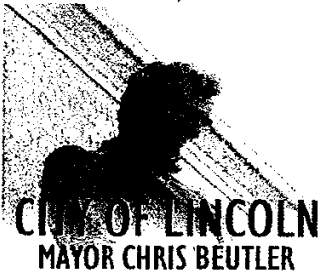




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EXECUTIVE  
ORDER

NO. 083432

*a/s*

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

I have executed three originals of the attached Building Restriction Agreement To Ensure Structures are Reasonably Safe From Flooding for the property owned by and between the applicants Roger H. Schwisow Revocalbe Trust, Eldonna Schwisow Revocable Trust, Detweiler Popproperties I LLC on Lots 3 & 4, Northbank Junction Addition; Lots 1 - 3 Northbank Junction 1<sup>st</sup> Addition; Lots 1 - 4, Block 1, Lots 1- 9, Block 2, Outlot A Northbank preserve; and Lot 22, I.T. all located in NE 1/4 Section 32, Township 11 North, Range 7 East of the 6<sup>th</sup> P.M., Lancaster County, Nebraska.

The Building Restriction Agreement To Ensure Structures are Reasonably Safe From Flooding provides restrictions on the development of the above-described property in order to ensure the structures are reasonably safe from flooding. The attached Building Restriction Agreement To Ensure Structures are Reasonably Safe From Flooding replaces Instrument #2006034002 (associated with Executive Order 76659), which by this Agreement's execution is now null and void.

The City Clerk is directed to file this Executive Order and an original of the Building Restriction Agreement To Ensure Structures are Reasonably Safe From Flooding with the Register of Deeds, recording fees to be paid in advance by the applicant.

The City Clerk is further directed to return two copies of this Executive Order, two originals of the Building Restriction Agreement to the Department of Building & Safety, Attn: Terry Kathe, for its records and for transmittal to the Applicant. Also send one copy of the executive order to Watershed Management, Attn: Ben Higgins for their records.

Dated this 14<sup>th</sup> day of Sept, 2010

Chris Beutler, Mayor, City of Lincoln

Approved to Form and Legality:  
  
City Attorney

**Building Restriction Agreement  
To Ensure Structures are Reasonably Safe From Flooding**

THIS BUILDING RESTRICTION AGREEMENT to Ensure Structures are Reasonably Safe From Flooding ("Agreement") is entered into as of the date this Agreement is fully executed, by and between Roger H. Schwisow Revocable Trust, Eldonna Schwisow Revocable Trust, Detweiler Properties I LLC (hereinafter referred to as "Owner") and the City of Lincoln, Nebraska, a municipal corporation (hereinafter referred to as "City"). This Building Restriction Agreement replaces Instrument #2006034002, which by this Agreement's execution is now null and void.

**RECITALS**

**I.**

Owner is the owner of Lots 3 & 4, Northbank Junction Addition; Lots 1 - 3 Northbank Junction 1<sup>st</sup> Addition; Lots 1 - 4, Block 1, and Lots 1 - 9, Block 2, Outlot A Northbank Preserve; and Lot 22, I.T. all located in NE 1/4 Section 32, T 11 N, R 7E (hereinafter referred to as the "Property"), which are the replatted lots that replace the lots listed in the original agreement (Instrument #2006034002). Attachment 1 shows the replatted lots. The base flood elevation of the Property ranges from 1136.9 NAVD 88 at the north property line to 1137.9 NAVD 1988 at the southern most property line.

**II.**

The Property is currently located in an area shown on the Flood Insurance Rate Map (FIRM) for the City of Lincoln issued by the Federal Emergency Management Agency (FEMA) as a special flood hazard area (SFHA) and is a designated floodplain subject to the requirements of the City's floodplain ordinance (Chapter 27.53 of the Lincoln Municipal Code).

**III.**

Lincoln Municipal Code § 27.53.030 provides in part that:

(b) Residential Construction. All new construction and substantial improvements of residential structures within the floodplain or floodprone area shall have the lowest floor, including basement, elevated at least one foot above the base flood level. Garages and storage buildings used exclusively for the storage of motor vehicles and storage of other items readily removable in the event of a flood warning may have their lowest floor below flood elevation, provided the building

structure is capable of withstanding hydrostatic and hydrodynamic forces caused by the 100-year flood and, further, provided that no utilities are installed in the building except elevated or floodproofed electrical fixtures. If the building is converted to another use, it must be brought into full compliance with the requirements of this title governing such uses.

(c) **Nonresidential Construction.** All new construction and substantial improvements of commercial, industrial, and other nonresidential structures within the designated floodplain or floodprone area shall either have the lowest floor, including basement, elevated at least one foot above the base flood level or, together with attendant utility and sanitary facilities, be floodproofed so that below the base flood level plus one foot the structure is watertight in accordance with the performance standards set forth in the City's building code. A registered professional engineer or architect shall develop or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction meet the watertight performance standards. The certification shall be provided to the City as set forth in § 27.53.040 of the Lincoln Municipal Code.

(d) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- (1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
  - (2) The bottom of all openings shall be no higher than one foot above grade;
- and
- (3) Openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

#### IV.

FEMA regulations found in 44 CFR 65.5 and 65.6 authorize the issuance of a Letter of Map Revision (LOMR) or a Letter of Map Revision based on fill (LOMR-F) to remove land from the area of a SFHA (i.e. designated floodplain) provided in part that the participating community has determined that the land and any existing or proposed structures to be removed from the SFHA are "reasonably safe from flooding."

**V.**

FEMA defines "reasonably safe from flooding" to mean "base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area (Floodplain) and that any subsurface waters related to the base flood will not damage existing or purposed buildings. 44 CFR 65.2(c).

**VI.**

After FEMA has revised the FIRM to show that the (filled) land is outside the floodplain (SFHA) the participating community is no longer required to apply the minimum National Flood Insurance Program (NFIP) floodplain management standards to any structures built on the land and FEMA's mandatory flood insurance purchase requirements no longer apply, although flood insurance may still be required contractually by banks and other lenders if the structure is used as collateral to secure a loan.

**VII.**

Land removed from the designated floodplain pursuant to a LOMR or LOMR-F is not subject to the City's floodplain ordinance and in particular the requirements of Lincoln Municipal Code § 27.53.030(b) and (c).

**VIII.**

FEMA believes that residual flood hazards may exist in areas elevated above the base flood elevation, including subsurface flood conditions and flooding from events which exceed the base flood. Therefore, FEMA will not process an application for nor approve a LOMR or a LOMR-F removing land from the floodplain unless the participating community, here the City, certifies that the area is reasonably safe from flooding according to criteria set forth in FEMA's Technical Bulletin 10-01 "Ensuring that structures built on fill and that are near special flood hazard areas are reasonably safe from flooding in accordance with the National Flood Insurance Program."

**IX.**

Currently the City of Lincoln Municipal Code does not have any regulations that control development of flood prone areas outside of the designated floodplain that would ensure that any construction in such areas is reasonably safe from flooding. Therefore, the City cannot make the required certification to FEMA required for the processing or issuance of a LOMR or LOMR-F.

**X.**

Owner applied for a LOMR-F that was approved 10/5/06 (case # 06-07-BA40A) in order to remove the Property from the SFHA (i.e. designated floodplain) for future development in order to avoid the mandatory flood insurance purchase requirement for lending which is attached to federally guaranteed loans for construction of said buildings on the Property as it presently exists. Therefore, Owner desires to enter into an Agreement with the City restricting development of the Property to ensure that any construction on the Property is reasonably safe from flooding in order to induce the City to sign the certification required by FEMA certifying that if the Property is removed from the SFHA (i.e. designated floodplain) the land and any existing or future buildings constructed thereon will be reasonably safe from flooding.

**XI.**

Owner has followed FEMA Technical Bulletin 10-1 guidelines to show that future buildings with lowest finished floors below base flood elevations for the Property are reasonably safe from flooding per the mutual covenants contained herein. Documentation available at the City Building and Safety Department includes reports and well logs from a qualified geo-technical engineer (May 25, 2010, June 25, 2010, August 26, 2010), and certification from a qualified geo-technical engineer (see Attachment 2).

NOW, THEREFORE, in consideration of the above-recited recitals and the mutual covenants contained herein, Owner and City agree as follows:

1. Owner and City agree that the base flood elevation of the Property ranges from 1136.9 NAVD 88 at the north property line to 1137.9 NAVD 1988 at the southern most property line.
2. Owner agrees that all new construction and substantial improvements of residential structures on the Property shall have the lowest minimum openings at or above the base flood level. The lowest finished floor, including basements shall be not more than five feet below the base flood level. City agrees that garages and storage buildings used exclusively for the storage of motor vehicles, and storage of other items readily removable in the event of a flood warning may have their lowest floor below flood elevation, provided the building structure is capable of withstanding hydrostatic and hydrodynamic forces caused by the 100-year flood and, further, provided that no utilities are installed in the building except elevated or floodproofed electrical fixtures. Owner agrees that if the building is converted to another use, it must be brought into full compliance with the requirements of this Agreement governing such uses.

3. Owner agrees that all new construction and substantial improvements of commercial, industrial, and other nonresidential structures located upon the Property shall either have the lowest floor, including basement, elevated at least one foot above the base flood level or, together with attendant utility and sanitary facilities, be floodproofed so that below the base flood level plus one foot the structure is watertight in accordance with the performance standards set forth in the City's building code. Owner further agrees that a registered professional engineer or architect shall develop or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction meet the watertight performance standards. The certification shall be provided to the City as set forth in Lincoln Municipal Code § 27.53.040.

4. Owner agrees that for all new construction and substantial improvements, fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
- b. The bottom of all openings shall be no higher than one foot above grade; and
- c. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters.

5. Owner agrees to identify all building sites and their elevation in relationship to the base flood elevation on all grading plans, preliminary plats, final plats, planned unit developments, use permits, and/or special permits for the Property or any part thereof. Owner further agrees to identify all building sites and their elevation in relationship to the base flood elevation in any application of a LOMR or LOMR-F.

6. Owner agrees to note, and/or agrees that the City may note, on all grading plans, building permits, preliminary plats, final plats, planned unit developments, use permits, and/or special permits for the Property or any part thereof that all new construction and substantial improvements of residential structures and all new construction and substantial improvements of commercial, industrial and other non-residential structures shall be constructed to the same standard as is required for such structures by Lincoln Municipal Code § 27.53.030(b) and § 27.53.030 (c) respectively.

7. Upon execution of this Agreement and its filing of record with the Register of Deeds for Lancaster County, Nebraska, the City agrees to provide FEMA with the City's assurance that if the Property is removed from the SFHA (i.e. designated floodplain) pursuant to a LOMR or a LOMR-F that all new construction and substantial improvement of existing buildings or structures on the Property will be reasonably safe from flooding.

8. Owner agrees that no building permit shall be issued for the construction of any new building or structure on the Property or substantial improvement of an existing building or structure on the Property until the Owner has submitted all the required information necessary to obtain a development permit in accordance with the requirements of Lincoln Municipal Code § 27.53.040 and 27.53.050. Owner further agrees that no certificate of occupancy will be issued by the City until Owner has provided certification from a registered professional engineer that the new building or structure or substantial improvement of an existing building or structure has been constructed in accordance with this Agreement.

9. Owner agrees to notify all purchasers of the Property or any part thereof that no certificate of occupancy will be issued until the City receives satisfactory certificate from a registered professional engineer that the new building or structure or substantial improvement of an existing building or structure has been constructed in accordance with this Agreement.

10. The parties agree that the agreements contained herein shall run with the land and shall be binding and obligatory upon the heirs, successors, and assigns of the Owner.

11. Owner agrees that this Agreement shall be filed by the City with the Register of Deeds of Lancaster County, filing fees to be paid in advance by Owner.

12. The parties agree that except as defined elsewhere in this Agreement the following terms be defined in the same manner as they are defined in Lincoln Municipal Code § 27.53.020: "base flood," "basement," "development," "existing manufactured home park or subdivision," "expansion to an existing manufactured home park or subdivision," "Flood Insurance Rate Map (FIRM)," "flood plain," "floodproofing," "floodway," "historic structure," "lowest floor," "manufactured home," "manufactured home park or subdivision," "NAVD," "new construction," "new manufactured home park or subdivision," "qualified engineer," "recreational vehicle," "riverine," "start of construction," "structure," "substantial damage," "substantial improvement."

Dated this 14<sup>th</sup> day of Sept., 2010

**OWNER:**

Roger H. Schwisow, trustee and his successors in trust under the Roger H. Schwisow Revocable Trust established by an instrument known as the Roger H. Schwisow Revocable Trust Agreement, dated July 2, 2003, as amended from time to time.

By: *Roger H. Schwisow*  
Roger H. Schwisow, Trustee

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of September, 2010, by Roger H. Schwisow, Trustee of the Roger H. Schwisow Revocable Trust.



*Marcia L. Kinning*  
Notary Public

**OWNER:**

Eldonna Schwisow, trustee and his successors in trust under the Eldonna Schwisow Revocable Trust established by an instrument known as the Eldonna Schwisow Revocable Trust Agreement, dated July 2, 2003, as amended from time to time.

By: *Eldonna Schwisow*  
Eldonna Schwisow, Trustee

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of September, 2010, by Eldonna Schwisow, Trustee of the Eldonna Schwisow Revocable Trust.



*Marcia L. Kinning*  
Notary Public



**OWNER:**

Detweiler Properties I, LLC, a Nebraska limited liability company.

By: Detweiler Investments LLC, sole member of Detweiler Properties I, LLC, a Nebraska limited liability company.

[Signature]  
Gary Detweiler, Member

[Signature]  
Beth Detweiler, Member

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of September, 2010, by Gary Detweiler and Beth Detweiler, members of Detweiler Investments LLC, sole member of a Detweiler Properties I, LLC, a Nebraska limited liability company.



[Signature]  
Notary Public

Attest:



CITY OF LINCOLN, NEBRASKA

[Signature]  
Teresa J. Meier  
City Clerk

[Signature]  
Chris Beutler, Mayor

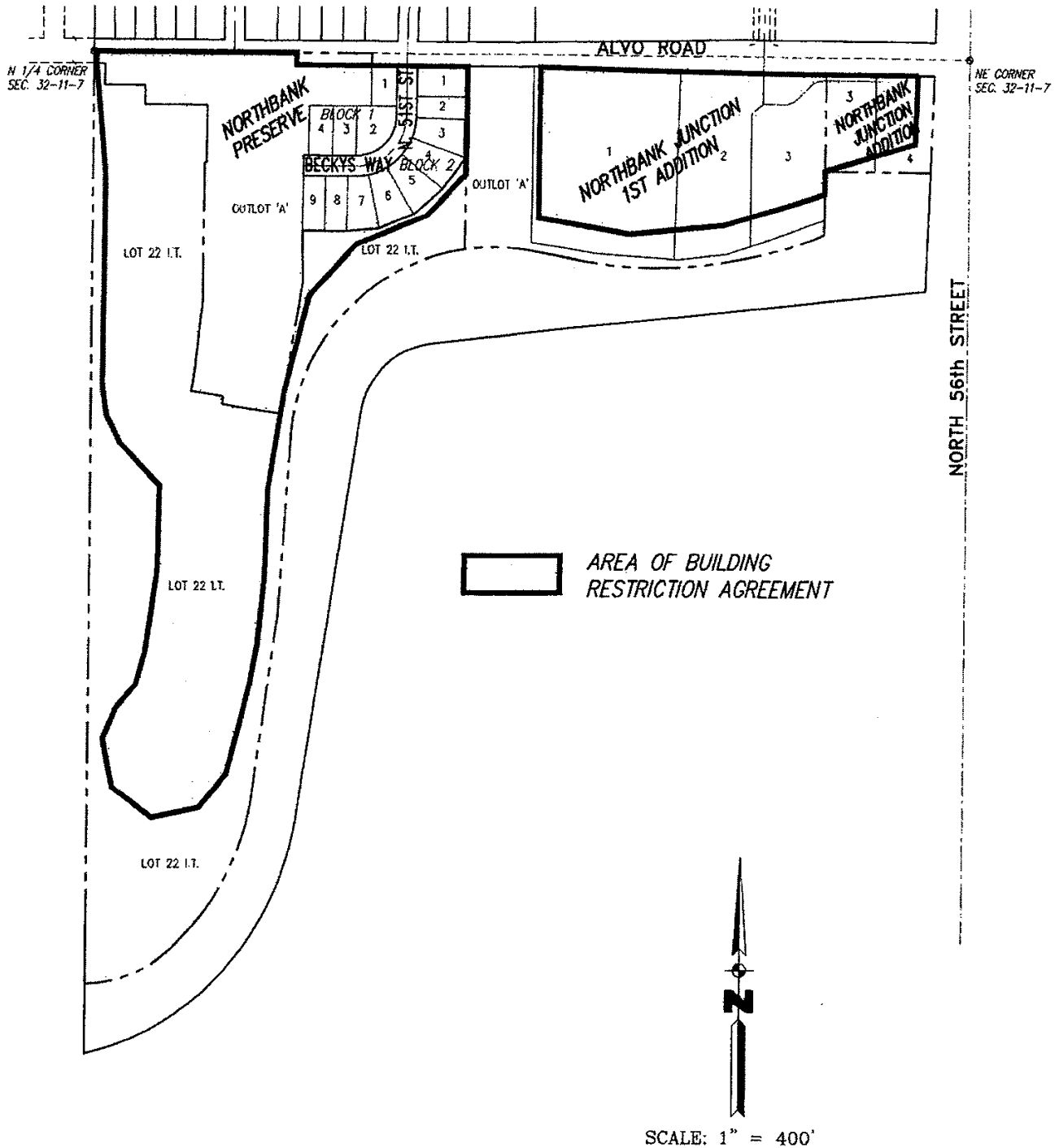
STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of Sept., 2010, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.



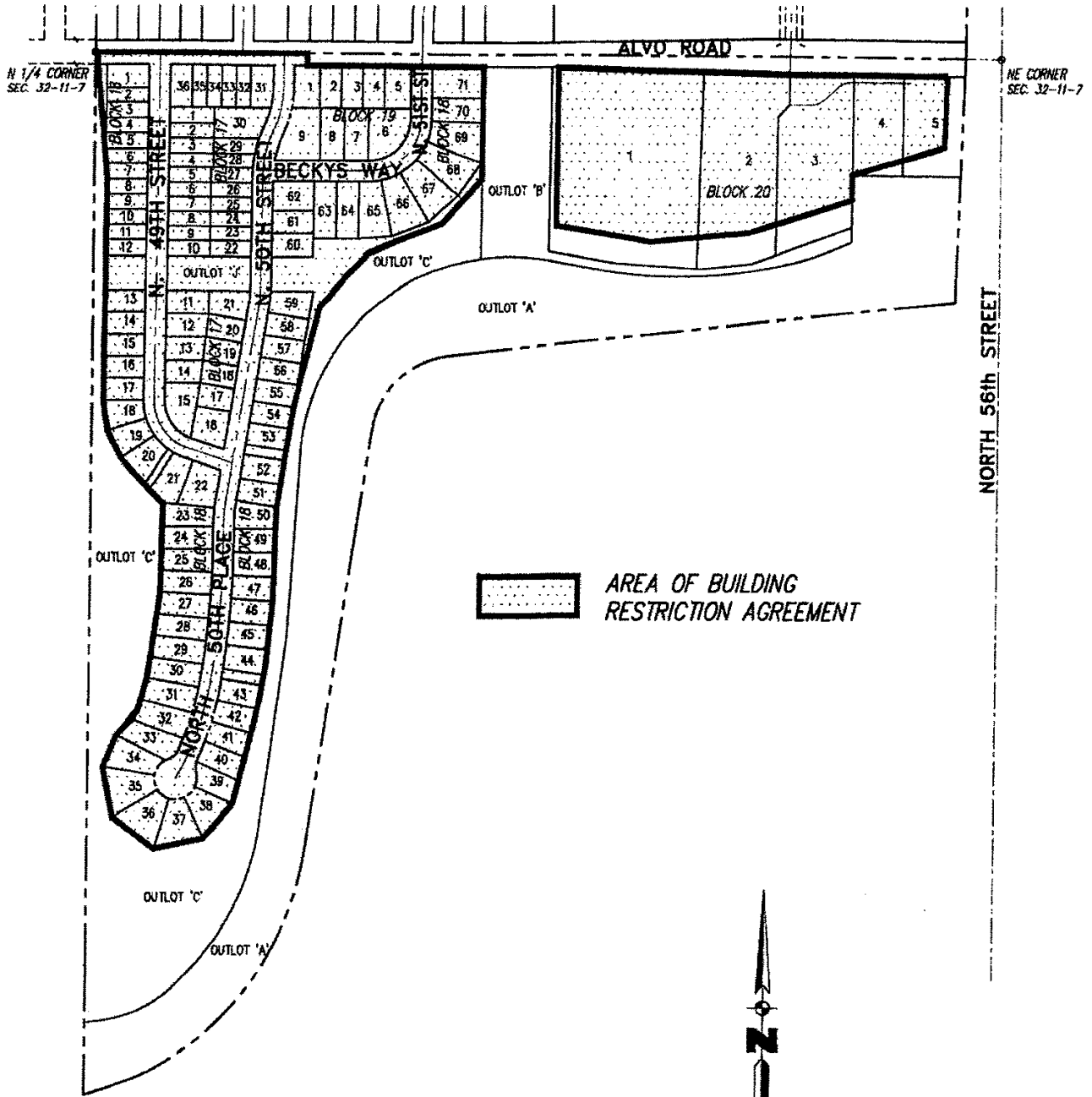
[Signature]  
Notary Public

# EXISTING EXHIBIT



# NORTHBANK JUNCTION

PRELIMINARY PLAT #03004, dated 8/1/10



SCALE: 1" = 400'

Northbank Junction; North 50th Street and Alvo Rd. Lincoln, NE  
Project Name and Address

I, William C. Arneson certify that the design for the aforementioned development is reasonably safe from flooding in accordance with the guidance provided within FEMA's Technical Bulletin 10-01 related to ensuring that structures are reasonably safe from flooding and in accordance with accepted professional practices.

Wm. C. Arneson Aug. 26, 2010  
Signature Date

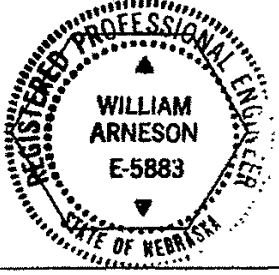
Geotechnical Engineer  
Title

Professional Engineer Nebr. E-5883  
Type of License License Number

134 S. 13th St. Suite 1100 Lincoln, NE 68508  
Address and Phone

Professional Seal

Dec. 31, 2011  
License Expiration Date




# CERTIFICATE

STATE OF NEBRASKA            )  
  )  
COUNTY OF LANCASTER        ) ss:  
  )  
CITY OF LINCOLN                )

I, Teresa J. Meier, Deputy City Clerk of the City of Lincoln, Nebraska, do hereby certify that the above and foregoing is a true and correct copy of E.O. 83432 - Executing the Building Restriction Agreement to Ensure Structures are Reasonably Safe from Flooding from Roger H. Schwisow Revocable Trust, Eldonna Schwisow Revocable Trust, Detweiler Properties I LLC as it appears of record in my said office and is now in my charge remaining as Deputy City Clerk aforesaid.

IN WITNESS WHEREOF, I have hereunto set my hand officially and affixed the seal of the City of Lincoln, Nebraska, this 16<sup>th</sup> day of September, 2010.

*Teresa J. Meier*  
Deputy City Clerk



*Bldg Restriction Agrmt (FEMA) Cert.tjm*