AGREEMENT

This Agreement is made and entered into as of this ___ day of November, 2006, by and between the City of Lincoln, Nebraska, a municipal corporation ("City") and Apples' Way, LLC, a Nebraska limited liability company, ("Owner").

WHEREAS, the City has approved Owner's application for permission to subdivide and for approval of the subdivision plat of Apples' Way Addition upon condition that Owner maintains the outlots and private improvements within Apples' Way Addition on a permanent and continuous basis and further agree to retain ownership of and the right of entry to the outlots in order to maintain the outlots and private improvements on a permanent and continuous basis. However, the Agreement authorizes the Owner to be relieved and discharged of such maintenance obligation upon creating in writing a permanent and continuous association of property owners who would be responsible for said permanent and continuous maintenance subject to the following conditions:

a. Owner shall not be relieved of Owner's maintenance obligation for each specific private improvements until a registered professional engineer or nurseryman who supervised the installation of said private improvement has certified to the City that the improvement has been installed in accordance with approved plans; and

b. The maintenance agreements are incorporated into covenants and restrictions in deeds to the subdivided property and the documents creating the association and the restrictive covenants have been reviewed and approved by the City Attorney and filed of record with the Register of Deeds; and

WHEREAS, Owner is the owner of all outlots within Apples' Way Addition; and

WHEREAS, Owner intends to place Restrictive Covenants ("Covenants") on the lots and outlots within Apples' Way Addition and further intends to incorporate an Apples' Way Owners Association to enforce the Covenants and to assume Owner's responsibility to maintain the outlots and private improvements within Apples' Way Addition ("Commons") on a permanent and continuous basis; and

WHEREAS, Outlot B, Apples' Way Addition, will be identified as part of the Commons in the Covenants to be filed of record with the Lancaster County Register of Deeds; and

WHEREAS, the Association to be incorporated by Owner will be responsible under the Covenants for the maintenance and repair of the Commons; and

WHEREAS, the City has an approved Stormwater Master Plan in the Beal Slough Basin that is an approved subcomponent of the Lincoln Lancaster County 2025 Comprehensive Plan; and

WHEREAS, the City has an approved 2005-06 Capital Improvement Program and Project 7 (Best Management Practices Projects) includes funding for structural Best Management Practices that improve water quality for the City of Lincoln; and

WHEREAS, water quality control is a component listed in the Beal Slough Stormwater Master Plan as best management practice to improve water quality; and

WHEREAS, the City desires to have water quality control within the Apples Way Addition Subdivision in Outlot B, where there also currently exist a dry cell detention pond; and

WHEREAS, Owner desires to complete various improvements that are necessary within Outlot B and to transfer ownership of Outlot B to the Association; and

WHEREAS, the City and Owner desire to enter into an Agreement that outlines a city cost sharing arrangement for certain improvements to be completed within Outlot B.

NOW THEREFORE, in consideration of the above, and the covenants and conditions contained herein, the parties agree as follows:

1. Improvements to Outlot B. The parties agree the following project shall be constructed within Outlot B in accordance with the terms and conditions set forth in this Agreement (collectively "Improvements"):

Rehabilitation of Southwest Detention Pond Outlet

The control structure for the current outlet provides for flood control of the 2, 10 and 100 year peak flow discharges. The outlet will be modified to control the water quality control volume from the Apples' Way subdivision in addition to controlling the above storm events.

2. Cost Responsibility. City shall be responsible for the design and construction costs of the Improvements listed in paragraph 1.

3. Design and Construction of the Improvements. The City has entered into a contract dated June 12, 2006 pursuant to Executive Order No. 76514 with Olsson Associates ("Engineer") for design of the Improvements. Following the approval of the design, the Engineer shall be responsible for bidding of the Improvements in accordance with the City's bidding procedures.

The City agrees to act as contract administrator for the contract with Engineer and for the construction contract with the construction contractor selected.

4. Time Frame. The City agrees to use its best efforts to complete design of the Improvements by November 15, 2006 and construction of the Improvements by March 1, 2007.

5. Future Ownership and Use of Outlot B. The Owner agrees to grant at no cost to the City a conservation easement to the City over Outlot B restricting its future use in substantially the form attached as Exhibit "A". Owner further agrees to grant the conservation easement prior to transfer of Outlot B to any association of property owners.

6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, devisees, personal representatives, successors and assigns.

7. Amendments. This Agreement may only be amended or modified in a writing signed by all parties to this Agreement.

8. Further Assurances. Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation. Each of the parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth and carry out the intent and purposes of this Agreement.

9. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

10. Interpretations. Any uncertainty or ambiguity in this Agreement shall not be interpreted against any party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules and interpretation of contracts generally.

11. Relationship of Parties. None of the provisions contained in this Agreement nor any acts of any party shall be deemed or construed by the City, or by any third person to create the relationship of partnership or of joint venture or of any association between the parties.

12. Assignment. In the case of the assignment of this Agreement by any of the parties, prompt written notice shall be given to the other parties, who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations unless a specific release in writing is given and signed by the other parties to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

ATTEST:

CITY OF LINCOLN, NEBRASKA,
a municipal corporation,

City Clerk

Coleen J. Seng, Mayor

APPLES' WAY LLC,
a Nebraska limited liability company

By: _____
Bennie L. McCombs
~~Managing Member~~ CEO

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

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

Notary Public

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~~ CEO of Apples' Way, LLC, a Nebraska limited liability company, on behalf of the company.

GENERAL NOTARY - State of Nebraska
JUSTINE EDSTROM
My Comm. Exp. Oct. 16, 2007

Justine Edstrom
Notary Public

Exhibit 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 by 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~~ CEO, Apples Way, LLC, a Nebraska limited liability company.

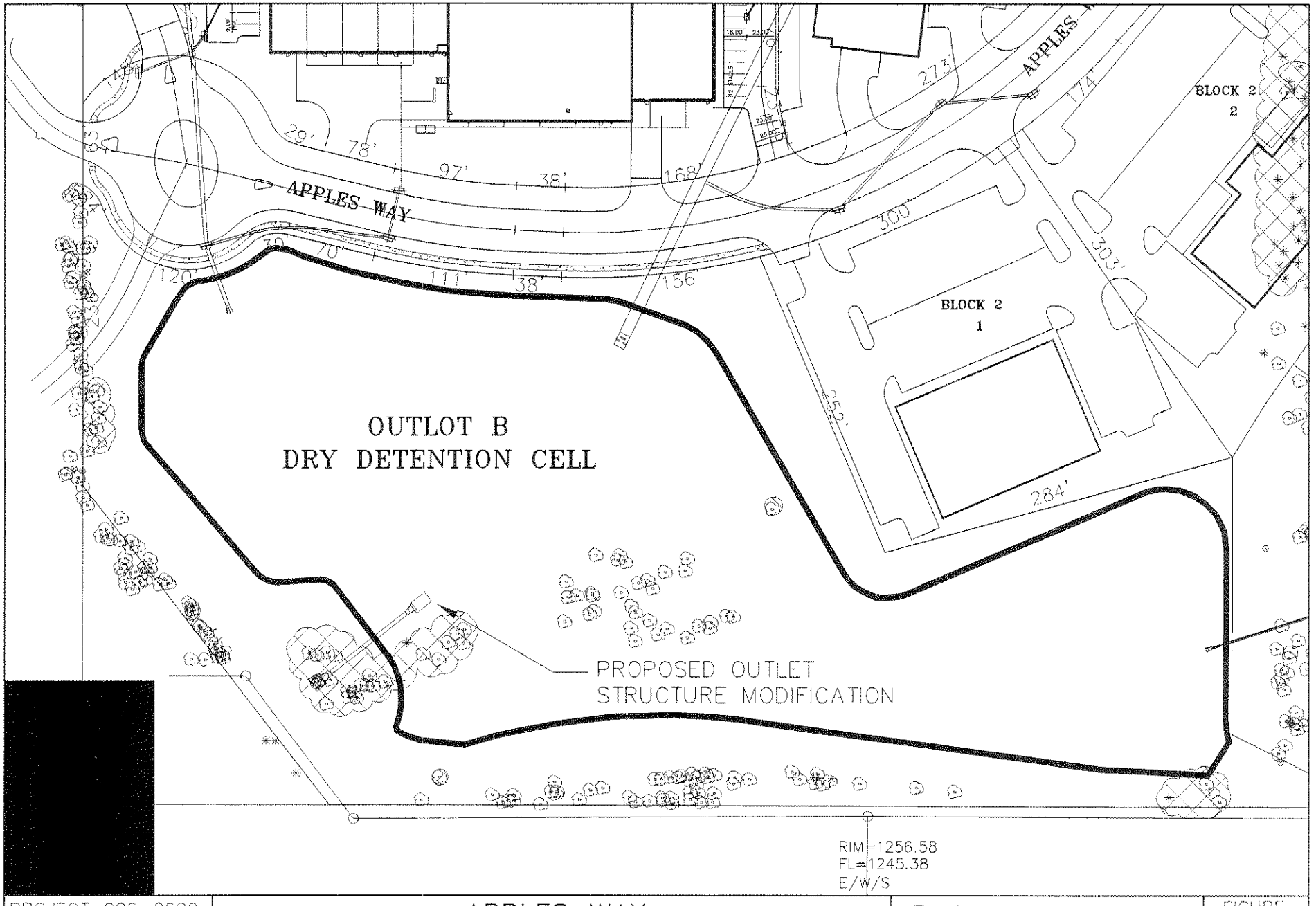
GENERAL NOTARY - State of Nebraska
JUSTINE EDSTROM
My Comm. Exp. Oct. 16, 2007

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



PROJECT: 006-0699 DRAWN BY: CDI DATE: 12/05/06	APPLES WAY EXHIBIT A – CONSERVATION AGREEMENT	OLSSON ASSOCIATES ENGINEERS – PLANNERS – SCIENTISTS – SURVEYORS 1111 LINCOLN MALL – LINCOLN, NEBRASKA 68508 PH: 402-474-6311 – FAX: 402-474-5160

FIGURE
EX. A

AGREEMENT

This Agreement is made and entered into as of this 20th day of March, 2007, by and between the City of Lincoln, Nebraska, a municipal corporation ("City") and AC Holdings, LLC, a Nebraska limited liability company, ("Owner").

WHEREAS, the City has approved Owner's application for permission to subdivide and for approval of the subdivision plat of Artisan Meadows Addition upon condition that Owner maintains the outlots and private improvements within Artisan Meadows Addition on a permanent and continuous basis and further agree to retain ownership of and the right of entry to the outlots in order to maintain the outlots and private improvements on a permanent and continuous basis. However, the Agreement authorizes the Owner to be relieved and discharged of such maintenance obligation upon creating in writing a permanent and continuous association of property owners who would be responsible for said permanent and continuous maintenance subject to the following conditions:

a. Owner shall not be relieved of Owner's maintenance obligation for each specific private improvements until a registered professional engineer or nurseryman who supervised the installation of said private improvement has certified to the City that the improvement has been installed in accordance with approved plans; and

b. The maintenance agreements are incorporated into covenants and restrictions in deeds to the subdivided property and the documents creating the association and the restrictive covenants have been reviewed and approved by the City Attorney and filed of record with the Register of Deeds; and

WHEREAS, Owner is the owner of all outlots within Artisan Meadows Addition; and

WHEREAS, Owner intends to place Restrictive Covenants ("Covenants") on the lots and outlots within Artisan Meadows Addition and further intends to incorporate an Artisan Meadows Homeowners Association to enforce the Covenants and to assume Owner's responsibility to maintain the outlots and private improvements within Artisan Meadows Addition ("Commons") on a permanent and continuous basis; and

WHEREAS, Outlot A, Artisan Meadows Addition, will be identified as part of the Commons in the Covenants to be filed of record with the Lancaster County Register of Deeds; and

WHEREAS, the Association to be incorporated by Owner will be responsible under the Covenants for the maintenance and repair of the Commons; and

WHEREAS, the City has an approved Stormwater Master Plan in the Beal Slough Basin that is an approved subcomponent of the Lincoln Lancaster County 2025 Comprehensive Plan; and

WHEREAS, the City has an approved 2005-06 Capital Improvement Program and Project 7 (Best Management Practices Projects) includes funding for structural Best Management Practices that improve water quality for the City of Lincoln; and

WHEREAS, water quality control is a component listed in the Beal Slough Stormwater Master Plan as best management practice to improve water quality; and

WHEREAS, the City desires to have water quality control within the Artisan Meadows Addition Subdivision in Outlot A, where there also currently exist a pond and detention capacity; and

WHEREAS, Owner desires to complete various improvements that are necessary within Outlot A and to transfer ownership of Outlot A to the Association; and

WHEREAS, the City and Owner desire to enter into an Agreement that outlines a city cost sharing arrangement for certain improvements to be completed within Outlot A.

NOW THEREFORE, in consideration of the above, and the covenants and conditions contained herein, the parties agree as follows:

1. Improvements to Outlot A. The parties agree the following project shall be constructed within Outlot A in accordance with the terms and conditions set forth in this Agreement (collectively "Improvements"):

Detention Pond Improvements:

Outlet Improvements. The control structure for the current outlet provides for flood control of the 2, 10 and 100 year peak flow discharges. The outlet will be modified to control the water quality control volume from the Artisan Meadows Way subdivision in addition to controlling the above storm events.

Sediment Forebay. The inlet to the detention cell shall be modified to provide for a sediment forebay to be accomplished with regrading and effective soil stabilization for the grading and lining of the forebay for future maintenance to include appropriate pavers for this purpose.

Vegetated Swale. A vegetated swale shall be constructed between the detention facilities within the detention pond area and appropriate vegetation shall be planted.

2. Cost Responsibility. City shall be responsible for the design and construction costs of the Improvements listed in paragraph 1.

3. Design and Construction of the Improvements. The City has entered into a contract dated June 12, 2006 pursuant to Executive Order No. 76514 with Olsson Associates ("Engineer") for design of the Improvements. Following the approval of the design, the Engineer shall be responsible for bidding of the Improvements in accordance with the City's bidding procedures.

The City agrees to act as contract administrator for the contract with Engineer and for the construction contract with the construction contractor selected.

4. Time Frame. The City agrees to use its best efforts to complete design of the Improvements by November 15, 2006 and construction of the Improvements by June 1, 2007.

5. Future Ownership and Use of Outlot A. The Owner agrees to grant at no cost to the City a conservation easement to the City over Outlot A restricting its future use in substantially the form attached as Exhibit "A". Owner further agrees to grant the conservation easement prior to transfer of Outlot A to any association of property owners.

6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, devisees, personal representatives, successors and assigns.

7. Amendments. This Agreement may only be amended or modified in a writing signed by all parties to this Agreement.

8. Further Assurances. Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation. Each of the parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth and carry out the intent and purposes of this Agreement.

9. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

10. Interpretations. Any uncertainty or ambiguity in this Agreement shall not be interpreted against any party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules and interpretation of contracts generally.

11. Relationship of Parties. None of the provisions contained in this Agreement nor any acts of any party shall be deemed or construed by the City, or by any third person to create the relationship of partnership or of joint venture or of any association between the parties.

12. Assignment. In the case of the assignment of this Agreement by any of the parties, prompt written notice shall be given to the other parties, who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations unless a specific release in writing is given and signed by the other parties to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

ATTEST:

City Clerk

CITY OF LINCOLN, NEBRASKA,
a municipal corporation,

Coleen J. Seng, Mayor

AC HOLDINGS LLC,
a Nebraska limited liability company

By: _____
Thomas C. Huston
Manager

By: _____
Peter W. Katt
Manager

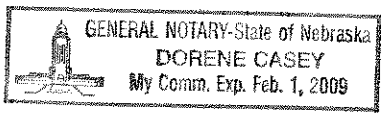
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

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

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

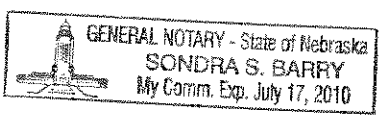
The foregoing instrument was acknowledged before me this 22nd day of March, 2007, by Thomas C. Huston, Manager, AC Holdings, LLC, a Nebraska limited liability company, on behalf of the company.



Dorene Casey
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

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



Sondra S. Barry
Notary Public

G:\AF\5000-5099\5059.012 Katt, Peter--Artisan Meadows\Artisan Meadows Agr re Covenants 3-20-07.wpd

Exhibit A

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, Manager

By: _____
Peter W. Katt, Manager

Attest:

CITY OF LINCOLN, NEBRASKA

_____
City Clerk

By: _____
Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

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.

GENERAL NOTARY-State of Nebraska
DORENE CASEY
My Comm. Exp. Feb. 1, 2009

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

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.

GENERAL NOTARY - State of Nebraska
SONDRA S. BARRY
My Comm. Exp. July 17, 2010

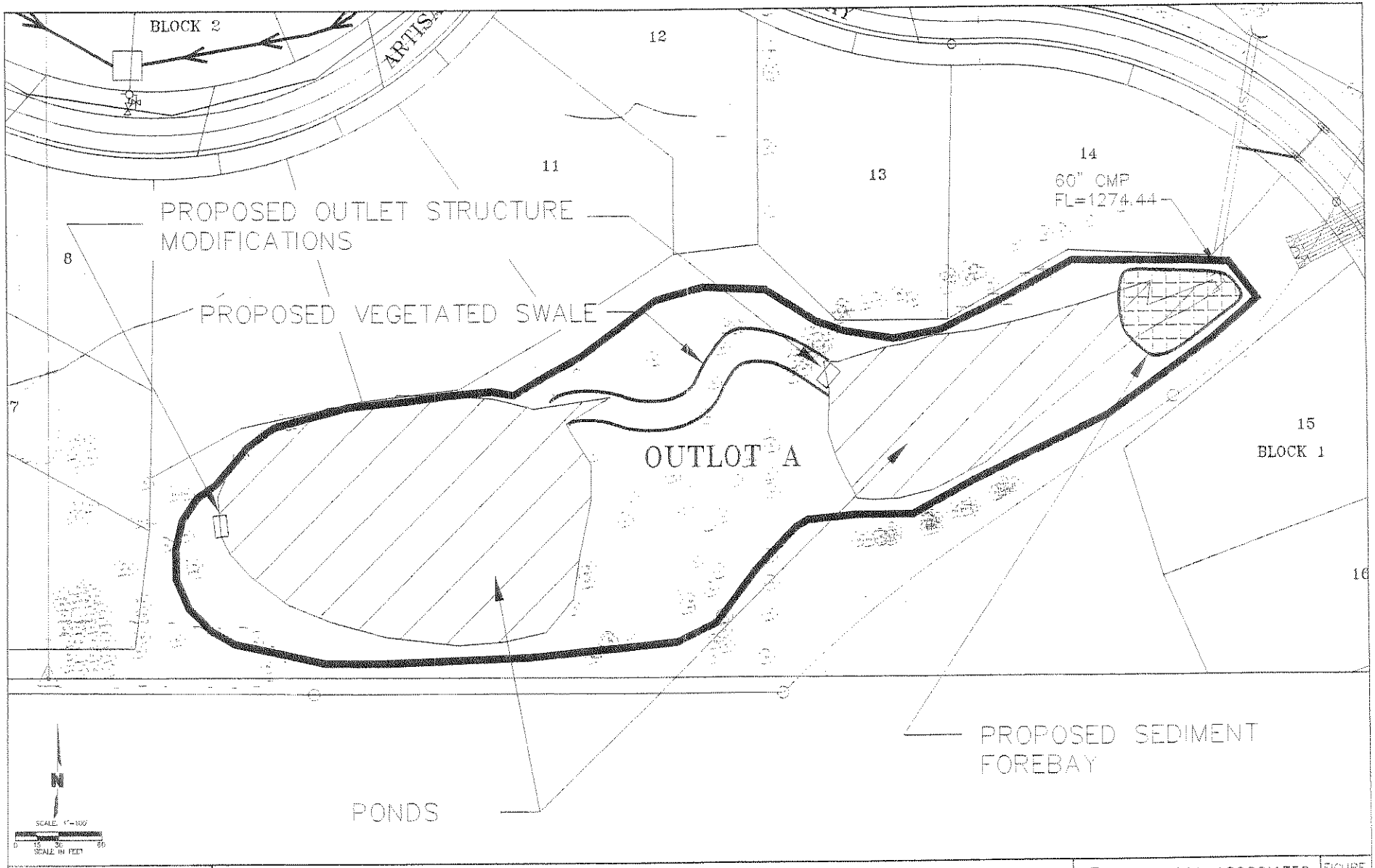
_____
Notary Public

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 on behalf of the City of Lincoln, Nebraska.

_____
Notary Public

(G:\AF\5000-5099\5059.012 Katt, Peter--Artisan Meadows\AM-Conservation Easement Agreement 3-20-07.wpd)



PROJECT: 006-0699	ARTISAN MEADOWS	FIGURE
DRAWN BY: CDI / REVISIONS:	EXHIBIT A – CONSERVATION AGREEMENT	EX-A
DATE: 04/19/07	OLSSON ASSOCIATES ENGINEERS – PLANNERS – SCIENTISTS – SURVEYORS	