



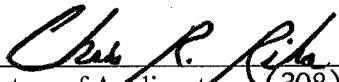
Application for Conditional Use Permit

- NE COLORADO CELLULAR, INC.
d/b/a VIAERO WIRELESS
1. Applicant's Name _____
 2. Applicant's Address 1224 W. Platte Avenue, Fort Morgan, CO 80701
 3. Applicant's Telephone Number (970) 867-6767
 4. Owner's Name Same as Applicant's. *See enclosed EXHIBIT A--
6-Page Commercial Purchase Agreement.
 5. Owner's Address N/A
 6. Owner's Telephone Number N/A
 7. Purpose of Conditional Use Permit Construct a Retail Store with an 80-FT Telecommunications
Monopole as an Accessory as a conditional use.
*See enclosed EXHIBIT B - Described Proposed Use.
 8. Present Zoning C-3 Highway Commercial
 9. Within City Limits Yes Within Zoning Jurisdiction Yes
 10. Legal Description Lot 2, Scooter's Coffee Addition, Lexington,
Dawson County, Nebraska.
 11. Street Address of Property or Approximate Location
Hwy. 283/Plum Creek Parkway & Frontier Street.
*See enclosed EXHIBIT C - Location of Property Map &
C-3 Zoning District Map.
 12. Site Plan (if applicable) Site Plan Drawing to be furnished with Architect's
Final Building Layout Drawings. *See EXHIBIT's D, E,
F1, F2, G1 & G2.

I/We the undersigned do hereby acknowledge that I/We do fully understand and agree to comply with the provisions and requirements for an application for a special use permit as described above. I/We the undersigned do hereby agree to allow City of Lexington employees or agents working for the City of Lexington, to enter the above referenced property as it pertains to this application.

NE COLORADO CELLULAR, INC.
d/b/a VIAERO WIRELESS
1224 W. Platte Avenue, Fort Morgan, CO 80701
(970) 867-6767

Signature of Owner


Signature of Applicant (308) 370-0383

1811 W. 2nd, St. 455, G.I., NE 68803

Chris R. Riha, Site Acquisition Specialist

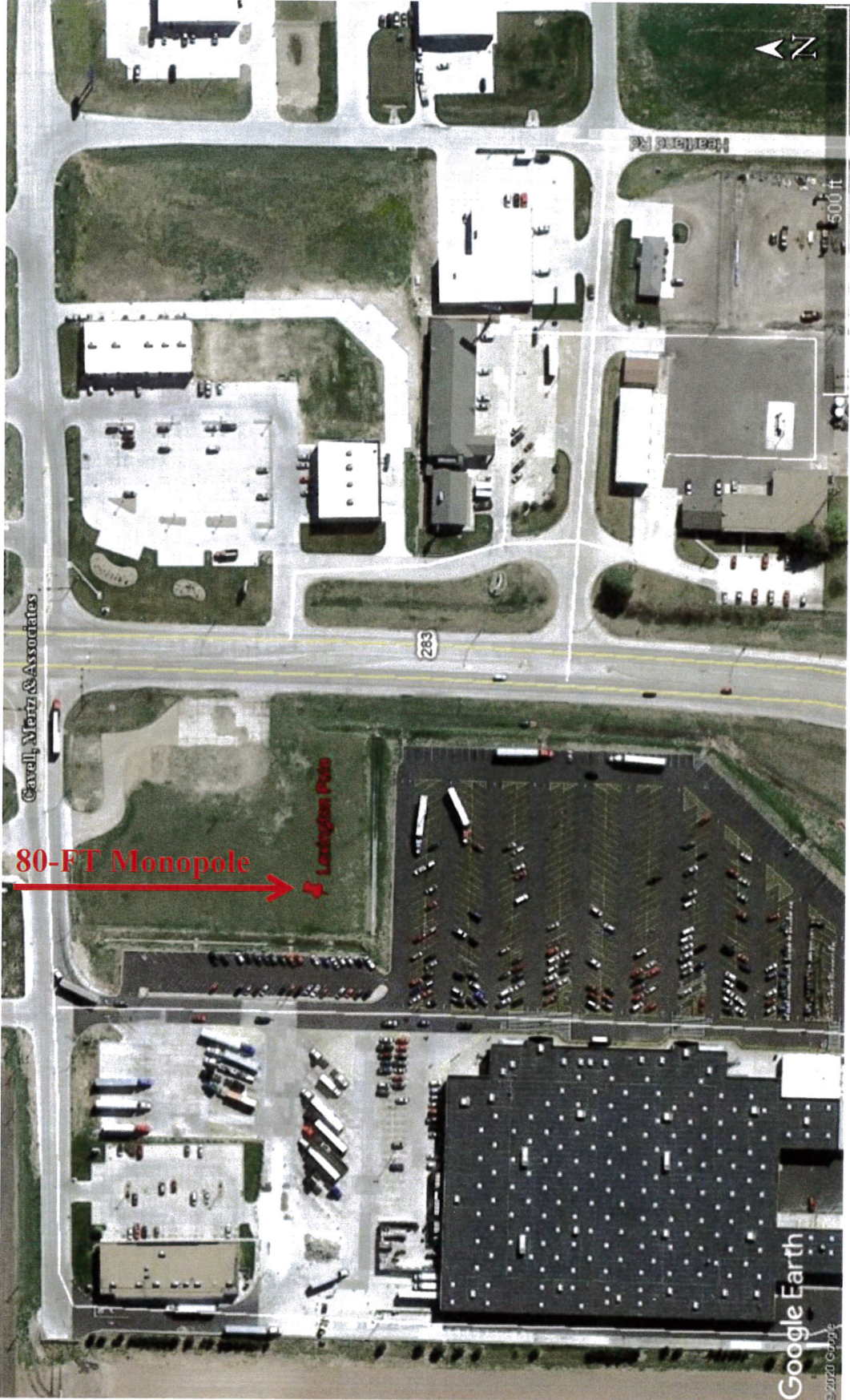
Administrative Use Only

chris.riha@viaero.com

Date Submitted _____
Filing Fee \$100.00 _____
Cert. Of Ownership _____
Date Sign Posted _____

Case Number _____
Accepted By _____
Date Advertised _____
Date of Public Hearing _____

Location of Monopole



80-FT Monopole

Location Pole

Cavell, Meritz & Associates

283

Heather Rd

500 ft



Google Earth
© 2020 Google

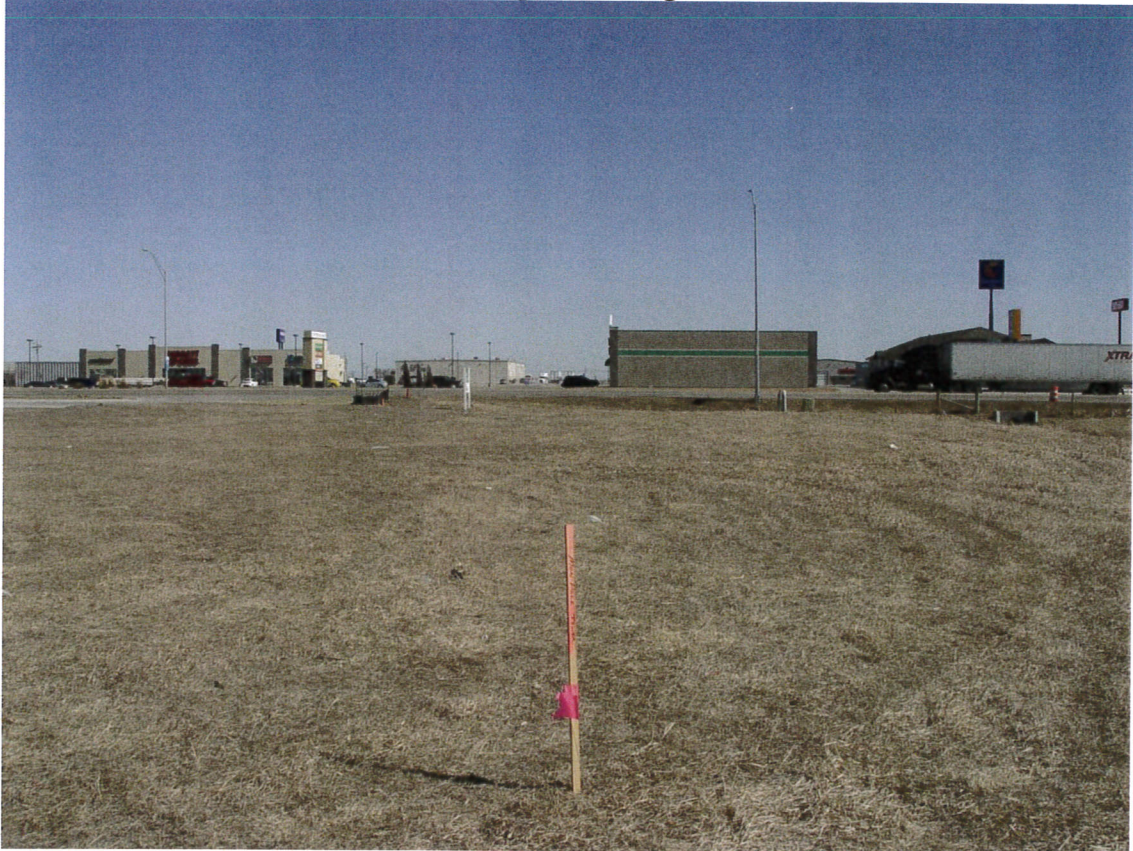
Location of Monopole looking North



Location of Monopole looking South



Location of Monopole looking East



Location of Monopole looking West



**Simulation Picture looking West
Typical Retail Store with a Monopole**



Picture of a Typical Retail Store with a
Monopole's Fenced Area



DESCRIBED PROPOSED USE

VIAERO WIRELESS is proposing to improve their Wireless Network's Frequency Strength specifically for In-Building Coverage in/around their proposed Retail Store located North of the I-80 Interchange. The Engineers have requested an 80-FT Telecommunications Monopole to uniformly distribute/receive the Wireless Network's Frequencies above & beyond the surrounding Improvements and the ability to have Line-of-Sight Microwave Connectivity.

MOUNTAIN TOWER & LAND, LLC, (a/k/a "Buyer,") and BOUNDLESS REAL ESTATE HOLDINGS, LLC, (a/k/a "Seller,") entered into a Commercial Purchase Agreement for the development of a VIAERO WIRELESS Retail Store with the accessory of a Telecommunications Monopole, together in Lot 2 of Scooter's Coffee Addition located on the West Side of Hwy. 283/Plum Creek Parkway and South of Frontier Street/SCOOTER's Drive In. The Real Estate Purchase Agreement is contingent to several Inspections and Approvals – including Local/State/Federal Government Approvals. VIAERO WIRELESS believes the proposed Telecommunications Monopole will comply with all of the CITY OF LEXINGTON's Zoning Regulations for this Type of Use as a Conditional Use in the "C-3" Highway Commercial Zoning District. ***See enclosed EXHIBIT A – 6-Page Commercial Purchase Agreement; and enclosed EXHIBIT C – Location of Property & C-3 Zoning District Map.**

The proposed Telecommunications Monopole Site will have the following Improvements & Characteristics:

- A Typical Retail Store with the Front Side facing the East – Hwy. 283/Plum Creek Parkway, and the Rear Side with the Telecommunications Monopole facing the West.
- A Typical 80-FT Telecommunications Monopole being 50+ Feet East of the West Property Line and 50+ Feet North of the South Property Line with Antennas & Microwave Dishes.
 - Designed & Engineered to meet & exceed the Standards of the Industry.
- The Retail Store will house the Electronic Radio Equipment & Backup Batteries.
- Backup Generator fueled by a buried 1,000 GA Propane Tank.
- All Outdoor Improvements will be enclosed by a Padlocked Security Fence, as required under **7.07.08, Paragraph 2.**
- Ingress/Egress easily accessible off of Hwy. 283/Plum Creek Parkway & Frontier Street.
- A Single-Phase, 400-AMP Electricity Service is the only Utility needed for the proposed Telecommunications Monopole, and all Utilities & Services will be needed for the VIAERO WIRELESS Retail Store.

***See enclosed EXHIBIT D – Location of Monopole (Google Earth Map); enclosed EXHIBIT E – Location of Monopole (Subdivision Plat Drawing); enclosed EXHIBIT F1 & F2 - Pictures of the Site; enclosed EXHIBIT G1 - Simulation Picture; & enclosed EXHIBIT G2 – Picture of Monopole's Fenced Area.**

EXHIBIT B

The proposed Telecommunications Monopole and Retail Store are located in a "C-3" Highway Commercial Zoning District that abuts the West Side of Hwy. 283/Plum Creek Parkway. ***See Enclosed EXHIBIT C – Location of Property Map & C-3 Zoning District Map.** The "C-3" Highway Commercial Zoning District Regulations allow Communication Towers as a Conditional Use under **5.13.03, Paragraph 15.**

The proposed 80-FT Telecommunications Monopole will have the required Setback Distances from all (4) Property Lines of the Purchased Lot, as required under **7.07.06, Paragraph 1.** (i.e.) 50+ Feet East of the West Property Line, 50+ Feet North of the South Property Line, 200+ Feet West of the East Property Line, and 300+ Feet South of the North Property Line. ***See Enclosed EXHIBIT D – Location of Monopole (Google Earth Map); & enclosed EXHIBIT E – Location of Monopole (Subdivision Plat Drawing).**

The proposed 80-FT Telecommunications Monopole is safely located 3.1+ Miles Southeast of the Airport's End-of-Runway. FAA has determined it to be Non-Hazardous to Air Navigation. With our proposed Telecommunications Monopole being 80 Feet in Height, it is not required by FAA to be marked/lighted and will comply with Zoning Regulation **7.07.08 & 7.07.09.** ***See enclosed EXHIBIT H – 4-Page FAA Determination Letter.**

In regards to **7.07.04, Paragraph #'s 3, 4 & 5,** our Engineer has prepared a Justification Letter that is referenced as **EXHIBIT I.**

Please accept the enclosed **EXHIBITS** that should suffice **7.07.04, Paragraph 7.** Specific Detailed Drawings will be submitted on the Telecommunications Monopole and Retail Store after the Architect has designed the Final Building Layout, Etc.

The Demand for Wireless Functions and Applications are continuing to increase each year and VIAERO WIRELESS is proposing a Telecommunications Monopole with a Retail Store to meet and exceed those Demands for VIAERO WIRELESS Customers and other GSM Technology Users (i.e.) AT&T, T-Mobile,... With this proposed Telecommunications Monopole, VIAERO WIRELESS will be able to meet the Consumers' Expectations, specifically in the immediate area of our proposed Retail Store.

COMMERCIAL
PURCHASE AGREEMENT

1. PARTIES TO CONTRACT.

Purchaser: MOUNTAIN TOWER AND LAND, LLC, a Colorado limited liability company or its Designee

Seller: BOUNDLESS REAL ESTATE HOLDINGS, LLC, a Nebraska Limited Liability Company

2. LEGAL DESCRIPTION.

Lot 2, Scooter's Coffee Addition, Lexington, Dawson County, Nebraska. *See attached Exhibit A.

3. PURCHASE PRICE. Purchaser agrees to pay [REDACTED] no/100 Dollars [REDACTED] following terms: an earnest money deposit of Twenty Thousand Dollars (\$20,000.00) will be made upon execution of this Purchase Agreement by the Parties hereto. All monies shall be deposited in a trust account/escrow account held by H.O. Smith Company, to be held until the time of closing or until transferred to an escrow agent by Agreement of Purchaser and Seller. H.O Smith Company will provide a receipt of deposited funds to the Seller upon deposit into such account. The balance of the Purchase Price shall be paid by wire transfer or by certified or cashier's check at time of closing.

4. INSPECTIONS.

This Offer is contingent upon the following inspections:

- (1) Satisfactory Survey at Purchaser's expense.
- (2) Satisfactory Soils Test at Purchaser's expense.
- (3) Satisfactory approval by all Local Government Agencies for an 80-FT Monopole.
- (4) Satisfactory approval by State & Federal Government Agencies.

Inspections shall be completed within One Hundred Eighty (180) days of acceptance of this offer.

Should the results of any inspections not be satisfactory to Purchaser, then within this same period, Purchaser shall notify Seller in writing of the specific dissatisfaction and at which time parties may either renegotiate or terminate this Contract. In the event that Purchaser is unable to secure approval from all Governmental Agencies, including local, state and federal approval to construct the 80 foot monopole on the premises, the parties agree to either negotiate an extension of this contract whereupon the Earnest Money becomes nonrefundable (goes hard), but still applied towards the Purchase Price in the event of a successful closing, or to terminate the same, with all earnest money to be refunded to Purchaser. If Purchaser fails to specifically approve or disapprove any other Inspections within the time specified, then Purchaser shall be deemed to have approved and accepted the property in its present condition.

5. TITLE. Purchaser shall obtain a title insurance commitment from THE H.O. SMITH COMPANY before closing and a title insurance policy insuring marketability. The cost of title insurance issued for this sale shall be paid by Purchaser.

The Parties hereby acknowledge that if the title commitment contains an exception or encumbrance, including but not limited to restrictive covenants or an easement interest within Lot 2 that restricts the development of a Retail Store and 80-FT Monopole, the Parties will renegotiate the Purchase Price to reflect such Easement interest that may potentially affect Purchaser's future use of the Property. In the event that the Parties cannot mutually agree to a Purchase Price to account for the encumbrance, Purchaser may declare this Agreement null and void, and the earnest money shall be refunded in full.

Purchaser further agrees that should a valid title defect exist, Seller will have a reasonable time to correct said defect not to exceed 30 days from the date of the title commitment. If the title defect(s) is not cured within such time period, Purchaser may declare this Agreement null and void, and the earnest money shall be refunded to Purchaser in full.

Seller agrees to convey Merchantable Title to Purchaser by Special Warranty Deed, subject to conditions, zoning, restrictions, and easements of record, if any, which do not interfere with or restrict the existing or future use of the property. Special assessments for items such as paving, curbing, sidewalk or utilities previously constructed, or now under construction by public authority, levied, assessed or not yet assessed as of the date of this Agreement shall be paid by Seller. The documentary stamp tax shall be paid by Seller.

6. **REAL ESTATE TAXES/PRORATIONS.** If the Closing occurs in 2020, the 2019 and previous years Taxes paid in 2020 shall be paid 100% by the Seller. Taxes for the calendar year 2020, together with interest, rents, prepaid services, and other expenses of the property, if any, shall be prorated to the date of possession/closing. Taxes shall be prorated on the basis of the county assessor's valuation at the date of closing and the most recently certified mill levy.
 7. **COMPLIANCE WITH LAW.** Seller shall comply with all federal, state and local laws applicable to the sale or transfer of the property, including but not limited to providing inspections.
 8. **MAINTENANCE/REPAIRS/REPLACEMENTS, COSTS TO SELLER.** Seller agrees to maintain the property in its condition on the date hereof until delivery of possession, which maintenance shall include, but not be limited to, snow removal, trash and debris cleanup, together mowing and eradicating weeds in all of Lot 2, all in compliance with any City ordinances or requirements.
 9. **ACCESS TO PROPERTY.** Seller shall guarantee legal access to Purchaser from the North, off of Frontier Street, and from the East, off of U.S. Highway 283/Plum Creek Parkway.
 10. **CONDITION OF PROPERTY.** Seller represents (1) that to the best of Seller's knowledge, there are no defects in the property that are not readily ascertainable and which significantly affect the desirability or value of the property, and (2) that Seller has no notice of violations of any local state or federal laws, rules and regulations relating to the property.
-

11. **RISK OF LOSS.** Risk of loss or damage to the Property, prior to the Closing Date, shall be the responsibility of Seller. If, prior to closing, the Property is materially damaged by fire, explosion or any other cause, Purchaser shall have the right: i) to require the Premises to be restored to the condition at execution hereof; ii) to adjust the price to the value subject to the damage; or iii) to rescind this Agreement.
 12. **POSSESSION AND CLOSING.** Closing of the sale shall be on 9/25/20 or at a time mutually agreeable to the Parties, PROVIDED, delivery of possession is conditioned upon Closing. Possession of the Property shall be given on the date of Closing. Purchaser shall have the right to make a final inspection of the Property prior to Closing to ascertain that all conditions of this Agreement have been met. Time is of the essence in this Agreement.
 13. **ESCROW CLOSING.** Purchaser and Seller agree that the closing of the sale may be handled by an escrow agent. The Escrow agent will not be required to disburse funds or deliver or record any documents until it has received certified funds or other good, sufficient and collected funds, and all conditions, terms and provisions of this Agreement have been satisfied, performed and met. The Escrow Agent shall be THE H.O. SMITH COMPANY and escrow closing charges shall be paid by Seller.
 14. **RECISSION, TERMINATION OR DEFAULT.** If Purchaser fails to consummate this purchase according to the terms of this Agreement, Seller may, at Seller's option, retain the earnest money as liquidated damages for such failure, or utilize such other legal remedies as are available to Seller by reason of such failure. If this Agreement is rescinded or terminated by either party without fault as allowed hereby, each party shall bear his or her costs and the earnest money shall be refunded to Purchaser.
 15. **USE.** Purchaser intends to use the Premises for a specific purpose. Purchaser may rescind this Agreement on or if Purchaser determines that zoning or land use restriction prohibits such intended use upon providing fourteen (14) day notice to Seller. The purpose is as follows: Retail Store and an 80-FT telecommunications Monopole.
 16. **ACCEPTANCE DATE.** This offer is null and void if not accepted by Seller on or before 3/20/20 at 5:00 o'clock P.M.
 17. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which is deemed to be an original hereof, and all of which shall together constitute one and the same instrument. The facsimile or e-mail transmission of a signed copy hereof or any counter-offer to the other party or their agent with confirmation of transmission shall constitute delivery. The parties agree to confirm delivery by mail or personal delivery of a signed copy to the other party or their agent.
 18. **ENTIRE AGREEMENT.** This document contains the entire Agreement of the parties and supersedes all prior Agreements or representations, oral or written, with respect to the Property which are not expressly set forth herein. This Agreement may be modified only by a writing signed and dated by both Parties. All express representations and warranties shall survive closing.
 19. **AUTHORITY TO SIGN.** The undersigned Seller and Purchaser each represent and warrant that they are duly empowered and/or authorized, whether individually, on behalf
-

of any entity or as a fiduciary, to enter into this Purchase Agreement and create a valid and binding contract. Seller represents all parties required to transfer title to the Property are parties to this contract.

20. DEED RESTRICTION. Purchaser shall record a deed restriction acceptable to Seller over the entire parcel restricting the sale of (a) ground or whole coffee beans, (b) espresso, espresso-based coffee drinks or coffee-based drinks, (c) tea or tea-based drinks, (d) brewed coffee, and/or (e) blended beverages; except future tenants or owners may sell brewed coffee and or brewed tea that is not brand identified (that is coffee or tea that is advertised or marketed within the Premises or Landlord's Real Estate by its brand name or served in a brand identified cup, (e.g., Starbucks, Caribou, Peets, etc.). Said Deed Restriction shall run with the land.

(Signatures on following page)

EXECUTED this 17 day of MARCH, 2020.

SELLER
BOUNDLESS REAL ESTATE HOLDINGS,
LLC

BY: David G. Odessa
TITLE: Chief legal officer

PURCHASER
MOUNTAIN TOWER AND LAND, LLC

BY: [Signature]
TITLE: Agent



Mail Processing Center
 Federal Aviation Administration
 Southwest Regional Office
 Obstruction Evaluation Group
 10101 Hillwood Parkway
 Fort Worth, TX 76177

Aeronautical Study No.
 2020-ACE-1657-OE

Issued Date: 03/26/2020

Skytyn Bellender
 Industrial Tower West, LLC
 1224 West Platte Avenue
 Fort Morgan, CO 80654

**** 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 Lexington I-80
Location:	Lexington, NE
Latitude:	40-44-45.19N NAD 83
Longitude:	99-44-28.26W
Heights:	2387 feet site elevation (SE)
	87 feet above ground level (AGL)
	2474 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:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- At least 10 days prior to start of construction (7460-2, Part 1)
 Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed in accordance with FAA Advisory circular 70/7460-1 L Change 2.

This determination expires on 09/26/2021 unless:

- the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- extended, revised, or terminated by the issuing office.
- 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, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, effective 21 Nov 2007, 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 includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

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.

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 (816) 329-2544, or William.M.Ratts@faa.gov. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2020-ACE-1657-OE.

Signature Control No: 432790463-434722889

(DNE)

Bill Ratts
Technician

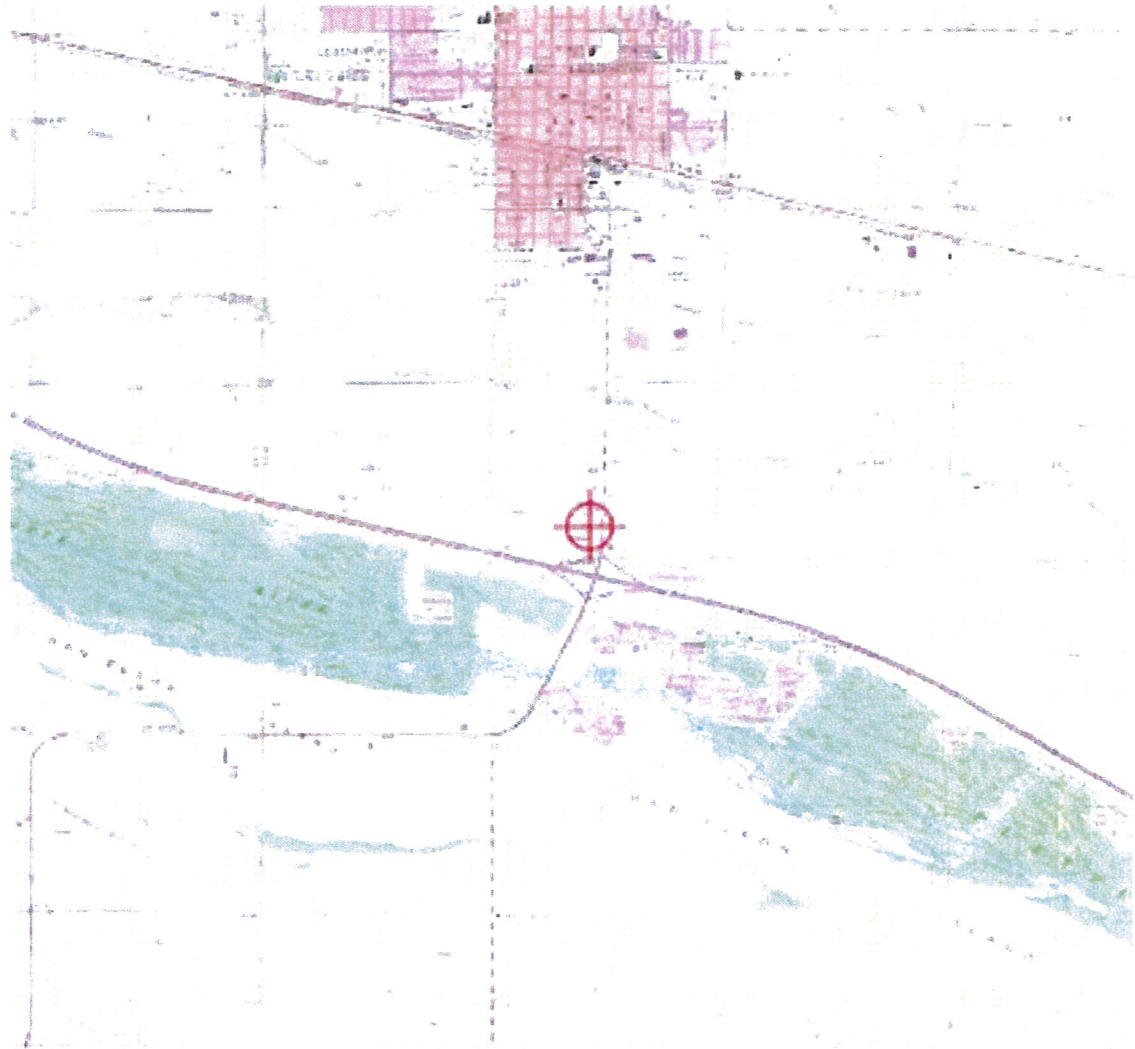
Attachment(s)
Frequency Data
Map(s)

cc: FCC

Frequency Data for ASN 2020-ACE-1657-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

TOPO Map for ASN 2020-ACE-1657-OE



1224 West Platte Ave
Ft. Morgan, CO 80701
Main 877.484.2376
Fax 970.867.3589
www.viaero.com

April 1, 2020

Bill Brecks, Development Services Director
City of Lexington
406 E. 7th Street
P.O. Box 70
Lexington, NE 68850
(308) 324-2341

RE: Viaero Conditional Use Permit – Lexington I-80 Cell Site, NE

Dear Mr. Breck,

In regards to VIAERO WIRELESS's Conditional Use Permit Application for their proposed Lexington I-80, NE Site, we respectfully submit the following Statement to comply with the referenced City Of Lexington Supplemental Regulations 7.07.04 Application to Develop a Tower:

7.07.04. Application To Develop A Tower

Prior to commencement of development or construction of a tower, an application shall be submitted to the Building Official for a Tower Development Permit and shall include the following:

3. The names, addresses and telephone numbers of all owners of other towers or useable antenna support structures within a one (1) mile radius of the location of the proposed tower, including publicly and privately owned towers or structures.

Using the Federal Communications Commission's Antenna Structure Registration database, we have conducted a search for all registered tower structures which are required to be registered according to the Code of Federal Regulations (CFR) 47 Part 17.7 and 14 CFR 77.13 within a 1 mile radius of the proposed site. This search resulted in one (1) structure which fall within the 1 mile criteria. This information is included at the end of this Exhibit.

4. An affidavit attesting to the fact that the applicant has made diligent but unsuccessful efforts to obtain permission to install or collocate the applicant's telecommunications facilities on a tower or useable antenna support structure within a one (1) mile radius of the proposed tower location or written technical evidence from an engineer that the applicant's telecommunications facilities cannot be installed or collocated on another tower or useable antenna support structure within a one (1) mile radius of the proposed tower location.

Structure Number 1 with FCC Antenna Registration 1292556 is a 150+ Foot self-supporting tower located at 40-44-40.3N & 99-44-54.9W and owned by Horvath Towers III, LLC. This site will not provide access to Viaero's fiber route.

Structure Number 2 is not registered with FCC. It is a 50+/- Foot self-supporting tower located at 40-44-38.75N & 99-44-21.45W and owned by a Government Agency. At .16 miles from our proposed 80 Foot Monopole, this site does not have sufficient capacity to support the required PCS and microwave antenna loading.

5. Written technical evidence from an engineer that the proposed tower will meet the established Building Code, and all other construction standards set forth by the City Council and federal and state and applicable ANSI standards.

Viaero Wireless will comply with all Universal Building Code, City, State and Federal laws and applicable American National Standards Institute (ANSI) standards.



(Signature)

For NE COLORADO CELLULAR, INC., d/b/a VIAERO WIRELESS
Thomas W. Burnett,
Title: CTO Viaero Wireless

Exhibit 1

Map Showing Towers Within a 1 Mile Radius Of Proposed Structure



Exhibit 2

FCC Registered Structures Search Result

4/1/2020

ASR Registration Search Results

ASR Registration Search

Registration Search Results

Displayed Results

 = Pending Application(s)

Specified Search

Latitude='40-44-45.2 N', Longitude='99-44-28.3 W', Radius=1.6 Kilometers

Registration Number	Status	File Number	Owner Name	Latitude/Longitude	Structure City/State	Overall Height Above Ground (AGL)
1 1292556	Constructed	A0931106	Horvath Towers III, LLC	40-44-40.3N 099-44-54.9W	Lexington, NE	50.3

[CLOSE WINDOW](#)

City of Lexington Conditional Use Permit

Conditional Use Permit for a Wireless Communication Tower

This Conditional Use Permit issued this _____ day of _____, 2020, by the City of Lexington, a municipal corporation in the County of Dawson County, Nebraska (“City”) to NE Colorado Cellular Inc, a Colorado Corporation, d/b/a Viaero Wireless (“Owner”), pursuant to the Lexington Zoning Ordinance.

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

Lot 2, Scooter’s Addition to the City of Lexington, Dawson County, Nebraska.

WHEREAS, Owner has applied for a conditional use permit for the purpose of developing said retail store and 80-foot wireless communications tower pursuant to an Application for Conditional Use Permit filed with the City of Lexington; and

WHEREAS, Owner has complied and/or agreed to comply with all the requirements of Section 7.07 of the Lexington Zoning Ordinance dated February 11, 2014, and amended December 8, 2015; and

WHEREAS, the Mayor and City Council of the City of Lexington make the following findings of fact in regards to the issuance of a conditional use permit: the location and characteristics of the use will not be detrimental to the health, safety, morals, and general welfare of the area, and such use is not in violation of any the standards set forth in Section 6.08 of the Lexington Zoning Ordinance dated February 11, 2014, and amended December 8, 2015; and

WHEREAS, the Mayor and City Council of the City of Lexington, based on the above findings of fact, are agreeable to the issuance of a conditional use permit to Owner for such purposes, subject to the appropriate conditions, safeguards, and time limits hereinafter provided.

NOW, THEREFORE, BE IT KNOWN THAT subject to the conditions hereof, this conditional use permit is issued to 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. A building permit must be applied for and issued per Section 4.28 of the Lexington City Code.
 - b. All landscaping requirements must be met; Section 7.07.10 of the Lexington City Code.
 - c. Owner will be responsible for maintenance of the tower; Section 7.07.11 of the Lexington City Code.

- d. Owner shall install said tower pursuant to the Application for Conditional Use Permit filed with the City of Lexington, Nebraska.
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.
 - 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. The Parties agree and acknowledge the City of Lexington may file this Conditional Use Permit with the Dawson County Register of Deeds or otherwise file a Memorandum of said Conditional Use Permit with the Register of Deeds. The filing of such shall be paid by the City of Lexington.
4. 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:

NE Colorado Cellular, Inc.
1224 West Platte Ave
Fort Morgan, CO 80701

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:

Pam 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:

By: _____

Title: _____

Date: _____

Owner:

By: _____

Title: _____

Date: _____

DRAFT