

**CONSERVATION EASEMENT AGREEMENT
(Preservation of Flood Storage)**

THIS CONSERVATION EASEMENT AGREEMENT is entered into as of the _____ day of _____, 2014, by and between Elsay Partnership, Inc. ("Owner"), and the City of Lincoln, Nebraska ("City").

RECITALS

I.

Owner is the owner in fee simple of Lots 17 through 29, and the West 20 feet of Lot 30, all in Block 15 of Cahn, Metcalf and Farwell's Subdivision, Lincoln, Lancaster County, Nebraska ("Property"). Owner desires to convey and City desires to accept a permanent Conservation Easement to preserve the flood storage capacity on that portion of the Property as shown and described on certain land ("Real Property") legally described as:

THE SOUTH 88 FEET OF LOT 29, BLOCK 15 OF CAHN, METCALF AND FARWELL'S SUBDIVISION

II.

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

III.

This Agreement has been submitted to the Lincoln-Lancaster County Planning Commission pursuant to the Provisions of Neb. Rev. Stat. § 76-2,112 for review and recommendation and said Commission has found that the Conservation Easement is in conformance with the Lincoln City Comprehensive Plan.

IV.

The City Council of the City of Lincoln, Nebraska, has approved and accepted this Conservation Easement after duly considering the recommendations of the Lincoln City-Lancaster County Planning Commission and has authorized the Mayor to execute this Agreement on behalf of the City.

NOW, THEREFORE, in consideration of the mutual value to the Owner and City and to encourage and floodplain conservation the City and Owner agree as follows:

1. Grant of Conservation Easement. Owner hereby grants and conveys to City and for its benefit and the benefit of the public a conservation easement over the Easement Area to preserve the flood storage capacity of the Easement Area and to restrict development and future use of the Property that will significantly impair or interfere with the flood storage capacity of the Easement Area.

- A. The following uses and practices shall be prohibited within the easement Area:
 - i. Construction of buildings or any other structure;
 - ii. Any other use or practice not shown in the 1100 'Y' Street, Community Unit Plan/Special Permit #14008, that would adversely impact the flood storage capacity.
- B. The term of this Conservation Easement will be in perpetuity unless earlier terminated pursuant to any of the following provisions:
 - i. By the City 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 easement over only a portion of the Easement Area.

2. Condition of the Easement Area at Time of Grant. The condition of the Easement Area at the time of this Conservation Agreement shall mean the flood storage capacity of the Easement Area existing at the time of this grant as shown on the attached Exhibit 'A' and conforming to the conservation easement site plan filed with Street and Alley Vacation #14006 and Comprehensive Plan Conformity #14018 in the City's Planning Department.

3. Protection and Maintenance of the Easement Area.

A. Owner agrees at Owner's own cost and expense to protect and maintain the flood storage capacity of the Easement Area in the same condition existing at the time of this Conservation Agreement except as otherwise authorized by this Conservation Easement.

B. 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 easement granted herein. Owner further agrees to obtain, pay for, and continuously maintain liability and property insurance covering the Easement Area.

C. Owner shall cooperate with and assist the City at the 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.

4. 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 adjacent properties for its employees, contractors, vehicles and equipment for the purpose of inspecting, maintaining or protecting the flood storage capacity of the Easement Area as the City may deem necessary or desirable.

5. Enforcement. Owner agrees that the City 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 may seek an injunction restraining any person from violating the terms of this Conservation Easement and that the City may be granted such injunction without posting of any bond whatsoever. Owner further agrees that the City does 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 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.

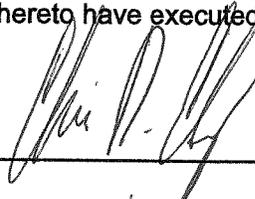
6. **Title to Easement Area.** Owner covenants that Owner is the owner of marketable title to all of the Easement Area, has legal right, title and capacity to grant the Conservation Easement granted herein subject to easements and restrictions of record.

7. **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.

8. **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.

9. **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
Title: Partner

Attest:

CITY OF LINCOLN, NEBRASKA

City Clerk

By: _____
Mayor