

RESOLUTION NO. 082514-1

A RESOLUTION APPROVING SUPPLEMENTAL AGREEMENT NO. 1 TO A ZONING COMPLIANCE AND INTERPRETATION AGREEMENT DATED DECEMBER 29, 2010, BETWEEN CHISHOLM TRAIL PROPERTIES, LLC AND THE CITY OF ABILENE, KANSAS, CONCERNING THE TEMPORARY USE OF PROPERTY LOCATED AT 1500 N. MULBERRY STREET

WHEREAS, the City Commission conducted a Public Hearing on August 25, 2014, for the purposes of hearing objections from property owners to a proposed Supplemental Agreement No. 1 to a Zoning Compliance and Interpretation Agreement dated December 29, 2010, between Chisholm Trail Properties, LLC and the City of Abilene, Kansas, concerning the temporary use of property located at 1500 N. Mulberry Street; and

WHEREAS, no public comments were provided for the record in opposition to the proposed Supplemental Agreement No. 1; and

WHEREAS, the City Commission desires to enter into a Supplemental Agreement with Chisholm Trail Properties, LLC for the purposes of amending a Zoning Compliance and Interpretation Agreement dated December 29, 2010 to allow the temporary use of property located at 1500 N. Mulberry Street for off-site parking by Unified School District No. 435 during construction-related activities.

NOW, THEREFORE BE IT RESOLVED, by the City Commission of the City of Abilene, as follows:

Section 1. Supplemental Agreement. That Supplemental Agreement No. 1 to a Zoning Compliance and Interpretation Agreement dated December 29, 2010 between Chisholm Trail Properties, LLC and the City of Abilene, Kansas, is hereby adopted as attached hereto as **Exhibit A**. Said Zoning Compliance and Interpretation Agreement is attached hereto as **Exhibit B**.

Section 2. Implementation. The Mayor is hereby authorized to execute the Supplemental Agreement and the City Manager shall be authorized to enforce the provisions as provided therein and in applicable resolutions, ordinances, and laws.

Section 3. Effective Date. That the effects of this Resolution shall be in full force after its approval by the City Commission.

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PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 25th day of August, 2014.



CITY OF ABILENE, KANSAS

By: *Brenda Finn Bowers*
Brenda Finn Bowers, Mayor

ATTEST:

Penny Soukup, CMC
Penny Soukup, CMC
City Clerk

EXHIBIT A

Supplemental Agreement No. 1

to

Zoning Compliance and Interpretation Agreement

dated December 29, 2010

concerning 1500 N. Mulberry Street

August 25, 2014

**SUPPLEMENTAL AGREEMENT NO. 1
TO A
ZONING COMPLIANCE AND INTERPRETATION AGREEMENT**

This Supplemental Agreement, made and entered into this 28th day of August, 2014, by and between Chisholm Trail Properties, LLC, owners of the subject property (hereafter "Owner") and the City of Abilene, Kansas, (hereafter "City").

WHEREAS, Owner is the record owner of land and buildings located at 1500 N. Mulberry in the City (hereafter the "Property");

WHEREAS, in a Zoning Compliance and Interpretation Agreement dated December 29, 2010, attached hereto as **Exhibit A**, Owner and City agreed that the future economic use of said Property must be of limited impact, based on interpretation of the City's zoning code for R-3 uses.

WHEREAS, Owner has requested use of said Property for the temporary storage of buses owned by Unified School District No. 435 (hereinafter "School District") during such time as the School District may be involved with improvements to School District property affecting use of the School District's bus facility;

WHEREAS, the City desires to amend the aforementioned Agreement to allow for such uses as would otherwise not be permitted on the Property because of an unprecedented and unforeseen circumstance of a voter-approved School District construction project and the City's desire to productively assist in the construction of public facilities that will no doubt benefit the community.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree to amend the Agreement as follows:

1. No Claim of Legal Nonconforming Use. By entering into this Agreement, Owner acknowledges that nothing in this Supplemental Agreement modifies the Property's non-conforming status under the terms of the Agreement.
2. City's Determination. The City has determined that the proposed use of the Property as temporary off-site parking for School District buses would not be permitted under the terms and conditions of the Agreement.
3. Authorized Use of Property. The City, in the public's interest, hereby authorizes the temporary use of the Property for the off-site parking of buses owned and operated by the School District and for the temporary parking of employees or contractors of the School District charged with operating said buses during such time as the School District constructs a new facility to locate School District buses. Such off-site parking shall not exceed two years from the effective date of this Supplemental Agreement. Owner acknowledges that it is desirable for the authorized off-street parking to end sooner than the allotted period, and that the School District shall not be required to maintain such off-site parking of School District buses on said Property any longer than is necessary for their purposes.

4. Non-Authorized Uses of Property. Owner and School District is prohibited from using said Property for any use other than for those uses explicitly described herein. Owner agrees that the School District will not be allowed to use Property for construction-related storage or staging.
5. Termination of Supplemental Agreement. Following completion of School District's use of Property, Owner agrees that this Supplemental Agreement shall effectively terminate and use of Property shall revert to the terms and conditions as defined by the Agreement dated December 29, 2010, until such time and only until either 1) the Owner rezones the Property, or 2) the Agreement is amended per the terms of the Agreement.
6. Rezoning. By entering into this Supplemental Agreement, Owner does not impair, in any way, its right to apply for rezoning of Property.
7. No Waiver of City Authority. Nothing in this Supplemental Agreement shall be construed to diminish, restrict, impair, or in any way limit the authority of the City to lawfully apply and enforce the laws of the City to activities occurring on the Property.
8. Enforcement. In the event Owner fails to satisfy any of its obligations under this Supplemental Agreement, the City shall have the right to enforce this Supplemental Agreement. Failure to satisfy any of the Owner's obligations to this Supplemental Agreement shall constitute a breach and shall be grounds for termination of this Supplemental Agreement at the discretion of the City.
9. Severability. The provisions of this Supplemental Agreement are separate and severable. The invalidity of any portion shall not affect the validity of the remainder of the Supplemental Agreement.
10. Entire Agreement. This Supplemental Agreement constitutes the entire agreement between the Parties and supersedes all previous communications, negotiations, arrangements and agreements, whether oral or written, between the Parties with respect to the subject matter of this Agreement.

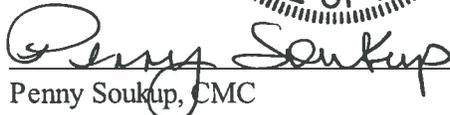
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IN WITNESS WHEREOF, the parties have caused this Supplemental Agreement to be executed by their respective duly authorized officers or representatives in multiple counterpart copies, each of which shall be deemed an original but constitute one and the same instrument, effective as of the date first set forth above.

ADOPTED BY THE CITY COMMISSION OF THE CITY OF ABILENE, KANSAS ON THE 25th DAY OF AUGUST 2014



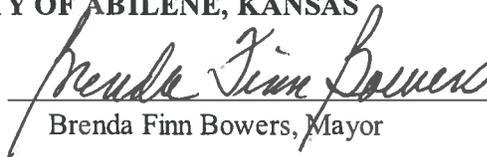
ATTEST:


Penny Soukup, CMC

City Clerk

CITY OF ABILENE, KANSAS

By:


Brenda Finn Bowers, Mayor

CHISHOLM TRAIL PROPERTIES, LLC

By:

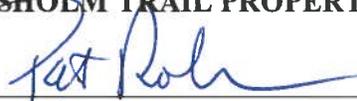

Pat Robson

EXHIBIT B

Zoning Compliance and Interpretation Agreement

dated December 29, 2010

concerning

1500 N. Mulberry Street

ZONING COMPLIANCE AND INTERPRETATION AGREEMENT

This Agreement, made and entered into this 29th day of December, 2010, by and between Chisholm Trail Properties, LLC, owners of the subject property (hereafter "Owner") and the City of Abilene, Kansas (hereafter "City") through its Zoning Administrator, (collectively the "Parties").

Owner is the record owner of land and buildings located at 1500 N. Mulberry in the City of Abilene (hereafter the "Property"). Prior to its sale to Owner the Property was owned by YRC Transportation (formerly Yellow Freight) which used it as a truck terminal. While the Property was, and is presently, zoned R-3, General Residential, YRC operated its business as a legal non-conforming use.

Owner was advised by the City on April 15, 2009 that the nonconforming use status of the Property had been lost and future use must be in compliance with its R-3 zoning, unless and until rezoning was approved.

Owner appealed the City's determination of loss of nonconforming use status to the Board of Zoning Appeals on September 28, 2010.

The Parties agree that it is in their mutual interest to resolve this matter to avoid the uncertainty and expense of the BZA proceeding and possible appeal(s) therefrom on the question of whether legal non-conforming use has been lost. Further, the City desires to see reasonable economic use of the Property, pending its anticipated redevelopment for residential use, so as to avoid the Property possibly falling into disuse and disrepair, thereby having a blighting influence upon the area. The reasonable economic use must be of limited impact, based on interpretation of the City's zoning code for R-3 uses. Such redevelopment for residential use has been represented by Owner to the City as its desired use of the Property.

Therefore, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. No Claim of Legal Nonconforming Use. By entering into this Agreement Owner (1) withdraws its appeal before the Abilene Board of Zoning Appeals which asserts the Property retains legal nonconforming use status for a truck terminal, and (2) acknowledges that the legal nonconforming use of the Property as a truck terminal has been abandoned and that the future use of the Property shall be consistent with its R-3 zoning and this Agreement, unless and until the Property is rezoned.
2. City's Determination. The City has determined, through the interpretation of its Zoning Administrator, that in cases where legal non-conforming use is lost, conditions can be established under which it would not be a violation of the City's land use regulations for the owner of such property to use existing structures on such property to store goods, equipment and other property of the Owner.

3. Conditions Imposed on the Future Use of the Property. Owner agrees to the following:
- a. Owner may utilize the existing structure on the Property for the storage of equipment, materials, etc. which it owns.
 - b. Owner will not engage in or allow any exterior storage of materials, vehicles or equipment on the Property, except that owner may keep not more than two personally owned vehicles on the Property. These vehicles cannot be tractor-trailers, or commercial truck trailers.
 - c. Owner will not construct any nonresidential structures, including accessory buildings, on the Property.
 - d. Owner agrees to limit truck traffic to and from the Property to not more than seven (7) trips per week, for the purpose of delivery or pickup of allowed materials stored in the building. No such pickup or delivery shall occur between 7:00 pm and 7:00 am.
 - e. Owner agrees to participate in cost-sharing with the City in the planting of trees along the North boundary line of the Property, such trees to serve as screening, if the Abilene City Commission in the future approves such a project. Owner's portion of such costs shall not exceed 50%.
 - f. Owner agrees to improve the appearance of the existing structure on the Property by painting the smaller wooden overhead doors on the North side of that structure, no later than June 30, 2011.
 - g. Owner may place a For Sale sign on the Property provided such sign indicates the R-3 zoning of the Property by wording such as "Residential Property for Sale" or "For Sale -- Property Zoned R-3 General Residential". No such signage shall represent that a nonresidential use of the property is allowed.
 - h. Owner agrees to provide a copy of this Agreement to any person or entity to which Property, including any portion thereof, is sold.
4. Rights of Other Owners. Owner has represented to the City that it presently is the sole owner of the Property, but that Owner is negotiating with and desires to sell an interest in the Property to Abilene USD No.435. City agrees to extend to the USD, if such sale takes place, the same use of the Property as is allowed Owner under this Agreement. However, Owner agrees, in the event it sells an interest in the Property to any other party, such owner shall not use the Property for any purpose other than that allowed under its current R-3 zoning, or new zoning in the event of a rezoning.

5. Rezoning. By entering into this Agreement Owner does not impair in any way its right to apply for rezoning of Property.
6. No Waiver of City Authority. Nothing in this Agreement shall be construed to diminish, restrict, impair or in any way limit the authority of the City to lawfully apply and enforce the laws of the City to activities occurring on the Property.
7. Term; Annual Review. This Agreement shall remain in full force and effect unless amended or terminated by mutual agreement of the Parties. Provided, on the anniversary date of the execution of this Agreement, in each year this Agreement is in effect, Owner shall submit to a review by the City of the adequacy of the conditions set out herein to protect the public health, safety and welfare, and Owner's compliance with the conditions which are set out in this Agreement, and amendments thereto.
8. Amendment. This Agreement may be modified only by a written instrument duly executed by all Parties.
9. Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein.
10. Severability. The provisions of this Agreement are separate and severable. The invalidity of any portion shall not affect the validity of the remainder of this Agreement.
11. Binding on Successors. This Agreement shall run with the land and shall be binding upon the Parties and their respective successors and assigns.
12. Enforcement. In the event Owner fails to satisfy any of its obligations under this Agreement the City shall have the right to enforce this Agreement. Failure to satisfy any of Owner's obligations to this Agreement shall constitute a breach and shall be grounds for termination of this Agreement at the discretion of the City.

AGREED to this 29th day of December, 2010.



For Chisholm Trail Properties, LLC



Dennis Kissinger
Zoning Administrator
Interim City Manager
For the City of Abilene, Kansas