

CONSERVATION EASEMENT AGREEMENT

THIS CONSERVATION EASEMENT AGREEMENT is entered into as of the ____ day of _____, 20____, by and between Joshua's Glen, LLC, a Nebraska limited liability company ("Owner"), the City of Lincoln, Nebraska ("City") and the Lower Platte South Natural Resources District ("NRD").

RECITALS

I.

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

Outlots A and C, Joshua's Glen 1st Addition, Lincoln, Lancaster County, Nebraska.

The City and NRD desire to acquire and Owner is willing to convey a permanent Conservation Easement over portions of Outlots A and C, Joshua's Glen 1st Addition ("Easement Area") to preserve the natural resources over the Easement Area. Said Easement Area is shown on the attached Exhibit "A", which is made a part of this agreement by this reference.

II.

NOW, THEREFORE, in consideration of **Ten DOLLARS (\$10.00)**, and other good and valuable consideration, receipt of which is hereby acknowledged, Owner hereby grants and conveys to the 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 area, drainage way, wetlands, and tree masses that occur on the land, to protect other water resources and biologic resources of the area identified on Exhibit B, 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.

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. 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.
- ii. Trails or other public recreational components as approved in advance by the Director of Public Works & Utilities.
- iii. Stream rehabilitation, water quality projects, or protection/restoration of other natural resources listed in Exhibit B as approved in advance by the Director of Public Works & Utilities.
- iv. Storm drain and outlet improvements conforming to the City’s design standards necessary for the functional drainage of adjacent lands as approved in advance by the Director of Public Works and 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 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 plant or 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 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 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 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, and the functional integrity of other water resources and biologic resources of the area identified on Exhibit A. The Easement Area on the date of this grant and conveyance does not reflect the condition of the Easement Area which was to be conveyed to the City and NRD as the Easement Area has been partially graded and trees and other vegetation has been removed, as evidenced by reports, photographs and scientific documentation on file with the City's Public Works Department or the NRD. Owner therefore agrees to restore and maintain vegetation and trees at Owners cost on disturbed portions of the Easement Area to approximate the Easement Area's pre-disturbance condition in accordance with a restoration plan to be approved by the City and NRD. The restoration plan will be completed within six months of acceptance of the conservation easement and the restoration work shall be completed within one (1) year of approval of the restoration plan. City and NRD will not unreasonably withhold approval of the restoration plan.

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 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 or NRD 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 Owners fail 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 and from adjacent properties for its employees, contractors, vehicles and equipment for the purpose of revegetating and for inspecting, maintaining, protecting or enhancing the Easement Area, including but not limited to stream stabilization projects, as the City or NRD may deem necessary or desirable. Such right of access will be modified as reasonably necessary upon subdivision or development of said adjacent properties.

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. If the land subject to this Conservation Easement Agreement or any interest therein is subsequently transferred by Owner to a third party, 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 Conservation Easement Agreement.

B. City'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 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, 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.

**LOWER PLATTE SOUTH NATURAL
RESOURCES DISTRICT**

By: _____
Glenn Johnson, General Manager

CITY OF LINCOLN, NEBRASKA
a municipal corporation

By: _____
Chris Beutler, Mayor of Lincoln

JOSHUA'S GLEN, LLC
a Nebraska limited liability company

By: The Wallace Blake Collingsworth Revocable
Trust dated September 1, 2010,
Sole Member of Joshua's Glen, LLC

By: _____
Wallace Blake Collingsworth, Trustee

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Glenn Johnson, General Manager of the Lower Platte South Natural Resource District, a Nebraska political subdivision, on behalf of said political subdivision.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

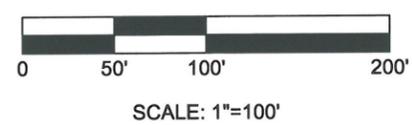
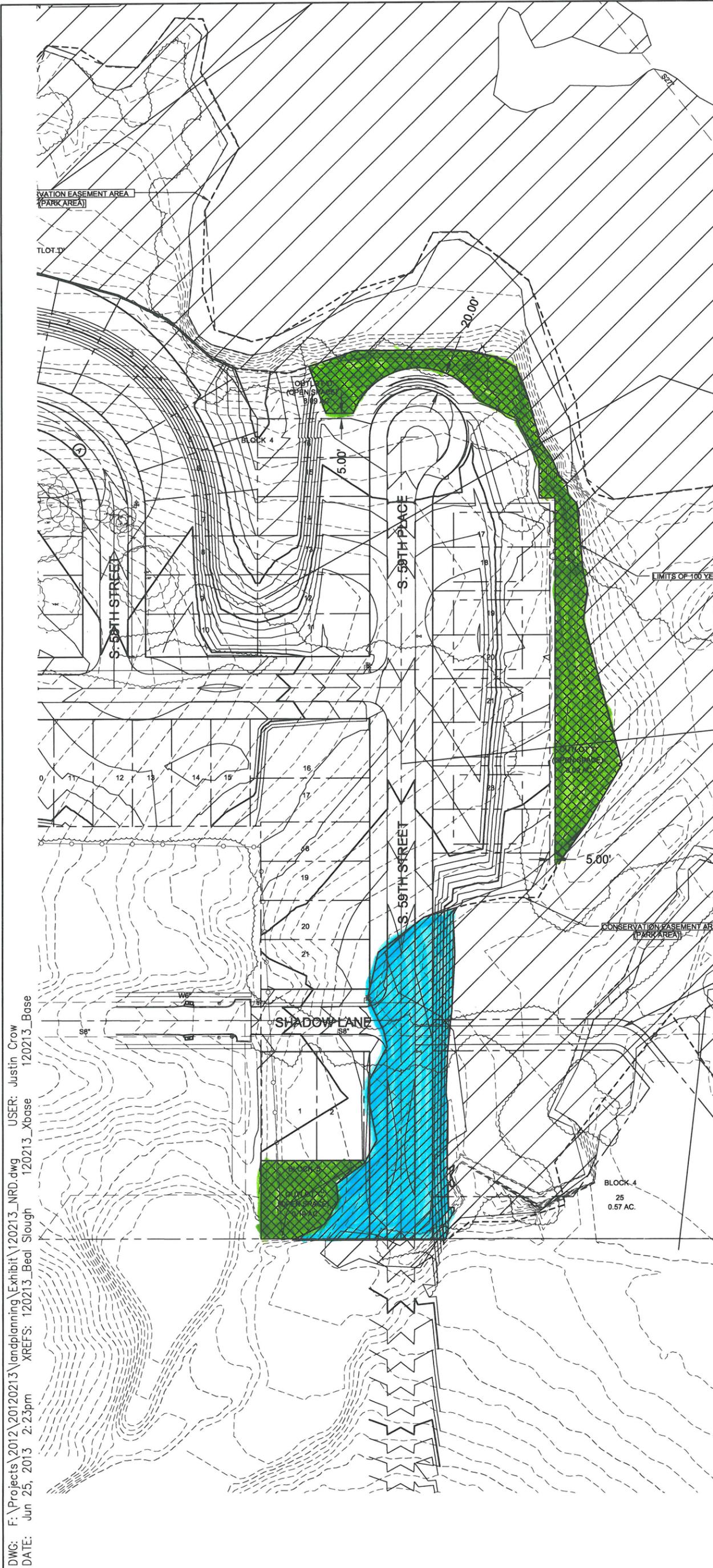
The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Chris Beutler, Mayor of the City of Lincoln, Nebraska on behalf of the City of Lincoln, Nebraska.

Notary Public

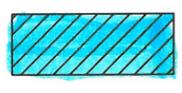
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Wallace Blake Collingsworth, Trustee of the Wallace Blake Collingsworth Revocable Trust dated September 1, 2010, Sole Member of Joshua's Glen, LLC, on behalf of Joshua's Glen, LLC.

Notary Public



LEGEND



ROAD CROSSING AND ASSOCIATED GRADING IN EXISTING NRD EASEMENT =24,498.13 SF.



LAND TO BE DEDICATED TO NRD EASEMENT =26,461.41 SF.

18' WIDE PANHANDLE ACCESS FOR LOT 25 (ON CITY SANITARY SEWER EASEMENT)

DWG: F:\Projects\2012\20120213\landplanning\Exhibit\120213_NRD.dwg USER: Justin Crow
DATE: Jun 25, 2013 2:23pm XREFS: 120213_Beal Slough 120213_Xbase 120213_Base

drawn by: jdc
checked by: jdc
project no.: 2012-0213
date: 06/25/2013

**NRD EASEMENT EXHIBIT
JOSHUA'S GLEN
LINCOLN, NEBRASKA**

 **Civil Design Group, Inc.**
8535 EXECUTIVE WOODS DR., SUITE 200
Lincoln, Nebraska 68512
Ph. 402-434-8494 Fax 866-215-8747
www.civildg.com
CONSULTING ENGINEERS • LAND USE PLANNERS
CIVIL DESIGN • SITE DEVELOPMENT • PLANNING AND ZONING

EXHIBIT
1

A legal description of a 20436.84 sq.ft. easement located in Outlot A, Joshua's Glen 1st Addition, located in the Southwest Quarter of Section 16, Township 9 North, Range 7 East of the 6th P.M., Lincoln, Lancaster County, Nebraska and more particularly described as follows:

Referring to the Northwest corner of Lot 16, Block 5 Joshua's Glen 1st Addition thence Easterly on the Northerly line of said Lot 16 on an assumed bearing of S 89°54'23" E for a distance of 60.01';
Thence N 00°05'37" E for a distance of 5.00 'to the **Point of Beginning**;

Thence N 19°31'45" W for a distance of 31.88';
Thence N 71°25'47" E for a distance of 46.28';
Thence N 89°24'13" E for a distance of 85.25';
Thence S 84°48'41" E for a distance of 25.92';
Thence S 76°36'57" E for a distance of 25.31';
Thence S 61°56'58" E for a distance of 19.94';
Thence S 21°35'19" E for a distance of 35.20';
Thence S 14°58'35" E for a distance of 39.22';
Thence S 34°12'09" E for a distance of 19.87';
Thence S 23°00'43" E for a distance of 19.06';
Thence S 46°07'36" E for a distance of 9.04';
Thence S 09°17'34" E for a distance of 12.38';
Thence S 46°06'02" E for a distance of 10.95';
Thence S 05°15'22" E for a distance of 66.69';
Thence S 14°20'16" E for a distance of 15.90';
Thence S 07°18'22" W for a distance of 30.28';
Thence S 14°38'03" E for a distance of 144.09';
Thence S 30°27'56" W for a distance of 66.05';
Thence S 37°34'06" W for a distance of 27.46';
Thence S 31°22'09" W for a distance of 12.22';
Thence N 58°37'51" W for a distance of 8.44';
Thence N 00°05'37" E for a distance of 354.41';
Thence N 68°30'39" W for a distance of 16.35';
Thence N 00°05'37" E for a distance of 14.42';
Thence N 26°54'07" W for a distance of 48.22';
Thence N 63°46'47" W for a distance of 41.71';
Thence with a curve turning to the left with an arc length of 134.42', with a radius of 66.50', with a chord bearing of S 89°27'32" W, with a chord length of 112.68,; Thence N 62°45'42" W for a distance of 7.31';
Thence N 89°54'23" W for a distance of 30.39'; to the **Point of Beginning**, and having a calculated area of 20436.84 sq.ft.

A legal description of a 5268.02 sq.ft. easement located in Outlot C, Joshua's Glen 1st Addition, located in the Southwest Quarter of Section 16, Township 9 North, Range 7 East of the 6th P.M., Lincoln, Lancaster County, Nebraska and more particularly described as follows:

Beginning at the Southwest corner of said Outlot C;

Thence N 00°00'15" W on the West line of Outlot C for a distance of 74.89' to the Southwest corner of Lot 1, Block 6 Joshua's Glenn 1st Addition;

Thence S 89°54'23" E on the line common to Outlot C and Lots 1 and 2 Block 6, for a distance of 98.08' to the Southeast corner of said Lot 2;

Thence S 13°25'50" E for a distance of 2.48';

Thence S 53°07'48" W for a distance of 33.49';

Thence S 05°42'34" E for a distance of 16.83';

Thence S 31°36'24" W for a distance of 25.56';

Thence S 63°26'06" W for a distance of 30.77' to a point on the South line of Outlot C; Thence N 89°54'36" W on the South line of Outlot C for a distance of 32.62' to the **Point of Beginning**, and having a calculated area 5268.02 sq.ft.

NATURAL RESOURCES

Floodplains and areas adjacent to 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 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