

## CONSERVATION EASEMENT AGREEMENT

THIS CONSERVATION EASEMENT AGREEMENT is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2008, by and between TCMO Investments, a Nebraska corporation, ("Owner") and the City of Lincoln, Nebraska ("City").

### RECITALS

#### I.

Owner is the owner in fee simple of Lots 7-12 inclusive, Block 141, 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 Exhibit 1 attached hereto.

#### 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 preserve flood storage capacity 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 (which may include a surface parking area) 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, or any other structure;
- ii. 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 page 2 of Exhibit 1.

**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.

**4. Inspections, Educational Use 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.

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. Filing fees shall be paid in advance by the Owner.

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.

**TMCO Investments  
a Nebraska corporation,**

By: \_\_\_\_\_  
\_\_\_\_\_, President

Attest:

**CITY OF LINCOLN, NEBRASKA**

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Christ Beutler, Mayor

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, President of TMCO Investments, a Nebraska corporation, on behalf of said corporation.

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

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by Chris Beutler, Mayor of the City of Lincoln, Nebraska on behalf of the City of Lincoln, Nebraska.

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