

SPONSOR: E. Brown/Adams

ORDINANCE NO. 80-08

AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO A SITE LEASE AGREEMENT BETWEEN THE CITY OF JACKSON, OHIO, AND HORIZON PERSONAL COMMUNICATIONS, INC. ("HORIZON PCS"), FOR A LEASE TO INSTALL ANTEENAS FOR WIRELESS COMMUNICATION ON A PORTION OF THE CITY'S APPPLE WATER TOWER, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JACKSON, STATE OF OHIO, as follows:

Section One. The Mayor is authorized to enter into an Agreement between the City of Jackson, Ohio, and Horizon Personal Communications, Inc. ("Horizon PCS"), an Ohio corporation, whose address is 648 North Chicago Street, Geneseo, Illinois 61254, for a lease agreement concerning the installation of antennas on the City's Apple Water Tower for wireless communications. The agreement to be executed by the Mayor shall be substantially similar to the copy of the Agreement which is attached hereto as Exhibit "A".

Section Two. This Ordinance is hereby declared to be an emergency Ordinance necessary for the immediate preservation of the public peace, health, or safety of the City of Jackson, in that it is necessary to enter into this agreement as soon as possible in order that the wireless communication project may proceed in a timely manner. Therefore, this Ordinance shall go into effect upon passage and approval by the Mayor, as provided in Ohio Revised Code Section 731.30.

Section Three. In the event this Ordinance receives a majority vote for passage but fails to receive the required number of votes to pass as an emergency, then this Ordinance shall be deemed to have passed but with no emergency clause and shall take effect at the earliest time permitted by law.

Section Four. It is hereby found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that the deliberations of this Council that resulted in such formal actions, were in a meeting open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Date: 9-8-08

Renee B. Seaman
PRESIDENT OF COUNCIL

Jana Brown
CLERK OF COUNCIL

Approved:

Date: 9-9-08

Randy R. Yeatts
MAYOR

Exhibit “A”

SITE LEASE

THIS SITE LEASE ("Lease") is made and entered into on this ___ day of _____ 2008, by and between the City of Jackson, Ohio ("City"), an Ohio municipal corporation, and Horizon Personal Communications, Inc. ("Horizon PCS"), an Ohio corporation, whose address is 648 North Chicago Street, Geneseo, Illinois 61254 (Lessee).

1. **Leased Site.** City leases to Lessee, and Lessee leases from City, on the terms and conditions contained herein, (a) space on the handrail of an existing water tower **for the installation of a maximum of nine (9) antennas** located at a height of approximately ____, (b) a 300 square foot area at the base of the water tower (the "Tower") which is required for cable runs to connect Lessee's equipment and (c) a non-exclusive easement for the unrestricted right of access thereto and for a suitable service of electricity, telephone and other utility facilities under the property described on attached Exhibit A (collectively, the "Site" or "Leased Premises"). The parties acknowledge and agree that the City's execution of this lease constitutes a permit for Lessee to use the Site and that Lessee intends to locate at the Site shown on the attached Exhibit A, a cellular antenna array and associated cables, wires, electrical equipment, base station, etc. (the "Antenna Facilities"). During the term of this Lease, Lessee, its employees, agents, invitees and its authorized representatives and contractors, including Sprint Spectrum L.P., shall have twenty-four (24) hour per day, seven (7) day a week access as needed to the water tower and its equipment shelter. The City reserves the right of access to the Site in emergencies as may be necessary to ensure the sound maintenance and safe operation of all facilities at the Water Tower site, but under no circumstances will the City willfully damage or interfere with Lessee's access to or use of the Site.

2. **Term.** The initial term ("**Initial Term**") of this Lease shall be for a period of five (5) years, commencing on the date Lessee commences construction at the Site or _____, whichever first occurs (the "**Commencement Date**").

3. **Rental.** On the first day of the month following the month in which the Lessee tower goes into operation (which date shall be verified in writing and shall be referred to as the "Rent Commencement Date"), the first monthly rent payment shall be due in the amount of **One Thousand Dollars (\$1,000.00)** ("**Monthly Rent**").

4. **Termination by City.** In the event that the City determines that the Antenna Facilities have caused damage to the Tower, fails to maintain its Antenna Facilities, or is otherwise in default of this Agreement, the City may serve notice of default on Lessee and if Lessee fails to cure such default within ninety (90) days, the City may terminate this agreement by giving the Lessee written notice of its election to terminate this agreement due to Lessee's failure to cure such default.

5. **Renewal Option.** Provided that this Agreement has not been terminated in accordance with the provisions of this Agreement, then the terms of this lease may be automatically extended by Lessee for five (5) additional five (5) year periods (the "Extension Terms") provided that Lessee does not provide City with written notification of Lessee's intentions to not renew not less than ninety (90) days prior to the end of the term then in effect. **The rental rate for the Extension terms shall be as follows:**

Term

Annual Amount

Initial Term	\$12,000 Annually
First five year renewal	110% of Initial Term
Second five year renewal	120% of Initial Term
Third five year renewal	130% of Initial Term
Fourth five year renewal	140% of Initial Term
Fifth five year renewal	150% of Initial Term

City may exercise its options under paragraph 4, above, by giving written notice of termination six (6) months or more prior to the end of the five year extension term.

6. **Possession.** Lessee shall take possession of the Site on the Commencement Date.

7. **Use of the Premises.**

a. Lessee may use the property for the installation, operation and maintenance of its Antenna Facilities for the transmission, reception and operation of a communications system and uses incidental thereto, and for the storage of related equipment in accordance with the terms of this Lease. The City may permit others to use other portions of the Tower. Lessee's installation of all such Antenna Facilities shall be done according to plans approved by the City, which are attached as Exhibits A ("site plan") and B ("tower construction plans"). Lessee shall be strictly liable for any contamination caused by Lessee to water in the Tower or damage done to the Tower and/or the Site during installation and/or during operations. Any contamination caused by Lessee to water in the Tower shall be remedied by the City, and the Lessee shall pay City the expenses of such remedy within 30 days after receipt of a statement from the City stating the cost of such remedy, even if the remedy is not yet completed. Lessee must notify the Water Plant Operator of any contamination caused by Lessee to the water in the Tower immediately. Any damage done to the Tower and/or Site during installation and/or during operations by Lessee shall be repaired or replaced within ten (10) days at Lessee's expense and to City's sole satisfaction.

b. Lessee shall, at its expense, comply with all present and future federal, state and local laws, ordinances, rules and regulations (including laws and ordinances relating to health, radio frequency emissions, other radiation and safety), if applicable, in connection with the use, operation, maintenance, construction and/or installation of the Antenna Facilities and/or the premises. City agrees to reasonably cooperate with Lessee in obtaining any federal licenses and permits required for or substantially required by Lessee's use of the premises at the expense of Lessee.

c. Upon termination of this lease, Lessee shall remove the Antenna Facilities and all support structures that are not shared or used by another user of the Tower. Such removal shall be done in a workmanlike and careful manner and without interference or damage to the water in the Tower, the Tower, or any other equipment, structures or operations on the Site, including use of the Site by the City or any of the City's assignees or lessees.

d. The City reserves the right to install additional bracketing material or similar structural supports to allow for the co-location of other lessees' antenna or similar radiating or broadcasting equipment. The City agrees, as a precondition to any such additional installation, to provide all reasonable and necessary assurances to Lessee that such co-location will not

disturb, disrupt or cause harm to Lessee's antenna or radiating equipment. Should Lessee cause or have cause to terminate this Lease, the City shall have the right to cause Lessee to remove all supporting attachments placed on the tower by Lessee or elect not to cause Lessee to remove its supporting hardware.

8. **Equipment Upgrade.** Lessee has the right to update or replace its Antenna Facilities from time to time, provided that the replacement facilities are not greater in number or size than the existing facilities and that any change in their location on the Tower is satisfactory to the City.

9. **Maintenance.**

a. Lessee shall, at its own expense, maintain its Antenna Facilities in a safe condition, in good repair and in a manner reasonably suitable to the City so as not to conflict with the use of or other leasing of the Tower by the City. In carrying out its maintenance responsibilities, Lessee shall not interfere with the use of the Tower, the premises, related facilities or other equipment of other tenants.

b. Lessee shall have sole responsibility for the maintenance, repair and security of its Antenna Facilities, and leasehold improvements, and shall keep the same in good repair and condition during the term of this Lease.

c. Lessee shall keep the Leased Premises free of debris and anything of a dangerous, noxious or offensive nature or which may create a hazard or undue vibration, heat, noise or interference.

d. Lessee shall keep the Site clean and neat with respect to Lessee's use.

10. **Utilities.** City agrees to cooperate with Lessee in Lessee's efforts to obtain electric and other utilities from any location provided by City or the servicing utility. During the Term of this Site Lease, Lessee shall obtain its own utilities. The lines must be buried. Lessee shall be responsible for all charges for utilities required for Lessee's operation of the communications facility on the Site. The cost to maintain, repair, operate and replace the electric facilities, upgrades or extensions to the Site requested by Lessee shall be paid by Lessee. Lessee shall promptly repair at Lessee's expense any damage occasioned by said construction or maintenance on the Site.

11. **Taxes.** Lessee shall be responsible for paying all personal property taxes assessed directly upon and arising solely from its own use of the Antenna Facilities on the Site during the Term of this Lease.

12. **Interference.** Lessee agrees to install and operate only equipment which does not cause interference to City or other lessees or licensees of the Tower site ("Pre-Existing User"); provided that their installations predate that of the Lessee's installation of its Antenna Facilities. In the event that the Lessee's Antenna Facilities cause such interference or any permitted subsequent modification or addition causes such interference, Lessee shall take all steps necessary to correct and eliminate the interference. If the interference is substantial (as determined by the Pre-Existing User acting in good faith and reasonably) then Lessee shall have forty-eight (48) hours to resolve the interference problem. If the interference is substantial and

cannot be resolved within 48 hours, Lessee shall power down its equipment and/or cease operations in order to correct and eliminate such interference provided that Lessee may operate its equipment intermittently during off-peak hours for testing purposes only. If the interference is not substantial, Lessee shall work diligently and take all necessary and appropriate action to cure such interference as promptly as possible without having to power down its equipment unless the interference becomes substantial.

In all cases of interference if Lessee is unable to eliminate the interference, or reduce it to a level acceptable to the affected Pre-Existing User, within a period of thirty (30) days of receipt of notification, then either party may terminate this Agreement. City agrees not to allow any user of the Tower whose equipment is installed or modified subsequent to Lessee's installation of its Antenna Facilities ("Subsequent User") to interfere with the operation of Lessee. In the event Lessee is subject to any such interference, City shall (or shall cause other Subsequent Users) take all steps necessary to correct and eliminate the interference. If such interference is not eliminated within forty-eight (48) hours after City's receipt of notice of such interference from Lessee, City shall (or shall cause such other Subsequent User) to cease operations if requested by Lessee until the interference is eliminated. If such Subsequent User is unable to eliminate the interference, or reduce it to a level acceptable to Lessee, within a period of thirty (30) days, then Lessee may, in addition to any other rights it may have, terminate this Agreement. Nothing in this section shall be deemed or interpreted to authorize Lessee to illegally transmit on any frequencies or to provide any protection to Lessee from interference from any other person in the event that Lessee is operating on any unlicensed frequency spectrum.

Lessee's installation, operation, and maintenance of its Antenna Facilities shall not damage or interfere in any way with the City's Tower operations or with such activities of other tenants of the Tower.

City will work with Lessee to avoid a discontinuation of service. Should a discontinuation of service occur, the discontinuation of service shall result in a prorated reduction of Lessee's Monthly Lease Payment. City will work with Lessee to find a suitable location for Lessee to operate a temporary COW (cell on wheels) should a discontinuation of service due to City's actions or requirements become unavoidable.

If the City receives a request for co-location on the Tower from any other third-party, it shall submit a proposal complete with all technical specifications reasonably requested by Lessee to Lessee for review for non-interference; however, City shall not be required to provide Lessee with any specifications or information claimed to be of a proprietary nature by the third party. Lessee shall have thirty (30) days following receipt of said proposal to make any objections thereto, and failure to make any objection within said thirty (30) day period shall be deemed consent by Lessee to the installation of antennas or transmission facilities pursuant to said proposal. If Lessee gives notice of objection due to interference during such thirty- (30) day period and Lessee's objections are verified by City to be valid, then City shall not proceed with the proposal.

13. **Insurance.** Lessee shall maintain, at its sole cost during the Term of this Lease, commercial general liability insurance insuring Lessee against liability for personal injury, death or damage to personal property arising out of the use of the Site by Lessee. Such insurance shall provide coverage in an amount not less than \$1 million for property damage. Lessee shall

provide City with a certificate of insurance evidencing such coverage which states that the carrier has insured Lessee for all liabilities under this Lease and that it will not cancel or change any policy of insurance issued to Lessee except after thirty (30) days notice in writing to City. City shall be added to the policy as an additional insured. The fact that Lessee is required to furnish insurance in accordance with this paragraph or the fact that such insurance is furnished does not and shall not relieve Lessee from its obligations to City under the provisions under Paragraph 15 of this lease for any deficiency amount of which Lessee is responsible to City. City shall insure its property, the Tower and building of which the Site is a part thereof, as the case may be, against loss or damage under a policy or policies of fire and extended coverage.

14. **Lessee's Property.** All Antenna Facilities installed by Lessee at the Site shall remain the property of Lessee and shall not be subject to any lien or encumbrance of City or any third party acting pursuant to an agreement with City. City waives any lien rights it may have concerning Lessee's facilities which are deemed Lessee's personal property and not fixtures, and Lessee has the right to remove the same at any time without City's consent. City acknowledges that Lessee has entered into a financing arrangement and may enter into additional financing arrangements in the future including promissory notes and a financial and security agreement ("Financing Agreement") for the financing of Lessee's facilities ("Collateral") with a third party or parties (the "Financing Entity"). In connection therewith, City (i) consents to the installation of the Collateral; (ii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any rent due or to become due and that such Collateral may be removed at any time without recourse to legal processing.

15. **Damage to Owner's Facilities.** Lessee shall exercise reasonable precaution to avoid damage to the Tower, including contamination caused to the water supply, and, subject to the waivers contained in this Lease, hereby assumes all responsibility for any and all loss or damage to such facilities caused by Lessee. Lessee shall make an immediate report to City of the occurrence of any damage and agrees to reimburse City for the reasonable expense incurred in making repairs upon Lessee's receipt of a written invoice from City's contractor evidencing both the cost of the repairs and that the repairs were completed.

16. **Indemnity.** Lessee and City shall indemnify and hold the other harmless from any and all costs (including, but not limited to, reasonable attorneys' fees and court costs) and claims of liability or loss which arise out of the use and/or occupancy of the Site by such indemnifying party, including liability or loss arising from environmental contamination as provided in Paragraph 16 below. This indemnity shall not apply to any claims arising from the sole negligence or intentional misconduct of the indemnified party.

17. **Hazardous Substances.** City represents and warrants that it has no knowledge, nor should it have any knowledge, of any substance, chemical or waste (collectively, "**Substance**") on the Site that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Lessee agrees not to introduce or use any Substance on the Site in violation of any applicable law.

18. **Assignment.** Lessee may assign this Agreement as a whole with City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; *provided, however*, that City's consent will not be required for an assignment to any person or entity which is controlled by, controlling or under common control with Lessee ("Affiliates"), or to Sprint Spectrum L.P. or to any successor-in-interest to Sprint Spectrum L.P. For these

purposes, "control" means ownership, directly or indirectly, of 50% or more of the voting stock, equity or beneficial interest or a general partner of any partnership. Any permitted assignee shall expressly assume, and become bound by, all of Lessee's obligations under this Agreement. City may freely assign or transfer this Agreement. Any permitted assignee shall expressly assume, and become bound by, all of City's obligations under this Agreement. This Agreement shall be binding upon the successors and permitted assigns of both parties.

19. **Condemnation.** If all or substantially all of City's property upon which the Site is located is condemned by an authorized governmental or quasi-governmental authority, this Lease shall terminate upon the date of the taking and each party shall have the right to maintain their own respective actions against the condemning authority for their respective damages and neither party shall have any interest in any award granted to the other. If a taking occurs, the Rent shall be prorated to the date of the taking, and any excess prepaid Rent shall be promptly repaid to Lessee.

20. **Termination.** Lessee shall have the right to terminate this Lease at any time without further liability to City if (i) Lessee cannot obtain all certificates, permits, licenses or other approvals (collectively "**Approvals**") required from any governmental authority and/or any easements required from any third party to operate its communications facility; (ii) such Approvals are canceled, expire, lapse, withdrawn or terminated; (iii) City fails to hold legal title to the property on which the Site is located; (iv) City does not have the authority to enter into this Lease; or (v) for any other reason, Lessee, in its sole discretion, determines that it will be unable to use the Site for the use intended by this Lease. City can terminate for a material breach of the lease with 30 days written notice to Lessee, and Lessee's failure to cure.

21. **Notices.** All notices shall be in writing and sent by U.S. certified mail, postage prepaid, return receipt requested or by overnight express delivery to the address of the party set forth above or as otherwise directed in writing by such party or as provided under applicable state law. Notice is deemed given three (3) days after being deposited in the U.S. Mail for certified mail delivery or one (1) day after being deposited with an overnight express delivery courier for delivery to the correct address.

22. **Compliance with Laws.** City represents that City's property (including, without limitation, the Site) and all improvements thereto, are in compliance with all building life/safety, disability and other laws, codes and regulations of any governmental or quasi-governmental authority. Lessee agrees that, subject to City's compliance with the terms of this paragraph, any improvements constructed by Lessee on the Site and all of the operations of Lessee within the Site shall be in compliance with all applicable laws, codes and regulations.

23. **Marking and Lighting Requirements.** City acknowledges that it, and not Lessee, shall be responsible for compliance with all marking and lighting requirements of the Federal Aviation Administration ("FAA") and the Federal Communications Commission ("FCC"). Owner shall indemnify and hold Lessee harmless from any fines or liabilities caused by City's failure to comply with such requirements.

24. **Miscellaneous.**

A. Lessee shall peaceably and quietly have, hold and enjoy the Site. City shall not cause or permit any use of its property of which the Site is a part thereof to interfere with or

impair the quality of the communications services being rendered by Lessee from the Site. The only remedy in the event of interference with Lessee's communications equipment or services by normal day-to-day water tower operations is termination of the lease. If an abnormal condition occurs, such as equipment malfunction, and said abnormality causes interference to Lessee's equipment, the City will work with Lessee to resolve such abnormality within thirty (30) days of notification.

B. City represents and warrants that City has full authority to enter into and sign this Lease and good title to the site.

C. The terms and conditions of this Lease shall extend to and bind the heirs, personal representatives, successors and assigns of City and Lessee.

D. The prevailing party in any action or proceeding in court to enforce the terms of this Lease shall be entitled to receive its reasonable attorney's fees and other reasonable enforcement costs and expenses from the non-prevailing party.

E. City, upon receipt of the fully executed Lease from Lessee, may execute and deliver within two (2) business days to Lessee for recording a Short Form of this Lease in the form substantially as set forth in the attached **Short Form of Lease**.

F. This Lease shall be construed pursuant to the laws of the State of Ohio.

G. This Site Lease may not be amended or modified unless the City and Lessee consent in writing to the amendment or modification.

H. There shall be no signage on the Tower Site by Lessee, other than reasonable signs for safety, federal and or state regulated, or emergency contact information.

I. This Lease contains all agreements, promises and understandings between City and Lessee. All Exhibits are incorporated by reference.

CITY OF JACKSON, OHIO

By: _____

Name: _____

Its: _____

Date: _____

LESSEE

Horizon Personal Communications, Inc.,
an Ohio corporation
648 North Chicago Street
Geneseo, IL 61254

By: _____

Name: Craig Kinley

Its: SVP of Eng & Net Ops

Date: _____

EXHIBIT A
WATER TOWER

LEGAL DESCRIPTION

EXHIBIT B

WATER TOWER

Tower Construction Plans