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May 15, 2011

VIA HAND DELIVERY

David Landry, Mayor
City of Novi
45175 West 10 Mile Road
Novi, Michigan 48375

Re: SBA Towers II, LLC v. City of Novi
U.S. District Court Case No.: 10-cv-13925
Our File No.: 1979-1280

CITY OF NOVI
CITY CLERK'S OFFICE
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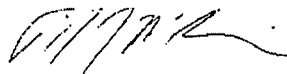
Dear Mayor Landry:

We are pleased to report that the above-referenced matter is concluded. For your files, we have enclosed a copy of the Consent Judgment, along with exhibits, which was entered by the Court on May 10, 2011.

All claims by Plaintiff, SBA Tower II, LLC against the City of Novi have now been resolved and the case is closed. Should you have questions or comments regarding this matter, please do not hesitate to contact me.

Very truly yours,

McGraw Morris P.C.



Thomas J. McGraw

TJM/sdc

Enclosures

cc: Thomas R. Schultz, Esq. (w/o)

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UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED

MAY 10 2011

CLERK'S OFFICE-DETROIT-PSG
U.S. DISTRICT COURT

SBA TOWERS II, LLC, a Florida limited
liability company,

Plaintiff,

Case No. 2:10-cv-13925-AJT-MJH

vs.

Hon. Arthur J. Tarnow

CITY OF NOVI, a Michigan municipal
corporation,

Defendant.

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CONSENT JUDGMENT

The parties to this Consent Judgment having agreed to settle this case as reflected in this Consent Judgment, which Consent Judgment is to be deemed to incorporate all exhibits attached hereto; the Court having reviewed the settlement reflected in this Consent Judgment and having specifically found that its terms are fair, just and reasonable and in the public interest, and that it

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has been entered into in good faith by the parties and that the settlement reached is not an admission of fault by the parties hereto but is a means to avoid further costs and uncertainty; and the Court being fully advised in the premises;

THE COURT HEREBY FINDS AND IT IS ORDERED AND ADJUDGED as follows:

A. BACKGROUND

1. **The Parties And Property At Issue.** The following findings are incorporated within and made part of this Consent Judgment:

i. Plaintiff SBA Towers II, LLC ("Plaintiff") is a Florida limited liability company that is an independent owner and operator of wireless telecommunication towers in the United States.

ii. Plaintiff is a licensee of certain property located within the City of Novi, Michigan, pursuant to a license agreement with the State of Michigan Department of Transportation ("M-DOT") and attached as **Exhibit A** hereto.

iii. The property is located on land owned by the State of Michigan. The land consists of approximately two acres and is located in the southwest quadrant of Twelve Mile Road and M-5 within the City of Novi, which is more particularly described and depicted in **Exhibit B** hereto ("Property").

iv. Defendant City of Novi is a Michigan municipal corporation, located in Oakland County and having a mailing address of 45175 W. Ten Mile, Novi, Michigan ("Defendant" or "City").

v. On or about December, 2008, Plaintiff applied to the City for site plan approval and for a special land use permit ("SLUP") for the construction and operation of a 150-foot monopole wireless telecommunications tower and associated equipment shelter on the Property.

vi. After a number of substantive reviews and meetings with the Plaintiff's representatives, the City Council voted to deny Plaintiffs' SLUP application, citing various factors that the City asserted had been left unresolved. These factors are specifically articulated in the minutes of the City Council's meeting on August 23, 2010.

vii. Plaintiff filed this lawsuit on or about October 1, 2010, Case No. 2:10-cv-13925-AJT-MJH, following the City's denial of Plaintiff's application for site plan approval and a special land use permit to construct a 150 foot monopole wireless telecommunications tower and associated equipment shelter on the Property (the "Action").

viii. On or about October 28, 2010, the City answered Plaintiff's complaint, denying any liability, denying that its conduct was in any way unlawful, and affirming that its denial of Plaintiff's SLUP application adhered to all applicable laws.

ix. The agreements reflected in this Consent Judgment are intended to resolve all known disputes between the parties with respect to the future use and development of the Property. This Consent Judgment resolves all claims, defenses and counterclaims asserted or which could have been asserted in this

action, without the admission of liability or responsibility on the part of either party.

B. CONSTRUCTION OF THE FACILITY

1. This Consent Judgment, upon entry by the Court, shall constitute a Special Land Use Permit and Site Plan Approval by the Defendant City of Novi ("City") authorizing Plaintiff to immediately construct and use a single wireless telecommunications tower, with accompanying antennas, and equipment shelters for Verizon Wireless and T-Mobile to construct and co-locate their respective telecommunications equipment ("Facility") on the Property as shown on and in accordance with the Site Plan and Construction Drawings prepared by Terra Consulting Group, Ltd, dated March 8, 2011, Job No. 7176, copies of which are attached hereto as Exhibit C and incorporated herein by reference (collectively, "the Plans"), as such Plans are expressly modified by this Consent Judgment, and provided that Verizon Wireless and T-Mobile timely submit for administrative approval to the City any unspecified details associated with their respective telecommunications equipment, including material samples illustrating the color and type of building materials for equipment shelters, such as brick and shingles.

2. Plaintiff shall place no more than one tower on the Property, which shall be a monopole, of standard industry design and construction made of galvanized steel and shall not exceed 150-feet in height; the neutral color of galvanized steel is deemed satisfactory.

3. The tower will be designed for multiple carriers to allow for future co-locations to be made available on the tower as well as M-DOT traffic management systems/cameras and associated communications services. With respect to future co-locations (i.e. other than Verizon Wireless and T-Mobile, which co-locations are expressly approved pursuant to this Consent Judgment) Plaintiff shall make applications for future co-locations and meet all necessary

requirements under the applicable laws, ordinances and regulations, including but not limited to applying for and obtaining any/all permits and/or approvals from all applicable governmental entities (i.e., MDOT, Road Commission for Oakland County, etc.). The City's standard review fees and administrative approval process shall be followed for all future submittals and for any changes made by Plaintiff or any carrier, including any made by Verizon and T-Mobile.

4. A fence, as depicted on the Plans, will surround and protect the compound area. The entrance gate to the Facility will consist of a decorative gate as shown on the Plans. Landscaping in the area of the project shall be as shown on the site plan attached as Exhibit C. The parties acknowledge that the gate is located in an area of the Property that may be used in the future for a pathway or bike path, which has not yet been designed in detail. Plaintiff agrees that, if the gate needs to be moved in the future to accommodate a pathway or bike path, Plaintiff will cause the gate to be moved to a location approved by the City. The parties anticipate that the gate would remain in the same approximate location, and would not need to be moved a substantial distance.

5. Nothing in this Consent Judgment is an adjudication as to whether the City of Novi's Zoning Ordinance applies to the State of Michigan's Right-of-Way at the location of the Property.

C. ADDITIONAL PROVISIONS

1. Costs. Each party will bear its own costs, interest and attorney fees related to this action, including those that may have been available under 42 U.S.C. §1988, or any other statute, court rule, or regulation to any party.

2. Enforcement. The Court hereby retains jurisdiction of this matter for the purpose of resolving any disputes that may arise under the terms hereof. The parties agree that the terms

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of this Consent Judgment may be specifically enforced through mandatory injunctive relief, in addition to any other remedy permitted by law.

3. **Co-location of Telecommunication Service Providers.** Plaintiff agrees that it will not unreasonably deny co-location on the subject tower to any wireless telecommunication provider ("Carrier"), provided that the Carrier consents to then applicable market rates and terms and conditions consistent with M-DOT License. City shall not unreasonably withhold, condition or delay approval of co-location requests consistent with this paragraph and the City's standard review fees and administrative approval process shall be followed.

4. **Control By Consent Judgment, Ordinance And Other Regulations.** Prior to and during the installation of the subject tower, to the extent that this Consent Judgment or the Plans conflict with City ordinances or other regulations, the terms of this Consent Judgment and the Plans shall control. However, to the extent that this Consent Judgment or the Plans are silent as to any issue, the City's ordinances or other applicable regulations shall control, including but not limited to additional co-locations, provisions regarding abandonment of the tower and the requisite annual inspection report set forth in Zoning Ordinance Sections 2508 and 2516. The uses, structures, setbacks and related construction expressly permitted by this Consent Judgment as depicted in the Site Plan shall not be deemed non-conforming uses, structures, setbacks or construction, but rather shall be deemed conforming uses structures, setbacks and construction.

5. **Dismissal of Claims.** This Consent Judgment resolves the entire dispute between the Parties. Subject to the terms and provisions of this Consent Judgment, all of the claims, defenses, counterclaims and causes of action alleged by Plaintiff and the City in this Action or which could have been alleged by Plaintiff or the City, shall be, and they are hereby dismissed

with prejudice and without costs or fees to any party, including attorneys' fees that may have been available under 42 U.S.C. 1988, or any other statute, court rule, or regulation.

6. **No Oral Modification.** This Consent Judgment may be modified only by written agreement of Plaintiff and the City, or their successors in interest, and approval of the Court.

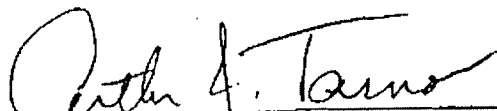
7. **Successors and Assigns.** All of the provisions of this Consent Judgment shall be deemed to run with the land and shall be binding upon and inure to the benefit of Plaintiff and the City, and each of their respective heirs, successors, assigns, purchasers and transferees, and reference in this Consent Judgment to Plaintiff and/or the City shall also mean and refer to its rights and obligations under this Consent Judgment.

8. **Recording.** This Consent Judgment shall run with the Property and a copy of the Consent Judgment, or an affidavit making reference to this Consent Judgment, may be recorded by any party with the Register of Deeds for Oakland County.

9. **Public Health, Safety and Welfare.** Plaintiff and the City acknowledge and represent that the terms and conditions of this Consent Judgment are fair and reasonable and that the land uses authorized herein and the locations of same are appropriate and reasonable under all of the circumstances present and that this Consent Judgment is consistent with the public health, safety and welfare of the community.

IT IS SO ORDERED AND ADJUDGED.

Dated: 5/10/11


HONORABLE ARTHUR J. TARNOW

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THE PARTIES UNDERSTAND ALL OF THE TERMS AND CONDITIONS OF THIS JUDGMENT AND HEREBY CONSENT TO ITS ENTRY. THE PARTIES REPRESENT THAT THEY HAVE OBTAINED THE ADVICE OF COUNSEL AND ARE CONSENTING TO THIS JUDGMENT FREELY AND VOLUNTARILY AND WITH FULL LEGAL AUTHORITY.

City of Novi, a Michigan municipal corporation

By: [Signature]

Name: David B. Landry - Mayor

Its: Mayor

And

By: [Signature]

Name: MARYANNE CORNELIUS-CITY CLERK

Its: CLERK

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

On this 4th day of MAY, 2011, before me, a Notary Public, in and for said County, personally appeared before me David B. Landry - Mayor and MARYANNE CORNELIUS-CITY CLERK, known to be the persons described above and who executed this Consent Judgment, and acknowledged same to be their free act and deed by authority given by Resolution of the City Commission.

[Signature], Notary Public
OAKLAND County, Michigan
My Commission Expires: OCT. 13, 2011
Acting in OAKLAND County

MARILYN S. TROUTMAN
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES Oct 13, 2011
ACTING IN COUNTY OF OAKLAND

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SBA Towers II, LLC, a Florida limited liability company

By: M. Caputo

Name: Mark Ciarcilla

Its: sr. VP operations

STATE OF FLORIDA)

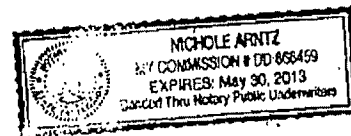
) ss.

COUNTY OF PALM BEACH)

The foregoing was acknowledged before me this 19 day of April 2011 by Mark Ciarcilla sr. VP Operations of SBA, on behalf of the company.

Nichole Arntz

Notary Public, State of Florida, County of Palm Beach
My Commission Expires: 5/30/13
Acting in the County of Palm Beach



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EXHIBIT A

CTR