

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
SEPTEMBER 19, 2017 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
CONDITIONAL USE PERMIT – WELLS FARGO ATM BRENTWOOD SQUARE	◆ RESOLUTION ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

**SYNOPSIS**

Wells Fargo and Company requests a minor edit to the recently approved Conditional Use Permit (CUP) to substitute Wells Fargo as the permit holder rather than its contractor, Cennox Security Solutions, Inc. A resolution is presented for this purpose. The premise of the CUP is to locate and operate an ATM on Lot 2A5 Willow Brook, generally located southwest of 84<sup>th</sup> Street and Brentwood Drive.

**FISCAL IMPACT**

N/A.

**RECOMMENDATION**

Approval.

**BACKGROUND**

The City Council held a public hearing on August 15, 2017, and unanimously voted to approve of a CUP is to locate and operate an ATM on Lot 2A5 Willow Brook, generally located southwest of 84<sup>th</sup> Street and Brentwood Drive.

(Wells Fargo & Company requests a minor edit to the CUP to substitute Wells Fargo and Company as the permit holder rather than its contractor, Cennox Security Solutions. A resolution is presented for this purpose. Cennox originally applied for the permit on behalf of Wells Fargo. The premise of the CUP is to locate and operate an ATM on Lot 2A5 Willow Brook, generally located southwest of 84<sup>th</sup> Street and Brentwood Drive.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA TO SUBSTITUTE WELLS FARGO AND COMPANY AS THE PERMIT HOLDER OF THE CONDITIONAL USE PERMIT TO ALLOW FOR AN AUTOMATED TELLER MACHINE (ATM) ON LOT 2A5, WILLOW BROOK.

WHEREAS, The City Council held a public hearing on August 15, 2017, and unanimously voted to approve a CUP to locate and operate an ATM on Lot 2A5 Willow Brook, generally located southwest of 84<sup>th</sup> Street and Brentwood Drive; and

WHEREAS, Wells Fargo & Company requests a minor edit to the CUP to substitute Wells Fargo and Company as the permit holder rather than its contractor, Cennox Security Solutions, Inc.; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the requested edit and issuance of the Conditional Use Permit on that basis,

NOW THEREFORE, BE IT RESOLVED, that the Mayor and City Council of the City of La Vista hereby authorize the execution the Conditional Use Permit in form and content submitted at this meeting, for Wells Fargo and Company, to allow for an automated teller machine (ATM) on Lot 2A5, Willow Brook.

PASSED AND APPROVED THIS 19TH DAY OF SEPTEMBER, 2017.

CITY OF LA VISTA

ATTEST:

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Douglas Kindig, Mayor

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Pamela A. Buethe, CMC  
City Clerk

## **City of La Vista Conditional Use Permit**

### **Conditional Use Permit for ATM**

This Conditional Use Permit issued this 16th day of September, 2017, by the City of La Vista, a municipal corporation in the County of Sarpy County, Nebraska ("City") to, Wells Fargo & Company ("Owner"), pursuant to the La Vista Zoning Ordinance.

WHEREAS, Owner wishes to construct and operate an automated teller machine (ATM) upon the following described tract of land within the City of La Vista zoning jurisdiction:

Lot 2A5, Willow Brook, a subdivision as surveyed, platted and recorded in the City of La Vista, Sarpy County, Nebraska.

WHEREAS, Owner has applied for a conditional use permit for the purpose of locating and operating an automated teller machine (ATM); and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit to the owner for such purposes, subject to certain conditions and agreements as 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 Exhibit "A" hereto for an automated teller machine (ATM), said use hereinafter being referred to as "Permitted 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 transferee shall be bound to perform this permit the same as the original Owner. Any deviation from any terms of this permit without prior consent of the City, or breach of any terms of this permit, shall cause the permit to expire and terminate.
2. In respect to the proposed Use:
  - a. A site plan showing the property boundaries of the tract of land and easements, proposed structures, parking, access points, and drives shall be provided to the City and attached to the permit as Exhibit "A1".
  - b. The hours of operation will be 24 hours a day, seven days a week.
  - c. There shall not be any outside storage of materials.
  - d. Parking lot striping depicted on the site plan (Exhibit "A1") shall be painted at time of construction, and regularly repainted and maintained to ensure proper visibility and to improve traffic flow.
  - e. The premises shall be developed and maintained in accordance with the site plan (Exhibit "A1") as approved by the City and incorporated herein by this reference. Any modifications must be submitted to the Chief Building Official for approval.
  - f. Exterior lighting, when used, shall enhance the building design and the adjoining landscape. Fixtures shall be of a design and size compatible with the building and adjacent areas. Lighting shall be restrained in design and excessive brightness avoided. Lighting shall be designed to a standard that does not impact adjoining properties.

- g. Owner shall obtain all required permits from the City of La Vista and shall comply with any additional requirements as determined by the Chief Building Official, including, but not limited to, building, fire, FAA and ADA.
- h. Owner shall comply (and shall ensure that all employees, invitees, suppliers, structures, appurtenances and improvements, and all activities occurring or conducted, on the premises at any time comply) with any applicable federal, state and/or local regulations, as amended or in effect from time to time, including, but not limited to, applicable environmental or safety laws, rules or regulations.
- i. 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 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.

3. In respect to the Gateway Corridor Overlay District:

- a. Exterior (Style and Building Materials)
  - i. The elevation plans (Exhibits "A5" and "A5.1") depict a metal cabinet with a color palette that is similar to adjoining structures.
- b. Signage
  - i. All signs shall comply with the City's sign regulations.

4. 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, if the violation continues after written notice from the City to Owner and a reasonable time for Owner to cure such violation.
- 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. 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.

5. Notwithstanding any other provision herein to the contrary, this permit, and all rights granted hereby, shall expire and terminate as to a permitted use hereunder upon the first of the following to occur:

- a. Owner's abandonment of the permitted use. Non-use thereof for a period of twelve (12) months shall constitute a presumption of abandonment.
- b. Cancellation, revocation, denial or failure to maintain any federal, state or local permit required for the Use.
- c. Owner's breach of any other terms hereof and his failure to correct such breach within ten (10) days of City's giving notice thereof.

6. If the permitted use is not commenced within one (1) year from August 21, 2017 this Permit shall be null and void and all rights hereunder shall lapse, without prejudice to owner's right to file for an extension of time pursuant to the La Vista Zoning Ordinance.

7. 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.

8. 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.

## **Miscellaneous**

1. The conditions and terms of this permit shall be binding upon owner, his successors and assigns.
2. Delay of City to terminate this permit on account of breach of owner of any of the terms hereof shall not constitute a waiver of City's right to terminate, unless it shall have expressly waived said breach and a waiver of the right to terminate upon any breach shall not constitute a waiver of the right to terminate upon a subsequent breach of the terms hereof, whether said breach be of the same or different nature.
3. 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. Any notice to be given by City hereunder 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:**

Martin Cordova  
Wells Fargo and Company  
525 Market Street, 8<sup>th</sup> Floor,  
San Francisco, CA 94105  
(415) 747-0878

### **Effective Date:**

This permit shall take effect upon the filing hereof with the City Clerk a signed original hereof.

THE CITY OF LA VISTA

By \_\_\_\_\_  
Douglas Kindig, Mayor

Attest:

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Pam A. Buethe  
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: \_\_\_\_\_

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

## ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me, a Notary Public duly commissioned and qualified in and for said County and State, appeared Douglas Kindig and Pamela A. Buethe, personally known by me to be the Mayor and City Clerk of the City of La Vista, and the identical persons whose names are affixed to the foregoing Agreement, and acknowledged the execution thereof to be their voluntary act and deed and the voluntary act and deed of said City.

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## Notary Public

## ACKNOWLEDGMENT OF NOTARY

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me, a Notary Public duly commissioned and qualified in and for said County and State, appeared [\_\_\_\_\_], personally known by me to be the \_\_\_\_\_ of Wells Fargo and Company, and the identical person whose name is affixed to the foregoing Agreement, and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said company.

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## Notary Public