

Resolution No. R-58-18

**Resolution Approving Amendment No. 2 to Communications Site Lease Agreement (Water Tower) with SprintCom, Inc.**

**WHEREAS**, the Village of Lemont ("Village") and SprintCom, Inc., a Kansas corporation, successor in interest to Nextel West Corp., a Delaware corporation, d/b/a Nextel Communications ("Sprint") are parties to that certain Communication Site Lease Agreement (Water Tower) dated August 24, 1998, as amended by Amendment No. 1 dated September 25, 2006 (collectively, the "Lease Agreement"); and

**WHEREAS**, the Lease Agreement is set to expire by its terms on June 30, 2019, and the Village and Sprint desire to modify certain provisions of the Lease Agreement, including but not limited to extending the term of the Lease Agreement, as more fully set forth in Amendment No. 2 to Communications Site Lease Agreement (Water Tower) ("Amendment No. 2") attached hereto as Exhibit A; and

**WHEREAS**, the President and Board of Trustees of the Village have determined that it is in the best interests of the Village and its residents to enter into Amendment No. 2 attached hereto as Exhibit A.

**NOW THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LEMONT, COOK, WILL & DU PAGE COUNTIES, ILLINOIS** as follows:

**Section One:** Amendment No. 2 attached hereto as Exhibit A is hereby approved.

**Section Two:** The Mayor, Village Clerk, and/or Village Administrator are authorized to execute and attest to Amendment No. 2, and to make minor changes to the document prior to execution that do not materially alter the Village's obligations, and to take any other steps necessary to carry out this resolution.

**Section Three:** This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

**PASSED AND APPROVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LEMONT, COUNTIES OF COOK, WILL AND DUPAGE, ILLINOIS on this 22nd day of October, 2018.**

**PRESIDENT AND VILLAGE BOARD MEMBERS:**

	AYES:	NAYS:	ABSENT:	ABSTAIN
Debby Blatzer	_____	_____	____/____	_____
Ryan Kwasneski	_____	_____	____/____	_____
Dave Maher	____/____	_____	_____	_____
Ken McClafferty	____/____	_____	_____	_____

Rick Sniagowski  
Ron Stapleton

✓  
✓

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*John Egofkse*  
JOHN EGOFKSE  
President

ATTEST:

*Charlene M. Smollen*  
CHARLENE M. SMOLLEN  
Village Clerk

**AMENDMENT NO. 2 TO  
COMMUNICATIONS SITE LEASE AGREEMENT (WATER TOWER)**

This Amendment No. 2 to Communications Site Lease Agreement (Water Tower) (this "Second Amendment"), effective as of the date last signed below ("Effective Date"), amends a certain Communications Site Lease Agreement (Water Tower) dated August 24, 1998, between SprintCom, Inc., a Kansas corporation, successor in interest to Nextel West Corp., a Delaware corporation, d/b/a Nextel Communications ("Lessee") and the Village of Lemont, a municipal corporation of Illinois ("Lessor"), as amended by Amendment No. 1 dated September 25, 2006 (collectively, the "Agreement").

**BACKGROUND**

WHEREAS, the Agreement is set to expire on June 30, 2019, and Lessee and Lessor desire to extend the term of the Agreement.

WHEREAS, Lessee and Lessor desire to modify certain provisions of the Agreement as provided below.

**AGREEMENT**

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, Lessor and Lessee agree as follows:

1. **Term.** Paragraph 4 of the Agreement is amended by adding the following:

The current term of the Agreement will expire on June 30, 2019. Notwithstanding anything to the contrary in the Agreement, commencing on July 1, 2019, the term of the Agreement is sixty (60) months ("New Initial Term"). The Agreement will be automatically renewed for five (5) additional terms of sixty (60) months each (each a "New Renewal Term"). Each New Renewal Term will be deemed automatically exercised without any action by either party unless Lessee gives written notice of its decision not to exercise any options to Lessor before expiration of the then current term. All references in the Agreement to Renewal Terms shall include the New Initial Term and the New Renewal Term(s).

2. **Modification to Rent.** Paragraph 5 of the Agreement is amended by adding the following:

Starting on the first day of the New Initial Term and on the first day of every month thereafter, Lessee will pay Rent in advance in equal monthly installments of Two Thousand Seven Hundred Nine and 16/100 Dollars (\$2,709.16). Rent for any partial months will be prorated based upon a 30-day month. Commencing on July 1, 2020, the Rent will be increased annually by three percent (3%) of the then current Rent.

Lessee's obligation to pay Rent is contingent upon Lessee's receipt of an IRS-approved W-9 form setting forth the tax identification number of Lessor or of the person or entity to whom payment is to be made payable as directed in writing by Lessor. Lessor agrees to enroll for automated payment no less than thirty (30) days prior to the commencement of the New Initial Term. All of Lessee's payment obligations set forth in the Agreement are conditioned upon Lessor's timely enrollment for automated payment. Lessor may obtain electronic payment enrollment forms by contacting Landlord solutions at 800-357-7641 or by submitting a ticket for direct deposit via the landlord portal at <https://landlordsolutions.sprint.com>.

Section 5(c) of the Agreement is hereby deleted in its entirety.

3. **Notice Address.** The notice addresses in Paragraph 19(d) of the Agreement or referenced therein for the party or parties listed below are hereby deleted in their entirety and replaced with the following:

To Lessor:	Village of Lemont Village Hall 418 Main Street Lemont, IL 60439-3708
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To Lessee: Sprint Property Services  
Sprint Site ID: CH73XC066-A  
Mailstop KSOPHT0101-Z2650  
6391 Sprint Parkway  
Overland Park, Kansas 66251-2650

With a mandatory copy to: Sprint Law Department  
Sprint Site ID: CH73XC066-A  
Attn.: Real Estate Attorney  
Mailstop KSOPHT0101-Z2020  
6391 Sprint Parkway  
Overland Park, Kansas 66251-2020

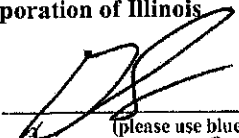
4. **General Terms and Conditions.**

- a. All capitalized terms used in this Second Amendment, unless otherwise defined herein, will have the same meaning as the terms contained in the Agreement.
- b. In case of any inconsistencies between the terms and conditions contained in the Agreement and the terms and conditions contained in this Second Amendment, the terms and conditions herein will control. Except as set forth herein, all provisions of the Agreement are ratified and remain unchanged and in full force and effect.
- c. This Second Amendment may be executed in duplicate counterparts, each of which will be deemed an original.
- d. Each of the parties represents and warrants that it has the right, power, legal capacity and authority to enter into and perform its respective obligations under this Second Amendment.
- e. Lessor agrees to execute concurrently with this Second Amendment a recordable Memorandum of Amendment attached to this Second Amendment as Exhibit C-1, which Memorandum of Amendment Lessee may record at its own expense in the real property records where the Premises is located.

The parties have executed this Second Amendment as of the Effective Date.

**Lessor:**  
Village of Lemont,  
a municipal corporation of Illinois

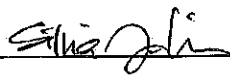
**Lessee:**  
SprintCom, Inc.,  
a Kansas corporation

By:   
(please use blue ink)

Printed Name: George J. Schafer

Title: Village Administrator

Date: January 28, 2019  
(Date must be completed)

By: 

Printed Name: Silvia J. Lin

Title: Manager, Real Estate

Date: 1/23/2019  
(Date must be completed)

**EXHIBIT C-1  
(MEMORANDUM OF AMENDMENT)**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

Sprint Property Services  
Mailstop KSOPHT0101-Z2650  
6391 Sprint Parkway  
Overland Park, Kansas 66251-2650

[space above this line for Recorder's use]

**MEMORANDUM OF AMENDMENT NO. 2 TO  
COMMUNICATIONS SITE LEASE AGREEMENT (WATER TOWER)**

THIS MEMORANDUM OF AMENDMENT NO. 2 TO COMMUNICATIONS SITE LEASE AGREEMENT (WATER TOWER) ("Amended Memorandum"), by and between the Village of Lemont, a municipal corporation of Illinois ("Lessor") and SprintCom, Inc., a Kansas corporation, successor in interest to Nextel West Corp., a Delaware corporation, d/b/a Nextel Communications ("Lessee"), evidences the Communications Site Lease Agreement (Water Tower) made and entered into between Lessor and Lessee dated August 24, 1998, as may have been previously amended (collectively, the "Agreement") has been amended by written agreement between the parties (the "Second Amendment"). The term "Agreement" hereinafter refers to and includes the Second Amendment.

This Amended Memorandum amends that certain Memorandum of Agreement recorded with the Office of County Recorder, County of Cook, State of Illinois, as document number 0010235028 on March 26, 2001.

The Agreement provides in part that Lessor leases to Lessee certain real property owned by Lessor and located at 731 Houston Street, City of Lemont, County of Cook, State of Illinois ("Land") for the purpose of installing, operating and maintaining a communications facility and other improvements. The Land is legally described in Exhibit A attached hereto. The portion of the Land leased to Lessee together with non-exclusive utility and access easements (the "Premises") is further described in the Agreement.

The new term of Lessee's lease and tenancy under the Agreement, as amended by the Second Amendment, is sixty (60) months, commencing on July 1, 2019, and is subject to five (5) renewal terms of sixty (60) months each that may be exercised by Lessee.

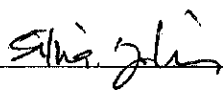
**SIGNATURES APPEAR ON THE FOLLOWING PAGE**

IN WITNESS WHEREOF, the parties have executed this Amended Memorandum as of the day and year indicated below.

**LESSOR:**  
Village of Lemont,  
a municipal corporation of Illinois

**LESSEE:**  
SprintCom, Inc.,  
a Kansas corporation

By:   
(please use blue ink)

By: 

Printed Name: George J. Schafer

Printed Name: Silvia J. Lin

Title: Village Administrator

Title: Manager, Real Estate

Date: January 28, 2019  
(Date must be completed)

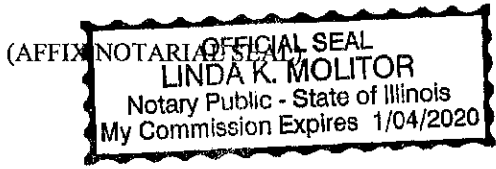
Date: 1/23/19  
(Date must be completed)

LESSOR NOTARY BLOCK: (please use blue ink)

STATE OF ILLINOIS

COUNTY OF COOK

The foregoing instrument was (choose one)  attested or  acknowledged before me this 28th day of JANUARY, 2019, by George J. Schafer, as Village Administrator of Village of Lemont, a municipal corporation of Illinois, on behalf of the Village.



Linda K. Molitor  
(OFFICIAL NOTARY SIGNATURE)  
NOTARY PUBLIC STATE OF

My commission expires:  
January 4, 2020

Linda K. Molitor  
(PRINTED, TYPED OR STAMPED NAME OF NOTARY)

COMMISSION NUMBER:

**LESSEE NOTARY BLOCK:**

STATE OF KANSAS )  
 ) ss.  
COUNTY OF JOHNSON )

Acknowledgment by Corporation  
Pursuant to Uniform Acknowledgment Act

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of January, 2019, by Silvia J. Lin on behalf of SprintCom, Inc., a Kansas corporation.

(AFFIX NOTARIAL SEAL)



My commission expires: 8/30/2022

*Laurie Anderson*  
(OFFICIAL NOTARY SIGNATURE)  
NOTARY PUBLIC STATE OF

Laurie Anderson  
(PRINTED, TYPED OR STAMPED NAME OF NOTARY)

*lin*



**EXHIBIT A**  
**TO MEMORANDUM OF AMENDMENT NO. 2 TO**  
**COMMUNICATIONS SITE LEASE AGREEMENT (WATER TOWER)**

LOTS 16 TO 23 INCLUSIVE IN BLOCK 7 IN McCARTHY AND HOUSTON'S ADDITION TO JASNAGORA  
IN SECTIONS 20 AND 29, TOWNSHIP 37 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN,  
IN COOK COUNTY, ILLINOIS.

And otherwise known as 731 Houston Street, Lemont, IL 60439  
P.I.N.: 22-29-223-030 Vol. No. 062

RESOLUTION NO. R-19-98

RESOLUTION EXECUTING A LEASE AGREEMENT  
BETWEEN NEXTEL WEST CORPORATION  
AND THE VILLAGE OF LEMONT  
731 Houston Street (Water Tower)

**WHEREAS** the President and Board of Trustees have deemed it in the community's best interest to execute a Lease Agreement between Nextel West Corporation, hereinafter known as the LESSEE, and the Village of Lemont, hereinafter known as the LESSOR, attached hereto as Exhibit "A" and made a part hereof; and

**WHEREAS** the Village of Lemont (hereinafter "Village") is a Municipal corporation pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1; and

**WHEREAS** it is agreed that the LESSOR hereby lets and leases unto the LESSEE, for the term of five (5) years, commencing on the date Lessee begins commercial operations of the Lessee Facilities or July 1, 1999, approximately eight hundred (800) square feet of the Land and space on the Water Tower for the sum of Fifteen Hundred and 00/100 Dollars (\$1,500.00) per month "Rent"; and

**WHEREAS** the rent shall be increased on each anniversary of the Commencement Date by an amount equal to three (3%) of the Rent then in effect for the previous year; and

**WHEREAS** within thirty (30) days of the Commencement Date, Lessee shall provide to Lessor an initial credit of Eight Thousand and 00/100 Dollars (\$8,000.00) to be used for the purchase of Nextel Communications mobile telephone equipment and or services. On each anniversary of the Commencement Date, Lessee shall provide to Lessor a credit of Five Thousand and 00/100 Dollars (\$5,000.00) to be used for the purchase of Nextel Communications mobile telephone equipment and or services.

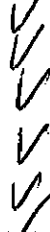

**NOW, THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Lemont, Counties of Cook, DuPage and Will, State of Illinois, as follows:

**SECTION 1:** that the President be and is hereby authorized and directed, and the Village Clerk is directed to attest to a Communications Site Lease Agreement (Water Tower), dated the 24 of August, 1998, a copy of which is attached hereto and made a part hereof.

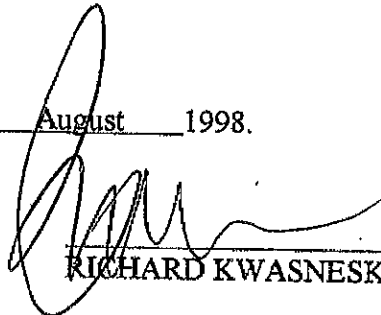
**PASSED AND APPROVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LEMONT, COUNTIES OF COOK, WILL AND DuPAGE, ILLINOIS on this 24th day of August 1998.**

Barbara Buschman  
Keith Latz  
Connie Markiewicz  
Rick Rimbo  
Ralph Schobert  
Mary Studebaker

AYES    NAYS    PASSED    ABSENT

  
  
CHARLENE SMOLLEN, Village Clerk

Approved by me this 24th day of August 1998.

  
RICHARD KWASNESKI, Village President

Attest:

  
CHARLENE SMOLLEN, Village Clerk

**Legal Description**

**LOTS 16 TO 23 INCLUSIVE IN BLOCK 7 IN McCARTHY AND HOUSTONS'S  
ADDITION TO JASNAGORA IN SECTIONS 20 AND 29, TOWNSHIP 37 NORTH,  
RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY,  
ILLINOIS.**

COMMUNICATIONS SITE LEASE AGREEMENT (WATER TOWER)

This Communications Site Lease Agreement (Water Tower) ("Agreement") is entered into this \_\_\_\_\_ day of August, 1998, between Nextel West Corp., a Delaware Corporation, d/b/a Nextel Communications, ("Lessee"), and Village of Lemont, a municipal corporation of Illinois, ("Lessor").

For good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Premises.** Lessor is the owner of a parcel of land (the "Land") and a telecommunications water tower (the "Water Tower") located in the Village of Lemont, County of Cook, State of Illinois, more commonly known as 731 Houston Street, Lemont, IL 60439, (the Water Tower and Land are collectively, the "Property"). The Land is more particularly described in Exhibit A annexed hereto. Lessor hereby leases to Lessee and Lessee leases from Lessor, approximately eight hundred (800) square feet of the Land and space on the Water Tower and all access and utility easements, if any, (collectively, the "Premises") as described in Exhibit B annexed hereto.
2. **Use.** The Premises may be used by Lessee for any activity in connection with the provision of communications services. Lessor agrees to cooperate with Lessee, at Lessee's expense, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Lessee's intended use of the Premises.
3. **Tests and Construction.** Lessee shall have the right at any time following the full execution of this Agreement to enter upon the Property for the purpose of making appropriate engineering and boundary surveys, inspections, soil test borings, other reasonably necessary tests and constructing the Lessee Facilities (as defined in Paragraph 6(a) below). Upon Lessee's request, Lessor agrees to provide promptly to Lessee copies of all plans, specifications, surveys and water tower maps for the Land and Water Tower. The water tower map shall include the elevation of all antennas on the Water Tower and the frequencies upon which each operates.
4. **Term.** The term of this Agreement shall be for five (5) years commencing on the date Lessee begins commercial operation of the Lessee Facilities (as defined in Paragraph 6(a)) or July 1, 1999, whichever first occurs ("Commencement Date") and terminating on the fifth anniversary of the Commencement Date (the "Term") unless otherwise terminated as provided in Paragraph 10. Lessee shall have the right to extend the Term for three (3) successive five (5) year periods (the "Renewal Terms") on the same terms and conditions as set forth herein. This Agreement shall automatically be extended for each successive Renewal Term unless Lessee notifies Lessor of its intention not to renew prior to commencement of the succeeding Renewal Term.
5. **Rent.**
  - (a) Within thirty (30) days of the Commencement Date and on the first day of each month thereafter, Lessee shall pay to Lessor as rent Fifteen Hundred and 00/100 Dollars (\$1,500.00) per month ("Rent"). Rent for any fractional month at the beginning or at the end of the Term or Renewal Term shall be prorated. Rent shall be payable to Lessor at Lemont Village Hall, 418 Main Street, Lemont, IL 60439; Attention: Village Treasurer.
  - (b) Rent shall be increased on each anniversary of the Commencement Date by an amount equal to three percent (3%) of the Rent then in effect for the previous year.
  - (c) Within thirty (30) days of the Commencement Date, Lessee shall provide to Lessor an initial credit of Eight Thousand and 00/100 Dollars (\$8,000.00) to be used for the purchase of Nextel Communications mobile telephone equipment and or services. On each anniversary of the Commencement Date, Lessee shall provide to Lessor a credit of Five Thousand and 00/100 Dollars (\$5,000.00) to be used for the purchase of Nextel Communications mobile telephone equipment and or services.
6. **Facilities, Utilities, Access.**
  - (a) Lessee has the right to erect, maintain and operate on the Premises radio communications facilities, including without limitation utility lines, transmission lines, air conditioned equipment shelter(s), electronic equipment, radio transmitting and receiving antennas and supporting equipment and structures thereto ("Lessee Facilities"). In connection therewith, Lessee has the right to do all work necessary to prepare, maintain and alter the Premises for Lessee's business operations and to install transmission lines connecting the antennas to the transmitters and receivers. All of Lessee's construction and installation work shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Title to the Lessee Facilities shall be held by Lessee. All of Lessee Facilities shall remain Lessee's personal property and are not fixtures. Lessee has the right to remove all Lessee Facilities at its sole expense on or before the expiration or earlier termination of the Agreement; provided, Lessee repairs any damage to the Premises caused by such removal.
  - (b) Lessee shall pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. Lessee shall have the right to draw electricity and other utilities from the existing utilities on the Property or obtain separate utility service from any utility company that will provide service to the Property (including a standby power generator for Lessee's exclusive use). Lessor agrees to sign such documents or easements as may be required by said utility companies to provide such service to the Premises, including the grant to Lessee or to the servicing utility company at no cost to the Lessee, of an easement in, over across or through the Land as required by such servicing utility company to provide utility services as provided herein.
  - (c) Lessee, Lessee's employees, agents, subcontractors, lenders and invitees shall have access to the Premises without notice to Lessor twenty-four (24) hours a day, seven (7) days a week, at no charge. Lessor grants to Lessee, and its agents, employees, contractors, guests and invitees, a non-exclusive right and easement for pedestrian and vehicular ingress and egress across that portion of the Land described in Exhibit B.
  - (d) Lessor shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow pedestrian and vehicular access at all times under normal weather conditions. Lessor shall be responsible for maintaining and repairing such roadway, at its sole expense, except for any damage caused by Lessee's use of such roadways.
  - (e) Lessee shall provide Lessor with a copy of Lessee's site plans ("Plans") prior to construction. Lessor shall either approve the Plans or provide Lessee with its requests for changes within ten (10) business days of Lessor's receipt of the Plans. If Lessor does not provide such approval or request for changes within ten (10) business days, Lessor shall be deemed to have approved the Plans. Lessor shall not be entitled to receive any additional consideration in exchange for giving its approval of Lessee's Plans.
7. **Interference.**
  - (a) Lessee shall operate the Lessee Facilities in a manner that will not cause interference to Lessor and other lessees or licensees of the Property, provided that their installations predate that of the Lessee Facilities. Lessee agrees to install equipment of a type and frequency which will not cause frequency interference with other forms of radio frequency communications existing on Lessor's property as of the date of this Agreement, including all existing Police, Fire and ESDA equipment. In the event Lessee's equipment causes such interference, Lessee, upon receipt of written notice, agrees to take all reasonable steps to correct and eliminate the interference consistent with appropriate government rules and regulations. All operations by Lessee shall be in compliance with all Federal Communications Commission ("FCC") requirements.

(b) Subsequent to the installation of the Lessee Facilities, Lessor shall not permit itself, its lessees or licensees to install new equipment on the Property or property contiguous thereto owned or controlled by Lessor, if such equipment is likely to cause interference with Lessee's operations. Lessor can lease space to other antenna companies, provided any installations do not interfere with the operation of Lessee Facilities. Such interference shall be deemed a material breach by Lessor. In the event interference occurs, Lessor agrees to take all action necessary to eliminate such interference, in a reasonable time period. In the event Lessor fails to comply with this paragraph, Lessee may terminate this Agreement, and/or pursue any other remedies available under this Agreement, at law, and/or at equity.

8. **Taxes.** If personal property taxes are assessed, Lessee shall pay any portion of such taxes directly attributable to the Lessee Facilities. Lessor shall pay all real property taxes, assessments and deferred taxes on the Property.

9. **Waiver of Lessor's Lien.**

(a) Lessor waives any lien rights it may have concerning the Lessee Facilities which are deemed Lessee's personal property and not fixtures, and Lessee has the right to remove the same at any time without Lessor's consent.

(b) Lessor acknowledges that Lessee has entered into a financing arrangement including promissory notes and financial and security agreements for the financing of the Lessee Facilities (the "Collateral") with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, Lessor (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.

10. **Termination.** This Agreement may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, provided that the grace period for any monetary default is ten (10) days from receipt of notice; or (ii) by Lessee for any reason or for no reason, provided Lessee delivers written notice of early termination to Lessor no later than thirty (30) days prior to the Commencement Date; or (iii) by Lessee if it does not obtain or maintain any license, permit or other approval necessary for the construction and operation of Lessee Facilities; or (iv) by Lessee if Lessee is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies; or (v) by Lessee if Lessee determines that the Premises are not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference.

11. **Destruction or Condemnation.** If the Premises or Lessee Facilities are damaged, destroyed, condemned or transferred in lieu of condemnation, Lessee may elect to terminate this Agreement as of the date of the damage, destruction, condemnation or transfer in lieu of condemnation by giving notice to Lessor no more than forty-five (45) days following the date of such damage, destruction, condemnation or transfer in lieu of condemnation. If Lessee chooses not to terminate this Agreement, Rent shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises.

12. **Insurance.** Lessee, at Lessee's sole cost and expense, shall procure and maintain on the Premises and on the Lessee Facilities, bodily injury and property damage insurance with a combined single limit of at least One Million and 00/100 Dollars (\$1,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against liability of Lessee, its employees and agents arising out of or in connection with Lessee's use of the Premises, all as provided for herein. Lessor, at Lessor's sole cost and expense, shall procure and maintain on the Property, bodily injury and property damage insurance with a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall insure, on an occurrence basis, against liability of Lessor, its employees and agents arising out of or in connection with Lessor's use, occupancy and maintenance of the Property. Each party shall be named as an additional insured on the other's policy. Each party shall provide to the other a certificate of insurance evidencing the coverage required by this paragraph within thirty (30) days of the Commencement Date.

13. **Waiver of Subrogation.** Lessor and Lessee release each other and their respective principals, employees, representatives and agents, from any claims for damage to any person or to the Premises or to the Lessee Facilities thereon caused by, or that result from, risks insured against under any insurance policies carried by the parties and in force at the time of any such damage. Lessor and Lessee shall cause each insurance policy obtained by them to provide that the insurance company waives all right of recovery by way of subrogation against the other in connection with any damage covered by any policy. Neither Lessor nor Lessee shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy required by Paragraph 12.

14. **Assignment and Subletting.** Lessee may not assign, or otherwise transfer all or any part of its interest in this Agreement or in the Premises without the prior written consent of Lessor; provided, however, that Lessee may assign its interest to its parent company, any subsidiary or affiliate of it or its parent company 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 9 above. Lessor may assign this Agreement upon written notice to Lessee, subject to the assignee assuming all of Lessor's obligations herein, including but not limited to, those set forth in Paragraph 9 above. Notwithstanding anything to the contrary contained in this Agreement, Lessee 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 Lessee (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.

15. **Warranty of Title and Quiet Enjoyment.** Lessor warrants that: (i) Lessor 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) Lessor has full right to make and perform this Agreement; and (iii) Lessor covenants and agrees with Lessee that upon Lessee paying the Rent and observing and performing all the terms, covenants and conditions on Lessee's part to be observed and performed, Lessee may peacefully and quietly enjoy the Premises. Lessor agrees to indemnify and hold harmless Lessee from any and all claims on Lessee's leasehold interest.

16. **Repairs.** Lessee shall not be required to make any repairs to the Premises or Property unless such repairs shall be necessitated by reason of the default or neglect of Lessee. Except as set forth in Paragraph 6(a) above, upon expiration or termination hereof, Lessee shall restore the Premises to the condition in which it existed upon execution hereof, reasonable wear and tear and loss by casualty or other causes beyond Lessee's control excepted.

17. **Hazardous Substances.** Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Land in violation of any law or regulation. Lessor represents, warrants and agrees (1) that neither Lessor nor, to Lessor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Land in violation of any law or regulation, and (2) that Lessor 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 Land in violation of any law or regulation. Lessor and Lessee 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 attorneys' 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 Land 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.

18. Liability and Indemnity. Lessee shall indemnify and hold Lessor harmless from all claims (including attorneys' fees, costs and expense of defending against such claims) arising from the negligence or willful misconduct of Lessee or Lessee's agents or employees in or about the Property. Lessor shall indemnify and hold Lessee harmless from all claims (including attorneys' fees, costs and expenses of defending against such claims) arising or alleged to arise from the acts or omissions of Lessor or Lessor's agents, employees, licensees, invitees, contractors or other tenant occurring in or about the Property. The duties described in Paragraph 18 survive termination of this Agreement.

19. Miscellaneous.

(a) This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiation 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 invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(c) This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(d) Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below:

Lessor: Village of Lemont  
Lemont Village Hall  
418 Main Street  
Lemont, IL 60439  
Attn: Village Clerk

Lessee: Nextel West Corp.  
300 Park Boulevard, 5th Floor  
Itasca, IL 60143  
Attn: Site Development Manager

With a copy to: Nextel Communications, Inc.  
1505 Fawn Credit Drive  
McLean, VA 22102  
Attn: Legal Dept., Contracts Manager

Lessor or Lessee may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt.

(e) This Agreement shall be governed by the laws of the State of Illinois.

(f) Lessor acknowledges that a Memorandum of Agreement in the form annexed hereto as Exhibit C will be recorded by Lessee in the official records of the County where the Property is located. In the event the Property is encumbered by a mortgage or deed of trust, Lessor agrees to obtain and furnish to Lessee a non-disturbance and attornment instrument for each such mortgage or deed of trust.

(g) Lessee may obtain title insurance on its interest in the Premises. Lessor shall cooperate by executing documentation required by the title insurance company.

(h) In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.

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

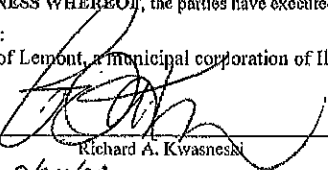
(j) This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

(k) Lessor will notify Lessee at least forty-five (45) days in advance of the date when the Water Tower is scheduled to be painted. Lessor will obtain bids for such work and the following terms will be used to address the impact of the Lessee Facilities on the cost of painting the Water Tower; the painting contractor will bid on the cost of painting the Water Tower without the Lessee Facilities; the contractor will then bid on the cost of painting the Water Tower with Lessee's antennas left in place; the contractor will then proceed to paint the Water Tower with Lessee's antennas left in place; Lessee will reimburse Lessor for the difference between the two (2) bids within thirty (30) days of receipt by Lessee of a detailed invoice for same.

20. Water Tower Marking and Lighting Requirements. Lessor acknowledges that it, and not Lessee, shall be responsible for compliance with all Water Tower marking and lighting requirements of the Federal Aviation Administration ("FAA") and the FCC. Lessor shall indemnify and hold Lessee harmless from any fines or other liabilities caused by Lessor's failure to comply with such requirements. Should Lessee be cited by either the FCC or FAA because the Water Tower is not in compliance and, should Lessor fail to cure the conditions of noncompliance within the time frame allowed by the citing agency, Lessee may either terminate this Agreement immediately on notice to Lessor or proceed to cure the conditions of noncompliance at Lessor's expense, which amounts may be deducted from the Rent.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LESSOR:  
Village of Lemont, a municipal corporation of Illinois

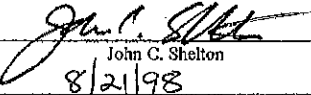
By:   
Richard A. Kwasheski

Date: 8/24/98

Title: Mayor

Tax ID: 36-6005968

LESSEE:  
Nextel West Corp., a Delaware corporation,  
d/b/a Nextel Communications

By:   
John C. Shelton

Date: 8/21/98

Title: Vice President

APPROVED AS TO FORM

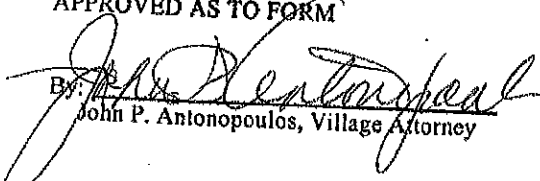
By:   
John P. Antonopoulos, Village Attorney

EXHIBIT A

DESCRIPTION OF LAND

to the Agreement dated August \_\_\_\_, 1998, by and between Village of Lemont, a municipal corporation of Illinois, as Lessor, and Nextel West Corp., a Delaware corporation, d/b/a Nextel Communications, as Lessee.

The Land is described and/or depicted as follows:

LOTS 16 TO 23 INCLUSIVE IN BLOCK 7 IN McCARTHY AND HOUSTON'S ADDITION TO JASNAGORA IN SECTIONS 20 AND 29, TOWNSHIP 37 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

and commonly known as: 731 Houston Street, Lemont, IL 60439  
P.I.N. #: 22-29-223-030 Vol. No. 062

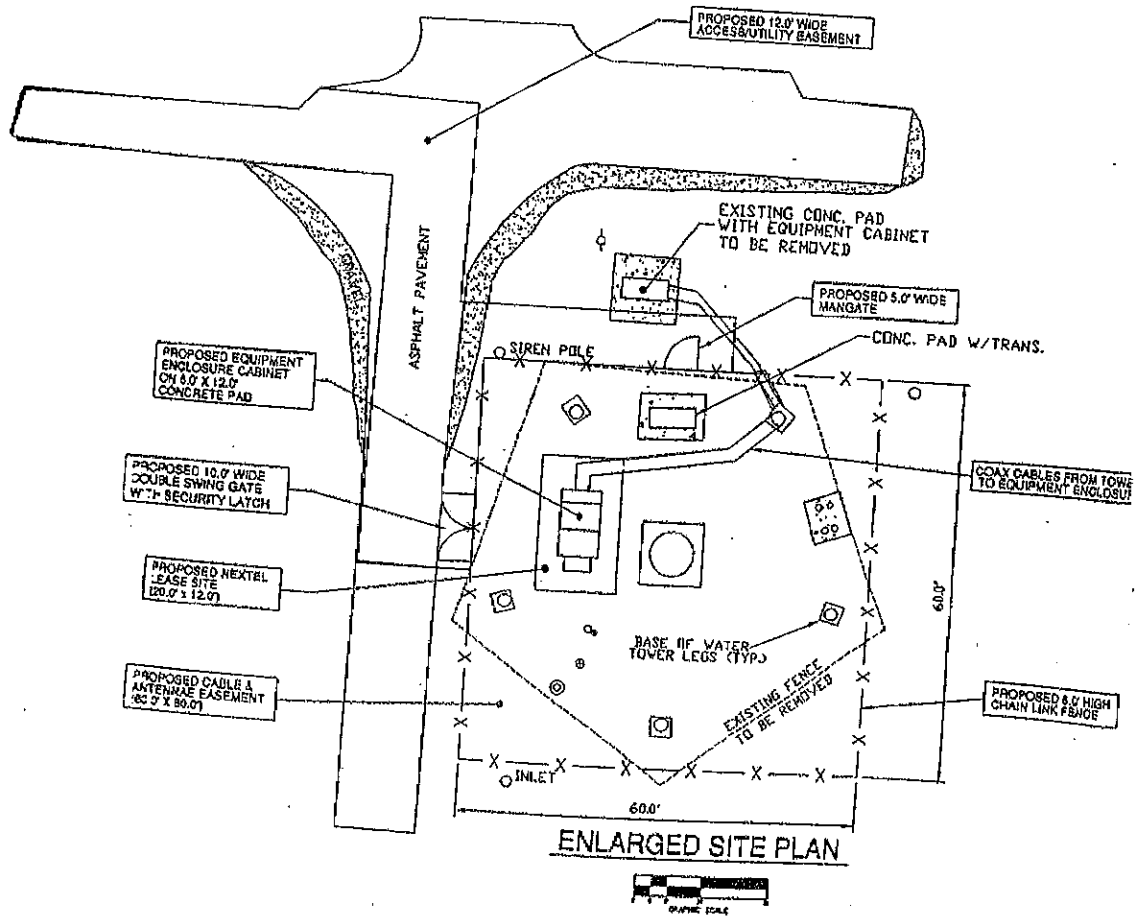


EXHIBIT B

DESCRIPTION OF PREMISES

to the Agreement dated August \_\_\_\_, 1998, by and between Village of Lemont, a municipal corporation of Illinois, as Lessor, ar Nextel West Corp., a Delaware corporation, d/b/a Nextel Communications, as Lessee.

The Premises are described and/or depicted as follows:



Notes:

731 Houston Street, Lemont, IL 60439

1. This Exhibit may be replaced by a land survey of the Premises once it is received by Lessee.
2. Setback of the Premises from the Land's 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 C

MEMORANDUM OF AGREEMENT

CLERK: Please return this document to: Nextel West Corp. 300 Park Boulevard, Suite 515 Itasca, IL 60143 Attn.: Site Development Manager

This Memorandum of Agreement is entered into on this \_\_\_ day of \_\_\_\_\_, 199\_\_, by and between Village of Lemont, a municipal corporation of Illinois, with an office at 418 Main Street, Lemont, IL 60439, (hereinafter referred to as "Lessor") and Nextel West Corp., a Delaware corporation, d/b/a Nextel Communications with an office at 300 Park Boulevard, 5th Floor, Itasca, IL 60143 (hereinafter referred to as "Lessee").

1. Lessor and Lessee entered into a Communications Site Lease Agreement (Water Tower) ("Agreement") on the \_\_\_ day of August, 1998, 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 term of the Agreement is for five (5) years commencing on \_\_\_\_\_, 199\_\_, with three (3) successive five (5) year options to renew.

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

LESSOR: Village of Lemont, a municipal corporation of Illinois

LESSEE: Nextel West Corp., a Delaware corporation, d/b/a Nextel Communications

By: \_\_\_\_\_ Name: Richard A. Kwasneski Title: Mayor Date: \_\_\_\_\_

By: \_\_\_\_\_ Name: John C. Shelton Title: Vice President Date: \_\_\_\_\_

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: \_\_\_\_\_

APPROVED AS TO FORM:

DATE \_\_\_\_\_

VILLAGE ATTORNEY \_\_\_\_\_