an amount not less than \$3,000,000 per occurrence combined single limit for bodily injury and property damage, including coverage for owned autos, hired autos, and non-owned autos, in accordance with the Licensors' Administrative Policy Manual. The commercial general liability and auto liability insurance policies shall name Indian River County, a political subdivision of the State of Florida, as an additional insured. In addition, the Licensee shall, at least ten (10) days prior to Licensee's use or occupancy of the Premises, provide to the Licensors a certificate of worker's compensation insurance, including employer's liability, with a limit of \$100,000 each accident, \$500,000 disease (policy limit), \$100,000 disease each employee, in compliance with all state and federal laws, and in accordance with the Licensors'



Administrative Policy Manual. All required insurance shall be issued by a company that is authorized to do business in the State of Florida and that has a rating equal to or exceeding A-VII from A.M. Best's Insurance Guide. The Licensee shall provide to the Licensors at least thirty (30) days' written notice addressed to the Licensors' risk manager, prior to cancellation or reduction in coverage of this cell site only of any required insurance. Licensee shall cause any contractor or subcontractor performing any work on the Property to provide to Licensors certificates of insurance under the same conditions and with the same policy limits as required of the Licensee.

(d) The Licensee hereby releases and holds harmless the Licensors, and the Licensors' officers, employees and agents, from and against any and all claims for damages, costs, third party claims, judgments, and expense to persons or property that may arise out of, or be occasioned by, Licensee's use or occupancy of the Premises and of the Property, or from any act or omission of any representative, agent, client, and/or employee of Licensee, and Licensee shall indemnify the Licensors against any such claims and any judgments that may be entered in connection therewith, including attorney fees. It is the intention of this indemnification agreement on the part of Licensee, and a condition of this agreement, that Licensee shall fully indemnify the Licensors and the Licensors' officers, employees, and agents, against any kind or character of claim whatsoever that may be asserted against the Licensors or against the Licensors' officers, employees, or agents, excepting, however, such liabilities and losses as may be due to or caused by the acts or omissions of Licensors or its officers, employees, or agents. Licensee hereby agrees to defend any and all suits, claims, and causes of action brought against the Licensors or against the Licensors' officers, employees, or agents, arising out of or in connection with Licensee use or occupancy of the Premises and of the Property, and Licensee agrees to pay any judgment or judgments, including attorney fees, that may be rendered against the Licensors or against any of the Licensors' officers, employees, or agents, in connection therewith.

(e) Upon termination of this Agreement Licensee shall promptly remove all its equipment and shall at Licensee's sole expense restore the Property to the same condition in which it was prior to Licensee's use, except for normal wear and tear and damage covered by casualty insurance.

## **15. NOTICES.**

All notices hereunder must be in writing and unless otherwise provided herein shall be deemed validly given if sent by certified mail, return receipt requested, addressed as follows (or to any other mailing address which the party to be notified may designate to the other party by such notice) or as otherwise provided under applicable state law. Each party shall promptly notify the other party of a change of address as provided in this paragraph. Unless Licensors specifies otherwise in writing, Licensee shall direct license fee checks to Licensors at Licensors' address set forth in this paragraph.

**LICENSEE:**           Name:       Omnipoint Holdings Inc. (dba T-Mobile)  
                          Address:   8100 SW 10<sup>th</sup> Street  
  Bldg. 3, Suite 1000  
                          City/State/zip: Plantation Florida 33324

**LICENSOR:**               Indian River County Board of County Commissioners  
                                  1840 25<sup>th</sup> Street, Vero Beach, FL 32960  
                                  Attention: Terry Smith, Telecommunications Manager  
                                  General Services Department  
                                  Phone: (772) 567-8000, Ext. 1318



## **16. HAZARDOUS SUBSTANCES.**

Licensee shall not use, generate, store or dispose of any Hazardous Material (defined below) on, under, about or within the Property or the Premises in violation of any law or regulation. Licensee agrees to defend, indemnify and hold harmless the Licensor and the Licensor's officers, agents and employees against any and all losses, liabilities, claims and/or costs, including reasonable attorney fees and costs, arising from Licensee's breach this paragraph. As used in this paragraph, "Hazardous Material" shall mean petroleum or any petroleum product, hydrocarbons, asbestos, any substance known to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. This paragraph shall survive for one (1) year after expiration or termination of this Agreement.

Licensor warrants, represents, and agrees that neither the Licensor nor, to the best of Licensor's knowledge, any third party has used, generated, stored, or disposed of any Hazardous Materials in, on, or under the Leased Premises, Property and contiguous surrounding property. "Hazardous Materials" shall mean petroleum or any petroleum product, asbestos, and any other substance, chemical, or waste that is identified as hazardous, toxic, or dangerous in any applicable federal, state, or local law, rule, regulation, order or ordinance. To the extent permitted by law, Licensor agrees to be responsible for and hold Licensee harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees and consultants' and experts' fees) from the presence or release of any Hazardous Materials on Licensor's Property or contiguous surrounding property unless caused by Licensee or persons acting under Licensee.

## **17. SALE OR TRANSFER BY LICENSOR.**

Licensor agrees not to subsequently sell, lease, or use any areas of Licensor's Property for the installation, operation, or maintenance of other wireless communications facilities if, such installation, operation, or maintenance would interfere with Licensee's facilities as determined by radio propagation tests performed by subsequent licensee at subsequent licensee's expense. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Licensee, Licensor shall be prohibited from subsequent licensing that area of Licensor's Property at that frequency. Licensor shall not be prohibited from the selling, leasing, or use of any of Licensor's Property for non-wireless communication use.

## **18. CONDEMNATION.**

In the event that the whole of the Property, including without limitation the Property and Elevated Tank, shall be taken or condemned, either temporarily or permanently, for public purposes, or sold to a condemning authority under threat of condemnation to prevent taking, then this Agreement shall forthwith automatically cease and terminate. Licensor shall receive the entire condemnation award for Land, Elevated Tank and such other improvements as are paid for by Licensor, and Licensee hereby expressly assigns to Licensor any and all right, title and interest of Licensee now or hereafter arising in and to any such award. Licensee may recover from such authority, and shall not recover from Licensor, any compensation as may be awarded to Licensee on account of its interest in this Agreement.



## **19. MISCELLANEOUS.**

(a) This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this Agreement must be in writing and executed by both parties.

(b) If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement not being held invalid or unenforceable by a court of competent jurisdiction shall remain in full force and effect.

(c) This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties, subject to the provisions of Paragraph 11, Assignment and Subleasing, of this Agreement.

(d) This Agreement shall be governed by the laws of the State of Florida. Venue for any lawsuit brought by one party against the other party or otherwise arising out of this agreement shall be in Indian River County, Florida or, in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida.

(e) All Riders and Exhibits annexed hereto form material parts of this Agreement.

(f) This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

(g) Licensor shall not be responsible for any loss, damage, destruction, or theft of Licensee's equipment or property.

(h) Once during the initial term and once during any Renewal Terms of this Agreement, Licensor may, upon sixty (60) days' written notice to Licensee, require Licensee to move or remove its equipment, including, but not limited to, antennas, cables, transmission lines, conduits, and supports, from the Elevated Tank, in order for Licensor to clean, paint, repair, or otherwise maintain the Elevated Tank. If such notice is given, Licensor agrees to permit Licensee to place temporary transmission facilities on the Property until such time as Licensor has completed the maintenance to the Elevated Tank.

(i) Upon prior notice to Licensee at least twenty-four (24) hours in advance, Licensor shall have access to the Premises, when accompanied by Licensee or its employee(s) or agent(s).

## **20. ENTIRE AGREEMENT.**

This Agreement constitutes the entire agreement of the parties hereto and shall supersede all prior offers, negotiations, and agreements. No revision of this Agreement shall be valid unless executed in writing by both parties.

IN WITNESS WHEREOF, the parties have made and executed this Elevated Water Tank Space License Agreement on the 23rd day of March, 2004.



Attest: J. K. Barton, Clerk

**APPROVED:**

*Patricia M. Redding*

Deputy Clerk

County Administrator

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

BY

*William G. Collins II*

**WILLIAM G. COLLINS II  
COUNTY ATTORNEY**

Witness:

Signature: *[Signature]*

Print Name: *Larissa Redding*

Witness:

Signature: *Ryan Coknell*

Print Name: *Ryan Coknell*

*Joseph A. Baird for J.E.C.*  
**JAMES E. CHANDLER,  
COUNTY ADMINISTRATOR**

**LICENSOR:**

**INDIAN RIVER COUNTY**

**by its Board of County Commissioners**

By:

*Caroline D. Ginn*  
Caroline D. Ginn, Chairman

Date approved by BCC: 03-23-2004

**LICENSEE:**

**OMNIPOINT HOLDINGS, INC.**

By:

*Patrick Monroe*

Print Name:

**Patrick Monroe**

Title: Director of Engineering and Operations



**EXHIBIT "A"**

Legal Description of County Property

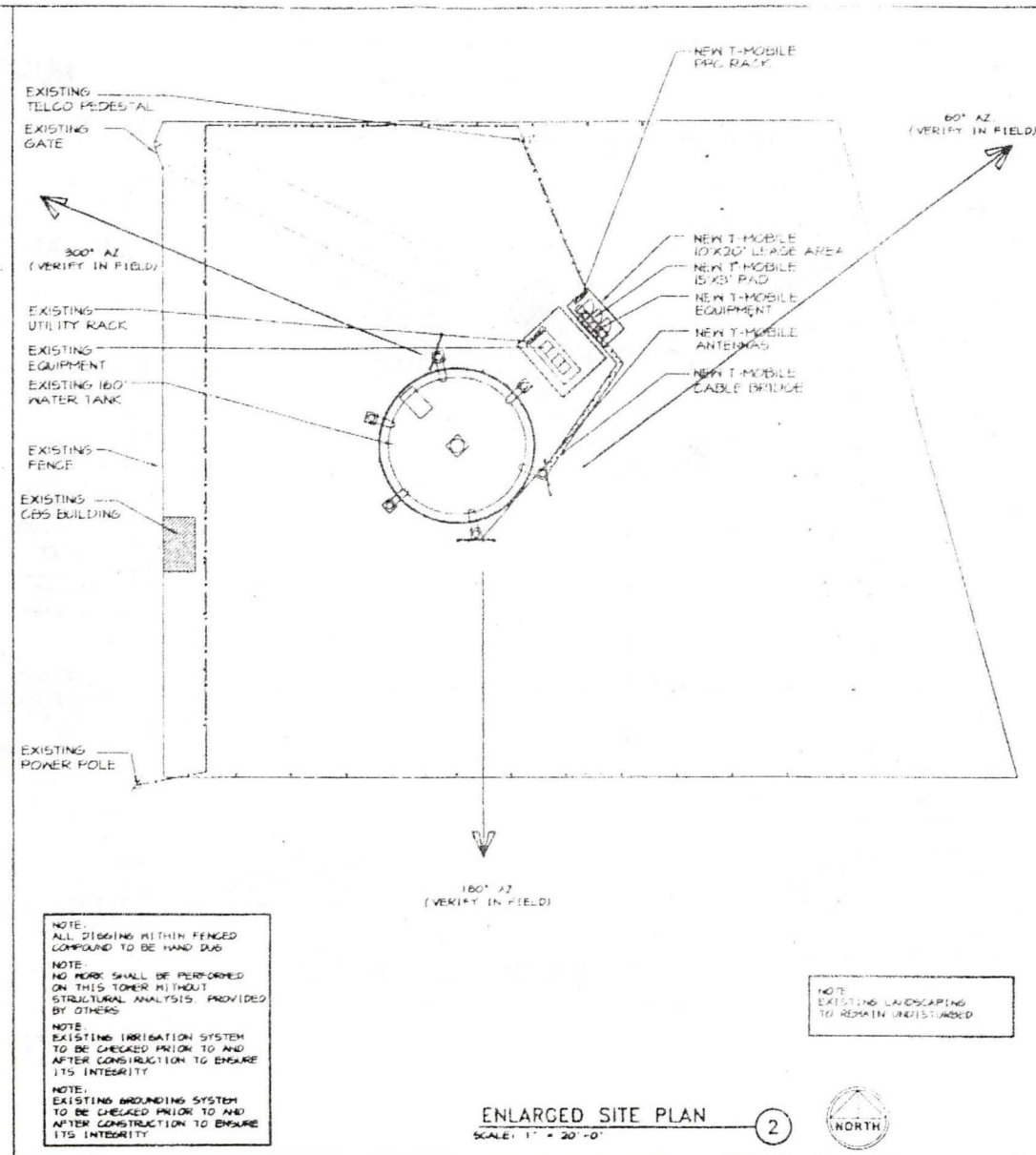
**Folio: 32392300000500000009.1**

**Com at nw cor of sw1/4 of sw1/4, run e along n line of sw1/4 of sw1/4 181.95 ft to pob; run s 237 ft; run e 309.58 ft; run nwly 245.65 ft to pt on n line of sw 1/4 of sw1/4 426.90 ft e of nw cor; run w 244.95 ft to pob as or bk 535 pp 322**



# EXHIBIT "B"

## DESCRIPTION OF PREMISES



**W-T**

**W-T COMMUNICATION  
DESIGN GROUP, LLC**

39 BAFT HOLLOW DRIVE  
KIRKLANDVILLE, ALABAMA 36020  
TEL (800) 886-8886 FAX (800) 886-8886  
WWW.WTDESIGNGROUP.COM

**T-Mobile**

8100 SW 10TH STREET  
BLDG. 3, SUITE 1000  
PLANTATION, FL 33324

**A2P003**

**WATER TANK**

4690 28TH CT  
VERO BEACH, FL 32967  
INDIAN RIVER

3221 S. 18TH AVE.  
FLORIDA LICENSE # 129926  
39 EAST SMOKEY DRIVE  
SOUTHMOORE, ALABAMA 36688

SIGNATURE: \_\_\_\_\_  
DATE: 01-19-04 EXPIRES: 01-19-07

**SITE PLAN**

**DATE:** 01-19-04

**SCALE:** AS NOTED

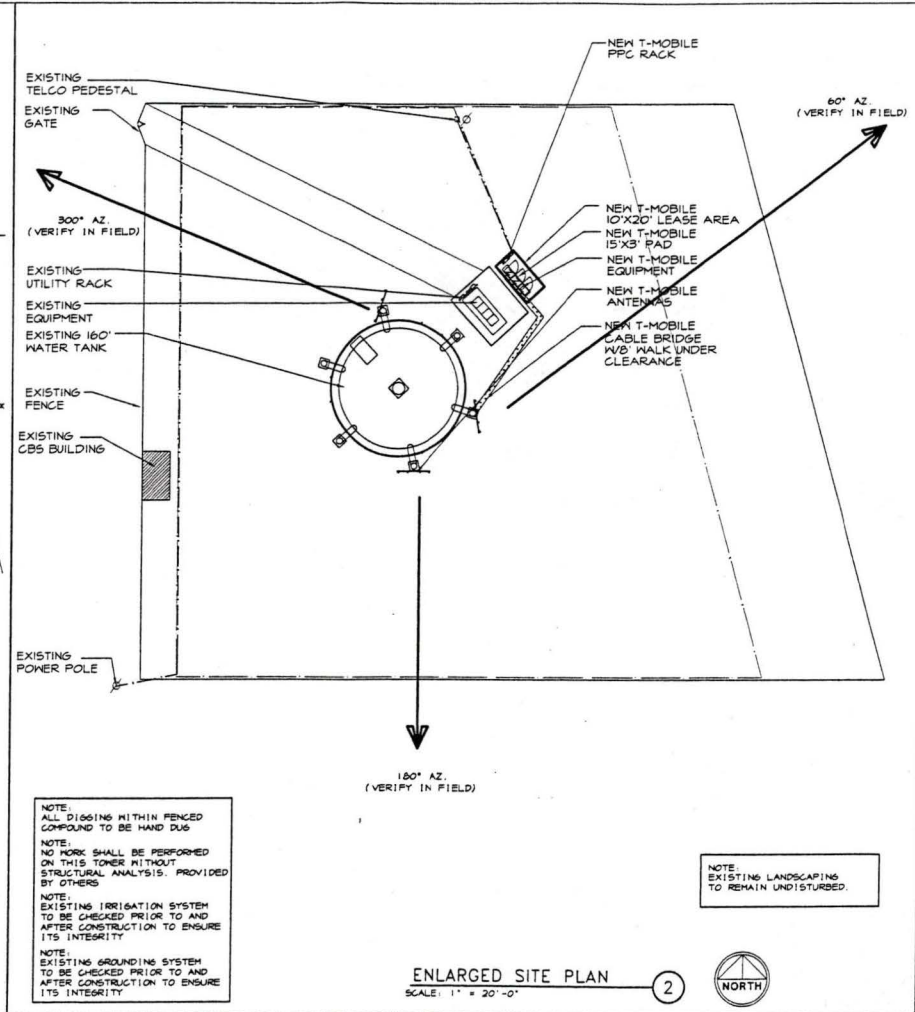
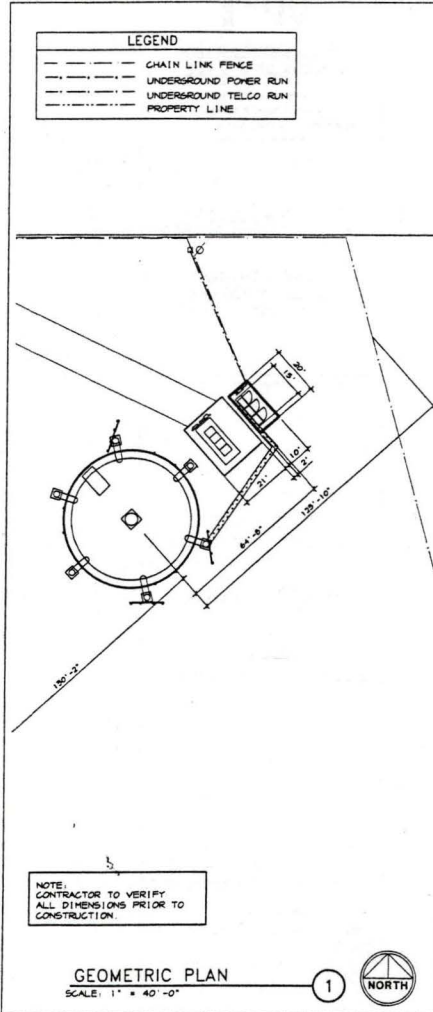
**DRAWN:** MS

**W-T #**

**SHEET**

**C-2**





**W-T**  
**W-T COMMUNICATION DESIGN GROUP, LLC**  
14 EAST HOLLY DRIVE  
SCHUMBERG, TEXAS 75081  
PH: (817) 891-3440 FAX: (817) 891-3441  
WWW.WTDESIGNGROUP.COM

**T-Mobile**  
8100 SW 10TH STREET  
BLDG. 3, SUITE 1000  
PLANTATION, FL 33324

1	02-19-04	FOR CONSTRUCTION
0	01-19-04	FOR CLIENT REVIEW

**A2P0003.A**  
**WATER TANK**  
4690 28TH CT  
VERO BEACH, FL 32967  
INDIAN RIVER COUNTY

SCOTT R. SCHUMBERG  
REGISTERED PROFESSIONAL ENGINEER  
IN THE STATE OF TEXAS  
NO. 10456  
DATE: 02/19/04  
DRAWN: MS

**SITE PLAN**  
DATE: 01-19-04  
SCALE: AS NOTED  
DRAWN: MS  
W-T # T03906

**SHEET**  
C-2

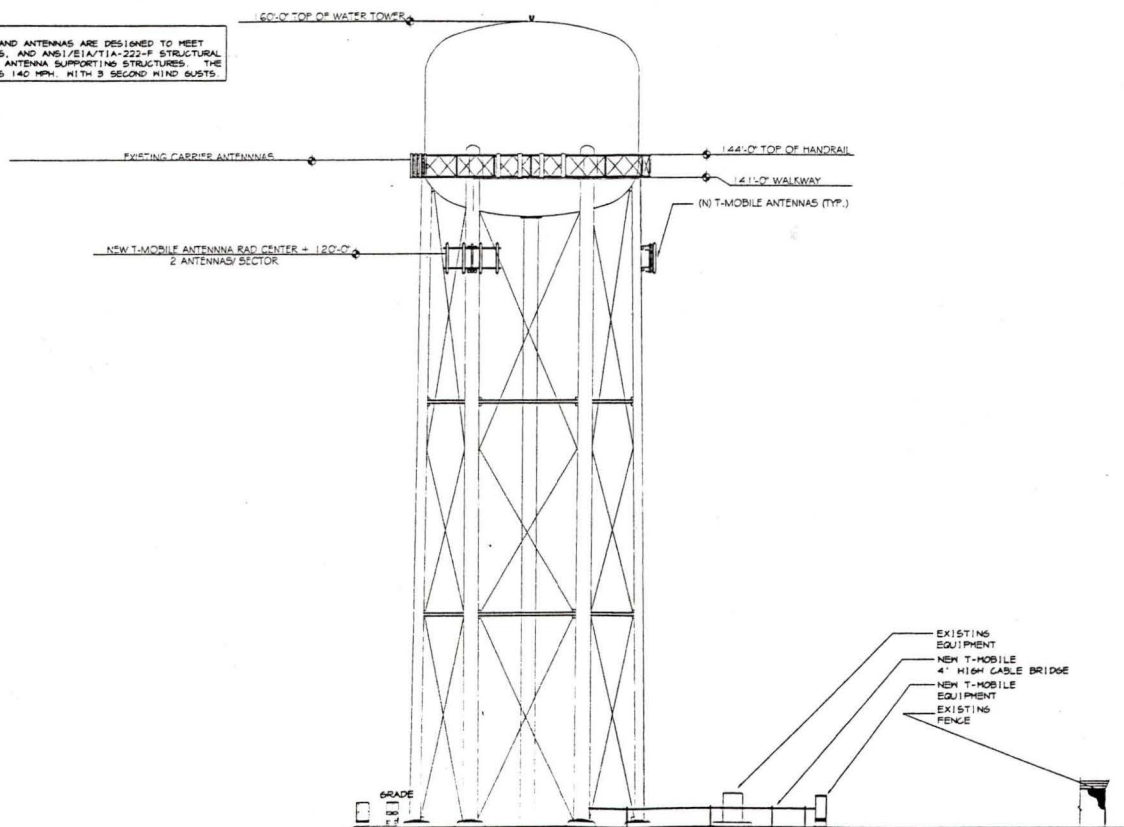
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**EXHIBIT "C"**



NOTE:  
GENERAL CONTRACTOR SHALL INSPECT  
CURRENT STRUCTURAL ANALYSIS TO  
DETERMINE STRUCTURAL ADEQUACY OF  
EXISTING TOWER. NEITHER NEW ANTENNAS  
NOR COAX CABLE SHALL BE ADDED TO  
STRUCTURE WITHOUT STRUCTURAL APPROVAL.

NOTE:  
SECTOR FRAME MOUNT AND ANTENNAS ARE DESIGNED TO MEET  
LOCAL BUILDING CODES, AND ANSI/EIA/TIA-222-F STRUCTURAL  
STANDARDS FOR STEEL ANTENNA SUPPORTING STRUCTURES. THE  
DESIGN WIND SPEED IS 140 MPH, WITH 3 SECOND WIND GUSTS.



TOWER ELEVATION  
SCALE 1" = 30'-0"

1

**W-T**

**W-T COMMUNICATION  
DESIGN GROUP, LLC**

39 EAST SOALLY DRIVE  
SCHAMBERG, ALABAMA 36183  
PH: (847) 955-3640 FAX: (847) 885-9965  
WWW.WTENGINEERING.COM

**T-Mobile**

8100 SW 10TH STREET  
BLDG. 3, SUITE 1000  
PLANTATION, FL 33324

1	02-19-04	FOR CONSTRUCTION
0	01-19-04	FOR CLIENT REVIEW

**A2P0003.A  
WATER TANK**

4690 28TH CT  
VERO BEACH, FL 32967  
INDIAN RIVER COUNTY

SCOTT R. THOMAS  
FLORIDA LICENSE # 15990  
39 EAST SOALLY DRIVE  
SCHAMBERG, ALABAMA 36183  
DATE: 02/19/04 (PAGES: 02/29/04)

ELEVATION

DATE: 01-19-04

SCALE: AS NOTED

DRAWN: MS

W-T # T03906

SHEET

C-3

EXHIBIT "C"