

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO: 19-08-20-08

IN THE MATTER OF AMENDING AND
EXTENDING THE SITE LEASE FOR A
CELLULAR COMMUNICATIONS TOWER AT
THE PUBLIC WORKS DEPARTMENT
DELTA CAMPUS AND AUTHORIZING THE
COUNTY ADMINISTRATOR TO EXECUTE
THE AMENDMENT

WHEREAS, the County leased a site for a new cellular telephone tower to Nextel West Corporation, a Delaware corporation, effective September 1, 2000; and

WHEREAS, the 2000 lease provided for an initial term of five years, plus three additional five-year renewal periods, all renewals of which have been exercised, for a total lease term of 20 years that will expire August 31, 2020; and

WHEREAS, the Nextel Lease was subsequently assigned, with the County's consent, to SBA Steel II, LLC, a Florida limited liability company; and

WHEREAS, SBA Steel II, LLC desires to amend the lease to extend its term, as described in Exhibit A, which includes payment to the County of \$23,000 per year in rent plus a percentage of the revenue; and

WHEREAS, the amendment provides for increasing the term of the lease for four additional five-year periods, for a total possible extension of 20 additional years, unless otherwise terminated in accordance with the agreement;

NOW, THEREFORE, the Board of County Commissioners of Lane County **ORDERS** as follows:

1. The Amendment to the Lease Agreement with SBA Steel II, LLC, in the form attached as Exhibit A to this Order, is approved; and
2. The County Administrator is delegated authority to execute the Lease Amendment and to execute any future extensions of the lease, in accordance with the terms of the amendment.

ADOPTED this 20th day of August, 2019



Peter Sorenson, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM
Date 8/13/19

EXHIBIT A

Prepared by: Joanne Beaulieu
After recording return to: Rita Drinkwater
SBA Network Services, LLC
8051 Congress Avenue
Boca Raton, FL 33487-1307
Ph: 1-800-487-7483 ext. 7872

Parcel ID: 0160802

AMENDMENT TO COMMUNICATIONS SITE LEASE AGREEMENT

THIS AMENDMENT TO COMMUNICATIONS SITE LEASE AGREEMENT (“Amendment”) is executed this _____ day of _____, 2019, by and between **LANE COUNTY, a political subdivision of the State of Oregon**, having an address at 3040 North Delta Highway, Eugene, Oregon 97405 (“Lessor”) and **SBA STEEL II, LLC, a Florida limited liability company**, having a principal office located at 8051 Congress Avenue, Boca Raton, Florida 33487-1307 (“Lessee”).

WHEREAS, Lessor and Nextel West Corp., a Delaware limited liability company d/b/a Nextel Communications, entered into that certain Communications Site Lease Agreement, dated October 12, 2000, as evidenced by that certain Memorandum of Agreement, recorded October 27, 2000, as Instrument No. 2000-062012, and also recorded January 21, 2005, as Instrument No. 2005-005076, and ultimately assigned to Lessee, as evidenced by that certain Memorandum of Assignment, recorded November 14, 2016, as Instrument No. 2016-056509, both recordings of the County Clerk of Lane County, Oregon, as amended and assigned from time to time (collectively, “Agreement”) for Lessee’s use of a portion of the real property (“Premises”) located at 3040 North Delta Hwy North, Eugene, OR 97408 (“Property”), being more particularly described in the attached **Exhibit “A”**; and

WHEREAS, Lessor and Lessee desire and intend to amend and supplement the Agreement as provided herein.

NOW, THEREFORE, for good and valuable consideration of One Hundred and No/100 Dollars (\$100.00), the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant, agree and bind themselves to the following modifications to the

Agreement:

1. **Section 4. Term**, of the Agreement is hereby amended as follows:

In addition to the Renewal Terms as referenced in the Agreement, the Agreement is hereby amended to include four (4) additional successive terms of five (5) years (each an "Additional Renewal Term"). Each Additional Renewal Term shall be deemed automatically extended, unless Lessee notifies Lessor of its intention not to renew the Agreement prior to the commencement of the succeeding Additional Renewal Term. The first Additional Renewal Term shall commence on September 1, 2020 ("Additional Renewal Term Commencement Date"), upon the expiration of the Renewal Term expiring on August 31, 2020.

2. **Section 5. Rent**, of the Agreement is hereby amended as follows:

On the Additional Renewal Term Commencement Date, Lessor's rent shall be reduced to Twenty Three Thousand and No/100 Dollars (\$23,000.00) per year. Commencing on September 1, 2021 and each anniversary of such date thereafter, Lessor's rent shall increase by three percent (3%). All escalations currently provided in the Agreement arising prior to the Additional Renewal Term Commencement Date shall be unaffected by this section.

In addition to the rent, Lessor shall receive an additional twenty percent (20%) monthly revenue sharing ("Revenue Share") beginning with the second (2nd) sublessee, using the Property or the Premises. Notwithstanding the foregoing, all Revenue Share contained herein shall be payable one month in arrears upon Lessee's receipt of rental payment from its sublessees. Lessee shall provide Lessor a summary report listing the sublessees on the tower and the sublessee's monthly rent with Lessor's monthly rent check. In the event the first (1st) sublessee is no longer a tenant on the Premises, the second (2nd) sublessee who collocated on the Premises will take the place of the first (1st) sublessee for purposes of being excluded from the revenue sharing provisions of this Section. In no event shall any Revenue Share be paid if there are less than two (2) tenants.

3. **Section 6. Tower Facilities; Utilities; Access**, of the Agreement is hereby amended by adding **subsection (e)** as follows:

(e) Lessor shall have the right to install two (2) microwave dishes or similar equipment not exceeding three (3) feet in diameter at a height of eighty (80) feet to ninety (90) feet above ground level on Lessee's communications "monopole" tower ("Tower") provided such equipment is used solely for governmental purposes. The construction, installation, and maintenance of Lessor's equipment shall be subject to the reasonable approve of Lessee.

4. **Section 25. (e) Miscellaneous**, of the Agreement is hereby amended as follows:

(e) If to Lessee:

SBA Steel II, LLC
Attn: Site Administration
8051 Congress Avenue
Boca Raton, FL 33487-1307
Re: OR47625-A/Santa Clara - Public Works

5. The Agreement is hereby amended to include **Section 26. Option to Purchase Premises:**

At expiration or earlier termination of the Agreement, Lessor shall have the option to purchase Lessee's Tower at a price Lessor and Lessee agree upon. Lessor shall accept and take title to the Tower in "as-is" and "where-is" condition without warranty or representation, express or implied, of any kind. If an agreement cannot be agreed upon, the Lessee has 90 days to remove the tower from the site.

6. Capitalized terms not defined in this Amendment will have the meaning ascribed to such terms in the Agreement.
7. This Amendment will be governed by and construed and enforced in accordance with the laws of the state in which the Property is located without regard to principles of conflicts of law.
8. Except as specifically set forth in this Amendment, the Agreement is otherwise unmodified and remains in full force and effect and is hereby ratified and reaffirmed. In the event of any inconsistencies between the Agreement and this Amendment, the terms of this Amendment shall take precedence.
9. Lessor acknowledges that the attached **Exhibit "A"** may be preliminary or incomplete and, accordingly, Lessee may replace and substitute such Exhibit with an accurate survey and legal descriptions of the Premises and easements and re-record this Amendment without obtaining the further approval of Lessor. Following such re-recording, the descriptions of the Premises and easements described therein shall serve as the descriptions for same for all purposes under the Amendment.
10. Lessor represents and warrants to Lessee that the Lessor is the sole owner in fee simple title to the Premises and easements and the Lessor's interest under the Agreement and that consent or approval of no other person is necessary for the Lessor to enter into this Amendment.
11. This Amendment may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same Amendment.

12. Lessee shall have the right to record this Amendment.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

WITNESSES:

LESSOR:

LANE COUNTY, a political subdivision of the State of Oregon

Print Name: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

STATE OF OREGON
COUNTY OF _____

On this ___ day of _____, 2019, before me appeared _____ to me personally known, who being duly sworn, did say that he/she, the said _____ is the _____ of Lane County, a political subdivision of the State of Oregon, the within named Corporation, and that the seal, if any, affixed to said instrument is the corporate seal of said Corporation, and that the said instrument was executed on behalf of said Corporation by authority of its Board of Directors, and _____ acknowledge said instrument to be the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

(NOTARY SEAL)

Notary Public

WITNESSES:

Print Name: _____

Print Name: _____

LESSEE:

SBA STEEL II, LLC, a Florida limited liability company

By: _____

Alyssa Houlihan

Vice President - Site Leasing

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me on the ____ day of _____, 2019, by Alyssa Houlihan, Vice President - Site Leasing of SBA Steel II, LLC, a Florida limited liability company, on behalf of the company and who is personally known to me.

Notary Public

Print Name: _____

My Commission Expires: _____

(NOTARY SEAL)

EXHIBIT 'A'

A parcel of land lying in the South one-half of Section 7 and the North one-half of Section 18, Township 17 South, Range 3 West, Willamette Meridian, and being a portion of the tracts of land conveyed by those certain deeds to Nancy D. Ray, recorded August 9, 1955, as Reel 85-D, Recorder's Reception No. 91874 and recorded July 25, 1967, on Reel 355-R, Recorder's Reception No. 92799, respectively, Lane County Oregon Deed Records, said parcel being described as follows:

Beginning at a point on the Northwesterly right of way of a County Road Survey known as Delta North Highway opposite and 40 feet distant Northwesterly from Engineer's centerline Station L 298+50.72 P.O.T., said point being marked by an iron pin and being 585.24 feet East and 135.57 feet North of the concrete monument marking the Northwest corner of the Daniel S. Snelling Donation Land Claim No. 41, said Township and Range, and being on the easterly line of the Grantor's property and running thence North 0° 12' 33" East along said Easterly line 813.29 feet to a point marked by an iron pin on the Southerly line of the tract of land described in that certain deed recorded as Reel 274-Q. Recorder's Reception No. 21390, Lane County Oregon Deed Records; thence along the Southerly line of said tract of land as follows: South 71° 08' 18" West 195.0 feet, South 89° 40' 48" West 700.28 feet to a point on the Easterly line of a 30 foot wide roadway over the East 30 feet of the land conveyed to Cora A. Saunders in the Southeast one-quarter of the Southwest one-quarter of said Section 7 and in Lot 3 of said Section 18, said Township and Range, thence South 4° 24' 12" East along the Easterly line of said roadway 915.90 feet to a point 85.05 feet South 2° 34' West and 194.04 feet North 89° 08' West from a 1 1/2 inch iron pipe established in a survey for Cogswell F. Campbell by John Quiner in May, 1986, for the Northwest corner of the Daniel S. Snelling Donation Land Claim No. 41; thence South 88° 08' East 614.54 feet to a point on the Westerly line of

said County Road Survey for Delta North Highway, 50 feet distant Northwesterly from Engineer's Centerline Station I; 299+03.44 P.O.T.; thence along the Northwesterly line of said highway survey as follows: North 39° 34' East 3.44 feet, South 50° 26' East 10 feet, and North 39° 34' 00" East 249.28 feet to the place of Beginning, in Lane County, Oregon.