

# **City of Lexington Conditional Use Agreement**

## **Conditional Use Permit for Automobile Service and Repair Facility**

This Conditional Use Permit issued this 27th day of October, 2015, by the City of Lexington, a municipal corporation in the County of Dawson, Nebraska (“City”) to, Jeff Ernstmeyer (“Owner”), pursuant to the Lexington Zoning Ordinance.

WHEREAS, Owner wishes to locate and operate an automobile service and repair facility at 203 East Pacific Street upon the following legally described property of land within the City of Lexington zoning jurisdiction:

**See Attached Exhibit “A”**

WHEREAS, Owner and/or its authorized agent has applied for a conditional use permit for the purpose of locating and operating an automobile service and repair facility on said real estate; 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 other specific findings as set out in Section 6.08 of the Lexington Zoning Ordinance dated February 11, 2014; 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 of the property described herein for an automobile service and repair facility, said use hereinafter being referred to as a “Conditional Use” or “Permit”.

### **Conditions of Permit**

1. **Conditions.** The conditions to which the granting of this Permit is subject are:
  - a. Owner shall comply with any and all provisions of the Lexington Zoning Ordinance dated February 11, 2014, including but not limited to all requirements relating to egress/ingress and off-street parking in accordance with Section 7.01.04 and Section 7.02.
  - b. Owner shall follow all applicable property maintenance codes adopted by the city.
  - c. Owner shall comply with all local, state, and federal laws in regards to his use of the property.
  - d. Owner is prohibited from maintaining more than three (3) cars for the purposes of service or repair on the subject real estate.
  - e. Continued compliance with the standards set forth in Section 6.08 of the Lexington Zoning Ordinance.
  
2. **Inspection and Time Limits for Permit.** 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. The Owner hereby irrevocably grants the City, its agents and employees the right to enter the premises, for the purposes of said inspection.

- b. The use authorized by the conditional use permit must be initiated within twelve (12) months of approval, unless an extension is granted pursuant to Section 6.05.01 of the Lexington Zoning Ordinance. If the use stated within the conditional use permit has not been commenced within 12 months, or approved time period, said permit shall become invalid and any activity shall be required to apply for a new conditional use permit.
- c. All obsolete or unused structures and accessory facilities or materials specifically pertaining to such Conditional Use shall be removed at owner's expense within twelve (12) months of cessation of the conditional use, if required by the City.

### **Revocation of Permit**

3. Revocation for Non-Compliance. Revocation shall require that the City notify the Owner of any non-compliance, in writing, and provide the Owner 30 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.
4. 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**

5. 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
6. 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.
7. Waiver. One or more waivers of any covenants, conditions, rules or regulations by Buyer or Seller shall not be construed as a waiver of a further breach of the same or different kind at any other time.
8. 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.
9. 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.
10. 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:**

**Jeff Ernstmeyer  
73718 Road 417  
Eustis, NE 69028**

**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 \_\_\_\_\_

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

**Exhibit "A"**

Lots 13, 14, 15, 16 and 17, Block Sixty-two (62), Original Town of Plum Creek, now the City of Lexington, Dawson County, Nebraska, except a tract conveyed to the State of Nebraska Department of Roads by Instrument 2010-1177 and described as a Tract of land located in Lots 13 & 14, Block 62, Original Town of Plum Creek, now City of Lexington, Dawson County, Nebraska, described as follows:

Beginning at the Northwest Corner of Lot 13; Thence easterly a distance of 12.01 feet to a point on the north line of said Lot 13; Thence southerly deflecting 068 degrees, 23 minutes, 16 seconds right, a distance of 15.68 feet; Thence southeasterly deflecting 013 degrees, 36 minutes, 40 seconds left, a distance of 22.79 feet; Thence southeasterly deflecting 031 degrees, 01 minutes, 02 seconds left, a distance of 13.90 feet; Thence southwesterly deflecting 089 degrees, 55 minutes, 55 seconds right, a distance of 3.90 feet to a point on the northerly Highway 30 right of way line; Thence westerly deflecting 080 degrees, 52 minutes, 50 seconds right, a distance of 43.36 feet along said line to a point on the west line of said Lot 13; Thence northerly deflecting 075 degrees, 12 minutes, 29 seconds right, a distance of 31.46 feet along said line to the point of beginning containing 800.74 square feet, more or less.