

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2012-CP-26-8652
Appellate Case No. 2013-CP-26-08652

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

v.

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

RECORD ON APPEAL
VOLUME TWO

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**RECORD ON APPEAL
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Certificate of Counsel	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF Horry	)	CIVIL ACTION NO.: 2012-CP-26-8652
Tristar Investors, Inc., Minerva	)	
Realty, LLC and Angeline Johnson,	)	
	)	
Plaintiff,	)	ADDITIONAL SUBMITTAL TO COURT
	)	ON BEHALF OF DEFENDANT THE
	)	Horry County Council
vs.	)	
	)	
The Horry County Council and	)	
American Tower Corporation,	)	
	)	
Defendants.	)	

The following additional information is being submitted to the Court by follow-up to the motion hearing of Friday, December 7, 2012.

Attached is a copy of the Agenda for the October 16, 2012, meeting of Horry County Council. (Attachment A). The Agenda reflects that "Resolution R-73-12 and Public Hearing" was placed on the Agenda by Council Member Jody Prince for the approval of American Tower LLC's application to locate a telecommunications towers on Huggins Road off of West Hwy. 9 Business. As additional supplemental information for it's consideration, the Court's attention is drawn to the archived video portion of the October 16, 2012, Horry County Council meeting pertaining to the County Council's Public Hearing and consideration of Resolution R-73-12. The archived meeting video reflects that, following a presentation by representatives of American Tower, Tristar was allowed an opportunity to respond and Horry County Council members were afforded an opportunity to ask questions of both parties. The public was also afforded an opportunity for public input. As shown in the archived video, Horry County Council voted unanimously to approve the tower relocation by American Tower. (The archived video of the

meeting may be located and reviewed at www.horrycounty.org under Minutes and Agenda Archive.)

Horry County asserts that Plaintiff's legal arguments are without factual basis and are without merit. The first shortcoming is Plaintiff's mistaken assertion that Defendant American Towers' application is for co-location of a tower. This is in error. American Tower applied for a re-location permit and, as documented in the Affidavit previously submitted to the Court from David Schwerd, which application met all re-location requirements of Horry County Ordinance.

The second error in Plaintiff's argument is that Plaintiff "bought the right to control the cellular communication activity on Ms. Johnson's property...." Paragraphs 3 and 23 of the Complaint. Horry County at no time issued a permit to Ms. Johnson to "control cellular communications activity" on her property. The permitted entirety of record with Horry County for the cell tower located on Ms. Johnson's property is American Tower, LLC. Moreover, Plaintiff's arguable need to preserve the status quo appears to arise out of the alleged failure of Co-Plaintiff Johnson to inform Plaintiff Tristar Investors that she had conveyed a lease extension to Defendant American Tower, and not from any flaw in the decision making process by Horry County Council or its Department of Planning and Zoning.

Horry County Council's unanimous decision was based on a carefully documented review and record by the Horry County Planning and Zoning Department which record is before this Court. The unanimous vote of Horry County Council occurred after a hearing and opportunity for public, as reflected in the archived video. It is respectfully submitted that based on the record and the governing caselaw, Plaintiff's motion for injunction should be denied. See Gay v. City of Beaufort, 364 S.C. 252, 254, 612 S.E.2d 467 (Ct. App. 2005) ("Where the city council of a municipality has acted after considering all of the facts, the court should not disturb

the finding unless such action is arbitrary, unreasonable, or an obvious abuse of its discretion: This court will not disturb on appeal such findings of the city council, concurred in by a circuit judge, unless they are without evidentiary support or against the clear preponderance of the evidence. (Citations omitted); and McSherry v. Spartanburg County Council, 371 S.C. 586, 433, 641 S.E.2d 431 (2007) “[i]n reviewing the discretionary decision of a legislative body, our courts have been loath to substitute their judgment for that of elected representatives. Such decisions should not be upset on appeal unless [they are] arbitrary, unreasonable, an obvious abuse of discretion, or in excess of lawfully delegated power.”) citing Sloan v. Greenville County, 356 S.C. 531, 555-56, 590 S.E.2d 338, 351 (Ct.App.2003).

Respectfully submitted,

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December 10, 2012
Myrtle Beach, South Carolina

ATTACHMENT A

Regular Council Meeting
October 16, 2012 – 6:00 p.m.
Council Chambers, 1301 Second Ave., Conway, SC

- A. Call to Order
- B. Invocation
- C. Pledge of Allegiance
- D. Public input on Agenda items (18-Minute Time Limit)
- E. Approval of Agenda Contents
- F. Approval of Minutes – Regular Meeting, October 2, 2012

Tom Rice, Chairman
Mr. J. Prince
Mr. Frazier

G. CONSENT AGENDA

- 1. Third Reading of the following ordinances to approve the request to amend the official zoning maps:
 - **73-12** Jim Gray, agent for Jerry McClain Evans (Mr. Frazier)
 - **74-12** Jeffrey Gore, agent for Gore Vander Moore Village PDD (Mr. P. Prince)
 - **75-12** Felix Pitts, agent for Sandhills Bank (Mr. P. Prince)
 - **76-12** Paul Prince, agent for PCP Property LLC (Mr. P. Prince)

H. PRESENTATIONS / RESOLUTIONS

- 2. Update on Riding On A Penny road projects. (Mr. Barbee, SCDOT)
- 3. Update on the MYR Terminal Expansion completion schedule. (Mr. Cram, MB Kahn)
- 4. Update on Lean Six Sigma Implementation. (Ms. Wright)
- 5. **Resolution R-73-12 and Public Hearing** to approve the permit to locate a telecommunications tower on Huggins Road off of West Hwy 9 Business. (Mr. J. Prince)
- 6. **Resolution R-74-12 and Public Hearing** to approve the permit to locate a telecommunications tower on Melissa Lane off of Hwy 90. (Mr. P. Prince)

I. READING OF ORDINANCES

- 7. Second Reading – **Ordinance 78-12** to amend the FY 2013 budget so as to add Section 23 that authorizes the administrator to transfer lobbying expenditures and a revenue source to cover same from the general fund to a separate fund. (Favorable, Admin Comm)
- 8. Second Reading – **Ordinance 79-12** to amend the FY 2013 budget so as to appropriate additional revenue in the general fund in connection with a contract for inmate housing with the US Marshall Service for the purpose of providing funding for 2 additional deputy sheriff positions and 2 transportation vans. (Favorable, Public Safety Comm)
- 9. Second Reading – **Ordinance 80-12** to amend the FY 2012 budget so as to add Section 24 designating that funds appropriated for OPEB (retiree insurance) that are not expended during the fiscal year be committed for that purpose as part of the fund balance. (Favorable, Admin Comm)

J. OLD / NEW BUSINESS

K. ANNOUNCEMENTS

- 10. Memorial Dedication: Michael Hamilton Hatchell
- 11. Disbursements of District Recreation Funds: \$5000 to Aynor-Gallivants Ferry Cultural Heritage Fund (Mr. Allen); \$600 to Green Sea-Floyds Robotics Club (Mr. J. Prince)
- 12. Upcoming Meetings: Regular Council Meetings – October 16, November 13, December 11
Infrastructure & Regulations Committee – October 18
Fall Budget Retreat – November 16

- L. **PUBLIC INPUT** on non-agenda items only. 18-minute time limit.

- M. **EXECUTIVE SESSION:** (if necessary)

- N. **ADJOURN**

364 S.C. 252
Court of Appeals of South Carolina.

Walter L. GAY, d/b/a Sandlapper Tours,
Appellant,

v.

The CITY OF BEAUFORT, Respondent.

No. 3980. | Submitted March 1, 2005. | Decided
April 18, 2005.

Synopsis

Background: Licensee appealed decision of city council that revoked business license to conduct tours in city's historic district. The Circuit Court, Beaufort County, Curtis L. Coltrane, Special Circuit Court Judge, affirmed. Licensee appealed.

[Holding:] The Court of Appeals, Hearn, C.J., held that for purposes of city ordinance providing that theme vehicles other than horse-drawn carriages may not be utilized for touring purposes in historic district, licensee's vehicle was a "theme vehicle."

Affirmed.

West Headnotes (3)

[1] Municipal Corporations
↔ Discretion

Where the city council of a municipality has acted after considering all of the facts, the court should not disturb the council's finding unless such action is arbitrary, unreasonable, or an obvious abuse of its discretion.

1 Cases that cite this headnote

[2] Municipal Corporations
↔ Appeal from Decisions

Court of Appeals will not disturb on appeal findings of the city council, concurred in by a circuit judge, unless they are without evidentiary support or against the clear preponderance of the evidence.

1 Cases that cite this headnote

[3] Public Amusement and Entertainment
↔ Licensing and Regulation

For purposes of city ordinance providing that theme vehicles other than horse-drawn carriages may not be utilized for touring purposes in historic district, licensee's vehicle was a "theme vehicle," and thus city council could revoke business license to conduct tours through historic district; ordinance included trolleys as prohibited theme vehicles, licensee referred to his vehicle as a trolley numerous times, and design and shape of vehicle indicated that it was a trolley.

Attorneys and Law Firms

****468 *253** Walter L. Gay, of St. Helena, Pro Se, for Appellant.

William B. Harvey, III, of Beaufort, for Respondent.

Opinion

HEARN, C.J.

This is an appeal from the trial court's decision affirming the Beaufort City Council's revocation of Walter Gay's business license to conduct tours in the historic district of Beaufort. We affirm.¹

***254 FACTS**

On August 5, 2002, the City of Beaufort granted Walter

Gay, doing business as Sandlapper Trolleys, a business license for the purposes of conducting tours through Beaufort, including the historic district. Within the next few days, the city told Gay the license would be revoked because his tour vehicle was considered a "trolley" under Beaufort City Ordinance section 7-11002 and, therefore, could not be used in the historic district.

Gay wrote a letter to the city manager requesting that the city council reconsider revoking his license. Alternatively, he asked that the city ordinance prohibiting the use of trolleys in the historic district be changed. The city council referred the matter to the city manager and city attorney and further requested Beaufort's Tourist Management Advisory Commission ("Commission") to review the ordinance and give a recommendation.

In 2003, based on the Commission's recommendation that the vehicle was considered a "trolley" for purposes of the ordinance as well as statements by several of the individuals who created the ordinance, the city council voted to revoke Gay's license. Gay appealed to the circuit court, which affirmed the decision of the city council. This appeal followed.

STANDARD OF REVIEW

^[1] ^[2] Where the city council of a municipality has acted after considering all of the facts, the court should not disturb the finding unless such action is arbitrary, unreasonable, or an obvious abuse of its discretion. *Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963). This court will not disturb on appeal such findings of the city council, concurred in by a circuit judge, unless they are without evidentiary support or against the clear preponderance of the evidence. *Id.* at 363, 133 S.E.2d at 848 (referring specifically to the findings of a master-in-equity, which affirmed the actions of a city council).

LAW/ANALYSIS

^[3] Gay claims the trial court erred in affirming Beaufort City Council's decision to revoke his license to conduct tours *255 through the historic district because his tour vehicle is not a "theme vehicle," as defined by the city ordinance. We disagree.

The City of Beaufort Ordinance § 7-11003 provides that

"[t]heme vehicles other than horse-drawn carriages ... may not be utilized for touring purposes in the historic district." The ordinances further define "theme vehicle" in the following manner:

A vehicle whose design, shape, form, color, signage, or accoutrements is intended to create a particular identity and to call special attention to that vehicle, such as a horse-drawn carriage, trolley, pedicab, snail vehicle, or articulated vehicle. Touring **469 vehicles displaying commercial or institutional identification in a customary fashion shall not be considered theme vehicles.

Ordinance § 7-11002. (Emphasis added.)

Gay considered his tour vehicle a "trolley," as evidenced by his trade name "Sandlapper Trolleys" and the content of his letter to the city manager. In that letter Gay referred to his tour vehicle as a "trolley" numerous times. For example, he stated, "I admit that what I have looks similar to a trolley and it is called a trolley." He also argued that his "trolley is a clean vehicle" and "is an asset to any historic area." He also requested help from the city manager in "finding a way to utilize [his] trolley in the historic tours of Beaufort." Finally, he asked the city council to consider amending the ordinance so his vehicle could be used in the historic district.

Additionally, the city manager and the city attorney determined, based on their evaluation of the tour vehicle and the ordinance, that the tour vehicle was a "theme vehicle" as defined by the city ordinance. "[B]ecause of the design and shape" of the tour vehicle, the Commission concluded that the tour vehicle was a trolley and, therefore, fit within Beaufort's definition of a theme vehicle.² At the city council meeting, a representative of the Commission stated, "an ordinance change would be necessary for [Gay] to operate" his tour vehicle in the historic district.

*256 Lastly, the city council agreed that the tour vehicle was a bus. However, "because of its design it is considered a theme vehicle." Therefore, the findings of the Beaufort City Council, concurred with by the circuit court, are supported by the preponderance of the evidence.

For the reasons stated herein, the decision of the circuit court is

AFFIRMED.

Parallel Citations

612 S.E.2d 467

KITTREDGE and WILLIAMS, JJ., concur.

Footnotes

1 We decide this case without oral argument pursuant to Rule 215, SCACR.

2 Any references to the Commission's recommendations or city council's decisions were extracted from the Beaufort City Council meeting minutes.

End of Document

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371 S.C. 586
Supreme Court of South Carolina.

Walter McSHERRY, individually and on behalf of
all others similarly situated, and the South
Carolina Public Interest Foundation, Appellants,

v.

SPARTANBURG COUNTY COUNCIL, Chairman
Jeffery A. Horton, Johnnye Code-Stewart, Steve
Parker, David Britt, Rock Adams, Ken Huckaby,
and Frank Nutt, Respondents.

No. 26258. | Heard Jan. 3, 2007. | Decided Feb. 5,
2007.

Synopsis

Background: Citizens brought suit for declaratory relief, contending that a \$25.00 road maintenance fee ordinance was not lawfully enacted. The Circuit Court, Spartanburg County, J. Mark Hayes, II, J., denied citizens' request for declaratory relief, and citizens appealed.

[Holding:] The Supreme Court, Toal, C.J., held that although the better practice might have been for the title to be in writing at the time of the first reading, this alone did not cause enactment of road maintenance fee ordinance to be invalid.

Affirmed.

West Headnotes (3)

[1]

Statutes

↳ Reading and consideration of bills

Statutes

↳ Legislative construction

The first reading of a bill is merely a formal matter on which no vote is taken, and the construction placed by the legislature upon its own procedure for so many years should be regarded as the correct interpretation.

[2]

Municipal Corporations

↳ Appeal from decisions

Discretionary decisions of a legislative body should not be upset on appeal unless they are arbitrary, unreasonable, in obvious abuse of discretion, or in excess of lawfully delegated power.

1 Cases that cite this headnote

[3]

Counties

↳ Ordinances and by-laws

Although the better practice might have been for the title to be in writing at the time of the first reading, this alone did not cause enactment of a \$25.00 road maintenance fee ordinance to be invalid; minutes of the first meeting wherein the road maintenance fee was suggested revealed that county council discussed the proposed ordinance at length and that all members were well aware of the nature and reason for the road maintenance fee, and nothing in the State Constitution, which authorized and established home rule, required that an ordinance be in written form when it received first reading. Code 1976, §§ 4-9-110, 4-9-120; Const. Art. 8.

Attorneys and Law Firms

****432** James G. Carpenter and Jennifer J. Miller, both of
The Carpenter Law Firm, of Greenville, for Appellants.

Edwin C. Haskell, III, of Spartanburg, for Respondents.

Opinion

Chief Justice TOAL:

***587** Walter McSherry and the South Carolina Public

Interest Foundation (collectively "Appellants") appeal an order of the circuit court denying their request for declaratory relief and holding that Respondent, Spartanburg County Council ("Council"), properly enacted a \$25.00 road maintenance fee ordinance. We affirm.

*588 FACTUAL/PROCEDURAL BACKGROUND

At a publicly advertised Council meeting in February 2005, council member Ken Huckaby made a motion to adopt a road user fee of \$25.00 for Spartanburg County. The county attorney moved to have the "first reading of an Ordinance to adopt the road fee by title only," and advised Council that he would have something drafted up for the next meeting. At the time, neither the title nor the ordinance was written. By Council's next meeting, however, the proposed ordinance had been reduced to writing. In late February 2005, Council held a public hearing to discuss the ordinance and the ordinance received second reading. The ordinance received third reading in March 2005. The ordinance became effective July 1, 2005.

Appellants instituted this complaint for declaratory relief, contending the ordinance was not lawfully enacted because it did not exist in written form at the time of the first reading. The circuit court upheld the ordinance, finding Council had sufficiently complied with the three reading requirement of S.C.Code Ann. § 4-9-120 (1986).¹

Appellants filed this appeal, and we certified this case from the court of appeals pursuant to Rule 204(b), SCACR. Appellants present the following issue for this Court's review:

Did the circuit court err in holding the road maintenance fee ordinance was properly enacted?

**433 LAW/ANALYSIS

S.C.Code Ann. § 4-9-120 (1986) sets forth procedures to be used by County governments in adopting ordinances. It provides, in part:

The council shall take legislative action by ordinance which may be

introduced by any member. With the exception of emergency ordinances, all ordinances shall be read at three public meetings of council on three separate days with an *589 interval of not less than seven days between the second and third readings.

Id. Furthermore, S.C.Code Ann. § 4-9-110 (1986) provides that "council shall determine its own rules and order of business." Pursuant to § 4-9-110, Spartanburg adopted the Spartanburg County Council Rules of Procedure. Article 9 of those rules provides, in part, as follows:

9-1 ORDINANCES AND RESOLUTIONS IN GENERAL (4-9-120): The Council shall take legislative action by ordinance ...

9-2 READINGS: with the exception of emergency ordinances, all ordinances shall be read at three public meetings of the Council on three separate days with an interval of not less than seven days between the second and third reading; provided that a verbatim reading of an ordinance shall not be required unless such reading is requested by a member.

9-3 FIRST READING: An ordinance may be introduced for first reading at any meeting of the Council by title only.² No vote shall be taken and no debate or amendment shall be in order. The ordinance shall be referred by the Chairperson to an appropriate committee or to the Council as a whole.

9-4 SECOND READING: Reports on a proposed ordinance shall be presented at the next meeting after the first reading, ... Prior to the second reading, a draft of the text of the ordinance shall be delivered to every member. After the proposed ordinance shall have been read, amendments shall be in order.... Any member of the Council may require that amendments be in writing.
(emphasis supplied).

Appellants acknowledge that an ordinance may validly be introduced for first reading by title only. However, Appellants assert that the procedure in this case was fundamentally flawed inasmuch as there was no ordinance in existence at the time of the first reading. Although we are disconcerted by *590 the methodology utilized by Council in this matter, we disagree with Appellants' argument.

[1] [2] Our precedent provides:

[T]he first reading of a bill is merely a formal matter on which no vote is taken, and ... the construction placed by the Legislature upon its own procedure for so many years should be regarded as the correct interpretation. The courts of almost all of our states have adopted the rule that the legislative construction placed upon doubtful constitutional provisions is entitled to great weight and consideration, and raises a strong presumption that it is correct, and will generally be adopted by the courts.

Thompson v. Livingston, 116 S.C. 412, 419, 107 S.E. 581, 583 (1921). Furthermore, "[i]n reviewing the discretionary decision of a legislative body, our courts have been loath to substitute their judgment for that of elected representatives. Such decisions should not be upset on appeal unless [they are] arbitrary, unreasonable, in obvious abuse of discretion, or in excess of lawfully delegated power." *Sloan v. Greenville County*, 356 S.C. 531, 555-56, 590 S.E.2d 338, 351 (Ct.App.2003).

As noted, Council's Rules of Procedure Section 9-3 allows for a first reading by title only, and provides that the matter may then be referred to a committee. Section 9-4 then allows that, prior to a second reading, a draft of the text of the ordinance shall be delivered to every member. Implicit in this language is the possibility that the ordinance may be drafted in between the first and **434 second readings. Importantly, nothing in the Code or in Article VIII of the South Carolina Constitution, which authorizes and establishes Home Rule, requires that an ordinance be in written form when it receives first reading. Thus, there is neither a constitutional provision nor a statutory requirement on which this Court could

base an invalidation of Council's rules and procedures.

^[3] The minutes of the first meeting wherein the road maintenance fee was suggested reveal that Council discussed the proposed ordinance at length and that all members were well aware of the nature and reason for the road maintenance fee. As noted by the circuit court, "considering [Article 9] as a whole, it is clear that the requirements of this Article *591 envision a process where ordinances can be developed from a possibly conceptual idea (section 9-3), to where a draft text of a proposed ordinance is developed and modified (section 9-4)." Although the better practice may have been for the title to be in writing at the time of the first reading, we cannot say that this alone caused the ordinance's enactment to be invalid. *Cf. Bauer v. South Carolina State Hous. Auth.*, 271 S.C. 219, 231, 246 S.E.2d 869, 875 (1978) (legislation is not invalid simply because this Court feels a different methodology would have been more effective).

CONCLUSION

For the foregoing reasons, we affirm the trial court's decision.

MOORE, BURNETT, JJ., and Acting Justices James W. Johnson, Jr. and L. Casey Manning, concur.

Parallel Citations

641 S.E.2d 431

Footnotes

- ¹ Council has since enacted a similar road maintenance fee ordinance and began collecting the fee under that ordinance. This second ordinance has not been challenged in this case. Accordingly, the only fees at issue on appeal are those collected for several months under the initial ordinance.
- ² Subsequent to the trial court's issuing its final order, Council amended this language to read, "[t]he title to the ordinance shall be in writing at the time the ordinance is introduced and shall disclose the object of the ordinance."

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

DEFENDANT AMERICAN
TOWERS, LLC'S SUPPLEMENTAL
RESPONSE IN OPPOSITION
TO PLAINTIFFS' APPLICATION
FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION

12 DEC 11 PM 2:53
CLERK OF COURT
HORRY COUNTY

American Towers, LLC ("American Towers")¹ erroneously named and referred to as American Tower Corporation, submits this Supplemental Response in Opposition to the Application for Temporary Restraining Order and Preliminary Injunction (the "Application") filed by TriStar Investors, Inc. ("Investors"), Minerva Realty, LLC ("Minerva"), and Angeline Johnson ("Johnson") (collectively, "TriStar" or "Plaintiffs"). This Supplemental Response is based on the pleadings, affidavits, and exhibits submitted to the Court.

Introduction

It would be legal error for the Court to 'balance the equities' in the absence of clear findings that TriStar possesses standing to pursue this claim, is likely to succeed on the merits, and will themselves suffer irreparable harm, incapable of being remedied through

¹ Plaintiffs named the wrong defendant in this lawsuit. Plaintiffs named American Tower Corporation as a Defendant, but American Towers, LLC applied for and was granted the permit of which Plaintiffs complain. The relief Plaintiffs seek in their Application can and should be denied on this basis alone.

monetary damages, in the absence of an injunction. *Poynter Investments, Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586 (2010) (“A preliminary injunction should issue only ... upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law... ‘balancing the equities’ requirement is neither necessary nor appropriate in a preliminary injunction case...”); *Hook Point, LLC v. Branch Banking and Trust Co.*, 397 S.C. 507, 511 (2012) (Supreme Court of South Carolina reversed the circuit court’s issuance of a preliminary injunction, finding that the movant failed to establish that it was more likely than not to succeed on its claim); *Ex parte State ex rel. Wilson*, 391 S.C. 565, 573, 707 S.E.2d 402, 407 (2011) (before reaching the merits of a case, a court must determine whether a plaintiff possesses standing to present its claim).

Under these clear standards, TriStar’s Application must be denied. TriStar lacks standing and cannot meet any of the elements necessary before injunctive relief can issue. TriStar is highly unlikely to succeed on the merits and, if they were to succeed, money damages for alleged lost revenue from the tower would adequately remedy TriStar’s complaint.

Should the Court engage in a balancing of the harm in its consideration of irreparable harm, there is no doubt that issuance of the injunction will harm American Towers significantly. Specifically, American Towers’ relationships with the three carriers – T-Mobile, Horry Telephone Company, and Verizon Wireless – will be harmed if American Towers does not meet their expectations, and the carriers expect that relocation of American Towers’ tower is occurring. American Towers does business with these three carriers at numerous tower sites and a delay will have a substantial negative effect on American Towers’ business.

Further, relocating the tower does not harm Plaintiffs. Plaintiffs do not own the tower, have not alleged agreements with carriers to provide services at the current site, and do not have any right to the tower at the current site (rather, American Towers is obligated to remove the tower from Landowner Johnson's land, and plans to do so). American Towers sought, negotiated, and even signed a lease extension with Landowner Johnson, but since Landowner Johnson was paid \$100,000 by Investors/Minerva, she now denies the enforceability of the American Towers' lease extension. The Court cannot allow the County's administrative actions and American Towers' legitimate business relationships with its carriers to be stunted by Plaintiffs who have no standing or interest in these claims and have schemed to deny the lease extension.

The current "status quo" is that American Towers is able to service its carriers how it chooses in accordance with resolutions of the Horry County Council. If the Court deems that this "status quo" must be changed to account for Plaintiff's complaint, American Towers advocates allowing the new tower to be built, without moving the carriers' equipment until the Court rules on the merits of this case. This would allow the relocated tower to be ready for the carriers' equipment in the event that Plaintiffs' claim is ultimately dismissed. This course would prevent harm to all parties, including Plaintiffs' alleged harm.

Additional Factual Background

Once the Horry County Council approved Resolution R-73-12 for the relocation of American Towers' tower, American Towers contacted the three telecommunications carriers which lease space and maintain equipment on American Towers' tower. (Aff. of Jason Groseclose, attached hereto as Exhibit A). American Towers advised the three carriers – T-Mobile, Horry Telephone Company, and Verizon Wireless – of the relocation

of the tower. All three of the carriers agreed to move their equipment to the relocated tower. American Towers has contracts with all three of these carriers whereby American Towers is obligated to provide them with tower space in the area.

Currently, all three of the carriers now expect that they will need to promptly relocate their equipment due to relocation of the tower. (Id. at ¶ 10). Verizon Wireless has stated that the relocated tower will be better for its network. (Id. at ¶ 13). 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. (Id. at ¶ 14).

In addition, American Towers ordered and has incurred the cost for materials (including certain due diligence) to build the relocated tower at an expense of approximately \$200,000. (Id. at ¶ 11). American Towers expects the material to be delivered to Brenda Huggins' Property within approximately 4-6 weeks, without a place to store the equipment. (Id. at 12).

Standard For Plaintiff's Application

A preliminary injunction is a *drastic* remedy. *Levine v. Spartanburg Regional Services District, Inc.*, 367 S.C. 458, 626 S.E.2d 38 (2005). To establish a need for injunctive relief, a plaintiff must show: (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *Id.*; *County of Richland v. Simpkins*, 348 S.C. 664, 671, 669, 560 S.E.2d 902, 904 (Ct. App. 2002).

Argument

A. Plaintiffs' Application Must Be Denied As Plaintiffs' Lack Standing.

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).

Here, Plaintiffs lack standing to pursue this suit. In a substantially similar case (attached hereto as Exhibit B), the Supreme Court of South Carolina determined that competitors in the cellular tower industry lack standing to appeal a local administrative body's decision to allow the building of a cellular tower. *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 669 S.E.2d 337 (2008). In the same way, due to Plaintiffs' lack of standing, the Court must deny Plaintiffs' Application for injunctive relief.

B. Plaintiffs Cannot Meet The Elements Needed For Injunctive Relief.

Under the Supreme Court of South Carolina's 2010 ruling in *Poynter Investments*, a preliminary injunction can *only* issue upon a showing by the moving party that it will likely succeed on the merits of its claim, that there is no adequate remedy at law, and that it will experience irreparable harm in the absence of an injunction. *Poynter Investments, Inc.*, 387 S.C. at 586. Soon after the Court's ruling in *Poynter Investments*, the Supreme Court of South Carolina reversed a circuit court's issuance of a preliminary injunction, finding that the movant failed to establish that it was more likely than not to succeed on its claim. *Hook Point, LLC*, 397 S.C. at 511 (2012). Like here, the movant in *Hook Point* had a high burden to succeed on its underlying claim which made showing a likelihood of success difficult. *Id.* at 511-513.

Plaintiffs have not shown, and cannot show, that they will likely succeed on the merits of their administrative appeal. Under South Carolina law, a reviewing court's

standard of review is very deferential to a government entity's decision. In order to succeed on their claim, Plaintiffs must show that approval of the Relocation Petition was arbitrary, unreasonable, an abuse of discretion, or in excess of delegated power. *McSherry v. Spartanburg County Council*, 371 S.C. 586, 590 641 S.E.2d 431, 433 (2007). Plaintiffs have not shown the existence of any of these. To the contrary, the evidence submitted to the Horry County Council in support of American Towers' Relocation Petition surpasses the applicable standard of review.

TriStar has also failed to show that money damages would be inadequate. In fact, the only potential harm (which TriStar has no right to) is a loss of revenue. (Cmplt. at ¶¶ 47-48). This alone warrants and requires denial of injunctive relief.

Not only have Plaintiffs failed to show likelihood of success and that money damages would be inadequate, but Plaintiffs have not submitted any evidence to show that they will experience irreparable harm in the absence of injunctive relief. They make allegations regarding the expectations of the carriers, but those relationships are between American Towers and the carriers, not with any of the Plaintiffs. Plaintiffs do not own the tower and, under American Tower's Lease Agreement, the tower is required to come down anyway. To the contrary of Plaintiffs' position, the irreparable harm will occur if an injunction is *granted*, as, based on communications between American Towers and the carriers, the carriers now expect that relocation of American Towers' tower is occurring. The carriers know that materials for the tower have been ordered. (Exhibit A at ¶¶ 7-12).

If the Court granted Plaintiffs injunctive relief, the Court would be allowing Investors/Minerva's scheme to stop a competitor's legitimate business activities, and the County's administrative activities, without standing and without any legal right to do so. The standards for issuance of injunctive relief are high so that this cannot occur.

C. American Towers Will Incur Harm If Injunctive Relief Is Issued.

American Towers' relationships with the three carriers – T-Mobile, Horry Telephone Company, and Verizon Wireless – will be harmed if American Towers does not meet their expectations and the carriers expect that relocation of American Towers' tower is occurring. The carriers know that the Horry County Council approved the relocation, know that American Towers made plans for the relocation, and know that materials for the relocated tower have been ordered. Verizon Wireless looks forward to the relocation as the relocated tower will be better for its network.

American Towers sought the approval of these carriers to relocate the tower and their equipment. 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. (Id. at ¶ 14).

The current "status quo" is that American Towers is able to provide tower space to its carriers wherever permitted by the Horry County Council to best serve the carriers. Blocking relocation of the tower would change the "status quo". Rather than injunctive relief, American Towers proposes an expedited handling of the review of this case to the extent possible.

If the Court deems that the "status quo" must be changed to account for Plaintiff's complaint, American Towers advocates allowing the new tower to be built, without moving the carriers' equipment until the Court rules on the merits of this case. This would allow the relocated tower to be ready for the carriers' equipment in the event that Plaintiffs' claim is ultimately dismissed. This course would prevent harm to all parties. Plaintiffs' alleged harm would not occur as the tower on the Johnson Property would remain as would the carrier equipment located on that tower. Further, the harm to

American Towers would be lessened as the time to move the carriers' equipment would be shortened and action to build the relocated tower would need to take place before the current lease terms ends. American Towers needs time to obtain the building permit, negotiate construction contracts, and build the relocated tower. After the Court rules on the merits, either the tower on the Johnson Property or the tower on the Huggins Property would be removed.

D. Plaintiffs Have Unclean Hands. The Court Should Not Reward Them For Their Deceptive Actions.

If a party has unclean hands, that party is precluded from recovering in equity. A party will have unclean hands where the party behaves unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. *Anderson v. Buonforte*, 365 S.C. 482, 617 S.E.2d 750 (Ct. App. 2005). Here, Landowner Johnson has unclean hands as she negotiated and signed the Lease Extension with American Towers but now, after doing business with TriStar/Minerva and receiving \$100,000 from TriStar/Minerva, Landowner Johnson denies the enforceability of that Lease. She is working in cohorts with TriStar/Minerva to block TriStar/Minerva's competition. American Towers tried to continue to operate from Landowner's property, but when TriStar denied the enforceability of the Lease Extension, American Towers sought to move its tower to another property. Because of TriStar's unclean hands, this Court should refuse to grant the injunctive relief sought. The Court should not reward parties for shirking their contractual obligations.

CONCLUSION AND PRAYER FOR RELIEF

Plaintiffs lack standing to bring this claim. Plaintiffs have also failed to establish the elements for an injunction – irreparable harm, likelihood of success, and an inadequate legal remedy. The harm to American Towers' business relationships, the public, and

Landowner Brenda Huggins exceeds any alleged harm to Plaintiffs. For these reasons, Defendant American Towers, LLC respectfully requests that this Court deny Plaintiffs' Application for a Temporary Restraining Order and Preliminary Injunction. Also, to the extent possible, American Towers requests hearing on the first available date.

To the extent that the Court enters any injunction, it should be limited to prohibiting American Towers from relocating the carriers until a hearing is held. American Towers should be permitted to continue to build its planned tower at its new site at its own risk. There is not even possible monetary harm to TriStar stemming from American Towers building the planned tower at the new location.

Date: December 10, 2012

Respectfully Submitted,

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

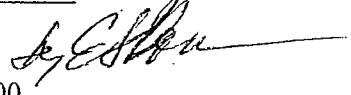

Elbert S. Dorn
NEXSEN PRUET, LLC
1101 Johnson Avenue, Suite 300
Myrtle Beach, SC 29577
Telephone: 803.213.5400
Attorneys for Plaintiff

Exhibit A

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.

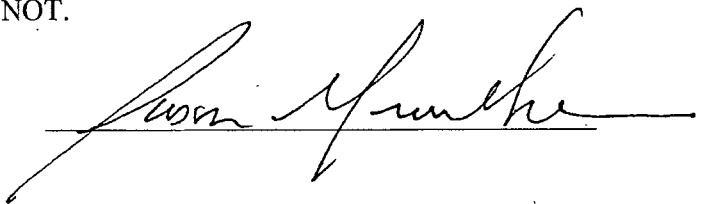
11. American Towers ordered and has incurred the costs for materials and due diligence to build the relocated tower at an expense of approximately \$200,000.

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 B



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C

Supreme Court of South Carolina.
 ATC SOUTH, INC., Appellant,
 v.

CHARLESTON COUNTY, Leon Stavrinakis, in
 his capacity as Chairman of Charleston County
 Council, and Charles T. Wallace, Timothy E. Scott,
 Curtis Inabinet, Henry Darby, Teddy Pryor, Curtis
 Bostic and Ed Fava, in their capacities as the duly
 elected council or governing body of the County of
 Charleston, SCANA Communications, Inc. and
 South Carolina Electric & Gas Company, Respond-
 ents.

No. 26563.

Heard Sept. 18, 2008.

Decided Nov. 17, 2008.

Background: Cellular telephone tower builder brought declaratory judgment action challenging rezoning of nonadjoining property that was leased to competitor to permit construction of tower. the Circuit Court, Charleston County, R. Markley Dennis, Jr., J., dismissed complaint, and builder appealed.

Holdings: The Supreme Court, Kittredge, J., held that:

- (1) builder that owned property about one mile from tract of land that owner leased to competitor did not have statutory standing to challenge rezoning;
- (2) increased competition to builder was not concrete and particularized injury, as necessary to confer standing;
- (3) builder's status as taxpayer was insufficient to confer standing; and
- (4) builder's concern about competition from competitor's construction of tower on nonadjoining property was not matter of public importance, for purposes of conferring standing.

Affirmed.

West Headnotes

[1] Zoning and Planning 414 ↪1587

414 Zoning and Planning

414X Judicial Review or Relief

414X(A) In General

414k1584 Right of Review; Standing

414k1587 k. Modification or amendment. Most Cited Cases
 (Formerly 414k571)

Cellular telephone tower builder that owned property about one mile from tract of land that owner leased to competitor did not have statutory standing to challenge rezoning of that property to allow building of tower. Code 1976, § 6-29-760 (C).

[2] Zoning and Planning 414 ↪1587

414 Zoning and Planning

414X Judicial Review or Relief

414X(A) In General

414k1584 Right of Review; Standing

414k1587 k. Modification or amendment. Most Cited Cases
 (Formerly 414k571)

Increased competition to cellular telephone tower builder, by itself, was not concrete and particularized injury, as required for tower builder to have standing to challenge rezoning of nonadjoining property that owner leased to competitor to permit building of cellular telephone tower.

[3] Action 13 ↪13

13 Action

13I Grounds and Conditions Precedent

13k13 k. Persons entitled to sue. Most Cited Cases

A three-part test is utilized to establish standing under the constitution's case or controversy requirement: first, the plaintiff must have suffered an "injury in fact," i.e., an invasion of a legally protected interest which is (a) concrete and particularized,

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and (b) actual or imminent, and not conjectural or hypothetical; second, there must be a causal connection between the injury and the conduct complained of, i.e., the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court; and third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. U.S.C.A. Const. Art. 3, § 1 et seq.

[4] Action 13 13

13 Action

13I Grounds and Conditions Precedent

13k13 k. Persons entitled to sue. Most Cited Cases

A private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom.

[5] Zoning and Planning 414 1587

414 Zoning and Planning

414X Judicial Review or Relief

414X(A) In General

414k1584 Right of Review; Standing

414k1587 k. Modification or amendment. Most Cited Cases (Formerly 414k571)

Cellular telephone tower builder's status as taxpayer was insufficient to confer standing to challenge rezoning of nonadjoining property that was leased by owner to tower builder's competitor to permit building of cellular telephone tower.

[6] Zoning and Planning 414 1587

414 Zoning and Planning

414X Judicial Review or Relief

414X(A) In General

414k1584 Right of Review; Standing

414k1587 k. Modification or amendment. Most Cited Cases (Formerly 414k571)

Cellular telephone tower builder's concern about competition from competitor's construction of tower on nonadjoining property was not matter of public importance, as required to confer standing on builder to challenge rezoning of property to permit competitor's construction of tower.

[7] Action 13 13

13 Action

13I Grounds and Conditions Precedent

13k13 k. Persons entitled to sue. Most Cited Cases

Standing is not inflexible; standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance.

[8] Action 13 13

13 Action

13I Grounds and Conditions Precedent

13k13 k. Persons entitled to sue. Most Cited Cases

In cases which fall within the ambit of important public interest, standing will be conferred without requiring the plaintiff to show he has an interest greater than other potential plaintiffs.

[9] Action 13 13

13 Action

13I Grounds and Conditions Precedent

13k13 k. Persons entitled to sue. Most Cited Cases

Whether an issue of public importance exists, as grounds for conferring standing, necessitates a cautious balancing of the competing interests presented: citizens must be afforded access to the judicial process to address alleged injustices, while, on the other hand, standing cannot be granted to every individual who has a grievance against a public official.

[10] Action 13 13

13 Action

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13I Grounds and Conditions Precedent
 13k13 k. Persons entitled to sue. Most Cited Cases

The key to the "public importance" analysis in determining whether a party has standing is whether a resolution is needed for future guidance.

[11] Action 13 ⇐13

13 Action

13I Grounds and Conditions Precedent
 13k13 k. Persons entitled to sue. Most Cited Cases

The very nature of the public importance exception to general standing requirements resists a formulaic approach, as each case must turn on the competing policy concerns.

****338** Ellison D. Smith, IV, and Stan Barnett, both of Smith, Bundy, Bybee & Barnett, of Mt. Pleasant, for Appellant.

Gary C. Pennington and Jessica Clancy Crowson, both of Pennington Law Firm, of Columbia, for Respondents SCANA Communications and South Carolina Electric & Gas and Joseph Dawson, III, Bernard E. Ferrara, Jr., Austin A. Bruner, and Bernice M. Jenkins, all of North Charleston, for Respondents Charleston County et al.

Justice KITTREDGE:

***193** This challenge to the rezoning of property in Charleston County, South Carolina, is foreclosed by Appellant's lack of standing.

***194** South Carolina Electric and Gas Company (SCE&G) owns a seven-acre tract of land on Edisto Island in Charleston County. SCANA Communications, Inc. (SCI) and SCE&G are affiliated corporations. SCI is in the business of constructing communications towers (cell-phone towers) to lease to wireless telecommunications companies. SCE&G leased a portion of its Edisto Island tract to SCI for the purpose of constructing a cell-phone tower. Because the then existing zoning did not permit cell-phone towers, SCE&G sought rezoning to

a classification that would permit a cell-phone tower. The property was rezoned pursuant to proper procedures. ATC South, Inc. (ATC) challenged the rezoning by filing a declaratory judgment action in circuit court. ATC and SCI are competitors in the cell-phone tower business. ATC owns a tract of land (with a cell-phone tower) ****339** approximately one mile from SCE&G's property. Pursuant to cross-summary judgment motions, the circuit court dismissed the case, finding that ATC's status as a mere competitor did not confer standing to challenge the rezoning by the Charleston County Council. We agree and affirm.^{FN1}

FN1. This appeal is before us pursuant to Rule 204(b) certification.

I.

SCI and SCE&G (hereinafter collectively "SCE&G") submitted an application to Charleston County Council to rezone property it owned from Agricultural-Residential (AGR) to Planned Development for utilities (PD) in order to expand the existing electrical substation and to build a cell-phone tower. The AGR zoning did not allow cell-phone towers, but the requested PD zoning would permit cell-phone towers.

The County Planning Commission ultimately recommended approval of the rezoning application to the County Council. Following public hearings and the appropriate number of "readings," County Council unanimously approved the rezoning request.

ATC appeals from its unsuccessful challenge in circuit court, contending the rezoning of SCE&G's property was improper. We are obligated before reaching the merits of the rezoning question to determine whether ATC has standing to press its ***195** complaint. We conclude ATC does not have standing and that ends our inquiry.

II.

Standing may be acquired: (1) by statute; (2) through the rubric of "constitutional standing;" or

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(3) under the “public importance” exception.

A. Statutory Standing

[1] Section 6-29-760(C) (2004) of the South Carolina Code provides “[a]n owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment; however, this subsection does not create any new substantive right in any party.” Because ATC is a nonadjoining landowner, it may not assert statutory standing. ATC so concedes. *Cf. St. Andrews Public Serv. Dist. v. City Council of Charleston*, 349 S.C. 602, 605, 564 S.E.2d 647, 648 (2002) (overruling precedent and holding that a non-statutory party lacks standing to challenge a “void” annexation of property).

B. Constitutional Standing

[2][3] The principle of standing under the United States Constitution is “an essential and unchanging part of the case-or-controversy requirement of Article III.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). The Supreme Court has provided a three-part test to establish standing:

First, the plaintiff must have suffered an “injury in fact”—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be “fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court.” Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.”

*196 *Lujan*, 504 U.S. at 560–61, 112 S.Ct. 2130 (internal citations omitted). See also *Daimler-Chrysler Corp. v. Cuno*, 547 U.S. 332, 342, 126 S.Ct. 1854, 164 L.Ed.2d 589 (2006).

[4] We need go no further than the initial re-

quirement of a concrete and particularized injury. “[A] private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom.” *Evins v. Richland County Historic Pres. Comm’n*, 341 S.C. 15, 21, 532 S.E.2d 876, 879 (2000) (citing *Blandon v. Coleman*, 285 S.C. 472, 330 S.E.2d 298 (1985)). ATC’s only concrete and particularized injury is that of a competitor of SCE&G in the cell-phone tower business. The thrust of ATC’s argument in the circuit court centered on its status as a cell-³⁴⁰ phone tower competitor with SCE&G. As ATC’s answers to interrogatories reflect:

The harm to [ATC], already inherent, is magnified by the fact that it is [a] competitor of Defendants [SCE&G] in the field of supply of communications tower facilities. Any favored treatment by a regulatory/zoning authority to one competitor, in this case Defendants [SCE&G], harms other competitors by lessening the favored competitor’s costs of doing business. In other words, one competitor is freed from regulatory restraints, and this action inevitably harms other competitors.

(emphasis added).

This Court rejected a competitor’s assertion that standing exists when alleged damages flow from increased or perceived unfair competition. *Connor Holdings, LLC v. Cousins*, 373 S.C. 81, 86, 644 S.E.2d 58, 60–61 (2007); 4 *Rathkopf’s The Law of Zoning and Planning* § 63.34 (4th ed. 2005) (“[G]enerally, persons whose only complaint is that the rezoning or grant of special permit or variance would create competition with them in the conduct of their business have been held not to have standing to litigate the validity of the zoning action.”). Further, “a person whose sole interest for objecting to a zoning board’s action is to prevent competition with his or her business is not a person aggrieved, and therefore does not have standing to challenge a zoning decision in court.” 83 *Am.Jur.2d Zoning and Planning* § 926 (2003).

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*197 This approach, which denies standing to a mere competitor, is the prevailing law throughout the country. See *Westborough Mall, Inc. v. City of Cape Girardeau, Mo.*, 693 F.2d 733, 747 (8th Cir.1982) (applying Missouri law, the court held “[c]ompetitive disadvantage alone does not give rise to standing”); *Earth Movers of Fairbanks, Inc. v. Fairbanks N. Star Borough*, 865 P.2d 741, 745 (Alaska 1993) (“[W]e thus adopt the majority rule and deny standing to a business competitor whose only alleged injury results from competition.”); *Swain v. Winnebago County*, 111 Ill.App.2d 458, 250 N.E.2d 439, 444 (1969) (“Neither the fact that parties may suffer reduced incomes or be put out of business by more vigorous or appealing competition, nor the fact that properties on which such businesses are operated would thus depreciate in value, give rise to a standing to sue.”); *E. Serv. Ctrs., Inc. v. Cloverland Farms Dairy, Inc.*, 130 Md.App. 1, 744 A.2d 63, 67 (Ct.Spec.App.2000) (“[A] person whose sole reason for appealing a decision from the Zoning Board is to prevent competition with his established business does not have standing.”); *Cummings v. City Council of Gloucester*, 28 Mass.App.Ct. 345, 551 N.E.2d 46, 50 (1990) (“[A party] might well fear ... an increase in business competition, such fear, by itself, would not cause it to be ‘aggrieved.’ ”); *City of Eureka v. Litz*, 658 S.W.2d 519, 523 (Mo.Ct.App.1983) (“Plaintiffs’ general competitive interest therefore, will not establish standing.”); *Copple v. City of Lincoln*, 210 Neb. 504, 315 N.W.2d 628, 630 (1982) (“An increase in business competition is not sufficient to confer standing to challenge a change of zone.”); *Nautilus of Exeter, Inc. v. Town of Exeter*, 139 N.H. 450, 656 A.2d 407, 408 (1995) (“[T]he only adverse impact that may be felt by the plaintiffs as a result of the ZBA’s decision is that of increased competition with their businesses. This type of harm alone is insufficient to entitle the plaintiffs to standing to appeal the ZBA’s decision....”); *Rockland Hospitality Assocs., LLC v. Paris*, 302 A.D.2d 597, 756 N.Y.S.2d 585, 586–87 (2003) (“The only potential injury suggested in the record is an increase in business competition, which

is insufficient to confer standing on a party.”); *Nernberg v. City of Pittsburgh*, 153 Pa.Cmwlth. 219, 620 A.2d 692, 696 (1993) (“The zoning ordinance is not part of a regulatory scheme to protect against competitive *198 injury, and thus competition is not the kind of direct injury which gives rise to standing in a zoning case.”).

We conclude that where, as here, the potential injury or prejudice is only an increase in business competition, such injury or prejudice is insufficient to confer standing. We join the majority of jurisdictions in holding that a competitor challenging legislative or executive action solely to protect its own economic interests lacks standing.

[5] ATC further relies on its status as a taxpayer to acquire standing. The injury to **341 ATC, however, as a taxpayer is common to all property owners in Charleston County. This feature of commonality defeats the constitutional requirement of a concrete and particularized injury. As the United States Supreme Court observed, a taxpayer lacks standing when he “suffers in some indefinite way in common with people generally.” *Frothingham v. Mellon*, 262 U.S. 447, 488, 43 S.Ct. 597, 67 L.Ed. 1078 (1923). We reject ATC’s claim of taxpayer standing under constitutional standing principles.

C. The “Public Importance” Exception

[6][7][8] This Court has long recognized the “public importance” exception to the general standing requirements. “[S]tanding is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance.” *Davis v. Richland County Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007) (citation omitted); see also *Baird v. Charleston County*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999) (holding standing existed to challenge an alleged *ultra vires* act of issuing tax-exempt hospital bonds because the act affected profound public interests: public health and public welfare). In cases which fall within the ambit of important public interest, standing will be conferred “without requiring the plaintiff to show he has an

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interest greater than other potential plaintiffs.” *Davis*, 372 S.C. at 500, 642 S.E.2d at 741 (citations omitted).

[9] Whether an issue of public importance exists necessitates a cautious balancing of the competing interests presented, as this Court explained:

*199 An appropriate balance between the competing policy concerns underlying the issue of standing must be realized. Citizens must be afforded access to the judicial process to address alleged injustices. On the other hand, standing cannot be granted to every individual who has a grievance against a public official. Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits.

Sloan v. Sanford, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004).

[10][11] The key to the public importance analysis is whether a resolution is needed for future guidance. It is this concept of “future guidance” that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance. *Baird*, 333 S.C. at 531, 511 S.E.2d at 75 (“[A] court may confer standing upon a party when an issue is of such public importance as to require its resolution for future guidance.”) (citations omitted); *Sloan v. Sanford*, 357 S.C. at 434, 593 S.E.2d at 472 (“[U]nder certain circumstances, standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance.”) (citations omitted). Yet the very nature of the public importance exception to general standing requirements resists a formulaic approach, as each case must turn on “the competing policy concerns” as we expressed in *Sloan v. Sanford*.^{FN2}

FN2. For examples where this Court has conferred standing under the public importance exception, see *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472

(2004), which held standing existed to challenge the sitting Governor's holding of a commission in the Air Force Reserve; *Evins v. Richland County Historic Pres. Comm'n*, 341 S.C. 15, 21, 532 S.E.2d 876, 879 (2000), which conferred standing to allege a preservation society exceeded its authority by conveying property; *Baird v. Charleston County*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999), which provided standing to argue a county exceeded its authority by issuing hospital bonds.

Turning to the case at hand, ATC claims that the matter of zoning is important to the public. Of course zoning is a matter of public importance, but the same may be said of most legislative and executive actions. For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance. There is nothing *public* *200 about ATC's concern with a competing cell-phone tower. Here, a local government followed proper procedure and rezoned a single piece of property for a narrow purpose and the only complaint comes from a nonadjoining landowner which just happens to be a competitor. ATC's efforts to cloak its zoning **342 challenge as a matter of “public importance” for the purpose of acquiring standing finds no traction in this record.

III.

ATC presents to the Court as a disgruntled competitor, nothing more. Because ATC's challenge to the rezoning of SCE&G's property by the Charleston County Council does not implicate a matter of public importance requiring court resolution for future guidance, ATC's complaint is dismissed for lack of standing. The judgment of the circuit court is

AFFIRMED.

TOAL, C.J., WALLER, PLEICONES and BEATTY, JJ., concur.

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(Cite as: 380 S.C. 191, 669 S.E.2d 337)

Page 7

S.C.,2008.
ATC South, Inc. v. Charleston County
380 S.C. 191, 669 S.E.2d 337

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THE STATE OF SOUTH CAROLINA
In The 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, ... Appellants,

v.

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

NOTICE OF APPEAL

Pursuant to Rule 203 of the South Carolina Appellate Court Rules, Appellants TriStar Investors, Inc., Minerva Realty, LLC, and Angeline Johnson ("Appellants") appeal the order of the Honorable Benjamin H. Culbertson entering final judgment against Appellants filed on May 21, 2013. Appellants received notice of the signed order on May 22, 2013. Appellants have attached a copy of the order on appeal to this Notice of Appeal.

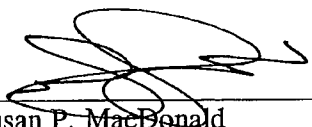
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MAY 22 2013

Court of Appeals

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

Columbia, South Carolina

May 22, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
TRISTAR INVESTORS, INC.,	)	Civil Action No. 2012-CP-26-8652
MINERVA REALTY, LLC, and	)	
ANGELINE JOHNSON,	)	
	)	<u>PLAINTIFFS' MOTION FOR</u>
Plaintiffs,	)	<u>SUPERSEDEAS</u>
	)	
vs.	)	
	)	
THE HORRY COUNTY COUNCIL; and	)	
AMERICAN TOWERS, LLC,	)	
	)	
Defendants.	)	

TriStar Investors, Inc. ("**TriStar**"), Minerva Realty, LLC, a wholly owned subsidiary of TriStar, and Ms. Angeline Johnson (together, "**Plaintiffs**") submit this Plaintiffs' Motion for Supersedeas under South Carolina Rule of Civil Procedure 62 ("**SCRCP 62**") and South Carolina Appellate Court Rule 241 ("**SCACR 241**").

Plaintiffs respectfully request a writ of supersedeas to suspend execution of the Court's judgment and to preserve the status quo pending Plaintiffs' appeal. Without supersedeas, the subject matter on appeal will be rendered moot. By contrast, granting supersedeas will cause no harm to Defendants. In support of this request, Plaintiffs would respectfully show as follows:

I. INTRODUCTION

1. This lawsuit is an appeal from a decision by the Horry County Council (the "**Council**") allowing Defendant American Towers, LLC ("**American Tower**") to remove a fully-functioning cell tower it currently operates on Ms. Johnson's land and build a new tower on nearby property. Plaintiffs requested a temporary restraining order and a preliminary injunction

preventing American Tower from removing the existing cell tower and constructing the new tower until this matter is resolved.

2. On March 26, 2013, this Court granted Plaintiffs the temporary restraining order and preliminary injunction. On April 26, 2013, the Court held a hearing on Plaintiffs' request for a permanent injunction. On May 21, 2013, the Court entered judgment against Plaintiffs and denied their application for a permanent injunction. Plaintiffs have timely filed a Notice of Appeal from that judgment.

3. To preserve the status quo and prevent Plaintiffs' appeal from becoming moot, Plaintiffs ask this Court to grant a writ of supersedeas suspending its judgment—and any orders, rulings, or decrees leading up to or forming the basis of that judgment that are in any way adverse to Plaintiffs—for the duration of Plaintiffs' appeal. *See* Rule 62(a), (c)-(d), SCRCF; *see also* Rules 205, 242(d)(11), SCACR.

II. FACTUAL BACKGROUND

4. American Tower currently operates a cell tower on Ms. Johnson's property under a lease that, according to its recorded interests per the County records, runs through January 13, 2030 (the "*Lease*"). *See* American Tower's Memorandum of Lease Amendment, attached here as Exhibit 1. In June 2010, Ms. Johnson and TriStar entered into an easement agreement (the "*Easement*") that allows TriStar to control telecommunications activities on Ms. Johnson's property at the expiration of the Lease.

5. After the Lease expires, TriStar intends to continue operating the existing tower site on Ms. Johnson's property. As the tower-site operator, TriStar would provide all of the services currently provided by American Tower, but at substantially lower cost to the wireless carriers and at greater benefit to Ms. Johnson.

6. After TriStar entered into its agreement with Ms. Johnson for the Easement, American Tower went to the Council and sought approval for a permit to build a new tower across the street from its existing, fully-functional tower. Plaintiffs believe American Tower did this to make an example out of Ms. Johnson for doing business with TriStar and in an attempt to serve as a “lesson” to other landowners who do business with TriStar. In fact, American Tower’s CEO, James Taiclet, has publicly confirmed that the company uses this tactic when its leases with property owners come up for renewal. In a presentation to investment analysts last year, Mr. Taiclet said that “[t]he leverage on our side is that we can move the tower nearby and go onto other leased land because we own the customer contract.” See Edited Transcript AMT – American Tower Corp at Citi Global Property CEO Conference, attached here as Exhibit 2 at 7. When he was asked what the costs would be of moving a tower, he said “*we would probably only do it as a demonstration.*” Ex. 2 at 8 (emphasis added).

7. American Tower presented its application for the new cell tower to the Council on October 16, 2012, in the form of Resolution R-73-12 (attached to TriStar’s Complaint as Exhibit A). Plaintiffs allege that American Tower’s presentation was misleading and designed to induce the Council to approve the Resolution despite insufficient evidence under the applicable ordinances. American Tower represented to the Council that the Lease expired in 2013. American Tower also told the Council that it was not required to provide certain mandatory evidence required by the ordinances governing construction of cell towers because, allegedly, American Tower was only “moving” an existing tower (despite the fact that, in reality, it asked for and received a permit under Section 13-70 of the Horry County Code). American Tower’s plan succeeded, as the Council approved the Resolution allowing construction of the new tower, without the showing and evidence required for a permit under Section 13-70. The Council also

mandated that, within 120 days of completing the new tower, American Tower take down the existing tower on Ms. Johnson's property.

8. Plaintiffs filed this lawsuit to appeal the Council's ruling as arbitrary, unreasonable, and an abuse of discretion. *See, e.g., Sloan v. Greenville County*, 356 S.C. 531, 560, 590 S.E.2d 338, 353 (Ct. App. 2003). Plaintiffs requested a temporary restraining order and a preliminary injunction to prevent American Tower from building the new tower or tearing down the existing tower on Ms. Johnson's property.

9. The Court granted Plaintiffs' request for a temporary restraining order and a preliminary injunction on March 26, 2013. On April 26, 2013, the Court held a hearing on Plaintiffs' request for a permanent injunction. On May 21, 2013, the Court entered judgment against Plaintiffs and denied their application for a permanent injunction. Plaintiffs intend to appeal the Court's judgment and timely filed their Notice of Appeal on May 22, 2013.

10. Because the Court's judgment is one denying a permanent injunction, it is not automatically stayed pending Plaintiffs' appeal. SCRCP 61(a), (c)-(d); SCACR 241(b)(8). Thus, American Tower presently may have the ability to act on the Court's judgment by taking down the existing, fully-functioning tower on Ms. Johnson's property and building a new tower on a different landowner's property across the street.

11. If American Tower acts on the Court's judgment before Plaintiffs' appeal is complete, it will render the appeal moot, as discussed below. To prevent this legally improper result, Plaintiffs ask this Court to grant a writ of supersedeas suspending the judgment and preserving the status quo for the duration of Plaintiffs' appeal.

III. GOVERNING LAW

12. Where (as here) a judgment denies injunctive relief, the judgment is not automatically stayed or suspended pending appeal. Rule 241(b)(8), SCACR; *see also* Rule 62(a), SCRCR. To suspend the judgment pending appeal, the Appellant must move for supersedeas—first in the Circuit Court, and then in the Court of Appeals (if the Circuit Court does not grant supersedeas).¹ Rule 241(c)(1), (d)(1)-(2), SCACR; *see also* Rule 62(c)-(d), SCRCR. “The purpose of a supersedeas is to stay proceedings in the trial court, to preserve the status quo pending the determination of the appeal, and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him.” *Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (Ct. App. 1990) (quoting 4A C.J.S. Appeal & Error § 662 at 494-95 (1957)) (internal quotation marks and alterations omitted); *see also Schwartz v. Schwartz*, 311 S.C. 303, 304, 428 S.E.2d 748, 749 (Ct. App. 1993) (“The South Carolina Supreme Court issued a writ of supersedeas to maintain the status quo pending appeal.”). If a court grants supersedeas, the judgment is suspended until the appeal is complete. Rule 241(c)(4), SCACR.

13. The standard for granting supersedeas is set forth in the Rule 241, SCACR: “In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider *whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.*” Rule 241(c)(2), SCACR (emphasis added).

¹ The Circuit Court retains jurisdiction to entertain motions for supersedeas even after the Notice of Appeal has been filed. Rule 205, SCACR.

IV. GROUNDS FOR SUPERSEDEAS

14. If this Court does not grant supersedeas, Plaintiffs' appeal will "becom[e] moot." *Id.* Because the Court's judgment is one denying injunctive relief, it is not subject to any automatic stay. Rule 241(b)(8), SCACR; *see also* Rule 62(a), SCRCP.

15. If American Tower proceeds under the County Council resolution and tears down the existing tower before Plaintiffs' appeal is complete, *Plaintiffs' appellate rights will be obliterated*. The wireless companies using the existing tower will be forced to migrate to the new tower, and TriStar will lose out on the benefit of the Easement it negotiated with Ms. Johnson in the free market. This will compromise TriStar's relationships, goodwill, and reputation with the carrier tenants on the existing tower. It will also deprive Ms. Johnson of the long-term rent and revenue share payments for the tower site on her property. It will also harm the wireless companies by forcing them to move locations in violation of their contractual rights of quiet enjoyment to remain on the existing tower. These are *precisely* the harms Plaintiffs seek to prevent in this lawsuit and on appeal.

16. In other words, once American Tower installs the new cell tower and removes the existing one from Ms. Johnson's property, the damage is done. Even if the Court of Appeals later determines that the Council abused its discretion and that its Resolution to grant a permit under Section 13-70 did not comply with its own ordinances, that victory will be a hollow one for Plaintiffs. This result would compromise Plaintiffs' due process rights to appellate review.

17. A stay pending appeal causes no harm to American Tower because its interests are protected for years to come. American Tower takes the position that the Lease extends until 2030. In order to simplify the issues in dispute, Plaintiffs concede that it does. There is no justification for American Tower immediately building the new tower, tearing down the existing tower, and rendering this appeal moot.

18. The purpose of supersedeas is to “preserve the status quo pending determination of the appeal.” *Graham*, 301 S.C. at 130, 390 S.E.2d at 470. Preservation of the status quo is precisely what Plaintiffs seek here. If this Court grants the writ of supersedeas, American Tower will simply continue operating the existing tower on Ms. Johnson’s property—as it is currently doing—through expiration of the Lease. American Tower will also continue receiving rent payments from the wireless carriers. Further, the existing tower will continue to serve the wireless carriers who currently enjoy a right to quiet enjoyment in the tower under their lease with American Tower. See *Diminich v. 2001 Enterprises, Inc.*, 292 S.C. 141, 144, 355 S.E.2d 275, 277 (Ct. App. 1987) (citing Friedman on Leases § 29.201 (2d ed. 1983)) (“It is virtually universally . . . held that a lease implies a covenant of quiet enjoyment.”).

19. Granting a writ of supersedeas in this case would be consistent with South Carolina case law. Courts here have consistently held that, where enforcement of an executable judgment would result in a change to the parties’ status quo before the appeal is complete, supersedeas is appropriate. See, e.g., *S.C. Dep’t of Revenue v. Sandalwood Social Club*, 399 S.C. 267, 276-7, 731 S.E.2d 330, 335 (Ct. App. 2012) (referencing the Court of Appeals’ decision to grant supersedeas, thereby staying the lower court’s decision to suspend appellant’s on-premises beer-and-wine permit); *Berry v. Ianuario*, 281 S.C. 21, 21 314 S.E.2d 308, 308 (1983) (granting supersedeas in a family-law dispute “to prevent the appeal from becoming moot” where the lower court’s order was not subject to an automatic stay and, if executed, would have changed the familial relationships at issue on appeal).

20. The same is true here. If American Tower is allowed to act on this Court’s judgment, the parties’ status quo will shift drastically. American Tower will tear down the tower on Ms. Johnson’s property and will build a new tower on a different landowner’s property across

the street. The wireless carriers currently using the existing tower will be forced to migrate to the new tower. This will cause precisely the harms that Plaintiffs are seeking to prevent on appeal, and Plaintiffs' appeal will thus "becom[e] moot." Rule 241(c)(2), SCACR.

V. CONCLUSION

21. For the reasons above, Plaintiffs respectfully request that the Court grant a writ of supersedeas and suspend for the pendency of appeal the matters decided in the Court's judgment of May 21, 2013 and in any orders, rulings, or decrees leading up to or forming the basis of that judgment that are in any way adverse to Plaintiffs.

DATED: May 22, 2013

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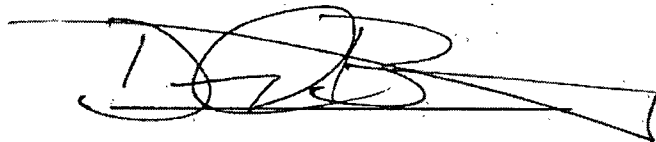
Conway, SC 29526

(843) 248-3177

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

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
TRISTAR INVESTORS, INC.,	)	Civil Action No. 2012-CP-26-8652
MINERVA REALTY, LLC, and	)	
ANGELINE JOHNSON,	)	
	)	<u>PLAINTIFFS' MOTION FOR</u>
Plaintiffs,	)	<u>SUPERSEDEAS</u>
	)	
vs.	)	
	)	
THE HORRY COUNTY COUNCIL; and	)	
AMERICAN TOWERS, LLC,	)	
	)	
Defendants.	)	

On behalf of Plaintiffs, I, David C. Bruening, hereby verify the contents of the Motion pursuant to Rule 241(d)(3), SCACR.



DAVID C. BRUENING
TriStar Investors, Inc., Associate General
Counsel

US 1884680v.4

Instrument#: 2010000089884, DEED BK: 3478 PG: 2953 DOCTYPE: 010 09/02/2010 at 08:10:18 AM, 2 OF 6 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

Prepared by and Return to:

American Tower
10 Presidential Way
Woburn, MA 01801
Attn: Land Management/Rachel Carlino, Esq.
ATC Site #85552
ATC Site Name: Finklea SC

MEMORANDUM OF LEASE

This MEMORANDUM OF LEASE ("Memorandum") is entered into on the 10th day of March, 2008 by and between Angeline D. Johnson (hereinafter referred to as "Lessor"), and American Tower, LP, a Delaware limited partnership (hereinafter referred to as "Lessee").

NOTICE is hereby given of the following described Agreement as amended, for the purpose of recording and giving notice of the existence of said Agreement. To the extent that notice of such Agreement has previously been recorded, then this Memorandum shall constitute a restatement and amendment of any such prior recorded notices.

1. **Lease:** Land Lease Agreement, between Lessor, or its predecessor in interest, and Lessee, or its predecessor in interest, entered into on January 14, 1995, as amended (the "Agreement")
2. **Extended Terms:** Lessee has the option to further extend the term of the Agreement for each of three (3) successive five (5) year terms.
3. **Final Expiration Date,** if all Extended Terms are exercised: January 13, 2030;
4. **Leased Premises:** As described in Exhibit "A," attached hereto, together with any access and utility easements. Exhibit A may be replaced by an as-built survey at Lessee's option depicting the Premises, access and utilities easements and if applicable, guy wire and guy anchor easements.
5. **Incorporation:** The terms and conditions of the Agreement, as amended, are hereby incorporated into this Memorandum.
6. **Effect:** This Memorandum is not a complete summary of the terms and conditions contained in the Agreement. Provisions in the Memorandum should not be used in interpreting the Agreement

EXHIBIT

1

Defendant 0677

Instrument#: 2010000089884, DEED BK: 3478 PG: 2954 DOCTYPE: 010 09/02/2010 at
08:10:18 AM, 3 OF 6 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

provisions. In the event of a conflict between this Memorandum and the Agreement, the Agreement will control.

[SIGNATURE PAGE FOLLOWS]

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08:10:18 AM, 4 OF 6 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

IN WITNESS WHEREOF, Lessor and Lessee have each executed this Memorandum as of the
day first above written.

LESSOR:
Angeline D. Johnson

WITNESSES:

Angeline D. Johnson
By: Angeline D. Johnson
Its:

Jill A. Adams
Signature
Print Name: Jill A. Adams

ACKNOWLEDGMENT

State of
County of Horry

On 2/19/08, before me, Wanda B. Lewis

personally appeared Angeline D. Johnson, who provide to me
on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon
behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State that the foregoing paragraph is true
and correct.

Witness my hand and official seal.

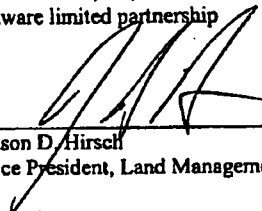
Signature Wanda B. Lewis (Seal)
Print Name: Wanda B. Lewis
My commission expires: 7/26/14



Instrument#: 2010000089884, DEED BK: 3478 PG: 2956 DOCTYPE: 010 09/02/2010 at
08:10:18 AM, 5 OF 6 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

LESSEE:

American Tower, LP,
a Delaware limited partnership


By: Jason D. Hirsch
Its: Vice President, Land Management

WITNESSES:


Signature
Print Name: Mark + Styblo

LESSEE

ACKNOWLEDGMENT

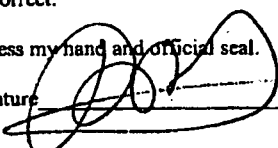
State of Massachusetts
County of Middlesex

On 3/10/08, before me, Dane P. Hutchison

personally appeared Jason D. Hirsch, who provide to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature  (Seal)



Instrument#: 2010000089884, DEED BK: 3478 PG: 2957 DOCTYPE: 010 09/02/2010 at 08:10:18 AM, 6 OF 6 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

EXHIBIT A

This Exhibit A May be Replaced by an As-Built Survey at Lessee's Option depicting the Premises, Access and Utilities Easements

LEASED PREMISES

10,000 square feet including but not limited to the following:

All and singular, that certain piece, parcel or lot of land situate in Green Sea Township, County of Horry, and State of South Carolina containing 6.77 acres, and more particularly described as follows:

Beginning at a stake on the South side of S. C. Highway #9, at S. C. Highway #722, thence running S W 481.65' to a stake, thence running N W 446.44' to a stake, thence N E 644.18' to a stake, thence running S E 603.38' to the beginning corner.

This being a portion of the 138.9 acre tract of land conveyed to Louise D. Strickland by Archie E. Johnson by deed conveying an undivided one-half (1/2) interest by deed dated November 13, 1972 and recorded in Deed Book 480 at page 544 in the records for Horry County. An undivided one-half (1/2) interest was conveyed to Louise D. Strickland by Archie E. Johnson by deed dated January 2, 1984 and recorded in Deed Book 843 at page 299 in the records for Horry County.

This is a portion of the 138.9 acre tract of land conveyed to Archie E. Johnson by Ben Leigh Hickman by deed dated October 20, 1972 and recorded in Deed Book 479 at page 369 in the records for Horry County.

ACCESS AND UTILITY EASEMENT LEGAL DESCRIPTION

Access runs from the Premises to the public right of way.

THE STATE OF SOUTH CAROLINA
In The 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, ... Appellants,

v.

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

Petition for *Ex Parte* Supersedeas Relief

TriStar Investors, Inc. ("TriStar"), Minerva Realty, LLC, a wholly owned subsidiary of TriStar, and Ms. Angeline Johnson (together, "Appellants") submit this Petition for Supersedeas under Rule 241 of the South Carolina Appellate Court Rules.

Appellants respectfully request a writ of supersedeas to suspend execution of the Court of Common Pleas' judgment and to preserve the status quo pending appeal. Without supersedeas, the subject matter on appeal will be rendered moot. By contrast, granting supersedeas will cause no harm to Respondents American Towers, LLC

("American Tower") or the County Council.¹ In support of this request, Appellants would respectfully show as follows:

GROUND FOR *EX PARTE* RELIEF

1. This matter warrants *ex parte* relief pursuant to Rule 241(d)(6), SCACR, from this Court.

2. As shown fully herein, the appealed decision wrongly permits American Tower to build a new tower nearby and requires American Tower to tear down the existing tower on Appellants' property.

3. If there is no supersedeas, American Tower will immediately tear down the tower that is the subject of appeal.

4. Moreover, exigent circumstances exist that warrant immediate supersedeas relief from this Court.

5. On Thursday, May 30, 2013, Respondents obtained the necessary construction permit for the new tower that would allow immediate construction of the tower at issue in this appeal by American Tower. *See Exhibit A*, attached hereto.²

6. As Respondents admitted in the trial court, deconstruction of the existing tower can take as few as 5 days. *See Exhibit F* at p. 10.

7. Therefore, the normal time frames for supersedeas are insufficient to preserve the issues on appeal.

8. Undersigned counsel certifies, as required by Rule 241(d)(6)(B), SCACR, that *ex parte* relief is required in this action because notice cannot be given,

¹ Respondent Horry County Council did not brief its position below but opposed supersedeas to the Court of Common Pleas at the May 31, 2013 hearing.

² Respondents did not inform Appellants of the permit until the supersedeas hearing before the trial court on May 31, 2013.

nor could Respondents be afforded the customary 10 days to respond to this Petition, as a result of the time frame associated with destruction of the existing tower that is at issue in this appeal.

9. Finally, Respondents will not be prejudiced by this grant of *ex parte* supersedeas relief because Respondents have potential review of such a ruling as allowed by Rule 241(d)(7), SCACR.

SUMMARY

10. This matter presents a quintessential case for supersedeas. The appeal will determine the status of an existing, fully-functioning cellular tower on Appellants' property. The appealed decision wrongly permits American Tower to build a new tower nearby and requires American Tower to tear down the existing tower on Appellants' property. If there is no supersedeas, American Tower will tear down the tower that is the subject of appeal and lock its tenants (wireless carriers including Verizon Wireless, T-Mobile, and Horry Telephone) into a new location. Even if Appellants win on appeal, those tenants are not part of this case and cannot be compelled to move back, and TriStar's relationships with those tenants will be harmed. Destroying the tower that is the subject of this appeal would render the appeal moot, and any victory for Appellants would be hollow.³ This is exactly the sort of irrevocable consequence that supersedeas is meant to prevent. The irony of this case is that

³ The issue in this appeal is whether the Horry County Council erred by violating county ordinances in issuing a permit to American Tower authorizing the destruction of the current America Tower cell tower and construction of the new tower. Once the new tower is constructed, the issue of whether the Horry County Council erred would be moot. The issue is not whether the parties' financial situation is impacted by the permit decision as argued by Respondents to the trial court. The fact that TriStar's rental income or other revenues remain unchanged during the appeal is immaterial because the issue on appeal is not monetary, but the subject of injunctive relief to prevent irreparable future harm. The trial court erred in denying supersedeas on this incorrect basis. The sole issue is whether the Horry County Council made a correct decision to allow the new construction and deconstruction of the existing tower by Respondents. That issue will be mooted if supersedeas is not granted by this Court.

American Tower never could and never did demonstrate any need for a new tower; it certainly cannot show now that it will suffer any real harm by waiting to see who prevails on appeal.

11. The facts are indisputable: American Tower has operated the current tower at the current site for seventeen years. The tower is fully functioning and has served Horry County consistently without any prior action by American Tower or the County to move the tower. American Tower recently renewed its lease on the current tower through 2030, demonstrating that there is nothing wrong with the site and no technical reason compelling an immediate move. The truth is that American Tower only acted to destroy the current tower and build a new tower on another site when it learned that its competitor, TriStar, had purchased an easement that would give it the potential to operate its own tower on that site once American Tower's lease expired. And it is undisputed that American Tower's rights at the current site are protected through 2030, when its lease expires – long past the pendency of any appeal. There is simply no pressing need to move the tower and destroy TriStar's due process right to appeal.

12. Nor will American Tower suffer any harm from waiting to destroy the tower it recently secured to use for another 15 years. Cell phone service will continue as it has for seventeen years, and American Tower will continue to enjoy the benefits of operating the existing tower. TriStar has offered to post a bond for the only actual costs American Tower has identified from a stay pending appeal – the cost of keeping its lease option open for the second site (where the new tower will go if TriStar loses on appeal) and the cost of storing steel for the new tower (even though that steel is

obviously fungible, and there is no need to store it when American Tower reports that it is constantly putting up new towers in the area). When asked by the Court of Common Pleas to identify any harm the County Council would suffer by pausing moving the tower pending the appeal, the Council conceded there was none.

13. Yet despite no urgency and no harm, American Tower obtained a construction permit for the new tower *this past Thursday*, in the face of TriStar's supersedeas hearing set with the Court of Common Pleas. See Exhibit A, attached hereto. Why the rush? To make the destruction of the tower a done deal, so TriStar's opportunity for a meaningful appeal will be eliminated along with the existing tower.

14. And American Tower's own argument against supersedeas to the Court of Common Pleas shows the contortions of their position. American Tower argued that *destruction* of the tower was the status quo and that, if American Tower lost on appeal, it could always pay to tear down the new tower and *rebuild* the old tower. This turns common sense on its head. And it is also wrong: once the carrier tenants are settled on a new tower, there is no forcing them to return to a rebuilt original tower. They would enjoy a right of quiet enjoyment as tenants. The carrier tenants are not parties to this matter, so American Tower's self-serving "offer" is not only contorted but impossible. Moreover, American Tower does not control whether the tower could be moved back to the Johnson property because American Tower cannot guarantee approval to move the tower. Nor can American Tower guarantee the return of the customers to the existing tower arrangement.

15. American Tower also argues that any damages to TriStar can be liquidated and paid retrospectively. But American Tower itself argued at the hearing

that its relationships with these carriers represent "intangible" value. TriStar is American Tower's competitor and has the same relationships with these carriers and values those intangible relationships similarly. That is why TriStar sued for injunctive relief, not money damages. And that is why destroying the tower now cannot be liquidated and is ripe for supersedeas. It is why American Tower is so desperate to destroy the tower before TriStar can appeal.

16. TriStar's position on appeal is simple. It secured an easement on Ms. Johnson's property in Horry County that would allow it to negotiate with American Tower or put up its own tower at the end of the current lease. As a result, the local Horry County resident, Ms. Johnson, would share a far greater percentage of the cellular carrier rents than American Tower ever gave her – *by a factor of three or more*. TriStar relied on the plain terms of Horry County ordinances to make this investment in Ms. Johnson and her land – TriStar invested in the property, giving the local resident, Ms. Johnson, the chance to enjoy a far greater share of the wireless profits, because local ordinances prevented American Tower from simply building a new tower where two perfectly good towers already existed, then destroying one of them, simply to make an example out of a local resident for bargaining with a company that would give the local resident more of a share of the profits. *See* paragraph 24, *infra*. The permit that American Tower ultimately received to build a new tower, conditioned on destruction of the existing tower, violated those county ordinances and robbed TriStar of its due process right to rely on the law as written. It is undisputed that American Tower did not present the required evidence under the ordinances, and thus TriStar was never given its opportunity to show why that

evidence was flawed. This denial of due process damaged TriStar's investment and its future expected revenue stream from the site.

17. The Court of Common Pleas denied supersedeas here for a single reason, which TriStar respectfully submits was error. *See* Ex. B (May 31, 2013 Order). The court reasoned that TriStar could not be harmed if the tower is destroyed immediately because TriStar's expected benefits from operating a tower on site were "anticipated" – that is, expected and contingent rather than immediate. But courts cannot and do not ignore damages simply because they are based on expected or contingent benefits. Indeed, from lost profits damages to expectation damages, courts frequently and universally recognize losses of benefits yet to accrue. *All future benefits are contingent on unknowns, but only one scenario here guarantees that TriStar will never realize the benefits of its investment: destruction of the tower now, during the appeal.* Denial of supersedeas was error.

18. The requested relief is thus straight-forward. Maintaining the status quo harms no one. American Tower will continue to operate the same site it has operated for seventeen years and that it recently secured for the next fifteen years. Destruction of the tower immediately serves no end other than rendering TriStar's appeal moot. A bond is easily quantifiable – indeed, American Tower itself proposed a \$25,000 bond. This is a classic scenario for supersedeas, and TriStar respectfully requests a stay pending appeal.

PROCEDURAL HISTORY

19. This lawsuit began as an appeal from a decision by the Horry County Council (the "Council") allowing American Tower to build a new tower and requiring

that American Tower remove the fully-functioning tower it currently operates on Ms. Johnson's land. Appellants requested a temporary restraining order and a preliminary injunction preventing American Tower from removing the existing cell tower and constructing the new tower until this matter is resolved.

20. On March 26, 2013, the Court of Common Pleas granted the temporary restraining order and preliminary injunction. On April 26, 2013, the lower court held a hearing on Appellants' request for a permanent injunction. On May 21, 2013, the lower court entered judgment against Appellants and denied their application for a permanent injunction. Appellants timely filed a Notice of Appeal from that judgment and moved the lower court to enter a writ of supersedeas. On May 31, 2013, the Court of Common Pleas held a hearing and denied the supersedeas motion. *See* Ex. B.

21. To preserve the status quo and prevent Appellants' appeal from becoming moot, Appellants ask this Court to grant a writ of supersedeas suspending the lower court's judgment—and any orders, rulings, or decrees leading up to or forming the basis of that judgment that are in any way adverse to Appellants—for the duration of Appellants' appeal. *See* Rule 62(a), (c)-(d), SCRCF; *see also* Rules 205, 242(d)(11), SCACR.

FACTUAL BACKGROUND

22. American Tower currently operates a cell tower on Ms. Johnson's property under a lease that, according to its recorded interests per the County records, runs through January 13, 2030 (the "Lease"). *See* American Tower's Memorandum of Lease Amendment, attached here as Exhibit C. In June 2010, Ms. Johnson and TriStar entered into an easement agreement (the "Easement") that

allows TriStar to control telecommunications activities on Ms. Johnson's property at the expiration of the Lease.

23. After the Lease expires, TriStar intends to continue operating the existing tower site on Ms. Johnson's property. As the tower-site operator, TriStar would provide all of the services currently provided by American Tower, but at substantially lower cost to the wireless carriers and at greater benefit to Ms. Johnson. The Easement gives TriStar the right to either negotiate use of the existing tower or operate its own tower on the site once American Tower's lease expires.

24. After TriStar entered into its agreement with Ms. Johnson for the Easement, American Tower went to the Council and sought approval for a permit to build a new tower down the road from its existing, fully-functioning tower. Based on American Tower's own public statements, it is clear they did this to make an example out of Ms. Johnson for doing business with TriStar and in an attempt to serve as a "demonstration" to other local landowners who do business with TriStar. American Tower's CEO, James Taiclet, has publicly confirmed that the company uses this tactic when its leases with property owners come up for renewal. In a presentation to investment analysts last year, Mr. Taiclet said that "[t]he leverage on our side is that we can move the tower nearby and go onto other leased land because we own the customer contract." See Edited Transcript AMT — American Tower Corp at Citi Global Property CEO Conference, attached here as Exhibit D at 7. When he was asked what the costs would be of moving a tower, he said "*we would probably only do it as a demonstration.*" Ex. D at 8 (emphasis added).

25. American Tower presented its application for the new cell tower to the Council on October 16, 2012, in the form of Resolution R-73-12 (as Exhibit E). Appellants allege that American Tower's presentation was misleading and designed to induce the Council to approve the Resolution despite insufficient evidence under the applicable ordinances. American Tower falsely represented to the Council that the Lease expired in 2013.

26. At the public hearing on R-73-12, American Tower also told the Council that it was not required to provide certain mandatory evidence required by the ordinances governing construction of cell towers because, allegedly, American Tower was only "moving" an existing tower (despite the fact that, in reality, it asked for and received a permit under Section 13-70 of the Horry County Code). When the County Council inquired whether the existing tower tenants were on board with the move (likely not wanting to disturb their interests at the existing site), American Tower represented that they were, a fact that is clearly false in light of American Tower's affidavit testimony now that "[o]nce the Horry County Council approved Resolution R-73-12 for the relocation of American Towers' tower, American Towers contacted these three telecommunications carriers" and advised them "of the relocation of the tower." (emphasis added). See Ex. F (American Tower's Opposition to Supersedeas at Groseclose Aff. at ¶ 7)).

27. American Tower's plan succeeded, as the Council approved the Resolution allowing construction of the new tower without the showing and evidence required for a permit under Section 13-70. Relying on American Tower's false representations that the wireless carriers knew about and had agreed to move to the

new tower, the Council also mandated that, within 120 days of completing the new tower, American Tower destroy the existing tower on Ms. Johnson's property.

28. Thus, the case on appeal is simple: TriStar made a business investment that benefitted the local landowner by a factor of at least three based on a plain reading of the county ordinances, which should have restricted what American Towers could lawfully do. Based on misrepresentations to the County Council, American Towers made a showing that expressly did not include the required evidence under the ordinances. There is no controversy about this: under American Tower's own application, it declines to present the required evidence. *See* Ex. E. The Council abused its discretion by failing to require American Tower to make the required showing, and by allowing American Tower to take an action that is prohibited by the ordinances. TriStar was deprived of its due process rights to contest the evidence set forth under the required showing, and TriStar was deprived of its due process rights to rely on county ordinances as written when making sound business decisions that benefit local landowners.

29. On Thursday, May 30, 2013, in an attempt to make Appellants' appeal moot before it begins, American Tower obtained a building permit to put up the new tower. Appellants expect American Tower to construct the new tower within days and immediately tear down the existing, fully-functioning tower on Ms. Johnson's property once construction of the new tower is complete.

30. There is a reason American Tower is in such a hurry to negate this appeal before it is heard. That is why supersedeas is appropriate.

GOVERNING LAW

31. Where (as here) a judgment denies injunctive relief, the judgment is not automatically stayed or suspended pending appeal. Rule 241(b)(8), SCACR. To suspend the judgment pending appeal, the Appellant must move for supersedeas—first in the Circuit Court, and then in the Court of Appeals (if the Circuit Court does not grant supersedeas). Rule 241(c)(1), (d)(1)-(2), SCACR. “The purpose of a supersedeas is to stay proceedings in the trial court, to preserve the status quo pending the determination of the appeal, and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him.” *Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (Ct. App. 1990) (quoting 4A C.J.S. Appeal & Error § 662 at 49495 (1957)) (internal quotation marks and alterations omitted); *see also Schwartz v. Schwartz*, 311 S.C. 303, 304; 428 S.E.2d 748, 749 (Ct. App. 1993) (“The South Carolina Supreme Court issued a writ of supersedeas to maintain the status quo pending appeal.”). If a court grants supersedeas, the judgment is suspended until the appeal is complete. Rule 241(c)(4), SCACR.

32. The standard for granting supersedeas is set forth in the Rule 241, SCACR: “In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether *such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.*” Rule 241(c)(2), SCACR (emphasis added).

GROUND FOR SUPERSEDEAS

33. If this Court does not grant supersedeas, Appellants' appeal will "becom[e] moot." *Id.* Because the Court's judgment is one denying injunctive relief, it is not subject to any automatic stay. Rule 241(b)(8), SCACR.

34. If American Tower is allowed to continue building the new tower and tear down the existing tower pursuant to the very County Council resolution that is being appealed, all before the appeal is decided, *Appellants' appellate rights will be obliterated.* The wireless companies using the existing tower will be forced to migrate to the new tower, and TriStar will lose out on the benefit of the Easement it negotiated with Ms. Johnson in the free market. This will compromise TriStar's relationships, goodwill, and reputation with the carrier tenants on the existing tower. It will also deprive Ms. Johnson of the long-term rent and revenue share payments for the tower site on her property. These are *precisely* the harms Appellants seek to prevent in this lawsuit and on appeal.

35. In other words, once American Tower installs the new cell tower and removes the existing one from Ms. Johnson's property, the damage is done. *This process is already starting; American Tower received its building permit for the new tower on Friday, May 31, 2013 – in the face of a supersedeas hearing.* Even if the Court of Appeals later determines that the Council abused its discretion and that its Resolution to grant a permit under Section 13-70 did not comply with its own ordinances, that victory will be a hollow one for Appellants. This result would compromise Appellants' due process rights to appellate review.

36. A stay pending appeal causes no harm to American Tower because its interests are protected for years to come. Its Lease to continue operating the existing

tower extends until 2030. American Tower attempted to make much at the May 31, 2013 hearing out of the fact that TriStar has waived its claim that American Tower's lease was only good through 2015. But this is an attempt to manufacture controversy where none exists. TriStar originally took that position because American Tower failed to record its own lease renewal, allowing TriStar to negotiate with Ms. Johnson in good faith without notice of American Tower's lease extension. Thus TriStar had an ancillary argument that it was a bona fide purchaser. But when the Honorable Judge Culbertson dissolved the T.R.O. of another County Court Judge, exposing TriStar to immediate, irreparable harm, TriStar waived the 2015 claim to simplify its argument for a stay pending appeal: nothing is more important to TriStar than preserving its right to appeal a decision it believes was clear error, *without the appeal becoming moot*. And so it waived – unequivocally and irrevocably – its secondary argument about whether the lease expires in 2015 or 2030. American Tower cannot support its nonsensical claim that the status quo means urgently tearing down a tower it was happy and determined to use through 2030.

37. The only colorable harms American Tower could suffer from a stay pending appeal are (1) the cost of preserving its right to lease both properties (the existing tower site and the new tower site) until the appeal is decided and (2) the costs of storing steel and other equipment during the appeal. TriStar has already offered to post a bond to cover both of these costs. American Tower itself proposed a bond of \$25,000 to allow it (implausibly and impossibly) to destroy the tower immediately, move the carriers, then destroy the new tower and rebuild the old tower and re-relocate the carriers, should they lose. While that plan is absurd and turns the phrase

status quo on its head, American Tower thus concedes a bond setting of \$25,000 is reasonable, which TriStar could and would post for a proper supersedeas preserving the tower pending appeal.

38. The other “harms” American Tower asserts—harm to American Tower’s relationships with the carriers if it does not meet their purported expectation “that they will promptly need to relocate their equipment due to relocation of the tower” and American Tower’s “costs for materials and due diligence to build the relocated tower”—do not pass the smell test. *See* Ex. F at Groseclose Aff. ¶¶ 10-14. American Tower has never introduced any actual evidence that the carriers *need* to move to the new tower site. Instead, only a few years ago, American Tower paid to *extend* its rights to the existing tower site *until 2030*. American Tower’s argument that the carriers will somehow be disappointed when they learn that they do not now “need to relocate their equipment,” as American Tower puts it, is both unsupported and unbelievable. The “evidence” American Tower introduced was rank hearsay: self-serving affidavits from American Tower employees describing their impression of what carriers allegedly think and feel. And American Tower’s similarly unsupported claims that the new site will be “better for [the carriers’] network[s]” should carry no weight. *See* Ex. F (Opp. at p. 2 and Groseclose Aff. at ¶ 13). American Tower’s expenditures for relocating the tower have no connection with a stay pending appeal because American Tower has not explained why the expenditures needed to or need to be made now or why they will not produce the same benefits to American Tower when and if it succeeds on appeal.

39. The purpose of supersedeas is to “preserve the status quo pending determination of the appeal.” *Graham*, 301 S.C. at 130, 390 S.E.2d at 470. Preservation of the status quo is precisely what Appellants seek here. If this Court grants the writ of supersedeas, American Tower will simply continue operating the existing tower on Ms. Johnson’s property—as it is currently doing—through expiration of the Lease. American Tower will also continue receiving rent payments from the wireless carriers. Further, the existing tower will continue to serve the wireless carriers who currently enjoy a right to quiet enjoyment in the tower under their lease with American Tower. See *Diminich v. 2001 Enterprises, Inc.*, 292 S.C. 141, 144, 355 S.E.2d 275, 277 (Ct. App. 1987) (citing Friedman on Leases § 29.201 (2d ed. 1983)) (“It is virtually universally . . . held that a lease implies a covenant of quiet enjoyment.”).

40. Granting a writ of supersedeas in this case would be consistent with South Carolina case law. Courts here have consistently held that, where enforcement of an executable judgment would result in a change to the parties’ status quo before the appeal is complete, supersedeas is appropriate. See, e.g., *S.C. Dep’t of Revenue v. Sandalwood Social Club*, 399 S.C. 267, 276-7, 731 S.E.2d 330, 335 (Ct. App. 2012) (referencing the Court of Appeals’ decision to grant supersedeas, thereby staying the lower court’s decision to suspend appellant’s on-premises beer-and-wine permit); *Berry v. Ianuario*, 281 S.C. 21, 21 314 S.E.2d 308, 308 (1983) (granting supersedeas in a family-law dispute “to prevent the appeal from becoming moot” where the lower court’s order was not subject to an automatic

stay and, if executed, would have changed the familial relationships at issue on appeal).

41. The same is true here. If American Tower is allowed to act on this Court's judgment, the parties' status quo will shift drastically. American Tower will tear down the tower on Ms. Johnson's property and will build a new tower on a different landowner's property across the street. The wireless carriers currently using the existing tower will be forced to migrate to the new tower. This will cause precisely the harms that Appellants are seeking to prevent on appeal, and Appellants' appeal thus will "becom[e] moot." Rule 241(c)(2), SCACR.

CONCLUSION

42. For the reasons above, Appellants respectfully request that the Court grant a writ of supersedeas and suspend for the pendency of appeal the matters decided in the Court's judgment of May 21, 2013 and in any orders, rulings, or decrees leading up to or forming the basis of that judgment that are in any way adverse to Appellants.

{Signature Page Follows}



Permit

Permit NO. **COMM-5-13-29315**

Permit Type: **Commercial Permit**

Work Classification: **Cell Tower**

For Inspections call : **843-915-5090 / 205-5090 / 756-2121**

Project Address		Parcel Number/Project	
312 HUGGINS Road		AMERICAN TOWER #278053-HUGGINS RD	
Loris, SC 29569		0380001020	
Owner Information	Address	Lot:	Block: District: 300
BRENDA G HUGGINS	215 HUGGINS Road		
	LORIS SC 29569-		
Mobile Home Owner Info	Address	Phone	Cell
Contractor(s)	Phone	Cell Phone	Contractor Type
SKYTEL CONTRACTORS INC	7708883264		General

The use of the building(s) and/or land as shown above conforms to the requirements of the zoning ordinance of Horry County. This is subject to the following conditions, restrictions and limitations:

Mobile homes have 15 days from passed inspection to have their underpinning installed & inspected.

Front Setback: 0 Left Setback: 0 Zone: FA Description of Work: CELL TOWER

Rear Setback: 0 Right Setback: 0 Flood Zone: X (REF.P#29317 & P#29316 - MOVED)

Total sq Feet :0 Heated Sq Feet: 0 Garage Sq Feet: Stories:0 Units: 1

Fireplaces: 0 Unheated Sq Feet: 0 Carport Sq Feet: Connection:N/A Value:266,800.00

INSPECTED FOR:	IVR	P	I		IVR	P	I
TEMPORARY SERVICE	205	☐	☐	CERTIFICATE OF OCCUPANCY	999	☐	☐
FOUNDATION	110	☐	☐	SETBACKS	195	☐	☐
POST FOUNDATION	245	☐	☐	TILE SIZE	240	☐	☐
PILASTER	105	☐	☐	SWIMMING POOL	165	☐	☐
SLAB PLUMBING	405	☐	☐	WINDOW / DOOR FLASHING	145	☐	☐
SLAB / POLYWIRE	135	☐	☐	BRICK FLASHING	140	☐	☐
ROUGH PLUMBING	410	☐	☐	SIGN	600	☐	☐
NAILING	130	☐	☐	MOBILE HOME	505	☐	☐
FRAMING	120	☐	☐	MOBILE HOME UNDERPINNING	510	☐	☐
E / CERT	190	☐	☐	ZONING	170	☐	☐
ROUGH ELECTRICAL	210	☐	☐	PARKING	175	☐	☐
ROUGH MECHANICAL	305	☐	☐	LANDSCAPING	180	☐	☐
ROUGH FIRE INSPECTION	705	☐	☐	BOND BEAM	115	☐	☐
INSULATION	125	☐	☐	METER SERVICE	215	☐	☐
FINAL INSPECTION	199	☐	☐	CHANGE OF SERVICE	220	☐	☐
FINAL FIRE INSPECTION	799	☐	☐				

EXHIBIT

A

Issued By: Horry County, SC

Authorized Signature

Date

ROA_0475

HORRY COUNTY CODE ENFORCEMENT DIVISION
1301 2ND AVENUE, SUITE 1D09
CONWAY, SOUTH CAROLINA 29526
(843) 915-5090 / 205-5090 / 756-2121 / IVR #
FAX#: (843) 915-6090

OFFICE HOURS

8 a.m. UNTIL 5 p.m. / Monday - Friday (Closed Holidays)

CALLING FOR AN INSPECTION:

- 1 Name on the permit and the permit number must be given.
- 2 Good driving directions.
- 3 Owner or contractor must do all calling. DO NOT let your subcontractors call for inspections.
- 4 Coordinate all inspections, especially in subdivisions where a contractor has more than one house under construction.
- 5 Call as soon as you are ready for an inspection. Inspections called in before 4:30 will be performed the next working day.

STAGES IN WHICH TO CALL:

- 1 Before you pour any concrete, call for an inspection. At this time you **must** have your property line marked and a line from the foundation to the property line, showing your **SETBACKS**.
- 2 After setting your temporary service.
- 3 Post foundation, if required (prior to any construction).
- 4 Rough in: Framing, electrical, plumbing, heating and air must be roughed in (We check them all at one time when possible), before insulation. Commercial & multifamily buildings must have fire inspections at this time.
- 5 After insulating.
- 6 Final: At this time a power sticker is issued, if everything is to code. You must have a sewer sticker or a final septic permit. Building must be complete and ready to move in, except power. In most subdivisions, you must have your driveways complete. Commercial and multifamily buildings must have final fire inspection and planning and zoning approvals (certificates) before call for a CO. They must also have their parking and landscaping complete.
- 7 Certificate of Occupancy: **Issued only on new construction!** After the power is turned on and everything has been completed, then make sure everything works and is safe.
- 8 If you have any questions, please call the office. If an inspector is not in, we will be glad to have one call as soon as possible.
- 9 When we make an inspection, we sign the permit card, leave a ticket, and if a power sticker is required, we leave it on the meter hub.

THIS PERMIT ALONG WITH AN APPROVED SET OF PLANS AND YOUR SUBCONTRACTORS ROSTER CARD MUST BE DISPLAYED AT THE ADDRESS ON THE PERMIT DURING THE ENTIRE PERIOD OF CONSTRUCTION.

THE PERMIT IS GOOD FOR AS LONG AS YOU ARE WORKING. JUST SO YOU DO NOT STOP FOR A PERIOD OF SIX MONTHS (YOU MUST HAVE AN INSPECTION WITHIN EVERY SIX MONTHS FOR THE PERMIT TO STAY VALID). IT MAY BE REVOKED OR SUSPENDED FOR ANY CODE OR ZONING VIOLATIONS OF ANY REGULATIONS IN EFFECT BY ORDINANCE OR OTHERWISE.

BUILDING PERMITS ARE NONREFUNDABLE OR TRANSFERABLE.

This Certificate is subject to cancellation if any misrepresentations have been made or if any changes are made which violate any zoning ordinance provisions.

HORRY COUNTY CODE ENFORCEMENT ROSTER CARD

OWNER _____

PERMIT #

29315

TRADE	CONTRACTOR	SC STATE LICENSE	COUNTY BUSINESS LICENSE	PHONE #	INSPECTOR
PLUMBER					
ELECTRICIAN					
HEATING & AC					
SIDING					
INSULATION					
ROOFER					
FLOORING					
MASON					
DRY WALL					
CARPENTER					
WALLPAPER					
PAINTER					
MOBILE HOME SETUP					
POOL					
SIGN					
FIRE SPRINKLER					
FIRE ALARM					
LANDSCAPING					
HOME MOVER					
PILE DRIVING					
DOCK/SEA WALL					
INTERIOR RENOVATION					
FOUNDATION/SLAB					
PEST CONTROL					
INTERIOR TRIM					
HOMEBUILDER					
GENERAL CONTRACTOR					
MECHANICAL CONTRACTOR					
OTHER					

SIGNATURE _____

DATE _____

PRINTED NAME _____

PHONE NUMBER _____

THIS FORM MUST BE COMPLETED AND REMAIN WITH PERMIT CARD TO BE PICKED UP BY THE INSPECTOR AT FINAL/CO.

ROA_0477

218PA

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

C/A No. 2012-CP-26-86852

**DEFENDANT
AMERICAN TOWERS, LLC'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR SUPERSEDEAS**

Defendant American Towers, LLC f/k/a American Towers, Inc. ("American Towers"), through its undersigned counsel THE BRITTAIN LAW FIRM, P.A., HELLMAN YATES & TISDALE, and NEXSEN PRUET, LLC, hereby submits its Opposition to the Motion for Supersedeas (the "Motion") filed by 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 "Plaintiffs") as follows:

INTRODUCTION

In the face of this Court's full consideration of the merits of this case and the deliberate dissolution of the temporary restraining order, Plaintiffs improperly and without a legal or factual basis seek to perpetuate the temporary restraining order. Plaintiffs are using their Motion to try to accomplish what they could not accomplish through the merits of their case and this Court must deny that abuse of the judicial process. Plaintiffs claim that the relief they seek would become moot if the relocated tower is constructed, however, Plaintiffs purposely fail to address that American Towers and its affiliated entities routinely construct

and deconstruct towers. American Towers can deconstruct a tower within 5-15 days. American Towers accepts and assumes the risk of building this relocated tower, and will agree, if this Court deems necessary, to post a tower removal bond as discussed herein.

Plaintiffs self-servingly claim that Defendants will not be harmed by staying construction of the relocated tower, however, American Towers has entered into a ground lease with Ms. Brenda Huggins which contains rent obligations and has negotiated revised agreements with the three cell phone 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 and have 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 and any delay will negatively impact American Towers' relationships with these carriers. In contrast, Plaintiffs will not incur any harm whatsoever from construction of the relocated tower. American Towers will continue to pay Johnson rent through January, 2015, the date that Johnson contends the Lease expires. (Cmplt. at ¶ 3). Upon information and belief, TriStar does not have any contractual relationships at the property, so there are no contractual relationships which could be impacted nor does TriStar have any property interest in the current tower on Johnson's property, despite TriStar's representations to this Court.

For these reasons and the reasons set forth herein, the Court must deny Plaintiffs' Motion and allow the current status quo – that the Final Judgment is not stayed pending appeal, and American Towers is allowed to proceed in the ordinary course of its business – to remain.

FACTUAL BACKGROUND¹

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

Since 1999, American Towers has owned and been operating its communications 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 Tower 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 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).

¹ The factual background is supported by the Affidavits of Robert McNeil and Jason Groseclose, attached hereto as Exhibits A-B.

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"). True and correct copies of the Lease and Lease Extension will be made available to the Court.

B. Plaintiffs' 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 C, Lease Lawsuit Cmplt. at ¶ 12)², however, the Landlord and TriStar/Minerva all filed an Answer expressly denying that. (Exhibit D, 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 much better broadcasting location on the property of Brenda Huggins, who was very interested in the consistent rental stream American Towers offered her to host the tower. 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 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.

² True and correct copies of the Complaint and Answer from the Lease Lawsuit are attached hereto as Exhibits C-D, respectively. This Court may take judicial notice of the Lease Lawsuit and pleadings filed in that case. *Wise v. Wise*, 394 S.C. 591, 600-601 (Ct. App. 2011) (court can take judicial notice of indisputable information, including prior lawsuits and the pleadings from prior lawsuits).

While American Towers started paying Brenda Huggins rent in April, 2013, American Towers intends on and will continue to pay rent to the Landlord Angeline 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 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. A representative from at least one of the Cellular Carriers appeared at the hearing. Plaintiffs also appeared at the hearing, made a presentation, and were the only persons/entities which 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 very near 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 quickly 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.

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 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 is attached hereto as Exhibit E.

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 injunction only to try to stall American Towers from relocating this tower because TriStar wants to buttress its meritless claims in the litigation it filed in Dallas.

ADDITIONAL PROCEDURAL BACKGROUND

On November 8, 2012, Plaintiffs 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 this case could be heard on its merits (the "Injunction Order"). The Injunction Order does not prevent American Towers from deconstructing or removing its current tower, it only stays 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 Plaintiffs' counsel, Plaintiffs did not submit a proposed order to the Court until late March, 2013. In fact, Plaintiffs waited so long to submit their proposed order that their actions delayed scheduling of the hearing of this case on its merits.

On Friday, April 26, 2013, the Court held a full hearing in 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. Plaintiffs later objected to Defendants' proposed order, seeking continued injunctive relief despite the Court's ruling, however, within minutes, this Court denied Plaintiffs' request and signed the Final Judgment as proposed by Defendants (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 F. The Final Judgment vacates the previous Injunction Order, declaring it void.

While Judge Hyman's Injunction Order required that Plaintiffs post a security bond in the amount of \$5,000.00, Plaintiffs did not post their bond until May 7, 2013, over a week after this Court's April 29, 2013 ruling on the merits against the Plaintiffs.

STANDARD OF REVIEW

As admitted by Plaintiffs, the current status quo is that the Final Judgment is not stayed pending appeal, and American Towers is allowed to proceed in the ordinary course of its business and relocate its existing tower to a nearby property. (Mt. at ¶¶ 1, 10, 14). 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.

Plaintiffs seek to change that status quo by blocking American Towers' lawful business activities and infringing on Horry County's rights to supervise and issue permits for construction in Horry County, despite this Court's ruling on the merits. To change the status quo and stay the Final Judgment, 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). Plaintiffs have failed to and cannot show that changing the status quo and issuing a stay is necessary to preserve an issue from becoming moot.

ARGUMENT

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

Plaintiffs argue that their appeal could become moot if American Towers relocates its existing tower, however, that argument is based on a falsehood. Without citing any evidentiary support, TriStar wrongly contends that after American Towers' Lease at the current property expires, TriStar would continue operating the tower. (Mt. at ¶ 5). However, TriStar will not and cannot operate the current tower at the end of American Towers' Lease as, per the terms of American Towers' Lease, American Towers is obligated to remove the tower and all components thereof from the property at the expiration of the Lease. (Lease at ¶ 8). The tower structure and all components thereof are American Towers' personal and exclusive property. Neither the Landlord nor her agents have any rights to them. Plaintiffs have not presented and cannot present any evidence, contractual provisions, or documents of any kind to the contrary.

Further, even if American Towers' tower is relocated, the relief requested by Plaintiffs would not become moot. American Towers is in the business of constructing, deconstructing, and operating communication 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. Even if American Towers relocates its tower, action which was unanimously approved by the Horry County Council, the relief sought by Plaintiffs would not be impossible, or even difficult, to effectuate. Plaintiffs fail to address this.

Constructing and deconstructing towers is routine for American Towers. If a reviewing court happens to enter an adverse ruling, American Towers could quickly deconstruct the relocated tower. 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. Again, if the Court deems it necessary, American Towers will agree to post a \$25,000 tower removal bond before constructing the relocated tower. This will sufficiently address and negate all allegations of Plaintiffs' unmeritorious claim becoming moot.

In addition to the lack of evidentiary support, Plaintiffs also do not have any legal support for their Motion. Three of the cases cited by Plaintiffs 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 Plaintiffs actually supports Defendants' 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 Plaintiffs' claims, the issues in this case could become moot and American Towers will be harmed if the Court *granted* Plaintiffs' Motion. Plaintiffs 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 Plaintiffs taken that position in this case, but Plaintiffs have taken that position in the Lease Lawsuit. (Exhibits C, D). Due to Plaintiffs' 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, in the millions of dollars, on these relationships. 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 contrast, Plaintiffs 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 at the property, so there are no contractual relationships which 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.

As already recognized by this Court, this appeal is not brought because of any error made by the Horry County Council or its Planning & Zoning Department. (Exhibit F, Final Judgment). This case is brought because TriStar is trying to stymie its competition. If, through this Court's decisions, American Towers is forced to operate from the existing property site rather than relocate, TriStar hopes to extort American Towers into renewing the property lease on its terms or for American Towers to purchase its easement rights. Even delays in construction will negatively impact American Towers' relationships with the Cellular Carriers which work to Plaintiffs' 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 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, Plaintiffs 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, Plaintiffs did not submit a proposed injunction order until late March, 2013— they didn't 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 the reviewing court to grant relief, Plaintiffs self-servingly and *erroneously* claim that American Towers will not be harmed by a stay. The Court should not allow Plaintiffs, competitors of American Towers, to indefinitely

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. (Mt. at ¶ 17). 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 its speculation and claims.

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 This Court's Order Being Affirmed And Unlikelihood Of Final Judgment Being Altered.

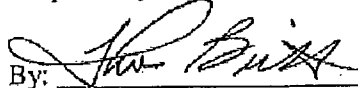
This Court should take into account that it is extremely unlikely that a reviewing court would alter this Court's Final Judgment in any way. This case is not a "close call" case. The Horry County Council's decision is like that of a zoning board which shall not be upset unless arbitrary, unreasonable, 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 (Cl. App. 2000). Plaintiffs cannot meet that high burden. Horry County Council's Relocation Resolution and this Court's Final Judgment were well-reasoned and based on a significant factual record.

CONCLUSION

Given the harm occurring to American Towers and Horry County, the complete lack of harm to Plaintiffs, and the improper motives of Plaintiffs in seeking this relief, Defendant American Towers, LLC respectfully requests that this Court deny Plaintiffs' Motion and grant any other and further relief that this Court deems proper and just. The status quo – that the Final Judgment is not stayed pending appeal, and American Towers is allowed to proceed in the ordinary course of its business – should remain.

Respectfully Submitted,

Date: May 30, 2013

By: 
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Telephone: 843.449.8562

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

JUN 06 2013

SC Court of Appeals

Case No. 2012-CP-26-8652

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

v.

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

Petition for Supersedeas Relief with Request for Expedited Decision

TriStar Investors, Inc. ("TriStar"), Minerva Realty, LLC, a wholly owned subsidiary of TriStar, and Ms. Angeline Johnson (together, "Appellants") submit this Petition for Supersedeas under Rule 241 of the South Carolina Appellate Court Rules.

Appellants respectfully request a writ of supersedeas to suspend execution of the Court of Common Pleas' judgment and to preserve the status quo pending appeal. Without supersedeas, the subject matter on appeal will be rendered moot. By contrast, granting supersedeas will cause no harm to Respondents American Towers, LLC ("American Tower") or the County Council.¹

¹ Respondent Horry County Council did not brief its position below but opposed supersedeas to the Court of Common Pleas at the May 31, 2013 hearing.

TriStar also requests that this Court set a condensed briefing schedule for Respondent's Return and any Reply and issue an expedited decision due to the imminent destruction of the existing tower and construction of the new tower at issue in this appeal. In support of this request, Appellants would respectfully show as follows:

GROUND FOR EXPEDITED DECISION BY THIS COURT

1. This matter warrants a condensed briefing schedule and expedited decision from this Court pursuant to Rule 241, SCACR.
2. As shown fully herein, the appealed decision wrongly permits American Tower to tear down the existing tower on Appellants' property and build a new tower nearby.
3. If there is no supersedeas, American Tower will tear down the tower that is the subject of appeal and start construction of the new tower.
4. This fact warrants expedited supersedeas relief from this Court.
5. In fact, American Tower has already started the destruction/construction work on the proposed site. *See* Affidavit of Ellen Hilburn attached hereto as Exhibit G. American Tower has mowed the field to allow the tower work to begin. *Id.* American Tower has further moved an excavator to the proposed site to begin the work. *Id.*
6. On May 30, 2013, American Tower obtained the necessary construction permit for the new tower that would allow immediate construction of the tower at issue in this appeal. *See* Exhibit A, attached hereto.²
7. As Respondents admitted in the trial court, deconstruction of the existing tower can take as few as 5 days. *See* Exhibit F at p. 10.

² Respondents did not inform Appellants of the permit until the supersedeas hearing before the trial court on May 31, 2013.

8. American Tower can complete the destruction/construction work on the proposed site prior to the expiration of the normal response period of 10 days to respond to this Petition.

9. Therefore, the normal time frames for responding and decision of this supersedeas request are insufficient to preserve the issues on appeal. Thus, this matter warrants an expedited decision.

SUMMARY

10. This matter presents a quintessential case for supersedeas. The appeal will determine the status of an existing, fully-functioning cellular tower on Appellants' property. The appealed decision wrongly permits American Tower to build a new tower nearby and requires American Tower to tear down the existing tower on Appellants' property. If there is no supersedeas, American Tower will tear down the tower that is the subject of appeal and lock its tenants (wireless carriers including Verizon Wireless, T-Mobile, and Horry Telephone) into a new location. Even if Appellants win on appeal, those tenants are not part of this case and cannot be compelled to move back, and TriStar's relationships with those tenants will be harmed. Destroying the tower that is the subject of this appeal would render the appeal moot, and any victory for Appellants would be hollow.³ This is exactly the sort of irrevocable consequence that supersedeas is meant to prevent. The irony of this case is that

³ The issue in this appeal is whether the Horry County Council erred by violating county ordinances in issuing a permit to American Tower authorizing the destruction of the current America Tower cell tower and construction of the new tower. Once the new tower is constructed, the issue of whether the Horry County Council erred would be moot. The issue is not whether the parties' financial situation is impacted by the permit decision as argued by Respondents to the trial court. The fact that TriStar's rental income or other revenues remain unchanged during the appeal is immaterial because the issue on appeal is not monetary, but the subject of injunctive relief to prevent irreparable future harm. The trial court erred in denying supersedeas on this incorrect basis. The sole issue is whether the Horry County Council made a correct decision to allow the new construction and deconstruction of the existing tower by Respondents. That issue will be mooted if supersedeas is not granted by this Court.

American Tower never could and never did demonstrate any need for a new tower; it certainly cannot show now that it will suffer any real harm by waiting to see who prevails on appeal.

11. The facts are indisputable: American Tower has operated the current tower at the current site for seventeen years. The tower is fully functioning and has served Horry County consistently without any prior action by American Tower or the County to move the tower. American Tower recently renewed its lease on the current tower through 2030, demonstrating that there is nothing wrong with the site and no technical reason compelling an immediate move. The truth is that American Tower only acted to destroy the current tower and build a new tower on another site when it learned that its competitor, TriStar, had purchased an easement that would give it the potential to operate its own tower on that site once American Tower's lease expired. And it is undisputed that American Tower's rights at the current site are protected through 2030, when its lease expires – long past the pendency of any appeal. There is simply no pressing need to move the tower and destroy TriStar's due process right to appeal.

12. Nor will American Tower suffer any harm from waiting to destroy the tower it recently secured to use for another 15 years. Cell phone service will continue as it has for seventeen years, and American Tower will continue to enjoy the benefits of operating the existing tower. TriStar has offered to post a bond for the only actual costs American Tower has identified from a stay pending appeal – the cost of keeping its lease option open for the second site (where the new tower will go if TriStar loses on appeal) and the cost of storing steel for the new tower (even though that steel is

obviously fungible, and there is no need to store it when American Tower reports that it is constantly putting up new towers in the area). When asked by the Court of Common Pleas to identify any harm the County Council would suffer by pausing moving the tower pending the appeal, the Council conceded there was none.

13. Yet despite no urgency and no harm, American Tower obtained a construction permit for the new tower *this past Thursday*, May 30th, in the face of TriStar's supersedeas hearing set with the Court of Common Pleas. *See* Exhibit A, attached hereto. Why the rush? To make the destruction of the tower a done deal, so TriStar's opportunity for a meaningful appeal will be eliminated along with the existing tower.

14. As noted, American Tower has already started the destruction/construction work on the proposed site. *See* Exhibit G. American Tower has mowed the field to allow the tower work to begin. *Id.* American Tower has further moved an excavator to the proposed site to begin the destruction/construction work on the proposed site. *Id.*

15. And American Tower's own argument against supersedeas to the Court of Common Pleas shows the contortions of their position. American Tower argued that *destruction* of the tower was the status quo and that, if American Tower lost on appeal, it could always pay to tear down the new tower and *rebuild* the old tower. This turns common sense on its head. And it is also wrong: once the carrier tenants are settled on a new tower, there is no forcing them to return to a rebuilt original tower. They would enjoy a right of quiet enjoyment as tenants. The carrier tenants are not parties to this matter, so American Tower's self-serving "offer" is not only

contorted but impossible. Moreover, American Tower does not control whether the tower could be moved back to the Johnson property because American Tower cannot guarantee approval to move the tower. Nor can American Tower guarantee the return of the customers to the existing tower arrangement.

16. American Tower also argues that any damages to TriStar can be liquidated and paid retrospectively. But American Tower itself argued at the hearing that its relationships with these carriers represent "intangible" value. TriStar is American Tower's competitor and has the same relationships with these carriers and values those intangible relationships similarly. That is why TriStar sued for injunctive relief, not money damages. And that is why destroying the tower now cannot be liquidated and is ripe for supersedeas. It is why American Tower is so desperate to destroy the tower before TriStar can appeal.

17. TriStar's position on appeal is simple. It secured an easement on Ms. Johnson's property in Horry County that would allow it to negotiate with American Tower or put up its own tower at the end of the current lease. As a result, the local Horry County resident, Ms. Johnson, would share a far greater percentage of the cellular carrier rents than American Tower ever gave her – *by a factor of three or more*. TriStar relied on the plain terms of Horry County ordinances to make this investment in Ms. Johnson and her land – TriStar invested in the property, giving the local resident, Ms. Johnson, the chance to enjoy a far greater share of the wireless profits, because local ordinances prevented American Tower from simply building a new tower where two perfectly good towers already existed, then destroying one of them, simply to make an example out of a local resident for bargaining with a

company that would give the local resident more of a share of the profits. *See* paragraph 25, *infra*. The permit that American Tower ultimately received to build a new tower, conditioned on destruction of the existing tower, violated those county ordinances and robbed TriStar of its due process right to rely on the law as written. It is undisputed that American Tower did not present the required evidence under the ordinances, and thus TriStar was never given its opportunity to show why that evidence was flawed. This denial of due process damaged TriStar's investment and its future expected revenue stream from the site.

18. The Court of Common Pleas denied supersedeas here for a single reason, which TriStar respectfully submits was error. *See* Ex. B (May 31, 2013 Order). The court reasoned that TriStar could not be harmed if the tower is destroyed immediately because TriStar's expected benefits from operating a tower on site were "anticipated" – that is, expected and contingent rather than immediate. But courts cannot and do not ignore damages simply because they are based on expected or contingent benefits. Indeed, from lost profits damages to expectation damages, courts frequently and universally recognize losses of benefits yet to accrue. *All future benefits are contingent on unknowns, but only one scenario here guarantees that TriStar will never realize the benefits of its investment: destruction of the tower now, during the appeal.* Denial of supersedeas was error.

19. The requested relief is thus straight-forward. Maintaining the status quo harms no one. American Tower will continue to operate the same site it has operated for seventeen years and that it recently secured for the next fifteen years. Destruction of the tower immediately serves no end other than rendering TriStar's appeal moot. A

bond is easily quantifiable – indeed, American Tower itself proposed a \$25,000 bond. This is a classic scenario for supersedeas, and TriStar respectfully requests a stay pending appeal.

PROCEDURAL HISTORY

20. This lawsuit began as an appeal from a decision by the Horry County Council (the “Council”) allowing American Tower to build a new tower and requiring that American Tower remove the fully-functioning tower it currently operates on Ms. Johnson’s land. Appellants requested a temporary restraining order and a preliminary injunction preventing American Tower from removing the existing cell tower and constructing the new tower until this matter is resolved.

21. On March 26, 2013, the Court of Common Pleas granted the temporary restraining order and preliminary injunction. On April 26, 2013, the lower court held a hearing on Appellants’ request for a permanent injunction. On May 21, 2013, the lower court entered judgment against Appellants and denied their application for a permanent injunction. Appellants timely filed a Notice of Appeal from that judgment and moved the lower court to enter a writ of supersedeas. On May 31, 2013, the Court of Common Pleas held a hearing and denied the supersedeas motion. *See* Ex. B.

22. To preserve the status quo and prevent Appellants’ appeal from becoming moot, Appellants ask this Court to grant a writ of supersedeas suspending the lower court’s judgment—and any orders, rulings, or decrees leading up to or forming the basis of that judgment that are in any way adverse to Appellants—for the duration of Appellants’ appeal. *See* Rule 62(a), (c)-(d), SCRCPP; *see also* Rules 205, 242(d)(11), SCACR.

FACTUAL BACKGROUND

23. American Tower currently operates a cell tower on Ms. Johnson's property under a lease that, according to its recorded interests per the County records, runs through January 13, 2030 (the "Lease"). See American Tower's Memorandum of Lease Amendment, attached here as Exhibit C. In June 2010, Ms. Johnson and TriStar entered into an easement agreement (the "Easement") that allows TriStar to control telecommunications activities on Ms. Johnson's property at the expiration of the Lease.

24. After the Lease expires, TriStar intends to continue operating the existing tower site on Ms. Johnson's property. As the tower-site operator, TriStar would provide all of the services currently provided by American Tower, but at substantially lower cost to the wireless carriers and at greater benefit to Ms. Johnson. The Easement gives TriStar the right to either negotiate use of the existing tower or operate its own tower on the site once American Tower's lease expires.

25. After TriStar entered into its agreement with Ms. Johnson for the Easement, American Tower went to the Council and sought approval for a permit to build a new tower down the road from its existing, fully-functioning tower. Based on American Tower's own public statements, it is clear they did this to make an example out of Ms. Johnson for doing business with TriStar and in an attempt to serve as a "demonstration" to other local landowners who do business with TriStar. American Tower's CEO, James Taiclet, has publicly confirmed that the company uses this tactic when its leases with property owners come up for renewal. In a presentation to investment analysts last year, Mr. Taiclet said that "[t]he leverage on our side is that we can move the tower nearby and go onto other leased land

because we own the customer contract.” See Edited Transcript AMT — American Tower Corp at Citi Global Property CEO Conference, attached here as Exhibit D at 7. When he was asked what the costs would be of moving a tower, he said “*we would probably only do it as a demonstration.*” Ex. D at 8 (emphasis added).

26. American Tower presented its application for the new cell tower to the Council on October 16, 2012, in the form of Resolution R-73-12 (as Exhibit E). Appellants allege that American Tower’s presentation was misleading and designed to induce the Council to approve the Resolution despite insufficient evidence under the applicable ordinances. American Tower falsely represented to the Council that the Lease expired in 2013.

27. At the public hearing on R-73-12, American Tower also told the Council that it was not required to provide certain mandatory evidence required by the ordinances governing construction of cell towers because, allegedly, American Tower was only “moving” an existing tower (despite the fact that, in reality, it asked for and received a permit under Section 13-70 of the Horry County Code). When the County Council inquired whether the existing tower tenants were on board with the move (likely not wanting to disturb their interests at the existing site), American Tower represented that they were, a fact that is clearly false in light of American Tower’s affidavit testimony now that “[o]nce the Horry County Council approved Resolution R-73-12 for the relocation of American Towers’ tower, American Towers contacted these three telecommunications carriers” and advised them “of the relocation of the tower.” (emphasis added). See Ex. F (American Tower’s Opposition to Supersedeas at Groseclose Aff. at ¶ 7)).

28. American Tower's plan succeeded, as the Council approved the Resolution allowing construction of the new tower without the showing and evidence required for a permit under Section 13-70. Relying on American Tower's false representations that the wireless carriers knew about and had agreed to move to the new tower, the Council also mandated that, within 120 days of completing the new tower, American Tower destroy the existing tower on Ms. Johnson's property.

29. Thus, the case on appeal is simple: TriStar made a business investment that benefitted the local landowner by a factor of at least three based on a plain reading of the county ordinances, which should have restricted what American Towers could lawfully do. Based on misrepresentations to the County Council, American Towers made a showing that expressly did not include the required evidence under the ordinances. There is no controversy about this: under American Tower's own application, it declines to present the required evidence. *See* Ex. E. The Council abused its discretion by failing to require American Tower to make the required showing, and by allowing American Tower to take an action that is prohibited by the ordinances. TriStar was deprived of its due process rights to contest the evidence set forth under the required showing, and TriStar was deprived of its due process rights to rely on county ordinances as written when making sound business decisions that benefit local landowners.

30. On Thursday, May 30, 2013, in an attempt to make Appellants' appeal moot before it begins, American Tower obtained a building permit to put up the new tower. American Tower has already started the destruction/construction work on the proposed site by mowing the field to allow the tower work to begin and moving an

excavator to the proposed cite to begin the destruction/construction work on the proposed cite. *See* Ex. G.

31. There is a reason American Tower is in such a hurry to negate this appeal before it is heard. That is why supersedeas is appropriate.

GOVERNING LAW

32. Where (as here) a judgment denies injunctive relief, the judgment is not automatically stayed or suspended pending appeal. Rule 241(b)(8), SCACR. To suspend the judgment pending appeal, the Appellant must move for supersedeas—first in the Circuit Court, and then in the Court of Appeals (if the Circuit Court does not grant supersedeas). Rule 241(c)(1), (d)(1)-(2), SCACR. “The purpose of a supersedeas is to stay proceedings in the trial court, to preserve the status quo pending the determination of the appeal, and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him.” *Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (Ct. App. 1990) (quoting 4A C.J.S. Appeal & Error § 662 at 49495 (1957)) (internal quotation marks and alterations omitted); *see also Schwartz v. Schwartz*, 311 S.C. 303, 304, 428 S.E.2d 748, 749 (Ct. App. 1993) (“The South Carolina Supreme Court issued a writ of supersedeas to maintain the status quo pending appeal.”). If a court grants supersedeas, the judgment is suspended until the appeal is complete. Rule 241(c)(4), SCACR.

33. The standard for granting supersedeas is set forth in the Rule 241, SCACR: “In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether *such an order is necessary to preserve jurisdiction of*

the appeal or to prevent a contested issue from becoming moot.” Rule 241(c)(2), SCACR (emphasis added).

GROUNDS FOR SUPERSEDEAS

34. If this Court does not grant supersedeas, Appellants’ appeal will “becom[e] moot.” *Id.* Because the Court’s judgment is one denying injunctive relief, it is not subject to any automatic stay. Rule 241(b)(8), SCACR.

35. If American Tower is allowed to continue building the new tower and tear down the existing tower pursuant to the very County Council resolution that is being appealed, all before the appeal is decided, *Appellants’ appellate rights will be obliterated.* The wireless companies using the existing tower will be forced to migrate to the new tower, and TriStar will lose out on the benefit of the Easement it negotiated with Ms. Johnson in the free market. This will compromise TriStar’s relationships, goodwill, and reputation with the carrier tenants on the existing tower. It will also deprive Ms. Johnson of the long-term rent and revenue share payments for the tower site on her property. These are *precisely* the harms Appellants seek to prevent in this lawsuit and on appeal.

36. In other words, once American Tower installs the new cell tower and removes the existing one from Ms. Johnson’s property, the damage is done. *This process is already starting; American Tower received its building permit for the new tower on Friday, May 31, 2013 – in the face of a supersedeas hearing.* And it has now moved an excavator to the site. Even if the Court of Appeals later determines that the Council abused its discretion and that its Resolution to grant a permit under Section 13-70 did not comply with its own ordinances, that victory will be a hollow

one for Appellants. This result would compromise Appellants' due process rights to appellate review.

37. A stay pending appeal causes no harm to American Tower because its interests are protected for years to come. Its Lease to continue operating the existing tower extends until 2030. American Tower attempted to make much at the May 31, 2013 hearing out of the fact that TriStar has waived its claim that American Tower's lease was only good through 2015. But this is an attempt to manufacture controversy where none exists. TriStar originally took that position because American Tower failed to record its own lease renewal, allowing TriStar to negotiate with Ms. Johnson in good faith without notice of American Tower's lease extension. Thus TriStar had an ancillary argument that it was a bona fide purchaser. But when the Honorable Judge Culbertson dissolved the T.R.O. of another County Court Judge, exposing TriStar to immediate, irreparable harm, TriStar waived the 2015 claim to simplify its argument for a stay pending appeal: nothing is more important to TriStar than preserving its right to appeal a decision it believes was clear error, *without the appeal becoming moot*. And so it waived – unequivocally and irrevocably – its secondary argument about whether the lease expires in 2015 or 2030. American Tower cannot support its nonsensical claim that the status quo means urgently tearing down a tower it was happy and determined to use through 2030.

38. The only colorable harms American Tower could suffer from a stay pending appeal are (1) the cost of preserving its right to lease both properties (the existing tower site and the new tower site) until the appeal is decided and (2) the costs of storing steel and other equipment during the appeal. TriStar has already offered to

post a bond to cover both of these costs. American Tower itself proposed a bond of \$25,000 to allow it (implausibly and impossibly) to destroy the tower immediately, move the carriers, then destroy the new tower and rebuild the old tower and re-relocate the carriers, should they lose. While that plan is absurd and turns the phrase *status quo* on its head, American Tower thus concedes a bond setting of \$25,000 is reasonable, which TriStar could and would post for a proper supersedeas preserving the tower pending appeal.

39. The other “harms” American Tower asserts—harm to American Tower’s relationships with the carriers if it does not meet their purported expectation “that they will promptly need to relocate their equipment due to relocation of the tower” and American Tower’s “costs for materials and due diligence to build the relocated tower”—do not pass the smell test. *See* Ex. F at Groseclose Aff. ¶¶ 10-14. American Tower has never introduced any actual evidence that the carriers *need* to move to the new tower site. Instead, only a few years ago, American Tower paid to *extend* its rights to the existing tower site *until 2030*. American Tower’s argument that the carriers will somehow be disappointed when they learn that they do not now “need to relocate their equipment,” as American Tower puts it, is both unsupported and unbelievable. The “evidence” American Tower introduced was rank hearsay: self-serving affidavits from American Tower employees describing their impression of what carriers allegedly think and feel. And American Tower’s similarly unsupported claims that the new site will be “better for [the carriers’] network[s]” should carry no weight. *See* Ex. F (Opp. at p. 2 and Groseclose Aff. at ¶ 13). American Tower’s expenditures for relocating the tower have no connection with a stay pending appeal

because American Tower has not explained why the expenditures needed to or need to be made now or why they will not produce the same benefits to American Tower when and if it succeeds on appeal.

40. The purpose of supersedeas is to “preserve the status quo pending determination of the appeal.” *Graham*, 301 S.C. at 130, 390 S.E.2d at 470. Preservation of the status quo is precisely what Appellants seek here. If this Court grants the writ of supersedeas, American Tower will simply continue operating the existing tower on Ms. Johnson’s property—as it is currently doing—through expiration of the Lease. American Tower will also continue receiving rent payments from the wireless carriers. Further, the existing tower will continue to serve the wireless carriers who currently enjoy a right to quiet enjoyment in the tower under their lease with American Tower. *See Diminich v. 2001 Enterprises, Inc.*, 292 S.C. 141, 144, 355 S.E.2d 275, 277 (Ct. App. 1987) (citing Friedman on Leases § 29.201 (2d ed. 1983)) (“It is virtually universally . . . held that a lease implies a covenant of quiet enjoyment.”).

41. Granting a writ of supersedeas in this case would be consistent with South Carolina case law. Courts here have consistently held that, where enforcement of an executable judgment would result in a change to the parties’ status quo before the appeal is complete, supersedeas is appropriate. *See, e.g., S.C. Dep’t of Revenue v. Sandalwood Social Club*, 399 S.C. 267, 276-7, 731 S.E.2d 330, 335 (Ct. App. 2012) (referencing the Court of Appeals’ decision to grant supersedeas, thereby staying the lower court’s decision to suspend appellant’s on-premises beer-and-wine permit); *Berry v. Ianuario*, 281 S.C. 21, 21 314 S.E.2d

308, 308 (1983) (granting supersedeas in a family-law dispute “to prevent the appeal from becoming moot” where the lower court’s order was not subject to an automatic stay and, if executed, would have changed the familial relationships at issue on appeal).

42. The same is true here. If American Tower is allowed to act on this Court’s judgment, the parties’ status quo will shift drastically. American Tower will tear down the tower on Ms. Johnson’s property and will build a new tower on a different landowner’s property across the street. The wireless carriers currently using the existing tower will be forced to migrate to the new tower. This will cause precisely the harms that Appellants are seeking to prevent on appeal, and Appellants’ appeal thus will “becom[e] moot.” Rule 241(c)(2), SCACR.

CONCLUSION

43. For the reasons above, Appellants respectfully request that the Court grant a writ of supersedeas and suspend for the pendency of appeal the matters decided in the Court’s judgment of May 21, 2013 and in any orders, rulings, or decrees leading up to or forming the basis of that judgment that are in any way adverse to Appellants.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellate Case No. 2013-001178

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

v.

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

AFFIDAVIT

NOW COMES, Ellen Hilburn, who after being duly sworn deposes and
says as follows:

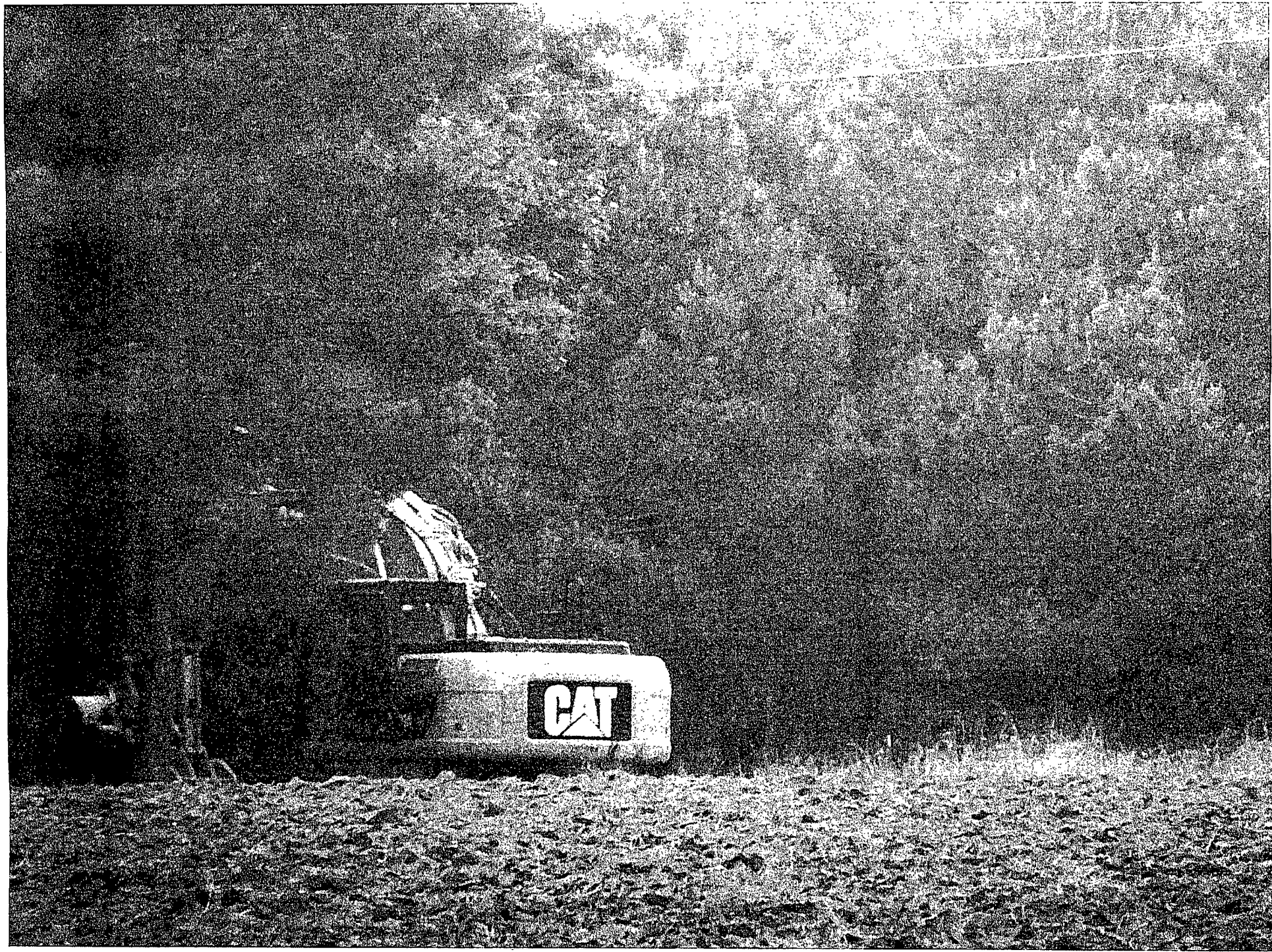
1. I have personally been to and observed the proposed site for the new cellular tower located on Huggins Road.
2. I have observed that the hay has now been mowed.
3. I have observed that an excavator has been moved onto the proposed site.
4. I personally took the pictures attached to this affidavit and attest to their authenticity.

FURTHER AFFIANT SAITH NOT.

Ellen Hilburn
Ellen Hilburn

Sworn to and subscribed before
Me this 6th day of June, 2013

John L. Ruel
Notary Public
My Commission Expires
October 8, 2014



ROA_0512



ROA_0513



ROA_0514



ROA_0515



ROA_0516

THE STATE OF SOUTH CAROLINA

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,

vs.

The Horry County Council and American Towers, LLC,

Defendants-Respondents.

Appellate Case No.: 2013-001178

**Respondent Horry County Council's Return to
Appellants' Petition for Supersedeas Relief
With Request for Expedited Decision**

Defendant-Respondent Horry County Council ("Horry County") through its undersigned counsel Thomas & Brittain, P.A., hereby submits its Return to Petition for Supersedeas Relief Request for Expedited Decision (the "Petition") filed by Plaintiffs-Appellants TriStar Investors, Inc. ("TriStar"), Minerva Realty, LLC, and Angeline Johnson (collectively referred to as "Appellants") as follows:

INTRODUCTION

Appellants filed this case, seeking a review of Horry County Council's decision as expressed in Resolution R-73-12, which authorizes American Towers to construct a relocated cell phone and telecommunications tower. Appellants contend that the trial court erred in denying their motion for supersedeas and that the "sole issue" in their appeal in this case "is whether the Horry County Council made a correct decision to

allow the new construction and deconstruction of the existing tower by Respondents.” (Appellants’ Petition, p. 3, footnote 3). Appellants contend that their challenge to Horry County Council’s Resolution in R-73-12 becomes moot if supersedeas is denied by this Court. Horry County Council disagrees with this assertion. Significantly, Appellants fail to meet the heavy legal burden that is placed upon them under well-established South Carolina case-law and which is necessary to establish that the Honorable Benjamin H. Culbertson unjustifiably denied their Motion for Supersedeas. *See* Rule 241(d)(4)(C) SCACR.

FACTUAL BACKGROUND

Respondent American Towers operates a communications tower located within Horry County and near Loris, South Carolina. American Towers filed an application with the Horry County Planning and Zoning Department on August 31, 2012, seeking to relocate its existing tower to a nearby property. Horry County’s Planning and Zoning Department reviewed the detailed relocation application and recommended approval of the permit to Horry County Council. Staff noted that the relocation was a better location because the fall zone radius of the proposed relocated tower “lies well within the new property location,” while the current tower’s fall zone falls within the adjacent highway; additionally, the application meets the current amended requirements of the Horry County Planning and Zoning Ordinance, which the current tower does not meet. The Planning and Zoning Department’s extensive review of American Tower’s co-location application is documented in the Record, as established by the Affidavit of David Schwerd, Principal Planner with the Horry County Planning and Zoning Department¹.

¹Mr. Schwerd was also the Planning Department staff member who drafted Horry County’s ordinance regulating telecommunications tower permits for review and approval and has been involved in the review of all telecommunication towers since the ordinance’s adoption.

(Attachment "A," Affidavit of David Schwerd and attachments).

On October 16, 2012, Horry County Council held a public hearing to consider and vote on American Towers' relocation permit application. A representative for American Towers appeared at the meeting and made a presentation. Appellants' representative also appeared and made a presentation to Horry County Council.

After hearing from American Towers and Appellants, Horry County Council unanimously voted its approval of Resolution R-73-12 authorizing American Towers to relocate its existing communications tower to the nearby property. Upon recommendation of staff, Horry County Council amended the Resolution to include a requirement that American Towers remove the existing tower within 120 days of final inspection and approval of the new tower, an action County staff understood American Towers was empowered to do by virtue of its ownership of the tower.

Appellants initiated this action on November 8, 2012, by filing a Summons and Complaint in the Horry County Court of Common Pleas. To avoid duplication as to further proceedings, Horry County craves reference to the "Additional Procedural Background" in American Towers' Verified Return to Appellants Petition for Supersedeas Relief.

STANDARD OF REVIEW

Appellants acknowledge that the Final Judgment entered in this case was not stayed under SCACR Rule 241(b)(8,11) pending appeal unless the Court grants supersedeas relief. (Mt. for Supersedeas at ¶¶ 1, 10, 14). South Carolina Rule of Civil Procedure 62(a), however, provides: "an interlocutory or final judgment in an action for an injunction...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 lower court, considering Appellants' motion for supersedeas, denied the motion and determined: "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." (See Exhibit "B," Form 4 Order of Lower Court).

To succeed on the instant Petition, Appellants must demonstrate that "an application for this relief was made to the lower court...and was unjustifiably denied..." See Rule 241(d)(4)(C), SCACR. Pursuant to Rule 241(c)(2) SCACR, the issue before the Court for determination is whether supersedeas is "necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Mootness occurs only 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). As set forth in American Tower's Return, and for the reasons set forth below on behalf of Horry County Council, Appellants have failed to meet the required showing under the governing Appellate Court Rules and case law; therefore Appellants' Petition for Supersedeas should be denied.

ARGUMENT

Horry County Council's Approval of the Relocation Permit Application of American Towers was a Proper Exercise of Discretion and of Lawfully Delegated Power Vested Horry County Council and Appellants' Have Failed To Make A Showing of Likelihood of Success on the Merits in the Record Below.

As the lower court properly observed, the scope of review of Horry County Council's decision to grant a relocation permit to American Towers is limited. In this regard, Judge Culbertson described the scope of review as follows:

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).

See Order Entering Final Judgment Against Plaintiffs, Page 3, Paragraph 1, filed May 21, 2013 and signed by The Honorable Benjamin H. Culbertson. (Attachment "C").

The lower court, holding 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," properly concluded based on the record evidence that Appellants' requested relief was not warranted. Judge Culbertson found that the record evidence clearly established that the approval of the new tower by Horry County constituted a relocation of American Tower's current tower and that Appellant's legal position to the contrary requires a restrictive reading of the statutes that is unsupported by the language of Horry County's zoning ordinance. Based on the record before him, including Mr. Schwerd's Affidavit, American Tower's detailed application submission, and the transcript of hearing before Horry County Council before Ordinance adoption, Judge Culbertson applied the proper standard of review in concluding that Horry County Council's actions were not arbitrary, unreasonable, an abuse of discretion or in excess of power lawfully vested in it, and therefore in denying Appellants' requested relief. (See Attachments "A", Affidavit of David Schwerd, and "D", Transcript of Public Hearing Regarding Resolution R-73-12 Before Horry County Council).

The governing case law of this Court is well settled that Horry County Council's decision to grant the relocation permit application of American Towers is entitled to great deference. The applicable standard of review in this matter is the "any evidence" standard. The decisions of Horry County Council, an elected legislative body, are like those of a zoning board and the appropriate standard of review is that "the findings of fact...shall be treated in the same manner as findings of fact by a jury, and the court may not take additional evidence." *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 32; 606 S.E.2d 209 (Ct. App. 2004)(citing S.C. Code Ann. §6-29-840A (Supp. 2012) and *Heilker v. Zoning Bd. of Appeals for City of Beaufort*, 346 S.C. 401, 405, 552 S.E.2d 42, 44 (Ct. App. 2001)). The Court in *Austin* continued:

In reviewing the questions presented by the appeal, the court shall determine only whether the decision of the Board is correct as a matter of law. *Id.* Furthermore, "[a] court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with the decision."

Id. at 32 (citing *Restaurant Row Assocs. v. Horry County*, 335 S.C. 209, 216, 516 S.E.2d 442, 446 (1999)). See also *Rush v. City of Greenville*, 246 S.C. 268, 277, 143 S.E.2d 527 (1965)(a strong presumption exists in favor of the validity of application of local government zoning ordinances). Appellants do not meet the heavy burden placed on them under the applicable South Carolina case law. Horry County Council's Relocation Resolution and the lower court's final order are well reasoned and based on a detailed factual record establishing a rational and reasonable basis for Horry County Council's approval of Resolution R-73-12 granting of the relocation. Appellants were afforded full opportunity to appear before and be heard by Horry County Council. Appellants' request for relief is neither supported by the Record evidence nor meets the review standard determined by the Appellate Courts to be applicable to the challenged decision of Horry

County Council.

CONCLUSION

Based on the above, Respondent Horry County Council respectfully requests that this Court deny Appellant's Petition for Supersedeas Relief and grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

THOMAS & BRITTAIN, P.A.



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843-692-2628

Attorneys for the Defendant

The Horry County Council

June 12, 2013

Myrtle Beach, South Carolina

1605. Permitted locations.

Freestanding telecommunication towers and associated equipment may receive a conditional use permit in the CFA, FA, LFA, AG1, AG2, AG3, OPI, PR1, PR2, RC, CC, NC, HC, LI, HI, PA1, MA1, MA2, RE3, RE4, CR, TRS, EIO and RCS zoning districts as a principal or accessory use subject to the standards established herein.

Except for the exclusions listed above, no new freestanding telecommunication tower shall be permitted unless the applicant demonstrates that no existing telecommunication facility can accommodate the applicant's proposed use; or that use of such existing facilities would prohibit the applicant from providing personal wireless services in the geographic search area to be served by the proposed antenna support structure.

- a. Requests to locate a new telecommunication tower shall be subject to the following co-location radius:
 1. No new proposed standard monopole shall be located within one and one-half (1½) miles of an existing telecommunication tower without a co-location waiver.
 2. No new proposed freestanding tower other than a standard monopole shall be located within two and one-half (2½) miles of an existing telecommunication tower without a co-location waiver.

(Ord. No. 36-07, § 1(Att. A), 5-1-07)

Sec. 13-70. Telecommunications tower permit required.

All new freestanding telecommunications towers that are not exempted by the exclusions section of the telecommunications facilities article of the zoning ordinance shall be required to obtain a telecommunications tower permit pursuant to the provisions of this article.

(Ord. No. 37-07, § 1, 5-1-07)

Sec. 13-71. Application procedures.

- (a) To initiate a request for a telecommunications tower permit the applicant shall submit a conditional use application addressing the criteria of section 13-73 to the zoning administrator with the appropriate fees. This information will be forwarded and used during the permit review process of county council.

(Ord. No. 37-07, § 1, 5-1-07)

Sec. 13-72. County council approval, public notice and hearing.

All requests for telecommunications tower permits shall be placed on the county council agenda for a public hearing and approval or disapproval by resolution.

- (1) The property shall be conspicuously posted at least fifteen (15) days prior to the county council meeting.
- (2) Notice shall also be sent by mail to property owners within a five hundred (500) foot radius of the property.
- (3) Notice of the public hearing shall be advertised in a newspaper of general circulation at least fifteen (15) days in advance of the scheduled meeting.

(Ord. No. 37-07, § 1, 5-1-07)

Sec. 13-73. Criteria.

- (a) County council shall consider the following in determining whether the request should be approved or disapproved.
- (1) Height of the proposed tower;
 - (2) Proximity of the tower to residential structures and residential zoning district boundaries;
 - (3) Nature of uses on adjacent and nearby properties;
 - (4) Surrounding topography;
 - (5) Surrounding tree coverage and foliage;
 - (6) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and
 - (7) Proposed ingress and egress.
- (b) County council may approve a waiver of the co-location requirements of Section 1605 of the Horry County Zoning Ordinance (co-location waiver) when such waiver is justified and the applicant can supply proof that co-location is not practical or warranted, or if:
- (1)

Co-location requires an increase in height of the existing tower beyond the height restrictions imposed by Chapter 3 (Airports) of the Horry County Code of Ordinances; or

- (2) Co-location requiring a significant expenditure (greater than fifty (50) percent of the tower and existing facility values) of funds to reconstruct the tower to accommodate the additional facilities to maintain safe operations. A claim of significant expenditure shall be shown in a cost estimate certified by a South Carolina licensed and registered engineer providing the current and reconstruction value of the tower; or
 - (3) Co-location is not possible due to technological incompatibilities of the proposed and existing telecommunication facilities. The technological incompatibility shall be documented in a letter certified by registered engineering or other professional knowledgeable in radio frequency technologies, as shown by employment history. The zoning administrator reserves the right to obtain a third party opinion regarding technological incompatibilities as a basis for co-location waiver.
- (c) The following information shall be provided justifying that co-location is not practical or warranted.
- (1) A list of all existing telecommunication towers within two and one-half (2½) miles of the proposed tower (or within one and one-half (1½) miles for a monopole).
 - (2) Maps showing broadcast coverage from the proposed site together with the coverage from applicant's (or the wireless licensee's) existing sites that would connect with and are adjacent to the proposed site.
 - (3) Detailed information as to why the existing towers within two and one-half (2½) miles of the proposed tower (or within one and one-half (1½) miles for a monopole) cannot reasonably be utilized for the proposed antenna installation.
 - (4) Applicant shall provide any other relevant information related to the proposed site as may be requested; however, applicant shall not be required to provide complete coverage maps of its wireless system or other proprietary information.

(Ord. No. 37-07, § 1, 5-1-07)

Exhibit G

HELLMAN YATES

ATTORNEYS AND COUNSELORS AT LAW

JONATHAN L. YATES
DIRECT VOICE 843 414-9754
JLY@HELLMANYATES.COM

HELLMAN & YATES, PA
145 KING STREET, SUITE 102
CHARLESTON, SOUTH CAROLINA 29401
V 843 266-9099
F 843 266-9198

August 31, 2012

VIA FEDERAL EXPRESS

Mr. David Schwerd, Principal Planner
Planning & Zoning Department
Government & Justice Center
1301 Second Ave
Conway, SC 29526

RE: Proposed relocation by American Towers, LLC of 300-foot self support wireless telecommunications facility at the corner of Huggins Road and SC Highway 9 to 215 Huggins Road, Loris, SC 29569

Dear Mr. Schwerd:

Enclosed please find our check for \$2,000.00 and the application of American Towers, LLC for the proposed relocation of an existing 300-foot self support communications facility currently located at the corner of Huggins Road and SC Highway 9. We are proposing to move the tower to a new property owned by Brenda G. Huggins at 215 Huggins Road, Loris, SC 29569. An aerial map showing the existing tower and proposed relocated tower is attached hereto as Exhibit "8" and incorporated herein by reference. We are requesting a Conditional Use Permit and a Telecommunications Tower Permit.

The existing tower was built by Vanguard Cellular in 1996 and was purchased by Triton PCS in 1999. In 2001 American Towers, LLC purchased the tower from Triton PCS. There are three existing tenants on the tower – T-Mobile, Horry Telephone, and Verizon Wireless. All three carriers have active contracts that obligate American Towers, LLC to provide them with tower space in this area. The ground lease is set to expire in 2013 and the new owner is not going to renew the ground lease. Therefore, we are proposing to relocate the tower, including all existing tenants, to the new location at 215 Huggins Road. The existing tower will be removed once all tenants relocate their equipment to the new tower.

We have taken the liberty of recasting the relevant sections of the Horry County Telecommunication Facilities Ordinance, found in Article XVI and Article VII, with our answer to the relevant section in bold font beneath the section. As will be evident from a review of the attached, American Towers, LLC has not only met, but has exceeded, all of the necessary requirements for approval under the Horry County Telecommunication Facilities Ordinance and the Telecommunications Tower Permits Ordinance. We greatly appreciate your time and consideration in the review of this application.

1607. - Application requirements.

A conditional use application and the supplemental information listed below shall be submitted prior to the issuance of a building permit for a telecommunication tower.

- (a) Antenna Owner(s). Identification of the owner(s) of all antennas and equipment to be located on the site;

All of the antennas and equipment are owned by T-Mobile, Horry Telephone, and Verizon Wireless. Please see Sheets A-1 and A-2 of the Site Plans and Drawings, attached hereto as Exhibit "1" and incorporated herein by reference, for the location of the carriers' equipment.

- (b) Engineer's Certification. The applicant shall provide certification from a licensed engineer, registered in the State of South Carolina, or other professional knowledgeable in telecommunications equipment, as shown by employment history, that the proposed facility will contain only equipment meeting the Federal Communication Commission rules and regulations;

Please see the letter of Jason Groseclose of American Towers, LLC, attached hereto as Exhibit "2" and incorporated herein by reference.

- (c) Copy of all pertinent licensing and/or certification required by federal or state licensing authorities, which are required for said operators to said tower or facility.

Please see the FAA Determination of No Hazard to Air Navigation, attached hereto as Exhibit "3" and incorporated herein by reference.

- (d) Location Map. A current County map showing the locations of the applicant's antennas, facilities, existing communication towers, proposed communication tower and any existing communication towers within two and one-half (2.5) miles of the proposed location (measured from the base of the tower);

Please see the inventory and map of existing American Towers, LLC sites, attached hereto as Exhibit "4" and incorporated herein by reference. In addition, please find A.S.R. search results showing all existing towers within 2.5 miles of the proposed relocated tower site on the property of Brenda G. Huggins, attached hereto as Exhibit "5" and incorporated herein by reference.

- (e) A site plan, at a scale no less than one (1) inch = one hundred (100) feet, that illustrates the following:

- 1) A boundary survey of the proposed tower location site. (The site of the tower shall meet all survey requirements of the Horry County Land Development Regulations (Chapter 18 of the County Code) for Final Plats);
- 2) The location of all associated features to support the tower site such as equipment/switching cabinets, fencing, and parking;
- 3) The location of all support structures. The location of such features shall be entirely on the proposed tower site;
- 4) The location of any existing structure within fifty (50) feet of the proposed tower site or those that may be within the fall zone of the proposed tower;

- 5) Identification of the setbacks/fall zone for the tower;
- 6) Elevation drawings and/or photographs of proposed tower which illustrate the type and size of the equipment that the tower will support;
- 7) Screening and Landscaping;
- 8) Specifications. One (1) copy of specifications for proposed structures and antennas, including description of design characteristics and materials; and
- 9) Visual Impact Analysis. A line of site analysis showing the potential visual and aesthetic impacts on adjacent residential districts.

Please see Exhibit "1."

1611. - Specific design requirements.

All telecommunication towers permitted for construction shall adhere to the following:

- (a) Height. Freestanding telecommunication towers, including concealed monopoles and stealth towers, shall be exempt from the height restrictions contained elsewhere in the zoning ordinance.
 - 1) All new freestanding towers proposed to be located within five hundred (500) feet of a major residential subdivision or a residential zoned district (SF 40 thru SF 6) shall be limited to one hundred ninety-nine (199) feet or less in height. All other towers except those listed below shall be limited to three hundred fifty (350) feet in height.
 - 2) The following types of towers shall be exempt from the three hundred fifty-(350) foot height cap for however they are subject to all remaining requirements of the Horry County zoning ordinance regarding telecommunication towers.
 - (i) Antenna support structures, antennas, and/or antenna arrays for AM/FM/TV/HDTV broadcasting transmission facilities that are licensed by the Federal Communications Commission shall be regulated in accordance with federal and other applicable local regulations.
 - (ii) Any cable television headend or hub tower and antennae used solely for cable television services.

The proposed relocated self support tower is 300 ft. a.g.l., located in the FA zoning district, and is not within 500 feet of a major residential subdivision or a residential zoned district (SF40-SF6), thus fully complying with the above provision.

- (b) *Illumination.* Towers shall be illuminated as required by the Federal Communications Commission (FCC) and/or the Federal Aviation Administration (FAA). If allowed under FAA and other governmental regulations, alternatives to strobe lighting shall be used at night and lighting shall be shielded to ensure that lighting is focused toward the top of the tower;

The proposed relocated self support tower will employ a dual-lighting system approved by the FAA, as shown in Exhibit "3" and on Sheet A-2 of Exhibit "1."

- (c) *Color.* Excluding stealth towers and unless otherwise required by the FCC or FAA, towers shall have galvanized finish or be painted with a silver or gray finish; All towers over one

hundred fifty (150) feet in height shall have a thirty-six (36) inch minimum stripe of either reflective tape and/or paint centered on the one hundred fifty (150) foot mark of the tower.

The proposed relocated self support tower shall maintain a galvanized steel finish, which quickly weathers to a dull gray patina. This is shown on Sheet A-2 of Exhibit "1." The proposed relocated self support tower will have the stripe at the 150 ft. mark as required above.

(d) *Signs.*

- 1) Commercial messages shall not be displayed on any non-stealth tower and/or antennae.
- 2) The only signage that is permitted upon a non-concealed antenna support structure, equipment cabinet, or fence shall be informational, and for the purpose of identifying the antenna support structure (such as ASR registration number), as well as the parties responsible for the operation and maintenance of the facility, its current address and telephone number, security or safety signs, and property manager signs (if applicable).
- 3) Where signs are otherwise permitted, a stealth tower may be concealed inside such signage, provided that all applicable standards for both the signage and the concealed tower are met.
- 4) If more than two hundred twenty (220) voltage is necessary for the operation of the facility and is present in a ground grid or in the antenna support structure, signs located every twenty (20) feet and attached to the fence or wall shall display in large, bold, high contrast letters (minimum height of each letter: four (4) inches) the following:

HIGH VOLTAGE - DANGER.

Signs for the purpose of identification, warning, emergency function, and contact will be placed as required by applicable state and federal law. Examples of such signs and other signs required by the FCC can be found on Sheet A-4 of Exhibit "1."

- (e) *Security.* Freestanding communication towers and associated structures including ground anchors for guyed towers shall be secured by a fence or wall measuring at least eight (8) feet in height.

The proposed relocated self support communications tower and associated structures will be appropriately secured by means of a 70 ft. by 70 ft. chain link fence with a height of eight feet, topped with three strands of barbed wire as an anti-climbing device, for an overall fence height of nine feet, as shown on Sheets A-1 and A-3 of Exhibit "1."

(f) *Equipment Compound.*

- 1) Shall not be used for the storage of any excess equipment or hazardous waste (e.g., discarded batteries). No outdoor storage yards shall be allowed in a WCF equipment compound.

Applicant accepts and acknowledges this provision.

- 2) Shall not be used as habitable space.

Applicant accepts and acknowledges this provision.

- 3) A site plan proposal shall be provided to demonstrate how potential collocation equipment cabinets will be accommodated within the compound.

Please see Sheet A-1 of Exhibit "1."

(g) Setbacks/Fall Zone.

- 1) Setbacks shall be equal to one (1) foot for every one (1) foot of tower height or one hundred (100) percent of the tower's fall zone, plus a safety factor of ten (10) percent; whichever is less. Fall zones shall be certified in the form of a letter from a licensed engineer that includes the engineer's original signature and seal.

The proposed relocated self support tower's 300-ft. fall zone radius as based on the height of the tower is shown on Sheet A-0 of Exhibit "1." The fall zone radius lies well inside the Huggins property.

- 2) The fall zone shall not encroach onto structures on the same property or on to adjacent properties, unless the owner of the adjacent property or structure signs a waiver. The waiver shall be in a recordable waiver document and shall indemnify and hold the county harmless. In no case shall the fall zone encroach into a public right-of-way.

The fall zone of the proposed self support tower will not encroach onto structures on the adjacent properties, as shown on Sheet A-0 of Exhibit "1." There is an old cabin on the Huggins property that is used as a storage shed, which is inside of the 300 ft. radius. The cabin/shed is simply used for storage and not for human habitation. The memorandum of lease between American Towers, LLC and Brenda G. Huggins is attached hereto as Exhibit "6" and incorporated herein by reference.

(h) Screening and Landscaping.

- 1) The tower facility shall be landscaped and maintained with a buffer of plant materials that effectively screens the view of all tower accessory structures, equipment and other improvements at ground level. The buffer shall consist of evergreens no less than twenty-four (24) inches in height at the time of planting and spaced two and one-half (2 1/2) feet on center along the fenced enclosure. Such plants shall be capable of reaching a height of no less than five (5) feet within two (2) years of planting.
- 2) In locations where the visual impact of the tower would be minimal, or where the requirements of this section are otherwise impracticable, the landscaping and screening requirements of this section may be reduced or waived by the Zoning Administrator. Existing mature vegetation and natural landforms on the site shall be preserved to the maximum extent possible, or replaced to present a natural, undisturbed appearance in keeping with the intent of this section. Examples of instances whereby the Zoning Administrator could waive the landscaping requirements are:

- (i) If the tower facility is in a wooded area the applicant may choose to retain a natural vegetated buffer strip of undisturbed trees that is at least twenty-five (25) feet in depth, and at least six (6) feet in height, around the perimeter of the tower facility. The area should remain undisturbed in appearance, except where minimally necessary to allow for an access drive.
- (ii) If the tower facility is located in an area that is under cultivation during the growing season, the planting of additional screening vegetation is not required. The intent of this subsection is to allow for the maximum use of productive farmland. In this instance it will be suitable to screen the fenced enclosure with green/brown fabric wrap.

In addition to the existing natural tree cover on the property, American Towers, LLC will plant 91 Nellie R. Stevens Holly trees and 20 Edward J. Stevens Holly trees around the lease area, which shall provide sufficient screening. These details can be found on page L-1 of Exhibit "1."

Sec. 13-73. - Criteria.

- (a) County council shall consider the following in determining whether the request should be approved or disapproved.

- (1) Height of the proposed tower;

The proposed relocated self support tower is 300 feet a.g.l., as shown on Sheet A-2 of Exhibit "1."

- (2) Proximity of the tower to residential structures and residential zoning district boundaries;

There are no residential subdivisions or districts zoned SF40 through SF6 located within 500 feet of the proposed tower, as shown on Sheet A-0 of Exhibit "1."

- (3) Nature of uses on adjacent and nearby properties;

The adjacent and surrounding properties are all zoned FA and are primarily used for agricultural purposes.

- (4) Surrounding topography;

The surrounding topography is relatively flat, consisting of large agricultural lots with heavy perimeter tree cover and lots that have a heavy and mature tree cover throughout.

- (5) Surrounding tree coverage and foliage;

The area is characterized by agricultural lots with heavy perimeter tree cover and lots that have a heavy and mature tree cover throughout.

- (6) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness; and

The proposed 300' self support communications tower will be finished in a galvanized gray finish, which quickly weathers to a dull gray patina and will be non-reflective and emit no glare. Our site acquisition consultants have done an extensive line of sight analysis and have determined clearly and unambiguously that there are no potential visual and aesthetic impacts on adjacent residential districts from the proposed tower location due to the existing tree cover and the landscaping that will be planted. A simulation photo of the proposed tower is attached hereto as Exhibit "7" and incorporated herein by reference.

- (7) Proposed ingress and egress.

Ingress and egress will be provided via an access easement from Huggins Road directly to the proposed relocated self support tower, as shown on Sheet C-1 of Exhibit "1."

- (b) County council may approve a waiver of the co-location requirements of Section 1605 of the Horry County Zoning Ordinance (co-location waiver) when such waiver is justified and the applicant can supply proof that co-location is not practical or warranted, or if:

- (1) Co-location requires an increase in height of the existing tower beyond the height restrictions imposed by Chapter 3 (Airports) of the Horry County Code of Ordinances; or
- (2) Co-location requiring a significant expenditure (greater than fifty (50) percent of the tower and existing facility values) of funds to reconstruct the tower to accommodate the additional facilities to maintain safe operations. A claim of significant expenditure shall be shown in a cost estimate certified by a South Carolina licensed and registered engineer providing the current and reconstruction value of the tower; or
- (3) Co-location is not possible due to technological incompatibilities of the proposed and existing telecommunication facilities. The technological incompatibility shall be documented in a letter certified by registered engineering or other professional knowledgeable in radio frequency technologies, as shown by employment history. The zoning administrator reserves the right to obtain a third party opinion regarding technological incompatibilities as a basis for co-location waiver.

This section is not applicable, as we are proposing to relocate an existing tower with existing leases. In order for T-Mobile, Horry Telephone, and Verizon Wireless to continue to provide the same level of service to this part of Horry County.

- (c) The following information shall be provided justifying that co-location is not practical or warranted.

- (1) A list of all existing telecommunication towers within two and one-half (2½) miles of the proposed tower (or within one and one-half (1½) miles for a monopole).

Please see Exhibit 4. The only towers shown by ASR are the existing American Towers, LLC tower, which will be removed, and a tower owned by SBA, which is over a mile from the Huggins property and will not accommodate the needs of T-Mobile, Horry Telephone, and Verizon Wireless for their relocation.

- (2) Maps showing broadcast coverage from the proposed site together with the coverage from applicant's (or the wireless licensee's) existing sites that would connect with and are adjacent to the proposed site.

The coverage by T-Mobile, Horry Telephone, and Verizon Wireless will remain the same, as we are proposing to relocate an existing tower.

- (3) Detailed information as to why the existing towers within two and one-half (2½) miles of the proposed tower (or within one and one-half (1½) miles for a monopole) cannot reasonably be utilized for the proposed antenna installation.

This section is not applicable, as we are proposing to relocate an existing tower with existing leases. The only towers shown by ASR are the existing American Towers, LLC tower, which will be removed, and a tower owned by SBA, which is over a mile from the Huggins property and will not accommodate the needs of T-Mobile, Horry Telephone, and Verizon Wireless for their relocation.

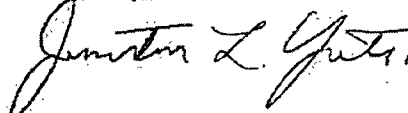
- (4) Applicant shall provide any other relevant information related to the proposed site as may be requested; however, applicant shall not be required to provide complete coverage maps of its wireless system or other proprietary information.

American Towers, LLC accepts and acknowledges this provision.

We thank you very much for all your help and consideration. If you have any questions as you review, please contact me at (843) 414-9754, or e-mail me at jly@hellmanyates.com.

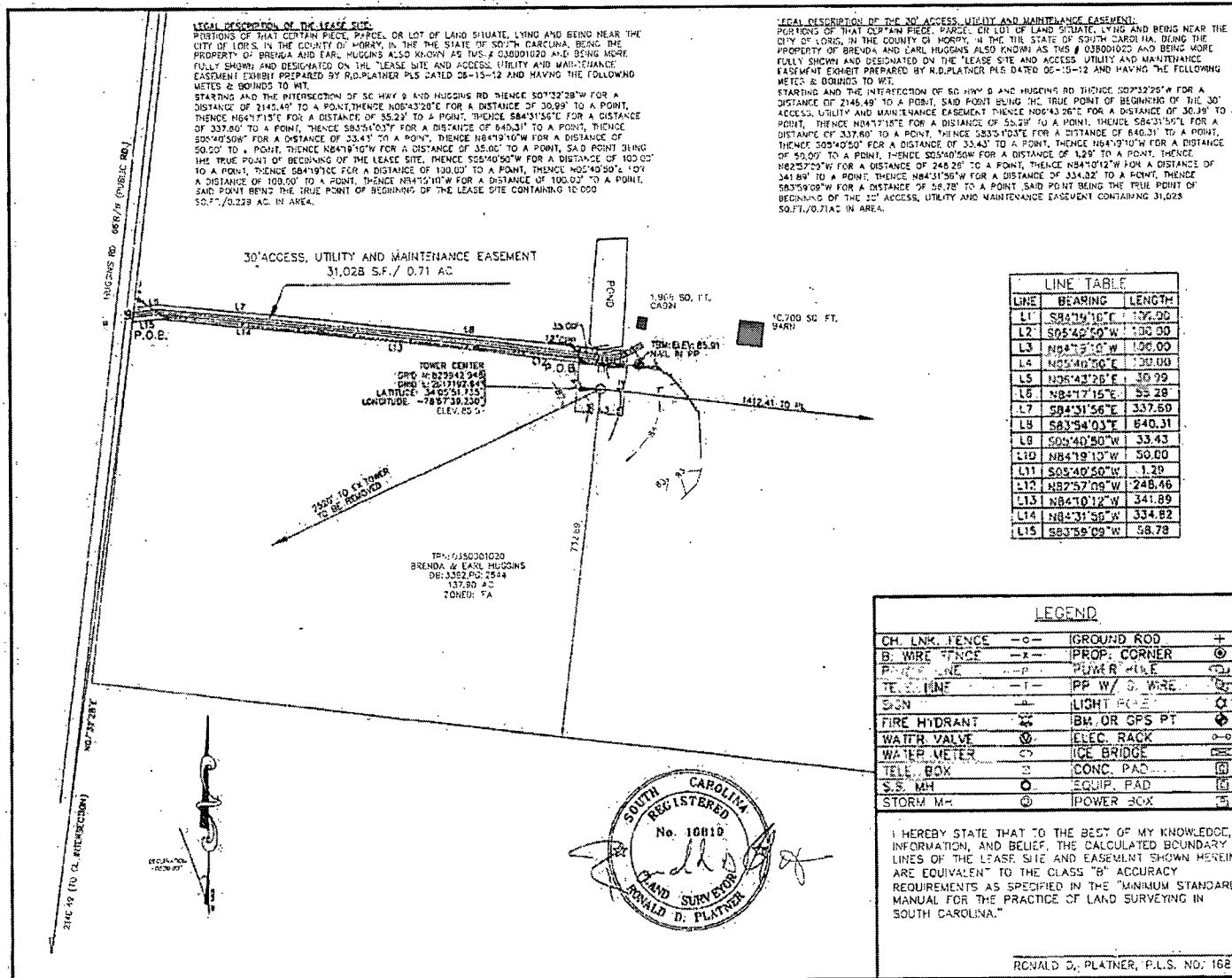
With warmest regards, I am

Yours very truly,



Jonathan L. Yates

JLY:edh
Enclosures



Commitment 01-12084222-01T

1. Commitment Effective Date: 5/24/2012 at 7:00 AM
2. Policy (or Policies) to be issued:
(a) ALTA LEASEHOLD POLICY 05-17-06
Policy Amount: \$250,000.00 Proposed Insured: (TO BE DETERMINED)

SCHEDULE B - SECTION II

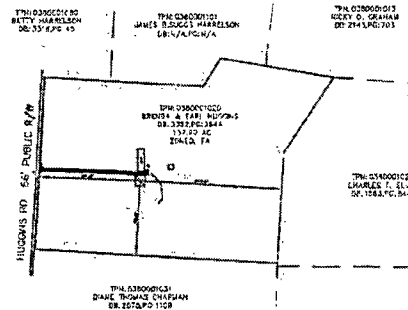
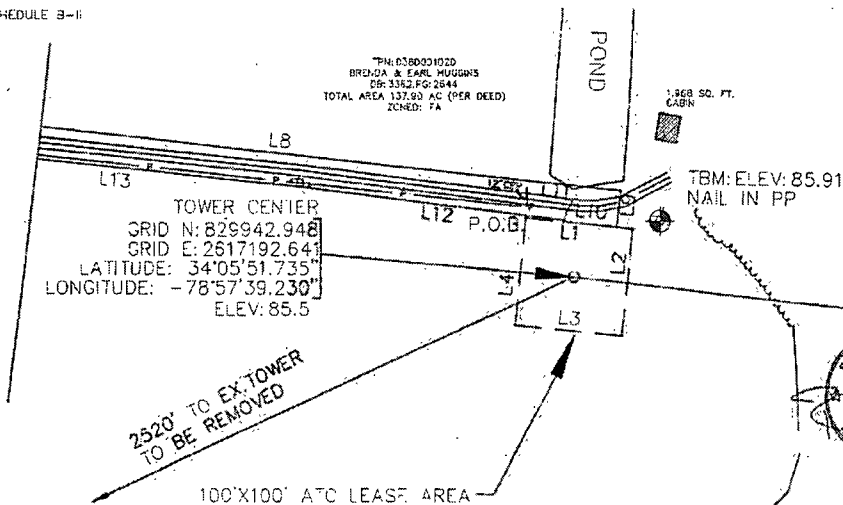
EXCEPTIONS

ANY POLICY WE ISSUE WILL HAVE THE FOLLOWING EXCEPTIONS UNLESS THEY ARE TAKEN CARE OF TO OUR SATISFACTION.

RECORDS.

- (1) FACTS WHICH WOULD BE DISCLOSED BY A COMPREHENSIVE SURVEY OF THE PREMISES HEREIN DESCRIBED, (AS SHOWN ON SURVEY)
- (2) RIGHTS OR CLAIMS OF PARTIES IN POSSESSION (NOT A SURVEY ISSUE)
- (3) MECHANICS', CONTRACTORS' OR MATERIAL MEN'S LIENS AND LIEN CLAIMS, IF ANY, WHERE NO NOTICE THEREOF APPEARS OF RECORD. (NOT A SURVEY ISSUE)
- (4) ANY CHANGES IN TITLE OCCURRING SUBSEQUENT TO THE EFFECTIVE DATE OF THIS COMMITMENT AND PRIOR TO THE DATE OF ISSUANCE OF THE TITLE POLICY. (NOT A SURVEY ISSUE)
- (5) TAXES AND SPECIAL ASSESSMENTS FOR CURRENT TAX YEAR DUE AND ALL SUBSEQUENT YEARS. (NOT A SURVEY ISSUE)
- (6) RIGHT OF WAY IN FAVOR OF SOUTH CAROLINA DEPARTMENT OF HIGHWAY AND PUBLIC TRANSPORTATION, RECORDED 5/11/1989 IN BOOK 1305 PAGE 792 OF OFFICIAL, (DOES NOT APPLY OR AFFECT)

END OF SCHEDULE B-II



PROPERTY DETAIL
NOT TO SCALE

REVISIONS

NO.	DATE	DESCRIPTION	BY
1.	5/30/12	TITLE COMMENTS	RDP
2.	7/10/12	REVISE LEGAL DESCRIPTIONS	RDP
3.	7/16/12	CORRECT CONTOURS	RDP

NOTES:

- 1) THIS EXHIBIT REPRESENTS THE LEASE SITE AND ACCESS, UTILITY AND MAINTENANCE EASEMENTS ONLY AND IS NOT INTENDED FOR ANY OTHER USE.
- 2) ALL BEARINGS ARE SO STATE GRID. ALL COORDINATES ARE NAD 83 AND ALL ELEVATIONS ARE NAVD 88.
- 3) TAX MAP PARCEL NO. 03B0001020.
- 4) THIS PROPERTY IS CURRENTLY ZONED: FA. (PER COUNTY OFFICIALS)
- 5) RATIO OF PRECISION = 1/10,000.
- 6) AREA BY COORDINATE METHOD.
- 7) THE LOCATIONS OF ANY UNDERGROUND UTILITIES IF SHOWN ARE BASED ON PAINTED MARKINGS OBSERVED IN THE FIELD AND/OR ARE APPROXIMATE.
- 8) EXISTING STRUCTURES ON PARCEL AS SHOWN.

NOTE:

THIS SURVEY DOES NOT REPRESENT A BOUNDARY SURVEY BY R.D. PLATNER P.L.S. PROPERTY LINES WERE TAKEN FROM EXISTING FIELD EVIDENCE, EXISTING DEEDS AND PLATS OF PUBLIC RECORD FROM SURVEYS AND DOCUMENTS PROVIDED TO THE SURVEYOR BY THE OWNER OR CLIENT.

I HEREBY CERTIFY THAT I HAVE CONSULTED THE FEDERAL EMERGENCY MANAGEMENT AGENCY, FLOOD INSURANCE RATE MAP NO. 45051C 0225J, AND TO THE BEST OF MY KNOWLEDGE AND BELIEF THE SUBJECT PROPERTY IS LOCATED IN "ZONE X", WHICH IS NOT LOCATED IN A SPECIAL FLOOD HAZARD ZONE A, B, OR V.

LEASE SITE AND ACCESS,
UTILITY AND MAINTENANCE
EASEMENT EXHIBIT

PREPARED FOR

AMERICAN TOWER, INC

FINKLEA RELO
TOWER SITE
SITE ID#: 278053

Horry County, Loris, South Carolina

R.D. PLATNER PLS

1 WISE FERRY COURT.

LXINGTON, SC 29073

TEL: (803) 612-0377 TEL: (803) 315-1238

SCALE: 0' 50' 100' 200'

1" = 100'

DRAWING NAME DATE SHEET NO.

12061.DWG

06/15/2012

C2

PROJECT NO.

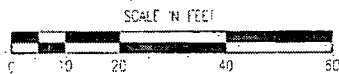
12061

FIELD BOOK NO.

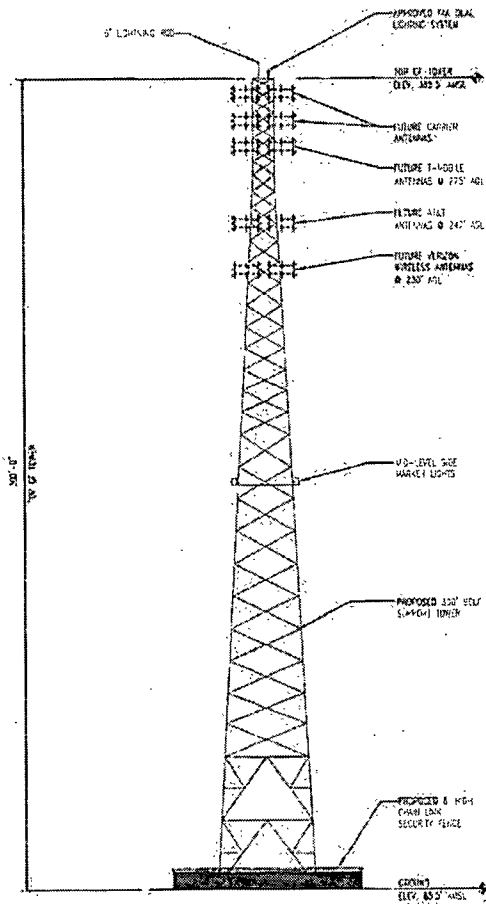
(SEE FILE)

RONALD D. PLATNER, P.L.S. NO. 15819

02-11-17 5:02:10 10/27/15 Y:\Drawings 2012\ATC\Drawings - 278053\278053.dwg



1"=40'



TOWER ELEVATION

AMERICAN TOWER
CORPORATION

ONE ONE PINE ASH
MOUNT PLEASANT, SC 29564
TEL: (843) 871-8400
FAX: (843) 871-8000

THESE DRAWINGS MUST BE ACCOMPANIED BY SPECIFICATIONS AS INDICATED BY THE TOWER AND THE EXISTING PROPERTY OF RECORD. THESE SPECIFICATIONS AND THEIR USE AND PUBLICATION SHALL BE RETURNED TO THE ENGINEER FOR THE OWNER. THEY ARE PROVIDED HEREIN FOR INFORMATION OF THE ENGINEER AND ARE NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN PERMISSION OF AMERICAN TOWER. CONSTRUCTION SHALL BE TO THE EXISTING RECORD SPECIFICATIONS. ITEMS WITH ANTI-CORROSION COATING SHALL BE PROTECTED AND MAINTAINED AS SHOWN. THE ENGINEER SHALL BE RESPONSIBLE FOR THE PROTECTION OF THESE DRAWINGS.

BC
architects
engineers

301 COLUMBIA Pk. SUITE 210
DALLAS TEXAS 75244-2808
TEL: (214) 871-8000
FAX: (214) 871-8000

SHEET REVISION			
NO.	DESCRIPTION	BY	DATE
1			
2			
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4			
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10			

A/E SITE NUMBER
278053

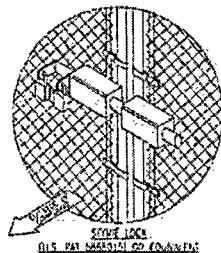
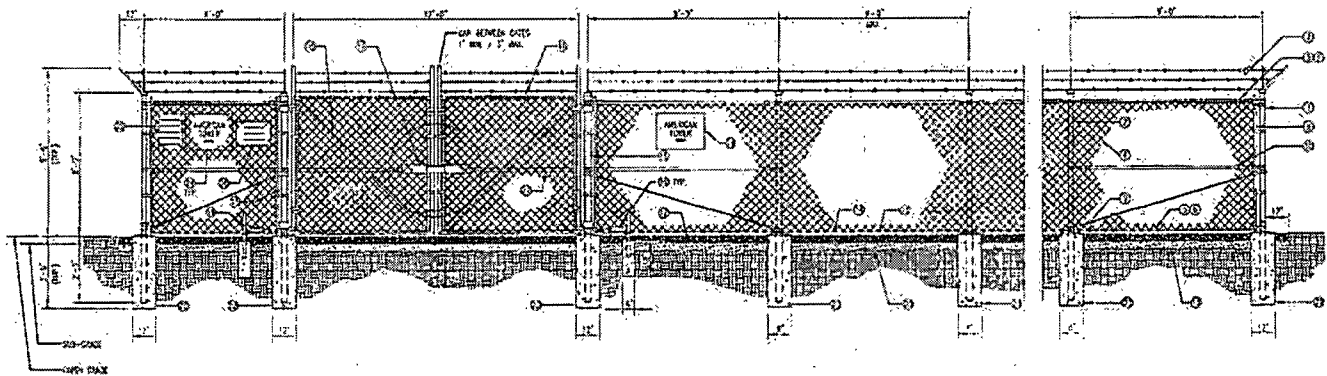
A/E FIRM NAME
FINKLEA RELO

C/E ADDRESS
215 HUGONS RD
LORIS, SC 29569

DESIGN BY	ACT
CHEKED BY	DRS
DATE SUBMITTED	07-24-12
REVISIONS	FINAL CDS

SHEET TITLE
TOWER ELEVATION

SHEET NUMBER	REV. #
A-2	



- REFERENCE NOTES:**
1. GATE POST: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 2. GATE POST: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 3. TOP RAIL: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 4. BOTTOM RAIL: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 5. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 6. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 7. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 8. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 9. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 10. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 11. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 12. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 13. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 14. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 15. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 16. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 17. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 18. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 19. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 20. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 21. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 22. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 23. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 24. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.
 25. GATE FRAME: 12" DIA. SCHEDULE 40 PIPE, PER ASTM-F1554.

- GENERAL NOTES:**
1. INSTALL FENCING PER ASTM-F1554.
 2. INSTALL FENCING PER ASTM-F1554.
 3. LOCAL GOVERNMENT OF BARRETT, ARIZONA, PER ASTM-F1554.
 4. POST & RAIL FENCE PER ASTM-F1554.
 5. POST & RAIL FENCE PER ASTM-F1554.
 6. POST & RAIL FENCE PER ASTM-F1554.
 7. POST & RAIL FENCE PER ASTM-F1554.
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 21. POST & RAIL FENCE PER ASTM-F1554.
 22. POST & RAIL FENCE PER ASTM-F1554.
 23. POST & RAIL FENCE PER ASTM-F1554.
 24. POST & RAIL FENCE PER ASTM-F1554.
 25. POST & RAIL FENCE PER ASTM-F1554.

STORE EXTRA PARTS OF MULTI-LOCK DEVICE IN TELCO CABINET.

NO PLUNGER OR MUSHROOM REQUIRED.

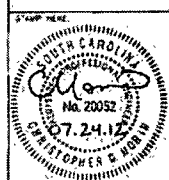
AMERICAN TOWER CORPORATION
410 LONG POINT ROAD
MOUNT PLEASANT, SC 29568
TEL: (803) 871-8200
FAX: (803) 871-8200

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engineers
3401 CALHOUN BLVD., SUITE 100
MOUNT PLEASANT, SC 29568
TEL: (803) 871-6000
FAX: (803) 871-6000

NO.	DESCRIPTION	BY	DATE
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ATC SITE NUMBER
278053
ATC SITE NAME
FINKLEA RELO
SITE ADDRESS
215 HUGGINS RD
LORAIN, SC 29569



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CHECKED BY	CRS
DATE DRAWN	07-24-12
APPROVED BY	FINAL COPY
SHEET TITLE	

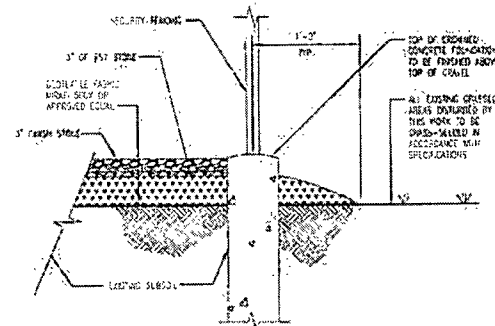
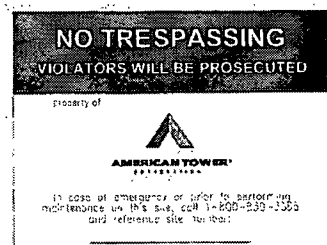
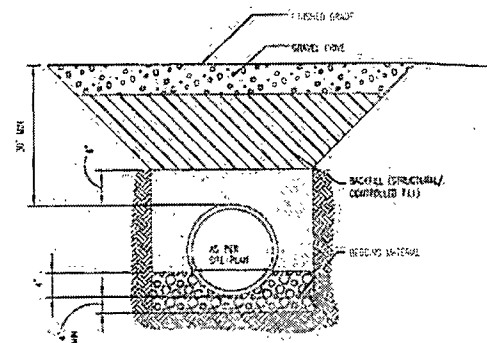
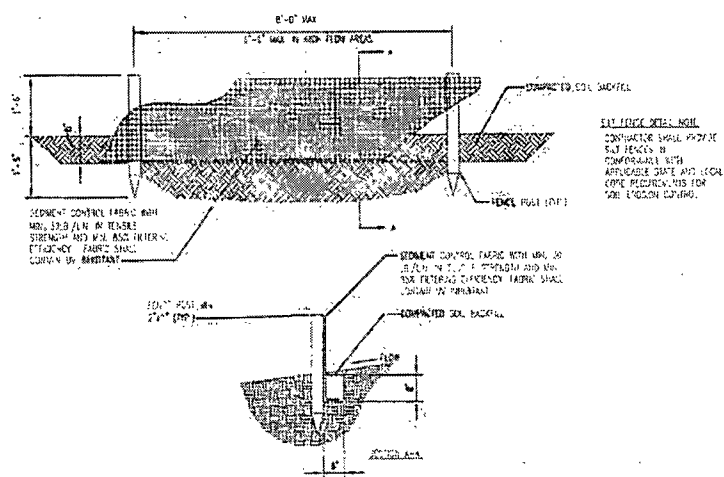
FENCE, GATE AND COMPOUND CROSS SECTION DETAIL

SHEET NUMBER
A-3

N.T.S.

FENCE, GATE AND COMPOUND CROSS SECTION DETAIL

1



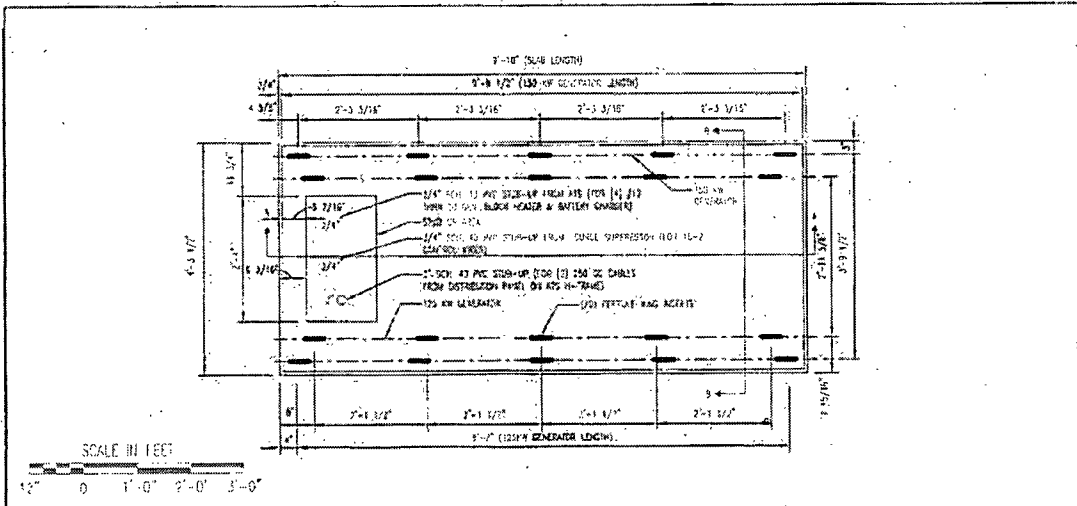
AMERICAN TOWER CORPORATION
895 LONG POINT ROAD
WYOMING, MISSISSAUGA, ONT. L3R 9W4
(416) 871-4245
FAX (416) 871-8829

SHEET REVISION			
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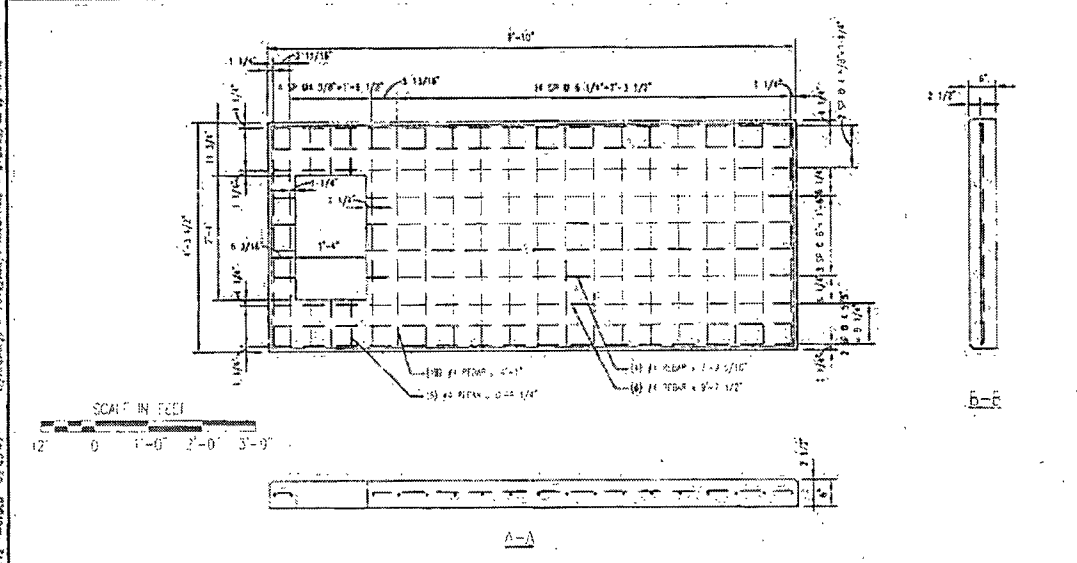


DETAILS

2007, NUMBER:	REV. A
A-4	



1/2"=1'-0" PLAN VIEW



1/2"=1'-0" PLAN VIEW SHOWING REINFORCEMENT

TABLE 1. LIST OF MATERIALS					
NO.	SIZE	QUANTITY	UNIT	REMARKS	REMARKS
1	1/2"	100	FT	REINFORCEMENT	
2	1/4"	100	FT	REINFORCEMENT	
3	1/2"	100	FT	REINFORCEMENT	
4	1/4"	100	FT	REINFORCEMENT	
5	1/2"	100	FT	REINFORCEMENT	
6	1/4"	100	FT	REINFORCEMENT	

- PROPERTY AND CONSTRUCTION NOTES:**
- ALL REINFORCEMENT (BARS) SHALL BE SUPPLIED AND USED TO PREVENT CORROSION. SAVING NUMBER OF CORROSION.
 - CONCRETE TO HAVE A MINIMUM COMPRESSIVE STRENGTH OF 4,000 PSI AT 28 DAYS.
 - REINFORCED CONCRETE CONSTRUCTION AND MATERIALS SHALL BE IN ACCORDANCE WITH ALL STANDARDS AND SPECIFICATIONS.
 - REINFORCED MATERIAL SHALL BE IN ACCORDANCE WITH ALL SPECIFICATIONS AND STANDARDS.
- CONCRETE AND REINFORCEMENT NOTES:**
- REINFORCEMENT SHALL BE PLACED ON WAYS 1/4"
 - REINFORCEMENT SHALL BE PLACED ON WAYS 1/4"
 - REINFORCEMENT SHALL BE PLACED ON WAYS 1/4" INCLUDING CONCRETE COVER.
- NOTES:**
- FOUNDATION SHALL BE BUILT ON REINFORCED CONCRETE. ALL REINFORCEMENT SHALL BE PLACED ON WAYS 1/4" INCLUDING CONCRETE COVER.
 - THE CONCRETE SHALL BE PLACED ON WAYS 1/4" INCLUDING CONCRETE COVER.
 - THE CONCRETE SHALL BE PLACED ON WAYS 1/4" INCLUDING CONCRETE COVER.
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 - THE CONCRETE SHALL BE PLACED ON WAYS 1/4" INCLUDING CONCRETE COVER.

NOTES

AMERICAN TOWER
RELOCATING TOWER
215 HUGGINS RD.
LOUIS, SC 29055
TEL: (803) 871-1000
FAX: (803) 871-1001

BC
architects
engineers
215 HUGGINS RD.
LOUIS, SC 29055
TEL: (803) 871-1000
FAX: (803) 871-1001

NO. 278053
NO. 278053
FINKLEA RELO
215 HUGGINS RD.
LOUIS, SC 29055

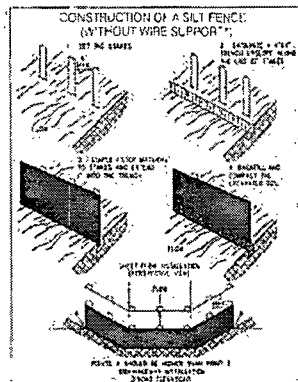
STATE OF SOUTH CAROLINA
PROFESSIONAL ENGINEER
No. 278053
07.24.12
CHRISTOPHER B. BROWN

DATE: 07-24-12
DATE: 07-24-12
DATE: 07-24-12
DATE: 07-24-12

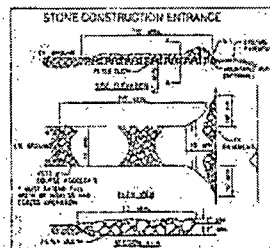
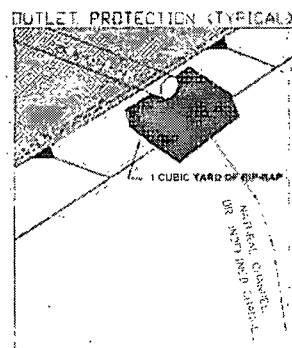
FUTURE
SHARED
GENERATOR
FOUNDATION DETAILS

SHEET NUMBER: A-6
REV: 1

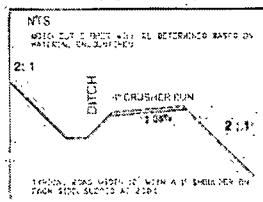
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SILT FENCE DETAIL



TYPICAL ROAD SECTION



1. MULCH TO BE PLACED AT 4" DEPTH
2. APPLY MULCH AT 10 POUNDS PER 1000 SQUARE FEET OR 1.5 TONS PER ACRE
3. APPLY 10-20 TO FERTILIZER AT A RATE OF 100 POUNDS PER ACRE OR 25 POUNDS PER 1000 SQUARE FEET. THE FERTILIZER SHOULD BE 5 INCHES BELOW THE RELEASE OF MULCH IN THE APPLICATION. MULCH AT THE TIME OF PLANTING AND 1-2 INCHES BELOW AFTER PLANTING WITH SEEDING.
4. MULCH AND FERTILIZER MUST BE PLACED INTO THE TIRE OF A TRUCK OR SO. MULCH TO BE PLACED.
5. MULCH MUST BE PLACED.

PERMANENT SEEDING

1. MULCH TO BE PLACED BETWEEN 1 SEPTEMBER AND FEBRUARY 24
2. 100 POUNDS PER ACRE MULCH (TYPICAL) TO THE GRASS
3. 25 POUNDS PER ACRE COMMON LEGUMINA (COMMON CLOVER) MULCH
4. 25 POUNDS PER ACRE COMMON BURNING (COMMON CLOVER) MULCH

WATERWAY SEEDING

1. MULCH TO BE PLACED BETWEEN 1 SEPTEMBER AND FEBRUARY 24
2. 100 POUNDS PER ACRE MULCH (TYPICAL) TO THE GRASS

3. MULCH TO BE PLACED BETWEEN 1 MARCH AND 21 AUGUST
4. 25 POUNDS PER ACRE LEGUMINA (COMMON CLOVER) MULCH
5. 25 POUNDS PER ACRE COMMON BURNING (COMMON CLOVER) MULCH

6. MULCH TO BE PLACED BETWEEN 1 SEPTEMBER AND FEBRUARY 24
7. 100 POUNDS PER ACRE MULCH (TYPICAL) TO THE GRASS
8. 25 POUNDS PER ACRE COMMON LEGUMINA (COMMON CLOVER) MULCH
9. 25 POUNDS PER ACRE COMMON BURNING (COMMON CLOVER) MULCH

10. MULCH TO BE PLACED BETWEEN 1 SEPTEMBER AND FEBRUARY 24
11. 100 POUNDS PER ACRE MULCH (TYPICAL) TO THE GRASS
12. 25 POUNDS PER ACRE COMMON LEGUMINA (COMMON CLOVER) MULCH
13. 25 POUNDS PER ACRE COMMON BURNING (COMMON CLOVER) MULCH

(PS) PERMANENT SEEDING



400 LONGVIEW ROAD
FARMER, MISSISSIPPI 39044
TEL: 601-371-1111
FAX: 601-371-1111

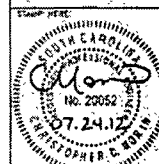
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architects
engineers

1000 COLUMBIA PIKE, SUITE 200
FARMER, MISSISSIPPI 39044
TEL: (601) 371-1111
FAX: (601) 371-1111

NO.	DESCRIPTION	BY	DATE
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PROJECT NUMBER:
278053
SITE NAME:
FINKLEA RELO
SITE ADDRESS:
215 HUGGINS RD
LORIS, SC 29559



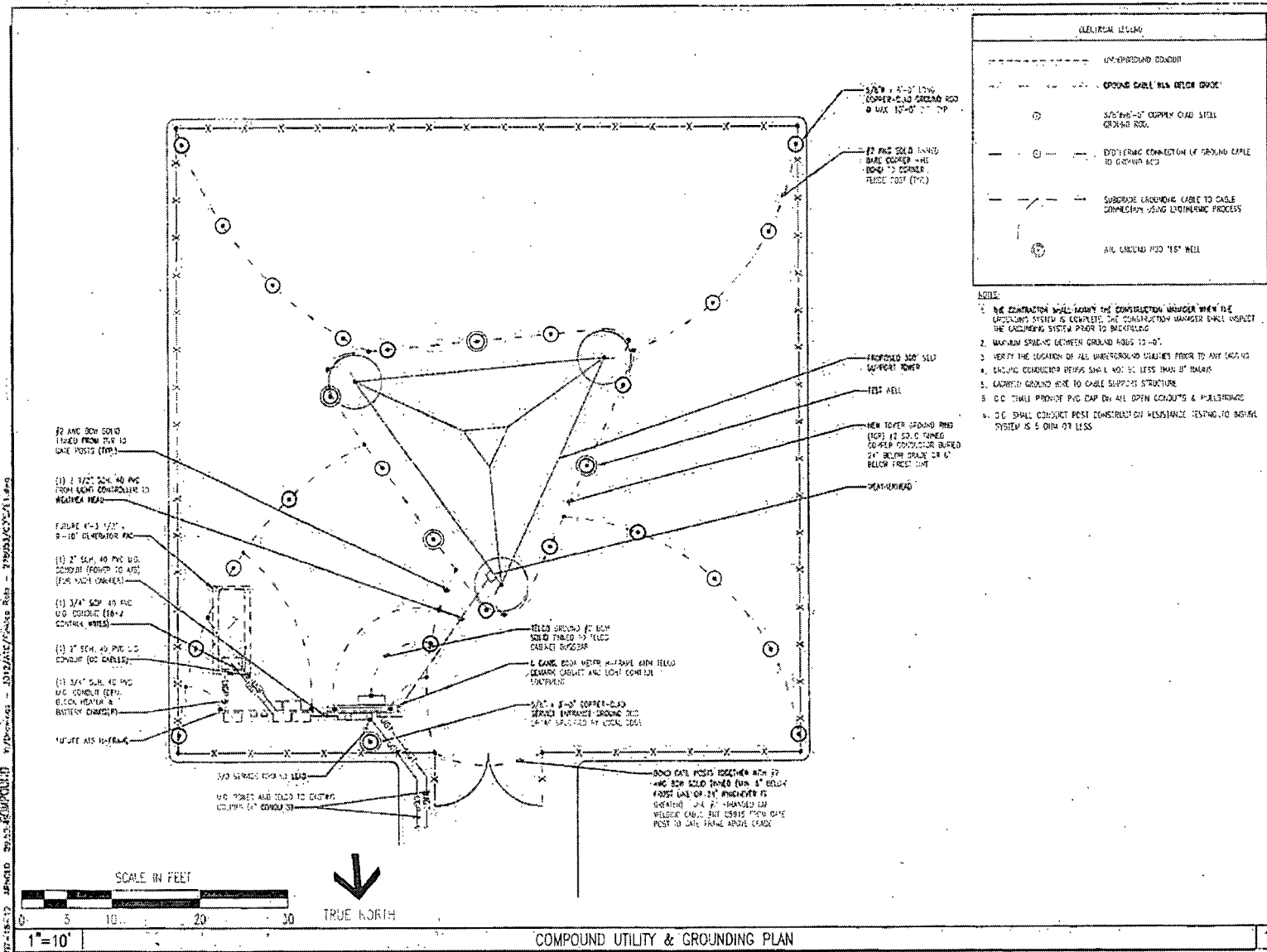
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DATE CHECKED:	07-24-12
DATE REVISION:	FINAL CD'S
SHEET TITLE:	

EROSION &
SEDIMENT CONTROL
DETAILS

SHEET NUMBER	REV. #
G-2	

N.T.S. EROSION & SEDIMENT CONTROL DETAILS

SEEDING SPECIFICATIONS



SYMBOLS	
	UN-EARTHED GROUND
	GROUNDING CABLE RUN BEFORE RISER
	3/4" x 1/2" x 1/2" CUPPER CABLE STEEL GROUND ROD
	DITCHING CONNECTION OF GROUND CABLE TO GROUND ROD
	SUBSTRATE GROUNDING CABLE TO CABLE CONNECTION USING LIGHTNING PROCESS
	AIR LIMITED ROD TEST WELL

- NOTES:**
1. THE CONTRACTOR SHALL VERIFY THE CONSTRUCTION MANAGER WHEN THE GROUNDING SYSTEM IS COMPLETE. THE CONSTRUCTION MANAGER SHALL VERIFY THE GROUNDING SYSTEM PRIOR TO BACKFILLING.
 2. MAXIMUM SPACING BETWEEN GROUND RODS IS 10'-0".
 3. VERIFY THE LOCATION OF ALL UNDERGROUND UTILITIES PRIOR TO ANY GROUNDING.
 4. GROUNDING CONDUCTOR REPAIRS SHALL NOT BE LESS THAN 1/2" DIA.
 5. GROUNDING GROUND ROD TO CABLE SUPPORT STRUCTURE.
 6. C.C. SHALL PROVIDE PVC CAP ON ALL OPEN CONDUITS & PULLSTRINGS.
 7. C.C. SHALL CONDUCT POST CONSTRUCTION RESISTANCE TESTING TO VERIFY SYSTEM IS 5 OHM OR LESS.

AMERICAN TOWER
COMMUNICATIONS
600 SOUTH FORT WARD
NORTH PLUMAGE, SC 29584
TEL: (803) 871-6315
FAX: (803) 871-6328

THIS SERVICE BIDDING FOR EXAMINING, DESIGNING, AND CONSTRUCTION OF GROUNDING SYSTEMS AND TESTS OF GROUNDING SYSTEMS IS SUBJECT TO THE TERMS AND CONDITIONS OF THE BIDDING AND CONTRACT DOCUMENTS FOR THE PROJECT. THE BIDDING AND CONTRACT DOCUMENTS FOR THE PROJECT ARE AVAILABLE FOR REVIEW AT THE OFFICE OF THE PROJECT MANAGER. THE BIDDING AND CONTRACT DOCUMENTS FOR THE PROJECT ARE AVAILABLE FOR REVIEW AT THE OFFICE OF THE PROJECT MANAGER. THE BIDDING AND CONTRACT DOCUMENTS FOR THE PROJECT ARE AVAILABLE FOR REVIEW AT THE OFFICE OF THE PROJECT MANAGER.

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engineers

1000 CHURCH STREET, SUITE 200
FALLS CHURCH, VA 22041-2813
TEL: (703) 871-1000
FAX: (703) 871-1000

SHEET REVISION

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ATC SITE NUMBER
278053

ATC SITE NAME
FINKLEA RELO

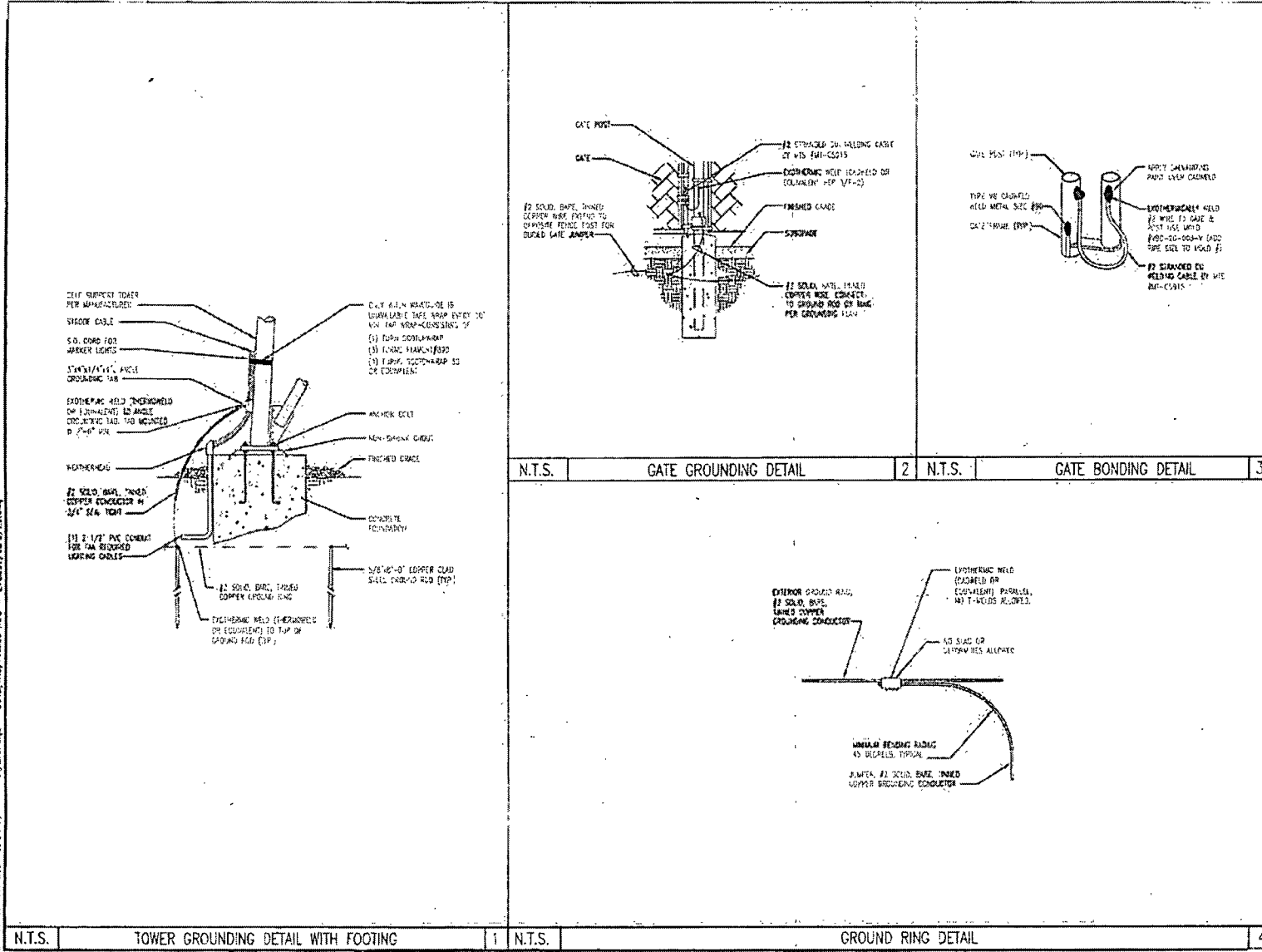
SITE ADDRESS
215 HUGGINS RD
LOUIS, SC 29559

CHRISTOPHER D. MOORE
No. 20052
07.24.12
SOUTH CAROLINA
REGISTERED PROFESSIONAL ENGINEER

COMPOUND UTILITY & GROUNDING PLAN

SHEET NUMBER	REV.
E-1	

07-18-12 AMENDED 09/21/15 T:\Downcast - 2012\AEC\Towers\Reb - 278053\A05\TOWER





AMERICAN TOWER
CORPORATION

430 ELAND POINT ROAD
MOUNT PLEASANT, SC 29504
TEL: (843) 871-8300
FAX: (843) 871-8300

PLEASE ADVISE AMERICAN TOWER OF ANY CHANGES TO THE ORIGINAL DESIGN OR SPECIFICATIONS. THE EXISTING PROPERTY OF AMERICAN TOWER CORPORATION AND THE EXISTING PROVISIONS OF THE EXISTING CONTRACT SHALL REMAIN IN FULL FORCE AND EFFECT. ANY CHANGES TO THE ORIGINAL DESIGN OR SPECIFICATIONS SHALL BE THE RESPONSIBILITY OF THE CLIENT. THE EXISTING PROPERTY OF AMERICAN TOWER CORPORATION AND THE EXISTING PROVISIONS OF THE EXISTING CONTRACT SHALL REMAIN IN FULL FORCE AND EFFECT. ANY CHANGES TO THE ORIGINAL DESIGN OR SPECIFICATIONS SHALL BE THE RESPONSIBILITY OF THE CLIENT.



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P.C. Sincere

1541 COLUMBIA PARK, SUITE 200
FALLS CHURCH, VA 22034-1004
TEL: (703) 471-3000
FAX: (703) 471-4070

SHEET REVISION	
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ATC SITE NUMBER
278053

ATC SITE NAME
FINKLEA RELO

SITE ADDRESS
215 HUGGINS RD
LORIS, SC 29569



SHEET TITLE	
ELECTRICAL DETAILS	

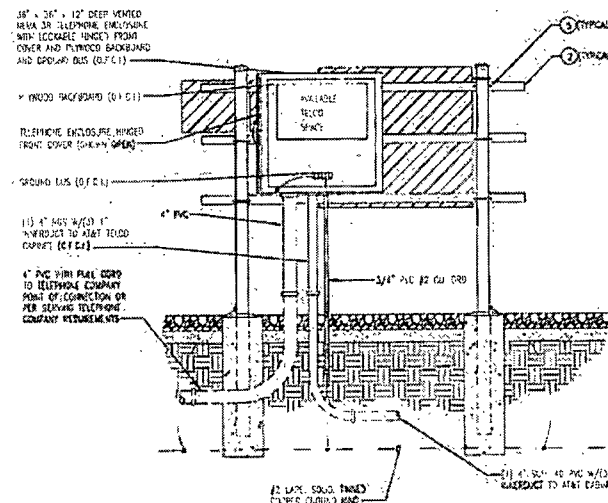
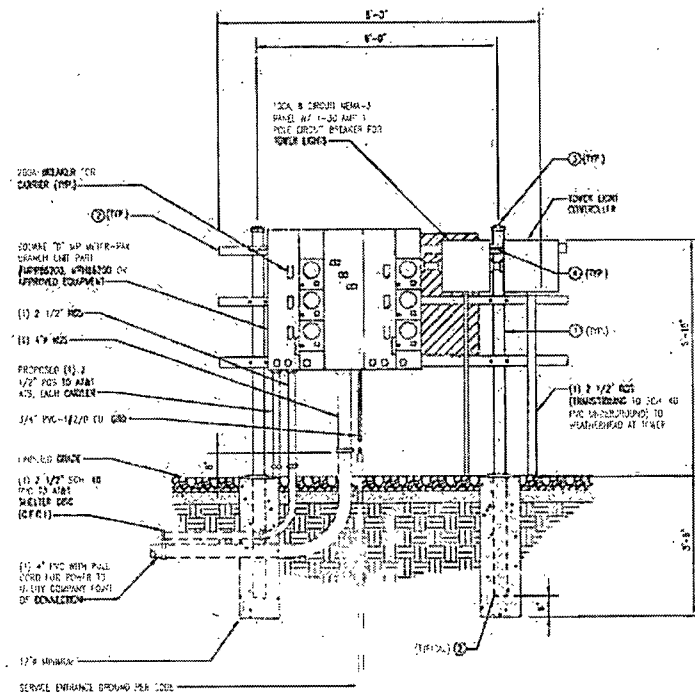
SHEET NUMBER	REV.
E-2	

1. UNLESS OTHERWISE NOTED, ALL UNDERGROUND PIPES TO BE 12 IN. OD. ALL OTHER UNDERGROUND PIPES (CONCRETE) TO BE 20 IN. DI.
2. ALL ABOVE GROUND PIPES TO BE 30 IN. OD. ALL CONNECTIONS TO BE 30 IN. OD. PIPES FOR SEW TIE, VERY RICH COMPOSITION WASTEWATER PIPING TO BE 36 IN.
3. ALL WIRE CONNECTIONS & TERMINALS TO BE SUPPLIED BY CONTRACTOR. WASTEWATER UNDERMINAL ACIDS OR CORROSIVE COMPOSITION WASTEWATER.
4. ALL TIE CONNECTIONS SHALL BE PROTECTED WITH GRATE AT ELONG FROM PIPE TO FOS ABOVE GROUND.
5. TIE IN FROM EXISTING: SIZE MAY BE DETERMINED BY LOCAL HEALTH DEPARTMENT.

RMS (S = 26.5)			
REV	DESCRIPTION	ISSUED BY	QTY.
①	500' AS	5" x 3/8" O.D. R2 2-DIMENSIONAL WIRE	2
②	FLUG	3/8" DIMENSIONAL WIRE	5
③		1-1/2" O.D. R2 CAP	2
④		1/2 x 3/8 x 5" ONLY U-SHAPED ROD	5
⑤		3/8" ONLY FLAT WASHES	12

- [illegible]

UTILITY SCOPE OF WORK



N.T.S.

UTILITY SERVICE H-FRAME - FRONT AND REAR ELEVATIONS



BACK LAMINAE FACTOR OF ACCOMPANYING
LIGATION AS INSTRUMENTS OF SERVICE, AND
THE FUTURE PROSPECTS OF AMERICAN CIVIL
COMMERCE AND TRADE AND POPULATION
SHALL BE RESTRICTED TO THE DOMAINS, BY THE
WHICH THEY ARE PRESENTLY SEVERE.
INVESTIGATION OF AMERICAN IN ANY BRANCH
AN SHIP OF IN PART, OF PROPOSED DEPT. IN
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COMPARISON SHALL TO BE IN THE AMERICAN
ELECTIONS SHALL BE IN THE AMERICAN
AND COMMERCE WITHOUT THE PROSPECTS
AND THE, CONTACT AND THE SMALL CONTACT
THE FACE PROSPECT OF ACCEPTANCE OF BACK
REASONING.

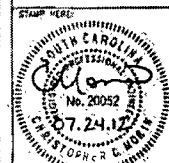
BC

architects
engineers

3851 COLUMBIA PKY, S.W. 330
TALLS CEMENT #1 27041 7860
TEL (520) 571-5300
FAX (520) 531-5300

SHEET REVISION		
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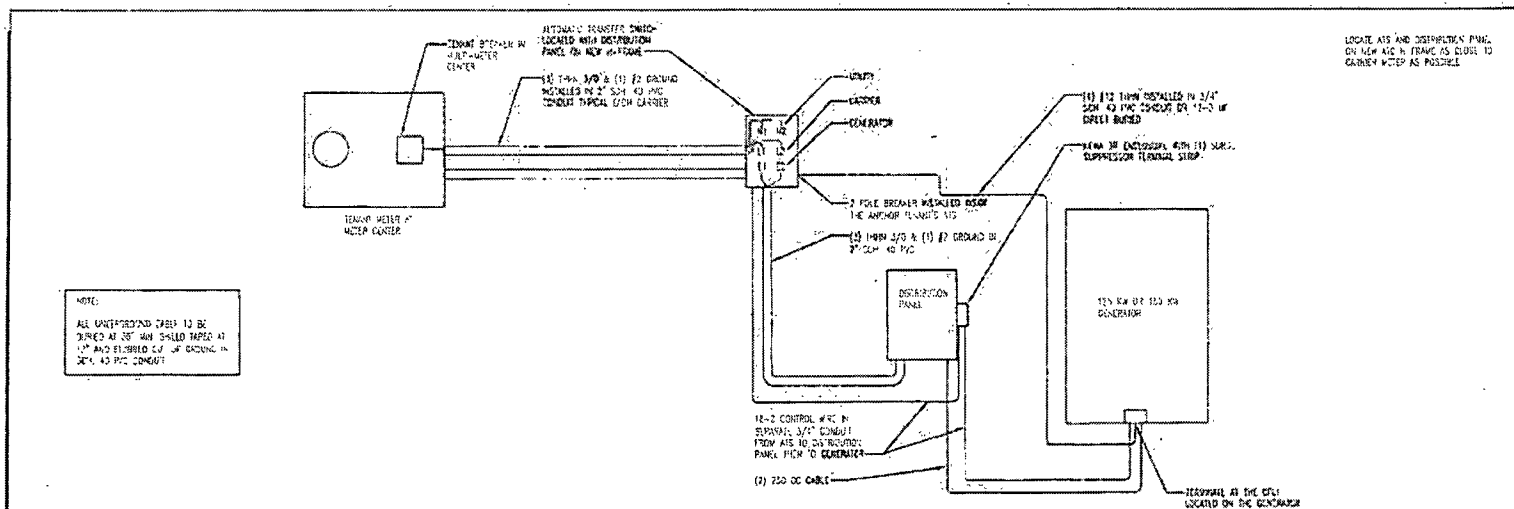
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278053
AFC SITE NAME:
FINKLEA RELO
CITY ADDRESS:
215 HUGGINS RD
LOUIS, SC 29569



ORANGE ST.	401
CHECKED BY	DRS
DATE DRAWN	DT-24-12
SUBMISSION	FINAL CO'S
REMARKS	

ELECTRICAL DETAILS

Sheet Number. **E-3** Rev. #



NOTE:
ALL UNIFORMED JAPS TO BE
DRESSED AT JET WITH S-SHIRT TAPED AT
1" AND FLEETED L/S OF GARDING IN
JETS. 40 PPS COMMENT

LOCATE AIS AND DESCRIPTIONS FROM
ON NEW AIS IN FRAME AS CLOSE TO
CATHED WATER AS POSSIBLE

[illegible]

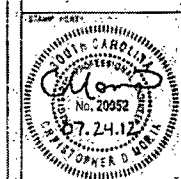
NEW YORK OFFICE
 100 WALL STREET
 NEW YORK, N.Y. 10038
 TEL: (212) 871-1000
 FAX: (212) 871-1000

SHEET REVISION		
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ATC SITE NUMBER:
278053

ATC SITE NAME:
FINKLEA RELO

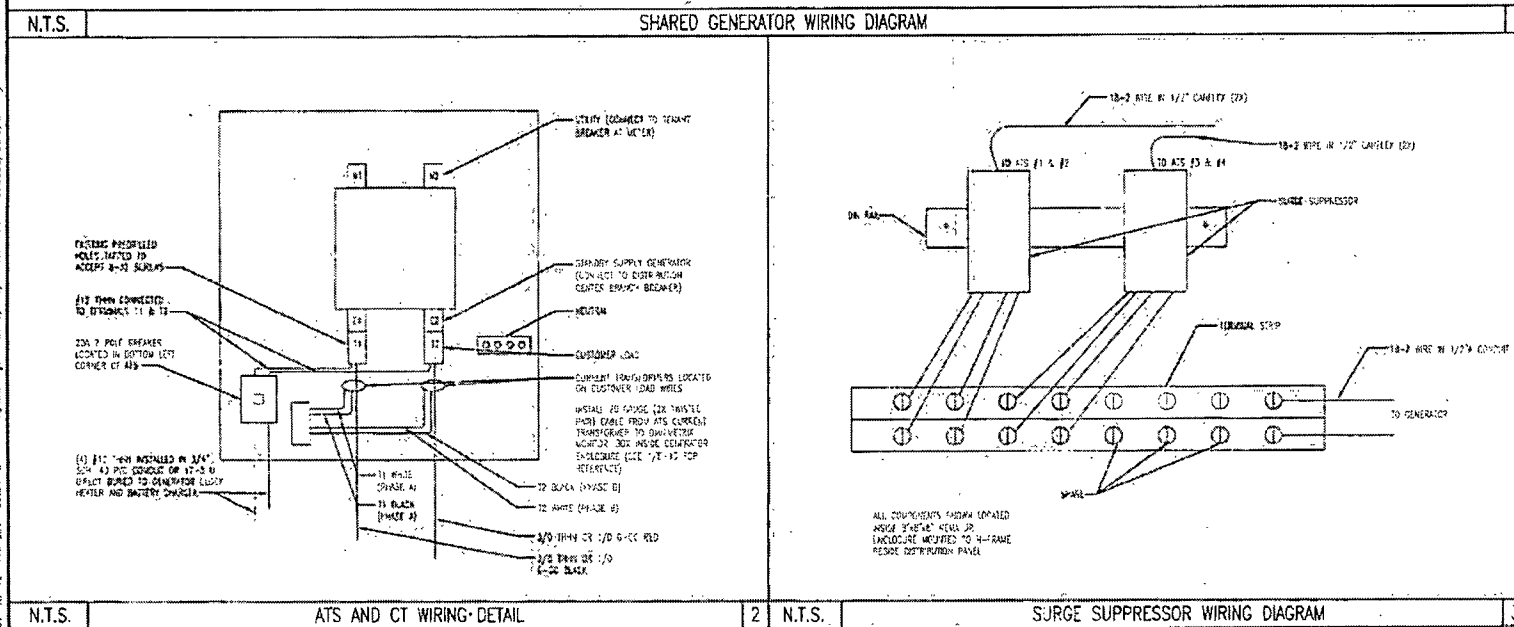
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LOUIS, SC 29569

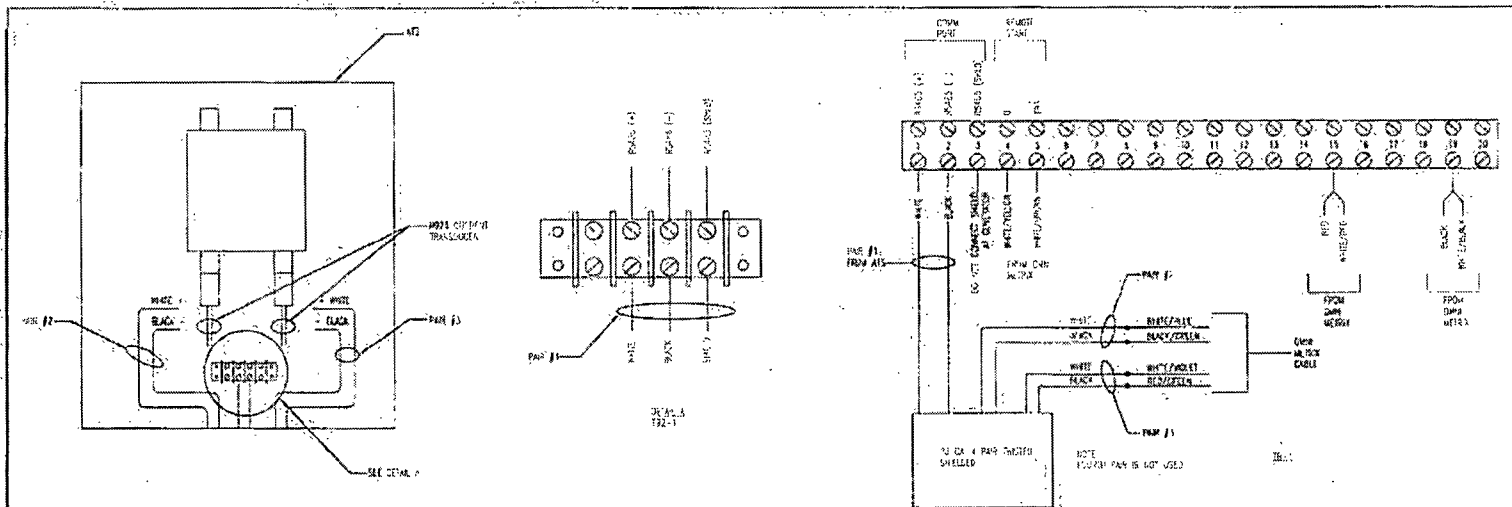


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COMPLD BY	GTS
DATE ENVRD	07-24-12
SUBMITTER	FINAL CO'S
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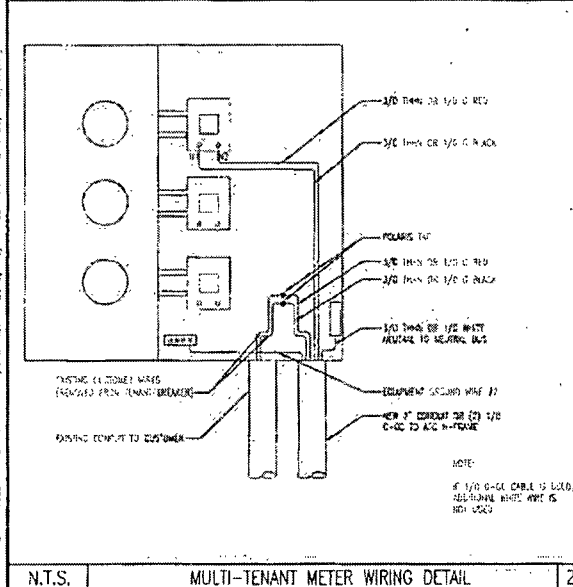
FUTURE SHARED
EQUIPMENT
ELEC. DETAILS

SHEET NUMBER:	REV. #
E-4	

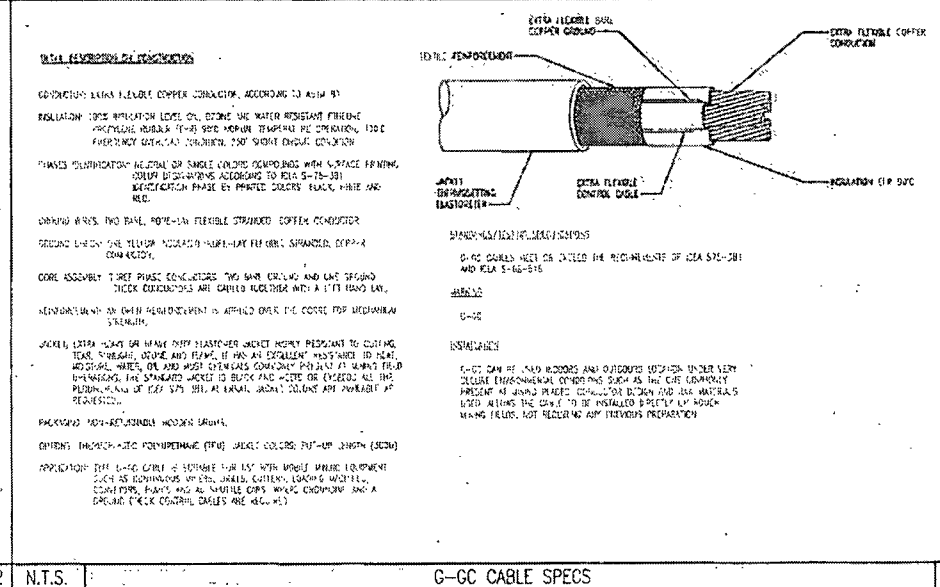




1 N.T.S. OMX ATC GENERAC INSTALLATION DETAIL 1



2 N.T.S. MULTI-TENANT METER WIRING DETAIL 2



3 N.T.S. G-GC CABLE SPECS 3

AMERICAN TOWER
COMMUNICATIONS

100 LOW POINT ROAD
WYOMING, WY 83094
TEL: (307) 871-1800
FAX: (307) 871-1801

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SUITE 200
DENVER, CO 80202
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SHEET REVISION

NO.	DESCRIPTION	BY	DATE
1			
2			
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10			

ATC SITE NUMBER
278053

ATC SITE NAME
FINKLEA RELO

SITE ADDRESS
215 HUGGINS RD
LOUIS, SC 29669

DESIGN BY	AGE
CHECKED BY	DATE
DATE COMPILED	07-24-12
TRANSMISSION	FINAL EDS

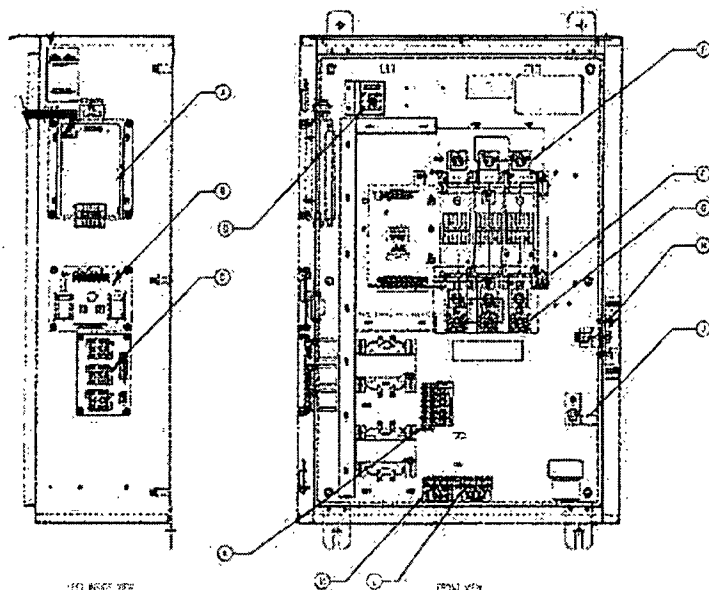
SHEET TITLE:

ELECTRICAL DETAILS

SHEET NUMBER	REV.
E-5	

NOTE:

THIS DRAWING REPRESENTS AKA AT CONFIGURATION OF THIS
MODELS 100-400V AC (120-240V 1PH) VOLTAGE
TO (120-240V 1PH) VOLTAGE
100A 1C (120/480V 1PH) 40-100C

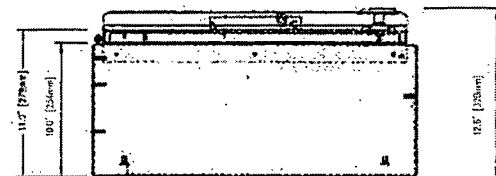
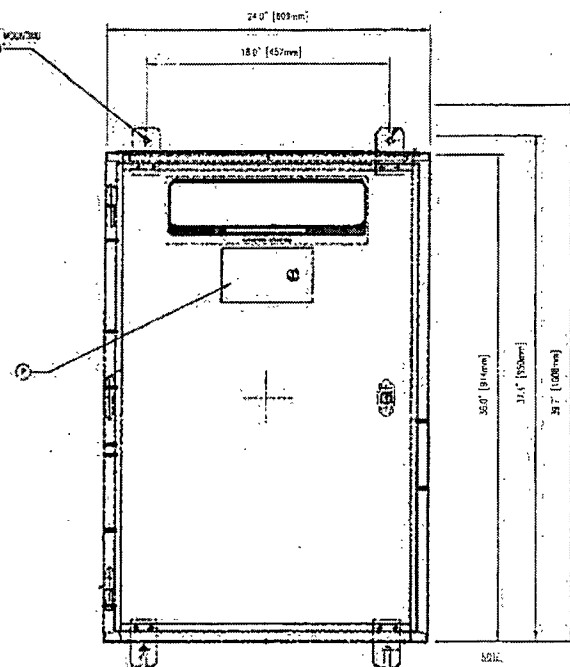


FRONT VIEW

FRONT VIEW

- A - ATS CONTROLLER
- B - SWITCHING TRANSFORMER ASSY
- C - CONTROL RELAYS
- D - MAIN TERMINAL DISCONNECT SWITCH
- E - MULTIPLE UN-GROUNDED CONDUCTOR CONNECTIONS
- F - GENERATOR UN-GROUNDED CONDUCTOR CONNECTION
- G - LOAD UN-GROUNDED CONDUCTOR CONNECTION
- H - NEUTRAL SUPPLY CONNECTIONS
- I - GROUND TERMINAL
- J - GROUNDING TRANSFORMER CONNECTIONS (OPTIONAL)
- K - SIGNAL BEFORE TRANSFER CONNECTIONS (OPTIONAL)
- L - POWER CONNECTIONS
- M - ACCESS PANEL - OPERATION INTERFACE

RECOMMENDED MOUNTING
HORIZONTAL 1/4"



MAIN DOOR SWING 180° FROM
CLOSE TO OPEN 140° MAX
(24" (609mm) DEPTH)
DIMENSION 1/4"

N.T.S.

AUTOMATIC TRANSFER SWITCH DETAIL

AMERICAN TOWER CORPORATION
435 10th Street
Atlanta, GA 30309
Tel: (404) 871-1000
Fax: (404) 871-1001

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engineers

1811 CORNWELL AVE. SUITE 200
FALLS CHURCH, VA 22034-1001
TEL: (703) 671-5000
FAX: (703) 671-5001

SHEET REVISION	
NO.	DESCRIPTION
1	AS SHOWN

ATC SITE NUMBER
278053

ATC SITE NAME
FINKLEA RELO

ONE ADDRESS
**215 HUGGINS RD
LORIS, SC 29559**

STAMP HERE:

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CHECKED BY:	CRS
DATE DRAWN:	07-24-12
SUBMISSION:	FINAL CD'S

**FUTURE ATS
DETAIL**

SHEET NUMBER	REV. #
E-6	

LOAD TRENDRING WITH 0-10VDC OUTPUT



K1216



High current transducer for 1000-amp loading

K1216



Low current transducer for 100-amp loading

K1216



High current transducer for 1000-amp loading

Current Transducers: 0-10VDC Analog Output

The Hawkeye 723/923 Series provide accurate load sensing information with a proportional 0-10VDC output signal. Devices offer three ampere range options, with slide-switch selection for easy field adjustment - no need for jumpers.

APPLICATIONS

- Load trending
- Motor control
- Fan/pump status

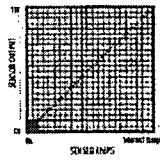
Self-powered analog current sensors

- 0-10VDC output
- Self-shipping split-core for easy installation - no need to remove conductor (K1233)
- No jumpers on terminals - no calibration error
- No external power required for sensor

Factory-wired for ease of installation

- Factory calibrated field-adjustable ranges for high resolution and low calibration error
- One device for stock and installation - no need for installation changes
- Removable mounting bracket for installation flexibility
- Bracket and K1233 can be installed in three different configurations - no need for shims
- 100% solid state, no moving parts to fail
- 5-year limited warranty

EXAMPLE LINEAR OUTPUT



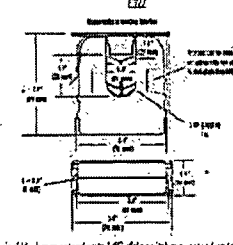
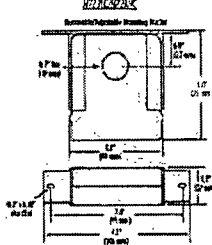
Provides flexibility Mount anywhere

SPECIFICATIONS

Model	Output
K1216	0-10VDC
K1233	0-10VDC
K1234	0-10VDC
Frequency Range	10 Hz to 100 kHz
Accuracy	±0.5% full scale error (typical)
Response Time	100 μs
Temperature Range	-40 to 125°C
Humidity Range	5 to 95% RH
Storage Temp	-40 to 125°C
Operating Temp	-40 to 125°C

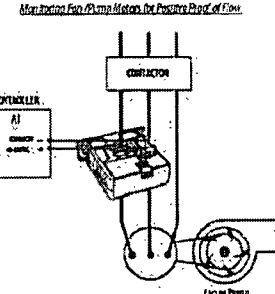
For complete specifications, please contact the factory.

DIMENSIONAL DRAWINGS



*Terminal block may extend up to 1/8" wide with one, extend up to 1/4" over the height dimension shown.

APPLICATION/MOUNTING EXAMPLE



Model	Output	Input	Output
K1216	0-10VDC	0-10VDC	0-10VDC
K1233	0-10VDC	0-10VDC	0-10VDC
K1234	0-10VDC	0-10VDC	0-10VDC

ATTENTION:
All units are shipped with the factory default settings.



AMERICAN TOWER

1750 YORK ROAD
SUITE 200
FARMERSVILLE, OH 43024
TEL: 614.393.3333
FAX: 614.393.3333

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engineers

501 CHURCH STREET, SUITE 200
FARMERSVILLE, OH 43024
TEL: 614.393.3333
FAX: 614.393.3333

PROJECT NO. _____ DATE _____

NO. _____

DATE _____

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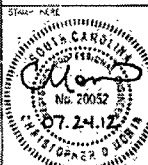
DATE _____

DATE _____

ATE SITE NUMBER
278053

ATE SITE NAME
FINKLEA RELO

DATE ADDRESS
215 HUGGINS RD
LORAIN, OH 43055



DESIGNED BY _____

CHECKED BY _____

DATE DRAWN _____

DATE APPROVED _____

DATE _____

CT
SPECS
SHEET

E-7

Screen 1 of 2

		Device Information (Section 1 of 1) Supply Voltage: 480V 3P 3W Bus Rating: 400A Ground Bar: G.D. Rating: Main Device Type: 400A Main Terminals: 400A Main Lug Rating: 800A Main Lug Block: 800A Neutral: 800A Device Modifications Ref # Description Notes Branch Devices Qty Poles Trip Frame Amps IRLD 1 1 30 100 10 2 1 40 100 10 3 1 40 100 10 4 1 40 100 10 5 1 40 100 10 6 1 40 100 10 7 1 40 100 10 8 1 40 100 10 9 1 40 100 10 10 1 40 100 10 11 1 40 100 10 12 1 40 100 10 13 1 40 100 10 14 1 40 100 10 15 1 40 100 10 16 1 40 100 10 17 1 40 100 10 18 1 40 100 10 19 1 40 100 10 20 1 40 100 10 21 1 40 100 10 22 1 40 100 10 23 1 40 100 10 24 1 40 100 10 25 1 40 100 10 26 1 40 100 10 27 1 40 100 10 28 1 40 100 10 29 1 40 100 10 30 1 40 100 10 31 1 40 100 10 32 1 40 100 10 33 1 40 100 10 34 1 40 100 10 35 1 40 100 10 36 1 40 100 10 37 1 40 100 10 38 1 40 100 10 39 1 40 100 10 40 1 40 100 10 41 1 40 100 10 42 1 40 100 10 43 1 40 100 10 44 1 40 100 10 45 1 40 100 10 46 1 40 100 10 47 1 40 100 10 48 1 40 100 10 49 1 40 100 10 50 1 40 100 10 51 1 40 100 10 52 1 40 100 10 53 1 40 100 10 54 1 40 100 10 55 1 40 100 10 56 1 40 100 10 57 1 40 100 10 58 1 40 100 10 59 1 40 100 10 60 1 40 100 10 61 1 40 100 10 62 1 40 100 10 63 1 40 100 10 64 1 40 100 10 65 1 40 100 10 66 1 40 100 10 67 1 40 100 10 68 1 40 100 10 69 1 40 100 10 70 1 40 100 10 71 1 40 100 10 72 1 40 100 10 73 1 40 100 10 74 1 40 100 10 75 1 40 100 10 76 1 40 100 10 77 1 40 100 10 78 1 40 100 10 79 1 40 100 10 80 1 40 100 10 81 1 40 100 10 82 1 40 100 10 83 1 40 100 10 84 1 40 100 10 85 1 40 100 10 86 1 40 100 10 87 1 40 100 10 88 1 40 100 10 89 1 40 100 10 90 1 40 100 10 91 1 40 100 10 92 1 40 100 10 93 1 40 100 10 94 1 40 100 10 95 1 40 100 10 96 1 40 100 10 97 1 40 100 10 98 1 40 100 10 99 1 40 100 10 100 1 40 100 10
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Screen 2 of 2

Power-Rated Device Specifications					
Item No.	Device	Rating	Frame	Terminals	Notes
1	400A	400A	400A	400A	
2	400A	400A	400A	400A	
3	400A	400A	400A	400A	
4	400A	400A	400A	400A	
5	400A	400A	400A	400A	
6	400A	400A	400A	400A	
7	400A	400A	400A	400A	
8	400A	400A	400A	400A	
9	400A	400A	400A	400A	
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13	400A	400A	400A	400A	
14	400A	400A	400A	400A	
15	400A	400A	400A	400A	
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LOUISVILLE, KY 40204
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FAX: (502) 271-1000

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SHEET REVISION

NO	DESCRIPTION	BY	DATE
1			
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ATC SITE NUMBER:
278053

ATC SITE NAME:
FINKLEA RELO

SITE ADDRESS:
215 HUGGINS RD
LOUISVILLE, KY 40204

Seal of the State of South Carolina
No. 20052
07-24-12
CHRISTOPHER S. BOYD

DESIGNED BY: **ATC**

CHECKED BY: **ATC**

DATE: **07-24-12**

REVISION: **FINAL**

SHEET TITLE:
FUTURE DISTRIBUTION PANEL DIAGRAM & NOTES

SHEET NUMBER: **E-8**

Step 1: Place the OMX unit on top of the alternator housing, behind the M-Panel enclosure box, as shown. Route the OMX cable into the housing and terminate to the terminal strip, picking up the positive battery + and GND, as described in the main installation guide. Connect to serial cable (blue wire) from monitor to serial port located on front of control panel.

Remove and terminate ends and insulate all wires except for red, red/white, black, black/white, white/yellow, and White/brown.

There is no polarity requirement for this connection.

Step 3: Plug the RS232 cable onto the OIMX unit's DB9 connector, noting the label "OIMX END." Connect the other end of the cable, the "Generic End" to the H-Panel Diagnostic Port. Screw down the jack screws firmly, but do not over tighten, as you can shear off these small screws.

Step 5: Call the OmniMatrix support line to confirm operation and to perform simple tests. The number is 770-209-0012 ext. 1020

Notes:

Questions: Call OmniMetric Support at 770-209-0012

OMNIMETRIX
GLOBAL VIBRATION MONITORING
CONTROL • DIAGNOSTICS

AMERICAN TOWNE
Enterprises, Inc.
128 LONG POINT ROAD
MOUNT PLEASANT, SC 29564
TEL (843) 271-8345
FAX (843) 271-0494

[illegible]

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1	ADD TOTALS TO ALL PAGES	J. A. B.	11-1-78		
2	REVISIONS TO ALL PAGES	J. A. B.	11-1-78		
3	REVISIONS TO ALL PAGES	J. A. B.	11-1-78		
4	REVISIONS TO ALL PAGES	J. A. B.	11-1-78		
5	REVISIONS TO ALL PAGES	J. A. B.	11-1-78		
6	REVISIONS TO ALL PAGES	J. A. B.	11-1-78		
7	REVISIONS TO ALL PAGES	J. A. B.	11-1-78		
8	REVISIONS TO ALL PAGES	J. A. B.	11-1-78		
9	REVISIONS TO ALL PAGES	J. A. B.	11-1-78		
10	REVISIONS TO ALL PAGES	J. A. B.	11-1-78		

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278053
ATC CRT NAME:
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SAC ADDRESS
215 HUGGINS RD
LOUIS, SC 29569

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COLLECTOR
No. 20052
07.24.12
CHRISTOPHER G. WORTH

DRAWN BY	AGP
CHECKED BY	ORS
DATE DRAWN	07-24-12
SURVEY NO.	FINAL 2012

GENERATOR INSTALLATION ADDENDUM

SHEET NUMBER:	REV.
F-10	

13-12 24,000 59,482 7/25/19 - 2017/AR/Finalized Rep -- 77MM03/CY25/Finalized

N.T.S.

GENERATOR INSTALLATION ADDENDUM

T

SYMBOL LIST

(SYMBOLS SHOWN MAY NOT BE USED ON THIS PROJECT)

- CONDUIT SIZE UP
- CONDUIT SIZE DOWN
- GROUNDING CONDUCTOR
- INDICATES WORKING CONTINUATION
- ENCLOSED CIRCUIT BREAKER, SIZE AS SHOWN
- FUSED DISCONNECT SWITCH, SIZE AS SHOWN
- RECEPTACLE, PANELBOARD, ETC. AS SHOWN
- NOTES, REFERENCE, ETC. AS SHOWN
- INDICATES WORKING HEIGHT ANT.
- FENCING ETC. (EQUIVALENT TO RUMBA)

ABBREVIATIONS

A	AMP	AMPERE	KVA	KILOVOLT AMPERE
AWG	AWG	AMERICAN WIRE GAGES	KWH	KILOWATT HOURS
CL	CL	CENTIMETER	L	LENGTH
FT	FT	FOOT	P	POUND
ANT	ANTENNA		MAX	MAXIMUM
CON	CONDUIT		MIN	MINIMUM
CAB	CABINET		NSD	NATIONAL STANDARD
CIR	CIRCUIT		CODE	CODING
BRK	BREAKER		NO	NUMBER
CHD	CHORD		NTG	NOT TO SCALE
COX	COAXIAL			
CC	COMPANY		DC	DIRECT CURRENT
CONTR	CONTRACTOR		D	DOLLAR
U	UNIT		K.G.S.	KILOGRAMS
DEG	DEGREE		ST	STANDARD
DISC	DISCONNECT		SCH	SCHEDULE
DRW	DRAWING		SHED	SHED
ENC	ENCLOSED		ELL	ELLIPSE
CRCT	CIRCUIT		(TYP)	TYPICAL
ELC	ELECTRICAL		L	LABORATORY
EXST	EXISTING		V	VOLT
FT	FEET		W	WIDTH OR WIRE
GND	GROUND		WT	WEIGHT
TRF	TRANSFORMER			

ELECTRICAL NOTIFICATION

1. FURNISH ALL LABOR, MATERIALS, TOOLS, EQUIPMENT SERVICES FOR ALL ELECTRICAL WORK AS INDICATED IN ACCORD WITH PROVISIONS OF CONTRACT DOCUMENTS COORDINATE WITH WORK OF ALL OTHER TRADES. FURNISH AND INSTALL ALL SUPPLEMENTARY OR BEST PRACTICE ITEMS AND DEVICES TO SECURE AND COMPLETE INSTALLATION.
2. FOR EXACT LOCATIONS OF BUILDING ELEMENTS, REFER TO ARCHITECTURAL DWGS. FIELD VERIFY LOCATIONS AND ARRANGEMENT OF ALL EXISTING SYSTEMS AND EQUIPMENT.
3. ALL EXTERIOR DEVICES AND EQUIPMENT SHALL BE WEATHERPROOF, NEMA-3R, PERFORM ALL WORK IN ACCORD WITH FOLLOWING CODES:
 1. NATIONAL, STATE AND LOCAL CODES, REGULATIONS AND ORDINANCES
 2. NATIONAL ELECTRICAL CODE (NEC) 1999 EDITION
 3. ALL APPLICABLE LOCAL JURISDICTIONS
4. USE UL LISTED ELECTRICAL MATERIALS WHERE LISTING HAS BEEN ESTABLISHED FOR MATERIALS OF CONSTRUCTION.
5. SAFETY SWITCH, "KNOCK OUT THIS IN NEW" (ENCLOSURE, NEMA-3R, N-3R) ON WET LOCATIONS.
6. CONDUIT, ALL ELECTRIC METALLIC (EMT) CONNECTIONS SHALL BE COMPRESSION TYPE (NO POST-METAL AND SET SCREWS), MIN. 1/4". USE FIBERGLASS METAL (FIBERGLASS) CONDUIT FOR CONNECTION TO ALL VIBRATING EQUIPMENT AND CONDUIT.
7. WIRE IN CONDUIT SIZES #10 AND SMALLER SHALL BE SOLID COPPER WITH TYPE THHN/THWN AND VOLT INSULATION. THE MAX. CONDUCTION SIZE SHALL BE NO. 12 AWG. CONDUIT WIRING MAY BE IN 1" AND 1 1/2" GROUNDED RIGID SHALL BE INSTALLED IN ALL CIRCUITS. WIRING OF STEEL RAYS AND UTILITY SHALL BE STRANDED COPPER WITH TYPE THHN/THWN OR TYPE THHN/THWN INSULATION. SPICES FOR WIRE SIZES #10 AND SMALLER SHALL BE CONDUCTIVE SPRING TYPE DEVICES. WIRE SIZES #10 AND LARGER SHALL HAVE DIRECT CONNECTIONS WITH SUFFICIENT LAYERS OF TAPE TO EQUAL INSULATION OF WIRE BEING JOINED.
8. PROVIDE NAMEPLATES ON ALL DEVICES OF ELECTRICAL EQUIPMENT, SHOW AS, CIRCUIT BREAKERS, DISCONNECT SWITCHES, PANELBOARDS, ALL PANEL BOARDS NAMEPLATES SHALL BE ENGRAVED WITH WHITE LETTERS ON A BLUE FIELD, 2 1/2" x 3 1/2" WITH 1/4" HIGH (MIN.) LETTERS. PLATE MATERIAL SHALL BE TIGHTLY MATCHED TO ALUMINUM (1/8" THICK MIN.) "ALUMINUM" TO WITHSTAND EXTREME WEAR AND OUTDOOR TEMPERATURES. PLATE SHALL HAVE PROTRUSION SENSITIVE REMOVING BACKING SUITABLE FOR OUTDOORS.
9. THE EQUIPMENT SHALL BE PROVIDED BY AS A PREFABRICATED PACKAGED UNIT, THE CONTRACTOR IS TO PROVIDE ALL OTHER EQUIPMENT, CONDUIT AND CABLES FOR A COMPLETE JOB.
10. ALL TERMINATIONS SHALL BE LISTED AND DERIVED FOR USE WITH THE RATED CONDUCTORS.
11. POWER COMPANY OR THE CONTRACTOR AS REQUIRED BY THE POWER COMPANY, SHALL TERMINATE THE POWER CABLES (SUPPLIED BY THE POWER CO.) A 10' MIN. MIN.
12. CONDUIT LINES SHALL HAVE A CONDUIT SIZE DOWNWARD AND AWAY FROM THE SHELTER TO THE PROPERTY LINE. IN THE CASE WITH 1/2" 1/2" AWAY FROM THE SHELTER, PREVIOUS SHALL BE CALCULATED ALONG STRAIGHT LINES BEFORE CONDUITS ARE Laid TO THE ELEVATION CAN BE ADJUSTED IF NECESSARY, TO AVOID UNDESIRABLE DESTRUCTIVE MANUFACTURED DEVICES SHALL HAVE A MIN. 1/2" 1/2" FOR CONDUITS.
13. BENDS SHALL HAVE A MINIMUM RADIUS 36" FOR CONDUITS. ALL CONDUITS ENTERING THE SHELTER SHALL BE SEALED WITH SEALANTS THAT ARE IDENTIFIED FOR USE WITH THE CABLE INSULATION, SHELL, OR OTHER COMPONENTS A BEAD OF SILICONE SHALL BE PLACED AROUND ALL CONDUIT PENETRATIONS INTO THE SHELTER.

15. METER SOCKET TO BE SUPPLIED BY OR AS PER POWER COMPANY REQUIREMENTS.
16. CIRCUIT FAULT PROTECTION IS REQUIRED FOR ALL UTILITY DEVICES.
17. ALL ELECTRICAL GROUNDING SHALL BE MAINTAINED THROUGHOUT THE SITE ELECTRICAL SYSTEM.

CABLE WORKS (GENERAL NOTES)

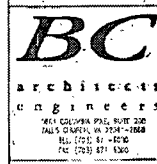
1. ALL COAX CABLE SHALL BE 1/2" MIN. WITH A "TAP" 1/2" WITH TAPPING FROM VERTICAL TO HORIZONTAL. JAMPER LENGTH SHALL NOT EXCEED 6' ON EACH SIDE OF FEEDER.
2. ALL COAX CABLES SHALL BE PER PERMITTER SECTIONS, ALL CONNECTIONS TO BE 7/16" DIA. FEMALE COUPLER. ALL JOINTS SHALL BE 1/2" DIA. SERIES (NO SPLICED) 7/16" DIA. ON TO 7/16" DIA. (NO 1/2" DIA.) SHALL BE 6' LONG MAX. (UNLESS OTHERWISE NOTED). ALL EXTERIOR CONNECTIONS SHALL BE WEATHERPROOF TAPE.
3. ALL ANTENNA MOUNTS MUST BE GROUNDED. ALL COAX FIBER CABLE MUST BE GROUNDED WITHIN THE MOUNT (PREPARED WITH 2" DIA. CONNECTION THROUGH GROUND BAR AT EACH SECTION). TERMINAL SHALL BE GROUNDED AT EQUIPMENT END AND ANTENNA END TO GROUND BARS. COUPLERS SHALL BE RIMMED BETWEEN TWO ENDS, PROVIDE GROUNDING AT SHIELD.
4. FOR MONOPILES - ALL CABLES SHALL RUN ON INSIDE OF MONOPILE. CABLE UNDER OR STANDOFFS PROVIDE CABLE SUPPORTS EVERY 4' FOR 1-1/2" CABLE, EVERY 4' FOR 7/8" CABLE, GROUNDING AS FOLLOWS:
 - AT TOP PRIOR TO TURN DOWN
 - AT BOTTOM BEFORE HORIZONTAL TURN
 - AT EQUIPMENT
 - BOND CABLE USE (POWER AND EQUIPMENT CABLE)
5. ALL SHELTER & ASSOCIATED EQUIPMENT SHALL BE GROUNDED BY EQUIPMENT MANUFACTURER REPRESENTATIVE.

GENERAL NOTICE TO ELECTRICAL CONTRACTOR

1. THE CONTRACTOR SHALL PROVIDE (TURNED AND INSTALLED) ALL NECESSARY CONDUITS, WIRING AND CABLES TO SUPPORT THE AMERICAN TOWER FURNISHED ITEMS.
2. PROVIDE ITEMS IN CONFORMITY WITH MANUFACTURER'S RECOMMENDATION AND N.E.C.
3. FOR LOCATION OF NEW EQUIPMENT & ANTENNAS SEE ARCHITECTURAL DWGS.
4. COORDINATE IN ADVANCE ALL WORK TO BE DONE WITH POWER UTILITY CO.
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAKING ALL CONNECTIONS AND MAKING A COMPLETE OPERATIONAL SYSTEM AS APPROVED BY AMERICAN TOWER REPRESENTATIVE.
6. THE CONTRACTOR SHALL CONVEY, COORDINATE AND COMPLY WITH RECOMMENDATIONS MADE BY THE NEW EQUIPMENT MANUFACTURER REPRESENTATIVE.
7. ELECTRICAL CONTRACTOR TO INCLUDE THE FINAL CONNECTION WORK AND REQUIRED STARTING AND INSPECTIONS TO COMPLETE THE POWER AND TELEPHONE CONNECTION TO EQUIPMENT. COORDINATE WITH THE GENERAL CONTRACTOR FOR EQUIPMENT STARTUP.
8. PRIOR TO ANY WORK OR ORDERING OF ANY MATERIALS, THE CONTRACTOR SHALL VERIFY THAT THE EXISTING SERVICE VOLTAGE IS THE SAME VOLTAGE AS SHOWN FOR THE NEW EQUIPMENT. IF THE VOLTAGE IS THE SAME, THE CONTRACTOR MAY PROCEED, IF PRESENT, THE CONTRACTOR SHALL NOTIFY AMERICAN TOWER IMMEDIATELY AND OBTAIN FURTHER DIRECTION.

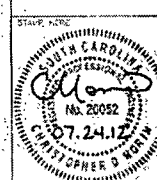


400 LOUISIANA STREET, SUITE 200
HOUSTON, TEXAS 77002
TEL: (713) 871-1000
FAX: (713) 871-1005



1000 COLUMBIA PIKE, SUITE 200
DALLAS, TEXAS 75201-1000
TEL: (214) 871-1000
FAX: (214) 871-1005

PROJECT NUMBER:
278053
PROJECT NAME:
FINKLEA RELO
SITE ADDRESS:
215 HUGGINS RD
LOUIS, SC 29568



DESIGNED BY: **AD**
CHECKED BY: **DRS**
DATE: **07-24-12**
SCALE: **FINAL CDS**
SHEET TITLE:

ELECTRICAL NOTES
SHEET NUMBER: **E-11**

[illegible]



AMERICAN TOWER
CORPORATION

ONE LONG BEACH BLVD
S.O. OF F. 25400, 2E 24404
N.E. 1843 211-1875
FAX: (404) 511-7442

THESE DRAWINGS AND/OR THE ACCOMPANYING SPECIFICATIONS ARE INTENDED TO DEFINE THE PROJECT AND TO BE USED BY AMERICAN TOWER CORPORATION AND THEIR SUBSIDIARIES AND AFFILIATES. THEY ARE NOT TO BE REPRODUCED OR COPIED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF AMERICAN TOWER CORPORATION. ANY REPRODUCTION OR COPIING WITHOUT THE WRITTEN PERMISSION OF AMERICAN TOWER CORPORATION SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO AMERICAN TOWER CORPORATION. THE USER SHALL BE RESPONSIBLE FOR THE PROTECTION OF THESE DRAWINGS AND SPECIFICATIONS FROM LOSS, THEFT, DESTRUCTION, AND FOR THE PROTECTION OF THEIR CONFIDENTIALITY.



BC
architects
engineers

5801 CANTON RD. SUITE 200
FALLS CHURCH, VA 22034
TEL: (703) 271-1200
FAX: (703) 271-1209

SHEET REVISION	
NO.	DESCRIPTION
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ASD 278 NUMBER:
278053

ASD 278 NAME:
FINKLEA RELO

SITE ADDRESS:
215 HUGGINS RD
LORIS, SC 29559



STATE OF SOUTH CAROLINA
COUNTY OF _____
No. 200652
67.24.12
CHRISTOPHER O. MORRIS

DRAWN BY:	ACT
CHECKED BY:	DSB
DATE DRAWING:	07-24-13
PROJECT NUMBER:	FINAL CD 5

SHEET TITLE:

SPECIFICATIONS

SHEET NUMBER:	REV. #
SP-1	

ROA 0561



David Schwerd, Principal Planner
Horry County Planning & Zoning Department
Government & Justice Center
1301 Second Ave
Conway, SC 29526
(843) 915-7896

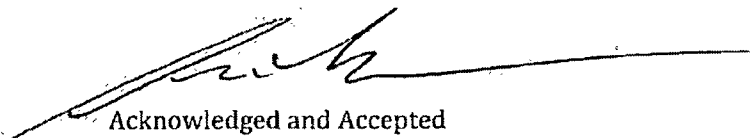
Re: American Towers, LLC, Site Name: Finklea Relo; Telecommunication
Facility Application – FCC Equipment Letter

Dear Mr. Schwerd:

I am Jason Groseclose, Project Manager of New Tower Development Carolinas for American Towers, LLC. I have been employed with American Tower for 15 years managing wireless development. Please accept this letter to indicate that the proposed American Tower facility shall contain only equipment meeting the Federal Communication Commission rules and regulations, as set forth in Article XVI, Section 1607(b) of the Horry County Zoning Ordinance.

If you have any questions please do not hesitate to contact me at (843) 224-3778.

Applicant: American Towers, LLC



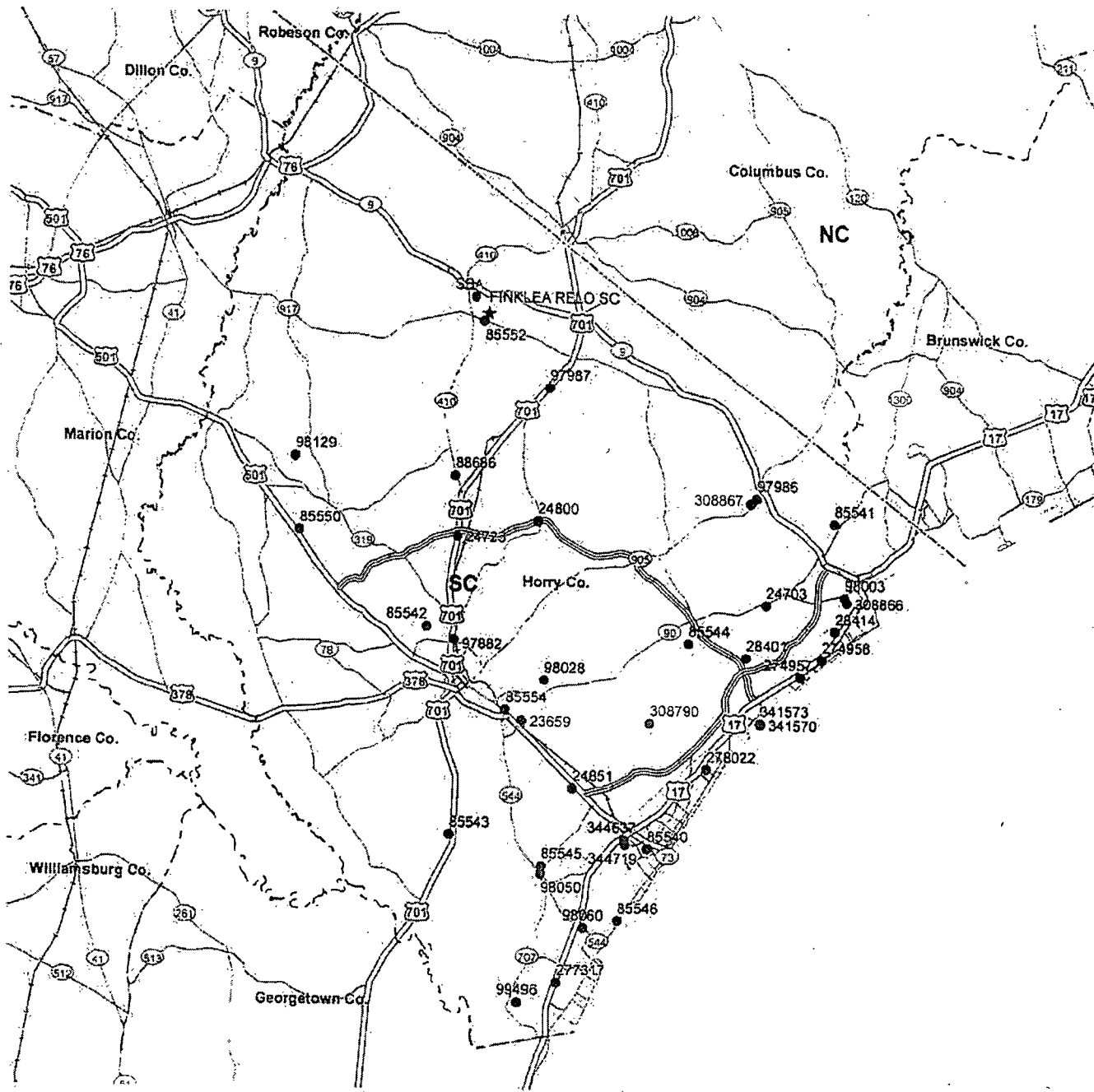
Acknowledged and Accepted

By: Jason Groseclose

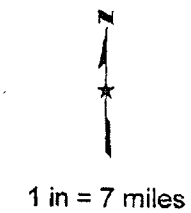
Its: Project Manager - New Tower Development Carolinas

Date: 8/8/12

Cc: Jonathan L. Yates, Esq.



ATC Marketable Assets in Horry County, SC



- ★ FINKLEA RELO SC
- SBA Site
- ATC Marketable Site
- Horry County, SC

Tower Number	Tower Name	Tower Status	Tower Type	Structure Height	Address	City	County	State	Zip	Latitude	Longitude
277317	SURFSIDE RESURRECTION SC	In Development	Monopole	150	8301 Highway 17 Bypass	Surfside Beach	HORRY	SC	29575-8845	33.60986	-79.021
278022	MYRTLE BEACH-LIVE OA SC	In Development	Monopole	150	820 67TH AVE N	MYRTLE BEACH	HORRY	SC	29572-3737	33.74442613	-78.83287
24851	LEGENDS 501 SC	Active	Monopole	152	Highway 501	Myrtle Beach	HORRY	SC	29579-6800	33.74707778	-78.96300556
274957	41ST AVE SC	Active	Stealth - Micropole	151	708 41st Avenue South	North Myrtle Beach	HORRY	SC	29582-5111	33.79976111	-78.72815556
274958	EDGE DRIVE SC	Active	Stealth - Micropole	145	1607 Edge Drive	North Myrtle Beach	HORRY	SC	29582-4017	33.80360853	-78.70464444
98028	RED HILL SC2	Active	Self Support	280	2692 Mike's Road	Conway	HORRY	SC	29526-7905	33.82872772	-78.97132111
99496	Surfside Beach	Active	Guyed	480	6201 Starbuck Lake Road	Murrells Inlet	HORRY	SC	29576-9819	33.60090278	-79.0512
97882	CONWAY/701	Active	Self Support	250	738 Country Club Drive	Conway	HORRY	SC	29526-3990	33.66927414	-79.05038452
97986	LONGS SC	Active	Self Support	250	621 Costier Heights Road	Longs	HORRY	SC	29568-8339	33.93155615	-78.73891449
97987	LORIS	Active	Self Support	280	190 Beauty Ave.	Loris	HORRY	SC	29569-7313	34.03704453	-78.91621399
98129	Aynor SC2	Active	Self Support	250	North Of Hwy 32 On Vaught Road.	Galivants Ferry	HORRY	SC	29544-8851	34.01916504	-79.17073822
98060	SURFSIDE SPLIT SC	Active	Self Support	220	2295 Dick Pond Road	Myrtle Beach	HORRY	SC	29575-5510	33.64622034	-78.97650909
98050	SOCASSEE	Active	Self Support	250	6279 Old Highway 544	Myrtle Beach	HORRY	SC	29538-7946	33.69038001	-79.00746918
98003	MYRTLE BEACH NORTH	Active	Monopole	158	469 Sandridge Road	Little River	HORRY	SC	29566-7537	33.85110833	-78.67233889
88686	GURLEY SC	Active	Guyed	813	GURLEY 15000 RADIO REPEATER ST	Aynor	HORRY	SC	29511-4329	33.985675	-79.021425
85540	CANNON ROAD SC	Active	Self Support	183	1455 Cannon Road	Myrtle Beach	HORRY	SC	29577-4310	33.69493611	-78.90254167
85541	BROOKSVILLE TINTON 1999 SC	Active	Self Support	283	2200 Shelley's Lane	Little River	HORRY	SC	29566-8661	33.90503889	-78.66907778
85542	CONWAY SC2	Active	Self Support	340	53R 107	Conway	HORRY	SC	29526-4562	33.83167191	-79.07398124
85543	CARVERS BAY SC	Active	Self Support	183	Winburn Road	Conway	HORRY	SC	29527-7514	33.72928889	-79.08776944
85544	REO BLUFF SC	Active	Self Support	195	Edge Road	Longs	HORRY	SC	29526-7667	33.83753333	-78.82819722
85545	ROUTE 544 SC	Active	Self Support	189	3704 Forestbrook Road	Myrtle Beach	HORRY	SC	29588-8512	33.69578511	-79.00582222
85550	Aynor SC1	Active	Self Support	203	654 Pine Oak Farm Road	Aynor	HORRY	SC	29511-2658	33.96636111	-79.17901389
85552	FINKLEA SC	Active	Self Support	287	200 HUGGINS RD.	Loris	HORRY	SC	29569-8191	34.09256744	-78.96549712
85554	RED HILL SC1	Active	Self Support	181	180 Sanderson Drive	Conway	HORRY	SC	29526-8122	33.81193333	-79.01289444
85546	SURFSIDE SC	Active	Monopole	119	McMaster Drive	Myrtle Beach	HORRY	SC	29575-5875	33.64736176	-78.94313812
23659	Conway SC1	Active	Self Support	345	55 COMMERCE PLAZA, HUSTEAD ROAD	Conway	HORRY	SC	29526-8231	33.80189514	-78.99943889
24723	ADRIAN SC	Active	Self Support	254	3597 BAY WATER DRIVE	Aynor	HORRY	SC	29526-5759	33.94240833	-79.02964167
24800	WHITE OAK SWAMP SC	Active	Guyed	310	5743 New Dawn Lane	Conway	HORRY	SC	29526-6086	33.94340356	-78.95630556
28401	LONG BAY SC	Active	Self Support	250	6370 Water Tower Road	Longs	HORRY	SC	29568-7601	33.82020556	-78.77620556
24703	WAMPEE SC	Active	Guyed	302	2425 Long Bay Road	Longs	HORRY	SC	29568-7604	33.8556366	-78.74832222
28414	OCEAN BEACH DRIVE SC	Active	Monopole	152	540 Bay Street	North Myrtle Beach	HORRY	SC	29582-3241	33.8258375	-78.68706389
308866	Crescent Beach	Active	Self Support	160	469 Sand Ridge Road	Little River	HORRY	SC	29566-7570	33.84728056	-78.6708
308790	Conway SC 6	Active	Guyed	600	1959 International Drive	Myrtle Beach	HORRY	SC	29526-8094	33.78466278	-78.8786
308867	Hwy 9	Active	Guyed	276.08	201 Hwy 905 South	Longs	HORRY	SC	29568-8362	33.92980833	-78.7449
341573	Embassy Suites Kingston Plantation	Inactive	Hotel	190	9800 Lake Drive	Myrtle Beach	HORRY	SC	29572-5349	33.77083333	-78.7747
344637	Coastal Grand SC RT	Inactive	Mall	0	2000 Coastal Grand Cr	Myrtle Beach	HORRY	SC	29577-4950	33.703991	-78.922391
344719	COASTAL GRAND JB SC	Inactive	Mall	0	2000 Coastal Grand Circle	Myrtle Beach	HORRY	SC	29577-4950	33.700501	-78.922405
341570	Myrtle Beach Hilton	Inactive	Hotel	204	10000 Beach Club Drive	Myrtle Beach	HORRY	SC	29572-5328	33.77	-78.7744



Mail Processing Center
Federal Aviation Administration
Southwest Regional Office
Obstruction Evaluation Group
2601 Meacham Boulevard
Fort Worth, TX 76137

Aeronautical Study No.
2012-ASO-6748-OE

Issued Date: 07/20/2012

FAA / FCC Department
American Towers, Inc.
1898 Leland Drive, Suite A
MARIETTA, GA 30067

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure: Antenna Tower 278053 FINKLEA RELO SC
Location: LORIS, SC
Latitude: 34-05-51.74N NAD 83
Longitude: 78-57-39.23W
Heights: 86 feet site elevation (SE)
315 feet above ground level (AGL)
401 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

As a condition to this Determination, the structure is marked/lighted in accordance with FAA Advisory circular 70/7460-1 K Change 2, Obstruction Marking and Lighting, a med-dual system - Chapters 4,8(M-Dual),&12.

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be completed and returned to this office any time the project is abandoned or:

- ☐ At least 10 days prior to start of construction (7460-2, Part I)
☒ Within 5 days after the construction reaches its greatest height (7460-2, Part II)

While the structure does not constitute a hazard to air navigation, it would be located within or near a military training area and/or route.

This determination expires on 01/20/2014 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.
- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within

6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates , heights, frequency(ies) and power . Any changes in coordinates , heights, and frequencies or use of greater power will void this determination. Any future construction or alteration , including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

A copy of this determination will be forwarded to the Federal Communications Commission (FCC) because the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (847) 294-7575. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2012-ASO-6748-OE.

Signature Control No: 168719292-169420643

(DNE)

Vivian Vilaro
Specialist

Attachment(s)
Frequency Data

cc: FCC

Frequency Data for ASN 2012-ASO-6748-OE

LOW FREQUENCY	HIGH FREQUENCY	FREQUENCY UNIT	ERP	ERP UNIT
698	806	MHz	1000	W
806	824	MHz	500	W
824	849	MHz	500	W
851	866	MHz	500	W
869	894	MHz	500	W
896	901	MHz	500	W
901	902	MHz	7	W
930	931	MHz	3500	W
931	932	MHz	3500	W
932	932.5	MHz	17	dBW
935	940	MHz	1000	W
940	941	MHz	3500	W
1850	1910	MHz	1640	W
1930	1990	MHz	1640	W
2305	2310	MHz	2000	W
2345	2360	MHz	2000	W



Antenna Structure Registration

[FCC](#) > [WTB](#) > [ASR](#) > [Online Systems](#) > [ASR Search](#)

[FCC Site Map](#)

ASR Registration Search

Registration Search Results

☒ **ADVANCED SEARCH**

[New Search](#) [Refine Search](#) [Printable Page](#) [Query Download](#)

HELP

[Map Result\(s\)](#)

Displayed Results

Matches 1-2 (of 2)

PA = Pending Application(s)

1

Specified Search

Latitude='34-05-51.7 N', Longitude='78-57-39.2 W', Radius=4 Kilometers

Display:

Registration Number	Status	File Number	Owner Name	Latitude/Longitude	Structure City/State	Overall Height Above Ground (AGL)
1 1045545	Constructed	A0601942	American Towers, LLC.	34-05-33.2N 078-57-59.3W	Loris, SC	89.9
1240462	Constructed	A0576132	SBA Towers Inc.	34-06-39.6N 078-58-14.9W	Loris, SC	93.8

Matches 1-2 (of 2)

1

ASR Help

[ASR License Glossary](#) - [FAQ](#) - [Online Help](#) - [Documentation](#) - [Technical Support](#)

ASR Online Systems

[TOWAIR](#) - [CORES](#) - [ASR Online Filing](#) - [Application Search](#) - [Registration Search](#)

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[Help](#) | [Tech Support](#)

Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Phone: 1-877-480-3201
TTY: 1-717-338-2824
[Submit Help Request](#)

Prepared by and Return To:
American Tower Corporation
10 Presidential Way
Woburn, MA 01801
Site #278053
Site Name: Finklea Relo

Cross Reference: Book: _____; Pg: _____

Memorandum of Lease Agreement

THIS MEMORANDUM OF AGREEMENT ("Memorandum") is executed this 28 day of June, 2012 by and between Brenda G. Huggins, an unmarried woman, with a mailing address of 215 Huggins Rd, Loris, SC 29569 ("Landlord") and American Towers LLC, a Delaware limited liability company, with a mailing address of 10 Presidential Way, Woburn, MA 01801 ("American Tower") and evidences that on the 28 day of June, 2012 a Lease Agreement ("Agreement") was entered into by and between Landlord and American Tower.

1. **Option.** The initial term of the Option is one (1) year from the date of the Agreement. This Option can be extended by American Tower for one (1) additional period of one (1) year and for such other periods as the Landlord and American Tower mutually agree.

2. **Property.** Landlord owns certain real property described in Exhibit "A" ("Property"). Subject to the terms of the Agreement, Landlord has granted to American Tower an option to lease a portion of the Property ("Compound") and to acquire certain easements for ingress, egress and utilities ("Easements" and collectively with the Compound, the "Site", as shown on Exhibit "B"), a license to use certain other portions of the Property and a right of first refusal to purchase the Site and/or the Property.

3. **Lease.** Should American Tower exercise its Option, the Agreement will constitute a lease of the Site. The initial term of the lease will be for five (5) years commencing

upon the date American Tower specifies in a written notice to Landlord. The Agreement will automatically renew for nine (9) additional periods of five (5) years each unless American Tower notifies Landlord of its decision not to renew the Agreement.

4. **Notices.** All notices, requests, demands, and other communications to the Landlord or American Tower will be made at the following addresses:

Landlord: Brenda G. Huggins
215 Huggins Rd
Loris, SC 29569

American Tower American Towers LLC
C/O American Tower Corporation
10 Presidential Way
Woburn, MA 01801
Attn: Land Management

With a Copy to: American Towers LLC
C/O American Tower Corporation
116 Huntington Avenue
Boston, MA 02116

5. **Construction of Memorandum.** This Memorandum is not a complete summary of the terms and conditions contained in the Agreement. Provisions in the Memorandum will not be used in interpreting the Agreement provisions. In the event of a conflict between this Memorandum and the Agreement, the Agreement will control.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first set forth above.

LANDLORD:

WITNESSES

Brenda G. Huggins

Danielle Gore
Print Name: Danielle Gore

Brenda G. Huggins

Sherry Duncan
Print Name: Sherry Duncan

Date: 6-1-12

STATE OF South Carolina
COUNTY OF Horry

I, a Notary Public of the County and State aforesaid, certify that Brenda G. Huggins came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 1st day of June, 2012.

[Affix Notary Seal]

Danielle Gore
Notary Public
My commission expires:

DANIELLE GORE
Notary Public
State of South Carolina
Commission Expires Nov. 9, 2016

AMERICAN TOWER:

WITNESSES:

American Towers LLC, a Delaware limited liability company

By: _____

Name: STEVE VONDRAN
Title: Senior Vice President
General Counsel

Date: 6/28/2012

Print Name: Sebastian Konarski

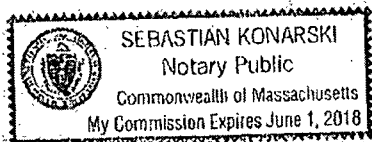
Print Name: REBEKAH L. VIEIRA

COMMONWEALTH OF MASSACHUSETTS)

) ss:

COUNTY OF MIDDLESEX)

On the 28 day of June, 2012, the undersigned notary public, personally appeared Steve Vondran, proved to me through satisfactory evidence of identification, which were personally known, to be the person whose name is signed on the preceding or attached document, and acknowledged that he/she signed it voluntarily for its stated purpose, as Senior VP General Counsel, of American Towers LLC, before me.



Notary Public
My Commission Expires:

**EXHIBIT A
PROPERTY**

Located in Horry County, SC

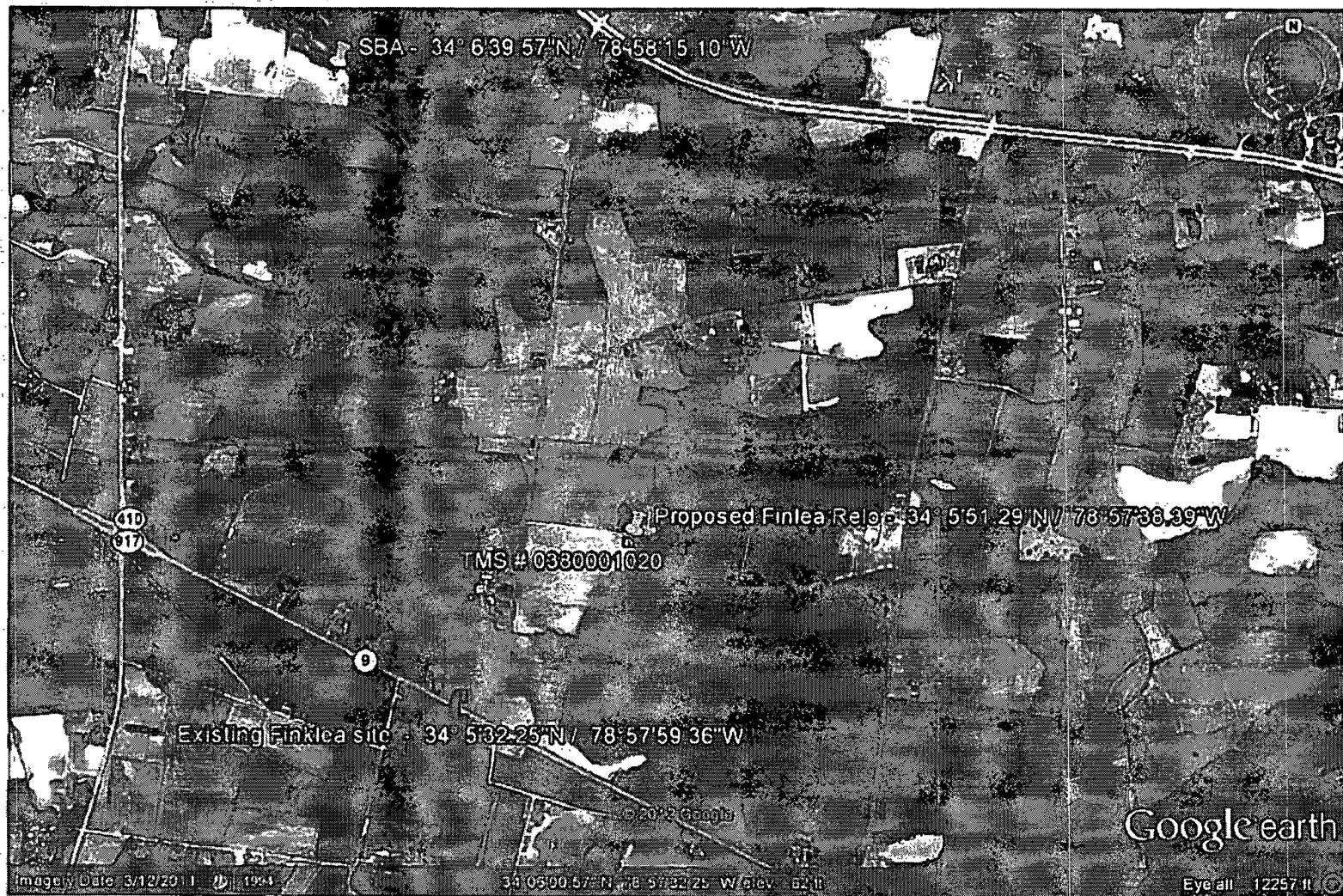
Being a portion of the property conveyed in Deed Book 3362, Page 2644

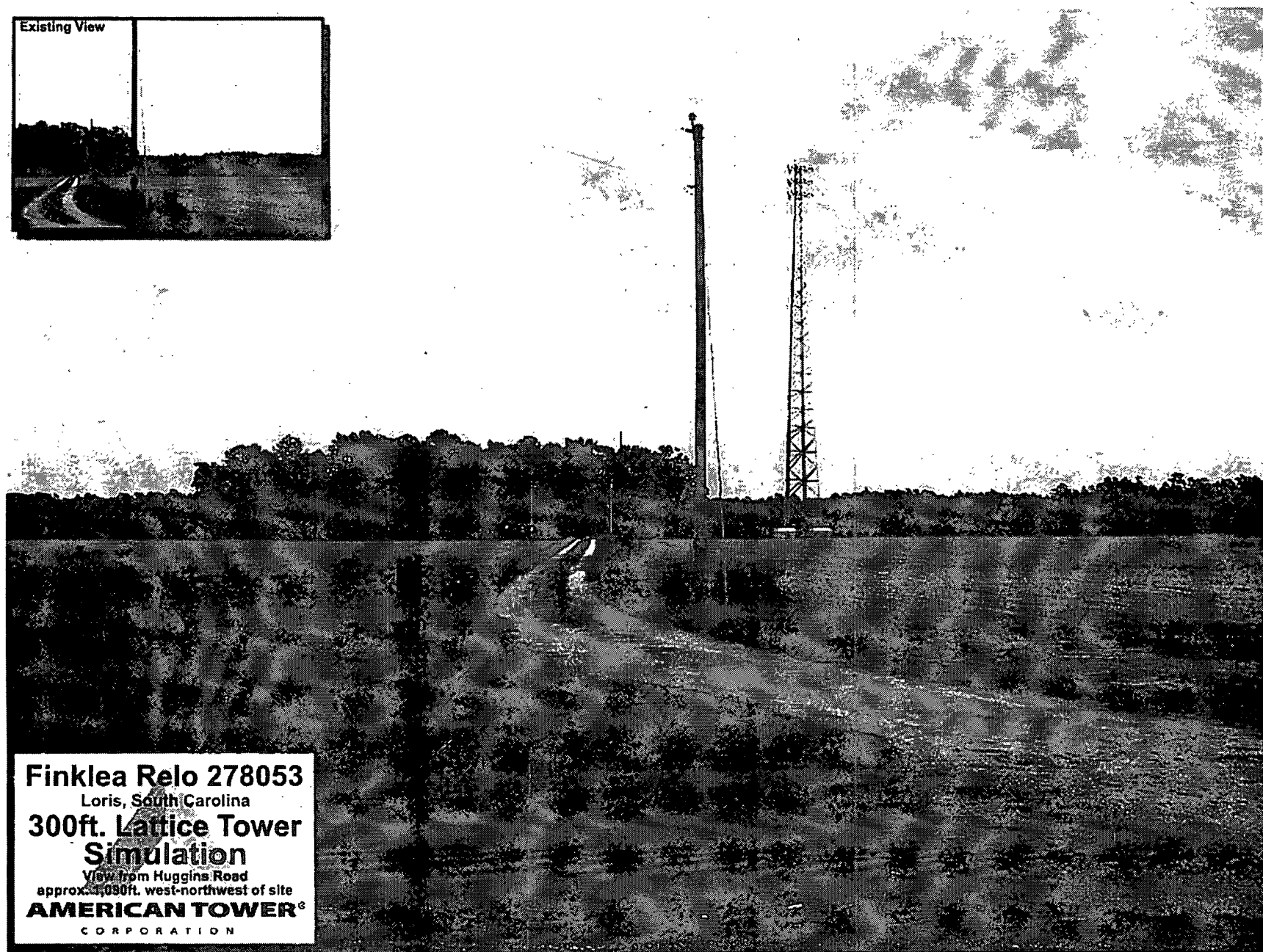
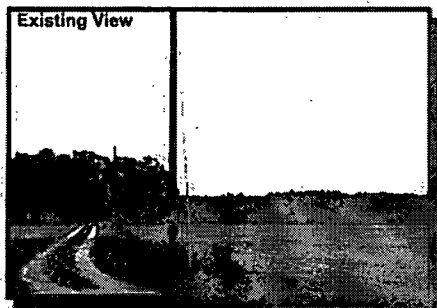
TMS. 0380001020

PIN: 15500000028

EXHIBIT B
SITE

See attached





Finklea Relo 278053

Loris, South Carolina

**300ft. Lattice Tower
Simulation**

View from Huggins Road

approx. 3,090ft. west-northwest of site

AMERICAN TOWER®

CORPORATION

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2012-CP-26-8652

Appellate Case No. 2013-CP-26-08652

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

v.

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

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

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By: 

Susan P. MacDonald

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Columbia, South Carolina

March 18, 2014

Nelson Mullins

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Attorneys and Counselors at Law

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February 26, 2014

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Myrtle Beach, SC 29577

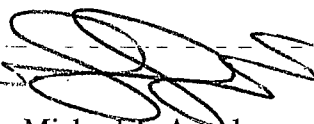
RE: TriStar Investors, Inc., Minerva Realty, LLC, and Angeline Johnson v. The
Horry County Council, and American Tower Corporation
Civil Action No. 2012-CP-26-08652
Our File No. 39776/01501

Dear Gentlemen:

Pursuant to Rule 210, SCACR, we enclose and serve upon you one copy of the Record on Appeal in the above referenced matter.

By copy of this letter to the Honorable Jenny Kitchings, we are enclosing the original and one copy of our proof of service for filing as require. We ask that the clerk, return a clocked copy to us via our courier. Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Michael J. Anzelmo

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FEB 26 2014

SC Court of Appeals

Myrtle Beach, SC 29577
February 26, 2014
Page 2

MJA:mws
Enclosures

cc: Honorable Jenny Kitchings, Clerk South Carolina Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2012-CP-26-8652
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TriStar Investors, Inc., Minerva Realty, LLC, and
Angeline Johnson, ... Appellants,

v.

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

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellants Tristar Investors, Inc., Minerva Realty, LLC and Angeline Johnson, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: RECORD ON APPEAL – TWO VOLUMES

Counsel Served:

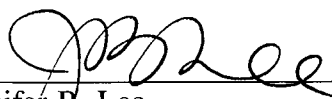
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FEB 26 2014

SC Court of Appeals



Jennifer B. Lee
Administrative Assistant

February 26, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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

v.

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

I, the undersigned Paralegal of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellants Tristar Investors, Inc., Minerva Realty, LLC and Angeline Johnson, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

RECORD ON APPEAL – Two Volumes

RECEIVED

Counsel Served:

MAR 20 2014

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Attorney for Respondent Horry County Council

SC Court of Appeals

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Meredith S. Keane
Paralegal

March 20, 2014