

**CONSERVATION EASEMENT AGREEMENT  
(Preservation of Wetlands)**

THIS CONSERVATION EASEMENT AGREEMENT is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between **Pine Lake Development, L.L.C.** ("Owner") and the City of Lincoln, Nebraska ("City").

**RECITALS**

**I.**

Owner is the owner in fee simple of certain land ("Real Property") legally described as: **OUTLOT A, PINE LAKE PLAZA ADDITION LOCATED IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 9 NORH, RANGE 7 EAST of the 6<sup>th</sup> P.M., Lancaster County, Nebraska, including the portions thereof referred to herein as the "Easement Area"; the Easement Area is more particularly described as follows:**

**OUTLOT A, PINE LAKE PLAZA ADDITION LOCATED IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 9 NORH, RANGE 7 EAST, CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA.**

**II.**

The City desires to acquire and Owner is willing to convey a permanent Conservation Easement to preserve the wetlands within the Easement Area

NOW, THEREFORE, 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 wetlands that occur on the land, to protect other water resources and biologic resources of the wetlands, and to restrict development and future use of the Easement Area that will significantly impair or interfere with the open space values and wetlands within the Easement Area.

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 easement is dedicated may continue in such use.
- ii. Roadway or utility crossings 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.

- 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 and water quality projects as approved in advance by the 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 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 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. Any other act which would be detrimental to the scenic beauty, wildlife habitat, wetlands, the natural beauty, or natural resources of the Easement Area;
- ix. Operation of motorized vehicles except as necessary in the use of the area as provided herein;
- x. The broadcast application of pesticides at any time. Spot application of pesticides for the control of noxious weeds as provided by state law will be permitted;
- xi. 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 easement;
- xii. Removal of tree masses;
- xiii. Changing the hydrology of the Easement Area or the land upstream in a way that negatively impacts the easement area.
- xiv. Sedimentation of the Easement Area due to grading or construction activities outside 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 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.

**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, wetlands, and the functional integrity of the water resources and biologic resources within the easement area, 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 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 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.

**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 adjacent properties for its employees, contractors, vehicles and equipment for the purpose of removing existing fill and revegetating and for 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, 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.

**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.



STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by **Coleen J. Seng, Mayor** of the City of Lincoln,  
Nebraska on behalf of the **City of Lincoln, Nebraska**.

(S E A L)

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

PINE LAKE S.I.D.

42

43  
PINE LAKE

44  
4TH

45  
ADD.

RIGHT-OF-WAY TO BE  
VACATED

PINE LAKE ROAD

MITIGATION  
AREA

1

BLOCK 1

2

3

4

5

1

2

3

4

6

8

EIGER DRIVE

OUTLOT A  
OPEN  
SPACE/WETLANDS/  
DETENTION/BLANKET  
UTILITY EASEMENT  
AREA= 1.83 AC.±

SOUTH 82nd STREET

2

7

7

3

BLOCK 3

OUTLOT B

NEBRASKA HIGHWAY 2

4



NO SCALE



PINE LAKE PLAZA  
EXHIBIT A  
LINCOLN, NEBRASKA

Drawn By: NLP  
Dwg.: 404\_EX  
Date: 10/22/04  
Job#: 02-059

SHEET  
1 OF 1

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