

CONSERVATION EASEMENT AGREEMENT

THIS CONSERVATION EASEMENT AGREEMENT is entered into as of the 16 day of April, 2007, by and between Roger and Eldonna Schwisow and Detweiler Investments, LLC ("Owners") and the City of Lincoln, Nebraska ("City").

RECITALS**I.**

Owner is the owner in fee simple of Northbank Junction 1st Addition, Outlot A, portions of lots 1, 2, 3 and 22 I.T., Section 32, T11N, R7E, 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 legally described in attached legal descriptions 'A' and 'B'. ("Easement Area").

II.

The City is authorized to accept and hold this Conservation Easement under the terms of this Agreement and the Conservation and Preservation Easements 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 preserve wetlands the City and Owner agree as follows:

1. **Grant of Conservation Easement.** Owner hereby creates, establishes, grants, and conveys to City for its benefit and the benefit of the public a conservation easement over the Easement Area to restrict the Easement Area to open space and protect and 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, 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 placement of fill material, cement, buildings, fences, signs, camping accommodations or mobile homes, billboards or other advertising materials, or any other structure;
- ii. Filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, the building of roads, or change in topography of the land in any matter except in the maintenance of foot trails;
- iii. Dumping of ashes, trash, garbage, or other unsightly or offensive material, and the changing of the topography through the placing of soil or other substances or materials such as fill or dredging spoils;

- iv. Commercial development of any nature;
- v. Human introduction of non-native plant species which may compete with and result in the decline or elimination of native plant species;
- vi. Human introduction of non-native animal species which may compete with and result in the decline or elimination of native animal species;
- vii. Changing the hydrology of the easement area or the land upstream, within the boundaries of the final plat for Northbank Junction (and any additions), so as to divert the natural flow of water from the wetlands within the easement area or to the wetlands so as to be detrimental;
- viii. Any other act which in the opinion of the City of Lincoln 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 will not be permitted at any time. Spot application for the control of noxious weeds as provided for by State Law will be permitted;
- xi. The cultivation, planting , or drilling of row crops, small grains and forages such as alfalfa and forage sorghum will not be permitted on the easement property;
- xii. Sedimentation of easement area due to grading or construction activities outside of the easement area;

xiii. Any other use or practice 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 grant shall mean the flood storage capacity of the Easement Area existing at the time of this grant as shown on the conservation easement site plan filed with Comprehensive Plan Conformity CPC#07002 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 grant 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 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.

D. Owner agrees to maintain the Easement Area as required by the Corps of Engineers permit #NE2002-11389, in order to preserve the wetlands by restricting the use of the easement area to open space or area that will significantly impair or interfere with the preservation of the wetlands. The owner agrees to continuously and permanently maintain the easement area in its condition based on the special conditions. The special conditions include the following: Native species buffer strips measuring 30 feet wide will be established adjacent to both top banks of the approximately 500 feet long upstream reach of the relocated channel, with the north-south alignment. For the remaining reach of the relocated channel which flows east, natives species will be established on the 3(H):1(V) slope of the south (right) bank, the 6(H):1(V) slope of the north (left) bank, and a 15 foot wide buffer strip adjacent to the top bank of the north bank. The owner agrees to pay any real estate taxes, estate taxes or assessments levied by competent authority on the easement area, including but not limited to any tax or assessment affecting the easement area. In order to accomplish the purpose of this Conservation Easement, the following practices and uses shall be prohibited in the easement area:

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.

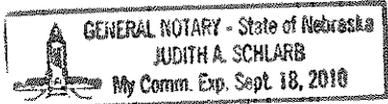
5. **Enforcement.** Owner agrees that the City may enforce the provisions of this Conservation Easement by any proceeding at law or in equity, including but not limited to, the right to require restoration of the Easement Area to the condition at the time of this grant. Owner further agrees that the 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 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.

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.

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 16 day of April, 2007, by Gary and Beth Detweiler, Members of Detweiler Investments, LLC, a Nebraska limited liability company.



Judith A. Schlarb
Notary Public

Attest:

CITY OF LINCOLN, NEBRASKA

City Clerk

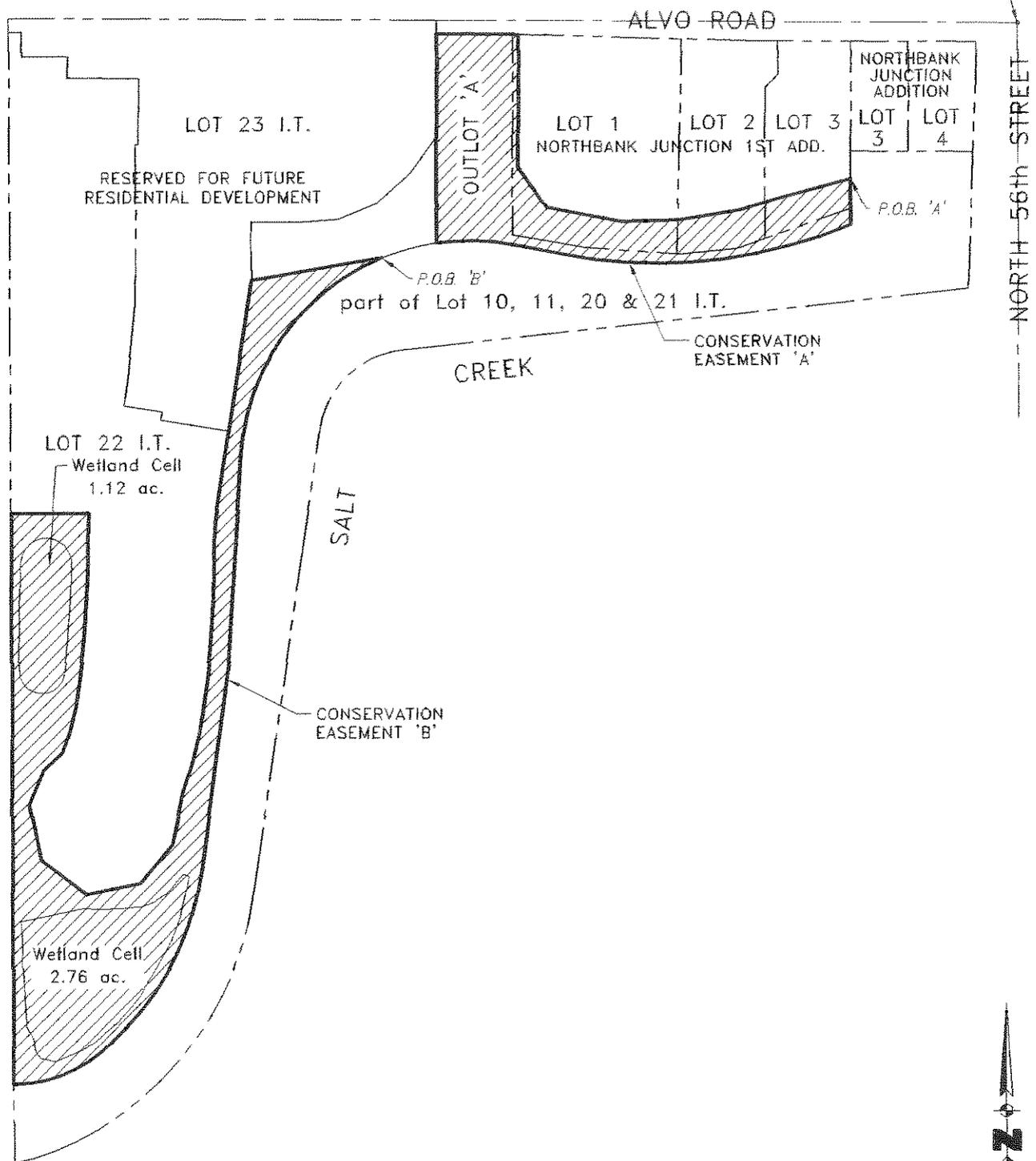
By: _____
Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Notary Public

Northeast Corner
Sec. 32, T 11 N, R 7 E



CONSERVATION EASEMENT

601 OLD CHENEY RD., SUITE 'A'
LINCOLN, NEBRASKA 68512
421-2500 OR 421-7096 FAX

E.S.P., INC.
CONSULTING ENGINEERS

NORTHBANK JUNCTION CONSERVATION EASEMENT

LEGAL DESCRIPTION 'A'

Outlot 'A', and a portion of Lots 1, 2 & 3, Northbank Junction 1st Addition located in the Northeast Quarter of Section 32, Township 11 North, Range 7 East, of the 6th P.M., Lincoln, Lancaster County, Nebraska and more particularly described as follows:

Commencing at the Northeast Corner of said Section 32;

Thence on the North Line of the Northeast Quarter of said Section 32, N 89°36'40"W, (an assumed bearing) a distance of 436.01 feet; Thence S 00°23'20"W, a distance of 50.00 feet to the Northeast corner of said Lot 3; Thence along the east line of said Lot 3, S 00°23'20"W, a distance of 287.63 feet; Thence continuing on the East Line of said Lot 3, S 00°23'17"W, a distance of 71.32 feet to the POINT OF BEGINNING;

Thence continuing on the East Line of said Lot 3 and Outlot 'A', S 00°23'17"W, a distance of 120.47 feet to the Southeast corner of said Outlot 'A';

Thence on the south line of said Outlot 'A', on a circular curve to the right, having a radius of 1320.00 feet, a central angle of 33°36'32" and whose long chord (763.24 feet) bears S 84°20'34"W;

Thence on the arc of said circular curve 774.29 feet to the point of tangency;

Thence N 78°51'10"W, a distance of 125.04 feet;

Thence on a circular curve to the left, having a radius of 600.00 feet, a central angle of 19°24'01" and whose long chord (202.19 feet) bears N 88°33'08"W;

Thence on the arc of said circular curve 203.16 feet to the point of tangency and the Southwest corner of said Outlot 'A';

Thence on the West Line of said Outlot 'A', N 00°23'20"E, a distance of 546.74 feet;

Thence on the North Line of said Outlot 'A', S 89°36'40"E, a distance of 199.82 feet;

Thence on the North Line of said Lot 1, S 88°20'13"E, a distance of 15.19 feet;

Thence S 00°23'20"W, a distance of 346.72 feet;

Thence S 34°30'16"E, a distance of 128.59 feet;

Thence S 79°11'44"E, a distance of 199.99 feet;

Thence N 88°06'34"E, a distance of 148.15 feet;

Thence N 81°07'12"E, a distance of 161.98 feet;

Thence N 73°45'35"E, a distance of 107.72 feet;

Thence N 74°38'14"E, a distance of 194.94 feet to the POINT OF BEGINNING, and containing a calculated area of 223,154.50 square feet or 5.12 acres more or less.

NORTHBANK JUNCTION CONSERVATION EASEMENT

LEGAL DESCRIPTION 'B'

A portion of Lot 22 I.T., located in the Northeast Quarter of Section 32, Township 11 North, Range 7 East, of the 6th P.M., Lincoln, Lancaster County, Nebraska and more particularly described as follows:

Commencing at the Northeast Corner of said Section 32:

Thence on the North Line of the Northeast Quarter of said Section 32, N 89°36'40"W, (an assumed bearing) a distance of 436.01 feet; Thence S 00°23'20"W, a distance of 50.00 feet to the Northeast corner of said Lot 3; Thence along the east line of said Lot 3, S 00°23'20"W, a distance of 287.63 feet; Thence continuing on the East Line of said Lot 3 and Outlot 'A', S 00°23'17"W, a distance of 191.79 feet; Thence on the south line of said Outlot 'A', on a circular curve to the right, having a radius of 1320.00 feet, a central angle of 33°36'32" and whose long chord (763.24 feet) bears S 84°20'34"W; Thence on the arc of said circular curve 774.29 feet to the point of tangency; Thence N 78°51'10"W, a distance of 125.04 feet; Thence on a circular curve to the left, having a radius of 600.00 feet, a central angle of 33°27'54" and whose long chord (345.48 feet) bears S 84°24'56"W; Thence on the arc of said circular curve 350.44 feet to the point of tangency and the POINT OF BEGINNING;

Thence on the East Line of said Lot 22 I.T. and continuing along the same circular curve to the left, having a radius of 600.00 feet, a central angle of 64°00'54" and whose long chord (636.04 feet) bears S 35°40'31"W;

Thence on the arc of said circular curve 670.36 feet to the point of tangency;

Thence continuing along the East Line of said Lot 22 I.T. (for the next 5 calls) S 03°40'00"W, a distance of 541.24 feet;

Thence S 07°45'10"W, a distance of 548.87 feet;

Thence on a circular curve to the right, having a radius of 735.00 feet, a central angle of 35°54'16" and whose long chord (453.09 feet) bears S 25°42'18"W;

Thence on the arc of said circular curve 460.59 feet to the point of tangency;

Thence S 43°39'27"W, a distance of 52.66 feet;

Thence on a circular curve to the right, having a radius of 360.00 feet, a central angle of 46°22'28" and whose long chord (283.49 feet) bears S 66°50'41"W;

Thence on the arc of said circular curve 291.38 feet to the point of tangency;

Thence on the West Line of said Lot 22 I.T., N 00°01'01"E, a distance of 1491.70 feet;

Thence S 89°58'59"E, a distance of 203.26 feet;

Thence S 02°39'42"W, a distance of 70.61 feet;

Thence S 00°04'26"W, a distance of 63.00 feet;

Thence S 01°12'34"W, a distance of 62.47 feet;

Thence S 02°45'08"W, a distance of 62.47 feet;

Thence S 04°17'42"W, a distance of 62.47 feet;

Thence S 05°50'16"W, a distance of 62.47 feet;

Thence S 07°22'50"W, a distance of 62.47 feet;

Thence S 08°59'24"W, a distance of 62.46 feet;

Thence S 13°05'34"W, a distance of 62.79 feet;

(Legal Description 'B' continued)

Thence S 18°27'52"W, a distance of 62.79 feet;
Thence S 48°04'18"W, a distance of 67.34 feet;
Thence S 22°49'51"W, a distance of 98.07 feet;
Thence S 11°23'35"E, a distance of 148.60 feet;
Thence S 52°50'07"E, a distance of 148.60 feet;
Thence N 78°11'35"E, a distance of 142.76 feet;
Thence N 40°11'37"E, a distance of 131.25 feet;
Thence N 12°43'44"E, a distance of 67.64 feet;
Thence N 11°30'10"E, a distance of 73.07 feet;
Thence N 18°11'42"E, a distance of 70.45 feet;
Thence N 14°09'27"E, a distance of 70.45 feet;
Thence N 10°16'34"E, a distance of 69.15 feet;
Thence N 08°37'02"E, a distance of 30.00 feet;
Thence N 07°29'29"E, a distance of 74.13 feet;
Thence N 05°55'53"E, a distance of 70.18 feet;
Thence N 04°24'50"E, a distance of 70.18 feet;
Thence N 02°53'48"E, a distance of 70.18 feet;
Thence N 01°22'45"E, a distance of 70.18 feet;
Thence N 00°08'25"E, a distance of 68.26 feet;
Thence N 03°49'22"E, a distance of 64.27 feet;
Thence N 08°58'20"E, a distance of 630.39 feet;
Thence S 89°36'40"E, a distance of 5.35 feet;

Thence N 80°26'59"E, a distance of 339.45 feet to the POINT OF BEGINNING and containing a calculated area of 442,128.18 square feet or 10.15 acres more or less.