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May 22, 2020

Town of Apple Valley, CA
Attn: Mr. Doug Robertson, Town Manager
14955 Dale Evans Parkway
Apple Valley, CA 92307
Email: drobotson@applevalley.org

VIA FIRST CLASS MAIL & EMAIL

RE: Breach of Communications Site License Agreement dated February 18, 2014 by and between Town of Apple Valley, CA (the "Town") and PLN Telecom, Inc. (the "License")

Dear Mr. Robertson:

High Tide Legal Group, PC ("HTLG") has been retained by PLN Telecom, Inc. (the "PLN") regarding the License and related communications facility located on that certain real property located in San Bernardino County, California, commonly known as Apple Valley Golf Course (the "Property").

Specifically, we have been engaged to assist with the resolution of the Town's breach of the terms of the License, as further described below, which, if not resolved will materially harm PLN. Resolution of these matters will be a required to avoid costly litigation for all parties and we are hopeful a fair compromise may be reached.

By way of background, in or around 2012-2013, the Town and Verizon were having difficulties negotiating terms and agreeing to work together for the construction of new communication Towers. PLN was able to assist both parties in reaching a resolution and in 2013-2014, PLN was granted a conditional use permit ("CUP") and the License by the Town to build a stealth monopine on the Property to be leased initially to Los Angeles SMSA d/b/a Verizon Wireless ("Verizon") for use as a telecommunications facility. Under the terms of the License between PLN and the Town, PLN agreed to fifty (50%) of rental income generated from the Verizon under the PLN Verizon Lease, as defined below. Verizon and PLN subsequently entered into that certain Tower Lease Agreement executed May 20, 2014 ("PLN Verizon Lease") granting Verizon certain rights to utilize the tower for their communication signals with certain limitations and restrictions regarding interference and use in exchange for rent to be split between PLN and the Town. PLN, thereafter, expended considerable capital in excess of **\$350,000.00** in the building of the subject tower alone, and additional amount in excess of **\$50,000.00** in related legal fees, permits and Town approvals. As part of consideration for expending in excess of

\$400,000.00 to erect the subject tower and telecommunication compound, PLN contracted with the Town to ensure its investment would be properly protected. In particular, PLN included the following Section 6.3 as part of the License:

“Licensor [Town] reserves the right to license other portions of the Property to other parties during the term of this License. Licensor [Town] shall not alter its existing or contemplated use of the Property, **nor shall Licensor [Town] permit any lessees, licensees, employees, invitees or agents obtaining right to the Property from and after the date hereof to use, any portion of the Property in a way that materially interferes with the operations of Licensee [PLN] or Authorized Sublicensees.**

Without limiting the generality of the foregoing, Licensor hereby acknowledges that in the event of *any material interference with Licensee’s Permitted Use* as a result of the transmission or reception (or both) of radio, microwave or other telecommunication signals by a future lessee, licensee or occupant of the Property, Licensee’s [PLN’s] right hereunder to conduct Licensee’s Permitted Use shall be and remain superior to the rights of any such future lessee, licensee or occupant... Licensor [Town] further acknowledges that interference with Licensee’s [PLN’s] operations shall cause Licensee to suffer irreparable injury and entitle Licensee [PLN], in addition to exercising any other rights hereunder or under applicable law, to seek immediate enjoinder of such interference against the interfering party” (emphasis added).

Under Section 1.2 of the License, “Permitted Use” is defined as by stating that the Town grants to PLN the right to “construct, operate and maintain an 85 foot stealth design monopine tree wireless communication facility with a minimum capacity *to collocate the antennas and related equipment of four (4) individual wireless carriers*, including all necessary structures, antennas, electrical equipment and utilities” (emphasis added).

Now, six (6) years after PLN fully fulfilled its contractual obligations and constructed an aesthetically pleasing and neighborhood compatible communication facility, leased to Verizon and has been sharing revenues with the Town, the Town has approved another CUP for the construction of a second (2nd) tower on the Property with Verizon and allowing for a collocator and is seeking City Council’s approval to enter that certain Wireless Communication Facility Site Lease Agreement (Verizon-Aoya) (“**Town Verizon Lease**”) during the May 26, 2020 Special Meeting. As an aside, PLN would like to note that we were not provided proper notice of this meeting and had to discover the issue on our own and was previously promised by Town officials that any future tower builds in close proximity to the Property would be handled by PLN. Nonetheless, once discovered, PLN reached out to the Town to voice concerns over the breach that would result by the granting of this new CUP and approval of the subsequent Town Verizon Lease. Unfortunately, to date, the Town has refused to properly address this matter which has resulted in HTLG’s involvement.

If the Town does not reconsider its current recommendation to its City Council and approves and enters into the proposed Town Verizon Lease, **the Town will be in breach of the License with PLN, as such new lease will materially interfere with PLN’s Permitted Use under the License as well as PLN’s operations.** As detailed above, PLN’s “Permitted Use” includes, not only constructing and operating a tower at the site, but also being allowed to collocate (attract other carriers to share the constructed tower (i.e. Sprint/T-Mobile, etc.) for additional rental revenue. The Town Verizon Lease would (i) provide Verizon with an additional tower from which to operate resulting in loss of leverage in future rental renegotiations and lease renewals between PLN and Verizon on PLN’s tower, (ii) harm PLN financially and may result in Verizon even terminating such agreement with PLN (industry practice typically allows for early termination by carriers of agreements, as does the License) thereby leaving PLN without any revenue from its constructed tower, for which it has still not even recouped its initial costs and (iii)

further, the fact that newly proposed tower under the Town Verizon Lease allows for an additional collocator, this immediately increases the supply of towers on the Property and therefore pushes demand down and creates undue competition for PLN in attracting new carriers to its tower, resulting in the loss of future collocation revenue or at the very least decreasing such revenue in an effort to lower rates to attract such other carriers/collocators to its site over the new Verizon site.

Additionally, PLN is hereby providing the Town written notice that Verizon is bound by the terms of the PLN Verizon Lease which prohibits Verizon building additional communication shelters, building or antennas on the Property outside of the PLN "Tower Space" without the express written consent of PLN, which has clearly not been requested or granted and would be reasonably withheld, if requested. Moving forward with the Town Verizon Lease will additionally result in the Town's intentional interference with PLN's contract and subject the Town to further potential legal exposure.

Pursuant to Section 10.1.2 of the License, please accept this letter as your written notice of default of the terms of the License and the beginning of the thirty (30) days in which to cure the above-referenced breach. Please note that PLN reserves all rights as provided herein and as available at law or equity. Failure to timely cure such default will cause PLN to pursue all legal and equitable remedies, including seeking to enjoin the Town's actions with Verizon.

Alternatively, given that PLN's main objective is to find reasonable resolutions for all parties involved, if the Town is amenable to commercial discussions, we believe that there are straightforward compromises that can be reached that would protect the rights of all parties and still result in the construction of the new tower and additional income to the Town. We request that the Town does not approve the Town Verizon Lease on May 26th and instead schedule a time to immediately negotiate the terms of a global resolution to avoid the need for any costly litigation and protracted delays in plans.

Again, we are hopeful the parties can promptly remedy the stated defaults and look forward to hearing from you soon so we may begin negotiating a beneficial resolution for all parties.

Sincerely,



Nick Goldberg, Esq.
High Tide Legal Group, PC

Enclosures (3) via Email only:

1. License
2. PLN Verizon Lease
3. Town Verizon Lease

Cc: Paul Nussbaum (plnussbaum@gmail.com)
Lori Lamson (llamson@appleyvalley.org)