

Explanation: This Ordinance authorizes the execution of a First Amendment to Ground Lease at Communications Site with Omnipoint Communications, Inc., on a portion of Lot 1.02 in Block 149.01 on the Hillsborough Tax Map.

ORDINANCE NO. 2008-33

AN ORDINANCE AUTHORIZING THE EXECUTION OF A FIRST AMENDMENT TO GROUND LEASE AT COMMUNICATIONS SITE WITH OMNIPOINT COMMUNICATIONS, INC., ON A PORTION OF LOT 1.02 IN BLOCK 149.01 ON THE HILLSBOROUGH TAX MAP.

WHEREAS, on December 19, 2006, the Township Committee of the Township of Hillsborough adopted Ordinance No. 2006-48, titled “An Ordinance Authorizing the Execution of Lease Agreements with New Cingular Wireless PCS, LLC, for Ground Space and the Construction of a Telecommunications Tower, Omnipoint Communications, Inc., and Sprint Spectrum LP, for Ground Space on a Portion of Lot 1.02 in Block 149.01 on the Hillsborough Tax Map”; and

WHEREAS, on October 28, 2006, pursuant to Ordinance No. 2006-48, the Township of Hillsborough entered into a Ground Lease at Communications Site with Omnipoint Communications, Inc. (“Lessee”), for a portion of Lot 1.02 in Block 149.01 as shown on the Tax Map of the Township of Hillsborough; and

WHEREAS, the Township and Lessee desire to amend the Ground Lease to clarify that the date on which rental payments to the Township were to commence is November 1, 2007; and

WHEREAS, the Township Attorney reviewed and approves of the First Amendment to Ground Lease at Communications Site attached hereto.

NOW THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Hillsborough, County of Somerset, State of New Jersey that the Mayor and the Township Administrator/Clerk are hereby authorized to execute the First Amendment to Ground Lease at Communications Site; and

BE IT FURTHER ORDAINED that the First Lease Amendment is being made pursuant to N.J.S.A. 40A:12-14 of the Local Lands and Buildings Law.

ATTEST:

**HILLSBOROUGH TOWNSHIP
COMMITTEE**

By: _____
Kevin P. Davis, Clerk

By: _____
Frank DelCore, Deputy Mayor

Introduced: September 9, 2008
Published: September 18, 2008
Public Hearing: October 14, 2008
Adopted: October 14, 2008
Published: October 23, 2008

FIRST AMENDMENT TO GROUND LEASE AT COMMUNICATIONS SITE

THIS FIRST AMENDMENT TO GROUND LEASE AT COMMUNICATIONS SITE ("Amendment") is made by and between **THE TOWNSHIP OF HILLSBOROUGH**, ("Township") and **OMNIPOINT COMMUNICATIONS, INC.** ("Lessee") (collectively the "Parties").

WHEREAS, Township and Lessee entered into that certain Ground Lease at Communications Site dated October 28, 2006 (the "Lease"), for a portion of Township's property designated as Lot 1.02; Block 149.01, in the Township of Hillsborough, County of Somerset, State of New Jersey (the "Premises"); and,

WHEREAS, the Parties agree the Lease did not adequately define the date on which rental payments to the Township were to commence; and,

WHEREAS, Township and Lessee now desire to amend the Lease to clarify the Parties' intentions with respect to rent commencement; and,

WHEREAS, Township and Lessee hereby affirm that, as of the date hereof: (i) no breach or default by Township or Lessee occurred; and (ii) the Lease, and all the terms, covenants, conditions, provisions and agreements thereof, except as expressly modified by this Amendment are in full force and effect, with no defenses or offsets thereto.

NOW, THEREFORE, in consideration of the mutual covenants contained in the Lease and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Township and Lessee hereby agree as follows:

1. Township and Lessee hereby affirm that, as of the date hereof: (i) no breach or default by Township or Lessee occurred; and (ii) the Lease, and all the terms, covenants, conditions, provisions and agreements thereof, except as expressly modified by this Amendment are in full force and effect, with no defenses or offsets thereto.
2. Paragraph 2, Term, is hereby amended by deleting the last sentence and replacing it with the following:

"The Term shall commence upon: the start of construction, or the receipt of a building permit and issuance of a notice to proceed ("NTP") by New Cingular Wireless PCS, LLC ("Cingular") (aka "AT&T Wireless"), or November 1, 2007, whichever first occurs.

3. Paragraph 3, Lease Consideration, is hereby deleted in its entirety and replaced with the following:

“As consideration for the Township’s lease of the Rented Premises to Lessee, Lessee shall pay to the Township annual rent of \$18,000.00 payable in twelve (12) equal monthly installments of \$1,500.00 each on the first day of each month, in advance, to the Township, beginning upon: the start of construction, or the receipt of a building permit and issuance of a notice to proceed (“NTP”) by New Cingular Wireless PCS, LLC (“Cingular”)(aka “AT&T Wireless”), or November 1, 2007, whichever first occurs. The rent shall be adjusted annually at the rate of four percent (4%) per annum on the annual anniversary of the commencement date.

4. Lessee acknowledges that it began construction on or about November 1, 2007, which event commenced the Lease and caused rent payments to become due and owing to the Township.
5. Within Forty-five (45) days of full execution of this Amendment, Lessee hereby agrees to make a one-time lump sum payment to Township in the amount of Eleven Thousand Eight Hundred and no/100 Dollars (\$11,800.00) representing rent payment due and owing from November 1, 2007 through and until June 26, 2008.
6. Rent shall escalate annually in the amount of four (4%) percent on the first day of November each calendar year the Lease is in effect.
7. All capitalized terms shall have the meaning ascribed to them in the Lease unless otherwise defined in this Amendment.
8. Except as expressly set forth in this Amendment, all other terms and conditions of the Lease shall remain in full force and effect. To the extent any provision contained in this Amendment conflicts with the terms of the Lease, the terms and provisions of this Amendment shall prevail.

[SIGNATURES APPEAR ON FOLLOWING PAGE.]

Site Number: NJ08415B
Site Name: Hillsborough/ 1st Amendment
Market: NJMTA
Page 2 of 3

IN WITNESS WHEREOF, the parties execute and make effective this Amendment as of the date last signed by a party hereto.

TOWNSHIP

LESSEE

**TOWNSHIP OF HILLSBOROUGH, a
municipal corporation of the State of New
Jersey**

OMNIPOINT COMMUNICATIONS, INC.

a Delaware corporation

By: _____

By: _____

Name: _____

Name: Keith Sharkey

Title: _____

Title: Director of Engineering & Operations

Date: _____

Date: _____

Tax ID No.: _____

Site Number: NJ08415B
Site Name: Hillsborough/ 1st Amendment
Market: NJMTA
Page 3 of 3