

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for May 9, 2007 PLANNING COMMISSION MEETING

- P.A.S.:** Comprehensive Plan Conformance #07009
- PROPOSAL:** To find that the acquisition of permanent conservation easements over two water quality projects conforms with the 2030 Comprehensive Plan.
- LOCATION:** Apples Way and Highway 2
- CONCLUSION:** These conservation easements are for the purpose of preserving flood storage capacity, wetland characteristics, and to enhance certain water quality efforts. They will protect flood storage capacity, wetlands, and water quality and are not an obstacle to any planned action. Acquisition of the easements by the City of Lincoln is in conformance with the Comprehensive Plan and supports several goals of the Plan.

RECOMMENDATION:	In conformance with the Comprehensive Plan.
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GENERAL INFORMATION:

- LEGAL DESCRIPTION:** Portions of Outlots B and C, Apple's Way Addition, Lancaster County, Nebraska.
- EXISTING ZONING:** R-1 Residential, B-2 Planned Neighborhood Business
- EXISTING LAND USE:** Commercial under construction in the B-2; and existing residence and new residential under construction on the R-1.

SURROUNDING LAND USE AND ZONING:

North:	Residential and Commercial both under development	R-1, B-2
South:	Residential, open space	AGR
East:	Residential, Highway 2	AGR, R-1
West:	Railroad, Commercial	AGR, H-4

HISTORY:

June 15, 2005 - CZ#05026 for Apple's Way PUD was approved changing the zoning from AG to R-1 and B-2 PUD with a development plan for 32 dwelling units and 235,000 square feet of commercial floor area.

June 15, 2005 - CPA#04010 was approved amending the Comprehensive Plan to change the land use designation from residential to commercial for the west 39 acres of the Apple's Way PUD.

COMPREHENSIVE PLAN SPECIFICATIONS:

Pg 4 - Emerging Regional Planning Issue identified: Conservation and protection of environmental and natural systems.

Pg 7 - Comprehensive Plan Vision: Environmental Stewardship. Natural and environmentally sensitive areas are preserved and thrive. Wetlands, native prairies and stream (riparian) corridors are preserved to ensure the ecological health of the community.

Pg 9 - Guiding Principles for the Urban Environment include: Natural and environmentally sensitive areas should be preserved within neighborhoods. Conservation areas and open lands should be used to define and connect different neighborhoods.

Streams, trees, open space, and other environmentally sensitive features should be preserved within new development as design standards allow. The natural topography and features of the land should be preserved by new development to maintain the natural drainageways and minimize land disturbance.

Pg 16 - The 2030 Future Land Use Plan designates this land for commercial and residential land uses.

Pg 52 - Environmental Resource Features represent an important part of today's urban and rural landscapes. Such features need to be valued and sustained as part of the overall planning process if they are to remain as vital parts of the natural heritage left for succeeding generations.

Pg 55 - The Greenprint Challenge: Overview - The purpose of the Greenprint Challenge is to assure the long term health and integrity of the ecosystem upon which Lancaster County is superimposed, and to capture the community-wide quality of life and economic benefits that can be derived from the area's environmental resource features.

Preserve ecological protection areas. Protect areas that are biologically interconnected to support bird, animal, and insect migration and supporting vegetation. Examples are stream beds and wooded corridors, prairie land, and saline wetlands.

Pg 57, 64 - The Greenprint Challenge Implementation Strategies include: Investigate means for encouraging native prairie restoration by private entities; Investigate the possible use of easements (e.g., conservation, preservation, public access, etc.),...to manage land with environmental resource interest.

ANALYSIS:

1. This is a request from the Director of Public Works and Utilities for a finding of conformance with the Comprehensive Plan for the acquisition for a sum of \$1 of two conservation easements.
2. Two parcels are within this request, as shown on the attached exhibits. All the land is within the City of Lincoln. The purpose of the conservation easements is to preserve

flood storage capacity, wetland characteristics, and to enhance certain water quality efforts.

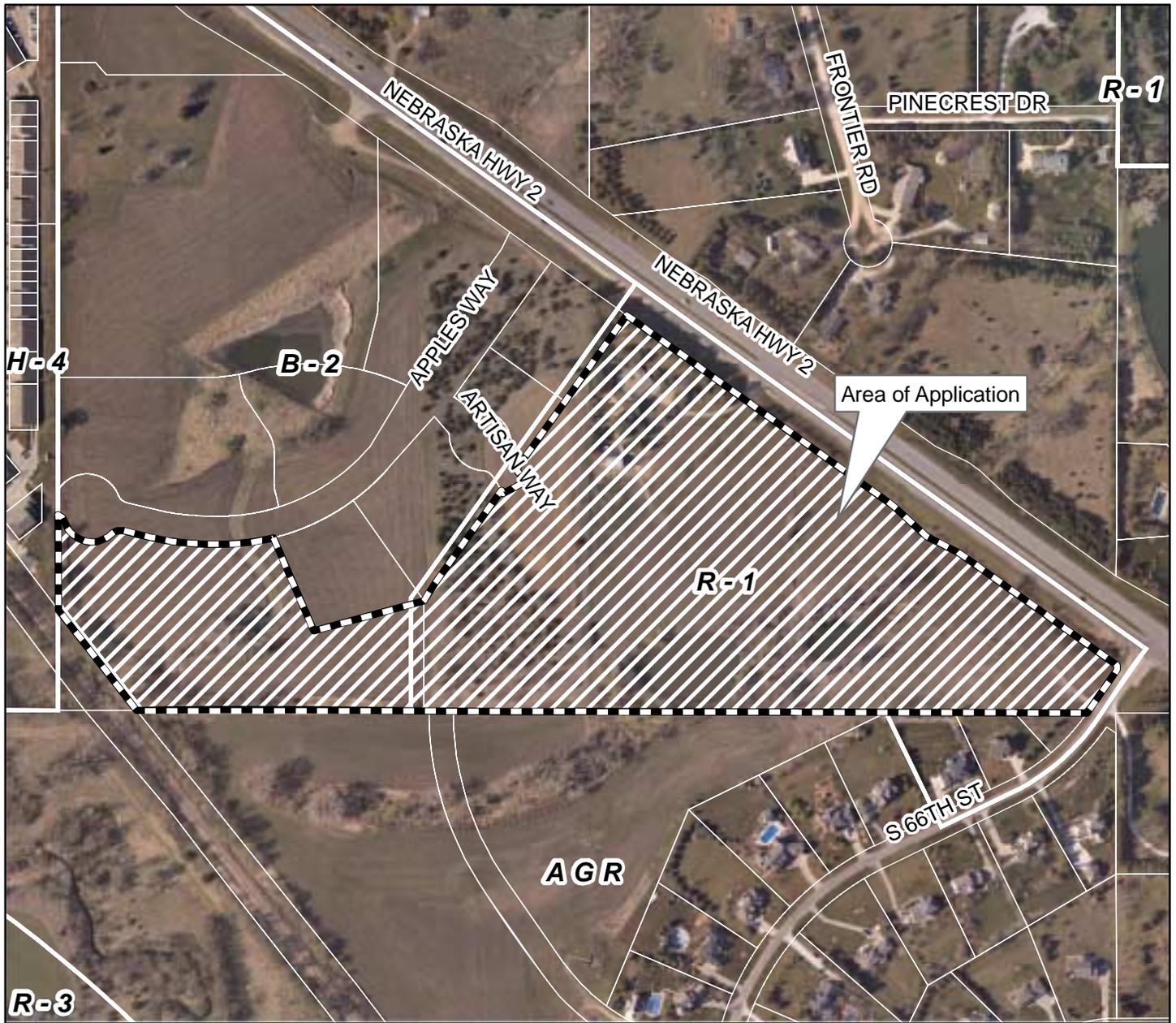
3. The easements will permanently protect two water quality projects to be constructed by the City and the Lower Platte South Natural Resource District (NRD) as Best Management Practice demonstration projects. The two projects will be incorporated into the private detention facilities that serve the Apple's Way commercial center and residential development.
4. The Nebraska Conservation and Preservation Easement Act (NEB. REV. STAT. §§ 76-2,111 to 76-2,118) requires that the acquisition of conservation easements be referred to the local planning commission having jurisdiction over the properties for approval prior to the acquisition. The Planning Commission must make a recommendation to the City Council "regarding the conformity of the proposed acquisition to comprehensive planning for the area," (NEB. REV. STAT. §76-2,112). The City Council will either accept or deny the easement.
5. The Conservation Easement Agreement will include provisions prohibiting specific uses and practices.
6. It should be noted that the final plat creating Outlot A, Artisan Meadows Addition has not been approved. The area of the conservation easement in the R-1-zoned area of the Apple's Way PUD is in Outlot C, Apples Way Addition unless the final plat of Artisan Meadows Addition is approved.

Prepared by:

Brian Will, 441-6362, bwill@lincoln.ne.gov
Planner
April 25, 2007

APPLICANT: Karl Fredrickson, Director
Public Works and Utilities
City of Lincoln
555 South 10th Street
Lincoln, NE 58508

CONTACT: Ben Higgins
Public Works and Utilities/Watershed Management
City of Lincoln
555 South 10th Street
Lincoln, NE 58508



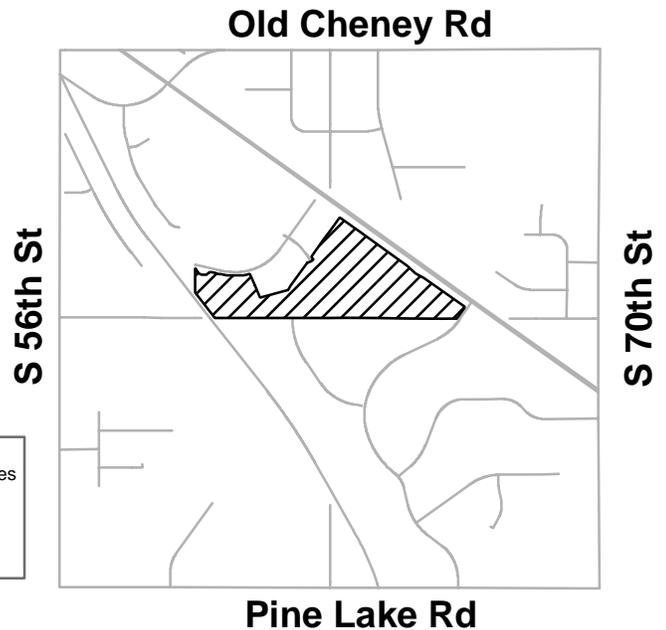
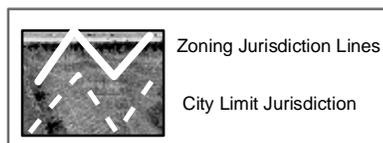
2005 aerial

Comp Plan Conformance #07009 Apples Way & Highway 2

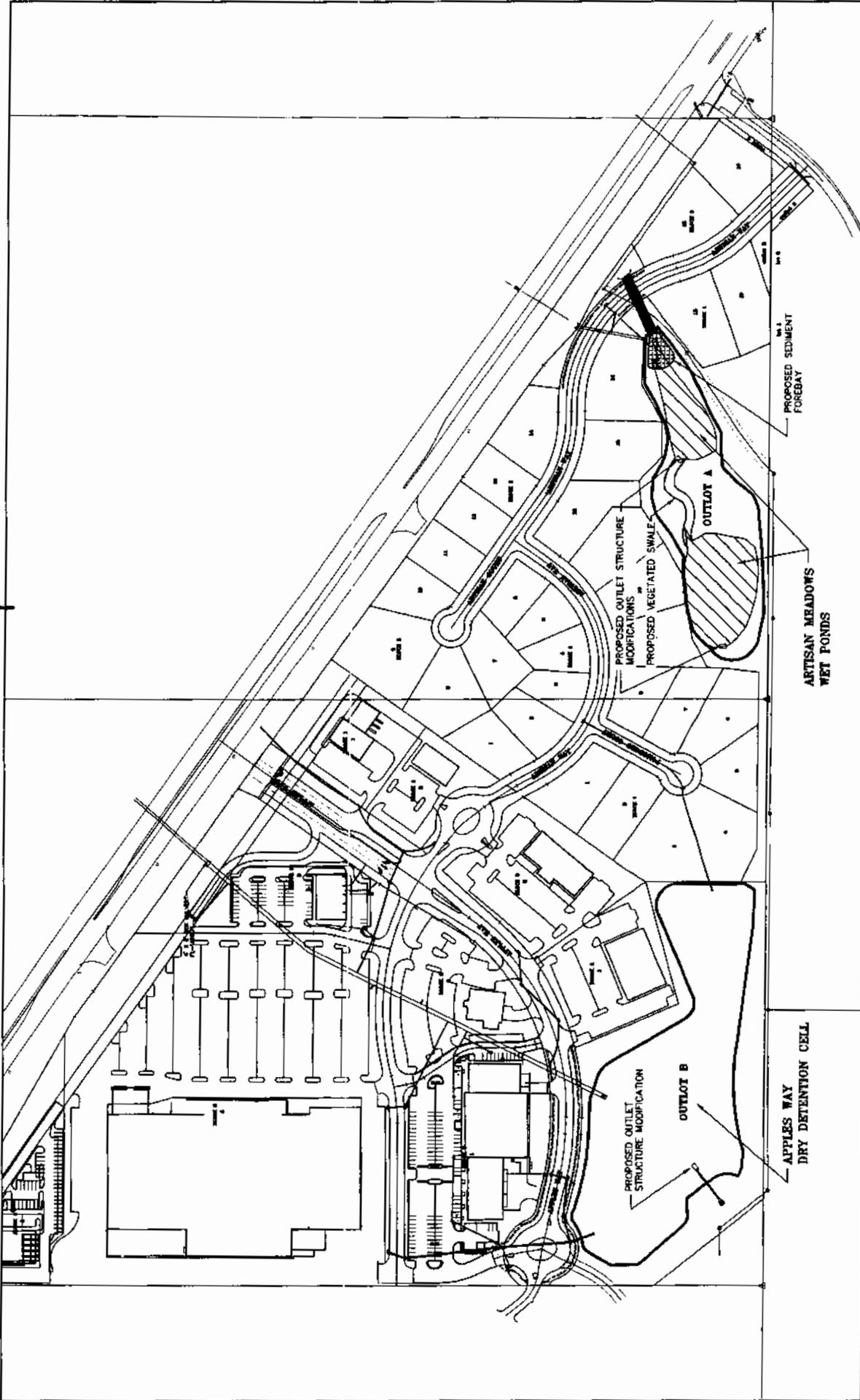
Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- R-C Residential Conservation District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

One Square Mile
Sec. 16 T9N R7E



1



PROJECT: 2-2002--0001-01
 DRAWN CDI XXX REVISIONS:
 DATE: 04/09/07

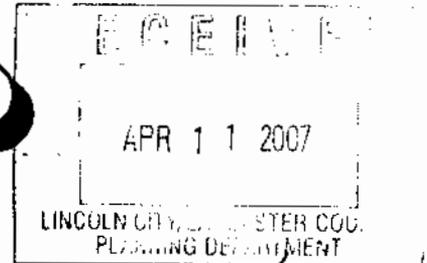
APPLES WAY / ARTISAN MEADOWS
 WATER QUALITY BMP LOCATION MAP



CITY OF LINCOLN
NEBRASKA
MAYOR COLEEN J. SENG
www.lincoln.ne.us

**PUBLIC WORKS AND
UTILITIES DEPARTMENT**

MEMORANDUM



Date: April 11, 2007

To: Marvin Krout, Planning Director

From: Karl Fredrickson, Public Works & Utilities Director

Subject: *Comprehensive Plan Conformity Application for Conservation Easements*

cc: Nicole Fleck-Tooze, Ben Higgins - PWU Department
Rick Peo - City Attorney's Office
Glenn Johnson - Lower Platte South NRD
Peter Katt, Thomas Huston - Artisan Meadows and Apples Way representatives

This memorandum is to serve as an application for a finding of conformance with the Comprehensive Plan for the acquisition by the City of two conservation easements. **We request that these items have public hearing and final action before the Planning Commission on May 9, 2007.** Separate agreements will be forwarded to the City Council for their approval by resolution.

The specific request is to find the acquisition of permanent conservation easements over certain outlots within the Apples Way and Artisan Meadows subdivisions, south of Highway 2 and adjacent to Apples Way (as shown on the attached map) to be in conformance with the Comprehensive Plan.

The purpose of the conservation easements is to permanently protect two water quality projects which are being constructed by the City and NRD as Best Management Practice demonstration projects, being incorporated into the private detention facilities for these two developments. These projects are consistent with the strategies of the Comprehensive Plan with regard to enhancing stormwater quality and filtering pollutants, and using public projects as an opportunity to set positive examples for the community relative to stormwater management. The projects are also consistent with the intent of the Beal Slough Stormwater Master Plan to improve water quality in the watershed. They are for the purpose of demonstrating and evaluating the costs for the "site-specific water quality BMPs" recommended by the Stevens Creek Watershed Master Plan for new developments in all watersheds.

Proposed Water Quality Control on Artisan Meadows Addition

Components for the City and Development approved water quality project are:

1. **Outlet Improvement:** The outlet will be modified to control the water quality control volume for the Artisan Meadows Way subdivision in addition to continue controlling the 2, 10 and 100 year events.
2. **Sediment Forebay:** The pond will be modified to provide for a sediment forebay for future maintenance of the pond.
3. **Vegetated Swale:** A vegetated swale will be constructed with appropriate vegetation within the pond.

Proposed Water Quality Control on Apples Way Addition

Components for the City and Development approved water quality project are:

1. **Outlet Improvement:** The outlet will be modified to control the water quality control volume for the Artisan Meadows Way subdivision in addition to continue controlling the 2, 10 and 100 year events.

It is anticipated that construction will begin this summer on both projects and be completed by this fall. The property will continue to be owned and maintained by the developer and/or his successors and assigns.

If there are questions regarding these items, please contact Ben Higgins at 441-7589 or bhiggins@lincoln.ne.gov.

**CONSERVATION EASEMENT AGREEMENT
(Preservation and Enhancement of Green Space)**

This Conservation Easement Agreement is entered into as of _____, 2007 by and between the City of Lincoln, Nebraska ("City") and AC Holdings, LLC, a Nebraska limited liability company ("Owner") on behalf of Artisan Meadows Homeowners Association, a Nebraska non-profit corporation to be created by Owner ("Association").

RECITALS

I.

Owner is the titleholder of Outlot A, Artisan Meadows Addition, Lincoln, Lancaster County, Nebraska ("Outlot") which is to become Commons under certain Restrictive Covenants to be executed and filed of record by the Owner with the Commons to then be conveyed to the Association.

II.

The City desires to acquire and Owner on behalf of the Association is willing to convey a permanent Conservation Easement to preserve the flood storage capacity, wetland characteristics and enhance certain water quality efforts within a portion of the Outlot, that portion being referred to as the "Easement Area." The Easement Area is more particularly shown on Exhibit "A".

III.

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

NOW, THEREFORE, in consideration of **ONE DOLLAR (\$1.00)**, and other good and valuable consideration, receipt of which is hereby acknowledged, Owner hereby grants and conveys to City for its benefit and the benefit of the Association and 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 drainage way, wetlands and tree masses that occur on the land; to protect other water and biologic resources within the Easement Area and to restrict any development or future use of the Easement Area that will significantly impair or interfere with the open space values of the Easement Area subject to the following terms, conditions, and covenants.

1. Uses.

A. **Compatible Uses.** The Easement Area shall be used only for flood storage capacity, wetlands management, water quality enhancement, open green space or recreational purposes. The following uses are compatible and are expressly permitted in the Easement Area:

- i. Any use of the Easement Area existing or proposed (See Exhibit A) on the date of this agreement may continue in such use.
- ii. Roadway or utility crossings necessary for the functional use of adjacent lands, as approved in advance by the City's Director of public Works & Utilities.
- iii. Trails or other public recreational components as approved in advance by the City's 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 are expressly prohibited within the Easement Area:

- i. Construction or placing of roadways, buildings, camping accommodations, or mobile homes, fences, billboards or other commercial advertising material, permanent signs or any other structure;
- ii. Filling, excavating, dredging, mining or drilling, removal of top soil, sand, gravel, rock, minerals, or other materials, except for silt removal from the detention cell outlet system;
- iii. Building of roads, or changing the topography of the land in any manner excepting the maintenance of existing Improvements in substantially their present condition;
- iv. Dumping of ashes, trash, garbage, or other unsightly or offensive material;
- v. Commercial development of any nature;
- vi. Human introduction of non-native species which may compete with and result in decline or elimination of species;
- vii. Any other act of which the City has provided written notice to the Owner that it considers to be detrimental to the scenic beauty, wildlife habitat, wetlands, the natural beauty, or natural resources of the Easement Area;
- viii. Operation of motorized vehicles except as necessary in the maintenance of the Easement Area;
- ix. The broadcast application of pesticides at any time. Spot application of herbicides for the control of noxious weeds as regulated by state law will be permitted;

- x. Cultivation, planting or drilling of row crops, small grains, and forages, such as alfalfa and forage sorghum;
- xi. Removal of the wetland planting areas shown on Exhibit A except for selected removal for maintenance issues;
- xii. Changing the hydrology of the Easement Area or Outlot.

2. **Term.** The term of this Conservation Easement will be in perpetuity unless earlier terminated pursuant to any of the following provisions:

- A. By the City pursuant to the provisions of Neb. Rev. Stat. § 76-2,113.
- B. By the Lancaster County District Court pursuant to the provisions of Neb. Rev. Stat. § 76-2,1.14.

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 natural and functional values of the floodprone area at the time of this grant as evidenced by reports, photographs and scientific documentation which have been reviewed and initialed by Owner and placed on file with the City's Planning Department.

4. **Protection and Maintenance of the Easement Area.**

A. The Association shall continuously and permanently maintain the Easement Area in substantially its same condition as existing at the time of this grant, subject to natural changes and evolution over time.

B. The Association agrees to pay any real estate taxes, estate taxes or assessments levied by competent authorities on the Easement Area.

C. The Association and 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 stated purposes provided the City indemnifies and holds harmless the Association and Owner from any and all claims, costs and demands arising out of or related to the City's management, maintenance or development of the Easement Area.

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 Outlot for its employees, contractors, vehicles and equipment for the purpose of inspecting, maintaining, protecting or enhancing the floodprone area within the Easement Area as the City may deem necessary or desirable.

6. **Enforcement.** Owner and Association agree that the City may enforce the provisions of this Conservation Easement by any proceeding at law or in equity including the right of the City to seek an injunction restraining any person from violating the terms of this Conservation Easement. Owner and Association further agree 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. The Association further agrees that should it undertake any activity requiring the approval of the City without in advance 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 the Association.

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 subject to easements and restrictions now of record.

8. **City's Transfer of Interest.** The City shall have the right to transfer this Conservation Easement to any public agency that, at the time of transfer, is an organization qualified to assume the responsibility imposed on the City by this Conservation Easement Agreement.

9. **Binding Affect.** This Conservation Easement shall run with the land and shall inure to the benefit of and be binding upon the heirs, successors and assigns of the Owner, Association and City.

10. **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.

11. **Severability.** If any provision of this Conservation Easement or its application 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.

AC Holdings, LLC, Owner

By: *Thomas C. Huston*
Thomas C. Huston, Manager

By: *Peter W. Katt*
Peter W. Katt, Manager

Attest:

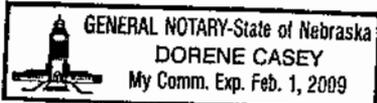
CITY OF LINCOLN, NEBRASKA

City Clerk

By: _____
Mayor

STATE OF NEBRASKA)
COUNTY OF LANCASTER) ss.

The foregoing instrument was acknowledged before me this 22nd day of March, 2007, by Thomas C. Huston, Manager of AC Holdings, LLC a Nebraska limited liability company, on behalf of the company.



Dorene Casey
Notary Public

STATE OF NEBRASKA)
COUNTY OF LANCASTER) ss.

The foregoing instrument was acknowledged before me this 21st day of March, 2007, by Peter W. Katt, Manager of AC Holdings, LLC a Nebraska limited liability company, on behalf of the company.

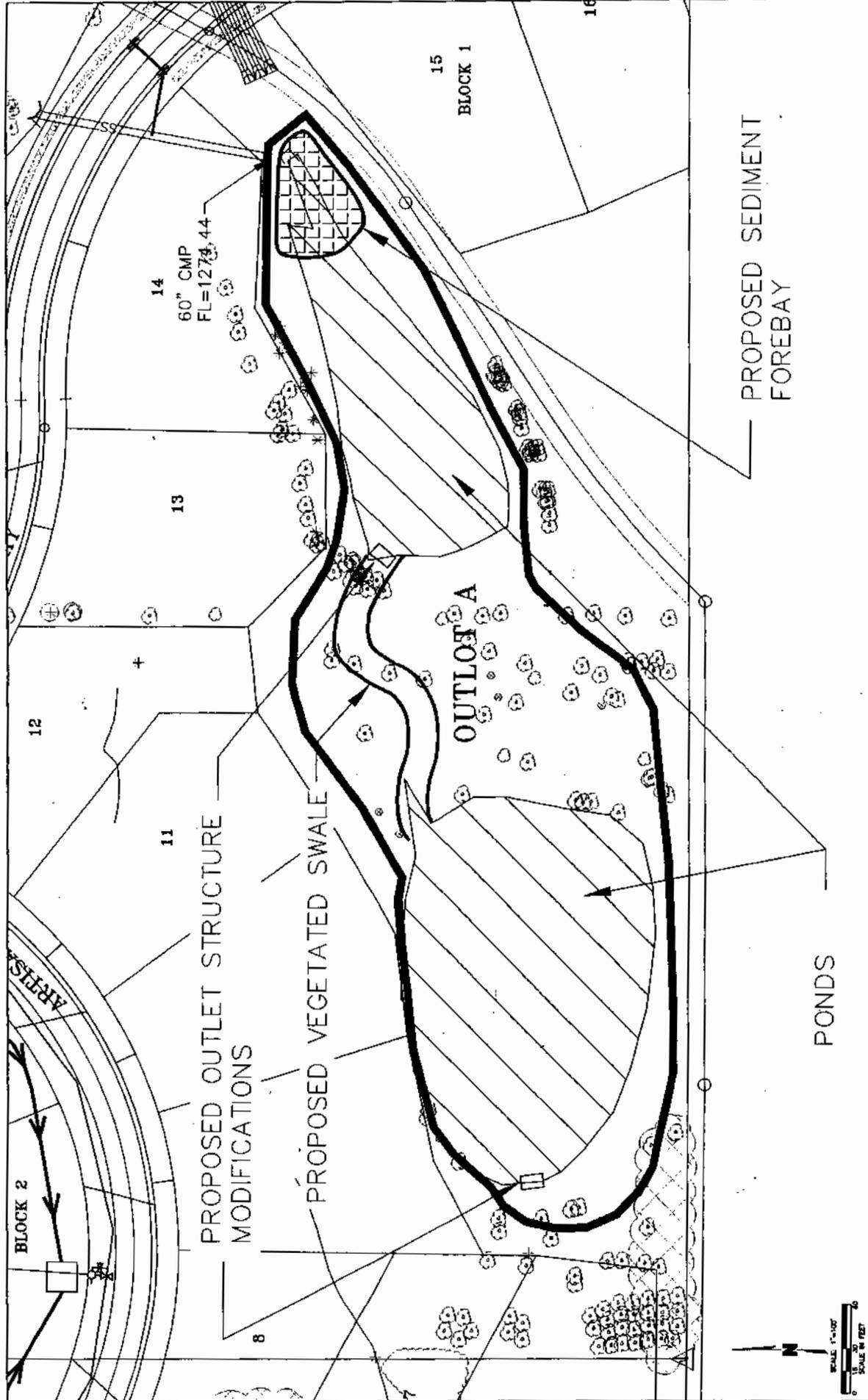


Sondra S. Barry
Notary Public

STATE OF NEBRASKA)
COUNTY OF LANCASTER) ss.

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

Notary Public



PROJECT: 006-0699
 DRAWN BY: CDI
 REVISIONS:
 DATE: 01/19/07

ARTISAN MEADOWS
EXHIBIT A - CONSERVATION AGREEMENT

OLSSON ASSOCIATES
 ENGINEERS, PLANNERS, ARCHITECTS - LANDSCAPE
 1111 LEXINGTON AVENUE, SUITE 1000, NEW YORK, NY 10017
 TEL: 212-512-2200 FAX: 212-512-2202

FIGURE
EX-A

**CONSERVATION EASEMENT AGREEMENT
(Preservation and Enhancement of Green Space)**

This Conservation Easement Agreement is entered into as of _____, 2006, by and between the City of Lincoln, Nebraska ("City") and Apples' Way, LLC, a Nebraska limited liability company ("Owner"), a Nebraska corporation.

RECITALS

I.

Owner is the owner of Outlot B, Apples Way Addition, Lincoln, Lancaster County, Nebraska ("Outlot B").

II.

The City desires to acquire and Owner is willing to convey a permanent Conservation Easement to preserve the flood storage capacity, wetland characteristics and enhance certain water quality efforts within a portion of Outlot B, that portion being referred to as the "Easement Area." The Easement Area is more particularly shown on Exhibit "A".

III.

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

NOW, THEREFORE, in consideration of One Dollar (\$1.00), and other good and valuable consideration, receipt of which is hereby acknowledged, 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 drainageway, wetlands, and tree masses that occur on the land, to protect other water and biologic resources within the Easement Area and to restrict any development or future use of the Easement Area that will significantly impair or interfere with the open space values of the Easement Area subject to the following terms, conditions, and covenants.

1. Uses.

A. Compatible Uses. The Easement Area shall be used only for flood storage

capacity, wetlands management, water quality enhancement, open green space or recreational purposes. The following uses are compatible and are expressly permitted in the Easement Area:

- i. Any use of the Easement Area existing or proposed (See Exhibit A) on the date of this agreement may continue in such use.
- ii. Roadway or utility crossings necessary for the functional use of adjacent lands, as approved in advance by the City's Director of Public Works & Utilities.
- iii. Trails or other public or private recreational components as approved in advance by the City's 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 are expressly prohibited within the Easement Area:

- i. Construction or placing of roadways, buildings, camping accommodations, or mobile homes, fences, billboards or other commercial advertising material, permanent signs or any other structure;
- ii. Filling, excavating, dredging, mining or drilling, removal of top soil, sand, gravel, rock, minerals, or other materials, except for silt removal from the detention cell outlet system;
- iii. Building of roads, or changing in the topography of the land in any manner excepting the maintenance of existing improvements in substantially their present condition;
- iv. Dumping of ashes, trash, garbage, or other unsightly or offensive material;
- v. Commercial development of any nature;
- vi. Human introduction of non-native species which may compete with and result in decline or elimination of species;
- vii. Any other act of which the City has provided written notice to the Owner that it considers to be detrimental to the scenic beauty, wildlife habitat, wetlands, the nature beauty, or natural resources of the Easement Area;
- viii. Operation of motorized vehicles except as necessary in the maintenance of the Easement Area;
- ix. The broadcast application of pesticides at any time. Spot application of herbicides for the control of noxious weeds as regulated by state law will be permitted;

- x. Cultivation, planting, or drilling of row crops, small grains, and forages, such as alfalfa and forage sorghum;
- xi. Removal of the wetland planting areas shown on Exhibit A except for selected removal for maintenance issues;
- xii. Changing the hydrology of the Easement Area or Outlot B.

2. **Term.** The term of this Conservation Easement will be in perpetuity unless earlier terminated pursuant to any of the following provisions:

- A. By the City pursuant to the provisions of *Neb. Rev. Stat. § 76-2,113*.
- B. 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 natural and functional values of the floodprone area at the time of this grant as evidenced by reports, photographs and scientific documentation which have been reviewed and initialed by Owner and placed on file with the City's Planning Department.

4. **Protection and Maintenance of the Easement Area.**

A. The Owner shall continuously and permanently maintain the Easement Area in substantially its same condition as existing at the time of this grant, subject to natural changes and evolution over time.

B. The Owner agrees to pay any real estate taxes, estate taxes or assessments levied by competent authorities on the Easement Area.

C. The 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 stated purposes provided the City indemnifies and holds harmless the Owner from any and all claims, costs and demands arising out of or related to the City's management, maintenance or development of the Easement Area..

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 Outlot B for its employees, contractors, vehicles and equipment for the purpose of 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 the right of the City to seek an injunction restraining any person from violating the terms of this Conservation Easement. 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. The Owner further agrees that should it undertake any activity requiring the approval of the City without in advance 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 the Association.

7. Title to Easement Area. Owner covenants that it is the owner of marketable title to all of the Easement Area and has legal right, title and capacity to grant the Conservation Easement subject to easements and restrictions now of record.

8. City's Transfer of Interest. The City shall have the right to transfer this Conservation Easement to any public agency that, at the time of transfer, is an organization qualified to assume the responsibility imposed on the City by this Conservation Easement Agreement.

9. Binding Affect. This Conservation Easement shall run with the land and shall inure to the benefit of and be binding upon the heirs, successors and assigns of the Owner and City.

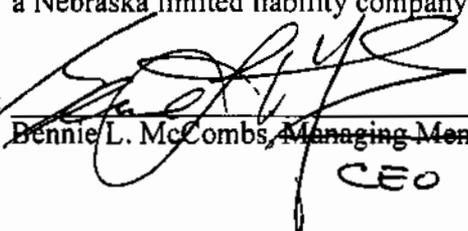
10. Recordation. The parties agree that this Agreement shall be duly filed by the City with the Lancaster County Register of Deeds upon execution and acceptance by the City.

11. Severability. If any provision of this Conservation Easement or its application 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

APPLES' WAY, LLC, OWNER,
a Nebraska limited liability company,

By:


Bennie L. McCombs, Managing Member

CEO

Attest:

CITY OF LINCOLN, NEBRASKA,
a municipal corporation,

City Clerk

By: _____
Mayor Coleen J. Seng

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 8th day of December, 2006, by Bennie L. McCombs, ~~Managing Member~~, Apples Way, LLC, a Nebraska limited liability company. CEO

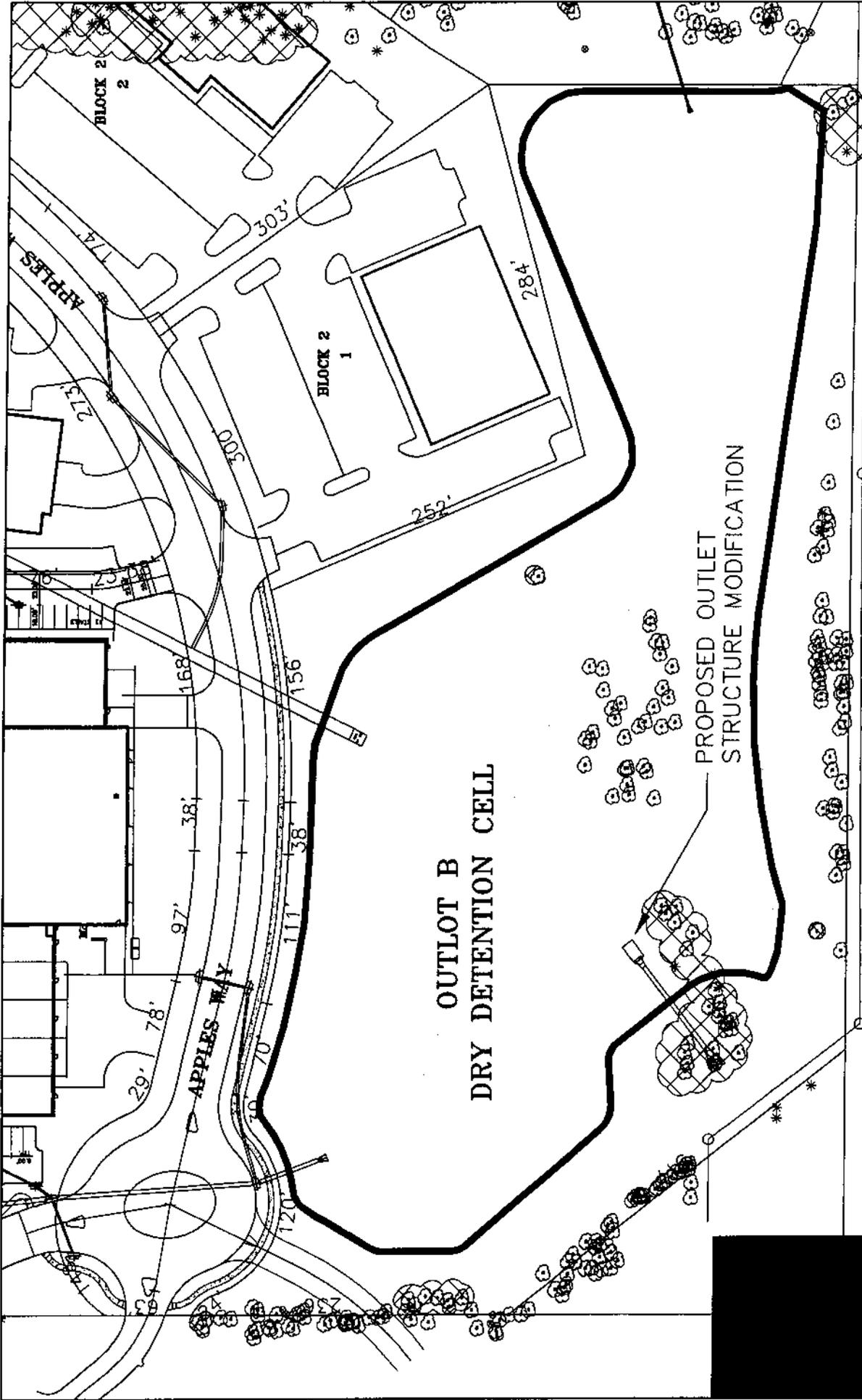


Justine Edstrom
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Notary Public



RIM=1256.58
 FL=1245.38
 E/W/S

PROJECT: 006-0699
 DRAWN BY: CDI
 DATE: 12/05/06

APPLES WAY
EXHIBIT A - CONSERVATION AGREEMENT

OLSSON ASSOCIATES
 ENGINEERS - PLANNERS - SCIENTISTS - SURVEYORS
 111 LEXINGTON HALL - LINDEN HILLS, NEW YORK
 NY 10649-3143 - TEL 914-271-3100



FIGURE
EX. A