

**DEVELOPMENT AND CONDITIONAL ZONING AGREEMENT
(9th to 10th Streets South of South Street)**

This Development and Conditional Zoning Agreement is hereby made and entered into this _____ day of _____, 2007, by and between Red Cloud Development, LLC, a Nebraska limited liability company, herein 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. 07027) from R-4 to B-3 upon the following described Property generally located between 9th and 10th Street south of the East/West Alley, south of South Street. The Property is legally described as:

Lot 7, 8, 9, 33 and 34, Block 2, South Park Addition;
North/South Alley adjacent to said Lots 7, 8, 33 and 34; and
the South Half of the East/West Alley adjacent to said Lots 7
and 34; all located in Section 25, Township 10 North, Range
6 East of the 6th P.M., Lancaster County, Nebraska.

II.

Developer has also petitioned the City for vacation of the East/West Alley and also petitioned the City for a partial vacation of the North/South Alley both of which are located upon the Property.

III.

This Change of Zone from R-4 Residential to B-3 Commercial District and the aforementioned alley vacations will allow the Property to be used for a range of commercial and retail uses which would not be compatible with the adjacent residential properties.

IV.

The Developer has represented to the City that in consideration of the City re-zoning the Property to B-3 Commercial District and the vacation of the alleys, the Developer will enter into an agreement with the City subjecting the Property to restrictions on uses, lighting and conformance with the South Street Redevelopment Plan in order to provide a compatible development with the adjacent residential neighborhood.

V.

The City desires an Agreement, to be assured that the Developer will develop the Property in a manner compatible with the adjacent residential neighborhood should the Property be zoned to B-3 Commercial District and the alleys be partially/completely vacated.

VI.

If the Developer enters into a redevelopment agreement with the City for the Property, the redevelopment agreement will void and supercede this zoning agreement.

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 R-4 Residential to B-3 Commercial District on the Property and to vacate the East/West Alley and partially vacate the North/West Alley as set forth above.

2. In consideration for the City re-zoning the Property to B-3 Commercial District the Developer agrees that the development of the Property shall be subject to the following restrictions:

- a. The Property shall be developed in accordance with the following design principles:
 - i. Provide parking to serve the South Street business corridor.
 - ii. Improve parking availability in conjunction with the redevelopment of the Property.
 - iii. Provide well landscaped parking lots along the sidewalk edge. Sidewalks along South Street shall be 9 1/2 feet from the curb .
 - iv. Entrances shall be visible and convenient to the sidewalks.
- b. Access limited to one driveway on each abutting arterial street.
- c. Provide safe and attractive sidewalks, including clear, convenient connections to building entrances.
- d. Buildings shall be located as shown on the attached plan identified as Exhibit "A" and incorporated herein. The parties agree that the

sizes of parking stalls and minor changes to the layout may be made at the time building permits are applied for.

- e. Most parking shall be located along the side or rear of buildings.
- f. A 20 foot side yard set back shall be required between the Residential District to the south (on Lot 9) and 10 foot side yard set back shall be required between Residential District to the south (on Lot 33) and the B-3 Property.
- g. The building to be located on South Streets shall have windows/glass on the north wall.

3. As further consideration for granting the B-3 zoning on the Property, Developer agrees that the following permitted uses in the B-3 Commercial Zoning District between 9th and 10th Street approximately 170 feet south of South Street are prohibited:

- a. Service Stations and self-serve, coin-operated car washes
- b. Automobile and vehicle repair, sales, dealerships or lots but does not prohibit automobile parts stores.
- c. Tire stores and tire sales including vulcanizing.
- d. No sale of alcoholic beverages for consumption off the premises. Sale of alcoholic beverages for consumption on the premises shall be in conjunction with the sale and service of food and gross receipts from the sale of alcoholic beverages shall be 40 percent or less of gross receipts from all business activity conducted on the premises.
- e. Sign Restrictions:
 - i. Changeable copy or message center type signs.
 - ii. Freestanding signs shall be limited to ground signs.
- f. Lighting Restrictions:
 - i. All exterior lighting shall utilize full cutoff fixtures and be mounted level in the horizontal and vertical axis.

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

5. 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, filing fees to be paid by Developer.

IN WITNESS WHEREOF, the parties herein have executed this Agreement on the day and year set forth above.

RED CLOUD DEVELOPMENT, LLC,
a Nebraska limited liability company,

James Mestl, Managing Member

ATTEST:

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

City Clerk

Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by James Mestl, Managing Member of Red Cloud Development, LLC, a Nebraska limited liability company.

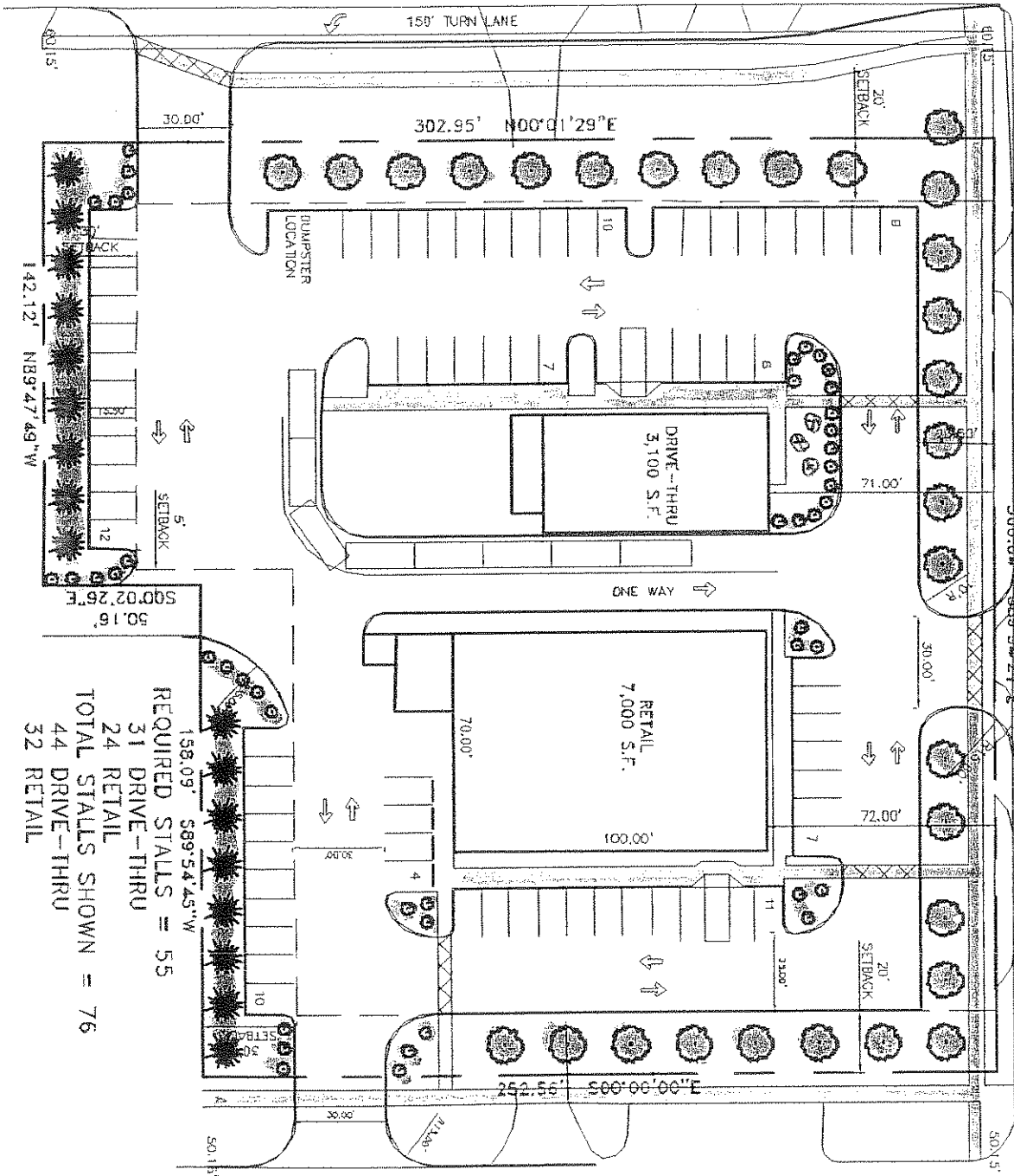
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Notary Public

SOUTH 9TH STREET



36.00'

SOUTH STREET

36.00'

36.00'

OPTION #91h

SOUTH 10TH STREET

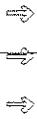


EXHIBIT " A "

142.12' NB9°47'49"W

158.09' S89°54'45"W
 REQUIRED STALLS = 55
 31 DRIVE-THRU
 24 RETAIL
 TOTAL STALLS SHOWN = 76
 44 DRIVE-THRU
 32 RETAIL

SCALE: 1" = 50'

