

**CITY OF LA VISTA**  
**MAYOR AND CITY COUNCIL REPORT**  
**JULY 21, 2015 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
CONDITIONAL USE PERMIT – MOBILITY MOTORING LOT 1, STONYBROOK SOUTH REPLAT II (W OF 142 <sup>ND</sup> & EDNA CIRCLE)	◆RESOLUTION ORDINANCE RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

**SYNOPSIS**

A public hearing has been scheduled for Council to consider an application for a Conditional Use Permit for Mobility Motoring to perform minor automotive repair on Lot 1, Stonybrook South Replat II, generally located west of 142<sup>nd</sup> and Edna Circle.

**FISCAL IMPACT**

N/A.

**RECOMMENDATION**

Approval.

**BACKGROUND**

A public hearing has been scheduled to consider an application submitted by Mobility Motoring ~~LLC~~ for a Conditional Use Permit to perform minor automobile repair on Lot 1, Stonybrook South Replat II. On June 16, 2015, the City Council approved a rezoning from C-1 to C-2 to allow for the conditional use permit application for the proposed use. The applicant proposes to lease part of an existing building and operate a business which makes mobility modifications to vehicles, a use which would be classified as a “service station with minor automobile repair services”, a conditional use in the C-2 General Commercial district.

A detailed staff report is attached.

The Planning Commission held a public hearing on June 18, 2015 and unanimously recommended approval of the Conditional Use Permit to City Council.

**RESOLUTION NO. 15-\_\_\_\_\_**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA AUTHORIZING THE EXECUTION OF A CONDITIONAL USE PERMIT FOR MOBILITY MOTORING TO PERFORM MINOR AUTOMOTIVE REPAIR ON LOT 1, STONYBROOK SOUTH.

WHEREAS, Mobility Motoring has applied for a conditional use permit to perform minor automotive repair on Lot 1, Stonybrook South, located west of 142<sup>nd</sup> Street and Edna Circle; and

WHEREAS, the La Vista Planning Commission has reviewed the application and recommends approval; and

WHEREAS, the Mayor and City Council of the City of La Vista are agreeable to the issuance of a conditional use permit for such purposes.

NOW THEREFORE, BE IT RESOLVED, that the Mayor and City Council of the City of La Vista hereby authorize the execution of a Conditional Use Permit in form and content submitted at this meeting, for Mobility Motoring to perform minor automotive repair on Lot 1, Stonybrook South, located in the NW ¼ of Section 13, Township 14 North, Range 12 East of the 6<sup>th</sup> P.M., Sarpy County, Nebraska, generally located west of 142<sup>nd</sup> Street and Edna Circle be, and hereby is, approved.

PASSED AND APPROVED THIS 21<sup>ST</sup> DAY OF JULY 2015.

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  
PLANNING DIVISION**

**RECOMMENDATION REPORT**

CASE NUMBER: 2015-CUP-04

FOR HEARING OF: July 21, 2015

Report Prepared on June 22, 2015

**I. GENERAL INFORMATION**

- A. APPLICANT:** Mobility Motoring
- B. PROPERTY OWNER:** Balance Point Properties LLC
- C. LOCATION:** 7222 S 142<sup>nd</sup> Street, West of South 142nd Street and Edna Circle
- D. LEGAL DESCRIPTION:** Lot 1, Stonybrook South Replat II
- E. REQUESTED ACTION(S):** Conditional Use Permit
- F. EXISTING ZONING AND LAND USE:**  
C-2 General Commercial and Gateway Corridor District (Overlay District); multi-tenant commercial building.
- G. PROPOSED USES:** The Conditional Use Permit would allow for Mobility Motoring LLC to operate a business which makes mobility modifications to vehicles, a use that coincides with the definition of “service station with minor automobile repair services”, a conditional use within the C-2 General Commercial zoning district.
- H. SIZE OF SITE:** 3.47 acres

**II. BACKGROUND INFORMATION**

- A. EXISTING CONDITION OF SITE:** The lot contains an existing multi-tenant commercial building. The property is mostly flat with a gradual downgrade to the south.
- B. GENERAL NEIGHBORHOOD/AREA LAND USES AND ZONING:**
  - 1. North:** Walker Tire; C-2 General Commercial District and Gateway Corridor District (Overlay District)
  - 2. East:** Single family residential subdivision; R-1 Medium Density Residential District
  - 3. South:** Heartland Center for Reproductive Medicine; C-1 Shopping Center Commercial District and Gateway Corridor District (Overlay District)

4. **West:** Willow Creek Apartments; R-3 High Density Residential and Gateway Corridor District (Overlay District)

**C. RELEVANT CASE HISTORY:**

1. The City Council held a public hearing on June 16, 2015, and approved of a Zoning Map Amendment to rezone the property from C-1 Shopping Center Commercial and Gateway Corridor District (Overlay District) to C-2 General Commercial and Gateway Corridor District (Overlay District).

**D. APPLICABLE REGULATIONS:**

1. Section 5.11 of the Zoning Regulations – C-2 General Commercial District
2. Section 5.17 of the Zoning Regulations – Gateway Corridor District (Overlay District)
3. Article 6 of the Zoning Regulations – Conditional Use Permits

**III. ANALYSIS**

**A. COMPREHENSIVE PLAN:** The Future Land Use Map of the Comprehensive Plan designates this property for commercial uses. The proposed commercial use is consistent with the Future Land Use Map.

**B. OTHER PLANS:** N/A

**C. TRAFFIC AND ACCESS:**

1. Access will be from existing egress / ingress to South 142<sup>nd</sup> Street. Traffic impacts from this tenant are expected to be minor.

**E. UTILITIES:** All utilities are available to the site.

**F. PARKING REQUIREMENTS:** Section 7.06 of the Zoning Ordinance requires three (3) spaces per repair stall for the automotive repair services use. The site plan provides for six spaces near the tenant's front entrance of the building. Additional space for parking is available along the south side (rear) of the building. At the time of Planning Commission review, staff recommended three additional spaces to be striped in the paved area on the south side will need to be painted prior to the execution of the Conditional Use Permit. The owner of the property has since delineated five stalls in this area with striping.

**G. LANDSCAPING:** N/A

**IV. REVIEW COMMENTS:**

1. The Conditional Use Permit would allow for Mobility Motoring LLC to operate a business which makes mobility modifications to vehicles, a use that coincides with the definition of "service station with minor

automobile repair services”, a conditional use within the C-2 General Commercial zoning district.

2. Stripes delineating three additional parking spaces in the paved area on the south side have been painted prior to the execution of the Conditional Use Permit.

**V. PLANNING COMMISSION RECOMMENDATION:**

The Planning Commission held a public hearing on June 18, 2015 and unanimously recommended approval of the Conditional Use Permit to City Council.

## **VI. STAFF RECOMMENDATION:**

Staff recommends approval of the Conditional Use Permit request as the CUP request is consistent with the Comprehensive Plan and the Zoning Ordinance.

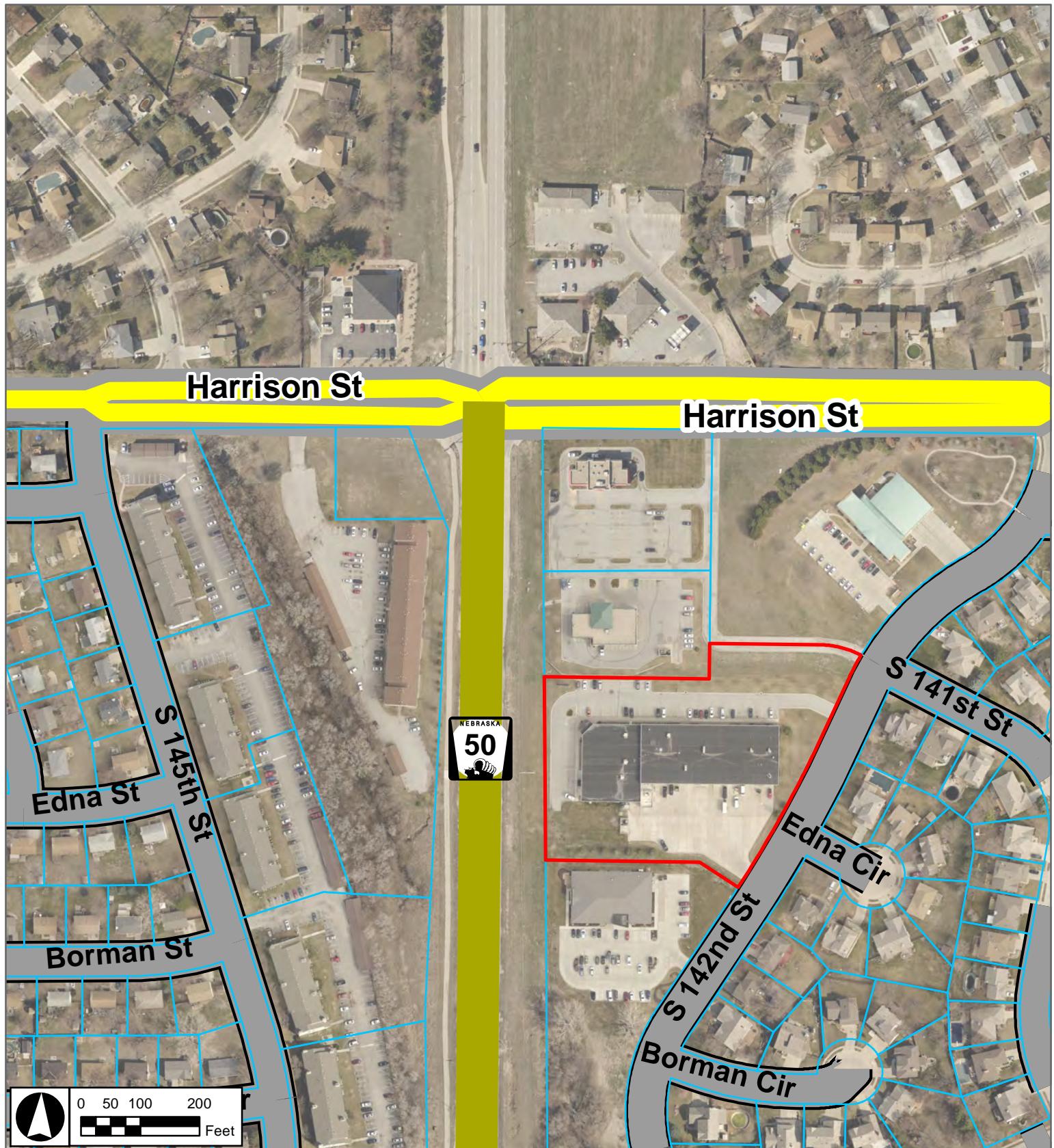
**VII. ATTACHMENTS TO REPORT:**

1. Vicinity Map
2. Letter from Applicant
3. Draft Conditional Use Permit

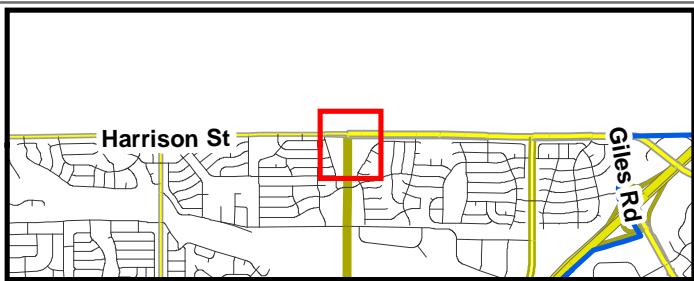
**VIII. COPIES OF REPORT TO:**

1. Kent Sullivan, Mobility Motoring, LLC
2. Mark Morris, Balance Point Properties, LLC
3. Public Upon Request

  
Prepared by  7-1-15  
Community Development Director Date



**Project Vicinity Map**



**Mobility Motoring**

5-8-2015  
CSB



# **BALANCE POINT PROPERTIES, LLC**

**1616 S 187<sup>th</sup> Circle  
Omaha, NE 68130  
402-672-0423**

5/6/2015

Chris Solberg - City Planner  
City of La Vista - City Hall  
8116 Park View Blvd  
La Vista, NE 68128

RE: Conditional Use Permit Request for 7222 S 142<sup>nd</sup> Street La Vista, NE 68138

Dear Chris:

Balance Point Properties LLC is the property owner of 7222 South 142<sup>nd</sup> Street. There is 10,820 sq. ft. of space for lease within this building that is currently available. We are negotiating to lease this space to Mobility Motoring LLC who provides a vital service by selling, installing, and servicing wheelchair and handicap accessible vans and adaptive equipment products. We would be proud to have them as a neighboring business and as part of our community. [www.mobilitymotoring.com](http://www.mobilitymotoring.com)

It is our understanding that our current C-1 commercial zoning may prevent Mobility Motoring from considering our space. Mobility Motoring views our space as beneficial to their business and has expressed an interest in receiving a conditional use permit.

We view this as good use of the space and do not feel it would be detrimental to our property or our highly valued surrounding neighbors and businesses. Please allow this letter to serve as our permission, endorsement and support of the efforts of Mobility Motoring LLC in their conditional use permit application on behalf of Balance Point Properties LLC.

Sincerely,

*Mark Morris*

Member Manager

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

### **Conditional Use Permit for a Service Station with Minor Automobile Repair Service**

This Conditional Use Permit issued this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by the City of La Vista, a municipal corporation in the County of Sarpy County, Nebraska ("City") to, Mobility Motoring, LLC ("Owner"), pursuant to the La Vista Zoning Ordinance.

WHEREAS, Owner wishes to construct and operate a Service Station with Minor Automobile Repair Service upon the following described tract of land within the City of La Vista zoning jurisdiction:

Lot 1, Stonybrook South Replat II, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

WHEREAS, Owner has applied for a conditional use permit for the purpose of locating and operating a Service Station with Minor Automobile Repair Service; 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 a Service Station with Minor Automobile Repair Service, 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 variation or breach of any terms hereof shall cause permit to expire and terminate without the prior written consent of the City (amendment to permit) or unless exempted herein.
2. In respect to the proposed Use:
  - a. A site plan showing the property boundaries of the tract of land and easements, proposed structures and orientation, parking, access points, and drives is approved by the City and attached to the permit as "Exhibit A". Access will be from South 142<sup>nd</sup> Street.
  - b. Hours of operation for said Service Station with Minor Automobile Repair Service will be from 8:00 a.m. to 5:00 p.m. Monday through Saturday.
  - c. The owner will lease a 10,820 square foot space within an existing 39,843 square foot building.
  - d. Deliveries must correspond with store business hours and shall be restricted to off-peak traffic hours when reasonable.
  - e. The premises shall be maintained in accordance with the site plan (Exhibit A) as approved by the City and incorporated herein by this reference. Any modifications must be submitted to the Chief Building Official for approval.
  - f. There shall be no storage, placement or display of goods, supplies or any other material, substance, container or receptacle outside of the facility, except trash receptacles and those approved in writing

by the City.

- g. There shall not be any outside storage of materials. All trash receptacles, benches and planters shall be placed on property and securely fastened to building or concrete.
- h. Automobiles for sale that are on display outside of the structure are limited to five (5) automobiles at any one time. All automobiles available for sale shall be parked within the structure after regular business hours. Owner shall maintain a dealer license at all times while vehicles for sale are on the lot. No signage advertising the automobile sales shall be allowed, except for one window sign, provided that it meets Section 7.01.05 of the City of La Vista Zoning Ordinance.
- i. Exterior lighting shall not be directed to adjacent properties nor have such intensity to detrimentally affect adjacent properties. Any additional lighting shall be approved by the City.
- j. All permanent and temporary signs shall comply with the City's sign regulations.
- k. 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, and ADA.
- l. The owner shall make annual inspections of the premises and structures, and the operation thereof for any hazard or risk, including, but not limited to, those of an environmental or safety nature. The owner shall take immediate action to protect persons, property and the environment from any damage, injury or loss, or risk thereof, arising out of or resulting from any hazard or risk on the premises and to abate any hazard or risk and remove it from the premises in accordance with any applicable laws, rules or regulations, as amended or in effect from time to time.
- m. 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.
- n. 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. 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. 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. 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 construction or placement of a storage tank, structure or other improvement on the premises not specified in this permit.

- d. 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.
- 5. If the permitted use is not commenced within one (1) year from \_\_\_\_\_, 2015, 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.
- 6. 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.
- 7. 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.
- 8. Recitals at the beginning of this permit, and all exhibits, agreements or instruments referenced in this permit, shall be incorporated into this permit by reference.

#### **Miscellaneous**

The conditions and terms of this permit shall be binding upon owner, his successors and assigns.

- 1. 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.
- 2. 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.
- 3. 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:** Kent Sullivan  
Mobility Motoring  
14450 Meadows Blvd. Suite 2  
Omaha, NE 68138

**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 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 \_\_\_\_\_, 2015, 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 NEBRASKA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, 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 Mobility Motoring, 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

## Exhibit A

