

**Lee County Board Of County Commissioners  
Agenda Item Summary**

**Blue Sheet No. 20051240**

**1. ACTION REQUESTED/PURPOSE:** Approve the issuance of a Tower Antenna Site License Agreement to Nextel South Corp., a Georgia Corporation for space on the County owned tower located on the Florida Gulf Coast University (FGCU) campus at 10501 FGCU Blvd., Ft. Myers, FL 33965.

**2. WHAT ACTION ACCOMPLISHES:** Allows Nextel South Corp to place antennas and related equipment near and upon the communications tower, so that it may provide personal telephonic communications opportunities to local consumers through collocation.

**3. MANAGEMENT RECOMMENDATION:** Staff recommends approval.

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| <b>4. Departmental Category:</b> <i>7</i><br><br><b>C7A</b> | <b>5. Meeting Date:</b><br><br><b>09-27-2005</b> |
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| <b>6. Agenda:</b><br><input checked="" type="checkbox"/> Consent<br><input type="checkbox"/> Administrative<br><input type="checkbox"/> Appeals<br><input type="checkbox"/> Public<br><br><input type="checkbox"/> Walk-On | <b>7. Requirement/Purpose: (specify)</b><br><input type="checkbox"/> Statute<br><input type="checkbox"/> Ordinance<br><input type="checkbox"/> Admin. Code<br><input checked="" type="checkbox"/> Other | <b>8. Request Initiated:</b><br>Commissioner _____<br>Department <u>Independent</u><br>Division <u>Public Safety</u><br>By: <u>Michael C. Bridges, Deputy</u><br><i>Michael C. Bridges</i> |
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**9. Background:**

Nextel South Corp., requests to place antennas for wireless telephonic communications on the FGCU Tower. County Staff has negotiated a non-exclusive license for a term of five (5) years with four (4) five (5) year renewals. Lee County will receive \$25,000 annually with an annual fee increase of 4% each year over the prior year's fee. By agreement with FGCU, the university will receive 25%, \$6,250 of the \$25,000.

Revenue Account String: KF5290352000.369900.9044 (revenues for FGCU Tower) \$18,750  
Expense Account String: Kf5290352000.508120 (Grant @ Aid State Govt.) \$6,250

Attachment 1 – Five (5) Site License Agreements  
Attachment 2 – Three (3) Memorandum of Agreements  
Attachment 3 – One (1) W-9 Request for Taxpayer Identification Number and Certification

**10. Review for Scheduling:**

| Department Director | Purchasing or Contracts | Human Resources | Other | County Attorney | Budget Services |               |               |               | County Manager/P.W. Director |
|---------------------|-------------------------|-----------------|-------|-----------------|-----------------|---------------|---------------|---------------|------------------------------|
| <i>2-20-05</i>      | <i>8/20/05</i>          | <i>N/A</i>      |       | <i>Bridges</i>  | Analyst         | Risk          | Grants        | Mgr.          | <i>HS 9/8/05</i>             |
|                     |                         |                 |       |                 | <i>9/6/05</i>   | <i>9/6/05</i> | <i>9/6/05</i> | <i>9/6/05</i> |                              |

**11. Commission Action:**

Approved  
 Deferred  
 Denied  
 Other

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| <p>RECEIVED BY COUNTY ADMIN<br/><b>9-1-05</b><br/>11:30<br/>COUNTY ADMIN FORWARDED TO: <i>11</i><br/><b>9-5-05</b><br/>4pm</p> | <p>Rec. by CoAtty<br/>Date: <b>8-31-05</b><br/>Time: <b>2:20pm</b><br/>Forwarded To:<br/><b>Admin 9-1-05</b></p> |
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**FLORIDA GULF COAST UNIVERSITY**  
**TOWER ANTENNA SITE LICENSE AGREEMENT**

This Lee County/Florida Gulf Coast University (FGCU) Cellular Tower Antenna Site License Agreement ("Agreement") entered into this day of \_\_\_\_\_, 2005, between Lee County, a political subdivision of the State of Florida (hereinafter referred to as "Owner" or "County"), Florida Gulf Coast University (FGCU) and Nextel South Corp, a Georgia Corporation whose address is 851 Trafalgar Court, Suite 300E, Maitland, FL 32751 (hereinafter referred to as "Licensee").

**RECITALS:**

**Whereas**, FGCU is the owner of certain real property and the County, by an interlocal agreement, owns a tower ("FGCU Cellular Tower") located at 10501 FGCU Boulevard South, on the campus of FGCU, Ft. Myers, Florida, in Lee County, ("FGCU Cellular Tower Property"); more particularly described in Exhibit "A" attached hereto; and

**Whereas**, Licensee desires to obtain a license from County to use a portion of the FGCU Cellular Tower Property and space on the FGCU Cellular Tower together with all access and utility easements (collectively the "Premises"). Said Premises is more particularly shown on Exhibit "B" attached hereto and by reference made a part hereof. After the Premises has been surveyed, then such survey and/or construction drawings shall then replace Exhibit "B" and become a part hereof and shall control the description of the Premises if a discrepancy exists between the current Exhibit "B" and the survey and/or construction drawings; and

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

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

1. The above representations are true and correct and incorporated herein as a binding part of this Agreement.
2. **PREMISES:** County hereby grants an exclusive license to Licensee, and Licensee hereby accepts this license from County, for a portion of the FGCU Cellular Tower Property consisting of FGCU Cellular Tower space at a location of 171 feet. The rights herein are not exclusive and the county reserves the right to license the remaining portions of the FGCU Cellular Tower Property and FGCU Cellular Tower not licensed to Licensee under this Agreement to more than one individual or entity for any use or purpose, provided that any future

third party use does not materially interfere with Licensee's rights as set forth herein. It is expressly understood that all rights granted to Licensee under this Agreement are irrevocable until this Agreement expires or sooner terminates.

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

B) Equipment Cabinet Space: Licensee shall install an equipment shelter within the Premises as further depicted on Exhibit B hereto, to shelter its communications equipment. Such equipment shall be fully landscaped consistent with, and meet all requirements of, the Lee County Land Development Code. Licensee's equipment, including its antennas, coaxial cable, shelter, base radios and any and all supporting structures, electronics or equipment shall hereinafter be referred to as "Licensee Equipment."

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

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

E) Interference: In its use of the Premises, Licensee shall comply with the provisions of Section 15 hereunder, which shall govern all license rights granted hereunder.

### 3. TERM AND LICENSE FEE:

A) The initial term of this Agreement shall be for five (5) years (the "Term")

B) The Term of this Agreement shall begin (the "Commencement Date") on the date of the issuance of the building permit, or twelve (12) months following full execution of this Agreement, whichever first occurs. Within fifteen (15) days of the Commencement Date, Licensee shall pay to the County an annual license fee of **Twenty-Five Thousand Dollars (\$25,000)**. The license fee for any fractional month at the beginning or at the end of the Term or

any renewal term shall be prorated. The license fee shall be payable to the County at: Lee County Division of Public Safety, PO Box 398, Fort Myers, Florida 33902 Attn: Michael C. Bridges. Licensee shall have a period, commencing upon the date of full execution of this Agreement and ending three hundred sixty-five (365) calendar days thereafter (the "Due Diligence Period") to satisfy itself as to the condition of the Premises and the suitability thereof for its intended use. Licensee shall utilize the Due Diligence Period to conduct its necessary tests and seek any approvals and/or permits from any governmental authority it may require in connection with its use of the Premises. County shall cooperate with Licensee by timely providing appropriate plans and documentation and shall execute such documents reasonably required to secure such approvals. If on or before the last day of the Due Diligence Period, Licensee elects, in its sole discretion, not to proceed with this transaction, Licensee may terminate this Agreement by written notice to County, whereupon this Agreement shall be terminated and both parties shall be released from all further obligations hereunder.

Thereafter, on each anniversary of the Commencement Date, Licensee shall pay to the County an annual license fee increase of four percent (4%) of the prior year's license fee.

(i) Prior to the Commencement Date, Licensee will be afforded reasonable access to the FGCU Cellular Tower Property and adjoining property for the purpose of conducting necessary tests, surveying, construction of its intended facility and equipment, etc., provided that Licensee does not interfere with County operations and minimizes interference with others on the property with County permission.

C) Extension of the Term of this Agreement is granted to Licensee for four (4) additional five (5) year extension periods. The Agreement shall automatically be extended for the next extension period at the end of the then current term unless Licensee gives the County written notice of its intention not to extend at least ninety (90) days prior to the expiration of the then current term.

#### **4. USE:**

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

All equipment, antenna support structures and trade fixtures placed on the Premises, by Licensee are and shall remain the property of Licensee and shall not be deemed fixtures on the land. Licensee has the right to remove all Licensee Equipment at its sole expense on or before the expiration or earlier termination of the Agreement, provided that Licensee shall repair any damage to the Premises caused by such removal. In the event that any modifications are needed to the FGCU Cellular Tower to accommodate Licensee's Equipment, Licensee shall bear all costs associated therewith. Licensee shall submit plans and specifications to County for written approval prior to commencement of any modification. The County shall not unreasonably delay or withhold approval. No use by Licensee may materially interfere with or hinder County's use

of the FGCU Cellular Tower Site or County Property. County and Licensee agree that in the event the FGCU Cellular Tower Site is no longer needed for use as a tower, County shall allow Licensee and all other license agreement holders, with superior rights belonging to Sprint PCS who originally constructed the tower, to maintain the FGCU Cellular Tower Site as an existing structure to the conclusion of any term, and shall have the right to remain on the FGCU Cellular Tower for the purposes contemplated in this Agreement for the remainder of said term.

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

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

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

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

E) Construction and Installing: Licensee shall have the right to construct and install its Licensee Equipment on the Premises. Licensee, at 's expense, shall cause its Licensee

Equipment to be constructed and installed in good workmanlike manner and in accordance with all governmental codes and regulations. Licensee shall be responsible for all construction methods, techniques, sequences and procedures and the coordination of all construction activities relating to Licensee's Equipment. After completion of the construction and installation of Licensee's Equipment, Licensee shall have the right to make modifications, additions and substitutions to its Licensee Equipment provided such modifications, additions, and substitutions are consistent with the terms of this Agreement and are constructed and installed in a good and workmanlike manner.

5. RIGHTS TO EQUIPMENT; CONDITION ON SURRENDER:

A) The Licensee Equipment shall remain personal to and the property of Licensee. Upon termination or expiration of this Agreement, Licensee shall remove its Licensee Equipment from the Premises at no cost to the County. Licensee shall repair any damage caused by such removal and shall surrender the Premises at the expiration of the term, as same may have been extended, or earlier termination thereof, in good condition, ordinary wear and tear, damage by fire and other casualty excepted. Any of Licensee's Equipment or other property that has not been removed from the Premises at the time this Agreement is terminated, County may remove and store Licensee Equipment at Licensee's sole cost and expense. Provided that the County has given Licensee and any third party financing entity thirty (30) days prior written notice, the Licensee Equipment shall be deemed abandoned by Licensee and County shall be free to dispose of same in any manner County chooses and shall be entitled to be reimbursed by Licensee for any and all reasonable costs associated with the removal, without any liability to Licensee therefore.

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

6. OWNER'S MAINTENANCE:

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

7. MAINTENANCE:

A) Licensee's Equipment shall be installed, constructed and maintained by Licensee

at Licensee's sole cost and expense, in a good and workmanlike manner in accordance with Licensee's specifications as approved by County, and shall not cause any damage to County's facilities, equipment, or property. Licensee, at Licensee's sole cost and expense, shall maintain its Licensee Equipment in good order and repair and keep the appearance in materially the form as approved.

B) County agrees that County's FGCU Cellular Tower Property (including, without limitation, the Tower) and all improvements comply and during the term of the License shall continue to comply with all building, life/safety, disability and other laws, codes and regulations of any applicable governmental or quasi governmental authority necessary. Except as otherwise provide herein, Licensee shall be responsible for any costs or expenses incurred for compliance with all building, life/safety, disability and other laws, codes and regulations of any governmental authority, which results from its use of the Premises. All such compliance shall be accomplished at the responsible party's cost and expense, as stated above. Except for improvements made by Licensee, County at its sole cost shall maintain in good condition and repair, the FGCU Cellular Tower and other improvements.

C) County acknowledges that it, and not Licensee, shall be responsible for compliance with all tower marking and lighting requirements of the Federal Aviation Administration ("FAA") and the FCC. Subject to Florida Statute Section 768.28, County shall indemnify and hold Licensee harmless for any fines or other liabilities caused by County's failure to comply with such requirements. Should Licensee be cited by either the FCC or FAA because the FGCU Cellular Tower is not in compliance, and should County fail to cure the conditions of noncompliance within the time frame allowed by the citing agency, Licensee may either terminate this Agreement immediately on notice to County or proceed to cure the conditions of noncompliance at County's expense, which amounts may be deducted from the license fee.

#### 8. DEFAULT:

A) The failure of Licensee to observe or perform any of the covenants or provisions of this Agreement to be observed or performed by Licensee where such failure shall continue for a period of thirty (30) days after written notice thereof is received by County shall constitute an "Event of Default" hereunder by:

1) The failure by Licensee to make any payment of the license fee or any other payment required to be made by Licensee hereunder, as and when due.

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

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

**Agreement.**

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

9. **OWNER'S DEFAULT:** In the event of a breach by County of any of the material covenants or provisions hereof and County's failure to cure any breach by County of any other provision of the Agreement after thirty (30) days written notice and demand, in addition to all other remedies available to Licensee at law or in equity, Licensee shall have the right to terminate the Agreement; provided, however, that this shall not be deemed an Event of Default by County if County shall commence to cure such failure within said thirty (30) day period and thereafter diligently and continuously prosecutes such cure to completion.

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

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

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

Licensee: Nextel South Corp  
851 Trafalgar Court, Suite 300E  
Maitland, FL 32751  
Attn: Property Manager

With a copy to: Nextel South Corp.  
2001 Edmund Halley Drive



Reston, VA 20191-3436  
Attn: Regional Legal Services, Contracts Manager

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

11. ASSIGNMENT: Assignment of the Agreement by Licensee may be made to its parent company, general partner or any affiliate or subsidiary of its parent company or to any successor-in-interest or to any party controlling, controlled by or under common control with Licensee, or to any party which acquires substantially all of the assets of Licensee, subject to any financing entity's interest, if any, in this agreement as set forth in Paragraph 12. Owner may assign this Agreement upon written notice to Licensee, subject to the assignee assuming all of Owners obligation herein, including but not limited to, those set forth in Paragraph 12 below. Notwithstanding anything to the contrary contained in this Agreement, Licensee 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 Licensee (i) has obligations for borrowed money or in respect to guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes, or similar instruments, or (iii) has obligation under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

12. WAIVER OF COUNTY'S LIEN.

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

(b) County acknowledges that Licensee has entered into a financing arrangement including promissory notes and financial and security agreements for the financing of the Licensee Equipment ("Collateral") with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, County (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 license fee due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

13. TERMINATION: Termination of this Agreement may be exercised by Licensee at any time without further liability if Licensee cannot obtain all Governmental Approvals required from any governmental authority and/or any easements required from any third party to operate Licensee's Equipment or access the Premises, or if any such approval is canceled or expires, or lapses, or withdrawn or terminated, or if county fails to have proper ownership of the FGCU Cellular Tower or FGCU Cellular Tower Property and/or authority to enter into this Agreement, or if for any other reason, Licensee in its sole discretion, determines that it will be unable to use the Premises for its intended purpose. Notice of Licensee's exercise of its right to terminate shall be given to County in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice by the County as evidenced by the return receipt. Upon such termination, this Agreement shall become null and void and all parties shall have no further

obligations, including the payment of money to each other. Licensee shall use its best efforts to obtain all approvals and keep them current and obtain and keep current all necessary easements. If Licensee fails to do so, that shall be a default under this Agreement entitling the County to keep all monies paid to County.

14. HAZARDOUS SUBSTANCES:

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

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

15. INTERFERENCE: Licensee agrees to install and operate communications equipment of a type and frequency, and in a location which will not cause material interference with or damage to County's equipment, provided that their installation predate that of Licensee's Equipment. In the event Licensee's Equipment or its operation or use or maintenance of said equipment causes damages or causes interference with County's equipment, facilities, or any of County's property of whatsoever nature, Licensee shall immediately, upon notice from the County, take all steps necessary to correct and completely remedy such damage or eliminate such interference at Licensee's sole cost and expense. If the damage or interference requires repairs or alterations to County property, County shall make the repairs and Licensee shall reimburse the County for the entire cost within thirty (30) days or receipt of notice of the cost. This obligation on the part of Licensee supersedes and modifies all rights granted to hereunder. County agrees not to allow any future use of County's Equipment or addition and/or modification to any current use of the FGCU Cellular Tower or County's FGCU Cellular Tower Property that may cause interference with or the improper operation of the FGCU Cellular Tower, Licensee's Equipment, or Licensee's communications signal or system. In the event that any addition or modification to the County's Equipment causes interference with Licensee's Equipment or communications signal or system, County upon notification of such interference, agrees to promptly seek a remedy for such interference at County's expense until such interference is corrected to Licensee's sole satisfaction. In the event County and Licensee cannot resolve the interference problems, County and Licensee agree to resolve any interference disputes by arbitration, which shall be performed in accordance with the Rules of the American Arbitration Association. The arbitration decision/award shall be binding upon County and Licensee and may be entered in any court having jurisdiction thereof. County and Licensee agree that the costs associated with any arbitration shall be borne by Licensee if Licensee is the cause of the interference or by County if County is the cause of the interference. In the case of an emergency, or failure by Licensee to

promptly eliminate the damage or interference, the County may take any actions needed to resolve an emergency resulting from Licensee's use or equipment and charge said costs to Licensee which shall pay said costs within thirty (30) days of receipt of documentation of said costs. County shall notify Licensee of such emergency and its actions to remedy said actions.

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

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

16. INDEMNIFICATION:

A) By County: Subject to S768.28, Florida Statutes, and any other law, County shall indemnify and hold harmless Licensee against and from any liability, claims, demands, actions, losses, damages, orders, judgments and any and all costs and expenses (including without limitation attorney's fees and expenses) incurred by or any affiliate or subsidiary of Licensee on account of or arising from County's negligence or misconduct in connection with this Agreement. To the extent permitted by law, County, upon notice from Licensee shall assist and defend at County's expense any such actions or proceedings by counsel reasonably satisfactory to Licensee. This indemnity shall not apply to any claims arising from any negligent or intentional misconduct of, Licensee its agents, employees, contractors or assigns. This indemnity shall survive any termination of this Agreement.

B) By Licensee: Licensee shall defend, indemnify and hold harmless County against and from any and all liability, claims, demands, actions, losses, damages, orders, judgments and any and all costs and expenses (including without limitation attorneys' fees and expenses) incurred by County on account of or arising from Licensee's use of the Premises. Licensee, upon notice from County, shall assist and defend at Licensee's expense any such actions or proceedings by counsel reasonably satisfactory to County. This indemnity shall not apply to any claims arising from any negligent or intentional misconduct of the indemnified party. This indemnity shall survive any termination of this Agreement.

17. INSURANCE:

Licensee shall maintain, at its sole cost, during the term of this Agreement, coverage in the types and amounts as per the attached Exhibit "C". If Licensee shall fail to procure and maintain said insurance, County may, but shall not be required to procure and maintain said insurance, at the expense of Licensee.

Licensee may comply with the various requirements of Exhibit "C" through the purchase of no deductible Commercial Insurance, or the use of combination of self-insured retention (SIR) and Commercial Insurance commonly known as self-funded program. Approval by the Lee County Risk Management Office of the use of SIR's shall not be unreasonably withheld, provided Licensee provides information relating to the financial stability and solvency of such programs.

Licensee shall maintain, at its sole cost, during the term of this Agreement, commercial general liability insurance insuring Licensee against liability for personal injury, death or damage to personal property arising out of the use of the Premises by Licensee. Such insurance shall provide coverage in an amount not less than \$1 million for property damage. The County shall be an additional insured on any such policy as it relates to the Premises. The County shall procure and maintain on the Property, bodily injury and property damage insurance with a combined single limit of at least One Million Dollars (\$1,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against liability of County, its employees and agents arising out of or in connection with the County's use, occupancy, and maintenance of the Property. The Licensee 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.

18. WAIVER OF SUBROGATION. County and Licensee release each other and their respective principals, employees, representatives and agents, from any claims for damage to any person or to the FGCU Cellular Property or FGCU Cellular Tower or the Premises or to the Licensee Facilities or any other property 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. County and Licensee 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 County nor Licensee shall be liable to the other for any damage caused by any of the risks insured against under any insurance policy required by Paragraph 17.

19. WARRANTY OF TITLE AND QUITE ENJOYMENT. County warrants that: (i) County owns the FGCU Cellular Property in fee simple or has full legal rights to utilize the FGCU Cellular Property as contemplated hereunder, has rights of access thereto from the nearest public roadway, which Licensee is legally permitted to use, and the FGCU Cellular Property and access rights are free and clear of all liens, encumbrances and restrictions except those of record as of the date of full execution of this Agreement; and (ii) County covenants and agrees with Licensee that Licensee may peacefully and quietly enjoy the Premises and such access thereto, provided that Licensee is not in default hereunder after notice and expiration of all cure periods.

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

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

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

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

Licensee shall pay as an additional license fee any increase in real property taxes levied against the Premises as a result of the improvement constructed by Licensee on the Premises. The County shall otherwise be responsible for all real property taxes, assessments, and deferred taxes on the Property.

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

23. DAMAGE OR DESTRUCTION:

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

and for the period that, the Premises are not usable for the conduct of Licensee's business. These shall be Licensee's sole and exclusive remedies.

B) In the event of any such damage or destruction which renders Licensee's Equipment non-operable for a period reasonably expected to exceed five (5) days, Licensee shall have, and County hereby grants to Licensee, the right to bring and maintain upon County's FGCU Cellular Tower Property such temporary communications facilities as Licensee shall reasonably determine are the minimum necessary to continue to operate Licensee's communications system and provided (1) that such temporary facilities do not materially interfere with County's or any other tenant's or licensee's communications operations on County's FGCU Cellular Tower Property or the repair or replacement of the damaged facilities; (ii) that Licensee obtains all necessary permits and authorizations for the construction and operation of such temporary facilities; (iii) that Licensee shall remove such temporary facilities upon the sooner of (a) the restoration of services by Licensee's Equipment, or (b) termination of this Agreement. This shall be Licensee's sole and exclusive remedy.

#### 24. MISCELLANEOUS:

A) County acknowledges that a Memorandum of Agreement in the form annexed hereto as Exhibit D will be recorded by Licensee in the official Records of the County where the FGCU Cellular Tower Property is located. In the event the FGCU Cellular Tower Property is encumbered by a mortgage or deed of trust, County agrees to obtain and furnish to Licensee a non-disturbance and attornment instrument for each such mortgage or deed of trust.

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

C) This Agreement contains all agreements, promises and understandings between the County and Licensee. Any amendments to this Agreement must be in writing and executed by both parties. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original. All exhibits are incorporated by reference.

D) The terms and conditions of this Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of County and Licensee. Except to its affiliates or subsidiaries, Licensee may not permit any other use of Premises for any purpose except as expressed herein and may not permit or assign to any third party except as expressed herein, to use the License unless approved by County, whose approval shall not be unreasonably withheld.

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

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

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

of the Agreement.

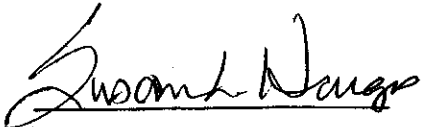
H) In no case shall either party be liable to the other for either consequential, punitive or special damages of any kind whatsoever, including, but not limited to, lost revenues, profits, or any other damages of any kind whatsoever.

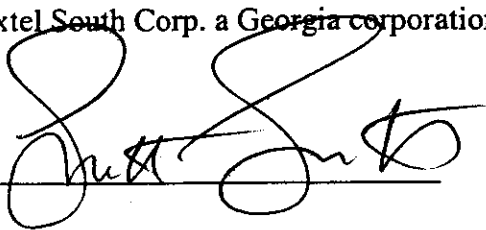
I) All disputes arising under this Agreement shall be governed by the laws of the State of Florida.

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

  
Witness

Nextel South Corp. a Georgia corporation

  
Witness

By: 

Title: VP, Site Development-SREG

(SEAL)

Date: 8.23-05

ATTEST:  
COMMISSIONERS  
CHARLIE GREEN, CLERK

BOARD OF COUNTY  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chairman

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

## **EXHIBIT LIST**

**EXHIBIT "A"** - Description of the Property (including description or depiction of the FGCU Cellular Tower)

**EXHIBIT "B"** - Description of the Premises (including description of Antenna(s) and Equipment)

**EXHIBIT "C"** - Insurance Requirements

**EXHIBIT "D"** - Memorandum of Agreement



**EXHIBIT "A"**

**LEGAL DESCRIPTION:**

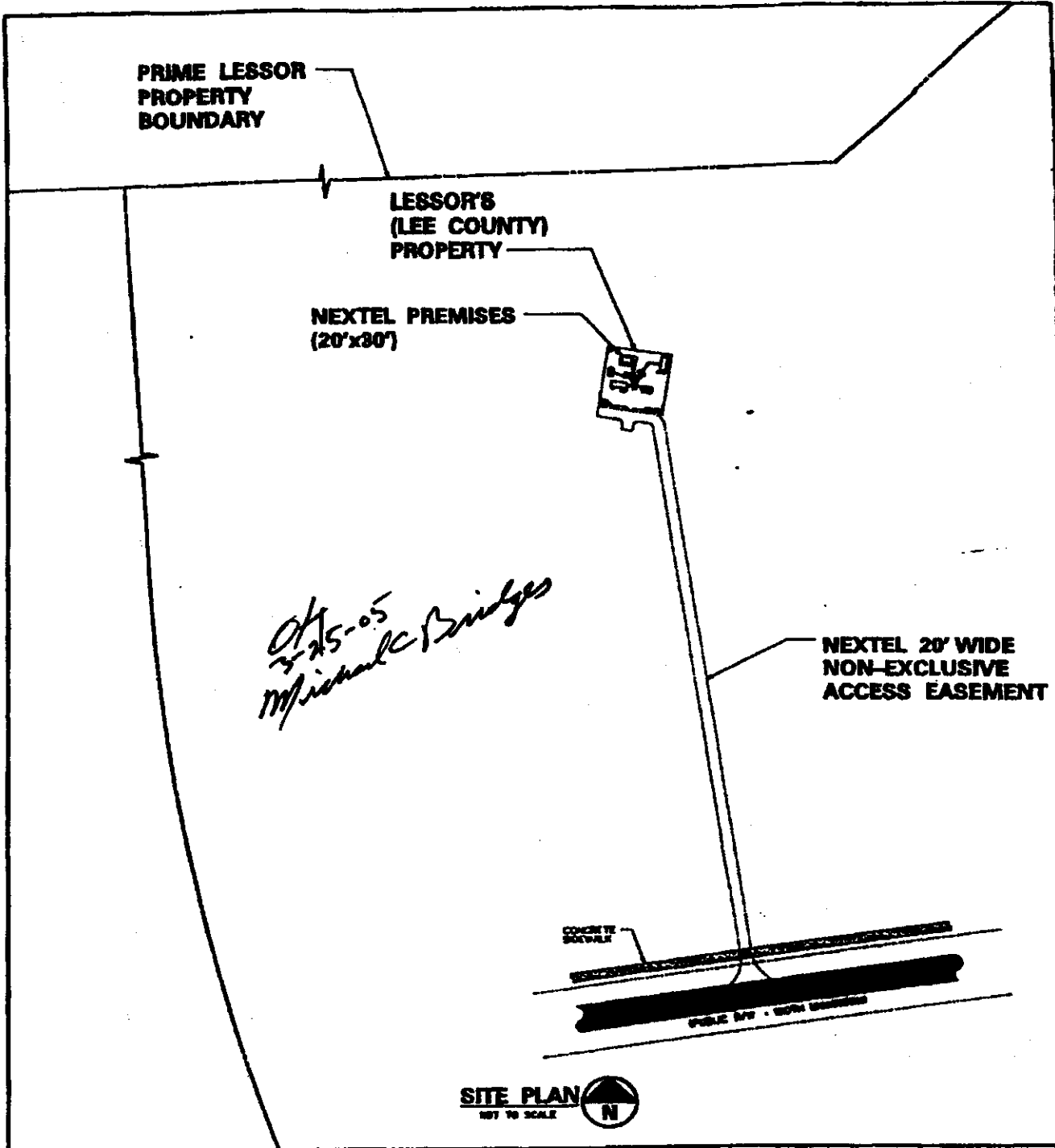
All that part of Sections 13, 14, 23 and 24, of Township 46 South, Range 25 East, Lee County, Florida, being more particularly described in deeds recorded in Official Record Book 2497, Pages 1564 and 1565, and Official Record Book 3010, Pages 714 and 715, Less and Except that portion more particularly described in Official Record Book 3010, Pages 710 and 713, of the Public Records of Lee County, Florida.

## Exhibit B

### 1. Tower Hardware PCS Requirements

- |   |             |
|---|-------------|
| a. 2 – Panel Antennas APX86-909014L-CTO | 30 degrees  |
| b. 2 – Panel Antennas APX86-909014L-CTO | 150 degrees |
| c. 2 – Panel Antennas APX86-909014L-CTO | 270 degrees |
| d. 1 – DR65-19-00-DPQ                   | 30 degrees  |
| e. 1 – DR65-19-00-DPQ                   | 150 degrees |
| f. 1 – DR65-19-00-DPQ                   | 270 degrees |
| g. 18 1 5/8" lines                      |             |

### 2. Equipment Shelter 12 x 20



**KCI**  
TECHNOLOGIES  
INC.

KCI Technologies, Inc.  
988 HOLLAND AVE. SUITE 800  
TAMPA, FL 33606  
TEL: 760-1200  
FLORIDA LICENSE NO.: EB000488

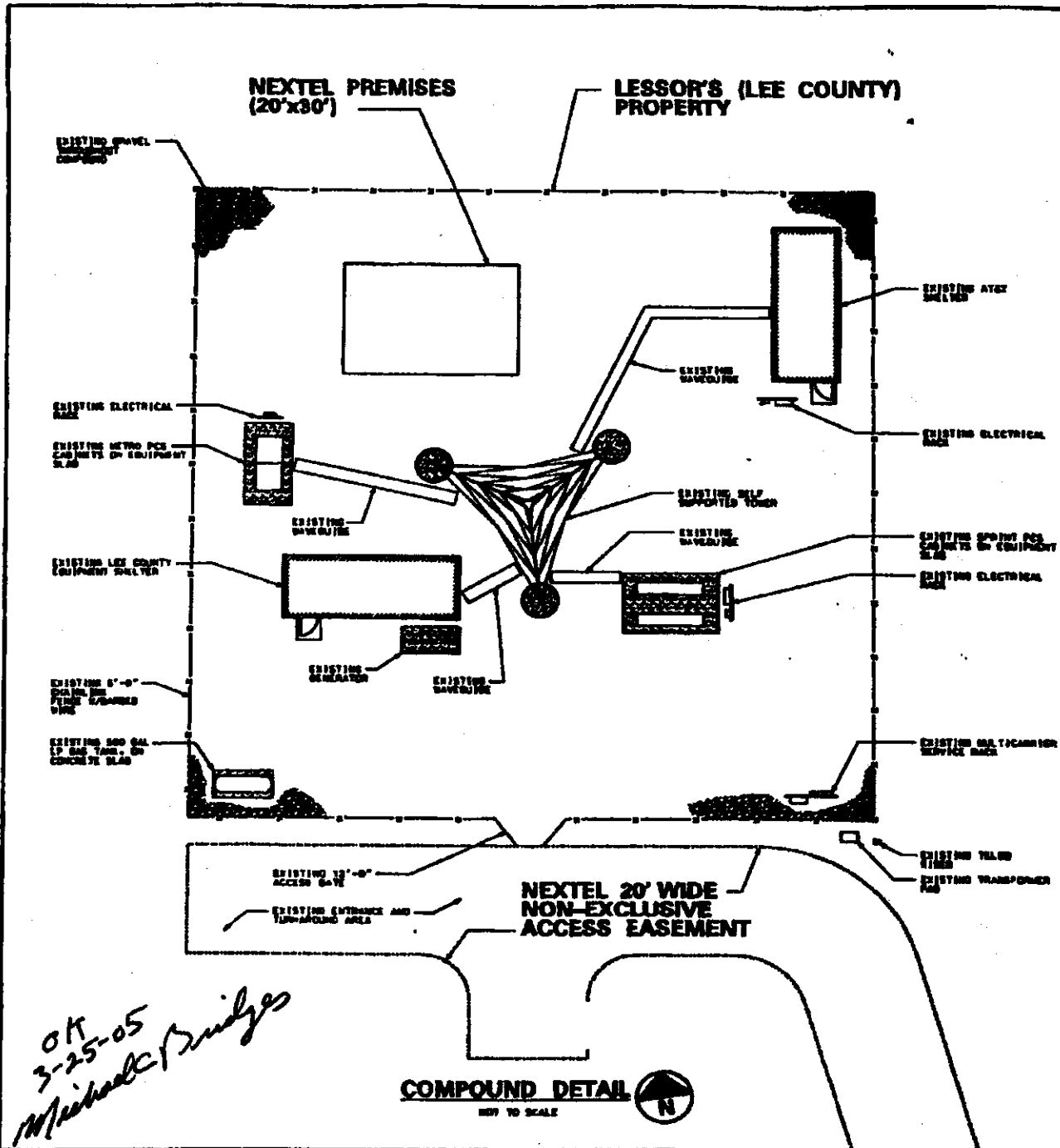
**NEXTEL**

NEXTEL CORPORATION  
4720 EISENHOWER BLVD.  
BLDG. D-1  
TAMPA, FLORIDA 33609  
(813) 806-4000

DRAWING TITLE:  
**EXHIBIT 'B'**

PROJECT NAME:  
**SAN CARLOS PARK  
FL-1761-H**

|                             |                 |
|-----------------------------|-----------------|
| REVISION NO. 0              | DRAWN BY: TD    |
| DATE ISSUED: 01/24/05       | CHECKED BY: SK  |
|                             | APPROVED BY: SK |
| SCALE: N.T.S.               |                 |
| SHEET NO. 1 OF 2            |                 |
| A/E PROJECT NO: 100-43278A1 |                 |



*OK  
3-25-05  
Michael Bridges*

**COMPOUND DETAIL**  
NOT TO SCALE



**KCI**  
TECHNOLOGIES, INC.  
ENGINEERS & PLANNERS

KCI Technologies, Inc.  
1800 HIGHLAND AVENUE SUITE 200  
TAMPA, FL 33606  
FLORIDA LICENSE NO. 180000000

**NEXTEL**

NEXTEL CORPORATION  
1710 EYENPOWER BLVD.  
BLDG. 2-1  
TAMPA, FLORIDA 33606  
(813) 876-6800

DRAWING TITLE:  
**EXHIBIT 'B'**

PROJECT NAME:  
**SAN CARLOS PARK  
FL-1761-H**

|                             |                 |
|-----------------------------|-----------------|
| REVISION NO. 0              | CREATED BY: TD  |
|                             | CHECKED BY: BK  |
| DATE ISSUED: 01/24/05       | APPROVED BY: BK |
| SCALE: N.T.S.               |                 |
| SHEET NO. 2 OF 3            |                 |
| A/E PROJECT NO: 100-3320A-J |                 |



## EXHIBIT "C"

### **Commercial General Liability**

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

### **Property Insurance**

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

### **Certificate of Insurance**

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

A current, valid, original hand signed certificate shall be on file with an approved by Lee County Risk Management office during the term of this agreement.

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

Site: FL-1761H San Carlos Park  
Market: Southwest

EXHIBIT "D"

RECORDED AT REQUEST OF, AND  
WHEN RECORDED RETURN TO:

Nextel South Corp, a Georgia corporation  
851 Trafalgar Court, Suite 300 East  
Maitland, FL 32751  
Attn: Property Manager

MEMORANDUM OF AGREEMENT  
FL-1761H San Carlos Park

This MEMORANDUM OF AGREEMENT is entered into on \_\_\_\_\_, 2005, by Lee County, a political subdivision of the State of Florida (hereinafter referred to as "County") and Nextel South Corp., a Georgia corporation with an office at 851 Trafalgar Court, Suite 300 East, Maitland, Florida 32751 (hereinafter referred to as "Licensee").

1. County and Licensee entered into a Tower Antenna Site License Agreement ("Agreement") dated as of \_\_\_\_\_, 2005, effective upon full execution of the parties for the purpose of Licensee undertaking certain Investigations and Tests and, upon finding the Property appropriate, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing is set forth in the Agreement.

2. The term of Licensee's tenancy under the Agreement is for five (5) years commencing on the date Licensee receives its building permit or twelve (12) months following full execution of the Agreement, whichever first occurs ("Commencement Date"), and terminating on the fifth anniversary of the Commencement Date with four (4) successive five (5) year options to renew.

3. The Land that is the subject of the Agreement is described in Exhibit A annexed hereto. The portion of the Land being licensed to Licensee and all necessary access and utility easements (the "Premises") are set forth in Exhibit B annexed hereto.

In witness whereof, the parties have executed this Memorandum of Agreement as of the day and year first written above.

COUNTY:

Lee County, a political subdivision of the State of Florida

LICENSEE:

Nextel South Corp., a Georgia corporation

By: EXHIBIT ONLY - DO NOT EXECUTE

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: EXHIBIT ONLY - DO NOT EXECUTE

Name: Scott Smith

Title: Vice President, Site Development, South Region

Date: \_\_\_\_\_

Site: FL-1761H San Carlos Park  
Market: Southwest

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2005, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_ for Lee County, a political subdivision of the State of Florida, who is 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 they executed the same in their authorized capacity, and that by their 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 \_\_\_\_\_, 2005, before me, \_\_\_\_\_, Notary Public, personally appeared Scott Smith, Vice President, Site Development, South Region, for Nextel South Corp., a Georgia corporation, 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 they executed the same in their authorized capacity, and that by their 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: \_\_\_\_\_



**Site: FL-1761H San Carlos Park**  
**Market: Southwest**

**MEMORANDUM OF AGREEMENT**

**EXHIBIT A**

**DESCRIPTION OF LAND**

**Site: FL-1761H San Carlos Park**  
**Market: Southwest**

**MEMORANDUM OF AGREEMENT**

**EXHIBIT B**

**DESCRIPTION OF PREMISES**