

SUBDIVISION AGREEMENT
WESTMINSTER WOODS

This Agreement entered into on _____, 2009, by and between Westminster Woods, LLC, hereinafter referred to as "SUBDIVIDER," and the City of Lexington, Nebraska, a municipal corporation of the State of Nebraska, hereinafter referred to as "CITY."

WHEREAS, SUBDIVIDER has applied for subdivision approval of WESTMINSTER WOODS, a subdivision being part of Government Lots 1 & 2 and accretions located in Section 21, Township 9 North, Range 21 West of the Sixth Principal Meridian, Dawson County, Nebraska, a rural subdivision, said subdivision to provide for future development of vacant land;

IN CONSIDERATION OF THE MUTUAL AGREEMENTS OF THE PARTIES, THE PARTIES THEREFORE AGREE AS FOLLOWS:

1. **SUBDIVIDER RESPONSIBILITY:** The parties understand and agree that any review of SUBDIVIDER'S plans and specifications by or on behalf of CITY is only for purposes of CITY and in no way relates to an approval of materials used or the end product of SUBDIVIDER'S work. SUBDIVIDER certifies that he has thoroughly reviewed all plans, notes and specifications, examined the project site and ascertained all soil, geological, ground water and other conditions to be encountered which might affect the construction and future maintenance of the Subdivision. SUBDIVIDER further certifies that work contemplated under such plans and specifications will be prepared by or on behalf of the SUBDIVIDER, that the Subdivision is the responsibility of the SUBDIVIDER and that work is undertaken thereon only in reliance on its own investigation and information and not on any statements, representations or reports, if any, that may have been made or furnished by CITY, its officers, agents or employees.
2. **ENGINEERING STANDARDS AND INSPECTIONS:** The parties agree that prior to construction of any public utilities, drainage facilities or public streets, an engineering plan shall be prepared for approval by the City Engineer, and the grades established and materials used shall be consistent with the grades established and materials used for City facilities.
3. **SUBDIVISION APPROVAL:** The parties agree that no construction will commence until a final subdivision plat complying with all of the terms and provisions of Chapter 24a of the Lexington City Code has been approved by the City Planning Commission and City Council.
4. **SEWER AND WATER:** Sanitary sewer systems and water system will be constructed in compliance with all state and federal regulations. At such time as a City sanitary sewer or water main shall abut or be within fifty (50) feet of the property, Subdivider shall cause the property to be connected to the system of the City of Lexington; Subdivider waives the right to object to creation of a water or sanitary sewer district.
5. **PUBLIC STREETS:** All dedicated roads or access roads to lots within the Subdivision are either County Roads or private drives. CITY shall have no responsibility for maintenance or repair of said roadway. No sidewalk construction shall be required.
6. **DRAINAGE:** All storm water within the subdivision shall be drained by way of surface drainage, subject to further agreement or Special Use Permit.

7. **EASEMENTS:** The parties agree that telephone, natural gas, cable TV, electric and other public utilities may locate facilities within the areas designated as “Utility Easement,” subject only, to the condition that such utility companies will restore the ground, including required paving (street or sidewalk), after construction, to its pre-existing condition. SUBDIVIDER will require each such utility to provide a map showing actual location of such facility as installed, such records to be deposited with CITY for public inspection. The parties further agree that no private construction will be allowed in the easement areas, except paving or permitted advertising signs, and that any such improvements or landscaping located in such easement areas, other than required paving, shall be removed at the property owner's expense, if reasonably necessary for purpose of installation, maintenance or repair of utilities within such easement.
8. **NUISANCE ENFORCEMENT:** The Subdivision shall be subject to the provisions of Chapter 18 of the Lexington City Code relating to nuisances and enforcement of the International Property Maintenance Code; maintenance of a nuisance within the Subdivision shall be treated as a violation of the terms of this Subdivision Agreement, and shall be subject to enforcement under the provisions of Chapter 18 of the Lexington City Code .
9. **TIME OF THE ESSENCE:** The parties agree that time is of the essence in completion of the proposed Subdivision, and in the event that construction is not commenced within 48 months of the date of this agreement, the Resolution approving such Subdivision shall be suspended, and no construction shall thereafter commence without specific authority of City Council.
10. **DEVELOPMENT TO BE SUSPENDED:** The parties agree that Lots 1, 2, 3 & 4 of the Subdivision have been rezoned by CITY to M-1, Light Industrial, but that because of the special and unusual nature of the property, the proximity to adjoining Residentially zoned lots, the environmental and habitat issues relating to the adjacent Platte River, and aesthetic issues relating to the proximity to Interstate 80 and the entrance to the City of Lexington, not all of the permitted uses in an M-1 Zone may be appropriate for development of said lots. It is therefore agreed that as a specific condition of adoption of the Rezoning and Subdivision approval by CITY, no change of existing uses, construction of improvements or other development of said Lots 1, 2, 3 & 4 of Westminster Subdivision shall take place, except as follows:
- A. SUBDIVIDER or any successors in title and interest shall make application directly to the Lexington City Council for a “Special Use Permit” for any proposed development on any of said Lots. CITY shall cause such matter to be scheduled for Public Hearing at the next regular meeting of the Lexington City Council, after 10 days published notice. Notice of such hearing shall also be posted upon the property at least 10 days prior to the Public Hearing.
 - B. CITY agrees to consider any proposed use which is a permitted principal use or permitted special use in a M-1 zone,¹ (or within an A-1 Agricultural Zone)² but reserves the

¹ Sec. 28-20.2 M-1 Permitted Principal Uses and Structures.

The following shall be permitted as uses by right:

- (1) Agriculture, excluding the expansion of existing or development of new feedlots;
- (2) Animal care;
- (3) Automobile sales and services;
- (4) Automotive wash facilities;
- (5) Bottling works;
- (6) Building material sales, except for ready-mix concrete plants and similar uses which

right to refuse approval of any use which is inconsistent with the provisions of Section 28-2 of the Lexington City Code.³

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- emit particulate, odor or smoke;
 - (7) Carpenter, cabinet, plumbing or sheet metal shops;
 - (8) Cheese factories;
 - (9) Construction sales and services;
 - (10) Dry cleaning and/or laundry plants;
 - (11) Farm implement sales and services;
 - (12) Farm produce sales;
 - (13) Food service, restaurants and taverns;
 - (14) Freight and truck terminals;
 - (15) Frozen food lockers;
 - (16) Furniture warehouse;
 - (17) Garden centers and nurseries;
 - (18) Groceries, retail and wholesale;
 - (19) Light manufacturing operation, provided such use complies with the regulations set forth in Article 28-28 of this Ordinance;
 - (20) Machinery sales and storage lots;
 - (21) Mobile and modular home sales and manufacturing;
 - (22) Newspaper publishing plants;
 - (23) Public and quasi-public uses of an educational, recreational or religious type including public and parochial elementary schools, junior high schools, and high schools; private non-profit schools, churches, parsonages, and other religious institutions; parks and playgrounds;
 - (24) Public utility and public service uses;
 - (25) Transportation warehousing;
 - (26) Warehouse or storage houses;
 - (27) Wholesale sales and services.

² Sec. 28-10.2 A-1 Permitted Principal Uses and Structures.

The following shall be permitted as uses by right:

- (1) Agricultural farm or operation, excluding the expansion of existing or development of new intensive livestock, confinement facilities/operations as defined in Section 28-9. (Ord. No. 2124, Sec. 2)
- (2) Bulk grain storage both publicly or privately owned or managed;
- (3) Garden centers and nurseries;
- (4) Home occupations; in conformance with Article 28-24;
- (5) Irrigation and flood control projects;
- (6) One single-family dwelling per zone lot;
- (7) Parks, playgrounds and community buildings owned or operated by a public agency;
- (8) Place of worship;
- (9) Public and private golf courses, excluding miniature golf and driving ranges not associated with a golf course;
- (10) Public elementary and high schools or private schools;
- (11) Public uses of an administrative, public service or cultural type including city, county, state or federal administrative centers and courts, libraries, police and fire stations and other public buildings, structures and facilities;
- (12) Stables and riding academies;
- (13) Veterinary facilities.

³ Sec. 28-2 Purpose.

In order to promote the health, safety and general welfare of the citizens of Lexington, Nebraska, and its environs in accordance with present and future needs as expressed in the Comprehensive Development Plan, the City of Lexington, Nebraska, proposes to adopt this Zoning Ordinance to provide for economic and efficient land development, encourage the most appropriate use of the land, provide convenient and safe movement of people and goods, control the distribution and density of population to areas where necessary public services can be provided, protect historical and environmental areas, preserve agricultural land, encourage good civic design, and provide for adequate public utilities, facilities and services.

