

**CONSERVATION EASEMENT AGREEMENT
(Preservation of Floodprone Area)**

THIS CONSERVATION EASEMENT AGREEMENT is entered into as of the _____ day of _____, 2005, by and between Pine Lake Heights Homeowners Association, Inc., a Nebraska non-profit corporation, ("Owner"), and the City of Lincoln, Nebraska ("City").

RECITALS

I.

Owner is the titleholder of Outlot A, Pine Lake Heights Addition, Lincoln, Lancaster County, Nebraska ("Outlot A").

II.

The City desires to acquire and Owner is willing to convey a permanent Conservation Easement to preserve the flood storage capacity and wetland characteristics over a portion of Outlot A, that portion being referred to as the "Easement Area." The Easement Area is more particularly shown on Exhibit A.

III.

The City is authorized to accept and hold this Conservation Easement under the terms of this Agreement.

NOW, THEREFORE, in consideration of **ONE DOLLAR (\$1.00)**, and other good and valuable consideration, receipt of which is hereby acknowledged, Owner hereby grants and conveys to City for its benefit and the benefit of the public a conservation easement over the Easement Area to restrict the use of the Easement Area to open space to protect and preserve the drainage way, wetlands and tree masses that occur on the land; to protect other water and biologic resources within the Easement Area as specified in Exhibit B, and to restrict any development or future use of the Easement Area that will significantly impair or interfere with

the open space values of the Easement Area subject to the following terms, conditions, and covenants.

1. Uses.

A. Compatible Uses. The Easement Area shall be used only for flood storage capacity, wetlands management, open green space, or recreational purposes. The following uses are compatible and are expressly permitted in the Easement Area:

- i. Any use of the Easement Area existing or proposed (See Exhibit A) on the date of this agreement may continue in such use.
- ii. Roadway or utility crossings necessary for the functional use of adjacent lands, as approved in advance by the City's Director of Public Works & Utilities.
- iii. Trails or other public recreational components as approved in advance by the City's Director of Public Works & Utilities.

B. Non-Compatible Uses. The following uses and practices, although not an exhaustive recital of the inconsistent uses and practices, are inconsistent with the purposes of this Conservation Easement and are expressly prohibited within the Easement Area:

- i. Construction or placing of roadways, buildings, camping accommodations, or mobile homes, fences, billboards or other commercial advertising material, permanent signs or any other structure;
- ii. Filling, excavating, dredging, mining or drilling, removal of top soil, sand, gravel, rock, minerals, or other materials, except for silt removal from the step weir system;
- iii. Building of roads, or changing the topography of the land in any manner excepting the maintenance of existing improvements in substantially their present condition;
- iv. Dumping of ashes, trash, garbage, or other unsightly or offensive material;
- v. Commercial development of any nature;
- vi. Human introduction of non-native species which may compete with and result in decline or elimination of species;

- vii. Any other act of which the City has provided written notice to the Owner that it considers to be detrimental to the scenic beauty, wildlife habitat, wetlands, the natural beauty, or natural resources of the Easement Area;
- viii. Operation of motorized vehicles except as necessary in the maintenance of the Easement Area;
- ix. The broadcast application of pesticides at any time. Spot application of herbicides for the control of noxious weeds as regulated by state law will be permitted;
- x. Cultivation, planting, or drilling of row crops, small grains, and forages, such as alfalfa and forage sorghum;
- xi. Removal of the wetland planting areas shown on Exhibit A attached hereto except for selected removal for maintenance issues;
- xii. Changing the hydrology of the Easement Area or Outlot A.

2. Term. The term of this Conservation Easement will be in perpetuity unless earlier terminated pursuant to any of the following provisions:

- A. By the City pursuant to the provisions of Neb. Rev. Stat. § 76-2,113.
- B. By the Lancaster County District Court pursuant to the provisions of Neb. Rev. Stat. § 76-2,114.

The parties agree that termination of this Agreement may be total and affect the entire Easement Area, or may be partial and result in the termination of the easement over only a portion of the Easement Area.

3. Condition of the Easement Area at Time of Grant. The condition of the Easement Area without limiting the generality of the terms is defined to mean the natural and functional values of the floodprone area at the time of this grant as evidenced by reports, photographs and scientific documentation which have been reviewed and initialed by Owner and placed on file with the City's Planning Department.

4. Protection and Maintenance of the Easement Area.

A. Owner agrees to continuously and permanently maintain the Easement Area in substantially its same condition as existing at the time of this grant, subject to natural changes and evolution over time.

B. Owner agrees to pay any real estate taxes, estate taxes or assessments levied by competent authorities on the Easement Area.

C. Owner shall cooperate with and assist the City at City's cost in applying for, obtaining, protecting, maintaining and enhancing any and all surface water and ground water rights and privileges related to the Easement Area by signing applications which the City deems necessary or desirable for the management, maintenance or development of the Easement Area for the purposes provided for herein provided the City indemnifies and holds harmless Owner from any and all claims, costs and demands arising out of or related to the City's management, maintenance or development of the Easement Area.

5. Inspections and Access by City. The City shall have the right of reasonable ingress and egress to and from the Easement Area from public roads and streets and from Outlot A for its employees, contractors, vehicles and equipment for the purpose of inspecting, maintaining, protecting or enhancing the floodprone area within the Easement Area as the City may deem necessary or desirable.

6. Enforcement. Owner agrees that the City may enforce the provisions of this Conservation Easement by any proceeding at law or in equity. Owner further agrees that the City may seek an injunction restraining any person from violating the terms of this Conservation Easement. Owner further agrees that the City does not waive or forfeit the right to take any action as it deems necessary to insure compliance with the covenants and purposes of this grant by any prior failure to act. Owner further agrees that should Owner undertake any activity requiring the approval of the City without or in advance of securing such approval, or undertake any activity in violation of the terms of this Conservation Easement that City shall have the right to enforce the restoration of that portion of the Easement Area affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the

cost of such restoration and the City's cost of suit, including reasonable attorney fees, shall be paid by Owner.

7. Title to Easement Area. Owner covenants that Owner is the owner of marketable title to all of the Easement Area, has legal right, title and capacity to grant the Conservation Easement granted herein subject to easements and restrictions of record.

8. City's Transfer of Interest. The City shall have the right to transfer this Conservation Easement to any public agency that, at the time of transfer, is an organization qualified to assume the responsibility imposed on the City by this Conservation Easement Agreement.

9. Binding Affect. The Conservation Easement granted herein shall run with the land and shall inure to the benefit of and be binding upon the heirs, successors and assigns of Owner and City.

10. Recordation. The parties agree that this Agreement shall be duly filed by the City with the Lancaster County Register of Deeds upon execution and acceptance by the City.

11. Severability. If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Conservation Easement and the application of such provisions to persons or circumstances other than those to which it is found to be invalid shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

**PINE LAKE HEIGHTS HOMEOWNERS
ASSOCIATION, INC. , Owner**

By: _____
President

Attest:

CITY OF LINCOLN, NEBRASKA

City Clerk

By: _____
Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

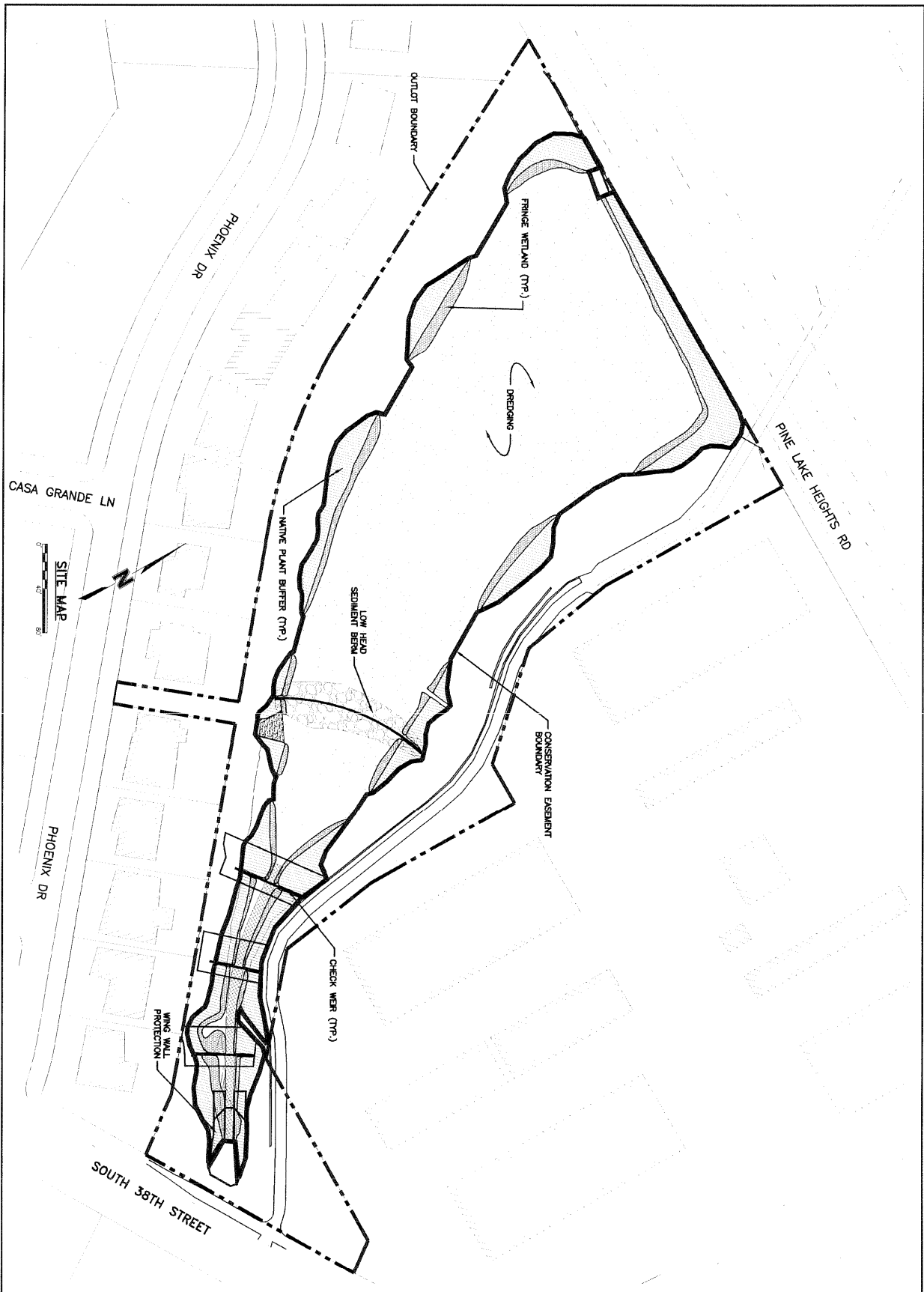
The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by Timothy J. Texel, President of Pine Lake Heights Homeowners Association, Inc., a Nebraska nonprofit corporation, on behalf of the corporation.


Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska on behalf of the City of Lincoln, Nebraska.

Notary Public



SHEET 1 OF 1	PROJECT DIAGRAM	<table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	NO.	DATE	DESCRIPTION													2004	REVISIONS	 <p> OLSSON ASSOCIATES ENGINEERS - PLANNERS - SCIENTISTS - SURVEYORS 1115 LINCOLN HALL - LINCOLN, NEBRASKA 68502 - 402-471-0111 - FAX 402-471-8900 LINCOLN - OMAHA - GRAND ISLAND - HOUSTON - LINCOLN CITY - PIRNIE - PONDOK </p>
	NO.		DATE	DESCRIPTION																
Drawn by: jam Checked by: jam Approved by: jam Drawing No.: 100815-02 Date: 11/13/04	LINCOLN, NE																			

APPENDIX A

NATURAL RESOURCES OF FLOODPLAINS

Floodplains that are relatively undisturbed (or have been restored to a nearly natural state) provide a wide range of benefits to both human and natural systems. These benefits take many forms: some are static conditions (like providing aesthetic pleasure) and some are active processes (like filtering nutrients). There is some ambiguity over which of these benefits are properly termed "functions," which are "resources," and where the terms overlap. A fairly well accepted (but not necessarily comprehensive) list follows. The resources and functions have been loosely grouped into three categories, and the categories have been labelled according to the primary recipient of the benefit or its relationship to a larger system. That is, "water resources" include those resources and functions of floodplains that are part of or provide a benefit to the hydrologic cycles on the earth's surface and below ground; "biologic resources" are floodplain resources and functions that benefit plants and animals; and "societal resources" are floodplain resources and functions that directly benefit human society. Throughout the Unified National Program document, the term "natural resources" is used to refer to any or all of the resources and functions listed here.

Water Resources

Natural Flood & Erosion Control

- Provide flood storage and conveyance
- Reduce flood velocities
- Reduce flood peaks
- Reduce sedimentation

Water Quality Maintenance

- Filter nutrients and impurities from runoff
- Process organic wastes
- Moderate temperature fluctuations

Groundwater Recharge

- Promote infiltration and aquifer recharge
- Reduce frequency and duration of low surface flows

Biologic Resources

Biological Productivity

- Support high rate of plant growth
- Maintain biodiversity
- Maintain integrity of ecosystem

Fish and Wildlife Habitats

- Provide breeding and feeding grounds
- Create and enhance waterfowl habitat
- Protect habitats for rare and endangered species

Societal Resources

Harvest of Wild & Cultivated Products

- Enhance agricultural lands
- Provide sites for aquaculture
- Restore and enhance forest lands

Recreational Opportunities

- Provide areas for active and passive uses
- Provide open space
- Provide aesthetic pleasure

Areas for Scientific Study and Outdoor Education

- Contain cultural resources (historic and archaeological sites)
- Provide opportunities for environmental and other studies