

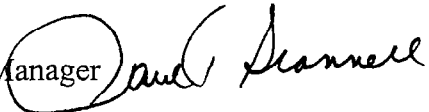
**COUNTY OF SAN MATEO**

**County Manager's Office**

**DATE:** January 30, 2001

**Agenda Date:** February 13, 2001

**TO:** Honorable Board of Supervisors

**FROM:** Paul T. Scannell, Assistant County Manager 

**SUBJECT:** Permit Agreement with Nextel of California, Inc dba Nextel Communications for the Installation and Operation of a Wireless Communication Facility at the County/EPA Community Services Building in East Palo Alto (No 5279)

Recommendation

Adopt a Resolution authorizing the President of the Board of Supervisors to execute a Permit Agreement with Nextel of California, Inc. dba Nextel Communications for the installation and operation of a wireless communication facility at the County East Palo Alto Community Services Building

Background

Nextel of California, Inc. dba Nextel Communications ( 'Nextel ) has submitted a proposal to the County to occupy a small area on the roof near the penthouse at the East Palo Alto Community Services Building for the installation, operation and maintenance of a wireless communication facility. The installation will include an equipment shelter building and twelve (12) antennae on the roof.

County staff, including Facilities and Communication Services, has been working with Nextel and two other mobile communications providers to coordinate the location of equipment, especially the location of antennae to keep the visual impact to a minimum Screening of the antennae will be required. Your Board approved a permit with Metricom in August 2000 and with Bay Area Cellular Telephone Company dba A T. & T Wireless Systems in November 2000 for this building.

The Permit Agreement with Nextel provides that the installation of the equipment be subject to approval of the County Placement of the communication equipment will also be subject to the review of Communication Services to ensure that the private communication equipment will not cause interference with the County s communication equipment. Nextel will also be required to

Honorable Board of Supervisors  
January 30, 2001  
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share costs to increase the electrical service capacity to the building with the other mobile communications providers. The electrical capacity at the building is currently inadequate for the needs of the mobile communications providers.

### Discussion

Real Property, Facilities and Communication Services have negotiated a permit agreement with the following major conditions

1. Term The term will be 60 months
2. Permit Fee The monthly fee of \$2,400 is to be adjusted annually based on the Consumer Price Index. The fee is set in accordance with ISD/Communication Division's fee schedule for communication sites. The fee schedule is based on the equipment building size and the number of antennae to be placed at the site. Fees are determined by comparable charges at similar sites
3. Option. Permittee has the option to extend the term for two additional five year periods based on the same terms and conditions except the rent to be adjusted to fair market rent. Both parties have the ability after five years to terminate this agreement with eighteen months notice.
4. Processing Fee. A \$1,000 processing fee will be payable to the County
5. Installation Approval The County has the authority to approve the proposed plans submitted by the Permittee.
6. Utilities The Permittee will provide and pay for its electrical service needs, including its share of the cost to increase the electrical service capacity to the building
7. Hold Harmless. The Permittee will hold the County harmless and will maintain the County's required general liability and property damage insurance
8. Permits. The Permittee shall obtain all permits from the County Building Inspection Division

County Counsel's Office has reviewed and approved the agreement.

The Director of Public Works concurs with our recommendation.

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Fiscal Impact

The permit fee for the first twelve months will be \$28,800 and will be deposited into the Facilities Account by Public Works.

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cc/enc. D Penny Bennett, Deputy County Counsel

cc: Neil Cullen, Director, Department of Public Works  
Attn: Susan Durling, Executive Secretary  
Steve Dupre, Communication Division, Information Services Department  
Lynda Green, Manager, Real Property Services

RESOLUTION NO \_\_\_\_\_

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

\* \* \* \* \*

RESOLUTION AUTHORIZING EXECUTION OF PERMIT AGREEMENT  
BETWEEN THE COUNTY OF SAN MATEO AND  
NEXTEL OF CALIFORNIA, INC DBA NEXTEL COMMUNICATIONS  
TO INSTALL, MAINTAIN AND OPERATE A WIRELESS COMMUNICATION FACILITY  
AT THE COUNTY/EPA COMMUNITY SERVICES BUILDING  
(NO 5279)

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RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, there has been presented to this Board of Supervisors for its consideration and acceptance an agreement, reference to which is hereby made for further particulars, whereby the County of San Mateo shall permit Nextel of California, Inc dba Nextel Communications to install, operate and maintain a wireless communication facility located at the County/EPA Community Services Building in East Palo Alto in accordance with the terms and conditions of said agreement; and

WHEREAS, this Board has been presented with a form of such permit agreement and said Board has examined and approved same as to both form and content and desires to enter into same

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED as follows

1 That the President of this Board of Supervisors be, and is hereby, authorized and directed to execute said Permit Agreement for and on behalf of the County of San Mateo, and the Clerk of this Board shall attest thereto

2. That the Assistant County Manager is hereby authorized to accept or execute, on behalf of the County, any and all notices in connection with the Permit Agreement

**PERMIT AGREEMENT  
No. 5279  
NEXTEL COMMUNICATIONS  
COUNTY/EPA OFFICE BUILDING**

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3. PREMISES AND USE ..... 1

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**PERMIT AGREEMENT  
NO. 5279  
NEXTEL COMMUNICATIONS**

-1 PARTIES This Permit, dated for reference purposes only, this \_\_\_\_\_ day of \_\_\_\_\_, 2001, is made by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California ( Permittor' ), whose address is:

County of San Mateo  
County Manager's Office  
455 County Center, 5th Floor  
Redwood City, CA 94063-1663

and Nextel of California, Inc , a Delaware corporation d/b/a Nextel Communications,  
( Permittee ), whose address is:

1255 Treat Boulevard, Suite 800  
Walnut Creek, CA 94596

Both parties agree as follows:

2 PERMITTOR is the owner of that certain real property located at 2415 University Avenue, East Palo Alto, more commonly known as the County/EPA Community Service Building (the Site) and shown on Exhibit "A" attached hereto and incorporated herein by reference

3. PREMISES AND USE.

A Permittee is hereby granted permission to use and occupy that certain portion of the Site, consisting of approximately 240 square feet of space on the Roof and exterior space on the roof parapet and stairwell (collectively the "Premises", all as shown on Exhibit "B" attached hereto and incorporated herein by reference) for the installation, maintenance and operation of a communication station consisting of

- One 10'x20'x10' Prefabricated Equipment Shelter with the following equipment
  - 3 Battery Bays (4 trays ea.)
  - 1 Power Plant (2 trays/8 rectifiers)
  - 1 Control Rack
  - 1 Primary (RF1) Rack (w/ up to 6 Base Radios)
  - 1 Primary (RF2) Rack (w/ up to 6 Base Radios)
  - 1 Expansion (RF1) Rack (w/ up to 6 Base Radios)
  - 1 Expansion (RF2) Rack (w/ up to 6 Base Radios)



- 2 HVAC Units
  - AC Power Distribution Panel
  - Power Transformer (if needed - to be placed outside of room)
  - Two (2) Global Positioning Sensors (GPS) mounted to the shelter.
  - Transformer for power.
- Structural steel for shelter foundation support attaching to structural members in roof.
  - Up to a total of twelve (12) panel antennas mounted flush with stairwell penthouse on North side of building Antennas mounted in three sectors of up to 4 antenna per sector.
  - Coaxial Cable and cable tray on roof from shelter to antennas
  - Fiberglass screen panels to conceal the antennas, with associated steel support structure
  - Appleton generator receptacle for emergency power.

together with cabling between the equipment and exterior antennas and for no other purposes without the prior written consent of Permittor, which consent shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed Subject to Section 11, Permittor hereby grants to Permittee for the duration of this Permit, or any extensions thereof, the right to use all utility ducts and conduits (including, telephone, cable, or other conduits) and any other common areas at the Site by which heat, ventilation, air conditioning, power, and communications signals may be delivered to or from the Premises. The rights granted to Permittee herein are for the purpose of installing, constructing, maintaining, restoring, replacing, and operating Permittee's equipment located within or on the Premises, including, in the case of an emergency, the right to install temporary facilities required to maintain continuous operation of the Permittee's communication equipment Permittee shall also have the right to install new conduit, if needed, in locations approved by Permittor The use of utilities at the Site by Permittee are non-exclusive and Permittee shall not interfere with said use of same by Permittor nor shall Permittee interfere with said uses by other building users/occupants.

Permittee is authorized to install other equipment related to the operation subject to the following:

Installation of Permittee's equipment shall be coordinated with and at the approval and direction of the Permittor's Communication Systems Manager, and Manager, Facilities Operator and Maintenance.

B. Permittee shall have the right to construct its communication station in accordance with the plans attached as Exhibit "B" Said construction is subject to the issuance of a Building Permit Prior to construction, Permittee shall provide satisfactory evidence to Permittor that the roof of the building will support Permittee's equipment Permittor shall have no responsibility to provide additional structural support for Permittee's equipment other than that which currently exists. Permittee shall take precautions during construction/installation of its improvements/equipment to protect the roof of the Building Permittee shall coordinate all work affecting the roof with Permittor (or at Permittor's instruction with Permittor's roofing contractor) Permittee shall obtain the consent of Permittor, which consent shall not be

unreasonably withheld, unreasonably delayed, or unreasonably conditioned, for any non-structural or structural modifications not shown on Exhibit B that may be required to accommodate Permittee's communications equipment. Permittee shall obtain all necessary governmental approvals and permits prior to commencing construction and shall provide Permittor with notice prior to the start of construction. All Permittee contractors and subcontractors shall be duly licensed in the State of California.

4. ACCESS TO PREMISES. Permittee understands that the building in which the Premises is located is an operating governmental building open to the public. Permittor understands that the Permittee's equipment will operate on a twenty-four (24) hour a day, seven (7) day per week basis and reasonable full time access is required. Permittor and Permittee agree to coordinate access to the Premises when the building is not open to the public. In the event of an emergency, Permittee shall be allowed to use the exterior stairway along the westerly side of the County building by the East Palo Alto Police Department compound area for access. Permittee may rekey the access doors of said stairway for emergency access. If Permittee decides to rekey said doors, the work shall be discussed with Permittor, and shall be subject to the approval of Permittor and other users of said access. Permittee shall also provide Permittor and other users with keys to said replaced locks. The Permittor's Manager, Facilities Operation and Maintenance shall be the contact person in connection with access related matters. The Permittor's Manager can be contacted as follows:

County of San Mateo  
Manager, Facilities Operations and Maintenance  
455 County Center  
Redwood City, CA 94063-1663  
Telephone No. (650) 599-1875

5. TERM. Unless sooner terminated pursuant to the provisions herein, the Primary Term of this Permit shall be for sixty (60) months commencing on the earliest of (i) the date the Building Permit is available for issuance to Permittee, (ii) the date Permittee takes occupancy of the Premises as evidenced by Permittee, or its agent, by storing material or otherwise commencing construction or installation of Permittee's improvements and/or communications equipment on Site, or (iii) six (6) months following full execution by Permittor of this Permit. In the event the commencement date falls on a day other than the first day of a calendar month, said partial month, together with the first twelve (12) full calendar months, shall be deemed to be the first year of the Term and each successive twelve (12) full calendar months shall be the successive years of the Term.

6. OPTION TO EXTEND TERM. Provided Permittee is not in default and breach of this Permit and subject to review and approval of the Permittor, Permittee shall have the option to renew this Permit for two additional five (5) year periods under the same terms, covenants and conditions (except the number of remaining options and subject to adjustment of the Permit Fee as specified in Section 14 B ) by giving notice to Permittor at least ninety (90) days prior to the expiration date of this Permit (or renewal date, as applicable).

7 REQUEST FOR EXPANSION OR REDUCTION OF SPACE

A Permittor, if requested in writing by Permittee, shall have the option to increase or decrease the permitted space, or allow Permittee to add to, remove or substitute equipment, subject to review and approval by the Communications Manager of the Information Services Department and the Manager, Facilities Operation and Maintenance and subject to space and facilities being available.

Permittee shall notify the Real Property Manager at least ninety (90) days prior to the anticipated change in the space required or a change in equipment specifications. Final approval of any permit modification shall be made by the Assistant County Manager

B. Permit Fee In the event approval is granted for additional space or a reduction of space, change in equipment specifications as set forth herein, the permit fee set forth in Section 13 below will be subject to adjustment as approved by Permittor

8. OPTION TO TERMINATE. This Agreement may be terminated, without penalty or further liability, as follows:

- (a) by either party if the other party remains in default under Paragraph 32 of this Agreement after the applicable cure periods,
- (b) by Permittee upon thirty (30) days' written notice, if Permittee is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the communication station as now and hereafter intended by Permittee if Permittee determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable,
- (c) by Permittee on not less than thirty (30) days' written notice for any reason other than (a) or (b) above or paragraph 29 below, or for no reason, so long as Permittee pays Permittor a termination fee equal to six (6) months permit fee, at the rate then in effect, or
- (d) after expiration of the Initial Term, by Permittee or Permittor on eighteen (18) months' written notice for any reason other than (a) above, or paragraph 29 below, or for no reason; or
- (e) in accordance with Section 14.C or Section 29 A.

9 NATURE OF PERMIT This Permit does not constitute the grant of a lease, deed, easement, or a conveyance or transfer of any property interest by County

10 ASSIGNMENT. Permittee may not assign, sublet or otherwise transfer all or any part of its interest in this permit or in the Premises without the prior written consent of Permittor, provided however, that Permittee 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 Notwithstanding anything to the contrary contained in the permit, Permittee may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in the Permit to any financing entity, or agent on behalf of any financing entity to whom Permittee (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 respect to letters of credit, bankers acceptance and similar facilities or in respect guaranties thereof

11. UTILITIES

- A The parties understand that the existing electrical power being delivered to the Site is inadequate to serve the requirements associated with the proposed installation of equipment by the Permittee and other communication users who may be granted permits to use the site for similar purposes.
- B. It is understood that Permittee will be using this facility along with the Permitter and other providers of similar services (hereafter “co-permittees”), and that the current electrical capacity to the building is inadequate for the proposed use under this Permit.
- C Prior to the installation of any equipment indentified in Section 3 of this Agreement, the Permittee shall be responsible to install and pay for (1) increasing electrical power delivered to the Site; (2) a meter mounting device with four (4) additional electrical meters; (3) conduits from said meters to the roof of the Site and Permittee’s shelter. The Permittee shall coordinate said work with the Permitter and Pacific Gas & Electrical Company (“PG&E”) The installation of additional electrical power facilities shall require the same Permitter approval as provided in Section 3. After said installation the Permittee shall be responsible to pay for all electrical usage and other charges associated with Permittee’s operation. Permittee shall also be solely responsible for and will promptly pay charges for the installation and use of its telephone services at the Premises
- D In the event the installation of additional electrical power described above has been accomplished by any co-permittee prior to Permittee’s occupancy of the Premises, Permittee will negotiate and execute a cost-sharing agreement with any co-permittee that incurred costs in increasing the electrical capacity of the building or any other improvements such as structural reinforcements to prepare the Building for Permittee’s use
- E Permittee must execute the cost-sharing agreement referred to in the previous paragraph and provide a copy of said agreement to Permitter before Permittee may start any occupancy, use, construction, or installation of equipment at the Building

12. PROCESSING FEE Permittee shall pay, at the time of the full execution of this Permit, a one-time charge of One Thousand Dollars (\$1,000) to cover Permittor's cost associated with the preparation of this Permit to assure complete compatibility of operations at the Site.

13. PERMIT FEE Permittee agrees to pay a fee to Permittor without prior notice or demand, in consideration of this Permit, the sum of Two Thousand Four Hundred Dollars (\$2,400) on or before the first day of the first full calendar month commencing as provided in Section #5 (Term) and the same sum on or before the first day of each and every successive calendar month thereafter during the first year of the Term hereof (including any extensions), subject to adjustment as set forth in Section 14.

Said fee to be sent to:

Department of Public Works  
Accounts Receivable  
555 County Center 5<sup>th</sup> floor  
Redwood City, CA 94063-1665

The Permit fee for any period during the term hereof which is less than one (1) month shall be prorated on a thirty (30) day month

14.A BASE FEE ADJUSTMENT. The fee payable by Permittee to Permittor hereunder shall be adjusted annually and shall be effective on each "Anniversary Date" by definition herein, the first Anniversary Date shall occur on the first day of the first full month following the first twelve (12) months after the Commencement Date of the Term. By example, if the Commencement Date of this Permit is January 3, 2001, the first Anniversary Date for the fee adjustment would be January 1, 2002, and annually thereafter on each January 1st throughout the Term, or any extensions thereof as provided in Section 6 herein (Option to Extend Term) of this Permit.

The adjustments, if any, shall be calculated based upon the Consumer Price Index ("Index") which is published by the United States Department of Labor, Bureau of Labor Statistics (1982-84=100), or successor index, for San Francisco-Oakland-San Jose, All Items, for All Urban Consumers. The Index published for the most recent month prior to each Anniversary Date shall be compared with the Index immediately preceding the Commencement Date or previous Anniversary Date. Effective on each Anniversary Date, the monthly fee shall be adjusted by multiplying the current month fee times the current Anniversary Date Index divided by the previous Anniversary Date Index. By example, the calculation for the first rent adjustment is shown as

$$\text{\$2,400} \times \frac{\text{Current Anniversary Date Index}}{\text{Previous Anniversary Date Index}} = \text{New Rent}$$

In any event, the adjusted monthly fee shall never be less than the monthly fee at the time of the adjustment.

When the adjusted Permit Fee payable on the Anniversary Date is determined, Permittor shall give Permittee written notice of such adjusted Permit Fee and the manner in which it is computed and Permittee shall pay that amount. Lack of written notification prior to the Anniversary Date shall not release Permittee from payment of the adjusted fee as of the Anniversary Date.

B. DISCONTINUED CONSUMER PRICE INDEX. If the Consumer Price Index is not of the format as recited in Section 14.A. herein (Base Fee Adjustment), on any of the Anniversary Dates, Permittor shall substitute any such official index as may be published by the Bureau of Labor Statistics, or any successor or similar government agency as may then exist or be most nearly equivalent thereto.

C. EXTENDED TERM FEE. During the first year of each extended term exercised by Permittee as provided for in Section 6, the permit fee for the year of each Renewal Term shall be based upon the then current fair market permit fees for like space and shall be subject to adjustment commencing the 2<sup>nd</sup> year of each Renewal Term and each year thereafter of each Renewal Term in accordance with Section 14 A above. The permit fee for the initial year of each Renewal Term shall be determined and agreed to by both parties at least sixty (60) days prior to the commencement date of the applicable Renewal Term. If an agreement on fair market permit fees cannot be reached by the parties within thirty (30) days prior to the commencement date of the applicable Renewal Term, then Permittor or Permittee shall have the right to terminate this Agreement upon twelve (12) months written notice to the other party, provided however, that Permittee shall not be obligated to vacate the Premises until twelve (12) months after termination/expiration of the prior term. The fee for said twelve (12) month period shall be the fee paid by Permittee for the preceding year of the permit which shall be increased by the CPI published immediately prior to the expiration date of the Term or Renewal Term. All other terms and conditions hereof shall apply.

15. LATE CHARGES. Permittee hereby acknowledges that late payment by Permittee to Permittor of rent or other sums due hereunder will cause Permittor to incur costs not contemplated by this Permit, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, administrative processing of delinquent notices and accounting charges. Accordingly, if any installment of rent or of a sum due from Permittee is not received by Permittor or postmarked within ten (10) business days after said amount is due, then Permittee shall pay to Permittor a late charge equal to one percent (1%) of the rent in effect at that time or Twenty-five Dollars (\$25), whichever is greater. A late charge shall be applied each month rent is delinquent. The parties hereby agree that such late charge represents a fair and reasonable estimate of the cost that Permittor will incur by reason of the late payment by Permittee. Acceptance of late charges by Permittor shall in no event constitute a waiver of Permittee's default with respect to such overdue amount, nor prevent Permittor from exercising any of the other rights and remedies granted hereunder.

16. COSTS TO RECOVER PREMISES. Permittee agrees to pay Permitter all costs and expenses in an action brought by Permitter to recover possession of the Premises or to enforce any rights of Permitter hereunder

17. RELATIONSHIP. Permitter shall not become or be deemed a partner or joint venturer with Permittee by reason of this Permit or any provision hereof.

18. LICENSES. Permittee shall secure any necessary licenses and approvals applicable to the use of the Premises for which this Permit is granted.

19. RESERVATIONS. This Permit is subsequent to and subject to all prior exceptions, reservations, grants, leases, easements or licenses of any kind whatsoever as the same appear on record in the San Mateo County Recorder's Office, or in the other public records of County. Permitter grants to Permittee the right to enter into any Quiet use and Non-disturbance Agreements with such third parties who have rights and interests in the Premises that are prior and superior to Permittee's right under this Permit Agreement. Permittee covenants that its use of the Premises will at all times be conducted with proper regard for any party having rights, title, or privileges in the Premises.

20. LAW AND REGULATIONS. Permittee shall at all times maintain, occupy and use the Premises in compliance with all laws, rules and regulations which may be applicable thereto.

21. MAINTENANCE.

A. PERMITTEE'S RESPONSIBILITIES. Permittee expressly agrees to maintain that portion of the Premises occupied by Permittee at Permittee's sole expense, in a safe, clean, wholesome and sanitary condition, to the complete satisfaction of Permitter and in compliance with all applicable laws, rules and regulations

Permittee shall not allow any offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable, or unlawful fire hazard, nor any material detrimental to the public health to accumulate or remain on the Premises. It is expressly understood that Permitter shall have no responsibility whatsoever to make any improvements or repairs or perform any maintenance to the Premises. Permittee hereby accepts the Premises AS IS

B. PERMITTOR'S RESPONSIBILITIES. Except as limited above, Permitter will maintain the County building and common areas in good repair and tenantable condition, so as to minimize breakdowns and loss of Permittee's use of the Premises caused by deferred or inadequate maintenance including, but not limited to

(1) Generally maintaining the Premises in good, vermin free, operating condition and appearance

(2) Furnishing prompt, good quality repair of the Premises, equipment and appurtenances.

(3) Furnishing preventive maintenance, including but not limited to, manufacturer's recommended servicing of equipment such as elevator (if any), electrical heating and ventilating equipment, and fixtures

(4) Furnishing and promptly replacing any inoperative light bulbs, fluorescent tubes, ballast's, starters, and filters for the heating, ventilating, and air conditioning equipment as required.

## 22 INDEMNIFICATION AND INSURANCE

A HOLD HARMLESS. Permittee shall at all times relieve, indemnify, protect, and hold harmless, Permitter, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of injuries to or death of any person, including Permittee or damage to property of any kind whatsoever and to whomsoever belonging, that may in whole or in part arise from, or be caused by.

(1) The operation, maintenance, use, or occupancy of the Premises by Permittee;

(2) The acts or omissions of Permittee, its officers, agents, employees, servants, or invitee or permittees; or

(3) The failure of Permittee, its officers, agents, employees, servants, or invitees to observe or abide by any of the terms, covenants, and conditions of this Permit or any applicable federal, state, county, or municipal law, rule, regulation, or the concurrent active or passive negligence of Permitter, its officers, agents or employees.

Notwithstanding the foregoing, in no event shall Permittee be required to indemnify Permitter for those injuries, death or damages to property that are solely caused by the negligence, recklessness or willful misconduct of Permitter

The duty of Permittee to relieve, indemnify, protect, and hold harmless, as set forth hereinabove, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

B. GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE Permittee at its cost shall maintain combined general liability and property damage insurance with liability limits of not less than ONE MILLION DOLLARS (\$1,000,000) insuring against all liability of Permittee and its authorized representatives arising out of and in connection with Permittee's use



or occupancy of the Premises

All general liability and property damage insurance shall insure performance by Permittee of Section 22A herein, the Hold Harmless subsection of this Permit.

C WORKERS' COMPENSATION AND EMPLOYER S LIABILITY INSURANCE During the Primary Term and Extended Term of this Permit, Permittee shall have in effect Workers' Compensation and Employer's Liability Insurance providing full statutory coverage for all its employees. In executing this Permit, Permittee makes the following certification:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer (1) to be insured against liability for Workers Compensation or (2) to undertake self-insurance in accordance with the provisions of the Code. I will comply with such provisions.

A valid Workers' Compensation Certificate shall be deposited with the Permitter within ten (10) days written request of Permitter after the execution of this Permit Agreement by Permitter.

D MISCELLANEOUS INSURANCE PROVISIONS. Permittee shall pay the premiums for maintaining the insurance required of Permittee herein All the insurance required under this Permit shall:

(1) Be issued by insurance companies authorized to do business in the State of California, with a financial rating of at least an AV status as rated in the most recent edition of Best s Insurance Reports.

(2) Be issued as a primary policy

(3) Contain an endorsement requiring thirty- (30) days' notice from the insurance company to both parties before cancellation or change in the coverage, scope, or amount of any policy.

(4) Permitter shall be named as additionally insured for acts/omissions of Permittee on each policy

(5) Each policy shall contain cross-liability endorsements

E. CERTIFICATE OF INSURANCE A certificate of insurance evidencing coverage as required under this Section shall be deposited with Permitter within ten (10) days written request of Permitter after the execution of this Permit by Permitter

In the event Permittee fails to deliver the certificate of insurance verifying

insurance coverage as required, Permitter shall have the option to terminate this Permit immediately.

23. OPERATIONS LIABILITY. Permittee agrees that Permitter shall not be responsible in any way for any loss, damage, or interruption to operations which may take place from any cause whatsoever while the Permittee's equipment is housed in the Permitter's Building, except for any loss, damage or interruption to operations which are adjudicated to have been caused by the sole negligence or willful misconduct of Permitter

Notwithstanding the foregoing, in no event shall Permittee be required to indemnify Permitter for those injuries, death or damages to property that are solely caused by the negligence, recklessness or willful misconduct of Permitter.

24 DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS. In the event of damage to or destruction of Permitter's Building or any portion thereof by reason of the negligence or willful misconduct of Permittee, its agents, officers, employees or invitees, Permittee shall, within thirty (30) days, commence and diligently pursue to complete the repair, replacement, or reconstruction of improvements necessary to permit full use and occupancy of the Building at Permittee's sole cost.

If the Premises or Permittee Facilities are damaged, destroyed not due to the negligence or willful misconduct of Permittee, Permitter or Permittee may elect to terminate this Agreement as of the date of the damage, destruction by giving notice to the other party no more than forty-five (45) days following the date of such damage, destruction. If Permittee chooses not to terminate this Permit, Rent shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises as determined by Permitter

However, in the event of a destruction of the Premises, Permittee has the option to terminate this Permit, immediately, with no further Permit Fee obligation if damage causes disruption to Permittee's transmission activities. If a proceeding is instituted by any governmental authority pursuant to which the Site, in whole or in part, is proposed to be taken or condemned, Permittee will have the option to terminate this Permit at any time thereafter during the pendency of such proceeding without further liability hereunder upon thirty (30) days written Notice to Permitter. Permittee may, at its own option, make a claim in any condemnation proceeding involving the Site for losses related to Permittee's Communications Equipment and relocation costs

25 PERMITS Permitter acknowledges that following execution of this Permit, Permittee will contact the appropriate local governmental agencies for the purpose of obtaining all permits and approvals necessary for the construction, operation, and maintenance of Permittee's communication facility. Permitter agrees to fully cooperate with Permittee in obtaining and maintaining the necessary permits and, without limiting the generality of the foregoing, to execute any applications, maps, certificates, or other documents that may be required in

connection with the permits

26. ALTERATIONS OR ADDITIONS. Permittee shall not make, construct, install or suffer to be made any alterations, additions (including antennas, wires, supports, poles or towers) or improvements to or of the Premises or any part thereof without the written consent of Permitter first had and obtained. Permittee shall be permitted to repair and replace the equipment as well as to perform routine equipment upgrade as long as said upgrade or replacement occupies the same or comparable space, without such Permitter consent. In the event Permitter consents to the making of any alterations, additions or improvements to the Premises by Permittee, the same shall be made by Permittee at Permittee's sole expense, and such consent shall specify whether such alterations are to be removed upon Permittee's surrender of the Premises. Upon the expiration or termination of the Term or Extended Term hereof, Permittee shall, upon demand by Permitter, given at least sixty (60) days written notice prior to the expiration or termination of this Permit, at Permittee's sole expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Permittee which Permitter specified in its consent to such alterations, was to be removed at the termination of this Permit. Permittee shall, forthwith and with all due diligence at its sole expense, repair any damage to the Premises caused by such removal. Should the Permittee fail to remove said alterations, additions, or improvements required to be removed hereunder in a reasonable period of time, the Permitter may perform this work or have it done, and the Permittee shall assume liability for the cost of this removal and restoration of the site.

27. FIXTURES. Permitter covenants and agrees that no part of the improvements constructed, erected, or placed by Permittee on the Premises or other real property owned by Permitter shall be or become, or be considered as being, affixed to, or a part of Permitter's real property, and any and all provisions and principles of law to the contrary notwithstanding, it being the specific intention of Permitter to covenant and agree that all improvements of every kind and nature constructed, erected, or placed by Permittee on the Premises, or other real property owned by Permitter, shall be and remain the property of the Permittee.

28. RECOMPLIANCE. Permitter and Permittee agree to comply with the Federal Communications Commission ("FCC") radio frequency ("RF") exposure rules and requirements for RF exposure to humans. Permitter warrants that the transmitting Site complies with the RF exposure rules and requirements of the FCC and the Occupational Safety and Health Administration ("OSHA") giving consideration to Permittee's proposed use and the existing and proposed uses of all other users, occupants, and tenants of the Site. Permitter will cooperate with and permit Permittee to implement reasonable measures at the transmitting Site, including restricting public access and posting signs and markings, in order for Permittee to fulfill its RF exposure compliance obligations. If Permitter does not fulfill its obligations pursuant to this provision, in addition to all other remedies that it may have, Permittee may terminate the Permit upon written Notice to Permitter without further obligation under the Permit Agreement.

29. EQUIPMENT CONFLICT. If the Permitter's communication equipment involves public safety communications and if the Permittee's equipment causes any interference to public safety

communications, the Permittee's equipment will be immediately taken out of service without exception by Permittee. If Permittee's equipment interferes with the Permitter's public safety communications, the determination to take out of service the Permittee's equipment shall be at the Permitter's sole discretion. Except as provided above:

A. Permittee will not cause radio frequency and/or electrical interference to the existing equipment of Permitter or to any other occupant, tenant, or any other user of the Site whose equipment was located at the Site ("Existing User") upon the earlier of: (i) the Commencement Date, or (ii) the date Permittee installs its Communications Equipment, provided that the equipment used by any Existing User or Permitter is operating within the technical parameters specified by its manufacturers and as defined by the FCC. Upon written notice from Permitter to Permittee of such interference, Permittee will take all reasonable steps to correct such interference in a timely manner. If such interference cannot be corrected within five (5) business days from receipt of Permitter's Notice, Permittee will cease using its Communications Equipment, except for testing, until such time as Permittee corrects the interference to Permittee's satisfaction. In the event Permittee cannot correct the interference, Permittee will have the option to terminate this Permit without further liability hereunder, upon (30) days written Notice to Permitter and Permittee shall remove its equipment in a timely manner and at Permittee's sole cost and expense.

B. After the date of this Permit, Permitter will not grant a Permit to any other party for use of the Site or modify any existing agreement for use of the Site, or change its use of the Site or permit an existing tenant to make any changes to its use of the Site, if such use would in any way adversely affect or interfere with the operation of Permittee's Communication Equipment. If other tenants of Permitter's Site cause uncorrected radio frequency and/or electrical interference with Permittee's Communication Equipment, Permitter will require the party causing such interference to either correct such interference or stop using the equipment that causes the interference. Permittee will be entitled to a rental abatement until such interference is corrected. If the interference cannot be corrected within five (5) business days from receipt of Permittee's Notice, Permitter will cause the party creating the interference to cease using its equipment, except for testing, until the interference has been corrected. If after thirty (30) days such interference has not been completely corrected to Permittee's satisfaction, Permittee will have the option to terminate this Permit Agreement without further liability hereunder,

30 PERSONAL PROPERTY TAXES BY PERMITTEE Permittee shall pay, or cause to be paid, before delinquency, any and all taxes and assessments levied against Permittee's personal property in the Premises.

31 POSSESSORY INTEREST TAX Permittee recognizes and understands in executing this Permit that its interest in the Premises created herein may be subject to a possessory interest tax that the County Assessor may impose on such interest, and any such tax would be the liability of and be paid solely by Permittee. Permittee agrees to pay promptly when due, any applicable possessory interest tax imposed on its interest in the Premises. Except as provided

above, Permittee shall not be liable to pay any property tax assessed against the County owned property of which the premises are a part thereof. Permitter acknowledges that Permittee Facilities are deemed personal property and Permittee pays all personal Property taxes on the Permittee Facilities directly to the State of California Board of Equalization. In the event Permitter's real property taxes are increased as a result of the Permittee Facilities, Permittee shall reimburse Permitter for such increase, provided that Permitter notifies Permittee no later the thirty (30) days after receipt of the bill indicating said increase and provided further that Permitter cooperates with Permittee, at Permittee's cost, in filing an appeal against such increase

## 32 RIGHTS ON DEFAULT

A. PERMITTEE S DEFAULT. If Permittee fails to perform an obligation under this Permit, including the payment of money within fifteen (15) days after receipt of written notice from Permitter specifying the payment due, or thirty (30) days for any other obligation, then unless Permittee promptly rectifies, or commences to rectify, the default, Permitter may, at Permitter's option, upon written notice to Permittee, take any or all of the following action:

(1) Perform such obligation, in which event the cost thereof becomes immediately due and payable to Permitter as additional rent; however, Permittee shall only pay reasonable costs incurred by Permitter in connection with the default. Permittee shall not be liable for any legal costs and fees, including attorney's fees incurred in the enforcement of this Permit Agreement unless Permitter is the prevailing party in an action by Permitter against the Permittee in respect of the premise; and or,

(2) Terminate this Permit

If the nature of Permittee's default is such that more than thirty (30) days are reasonably required for cure thereof, then Permittee shall not be in default if Permittee shall commence such cure within said thirty (30) day period and thereafter diligently prosecute such cure to completion. As long as Permittee continues to pay Permit fee (Rent), abandonment of the premises by Permittee shall not constitute a default.

B. PERMITTOR S DEFAULT. Permitter shall not be considered to be in default under this Permit unless:

(1) Permittee has given notice specifying the default, and

(2) Permitter has failed for thirty (30) days to cure the default, if it is curable, or to institute and diligently pursue reasonable corrective acts for defaults that cannot be reasonably cured within thirty (30) days

33. LIABILITY Permittee agrees that Permitter shall not be responsible for any damage to Permittee's property due to vandalism or natural disasters

34. HOLDING OVER. Should Permittee, with Permitter's consent, hold possession of the Premises or any portion thereof after the date upon which the Premises are to be surrendered, Permittee shall pay increased monthly permit fee that is ten percent (10%) over the amount which was payable by Permittee during the immediately preceding month, and such possession shall be subject to all provisions of this Permit except those pertaining to the Primary Term or Extended Term. Use will continue from month-to-month until terminated by Permitter or Permittee by giving of thirty (30) days written notice to the other. Nothing in this section is to be construed as a consent by Permitter to the occupancy or possession of the Premises by Permittee after the expiration of the Primary Term or Extended Term.

35. SEPARABILITY. Any provision of this Permit which shall prove to be invalid, void, illegal or unenforceable shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect.

36. CUMULATIVE REMEDIES. No remedy or election hereunder shall be deemed exclusive, but shall whenever possible, be cumulative with all other remedies at law or in equity.

37. CHOICE OF LAW. This Permit shall be construed, interpreted and governed in accordance with the laws of the State of California.

38. AUTHORIZED REPRESENTATIVE OF THE COUNTY OF SAN MATEO. The Assistant County Manager shall be the only authorized agent of the County of San Mateo for purposes of giving any notices or exercising any rights, options, privileges, or obligations of the County of San Mateo under this Permit. This Permit shall not be valid unless executed by President of the Board of Supervisors of the County of San Mateo pursuant to a resolution adopted in accordance with the California Government Code.

39. NOTICE. All notices or demands are deemed to have been given or made when delivered in person or delivered by certified or registered mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective parties as follows.

Permittee: Nextel of California, Inc  
1255 Treat Boulevard, Suite 800  
Walnut Creek, CA 94596  
Attn: Property Management  
Phone (925) 279-2509

With a copy to: Nextel Communications, Inc  
2001 Edmund Halley Drive  
Reston, VA 20191-3436  
Sixth Floor, Mail Stop, 6E630  
Attn: Site Leasing Services, Contracts Manager

Permitter County of San Mateo  
Assistant County Manager  
400 County Center  
Redwood City, CA 94063-1662

The address to which any notice or demand may be given to either party may be changed by written notice.

40. CONSENT Whenever under the Permit the consent or approval of either party is required or a determination must be made by either party, no such consent or approval shall be unreasonably withheld or delayed, and all such determinations shall be made on a reasonable basis and in a reasonable manner

41. HAZARDOUS MATERIALS ACTIVITY. Permittee shall not store, handle or generate hazardous materials/waste/underground tanks on the Premises in violation of any federal, state, or local rule or regulation. Permittee shall notify Permitter of all legal hazardous materials used by Permittee or brought on the Premises by Permittee. In the event that Permittee does store, handle, or generate hazardous materials on the Premises, Permittee shall be deemed to be in breach of this Agreement and shall be subject to such remedies as are available to Permitter under law, and as provided herein. Additionally, Permittee shall be liable for the payment of all costs of investigation and remediation of hazardous materials on the Premises that may be required in the event that Permittee does store, handle, or generate hazardous materials on the Premises, and shall relieve, indemnify, protect, and save Permitter harmless against any and all claims and liabilities, of any kind or nature whatsoever, arising out of the presence of any such hazardous materials introduced to the Premises by Permittee

Hazardous material means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the work place or the environment. Hazardous materials include, but are not limited to, hazardous substances, hazardous waste, and any material which a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the work place or the environment. Examples of such hazardous materials are, but are not limited to, waste oil, solvents, gasoline and compressed gases

42. WARRANTY OF TITLE AND QUIET ENJOYMENT Permitter warrants that (i) Permitter owns the Property in fee simple and has rights of access thereto; (ii) Permitter has full right to make and perform this Agreement, and (iii) Permitter covenants and agrees with Permitter that upon Permittee paying the Permit fees and observing and performing all the terms, covenants and conditions on Permittee's part to be observed and performed, Permittee may peacefully and quietly enjoy the Premises

43. WAIVER OF PERMITTOR'S LIEN

A Permittor waives any lien rights it may have concerning the Permittee Facilities which are deemed Permittee's personal property and not fixtures, and Permittee has the right to remove the same at any time without Permittor's consent.

B Permittor acknowledges that Permittee has entered into a financing arrangement including promissory notes and financial and security agreements for the financing of the Permittee 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, Permittor (i) consents to the installation of the Collateral, (ii) disclaims any interest in the Collateral, as fixtures and otherwise, and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Permit fee due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings

44. NON-DISCRIMINATION.

A. Permittee shall comply with any applicable provisions of Section 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

B No person shall, on the grounds of race, color, religion, ancestry, sex, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth, or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Permit.

C Permittee shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Permit. Permittee's equal employment policies shall be made available to Permittor upon request

45 SAN MATEO COUNTY NO SMOKING ORDINANCE Permittee is aware that the County of San Mateo has adopted an Ordinance, which prohibits smoking in all County facilities whether owned or leased. Permittee understands that said Ordinance authorizes County to enforce the provisions contained therein.

46 ENTIRE AGREEMENT. The foregoing, including attached Exhibit and Schedules constitutes the entire Permit Agreement between the parties and may be modified only by a writing executed by both parties. No prior written or contemporaneous oral promises or



representations are and will be binding. This permit is irrevocable during the Term or any Extended Term hereof, except that it may be terminated pursuant to the terms and conditions contained herein.

47. CAPTIONS Paragraph captions are for convenience only, and neither limit nor amplify the provisions of this Permit Agreement.
48. AUTHORITY OF SIGNATORIES TO BIND PRINCIPALS The undersigned have full power and authority to bind their principals to this Permit Agreement.

IN WITNESS WHEREOF, Permitter and Permittee have executed this Permit as of the date and year first above written.

All parties executing this Permit acknowledge receipt of a copy thereof

PERMITTEE:

NEXTEL OF CALIFORNIA, INC.,  
a Delaware corporation, d/b/a Nextel  
Communications

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

Dated 1.16.01 \_\_\_\_\_

Printed Name: Colin E. Holland  
Regional Vice President of Engineering /Operations

PERMITTOR.

COUNTY OF SAN MATEO, a political  
subdivision of the State of California

ATTEST

\_\_\_\_\_  
Clerk of the Board

By \_\_\_\_\_  
President, Board of Supervisors

**ORIGINAL**

EXHIBIT "A"  
LEGAL DESCRIPTION OF LESSOR'S PROPERTY

## EXHIBIT "A"

A PORTION OF PARCELS "A" AND "C" AS SHOWN ON PARCEL MAP FILED JULY 9, 1969 IN VOLUME 8, PARCEL MAPS OF SAN MATEO COUNTY, PAGE 10, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF SAID PARCEL "C" AT THE NORTHWESTERLY CORNER OF THAT PARCEL GRANTED TO THE COUNTY OF SAN MATEO FOR ROAD WIDENING IN VOLUME 6332, OFFICIAL RECORDS OF SAN MATEO COUNTY, PAGE 169; THENCE FROM SAID POINT OF BEGINNING ALONG THE WESTERLY LINE OF SAID PARCEL )6332 O R. 169) SOUTH 1° 00' 26" WEST 317.04 FEET TO THE SOUTHERLY LINE OF SAID PARCEL "C"; THENCE ALONG SAID SOUTHERLY LINE SOUTH 81° 30' WEST 262.91 FEET TO THE EASTERLY LINE OF SAID PARCEL "A"; THENCE ALONG THE BOUNDARIES OF SAID PARCEL "A" SOUTH 8° 30' EAST 151 FEET AND SOUTH 81° 30' WEST 35 FEET; THENCE LEAVING SAID BOUNDARY NORTH 8° 30' WEST 463.69 FEET TO THE NORTHERLY BOUNDARY OF SAID PARCEL "A"; THENCE ALONG THE NORTHERLY BOUNDARIES OF SAID PARCELS "A" AND "C" NORTH 81° 30' EAST 350.28 FEET TO THE POINT OF BEGINNING.

AMERISTAR DOES NOT REPRESENT THAT THE ABOVE ACREAGE OR SQUARE FOOTAGE CALCULATIONS ARE CORRECT

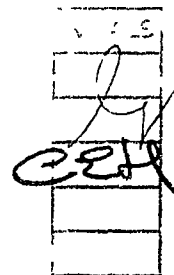
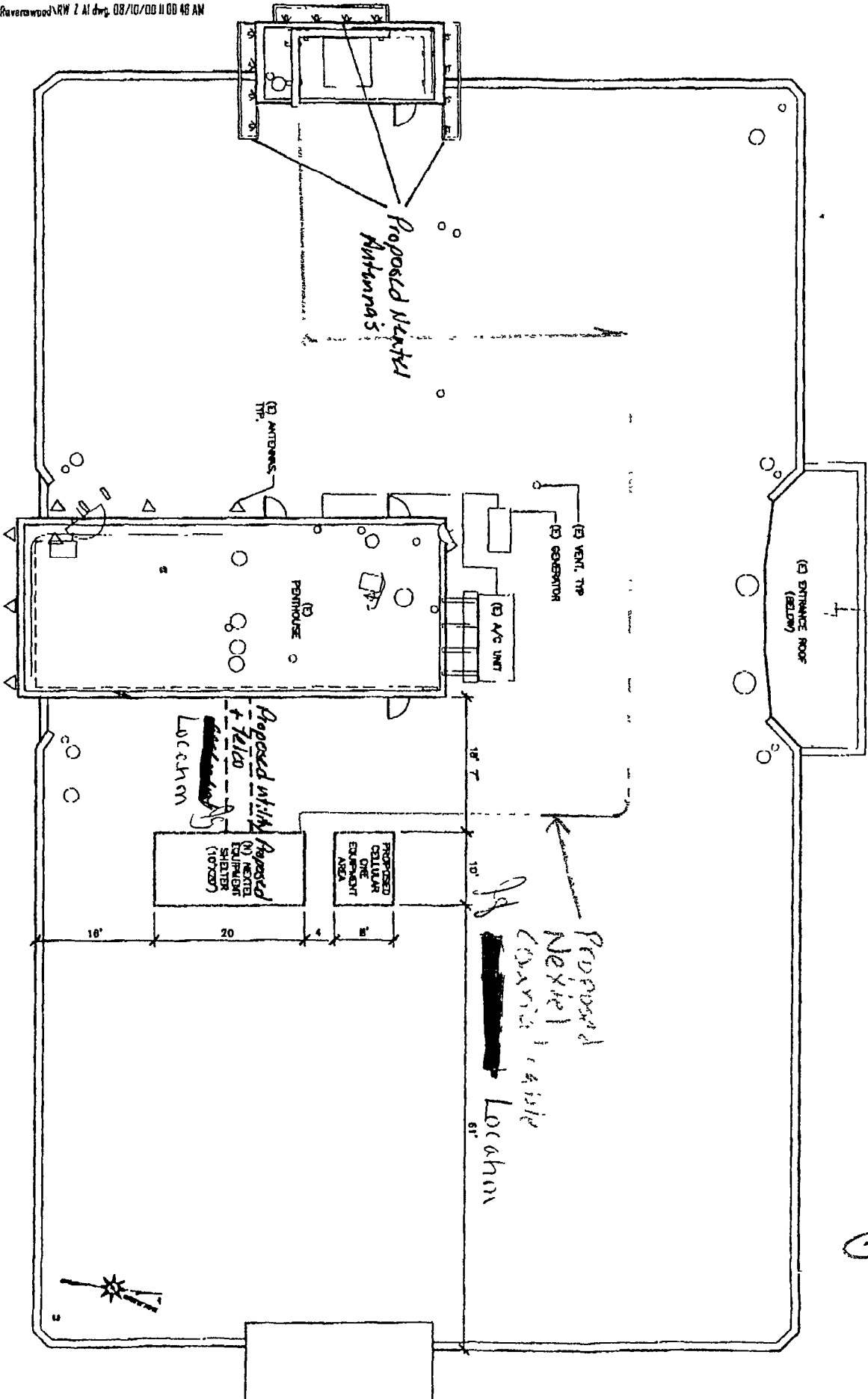
A handwritten signature and initials are written over a grid of five rows and one column. The signature appears to be 'E.E.P.' and the initials are 'E.E.P.'.

EXHIBIT "B"  
LESSEE'S FACILITIES

See Attached Site Plans

CEA  
12

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Not to Scale

[ ]