

## **DEVELOPMENT AND CONDITIONAL ZONING AGREEMENT**

This Development and Conditional Zoning Agreement entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between Whitehead Oil Company, a Nebraska corporation (Developer) and the City of Lincoln, Nebraska, a municipal corporation (City).

### **RECITALS:**

A. Developer has petitioned the City for a change of zone (No. \_\_\_\_\_) from R-6 Residential District to B-3 Commercial District upon property generally located between K and L Street and 21<sup>st</sup> and 22<sup>nd</sup> Street, legally described on attached Exhibit A (Property).

B. The request for the change of zone to B-3 Commercial District is to allow the Property to be used for a gas station/convenience store and restaurant with drive through.

C. The aforementioned proposed use of the property does not conform specifically to either the land use plan contained in the Downtown Master Plan or the Antelope Valley Redevelopment Plan. Existing plans for the area address architectural design and detail as it relates to the existing character. A typical, modern, combined gas station/convenience store and restaurant with drive through does not always blend well into an area such as this, which is characterized by traditional materials and reduced setbacks.

D. Developer has represented to the City that, if the Property is rezoned to B-3 Commercial district, the Developer will develop the Property as described in Recital B above and agree that the development will be subject to use restrictions, architectural criteria, limited signage, restrictions on lighting, and the provisions of pedestrian amenities and landscaping in order to provide a development more compatible with the Downtown Master Plan and Antelope Valley Redevelopment Plan.

E. City desires Developer to enter into this Agreement to be assured that the Developer will develop the Property as represented should the Property be re-zoned to B-3 Commercial District.

**THEREFORE**, Developer and City agree:

1. City agrees to grant Developers petition to change the zoning map from R-6 residential District to B-3 Commercial District on the Property.

2. Developer agrees to develop the Property in accordance with the site plan attached hereto as Exhibit B.

3. Developer further agrees to comply with the following restrictions upon the use and development of the property:

a. Uses which are otherwise allowed in the B-3 Commercial District, but which shall be prohibited on the Property are as follows:

(1) Permitted uses prohibited:

Milk distribution stations, but not involving any bottling on the premises;

Food storage lockers;

(2) Conditional uses prohibited:

Furnace, hearing, sheet metal, electrical shops or electrical contractors,

heating and air conditioning contractors, and cabinet shops or stores; Tire

stores and sales, including vulcanizing; recycling centers; vehicle body

repair shops, automobile wash facilities

(3) Special permitted uses prohibited:

Broadcast towers; Wind energy conversion system;

(4) All display items for sale and signage for such items shall be located in the main building or in designated areas screened to block view from the adjacent right-of-way, except as provided below.

b. Architectural requirements:

(1) Primary material on all facades of main building, not including glass area, shall be non-painted red or brown face brick. All on-site structures shall have consistent architectural features, detailing, and design elements. All building walls, screening walls or fences, and canopy columns shall use the same primary material, color, and detailing as on the main building. Secondary building colors shall be white or earth tones.

(2) Overall canopy heights shall not exceed 17 feet. The canopy fascia shall not exceed 3 feet in depth, and shall extend at least 2 feet below the canopy ceiling and block the direct view of the light sources from the adjacent right-of-way.

c. Not with standing other sign regulations, signs on the Property shall be limited to the following:

(1) Detached signs: Limited to one ground sign at the site entrances along "K" Street and "L" Street. Maximum height shall be 8 feet; maximum size shall be 50 square feet. Bases shall be constructed of brick to match the building.

(2) Wall signs: Limited to one sign on each building facade. Maximum size shall be 25 square feet. Signs shall be designed with individually applied letters or symbols.

(3) Canopy fascia: Limited to signs and logos required by parent company. Where alternative signs of logos are allowed, the smallest option shall be utilized.

(4) Pump islands: Limited to signs applied to the dispensing cabinet. Maximum size shall be 4 square feet per pump face.

d. Lighting on the Property shall be limited as follows:

(1) Canopy: Average maintained illuminance must not exceed 20 foot-candles at grade directly under the canopy. Individual light fixtures shall not exceed 250 watts. Fixtures shall be completely recessed and flush with the canopy ceiling with flat, translucent lenses. Canopy columns shall not have individual light fixtures. No lighting shall be mounted on or above the canopy fascia. Canopy fascia shall not be internally illuminated.

(2) Buildings and pole lighting: All lighting fixtures mounted on the building or poles shall be full cut-off design and aimed downward. Lenses shall be shielded or recessed so the light source is not directly visible from the adjacent right-of-way. Buildings may not be illuminated by ground mounted flood lighting. Building canopies shall not be internally illuminated.

(3) Average maintained illuminance shall not exceed 6 foot candles except directly under the canopy area.

e. Pedestrians Amenities shall be provided on the Property as follows:

(1) An outdoor pedestrian plaza area shall be provided, at least 400 square feet in area, with seating, located in the front of the west-facing

facade, and shaded with trees and/or other shade devices, as generally shown in Exhibit 1.

(2) Public sidewalk shall be extended along “K” Street and “L” Street from 21<sup>st</sup> Street east to the internal sidewalk as shown on the site plan (Exhibit 1) and pedestrian walkways shall extend from the public sidewalks on “K” Street and “L” Street to the building, as shown on Exhibit 1. On-site pedestrian walkways shall be constructed with differently textured or colored surfaces across the driving aisles, and shall be signed and marked for pedestrian safety as required by Public Works.

(3) The public side walk along the south side of “L” Street (Capitol Parkway) shall be installed a minimum of 6 feet from the curb and shall be on private property, were it does not preclude planting the required landscape screen or require the existing tree that would otherwise be retained as part of the landscape plan The developer shall provide a pedestrian easement for the sidewalk if and where required. Street trees shall be planted between the sidewalk and the curb where possible.

(4) Developer shall pay for th cost to install pedestrian- actuated traffic signals on “K” Street at vacated S. 22<sup>nd</sup> Street if and when warranted and recommended by the Director of Public Works, if not warranted, developer will pay for installation of cross walk and traffic warning signs as part of said installation, the Developer shall be required to extend the sidewalk in “K” Street to vacated S. 22<sup>nd</sup> Street.

- f. Landscaping on the Property shall meet or exceed the following:
- (1) Two (2) deciduous shade trees, shall be provided on the interior of the lot, in front of the building. Four hundred (400) square feet of ornamental grasses or shrub coverage shall be provided on site, primarily in front of and around the building.
  - (2) Large trash receptacles for business use and any outside storage areas must be screened from the adjacent right-of-way.
  - (3) The developer agrees to preserve existing perimeter trees, unless Parks & Recreation agrees that the trees must be removed, for access from “K” and “L” Streets (Capitol Parkway) or due to disease, grading impacts or compatibility with nearby street tree plans. These trees may be counted toward meeting street tree and parking lot tree requirements.
  - (4) Street trees shall be planted or preserved along all abutting streets. Species and spacing of the trees shall generally conform with the street tree master plan for this area and shall be approved by Parks and Recreation. Said trees shall be planted within 1 year of date of occupancy. The developer shall post a surety for the street trees in an amount to be determined by Parks and Recreation prior to issuance of a building permit.

4. Certain portions of the Property are currently part of street right-of-way owned by the City of Lincoln. Petitions to vacate such portions of the right-of-way will be approved by City

and prior to receiving a building permit, such property shall be acquired, or easements or permits for its use shall be obtained, allowing the development of the site as depicted in Exhibit B.

5. Easements shall be provided for all existing and future utilities to the satisfaction of the Public Works and Utilities Department of the City, and recorded with the Register of Deeds prior to receiving building permits. Prior to the transfer of title to any City property, the City shall retain any portion of such parcel as right-of-way or retain such easements as the City may deem necessary for the continued operation, maintenance, and future needs of the right-of-way.

6. Developer shall construct the following required improvements:

- a. Developer shall extend the existing curb line east of the driveway on “K” Street to protect the post office drop-off lane as shown on Exhibit
- b. Developer shall construct a left-turn lane in “L” Street, to the satisfaction of Public Works, providing access to the site.
- c. Existing electric poles shall be removed and the overhead electric line shall be relocated underground in a location and manner approved by LES.

7. Access to the Property shall be limited to one left-in, left-out driveway on “K” Street, and one left-in, left-out driveway on “L” Street.

8. The Planning Director may approve minor changes to the site plan and/or conditions that are consistent with the spirit and intent of this agreement.

9. This Agreement is binding upon the parties and their respective successors and assigns.

10. This Agreement, when executed by the parties, 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.

11. No development will occur until and unless the street and alley vacation is approved and the property declared surplus or an alternate site plan is approved as an amendment to the agreement.

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

WHITEHEAD OIL COMPANY,  
a Nebraska corporation

By: \_\_\_\_\_  
Mark A. Whitehead, President

ATTEST:

CITY OF LINCOLN, NEBRASKA  
a municipal corporation

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor