

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

THIS CONSERVATION EASEMENT AGREEMENT ("Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between Village Meadows, LLC, a Nebraska limited liability company ("Owner"), the City of Lincoln, Nebraska, a municipal corporation ("City"), and Lower Platte South Natural Resources District, a political subdivision ("NRD").

**RECITALS**

**I.**

Owner is the owner in fee simple of certain land legally described as:

Outlot D, Village Meadows 7<sup>th</sup> Addition, Outlot A, Village Meadows 10<sup>th</sup> Addition, Outlot A, Village Meadows 11<sup>th</sup> Addition, and Outlot B, Village Meadows 15<sup>th</sup> Addition, Lincoln, Lancaster County, Nebraska ["Easement Area"].

**II.**

The City and NRD desire to acquire and Owner is willing to convey a permanent Conservation Easement to preserve the flood storage capacity and other natural resources over the Easement Area described above.

NOW, THEREFORE, in consideration of **Three Hundred Twenty-nine Thousand Six Hundred Eighty-two and 85/100 Dollars (\$329,682.85)**, and other good and valuable consideration, receipt of which is hereby acknowledged, Owner hereby grants and conveys to City and NRD for their 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 floodplain/floodprone area, drainageway, wetlands, and tree masses that occur on the land, to protect other water resources and biologic resources of the floodplain/floodprone area as identified on Exhibit A, and to restrict development and future use of the Easement Area that will significantly impair or interfere with the open space values and natural resources of the Easement Area (see Exhibit B). In addition, the Conservation Easement is granted over the Easement Area for the purposes of construction, reconstruction, operation, maintenance, repair, and inspection of stormwater detention basins (including appurtenant structures), to include a site where the suitable borrow materials can be obtained, and for the purpose of the flowage of any waters in, over, upon or through such basins, and for the permanent storage and temporary detention, either or both, of any waters that are impounded, stored or detained by such stormwater detention basins designated as Village Meadows Detention Cells 09\_01, 10\_02, 10\_03, 10\_04, and 10\_05.

The terms, conditions, and covenants of the Conservation Easement hereby created are as follows:

**1. Use of Easement Area.**

A. Compatible Uses. The Easement Area shall be used only for purposes compatible with open space, recreational, or wetlands management practices. Notwithstanding subsection B, "Non-Compatible Uses," below, the following uses are compatible with the purposes of the Easement Area:

- i. Areas already in agricultural use at the time this Conservation Easement is dedicated may continue in such use.
- ii. Roadway or utility crossings necessary for the functional use of adjacent lands constructed in accordance with the flood regulations.
- iii. Public sanitary sewer lines along the stream alignment necessary for the functional use of adjacent lands, as approved in advance by the Director of Public Works & Utilities, provided the corridor is restored following disturbance to the maximum extent practicable.
- iv. Trails or other public recreational components as approved in advance by the Director of Public Works & Utilities.
- v. Stream rehabilitation, water quality projects, or protection/restoration of other natural resources listed in Exhibit A as approved in advance by the Director of Public Works & Utilities.
- vi. Storm drain and outlet improvements conforming to the City's design standards necessary for the functional drainage of adjacent lands.

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 shall be prohibited within the Easement Area:

- i. Construction or placing of roadways, buildings, camping accommodations, or mobile homes, fences, signs, billboard or other advertising material, or any other structure;
- ii. Filling, excavating, dredging, mining or drilling, removal of top soil, sand, gravel, rock, minerals, or other materials;
- iii. Building of roads, or changing in the topography of the land in any manner excepting the maintenance of foot trails or any work requested by the City;
- iv. Dumping of ashes, trash, garbage, or other unsightly or offensive material;
- v. Changing the topography of the land by placing of soil or other substances or materials such as landfill or dredging spoils;
- vi. Commercial or residential development of any nature;
- vii. Human introduction of non-native plant or animal species which may compete with and result in decline or elimination of native animal species;
- viii. Operation of motorized vehicles except as necessary in the use of the area as provided herein;
- ix. The broadcast application of pesticides at any time, except for that which is needed for areas already in agricultural use at the time this Conservation Easement is dedicated. Spot application of pesticides for the control of noxious weeds as provided by state law will be permitted;

- x. Cultivation, planting, or drilling of row crops, small grains, and forages, such as alfalfa and forage sorghum within areas not already in agricultural use at the time of the dedication of this Conservation Easement;
- xi. Removal of tree masses;
- xii. Changing the hydrology of the Easement Area or the land upstream in a way that negatively impacts the Easement Area;
- xiii. Sedimentation of the Easement Area due to grading or construction activities outside the Easement Area;
- xiv. Any other act which would be detrimental to the scenic beauty, wildlife habitat, wetlands, the natural beauty, or natural resources of the Easement Area.

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

- i. By the City and NRD pursuant to the provisions of Neb. Rev. Stat. § 76-2,113.
- ii. 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 Conservation 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 open space, drainageway, wetlands, tree masses, detention basins, grade control and outlet structures, and the functional integrity of other water resources and biologic resources of the floodplain/floodprone area identified on Exhibit A, as evidenced by reports, photographs and scientific documentation on file with the City's Planning Department.

**4. Protection and Maintenance of the Easement Area.**

A. Owner agrees to pay any real estate taxes, estate taxes or assessments levied by competent authorities on the Easement Area, including but not limited to any tax or assessment affecting the Conservation Easement granted herein. Owner retains the right to challenge the assessed value of the property and to challenge the validity of any such tax or assessment.

B. Owner shall cooperate with and assist the City and NRD at the City or NRD'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.

C. The Owners shall, at Owners' sole cost and expense, maintain the Easement Area. Maintenance shall consist of routine noxious weed control, routine weed and brush control, routine removal of trash and debris, and routine non-structural maintenance of stream bed and bank stability measures following installation. If Owner fails to maintain the Easement Area the City and/or NRD may carry out such maintenance and bill the cost thereof to Owners. Owners shall pay said cost within thirty days from receipt of said billing.

**5. Inspections and Access by City.** The City and NRD shall have the right of reasonable ingress and egress to and from the Easement Area from public roads and streets for its employees, contractors, vehicles and equipment for the purpose of revegetating and for inspecting, maintaining, protecting or enhancing the floodplain/floodprone area within the Easement Area, including but not limited to stream stabilization projects, as the City or NRD may deem necessary or desirable.

**6. Enforcement.** Owner agrees that the City and NRD may enforce the provisions of this Conservation Easement by any proceeding at law or in equity, including but not limited to, the right to require restoration of the Easement Area to the condition at the time of this grant. Owner further agrees that the City or NRD may seek an injunction restraining any person from

violating the terms of this Conservation Easement and that the City or NRD may be granted such injunction without posting of any bond whatsoever. Owner further agrees that the City and NRD do not waive or forfeit the right to take any action as they deem 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 and NRD without or in advance of securing such approval, or undertake any activity in violation of the terms of this Conservation Easement that City and NRD 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 and/or NRD'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. **Transfer of Interest.**

A. **Owner's Title to Easement Area.** The City and NRD acknowledge that Owner will be transferring the Easement Area to the Village Meadows Homeowners Association via a quit claim deed subject to this Agreement. If the land subject to this Agreement or any interest therein is subsequently transferred to a third party, any owner shall notify the City and NRD in writing prior to the transfer of the land and the document transferring the interest shall be made subject to this Agreement.

B. **City and NRD's Conservation Easement.** The City and NRD shall have the right to transfer this Conservation Easement to any public agency, charitable organization or trust that, at the time of transfer, is an organization qualified to assume the responsibility imposed on the City and NRD by this Agreement.

9. **Binding Affect.** The Conservation Easement and other terms, conditions, and restrictions granted herein by this Agreement shall run with the land and shall inure to the benefit of and be binding upon the heirs, successors and assigns of Owner, City and NRD.

10. **Approvals.** Any approval required under this Agreement shall not be unreasonably withheld.

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

12. **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.

"OWNER"

**VILLAGE MEADOWS, LLC**, a Nebraska limited liability company

By: 1640 LLC, a Nebraska limited liability company, Manager

By: Michelle S. Benes Revocable Trust dated May 21, 2003, Managing Member

By: Michelle S. Benes  
Michelle S. Benes, Trustee

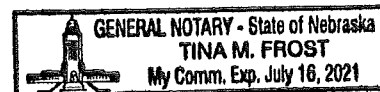
By: Robert L. Benes Revocable Trust dated May 21, 2003, Managing Member

By: Robert L. Benes  
Robert L. Benes, Trustee

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing was acknowledged before me this 24 day of October, 2017, by Michelle S. Benes, Trustee of the Michelle S. Benes Revocable Trust dated May 21, 2003, Managing Member of 1640 LLC, a Nebraska limited liability company, Manager of **Village Meadows, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.

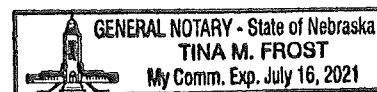
Tina M. Frost  
Notary Public



STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing was acknowledged before me this 24 day of October, 2017, by Robert L. Benes, Trustee of the Robert L. Benes Revocable Trust dated May 21, 2003, Managing Member of 1640 LLC, a Nebraska limited liability company, Manager of **Village Meadows, LLC**, a Nebraska limited liability company, on behalf of the limited liability company.

Tina M. Frost  
Notary Public



"CITY"

**CITY OF LINCOLN, NEBRASKA**, a  
municipal corporation

By: \_\_\_\_\_  
Chris Beutler, Mayor

STATE OF NEBRASKA            )  
                                          ) ss.  
COUNTY OF LANCASTER        )

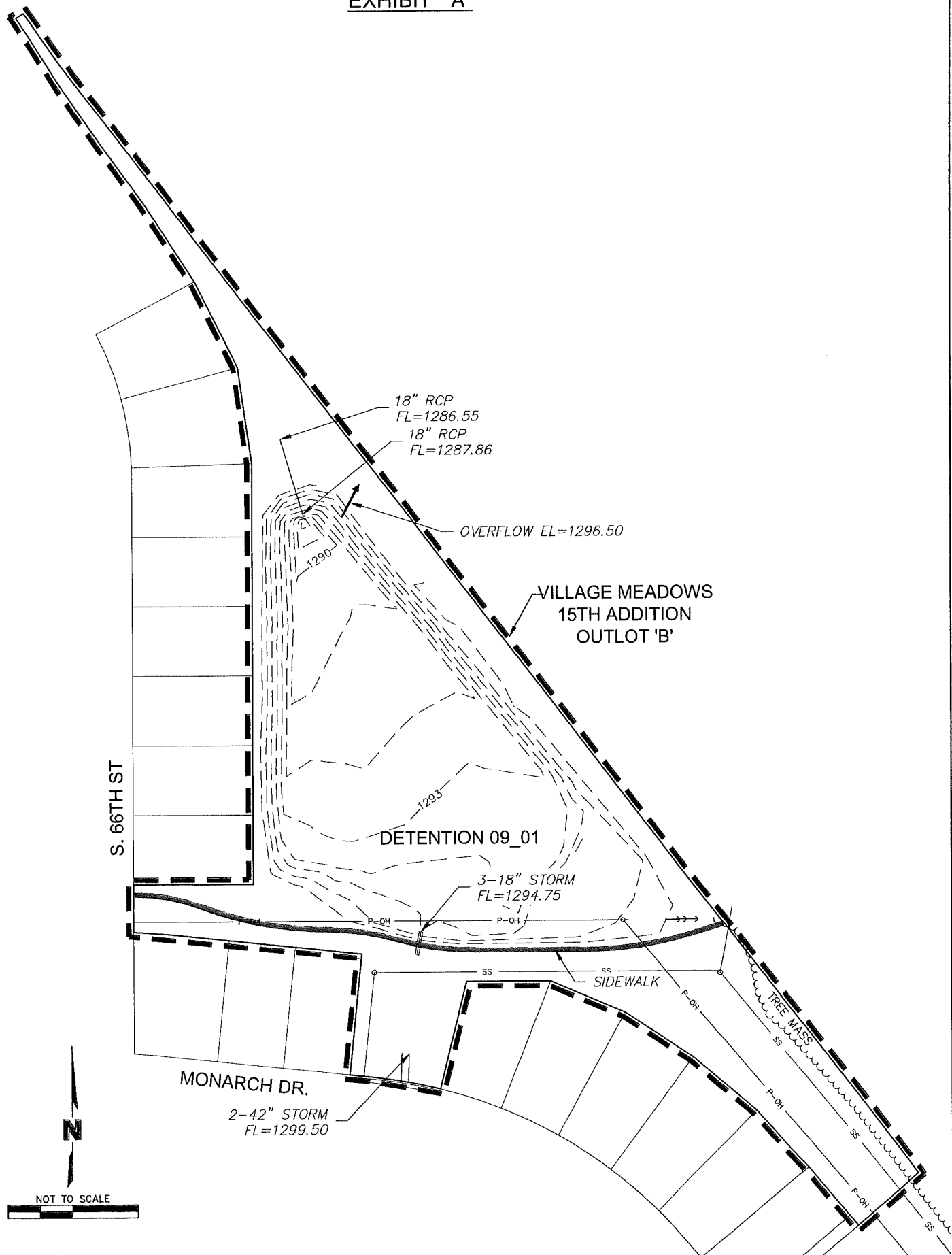
The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by Chris Beutler, Mayor of the **City of Lincoln, Nebraska**, a municipal corporation, on behalf of the municipal corporation.

(Seal)

\_\_\_\_\_  
Notary Public



EXHIBIT "A"



USER: bbartek  
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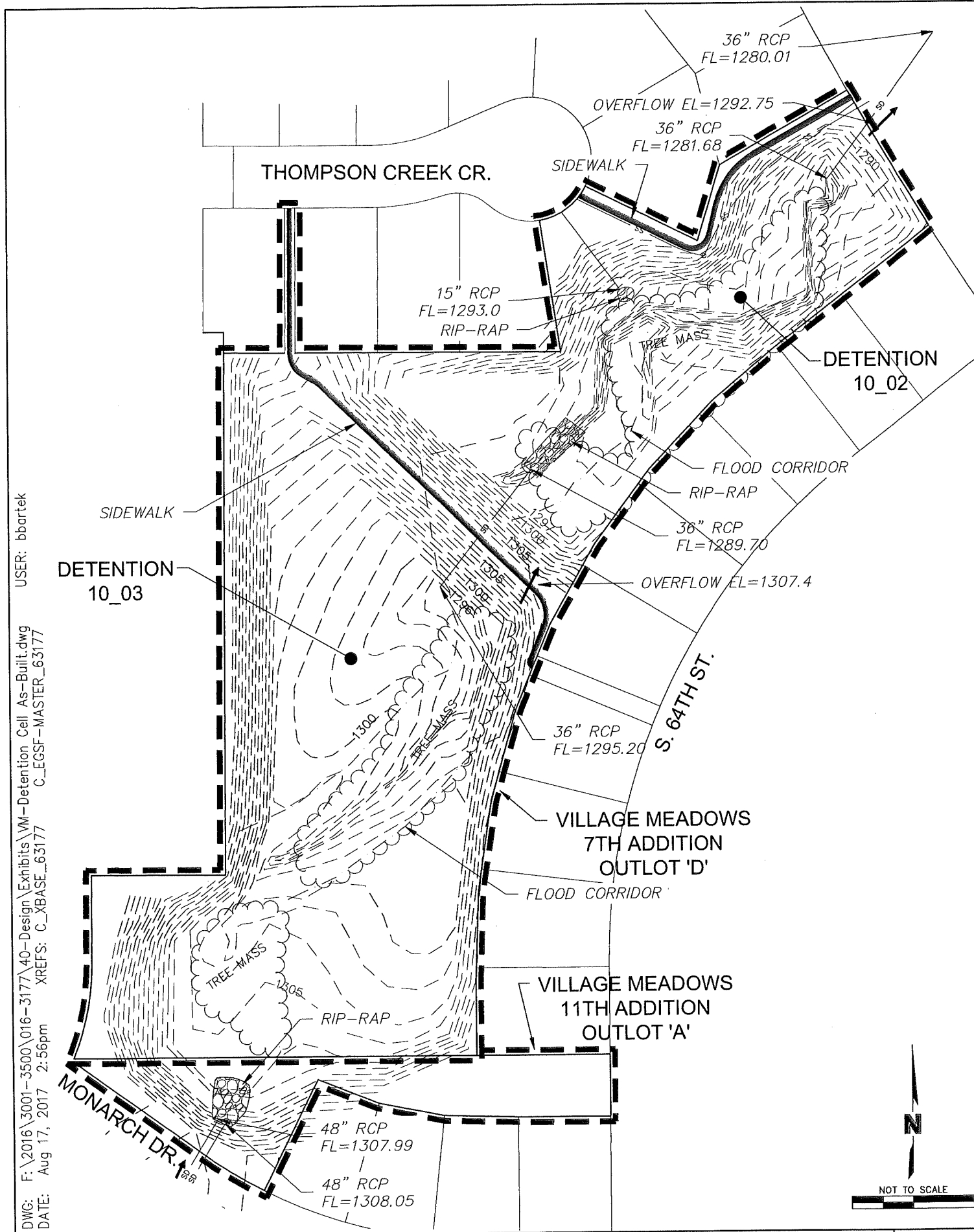
PROJECT NO:	016-3177
DRAWN BY:	BPB
DATE:	8/17/17

VILLAGE MEADOWS  
 CELL 09\_01

**OLSSON ASSOCIATES**  
 601 P Street, Suite 200  
 P.O. Box 84608  
 Lincoln, NE 68508  
 TEL 402.474.6311  
 FAX 402.474.5160

EXHIBIT
A1

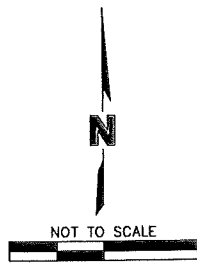




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DATE: Aug 17, 2017 2:56pm



PROJECT NO:	016-3177
DRAWN BY:	BPB
DATE:	8/17/17

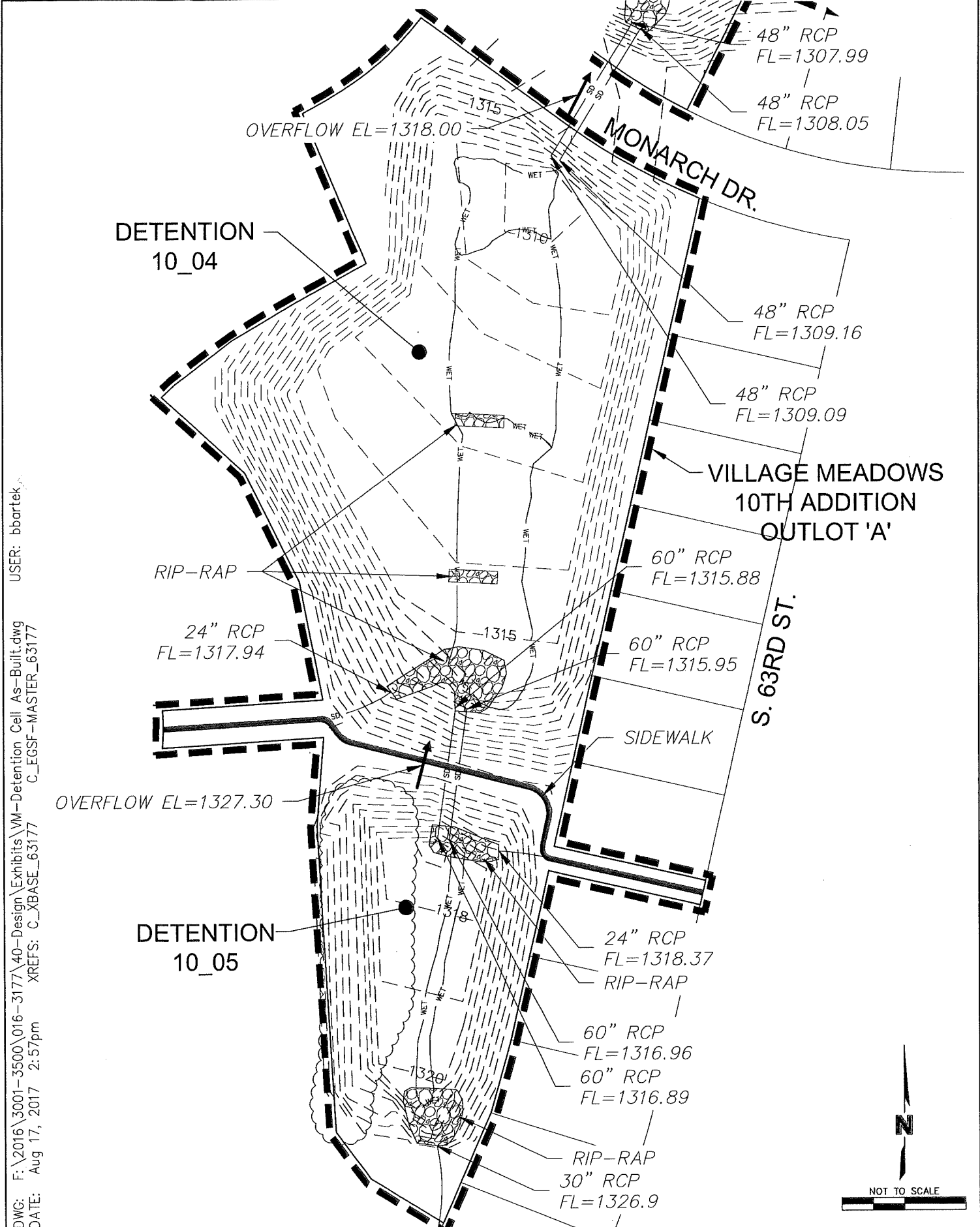
VILLAGE MEADOWS  
CELL 10\_02 / 10\_03



601 P Street, Suite 200  
 P.O. Box 84608  
 Lincoln, NE 68508  
 TEL 402.474.6311  
 FAX 402.474.5160

EXHIBIT
A2

USER: bbartek  
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 DATE: Aug 17, 2017 2:57pm  
 XREFS: C\_XBASE\_63177 C\_EGSF-MASTER\_63177



PROJECT NO:	016-3177
DRAWN BY:	BPB
DATE:	8/17/17

**VILLAGE MEADOWS  
 CELL 10\_04 / 10\_05**



601 P Street, Suite 200  
 P.O. Box 84608  
 Lincoln, NE 68508  
 TEL 402.474.6311  
 FAX 402.474.5160

EXHIBIT
<b>A3</b>

## Exhibit B

# 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”, or “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 labeled 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 this 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

### Biological Resources

#### *Biological Productivity*

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

#### *Fish & 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 & Outdoor Education*

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