

---

## DEVELOPMENT AND CONDITIONAL ZONING AGREEMENT

This Development and Conditional Zoning Agreement is hereby made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between Enterprise Company Inc., a Nebraska corporation, and Wyuka Cemetery, a public charitable corporation, hereinafter collectively referred to as "Developer," and the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as "City."

### RECITALS

#### I.

Developer has petitioned the City for a change of zone No.12006 from O-2 Suburban Office District to B-1 Local Business District upon property located at 110 N. 35th Street and legally described as: the west 15 feet of Lot 3, and Lots 4 through 9, except for the southwest corner of Lot 7 taken for a street, and the west 15 feet of Lot 10, and all of the vacated east-west alley adjacent thereto, in Block 19, Ridgeway, Lincoln, Lancaster County, Nebraska (Lancaster County Parcel No. 17-19-418-001-000); and the south half of vacated P Street abutting the west 15 feet of Lot 3 and all of Lots 4 through 6, Block 19, Ridgeway, Lincoln, Lancaster County, Nebraska.

#### II.

Approval of this change of zone from O-2 Suburban Office District to B-1 Local Business District would allow Developer to use the Property for a range of commercial and retail uses which would not be compatible with the adjacent residential neighborhood.

#### III.

The Developer has represented to the City that in consideration of the City re-zoning the Property to B-1 Local Business District, the Developer will enter into an agreement regarding development of the Property with the City to restrict uses in order to provide a compatible development with the adjacent residential neighborhood.

#### IV.

The City desires to enter into the Agreement, to be assured that the Developer will develop the Property in a manner compatible with the adjacent residential neighborhood should the Property be rezoned to B-1 Local Business District.

NOW THEREFORE, in consideration of the above recitals and the following terms and conditions, the parties agree as follows:

1. The City hereby agrees to grant Developer's petition to change the zoning map from O-2 Suburban Office District to B-1 Local Business District on the Property.

2. Developer agrees that, notwithstanding the sign regulations in the B-1 Local Business District, signs shall be limited to those signs allowed in the O-2 Suburban Office District.

3. Developer agrees that the following uses allowed in the B-1 Local Business District are prohibited:

- (a) Service Stations / Convenience Store with or without gas pumps;
- (b) Automobile wash facility;
- (c) Ambulance Services;
- (d) Banks with drive through facilities;
- (e) Drive up ATMs;
- (f) Restaurants;
- (g) Motels and hotels;
- (h) Social halls;
- (i) Any business whose predominant operation is the retail sale of alcohol beverages (predominant shall mean retail gross sales of alcoholic beverages, including mixed drinks, in excess of 50% of gross sales on the premises);
- (j) Any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises);

- (k) Any business operated or held out to the public as a sexually oriented business including any business in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; exotic lingerie; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service;
- (l) Any business whose predominant operation is the use, storage or processing of hazardous or potentially hazardous materials as defined under applicable law, including any service stations, salvage or recycling operations, car wash, dry cleaning, vehicle body repair, paint, refinishing, or parts and equipment cleaning business; provided nothing herein shall be construed to prohibit a dry cleaning pickup facility, the sale of household and automotive cleaners and other chemicals (including motor oil) in standard retail containers as are commonly sold by supermarkets, discount stores, and/or drugstores, the use of household cleaners and chemicals to maintain the Lot, additional chemicals to perform on-site photo-processing, or any other similar uses or sales in strict compliance with all applicable laws;
- (m) Any business involving gambling or wagering even if otherwise permitted by law, including keno, bingo, slot machines, video lottery machines, casino games, or off-site pari-mutual wagering sites, but excluding the retail sale of lottery tickers as permitted by applicable law;
- (n) Any business whose predominant operation is warehousing or storage of goods, materials or merchandise; and
- (o) Any business involving a residential use, sale or display of weapons, self-service laundry, industrial manufacturing, cell tower, radio telecommunication or other communication tower, illegal activities, or sale of any illegal goods or products. The foregoing restriction shall not prohibit the installation and operation of satellite dishes and related equipment used in connection with the permitted use of the Lot.

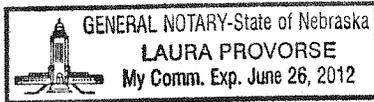
3. This Agreement shall run with the land and shall be binding upon the parties hereto and their respective successors and assigns.

4. This Agreement, when executed by the parties hereto, shall be recorded by the City in the office of the Register of Deeds of Lancaster County, Nebraska, filling fees to be paid in advance by Developer.



STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 4 day of May, 2012, by Jeff Schumacher Trustee of Wyuka Cemetery, a public charitable corporation, on behalf of said corporation.



*Laura Provorse*  
\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

\_\_\_\_\_  
Notary Public