

THE STATE OF SOUTH CAROLINA COURT OF APPEALS

Appeal from the Court of Common Pleas for Horry County
Benjamin H. Culbertson, Circuit Court Judge
Case No. 2012-CP-26-8652

RECEIVED

JUN 10 2013

TriStar Investors, Inc., Minerva Realty, LLC, and Angeline Johnson,
Plaintiffs-Appellants,

SC Court of Appeals

v.

The Horry County Council, and American Towers, LLC,
Defendants-Respondents.

Appellate Case No. 2013-001178

**Respondent American Towers, LLC's
Verified Return To Appellants' Petition For Supersedeas Relief
And Request For Immediate Hearing**

Defendant-Respondent American Towers, LLC f/k/a American Towers, Inc. ("American Towers"), through its undersigned counsel HELLMAN YATES & TISDALE, NEXSEN PRUET, LLC, and THE BRITTAIN LAW FIRM, P.A., hereby submits its Verified Return to the Petition for Supersedeas Relief with Request for Expedited Decision (the "Petition") filed by Plaintiffs-Appellants TriStar Investors, Inc. ("TriStar"), Minerva Realty, LLC ("Minerva"), and Angeline Johnson ("Johnson" or the "Landlord") (TriStar, Minerva, and the Landlord may be collectively referred to as "Appellants"). Respondent American Towers respectfully requests that the Court issue a final order to deny Appellants' Petition or hold an immediate hearing for further argument.

INTRODUCTION

Appellants are trying to use their Petition to accomplish what they could not accomplish through the merits of their case after many failed attempts. At the local level, over Appellants' objections, the Horry County Council unanimously adopted Resolution R-73-12, thereby allowing American Towers to relocate its existing telecommunications tower. On Appellants' administrative review to the Court of Common Pleas for Horry County, the Honorable Judge Benjamin H. Culbertson affirmed the Horry County Council Resolution, entered judgment against Appellants, and then denied Appellants' motion for supersedeas. With this Court, the Honorable Judge John C. Few already denied Appellants' petition for *ex parte* supersedeas relief, finding that Appellants failed to demonstrate "exigent circumstances." At each step, Appellants have lost because they do not have any right to the relief they seek. Moreover, Appellants lack standing under the law to assert their claim in this case.

Appellants filed this case, seeking a review of Horry County Council Resolution R-73-12, which authorizes American Towers to construct a relocated cell phone tower. That County decision, authorizing construction of a new tower, is like that of a zoning board, which cannot be upset unless arbitrary, unreasonable, in obvious abuse of discretion, or in excess of lawfully delegated power. The Honorable Judge Benjamin H. Culbertson entered judgment against Appellants, finding that the Horry County Council did not act unreasonably or in excess of lawfully delegated power, and American Towers anticipates that this Court will make that same finding.

As any delay in construction of the relocated tower will help TriStar/Minerva in competing with American Towers and in other litigation pending between the parties,

Appellants improperly seek a stay of Judge Culbertson's Final Judgment by alleging that the relief sought in this case will become moot pending appeal. However, the issue in this appeal – whether the Horry County Council properly permitted construction of the new tower – will not become moot. Appellants concede that American Towers and its affiliated entities routinely construct and deconstruct towers. American Towers can deconstruct a tower within 5-15 days and American Towers accepts and assumes the risk of constructing and potentially deconstructing this relocated tower. Further, as discussed herein, American Towers continues to offer to post a tower removal bond as necessary.

In their Petition, in addition to discussing construction of the relocated tower (at issue in the Horry County Council Resolution), Appellants also discuss deconstruction of the current tower. However, as Appellants admitted to the Honorable Judge Benjamin H. Culbertson when directly asked, and as expressly stated in American Towers' lease with the Landlord, Appellants have no rights whatsoever to the current cell phone tower structure, as the structure is exclusively owned and operated by American Towers. The Landlord simply leases the land underneath the structure to American Towers and Appellants TriStar/Minerva purchased an easement to the land, which they claim does not begin until the expiration of American Towers' lease. Based on this fact, on May 31, 2013, the Honorable Judge Benjamin H. Culbertson found that, "The plaintiffs' rights as property owner and easement owner will be unaffected pending the appeal of this case, regardless of whether their motion for supersedeas is granted or denied." (Exhibit A). In other words, Appellants' "interests" cannot be affected by relocation of the tower during pendency of the appeal, as they have no rights in the tower. Appellants state they may wish to operate their own unbuilt tower at the end of American Towers' lease (Petition at ¶ 11); however, that

would not be affected by relocation of American Towers' current tower.

Contrary to Appellants self-serving assertion, Respondents will indeed be immediately harmed by supersedeas relief. As Appellants continuously contended that American Towers' lease at the current tower site expires in January, 2015 (Cmplt. at ¶ 3), American Towers negotiated revised agreements with its customers, three cell phone carriers, to broadcast from the relocated tower instead of the current tower. All three of American Towers' customers at this tower now expect that they will be immediately relocating their equipment to the relocated tower and have all taken steps to move their equipment to the relocated tower. The relocated tower will provide better service coverage for at least two of three carriers. Any delay in construction of the relocated tower will negatively impact American Towers' relationships with these customers who expect to move to the relocated tower site. Additionally, American Towers started construction on the relocated tower and is incurring expenses of \$9,500.00 each day that the construction crews sit idle.

In contrast, Appellants will not incur any harm whatsoever from construction of the relocated tower—they admitted this to the Honorable Judge Benjamin H. Culbertson. American Towers will continue to pay the Landlord rent through January, 2015, the date that Landlord contends the lease expires. (Cmplt. at ¶ 3). Upon information and belief, besides the easement from the Landlord, TriStar/Minerva do not have any contractual relationships whatsoever at the property, so there are no contractual relationships that could be impacted. Appellants improperly seek this construction delay to gain an advantage in other litigation pending between the parties and to block a competitor from proceeding with advancing its business activities and customer relationships. Appellants mention carrier

relationships in their Petition, but they do not point to any specific relationship because they do not currently have any at this location.

For these reasons, the Court should deny Appellants' Petition and allow American Towers to proceed in the ordinary course of its business. The burden is on Appellants to show that the Honorable Judge Benjamin H. Culbertson unjustifiably denied their motion for supersedeas, and Appellants have failed to do so. *See* Rule 241(d)(4)(C), SCACR.

FACTUAL BACKGROUND¹

A. American Towers Owns The Tower Structure And The Tower Components.

Since 1999, American Towers has owned and been operating its telecommunications and cell phone tower at the corner of Huggins Road and Route 9 in Myrtle Beach, South Carolina. American Towers has agreements in place with three cell phone carriers – T-Mobile, Horry Telephone, and Verizon Wireless (the “Cellular Carriers”) – whereby American Towers permits these Cellular Carriers to attach their broadcasting equipment to this tower.

American Towers leases the real property beneath its tower from the Landlord pursuant to a January 14, 1995 property lease to which American Towers and the Landlord are both successors-in-interest (the “Lease”). Under the Lease, the steel tower structure remains American Towers' personal property at all times and must be removed at the expiration of the Lease. Paragraph 8 of the Lease specifically states:

8. Removal of Lessee's Improvements Upon Termination. Lessor [Johnson] covenants and agrees that no part of the improvements constructed, erected or placed by Lessee [American Tower] on the Demised Premises shall

¹ In addition to the verification, the factual background is supported by the Affidavits of Robert McNiel and Jason Groseclose, attached hereto as Exhibits B-C, which were originally presented to the Court of Common Pleas for Horry County.

become, or be considered as being affixed to or a part of, the Demised Premises, any and all provisions and principles of law to the contrary notwithstanding, it being the specific intention of Lessor that all improvements of every kind and nature constructed, erected or placed by Lessee on the Demised Premises shall be and remain the property of Lessee. Lessee, upon termination of this Agreement shall within 120 days, remove all such improvements, including without limitation the tower, equipment building and any fencing, from the Demised Premises. The Demised Premises shall be returned in a condition that reasonably matches its original condition (except for any tree, shrub or other vegetation that was removed), reasonable wear and tear excepted. Lessee shall compensate Lessor, on a pro rata basis, for each day said personal property and fixtures remain on the Demised Premises after termination of this Agreement, at the monthly rent in effect at the time of termination until such time as removal of the improvements is completed.

(Lease at ¶ 8).

Importantly, under the Lease, the Landlord (and her agents) has never and will never have any rights to the tower structure or any of the tower components. (Id.). Further, nothing prevents American Towers from deconstructing or removing the tower at any point in time—the tower is American Towers' exclusive property.

Pursuant to its terms, the Lease runs through January, 2015. In October, 2007, American Towers and the Landlord negotiated and signed an amendment to the Lease to extend the term of the Lease through January, 2030 (the "Lease Extension").

B. Appellants' Own Acts Caused American Towers To Move Locations.

Subsequently, at the initiative of American Towers' competitor TriStar and its subsidiary Minerva (TriStar and Minerva may be collectively referred to as "TriStar/Minerva"), in June, 2010, the Landlord and Minerva entered into an Exclusive Easement and Assignment Agreement (the "Easement Agreement"), pursuant to which the Landlord sold Minerva an easement to the land already being leased by American Towers. (Cmplt. at ¶ 12). TriStar/Minerva claim that their easement at the property begins at the expiration of American Towers' lease in 2015. (Id. at ¶ 3). In exchange, the Landlord

received an up-front one-time \$100,000 payment. (Id.). The Landlord chose to do business with TriStar/Minerva in exchange for the up-front \$100,000 payment rather than to seek further monthly rent after the Lease term from American Towers.

Once American Towers learned of the Easement Agreement, American Towers filed suit against the Landlord and TriStar/Minerva to determine the rights of the parties and to enforce the Lease Extension through the year 2030 (the "Lease Lawsuit"), Case No. 2012-CP-26-2912, *American Towers, LLC v. TriStar Investors, Inc., et. al.*, pending in Horry County. In the Lease Lawsuit, due to the Lease Extension, American Towers alleged that the term of its Lease with amendment runs through January, 2030 (Exhibit D, Lease Lawsuit Cmplt. at ¶ 12).² However, the Landlord and TriStar/Minerva all filed an Answer expressly denying that fact. (Exhibit E, Answer at ¶ 11). TriStar/Minerva vigorously claimed that the Lease Extension is not enforceable because TriStar/Minerva did not have notice of the Lease Extension when Minerva signed the Easement Agreement. (Cmplt. at ¶ 12, ft. 1).

After the Landlord and TriStar/Minerva denied the enforceability of the Lease Extension, and given that the original terms of the Lease end in 2015, American Towers sought an alternative location for its tower and found a better broadcasting location on the property of Brenda Huggins. American Towers' customers, the cellular companies, want to and choose to secure tower space far in advance of the time needed in order to test equipment, determine whether the tower site works with its current network, and generally guarantee ample service coverage to the public. To move forward with this better location and secure tower space for the carriers in a timely way as they require, American Towers

² True and correct copies of the Complaint and Answer from the Lease Lawsuit are attached hereto as Exhibits D-E, respectively.

signed an agreement with landowner Brenda Huggins to lease certain real property for relocating the tower (the “Huggins Lease”). Pursuant to the Huggins Lease, American Towers started paying Brenda Huggins rent in April, 2013.

While American Towers started paying Brenda Huggins rent in April, 2013, American Towers intends on and will continue to pay rent to the Landlord Johnson through January, 2015, the date that Johnson contends the Lease expires. (Id. at ¶ 3).

American Towers also filed an application with the Horry County Planning & Zoning Department, seeking to relocate its existing tower to the Huggins Property (the “Relocation Application”). After reviewing the Relocation Application with the detailed supporting materials, the Horry County Planning & Zoning Department recommended that the Horry County Council approve the Relocation Application.

Subsequently, on October 16, 2012, the Horry County Council held a public hearing to vote on the Relocation Application. American Towers made a presentation at that hearing and members of the Horry County Council asked questions. A representative from at least one of the Cellular Carriers appeared at the hearing. Appellants also appeared at the hearing, made a presentation, and were the only persons/entities that objected to American Towers’ Relocation Application.

C. American Towers Is Already Being Harmed By The Delay.

Over TriStar/Minerva’s objection, the Horry County Council unanimously approved the Relocation Application, as Resolution R-73-12. Upon approval of the relocation, American Towers negotiated revised agreements with the Cellular Carriers. The Cellular Carriers now expect that they will be relocating their equipment to the relocated tower in the immediate future and have taken steps to move their equipment to the relocated tower,

including ordering upgraded equipment for the relocated tower which will provide better service coverage.

American Towers' relationships with these Cellular Carriers will be immediately and significantly impacted if American Towers does not meet their expectations and construct the relocated tower. American Towers does business with these three Cellular Carriers at numerous tower sites and a delay will have a substantial negative effect on these relationships. Over a period of years, the negative impact could reach in the high hundreds of thousands of dollars on just one site alone.

Further, prior to the filing of this lawsuit, American Towers ordered materials to build the relocated tower and the upgraded equipment for carrier T-Mobile at a cost of approximately \$225,000. The materials and equipment have been delivered and American Towers is incurring storage costs to store these materials.

On or about May 30, 2013, after the Court of Common Pleas for Horry County affirmed Resolution R-73-12, entering judgment against Appellants, Horry County issued a building permit for construction of the relocated tower.

A construction crew started construction on the relocated tower. American Towers temporarily halted construction in accordance with this Court's June 7, 2013 Order pending consideration and resolution of the Petition. American Towers is incurring expenses of \$9,500.00 each day that the construction crews sit idle.

D. Other Litigation Between The Parties.

American Towers, its affiliated entities (American Towers and its affiliated entities may be referred to collectively as "American Tower"), and Appellant TriStar are currently involved in litigation pending in the United States District Court for the Northern District of

Texas, initiated by TriStar, in which the parties have asserted causes of action against each other for, among other things, unfair competition, business disparagement, and tortious interference (the “Texas Litigation”). TriStar admits in the Texas Litigation that it has acquired ground easements beneath over 600 of American Tower’s towers. To support its counts in the Texas litigation, TriStar claims that American Tower *falsely* tells landowners that American Tower may relocate towers to other locations. TriStar claims that the alleged statements are false because American Tower has no intent to move towers. A true and correct copy of TriStar’s Second Amended Complaint and Application for Permanent Injunction from the Texas Litigation, without exhibits, is attached hereto as Exhibit F.

However, to the extent that American Tower has made such statements, such statements are true. American Tower does not move towers willy-nilly, however, under circumstances such as these where a landowner is refusing to acknowledge a lease extension and the lease term is soon expiring, American Towers has no option but to relocate a tower. TriStar is pursuing this supersedeas only to try to stall American Towers from relocating this tower because TriStar needs support for its meritless claims in the Texas Litigation.

ADDITIONAL PROCEDURAL BACKGROUND

On November 8, 2012, Appellants filed this administrative review, seeking an injunction preventing American Towers from relocating its tower. In an abundance of caution, the Honorable Larry B. Hyman, Jr., entered a temporary restraining order staying Resolution R-73-12 until the case could be heard on its merits (the “Temporary Injunction Order”). The Temporary Injunction Order did not prevent American Towers from deconstructing its current tower; it only stayed enforcement of Resolution R-73-12.

While the Honorable Larry B. Hyman, Jr.'s law clerk emailed counsel for the parties on December 11, 2012, indicating that the Court would stay Resolution R-73-12 pending hearing and requesting a proposed order from Appellants' counsel, Appellants did not submit a proposed order to the Court until late March, 2013. In fact, Appellants waited so long to submit their proposed order that their actions delayed scheduling of the hearing of the case on its merits.

On Friday, April 26, 2013, the Court of Common Pleas for Horry County held a hearing on the merits of this case. On the following Monday, April 29, 2013, the Court emailed the parties' counsel and affirmed the decision of the Horry County Council in adopting Resolution R-73-12 (the "Final Judgment"). A true and correct copy of the Final Judgment signed on May 8, 2013, entered on May 21, 2013, is attached hereto as Exhibit G. The Final Judgment vacates the previous Temporary Injunction Order, declaring it void.

While Judge Hyman's Temporary Injunction Order required that Appellants post a security bond in the amount of \$5,000.00, Appellants did not post their bond until May 7, 2013, over a week after the Court of Common Pleas for Horry County ruled against Appellants on the merits of the case.

STANDARD OF REVIEW

Appellants previously admitted to the Court of Common Pleas for Horry County that the Final Judgment entered in this case was not stayed under SCACR 241(b)(8) pending appeal unless a court granted supersedeas relief. (Mt. for Supersedeas at ¶¶ 1, 10, 14). Further, South Carolina Rule of Civil Procedure 62(a) states that, "an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting, shall not be stayed during the period after its entry and until an

appeal is taken or during the pendency of an appeal.” *See* Rule 62(a), SCRCF; see also Rule 241(b)(8, 11), SCACR.

The Court of Common Pleas for Horry County considered Appellants’ motion for supersedeas, denied the motion, determining that, “The plaintiffs’ rights as property owner and easement owner will be unaffected pending the appeal of this case, regardless of whether their motion for supersedeas is granted or denied.” (Exhibit A).

To succeed on their current Petition, Appellants must demonstrate that “an application for this relief was made to the lower court or administrative tribunal, and was unjustifiably denied”. *See* Rule 241(d)(4)(C), SCACR. South Carolina Appellate Court Rule 241(c)(2) directs the Court to determine whether supersedeas is “*necessary* to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” *See* SCACR 241(c)(2) (emphasis added). A case only becomes moot when a judgment will have no practical legal effect upon an existing controversy or when some event makes it impossible for the reviewing court to grant effectual relief. *S.C. Dept. of Revenue v. Club Rio*, 392 S.C. 636, 643, 709 S.E.2d 690, 694 (S.C. App. 2011). Appellants have failed to and cannot show that issuing a stay, thereby blocking American Towers’ lawful business activities and infringing on Horry County’s rights to supervise and issue permits, is necessary to preserve an issue from becoming moot.

ARGUMENT

Appellant TriStar, a competitor of Respondent American Towers, will do and say anything it can – no matter how inaccurate – to try to prevent competition between these parties in Horry County. TriStar made lengthy objections at the Horry County Council meeting on American Towers’ relocation permit, yet the Horry County Council

unanimously approved the relocation. TriStar then appealed the ruling, but, after a full hearing, the Court of Common Pleas for Horry County affirmed the Resolution. TriStar is now making another attempt to stop its competitor. However, Appellants' Petition should be denied on the following grounds:

1. Construction of the new relocated tower will not moot the issues at issue in this appeal and American Towers offers to post a tower removal bond if necessary;
2. Any supersedeas will drastically harm American Towers' relationships with its carriers but cause no harm whatsoever to any interest of any of the Appellants. Appellants are improperly trying to damage a competitor's relationships with its customers and gain advantage in other litigation.;
3. Appellants have not shown, and cannot show, that they will likely succeed on the merits of their underlying claim. Appellants will need to prove that the Horry County Council's approval of the permit was arbitrary, but, to the contrary, the Horry County Council heard evidence from both sides and was able to make an informed decision.; and
4. Appellants lack standing to challenge the Horry County Council's decision. The Supreme Court of South Carolina's rulings on this are clear.

I. Appellants' Sought-After Relief Will Not Become Moot.

Even if American Towers' current tower is relocated, the contested issue and/or relief requested by Appellants will not become moot. Constructing and deconstructing towers is routine for American Towers. American Towers and its affiliated entities have built several thousand towers in the United States, and have built approximately 800 towers in South Carolina, North Carolina, and Virginia over the past 12 years. American Towers can erect a communications tower within 15-45 days and can deconstruct a tower within 5-15 days. If an adverse ruling is ever entered in this case, American Towers could quickly deconstruct the relocated tower—the only thing at issue in this appeal.

In fact, even if American Towers' current tower is relocated, the Appellants would

have every property interest and right they now possess as property owner and/or easement holder on the Landlord's property. The only item Appellants would not have is the tower which Appellants have no right to in any factual or legal scenario, as the tower is the personal property of American Towers which is to be removed according to the terms of the Lease at the end of the current lease term. Consequently, under any decision of a reviewing court, Appellants maintain their property rights as Landlord and easement holder despite relocation of the tower. Even if American Towers relocates its tower, action which was unanimously approved by the Horry County Council, the relief sought by Appellants would not be impossible, or even difficult, to effectuate. Appellants fail to address this.

American Towers accepts and assumes the risk of building the relocated tower with the appeal pending. In addition, if this Court deems it necessary, American Towers agrees to post a tower "removal bond", guaranteeing that funds sufficient to cover costs for removal of the relocated tower are available. Certain bonding companies have experience with issuing such tower removal bonds. In South Carolina, such bonds are typically in the amount of \$25,000. This will sufficiently address and negate all allegations of Appellants' unmeritorious claim becoming moot.

In addition to the lack of evidentiary support for their Petition, Appellants also do not have any legal support. Three of the cases cited by Appellants are inapposite and deal with family law issues. *Berry v. Ianuario*, 281 S.C. 21, 314 S.E.2d 308 (1983) (risk of natural father's paternal rights being terminated while appeal pending, including state officials changing the child's name and status); *Schwartz v. Schwartz*, 311 S.C. 303, 428 S.E.2d 748 (Ct. App. 1993) (interstate battle involving federal kidnapping act and custody of 6-year old daughter). In *Graham v. Graham*, 301 S.C. 128, 390 S.E.2d 469 (Ct. App. 1990), the court

of appeals did not even take any action on the supersedeas, but rather, just remanded for clarification on the family court's order. *Id.* at 130.

The case *S.C. Dep't of Revenue v. Sandalwood Social Club*, 399 S.C. 267, 731 S.E.2d 300 (Ct. App. 2012), cited by Appellants actually supports Respondents' position that business activities should not be stayed pending appeal. In *Sandalwood Social Club*, an administrative law judge suspended a resort owner's beer and wine permit and liquor license for 60 days. The resort owner moved for supersedeas, and the court of appeals granted that relief, thereby allowing the resort owner to continue operations pending appeal. *Id.* at 276.

II. Halting Construction Will Harm American Towers And Its Carriers.

To the contrary of Appellants' claims, the issues in this case could become moot and American Towers will be harmed if the Court *granted* Appellants' Petition. Appellants have taken the position in this lawsuit that American Towers' Lease at the current property expires in January, 2015. (Cmplt. at ¶ 12). Not only have Appellants taken that position in this case's Complaint, but Appellants have taken that position in the Lease Lawsuit. (Exhibits D, E). Due to Appellants' disavowal of the Lease Extension, American Towers was forced to locate other property for its tower and signed the Huggins Lease. American Towers has started paying Brenda Huggins rent under that Huggins Lease.

American Towers also negotiated revised agreements with all three of the Cellular Carriers for the relocated tower. All three of the Cellular Carriers now expect that they will be relocating their equipment to the relocated tower in the very near future. The Cellular Carriers have taken steps to move their equipment to the relocated tower, including ordering upgraded equipment for the relocated tower, which will provide better service coverage. American Towers does business with these three Cellular Carriers at numerous tower sites

and a delay could have a substantial negative effect, easily in the high hundreds of thousands of dollars, on these relationships. TriStar erroneously argues that a \$25,000 bond would be sufficient to cover damages from supersedeas. Additionally, the materials and equipment for the relocated tower have been delivered and American Towers is incurring costs to store these materials.

As a general rule, American Towers' customers, cellular companies, require and choose to secure tower space far in advance of the time needed in order to test equipment, determine whether the tower site works with its current network, obtain information on the height needed for the equipment, and generally guarantee ample service coverage to the public. If construction of the relocated tower does not continue, American Towers' ability to meet customer demands will be compromised.

A delay in constructing the relocated tower will also substantially negatively impact telecommunications service coverage in Horry County. Verizon Wireless and T-Mobile expect that they will be able to quickly provide better coverage and service in this area to consumers, with T-Mobile having new, upgraded equipment on the relocated tower.

In addition, a construction crew started construction on the relocated tower. American Towers temporarily halted construction in accordance with this Court's June 7, 2013 Order pending consideration and resolution of the Petition. American Towers is incurring expenses of \$9,500.00 each day that the construction crews sit idle.

In contrast, Appellants will not incur any harm whatsoever from construction of the relocated tower. The Landlord received an up-front \$100,000 payment and American Towers will continue to pay Johnson rent through January, 2015, the date that Johnson contends the Lease expires. (Cmplt. at ¶ 3). TriStar has not alleged any contractual relationships with

respect to the property, so there are no contractual relationships that could be impacted. TriStar has absolutely no right to the tower steel at the current location, and TriStar has no right to build a new tower anywhere on the Landlord's property.

This appeal is not brought because of any error made by the Horry County Council or its Planning & Zoning Department. (See Final Judgment at Exhibit G). This case is brought because TriStar is trying to stymie its competition. If American Towers is forced to operate from the existing property site rather than relocate, Appellants hope to re-negotiate a lease extension on new terms or for American Towers to purchase TriStar/Minerva's easement rights at an inflated price. Even delays in construction will negatively impact American Towers' relationships with the Cellular Carriers which works to Appellants' advantage. This Court cannot allow judicial proceedings to be so easily abused.

Further, TriStar seeks to block and delay American Towers' actions in relocating this tower in an improper attempt to create evidence for the Texas Litigation. TriStar claims in the Texas Litigation that American Tower unfairly competes by stating that it will move towers without intention to do so. TriStar worries that the relocation of a tower would prove TriStar's claim in the Texas Litigation as false as it is. Because of the Texas Litigation, Appellants will continue to delay hearing of this case on its merits as they have done in the past. Once receiving news that the Honorable Judge Hyman intended to enter a temporary injunction on December 11, 2012, Appellants did not submit a proposed injunction order until late March, 2013— they did not need a ruling on the merits, they just wanted temporary relief to prevent construction of the relocated tower until after the October 28,

2013 trial date in the Texas Litigation.³

This Court cannot allow a disgruntled competitor from indefinitely blocking legitimate business activities and Horry County's management of utilities within the County, especially given the substantial unlikelihood of this Court's May 21, 2013 Final Judgment being altered in any way. Rather than showing that the relocation of American Towers' existing tower would make it impossible for a reviewing court to grant relief, Appellants self-servingly and *erroneously* claim that American Towers will not be harmed by a stay. The Court should not allow Appellants, competitors of American Towers, to indefinitely disturb and disrupt Horry County's management of utilities and construction within the County, especially absent factual evidence, legal support, or grounds to appeal.

III. Likelihood Of Success On Merits.

This Court should take into account that the (un)likelihood of the Horry County Council Resolution being reversed. The Horry County Council's decision is like that of a zoning board, which shall not be upset unless arbitrary, unreasonable, in obvious abuse of discretion, or in excess of lawfully delegated power. (Cmplt at p. 8, fn. 3); *Vulcan Materials Co. v. Greenville County Bd. of Zoning Appeals*, 342 S.C. 480, 488, 536 S.E.2d 892, 896 (Ct. App. 2000). Appellants cannot meet that high burden. Horry County Council's Relocation Resolution and the Court of Common Pleas for Horry County's Final Judgment were well-reasoned and based on a significant factual record. Appellants had an opportunity to be heard

³ As further evidence of their motives, Plaintiffs have consistently claimed that the Lease only runs through 2015. However, Plaintiffs only now try to "concede" that the Lease may run through 2030. This belated-concession is another attempt to get American Towers to stay at the current property location until after the conclusion of the trial in the Texas Litigation. TriStar does not want to have a fact out there – that American Towers moves its towers when necessary – which contradicts TriStar's claims.

by the Horry County Council. The Horry County Council just rejected Appellants' viewpoint.

IV. Appellants' Petition Must Be Denied As Appellants Lack Standing.⁴

Standing to sue is a fundamental requirement in instituting an action. *Joytime Distribs. and Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). Before reaching the merits of a case, a court must determine whether a plaintiff possesses standing to present its claim. *See Ex parte State ex rel. Wilson*, 391 S.C. 565, 573, 707 S.E.2d 402, 407 (2011). A plaintiff can possess standing based on a statute, by having suffered an injury in fact to a legally protected interest, or through the public importance exception. *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 669 S.E.2d 337 (2008).

Here, Appellants lack standing to appeal the Horry County Council's approval of American Towers' Relocation Petition. Appellants have not cited any statute that would confer standing, have not suffered injury to a legally protected interest, and do not meet the requirements for the public importance exception. Appellants have not and cannot point to any contractual provision that is being violated. TriStar is not even a party to any of the agreements at issue. Appellants allege "injury" but only to their goals and desires, not to any protectable legal right. Pursuant to ¶ 8 of the Lease, American Towers owns the steel tower and is required to remove the tower upon expiration of the lease. Further, American Towers is not prevented from doing so sooner.

In a substantially similar case, *ATC South v. Charleston County*, the Supreme Court of South Carolina addressed whether a cellular tower company possessed standing to

⁴ This issue was argued to the Court of Common Pleas for Horry County, but the issue was not ruled upon as the Court entered judgment against Appellants on other grounds.

challenge a county decision to allow an applicant to construct a cellular communications tower. In no uncertain terms, the Supreme Court of South Carolina determined that competitors lack standing to challenge local zoning decisions made by a county government. *Id.* at 197-198. The Supreme Court of South Carolina determined that competitors in the cellular tower industry do not have a protectable right that would confer standing to construct towers or prevent a competitor from constructing a tower. *Id.* The Supreme Court of South Carolina also determined that the case did not fall under the public importance exception—that a cellular tower company’s efforts to ‘cloak’ a zoning challenge as a matter of public importance would not gain traction with the Supreme Court. *Id.* at 200. The Supreme Court of South Carolina affirmed the dismissal of the case based on plaintiff’s lack of standing to challenge the county action. *Id.*

In the same way, due to Appellants’ lack of standing, this Court must deny Appellants’ Petition and dismiss this case. Appellants have not provided any evidence to support the notion that a legally protected interest is being injured.

CONCLUSION

Given the harm occurring to American Towers and Horry County, the complete lack of harm to Appellants, and the improper motives of Appellants in seeking this relief, American Towers respectfully requests that this Court deny Appellants’ Petition, cancel the temporary grant of supersedeas relief it issued in this Court’s June 7, 2013 Order, and enter any other and further relief that this Court deems proper and just.

Respectfully Submitted,

Date: June 10, 2013

By: Thomas Tisdale By: Martin Grier Jr.

Thomas S. Tisdale
Jonathan L. Yates
HELLMAN YATES & TISDALE
King & Queen Building
145 King Street, Suite 102
Charleston, SC 29401
Telephone: 843.414.9754
Facsimile: 843.266.9188

Elbert Dorn
Tanya A. Gee
NEXSEN PRUET, LLC
1101 Johnson Avenue, Suite 300
Myrtle Beach, SC 29577
Telephone: 843.213.5400
Facsimile: 843.213.5419

Thomas C. Brittain
THE BRITTAIN LAW FIRM, P.A.
4614 Oleander Drive
Myrtle Beach, SC 29577
Telephone: 843.449.8562
Facsimile: 843.497.6124

HELLMAN YATES & TISDALE

ATTORNEYS AND COUNSELORS AT LAW

THOMAS S. TISDALE
DIRECT VOICE 843 414-9757
TST@HELLMANYATES.COM

HELLMAN YATES & TISDALE, PA
145 KING STREET, SUITE 102
CHARLESTON, SOUTH CAROLINA 29401
V 843 266-9099
F 843 266-9188

June 10, 2013

The Honorable John C. Few
Chief Judge
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

RECEIVED
JUN 10 2013
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

RE: Tri-Star investors, Inc., et al. vs. Horry County Council and American Towers, LLC
Appellate Case No.: 2013-001178

Dear Judge Few,

Enclosed herewith is a Return of American Towers, LLC, in response to the Court's order on June 7, 2013.

Unless the Court decides this matter on the papers that are filed, American Towers, LLC, respectfully requests a hearing on the matter at the earliest possible date.

Thank you for your consideration of this matter, and with best wishes, I am

Sincerely,

Thomas Tisdale By: Martin Grier Jr.
Thomas S. Tisdale

TST/keb

cc: Susan MacDonald, Esquire (susan.macdonald@nelsonmullins.com)
Michael J. Anzelmo, Esquire (michael.anzelmo@nelsonmullins.com)
L. Morgan Martin, Esquire (mmartin@sccoast.net)
Emma Ruth Brittain, Esquire (erbrittain@myrlaw.com)
David C. Slough, Esquire (dslough@nexsenpruet.com)
Elbert Dorn, Esquire (edorn@nexsenpruet.com)

THE STATE OF SOUTH CAROLINA COURT OF APPEALS

Appeal from Horry County Court of Common Pleas
Benjamin H. Culbertson, Circuit Court Judge
Case No. 2012-CP-26-8652

TriStar Investors, Inc., Minerva Realty, LLC, and Angeline Johnson,
Plaintiffs-Appellants,

v.

The Horry County Council, and American Towers, LLC,
Defendants-Respondents.

Appellate Case No. 2013-001178

Verification

On behalf of Defendant American Towers, LLC f/k/a American Towers, Inc. ("American Towers"), in accordance with applicable law, I, Raymond W. Goodwin hereby verify the contents of this Return To Appellants' Petition For Supersedeas Relief.

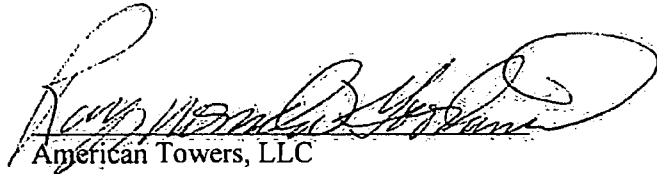

American Towers, LLC

EXHIBIT A

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-26-8652

Tristar Investors, Inc., et al.
PLAINTIFF(S)

The Horry County Council, et al.
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☒ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiffs' Motion for Supersedeas is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Benjamin H. Culbertson, Circuit Court Judge

2148

Judge Code

May 31, 2013

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Susan P. MacDonald

L. Morgan Martin

ATTORNEY(S) FOR THE PLAINTIFF(S)

Emma Ruth Brittain

Thomas C. Brittain

Jonathan Yates

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Henry Young

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

The plaintiff seeks an Order of Supersedeas staying enforcement of this court's order affirming the decision of the Horry County Council allowing the defendant American Tower Corporation to move a telecommunications tower. The telecommunications tower is owned by the defendant American Tower Corporation. The plaintiff Angeline Johnson is the owner of the property on which the telecommunications tower is located. The plaintiff Tristar Investors, Inc. owns a perpetual easement to the property.

The plaintiffs' rights as property owner and easement owner will be unaffected pending the appeal of this case, regardless of whether their motion for supersedeas is granted or denied. They seek an order of supersedeas to stay the removal of the telecommunications tower pending the appeal of this case in order to protect Tristar Investors, Inc.'s investment for the "anticipated" future use of the subject property.

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

TRISTAR INVESTORS, INC.,
MINERVA REALTY, LLC,
and ANGELINE JOHNSON,

Plaintiffs,

vs.

THE HORRY COUNTY COUNCIL, and
AMERICAN TOWER CORPORATION,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C/A No. 2012-CP-26-8652

STATE OF Texas)
COUNTY OF Dallas)

AFFIDAVIT OF ROBERT MCNIEL

Before me, the undersigned authority in and for said State and County, personally appeared Robert McNiel who, after being first duly sworn under oath, doth depose and say as follows:

1. My name is Robert McNiel. I am over the age of twenty-one and submit this affidavit based upon personal knowledge of the information contained herein, about which I am competent to testify.

2. I am employed as a Director of Strategic Site Development for American Tower Corporation. In that capacity, I also work for American Towers, LLC ("American Towers"), an entity related to American Tower Corporation, and have knowledge of the business and transactions of American Towers.

3. In my position, I have extensive personal knowledge of American Towers' operating procedures. In addition, I am familiar with and have access to American Towers' business records, including how such records are maintained.

4. American Towers is in the business of owning and operating communications sites for the wireless industry. American Towers will lease real property from a landowner, obtain the necessary zoning and building permits, and build a tower. The towers themselves are owned by American Tower, just located on leased land. American Towers then finds and negotiates rates with telecommunications carriers who lease space on the tower from American Towers.

5. I have knowledge of the history of American Towers' telecommunications facility located at the corner of Huggins Road and Route 9, Myrtle Beach, South Carolina 29572 (the "Finklea Site").

6. Three cellular telephone companies currently lease and use space on the tower at the Finklea Site to broadcast and transmit voice and data signals.

7. American Towers' tower at the Finklea Site is approximately 300 feet in height.

8. American Towers obtained the right to operate its tower at the Finklea Site through a lease. Angeline Johnson ("Landowner") and American Towers are the successors-in-interest to the lessor and lessee, respectively, under a January 14, 1995 Lease Agreement entered into between Louise D. Strickland, then the landowner of the Finklea Site, and Vanguard Cellular Systems of South Carolina, Inc. (the "Lease Agreement").

9. Pursuant to its original terms, the Lease Agreement runs through January, 2015.

10. Upon expiration of the Lease Agreement, lessee American Towers is obligated to remove the tower and all components thereof from the property. In the event that American Towers does not remove the tower and its components from the property, American Towers is penalized and obligated to pay additional rent. Paragraph 8 of the Lease Agreement expressly provides that:

8. Removal of Lessee's Improvements Upon Termination. Lessor [Johnson] covenants and agrees that no part of the improvements constructed, erected or placed by Lessee [American Tower] on the Demised Premises shall become, or be considered as being affixed to or a part of, the Demised Premises, any and all provisions and principles of law to the contrary notwithstanding, it being the specific intention of Lessor that all improvements of every kind and nature constructed, erected or placed by Lessee on the Demised Premises shall be and remain the property of Lessee. Lessee, upon termination of this Agreement shall within 120 days, remove all such improvements, including without limitation the tower, equipment building and any fencing, from the Demised Premises. The Demised Premises shall be returned in a condition that reasonably matches its original condition (except for any tree, shrub or other vegetation that was removed), reasonable wear and tear excepted. Lessee shall compensate Lessor, on a pro rata basis, for each day said personal property and fixtures remain on the Demised Premises after termination of this Agreement, at the monthly rent in effect at the time of termination until such time as removal of the improvements is completed.

11. In addition to requiring American Towers to remove the tower upon expiration of the lease, ¶ 8 makes clear that the tower and its components are owned and controlled by American Towers at all times. Neither Landowner nor its agents have rights to the tower itself.

12. In October, 2007, American Towers and the Landowner negotiated and signed an amendment to the Lease Agreement to extend the duration of American Towers' lease at the site through January, 2030 (the "Lease Extension").

13. American Towers tried to continue to operate from Landowner's property, but when Landowner/TriStar/Minerva denied the enforceability of this Lease Extension, American Towers sought to relocate its tower currently located at the Finklea Site to

another property.

14. On June 28, 2012, American Towers signed an agreement with landowner Brenda G. Huggins (the "Huggins Lease") to lease certain property near American Towers' Finklea Site (the "Huggins Property"). The Huggins Property is located at 215 Huggins Road, Loris, South Carolina, approximately ½ mile away from the current tower site.

15. A true and correct copy of a Memorandum of Lease, which memorializes certain public terms of the Huggins Lease is attached to American Tower Corporation's Memorandum in Opposition to Plaintiffs' Application for Temporary Restraining Order and Preliminary Injunction (the "Memorandum").

16. On or about August 31, 2012, American Towers filed a petition with the Horry County Planning & Zoning Department, seeking to relocate its existing tower at the Finklea Site to the Huggins Property (the "Relocation Petition"). A true and correct copy of American Towers' Relocation Petition with the supporting materials is attached to the Memorandum.

17. The proposed relocated tower would be 300 feet in height.

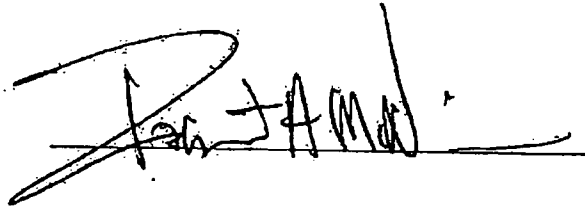
18. Plaintiffs in this action named American Tower Corporation as a Defendant, however, American Towers, LLC applied for and was granted the permit to construct its tower at the Huggins Property.

19. American Towers has communicated with the telecommunications carriers who have leased space on American Towers' tower at the Finklea Site regarding the relocation. All of the carriers have agreed to move their equipment to the proposed tower on Brenda Huggins' property.

20. American Tower has built several thousand towers in the United States over the last 12 years and approximately 800 towers in South Carolina, North Carolina, and Virginia.

21. Based on my experience, American Towers is able to construct a 300' telecommunications tower within a period of 15-45 days. American Towers is able to deconstruct a 300' tower within 5-15 days.

FURTHER AFFLIANT SAYETH NOT.



SWORN and subscribed to before me
this 5th day of December, 2012.



Notary Public for the State of Texas (L.S.)
My Commission expires: 9/11/16

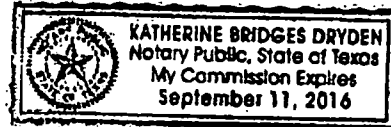


EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

TRISTAR INVESTORS, INC.,
MINERVA REALTY, LLC,
and ANGELINE JOHNSON,

Plaintiffs,

vs.

THE HORRY COUNTY COUNCIL, and
AMERICAN TOWER CORPORATION,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C/A No. 2012-CP-26-8652

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT OF JASON GROSECLOSE

Before me, the undersigned authority in and for said State and County, personally appeared Jason Groseclose who, after being first duly sworn under oath, doth depose and say as follows:

1. My name is Jason Groseclose. I am over the age of twenty-one and submit this affidavit based upon personal knowledge of the information contained herein, about which I am competent to testify.

2. I am employed as a Project Manager for American Tower Corporation. In that capacity, I also work for American Towers, LLC ("American Towers"), an entity related to American Tower Corporation, and have knowledge of the business and transactions of American Towers.

3. In my position, I have extensive personal knowledge of American Towers'

operating procedures. In addition, I am familiar with and have access to American Towers' business records, including how such records are maintained.

4. American Towers is in the business of owning and operating communications sites for the wireless industry. American Towers will lease real property from a landowner, obtain the necessary zoning and building permits, and build a tower. The towers themselves are owned by American Tower, just located on leased land. American Towers then finds and negotiates rates with telecommunications carriers who lease space on the tower from American Towers.

5. I have knowledge of the history of American Towers' telecommunications facility located at the corner of Huggins Road and Route 9, Loris, South Carolina 29572 (the "Finklea Site").

6. I am American Towers' Project Manager for the Finklea Site. My duties include communicating with the carriers that lease space on our tower, and relocation of our tower to the Brenda Huggins' Property.

7. Three cellular telephone companies – T-Mobile, Horry Telephone Company, and Verizon Wireless – currently lease space and maintain signaling equipment on American Towers' tower at the Finklea Site. Once the Horry County Council approved Resolution R-73-12 for the relocation of American Towers' tower, American Towers contacted these three telecommunications carriers. American Towers advised these carriers of the relocation of the tower.

8. American Towers has contracts with all three of these carriers whereby American Towers is obligated to provide them with tower space in the area.

9. All three of the carriers agreed to move their equipment to the relocated tower.

10. All three of the carriers now expect that they will promptly need to relocate their equipment due to relocation of the tower.

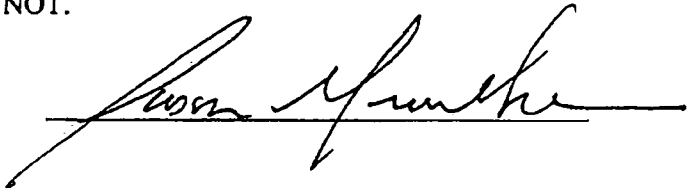
11. American Towers ordered and has incurred the costs for materials and due diligence to build the relocated tower at an expense of approximately \$200,000.

12. American Towers expects that the materials to build the relocated tower will to be delivered to Brenda Huggins' Property within approximately 4-6 weeks, without a place to store the equipment.

13. Verizon Wireless has stated that the relocated tower would be better for its network.

14. American Towers' relationships with the carriers will be harmed if American Towers does not meet their expectations. American Towers does business with these three carriers at numerous tower sites and a delay would have a substantial negative effect on American Towers business.

FURTHER AFFIANT SAYETH NOT.



SWORN and subscribed to before me
this 10th day of December, 2012.

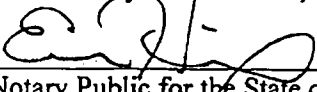
 (L.S.)
Notary Public for the State of South Carolina
My Commission expires: 6-9-21



EXHIBIT D

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

AMERICAN TOWERS LLC

Plaintiff(s)

vs.

ANGELINE D. JOHNSON, TRISTAR INVESTORS, INC.
AND MINERVA REALTY, LLC

Defendant(s)

(Please Print)

Submitted By: David C. Slough

Address: Nexsen Pruet, LLC

1101 Johnson Avenue, Suite 300

Myrtle Beach, SC 29577

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP - 26-

SC Bar #: 11852

Telephone #: 843-213-5411

Fax #: 843-213-5419

Other:

E-mail: ds1ough@nexsenpruet.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☒ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20-CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Date: 4/10/12

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

AMERICAN TOWER, LLC,

Plaintiff,

vs.

ANGELINE D. JOHNSON, TRISTAR
INVESTORS, INC. and MINERVA REALTY,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2012-CP-26-_____

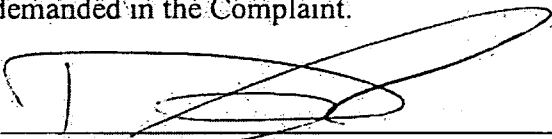
SUMMONS

(BREACH OF CONTRACT)
JURY TRIAL DEMANDED

HORRY COUNTY
CLERK OF COURT
12 APR 10 PM 4:06

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above-entitled action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices at 1101 Johnson Avenue, Suite 300, Myrtle Beach, South Carolina 29577 within thirty (30) days after the date of such service, exclusive of the day of service. Should you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.


David C. Slough
NEXSEN PRUET, LLC
1101 Johnson Avenue, Suite 300
Myrtle Beach, SC 29577
843.213.5400

Attorneys for Plaintiff
American Towers, LLC

April 10, 2012

Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

AMERICAN TOWERS LLC,

Plaintiff,

v.

ANGELINE D. JOHNSON,
TRISTAR INVESTORS, INC. and
MINERVA REALTY, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-26-_____

**COMPLAINT FOR DAMAGES,
DECLARATORY AND INJUNCTIVE
RELIEF,
AND PUNITIVE DAMAGES**

JURY TRIAL DEMANDED

HORRY COUNTY
12 APR 10 PM 4:06
CLERK OF COURT

NOW COMES Plaintiff American Towers, LLC f/k/a American Towers, Inc., by and through its undersigned counsel, and for its Complaint states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff American Towers, LLC f/k/a American Towers, Inc. ("American Tower") is a limited liability company duly organized and existing under and by virtue of the laws of the State of Delaware, and which conducts business in the State of South Carolina, with its registered office address located at 2 Office Park Court, Suite 103, Columbia, South Carolina.
2. Defendant Angeline D. Johnson ("Landowner") is an individual residing in Myrtle Beach, Horry County, South Carolina.
3. Defendant TriStar Investors, Inc. ("TriStar") is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and conducts business in the State of South Carolina, with its registered office address located at 2 Office Park Court, Suite 103, Columbia, South Carolina.

4. Defendant Minerva Realty, LLC ("Minerva") is a limited liability company duly organized and existing under and by virtue of the laws of the State of Delaware, and conducts business in the State of South Carolina, with its registered office address located at 2 Office Park Court, Suite 103, Columbia, South Carolina.

5. Upon information and belief, Minerva is a wholly-owned subsidiary of TriStar. TriStar and Minerva are collectively referred to herein as TriStar/Minerva.

6. Jurisdiction is proper pursuant to South Carolina Code § 36-2-803 (a) because, among other things, the Defendants have transacted business within the state of South Carolina and Plaintiff's claims herein arise from such transactions. Venue is proper in Horry County, South Carolina pursuant to South Carolina Code § 15-7-30 because Defendant Landowner resides in Horry County, South Carolina.

GENERAL ALLEGATIONS—LEASE AGREEMENT FOR OPERATION OF THE SITE

7. Plaintiff incorporates herein by reference each and every previous allegation of this Complaint as though the same were fully set forth herein.

8. American Tower is in the business of owning and operating communications sites for the wireless and broadcast industries.

9. This action encompasses agreements between American Tower and Landowner relating to real property located in Horry County, South Carolina, in which American Tower has a contractual and business interest and Landowner's subsequent agreements with TriStar/Minerva that violate American Tower's agreements.

10. The underlying res of this suit is known as the "Finklea Site" and is located at the corner of Huggins Road and Route 9, Myrtle Beach, South Carolina 29572.

11. The fee simple interest in the Finklea Site is held by Landowner.

12. On or about January 14, 1995, Louise D. Strickland, then the owner of the Finklea Site, and Vanguard Cellular Systems of South Carolina, Inc. entered into a Land Lease Agreement for purposes of construction and operation of a telecommunications facility on the Finklea Site (the "Land Lease"). Landowner and American Tower are the successors-in-interest to the lessor and lessee, respectively, under the Land Lease. The term of the Land Lease, as amended, runs, as renewed, through January 13, 2030.

13. Pursuant to the Land Lease, American Tower has the right to operate the Finklea Site.

14. American Tower currently maintains and operates a communications tower at the Finklea Site. Several cellular telephone companies use the space on the tower to broadcast and transmit voice and data signals.

15. Paragraph 26 of the Land Lease reflects American Tower's expressed desire to maintain the confidentiality of the terms of its agreements with Landowner and provides in relevant part as follows:

Confidentiality of Agreement Terms. Lessor agrees that all terms of this Agreement provided to Lessor shall remain confidential. No information is to be divulged by Lessor without the written consent of Lessee.

16. Paragraph 26 of the Land Lease reflects the effort American Tower has taken to protect the confidentiality of the terms of the Land Lease, included the lease rates.

TRISTAR/MINERVA'S INTERFERENCE

17. Prior to the expiration of American Tower's leasehold interest in the Finklea Site, TriStar/Minerva began negotiating with Landowner to obtain an interest in the Finklea Site.

18. TriStar/Minerva approached the Landowner prior to the expiration of the Land Lease. TriStar offered to pay Landowner in exchange for the granting of a "Communications Easement" and an assignment of the Landowner's beneficial rights with American Tower.

19. On or about June 10, 2010, Minerva and Landowner entered into an Exclusive Easement and Assignment Agreement ("Easement Agreement"). A copy of the Easement Agreement is attached as **Exhibit A** and incorporated herein by reference.

20. The Easement Agreement was recorded in Horry County on July 2, 2010.

21. The Easement Agreement purported to grant Minerva an exclusive, perpetual "Communications Easement" in the property where the Finklea Site is located, for the transmission and reception of any and all wireless communication signals and the construction, maintenance, repair, replacement, improvement, operation and removal of towers, antennas, cabinets, buildings, ice bridges, fences, gates and all related facilities [], and any and all activities and uses of the Communications Easement related to the operation of a wireless communications site

Exhibit A, at 2.

22. The Easement Agreement also purported to grant Minerva a transfer and assignment of all rights of Landowner under Landowner's various agreements involving the Finklea Site. *Id.*

23. The Easement Agreement makes specific reference to the Land Lease. *Id.* at Exhibit C.

24. The Easement Agreement was signed on behalf of Minerva by John Lemmon in TriStar's home of Allegheny County, Pennsylvania. John Lemmon is TriStar's General Counsel.

25. The assignment of Landowner's beneficial rights under the Land Lease is intended to give TriStar/Minerva the right to receive payments under the Land Lease and control over renewals of and extensions and modifications thereto. The "Communications Easement" is intended to give TriStar/Minerva the right to operate the Finklea Site.

MINERVA'S ALTER EGO

26. TriStar is merely an alter ego of Minerva through its unity of interest and ownership between the parent corporation, TriStar, and the subsidiary, Minerva; and, there is an inequitable result if the acts in question are treated as those of Minerva alone.

27. Minerva is a mere instrumentality through which TriStar conducts business such that TriStar is legally liable for the actions of Minerva. Specifically, the decision to target the Finklea Site was made by TriStar's "acquisition team" located in Pittsburgh, Pennsylvania. On information and belief, Minerva does not have any employees. All actions taken on behalf of Minerva are taken by TriStar employees.

28. TriStar has caused Minerva to engage in all of the wrongful acts alleged herein and controls Minerva to such a degree that Minerva is merely an instrumentality of TriStar.

29. As its alter ego, TriStar is liable for any damages and/or wrongful acts as alleged herein and committed by Minerva.

FOR A FIRST CAUSE OF ACTION Declaratory Judgment Invalidating Easement Agreement (Landowner/Minerva Realty, LLC)

30. Plaintiff incorporates herein by reference paragraphs 1 through 29 of this Complaint as though the same were fully set forth herein.

31. The Land Lease prohibited Landowner from disclosing the terms of the Land Lease to any person.

32. Upon information and belief, Landowner disclosed terms of the Land Lease and confidential information of American Tower to TriStar/Minerva.

33. The Easement Agreement between Landowner and Minerva specifically references the Land Lease and purports to assign the Land Lease to Minerva and to grant Minerva an easement in the Finklea Site. [See Exhibit A.]

34. An actual controversy exists between the parties inasmuch as TriStar/Minerva contends that it has a valid Communications Easement in the Finklea Site.

35. By reason of the foregoing, there is a case of actual controversy between the parties within the jurisdiction of this Court as required by South Carolina Code § 15-53-20, and the Court can declare the rights and other legal relations of the parties.

WHEREFORE Plaintiff American Towers LLC prays that this Honorable Court enter a declaratory judgment declaring the Easement Agreement to be null, void and of no effect and for an award of all costs and attorney fees so wrongfully incurred by Plaintiff in connection with the filing of this suit.

FOR A SECOND CAUSE OF ACTION
Breach of Contract (Landowner)

36. Plaintiff incorporates herein by reference paragraphs 1 through 35 of this Complaint as though the same were fully set forth herein.

37. American Tower did all, or substantially all, of the significant things that the Land Lease required it to do.

38. All conditions required for Landowner's performance have occurred.

39. Pursuant to the Land Lease, Landowner was not entitled to disclose the terms of its lease arrangements with American Tower regarding the Finklea Site to a third party.

40. Upon information and belief, Landowner breached the Land Lease by providing a copy of the Land Lease to TriStar/Minerva and by disclosing terms of the Land Lease and confidential information of American Tower to TriStar/Minerva.

41. As a direct and proximate result of Landowner's breach of the Land Lease, American Tower has suffered damages in excess of \$25,000.00.

WHEREFORE Plaintiff American Towers LLC prays that this Honorable Court award it a judgment for actual damages and compensatory damages against Defendant Angeline D. Johnson in an amount in excess of \$25,000.00, with interest thereon, together with all costs and attorney fees so wrongfully incurred by Plaintiff in connection with the filing of this suit.

FOR A THIRD CAUSE OF ACTION

**Breach of South Carolina Trade Secrets Act, South Carolina Code § 39-8-10, *et seq.*
(TriStar Investors, Inc./Minerva Realty, LLC/ Angeline D. Johnson)**

42. Plaintiff incorporates and realleges paragraphs 1 through 41 herein by reference as though the same were fully set forth herein.

43. The terms of American Tower's agreements with Landowner contained trade secrets within the meaning of South Carolina Code § 39-8-20(5), in that they included proprietary information about the value of American Tower's leasehold interests, from which American Tower derives independent economic value, is not readily ascertainable to the general public, and is the subject of reasonable efforts under the circumstances to maintain its secrecy.

44. These trade secrets had given American Tower an advantage over competitors who did not know or use them.

45. American Tower intended said information to be kept confidential between the contracting parties.

46. American Tower took reasonable steps to ensure that the terms of its agreements with Landowner, as well as information American Tower provided to Landowner in connection with the Land Lease, remained confidential by including Paragraph 26 of the Land Lease.

47. This information is of great value to American Tower; American Tower's competitors would find this information - especially the lease rates, costs and other proprietary information relating to the Finklea site - of great value.

48. TriStar/Minerva misappropriated American Tower's trade secrets by inducing and acquiring from Landowner lease agreements with American Tower, as well as confidential information that American Tower had provided to Landowner in connection with the Land Lease, despite having knowledge that the agreements prohibited disclosure to any third parties without American Tower's consent and having knowledge that such disclosure would violate the terms of the Land Lease.

49. Landowner knowingly participated in the misappropriation of American Tower trade secrets by producing copies of the lease agreements, as well as confidential information that American Tower had provided Landowner in connection with the Land Lease, to TriStar/Minerva.

50. As a direct and proximate result of their misappropriation, TriStar/Minerva/Landowner have injured American Tower by disclosing confidential information including the lease rates and profitability of said site.

51. TriStar/Minerva/Landowner's misappropriation of American Tower's trade secrets has unjustly enriched Defendants.

52. TriStar/Minerva/Landowner acted with reckless, willful or callous disregard of American Tower's rights and with malice, fraud or oppression towards American Tower, thereby entitling American Tower to an award of punitive damages in accordance with proof at trial.

WHEREFORE Plaintiff American Towers LLC prays that this Honorable Court award it a judgment for actual damages and compensatory damages against Defendants TriStar Investors, Inc., Minerva Realty, LLC and Angeline D. Johnson, in an amount in excess of \$25,000.00, with interest thereon, punitive damages, together with all costs and attorney fees so wrongfully incurred by Plaintiff in connection with the filing of this suit, pursuant to South Carolina Code § 39-8-80(3).

**FOR A FOURTH CAUSE OF ACTION
Permanent Injunction**

(TriStar Investors, Inc./Minerva Realty, LLC/ Angeline D. Johnson)

53. Plaintiff incorporates and realleges paragraphs 1 through 52 herein by reference as though the same were fully set forth herein.

54. American Tower has a tangible interest in its trade secrets and confidential information, including information contained in and the terms of American Tower's Land Lease, as well as information that American Tower had provided to the Landowner in connection with the Lease Agreement.

55. In the event that a permanent injunction is not issued, American Tower will continue to be substantially and irreparably harmed.

56. American Tower has and will continue to suffer immediate and irreparable harm as a result of Defendants' actions.

57. American Tower does not possess an adequate remedy at law for the disclosure of its trade secrets and confidential information.

58. Based upon the facts as set forth above, American Tower has established its likelihood of success on the merits and that granting a permanent injunction against Defendants will not be a disservice to public policy but, on the contrary, will enhance public policy.

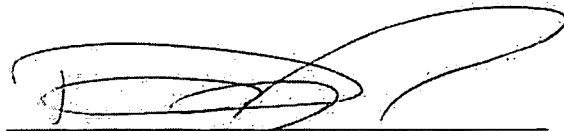
59. Further, based upon the above, the injury to American Tower if a permanent injunction is not entered greatly outweighs any injury to the Defendants if the injunction is issued.

WHEREFORE Plaintiff American Towers LLC prays that this Honorable Court:

- a. issue a permanent injunction prohibiting all Defendants, their employees, agents, affiliates, representatives, successors, assigns and all persons who act in concert with them be permanently enjoined from (a) disclosing any copies of or terms of American Tower's agreement with Landowner with any party; and (b) disclosing any American Tower confidential information with any party;
- b. issue a permanent injunction requiring TriStar Investors, Inc. and Minerva Realty, LLC, and their employees, affiliates,

- representatives, and assigns and all persons who act in concert with them: (a) to destroy and permanently delete any and all copies of any American Tower agreements with Landowner, and any portions thereof; and (b) to destroy and permanently delete all American Tower confidential information and trade secrets, including any and all of the terms of American Tower agreements with Landowner;
- c. award all costs and attorney fees incurred by Plaintiff in connection with the filing of this suit; and
- d. grant any other and further relief that the Court deems just and reasonable under the circumstances.

Respectfully submitted,



David C. Slough
NEXSEN PRUET, LLC
1101 Johnson Avenue, Suite 300
Myrtle Beach, SC 29577
803.213.5400

Attorneys for the Plaintiff

April 10, 2012
Myrtle Beach, South Carolina

Exhibit A

PREPARED BY AND
WHEN RECORDED MAIL TO:

iMortgage Services LLC
2570 Boyce Plaza Road
Pittsburgh, PA 15241

Instrument#: 201000066785, DEED BK:
3468 PG: 3454 DOCTYPE: 062 07/02/2010
at 04:30:00 PM, 1 OF 12 COUNTY
STAMPS: \$106.15 STATE STAMPS:
\$250.90 BALLERY V. SKIPPER, HORRY
COUNTY, SC REGISTRAR OF DEEDS

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EXCLUSIVE EASEMENT AND ASSIGNMENT AGREEMENT

THIS EXCLUSIVE EASEMENT AND ASSIGNMENT AGREEMENT ("Agreement") is made as of the 10th day of June, 2010 ("Effective Date") by and between ANGELINE D. JOHNSON ("Grantor") and MINERVA REALTY, LLC, a Delaware limited liability company ("Grantee"). Grantor and Grantee are at times collectively referred to hereinafter as the "Parties" or individually as a "Party".

RECITALS:

WHEREAS, Grantor is the owner of that certain real property located at 200 Huggins Road a/k/a S Side of HWY 9, Loris, Horry County, South Carolina 29569 ("Property"), which Property is more particularly described on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Grantor and Grantee have entered into that certain Letter Agreement last executed the 18th day of March, 2010 ("Letter Agreement"), in which Grantor has agreed to grant to Grantee certain easement rights to a portion of the Property in accordance with the terms herein.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid, the mutual promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Grantor and Grantee hereby agree and covenant to and with each other the following:

1. **Recitals.** The recitals set forth above and the Letter Agreement are incorporated herein by reference and made a part of this Agreement.

2. **Grant of Easement.**

(a) Grantor grants, bargains, sells, transfers and conveys to Grantee:

(i) an easement in, to, under and over the portions of the Property, substantially as shown or described on Exhibit "B" attached hereto ("Communication Easement"), for the transmission and reception of any and all wireless communication signals and the construction, maintenance, repair, replacement, improvement, operation and removal of towers, antennas, cabinets, buildings, ice bridges, fences, gates and all related facilities (collectively "Facilities"); and any and all activities and uses of the Communication Easement related to the operation of a wireless communications site, which Communication Easement shall be exclusive except for any contrasting rights granted prior to the Effective Date via the leases or other agreements listed on Exhibit "C" ("Current Agreements") and exclusive upon the expiration or earlier termination of such Current Agreements; and

(ii) non-exclusive easements in, to, under and over portions of the Property ("Access and Utility Easements") for ingress and egress to and from the Communication Easement and a publicly dedicated roadway, and for the installation, repair, replacement, improvement, maintenance and removal of utilities providing service to the Communication Easement and the Facilities, and any related activities and uses; the Communication Easement and Access and Utility Easements are collectively referred to herein as the "Easement".

(b) The Parties agree that the Easement shall be modified to include any additional areas utilized by the lessee or any assignees or sublessees under the Current Agreements at the time of expiration of such respective Current Agreements if any such areas extend beyond those areas described in Exhibit "B". Such additional areas may be documented by a survey acquired by Grantee at Grantee's cost. Grantee shall have the right to replace any site plan or description provided in Exhibit "B" or on any ancillary documents with a survey.

3. **Assignment of Current Agreements.** Grantor transfers and assigns to Grantee, as of the Effective Date, any and all of its beneficial rights, title and interest in, to and under the Current Agreements, including but not limited to (i) the right to receive any and all rents and other monies due to Grantor thereunder, including from any assignees or sublessees, and on any and all extensions thereof, and (ii) the right to modify, extend, expand and/or terminate the Current Agreements. Grantor covenants and agrees that Grantor remains the fee owner of the Property and Grantor is not assigning and shall continue to comply with all of Grantor's obligations as lessor under the Current Agreements. Notwithstanding the foregoing, to the extent that any of the Current Agreements require any assignee of Grantor's rights to assume all obligations of Grantor under the Current Agreements, then (i) Grantor also transfers and assigns to Grantee, as of the Effective Date, any and all of its obligations in, to and under the Current Agreements, (ii) Grantee assumes, recognizes and is responsible for all such obligations, and (iii) Grantor shall cooperate with Grantee to facilitate Grantee's fulfillment of all such obligations, and Grantor shall indemnify, defend and hold harmless Grantee for any performance of Grantee of such

obligations that reasonably relate to the Property outside of the Easement. During the term of the Current Agreements, maintenance of the Easement is the responsibility of any tenants under the Current Agreements. In the event of a default by a tenant with respect to any maintenance obligation under any of the Current Agreements, Grantee shall not be responsible for such default nor obligated to cure or seek remedy for such default, and Grantor may pursue such remedies from the defaulting tenant as may be available to Grantor under the Current Agreements or at law or equity.

4. **Use of Easement.** Grantor shall provide to Grantee the quiet enjoyment and use of the Easement. Grantee shall have the exclusive, unrestricted right to lease, sublease, license, transfer, assign or encumber, in whole or in part, or grant the use of the Easement and/or its rights under this Agreement to any third parties, including but not limited to (i) communication service providers or tower owners or operators, (ii) any lessee, sublessee or licensee under the Current Agreements, (iii) the affiliates, subsidiaries, parents, successors, purchasers in whole or in part, agents, contractors, invitees and employees of Grantee, and (iv) Grantee's present or future lessees, sublessees or licensees (collectively "Customers"). Grantee and its Customers shall have the right to enter and access the Easement at any time, twenty-four (24) hours a day, seven (7) days a week.

5. **Term.** This Agreement and the Easement shall be perpetual commencing on the Effective Date, except if terminated in accordance with the terms herein.

6. **Termination.** In the event Grantee and Customers cease all use of all portions of the Easement for a period of more than five (5) consecutive years (for reasons other than casualty or force majeure) subsequent to the expiration or earlier termination of the Current Agreements, the Easement shall be deemed abandoned. Limited or partial use of the Easement by Grantee or any Customers shall not be deemed a surrender or abandonment of the Easement or any unused portion thereof, nor prevent Grantee from benefiting from the full use and enjoyment of the entirety of the Easement. Grantee may abandon the Easement upon thirty (30) days notice to Grantor. This Agreement may not be terminated by Grantor. Upon abandonment, this Agreement shall be terminated, and Grantee and Grantor shall cooperate in the execution and recordation of such documents reasonably required to evidence such termination.

7. **Improvements.** Grantee and its Customers may, at their discretion and expense, construct improvements in, to, under and over the Easement, all of which shall be deemed part of the Facilities. The Facilities shall remain the personal property of Grantee and its Customers, as applicable, and Grantor shall possess no right, title or interest therein. Grantee and its Customers may from time to time temporarily utilize additional portions of the Property contiguous to the Easement to the minimum extent necessary for installation, maintenance or other work on the Facilities, or for the placement of mobile facilities to maintain service during periods of repair or replacement of the Facilities. Grantor shall be under no obligation to reserve any such additional Property. Any such additional Property that is used hereunder shall be returned to the condition which existed prior to such use promptly upon the completion of such use.

8. **Taxes.** Upon the expiration of the Current Agreements, Grantee shall thereafter be responsible for all taxes directly attributable to the Facilities as evidenced by an applicable tax bill. Grantor shall pay all other taxes that are not directly attributable to the Facilities. To the extent that Grantor shall fail to pay timely any taxes on the Property for which Grantor is responsible, Grantor shall (i) waive all future payments due from Grantee, if any, and (ii) at Grantee's election, subdivide the Easement and any additional space necessary to satisfy any minimum lot requirements from the Property and convey such subdivided parcel to Grantee, and Grantor hereby irrevocably constitutes and appoints Grantee as its true and lawful attorney-in-fact, with full power of substitution, to apply for and obtain

such subdivision and conveyance. Grantor shall reimburse Grantee for all costs incurred in obtaining such subdivision and conveyance.

9. **Exclusive Use.** Except for Grantee's use or the use of any Customers or third parties with Grantee's permission or as otherwise permitted by the Current Agreements, no portion of the Property or any other property owned by Grantor and located within a five (5) mile radius of the Property shall be used for the purpose of or in connection with communications towers and/or facilities without the prior written consent of Grantee, which consent may be withheld in Grantee's sole discretion. Grantor shall not install or permit to be installed any structure or equipment which causes measurable interference to the equipment of Grantee or its Customers, or otherwise permit any portion of the Property to be used in a manner which materially interferes with the operations of Grantee and/or any Customers. Grantor and Grantee acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this section and therefore, Grantee shall have the right to specifically enforce the provisions herein in a court of competent jurisdiction.

10. **Environmental Covenants and Indemnity.** Grantor represents that it has no knowledge of any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation ("Hazardous Materials") located on, under or about, or otherwise affecting, the Property or the Easement. Neither Grantor nor Grantee will introduce or use any Hazardous Materials on, under or about the Property or the Easement in violation of any applicable law or regulation. Grantor and Grantee shall indemnify, defend and hold the other Party harmless from and against any and all demands, claims, enforcement actions, costs and expenses, including reasonable attorneys' fees, arising out of the presence of Hazardous Materials upon or affecting the Property or the Easement and caused by the indemnifying Party. The foregoing indemnity shall survive any termination of this Agreement.

11. **General Indemnity.** Grantor and Grantee shall each indemnify, defend and hold the other harmless against any and all costs and claims of liability or loss arising (i) due to the breach of any representation, warranty or covenant of such indemnifying Party set forth herein, or (ii) out of the use and/or occupancy of the Property or the Easement by the indemnifying Party, except to the extent arising from the negligence or intentional misconduct of the indemnified Party. The foregoing indemnity shall survive any termination of this Agreement.

12. **Transfer of the Property; Assignment.** The provisions and covenants contained in this Agreement shall run with the land and shall bind and inure to the benefit of the Parties and their respective successors, heirs and assigns. Should Grantor sell or otherwise convey all or any part of the Property to a purchaser or transferee other than Grantee, such sale or conveyance shall be under and subject to the terms contained in this Agreement and Grantee's rights hereunder. Notwithstanding the foregoing, the Easement is for the benefit of Grantee, its Customers, successors and assigns, rather than for the benefit of any other tract of land, and may be assigned freely, in whole or in part, by Grantee and its successors and assigns.

13. **Mortgages.** At Grantor's option, this Agreement and the Easement shall be subordinate to any mortgage or other security interest by Grantor which from time to time may encumber all or part of the Easement so long as Grantor's lender shall agree in writing in a form reasonably acceptable to Grantee that such lender will not disturb Grantee's possession and rights under this Agreement so long as Grantee remains in compliance with this Agreement.

14. **Secured Parties.** Grantee shall have the unrestricted right to assign, mortgage or grant a security interest in Grantee's interest in and to this Agreement and the Easement, and may assign this Agreement and the Easement to any such assignees, mortgagees or holders of security interests, including

their successors and assigns ("Secured Parties"). If Grantee fails to perform any of its obligations under this Agreement, Grantor agrees to provide written notice of such default to Grantee and all Secured Parties of which Grantor has been notified, and to give Grantee and/or such Secured Parties the right to cure such default within a period of not less than sixty (60) days from receipt of the written default notice.

15. **Estoppel Certificate.** Each Party shall, within ten (10) days after request by the other Party, execute and deliver to the requesting Party, or the Party designated by the requesting Party, a statement certifying (i) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, stating the modifications and that the modified Agreement is in full force and effect); (ii) whether either Party is in default in performance of any of its obligations under this Agreement, and, if so, specifying each default; and (iii) any other information reasonably requested concerning this Agreement.

16. **Condemnation.** In the event of any condemnation of the Easement in whole or in part, Grantee shall be entitled to file claims against the condemning authority for, and to receive, the entire value of the portion of the Property so taken on which the Easement is located, business dislocation expenses and any other award or compensation to which Grantee may be legally entitled.

17. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given one (1) day after posting with a nationally recognized overnight courier service, or the earlier of receipt or ten (10) days after posting by registered or certified mail, return receipt requested, to the addresses of Grantor and Grantee as set forth on the signature page. Either Party may change its notice address by providing notice as set forth herein.

18. **Miscellaneous.**

- (a) This Agreement, including all Exhibits attached hereto and the Letter Agreement which is incorporated herein by reference, constitutes the entire agreement and understanding of Grantor and Grantee with respect to the subject matter of this Agreement, and supersedes all offers, negotiations and any other written or verbal agreements, and any amendments to this Agreement must be in writing and executed by both Parties;
- (b) this Agreement is governed by the laws of the State in which the Property is located;
- (c) in the event that either Party fails to pay when due any taxes, loans, judgments or payments attributable to or encumbering the Property, Easement or this Agreement, the other Party shall have the right, but not the obligation, to pay such sums on behalf of the non-paying Party, and the non-paying Party shall thereafter reimburse the paying Party for the full amount of such sums paid within five (5) business days of the non-paying Party's receipt of an invoice from the paying Party, or at the Paying party's option the paying Party may offset such amount, plus reasonable interest thereon, against any sums due from the paying Party to the non-paying Party;
- (d) if any term of this Agreement is found to be void, invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the minimum extent necessary to be operative, valid and enforceable to most closely reflect the intent of the Parties as expressed herein, or if such modification is not

practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect;

- (e) the Parties shall perform, execute and/or deliver promptly any and all such further acts and documents as may be reasonably required to consummate and continue to effectuate the transaction contemplated hereby, including any documents required for Grantee to acquire title insurance on the Easement;
- (f) the section headings of this Agreement have been inserted for convenience of reference only, and shall in no way modify or restrict the terms of this Agreement;
- (g) this Agreement has been negotiated at arm's-length, and in the event of any ambiguity in any of the terms and provisions, this Agreement shall be interpreted in accordance with the intent of the Parties and shall not be interpreted against or in favor of either Grantor or Grantee;
- (h) each Party acknowledges that neither Party has provided any legal or tax advice to the other regarding the transaction contemplated hereby or in connection with the execution of this Agreement or any ancillary documents hereto, and each of Grantor and Grantee has had the full opportunity to avail itself of legal and financial representation;
- (i) if either Grantor or Grantee files an action for the enforcement or breach of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs;
- (j) Grantee, at Grantee's expense, may record this Agreement upon the full execution hereof; and
- (k) this Agreement may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

[Signatures to immediately follow.]

IN WITNESS WHEREOF, and intending to be legally bound, Grantor and Grantee have executed this Agreement.

WITNESSES:

GRANTOR:

Angeline D. Johnson,

Winnie L. Skipper
Name: WINNIE L. SKIPPER

Tonia Mumma
Name: Tonia J. Clemmons

Angeline D. Johnson
Name: Angeline D. Johnson

2360 Gurley Road.
Loris, SC 29569
Tel.: (843) 756-8222

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

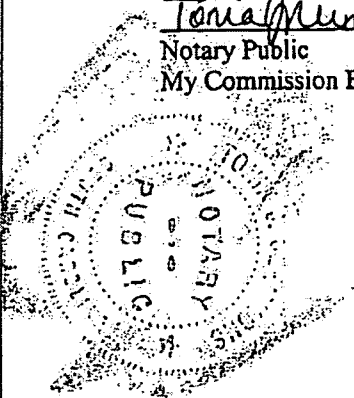
)
)
)

SS:

On this 8TH day of JUNE, 2010, before me, a Notary Public, the undersigned officer, personally appeared Angeline D. Johnson, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same as her free act and deed for the purposes and consideration therein expressed.

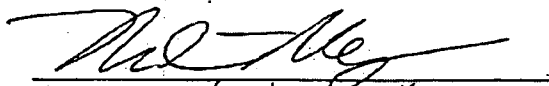
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Tonia Mumma
Notary Public
My Commission Expires: 2/2/2013



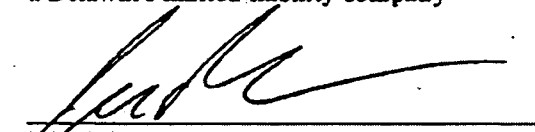
WITNESSES:


Name: Christopher Blumenthal


Name: Michael Mackey

GRANTEE:

Minerva Realty, LLC,
a Delaware limited liability company


John P. Lemmon
Vice President and General Counsel

1437 East Franklin Blvd., Box 194
Gastonia, NC 28054
Tel.: (704) 765-5027

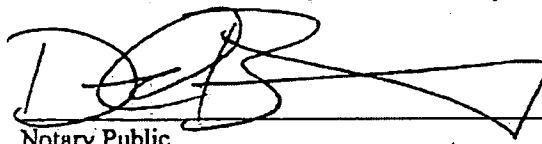
COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF ALLEGHENY)

SS:

On this 10th day of JUNE, 2010, before me, a Notary Public, the undersigned officer, personally appeared John P. Lemmon, who acknowledged himself to be the Vice President and General Counsel of Minerva Realty, LLC, a Delaware limited liability company, and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing his name on behalf of said limited liability company by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public
My Commission Expires:

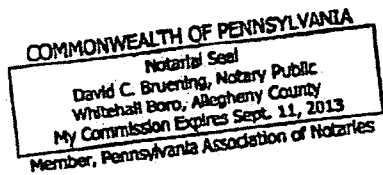


Exhibit "B"

The Easement

Those premises and access/utility easements previously leased pursuant to the Current Agreements as defined herein.

This Exhibit "B" may be replaced by a survey in accordance with the terms of the Agreement.

Exhibit "C"

Current Agreements

1. That certain Land Lease Agreement entered into by and between Grantor's predecessor-in-interest, Louise D. Strickland, as lessor and Vanguard Cellular Systems of South Carolina, Inc., a North Carolina corporation, as lessee, dated January 14, 1995, including any amendments thereto, if any.
2. Any other leases, licenses or agreements respecting the Easement to which Grantor is a party.

EXHIBIT E

5. Defendants admit the allegations of Paragraphs 4 and 5.
6. Answering the allegations of Paragraph 6, Defendants would admit that jurisdiction and venue is proper with this Court.
7. Answering Paragraph 7, these Defendants re-allege the foregoing defenses as if repeated here and verbatim.
8. Admit the allegations of Paragraph 8.
9. Answering Paragraph 9, these Defendants admit that this action involves real property agreements as to real estate interests in Horry County, South Carolina. All other allegations are denied and the Defendants specifically deny any violation of any agreement with American Tower.
10. Admit the allegations of Paragraphs 10 and 11.
11. Answering Paragraphs 12 and 13, the Defendants cross reference the Land Lease Agreement cited by Plaintiff and deny any allegations inconsistent with the language therein. Defendants specifically deny that the term of the Land Lease runs through January 13, 2030.
12. Admit, upon information and belief, the allegations of Paragraph 14.
13. Answering Paragraph 15, the Defendants cross reference the Land Lease Agreement cited by Plaintiff and deny any allegations inconsistent with the language therein.
14. Answering Paragraph 16, Defendants deny the allegations.
15. Admits Paragraphs 17 and 18.
16. Admit the allegations of Paragraphs 19 and 20.

17. Answering the allegations of Paragraphs 21, 22, and 23, these Defendants cross reference the language of the Easement Agreement and deny any allegations inconsistent therewith.

18. Answering Paragraph 24, these Defendants would show that the Easement Agreement was signed by John Lemmon on behalf of Minerva as its Vice President and General Counsel in Pennsylvania, its principal place of business. John Lemmon is also TriStar's General Counsel.

19. Answering Paragraph 25, these Defendants cross reference the Easement Agreement and deny any allegations inconsistent with the language therein. Defendants specifically deny that the Easement Agreement conveyed any rights to TriStar.

20. Deny the allegations of Paragraphs 26, 27, 28 and 29.

21. Answering the allegations of Paragraph 30, these Defendants re-allege the foregoing defenses as if repeated herein verbatim.

22. Deny the allegations of Paragraph 31.

23. Admit so much of Paragraph 32 that the terms of the Land Lease were disclosed but deny the remaining allegations.

24. Answering Paragraph 33, Defendants cross reference the Land Lease Agreement cited by Plaintiff and deny any allegations inconsistent with the language therein.

25. Answering Paragraph 34, Defendants assert that the Easement Agreement between Mrs. Johnson and Minerva is valid but otherwise deny the remaining allegations.

26. Answering Paragraph 35, the Defendants would respectfully request that the Court enter judgment in favor of the Defendants upon the First Cause of Action and enter a finding validating the Easement Agreement and dismissing Plaintiff's claims.

27. Answering the allegations of Paragraph 36, these Defendants re-allege the foregoing defenses as if repeated herein verbatim.

28. Defendants deny Paragraphs 37 and 38 and require specific proof thereof.

29. Deny Paragraphs 39, 40 and 41. The Defendants request that the Court enter judgment upon the Second Cause of Action in favor of the Defendants.

30. Answering the allegations of Paragraph 42, these Defendants re-allege the foregoing defenses as if repeated herein verbatim.

31. Deny the allegations of Paragraphs 43 through 52 and request the Court enter judgment in favor of the Defendants upon the Third Cause of Action.

32. Answering the allegations of Paragraph 53, these Defendants re-allege the foregoing defenses as if repeated herein verbatim.

33. Deny the allegations of Paragraphs 54 through 59 and request the Court enter judgment in favor of the Defendants upon the Fourth Cause of Action.

FOR A THIRD DEFENSE

34. Plaintiff's Complaint fails to state facts sufficient to constitute a claim from which relief can be granted against these Defendants.

FOR A FOURTH DEFENSE

35. These Defendants assert all applicable statutes of limitations as a bar to Plaintiff's claim for relief.

FOR A FIFTH DEFENSE

36. The Defendants assert any applicable statutes of repose as a bar to Plaintiff's claim for relief.

FOR A SIXTH DEFENSE

37. Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(8) of the S.C. Rules of Civil Procedure as a substantially similar matter is pending in separate litigation.

WHEREFORE, fully answered the Complaint of the Plaintiff's herein Defendants respectfully pray that the Complaint be dismissed with prejudice and for such other and further relief as the Court deems proper.

NELSON MULLINS RILEY & SCARBOROUGH , LLP

By: _____

Susan P. MacDonald

SC Bar No. 007943

E-Mail: susan.macdonald@nelsonmullins.com

3751 Robert M. Grissom Parkway / Suite 300

Post Office Box 3939 (29578-3939)

Myrtle Beach, SC 29577-3165

(843) 448-3500

Attorneys for Angeline D. Johnson, TriStar Investors,
Inc., and Minerva Realty, LLC

Myrtle Beach, South Carolina

May 14, 2012

May 14, 2012

EXHIBIT F

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TRISTAR INVESTORS, INC.,

Plaintiff,

v.

**AMERICAN TOWER CORPORATION,
AMERICAN TOWERS LLC, AMERICAN
TOWERS INC., AMERICAN TOWER
GUARANTOR SUB, LLC, AMERICAN
TOWER HOLDING SUB, LLC, AMERICAN
TOWER ASSET SUB, LLC, AMERICAN
TOWER ASSET SUB II, LLC, AMERICAN
TOWER MANAGEMENT, LLC,
AMERICAN TOWER L.P., SPECTRASITE
COMMUNICATIONS, LLC, and
AMERICAN TOWER, LLC,**

Defendants.

**AMERICAN TOWER, LLC, SPECTRASITE
COMMUNICATIONS, LLC, and
AMERICAN TOWERS, LLC,**

Counter-Plaintiffs,

v.

**TRISTAR INVESTORS, INC., DAVID IVY,
ED WALLANDER, ROBERT GILES, DALE
GILARDI, JERRY VOGL, JOHN
LEMMON, MICHAEL MACKEY, and
MATT NEWTON,**

Counter-Defendants.

**SECOND AMENDED COMPLAINT AND
APPLICATION FOR PERMANENT INJUNCTION**

Plaintiff TriStar Investors, Inc. ("TriStar") files this Second Amended Complaint against Defendants American Tower Corporation, American Towers LLC, American Towers Inc.,

American Tower Guarantor Sub, LLC, American Tower Holding Sub, LLC, American Tower Asset Sub, LLC, American Tower Asset Sub II, LLC, American Tower Management, LLC, American Tower L.P., SpectraSite Communications, LLC, and American Tower, LLC (collectively, "American Tower" or "Defendants"), and respectfully shows the Court as follows:

INTRODUCTION

1. This is a case about unfair competition and false advertising in the cell tower industry. American Tower, a massive corporation, has resorted to unfair and illegal tactics in negotiations with landowners for cell tower sites when faced with competition from a tiny competitor, TriStar. Rather than competing fairly and acquiring sites through superior offers, American Tower has systematically misinformed and deceived landowners to acquire sites under less favorable economic terms than those offered by TriStar, to the material detriment of TriStar and landowners nationwide.

2. American Tower is a "Goliath" of the tower industry, with a total public equity valuation of more than \$25 billion and annual revenue of approximately \$2.5 billion resulting from approximately 40,000 cell tower locations globally. American Tower is not a wireless carrier and does not provide any wireless services. It leases or subleases space on towers to wireless carriers. The vast majority of these towers are on land leased from various landowners. American Tower's financial motivation for any given site is relatively simple: pay the landowner as little rent as possible and charge the wireless carriers as much as possible. Whatever is left between the two, minus some small operating expenses, is profit. Historically, American Tower and the other tower companies have faced little competition in retaining sites, leaving uninformed landowners with no true options but to extend their lease on whatever terms the tower company would offer. As carrier rents have continued to escalate, a typical landowner has

seen the ratio of the cash flow from a tower on his or her land fall from approximately 40% to less than 15%.

3. TriStar, a small private company of approximately forty employees, was founded in 2005 by former executives of a major tower company. TriStar's business model is firmly rooted in the beliefs that (1) landowners should be educated about the true value of the communications sites occupying their land; (2) landowners should get a fair share of the profits being generated by their land; and (3) carriers should benefit from price competition. To date, TriStar has acquired over 600 tower locations throughout the continental United States.

4. While small, TriStar has brought true competition to the cell tower industry. TriStar's customers, the landowners where the cell towers are located, are much the better for it. In a typical transaction, a landowner who consummates a deal with TriStar will vastly improve his or her current financial arrangement. TriStar conservatively calculates that the landowners that have consummated deals with TriStar will collectively enjoy an increase in compensation over the next thirty years of approximately \$340,000,000 over the amount they would have received if they had just extended their leases under their current lease terms. This increased compensation has a present value of approximately \$104,000,000. In addition to providing more money to landowners, TriStar also reduces the costs incurred by the wireless carriers (e.g., AT&T, Verizon Wireless, Sprint/Nextel, T-Mobile, etc.) when they lease space on the cell towers managed by TriStar. This significant discount for carriers could then be passed down to the carriers' own customers, the consumers who purchase cell phone service.

5. While the landowners and carriers have benefited enormously from TriStar's entry into the market, American Tower has not. Because of the premium financial offers TriStar has made to landowners, revenue is being redirected from the tower company to landowners.

American Tower is not at all happy that TriStar is increasing its costs of doing business and shifting dollars from its bottom line to the landowners' bottom lines.

6. When faced with competition from TriStar, American Tower has two legal alternatives: (1) American Tower could compete fairly and seek to acquire sites through equivalent or superior financial offers, which competition is the very essence of capitalism, or (2) American Tower could simply walk away and concede the site to TriStar's superior offer. Unfortunately, American Tower has instead adopted an unlawful strategy of deceiving and misleading landowners in an effort to keep a stranglehold on its customers and to prevent TriStar's acquisition of sites. American Tower knowingly and habitually makes false statements about TriStar. American Tower knowingly and habitually makes false statements about what it will do to the landowners if they do a deal with TriStar. Third parties The Lyle Company ("Lyle") and, upon information and belief, Md7 and HPC, are participants in American Tower's scheme, acting as agents subject to American Tower's direction and control who communicate false statements and threats to landowners on American Tower's behalf. As a result of American Tower's and its agents' knowing and intentional misconduct, TriStar, an entire class of landowners nationwide, and wireless carriers have been significantly harmed.

7. The following statements from two different landowners illustrate the contrast between American Tower's unlawful actions and TriStar's pro-consumer business practices:

I am still trying to make up my mind, but I like your offer. I'm tired of American Tower threatening me. They assured me that if I sign with you they will take the tower down. What happens to me if they really do? My lease with them isn't up until 2025. They want me to sign for another 25 years with no increase. Will TriStar keep paying me for the next 25 years after the current lease is up?

I have Multiple Sclerosis (37 years). Stress is one of my enemies. My nurse was here today and told me whatever is upsetting me I had better solve it, as my MS symptoms are worse. I live alone

and I can't walk so I can't take chances with my health. A nursing home would be next. I know you don't need to hear all this, but I think it will help you understand why I haven't made my decision yet.

—Email from a landowner on dealing with American Tower (altered to correct spelling)

Our relations are even stronger now with TriStar than they were because we do know now, firsthand, that they do what they say. . . . No, I'm glad I didn't wait any longer because I gained money by going with TriStar then. They paid me more rent in order to operate my tower in the future. . . . I love the revenue sharing!

—Statement by a landowner on dealing with TriStar

PARTIES

8. TriStar Investors, Inc. is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania.

9. American Tower Corporation is a Delaware corporation with its principal place of business in Boston, Massachusetts. It receives mail at 116 Huntington Avenue, 11th Floor, Boston, Massachusetts 02116. American Tower Corporation regularly conducts business in the State of Texas even though it is not registered and does not maintain an agent for service of process in Texas. It has been served and has appeared in this matter and can be served through counsel.

10. American Towers LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It does business in Texas as American Texas Towers LLC. American Towers LLC has been served and has appeared in this matter and can be served through counsel.

11. American Towers Inc. is a Delaware corporation with its principal place of business in Boston, Massachusetts. It has been served and has appeared in this matter and can be served through counsel.

12. American Tower Guarantor Sub, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It has been served and has appeared in this matter and can be served through counsel.

13. American Tower Holding Sub, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It has been served and has appeared in this matter and can be served through counsel.

14. American Tower Asset Sub, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It has been served and has appeared in this matter and can be served through counsel.

15. American Tower Asset Sub II, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It has been served and has appeared in this matter and can be served through counsel.

16. American Tower Management, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It has been served and has appeared in this matter and can be served through counsel.

17. American Tower L.P. is a Delaware limited partnership with its principal place of business in Boston, Massachusetts. It has been served and has appeared in this matter and can be served through counsel.

18. SpectraSite Communications, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It has been served and has appeared in this matter and can be served through counsel.

19. American Tower, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It has been served and has appeared in this matter and can be served through counsel.

JURISDICTION AND VENUE

20. This Court has personal jurisdiction over all of the Defendants¹ because they each regularly conduct business in the State of Texas and have established minimum contacts with the State of Texas. Further, the Court has personal jurisdiction over American Tower Corporation because it is a holding company that has formed a unitary business operation with its subsidiaries, Defendants American Towers LLC, American Towers Inc., American Tower Guarantor Sub, LLC, American Tower Holding Sub, LLC, American Tower Asset Sub, LLC, American Tower Asset Sub II, LLC, American Tower Management, LLC, American Tower L.P., and SpectraSite Communications, LLC (collectively, the "Subsidiaries"). Upon information and belief, the Subsidiaries are financially dependent on American Tower Corporation, consolidate their financials with American Tower Corporation, and employ key personnel selected by American Tower Corporation. The agents and representatives of Defendants who engaged in the tortious and unlawful conduct described below also hold themselves out in correspondence and otherwise as authorized agents or representatives of American Tower Corporation.

21. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because TriStar asserts claims arising under the laws of the United States.

¹ The Defendants are referred to collectively because they jointly committed the tortious and unlawful acts described herein using interconnected and interdependent parent and subsidiary entities. The subsidiaries are mere instrumentalities of American Tower Corporation.

22. Venue is proper in this district under 28 U.S.C. § 1391(b) because (1) a substantial part of the events giving rise to TriStar's claims occurred in this district, and (2) a substantial part of the property that is the subject of this action is situated in this district.

BACKGROUND

A. The Cellular Tower Industry

1. The Beginning of the Industry

23. In the mid-1980s, cellular telephone service was first introduced. Initially, due to government regulation and oversight, there were only two carriers in any given urban region that provided cell service, primarily in densely populated areas. The names of these carriers have changed or evolved, with the dominant carriers today being AT&T, Verizon, Sprint/Nextel, T-Mobile, and MetroPCS. The services provided by these carriers now stretch coast-to-coast, serving nearly the entire United States population, urban and rural.

24. Cell phone service is provided through antennas and other equipment installed on a network of cell site locations, including towers erected for the sole purpose of siting antennas as well as rooftops, water tanks, and other existing structures. From 1985 to 1996, the towers were built and owned by carriers almost exclusively for their sole use.

25. In 1996, President Clinton signed into law the Telecommunications Act of 1996, dramatically altering the landscape of the cell phone industry. The law was designed to both increase the number of wireless carriers and to foster competition among carriers using similar network technologies. The Telecommunications Act mandated two significant changes in the wireless marketplace. First, additional wireless licenses were sold, enabling new wireless carriers to emerge as competitors, certain of which eventually became Sprint/Nextel and T-Mobile. Second, carriers were required to open up their networks for certain kinds of sharing, or

“co-locating,” with these new market entrants, essentially requiring each carrier to share space on its towers with competing carriers.

26. This second change in the industry eventually led to the emergence of the cell tower industry. As consumer interest in cell phone service grew exponentially, it became apparent to the large incumbent carriers that the real value of their cellular business existed not in continuing to own the cell towers—which they were forced to share by federal law—but in attracting new customers to their various service plans. As a result, beginning in 1999, carriers began to outsource their towers by transferring control of the towers to a new market entity: the tower company.

27. The carriers sold or subleased their rights to use the towers (and sometimes the ownership of the towers themselves) to the tower companies and used the proceeds to grow their networks and expand their customer bases. The carriers reserved space on the towers for their own antennas. The carriers are tenants on the towers, whether they sold them or subleased them. The tower companies, in exchange for their investment of capital to control a tower site, were the beneficiaries of two critical opportunities: (1) the lease-back payment from the carrier that had previously owned the tower, and (2) the option to lease additional space on the tower to other wireless carriers.

ii. The Industry Today

28. Today, there are more than 100,000 cell towers in the United States. Over half of those towers are controlled by three major public tower companies. American Tower alone operates over 22,000 towers in the United States. The cell phone carriers continue to control about 27% of the towers, and the remaining towers are controlled by a number of smaller tower companies. By comparison, TriStar controls the ground underlying less than 1% of the towers.

29. When a tower company "controls" a given tower, it may either have actual ownership of the tower steel or simply own sublease rights to space on the towers (i.e., a right to lease to other carriers the space not reserved by the incumbent carrier that maintains ownership of the tower steel). The ownership interests to which each tower is subject varies depending upon the carrier from whom the tower was acquired. The first transaction in which a carrier transferred control of its towers occurred in 1999. Under the terms of that transaction, Bell Atlantic sold actual ownership of the tower steel to Crown Castle. In subsequent transactions, tower companies like Crown Castle and American Tower acquired only sublease rights to space on the towers, while the carriers retained ownership of the towers. In these later transactions, the landowner owns the land and leases it to a cell phone company, which subleases it to a cell tower company like American Tower.

30. More than 25% of American Tower's towers in the United States are subleased towers. American Tower, as sublessee, often pays rent to the landowner and, as lessor, collects rent from the wireless carriers that use space on the tower. American Tower's profit depends on the gross margin between the rent it pays to the landowner and the rent it collects from the cell phone companies using the tower, less some minor operating expenses.

31. The majority of the nation's more than 100,000 cell towers are located on property that the tower companies or carriers lease from individual landowners for a specific period of time. This is true whether the tower steel is owned by a tower company or a carrier. American Tower recently disclosed that approximately 87% of the communications sites in its portfolio are located on leased land. In order to establish or maintain their control of tower sites and generate revenue, American Tower must negotiate new ground leases, or renewals of current ground leases, with landowners on an individualized basis.

32. While towers could initially be sited at any number of potential locations, zoning regulations in many jurisdictions now make it very difficult to move existing towers, erect new ones, or demolish existing structures housing active carriers. In addition, cellular networks were laid out on a hexagonal grid of concurrent honeycomb shapes (i.e., "cells"), with each tower sitting in the center of each honeycomb and providing service within that honeycomb. Towers are located to avoid having space between these honeycombs because any space would result in a cellular "dead zone." Thus, it would be nearly impossible to substantially relocate a tower today without adversely impacting the grid, thereby creating a dead zone in a carrier's cellular network.

33. With the exponential growth in demand for cell phone service, the tower companies have increased the rents they charge to cell phone carriers, and additional carrier tenants have been added to existing towers, further increasing revenues to tower companies. And while the location of existing cellular sites has also become more important, landowners have not seen a significant increase in rents from the tower companies.

34. Since the formation of the cell tower industry in the mid-1990s, the total cash flow produced by a typical cell tower has increased by more than \$50,000 per year, while the total cash flow received by a typical landowner in the form of ground rent has increased by less than \$10,000 per year. Whereas the typical landowner previously received approximately 40% of a cell tower location's total cash flow, landowners now typically receive less than 15% from the tower companies. Over the course of the past 15 years, the total cash flow from a typical cell tower has increased by more than 400%, while the share of total cash flow that is typically received by a landowner has declined by more than 50%.

35. A typical cell tower operated by American Tower produces annual gross cash flow in excess of \$80,000 for the company, whereas the landowner of such site typically receives less than \$15,000.

B. American Tower and TriStar as Competitors

i. American Tower as "Goliath" of the Industry

36. Boston-based American Tower is a \$25 billion company, operating approximately 40,000 cell tower locations globally, with offices throughout the United States and in Brazil, Chile, Colombia, Ghana, India, Mexico, Peru, South Africa, and the United Kingdom. The company's annual rental and management revenue is approximately \$2.5 billion. American Tower's annual consolidated gross margin (generally the difference between its tower rent income and its ground rent, less some minor operating expenses) is more than \$1.8 billion, or approximately a 75% gross profit margin, placing it among the highest of all public companies in the world.

37. American Tower controls more than 22,000 towers domestically. Upon information and belief, many of American Tower's most profitable towers are controlled by a sublease arrangement, whereby (1) American Tower is the sublessee of the wireless carrier that originally entered into a ground lease with the landowner, and (2) American Tower has the right to further sublease out space on the towers to carriers for the duration of the ground lease. Under this arrangement, American Tower does not own the tower steel. In addition, the vast majority of American Tower's towers are located on land leased from individual landowners for a defined period of time.

ii. The Emergence of TriStar

38. Prior to the formation of TriStar and other ground lease acquirers, landowners leasing land to tower companies had only one real option when the ground lease expired:

renewing and extending the ground lease with the existing tower company. Given the lack of competitive alternatives, the lease renewal rate was typically set by the tower company without negotiation. The tower company's goal was (and still is) to renew the ground lease at the lowest possible rental rate, and not to share the enormous profits from a site with its landowner.

39. In 2005, TriStar was formed to assist individual landowners in realizing the true value of the land on which the cell tower is located. TriStar is a private company of approximately forty employees based primarily in Pennsylvania and Texas, with operations throughout the continental United States.

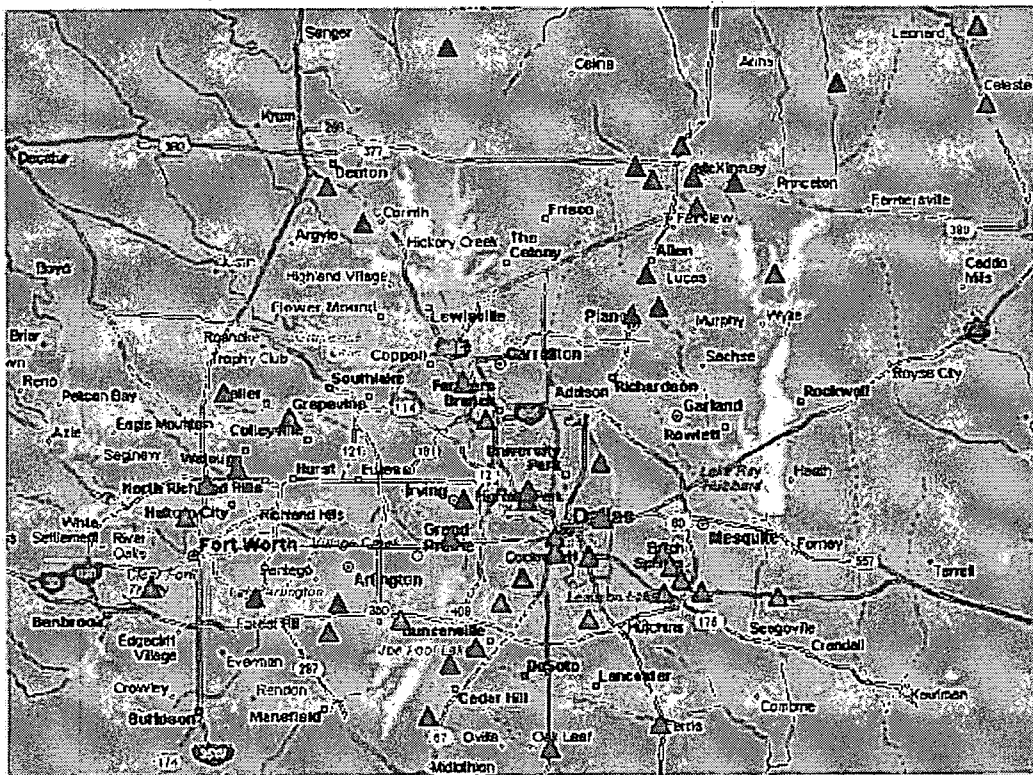
40. Most commonly through execution of an easement with the landowner, but occasionally via a fee purchase or successor lease, TriStar acquires the right to manage a communications site once the underlying ground lease with the existing tower company expires. The tower company enjoys the full benefit of its lease for the duration of the existing term without interference from TriStar. Upon lease expiration, TriStar takes over the management of the tower property from the tower company and endeavors to maximize benefit to the landowner.

41. Upon information and belief, TriStar is the only ground lease acquirer that takes over the management of the tower property from the tower company and endeavors to substantially increase benefits to the landowner. The other ground lease acquirers seek to purchase the ground rent paid by the tower company with the intention of extending the ground lease, and are thus a much less significant business threat to American Tower. In fact, the portfolios of the two largest ground lease acquirers have been acquired by the nation's largest tower companies.

42. TriStar has acquired (or has fully executed agreements to acquire) control of over 600 tower locations throughout the continental United States. Furthermore, the principals of

TriStar (the management team) have in the aggregate constructed, acquired, designed, and/or managed more than 40,000 towers in their careers, which is more towers than American Tower owns globally. Their careers in the industry began at the very formation of the cell tower business. They are industry experts.

43. More than 100 of TriStar's locations are in Texas, its largest state concentration by far. As the following demonstrates, a number of these Texas sites are located in the DFW area.



44. Since entering the industry, TriStar has acquired property rights underlying several hundred tower locations leased or subleased by American Tower. TriStar's business model is to not renew leases with American Tower when they expire, but instead to operate each tower site for wireless communications purposes upon expiration of the respective lease (either

by acquiring rights to the existing tower or constructing a replacement tower at the same location, which is typically permitted by local zoning regulations). As such, TriStar's emergence as a competitor in the cell tower industry has been detrimental to American Tower.

III. Example of an American Tower Site Acquired by TriStar

45. While TriStar's entry to the market has been detrimental to American Tower, TriStar has created legitimate competition in the cell tower industry, added tremendous value for landowners, and generated significant savings for wireless carriers. For example, in 2006, TriStar made a deal with a landowner in Tarrant County to acquire land containing one of the most critical towers in the DFW area. The tower holds key communication facilities for three carriers, including critical equipment for transporting signals for AT&T through an expansive metropolitan area.

46. The land was subject to an underlying ground lease with American Tower, with the ground lease expiring on April 30, 2010. Prior to TriStar's involvement, the landowner was receiving ground lease payments of \$3,732 annually from American Tower. At the time that TriStar made the deal with the landowner, the landowner had an offer from American Tower to simply renew and extend the ground lease for a nominal increase. TriStar offered to pay the landowner a premium for the remaining payments due under the ground lease with American Tower and then, after the expiration of that ground lease, to pay the landowner 50% of the actual net revenue generated by TriStar from the site.

47. Upon the landowner's acceptance, TriStar paid the landowner ten times the annual ground rent amount, or \$37,000, and took over receipt of the ground lease payments from American Tower for the remaining three years on the ground lease. Since American Tower's rights to the tower were only sublease rights, American Tower did not actually own the tower. In 2009, TriStar acquired the rights to purchase the tower from the actual tower owner once the

underlying ground lease expired on April 30, 2010. Then, upon expiration of the underlying ground lease, TriStar did not renew the ground lease with American Tower. Now in ownership of the tower and in control of the underlying land, TriStar executed new tower lease arrangements with the carriers at reduced rates from those previously being charged by American Tower. TriStar promptly commenced revenue share payments to the landowner, which amounted to many times what the landowner had received from American Tower.

48. Describing her satisfaction with TriStar, the landowner stated:

At the time that TriStar contacted us, the lease was paying \$3,732. That was the amount of money that we received in 2005. That was a year before TriStar had contacted us, and we went with TriStar. Once TriStar started operating the tower, we received \$43,533 for the yearly lease, and we received that check last June. It was a difficult decision because I knew firsthand how things could change in 25 years, and that's why I was so excited about the revenue sharing rather than just the flat rate that I would agree to now.

49. In sum, TriStar increased the landowner's compensation under the ground lease by more than 1000% and decreased the rental costs for the carrier tenants. TriStar has done many similar deals in which it has provided and will continue to provide substantial value for all parties involved.

C. American Tower's Unfair Competition and Interference with TriStar

50. Instead of trying to compete with TriStar by increasing the rent it offers to landowners, American Tower has decided to employ unfair and illegal tactics to eliminate TriStar as a competitive threat. Since 2007, American Tower representatives, including Brenda Berry, Ben Myers, Jason Hirsch, and others, including third parties acting on American Tower's behalf and for American Tower's benefit, have knowingly made false statements to landowners. These false statements include statements about TriStar, American Tower, the legal rights of both companies and of landowners, TriStar's business model and financial condition, TriStar's

intentions and capabilities, American Tower's ability to tear down or move towers, American Tower's relationship with and control over the carrier tenants on the tower, and other aspects of the tower business in order to induce those landowners to extend their ground leases with American Tower instead of accepting better offers from TriStar. Upon information and belief, American Tower has implemented a nationwide business strategy of instructing its agents and representatives to make these false statements as part of American Tower's commercial advertising and promotion to landowners.

51. American Tower has also utilized third-party agents, such as Lyle and, upon information and belief, Md7 and HPC, to approach landowners with false and misleading information on behalf of American Tower and negotiate lease extensions or other property transactions on behalf of American Tower. Lyle, Md7, and HPC have entered into agreements with American Tower whereby they act as agents of American Tower in negotiations with landowners. Lyle, Md7, and HPC hold themselves out in emails, letters and by telephone as authorized agents of American Tower, and landowners believe that these entities have authority to act as agents for American Tower. American Tower also represents to landowners that Lyle, Md7, and HPC have authority to act as agents of American Tower. American Tower approves of the forms of letters sent by Lyle, Md7, and HPC to landowners and uses those agents as a conduit to conduct negotiations on behalf of American Tower. American Tower has, by its own affirmative acts and by voluntarily permitting Lyle, Md7, and HPC to hold themselves out as its agents, generated reasonable belief among landowners that Lyle, Md7, and HPC serve as American Tower's agents. Landowners have justifiably relied on those acts in believing that Lyle, Md7, and HPC have authority to conduct negotiations for American Tower. Upon information and belief, American Tower instructs Lyle, Md7, and HPC to make false statements

and threats to landowners in order to convince the landowners to continue to do business with American Tower instead of entering into an agreement with TriStar. At the very least, American Tower condones and allows this behavior with knowledge that it is happening. Lyle and, upon information and belief, Md7 and HPC, pursuant to American Tower's policies, have made and continue to make the same false and misleading statements detailed below that American Tower employees make to landowners in negotiations for tower sites. Further, upon information and belief, such third-party agents lacked appropriate real estate brokerage licenses to undertake such efforts, in violation of state laws.

52. TriStar, with its limited resources, does not attempt to acquire control over all of the estimated 100,000 towers in the US, or even all of the estimated 22,000 towers currently controlled by American Tower. Instead, TriStar focuses its limited resources on identifying key tower sites and negotiating with those specific landowners for control of those towers. Upon information and belief, based on TriStar's communications with these landowners and based on documentary correspondence obtained by TriStar, American Tower targets all or substantially all of these landowners with current relationships with American Tower as recipients of the false or misleading representations, threats, and other confusing and misleading statements.

I. American Tower's False Statements about Tearing Down Towers

53. American Tower repeatedly has told landowners that if they sign a deal with TriStar instead of extending their leases with American Tower, American Tower will tear down the tower on the land and that, therefore, the landowner would lose its income stream from the site. Upon information and belief, based on TriStar's communications with these landowners and based on documentary correspondence obtained by TriStar, American Tower has made these statements to many of the landowners with whom TriStar has begun negotiations. But these statements are demonstrably false and misleading because American Tower knows that it does

not, in the vast majority of cases, have any legal right to tear down towers at the expiration of its ground leases for several reasons. For many of the same reasons and some others, American Tower's threats to landowners that they will move the tenants off of the landowners' tower site are likewise false and misleading.

54. First, a number of the towers American Tower manages—including a significant number of its towers in Texas—are owned by AT&T, and American Tower's rights with respect to these towers are defined and limited by a sublease agreement (the "SBC Sublease"). Article III, Section 3 of the SBC Sublease, which is publically available, states that the sublease terminates as soon as the underlying ground lease for a tower expires, unless the ground lease has been extended. Article III, Section 35 of the SBC Sublease provides that American Tower has an option to purchase the towers at a specified future date, but *only* if the ground lease for a particular site has not expired or otherwise been terminated before that purchase date. Thus, American Tower has no right to purchase a tower subleased from AT&T if the ground lease has expired. It is therefore unambiguously false for American Tower to represent to landowners that it will or can tear down or move towers if the landowners do not extend their leases with American Tower because those towers are owned by AT&T, and American Tower has no legal right to purchase the towers after the ground lease expires.

55. Second, even where American Tower has an existing ground lease and a purchase option at a set point in the future, the company has stated in its recent 10Q filings with the SEC that it has not yet decided whether it will exercise its purchase option for any towers, stating specifically:

Our communications site portfolio includes towers that we operate pursuant to lease and sublease agreements that include a purchase option at the end of each lease period. We may not have the required available capital to exercise our right to purchase leased

or subleased towers at the end of the applicable period. Even if we do have available capital, we may choose not to exercise our right to purchase such towers for business or other reasons. In the event that we do not exercise these purchase rights, or are otherwise unable to acquire an interest that would allow us to continue to operate these towers after the applicable period, we will lose the cash flows derived from such towers, which may have a material adverse effect on our business. . . .

Thus, American Tower's unequivocal statements to landowners that it will "tear the tower down" are belied by its own statements to the SEC and the investing public.

56. Third, many of the remaining towers that American Tower controls are owned by Verizon and subject to a sublease agreement between American Tower and a Verizon predecessor (the "AirTouch Sublease"). Under the terms of the AirTouch Sublease, which is publically available, American Tower has *no* right to purchase the towers at *any* point. As such, American Tower has no legal right to tear down or move these towers either.

57. Fourth, American Tower cannot tear down or move the towers that it actually owns during the respective terms of the underlying ground leases because the carrier tenants have a contractual right to maintain equipment on the towers, and their cellular networks depend on the specific existing sites. Indeed, in a federal complaint filed jointly with Verizon Wireless less than a year ago, American Tower and Verizon emphasized the importance of maintaining—not tearing down—current cellular tower locations:

Because of the early location of the Existing Tower in the development of the Verizon Wireless network, in which all tower sites are interrelated and networked to provide seamless coverage, maintaining wireless telecommunications facilities at this approximate location is critical to the continued operation of Verizon Wireless's wireless communications network.

Complaint at ¶ 7, *Verizon Wireless (VAW) LLC & Am. Tower Corp. v. City of Lee's Summit, Mo.*, No. 4:11-cv-00245-DGK (W.D. Mo. Mar. 4, 2011). The carrier tenants would have to agree to move off of the existing tower in order for American Tower to be able to "move the

tower.” The carriers are the customers and generally have no interest in moving sites. Additionally, zoning regulations in many districts would preclude American Tower from acquiring a demolition permit to remove a tower and eliminate wireless coverage since such demolition would result in safety concerns and a lack of 911 coverage for a particular area.

58. The fact is that American Tower has *never* torn down or moved a tower after losing a ground lease to TriStar, even though TriStar has acquired property rights underlying hundreds of sites operated by American Tower and has assumed control of various sites formerly operated by American Tower. American Tower’s CEO, James Taiclet, confirmed in a March 2012 conference that: “we . . . haven’t done it [(moved a tower)], and we would probably only do it as a demonstration”

59. Upon information and belief, American Tower’s threats to move towers are also belied by statements it has made to the IRS in connection with its application to become a REIT. In those documents, it is believed that American Tower insisted that the towers are permanent fixtures and are not intended to be moved.

60. Notwithstanding American Tower’s lack of a legal right to tear down or move towers, it has engaged and continues to engage in a regular practice of threatening landowners that it will do so, not only in the DFW area and across Texas, but throughout the United States. For example, in 2010, TriStar was negotiating with a landowner in Tarrant County to acquire rights to land on which an American Tower-controlled site was located. American Tower offered to extend its ground lease with the landowner on terms far less favorable than the terms TriStar offered. In order to persuade the landowner to accept these less favorable terms, American Tower told him that it would tear down the tower if he did not extend his lease. But the tower on this land is subject to the SBC Sublease, and American Tower therefore has no right

to tear the tower down when the ground lease expires. However, because of American Tower's false statements and because of the landowner's understandable lack of knowledge concerning the falsity of those statements, the landowner declined TriStar's favorable deal and extended his ground lease with American Tower.

61. American Tower made similar false statements to Leon Pelzel, another landowner in the DFW area. While TriStar was negotiating with Mr. Pelzel, American Tower told him that it would tear down the tower on his land if he signed with TriStar. But this tower was also subject to the SBC Sublease, so American Tower made these statements knowing that it did not have a legal right to tear the tower down. Although Mr. Pelzel eventually signed with TriStar, TriStar had to devote additional time and money to close the transaction. As a direct result of American Tower's false statements, TriStar also had to put up a letter of credit that Mr. Pelzel could cash in if TriStar was not able to convert the tower due to it being torn down. Contrary to American Tower's false statements to Mr. Pelzel, TriStar ultimately followed through with its promise to convert the tower and operate it in a manner that is profitable to Mr. Pelzel.

62. In Dallas County, TriStar offered Karl Willock \$100,000 to purchase a tower site, which was significantly more than American Tower was willing to pay for the same site. Instead of increasing its offer, American Tower made false statements to Mr. Willock about the company's ability to tear down the tower, which is subject to the SBC Sublease. Mr. Willock eventually signed with TriStar, but TriStar had to increase the purchase price to \$136,000 to overcome American Tower's misrepresentations and disparaging comments about TriStar to Mr. Willock.

63. At several other DFW area sites, negotiations between TriStar and landowners are ongoing. American Tower continues to make false statements regarding its ability to tear down

or move towers that are subject to SBC Subleases. In addition, American Tower has disparaged TriStar to some of these landowners, stating that TriStar does not have the ability to convert and operate their towers even though it knows that TriStar has converted and operates a number of sites. TriStar continues to spend significant amounts of time and money to combat American Tower's false advertising. Additionally, American Tower's ongoing false statements are likely to cause at least some of the landowners to take inferior offers from American Tower, causing additional financial losses to TriStar.

64. American Tower has made similar false statements to other landowners throughout the State of Texas. In fact, American Tower has made false statements regarding its ability to tear down towers to landowners in at least the following Texas counties: Cameron, Dallas, Denton, Hidalgo, Nueces, Tarrant, and Taylor. All of the towers at issue were either subject to the SBC Sublease or had a tenant that was committed to stay on the tower. In either scenario, American Tower falsely represented that it could and would tear down a tower, despite knowing that it had no legal right to do so.

65. American Tower has also made false statements to landowners outside of Texas. With knowledge that it had no legal right to tear down towers at the end of ground leases under the SBC Sublease, American Tower has told landowners in multiple states that it will tear down or move their towers if they sign with TriStar. For example, in Oklahoma, Doris Vorel turned down a TriStar deal and accepted an inferior offer from American Tower because American Tower told her that the tower on her land would be torn down unless she signed a lease extension.

66. American Tower also threatened to tear down a tower that is subject to the SBC Sublease in New Jersey if the landowner, Carl Jolley, signed a deal with TriStar. This false

statement caused Mr. Jolley so much fear that he turned down TriStar's superior proposal to sign a lease extension with American Tower.

67. Further, American Tower has made false statements to landowners throughout the United States where towers are subject to the AirTouch Sublease. For example, in Oregon, TriStar offered Kevin Howard a 50% share of revenue generated by the tower on his land. American Tower made an inferior offer that involved an outright purchase of the land and told Mr. Howard that "the TriStar offer of 50% revenue share is only good if the tower is still there." While this tower is subject to the AirTouch Sublease (under which American Tower has no right to tear the tower down), American Tower emailed Mr. Howard language from another contract, claiming that the language gave it the right to tear down the tower on his land. Because of American Tower's blatantly and intentionally misleading statement, Mr. Howard rejected TriStar's superior offer.

68. Similarly, American Tower told Martha McCain, a landowner in Arizona, that the company would tear down the tower on her land, which was also subject to the AirTouch Sublease, if Ms. McCain did business with TriStar. As a result of this false statement, Ms. McCain signed a long-term lease extension with American Tower and turned down TriStar's superior offer.

69. Likewise, American Tower has told several landowners in California, including Beymer Well Service Company, Yosemite College, and Stephen Weinberg, that their towers will be torn down if they sign deals with TriStar, despite American Tower's knowledge that these towers are subject to the AirTouch Sublease and therefore cannot be torn down.

70. Moreover, American Tower has made false statements in several additional states where tower ownership is subject to some other arrangement. Notably, American Tower cannot

tear down or move towers even when it actually owns the towers due to its obligations to the carriers and zoning regulations. Despite knowing that it has no right to tear down or move these towers, American Tower continues to harass and deceive landowners with misrepresentations and unfounded threats. For example, as recently as February 14, 2012, American Tower told a landowner in Oklahoma that the company would move the tower if the landowner did not sign an extension with American Tower. At the time it made this threat, upon information and belief, American Tower did not have an alternate site zoned or the agreements of the tenants to move towers. Under these circumstances, the tower and the tenants could not move. Similar misleading and false threats are repeated by American Tower and its agents all across the country.

71. Additionally, in April 2011, American Tower made false statements regarding its ability to tear down a tower in Michigan. American Tower's persistent harassment caused the landowner such concern and hardship that she wrote the following email (altered to correct spelling):

I am still trying to make up my mind, but I like your offer. I'm tired of American Tower threatening me. They assured me that if I sign with you they will take the tower down. What happens to me if they really do? My lease with them isn't up until 2025. They want me to sign for another 25 years with no increase. Will TriStar keep paying me for the next 25 years after the current lease is up?

I have Multiple Sclerosis (37 years). Stress is one of my enemies. My nurse was here today and told me whatever is upsetting me I had better solve it, as my MS symptoms are worse. I live alone and I can't walk so I can't take chances with my health. A nursing home would be next. I know you don't need to hear all this, but I think it will help you understand why I haven't made my decision yet.

72. Months after this lawsuit started, on or about July 10, 2012, American Tower sent letters to landowners all over the country (the "July 10 Letter"), falsely claiming that there is a

“strong” likelihood it will “remove the [landowner’s] tower if our lease expires,” and threatening the landowner with “loss of all revenue at the current tower site.” The letter was designed to dissuade landowners from talking to TriStar. It has worked, causing TriStar damages in the form of lost opportunities.

73. American Tower’s false statements throughout the country are numerous and widespread. According to TriStar’s discussions with landowners, American Tower has made false statements regarding its ability to tear down towers to landowners in at least the following counties: Yuma, Arizona; Camino, California; El Dorado, California; Merced, California; Sacramento, California; Stanislaus, California; Sutter, California; Hernando, Florida; Chatham, Georgia; Cobb, Georgia; Elmore, Idaho; St. Clair, Illinois; Jackson, Michigan; Oakland, Michigan; St. Clair, Michigan; Jackson, Missouri; St. Francois, Missouri; Monmouth, New Jersey; Curry, New Mexico; Lucas, Ohio; Perry, Ohio; Cherokee, Oklahoma; McClain, Oklahoma; Oklahoma, Oklahoma; Clackamas, Oregon; Bucks, Pennsylvania; Providence, Rhode Island; Sumter, South Carolina; Chelan, Washington; and Racine, Wisconsin.

74. And these are just the instances that TriStar has been able to learn about. Upon information and belief, the practice is even more widespread. TriStar contacts over 1000 landowners every year seeking to do a deal. In most circumstances, TriStar is not privy to why the landowner either will not engage in negotiations with TriStar or breaks off negotiations once begun. Upon information and belief, American Tower’s practice of making misrepresentations to the landowners is a matter of policy and is widespread throughout the country.

II. American Tower’s False Statements about Relocating Tenants

75. American Tower has made additional false statements regarding the company’s ability to relocate the carrier tenants to another American Tower site. For example, in 2010, American Tower told Santos Leal, a landowner in Dallas County, that if he signed with TriStar,

American Tower would relocate the carrier tenants—including AT&T and MetroPCS—to another American Tower site, rendering Mr. Leal's tower worthless. Upon information and belief, at the time American Tower made this threat, neither AT&T nor MetroPCS had agreed to move towers and American Tower had not gotten an alternate site zoned or approved.

76. American Tower made the same statement to St. John's Lutheran Church, a Tarrant County landowner, in 2011. By 2011, MetroPCS had a contractual arrangement in place with TriStar in both Texas and California where it will not relocate from a TriStar controlled tower. Because, upon information and belief, American Tower knows that MetroPCS has this contractual commitment to TriStar, American Tower's statement that MetroPCS would relocate to another site is untrue.

77. In its July 10, 2012 Letter to landowners all over the country, American Tower falsely claimed that if the landowner's lease expired, it would "seek to move the carriers on the tower to one of our nearby towers or one that we will construct nearby," and threatened the landowner with "loss of all revenue at the current tower site."

78. With respect to other carriers, it is misleading for American Tower to suggest that these tenants will relocate because American Tower does not have an alternative site acceptable to the carriers or one that has all regulatory approvals and permits. Additionally, the carriers have a right to be at the precise location they have contracted for, and, as American Tower recently has told other courts, the carriers' network is designed around the specific locations of its current tower equipment. American Tower therefore knows that even carriers without contractual deals with TriStar would likely not relocate to a new site. Finally, American Tower knows that carriers would have no incentive to abandon a TriStar-controlled tower and relocate

to an American Tower-controlled tower because, as explained above, carriers benefit from discounted lease rates and operational efficiencies offered by TriStar on towers it controls.

79. American Tower has nevertheless made this demonstrably false statement to landowners in the DFW area, across Texas, and throughout the United States. Specifically, TriStar is aware of American Tower making similar false statements about moving carriers in at least the following counties: Dallas, Texas; Tarrant, Texas; Smith, Texas; Oakland, Michigan; St. Clair, Michigan; Curry, New Mexico; Lucas, Ohio; and Bucks, Pennsylvania.

80. Again, these are just the instances that TriStar has been able to learn about. Upon information and belief, the practice is even more widespread. TriStar contacts over 1000 landowners every year seeking to do a deal. In most circumstances, TriStar is not privy to why the landowner either will not engage in negotiations with TriStar or breaks off negotiations once begun. Upon information and belief, American Tower's practice of making misrepresentations to the landowners is a matter of policy and is widespread throughout the country.

iii. American Tower's False Statements about TriStar's Business

81. American Tower has told numerous landowners that TriStar is going out of business, is unable to meet its current financial obligations, or will be unable to meet its financial obligations in the future. American Tower also has specifically stated that TriStar never intends to convert or operate towers that it acquired and/or that TriStar lacks the financial means or expertise necessary to operate the towers. Each of these statements is false. TriStar is financially stable and able to meet all of its obligations, has honored all of its contractual agreements, and is owned and managed by principals with extensive experience in operating and managing tower sites. TriStar's business model is to not renew leases with American Tower when they expire, but instead to operate each tower site for wireless communications purposes upon expiration of the respective lease.

82. Nevertheless, American Tower makes these statements knowing that they are false and intending for landowners to rely on them. For example, as recently as February 14, 2012, American Tower told a landowner in Washington that TriStar is going out of business, which American Tower knows is false.

83. In its July 10, 2012 Letter to landowners all over the country, American Tower falsely claimed that "TriStar's business tactics are unfair and misleading to landowners" and wrongfully questioned whether "TriStar intends to remain in in the market to manage towers and share revenues," even though it knows or should know that TriStar is fully capable of managing towers and that the landowners' contracts with TriStar, including any rights to share in revenues, are enforceable even if assigned to a new buyer of the towers.

84. American Tower has made similar false statements in at least the following counties: Denton, Texas; St. Clair, Alabama; Volusia, Florida; Madison, Illinois; St. Francois, Missouri; Chesterfield, Virginia; and King, Washington.

85. Once again, these are just the instances that TriStar has been able to learn about. Upon information and belief, the practice is even more widespread. TriStar contacts over 1000 landowners every year seeking to do a deal. In most circumstances, TriStar is not privy to why the landowner either will not engage in negotiations with TriStar or breaks off negotiations once begun. Upon information and belief, American Tower's practice of making misrepresentations to the landowners is a matter of policy and is widespread throughout the country.

iv. American Tower's False Claim of Affiliation with AT&T

86. American Tower sent letters to landowners implying that American Tower was endorsed by or affiliated with AT&T. Upon information and belief, based on the nature of the letters TriStar has obtained from landowners and based on TriStar's communications with landowners, American Tower has sent these letters to all or substantially all of the landowners

with sites subject to the SBC Sublease. These letters encouraged landowners to enter into long-term lease extensions with American Tower. While American Tower knew that the designation of affiliation with AT&T was false, American Tower used the designation for its benefit and to the detriment of TriStar.

v. Harm Caused by American Tower's False Claims to Landowners

87. American Tower's false representations to landowners across the country have caused many of these landowners to sign deals with American Tower, despite more favorable offers from TriStar. In some cases, negotiations with landowners are ongoing, and American Tower's false statements have required TriStar to spend additional time and money to attempt to close a deal. Even in those cases where landowners have ultimately signed contracts with TriStar, American Tower's false statements have caused TriStar to overpay for certain sites to offset the reputational damage American Tower has caused with its false and disparaging statements and the understandable fears of landowners resulting from American Tower's misrepresentations and threats. Additionally, American Tower's false statements have caused TriStar to include unfavorable contractual guarantees and to purchase letters of credit to comfort landowners fearful of American Tower's false statements. In all of these scenarios, American Tower's unlawful actions have caused significant financial harm to TriStar.

vi. American Tower's Tortious Interference with TriStar's Contracts

88. Even when landowners have seen through American Tower's deception and signed better deals with TriStar, American Tower has continued to make false statements to the landowners. Specifically, American Tower has encouraged landowners to breach their contracts with TriStar, repeating its threats that it will tear down towers and relocate tenants if the landowners honor their contracts.

89. For example, in mid-2011, American Tower continued to make false and harassing statements to Verbenia Carroll, a landowner in the DFW area who had signed a contract with TriStar in January 2011. Although American Tower knew of TriStar's relationship with Ms. Carroll and TriStar had publically recorded its interest months earlier, American Tower threatened to tear down the tower on the land—despite that the company had no right to do so—unless Ms. Carroll entered into a lease extension with American Tower.

90. American Tower made similar threats to Morteza Shafinury, a landowner in South Texas who had already executed a contract with TriStar. Based on American Tower's demands for Ms. Shafinury to break the TriStar agreement, she eventually cancelled the TriStar contract and entered into a lease extension with American Tower.

91. American Tower has continued to make false and harassing statements to landowners under contract with TriStar throughout the United States, in places such as Taylor County, Texas; Denton County, Texas; Hidalgo County, Texas; Maricopa County, Arizona; and Sacramento County, California. This has caused financial harm to TriStar, as some landowners have dishonored their deals with TriStar to enter into lease extensions with American Tower.

vii. American Tower's False Statements to AT&T and MetroPCS

92. In addition to American Tower's false statements to landowners, American Tower has also made false statements to AT&T and MetroPCS. TriStar reached an agreement with a landowner in Dallas County to take over land on which an American Tower-controlled site was located. TriStar did not extend American Tower's ground lease when it expired in 2009. Shortly thereafter, American Tower convinced AT&T and MetroPCS to relocate to a new site by telling them that the land under the tower had been condemned. American Tower knew that the land had not been condemned but made the false statement for the purpose of inducing AT&T and MetroPCS to leave the TriStar-controlled site. When AT&T discovered that American Tower

had misrepresented that the land had been condemned, AT&T decided not to relocate but asked TriStar to extend the ground lease. TriStar agreed to extend the lease, which resulted in significantly less revenue for TriStar and rendered its asset less valuable.

viii. American Tower's Breach of Contracts with TriStar

93. In addition to its numerous false statements and other anticompetitive acts, American Tower has also breached contracts with TriStar. After TriStar executes a contract with a landowner, it often steps into the shoes of the landowner and assumes the legal rights of the landowner to receive lease payments due to the landowner under any existing ground lease. American Tower has refused to acknowledge these rights following proper notice and is withholding payments due to TriStar under existing ground leases.

ix. American Tower's Use of Nondisclosure Clauses to Intentionally Prevent Competition

94. American Tower alleges in its Counterclaim that many of its leases have nondisclosure clauses that purport to prevent a landowner from disclosing any of the terms of the leases to any third parties, including potential competitors. The example clauses provided by American Tower in its state court lawsuits do not contain any exception that would permit the landowner to disclose the terms of the leases to a bona fide potential purchaser or assignee of rights in the land. As a result, these clauses interfere with rivals' attempts to compete with American Tower for land underlying communications towers and landowners' attempts to obtain competitive bids for their ground leases. Indeed, American Tower concedes in its Counterclaim that its nondisclosure clauses effectively "prevent [landowners] from granting a communication easement to TriStar" and "prevent the landowner from licensing, leasing, transferring or conveying any interest in the land for purposes of operating a communications facility."²

² Counterclaim (Doc. No. 9) at ¶ 39, 43.

95. In its July 10, 2012 Letter to landowners all over the country, American Tower falsely and wrongfully threatened landowners that simply “conducting business” with TriStar or another land aggregator may “cause you to breach an existing obligation to American Tower, such as the requirement in many of our land leases to keep confidential the terms of the lease.” The letter asked landowners to contact American Tower if there has been such a “breach,” in order “to resolve the issue.”

96. The portions of the nondisclosure clauses preventing disclosure to potential buyers or assignees serve no legitimate business purpose. Rather, they are naked anticompetitive elements in American Tower’s scheme to monopolize the tower industry in the areas where American Tower operates by preventing competitors from accessing an essential resource for entry into and expansion in the market. As such, these clauses are invalid and unenforceable as elements of an anticompetitive scheme.

97. In addition, these nondisclosure clauses constitute unlawful restraints on the alienation of real property and unreasonably interfere with the landowners’ rights in their real property.

98. As demonstrated by its sham, vexatious litigation against TriStar, American Tower routinely files lawsuits against its competitors and landowners to enforce these nakedly anticompetitive nondisclosure clauses. This litigation, and thinly veiled threats of litigation such as those contained in the July 10 Letter, are part of American Tower’s pattern of intimidating landowners and blocking legitimate competition in the tower operating market from rivals like TriStar. American Tower’s efforts to enforce these clauses in a way that would prevent competition is exclusionary conduct.

K. American Tower's Use of Vexatious, Sham Litigation to Further Intimidate Landowners and Financially Weaken TriStar

99. American Tower's latest tactic has been to file bad faith and sham lawsuits in five state courts that raise the same claims it has raised in its counterclaim.

100. American Tower is abusing the litigation process to impose a hardship on TriStar and in an attempt to frighten landowners from doing business with TriStar. Shortly before this lawsuit began, on February 1, 2012, American Tower sent a letter to TriStar that enclosed a copy of the complaint it filed against TriStar and a landowner in Oakland County, Michigan (the "Oakland County, MI Lawsuit"),³ and threatened to file similar lawsuits throughout the country.

101. In the Oakland County, MI Lawsuit, American Tower alleged that TriStar induced the landowner to breach a nondisclosure clause of American Tower's lease with the landowner that purports to prevent the landowner from revealing the terms of the lease to potential competitors, rendering TriStar's easement with the landowner invalid. The court made quick work of American Tower's specious claims, granting summary disposition in favor of both TriStar and the landowner. The court held that American Tower received the benefit of its bargain under its lease with the landowner and was not damaged in any way by TriStar's easement on the landowner's property which took effect after the expiration of the lease. The court also held that American Tower failed to establish that its lease contained any trade secrets.⁴

102. On February 16, 2012, TriStar filed suit against American Tower in this Court. (Doc. No. 1). On March 23, 2012, American Tower filed its answer and counterclaim ("Counterclaim") (Doc. No. 9) against TriStar in this Court, alleging, among other things, that

³ *American Tower Delaware Corp. v. 2100 East Maple Road L.L.C.; TriStar Investors, Inc.; and Big Top Ventures, LLC*, No. 12-124575-CK, in the Circuit Court for the County of Oakland, Michigan. American Tower Delaware Corp. is an American Tower subsidiary and a mere instrumentality of American Tower Corporation. Big Top Ventures is a TriStar subsidiary.

⁴ Opinion and Order Re: Summary Disposition, Oakland County, MI Lawsuit, Oct. 24, 2012.

TriStar engaged in false advertising and unfair competition, tortiously interfered with American Tower's contracts and business expectancy, and misappropriated American Tower's trade secrets by obtaining and using information from American Tower's leases that contain nondisclosure clauses, preventing landowners from revealing lease information to potential competing lessees or assignees. As described above, these nondisclosure clauses are themselves part of American Tower's scheme to monopolize the tower industry.

103. Less than two weeks after filing its Counterclaim in this Court, on April 3, 2012, American Tower sued TriStar and a landowner in the Superior Court in Sacramento County, California, alleging that TriStar induced the landowner to breach a nondisclosure clause of American Tower's lease with the landowner that purports to prevent the landowner from revealing the terms of the lease to potential competitors, rendering TriStar's easement with the landowner invalid.⁵ American Tower knew these claims existed at the time it filed its Counterclaim and has raised these issues before this Court in its Counterclaim.

104. On April 5, 2012, American Tower sued TriStar and a landowner in the Circuit Court for Eaton County, Michigan, alleging that TriStar induced the landowner to breach a nondisclosure clause of American Tower's lease with the landowner that purports to prevent the landowner from revealing the terms of the lease to potential competitors, rendering TriStar's easement with the landowner invalid.⁶ American Tower knew these claims existed at the time it filed its Counterclaim and has raised these issues before this Court in its Counterclaim. The Michigan court dismissed American Tower's Eaton County, MI Lawsuit, granting summary

⁵ *American Tower Delaware Corp. v. TriStar Investors, Inc.; Shamrock BGM; John H. Kautz; Gail E. Kautz; and Does 1-100, inclusive*, No. 34-2012-00121614, in the Superior Court of California, County of Sacramento. American Tower Delaware Corp. is an American Tower subsidiary and is a mere instrumentality of American Tower Corporation. Shamrock BGM is a TriStar subsidiary.

⁶ *Unisite, LLC f/k/a Unisite, Inc. v. Joel L. Young; Brenda S. Young; TriStar Investors, Inc.; and Big Top Ventures*, No. 12-445-CK, in the Circuit Court for the County of Eaton, Michigan (the "Eaton County, MI Lawsuit"). Unisite, LLC is an American Tower subsidiary and a mere instrumentality of American Tower Corporation. Big Top Ventures is a TriStar subsidiary.

disposition in favor of TriStar and the landowner. The court held the nondisclosure clause in American Tower's lease was an unreasonable restraint on alienation of property and "when read in context of the entire Lease, does not prevent the [landowners] from discussing the Lease terms in the course of their own business affairs."⁷ The court denied American Tower's motion for reconsideration of this ruling.⁸

105. On April 10, 2012, American Tower sued TriStar and a landowner in the Court of Common Pleas in Horry County, South Carolina, alleging that TriStar induced the landowner to breach a nondisclosure clause of American Tower's lease with the landowner that purports to prevent the landowner from revealing the terms of the lease to potential competitors, rendering TriStar's easement with the landowner invalid.⁹ American Tower knew these claims existed at the time it filed its Counterclaim and has raised these issues before this Court in its Counterclaim.

106. On April 12, 2012, American Tower sued TriStar and a landowner in the Superior Court in Nevada County, California, alleging, among other things, that TriStar induced the landowner to breach a nondisclosure clause of American Tower's lease with the landowner that purports to prevent the landowner from revealing the terms of the lease to potential competitors, rendering TriStar's easement with the landowner invalid.¹⁰ American Tower knew these claims existed at the time it filed its Counterclaim and has raised these issues before this Court in its Counterclaim. The court sustained TriStar's and the landowners' demurrers in the Nevada

⁷ Opinion and Order, Eaton County, MI Lawsuit, July 9, 2012.

⁸ Opinion and Order, Eaton County, MI Lawsuit, Dec. 12, 2012.

⁹ *American Tower, LLC v. Angeline D. Johnson, TriStar Investors, Inc. and Minerva Realty, LLC*, No. 2012-CP-26-2912, in the Court of Common Pleas, County of Horry, South Carolina. American Tower, LLC is a defendant and counterclaimant before this Court. Minerva Realty, LLC is a TriStar subsidiary.

¹⁰ *American Tower, LLC v. TriStar Investors, Inc.; Shamrock BGM, LLC; Pamela G. Dobbas, Trustee of the Pamela G. Dobbas Revocable Trust, UTD October 10, 2006; and Does 1-50, inclusive*, No. T12/S004C, in the Superior Court of California, County of Nevada (the "Nevada County, CA Lawsuit"). American Tower, LLC is a defendant and counterclaimant before this Court. Shamrock BGM, LLC is a TriStar subsidiary.

County, CA Lawsuit and ordered that American Tower not seek to invalidate TriStar's easement in any amended pleading.

107. There was no legitimate justification for bringing this series of lawsuits against TriStar with identical claims based on the same facts in multiple courts. These lawsuits are motivated by an intent to inflict harm external to the litigation or to the result reached in the litigation. The purpose of such a series of cases was only to "up the ante" by increasing TriStar's cost of doing business and by intimidating landowners with the threat of costly litigation if they contract with TriStar at a competitive compensation rate.

108. Most recently, American Tower filed an Amended Counterclaim in this Court adding a claim against TriStar under the Sherman Act based upon its dealings with its investors and individual claims against eight current and former TriStar employees under the Racketeer Influenced and Corrupt Organizations Act ("RICO"). American Tower has no standing to bring any of the new claims in its Amended Counterclaim, which are without any legal or factual merit. The RICO and Sherman Act counterclaims, like the original counterclaims and the state court lawsuits, are motivated by an intent to inflict harm external to the litigation or to the result reached in the litigation. The RICO and Sherman Act claims are intended to threaten and intimidate TriStar's investors and employees.

109. In addition, upon information and belief, these suits were filed as part of a strategy of litigating TriStar out of business. This pattern of repeated, vexatious litigation constitutes a sham and has and will raise a barrier to entry for competitive entrants into the tower operating market, deprive landowners of competitive compensation, and decrease competition in the rates carriers pay for access to cell towers.

110. These suits are objectively baseless and motivated by an attempt to use the adjudicatory process as a weapon against a competitor. They are filed pursuant to a policy of starting legal proceedings without regard to the merits and for the purpose of injuring a market rival. These legal filings are not made out of a genuine interest in redressing grievances, but as part of a pattern or practice of successive filings undertaken essentially for purposes of harassment. As described above, many of these lawsuits are based on invalid nondisclosure clauses that are, themselves, part of American Tower's scheme to monopolize the tower industry. With these lawsuits, American Tower is attempting to use the litigation process—as opposed to the outcome of that process—as an anticompetitive weapon.

111. These later-filed state court lawsuits are an improper interference with this Court's jurisdiction.

xl American Tower's Cooperation with Other Tower Aggregators and Landowner Consultants

112. As part of its pattern of misleading and deceptive conduct towards landowners, without the knowledge of landowners involved, American Tower has also cooperated and/or colluded with American Tower's purportedly independent competitors such as Unison and purportedly independent landowner consultants during negotiations with landowners for tower sites.

CAUSES OF ACTION

COUNT I

Violation of the Lanham Act, 15 U.S.C. § 1125(a)

113. TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

114. American Tower, and its actual and/or apparent agents Lyle, Md7, and HPC, acting under the direction of American Tower, made false and misleading descriptions or

representations of fact, misrepresenting the nature, characteristics, and qualities of TriStar's services and commercial activities and of American Tower's services and commercial activities. For example, American Tower, itself and through its actual and/or apparent agents, falsely represented that it could and would tear down or move towers or relocate tenants if landowners signed with TriStar. American Tower, itself and through its actual and/or apparent agents, also misrepresented facts related to TriStar's current and future financial condition.

115. American Tower also made false or misleading representations of fact about its affiliation with or sponsorship or approval by AT&T in connection with American Tower's services or commercial activities. These misrepresentations are likely to cause confusion or to deceive consumers about an affiliation between American Tower and AT&T.

116. American Tower also made false or misleading representations of fact to AT&T and MetroPCS, stating that a tower site had been condemned.

117. American Tower, itself and through its actual and/or apparent agents, made these false statements and misrepresentations by telephone, mail, email, and fax across state lines, causing its false statements to enter interstate commerce and regarding transactions of an interstate nature.

118. American Tower's false statements and misrepresentations were made in commercial advertising or promotion. Specifically, the false statements constituted commercial speech by American Tower, an entity engaged in commercial competition with TriStar, for the purpose of influencing landowners and/or carriers to sign deals with American Tower. Upon information and belief, based on TriStar's communications with landowners and based on documentary correspondence obtained by TriStar, these false statements were disseminated, pursuant to a marketing or promotion campaign organized by American Tower, to all or

substantially all of the relevant purchasing public—those landowners with lease relationships with American Tower and with whom TriStar has attempted to negotiate, as well as wireless carriers like AT&T.

119. American Tower's false statements and misrepresentations were material in that they caused numerous landowners to sign leases with American Tower instead of taking better offers from TriStar and, in other cases, caused landowners substantial concerns about leasing their property to TriStar. They also caused TriStar to pay more to acquire sites than it would have paid in the absence of American Tower's unlawful conduct. As a direct and proximate result of American Tower's false statements and misrepresentations, TriStar has suffered actual damages in the form of lost revenue from towers, inflated rent payments to landowners, unfavorable contractual guarantees, payments for letters of credit, and other losses that it is entitled to recover at trial. TriStar is also entitled to recover American Tower's profits and the costs incurred in bringing this action, including attorney's fees, pursuant to 15 U.S.C. § 1117(a).

120. Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs.

COUNT II **Unfair Competition**

121. TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

122. American Tower's conduct described above, including the conduct of its actual and/or apparent agents Lyle, Md7, and HPC acting under the direction of American Tower, constitutes unfair competition under the laws of the various states where Defendants do business, including but not limited to the following: California Business & Professions Code § 17200, *et seq.*; Florida Statutes § 501.204; Illinois Compiled Statutes Chapter 815, § 510; South Carolina

Code § 39-5-20; Washington Revised Code § 19.86.020; Wisconsin Statutes § 100.20, and the common law of numerous other states.

123. American Tower's conduct is contrary to honest practice in commercial matters and has interfered and continues to interfere with TriStar's ability to conduct its business. The nature of these practices is anticompetitive and injurious to TriStar, landowners, cellular phone carriers, and consumers.

124. American Tower's conduct, including the conduct of its actual and/or apparent agents Lyle, Md7, and HPC acting under the direction of American Tower or in concert with American Tower, is independently tortious or unlawful because, as described herein, American Tower has violated § 43(a) of the Lanham Act, § 2 of the Sherman Act, and other federal and state laws; made false, misleading, and deceptive statements to landowners; and intentionally disparaged TriStar's business and services. American Tower's conduct also unreasonably restrains trade and violates the spirit of laws ensuring fair competition.

125. American Tower's conduct has proximately caused and continues to proximately cause damages to TriStar as described above. TriStar is entitled to American Tower's profits earned on the transactions in which American Tower engaged in unfair competition.

126. Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs. In addition, because of the knowing and reckless nature of their conduct, Defendants are liable for exemplary damages and attorney's fees.

COUNT III
Business Disparagement

127. TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

128. American Tower has published and continues to publish disparaging words against TriStar's economic interests to third parties. Among other things, American Tower, itself and through its actual and/or apparent agents acting under the direction of American Tower, has disparaged TriStar by telling landowners that American Tower will run TriStar out of business, that TriStar is currently unable to meet its financial obligations, and that TriStar is unable to sustain its business in the foreseeable future. These statements are false.

129. As described above, American Tower lacked privilege in making these statements, knew that the statements were false, acted with reckless disregard for the truth, and acted with ill will or intent to interfere in the economic interests of TriStar. American Tower intended these publications to cause TriStar pecuniary loss and/or should reasonably have recognized that the publications would result in pecuniary loss.

130. As a result of American Tower's intentional, unlawful, and unexcused use of disparaging words grounded in falsity and malice, TriStar has been and continues to be injured and financially damaged and has suffered pecuniary loss. TriStar has experienced reputational harm and consequential damages as a result of American Tower's unlawful actions. TriStar is also entitled to restitution in the amount of American Tower's wrongfully obtained profits.

131. Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs. In addition, because of the knowing and reckless nature of their conduct, Defendants are liable for exemplary damages.

COUNT IV
Defamation

132. TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

133. American Tower's conduct described above, including the conduct of its actual and/or apparent agents Lyle, Md7, and HPC acting under the direction of American Tower, constitutes defamation under the statutory and common laws of the various states where Defendants do business, including but not limited to 42 Pa. CS §8341 *et seq.* and Pennsylvania common law. American Tower, itself and through its actual and/or apparent agents, published or caused to be published numerous communications that were directed at TriStar and were defamatory in nature. These communications were false statements of fact and tend to harm TriStar's reputation among landowners so as to lower their estimation of TriStar or deter them from associating or dealing with TriStar. Further, the statements ascribe to TriStar conduct, character, or a condition that adversely affects TriStar's fitness for the proper conduct of its business, trade, or profession.

134. The statements were communicated by American Tower and its actual and/or apparent agents orally and/or in writing, directly to landowners with whom TriStar sought to deal. TriStar suffered harm as a result of American Tower's defamatory communications insofar as landowners breached agreements with TriStar, turned down TriStar's superior offers in favor of American Tower's offers, and compelled TriStar to increase its offers in order to overcome the false statements of fact.

135. The landowners to whom these defamatory statements were communicated understood the defamatory meaning of the statements. These communications included statements to the effect that TriStar is untrustworthy, is unable to meet its financial obligations, is unable to sustain its business in the foreseeable future, will run out of business, and lacks the means and intent to operate cell towers. These statements are false and were made for the purpose of dissuading landowners from dealing with TriStar. The statements have had, and

continue to have the effect of diminishing the goodwill and reputation of TriStar among landowners. Further, the statements have deterred, and continue to deter landowners from associating or dealing with TriStar.

136. American Tower's defamatory statements were directed at TriStar, expressly in some instances and indirectly in others. In all cases, landowners understood that TriStar is the intended subject of these false statements of fact.

137. American Tower's defamatory statements were intended to and did cause actual harm to TriStar. The false statements of fact caused some landowners to request more money in order to reach an agreement, compelled certain landowners to terminate their dealings with TriStar, and deterred other landowners from dealing with TriStar altogether. Consequently, TriStar has suffered, and continues to suffer immediate economic harm in the form of substantial premiums necessary to close deals and lost revenue from deals that would otherwise have materialized.

138. American Tower was not privileged in making these false statements of fact, and even if it was privileged, American Tower abused that privilege by making the statements with malice, or at a minimum, with negligence as to their truthfulness. American Tower knew that the statements it made concerning TriStar were false, had serious doubts as to the veracity of the statements, or at a minimum, was negligent in making the statements without verifying their truth.

COUNT V

Tortious Interference with Existing Contract

139. TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

140. TriStar has valid contracts with landowners. TriStar's contracts with landowners include, among other things, agreements to pay rent and/or share revenue with landowners in exchange for TriStar's right to operate a tower site once the underlying ground lease with the existing tower company expires.

141. As described above, American Tower has and had actual knowledge of the existence of TriStar's contracts with landowners and TriStar's interest therein, or knowledge of facts and circumstances that would lead a reasonable person to know of their existence.

142. American Tower, itself and through its actual and/or apparent agents acting under the direction of American Tower, has interfered and continues to interfere with TriStar's existing contracts with landowners by the conduct described above. Among other things, American Tower has convinced landowners to breach their contracts with TriStar by threatening landowners that American Tower will tear down the towers on the landowners' land and/or relocate the carriers currently leasing space on those towers and by falsely representing to landowners that TriStar is unable to meet its current financial obligations or will be unable to meet its financial obligations in the future. American Tower lacked privilege or justification for committing the acts described above.

143. American Tower's conduct was and is independently tortious or unlawful because American Tower monopolizes and is attempting to monopolize tower operation; has violated § 43(a) of the Lanham Act; intentionally or negligently made false, misleading, and deceptive statements to landowners; intentionally disparaged TriStar's business and services; violated § 2 of the Sherman Act; engaged in unfair competition and anticompetitive conduct; fraudulently induced landowners to enter contracts with American Tower; engaged in a pattern of sham litigation; violated consumer protection and unfair trade practices statutes in numerous states,

including but not limited to 73 Pa. CS § 201-1, *et seq.*; and committed other tortious or illegal acts.

144. American Tower has willfully and intentionally committed the acts described above that are calculated to interfere with TriStar's existing contracts, which acts and interference were intended to and have caused damage to TriStar in its lawful business, and American Tower's willful and intentional interference continues to cause TriStar damage. American Tower's acts have proximately caused and continue to proximately cause actual damage and loss to TriStar. TriStar has suffered and continues to suffer losses in revenue and profits as a result of American Tower's interference because certain landowners have breached their contracts with TriStar due to American Tower's conduct and because TriStar has been forced to expend additional resources in an attempt to prevent other breaches of its contracts with landowners. TriStar has experienced reputational harm and consequential damages as a result of American Tower's unlawful actions. TriStar is also entitled to restitution in the amount of American Tower's wrongfully obtained profits.

145. Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs. In addition, because of the knowing, malicious or reckless nature of their conduct, Defendants are liable for exemplary damages.

COUNT VI

Tortious Interference with Prospective Business Relations

146. TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

147. American Tower, itself and through its actual and/or apparent agents Lyle, Md7, and HPC acting under the direction of American Tower, have interfered and continue to interfere with TriStar's prospective business, contractual, and/or economic relations with landowners by

the conduct described above. Among other things, American Tower and its actual and/or apparent agents have made false and misleading statements of fact and unfounded threats to landowners regarding, among other things, American Tower's rights with respect to the towers, American Tower's rights or ability to relocate carriers from specific towers, TriStar's financial status and ability to meet its current obligations, and American Tower's affiliation with AT&T.

148. Absent American Tower's and its actual and/or apparent agents' interference, a reasonable probability existed that TriStar would have entered into business relationships with the landowners with whom it negotiated, especially because TriStar offered landowners substantially better terms than the terms offered by American Tower.

149. American Tower's conduct was and is independently tortious or unlawful because American Tower monopolizes and is attempting to monopolize tower operation; has violated § 43(a) of the Lanham Act; intentionally or negligently made false, misleading, and deceptive statements to landowners; intentionally disparaged TriStar's business and services; violated § 2 of the Sherman Act; engaged in unfair competition and anticompetitive conduct; fraudulently induced landowners to enter contracts with American Tower; engaged in a pattern of sham litigation; violated consumer protection and unfair trade practices statutes in numerous states, including but not limited to 73 Pa. CS § 201-1, *et seq.*; and committed other tortious or illegal acts.

150. American Tower's interference with TriStar's prospective business relations is intentional and without privilege or justification. Upon information and belief, American Tower has and had actual knowledge regarding TriStar's ongoing negotiations with landowners regarding easement and lease arrangements, and American Tower intended and intends by its

tortious and unlawful conduct to prevent TriStar from reaching agreements with landowners as to towers and leases in which American Tower is interested.

151. American Tower's and its actual and/or apparent agents' tortious and unlawful acts have been and continue to be the proximate cause of actual damage and loss to TriStar. As a result of American Tower's and its actual and/or apparent agents' conduct, including unfounded threats and misrepresentations, landowners have rejected TriStar's more favorable offers, which has resulted in lost revenue to TriStar and lost income to the landowners. In some instances, TriStar has still reached agreements with landowners, but only upon less favorable terms due to American Tower's tortious and unlawful acts.

152. American Tower's and its actual and/or apparent agents' intentional, tortious, unlawful, and unexcused interference with TriStar's ability to enter into business relations and business contracts with landowners owning property on which towers were located has been and continues to be the proximate cause of actual injury and special financial damage to TriStar. TriStar has experienced reputational harm and consequential damages as a result of American Tower's and its actual and/or apparent agents' unlawful actions. TriStar is also entitled to restitution in the amount of American Tower's wrongfully obtained profits.

153. Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs. In addition, because of the knowing, malicious, and/or reckless nature of their conduct, Defendants are liable for exemplary damages.

COUNT VII
Breach of Contract

154. TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

155. American Tower entered into or otherwise acquired valid and enforceable lease agreements with a number of individuals that own property on which cell towers have been erected. Concurrent with TriStar's acquisition of rights to the land underneath those towers from the landowners, these landowners assigned these valid and enforceable contracts to TriStar. Thus, TriStar stands in the shoes of the landowners and is entitled to all benefits flowing from the contracts, including rent payments from American Tower.

156. TriStar has performed its contractual obligations by allowing American Tower to continue to operate its towers during the duration of the lease.

157. American Tower breached the lease agreements by failing to tender payment to TriStar, despite proper notice that the lease agreements have been assigned to TriStar.

158. As a result of American Tower's breach, TriStar has incurred actual damages in the form of lost rent payments and is entitled to recover these damages at trial. TriStar is also entitled to attorney's fees pursuant to Texas Civil Practices & Remedies Code § 38.001-006. All conditions precedent to this claim have been satisfied.

COUNT VIII
Violation of the Sherman Act, 15 U.S.C. § 2
Monopolization and Attempted Monopolization

159. TriStar incorporates by reference the allegations of all the preceding paragraphs as if fully set forth herein.

160. American Tower monopolizes and is attempting to monopolize tower operation in the relevant market and/or submarkets by preventing entry into and expansion in those areas by competitor tower site acquirers/operators such as TriStar.

161. For TriStar or any other tower site acquirer/operator competitor to effectively enter the relevant market and/or submarkets, it must be able to compete for ground leases of existing tower sites.

162. The market is defined as the nationwide market for the operation of cell towers with relevant submarkets consisting of individual tower sites that American Tower currently controls or seeks to control. Each cell tower is an economically distinct market such that services provided at one cell tower location are not interchangeable with services provided at a different cell tower location. As American Tower itself has pleaded, "tower sites are interrelated and networked to provide seamless coverage."¹¹ As a result, they cannot be moved, if at all, any substantial distance from their current locations. Further, zoning and other regulations and market factors often make competition through the construction of new towers completely impracticable. Thus, each tower uniquely serves the area in which it is located, and carriers have no reasonable alternatives to the towers already leased. Competition for carrier leases within the range of a specific cell tower is independent of, and separate from, competition for carrier leases elsewhere.

163. American Tower has monopoly power in that it controls 100% of the relevant market and/or submarkets. This monopoly power is recognized by the analysts who follow the cell tower industry. Credit Suisse has stated that "[e]ach tower has a virtual monopoly on its sites." Goldman Sachs says that "the Towers benefit from supply constraints and monopolistic pricing leverage as the regulatory hurdles to permit new tower construction remains difficult." Evercore Partners agrees that "prime tower locations act as mini-monopolies." American Tower's market power in each tower submarket is demonstrated by the inability of the

¹¹ Indeed, in a federal complaint filed jointly with Verizon Wireless less than a year ago, American Tower and Verizon emphasized the importance of maintaining—not tearing down—current cellular tower locations:

Because of the early location of the Existing Tower in the development of the Verizon Wireless network, in which all tower sites are interrelated and networked to provide seamless coverage, maintaining wireless telecommunications facilities at this approximate location is critical to the continued operation of Verizon Wireless's wireless communications network.

Complaint at ¶ 7, *Verizon Wireless (VAW) LLC & Am. Tower Corp. v. City of Lee's Summit, Mo.*, No. 4:11-cv-00245-DGK (W.D. Mo. Mar. 4, 2011).

landowner to turn to other tower operating companies to operate the tower on the property to seek higher compensation. Its exclusionary conduct has precluded lease rates reaching competitive levels. Blocking competition for tower sites prevents competition in carrier lease rates. American Tower's exclusionary conduct has precluded landowner compensation from reaching competitive levels, further demonstrating its monopoly power. American Tower's ability to artificially hold landowner compensation down while simultaneously preventing competition in carrier lease rates establishes the power that American Tower has over the relevant market and/or submarkets. American Tower has engaged in predatory and anticompetitive conduct—threats, false statements, business disparagement, breaches of contract, bad-faith, vexatious and sham litigation, and nakedly anticompetitive attempts to enforce invalid nondisclosure clauses in its ground leases—to prevent TriStar from competing in tower operations. In addition, as part of its pattern of misleading and deceptive conduct towards landowners, without the knowledge of landowners involved, American Tower has also cooperated with and/or colluded with American Tower's purportedly independent competitors such as Unison and purportedly independent landowner consultants during negotiations with landowners for tower sites. Its use of barriers to entry and expansion has deprived carriers of competition and prevented competition for ground leases to the detriment of land owners.

164. The vexatious, sham litigation has increased TriStar's cost of doing business and created a barrier to its expansion. If successful, it would drive TriStar from the relevant market and/or submarkets. This success of its exclusionary conduct demonstrates the ability of American Tower to exclude competition.

165. American Tower has obtained, maintained, and seeks to further acquire monopoly power in the relevant market and/or submarkets, not through offering a superior product or

business acumen, but rather through a pattern of anticompetitive and exclusionary conduct to prevent competitors from entering, remaining, or expanding in the relevant market and/or submarkets.

166. American Tower's inclusion of and enforcement of nondisclosure clauses in its ground leases—which prevents a landowner from disclosing any of the terms of the leases to any third parties, including potential competitors—is nakedly anticompetitive and designed to exclude potential competitors, like TriStar, from participating in the market and submarkets. These nondisclosure clauses also constitute unlawful restraints on the alienation of real property. These nondisclosure clauses serve no legitimate business purpose and are an integral part of American Tower's scheme to monopolize the tower industry in the relevant market and/or submarkets.

167. American Tower is engaging in a malicious pattern of repeated, costly, objectively baseless, and duplicative litigation for the purpose of raising TriStar's costs and intimidating landowners from dealing with TriStar. Each of the claims is premised on nakedly anticompetitive nondisclosure clauses that are intended to prevent potential tower operators from participating in the relevant market and/or submarkets.

168. As demonstrated by its sham litigation against TriStar, American Tower routinely files lawsuits against its competitors and landowners to enforce these nakedly anticompetitive, illegitimate nondisclosure clauses. American Tower's latest tactic is to personally sue TriStar employees with meritless RICO claims and to bring groundless challenges against TriStar's arrangements with its investors under the Sherman Act. All of this litigation is part of American Tower's pattern of intimidating landowners, TriStar's employees, and TriStar's investors, all in an attempt to block legitimate competition from rivals like TriStar.

169. Through its anticompetitive and exclusionary conduct, for which American Tower has no legitimate business justification, American Tower has demonstrated its specific intent to monopolize the relevant markets and/or submarkets, and where American Tower does not already possess monopoly power, there is a dangerous probability that it will achieve such power.

170. TriStar has been and will continue to be injured as a result of American Tower's anticompetitive and exclusionary conduct, which has prevented competitive entry, has kept TriStar from growing its tower operating business to a much larger market share, and increases the cost of doing business. If successful, American Tower will drive TriStar and other potential competitors completely from the relevant market and submarkets.

171. These anticompetitive acts of attempted monopolization and monopolization violate Section 2 of the Sherman Act. TriStar is entitled to treble damages and attorneys' fees for these actions.

COUNT IX
Application for Permanent Injunction

172. TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

173. American Tower, and its actual and/or apparent agents acting at its direction and on its behalf, continues to make false statements and misrepresentations about TriStar. TriStar has learned of several recent false statements: (1) on February 8, 2012, an American Tower employee informed a California landowner with whom TriStar is negotiating that TriStar will never be able to acquire control of the site on her property despite MetroPCS being a tenant on the tower; (2) on February 14, 2012 an American Tower employee told an Oklahoma landowner that American Tower would move the tower if he did a deal with TriStar, despite not having the

agreement from the tenants on the tower to move towers; and (3) on February 14, 2012 an American Tower employee told a Washington landowner that TriStar was going out of business.

174. Since TriStar filed this action, American Tower has continued to make false and misleading statements to landowners. For example, TriStar has learned of the following recent misrepresentations: (1) on April 13, 2012, an American Tower employee told a Washington landowner with whom TriStar is negotiating that TriStar has sold several towers back to American Tower, which TriStar has not done; that TriStar would raise rents and cause carriers to leave any tower that it operates, which has never happened; and that TriStar is just a finance company with no tower operations experience, which is demonstrably false; (2) on April 12, 2012, an American Tower employee told a California landowner that TriStar is just a finance company, which is demonstrably false, and that American Tower would remove the landowner's tower, even though American Tower does not own the Tower, if he does a deal with TriStar; (3) between February 26 and March 22, 2012, a Lyle employee, acting as an actual and/or apparent agent of American Tower, informed a Florida landowner that American Tower would move the landowner's tower and take the carriers to the new location, which is impossible under local zoning regulations, if the landowner did a deal with TriStar; and (4) on March 25, 2012, an American Tower employee told a Colorado landowner with whom TriStar is negotiating that American Tower would move the landowner's tower, even though American Tower does not own the tower, if he does a deal with TriStar.

175. TriStar has been and will continue to be severely injured by American Tower's unfair and unlawful actions throughout the United States. American Tower's false statements and misrepresentations about TriStar will continue to cause a loss of reputation, goodwill, and competitiveness in the market, which cannot be adequately compensated by monetary damages.

176. Pursuant to Texas Business and Commerce Code § 16.29 and the statutory and common law of the other states in which American Tower is engaging in unlawful actions, TriStar prays that this Court grant it a permanent injunction prohibiting American Tower and third parties acting under the direction of American Tower from (1) making false statements about American Tower's own services and commercial activities in negotiations with landowners; (2) making false statements about TriStar's services and commercial activities in negotiations with landowners; and (3) making statements to landowners under contract with TriStar for purposes of inducing a breach of the TriStar contract.

JURY DEMAND

177. Plaintiff demands a jury trial of all claims in the Second Amended Complaint on which a jury trial is available.

PRAYER

Wherefore, TriStar respectfully prays that this Court grant the following relief:

- a. a permanent injunction restraining Defendants as described above;
- b. a monetary judgment awarding TriStar actual, consequential, exemplary, and treble damages; restitution in the amount of American Tower's wrongfully obtained profits; costs and attorney's fees; and pre- and post-judgment interest; and
- c. such other and further relief to which TriStar is justly entitled.

Respectfully submitted,

VINSON & ELKINS L.L.P.

Kyle D. Young

William D. Sims, Jr.

Texas Bar No. 18429500

Matthew R. Stammel

Texas Bar No. 24010419

John D. Taurman

Texas Bar No. 19680400

Kyle D. Young

Texas Bar No. 24070899

Tyler J. Bexley

Texas Bar No. 24073923

2001 Ross Avenue, Suite 3700

Dallas, Texas 75201

Tel: 214.220.7700

Fax: 214.220.7716

bsims@velaw.com

mstammel@velaw.com

jtaurman@velaw.com

kyoung@velaw.com

tbexley@velaw.com

Harry M. Reasoner

Texas Bar No. 16642000

Stacey Neumann Vu

Texas Bar No. 24047047

1001 Fannin Street, Suite 2500

Houston, Texas 77002

Tel: 713.758.2222

Fax: 713.758.2346

hreasoner@velaw.com

svu@velaw.com

Attorneys for Plaintiff TriStar Investors, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2013, I served a true and accurate copy of the foregoing document on all counsel of record via filing of the same with the Court's CM/ECF system.

/s/ Kyle D. Young

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TRISTAR INVESTORS, INC.,

Plaintiff,

v.

AMERICAN TOWER CORPORATION,
AMERICAN TOWERS LLC, AMERICAN
TOWERS INC., AMERICAN TOWER
GUARANTOR SUB, LLC, AMERICAN
TOWER HOLDING SUB, LLC, AMERICAN
TOWER ASSET SUB, LLC, AMERICAN
TOWER ASSET SUB II, LLC, AMERICAN
TOWER MANAGEMENT, LLC,
AMERICAN TOWER L.P., SPECTRASITE
COMMUNICATIONS, LLC, and
AMERICAN TOWER, LLC,

Defendants.

AMERICAN TOWER, LLC, SPECTRASITE
COMMUNICATIONS, LLC, and
AMERICAN TOWERS, LLC,

Counter-Plaintiffs,

v.

TRISTAR INVESTORS, INC., DAVID IVY,
ED WALLANDER, ROBERT GILES, DALE
GILARDI, JERRY VOGL, JOHN LEMMON,
MICHAEL MACKEY, and MATT
NEWTON,

Counter-Defendant Defendants.

FIRST~~SECOND~~ AMENDED COMPLAINT AND
APPLICATION FOR PERMANENT INJUNCTION

Plaintiff TriStar Investors, Inc. ("TriStar") files this First~~Second~~ Amended Complaint
against Defendants American Tower Corporation, American Towers LLC, American Towers Inc.,

American Tower Guarantor Sub, LLC, American Tower Holding Sub, LLC, American Tower Asset Sub, LLC, American Tower Asset Sub II, LLC, American Tower Management, LLC, American Tower L.P., and SpectraSite Communications, LLC, and American Tower, LLC (collectively, "American Tower" or "Defendants"), and respectfully shows the Court as follows:

INTRODUCTION

1. This is a case about unfair competition and false advertising in the cell tower industry. American Tower, a massive corporation, has resorted to unfair and illegal tactics in negotiations with landowners for cell tower sites when faced with competition from a tiny competitor, TriStar. Rather than competing fairly and acquiring sites through superior offers, American Tower has systematically misinformed and deceived landowners to acquire sites under less favorable economic terms than those offered by TriStar, to the material detriment of TriStar and landowners nationwide.

2. American Tower is a "Goliath" of the tower industry, with a total public equity valuation of more than \$25 billion and annual revenue of approximately \$2.5 billion resulting from approximately 40,000 cell tower locations globally. American Tower is not a wireless carrier and does not provide any wireless services. It leases or subleases space on towers to wireless carriers. The vast majority of these towers are on land leased from various landowners. American Tower's financial motivation for any given site is relatively simple: pay the landowner as little rent as possible and charge the wireless carriers as much as possible. Whatever is left between the two, minus some small operating expenses, is profit. Historically, American Tower and the other tower companies have faced little competition in retaining sites, leaving uninformed landowners with no true options but to extend their lease on whatever terms the tower company would offer. As carrier

rents have continued to escalate, a typical landowner has seen the ratio of the cash flow from a tower on his or her land fall from approximately 40% to less than 15%.

3. TriStar, a small private company of approximately forty employees, was founded in 2005 by former executives of a major tower company. TriStar's business model is firmly rooted in the beliefs that (1) landowners should be educated about the true value of the communications sites occupying their land; (2) landowners should get a fair share of the profits being generated by their land; and (3) carriers should benefit from price competition. To date, TriStar has acquired over 600 tower locations throughout the continental United States.

4. While small, TriStar has brought true competition to the cell tower industry. TriStar's customers, the landowners where the cell towers are located, are much the better for it. In a typical transaction, a landowner who consummates a deal with TriStar will vastly improve his or her current financial arrangement. TriStar conservatively calculates that the landowners that have consummated deals with TriStar will collectively enjoy an increase in compensation over the next thirty years of approximately \$340,000,000 over the amount they would have received if they had just extended their leases under their current lease terms. This increased compensation has a present value of approximately \$104,000,000. In addition to providing more money to landowners, TriStar also reduces the costs incurred by the wireless carriers (e.g., AT&T, Verizon Wireless, Sprint/Nextel, T-Mobile, etc.) when they lease space on the cell towers managed by TriStar. This significant discount for carriers could then be passed down to the carriers' own customers, the consumers who purchase cell phone service.

5. While the landowners and carriers have benefited enormously from TriStar's entry into the market, American Tower has not. Because of the premium financial offers TriStar has made to landowners, revenue is being redirected from the tower company to landowners.

American Tower is not at all happy that TriStar is increasing its costs of doing business and shifting dollars from its bottom line to the landowners' bottom lines.

6. When faced with competition from TriStar, American Tower has two legal alternatives: (1) American Tower could compete fairly and seek to acquire sites through equivalent or superior financial offers, which competition is the very essence of capitalism, or (2) American Tower could simply walk away and concede the site to TriStar's superior offer. Unfortunately, American Tower has instead adopted an unlawful strategy of deceiving and misleading landowners in an effort to keep a stranglehold on its customers and to prevent TriStar's acquisition of sites. American Tower knowingly and habitually makes false statements about TriStar. American Tower knowingly and habitually makes false statements about what it will do to the landowners if they do a deal with TriStar. Third parties The Lyle Company ("Lyle") and, upon information and belief, Md7 and HPC, are participants in American Tower's scheme, acting as agents subject to American Tower's direction and control who communicate false statements and threats to landowners on American Tower's behalf. As a result of American Tower's and its agents' knowing and intentional misconduct, TriStar—and, an entire class of landowners nationwide, and wireless carriers have been significantly harmed.

7. The following statements from two different landowners illustrate the contrast between American Tower's unlawful actions and TriStar's pro-consumer business practices:

I am still trying to make up my mind, but I like your offer. I'm tired of American Tower threatening me. They assured me that if I sign with you they will take the tower down. What happens to me if they really do? My lease with them isn't up until 2025. They want me to sign for another 25 years with no increase. Will TriStar keep paying me for the next 25 years after the current lease is up?

I have Multiple Sclerosis (37 years). Stress is one of my enemies. My nurse was here today and told me whatever is upsetting me I had better solve it, as my MS symptoms are worse. I live alone and I can't walk so I can't take chances with my health. A nursing home

would be next. I know you don't need to hear all this, but I think it will help you understand why I haven't made my decision yet.

–Email from a landowner on dealing with American Tower (altered to correct spelling)

Our relations are even stronger now with TriStar than they were because we do know now, firsthand, that they do what they say. . . . No, I'm glad I didn't wait any longer because I gained money by going with TriStar then. They paid me more rent in order to operate my tower in the future. . . . I love the revenue sharing!

–Statement by a landowner on dealing with TriStar

PARTIES

8. TriStar Investors, Inc. is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania.

9. American Tower Corporation is a Delaware corporation with its principal place of business in Boston, Massachusetts. It receives mail at 116 Huntington Avenue, 11th Floor, Boston, Massachusetts 02116. American Tower Corporation regularly conducts business in the State of Texas even though it is not registered and does not maintain an agent for service of process in Texas. Accordingly, ~~it may~~ It has been served and has appeared in this matter and can be served with process through the Secretary of State of Texas at Citations Division, 1019 Brazos Street, Austin, Texas 78701 through counsel.

10. American Towers LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It does business in Texas as American Texas Towers LLC. American Towers LLC ~~may~~ has been served and has appeared in this matter and can be served with process through its registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201 through counsel.

11. American Towers Inc. is a Delaware corporation with its principal place of business in Boston, Massachusetts. It ~~may~~ has been served and has appeared in this matter and can

be served with process through its registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201 through counsel.

12. American Tower Guarantor Sub, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It may have been served and has appeared in this matter and can be served with process through its registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201 through counsel.

13. American Tower Holding Sub, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It may have been served and has appeared in this matter and can be served with process through its registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201 through counsel.

14. American Tower Asset Sub, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It may have been served and has appeared in this matter and can be served with process through its registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201 through counsel.

15. American Tower Asset Sub II, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It may have been served and has appeared in this matter and can be served with process through its registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201 through counsel.

16. American Tower Management, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It may have been served and has appeared in this matter and can be served with process through its registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201 through counsel.

17. American Tower L.P. is a Delaware limited partnership with its principal place of business in Boston, Massachusetts. It ~~may~~has been served and has appeared in this matter and can be served with process through its registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201, ~~through counsel.~~

18. SpectraSite Communications, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It ~~may~~has been served and has appeared in this matter and can be served with process through its registered agent, CT Corporation System, 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201, ~~through counsel.~~

19. American Tower, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. It has been served and has appeared in this matter and can be served through counsel.

JURISDICTION AND VENUE

20. This Court has personal jurisdiction over all of the Defendants¹ because they each regularly conduct business in the State of Texas and have established minimum contacts with the State of Texas. Further, the Court has personal jurisdiction over American Tower Corporation because it is a holding company that has formed a unitary business operation with its subsidiaries, Defendants American Towers LLC, American Towers Inc., American Tower Guarantor Sub, LLC, American Tower Holding Sub, LLC, American Tower Asset Sub, LLC, American Tower Asset Sub II, LLC, American Tower Management, LLC, American Tower L.P., and SpectraSite Communications, LLC (collectively, the "Subsidiaries"). Upon information and belief, the Subsidiaries are financially dependent on American Tower Corporation, consolidate their financials with American Tower Corporation, and employ key personnel selected by American

Tower Corporation. The agents and representatives of Defendants who engaged in the tortious and unlawful conduct described below also hold themselves out in correspondence and otherwise as authorized agents or representatives of American Tower Corporation.

21. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because TriStar asserts claims arising under the laws of the United States.

22. Venue is proper in this district under 28 U.S.C. § 1391(b) because (1) a substantial part of the events giving rise to TriStar's claims occurred in this district, and (2) a substantial part of the property that is the subject of this action is situated in this district.

BACKGROUND

A. The Cellular Tower Industry

1. The Beginning of the Industry

23. In the mid-1980s, cellular telephone service was first introduced. Initially, due to government regulation and oversight, there were only two carriers in any given urban region that provided cell service, primarily in densely populated areas. The names of these carriers have changed or evolved, with the dominant carriers today being AT&T, Verizon, Sprint/Nextel, T-Mobile, and MetroPCS. The services provided by these carriers now stretch coast-to-coast, serving nearly the entire United States population, urban and rural.

24. Cell phone service is provided through antennas and other equipment installed on a network of cell site locations, including towers erected for the sole purpose of siting antennas as well as rooftops, water tanks, and other existing structures. From 1985 to 1996, the towers were built and owned by carriers almost exclusively for their sole use.

¹ The Defendants are referred to collectively because they jointly committed the tortious and unlawful acts described herein using interconnected and interdependent parent and subsidiary entities. The subsidiaries are mere instrumentalities of American Tower Corporation.

25. In 1996, President Clinton signed into law the Telecommunications Act of 1996, dramatically altering the landscape of the cell phone industry. The law was designed to both increase the number of wireless carriers and to foster competition among carriers using similar network technologies. The Telecommunications Act mandated two significant changes in the wireless marketplace. First, additional wireless licenses were sold, enabling new wireless carriers to emerge as competitors, certain of which eventually became Sprint/Nextel and T-Mobile. Second, carriers were required to open up their networks for certain kinds of sharing, or “co-locating,” with these new market entrants, essentially requiring each carrier to share space on its towers with competing carriers.

26. This second change in the industry eventually led to the emergence of the cell tower industry. As consumer interest in cell phone service grew exponentially, it became apparent to the large incumbent carriers that the real value of their cellular business existed not in continuing to own the cell towers—which they were forced to share by federal law—but in attracting new customers to their various service plans. As a result, beginning in 1999, carriers began to outsource their towers by transferring control of the towers to a new market entity: the tower company.

27. The carriers sold or subleased their rights to use the towers (and sometimes the ownership of the towers themselves) to the tower companies and used the proceeds to grow their networks and expand their customer bases. The carriers reserved space on the towers for their own antennas. The carriers are tenants on the towers, whether they sold them or subleased them. The tower companies, in exchange for their investment of capital to control a tower site, were the beneficiaries of two critical opportunities: (1) the lease-back payment from the carrier that had

previously owned the tower, and (2) the option to lease additional space on the tower to other wireless carriers.

II. The Industry Today

28. Today, there are more than 100,000 cell towers in the United States. Over half of those towers are controlled by three major public tower companies. American Tower alone operates over 22,000 towers in the United States. The cell phone carriers continue to control about 27% of the towers, and the remaining towers are controlled by a number of smaller tower companies. By comparison, TriStar controls the ground underlying less than 1% of the towers.

29. When a tower company "controls" a given tower, it may either have actual ownership of the tower steel or simply own sublease rights to space on the towers (i.e., a right to lease to other carriers the space not reserved by the incumbent carrier that maintains ownership of the tower steel). The ownership interests to which each tower is subject varies depending upon the carrier from whom the tower was acquired. The first transaction in which a carrier transferred control of its towers occurred in 1999. Under the terms of that transaction, Bell Atlantic sold actual ownership of the tower steel to Crown Castle. In subsequent transactions, tower companies like Crown Castle and American Tower acquired only sublease rights to space on the towers, while the carriers retained ownership of the towers. In these later transactions, the landowner owns the land and leases it to a cell phone company, which subleases it to a cell tower company like American Tower.

30. More than 25% of American Tower's towers in the United States are subleased towers. American Tower, as sublessee, often pays rent to the landowner and, as lessor, collects rent from the wireless carriers that use space on the tower. American Tower's profit depends on the gross margin between the rent it pays to the landowner and the rent it collects from the cell phone companies using the tower, less some minor operating expenses.

31. The majority of the nation's more than 100,000 cell towers are located on property that the tower companies or carriers lease from individual landowners for a specific period of time. This is true whether the tower steel is owned by a tower company or a carrier. American Tower recently disclosed that approximately 8687% of the communications sites in its portfolio are located on leased land. In order to establish or maintain their control of tower sites and generate revenue, American Tower must negotiate new ground leases, or renewals of current ground leases, with landowners on an individualized basis.

32. While towers could initially be sited at any number of potential locations, zoning regulations in many jurisdictions now make it very difficult to move existing towers, erect new ones, or demolish existing structures housing active carriers. In addition, cellular networks were laid out on a hexagonal grid of concurrent honeycomb shapes (i.e., "cells"), with each tower sitting in the center of each honeycomb and providing service within that honeycomb. Towers are located to avoid having space between these honeycombs because any space would result in a cellular "dead zone." Thus, it would be nearly impossible to substantially relocate a tower today without adversely impacting the grid, thereby creating a dead zone in a carrier's cellular network.

33. With the exponential growth in demand for cell phone service, the tower companies have increased the rents they charge to cell phone carriers, and additional carrier tenants have been added to existing towers, further increasing revenues to tower companies. And while the location of existing cellular sites has also become more important, landowners have not seen a significant increase in rents from the tower companies.

34. Since the formation of the cell tower industry in the mid-1990s, the total cash flow produced by a typical cell tower has increased by more than \$50,000 per year, while the total cash flow received by a typical landowner in the form of ground rent has increased by less than \$10,000

per year. Whereas the typical landowner previously received approximately 40% of a cell tower location's total cash flow, landowners now typically receive less than 15% from the tower companies. Over the course of the past 15 years, the total cash flow from a typical cell tower has increased by more than 400%, while the share of total cash flow that is typically received by a landowner has declined by more than 50%.

35. A typical cell tower operated by American Tower produces annual gross cash flow in excess of \$80,000 for the company, whereas the landowner of such site typically receives less than \$15,000.

B. American Tower and TriStar as Competitors

L American Tower as "Goliath" of the Industry

36. Boston-based American Tower is a \$25 billion company, operating approximately 40,000 cell tower locations globally, with offices throughout the United States and in Brazil, Chile, Colombia, Ghana, India, Mexico, Peru, South Africa, and the United Kingdom. The company's annual rental and management revenue is approximately \$2.5 billion. American Tower's annual consolidated gross margin (generally the difference between its tower rent income and its ground rent, less some minor operating expenses) is more than \$1.8 billion, or approximately a 75% gross profit margin, placing it among the highest of all public companies in the world.

37. American Tower controls more than 22,000 towers domestically. Upon information and belief, many of American Tower's most profitable towers are controlled by a sublease arrangement, whereby (1) American Tower is the sublessee of the wireless carrier that originally entered into a ground lease with the landowner, and (2) American Tower has the right to further sublease out space on the towers to carriers for the duration of the ground lease. Under this arrangement, American Tower does not own the tower steel. In addition, the vast majority of

American Tower's towers are located on land leased from individual landowners for a defined period of time.

ii. The Emergence of TriStar

38. Prior to the formation of TriStar and other ground lease acquirers, landowners leasing land to tower companies had only one real option when the ground lease expired: renewing and extending the ground lease with the existing tower company. Given the lack of competitive alternatives, the lease renewal rate was typically set by the tower company without negotiation. The tower company's goal was (and still is) to renew the ground lease at the lowest possible rental rate, and not to share the enormous profits from a site with its landowner.

39. In 2005, TriStar was formed to assist individual landowners in realizing the true value of the land on which the cell tower is located. TriStar is a private company of approximately forty employees based primarily in Pennsylvania and Texas, with operations throughout the continental United States.

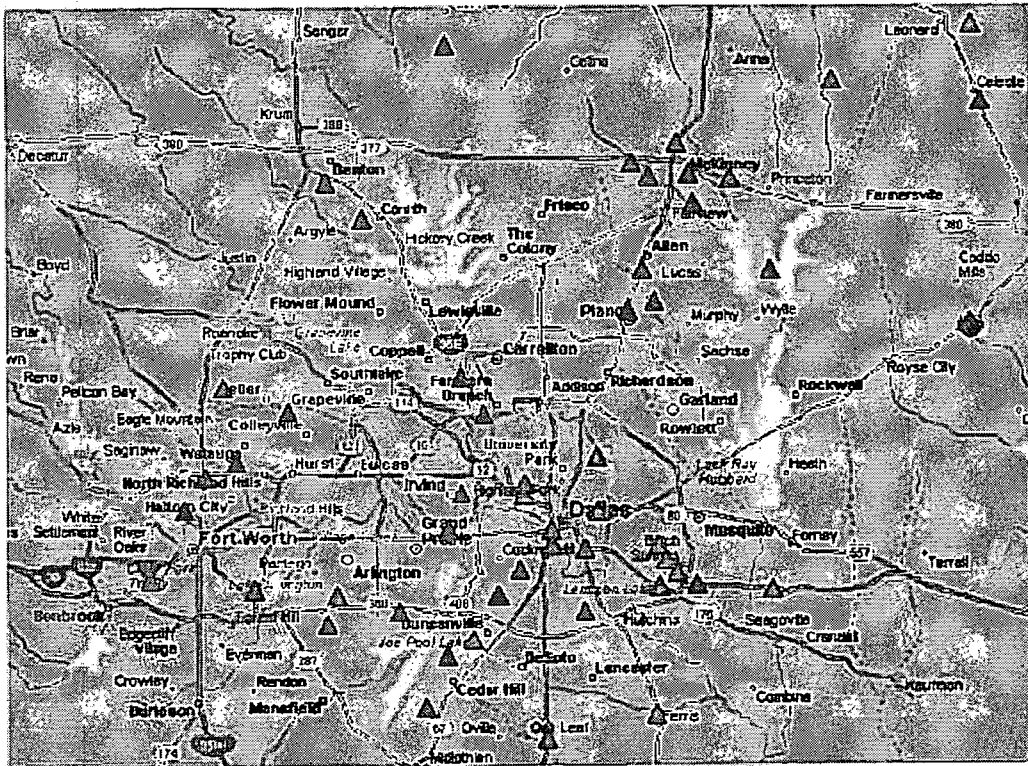
40. Most commonly through execution of an easement with the landowner, but occasionally via a fee purchase or successor lease, TriStar acquires the right to manage a communications site once the underlying ground lease with the existing tower company expires. The tower company enjoys the full benefit of its lease for the duration of the existing term without interference from TriStar. Upon lease expiration, TriStar takes over the management of the tower property from the tower company and endeavors to maximize benefit to the landowner.

41. Upon information and belief, TriStar is the only ground lease acquirer that takes over the management of the tower property from the tower company and endeavors to substantially increase benefits to the landowner. The other ground lease acquirers seek to purchase the ground rent paid by the tower company with the intention of extending the ground lease, and

are thus a much less significant business threat to American Tower. In fact, the portfolios of the two largest ground lease acquirers have been acquired by the nation's largest tower companies.

42. TriStar has acquired (or has fully executed agreements to acquire) control of over 600 tower locations throughout the continental United States. Furthermore, the principals of TriStar (the management team) have in the aggregate constructed, acquired, designed, and/or managed more than 40,000 towers in their careers, which is more towers than American Tower owns globally. Their careers in the industry began at the very formation of the cell tower business. They are industry experts.

43. More than 100 of TriStar's locations are in Texas, its largest state concentration by far. As the following demonstrates, a number of these Texas sites are located in the DFW area.



44. Since entering the industry, TriStar has acquired property rights underlying several hundred tower locations leased or subleased by American Tower. TriStar's business model is to not renew leases with American Tower when they expire, but instead to operate each tower site for wireless communications purposes upon expiration of the respective lease (either by acquiring rights to the existing tower or constructing a replacement tower at the same location, which is typically permitted by local zoning regulations). As such, TriStar's emergence as a competitor in the cell tower industry has been detrimental to American Tower.

III. Example of an American Tower Site Acquired by TriStar

45. While TriStar's entry to the market has been detrimental to American Tower, TriStar has created legitimate competition in the cell tower industry, added tremendous value for landowners, and generated significant savings for wireless carriers. For example, in 2006, TriStar made a deal with a landowner in Tarrant County to acquire land containing one of the most critical towers in the DFW area. The tower holds key communication facilities for three carriers, including critical equipment for transporting signals for AT&T through an expansive metropolitan area.

46. The land was subject to an underlying ground lease with American Tower, with the ground lease expiring on April 30, 2010. Prior to TriStar's involvement, the landowner was receiving ground lease payments of \$3,732 annually from American Tower. At the time that TriStar made the deal with the landowner, the landowner had an offer from American Tower to simply renew and extend the ground lease for a nominal increase. TriStar offered to pay the landowner a premium for the remaining payments due under the ground lease with American Tower and then, after the expiration of that ground lease, to pay the landowner 50% of the actual net revenue generated by TriStar from the site.

47. Upon the landowner's acceptance, TriStar paid the landowner ten times the annual ground rent amount, or \$37,000, and took over receipt of the ground lease payments from American Tower for the remaining three years on the ground lease. Since American Tower's rights to the tower were only sublease rights, American Tower did not actually own the tower. In 2009, TriStar acquired the rights to purchase the tower from the actual tower owner once the underlying ground lease expired on April 30, 2010. Then, upon expiration of the underlying ground lease, TriStar did not renew the ground lease with American Tower. Now in ownership of the tower and in control of the underlying land, TriStar executed new tower lease arrangements with the carriers at reduced rates from those previously being charged by American Tower. TriStar promptly commenced revenue share payments to the landowner, which amounted to many times what the landowner had received from American Tower.

48. Describing her satisfaction with TriStar, the landowner stated:

At the time that TriStar contacted us, the lease was paying \$3,732. That was the amount of money that we received in 2005. That was a year before TriStar had contacted us, and we went with TriStar. Once TriStar started operating the tower, we received \$43,533 for the yearly lease, and we received that check last June. It was a difficult decision because I knew firsthand how things could change in 25 years, and that's why I was so excited about the revenue sharing rather than just the flat rate that I would agree to now.

49. In sum, TriStar increased the landowner's compensation under the ground lease by more than 1000% and decreased the rental costs for the carrier tenants. TriStar has done many similar deals in which it has provided and will continue to provide substantial value for all parties involved.

C. American Tower's Unfair Competition and Interference with TriStar

50. Instead of trying to compete with TriStar by increasing the rent it offers to landowners, American Tower has decided to employ unfair and illegal tactics to eliminate TriStar

as a competitive threat. Since 2007, American Tower representatives, including Brenda Berry, Ben Myers, Jason Hirsch, and others, including third parties acting on American Tower's behalf and for American Tower's benefit, have knowingly made false statements to landowners. These false statements include statements about TriStar, American Tower, and the legal rights of both companies and of landowners, TriStar's business model and financial condition, TriStar's intentions and capabilities, American Tower's ability to tear down or move towers, American Tower's relationship with and control over the carrier tenants on the tower, and other aspects of the tower business in order to induce those landowners to extend their ground leases with American Tower instead of accepting better offers from TriStar. Upon information and belief, American Tower has implemented a nationwide business strategy of instructing its agents and representatives to make these false statements as part of American Tower's commercial advertising and promotion to landowners.

51. American Tower has also utilized third-party agents, such as ~~The Lyle Company~~ Lyle and, upon information and belief, Md7 and HPC, to approach landowners with false and misleading information on behalf of American Tower and negotiate lease extensions or other property transactions on behalf of American Tower. Lyle, Md7, and HPC have entered into agreements with American Tower whereby they act as agents of American Tower in negotiations with landowners. Lyle, Md7, and HPC hold themselves out in emails, letters and by telephone as authorized agents of American Tower, and landowners believe that these entities have authority to act as agents for American Tower. American Tower also represents to landowners that Lyle, Md7, and HPC have authority to act as agents of American Tower. American Tower approves of the forms of letters sent by Lyle, Md7, and HPC to landowners and uses those agents as a conduit to conduct negotiations on behalf of American Tower. American Tower has, by its own affirmative

acts and by voluntarily permitting Lyle, Md7, and HPC to hold themselves out as its agents, generated reasonable belief among landowners that Lyle, Md7, and HPC serve as American Tower's agents. Landowners have justifiably relied on those acts in believing that Lyle, Md7, and HPC have authority to conduct negotiations for American Tower. Upon information and belief, American Tower instructs Lyle, Md7, and HPC to make false statements and threats to landowners in order to convince the landowners to continue to do business with American Tower instead of entering into an agreement with TriStar. At the very least, American Tower condones and allows this behavior with knowledge that it is happening. Lyle and, upon information and belief, Md7 and HPC, pursuant to American Tower's policies, have made and continue to make the same false and misleading statements detailed below that American Tower employees make to landowners in negotiations for tower sites. Further, upon information and belief, such third-party agents lacked appropriate real estate brokerage licenses to undertake such efforts, in violation of state laws.

52. TriStar, with its limited resources, does not attempt to acquire control over all of the estimated 100,000 towers in the US, or even all of the estimated 22,000 towers currently controlled by American Tower. Instead, TriStar focuses its limited resources on identifying key tower sites and negotiating with those specific landowners for control of those towers. Upon information and belief, based on TriStar's communications with these landowners and based on documentary correspondence obtained by TriStar, American Tower targets all or substantially all of these landowners with current relationships with American Tower as recipients of the false or misleading representations, threats, and other confusing and misleading statements.

I American Tower's False Statements about Tearing Down Towers

53. American Tower repeatedly has told landowners that if they sign a deal with TriStar instead of extending their leases with American Tower, American Tower will tear down the tower on the land and that, therefore, the landowner would lose its income stream from the site.

Upon information and belief, based on TriStar's communications with these landowners and based on documentary correspondence obtained by TriStar, American Tower has made these statements to many of the landowners with whom TriStar has begun negotiations. But these statements are demonstrably false and misleading because American Tower knows that it does not, in the vast majority of cases, have any legal right to tear down towers at the expiration of its ground leases for several reasons. For many of the same reasons and some others, American Tower's threats to landowners that they will move the tenants off of the landowners' tower site are likewise false and misleading.

54. First, a number of the towers American Tower manages—including a significant number of its towers in Texas—are owned by AT&T, and American Tower's rights with respect to these towers are defined and limited by a sublease agreement (the "SBC Sublease"). Article III, Section 3 of the SBC Sublease, which is publically available, states that the sublease terminates as soon as the underlying ground lease for a tower expires, unless the ground lease has been extended. Article III, Section 35 of the SBC Sublease provides that American Tower has an option to purchase the towers at a specified future date, but *only* if the ground lease for a particular site has not expired or otherwise been terminated before that purchase date. Thus, American Tower has no right to purchase a tower subleased from AT&T if the ground lease has expired. It is therefore unambiguously false for American Tower to represent to landowners that it will or can tear down or move towers if the landowners do not extend their leases with American Tower because those towers are owned by AT&T, and American Tower has no legal right to purchase the towers after the ground lease expires.

55. Second, even where American Tower has an existing ground lease and a purchase option at a set point in the future, the company has stated in its recent 10Q filings with the SEC that

it has not yet decided whether it will exercise its purchase option for any towers, stating specifically:

Our communications site portfolio includes towers that we operate pursuant to lease and sublease agreements that include a purchase option at the end of each lease period. We may not have the required available capital to exercise our right to purchase leased or subleased towers at the end of the applicable period. Even if we do have available capital, we may choose not to exercise our right to purchase such towers for business or other reasons. In the event that we do not exercise these purchase rights, or are otherwise unable to acquire an interest that would allow us to continue to operate these towers after the applicable period, we will lose the cash flows derived from such towers, which may have a material adverse effect on our business. . . .

Thus, American Tower's unequivocal statements to landowners that it will "tear the tower down" are belied by its own statements to the SEC and the investing public.

56. Third, many of the remaining towers that American Tower controls are owned by Verizon and subject to a sublease agreement between American Tower and a Verizon predecessor (the "AirTouch Sublease"). Under the terms of the AirTouch Sublease, which is publically available, American Tower has *no* right to purchase the towers at *any* point. As such, American Tower has no legal right to tear down or move these towers either.

57. Fourth, American Tower cannot tear down or move the towers that it actually owns during the respective terms of the underlying ground leases because the carrier tenants have a contractual right to maintain equipment on the towers, and their cellular networks depend on the specific existing sites. Indeed, in a federal complaint filed jointly with Verizon Wireless less than a year ago, American Tower and Verizon emphasized the importance of maintaining—not tearing down—current cellular tower locations:

Because of the early location of the Existing Tower in the development of the Verizon Wireless network, in which all tower sites are interrelated and networked to provide seamless coverage, maintaining wireless telecommunications facilities at this

approximate location is critical to the continued operation of Verizon Wireless's wireless communications network.

Complaint at ¶ 7, *Verizon Wireless (VAW) LLC & Am. Tower Corp. v. City of Lee's Summit, Mo.*, No. 4:11-cv-00245-DGK (W.D. Mo. Mar. 4, 2011). The carrier tenants would have to agree to move off of the existing tower in order for American Tower to be able to "move the tower." The carriers are the customers and generally have no interest in moving sites. Additionally, zoning regulations in many districts would preclude American Tower from acquiring a demolition permit to remove a tower and eliminate wireless coverage since such demolition would result in safety concerns and a lack of 911 coverage for a particular area.

58. The fact is that American Tower has ~~never~~ never torn down or moved a tower after losing a ground lease to TriStar, even though TriStar has ~~taken~~ acquired property rights underlying hundreds of sites ~~from operated by~~ American Tower and has assumed control of various sites formerly operated by American Tower. American Tower's CEO, James Taiclet, confirmed in a March 2012 conference that: "we . . . haven't done it [(moved a tower)], and we would probably only do it as a demonstration . . ."

59. Upon information and belief, American Tower's threats to move towers are also belied by statements it has made to the IRS in connection with its application to become a REIT. In those documents, it is believed that American Tower insisted that the towers are permanent fixtures and are not intended to be moved.

60. ~~59.~~ Notwithstanding American Tower's lack of a legal right to tear down or move towers, it has engaged and continues to engage in a regular practice of threatening landowners that it will do so, not only in the DFW area and across Texas, but throughout the United States. For example, in 2010, TriStar was negotiating with a landowner in Tarrant County to acquire rights to land on which an American Tower-controlled site was located. American Tower offered to extend

its ground lease with the landowner on terms far less favorable than the terms TriStar offered. In order to persuade the landowner to accept these less favorable terms, American Tower told him that it would tear down the tower if he did not extend his lease. But the tower on this land is subject to the SBC Sublease, and American Tower therefore has no right to tear the tower down when the ground lease expires. However, because of American Tower's false statements and because of the landowner's understandable lack of knowledge concerning the falsity of those statements, the landowner declined TriStar's favorable deal and extended his ground lease with American Tower.

61. 60.—American Tower made similar false statements to Leon Pelzel, another landowner in the DFW area. While TriStar was negotiating with Mr. Pelzel, American Tower told him that it would tear down the tower on his land if he signed with TriStar. But this tower was also subject to the SBC Sublease, so American Tower made these statements knowing that it did not have a legal right to tear the tower down. Although Mr. Pelzel eventually signed with TriStar, TriStar had to devote additional time and money to close the transaction. As a direct result of American Tower's false statements, TriStar also had to put up a letter of credit that Mr. Pelzel could cash in if TriStar was not able to convert the tower due to it being torn down. Contrary to American Tower's false statements to Mr. Pelzel, TriStar ultimately followed through with its promise to convert the tower and operate it in a manner that is profitable to Mr. Pelzel.

62. 61.—In Dallas County, TriStar offered Karl Willock \$100,000 to purchase a tower site, which was significantly more than American Tower was willing to pay for the same site. Instead of increasing its offer, American Tower made false statements to Mr. Willock about the company's ability to tear down the tower, which is subject to the SBC Sublease. Mr. Willock eventually signed with TriStar, but TriStar had to increase the purchase price to \$136,000 to

overcome American Tower's misrepresentations and disparaging comments about TriStar to Mr. Willock.

63. ~~62.~~ At several other DFW area sites, negotiations between TriStar and landowners are ongoing. American Tower continues to make false statements regarding its ability to tear down or move towers that are subject to SBC Subleases. In addition, American Tower has disparaged TriStar to some of these landowners, stating that TriStar does not have the ability to convert and operate their towers even though it knows that TriStar has converted and operates a number of sites. TriStar continues to spend significant amounts of time and money to combat American Tower's false advertising. Additionally, American Tower's ongoing false statements are likely to cause at least some of the landowners to take inferior offers from American Tower, causing additional financial losses to TriStar.

64. ~~63.~~ American Tower has made similar false statements to other landowners throughout the State of Texas. In fact, American Tower has made false statements regarding its ability to tear down towers to landowners in at least the following Texas counties: Cameron, Dallas, Denton, Hidalgo, Nueces, Tarrant, and Taylor. All of the towers at issue were either subject to the SBC Sublease or had a tenant that was committed to stay on the tower. In either scenario, American Tower falsely represented that it could and would tear down a tower, despite knowing that it had no legal right to do so.

65. ~~64.~~ American Tower has also made false statements to landowners outside of Texas. With knowledge that it had no legal right to tear down towers at the end of ground leases under the SBC Sublease, American Tower has told landowners in multiple states that it will tear down or move their towers if they sign with TriStar. For example, in Oklahoma, Doris Vorel

turned down a TriStar deal and accepted an inferior offer from American Tower because American Tower told her that the tower on her land would be torn down unless she signed a lease extension.

66. ~~65.~~ American Tower also threatened to tear down a tower that is subject to the SBC Sublease in New Jersey if the landowner, Carl Jolley, signed a deal with TriStar. This false statement caused Mr. Jolley so much fear that he turned down TriStar's superior proposal to sign a lease extension with American Tower.

67. ~~66.~~ Further, American Tower has made false statements to landowners throughout the United States where towers are subject to the AirTouch Sublease. For example, in Oregon, TriStar offered Kevin Howard a 50% share of revenue generated by the tower on his land. American Tower made an inferior offer that involved an outright purchase of the land and told Mr. Howard that "the TriStar offer of 50% revenue share is only good if the tower is still there." While this tower is subject to the AirTouch Sublease (under which American Tower has no right to tear the tower down), American Tower emailed Mr. Howard language from another contract, claiming that the language gave it the right to tear down the tower on his land. Because of American Tower's blatantly and intentionally misleading statement, Mr. Howard rejected TriStar's superior offer.

68. ~~67.~~ Similarly, American Tower told Martha McCain, a landowner in Arizona, that the company would tear down the tower on her land, which was also subject to the AirTouch Sublease, if Ms. McCain did business with TriStar. As a result of this false statement, Ms. McCain signed a long-term lease extension with American Tower and turned down TriStar's superior offer.

69. ~~68.~~ Likewise, American Tower has told several landowners in California, including Beymer Well Service Company, Yosemite College, and Stephen Weinberg, that their towers will

be torn down if they sign deals with TriStar, despite American Tower's knowledge that these towers are subject to the AirTouch Sublease and therefore cannot be torn down.

70. ~~69.~~ Moreover, American Tower has made false statements in several additional states where tower ownership is subject to some other arrangement. Notably, American Tower cannot tear down or move towers even when it actually owns the towers due to its obligations to the carriers and zoning regulations. Despite knowing that it has no right to tear down or move these towers, American Tower continues to harass and deceive landowners with misrepresentations and unfounded threats. For example, as recently as February 14, 2012, American Tower told a landowner in Oklahoma that the company would move the tower if the landowner did not sign an extension with American Tower. At the time it made this threat, upon information and belief, American Tower did not have an alternate site zoned or the agreements of the tenants to move towers. Under these circumstances, the tower and the tenants could not move. Similar misleading and false threats are repeated by American Tower and its agents all across the country.

71. ~~70.~~ Additionally, in April 2011, American Tower made false statements regarding its ability to tear down a tower in Michigan. American Tower's persistent harassment caused the landowner such concern and hardship that she wrote the following email (altered to correct spelling):

I am still trying to make up my mind, but I like your offer. I'm tired of American Tower threatening me. They assured me that if I sign with you they will take the tower down. What happens to me if they really do? My lease with them isn't up until 2025. They want me to sign for another 25 years with no increase. Will TriStar keep paying me for the next 25 years after the current lease is up?

I have Multiple Sclerosis (37 years). Stress is one of my enemies. My nurse was here today and told me whatever is upsetting me I had better solve it, as my MS symptoms are worse. I live alone and I can't walk so I can't take chances with my health. A nursing home

would be next. I know you don't need to hear all this, but I think it will help you understand why I haven't made my decision yet.

72. Months after this lawsuit started, on or about July 10, 2012, American Tower sent letters to landowners all over the country (the "July 10 Letter"), falsely claiming that there is a "strong" likelihood it will "remove the [landowner's] tower if our lease expires," and threatening the landowner with "loss of all revenue at the current tower site." The letter was designed to dissuade landowners from talking to TriStar. It has worked, causing TriStar damages in the form of lost opportunities.

73. 71. American Tower's false statements throughout the country are numerous and widespread. According to TriStar's discussions with landowners, American Tower has made false statements regarding its ability to tear down towers to landowners in at least the following counties: Yuma, Arizona; Camino, California; El Dorado, California; Merced, California; Sacramento, California; Stanislaus, California; Sutter, California; Hernando, Florida; Chatham, Georgia; Cobb, Georgia; Elmore, Idaho; St. Clair, Illinois; Jackson, Michigan; Oakland, Michigan; St. Clair, Michigan; Jackson, Missouri; St. Francois, Missouri; Monmouth, New Jersey; Curry, New Mexico; Lucas, Ohio; Perry, Ohio; Cherokee, Oklahoma; McClain, Oklahoma; Oklahoma, Oklahoma; Clackamas, Oregon; Bucks, Pennsylvania; Providence, Rhode Island; Sumter, South Carolina; Chelan, Washington; and Racine, Wisconsin.

74. 72. And these are just the instances that TriStar has been able to learn about. Upon information and belief, the practice is even more widespread. TriStar contacts over 1000 landowners every year seeking to do a deal. In most circumstances, TriStar is not privy to why the landowner either will not engage in negotiations with TriStar, or breaks off negotiations once begun. Upon information and belief, American Tower's practice of making misrepresentations to the landowners is a matter of policy and is widespread throughout the country.

ii. American Tower's False Statements about Relocating Tenants

75. ~~73.~~ American Tower has made additional false statements regarding the company's ability to relocate the carrier tenants to another American Tower site. For example, in 2010, American Tower told Santos Leal, a landowner in Dallas County, that if he signed with TriStar, American Tower would relocate the carrier tenants—including AT&T and MetroPCS—to another American Tower site, rendering Mr. Leal's tower worthless. Upon information and belief, at the time American Tower made this threat, neither AT&T nor MetroPCS had agreed to move towers and American Tower had not gotten an alternate site zoned or approved.

76. ~~74.~~ American Tower made the same statement to St. John's Lutheran Church, a Tarrant County landowner, in 2011. By 2011, MetroPCS had a contractual arrangement in place with TriStar in both Texas and California where it will not relocate from a TriStar controlled tower. Because, upon information and belief, American Tower knows that MetroPCS has this contractual commitment to TriStar, American Tower's statement that MetroPCS would relocate to another site is untrue.

77. ~~In its July 10, 2012 Letter to landowners all over the country, American Tower falsely claimed that if the landowner's lease expired, it would "seek to move the carriers on the tower to one of our nearby towers or one that we will construct nearby," and threatened the landowner with "loss of all revenue at the current tower site."~~

78. ~~75.~~ With respect to other carriers, it is misleading for American Tower to suggest that these tenants will relocate because American Tower does not have an alternative site acceptable to the carriers or one that has all regulatory approvals and permits. Additionally, the carriers have a right to be at the precise location they have contracted for, and, as American Tower recently has told other courts, the carriers' network is designed around the specific locations of its current tower equipment. American Tower therefore knows that even carriers without contractual

deals with TriStar would likely not relocate to a new site. Finally, American Tower knows that carriers would have no incentive to abandon a TriStar-controlled tower and relocate to an American Tower-controlled tower because, as explained above, carriers benefit from discounted lease rates and operational efficiencies offered by TriStar on towers it controls.

79. ~~76.~~ American Tower has nevertheless made this demonstrably false statement to landowners in the DFW area, across Texas, and throughout the United States. Specifically, TriStar is aware of American Tower making similar false statements about moving carriers in at least the following counties: Dallas, Texas; Tarrant, Texas; Smith, Texas; Oakland, Michigan; St. Clair, Michigan; Curry, New Mexico; Lucas, Ohio; and Bucks, Pennsylvania.

80. ~~77.~~ Again, these are just the instances that TriStar has been able to learn about. Upon information and belief, the practice is even more widespread. TriStar contacts over 1000 landowners every year seeking to do a deal. In most circumstances, TriStar is not privy to why the landowner either will not engage in negotiations with TriStar, or breaks off negotiations once begun. Upon information and belief, American Tower's practice of making misrepresentations to the landowners is a matter of policy and is widespread throughout the country.

III. American Tower's False Statements about TriStar's Business

81. ~~78.~~ American Tower has told numerous landowners that TriStar is going out of business, is unable to meet its current financial obligations, or will be unable to meet its financial obligations in the future. American Tower also has specifically stated that TriStar never intends to convert or operate towers that it acquired and/or that TriStar lacks the financial means or expertise necessary to operate the towers. Each of these statements is false. TriStar is financially stable and able to meet all of its obligations, has honored all of its contractual agreements, and is owned and managed by principals with extensive experience in operating and managing tower sites. TriStar's business model is to not renew leases with American Tower when they expire, but instead to

operate each tower site for wireless communications purposes upon expiration of the respective lease.

82. 79. Nevertheless, American Tower makes these statements knowing that they are false and intending for landowners to rely on them. For example, as recently as February 14, 2012, American Tower told a landowner in Washington that TriStar is going out of business, which American Tower knows is false.

83. In its July 10, 2012 Letter to landowners all over the country, American Tower falsely claimed that "TriStar's business tactics are unfair and misleading to landowners" and wrongfully questioned whether "TriStar intends to remain in in the market to manage towers and share revenues," even though it knows or should know that TriStar is fully capable of managing towers and that the landowners' contracts with TriStar, including any rights to share in revenues, are enforceable even if assigned to a new buyer of the towers.

84. 80. American Tower has made similar false statements in at least the following counties: Denton, Texas; St. Clair, Alabama; Volusia, Florida; Madison, Illinois; St. Francois, Missouri; Chesterfield, Virginia; and King, Washington.

85. 81. Once again, these are just the instances that TriStar has been able to learn about. Upon information and belief, the practice is even more widespread. TriStar contacts over 1000 landowners every year seeking to do a deal. In most circumstances, TriStar is not privy to why the landowner either will not engage in negotiations with TriStar, or breaks off negotiations once begun. Upon information and belief, American Tower's practice of making misrepresentations to the landowners is a matter of policy and is widespread throughout the country.

iv. American Tower's False Claim of Affiliation with AT&T

86. 82. American Tower sent letters to landowners implying that American Tower was endorsed by or affiliated with AT&T. Upon information and belief, based on the nature of the

letters TriStar has obtained from landowners and based on TriStar's communications with landowners, American Tower has sent these letters to all or substantially all of the landowners with sites subject to the SBC Sublease. These letters encouraged landowners to enter into long-term lease extensions with American Tower. While American Tower knew that the designation of affiliation with AT&T was false, American Tower used the designation for its benefit and to the detriment of TriStar.

v. Harm Caused by American Tower's False Claims to Landowners

87. ~~83.~~ American Tower's false representations to landowners across the country have caused many of these landowners to sign deals with American Tower, despite more favorable offers from TriStar. In some cases, negotiations with landowners are ongoing, and American Tower's false statements have required TriStar to spend additional time and money to attempt to close a deal. Even in those cases where landowners have ultimately signed contracts with TriStar, American Tower's false statements have caused TriStar to overpay for certain sites to offset the reputational damage American Tower has caused with its false and disparaging statements and the understandable fears of landowners resulting from American Tower's misrepresentations and threats. Additionally, American Tower's false statements have caused TriStar to include unfavorable contractual guarantees and to purchase letters of credit to comfort landowners fearful of American Tower's false statements. In all of these scenarios, American Tower's unlawful actions have caused significant financial harm to TriStar.

vi. American Tower's Tortious Interference with TriStar's Contracts

88. ~~84.~~ Even when landowners have seen through American Tower's deception and signed better deals with TriStar, American Tower has continued to make false statements to the landowners. Specifically, American Tower has encouraged landowners to breach their contracts

with TriStar, repeating its threats that it will tear down towers and relocate tenants if the landowners honor their contracts.

89. 85.—For example, in mid-2011, American Tower continued to make false and harassing statements to Verbenia Carroll, a landowner in the DFW area who had signed a contract with TriStar in January 2011. Although American Tower knew of TriStar's relationship with Ms. Carroll and TriStar had publically recorded its interest months earlier, American Tower threatened to tear down the tower on the land—despite that the company had no right to do so—unless Ms. Carroll entered into a lease extension with American Tower.

90. 86.—American Tower made similar threats to Morteza Shafinury, a landowner in South Texas who had already executed a contract with TriStar. Based on American Tower's demands for Ms. Shafinury to break the TriStar agreement, she eventually cancelled the TriStar contract and entered into a lease extension with American Tower.

91. 87.—American Tower has continued to make false and harassing statements to landowners under contract with TriStar throughout the United States, in places such as Taylor County, Texas; Denton County, Texas; Hidalgo County, Texas; Maricopa County, Arizona; and Sacramento County, California. This has caused financial harm to TriStar, as some landowners have dishonored their deals with TriStar to enter into lease extensions with American Tower.

vii. American Tower's False Statements to AT&T and MetroPCS

92. 88.—In addition to American Tower's false statements to landowners, American Tower has also made false statements to AT&T and MetroPCS. TriStar reached an agreement with a landowner in Dallas County to take over land on which an American Tower-controlled site was located. TriStar did not extend American Tower's ground lease when it expired in 2009. Shortly thereafter, American Tower convinced AT&T and MetroPCS to relocate to a new site by telling them that the land under the tower had been condemned. American Tower knew that the

land had not been condemned but made the false statement for the purpose of inducing AT&T and MetroPCS to leave the TriStar-controlled site. When AT&T discovered that American Tower had misrepresented that the land had been condemned, AT&T decided not to relocate but asked TriStar to extend the ground lease. TriStar agreed to extend the lease, which resulted in significantly less revenue for TriStar and rendered its asset less valuable.

viii. American Tower's Breach of Contracts with TriStar

93. ~~89.~~ In addition to its numerous false statements and other anticompetitive acts, American Tower has also breached contracts with TriStar. After TriStar executes a contract with a landowner, it often steps into the shoes of the landowner and assumes the legal rights of the landowner to receive lease payments due to the landowner under any existing ground lease. American Tower has refused to acknowledge these rights following proper notice and is withholding payments due to TriStar under existing ground leases.

ix. American Tower's Use of Nondisclosure Clauses to Intentionally Prevent Competition

94. ~~90.~~ American Tower alleges in its Counterclaim that many of its leases have nondisclosure clauses that purport to prevent a landowner from disclosing any of the terms of the leases to any third parties, including potential competitors. The example clauses provided by American Tower in its state court lawsuits do not contain any exception that would permit the landowner to disclose the terms of the leases to a bona fide potential purchaser or assignee of rights in the land. As a result, these clauses interfere with rivals' attempts to compete with American Tower for land underlying communications towers and landowners' attempts to obtain competitive bids for their ground leases. Indeed, American Tower concedes in its Counterclaim that its nondisclosure clauses effectively "prevent [landowners] from granting a communication

easement to TriStar” and “prevent the landowner from licensing, leasing, transferring or conveying any interest in the land for purposes of operating a communications facility.”²

95. In its July 10, 2012 Letter to landowners all over the country, American Tower falsely and wrongfully threatened landowners that simply “conducting business” with TriStar or another land aggregator may “cause you to breach an existing obligation to American Tower, such as the requirement in many of our land leases to keep confidential the terms of the lease.” The letter asked landowners to contact American Tower if there has been such a “breach,” in order “to resolve the issue.”

96. 91.—The portions of the nondisclosure clauses preventing disclosure to potential buyers or assignees serve no legitimate business purpose. Rather, they are naked anticompetitive elements in American Tower’s scheme to monopolize the tower industry in the areas where American Tower operates by preventing competitors from accessing an essential resource for entry into and expansion in the market. As such, these clauses are invalid and unenforceable as elements of an anticompetitive scheme.

97. 92.—In addition, these nondisclosure clauses constitute unlawful restraints on the alienation of real property and unreasonably interfere with the landowners’ rights in their real property.

98. 93.—As demonstrated by its sham, vexatious litigation against TriStar, American Tower routinely files lawsuits against its competitors and landowners to enforce these nakedly anticompetitive nondisclosure clauses. This litigation is, and thinly veiled threats of litigation such as those contained in the July 10 Letter, are part of American Tower’s pattern of intimidating landowners and blocking legitimate competition in the tower operating market from rivals like

² Counterclaim (Dec. No. 9) at ¶¶ 39, 43.

TriStar. American Tower's efforts to enforce these clauses in a way that would prevent competition is exclusionary conduct.

x. American Tower's Use of Vexatious, Sham Litigation to Further Intimidate Landowners and Financially Weaken TriStar

99. 94. American Tower's latest tactic has been to file, subsequent to the filing of its counterclaim in this case, bad faith and sham lawsuits in four~~five~~ state courts that raise the same claims it has raised in its counterclaim.

100. American Tower is abusing the litigation process to impose a hardship on TriStar and in an attempt to frighten landowners from doing business with TriStar. Shortly before this lawsuit began, on February 1, 2012, American Tower sent a letter to TriStar that enclosed a copy of the complaint it filed against TriStar and a landowner in Oakland County, Michigan (the "Oakland County, MI Lawsuit").³ and threatened to file similar lawsuits throughout the country.

101. In the Oakland County, MI Lawsuit, American Tower alleged that TriStar induced the landowner to breach a nondisclosure clause of American Tower's lease with the landowner that purports to prevent the landowner from revealing the terms of the lease to potential competitors, rendering TriStar's easement with the landowner invalid. The court made quick work of American Tower's specious claims, granting summary disposition in favor of both TriStar and the landowner. The court held that American Tower received the benefit of its bargain under its lease with the landowner and was not damaged in any way by TriStar's easement on the landowner's property which took effect after the expiration of the lease. The court also held that American Tower failed to establish that its lease contained any trade secrets.⁴

³ American Tower Delaware Corp. v. 2100 East Maple Road L.L.C., TriStar Investors, Inc., and Big Top Ventures, L.L.C. No. 12-124575-CK, in the Circuit Court for the County of Oakland, Michigan. American Tower Delaware Corp. is an American Tower subsidiary and a mere instrumentality of American Tower Corporation. Big Top Ventures is a TriStar subsidiary.

⁴ Opinion and Order Re: Summary Disposition, Oakland County, MI Lawsuit, Oct. 24, 2012.

102. 95.—On February 16, 2012, TriStar filed suit against American Tower in this Court. (Doc. No. 1). On March 23, 2012, American Tower filed its answer and counterclaim (“Counterclaim”) (Doc. No. 9) against TriStar in this Court, alleging, among other things, that TriStar engaged in false advertising and unfair competition, tortiously interfered with American Tower’s contracts and business expectancy, and misappropriated American Tower’s trade secrets by obtaining and using information from American Tower’s leases that contain nondisclosure clauses, preventing landowners from revealing lease information to potential competing lessees or assignees. As described above, these nondisclosure clauses are themselves part of American Tower’s scheme to monopolize the tower industry.

103. 96.—Less than two weeks after filing its Counterclaim in this Court, on April 3, 2012, American Tower sued TriStar and a landowner in the Superior Court in Sacramento County, California, alleging that TriStar induced the landowner to breach a nondisclosure clause of American Tower’s lease with the landowner that purports to prevent the landowner from revealing the terms of the lease to potential competitors, rendering TriStar’s easement with the landowner invalid.³⁵ American Tower knew these claims existed at the time it filed its Counterclaim and has raised these issues before this Court in its Counterclaim.

104. 97.—On April 5, 2012, American Tower sued TriStar and a landowner in the Circuit Court for Eaton County, Michigan, alleging that TriStar induced the landowner to breach a nondisclosure clause of American Tower’s lease with the landowner that purports to prevent the landowner from revealing the terms of the lease to potential competitors, rendering TriStar’s

³⁵ *American Tower Delaware Corp. v. TriStar Investors, Inc.; Shamrock BGM; John H. Kautz; Gail E. Kautz; and Does 1-100, inclusive*, No. 34-2012-00121614, in the Superior Court of California, County of Sacramento. American Tower Delaware Corp. is an American Tower subsidiary and is a mere instrumentality of American Tower Corporation. Shamrock BGM is a TriStar subsidiary.

easement with the landowner invalid.⁴⁶ American Tower knew these claims existed at the time it filed its Counterclaim and has raised these issues before this Court in its Counterclaim. The Michigan court dismissed American Tower's Eaton County, MI Lawsuit, granting summary disposition in favor of TriStar and the landowner. The court held the nondisclosure clause in American Tower's lease was an unreasonable restraint on alienation of property and "when read in context of the entire Lease, does not prevent the [landowners] from discussing the Lease terms in the course of their own business affairs."⁷ The court denied American Tower's motion for reconsideration of this ruling.⁸

105 98.—On April 10, 2012, American Tower sued TriStar and a landowner in the Court of Common Pleas in Horry County, South Carolina, alleging that TriStar induced the landowner to breach a nondisclosure clause of American Tower's lease with the landowner that purports to prevent the landowner from revealing the terms of the lease to potential competitors, rendering TriStar's easement with the landowner invalid.⁹² American Tower knew these claims existed at the time it filed its Counterclaim and has raised these issues before this Court in its Counterclaim.

106 99.—On April 12, 2012, American Tower sued TriStar and a landowner in the Superior Court in Nevada County, California, alleging, among other things, that TriStar induced the landowner to breach a nondisclosure clause of American Tower's lease with the landowner that purports to prevent the landowner from revealing the terms of the lease to potential

⁴⁶ *Unisite, LLC f/k/a Unisite, Inc. v. Joel L. Young; Brenda S. Young; TriStar Investors, Inc.; and Big Top Ventures*, No. 12-445-CK, in the Circuit Court for the County of Eaton, Michigan (the "Eaton County, MI Lawsuit"). Unisite, LLC is an American Tower subsidiary and a mere instrumentality of American Tower Corporation. Big Top Ventures is a TriStar subsidiary.

⁷ Opinion and Order, Eaton County, MI Lawsuit, July 9, 2012.

⁸ Opinion and Order, Eaton County, MI Lawsuit, Dec. 12, 2012.

⁹² *American Tower, LLC v. Angeline D. Johnson, TriStar Investors, Inc. and Minerva Realty, LLC*, No. 2012-CP-26-2912, in the Court of Common Pleas, County of Horry, South Carolina. American Tower, LLC is a defendant and counterclaimant before this Court. Minerva Realty, LLC is a TriStar subsidiary.

competitors, rendering TriStar's easement with the landowner invalid.⁶¹⁰ American Tower knew these claims existed at the time it filed its Counterclaim and has raised these issues before this Court in its Counterclaim. The court sustained TriStar's and the landowners' demurrers in the Nevada County, CA Lawsuit and ordered that American Tower not seek to invalidate TriStar's easement in any amended pleading.

107. 100. There was no legitimate justification for bringing this series of lawsuits against TriStar with identical claims based on the same facts in multiple courts. These lawsuits are motivated by an intent to inflict harm external to the litigation or to the result reached in the litigation. The purpose of such a series of cases was only to "up the ante" by increasing TriStar's cost of doing business and by intimidating landowners with the threat of costly litigation if they contract with TriStar at a competitive compensation rate. ~~In addition, upon information and belief, these suits were filed as part of a strategy of litigating TriStar out of business. This pattern of repeated, vexatious litigation constitutes a sham and has and will raise a barrier to entry for competitive entrants into the tower operating market, deprive landowners of competitive compensation, and decrease competition in the rates carriers pay for access to cell towers.~~

108. Most recently, American Tower filed an Amended Counterclaim in this Court adding a claim against TriStar under the Sherman Act based upon its dealings with its investors and individual claims against eight current and former TriStar employees under the Racketeer Influenced and Corrupt Organizations Act ("RICO"). American Tower has no standing to bring any of the new claims in its Amended Counterclaim, which are without any legal or factual merit. The RICO and Sherman Act counterclaims, like the original counterclaims and the state court

⁶¹⁰ *American Tower, LLC v. TriStar Investors, Inc.; Shamrock BGM, LLC; Pamela G. Dobbas, Trustee of the Pamela G. Dobbas Revocable Trust, UTD October 10, 2006; and Does 1-50, inclusive*, No. T12/5004C, in the Superior Court of California, County of Nevada (the "Nevada County, CA Lawsuit"). American Tower, LLC is a defendant and counterclaimant before this Court. Shamrock BGM, LLC is a TriStar subsidiary.

lawsuits are motivated by an intent to inflict harm external to the litigation or to the result reached in the litigation. The RICO and Sherman Act claims are intended to threaten and intimidate TriStar's investors and employees.

109. In addition, upon information and belief, these suits were filed as part of a strategy of litigating TriStar out of business. This pattern of repeated, vexatious litigation constitutes a sham and has and will raise a barrier to entry for competitive entrants into the tower operating market, deprive landowners of competitive compensation, and decrease competition in the rates carriers pay for access to cell towers.

110. 101. These suits are objectively baseless and motivated by an attempt to use the adjudicatory process as a weapon against a competitor. They are filed pursuant to a policy of starting legal proceedings without regard to the merits and for the purpose of injuring a market rival. These legal filings are not made out of a genuine interest in redressing grievances, but as part of a pattern or practice of successive filings undertaken essentially for purposes of harassment. As described above, many of these lawsuits are based on invalid nondisclosure clauses that are, themselves, part of American Tower's scheme to monopolize the tower industry. With these lawsuits, American Tower is attempting to use the litigation process—as opposed to the outcome of that process—as an anticompetitive weapon.

111. 102. These later-filed state court lawsuits are an improper interference with this Court's jurisdiction.

xi. American Tower's Cooperation with Other Tower Aggregators and Landowner Consultants

112. As part of its pattern of misleading and deceptive conduct towards landowners, without the knowledge of landowners involved, American Tower has also cooperated and/or colluded with American Tower's purportedly independent competitors such as Unison and

purportedly independent landowner consultants during negotiations with landowners for tower sites.

CAUSES OF ACTION

COUNT I

Violation of the Lanham Act, 15 U.S.C. § 1125(a)

113. ~~103.~~ TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

114. ~~104.~~ American Tower, and third parties its actual and/or apparent agents Lyle, Md7, and HPC, acting under the direction of American Tower, made false and misleading descriptions or representations of fact, misrepresenting the nature, characteristics, and qualities of TriStar's services and commercial activities and of American Tower's services and commercial activities. For example, American Tower, itself and through its actual and/or apparent agents, falsely represented that it could and would tear down or move towers or relocate tenants if landowners signed with TriStar. American Tower, itself and through its actual and/or apparent agents, also misrepresented facts related to TriStar's current and future financial condition.

115. ~~105.~~ American Tower also made false or misleading representations of fact about its affiliation with or sponsorship or approval by AT&T in connection with American Tower's services or commercial activities. These misrepresentations are likely to cause confusion or to deceive consumers about an affiliation between American Tower and AT&T.

116. ~~106.~~ American Tower also made false or misleading representations of fact to AT&T and MetroPCS, stating that a tower site had been condemned.

117. ~~107.~~ American Tower, itself and through its actual and/or apparent agents, made these false statements and misrepresentations by telephone, mail, email, and fax across state lines,

causing its false statements to enter interstate commerce and regarding transactions of an interstate nature.

118. ~~108.~~ American Tower's false statements and misrepresentations were made in commercial advertising or promotion. Specifically, the false statements constituted commercial speech by American Tower, an entity engaged in commercial competition with TriStar, for the purpose of influencing landowners and/or carriers to sign deals with American Tower. Upon information and belief, based on TriStar's communications with landowners and based on documentary correspondence obtained by TriStar, these false statements were disseminated, pursuant to a marketing or promotion campaign organized by American Tower, to all or substantially all of the relevant purchasing public—those landowners with lease relationships with American Tower and with whom TriStar has attempted to negotiate, as well as wireless carriers like AT&T.

119. ~~109.~~ American Tower's false statements and misrepresentations were material in that they caused numerous landowners to sign leases with American Tower instead of taking better offers from TriStar and, in other cases, caused landowners substantial concerns about leasing their property to TriStar. They also caused TriStar to pay more to acquire sites than it would have paid in the absence of American Tower's unlawful conduct. As a direct and proximate result of American Tower's false statements and misrepresentations, TriStar has suffered actual damages in the form of lost revenue from towers, inflated rent payments to landowners, unfavorable contractual guarantees, payments for letters of credit, and other losses that it is entitled to recover at trial. TriStar is also entitled to recover American Tower's profits and the costs incurred in bringing this action, including attorney's fees, pursuant to 15 U.S.C. § 1117(a).

~~120.~~ ~~110.~~ Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs.

COUNT II
Unfair Competition

~~121.~~ ~~111.~~ TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

~~122.~~ ~~112.~~ American Tower's conduct described above, including the conduct of third parties its actual and/or apparent agents Lyle, Md7, and HPC acting under the direction of American Tower, constitutes unfair competition under the laws of the various states where Defendants do business, including but not limited to the following: California Business & Professions Code § 17200, *et seq.*; Florida Statutes § 501.204; Illinois Compiled Statutes Chapter 815, § 510; South Carolina Code § 39-5-20; Washington Revised Code § 19.86.020; Wisconsin Statutes § 100.20, and the common law of numerous other states.

~~123.~~ ~~113.~~ American Tower's conduct is contrary to honest practice in commercial matters and has interfered and continues to interfere with TriStar's ability to conduct its business. The nature of these practices is anticompetitive and injurious to TriStar, landowners, cellular phone carriers, and consumers.

~~124.~~ ~~114.~~ American Tower's conduct, including the conduct of third parties its actual and/or apparent agents Lyle, Md7, and HPC acting under the direction of American Tower or in concert with American Tower, is independently tortious or unlawful because, as described above herein, American Tower has violated § 43(a) of the Lanham Act, § 2 of the Sherman Act, and other federal and state laws; made false, misleading, and deceptive statements to landowners; and intentionally disparaged TriStar's business and services. American Tower's conduct also unreasonably restrains trade and violates the spirit of laws ensuring fair competition.

125. ~~115.~~ American Tower's conduct has proximately caused and continues to proximately cause damages to TriStar as described above. TriStar is entitled to American Tower's profits earned on the transactions in which American Tower engaged in unfair competition.

126. ~~116.~~ Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs. In addition, because of the knowing and reckless nature of their conduct, Defendants are liable for exemplary damages and attorney's fees.

COUNT III
Business Disparagement

127. ~~117.~~ TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

128. ~~118.~~ American Tower has published and continues to publish disparaging words against TriStar's economic interests to third parties. Among other things, American Tower, itself and through its actual and/or apparent agents acting under the direction of American Tower, has disparaged TriStar by telling landowners that American Tower will run TriStar out of business, that TriStar is currently unable to meet its financial obligations, and that TriStar is unable to sustain its business in the foreseeable future. These statements are false.

129. ~~119.~~ As described above, American Tower lacked privilege in making these statements, knew that the statements were false, acted with reckless disregard for the truth, and acted with ill will or intent to interfere in the economic interests of TriStar. American Tower intended these publications to cause TriStar pecuniary loss and/or should reasonably have recognized that the publications would result in pecuniary loss.

130. ~~120.~~ As a result of American Tower's intentional, unlawful, and unexcused use of disparaging words grounded in falsity and malice, TriStar has been and continues to be injured and financially damaged and has suffered pecuniary loss. TriStar has experienced reputational harm

and consequential damages as a result of American Tower's unlawful actions. TriStar is also entitled to restitution in the amount of American Tower's wrongfully obtained profits.

131. ~~121.~~ Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs. In addition, because of the knowing and reckless nature of their conduct, Defendants are liable for exemplary damages.

COUNT IV
Defamation

132. ~~TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.~~

133. ~~American Tower's conduct described above, including the conduct of its actual and/or apparent agents Lyle, Md7, and HPC acting under the direction of American Tower, constitutes defamation under the statutory and common laws of the various states where Defendants do business, including but not limited to 42 Pa. CS §8341 et seq. and Pennsylvania common law. American Tower, itself and through its actual and/or apparent agents, published or caused to be published numerous communications that were directed at TriStar and were defamatory in nature. These communications were false statements of fact and tend to harm TriStar's reputation among landowners so as to lower their estimation of TriStar or deter them from associating or dealing with TriStar. Further, the statements ascribe to TriStar conduct, character, or a condition that adversely affects TriStar's fitness for the proper conduct of its business, trade, or profession.~~

134. ~~The statements were communicated by American Tower and its actual and/or apparent agents orally and/or in writing, directly to landowners with whom TriStar sought to deal. TriStar suffered harm as a result of American Tower's defamatory communications insofar as landowners breached agreements with TriStar, turned down TriStar's superior offers in favor of~~

American Tower's offers, and compelled TriStar to increase its offers in order to overcome the false statements of fact.

135. The landowners to whom these defamatory statements were communicated understood the defamatory meaning of the statements. These communications included statements to the effect that TriStar is untrustworthy, is unable to meet its financial obligations, is unable to sustain its business in the foreseeable future, will run out of business, and lacks the means and intent to operate cell towers. These statements are false and were made for the purpose of dissuading landowners from dealing with TriStar. The statements have had, and continue to have the effect of diminishing the goodwill and reputation of TriStar among landowners. Further, the statements have deterred, and continue to deter landowners from associating or dealing with TriStar.

136. American Tower's defamatory statements were directed at TriStar, expressly in some instances and indirectly in others. In all cases, landowners understood that TriStar is the intended subject of these false statements of fact.

137. American Tower's defamatory statements were intended to and did cause actual harm to TriStar. The false statements of fact caused some landowners to request more money in order to reach an agreement, compelled certain landowners to terminate their dealings with TriStar, and deterred other landowners from dealing with TriStar altogether. Consequently, TriStar has suffered, and continues to suffer immediate economic harm in the form of substantial premiums necessary to close deals and lost revenue from deals that would otherwise have materialized.

138. American Tower was not privileged in making these false statements of fact, and even if it was privileged, American Tower abused that privilege by making the statements with

malice, or at a minimum, with negligence as to their truthfulness. American Tower knew that the statements it made concerning TriStar were false, had serious doubts as to the veracity of the statements, or at a minimum, was negligent in making the statements without verifying their truth.

COUNT IV

Tortious Interference with Existing Contract

139. ~~122.~~ TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

140. ~~123.~~ TriStar has valid contracts with landowners. TriStar's contracts with landowners include, among other things, agreements to pay rent and/or share revenue with landowners in exchange for TriStar's right to operate a tower site once the underlying ground lease with the existing tower company expires.

141. ~~124.~~ As described above, American Tower has and had actual knowledge of the existence of TriStar's contracts with landowners and TriStar's interest therein, or knowledge of facts and circumstances that would lead a reasonable person to know of their existence.

142. ~~125.~~ American Tower, itself and through its actual and/or apparent agents acting under the direction of American Tower, has interfered and continues to interfere with TriStar's existing contracts with landowners by the conduct described above. Among other things, American Tower has convinced landowners to breach their contracts with TriStar by threatening landowners that American Tower will tear down the towers on the landowners' land and/or relocate the carriers currently leasing space on those towers and by falsely representing to landowners that TriStar is unable to meet its current financial obligations or will be unable to meet its financial obligations in the future. American Tower lacked privilege or justification for committing the acts described above.

143. American Tower's conduct was and is independently tortious or unlawful because American Tower monopolizes and is attempting to monopolize tower operation; has violated § 43(a) of the Lanham Act; intentionally or negligently made false, misleading, and deceptive statements to landowners; intentionally disparaged TriStar's business and services; violated § 2 of the Sherman Act; engaged in unfair competition and anticompetitive conduct; fraudulently induced landowners to enter contracts with American Tower; engaged in a pattern of sham litigation; violated consumer protection and unfair trade practices statutes in numerous states, including but not limited to 73 Pa. CS § 201-1, et seq.; and committed other tortious or illegal acts.

144. 126- American Tower has willfully and intentionally committed the acts described above that are calculated to interfere with TriStar's existing contracts, which acts and interference were intended to and have caused damage to TriStar in its lawful business, and American Tower's willful and intentional interference continues to cause TriStar damage. American Tower's acts have proximately caused and continue to proximately cause actual damage and loss to TriStar. TriStar has suffered and continues to suffer losses in revenue and profits as a result of American Tower's interference because certain landowners have breached their contracts with TriStar due to American Tower's conduct and because TriStar has been forced to expend additional resources in an attempt to prevent other breaches of its contracts with landowners. TriStar has experienced reputational harm and consequential damages as a result of American Tower's unlawful actions. TriStar is also entitled to restitution in the amount of American Tower's wrongfully obtained profits.

145. 127- Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs. In addition, because of the knowing, malicious or reckless nature of their conduct, Defendants are liable for exemplary damages.

COUNT VVI

Tortious Interference with Prospective Business Relations

146. ~~128.~~ TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

147. ~~129.~~ American Tower and third parties, itself and through its actual and/or apparent agents Lyle, Md7, and HPC acting under the direction of American Tower, have interfered and continue to interfere with TriStar's prospective business, contractual, and/or economic relations with landowners by the conduct described above. Among other things, American Tower and its representatives actual and/or apparent agents have made false and misleading statements of fact and unfounded threats to landowners regarding, among other things, American Tower's rights with respect to the towers, American Tower's rights or ability to relocate carriers from specific towers, TriStar's financial status and ability to meet its current obligations, and American Tower's affiliation with AT&T.

148. ~~130.~~ Absent American Tower's and its actual and/or apparent agents' interference, a reasonable probability existed that TriStar would have entered into business relationships with the landowners with whom it negotiated, especially because TriStar offered landowners substantially better terms than the terms offered by American Tower.

149. ~~131.~~ American Tower's conduct was and is independently tortious or unlawful because American Tower monopolizes and is attempting to monopolize tower operation; has violated § 43(a) of the Lanham Act; intentionally or negligently made false, misleading, and deceptive statements to landowners; intentionally disparaged TriStar's business and services; violated § 2 of the Sherman Act; engaged in unfair competition and anticompetitive conduct; fraudulently induced landowners to enter contracts with American Tower; engaged in a pattern of sham litigation; violated consumer protection and unfair trade practices statutes in numerous

states, including but not limited to 73 Pa. CS § 201-1, et seq.; and committed other tortious or illegal acts.

150. ~~432.~~ American Tower's interference with TriStar's prospective business relations is intentional and without privilege or justification. Upon information and belief, American Tower has and had actual knowledge regarding TriStar's ongoing negotiations with landowners regarding easement and lease arrangements, and American Tower intended and intends by its tortious and unlawful conduct to prevent TriStar from reaching agreements with landowners as to towers and leases in which American Tower is interested.

151. ~~433.~~ American Tower's and its actual and/or apparent agents' tortious and unlawful acts have been and continue to be the proximate cause of actual damage and loss to TriStar. As a result of American Tower's and its actual and/or apparent agents' conduct, including unfounded threats and misrepresentations, landowners have rejected TriStar's more favorable offers, which has resulted in lost revenue to TriStar and lost income to the landowners. In some instances, TriStar has still reached ~~agreements~~ agreements with landowners, but only upon less favorable terms due to American Tower's tortious and unlawful acts.

152. ~~434.~~ American Tower's and its actual and/or apparent agents' intentional, tortious, unlawful, and unexcused interference with TriStar's ability to enter into business relations and business contracts with landowners owning property on which towers were located has been and continues to be the proximate cause of actual injury and special financial damage to TriStar. TriStar has experienced reputational harm and consequential damages as a result of American Tower's and its actual and/or apparent agents' unlawful actions. TriStar is also entitled to restitution in the amount of American Tower's wrongfully obtained profits.

~~153.~~ ~~135.~~ Defendants are jointly and severally liable for their actions as described in the foregoing paragraphs. In addition, because of the knowing, malicious, and/or reckless nature of their conduct, Defendants are liable for exemplary damages.

COUNT VI
Breach of Contract

~~154.~~ ~~136.~~ TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

~~155.~~ ~~137.~~ American Tower entered into or otherwise acquired valid and enforceable lease agreements with a number of individuals that own property on which cell towers have been erected. Concurrent with TriStar's acquisition of rights to the land underneath those towers from the landowners, these landowners assigned these valid and enforceable contracts to TriStar. Thus, TriStar stands in the shoes of the landowners and is entitled to all benefits flowing from the contracts, including rent payments from American Tower.

~~156.~~ ~~138.~~ TriStar has performed its contractual obligations by allowing American Tower to continue to operate its towers during the duration of the lease.

~~157.~~ ~~139.~~ American Tower breached the lease agreements by failing to tender payment to TriStar, despite proper notice that the lease agreements have been assigned to TriStar.

~~158.~~ ~~140.~~ As a result of American Tower's breach, TriStar has incurred actual damages in the form of lost rent payments and is entitled to recover these damages at trial. TriStar is also entitled to attorney's fees pursuant to Texas Civil Practices & Remedies Code § 38.001-006. All conditions precedent to this claim have been satisfied.

COUNT VII
Violation of the Sherman Act, 15 U.S.C. § 522
Monopolization and Attempted Monopolization

159. ~~438.~~ TriStar incorporates by reference the allegations of all the preceding paragraphs as if fully set forth herein.

160. ~~439.~~ American Tower ~~seeks~~monopolizes and is attempting to monopolize tower operation in the relevant market and/or submarkets by preventing entry into and expansion in those areas by competitor tower site acquirers/operators such as TriStar.

161. ~~440.~~ For TriStar or any other tower site acquirer/operator competitor to effectively enter the relevant market and/or submarkets, it must be able to compete for ground leases of existing tower sites.

162. ~~441.~~ The market is defined as the nationwide market for the operation of cell towers with relevant submarkets consisting of individual tower sites that American Tower currently controls or seeks to control. Each cell tower is an economically distinct market such that services provided at one cell tower location are not interchangeable with services provided at a different cell tower location. As American Tower itself has pleaded, "tower sites are interrelated and networked to provide seamless coverage."¹¹ As a result, they cannot be moved if at all any substantial distance from their current locations. Further, zoning and other regulations and market factors often make competition through the construction of new towers completely impracticable. Thus, each tower uniquely serves the area in which it is located, and carriers have no reasonable alternatives to the towers already leased. Competition for carrier leases within the range of a specific cell tower is independent of, and separate from, competition for carrier leases elsewhere.

¹¹ Indeed, in a federal complaint filed jointly with Verizon Wireless less than a year ago, American Tower and Verizon emphasized the importance of maintaining—not tearing down—current cellular tower locations:

Because of the early location of the Existing Tower in the development of the Verizon Wireless network, in which all tower sites are interrelated and networked to provide seamless coverage, maintaining wireless telecommunications facilities at this approximate location is critical to the continued operation of Verizon Wireless's wireless communications network.

Complaint at ¶ 7, *Verizon Wireless (VAW) LLC & Am. Tower Corp. v. City of Lee's Summit, Mo.*, No. 4:11-cv-00245-DGK (W.D. Mo. Mar. 4, 2011).

163. 142. American Tower has monopoly power in that it controls 100% of the relevant market and/or submarkets. This monopoly power is recognized by the analysts who follow the cell tower industry. Credit Suisse has stated that "[e]ach tower has a virtual monopoly on its sites." Goldman Sachs says that "the Towers benefit from supply constraints and monopolistic pricing leverage as the regulatory hurdles to permit new tower construction remains difficult." Evercore Partners agrees that "prime tower locations act as mini-monopolies." American Tower's market power in each tower submarket is demonstrated by the inability of the landowner to turn to other tower operating companies to operate the tower on the property to seek higher compensation. Its exclusionary conduct has precluded lease rates reaching competitive levels. Blocking competition for tower sites prevents competition in carrier lease rates. American Tower's exclusionary conduct has precluded landowner compensation from reaching competitive levels further demonstrating its monopoly power. American Tower's ability to artificially hold landowner compensation down while simultaneously preventing competition in carrier lease rates establishes the power that American Tower has over the relevant market and/or submarkets. American Tower has engaged in predatory and anticompetitive conduct—threats, false statements, business disparagement, breaches of contract, bad-faith, vexatious and sham litigation, and nakedly anticompetitive and attempts to enforce invalid nondisclosure clauses in its ground leases—to prevent TriStar from competing in tower operations. In addition, as part of its pattern of misleading and deceptive conduct towards landowners, without the knowledge of landowners involved, American Tower has also cooperated with and/or colluded with American Tower's purportedly independent competitors such as Unison and purportedly independent landowner consultants during negotiations with landowners for tower sites. Its use of barriers to entry and

expansion has deprived carriers of competition and prevented competition for ground leases to the detriment of land owners.

164. 143.—The vexatious, sham litigation has increased TriStar's cost of doing business and created a barrier to its expansion. If successful, it would drive TriStar from the relevant market and/or submarkets. This success of its exclusionary conduct demonstrates the ability of American Tower to exclude competition.

165. 144.—American Tower has obtained, maintained, and seeks to further acquire monopoly power in the relevant market and/or submarkets, not through offering a superior product or business acumen, but rather through a pattern of anticompetitive and exclusionary conduct to prevent competitors from entering, remaining, or expanding in the relevant market and/or submarkets.

166. 145.—American Tower's inclusion of and enforcement of nondisclosure clauses in its ground leases—which prevents a landowner from disclosing any of the terms of the leases to any third parties, including potential competitors—is nakedly anticompetitive and designed to exclude potential competitors, like TriStar, from participating in the market and submarkets. These nondisclosure clauses also constitute unlawful restraints on the alienation of real property. These nondisclosure clauses serve no legitimate business purpose and are an integral part of American Tower's scheme to monopolize the tower industry in the relevant market and/or submarkets.

167. 146.—American Tower is engaging in a malicious pattern of repeated, costly, objectively baseless, and duplicative litigation for the purpose of raising TriStar's costs and intimidating landowners from dealing with TriStar. Each of the claims is premised on nakedly

anticompetitive nondisclosure clauses that are intended to prevent potential tower operators from participating in the relevant market and/or submarkets.

~~168.~~ 147. As demonstrated by its sham litigation against TriStar, American Tower routinely files lawsuits against its competitors and landowners to enforce these nakedly anticompetitive, illegitimate nondisclosure clauses. This American Tower's latest tactic is to personally sue TriStar employees with meritless RICO claims and to bring groundless challenges against TriStar's arrangements with its investors under the Sherman Act. All of this litigation is part of American Tower's pattern of intimidating landowners and blocking TriStar's employees and TriStar's investors, all in an attempt to block legitimate competition from rivals like TriStar.

~~169.~~ 148. Through its anticompetitive and exclusionary conduct, for which American Tower has no legitimate business justification, American Tower has demonstrated its specific intent to monopolize the relevant market and/or submarkets and to exclude competitors like TriStar from entering and remaining in the market and submarkets markets and/or submarkets, and where American Tower does not already possess monopoly power, there is a dangerous probability that it will achieve such power.

~~149.~~ American Tower also has monopoly power in the market and/or each of the submarkets, where American Tower controls 100% of the relevant submarkets. American Tower's exclusionary conduct has precluded landowner compensation from reaching competitive levels, further demonstrating its monopoly power. American Tower's ability to artificially hold landowner compensation down while simultaneously preventing competition in carrier lease rates establishes the power that American Tower has over the relevant market and/or submarkets.

~~170.~~ 150. TriStar has been and will continue to be injured as a result of American Tower's anticompetitive and exclusionary conduct, which has prevented competitive entry, has

kept TriStar from growing its tower operating business to a much larger market share, and increases the cost of doing business. If successful, American Tower will drive TriStar and other potential competitors completely from the relevant market and submarkets.

171. ~~151.~~ These anticompetitive acts of attempted monopolization and monopolization violate Section 2 of the Sherman Act. TriStar is entitled to treble damages and attorneys' fees for these actions.

COUNT VIIIIX
Application for Permanent Injunction

172. ~~152.~~ TriStar incorporates by reference the allegations of all preceding paragraphs as if fully set forth herein.

173. ~~153.~~ American Tower, and its actual and/or apparent agents acting at its direction and on its behalf, continues to make false statements and misrepresentations about TriStar. TriStar has learned of several recent false statements: (1) on February 8, 2012, an American Tower employee informed a California landowner with whom TriStar is negotiating that TriStar will never be able to acquire control of the site on her property despite MetroPCS being a tenant on the tower; (2) on February 14, 2012 an American Tower employee told an Oklahoma landowner that American Tower would move the tower if he did a deal with TriStar, despite not having the agreement from the tenants on the tower to move towers; and (3) on February 14, 2012 an American Tower employee told a Washington landowner that TriStar was going out of business.

174. ~~154.~~ Since TriStar filed this action, American Tower has continued to make false and misleading statements to landowners. For example, TriStar has learned of the following recent misrepresentations: (1) on April 13, 2012, an American Tower employee told a Washington landowner with whom TriStar is negotiating that TriStar has sold several towers back to American Tower, which TriStar has not done; that TriStar would raise rents and cause carriers to leave any

tower that it operates, which has never happened; and that TriStar is just a finance company with no tower operations experience, which is demonstrably false; (2) on April 12, 2012, an American Tower employee told a California landowner that TriStar is just a finance company, which is demonstrably false, and that American Tower would remove the landowner's tower, even though American Tower does not own the Tower, if he does a deal with TriStar; (3) between February 26 and March 22, 2012, an Lyle employee acting as an actual and/or apparent agent of American Tower, informed a Florida landowner that American Tower would move the landowner's tower and take the carriers to the new location, which is impossible under local zoning regulations, if the landowner did a deal with TriStar; and (4) on March 25, 2012, an American Tower employee told a Colorado landowner with whom TriStar is negotiating that American Tower would move the landowner's tower, even though American Tower does not own the tower, if he does a deal with TriStar.

175. ~~155.~~ TriStar has been and will continue to be severely injured by American Tower's unfair and unlawful actions throughout the United States. American Tower's false statements and misrepresentations about TriStar will continue to cause a loss of reputation, goodwill, and competitiveness in the market, which cannot be adequately compensated by monetary damages.

176. ~~156.~~ Pursuant to Texas Business and Commerce Code § 16.29 and the statutory and common law of the other states in which American Tower is engaging in unlawful actions, TriStar prays that this Court grant it a permanent injunction prohibiting American Tower and third parties acting under the direction of American Tower from (1) making false statements about its American Tower's own services and commercial activities in negotiations with landowners; (2) making false statements about TriStar's services and commercial activities in negotiations with landowners; and

(3) making statements to landowners under contract with TriStar for purposes of inducing a breach of the TriStar contract.

JURY DEMAND

177. ~~157.~~ Plaintiff demands a jury trial of all claims in the ~~First~~Second Amended Complaint on which a jury trial is available.

PRAYER

Wherefore, TriStar respectfully prays that this Court grant the following relief:

- a. a permanent injunction restraining Defendants as described above;
- b. a monetary judgment awarding TriStar actual, consequential, exemplary, and treble damages; restitution in the amount of American Tower's wrongfully obtained profits; costs and attorney's fees; and pre- and post-judgment interest; and
- c. such other and further relief to which TriStar is justly entitled.

Respectfully submitted,

VINSON & ELKINS ~~LLP~~ LLP

~~/s/ William D. Sims, Jr. Kyle D. Young~~

William D. Sims, Jr.

Texas Bar No. 18429500

Matthew R. Stammel

Texas Bar No. 24010419

John D. Tauman

Texas Bar No. 19680400

Kyle D. Young

Texas Bar No. 24070899

Tyler J. Bexley

Texas Bar No. 24073923

2001 Ross Avenue, Suite 3700

Dallas, Texas 75201

Tel: 214.220.7700

Fax: 214.220.7716

bsims@velaw.com

mstammel@velaw.com

jtauman@velaw.com

kyoung@velaw.com

tbexley@velaw.com

Harry M. Reasoner

Texas Bar No. 16642000

Stacey Neumann Vu

Texas Bar No. 24047047

1001 Fannin Street, Suite 2500

Houston, Texas 77002

Tel: 713.758.2222

Fax: 713.758.2346

hreasoner@velaw.com

svu@velaw.com

Attorneys for Plaintiff TriStar Investors, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on ~~May 15, 2012~~ February 6, 2013, I served a true and accurate copy of the foregoing document on all counsel of record via filing of the same with the Court's CM/ECF system.

~~/s/ Tyler J. Besley~~ /s/ Kyle D. Young

Document comparison by Workshare Professional on Wednesday, February 06, 2013 7:03:59 PM

Input:	
Document 1 ID	interwovenSite://USDMS/US/1397029/1
Description	#1397029v1<US> - FINAL TriStar First Amended Complaint
Document 2 ID	interwovenSite://USDMS/US/1756344/3
Description	#1756344v3<US> - TriStar Second Amended Complaint v.4
Rendering set	standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	188
Deletions	173
Moved from	3
Moved to	3
Style change	0
Format changed	0
Total changes	367

EXHIBIT G

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

TRISTAR INVESTORS, INC.,
MINERVA REALTY, LLC, and
ANGELINE JOHNSON,
Plaintiffs,

v.

THE HORRY COUNTY COUNCIL, and
AMERICAN TOWERS, LLC,
Defendants.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT

) Civil Action No. 2012-CP-26-8652

) **ORDER ENTERING FINAL**
) **JUDGMENT AGAINST PLAINTIFFS**

MELANIE J. WARD
CLERK
COURT

13 MAY 21 AM 7:30

FILED
HORRY COUNTY

This matter comes before the Court upon hearing of the merits of the case filed by TriStar Investors, Inc. ("TriStar"), Minerva Realty, LLC ("Minerva"), a wholly owned subsidiary of TriStar (TriStar and Minerva may be referred to collectively as "TriStar/Minerva"), and Angeline Johnson ("Johnson") (TriStar, Minerva, and Johnson may be collectively referred to as "Plaintiffs") appealing Resolution No. R-73-12 adopted by the Horry County Council (the "Horry County Council"). A hearing was held before me on April 26, 2013 in which arguments were presented by counsel for all parties in this matter.

Plaintiffs are represented by Susan MacDonald, Esquire, with Nelson, Mullins, Riley and Scarborough, and Morgan Martin, Esquire, with the Law Offices of L. Morgan Martin, P.A. Defendant Horry County is represented by Emma Ruth Brittain with Thomas & Brittain, P.A. Defendant American Towers, LLC is represented by Tommy Brittain, Esquire, with The Brittain Law Firm, P.A.; David Slough, Esquire, with Nexsen Pruet, LLC; and Jonathan Yates, Esquire, with Hellman, Yates & Tisdale, P.A. The issues have been heard and this decision is hereby rendered.

FINDINGS OF FACT

1
mhc

By Order of the Court dated 05/21/13

Defendant American Towers, LLC, f/k/a American Towers, Inc. ("American Towers") operates a communications tower at the property located at the corner of Huggins Road and Route 9, Myrtle Beach, South Carolina 29572.

1. On or about August 31, 2012, American Towers filed an application with supporting materials with Horry County's Planning & Zoning Department, seeking to relocate American Towers' existing tower to a nearby property located at 215 Huggins Road, Loris, South Carolina.

2. On October 16, 2012, the Horry County Council held a public hearing to vote on the matter. A representative for Defendant American Towers appeared at that meeting and made a presentation. A representative for Plaintiffs also appeared at that meeting and made a presentation.

3. On October 16, 2012, the Horry County Council unanimously approved Resolution No. R-73-12 authorizing Defendant American Towers to relocate its existing communications tower to a nearby property. Horry County Council amended Resolution R-73-12 to include a requirement that Defendant American Towers remove the existing tower within 120 days of final inspection and approval of the new tower. (All further references to R-73-12 by the Court herein include the amendment).

4. Plaintiffs initiated this action on November 8, 2012, by filing their Summons and Complaint in the Horry County Court of Common Pleas. All parties consented to the hearing of this matter by the undersigned in the Georgetown County Courthouse, Georgetown, South Carolina, with no objection as to the hearing venue.

CONCLUSIONS OF LAW

²/mhc

1. This Court's scope of review in this matter is limited. As conceded by Plaintiffs, the decision of the Horry County Council must be affirmed unless arbitrary, unreasonable, an abuse of discretion, or in excess of lawfully delegated power. As also conceded by Plaintiffs, the evidence in this case is limited to the record before the Horry County Council. See Gay v. City of Beaufort, 364 S.C. 252; 254, 612 S.E.3d 467 (Ct. App. 2005)(City council decision should not be disturbed unless decision is arbitrary, unreasonable, or obvious abuse of discretion); McSherry v. Spartanburg County Council, 371 S.C. 586, 589; 641 S.E.2d 431 (2007) (in reviewing the discretionary decision of a legislative body, our courts are loath to substitute their judgment for that of elected representatives") (citation omitted).

2. The Court has reviewed the record before it and concludes that Horry County Council's unanimous decision enacting R-73-12, was based on a thorough documented review and record prepared by the Horry County Planning and Zoning Department; accordingly, I find that the relief requested by Plaintiffs is not warranted, which finding is further supported by the reasons set forth below.

3. In approving Resolution No. R-73-12, Horry Council County did not act arbitrarily, unreasonably, in an abuse of its discretion, or in excess of lawfully delegated power. American Towers' application did not seek to operate multiple towers but to relocate its existing tower. The record, including Defendant TriStar's application and Horry County Council's amendment to the Resolution requiring demolition of the existing tower within 120 days of final inspection and approval of the new tower, clearly establishes that American Towers' new tower approved by Horry County Council Resolution No. R-73-12 is a re-location rather than a co-location.

4. The Court further finds that approval of the tower as a relocation is within the lawfully delegated power of Horry County Council, and, based on the record before the Court, is neither arbitrary or capricious nor an abuse of discretion. The Court finds the restrictive reading urged by Plaintiffs is not supported by the language of the County's zoning ordinance

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The decision of the Horry County Council is passing Resolution No. R-73-12 is hereby affirmed. This appeal of Resolution Horry County Council No. R-73-12 is denied. Final judgment is entered in this case against Plaintiffs TriStar Investors, Inc., Minerva Realty, LLC, and Angeline Johnson and in favor of Defendants the Horry County Council and American Towers, LLC.

2. The Temporary Restraining Order and Preliminary Injunction entered in this case are void and no longer in effect. Paragraphs 1-3 of the Order Granting Temporary Restraining Order And Preliminary Injunction And Reforming Caption are hereby vacated and declared null and void.

3. Defendants and their subsidiaries, sister or parent companies, affiliates, and agents may take action in reliance upon Horry County Council Resolution No. R-73-12.

4. Horry County Council Resolution No. R-73-12 is no longer stayed.

5. Defendants and their subsidiaries, sister or parent companies, affiliates, and agents may issue or accept any building permit or other administrative or regulatory permit or application related to Horry County Council Resolution No. R-73-12 or the new tower.

6. This case is dismissed with prejudice.

7. This Order shall be a final order.

4/mk

AND IT IS SO ORDERED.

Benjamin H. Culbertson

The Honorable Benjamin H. Culbertson
Fifteenth Judicial Circuit

This 8th day of May, 2013

FILED
5-21-13 to all
parties not in default
Rell