

Resolution No. 62 -2011

Resolution to Adopt Amendment to Structure Lease Agreement for Cellular Communications
(Cumberland/McKinley Tower – New Cingular Wireless (AT&T))

TO THE HONORABLE SUPERVISORS OF THE COUNTY BOARD OF THE COUNTY OF
POLK:

Ladies and Gentlemen:

WHEREAS Polk County maintains a communications tower located in McKinley Township, located at 80 240th Avenue Cumberland, Wisconsin;

WHEREAS, pursuant to a Structure Lease Agreement, dated May 20, 2009, Polk County does lease to New Cingular Wireless PCS, LLC., a subsidiary of AT&T, ground space and antenna space at said location; and

WHEREAS, New Cingular Wireless PCS, LLC., has requested certain modifications to the Structure Lease Agreement that establish additional extended terms; modifies rights of the parties to terminate the lease agreement; modifies the amount of rent; establishes a guaranteed rental payment; modifies the provision for future increases in rent; and expands the rights of usage of ground space and antenna space by New Cingular Wireless PCS, LLC.

WHEREAS, as lease administrator, the Polk County Sheriff's Department has considered the requested modifications and has negotiated the terms and conditions of proposed amendments to the Structure Lease Agreement, as contained in the document entitled "First Amendment to 2009 Structure Lease Agreement (Cumberland McKinley Tower)" attached hereto and incorporated herein.

WHEREAS, upon the recommendation of the Polk County Public Protection and Judicial Committee, it is in the interest of Polk County to amend the Structure Lease Agreement consistent with the provisions of the First Amendment to 2009 Structure Lease Agreement (Cumberland McKinley Tower).

NOW THEREFORE BE IT RESOLVED that the Polk County Board of Supervisors, on behalf of Polk County, agrees to an amendment of the terms and conditions of the Structure Lease Agreement as set forth in the "First Amendment to 2009 Structure Lease Agreement (Cumberland McKinley Tower)", attached hereto and incorporated herein.

BE IT FURTHER RESOLVED that the First Amendment to 2009 Structure Lease Agreement (Cumberland McKinley Tower) shall be effective on August 1, 2013.

Funding Amount and Source: No Fiscal Impact for 2012

Finance Committee Advised: Not Applicable

Finance Committee Recommendation: _____

Date Submitted to County Board: December 20, 2011

County Board Action: adopted

Effective Date:

Resolution is Effective upon Passage -

Amendment to Lease is Effective August 1, 2013

Submitted upon recommendation of the Polk County Public Protection and Judicial Committee

Jay Luke
Jay Luke

James S. Edgell
James Edgell

Kim O'Connell 12-6-11
Kim O'Connell

Gary P. Bergstrom
Gary Bergstrom

Brian Masters 12/6/11
Brian Masters

Review By County Administrator:

- Recommended
- Not Recommended
- Reviewed Only

Dana Frey
Dana Frey, County Administrator

Review By Corporation Counsel:

- Approved as to Form
- Recommended
- Not Recommended
- Reviewed Only

Jeffrey B. Fuge
Jeffrey B. Fuge, Corporation Counsel

On December 20, 2011, the Polk County Board of Supervisors adopted Resolution No. 62-
2011: Resolution to Adopt Amendment to Structure Lease Agreement for Cellular Communications
(Cumberland/McKinley Tower – New Cingular Wireless (AT&T)), by a vote of ___ in favor and
___ against. unanimous voice vote

William F. Johnson, IV
William F. Johnson, IV, Chairperson

Attest: Carole T. Wondra
Carole T. Wondra, County Clerk

Cell Site No.: 124804
Cell Site Name: WI3642
Fixed Asset No.: 10129150
Market: ND / SD / NE / MN / IA
Address: 80 240th Avenue
Cumberland, Town of McKinley

FIRST AMENDMENT TO STRUCTURE LEASE AGREEMENT

THIS FIRST AMENDMENT TO STRUCTURE LEASE AGREEMENT ("First Amendment") dated as of the later date below is by and between Polk County, Wisconsin, having a mailing address at 100 Polk County Plaza, Suite 110, Balsam Lake, WI 54810 (hereinafter referred to as "Landlord") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address at 12555 Cingular Way, Suite 1300, Alpharetta, GA 30004 (hereinafter referred to as "Tenant").

WHEREAS, Landlord and Tenant (or their predecessors in interest) entered into a Structure Lease Agreement dated June 10, 2009 (hereinafter, the "Agreement"), whereby Landlord leased to Tenant certain Premises, therein described, that are a portion of the Property located at 80 240th Avenue, Cumberland, WI 54829; and

WHEREAS, Landlord and Tenant desire to modify the Agreement and to extend the term of the Agreement, as set forth herein and as summarized as follows:

WHEREAS, Landlord and Tenant desire to modify, as set forth herein, the Rent (as defined below) payable under the Agreement; and

WHEREAS, Landlord and Tenant desire to modify, as set forth herein, the Tenant's obligations to pay Rent to Landlord for a Rent Guarantee Period (as defined below); and

WHEREAS, Landlord and Tenant desire to amend the Agreement to provide Tenant the right to enlarge the Premises; and

WHEREAS, Landlord and Tenant, in their mutual interest, further wish to amend the Agreement as set forth below; and

Whereas, Landlord and Tenant acknowledge and agree that it is in their interest to amend the Agreement consistent with the provisions of this First Amendment, shall have prospective effect, first commencing on August 1 2013.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. **Term.** The term of the Agreement shall be amended to provide that the Agreement has a new initial term of sixty (60) months ("New Initial Term"), commencing on August 1, 2013. The Term will be automatically renewed for up to five (5) additional terms, (each an "Extension Term"), each such term consisting of sixty (60) months, upon the same terms and conditions of the Agreement, as amended herein, without further action by Tenant, unless Tenant notifies Landlord in writing of Tenant's intention not to renew the Agreement at least sixty (60) days prior to the expiration of the then current Extension Term. Hereafter, the defined term "Term" shall include the New Initial Term and any applicable Extension Term. Landlord agrees and acknowledges that except that as such permitted use or other rights may be amended herein, Tenant may continue to use and exercise its rights under the Agreement as permitted prior to the New Initial Term.

Cell Site No.: 124804
Cell Site Name: WI3642
Fixed Asset No.: 10129150
Market: ND / SD / NE / MN / IA
Address: 80 240th Avenue
Cumberland, Town of McKinley

2. **Termination.** Subparagraph 6(f) is repealed and recreated to read as follows:

"(f) by Landlord upon one (1) years written notice to Tenant for the sole reason that any part of the Premise is necessarily required for the purposes of transmission of public safety communications, which is incompatible with Tenant's Permitted Use, provided that Tenant shall have a reasonable opportunity to resolve any such incompatibility.

Subparagraph 6 (g) is added to read as follows: After the Rent Guarantee Period, as defined below, Tenant may terminate the Agreement at any time with thirty (30) days prior written notice to Landlord for any or no reason."

3. **Modification of Rent.** Commencing on August 1, 2013, the rent payable under the Agreement shall be Fifteen Thousand Eight Hundred Eight and No/100 Dollars (\$15,808.00) annually (the "Rent"), and shall continue during the Term, subject to adjustment, if any, as provided below.

4. **Modification of Tenant's Obligation to Pay – Rent Guarantee.** Notwithstanding Tenant's obligations to pay Rent set forth under the Agreement, for a thirty-six (36) month period commencing August 1, 2013, and ending July 31, 2016 ("Rent Guarantee Period"), Tenant's obligation to pay Rent is guaranteed and such obligation will not be subject to offset or cancellation by Tenant, except as due to loss from casualty or condemnation. Notwithstanding the foregoing, if Landlord exercises any of Landlord's rights to terminate the Agreement, if any, Tenant will be released from any and all of its obligations to pay Rent during the Rent Guarantee Period as of the effective date of the termination. In addition, Tenant shall be released from any and all of its obligations to pay Rent during the Rent Guarantee Period if any of the following shall occur: (a) Landlord is in breach of the Agreement, including but not limited to any default under the terms of the Agreement beyond any applicable grace and cure period; (b) there is a foreclosure of the Property; (c) the Landlord shall require Tenant to relocate Tenant's equipment and facilities to a location that is not acceptable to Tenant in its reasonable business judgment if allowed for in the Agreement, or (d) any existing government permits and/or approvals cannot be obtained or maintained, at no fault of the Tenant. If the Agreement is further modified in the future with an obligation for Tenant to pay additional Rent, the payment of Rent guarantee established in this paragraph will not be diminished or limited, but such Rent guarantee will not extend to that future additional Rent obligation.

5. **Future Rent Increase / Annual Payments.** The Agreement is amended to provide that commencing on August 1, 2014, Rent shall increase by two percent (2%) over the Rent paid during the previous year.

6. **Expansion of the Premises.** Landlord will agree to grant to Tenant the right, to the extent practicable and on a space available basis, at no additional cost or expense, to enlarge or to make space available on the ground space of the Property for Tenant so that Tenant or its authorized subtenants may implement any necessary modifications, supplements, replacements, refurbishments, or expansions to the Communications Facility or to any equipment related thereto, or for any other reasons, as determined by Tenant in its sole discretion.

7. **Acknowledgement.** Landlord acknowledges that: 1) this First Amendment is entered into of the Landlord's free will and volition; 2) Landlord has read and understands this First Amendment and the

Cell Site No.: 124804
Cell Site Name: WI3642
Fixed Asset No.: 10129150
Market: ND / SD / NE / MN / IA
Address: 80 240th Avenue
Cumberland, Town of McKinley

underlying Agreement and, prior to execution of this First Amendment, has consulted with counsel of its choosing regarding Landlord's decision to enter into this First Amendment and to have counsel review the terms and conditions of this First Amendment; 3) Landlord has been advised and is informed that should Landlord not enter into this First Amendment, the underlying Agreement between Landlord and Tenant, including any termination or non-renewal provision therein, would remain in full force and effect and that the underlying Agreement will remain in full force and effect, if and when this First Amendment is adopted and mutually agreed to in writing by Landlord and Tenant.

8. **Notices and Designation of Lease Administrator.** Paragraph 17 of the Agreement is hereby deleted in its entirety and replaced with the following:

"NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Tenant:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site # 124804
Cell Site Name WI3642 (WI); Fixed Asset No.: 10129150
12555 Cingular Way, Suite 1300
Alpharetta, GA 30004

With a required copy of the notice sent to the address above to AT&T Legal at:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site # 124804
Cell Site Name WI3642 (WI); Fixed Asset No: 10129150
15 East Midland Avenue
Paramus, NJ 07652

And as to Landlord:

Landlord designates the Polk County Chief Deputy Sheriff as and for its administrator of the Agreement.

Polk County, Wisconsin
Attn: Polk County Sheriff's Department
1005 W Main Street
Suite 900
Balsam Lake, WI 54810

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein."

Cell Site No.: 124804
Cell Site Name: WI3642
Fixed Asset No.: 10129150
Market: ND / SD / NE / MN / IA
Address: 80 240th Avenue
Cumberland, Town of McKinley

9. **Memorandum of Agreement.** Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Agreement substantially in the form of the Attachment 1. Either party may record this memorandum at any time, in its absolute discretion.

10. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this First Amendment, the terms of this First Amendment shall control. Except as expressly set forth in this First Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this First Amendment.

11. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

[NO MORE TEXT ON THIS PAGE - SIGNATURES TO FOLLOW ON NEXT PAGE]

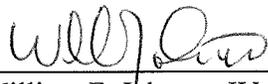
Cell Site No.: 124804
Cell Site Name: WI3642
Fixed Asset No.: 10129150
Market: ND / SD / NE / MN / IA
Address: 80 240th Avenue
Cumberland, Town of McKinley

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this First Amendment on the date and year below

LANDLORD:
Polk County, Wisconsin

TENANT:
New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By:  _____
William F. Johnson IV

By: _____

Print Name: _____

Title: County Board Chairman

Title: _____

Date: _____

Date: _____

Cell Site No.: 124804
Cell Site Name: WI3642
Fixed Asset No.: 10129150
Market: ND / SD / NE / MN / IA
Address: 80 240th Avenue
Cumberland, Town of McKinley

LANDLORD ACKNOWLEDGEMENT

STATE OF Wisconsin)

)

COUNTY POLK__)

I CERTIFY that on December 20, 2011, William F. Johnson IV personally came before me

and acknowledged under oath that he:

(a) is the **County Board Chairman** of Polk County, Wisconsin, the governmental entity named in the attached instrument,

(b) was authorized to execute this instrument on behalf of the corporation and

(c) executed the instrument as the act of the corporation.

Carole T. Wondra

Notary Public: Carole T. Wondra

My Commission is permanent/expires: per state statute

Cell Site No.: 124804
Cell Site Name: WI3642
Fixed Asset No.: 10129150
Market: ND / SD / NE / MN / IA
Address: 80 240th Avenue
Cumberland, Town of McKinley

Attachment 1

Memorandum of Agreement

