

# **City of Lexington Conditional Use Permit**

## **Conditional Use Permit for a Wireless Communication Tower**

This Conditional Use Permit issued this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the City of Lexington, a municipal corporation in the County of Dawson County, Nebraska (“City”), to Anthony J. Bohaty (“Owner”) Horvath Towers III, LLC, pursuant to the Lexington Zoning Ordinance.

WHEREAS, Owner wishes to develop a wireless communication tower upon the following described tract of land within the City of Lexington zoning jurisdiction:

Lot 2, Block 1, Fertitta Addition, in Dawson County, Nebraska.

WHEREAS, Owner has applied for a conditional use permit for the purpose of developing a wireless communications tower; and

WHEREAS, the Mayor and City Council of the City of Lexington are agreeable to the issuance of a conditional use permit to the owner for such purposes, subject to certain conditions and agreements as hereinafter provided.

NOW, THEREFORE, BE IT KNOWN THAT subject to the conditions hereof, this conditional use permit is issued to the owner to use the area designated on the Conditional Use Permit Application for a wireless communication tower, said use hereinafter being referred to as “Permitted Use or Use”.

### **Conditions of Permit**

The conditions to which the granting of this permit is subject are:

1. The rights granted by this permit are transferable and any variation or breach of any terms hereof shall cause permit to expire and terminate without the prior written consent of the City (amendment to permit) or unless exempted herein.
2. In respect to the proposed Use:
  - A. Setbacks and Separation or Buffer Requirements (Zoning Ordinance 7.07.06)
    - a. All towers up to 50 feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district. Towers in excess of 50 feet in height shall be set back one additional foot for each foot of tower height in excess of 50 feet. The height of the tower shall be measured from the grade at the foot of the base pad to the top of any telecommunications facilities or antennas attached thereto. Setback requirements shall be measured from the base of the tower to the property line of the tract of land on which it is located.
    - b. Towers exceeding 100 feet in height may not be located in any residentially zoned district and must be separated from all residentially zoned districts and occupied structures other than those utilized by the tower owner, by a minimum of 200 feet or 100 percent of the height of the proposed tower, whichever is greater.
    - c. Towers of 100 feet or less in height may be located in residentially zoned districts provided said tower is separated from any residential structure, school, church, and/or occupied

structures other than those utilized by the tower owner, by a minimum of 100 percent of the height of the tower.

- d. Towers must meet the following minimum separation requirements from other towers:
  - i. Monopole tower structures shall be separated from all other towers, whether monopole, self-supporting lattice, or guyed by a minimum of 750 feet.
  - ii. Self-supporting lattice or guyed towers shall be separated from all other self-supporting lattice or guyed towers by a minimum of 1,500 feet.

B. Structural Standards for Towers Adopted (Zoning Ordinance 7.07.07)

- a. The Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, 1991 Edition (ANSI/EIA/TIA 222-E-1991) is hereby adopted, together with any amendments thereto as may be made from time to time, except such portions as are hereinafter deleted, modified, or amended by regulation and set forth in this Article of the Zoning Regulation.

C. Illumination and Security Fences (Zoning Ordinance 7.07.08)

- a. Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). In cases where there are residential uses / zoned properties within a distance of 300 percent of the height of the tower, any tower subject to this Section shall be equipped with dual mode lighting.
- b. All self-supporting lattice or guyed towers shall be enclosed within a security fence of at least six feet in height or other structure designed to preclude unauthorized access. Monopole towers shall be designed and constructed in a manner which will preclude to the extent practical, unauthorized climbing of said structure.

D. Exterior Finish(Zoning Ordinance 7.07.09)

- a. Towers not requiring FAA painting or marking shall have an exterior finish which enhances compatibility with adjacent land uses, subject to review and approval by the Building Official as part of the application approval process. All towers which must be approved as a conditional use shall be stealth design unless stealth features are impractical or the cost of such features represents an undue burden on the applicant.

E. Landscaping (Zoning Ordinance 7.07.10)

- a. All tracts of land on which towers, antenna support structures, telecommunications facilities and/or antennas are located shall be subject to the landscaping requirements of the City.

F. Maintenance (Zoning Ordinance 7.07.13)

- a. The towers, antenna support structures, telecommunications facilities and antennas shall at all times be kept and maintained in good condition, order and repair so that the same does not constitute a nuisance to or a danger to the life or property of any person or the public.

3. The applicant's right to maintain the use as approved pursuant to these provisions shall be based on the following:

- a. An annual inspection to determine compliance with the conditions of approval. The conditional use permit may be revoked upon a finding by the City that there is a violation of the terms of approval.
- b. The use authorized by the conditional use permit must be initiated within one (1) year of approval and shall become void two (2) years after the date of approval unless the applicant has fully complied with the terms of approval.

- c. All obsolete or unused structures, accessory facilities or materials with an environmental or safety hazard shall be abated and/or removed at owner's expense within twelve (12) months of cessation of the conditional use.
4. Notwithstanding any other provision herein to the contrary, this permit, and all rights granted hereby, shall expire and terminate as to a permitted use hereunder upon the first of the following to occur:
    - a. If any tower shall cease to be used for a period of one year, the Building Official shall notify the tower owner that the site will be subject to determination of abandonment. Upon issuance of written notice to show cause by the Building Official, the tower owner shall have 30 days to show that the tower has been in use or under repair during the period of apparent abandonment. In the event the tower owner fails to show that the tower has been in use or under repair during the relevant period, the Building Official shall issue a final determination of abandonment of the site and the tower owner shall have 75 days thereafter to dismantle and move the tower. In the event the tower is not dismantled and removed, the tower shall be declared a public nuisance by the Building Official, and the City will abate said public nuisance pursuant to authority of the Revised Nebraska State Statutes and City of Lexington codes, and charge the costs thereof against the real estate on which the tower is located or the owner of record of the said real estate. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Use. . (Section 7.07.14 of zoning code)
    - b. Owner's breach of any other terms hereof and his failure to correct such breach within ten (10) days of City's giving notice thereof.
  5. In the event of the owner's failure to promptly remove any safety or environmental hazard from the premises, or the expiration or termination of this permit and the owner's failure to promptly remove any permitted materials or any remaining environmental or safety hazard, the City may, at its option (but without any obligation to the owner or any third party to exercise said option) cause the same to be removed at owner's cost (including, but not limited to, the cost of any excavation and earthwork that is necessary or advisable) and the owner shall reimburse the City the costs incurred to remove the same. Owner hereby irrevocably grants the City, its agents and employees the right to enter the premises and to take whatever action as is necessary or appropriate to remove the structures or any environmental or safety hazards in accordance with the terms of this permit, and the right of the City to enter the premises as necessary or appropriate to carry out any other provision of this permit.
  6. If any provision, or any portion thereof, contained in this agreement is held to be unconstitutional, invalid, or unenforceable, the remaining provisions hereof, or portions thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

### **Miscellaneous**

The conditions and terms of this permit shall be binding upon owner, his successors and assigns.

1. Delay of City to terminate this permit on account of breach of owner of any of the terms hereof shall not constitute a waiver of City's right to terminate, unless it shall have expressly waived said breach and a waiver of the right to terminate upon any breach shall not constitute a waiver of the right to terminate upon a subsequent breach of the terms hereof, whether said breach be of the same or different nature.
2. Nothing herein shall be construed to be a waiver or suspension of, or an agreement on the part of the City to waive or suspend, any zoning law or regulation applicable to the premises except to the extent and for the duration specifically authorized by this permit.

3. Any notice to be given by City hereunder shall be in writing and shall be sufficiently given if sent by regular mail, postage prepaid, addressed to the owner as follows:

**Contact Name and Address:**

Anthony J. Bohaty  
1618 Road O  
York, NE 68467

**Effective Date:**

This permit shall take effect upon the filing hereof with the City Clerk a signed original hereof.

THE CITY OF LEXINGTON

By \_\_\_\_\_  
John Fagot, Mayor

Attest:

\_\_\_\_\_  
Pamela Baruth  
City Clerk

CONSENT AND AGREEMENT

The undersigned does hereby consent and agree to the conditions of this permit and that the terms hereof constitute an agreement on the part of the undersigned to fully and timely perform each and every condition and term hereof, and the undersigned does hereby warrant, covenant and agree to fully and timely perform and discharge all obligations and liabilities herein required by owner to be performed or discharged.

Owner:

Developer:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_