

2008-013862

Klamath County, Oregon



00054430200800138620100107

10/08/2008 11:11:12 AM

Fee: \$66.00

**ASSIGNMENT AND ASSUMPTION OF GROUND LEASE**

THIS ASSIGNMENT AND ASSUMPTION OF GROUND LEASE ("Assignment") is made, entered into and effective as of this 23 day of September, 2008 ("Transfer Date"), by Nextel West Corp., a Delaware corporation, having an address at 6391 Sprint Parkway, Mailstop KSOPHT0101-z2650, Overland Park, Kansas 66251-2650 ("Assignor"), to TowerCo Assets LLC, a Delaware limited liability company, having an address at 6391 Sprint Parkway, Mailstop KSOPHT0101-z2650, Overland Park, Kansas 66251-2650 ("Assignee"). **The notice address for the Assignee shall be: TowerCo Assets LLC c/o TowerCo Acquisition LLC, 5000 Valleystone Drive, Cary, North Carolina 27519.**

Preliminary Statement:

Pursuant to that certain Purchase and Sale Agreement dated as of July 23, 2008 (as amended, modified and supplemented from time to time, the "Purchase Agreement"), by and between TowerCo Acquisition LLC, the parties identified as sellers therein (including Assignor), Sprint Spectrum L.P., as agent for such sellers and the "Tower Entities" (including Assignee) that become parties thereto, Assignor has, among other things, agreed to assign all its right, title and interest in and to the Ground Lease (as defined on Exhibit "A") to Assignee and to assign, transfer and convey to Assignee its right, title and interest in all Towers and Tower Related Buildings and Equipment located on the land demised under the Ground Lease (as such land is further described in Exhibit B (as so described, the "Real Property")). All capitalized terms not otherwise defined in this Assignment shall have the meanings ascribed thereto in the Purchase Agreement.

In consideration of the mutual covenants contained in this Assignment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. ASSIGNMENT. As of the Transfer Date, Assignor for good and valuable consideration as recited in the Purchase Agreement, the receipt and sufficiency of which are hereby acknowledged, does hereby convey, assign, contribute and transfer all of its right, title, and interest in, to and under the Ground Lease, and the leasehold, license or other interest created thereunder, to Assignee and its successors and assigns.

2. ACCEPTANCE OF ASSIGNMENT. Assignee as of the Transfer Date, hereby accepts the foregoing assignment of the Ground Lease and assumes all of the Assumed Liabilities arising under or pursuant to the Ground Lease.

3. APPURTENANT PROPERTY, EASEMENTS, AND IMPROVEMENTS.

Assignor hereby grants, bargains, conveys, contributes and transfers to Assignee, its successors and assigns forever, all of Assignor's right, title and interest (subject to Permitted Liens) in and to (i) all appurtenant property and rights relating to the Real Property, (ii) all easements and rights of way benefiting the Real Property, (iii) all Towers located on the Real Property and (iv) all Tower Related Buildings and Equipment located on the Real Property and all other Tower Related Assets located on or relating to the Real Property; excluding, in the case of clauses (i) through (iv), any and all Excluded Assets.

4. BINDING EFFECT. This Assignment will be binding on and inure to the benefit of the parties herein, their heirs, executors, administrators, successors-in-interest and assigns.

5. GOVERNING LAW. This Assignment and its validity, construction and performance will be governed by and construed in accordance with the internal laws of the State of Delaware, without regard to principles of conflicts of laws, except to the extent mandatorily governed by the laws of the state in which the Real Property is located.

6. COUNTERPARTS. This Assignment may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

7. PURCHASE AGREEMENT. This Assignment is intended to implement the provisions of the Purchase Agreement and shall not be construed to enhance, extend or limit the rights or obligations of Assignor or Assignee (it being understood that Assignee will not be deemed to be assuming any Excluded Liabilities). No provision of this Assignment shall in any way modify the express provisions (including without limitation the warranties, representations, covenants, agreements, conditions or any of the obligations and indemnifications of the parties hereto with respect to the subject matter of the Purchase Agreement) set forth in the Purchase Agreement. To the extent any provision of this Assignment is inconsistent with the Purchase Agreement, the provisions of the Purchase Agreement shall control.

8. AMENDMENT. This Assignment may not be amended, waived or otherwise modified except by a written instrument signed by the parties hereto.

THIS ASSIGNMENT has been executed by Assignor and Assignee effective as of the Transfer Date.

[Signatures on following pages]

Witnesses:

[Signature]  
Print Name: GARTH ANDERSON

[Signature]  
Print Name: W. DAVID FLOCK

ASSIGNOR:

Nextel West Corp., a Delaware corporation

By: [Signature]  
Print Name: John W. Chapman  
Title: Assistant Secretary

State of New York  
County of New York

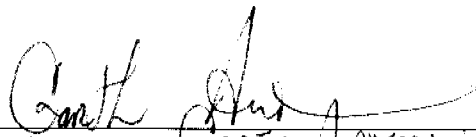
The foregoing instrument was acknowledged before me this 18 day of September, 2008, by John W. Chapman an Assistant Secretary of Nextel West Corp., a Delaware corporation, on behalf of the company. The above-named individual is personally known to me or has produced a drivers license or passport as identification.

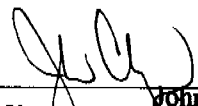
[Signature]  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

JOSEPHINE A. MARSALA  
Notary Public, State of New York  
No. 41-4775927  
Qualified in Queens County  
Commission Expires 11/31/2011

ASSIGNEE:

TowerCo Assets LLC, a Delaware limited liability company

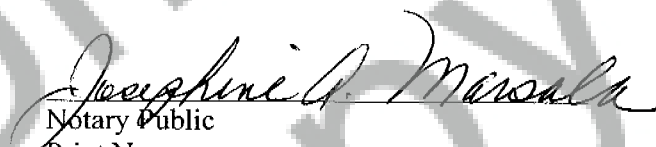
  
Print Name: GARTH ANDERSON

By:   
Name: John W. Chapman  
Title: Assistant Secretary

  
Print Name: W. DAVID ELCOCK

State of New York  
County of New York

The foregoing instrument was acknowledged before me this 18 day of September, 2008, by John W. Chapman an Assistant Secretary of TowerCo Assets LLC, a Delaware limited liability company, on behalf of the company. The above-named individual is personally known to me or has produced a drivers license or passport as identification.

  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

JOSEPHINE A. MARSALA  
Notary Public, State of New York  
No. 41-4775927  
Qualified in Queens County  
Commission Expires 11/31/2011

**EXHIBIT "A"**

**The Ground Lease**

That certain lease agreement (the "Ground Lease") dated October 25, 2004 by and between Train Mountain Railroad Museum, as lessor, and Assignor, as lessee, with respect to that certain parcel of real property ("Real Property") located in the County of Klamath, State of OR, which Real Property is more particularly described on Exhibit "B" attached hereto. The Memorandum of the Ground Lease is recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ or as Official Document/Instrument Number 2006-016082, in the Register's office of Klamath County, State of OR.

This Instrument Prepared By  
TowerCo Acquisition LLC  
5000 Valleystone Drive  
Cary, North Carolina 27519

After Recording Return To:  
LandAmerica CLSS  
Attn: Lisa Robertson  
5600 Cox Road  
Glen Allen, VA 23060

2006-016082

Klamath County, Oregon

WHEN RECORDED RETURN TO:

NEXTEL WEST CORP.  
1255 TREAT BLVD., SUITE 800  
WALNUT CREEK, CA 94597-7982  
ATTN: PNW PROPERTY SERVICES

00000823200600160820050056

08/10/2006 10:20:39 AM

Fee: \$41.00

KLAMATH COUNTY RECORDER COVER SHEET

Document Title(s)

Memorandum of Lease Agreement

Reference Number(s) of Documents assigned or released

1. Nextel Site Reference - OR0320-B/Chiloquin

Grantor(s)

Quentin L. Breen, trustee of Train Mountain Foundation

Grantee(s)

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

Legal description (Abbreviated: i.e., lot, block & subdivision name or number OR section/township/range and quarter/quarter section)

See Exhibit A:

Complete Legal Description on Page 5 of the document.

Assessor's Property Tax Parcel/Account Number(s)

3407-02900-01100  
3407-02800-00301

The Auditor/Recorder will rely on the information provided on this cover sheet. The Staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in ORS 205.327. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party (Required for non-standard recordings only)  
Gpcovst.doc rev 4/02

**RECORDED AT REQUEST OF, AND  
WHEN RECORDED RETURN TO:**

Nextel West Corp.  
1255 Treat Blvd., Suite 800  
Walnut Creek, CA 94597-7982  
Attn: Property Services

ORIGINAL

**MEMORANDUM OF AGREEMENT  
OR-0320-B / Chiloquin  
APN: 3407-02900-01100  
3407-02800-00301**

This MEMORANDUM OF AGREEMENT is entered into on this 25th day of October, 2004, by Quentin L. Breen, trustee of Train Mountain Foundation with an address at 36941 S Chiloquin Road, Chiloquin, Oregon 97624 (hereinafter referred to as "**Owner**" or "**Landlord**") and Nextel West Corp., a Delaware corporation, d/b/a Nextel Communications, with an office at 1255 Treat Blvd., Suite 800, Walnut Creek, CA 94597-7982 (hereinafter referred to as "**Nextel**" or "**Tenant**").

1. Owner and Nextel entered into a Communications Site Lease Agreement ("**Agreement**") on the 25th day of October, 2004, ("**Effective Date**") for the purpose of Nextel undertaking certain Investigations and Tests and, upon finding the Land 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 Nextel's tenancy under the Agreement is for five (5) years commencing on the commencement of construction of the Tenant Facilities or eighteen (18) months following the Effective Date, whichever first occurs ("**Term Commencement Date**"), and terminating on the fifth anniversary of the Term Commencement Date with five (5) 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 leased to Tenant and all necessary access and utility easements (the "**Premises**") are set forth in the Agreement.

\*\*\* SIGNATURES ON FOLLOWING PAGE\*\*\*

Exhibit B  
Real Property

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

LANDLORD:

Quentin L. Breen,  
trustee of Train Mountain Foundation

By: [Signature]

Name: Quentin Breen

Title: Trustee

Date: 10-14-04

TENANT:

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

By: [Signature]

Name: Mary Murdoch

Title: Director of Site Development

Date: 10-25-04

\*\*\*ALL SIGNATURES MUST BE ACKNOWLEDGED\*\*\*

STATE OF OREGON

COUNTY OF WASHINGTON

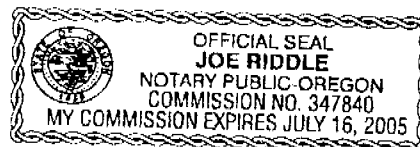
On 10/14/04, before me, Joe Riddle, Notary Public, personally appeared Quentin Breen, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized 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.

[Signature]  
Notary Public

(SEAL)

My commission expires: 7/16/04



\*\*\*ACKNOWLEDGEMENTS CONTINUED ON FOLLOWING PAGE\*\*\*



Exhibit B  
Real Property

STATE OF Washington

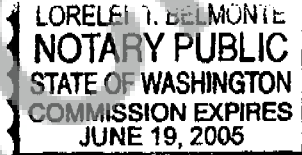
COUNTY OF KING

On 10-25-04, before me, LORELEI T. BELMONTE, Notary Public, personally appeared Mary Murdoch, 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 she executed the same in her 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.

Lorelei T. Belmonte (SEAL)  
Notary Public

My commission expires: 6-19-05



A handwritten mark, possibly a signature or initials, located in the bottom right corner of the page.

Exhibit B  
Real Property

EXHIBIT A  
DESCRIPTION OF LAND

to the Memorandum of Agreement dated \_\_\_\_\_, 2004, by and between Quentin L. Breen, trustee of Train Mountain Foundation, as Landlord, and Nextel West Corp., a Delaware corporation, d/b/a Nextel Communications, as Tenant.

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

Real Property in the County of Klamath, State of Oregon, described as follows:

S  $\frac{1}{2}$  N  $\frac{1}{2}$  SE  $\frac{1}{4}$  and the S  $\frac{1}{2}$  SE  $\frac{1}{4}$  of Section 29, Township 34 South, Range 7 East of the Willamette Meridian, Klamath County, EXCEPTING THEREFROM the following: Being a portion of the SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  of Section 29, Township 34 South, Range 7 East of the Willamette Meridian, Describe as follows:

Commencing at the section of corner common Sections 28, 29, 32 and 33, all in said Township and Range; thence North 80°54'10" West, 614.85 feet to the true point of beginning of the parcel of land to be described; thence South 52°29'30" West 150.00 feet; thence North 37°30'30" West, 150.00 feet; thence North 52°29'30" East, 150.00 feet; thence South 37°30'30" East, 150.00 feet to the true point of Beginning.

Access easement as follows:

Width: 20 Feet; Approximate length: 1.10 Miles between the Leasehold Parcel and the public road known as Highway 422 North over existing traveled ways where practical, and establishing a new route as necessary.

Utilities easement as follows:

Width: 5 Feet; Approximate length: 500 Feet between the Leasehold Parcel and suitable utility company service connection points. Lessor agrees to make such direct grants of easement as the utility companies may require.

Tax Parcel Numbers: 3407-02900-01100  
3407-02800-00301

*[Handwritten signature]*