

City of Lexington Conditional Use Permit

Conditional Use Permit for Multi-Family Dwelling

This Conditional Use Permit issued this _____ day of _____, 2016, by the City of Lexington, a municipal corporation in the County of Dawson, Nebraska (“City”) to MMSC, L.L.C., a Nebraska Limited Liability Company (“Owner”), pursuant to the Lexington Zoning Ordinance.

WHEREAS, Owner wishes to develop a multi-family dwelling upon the following described property of land within the City of Lexington zoning jurisdiction:

107 W 6th, Lexington, Nebraska 68850

WHEREAS, Owner has applied for a conditional use permit for the purpose of developing a multi-family dwelling located in a C-2 Downtown Commercial District; 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, said use hereinafter being referred to as “Conditional 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 or unless exempted herein.

2. In respect to the proposed Use:
 - a. A Certificate of Occupancy must be obtained before the premise may be occupied. All applicable local and state building codes must be obeyed.
 - b. The Owner waives any right to a hearing or otherwise the Owner agrees not protest any liquor license application pursuant to the Nebraska Liquor Control Act for adjacent property owners.
 - c. Continued compliance with the standards set forth in Section 6.08 of the Lexington Zoning Ordinance.
 - d. In applying to the Lexington building official (“Building Official”) for a building permit, the applicant shall submit a dimensioned sketch or a scale plan indicating the shape, size and height and location of all buildings to be erected, altered or moved and of any building already on the lot. The applicant shall also state the existing and intended use of all such buildings, and supply such other information as may be required by the Building Official for determining whether the provisions of local, state, and federal law, as well as this permit, are being observed. If the proposed excavation or construction as set forth in the application is in conformity with the provisions of local, state, and federal law, as well as this permit, then in force, the Building Official shall issue a building permit for such excavation or construction. If a building permit is refused, the Building Official shall state such refusal in writing, with the cause, and shall immediately thereupon mail notice of such refusal to the applicant at the address indicated upon the application. The Building Official shall grant or deny the permit within a reasonable time from the date the application is submitted. The issuance of a permit shall, in no case, be construed as waiving any provisions of this local, state, and federal law, or this permit.
 - e. The structure shall not be enlarged, extended, or structurally altered except in accordance to the provisions contained herein.
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. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Use;
 - d. 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. Environmental Hazards. 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.

Revocation of Permit

1. Revocation for Non-Compliance. Revocation shall require that the City notify the Owner of any non-compliance, in writing, and provide the Owner 90 days to correct the issue(s). Failure to comply shall cause a public hearing to be scheduled before the City Council, to review the permit and the approved conditions and the failure to act by the Owner. If the Owner is found to be non-compliant, the City Council shall revoke the permit and the order the use to cease and desist. Failure to follow a cease and desist shall cause action to be filed in the District Court and the Owner shall be responsible for all damages, including costs and reasonable attorney fees, or any such other remedies as allowed by Nebraska law.
2. Revocation for Abandonment. Revocation may also occur if the City documents that the use has ceased operations for 12 consecutive months. The City shall notify the Owner in writing and the permit shall be invalid within 30 days of such notice.

Miscellaneous

1. **Entire Understanding.** This Conditional Use contains the entire agreement of the parties relating to this matter. It supersedes any prior agreements or understandings among them and shall not be modified or altered or amended in any manner except in writing and signed by both parties
2. **Binding.** This Conditional Use, and all conditions stated herein, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legatees, devisees, personal representatives, successors and permitted assigns.
3. **Waiver.** 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.
4. **Indemnification.** Owner hereby indemnifies the City against, and holds the City harmless from, any liability, loss, claim or expense whatsoever (including, but not limited to, reasonable attorney fees and court cost) arising out of or resulting from the acts, omissions or negligence of the owner, his/her agents, employees, assigns, suppliers or invitees, including, but not limited to, any liability, loss, claim or expense arising out of or resulting from any violation on the premises of any environmental or safety law, rule or regulation.
5. **Severability.** 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.
6. **Notice.** Any notice to be given by City 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:

**MMSC, LLC
Gregory S. Cornelius and/or Mike Maloley
304 W. 8th Street
Cozad, NE 69130**

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: owner/operator

Date: _____