

SITE LEASE AGREEMENT

THIS SITE LEASE AGREEMENT ("Lease"), made this 11th day of July, 1997 between **City of Tonka Bay**, a Minnesota municipal corporation ("Landlord"), and **Nextel West Corp.**, a corporation organized and existing under the laws of Delaware ("Tenant").

For good and valuable consideration, the parties agree as follows:

1. **Leased Premises.** Subject to the terms and conditions of this Lease, Landlord hereby leases to Tenant and Tenant leases from Landlord approximately eighteen hundred Fifty-five(1855) square feet of Landlord's property, located at 5605 Manitou Road, County of Hennepin, State of Minnesota, legally described in Exhibit A (the "Property") attached hereto, together with any and all non-exclusive easements for reasonable access thereto, and for adequate utility services, including sources of electric and telephone facilities, as shown on Exhibit B.. Tenant has the right to erect, maintain and operate on the "Leased Premises" (the "Leased Premises" are defined on Exhibit B) a radio communications facilities, including an antenna tower and foundation ("Tower"), utility lines, transmission lines, air conditioned equipment shelter consisting of a prebuilt 11' x 20' building, electronic equipment, radio transmitting and receiving antennas, supporting equipment, and structures thereto ("Tenant's Facilities"), as described in Exhibit B attached hereto.

2. **Rent.**

(a) **Amount, Adjustments.** As consideration for this Lease, Tenant shall pay Landlord rent in the amount of eight hundred and thirty three dollars and 00/100 Dollars (\$833.33) per month for the initial year, which shall be increased each year on January 1, by four percent (4%) of the previous month's rent.

(b) **Time of Payment, Taxes.** This Lease shall commence on the date Tenant receives all building permits and approvals from the City of Tonka Bay ("Commencement Date"). Within 15 days of the Commencement Date and on the first day of each month thereafter, Tenant shall pay to Landlord rent as described in Paragraph 2(a). Rent shall be payable to Landlord at 4901 Manitou Road, Tonka Bay, Minnesota 55331. If the Tenant does not meet the requirements referenced in Subparagraph 3(a) below and Tenant has diligently pursued such requirements, Landlord shall refund to Tenant rent payments made at the time of Lease execution and this Lease shall terminate. In addition to the monthly rent, Tenant agrees to timely pay its pro rata share, of any taxes or payments in lieu of taxes required as a result of this Lease. Tenant's pro rata share of such taxes shall be calculated by a percentage, such percentage shall be based upon Tenant's proportionate share of the total rent paid to Landlord by all tenants.

3. **Governmental Approval Contingency.**

(a) **Tenant Application.** Tenant's right to use the Leased Premises is expressly made contingent upon its obtaining all the certificates, permits, zoning and other approvals that may be required by any federal, state, or local authority. Landlord shall cooperate with Tenant in its efforts to obtain and retain such approvals and shall take no action which would adversely affect the status of the Leased Premises with respect to the Tenant's proposed use thereof.

(b) **Interference Study.** Before obtaining a building permit, Tenant shall cause to be performed and pay the reasonable cost of: a radio frequency interference study performed by an independent, qualified communication engineer selected by the Landlord, showing that Tenant's use contemplated herein will not interfere with any existing communications facilities upon the Property ("Interference Study").

(c) **Non-approval.** In the event that any application necessary under Subparagraph 3(a) or 3(b) above is finally rejected or any certificate, permit, license, or approval issued to Tenant is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority so that Tenant, in its sole discretion, will be unable to use the Leased Premises for its intended purposes, Tenant shall have the right to terminate this Lease and be reimbursed for the rent payment if made pursuant to Subparagraph 2(b) above. Notice of Tenant's exercise of its right to terminate shall be given to Landlord in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice by Landlord as evidenced by the return receipt. Except as required under Subparagraph 5(j) below, upon such termination, this Lease shall become null and void and the parties shall have no further obligations to each other.

4. **Term and Renewals.** The "Initial Term" of this Lease shall commence on the Commencement Date and end on December 31, 2001. Subject to the terms and conditions of this Lease, Tenant shall have the right to extend this Lease for five (5) additional five (5) year renewal periods ("Renewal Term") commencing on January 1 following the expiration date of the Initial Term or of any subsequent Renewal Term. This Lease shall automatically be extended for each successive Renewal Term unless Tenant notifies Landlord of its intention not to renew prior to commencement of the succeeding Renewal Term. Tenant's election not to renew the Lease under this paragraph shall be deemed a termination of the Lease.

5. **Tenant's Use.** Tenant may use the Property to install, remove, replace, maintain, and operate Tenant's Facilities subject to such modifications and alterations as may result from changes or improvements in technology. Prior to Tenant installing, subsequently modifying, or removing Tenant's Facilities it shall provide written notice to the Landlord, along with copies of the plans and specifications for the work. Landlord will not in any way be responsible for the Tenant's Facilities or any personal property actually placed on the Property or in the Equipment Shelter.

(a) **Purposes.** Tenant shall use the Leased Premises only for the purpose of installing, maintaining, and operating Tenant's Facilities and uses incidental thereto for providing radio and

wireless telecommunication services which Tenant is legally authorized to provide to the public. This use shall be non-exclusive, Landlord specifically reserves the right to allow the Tower to be used by other parties in accordance with subparagraph 5.(j) and to make additions, deletions, or maintenance modifications to its own facilities on the Property. Tenant shall comply with all applicable ordinances, statutes and regulations of local, state and federal government agencies.

(b) Construction. Tenant may erect and operate an antenna array in accordance with Exhibit B. If Tenant seeks to increase the number of antennas beyond the three whip antennas and nine panel antennas illustrated on Exhibit B, it must first pay for an evaluation carried out by a qualified professional, retained by Landlord demonstrating that (i) each additional antenna will not interfere with existing antennas and that (ii) the Tower can structurally support the additional antennas. The cost of each evaluation must be paid by the Tenant within 30 days after receiving written notice of the cost.

(c) Operation. Tenant shall have the right, at its sole cost and expense, to operate and maintain Tenant's Facilities on the Leased Premises in accordance with good engineering practices, with all applicable FCC rules and regulations. Tenant's installation of all Tenant Facilities shall be done according to Exhibit B attached hereto and which is hereby approved by Landlord. Tenant's installation, operation, maintenance, modifications, and removal of Tenant's Facilities shall not damage or interfere in any way with the Property or Landlord's Water Tower operations or related repair and maintenance activities. If the activities of Tenant, or those of its agents, representatives, employees, contractors, or subcontractors, cause such damage or interference, Tenant will cure the damage or interference within thirty (30) days after receipt of written notice. If Tenant fails to cure the damage or interference, the Landlord without further notice may take such steps as Landlord deems necessary to repair the damage or remedy the interference, at the sole cost and expense of Tenant.

(d) Maintenance, Improvement Expenses. All modifications to the Leased Premises for Tenant's benefit and all improvements made for Tenant's benefit shall be at the Tenant's expense and such improvements, including antenna tower, antenna, facilities and equipment, shall be maintained in a good state of repair, at least equal to the standard of maintenance of the Landlord's facilities on or adjacent to the Leased Premises. Every three (3) years from the Commencement Date of this Lease, Tenant shall have the Tower inspected by a Certified Professional Engineer and shall provide the Landlord with a copy of the inspection results or report. If Tenant fails to do so, and such failure creates a risk of damage or injury to persons or property (as determined in the reasonable discretion of the Landlord), the Landlord may take such steps as it determines to be necessary to protect persons or property. Tenant shall reimburse the Landlord for any cost incurred in connection with assuring compliance with the provisions of this paragraph, including any costs of restoring the Property to its original condition, normal wear and tear excepted. If Tenant fails to pay the Landlord for such costs within thirty (30) days of a demand by the Landlord for payment, Tenant shall be deemed to be in default. These remedies are nonexclusive and the Landlord expressly reserves its right to pursue any available legal and equitable remedies.

(e) Replacements. Before the Tenant may update or replace the Tenant's Facilities, Tenant must notify and provide a detailed proposal to Landlord. Tenant shall submit to Landlord a detailed proposal for any such replacement facilities and any other information reasonably requested by Landlord of such requested update or replacement, including but not limited to a technical study, carried out at Tenant's expense. Any plans to change the location or add any additional equipment to Tenant's Facilities shall be submitted for Landlord's approval, which approval shall not be unreasonably withheld or delayed.

(f) Drawings. Tenant shall provide Landlord with as-built drawings of the equipment and improvements installed on the Property, Leased Premises, and Utility Easements, which show the actual location of all of Tenant's Facilities. Said drawings shall be accompanied by a complete and detailed inventory of all equipment, personal property, and Tenant's Facilities actually placed on the Leased Premises.

(g) No Interference. Tenant shall, at its own expense, maintain any equipment on or attached to the Leased Premises in a safe condition, in good repair and in a manner suitable to Landlord so as not to conflict with the use of the surrounding premises by Landlord. Tenant shall not unreasonably interfere with the operations of any prior tenant using the Property and shall not interfere with the working use of the water storage facilities thereon or to be placed thereon by Landlord.

(h) Access. Tenant, at all times during this Lease, shall have access to the Leased Premises in order to install, operate, and maintain Tenant's Facilities. Tenant, Tenant's employees, agents, subcontractors, lenders and invitees shall have access to the Leased Premises without notice to Landlord twenty-four (24) hours a day, seven (7) days a week.

(i) Payment of Utilities. Tenant shall separately meter charges for the consumption of electricity and other utilities associated with its use of the Leased Premises and shall promptly pay all costs associated therewith.

(j) Transfer of Tower Ownership: Use by Others. As additional consideration for the use of the Property and the Leased Premises, Tenant shall construct a 180 foot tall Rohn SSV Tower with sufficient loading capacity to accommodate nine (9) 96" by 8" panel antennas (or equivalent) for Tenant and additional capacity to accommodate twenty-four (24) 96" by 8" panel antennas (or equivalent) for other users. Landlord may rent space on Tenant's Tower and ground space on the Leased Premises, during the term of this Agreement, to other parties for telecommunication purposes provided such parties' use does not interfere with Tenant's use or Tenant's ability to access and maintain the Tower and Leased Premises. Tenant shall have the right to secure the Leased Premises and reasonably restrict access to Tenant's Tower in such a way so as not to restrict access by Landlord and non-defaulting tenants of Landlord. Tenant shall have 30 days to review plans and specifications of such other parties to ensure such other parties' use will not interfere with Tenant's use. Landlord shall negotiate the rent to be paid by other parties. Tenant shall be entitled to zero percent (0%) of the proceeds from the rent paid by such other parties for Tower and ground space. Upon termination of the Agreement for any reason provided in this agreement, the Tenant agrees to remove the Tower and related equipment from the Leased

Premises, repair the site and restore the surface of the Property within 60 days. Tenant shall not be required to remove any foundation more than one (1) foot below grade level. At Landlord's option, unless termination was due to a default of Landlord, Tenant will rebuild and transfer ownership of an equivalent tower to Landlord prior to removal of Tenant's Tower at Tenant's cost. Landlord shall notify Tenant of its decision to require rebuilding of the tower within 30 days of receiving written notice from Tenant that the Agreement is terminated.

6. **Emergency Facilities.** In the event of a natural or man-made disaster, in order to protect the health, welfare, and safety of the community, Tenant may erect additional Tenant's Facilities and install additional equipment on a temporary basis on the Leased Premises to assure continuation of service. Such temporary operation shall not exceed 90 days unless Tenant obtains written approval from the Landlord.

7. **Additional Maintenance Expenses.** Upon notice from Landlord, Tenant shall promptly pay its pro rata share with other tenants to Landlord all additional Landlord expenses incurred in maintaining the Leased Premises and Access Area, including snowplowing or other maintenance of the site, that are caused by Tenant's occupancy of the Leased Premises.

8. **Additional Buildings.** Tenant acknowledges that Landlord may permit additional buildings to be constructed on the Property or Leased Premises described in Exhibit B in accordance with subparagraph 5.(j). At such time as this may occur, Tenant will permit said buildings to be placed immediately adjacent to Tenant's building and will allow "attachments" to its building so as to give the appearance that all buildings are a connected facility. Said attachments will be made at no cost to Tenant and will not compromise the structural integrity or utility of Tenant's building.

9. **Defense and Indemnification.**

(a) **General.** Tenant and Landlord each indemnify and hold harmless the other and their respective elected officials, officers, employees, agents, and representatives, from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorneys' fees and other costs and expenses of litigation arising out of the use and occupancy of the Leased Premises by Tenant, which may be asserted against or incurred by either party or for which either party may be liable in the performance of this Lease, except those to the extent that the same arise from the negligence, willful misconduct, or other fault of either party.

(b) **Hazardous Substances.** Tenant agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Property in violation of any law or regulation. Landlord represents, warrants and agrees (1) that neither Landlord nor, to Landlord's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material (defined below) on, under, about or within the Property in violation of any law or regulation, and (2) that Landlord will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Material on, under, about or within the Property in violation of any law or regulation. Landlord and Tenant each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents

and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorney's fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, any substance known by the state in which the Property is located 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 the termination of this Agreement.

(c) Liens Tenant shall not permit any mechanics or other liens to be filed or placed against the Leased Premises or any part thereof by reason of work, services, materials supplied to or claimed to have been supplied to Tenant, and if such lien is filed against the Leased Premises at any time, Tenant shall cause the same to be discharged of record by paying the amount claimed to be due, shall deposit with the court an amount equal to the amount claimed, or shall post bond for the same, within thirty (30) days of the date of such filing. If Tenant shall fail to discharge such lien or to so deposit such amount within such period, then, Landlord may, but is not hereby required to, take reasonable steps to discharge such lien, and Tenant shall reimburse Landlord, upon demand, for all reasonable costs incurred by Landlord in connection with such discharge.

10. Waiver of Landlord's Lien. Landlord waives any lien rights it may have concerning the Tenant Facilities which are deemed Tenant's personal property and not fixtures, and Tenant has the right to remove the same at any time without Landlord's consent. Landlord acknowledges that Tenant has entered into a financing arrangement including promissory notes and financial and security agreements for the financing of Tenant's Facilities (the "Collateral") with third party financing entities (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, Landlord (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

11. Insurance.

(a) Workers' Compensation. The Tenant must maintain Workers' Compensation insurance in compliance with all applicable statutes. The policy shall also provide Employer's Liability coverage with limits of not less than \$500,000 Bodily Injury each accident, \$500,000 Bodily Injury by disease, policy limit, and \$500,000 Bodily Injury by disease, each employee.

(b) General Liability. The Tenant must maintain an occurrence form comprehensive general liability coverage. Such coverage shall include, but not be limited to, bodily injury, property damage - broad form, and personal injury, for the hazards of Premises/Operation. The Tenant must maintain and name Landlord as an additional Insured under the aforementioned comprehensive general liability coverage with limits of liability not less than \$1,000,000 each occurrence; \$1,000,000 personal and injury; \$1,000,000 general aggregate. These limits may be satisfied by the comprehensive general liability coverage or, in combination with an Umbrella or

Excess Liability Policy, provided coverage afforded by the Umbrella or Excess Liability Policy are no less than the underlying comprehensive general liability coverages..

(c) Automobile Liability. The Tenant must carry Automobile Liability coverage. Coverage shall afford total liability limits for Bodily Injury Liability and Property Damage Liability in the amount of \$1,000,000 per accident. The liability limits may be afforded under the Commercial Policy or; combination with an Umbrella or Excess Liability Policy provided coverages afforded by the Umbrella Excess Policy are no less than the underlying Commercial Automobile Liability coverage. Coverage shall be provided for Bodily Injury and Property Damage for the ownership, use, maintenance or operation of all owned, non owned and hired automobiles. The Commercial Automobile Policy shall include at least statutory personal injury protection, uninsured motorists and underinsured motorists coverages.

(d) Tenant Property Insurance. The Tenant must keep in force during the term and any renewals of the Lease a policy covering damages to its property at the Leased Premises. The amount of coverage shall be sufficient to replace the damaged property, loss of use and comply with any ordinance or law requirements.

12. Damage or Destruction. If Tenant's Facilities are destroyed or damaged, without contributory fault of the Tenant or its agents, so as, in Tenant's judgment, to hinder its effective use of Tenant's Facilities, Tenant may elect to terminate this Lease upon 30 days' written notice to Landlord. In the event Tenant elects to terminate the Lease, Tenant shall be entitled to reimbursement of prepaid rent covering the period subsequent to the date of damage to or destruction of Tenant's Facilities.

13. Lease Termination.

(a) Upon termination of this Lease, except if terminated by reason of an Event of Default, Tenant shall be entitled to a refund of any Base Rent paid in advance. This Lease may be terminated pursuant to any of the following provision:

(1) By Notice. Tenant may elect to terminate this Lease, without cause, as of the end of the Initial Term or any subsequent Renewal Term by giving notice to the Landlord at least ninety (90) days prior to the expiration of the Initial Term or any subsequent Renewal Term.

(2) By Default. Either party may terminate this Lease as described in this paragraph. If Landlord or Tenant fail to perform any covenant of this Lease and does not cure or reasonably commence and proceed diligently to cure such failure within sixty (60) days after receipt of notice thereof from the other party, the other party may at any time thereafter: (i) terminate this Lease as of the date stated in such notice; and/or (ii) pursue any other available remedies at law or in equity that may appear necessary or desirable to enforce performance and observance of any obligation, Lease, or covenant of this Lease.

(3) By Failure of Interference Study. Tenant may terminate this Lease if the Interference Study is not satisfied as a result of an adverse finding in the Interference Study.

(4) By Tenant. Tenant may terminate this Lease with cause if: (i) Tenant gives Landlord at least sixty (60) days notice of Tenant's exercise of this provision; (ii) Tenant is not in default under the terms hereof, (iii) Tenant pays Landlord all outstanding amounts that are due and payable hereunder as of the termination date; and:

(i) Tenant is unable, after exerting all reasonable effort, to obtain and/or maintain any license, permit, or other governmental approval necessary for the construction and/or operation of the Equipment or Tenant's business;

(ii) The Leased Premises is or becomes unacceptable for technological reasons.

(5) By Landlord. Landlord may terminate this Lease if Landlord gives Tenant at least sixty (60) days notice of Landlord's exercise of this provision, and:

(i) If after the second Renewal Term, Landlord's Council decides, for any reason, to discontinue use of the Property for the operation and maintenance of a municipal water tower. The Landlord will undertake its best efforts to provide notice of at least one year to Tenant;

(ii) Landlord determines that Tenant has failed to comply with applicable ordinances, or state or federal law, or any condition attached to government approvals granted thereunder, after public hearing before the Landlord's Council.

(6) By Destruction. Tenant may terminate this Lease upon thirty (30) days notice, if, as a result of any natural disaster, act of God or other occurrence beyond the control of the parties hereto, all or any part of Tenant's Facilities is destroyed or damaged to the extent that it is reasonably determined by Tenant that such will be unusable for more than sixty (60) days. If this Lease is not so terminated, Tenant shall undertake to repair or replace Tenant's Facilities within a reasonable period of time, and if such damage renders the Tower unfit for Tenant's use, and Tenant, by reason thereof, discontinues its use of the Tenant Facilities the Base Rent payments due hereunder shall abate in proportion to that part of the Leased Premises that is rendered unusable, until such time as the Leased Premises is again operational.

(b) Notice of Termination. The parties shall give Notice of Termination in writing by certified mail, return receipt requested. Such Notice shall be effective upon receipt as evidenced by the return receipt, or such later date as stated in the Notice. All rent paid for the Lease prior to said termination date shall be retained by Landlord

14. Default.

(a) Events of Default. The occurrence of any one or more of the following events shall constitute an Event of Default under this Lease:

(1) Failure to Pay. Tenant shall fail to timely pay any amount due under this Lease, and such failure shall continue uncured for more than thirty (30) days after receipt of notice thereof from Landlord;

(2) Failure to Perform. Except as otherwise stated herein, Tenant shall fail to perform any other covenant of this Lease and Tenant does not cure or reasonably commence and proceed diligently to cure such failure within sixty (60) days after receipt of notice thereof from Landlord; or

(3) Bankruptcy. If during the term of this Lease: (i) Tenant shall make an assignment for the benefit of creditors; (ii) Tenant files a voluntary petition under the Bankruptcy Code of the United States or any state statute similar thereto, or Tenant be adjudged insolvent or bankrupt pursuant to an involuntary petition; (iii) a receiver or trustee is appointed for the property of Tenant by reason of insolvency of Tenant and such receiver or trustee is not discharged within 60 days; (iv) any department of the state or federal government, or any officer thereof duly authorized, takes possession of the business or property of Tenant by reason of the insolvency of Tenant; (v) Tenant continues in possession without the appointment of a receiver or trustee under Chapter 11 of the Bankruptcy Code; or (vi) Tenant is the subject of any petition or proceeding related to relief from creditors and such proceeding has not been dismissed within sixty (60) days.

(b) Remedies On Default. If an Event of Default occurs, Landlord may at any time thereafter:

(1) Terminate this Lease. Terminate this Lease pursuant to Section 13(b) above; and/or

(2) Pursue any other available remedies at law or in equity that may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of this lease.

15. Limitation of Landlord's Liability. If Landlord terminates this Lease other than as of right as provided in this Lease, or Landlord causes interruption of the business of Tenant or for any other Landlord breach of this Lease, Landlord's liability for damages to Tenant shall be limited to the actual and direct costs of equipment removal, relocation or repair.

16. Temporary Interruptions of Service. If the FCC determines that continued operation of Tenant's Facilities would cause or contribute to an immediate threat to public health and/or safety (except for issues associated with human exposure to radio frequency emissions, which is regulated by the federal government), Landlord may order Tenant to discontinue its operation. Tenant shall immediately comply with such order. Pursuant to such order, such disconnection shall continue only for a period that the immediate threat exists. Landlord shall not be liable to Tenant or any other party for any interruption of Tenant's operation at the Leased Premises, except as may be occasioned by the willful misconduct of Landlord, its employees or agents. During the Term, a temporary interruption or discontinuance of the operation of the Tower,

Tenant's operations at the Leased Premises, or any part or combination thereof, resulting from some occurrence beyond the reasonable control of Landlord, shall not constitute a default under this Agreement, if the length of such interruption or discontinuance is commensurate with the seriousness of the event that caused the interruption or discontinuance.

17. **Tenant Interference.**

(a) **With Property.** Landlord acknowledges that Tenant's use as depicted in Exhibit B will not interfere with Landlord's use of the Property. Tenant shall not interfere with Landlord's use of the Property and agrees to cease all such actions which unreasonably and materially interfere with Landlord's use thereof no later than three business days after receipt of written notice of the interference from Landlord. In the event that Tenant's cessation of action is material to Tenant's use of the Leased Premises and such cessation frustrates Tenant's use of the Leased Premises, within Tenant's sole discretion, Tenant shall have the immediate right to terminate this Lease.

(b) **Interference Study - New Occupants.** Upon written notice by Landlord that it has a bona fide request from any other party to lease an area including or in close proximity to the Leased Premises ("Leased Premises Area"), Tenant agrees to provide Landlord, within sixty (60) days, the radio frequencies currently in operation or to be operated in the future of each transmitter and receiver installed and operational by Tenant on the Leased Premises at the time of such request. Landlord may then have an independent, registered professional engineer of Landlord's choosing perform the necessary interference studies to determine if the new applicant's frequencies will cause harmful radio interference to Tenant. Landlord shall require the new applicant to pay for such interference studies.

(c) **Interference - New Occupants.** Landlord agrees that it will not grant a future lease in the Leased Premises Area to any party if such party's use is reasonably anticipated to interfere with Tenant's operation of its Tenant Facilities. Landlord agrees further that any future lease of the Leased Premises Area will prohibit a user from interfering with Tenant's Facilities. Landlord agrees that it will require any subsequent occupants of the Property to provide Tenant these same assurances against interference. Landlord shall have the obligation to eliminate any interference with the operations of Tenant caused by such subsequent occupants. If such interference is not eliminated, Tenant shall have the right to terminate this Lease or seek injunctive relief against the interfering occupant, at Tenant's expense.

18. **Assignment.**

(a) Tenant may not assign, or otherwise transfer all or any part of its interest in this Agreement or in the Leased Premises without the prior written consent of Landlord provided, however, that Tenant may assign its interest to its parent company, any subsidiary or affiliate or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets, subject to any financing entity's interest, if any, in this Agreement as set forth in Paragraph 10 above. Notwithstanding anything to the contrary contained in this Agreement, Tenant may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this

Agreement to any financing entity, or agent on behalf of any financing entity to whom Tenant (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

(b) The parties acknowledge that this is a non-exclusive lease, except as set forth on Exhibit B, nothing in this Lease shall preclude Landlord from leasing other space for communication equipment to any person or entity which may be in competition with Tenant, or any other party, subject to the conditions set forth in this Lease. The parties acknowledge that the non-exclusive nature of this lease is limited to the leasing of tower space, ground space and additional uses in accordance with Subparagraph 5.(j), necessary cable runs through the Leased Premises incidental thereto and the "attachments" provisions of Paragraph 8. The parties further acknowledge that the limitation contained in the preceding sentence shall not exclude Landlord from the Property or Leased Premises in accordance with Subparagraph 5.(j).

(c) The Landlord may freely assign its rights and delegate its duties under this lease to joint powers organization of which it is now a member or become a member during the term of this lease, subject to the assignee assuming all of Landlord's obligations herein, including but not limited to, those set forth in Paragraphs 10 and 18(a) above.

19. **Condemnation.** In the event the whole of the Leased Premises is taken by eminent domain, this Lease shall terminate as of the date title to the Leased Premises vests in the condemning authority. In event a portion of the Leased Premises is taken by eminent domain, either party shall have the right to terminate this Lease as of said date of title transfer, by giving thirty (30) days' written notice to the other party. In the event of any taking under the power of eminent domain, Tenant shall not be entitled to any portion of the reward paid for the taking and the Landlord shall receive full amount of such award. Tenant hereby expressly waives any right or claim to any portion thereof. Although all damages, whether awarded as compensation for diminution in value of the leasehold or to the fee of the Leased Premises, shall belong to Landlord, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant on account of any and all damage to Tenant's business and any costs or expenses incurred by Tenant in moving/removing its equipment, personal property, Antenna Facilities, and leasehold improvements.

20. **Notices.** All notices hereunder must be in writing and shall be deemed validly given if delivered personally or if sent by certified mail, return receipt requested, addressed as follows (or any other address that the parlor to be notified may have designated to the sender by like notice):

If to Tenant:

Nextel Communications
9401 James Avenue
South, Suite 180
Bloomington, MN 55431

If to

Landlord: City of Tonka Bay
4901 Manitou Road
Tonka Bay MN 55331

Attn: Property Manager

With a copy to: Nextel Communications
1505 Farm Credit Drive
McLean, VA 22102

Attn: Legal Dept., Contracts
Manager

21. **Authority.** Each of the individuals executing this Lease on behalf of the Tenant or the Landlord represents to the other party that such individual is authorized to do so by requisite action of the party to this Lease.
22. **Binding Effect.** This Lease shall run with the Property. This Lease shall extend to and bind the heirs, personal representatives, successors and assigns of the parties hereto.
23. **Complete Lease: Amendments.** This Lease constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties.
24. **Applicable Law.** This Lease has been made, and its validity, performance and effect shall be determined in accordance with the laws of the State of Minnesota.
25. **Warranty of Title and Quiet Enjoyment.** Landlord warrants that: (i) Landlord owns the Property in fee simple and has rights of access thereto and the Property is free and clear of all liens, encumbrances and restrictions; (ii) Landlord has full right to make and perform this Agreement; and (iii) Landlord covenants and agrees with Tenant that upon Tenant's paying the Rent and observing and performing all the terms, covenants and conditions on Tenant's part to be observed and performed, Tenant may peacefully and quietly enjoy the Leased Premises.
26. **Limitations of Liability.** Nothing in the Lease shall be deemed a waiver of any limitation of liability or defenses under Minnesota Statutes Chapter 466 or any other provision of law.
27. **Inspection Fees.** Tenant shall reimburse Landlord up to \$2,000 for fees paid to Landlord's Consulting Engineer by Landlord, associated with Landlord's Consulting Engineer's monitoring and inspection of Tenant's construction of Tenant's Facilities.
28. **Severability.** If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.
29. **Memorandum.** Upon request by either party, the parties agree to promptly execute and deliver a recordable Memorandum of this Lease in the form attached as Exhibit C.

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

LANDLORD: **City of Tonka Bay, a
Minnesota Municipal
corporation**

TENANT: **Nextel West Corp., a Delaware
corporation**

By:

Raymond Keller

By:

John C. Stets

Date:

7-11-97

Date:

7/14/97

Title:

Its Mayor

Title:

Market President

Tax ID #:

41-6008060

Tax ID #:

52-1648414

By:

Peter W. ...

Date:

7-11-97

Title:

Its Clerk Administrator

Tax ID #:

41-6008060

EXHIBIT A

DESCRIPTION OF PROPERTY

to the Agreement dated _____, 1997, by and between **City of Tonka Bay**, a Minnesota Municipal corporation, as Landlord, and **Nextel West Corp.**, a Delaware corporation, as Tenant.

The Property is described and/or depicted as follows (metes and bounds description):

The North 100.00 feet of the East 100.00 feet of that part of Tract A, Registered Land Survey No. 482, Hennepin County, Minnesota, which lies Southerly of a line drawn Westerly, at a right angle to the East line of said Tract A, from a point on said East line distant 490.00 feet Southerly from the Northeast corner of said Tract A.

EXHIBIT B

DESCRIPTION OF LEASED PREMISES, ACCESS EASEMENT AND UTILITY EASEMENT

to the Agreement dated _____, 1997, by and between City of Tonka Bay, a Minnesota Municipal corporation, as Landlord, and Nextel West Corp., a Delaware corporation, as Tenant.

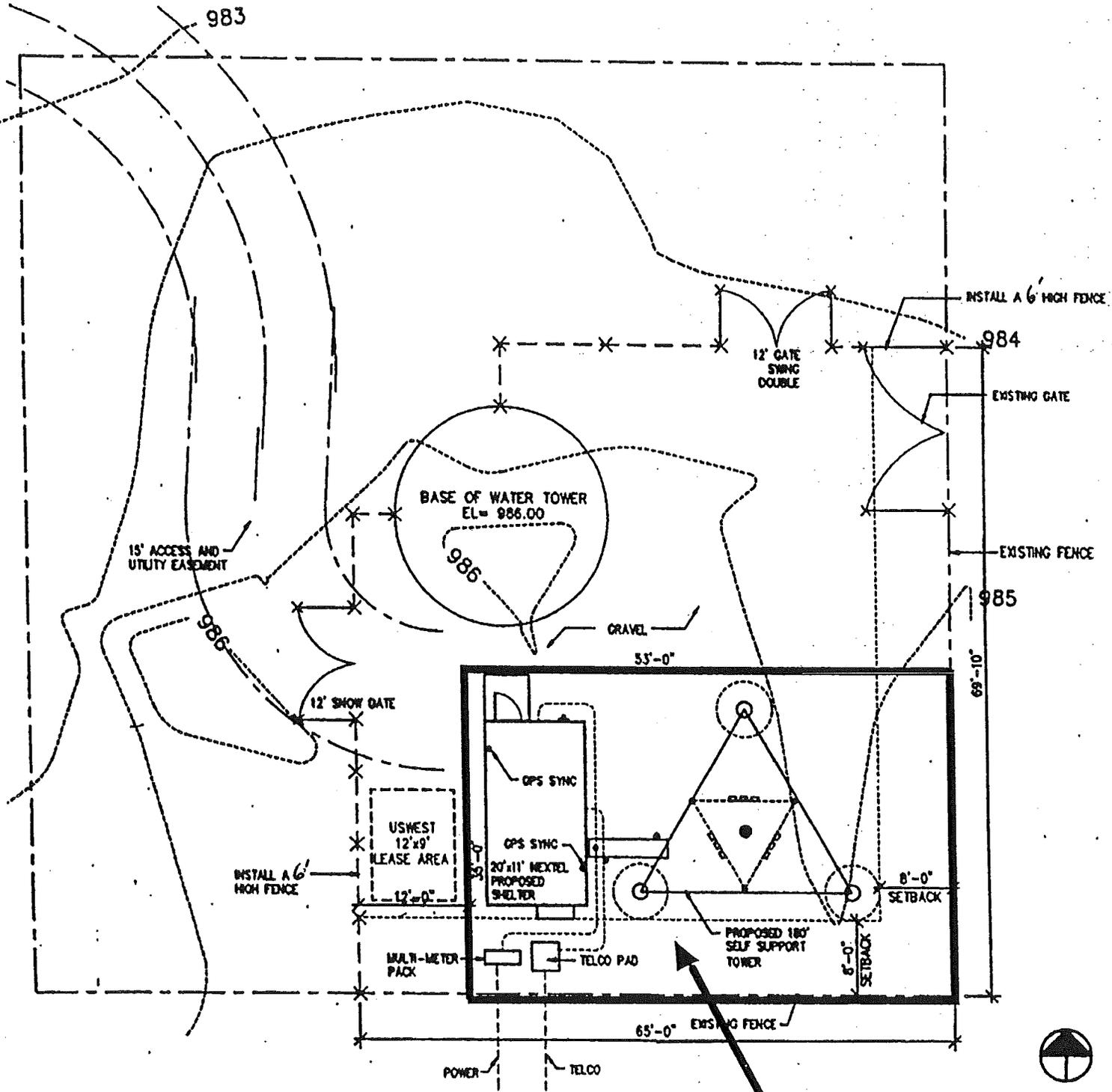
The Leased Premises, Access Easement And Utility Easement are described and/or depicted as follows:

PLEASE SEE ATTACHED DRAWINGS LABELED AS EXHIBIT B: 2-3-4.

Notes:

1. This Exhibit may be replaced by a land survey of the Leased Premises once it is received by Tenant.
2. Setback of the improvements from the Property boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers, mounting positions may vary from what is shown above.

EXHIBIT B, Page 3



Leased Premises
53' x 35'
(1855 sq. ft.)



Exhibit B, Page 4

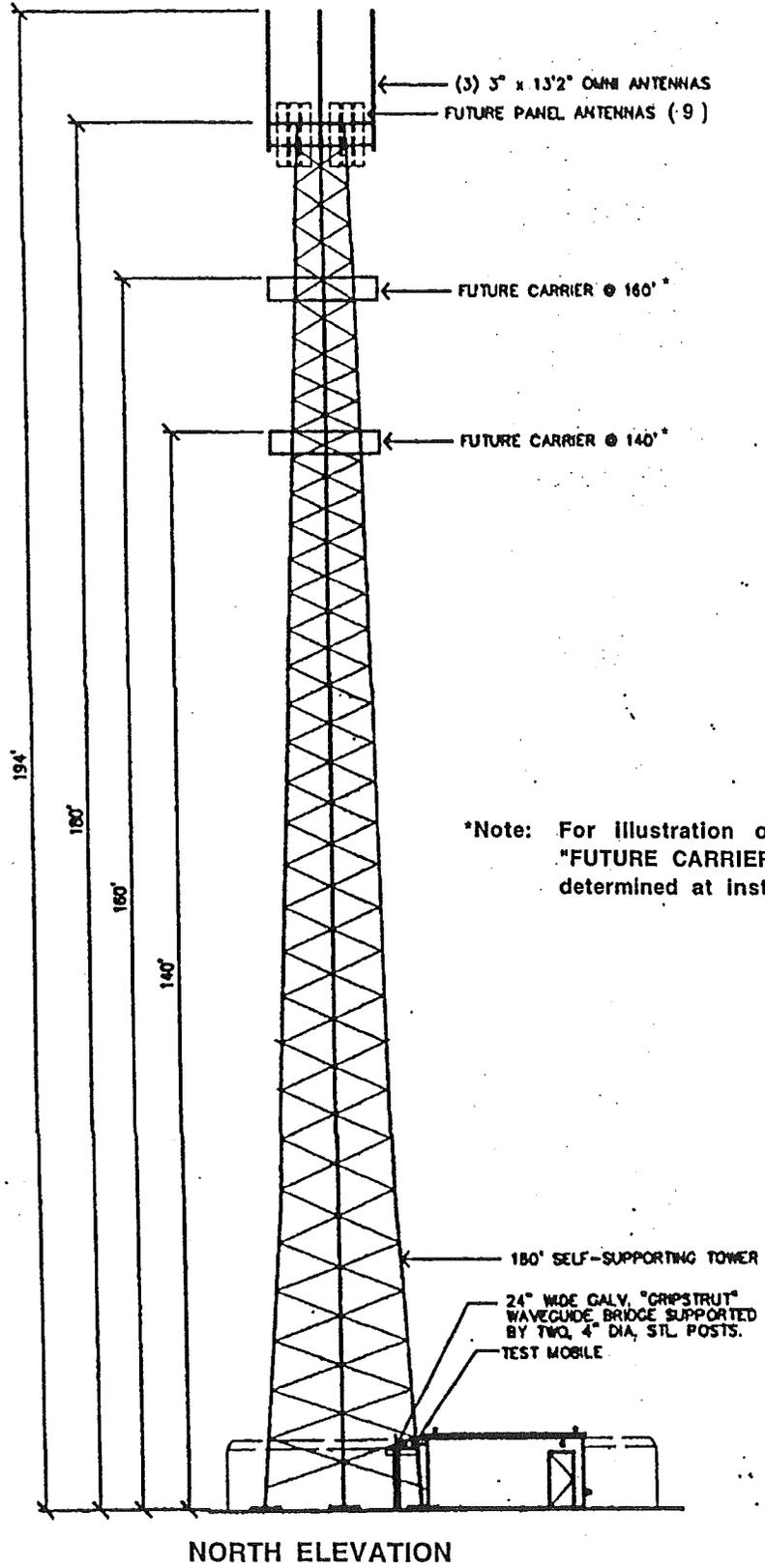


EXHIBIT C

FOR EXHIBIT PURPOSES ONLY EXECUTABLE MEMORANDUM FOLLOWS THIS EXHIBIT

MEMORANDUM OF AGREEMENT

CLERK: Please return this document to: _____

This Memorandum of Agreement is entered into on this ____ day of _____, 199____, by and between City of Tonka Bay, a Minnesota Municipal corporation, with an office at 4901 Manitou Road, Tonka Bay, MN 55331, (hereinafter referred to as "Landlord") and Nextel West Corp., a Delaware corporation with an office at 9401 James Avenue South, Bloomington, MN 55431 (hereinafter referred to as "Tenant").

1. Landlord and Tenant entered into a Communications Site Lease Agreement ("Agreement") on the ____ day of _____ 1997, for the purpose of installing, operating and maintaining a radio communications facility and other improvements. All of the foregoing are set forth in the Agreement.

2. The Initial Term of the Agreement commenced on _____, 1997 ("Commencement Date"), and ends on December 31, 2001 with five successive five (5) year automatic Renewal Terms at Tenant's option.

3. The Property which is the subject of the Agreement is described in Exhibit A annexed hereto. The portion of the Property being leased to Tenant (the "Leased Premises") is described in Exhibit B annexed hereto.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the day and year first above written.

LANDLORD: City of Tonka Bay, a Minnesota Municipal corporation

TENANT: Nextel West Corp., a Delaware corporation

By: NOT FOR EXECUTION

By: NOT FOR EXECUTION

Date: _____

Date: _____

Title: Its Mayor

Title: _____

Tax ID #: 41-6008060

Tax ID #: 52-1648414

LANDLORD: City of Tonka Bay, a Minnesota Municipal corporation

By: NOT FOR EXECUTION

Date: _____

Title: Its Clerk Administrator

Tax ID #: 41-6008060

ALL SIGNATURES MUST BE ACKNOWLEDGED

ACKNOWLEDGMENTS ON FOLLOWING PAGE

ACKNOWLEDGMENTS

STATE OF : _____

COUNTY OF: _____

On _____, before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

Notary Public

My commission expires: _____

STATE OF : _____

COUNTY OF: _____

On _____, before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

Notary Public

My commission expires: _____

ACKNOWLEDGMENTS CONTINUED ON FOLLOWING PAGE

ACKNOWLEDGMENTS CONTINUED

STATE OF : _____

COUNTY OF: _____

On _____, before me, , Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public (SEAL)

My commission expires: _____