



CITY OF LINCOLN  
NEBRASKA  
MAYOR COLEEN J. SENG

EXECUTIVE  
ORDER

NO. 075101

Smart # 05120194

12-15-05/law/tb

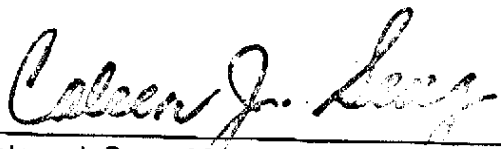
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BY VIRTUE OF THE AUTHORITY VESTED IN ME by the Charter of the City of Lincoln, Nebraska:

On behalf of the City of Lincoln, Nebraska I have executed the attached Subdivision Agreement and the Agreement for Escrow of Security Fund to guarantee the installation of sidewalks, private roadways, removal of driveway, setting permanent monuments, street trees, private storm sewer, and private street lights, within the final plat of **Earl Carter Addition**.

The City Clerk is directed to return an original Subdivision Agreement to the Planning Director to be filed with the Register of Deeds along with the approved final plat. The City Clerk is directed to return copies of this Executive Order and the Agreement for Escrow of Security Fund to the Planning Department.

Dated this 20 day of Dec, 2005.

  
Coleen J. Seng, Mayor

Approved as to Form & Legality:

  
Chief Assistant City Attorney

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## AGREEMENT

THIS AGREEMENT is made and entered into by and between **Donald J. Arena, a single person, and Lincoln North Creek, LLC, a Nebraska limited liability company,** hereinafter called "Subdivider", whether one or more, and the **CITY OF LINCOLN, NEBRASKA, a municipal corporation,** hereinafter called "City."

WHEREAS, Subdivider has made application to City for permission to subdivide and for approval of the subdivision plat of **EARL CARTER ADDITION**; and

WHEREAS, the resolution approving said plat contains certain provisions requiring an agreement between Subdivider and City relating to said plat and the development thereof.

NOW, THEREFORE, IN CONSIDERATION of City granting permission to plat and approval of the plat of **EARL CARTER ADDITION**, it is agreed by and between Subdivider and City as follows:

1. The Subdivider agrees to complete the paving the private roadway shown on the final plat within two years following the approval of this final plat.
2. The Subdivider agrees to complete the installation of sidewalks along both sides of the private roadway as shown on the final plat within four years following the approval of this final plat.
3. The Subdivider agrees to complete the public water distribution system to serve this plat within two years following the approval of this final plat.

4. The Subdivider agrees to complete the public wastewater collection system to serve this plat within two years following the approval of this final plat.

5. The Subdivider agrees to complete the enclosed public drainage facilities as shown on the approved drainage study to serve this plat within two years following the approval of this final plat.

6. The Subdivider agrees to complete land preparation including storm water detention/retention facilities and open drainageway improvements to serve this plat prior to the installation of utilities and improvements not more than two years following the approval of this final plat.

7. The Subdivider agrees to complete the installation of private street lights along the private roadway within this plat within two years following the approval of this final plat.

8. The Subdivider agrees to complete the planting of the street trees along the private roadway within this plat within four years following the approval of this final plat.

9. The Subdivider agrees to complete the planting of the street trees along West "O" Street as shown on the final plat within two years following the approval of this final plat.

10. The Subdivider agrees to complete the installation of the permanent markers prior to construction on or conveyance of any lot in the plat.

11. The Subdivider agrees to timely complete any other public or private improvement or facility required by Chapter 26.23 of the Land Subdivision Ordinance which has not been waived, but which inadvertently may have been omitted from the above list of required improvements.

12. The Subdivider agrees to submit to the Director of Public Works for review and approval a plan showing proposed measures to control sedimentation and erosion and the proposed method to temporarily stabilize all graded land.

13. The Subdivider agrees to comply with the provisions of the Land Preparation and Grading requirements of the Land Subdivision Ordinance.

14. The Subdivider agrees to complete the public and private improvements shown on the preliminary plat.

15. The Subdivider agrees to maintain the street trees along the private roadways on a permanent and continuous basis.

16. The Subdivider agrees to maintain the outlots and private improvements on a permanent and continuous basis, and to recognize that there may be additional maintenance issues or costs associated with providing for the proper functioning of stormwater detention/retention facilities as they were designed and constructed within the development and these are the responsibility of the Subdivider. Subdivider further agrees to retain ownership of or the right of entry to the outlots in order to maintain the outlots and private improvements on a permanent and continuous basis. However, the Subdivider may be relieved and discharged of such maintenance obligations only 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) Subdivider shall not be relieved of Subdivider's maintenance obligation for each specific private improvement 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

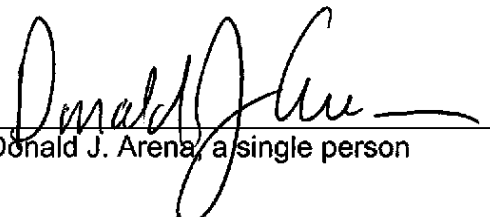
(b) The maintenance agreements are incorporated into covenants and restrictions in deeds to the subdivided property and the documents creating the association and the restrictive covenants have been reviewed and approved by the City Attorney and filed of record with the Register of Deeds.

17. The Subdivider agrees to submit to the lot buyers and home builders a copy of the soil analysis.

18. The Subdivider agrees to relinquish the right of direct vehicular access from Lots 1 and 7 to West "O" Street.

19. The Subdivider agrees to inform all prospective purchasers and users that the land is located within the Airport Environs Noise District, that the land is subject to an aviation and noise easement granted to Lincoln Airport Authority, and that the land is potentially subject to aircraft noise levels which may affect users of the property and interfere with its use.

Dated this 12 day of December, 2005.

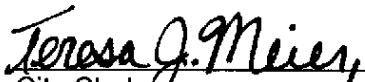
  
Donald J. Arena, a single person

LINCOLN NORTH CREEK, LLC  
a Nebraska limited liability company,

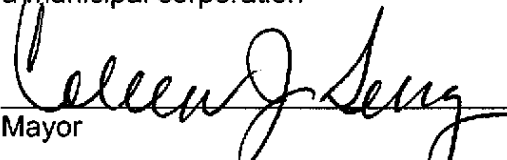
  
Robert D. Hampton, Manager

ATTEST:

CITY OF LINCOLN, NEBRASKA,  
a municipal corporation

  
Teresa J. Meier,  
City Clerk



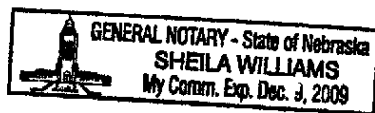
  
Celeen J. Seng  
Mayor

STATE OF NEBRASKA

COUNTY OF LANCASTER

) SS.  
)

The foregoing instrument was acknowledged before me this 12 day of December, 2005, by Donald J. Arena, a single person.



  
Notary Public

STATE OF NEBRASKA )  
COUNTY OF LANCASTER ) ss.

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of December, 2005, by Robert D. Hampton, Manager of Lincoln North Creek, LLC, a Nebraska limited liability company.

Lori Michl  
Notary Public



STATE OF NEBRASKA )  
COUNTY OF LANCASTER ) ss.

The foregoing instrument was acknowledged before me this 20 day of December, 2005, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Judith A. Roscoe  
Notary Public



## AGREEMENT FOR ESCROW OF SECURITY FUND

WHEREAS, Lincoln North Creek L.L.C., hereinafter called "Permittee," has made application to the City of Lincoln for permission to construct improvements consisting of:

<u>Improvement</u>	<u>Amount</u>
Storm Sewers	\$ _____
Street Paving	\$ _____
Water Mains	\$ _____
Sanitary Sewers	\$ _____
Ornamental Lighting	\$ _____
Sidewalks	\$ <u>4,640</u>
Parking Areas	\$ _____
Private Roadways	\$ <u>58,700</u>
Removal of Eastern Driveway	\$ <u>2,100</u>
Setting Permanent Monuments	\$ <u>1,400</u>
Landscape Screen	\$ _____
Recreation Facilities	\$ _____
Street Trees	\$ <u>5,500</u>
Street Name Signs	\$ _____
Private Storm Sewer	\$ <u>8,800</u>
Private Street Lights	\$ <u>15,850</u>

within the final plat of Earl Carter Addition, an addition to the City of Lincoln, Lancaster County, Nebraska; and

WHEREAS, the conditions of approval for said final plat require the posting of certain performance bonds in connection with the installation of improvements on said property; and

WHEREAS, as a condition to permitting the construction of certain of the aforesaid improvements by the Permittee, the City of Lincoln requires that said Permittee secure an Executive Order authorizing Permittee to do said construction work and, as a condition of the granting of said permit, the Permittee must post performance bonds in an amount equal to the cost of installing said improvements; and

WHEREAS, Permittee desires to construct and install the aforesaid improvements privately and guarantee the same by placing funds in an escrow account as security for performance of said construction rather than posting performance bonds.

NOW, THEREFORE, IT IS AGREED by and between Lincoln North Creek L.L.C., Permittee, and the City of Lincoln, Nebraska, a municipal corporation, hereinafter called the "City," as follows:

1. That prior to construction of the aforesaid improvements, Permittee shall either deposit the sum of Ninety Six Thousand Nine Hundred Ninety and 00/100 Dollars (\$96,990.00) with City Bank & Trust (Bank) as escrow agent for the City, or obtain a loan of immediately payable funds from City Bank & Trust (Bank) in said amount and irrevocably pledge and assign said funds to City Bank & Trust (Bank) as escrow agent for the City, the same to be held in escrow as security to guarantee the construction of the aforesaid improvements within Earl Carter Addition.

2. The said escrow fund shall be allocated to the specified improvements as follows:

<u>Improvement</u>	<u>Amount</u>
Storm Sewers	\$ _____
Street Paving	\$ _____
Water Mains	\$ _____
Sanitary Sewers	\$ _____
Ornamental Lighting	\$ _____
Sidewalks	\$ 4,640
Parking Areas	\$ _____
Private Roadways	\$ 58,700
Removal of Eastern Driveway	\$ 2,100
Setting Permanent Monuments	\$ 1,400
Landscape Screen	\$ _____
Recreation Facilities	\$ _____
Street Trees	\$ 5,500
Street Name Signs	\$ _____
Private Storm Sewer	\$ 8,800
Private Street Lights	\$ 15,850

3. The funds designated for any one improvement less the retainage, if any, may be released from escrow when that improvement is completed to the satisfaction of the City and the City has certified to City Bank & Trust (Bank) in writing that construction has been completed for that improvement; provided, that all other funds in the escrow account designated as security for remaining uncompleted improvements shall remain in escrow until the improvements for which said funds have been designated has been completed. In the event any or all of the aforesaid improvements are not completed to the satisfaction of the City by the completion dates listed in the conditions of approval for said final plat or the Executive Order to do said construction, whichever is earlier, then and in that event City Bank & Trust (Bank) upon written request from the City, shall pay to the City the total amount of funds designated for each of the aforesaid improvements which shall not have been completed on said date or the amount of funds necessary to complete construction thereof, whichever is the lesser.

4. The conditions of release of the escrow funds upon completion of the improvements set forth in paragraph 1, supra, shall include payment in full of any and all costs due to the City by Permittee in connection with the development and construction of such improvements including, but not limited to, engineering costs, inspection costs, and survey costs.

5. This Agreement shall be contingent upon its execution by the parties hereto, the pledge and assignment of the required security funds with City Bank & Trust (Bank) as escrow agent for the City of Lincoln, and the acceptance of this Agreement by said escrow agent.

6. Permittee agrees to pay any and all fees charged by City Bank & Trust (Bank) as escrow agent for the City of Lincoln under the terms of this Agreement.

7. City Bank & Trust (Bank) shall be liable as a depository only.

8. Upon deposit of the security fund as provided in this Agreement, the City agrees to waive the requirement that Permittee post performance bonds for completion of the aforesaid improvements.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this 18 day of November, 2005.

ATTEST:

By: Christine K. Middleton  
Title: Office Manager

Lincoln North Creek L.L.C., Permittee

By: Robert D. Hampton  
Title: Managing Member

ATTEST:

Teresa J. Meyer, Secretary  
City Clerk

CITY OF LINCOLN, NEBRASKA,  
a municipal corporation,

Robert D. Hampton  
Mayor

Approved:

Paul R. Bo  
City Attorney



## ACCEPTANCE OF ESCROW AGREEMENT

City Bank & Trust (Bank) hereby agrees to the terms and instruction listed above and acknowledges that it has accepted a deposit of Ninety Six Thousand Nine Hundred Ninety and 00/100 Dollars (\$96,990.00) or an irrevocable pledge and assignment of immediately payable funds in said amount from Lincoln North Creek L.L.C. (Permittee) to be held in escrow (Note No. 64005) by City Bank & Trust (Bank) as escrow agent for the City of Lincoln, Nebraska, a municipal corporation, to ensure construction of the improvements listed in the above and foregoing Agreement and further agrees not to release any of said monies or irrevocable pledges held by City Bank & Trust (Bank) to secure construction of said improvements until it has received written authorization from the City of Lincoln in accordance with the foregoing Agreement.

Dated this 18th day of November, 2005.

Attest: Carol Sims  
Asst. Vice President

City Bank & Trust Co. (Bank)  
2929 Pine Lake Rd. (Address)  
Lincoln, NE 68516

By: [Signature]  
Title: V.P.

By: [Signature]  
Title: V.P.

EARL CARTER ADDITION

LOTS 1-7