

City of Brisbane Agenda Report

TO: Honorable Mayor and City Council

FROM: Director of Public Works/City Engineer via City Manager

SUBJECT: Amendment to Communications Site Lease Agreement

DATE: September 13, 2003

City Council Goals:

To design infrastructure and public facilities to be efficient, cost effective and to contribute to the cohesion and character of the community. (#2)

To preserve and enhance livability and diversity of neighborhoods. (#14)

Purpose:

To approve a proposed amendment to the site lease agreement for the existing communications monopole at 50 Park Place (City Hall).

Recommendation:

Approve the “First Amendment to Communications Site Lease Agreement” (Attachment A) and authorize the Mayor to sign the document on the city’s behalf.

Background:

The existing monopole was installed by MetroPCS pursuant to a 5/26/04 agreement (Attachment B) with the city. The location of this wireless telecommunications facility is in conformance with BMC §17.32.032.

The monopole lease was subsequently transferred to Capital Strategies International in 2007, and then transferred to Florida Tower Partners (FTP) in 2009.

FTP has proposed a lease amendment that will transfer the city’s right to install communications equipment at the top of the existing pole to FTP, in exchange for a payment of \$20,000 upon the commencement of a new monopole tenant sublease.

The city retains the right to lease and control the requirements for ground space necessary for any equipment associated with a new monopole tenant.

The City attorney has reviewed and approved the proposed Amendment.

Discussion:

If the Amendment is not approved, then FTP may still locate another tenant at a lower position on the monopole; however, in that case the city would not receive any payment for the new pole tenant.

If the Amendment is approved, then FTP will be able to locate a new tenant at the top of the monopole, in addition to the possibility of another tenant at a lower position, and the city will receive a \$20,000 payment for each new pole tenant.

Fiscal Impact:

There is no direct cost to the city as a result of the recommended action.

In addition to the one-time payment(s) of \$20,000 if new tenants are added to the pole, the city would also anticipate receiving monthly ground lease payments for equipment ancillary to the pole-mounted antennae.

Measure of Success

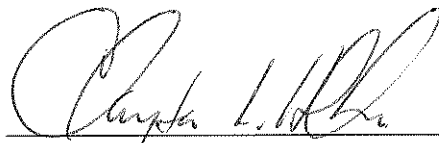
Telecommunications facilities installed in compliance with the city's municipal code. A related desired end state is the relocation of an existing AT&T facility from a residential district to the monopole at 50 Park Place.

Attachments:

- A. First Amendment to Communications Site Lease Agreement
- B. Communications Site Lease Agreement dated May 26, 2004



Director of Public Works/City Engineer



City Manager

**FIRST AMENDMENT TO COMMUNICATIONS SITE
LEASE AGREEMENT**

This First Amendment to Communications Site Lease Agreement ("First Amendment"), dated as of the latter of the signature dates below, is by and between the **City of Brisbane**, a municipal corporation, with an address of 50 Park Place, Brisbane, CA, 94005 ("Lessor") and **Florida Tower Partners, LLC**, a Delaware limited liability company, with an address of 1001 Third Avenue West, Suite 420, Bradenton, FL 34205 ("Lessee").

WHEREAS, Lessor and Lessee's predecessor in interest entered into that certain Communications Site Lease Agreement dated as of May 26, 2004, defined therein as the "Lease Agreement", whereby Lessor leased to Lessee's predecessor in interest a portion of Lessor's Real Property commonly known as 50 Park Place, Brisbane, CA, 94005, Assessor's Parcel Number 005-201-130; and

WHEREAS, MetroPCS California/Florida, Inc. as the original Lessee under the Lease Agreement, assigned the Lease Agreement and all rights, privileges and obligations thereunder, to Capital Strategies International, LLC via that certain Assignment and Assumption of Ground Lease dated May 7, 2007, and

WHEREAS, Capital Strategies International, LLC, assigned the Lease Agreement and all rights, privileges and obligations thereunder to Florida Tower Partners, LLC via that certain Assignment and Assumption of Ground Lease dated June 5, 2009; and

WHEREAS, Lessor desires to release any and all of its rights, actual and implied, to use of the top of the monopole tower that is a portion of Lessee's Facilities and that Lessee desires to accept such release of any such rights; and

WHEREAS, Lessee and Lessor desire to add a provision to the Lease Agreement to set forth compensation to Lessor in exchange for such release of Lessor's rights to the monopole tower.

NOW THEREFORE, for the mutual covenants contained herein, and such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree to amend the Lease Agreement as follows:

1. Section 5(c)(1) is hereby DELETED in its entirety from the Lease Agreement.
2. A Section 5(d) is hereby ADDED in its entirety to the Lease Agreement as follows:

(d) Lessee will pay to Lessor the one-time sum of TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) upon the commencement of any new sublease to a subtenant for use of the monopole tower that is part of Lessee's Facilities. Such payment shall be made within thirty (30) days of the commencement of any such new sublease. The consideration to be paid by Lessee to Lessor hereunder excludes any payment for those certain subtenants MetroPCS California/Florida, Inc. and Sprint Spectrum, L.P. which pre-exist at the time of this First Amendment. Any new subtenant shall be required to enter into a new, separate lease with Lessor for occupancy of any ground space in accord with Section 18. The granting of such lease shall be conditioned and such grant may be revoked by Lessor should Lessee fail to make full payment to Lessor in the timeframe specified herein.

Attachment A

The parties acknowledge that the right of Lessee to sublet without the need for the subtenant to enter into a separate lease with Lessor for use of ground space is limited to the antenna structure and the area occupied by the existing equipment enclosure originally installed pursuant to the building permit issued to MetroPCS on July 16, 2004. Any other use of ground space, including any portion of the area enclosed by the monopole fence, is subject to the last sentence of Section 18.

3. Except as otherwise provided herein, the Lease Agreement remains unmodified and in full force and effect. In the event of a contradiction between the Lease Agreement and this First Amendment, this First Amendment shall control. All capitalized words and phrases, not defined herein, shall have the same definition as provided for in the Lease Agreement

4. Lessor affirms that as of the date of this First Amendment, no default exists under the Lease Agreement on the part of Lessee and to Lessor's knowledge, no event or condition has occurred or exists which, with notice or the passage of time or both, would constitute a default by Lessee under the Lease Agreement. The Lease Agreement and this First Amendment contains the entire agreement between Lessor and Lessee with respect to the Property.

IN WITNESS THEREOF, the parties have caused this First Amendment to be duly executed as of the latter of the signature dates below, intending to be bound by all the terms and conditions contained herein.

[SIGNATURE BLOCKS FOLLOW]

LESSOR:

CITY OF BRISBANE
a municipal corporation

By: _____
Name: W. Clarke Conway
Title: Mayor

Date: _____

APPROVED AS TO FORM:

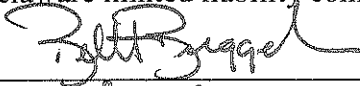
Harold S. Toppel, City Attorney

ATTEST:



Sign: _____
Print: Sheri Marie Schroeder

LESSEE:

FLORIDA TOWER PARTNERS, LLC
a Delaware limited liability company

By: 
Name: BRETT BUGGELN
Title: MANAGER/PRESIDENT
Date: 7/21/10

Witnesses:

Sign: 
Print: Todd J. Bowman
Sign: 
Print: Roger Lapina

COMMUNICATIONS SITE LEASE AGREEMENT

THIS COMMUNICATIONS SITE LEASE AGREEMENT ("Lease Agreement") dated as of May 26, 2004, is made by and between MetroPCS California/Florida, Inc., a Delaware corporation, d/b/a MetroPCS ("Lessee") and City of Brisbane, a municipal corporation ("Lessor").

RECITALS

This Lease Agreement is entered into based upon the following facts, circumstances and understandings:

A. Lessor owns certain real property legally described in Exhibit "A" attached hereto and commonly known as 50 Park Place, Brisbane, CA 94005; Assessor's Parcel Number 005-201-130 ("Lessor's Real Property"). Lessee desires to lease a portion of Lessor's Real Property with any easements over other portions of Lessor's Real Property necessary for Lessee's access and utilities to the leased area (altogether the "Premises"), as shown on the drawing attached hereto as Exhibit "B". Lessor represents and warrants that it has full rights of ingress to and egress from the Premises from a public roadway.

B. Lessee is a communications carrier that desires to construct and operate a wireless communications site at the Premises as part of its communications network.

C. Lessor is willing to lease the Premises to Lessee for Lessee's proposed use subject to the terms and conditions of this Lease Agreement.

WHEREFORE, the parties hereto agree as follows:

1. **Grant of Lease.** Lessor hereby leases to Lessee the Premises for Lessee's proposed use, subject to the following terms and conditions.

2. **Permitted Uses.** The Premises may be used by Lessee for the operation of a wireless communications site. Under this Lease Agreement, Lessee may install, place, use and operate on the Premises such antennas, radio transmitting and receiving equipment, conduits, wires, batteries, back-up generators, utility lines and facilities, supporting structures, storage facilities, and related equipment (collectively "Lessee's Facilities") as Lessee deems necessary for the operation of its wireless communications site at the Premises. Further, Lessee may perform construction, maintenance, repairs, additions to, and replacement of Lessee's Facilities as necessary and appropriate for its ongoing business and has the right to do all work necessary to prepare, modify and maintain the Premises to accommodate Lessee's Facilities and as required for Lessee's communications operations at the Premises. Lessee's Facilities shall be installed and

operated in compliance with all applicable federal, state and local statutes, ordinances, rules and regulations, including FCC regulations pertaining to wireless communication facilities.

3. Conditions Precedent: Prior Approvals. This Lease Agreement is conditioned upon Lessee obtaining all governmental licenses, permits and approvals enabling Lessee to construct and operate wireless communications facilities on the Premises. Such approvals include a building permit issued by Lessor for installation of Lessee's Facilities on the Premises. Lessor agrees to cooperate with Lessee's reasonable requests for Lessor's signatures as real property owner on applications for any other permits, for allowing site inspections by other governmental agencies required in connection with reviewing permit applications, and for assistance in obtaining such necessary approvals, provided that such cooperation and assistance shall be at no expense to Lessor. Lessee's Facilities shall be constructed and installed in accordance with plans and specifications approved by Lessor, which approval shall not be unreasonably withheld or delayed.

4. Term. The term of this Lease Agreement ("Term") shall be five (5) years commencing with the issuance of a building permit by Lessor allowing Lessee to construct Lessee's Facilities on the Premises ("Commencement Date"). Lessee shall promptly deliver to Lessor a written acknowledgment of the Commencement Date. Provided that Lessee is not then in default under this Lease Agreement, Lessee shall have the right to extend the Term of this Lease Agreement for four (4) additional terms (each a "Renewal Term") of five (5) years each. The terms and conditions for each Renewal Term shall be the same terms and conditions as in this Lease Agreement, except that the Rent shall be increased as set forth hereinbelow. This Lease Agreement shall automatically be extended for each successive five (5) year Renewal Term unless Lessee is then in default hereunder or unless Lessee notifies Lessor in writing of Lessee's intention not to extend this Lease Agreement at least thirty (30) days prior to the expiration of the first Term or any Renewal Term.

5. Rent.

(a) Within fifteen (15) days of the Commencement Date, Lessee shall make a lump sum payment to Lessor in the amount of Eighteen Thousand Dollars (\$18,000.00), representing prepayment of rent for the first year of the Term at the rate of One Thousand Five Hundred Dollars (\$1,500.00) per month ("Rent"). Starting with the first anniversary of the Commencement Date, Rent shall be payable on the first day of each month, in advance, to Lessor or Lessor's alternate payee specified in Section 22, Notices and Deliveries. If the first anniversary of the Commencement Date of this Lease Agreement is other than the first day of a calendar month, Lessee may pay on such anniversary date the prorated Rent for the remainder of the calendar month and thereafter Lessee shall pay a full month's Rent on the first day of each calendar month, except that payment shall be prorated for the final fractional month of this Lease Agreement, or if this Lease Agreement is terminated before the expiration of any month for which Rent should have been paid. If any installment of Rent or other charge payable by Lessee hereunder is not received by Lessor within ten (10) days after the same becomes due, Lessor shall be entitled to collect as additional rent, a sum equal to five percent (5%) of the delinquent

payment. Acceptance of any late charge as additional rent shall not constitute a waiver of Lessee's default with respect to the overdue amount, nor prevent Lessor from exercising any other rights and remedies available to Lessor hereunder or provided by law.

(b) Rent shall be adjusted annually on each anniversary of the Commencement Date ("Adjustment Date") by an amount equal to either the CPI Adjustment (as hereinafter defined) or three percent (3%) of the Rent paid during the immediately preceding month, whichever is greater, provided however that in no event shall the adjustment exceed five percent (5%) of the Rent paid for the preceding month. In the event the CPI Adjustment for any year is greater than five percent (5%), the excess shall be carried over to subsequent years and added to the monthly rent for any year in which the CPI Adjustment is less than five percent (5%) until such time as the total excess has been recovered by City. No amount shall be owed by Lessee for any carry-over excess that may remain outstanding as of the expiration or termination of this Lease. The CPI Adjustment shall be the percentage increase, if any, in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for Urban Wage Earners and Clerical Workers, All Items, for the San Francisco-Oakland Statistical Area ("CPI") published for the month nearest preceding the current Adjustment Date as compared to the CPI published for the month nearest preceding the Adjustment Date for the immediately preceding year. If the CPI is discontinued, another similar index shall be mutually agreed upon by the parties. Lessor shall provide Lessee with written notice of each annual adjustment, whether pursuant to CPI or other similar index, at least thirty (30) days prior to each Adjustment Date.

(c) As additional consideration for Lessee's use and occupancy of the Premises during the term of this Lease, Lessee shall provide each of the following benefits to Lessor:

- (1) Lessor shall be allowed to install its own communications antennas ("Lessor's Facilities") above Lessee's antennas, as Lessee's antennas are described or shown on Exhibit B attached hereto. Lessor shall have the right to enter upon the Premises from time to time as may be necessary for the installation, maintenance, repair and replacement of Lessor's Facilities.
- (2) Within fifteen (15) days of the Commencement Date, Lessee shall make an additional rental payment to Lessor in the amount of Seven Thousand (\$7,000.00), to be applied by Lessor toward the cost of purchasing and installing Lessor's Facilities.
- (3) At the time of constructing Lessee's Facilities, Lessee shall also install at Lessee's expense, for the use and ownership of Lessor, the following improvements: (i) two (2) six inch (6") conduits from Lessee's pad on the Premises to a point of termination outside of City Hall, as designated by the City Engineer; and (ii) a concrete sidewalk, four feet (4') in width, with maximum slope of five

percent (5%), from the southeast end of the Premises to the entrance of the proposed dog park, as designated by the City Engineer (the "Improvements"). Upon completion of construction and installation of the Improvements, Lessor shall be solely responsible for the maintenance and repair of the Improvements except for damage caused by Lessee.

6. Due Diligence Contingency and Pre-Commencement Date Access to Premises.

(a) Lessee shall have the right (but not the obligation) at any time following the full execution of this Lease Agreement and prior to the Commencement Date, to enter the Premises for the purpose of making necessary inspections, taking measurements and conducting engineering surveys (and soil tests where applicable) and other reasonably necessary tests to determine the suitability of the Premises for Lessee's Facilities ("Due Diligence"), and for the purpose of preparing the Premises for the installation or construction of Lessee's Facilities. During any Due Diligence activities or pre-construction work, Lessee shall have insurance which covers such activities as set forth in Section 16, Insurance. Lessee will notify Lessor of any proposed tests, measurements or pre-construction work and will coordinate the scheduling of such activities with Lessor. If in the course of its Due Diligence Lessee determines that the Premises are unsuitable for Lessee's contemplated use, then Lessee shall have the right to terminate this Lease Agreement prior to the Commencement Date by delivery of written notice thereof to Lessor as set forth in Section 13, Termination.

(b) Lessee acknowledges and agrees that the Premises are being leased to Lessee in "AS IS" condition and Lessor shall have no obligation to make any alterations or improvements to the Premises for the benefit of Lessee. Lessee further acknowledges that neither Lessor nor anyone acting on Lessor's behalf has made any representation or warranty as to the suitability or fitness of the Premises for the intended use thereof by Lessee and it is the sole responsibility of Lessee to satisfy itself with respect to all such matters.

7. Ongoing Access to Premises; Security Measures.

(a) Throughout the Term and any Renewal Term of this Lease Agreement, Lessee shall have the right of access to the Premises for its employees and agents twenty-four (24) hours a day, seven (7) days per week, at no additional charge to Lessee. In exercising its right of access to the Premises herein, Lessee agrees to cooperate with any reasonable security procedures utilized by Lessor at Lessor's Real Property and further agrees not to unduly disturb or interfere with the business or other activities of Lessor or of other tenants or occupants of Lessor's Real Property. Lessor shall maintain all existing access roadways or driveways extending from the nearest public roadway to the Premises in a manner sufficient to allow for Lessee's access to the Premises. Lessor shall be responsible for maintaining and repairing such roadways and driveways at Lessor's sole expense, except for any damage caused by Lessee's use

of such roadways or driveways. If Lessee causes any such damage, Lessee shall promptly repair the same at its sole expense.

(b) Lessor has no obligation to provide any security measures at the Premises other than those Lessor determines are needed for Lessor's Facilities. Lessee may provide security measures for Lessee's Facilities provided that such measures do not unreasonably limit access to Lessor's Facilities installed on the Premises.

8. Lessee's Work, Maintenance and Repairs, Mechanics' Liens.

(a) All of Lessee's construction and installation work at the Premises shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Lessee shall submit copies of the site plan and specifications to Lessor for building permit approval, which approval will not be unreasonably withheld, conditioned or delayed. Lessor shall give such approval or provide Lessee with its requests for changes within twenty (20) business days of Lessor's receipt of a completed application for the building permit. Lessee shall maintain Lessee's Facilities and the Premises in neat and safe condition in compliance with all applicable codes and governmental regulations. Lessee shall not be required to make any repairs to the Premises except for damages to the Premises caused by Lessee, its employees, agents, contractors or subcontractors. Upon the expiration, cancellation or termination of this Lease Agreement, Lessee shall surrender the Premises in good condition, less ordinary wear and tear; however, Lessee shall not be required to remove any foundation supports for Lessee's Facilities or conduits which have been installed by Lessee.

(b) Throughout the Term of this Lease Agreement, Lessee's Facilities shall be installed and maintained in accordance with the following requirements:

- (1) The monopole shall be painted light grey and the fencing surrounding the pad shall be painted green or, if a cyclone fence is used, shall contain wooden slats painted green. Planted or boxed climbing vines shall be installed adjacent to the fencing so as to provide a landscape screening of the ground equipment. Colors, fence design, and landscaping shall be subject to reasonable approval by the Planning Director.
- (2) No signs shall be placed on the Premises, except for identification and no trespassing signs as approved by the Planning Director.
- (3) The monopole, surface equipment, fencing and landscaping shall be kept in good condition and repair, including repainting of surface areas as needed and replacement of any dead or diseased plants.

(c) Lessee shall keep the Premises free and clear of all mechanics' liens resulting from any construction work done by or for Lessee. Lessee shall have the right to contest the correctness or validity of any such lien if, immediately on demand by Lessor, Lessee: (i) procures and records a lien release bond issued by a corporation authorized to issue surety bonds in California in an amount equal to one and one-half (1-1/2) times the amount of the claim of lien, or (ii) provides other security in form and amount satisfactory to Lessor. If used, the bond shall meet the requirements of Section 3143 of the California Civil Code and shall provide for the payment of any sum that the claimant may recover on the claim, together with costs of suit. Should Lessee fail to discharge any such lien or cause the same to be released within sixty (60) days from the date the lien is filed, Lessor may, without inquiring into the validity thereof, cause the same to be discharged and all amounts so expended by Lessor, together with reasonable attorney's fees and expenses, shall be paid by Lessee to Lessor as additional rent hereunder, together with interest thereon at the rate of ten percent (10%) per annum. Lessee shall give ten (10) days prior written notice to Lessor of the date on which any construction work will be commenced so as to afford Lessor the opportunity to post a notice of non-responsibility.

9. Title to Lessee's Facilities.

(a) Title to Lessee's Facilities and any equipment placed on the Premises by Lessee shall be held by Lessee. During the term of this Lease Agreement, all of Lessee's Facilities shall remain the property of Lessee and are not fixtures. Except as otherwise provided herein Subsection 9(b), Lessee has the right to remove all Lessee's Facilities at its sole expense on or before the expiration or termination of this Lease Agreement. Lessor acknowledges that Lessee may enter into financing arrangements including promissory notes and financial and security agreements for the financing of Lessee's Facilities (the "Collateral") with a third party financing entity and may in the future enter into additional financing arrangements with other financing entities. In connection therewith, Lessor (i) consents to the installation of the Collateral to the extent that the Collateral is part of the approved Lessee's Facilities; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

(b) Subject to the prior rights of any third party financing entity in the Collateral, as set forth in Subsection 9(a) above, upon the expiration or earlier termination of this Lease Agreement, Lessor may elect to acquire ownership of the pole antenna installed by Lessee on the Premises for continued operation of Lessor's Facilities located or to be located thereon. Lessor shall give written notice of such election to Lessee and Lessee shall promptly execute and deliver to Lessor a Bill of Sale for the antenna structure at no cost to Lessor.

10. Utilities. Lessee shall have the right to install utilities, at Lessee's expense, and to improve the present utilities on or near the Premises (including, but not limited to the installation of emergency back-up power). Subject to Lessor's approval of the location, which approval shall not be unreasonably withheld, Lessee shall have the right to place utilities on (or

to bring utilities across) Lessor's Real Property in order to service the Premises and Lessee's Facilities. Lessee shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of Lessee's Facilities. Upon Lessee's request, Lessor shall allow Lessee to install sub-metering equipment on existing Lessor utility service(s). Lessee agrees to install, at Lessee's cost, the required equipment, meters and connections and will reimburse Lessor for Lessee's use of utilities at a rate equal to Lessor's unit cost for the utilities. Lessee shall pay the cost of utility service provided to the Premises and attributable to Lessee's use ("Utility Charge"). Lessee shall pay the estimated cost of the Utility Charge monthly in advance. The parties estimate the Utility Charge at the commencement of construction to be Two Hundred Dollars (\$200.00) per month. During the term of this agreement, at Lessor's request (which request shall not be more frequent than once every twelve months), Lessee shall calculate the actual Utility Charge for the immediately preceding twelve (12) months based on the readings from the privately installed sub-meter at Lessor's property. If the actual Utility Charge varies from the estimated Utility Charges paid, the parties shall reconcile past payments of utility charges and adjust future estimates of the Utility Charge to reflect Lessee's actual usage.

11. Interference with Communications. Lessee's Facilities and operations shall not interfere with the communications configurations, frequencies or operating equipment which exist on Lessor's Real Property on the effective date of this Lease Agreement ("Pre-existing Communications"), and Lessee's Facilities and operations shall comply with all non-interference rules of the Federal Communications Commission ("FCC"). Upon written notice from Lessor of apparent interference by Lessee with Pre-existing Communications, Lessee shall have the responsibility to promptly terminate such interference or demonstrate to Lessor with competent information that the apparent interference in fact is not caused by Lessee's Facilities or operations. Lessor shall not, nor shall Lessor permit any other tenant or occupant of any portion of Lessor's Real Property to, engage in any activities or operations which interfere with the communications operations of Lessee described in Section 2, above, including Lessor's future communications operations on Lessee's Facilities. Such interference with Lessee's communications operations shall be deemed a material breach by Lessor, and Lessor shall have the responsibility to promptly terminate said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference will cause irreparable injury to Lessee, and therefore Lessee shall have the right to bring a court action to enjoin such interference or to terminate this Lease Agreement immediately upon notice to Lessor. Lessor agrees to incorporate equivalent provisions regarding non-interference with Pre-existing Communications into any subsequent leases, licenses or rental agreements with other persons or entities for any portions of Lessor's Real Property.

12. Taxes. Lessee shall pay personal property taxes assessed against Lessee's Facilities.

13. Termination. This Lease Agreement may be terminated by Lessee effective immediately without further liability by delivery of written notice thereof to Lessor prior to the Commencement Date for any reason resulting from Lessee's Due Diligence, or if a title report obtained by Lessee for Lessor's Real Property shows any defects of title or any liens or

encumbrances which may adversely affect Lessee's use of the Premises for Lessee's intended use, or for any other or no reason. This Lease may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by Lessor if any payment of Rent hereunder is not paid in full within ten (10) days after the same becomes due and such default is not cured within five (5) days after written notice of the default is given by Lessor to Lessee; (ii) by either party upon a default of any covenant, condition, or term hereof by the other party (other than payment of Rent), which default is not cured within sixty (60) days of receipt of written notice of default; (iii) by Lessee if it does not obtain licenses, permits or other approvals necessary to the construction or operation of Lessee's Facilities or is unable to maintain such licenses, permits or approvals despite reasonable efforts to do so; (iv) by Lessee if Lessee is unable to occupy or utilize the Premises due to ruling or directive of the FCC or other governmental or regulatory agency, including, but not limited to, a take back of frequencies; or (v) by Lessee if Lessee determines that the Premises are not appropriate for its operations for economic, environmental or technological reasons, including, without limitation, signal strength or interference. Other than as stated herein, Lessor shall not have the right to terminate, revoke or cancel this Lease Agreement.

14. Destruction of Premises. If the Premises or Lessor's Property is destroyed or damaged so as in Lessee's judgment to hinder its effective use of Lessor's Property for the ongoing operation of a wireless communications site, Lessee may elect to terminate this Lease Agreement as of the date of the damage or destruction by so notifying Lessor no more than thirty (30) days following the date of damage or destruction. In such event, all rights and obligations of the parties which do not survive the termination of this Lease Agreement shall cease as of the date of the damage or destruction.

15. Condemnation. If a condemning authority takes all of Lessor's Real Property, or a portion which in Lessee's reasonable opinion is sufficient to render the Premises unsuitable for Lessee's ongoing operation of a wireless communications site, then this Lease Agreement shall terminate as of the date when possession is delivered to the condemning authority. In any condemnation proceeding each party shall be entitled to make a claim against the condemning authority for just compensation recoverable under applicable condemnation law. Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain shall be treated as a taking by a condemning authority.

16. Insurance

(a) Insurance Provided by Lessee.

- (1) At all times during the term of this Lease Agreement, Lessee shall maintain in full force and effect, at Lessee's sole expense, each of the following types of insurance policies and coverages:
 - (i) Commercial General Liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) per

occurrence for bodily injury, personal injury and property damage arising out of or in connection with Lessee's use and occupancy of the Premises and also insuring performance by Lessee of the indemnity provisions set forth in Section 20 of this Agreement. However, the amount of such general liability insurance shall not limit Lessee's liability nor relieve Lessee of any obligations under this Lease Agreement. Such policy shall provide coverage at least as broad as Insurance Services Office Commercial General Liability form CG 0001 (Ed. 11/88). If the form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Premises or the general aggregate limit shall be at least twice the required occurrence limit.

- (ii) Automobile Liability with a combined single limit of One Million Dollars (\$1,000,000.00) per accident.
 - (iii) Workers Compensation as required by law, and
 - (iv) Employer's Liability with limits of One Million Dollars (\$1,000,000.00) per occurrence, for any and all persons employed by Lessee in connection with the use and operation of the Premises. In the alternative, Lessee may rely on a self-insurance program to provide this coverage so long as the program of self-insurance complies fully with the provisions of the California Labor Code.
- (2) The liability insurance policies referred to in Subparagraphs (i) and (ii) above shall contain, or be endorsed to contain, the following provisions:
- (i) The City of Brisbane, its officers, officials, employees, agents and volunteers shall be named as insured parties thereunder. The coverage shall contain no special limitations on the scope of protection afforded to the City and its officers, officials, employees, agents and volunteers.
 - (ii) For any claims related to the Premises, Lessee's insurance coverage shall be primary insurance as respects the City of Brisbane and its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or

volunteers shall be excess of Lessee's insurance and shall not contribute with it.

- (iii) Any failure to comply with reporting or other provisions of the policies shall not affect coverage provided to the City or Brisbane, its officers, officials, employees, agents and volunteers.
- (iv) Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(b) **Insurance Provided By Lessor:** At all times during the Term of this Lease Agreement, Lessor shall maintain in full force and effect, at Lessor's sole cost and expense, general liability insurance coverage on the Property for bodily injury and property damage with a combined single limit of at least One Million Dollars (\$1,000,000.00) per occurrence. Such insurance coverage may be in the form of an insurance pool operated by a joint powers authority consisting of the City of Brisbane and other public agencies. The general liability insurance shall insure, on an occurrence basis, against liability of Lessor, its employees and agents arising out of or in connection with Lessor's use, occupancy and maintenance of the Property. Lessee shall be named as an additional insured under Lessor's insurance coverage.

(c) **Mutual Obligations.** Each party shall provide to the other a certificate of insurance or endorsements evidencing the coverage required by this paragraph on or before the Commencement Date and at any time thereafter during the term of this Lease Agreement, as may be requested by the other party. At the request of either party, the other party shall provide a complete copy of all required insurance policies, including endorsements effecting the coverage required by this Lease Agreement. To the extent allowed by the insurance provider, each party waives any rights of recovery against the other for injury or loss due to hazards covered by their property insurance.

17. **Assignments or Transfers.** Lessor may assign or transfer this Lease Agreement to any person or entity without any requirement for prior approval by Lessee, provided that such assignee or transferee agrees in writing to fulfill the duties and obligations of the Lessor in said Lease Agreement, including the obligation to respect Lessee's rights to nondisturbance and quiet enjoyment of the Premises during the remainder of the Term and any Renewal Term hereof. Lessee may assign or transfer this Lease Agreement without prior approval by Lessor to any of its partners, subsidiaries, affiliates, or to a person or entity acquiring by purchase, merger or operation of law a majority of the value of the assets of Lessee. Lessee shall not assign or transfer this Lease Agreement to any other person or entity without the prior written approval of Lessor, which approval shall not be unreasonably withheld. No assignment or subletting by Lessee with the approval of Lessor shall release Lessee from its obligations under this Lease Agreement, unless expressly so stated in Lessor's consent to the assignment. Notwithstanding anything to the contrary contained in this Agreement, Lessee may assign, mortgage, pledge,

hypothecate or otherwise transfer without consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Lessee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

18. Subleases. Lessee shall have the right to sublease or otherwise allow any other communications provider to occupy space on any antenna structure or equipment enclosure installed by Lessee at the Premises without Lessor's prior written consent, provided that any such sublessee shall be bound by all the duties and obligations of this Lease Agreement and that Lessee shall be primarily liable to Lessor for such sublessee's performance under this Lease Agreement. In any such sublease, Lessee shall be entitled to charge the subtenant rent or fees in order to recover the expenses which Lessee advanced to develop Lessee's Facilities at the Premises, to provide utilities to the Premises, and to recover its costs incurred to effect such subletting. The parties acknowledge that any sublessee of Lessee must enter into a separate lease agreement for ground space from Lessor.

19. Nondisturbance and Quiet Enjoyment; Subordination; Estoppel Certificates; Entry Upon Premises by Lessor.

(a) So long as Lessee is not in default under this Lease Agreement, Lessee shall be entitled to quiet enjoyment of the Premises during the term of this Lease Agreement or any Renewal Term, and Lessee shall not be disturbed in its occupancy and use of the Premises.

(b) This Lease Agreement shall be subordinate to each and every deed of trust, mortgage or other security instrument which may now or hereafter affect Lessor's Real Property and to any renewals, extensions, supplements, amendments, modifications or replacements thereof. In confirmation of such subordination, Lessee shall execute and deliver promptly any certificate of subordination that Lessor may request, provided that such certificate acknowledges that this Lease Agreement remains in full force and effect and recognizes Lessee's right to nondisturbance and quiet enjoyment of the Premises so long as Lessee is not in default under this Lease Agreement. If any mortgagee or lender succeeds to Lessor's interest in Lessor's Real Property through a foreclosure proceeding or by a deed in lieu of foreclosure, Lessee shall attorn to and recognize such successor as Lessor under this Lease Agreement.

(c) At any time upon not less than ten (10) days' prior written notice by Lessor, Lessee shall execute, acknowledge and deliver to Lessor or any other party specified by Lessor a statement in writing certifying that this Lease Agreement is in full force and effect and the status of any continuing defaults under this Lease Agreement.

(d) Lessor and Lessor's authorized representatives shall have the right to enter the Premises at reasonable hours for any of the following purposes:

- (1) To examine and inspect the Premises;

- (2) To inspect the performance by Lessee of the terms and conditions of this Lease Agreement;
- (3) To serve, post or keep posted any notices required or allowed under the provisions of this Lease Agreement or authorized by law;
- (4) To do any other act or thing necessary for the safety or preservation of the Premises, or to comply with the directives of any governmental authority having jurisdiction over the Premises.
- (5) To perform any necessary maintenance, repair or replacement of Lessor's Facilities located upon the Premises.

20. Indemnifications.

(a) **Lessee's Indemnity.** Lessee hereby agrees to indemnify, defend, and hold Lessor and Lessor's officials, officers, employees, agents, contractors, subcontractors and volunteers harmless from and against any and all losses, claims, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) and injuries (including personal injuries or death) arising from or in connection with Lessee's installation, use, operation, maintenance or repair of Lessee's Facilities at the Premises or any other activity conducted by Lessee on the Premises or access over Lessor's Real Property or Lessee's shared use of Lessor's easements for access to the Premises, except those resulting from the gross negligence or willful misconduct of Lessor or Lessor's officials, officers, employees, agents, contractors, subcontractors or volunteers.

(b) **Lessor's Indemnity.** Lessor hereby agrees to indemnify, defend, and hold Lessee and Lessee's officers, directors, partners, shareholders, employees, agents, contractors or subcontractors harmless from and against any and all losses, claims, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) and injuries (including personal injuries or death) arising from or in connection with Lessor's use, operation, maintenance or repair of improvements on Lessor's Real Property or Lessor's shared use of easements for access to Lessor's Real Property, except those resulting from the gross negligence or willful misconduct of Lessee or Lessee's officers, directors, partners, shareholders, employees, agents, contractors or subcontractors.

(c) **Survival of Indemnity Provisions.** The indemnity provisions of this section shall survive the expiration, cancellation or expiration of this Lease Agreement.

21. Environmental Issues; Historic Preservation; Hazardous Materials. Lessor represents that Lessor's Real Property is not subject to any environmental conditions, adverse impacts, or mitigation monitoring programs resulting from any prior environmental assessments conducted under the National Environmental Policy Act (NEPA) or the California Environmental

Quality Act (CEQA) which could reasonably forbid, interfere with, or complicate Lessee's proposed use of the Premises. Further, Lessor represents that Lessor's Real Property has not been listed or been determined to be eligible for listing on the National Register of Historic Places, has not been identified or determined to be an historical landmark or located within an historic district or preservation district under applicable federal, state or local laws or regulations, and has not been identified as an archeological site nor as a location of any archeological artifacts or other similar resources by any prior survey or study. Further, Lessor represents that neither Lessor's Real Property nor the Premises have been used for the generation, storage, treatment or disposal of hazardous materials, hazardous substances or hazardous wastes as now or hereafter defined in the federal Solid Waste Disposal Act (SWDA; 42 U.S.C. § 6901 et. seq.) or other federal or state environmental statutes or regulations. In addition, Lessor represents that no hazardous materials, hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil or any fraction or derivative thereof) or underground storage tanks are located on Lessor's Real Property or the Premises for which a permit would be required or would be subject to remediation or regulation by any governmental agency. Notwithstanding any other provision of this Lease Agreement, Lessee relies upon the representations stated herein as a material inducement for entering into this Lease Agreement. Lessee shall not bring any hazardous materials onto the Premises except for those contained in its back-up power batteries (lead acid batteries) and common materials used in telecommunications operations, such as cleaning solvents. Lessee shall handle any hazardous materials it brings onto the Premises in accordance with all applicable federal, state and local laws and regulations. Lessor and Lessee each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. This paragraph shall survive termination of this Lease Agreement.

22. Notices and Deliveries. Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, confirmed fax, or reliable overnight delivery service to the address of the respective parties set forth below:

Lessor: City of Brisbane
Attn: City Manager
50 Park Place
Brisbane, CA 94005
Telephone: 415-508-2111
Facsimile: 415-467-4989
Federal Taxpayer ID Number: 94-1525-367

Lessee: MetroPCS California/Florida, Inc.
8144 Walnut Hill Lane, Suite 600
Dallas, Texas 75231
Attn: Property Manager
Telephone: 214-265-2550

Facsimile: 214-265-2570

With a copy to: MetroPCS
1080 Marina Village Parkway,
4th Floor
Alameda, CA 94501
Attn: Property Manager

Notices sent by certified or registered mail shall be deemed given on the date of the return receipt; notice by fax shall be deemed given on the confirmation date; notice by overnight courier service shall be deemed given on the next business day following delivery of the notice to the service. Lessor or Lessee may from time to time designate any other address for notices or deliveries by written notice to the other party.

23. Miscellaneous.

(a) **Severability.** If any provision of this Lease Agreement is held to be invalid or unenforceable by a court of competent jurisdiction with respect to any party, the remainder of this Lease Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected, and each provision of this Lease Agreement shall be valid and enforceable to the fullest extent permitted by law.

(b) **Binding Effect.** Each party represents and warrants that said party has full power and authority, and the person(s) executing this Lease Agreement have full power and authority, to execute and deliver this Lease Agreement, and that this Lease Agreement constitutes a valid and binding obligation of each party, enforceable in accordance with its terms. This Lease Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(c) **Waivers.** No provision of this Lease Agreement shall be deemed to have been waived by a party unless the waiver is in writing and signed by the party against whom enforcement of the waiver is attempted. No custom or practice which may develop between the parties in the implementation or administration of the terms of this Lease Agreement shall be construed to waive or lessen any right to insist upon strict performance of the terms of this Lease Agreement.

(d) **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of California.

(e) **Attorneys' Fees and Costs.** The prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorneys' fees and court costs. Should Lessor, without fault on Lessor's part, be made a party to any litigation instituted by Lessee or by any third party against Lessee, or by or against any person holding under or using the Premises by license of Lessee, or for the foreclosure of any lien for labor or materials furnished to or for

Lessee or any such other person or otherwise arising out of or resulting from any act or transaction of Lessee or of any such other person, Lessee covenants to save, defend, and hold Lessor harmless from any judgment rendered against Lessor or the Premises or any part thereof, and all costs and expenses, including reasonable attorney's fees, incurred by Lessor in connection with such litigation.

(f) **Survival.** Terms and conditions of this Lease Agreement which by their sense and context survive the termination, cancellation or expiration of this Lease Agreement will so survive.

(g) **Entire Agreement; Amendments.** This Lease Agreement constitutes the entire agreement and understanding between the parties regarding Lessee's lease of the Premises and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease Agreement must be in writing and executed by authorized representatives of both parties.

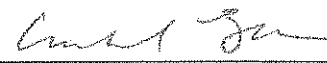
(h) **No Presumptions Regarding Preparation of Lease Agreement.** The parties acknowledge and agree that each of the parties have been represented by counsel or has had full opportunity to consult with counsel and that each of the parties has participated in the negotiation and drafting of this Lease Agreement. Accordingly it is the intention and agreement of the parties that the language, terms and conditions of this Lease Agreement are not to be construed in any way against or in favor of any party hereto by reason of the roles and responsibilities of the parties or their counsel in connection with the preparation of this Lease Agreement.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement on the dates set forth below and acknowledge that this Lease Agreement is effective as of the date first above written.


LESSOR:

THE CITY OF BRISBANE,
a municipal corporation

Date: 5/20/04

By: 

Michael Barnes, Mayor

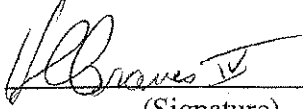
ATTEST:

Sheri Marie Schroeder, City Clerk

APPROVED AS TO FORM:


Harold S. Toppel, City Attorney

LESSEE:

MetroPCS CALIFORNIA/FLORIDA, INC.,
a Delaware corporation, d/b/a MetroPCS

By: 
(Signature)

Print Name: A.C. Groves IV

Title: VP/GM

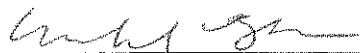
Date: 05/26/04

CONSENT TO LEASE

The BRISBANE PUBLIC FINANCE AUTHORITY, a public agency, hereby consents to the foregoing Communications Site Lease Agreement between MetroPCS California/Florida, Inc. and the City of Brisbane, pertaining to a portion of the real property commonly known as 50 Park Place, Brisbane, California.

BRISBANE PUBLIC FINANCE AUTHORITY

Date: 5/20/04

By: 
Michael Barnes, Chair

ATTEST:


Sheri Marie Schroeder, Secretary

EXHIBIT A

DESCRIPTION OF LESSOR'S REAL PROPERTY

Attached to the Lease Agreement dated May 26, 2004, by and between City of Brisbane, a municipal corporation, as Lessor, and MetroPCS California/Florida, Inc., a Delaware corporation, d/b/a MetroPCS, as Lessee.

Lot 1 and portions of Lots 2, 5 and 6, Block "B", Map of TRACT NO. 778, CROCKER INDUSTRIAL PARK, UNIT NO. 1, filed June 5, 1959, in Book 51 of Maps, page 35, San Mateo County Records, described as follows:

BEGINNING at the intersection of the Northwesterly line of Lot 1, Block "B" with the Southwesterly line of Valley Drive, as said lot, block and drive are shown on the Map above referred to; thence along the Southwesterly line of Valley Drive, North 61° 17' 44" West 47.00 feet to the Northeasterly corner of that certain parcel of land described as "Parcel One" in the Deed from Foremost-McKesson, Inc. to Connecticut General Mortgage and Realty Investments, recorded April 21, 1972, in Book 6133, Official Records, page 350;; thence leaving said line of Valley Drive, along the Southeasterly line of said "Parcel One" and the Southwesterly extension thereof, South 28° 42' 16" West 250.00 feet to the intersection thereof with the Northeasterly line of "Parcel Two", as described in aforesaid deed; thence South 61° 17' 44" East along said Northeasterly line (said line being parallel with and distant 10 feet Southwesterly, measured at right angles, from the Southwesterly line of Lots 2 and 1 in said Block "B"), 272.00 feet to the Northeasterly corner of said "Parcel Two" in the Northwesterly line of Park Lane, as said lane is shown on aforesaid Map; thence along said Northwesterly line of Park Lane, North 28° 42' 16" East 230.00 feet; thence along a curve to the left, with a radius of 20.00 feet, through a central angle of 90° 00' 00" for an arc distance of 31.42 feet to a point in the aforesaid Southwesterly line of Valley Drive; thence along last said Southwesterly line, North 61° 17' 44" West 252.00 feet to the Point of Beginning.

EXCEPTING THEREFROM all oil, gas, minerals and other hydrocarbon substances lying below the surface of said land, with right of surface entry, as provided in patent recorded July 28, 1958 in Book 3430 at page 723 Document No. 61447-Q, Records of San Mateo County, California.

A.P. No.: 005-201-130

JPN 005 020 201 13 A

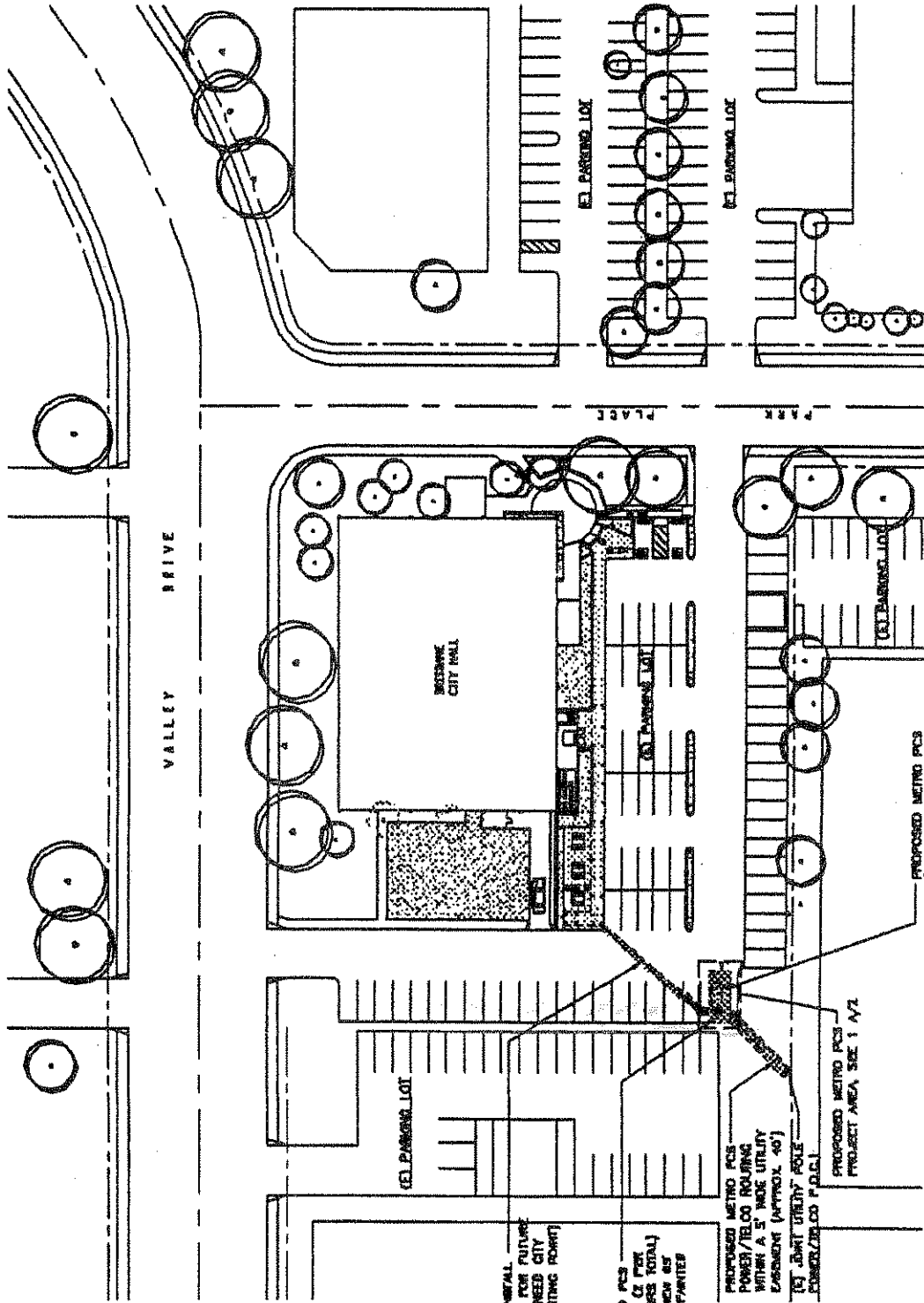
EXHIBIT B

DESCRIPTION OF PREMISES

Attached to the Lease Agreement dated May 26, 2004, by and between City of Brisbane, a municipal corporation, as Lessor, and MetroPCS California/Florida, Inc., a Delaware corporation, d/b/a MetroPCS, as Lessee.

The Premises consist of those specific areas shown on the attached Site Plan where Lessee's communications antennae, equipment and cables occupy Lessor's Real Property. The Premises and the associated utility connections and access, including easements, ingress, egress, dimensions, and locations as described/shown, are approximate only and may be adjusted or changed by Lessee at the time of construction to reasonably accommodate sound engineering criteria and the physical features of Lessor's Real Property.

(A final drawing or copy of a property survey or site plan depicting the above shall replace this Exhibit B when initialed by Lessor or Lessor's designated agent and may be modified from time to time when initialed by both Lessor and Lessee.)



METRO PCS TO INSTALL
 (2) 6" CONCRETE PIPES FOR FUTURE
 CITY UTILITIES (NEED CITY
 DESIGN FOR STARTING POINT)

PROPOSED METRO PCS
 PANEL UTILITIES (2 FEET
 SECTIONS, 2 SECTIONS REMAIN)
 ADAPTED ON A NEW 8'5"
 FROM IMPROVED PAVED
 PAVED GREEN

PROPOSED METRO PCS
 POWER/TELECO ROUTING
 WITHIN A 5' WIDE UTILITY
 EASEMENT (APPROX. 40')
 (EEL) JOINT UTILITY ROLE
 POWER/TELECO P.D.C.I.

PROPOSED METRO PCS
 PROJECT AREA, SEE 1 A/2

PROPOSED METRO PCS
 EQUIPMENT CABINETS
 MOUNTED ON A CONCRETE
 SLAB WITHIN A CHAIN LINK
 FENCE WITH GREEN SLATS

EXHIBIT "B"