

Application for Conditional Use Permit

- 1. Applicant's Name Industrial Tower West LLC c/o Rick Bailey
- 2. Applicant's Address 2825 E. Beaver Ave. Fort Morgan, CO 80701
- 3. Applicant's Telephone Number 970-768-6464 (Rick Bailey)
- 4. Owner's Name (of easement) Mountain Tower & Land LLC.
- 5. Owner's Address 1224 W. Platte Ave. Fort Morgan, CO 80701
- 6. Owner's Telephone Number 970-467-3172
- 7. Purpose of Conditional Use Permit replace existing pole for cell site
- 8. Present Zoning R-1
- 9. Within City Limits Yes Within Zoning Jurisdiction R-1 City of Lexington
- 10. Legal Description 40'x40' easement located in Lot 2, Blk 3, NW Sub to City of Le
- 11. Street Address of Property or Approximate Location  
1709 N. Erie, Lexington, NE
- 12. Site Plan (if applicable) \_\_\_\_\_

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.

[Signature]  
Signature of Owner

[Signature]  
Signature of Applicant

<u>Administrative Use Only</u>	
Date Submitted <u>4/6/2023</u>	Case Number _____
Filing Fee <u>\$100.00</u>	Accepted By _____
Cert. Of Ownership _____	Date Advertised _____
Date Sign Posted _____	Date of Public Hearing <u>PC 7/12/2023</u>

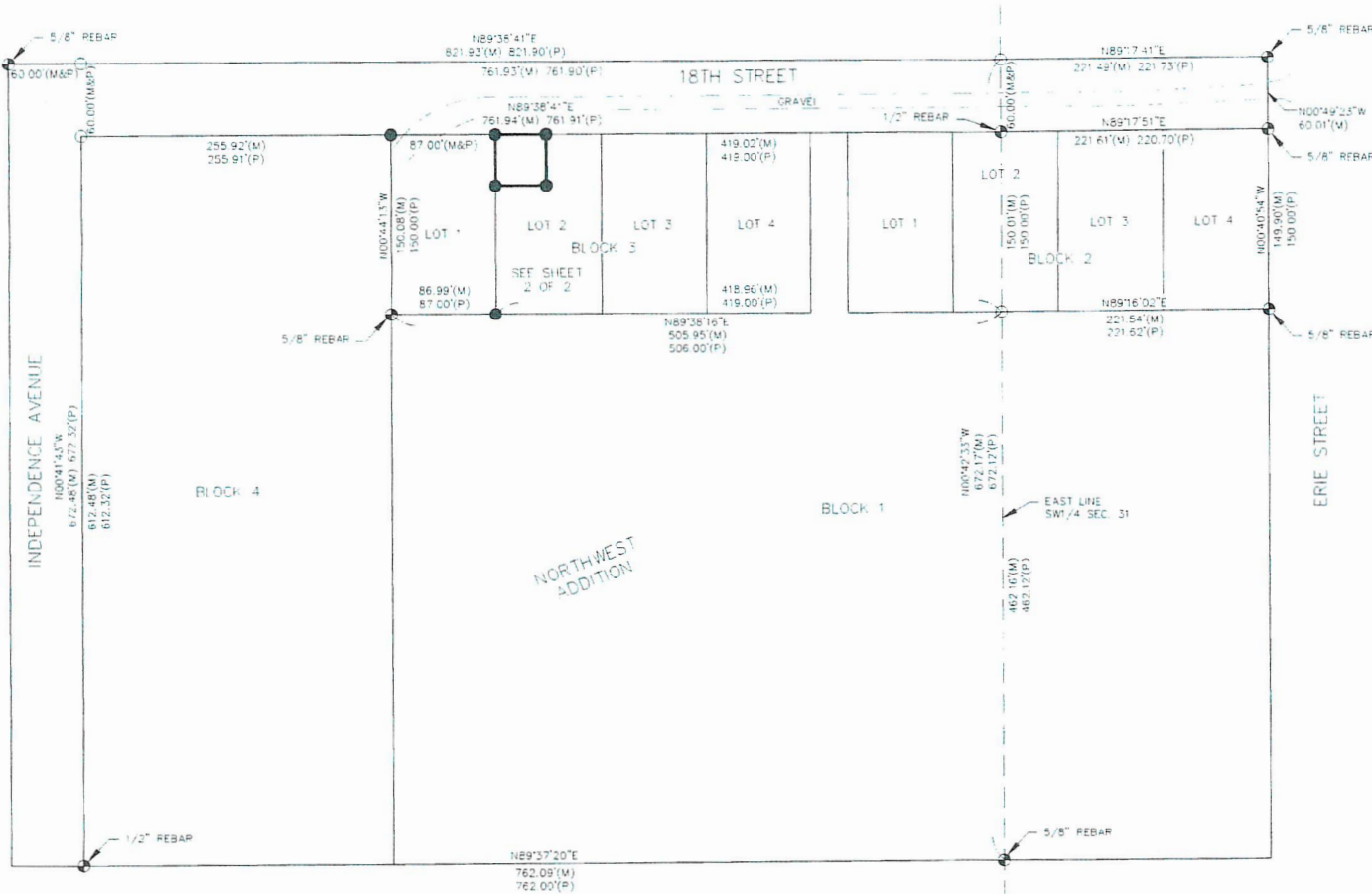
### **Section 6.08 Standards**

No conditional use permit shall be granted unless that Planning Commission or City Council has found:

- 6.08.01 That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, moral, comfort or general welfare of the community.
- 6.08.02 That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish and impair property values within the neighborhood.
- 6.08.03 That the establishment of the conditional use will not impede the normal and orderly development of the surrounding property for uses permitted in the district.
- 6.08.04 Adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided.
- 6.08.05 Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- 6.08.06 The use shall not include noise which is objectionable due to volume, frequency, or beat unless muffled or otherwise controlled.
- 6.08.07 The use shall not involve any pollution of the air by fly-ash, dust, vapors or other substance which is harmful to health, animals, vegetation or other property or which can cause soiling, discomfort, or irritation.
- 6.08.08 The use shall not involve any malodorous gas or matter which is discernible on any adjoining lot or property.
- 6.08.09 The use shall not involve any direct or reflected glare which is visible from any adjoining property or from any public street, road, or highway.
- 6.08.010 The use shall not involve any activity substantially increasing the movement of traffic on public streets unless procedures are instituted to limit traffic hazards and congestion.
- 6.08.011 The use shall not involve any activity substantially increasing the burden on any public utilities or facilities unless provisions are made for any necessary adjustments.



LEXINGTON NW VIAERO (TOWER SITE PLAN)  
 A PART OF LOT 2, BLOCK 3, NORTHWEST ADDITION  
 CITY OF LEXINGTON  
 DAWSON COUNTY, NEBRASKA



**LEGEND**

- MONUMENT FOUND
- MONUMENT SET
- CALCULATED POINT
- M MEASURED DISTANCE
- R RECORDED DISTANCE
- D DECEDD DISTANCE
- ▲ PROPOSED 52' TOWER
- EXISTING CONTOUR
- - - EXISTING EASEMENT LINE
- PERMANENT EASEMENT LINE

**VICINITY SKETCH**  
 DAWSON COUNTY  
 NEBRASKA  
 R21W

**GRAPHIC SCALE**

PROJECT NO.	R160255
DATE	11/29/2016
DRAWN BY	AJD
FILE NAME	Lexington NW.dwg
FIELD BOOK	DAWSON CO #
FIELD OPER.	
SURVEY FILE NO.	25
REVISION	
REVISION DATE	
REVISION	

Inst. 2016 - 3686

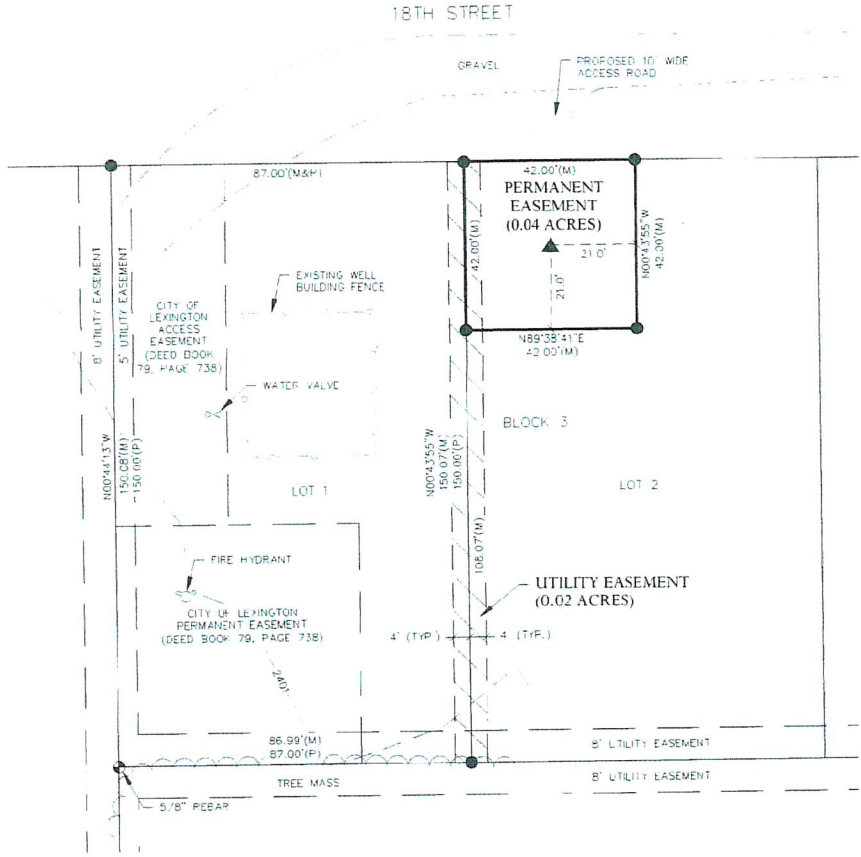
SURVEY RECORD  
 LEXINGTON NW VIAERO SITE

A PART OF LOT 2, BLOCK 3  
 NORTHWEST ADDITION  
 CITY OF LEXINGTON  
 DAWSON COUNTY, NEBRASKA

P:\Survey\160255.dwg - Areas Wireless Lexington NW.dwg (Drawn) Drawn: ajd Date: 11/29/2016 3:14 PM



LEXINGTON NW VIAERO (TOWER SITE PLAN)  
 A PART OF LOT 2, BLOCK 3, NORTHWEST ADDITION  
 CITY OF LEXINGTON  
 DAWSON COUNTY, NEBRASKA



NOTE:  
 PROPOSED 52' TOWER  
 LAT. = 40°47'30.17903"  
 LONG. = 99°45'35.49988"  
 NAD 83  
 BASE ELEV. = 2401 NAVD88

PERMANENT EASEMENT:

THE NORTH 42.00 FEET OF THE WEST 42.00 FEET OF LOT 2, BLOCK 3, NORTHWEST SUBDIVISION TO THE CITY OF LEXINGTON, DAWSON COUNTY, NEBRASKA, CONTAINING 0.04 ACRES, MORE OR LESS.

UTILITY EASEMENT:

THE EAST 4.00 FEET OF LOT 1 AND THE WEST 4.00 FEET OF LOT 2, ALL IN BLOCK 3, NORTHWEST SUBDIVISION TO THE CITY OF LEXINGTON, DAWSON COUNTY, NEBRASKA, CONTAINING 0.02 ACRES MORE OR LESS.

SURVEYOR'S REPORT:

THIS SURVEY WAS PERFORMED AT THE REQUEST OF VIAERO WIRELESS. THE PURPOSE OF THIS SURVEY WAS TO ESTABLISH THE PERIMETER AND CREATE A DESCRIPTION OF A PARCEL OF LAND LOCATED IN LOT 2, BLOCK 3, NORTHWEST SUBDIVISION TO THE CITY OF LEXINGTON, DAWSON COUNTY, NEBRASKA. EXISTING MONUMENTS OF RECORD WERE FOUND AT LOCATIONS SHOWN ON THIS PLAT. ALL MONUMENTS FOUND ARE DESCRIBED ON THIS PLAT. ALL MONUMENTS SET ARE A 5/8"x24" REBAR WITH A PLASTIC CAP STAMPED "GOERTZEN L.S. 704".

ALL LINES WERE PRODUCED AND ANGLES AND DISTANCES MEASURED WITH SEILER INSTRUMENT'S VPS NETWORK, A TRIMBLE R8 GNSS RECEIVER, AND A 100 FOOT STEEL TAPE.

SURVEYOR'S CERTIFICATE:

I HEREBY CERTIFY THAT THIS PLAT OF A SURVEY WAS MADE BY ME OR UNDER MY SUPERVISION AND IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE, AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NEBRASKA.

*Adam J. Goertzen* 11/29/2016  
 ADAM J. GOERTZEN, L.S. 704



Inst. 2016 - 3686

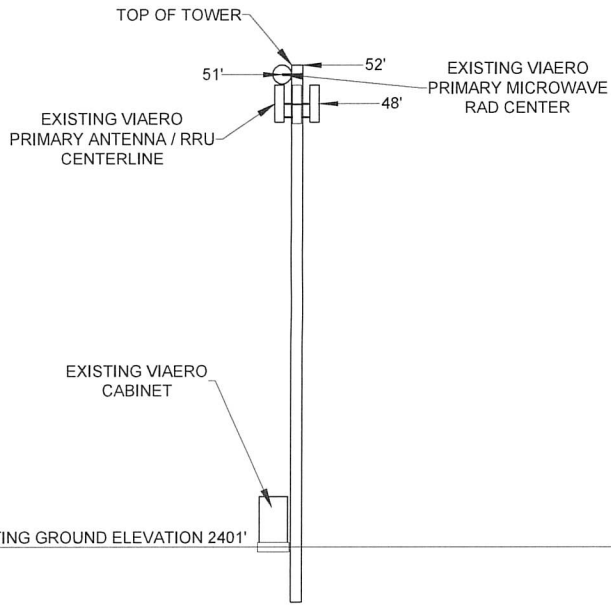
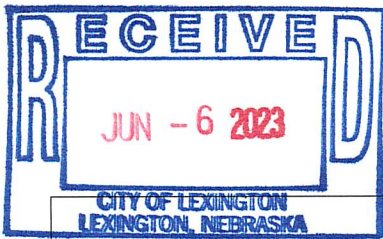
A PART OF LOT 2, BLOCK 3  
 NORTHWEST ADDITION  
 CITY OF LEXINGTON  
 DAWSON COUNTY, NEBRASKA

SURVEY RECORD  
 LEXINGTON NW VIAERO SITE

PROJECT NO.	R160255
DATE	11/29/2016
DRAWN BY	AJG
FILE NAME	Lexington NW.Dwg
FIELD BOOK	DAWSON CO #1
FIELD DRAWN	JG
SURVEY FILE NO.	
REVIEW BY	
REVIEW DATE	
REVISIONS	



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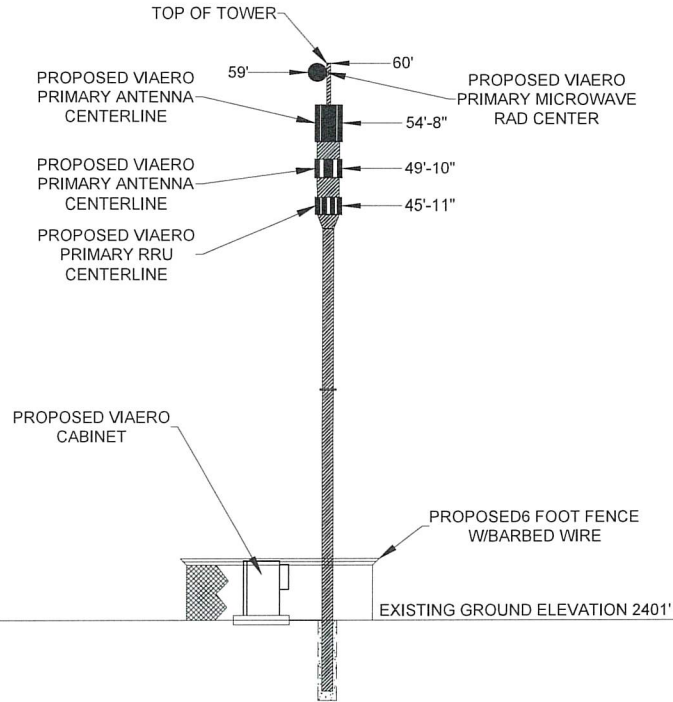


EXISTING  
NORTH ELEVATION

- NOTES:
1. EXISTING TOWER WILL NE REMOVED
  2. EXISTING CABINET WILL BE REMOVED
  3. EXISTING ANTENNAS, RADIOS AND MICROWAVE WILL BE REMOVED

**TOWER ELEVATION NORTH DETAIL:**

SCALE: N.T.S



PROPOSED  
NORTH ELEVATION



2825 E. BEAVER AVENUE  
FORT MORGAN, CO 80701

PROJECT INFORMATION:

SITE NAME:  
LEXINGTON NORTHWEST  
LEXINGTON, NE  
(DAWSON COUNTY)

SEAL:

REV	DATE	ISSUED FOR:

DRAWN BY:                      CHECKED BY:

SHEET TITLE:  
**TOWER ELEVATION  
NORTH**

SHEET NUMBER:                      REVISION:

**A-4**

# City of Lexington Conditional Use Permit

## Conditional Use Permit for a Wireless Communication Tower

This Conditional Use Permit issued this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by the City of Lexington, a municipal corporation in the County of Dawson County, Nebraska (“City”) to Lexington Public Schools (“Owner”) and Mountain Tower and Land, LLC, pursuant to the Lexington Zoning Ordinance.

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

The North 42 feet of the West 42 feet of Lot 2, Block 3, Northwest Subdivision to the City of Lexington, 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 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 the 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 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. A building permit must be applied for and issued per Section 4.28 of the Lexington City Code.
  - b. All requirements of Section 7.07 of the Lexington Zoning Ordinance, pertaining to wireless communication towers, must be met.
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.
  - d. Continued Compliance with the standards set forth at Section 6.08 of the Lexington Zoning Ordinance .
  - e. Continued Compliance with the standards set forth for wireless communication towers at Section 7.07 of the Lexington Zoning Ordinance.
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. 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:**

Lexington Public Schools  
 300 South Washington Street  
 Lexington, NE 68850

**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.

Operator:

Owner:



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

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

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

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

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

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

DRAFT