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RICHARD H. TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE



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BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA

AK-SAR-BEN FUTURE TRUST

USE AGREEMENT

This Use Agreement (Agreement) is made this 27 day of June, 1997 and shall be effective as provided herein by and between the **Board of Regents of the University of Nebraska**, a public body corporate organized and existing under and by virtue of the laws of the State of Nebraska (University) and **Ak-Sar-Ben Future Trust**, a Nebraska nonprofit corporation (Future Trust) (University and Future Trust are hereinafter sometimes collectively referred to as the "Parties").

RECITALS

WHEREAS, First Data Resources Inc., a Delaware corporation, and the University contemplate the development of an office park and research facility campus (FDR Campus) adjacent to and co-located with an educational facility to be operated by the University, to include the Omaha Institute of Information Science, Technology and Engineering of the University of Nebraska (Omaha Institute) and other future University facilities;

WHEREAS, the University contemplates that the development of the Omaha Institute and future University facilities will take place on Lots 1, 2 and 3 of the Ak-Sar-Ben Business and Education Campus, an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska (Subdivision) as shown on

**Exhibit "A"** attached hereto and by this reference specifically incorporated herein which is a portion of that larger parcel of real property consisting of Lots 1 through 10, inclusive and Outlots 1 through 3, inclusive, of the Subdivision (collectively the "Ak-Sar-Ben Property");

WHEREAS, under the terms of that certain Donation and Covenant Agreement dated June 27, 1997 (Donation Agreement) by and between the University and FDR, the University will acquire fee simple title to that portion of the Ak-Sar-Ben Property designated as Lots 1, 2 and 3 of the Subdivision (University Property) for the establishment of the Omaha Institute and other University facilities and uses;

WHEREAS, under the terms of that certain Supplemental Project Agreement dated December 31, 1996 (Supplemental Project Agreement) by and among Douglas Racing Corp., a Nebraska nonprofit corporation (RaceCo), Douglas Recreation Corp., a Nebraska nonprofit corporation (RecCo), Future Trust, the County of Douglas, Nebraska a public body corporate and politic (Douglas County), the Knights of Ak-Sar-Ben, a Nebraska nonprofit corporation (Knights) and the Ak-Sar-Ben Foundation, a Nebraska nonprofit corporation (Foundation), Future Trust will acquire fee simple title to that portion of the Ak-Sar-Ben Property designated as Lots 9 and 10 of

the Subdivision (Future Trust Property) and will succeed to the current operations of RecCo on the Future Trust Property;

WHEREAS, the Grandstand located on Lot 9 of the Subdivision and within the Future Trust Property as more particularly shown on **Exhibit "B"** attached hereto and by this reference specifically incorporated herein (Grandstand) is immediately south of Lot 3 of the Subdivision;

WHEREAS, the University does not intend to make immediate use of the area located immediately to the north of the Grandstand within the University Property in Lot 3 of the Subdivision as more particularly shown on **Exhibit "C"** attached hereto and by this reference specifically incorporated herein (Grandstand License Area) for the development of the Omaha Institute or other University facilities to the exclusion of other uses of the Grandstand License Area;

WHEREAS, the designation of the property line between Lot 3 of the Subdivision to be owned by the University and Lot 9 of the Subdivision to be owned by Future Trust necessitates an agreement between the University and Future Trust regarding the use of the Grandstand License Area by Future Trust in order to facilitate the community benefit of continued use of the Grandstand in conjunction with the use of such area;

WHEREAS, the use of the Grandstand License Area by Future Trust as herein provided will greatly enhance the community use of the subject portions of the University Property and Future Trust Property;

WHEREAS, that certain Declaration of Covenants and Restrictions for the Ak-Sar-Ben Business and Education Campus Omaha, Douglas County, Nebraska (Covenant and Easement Agreement) by and among Future Trust, RecCo, Douglas County, the City of Omaha, Nebraska, a municipal corporation (City) and FDR recorded in the Miscellaneous Records of Douglas County, Nebraska at Book 1214, Page 414 contains certain conditions and restrictions upon the use and occupancy of the University Property and the Future Trust Property;

WHEREAS, in order to accommodate continued use of the Grandstand for the benefit of the community the Parties desire to provide for the use of the Grandstand License Area by Future Trust for certain outdoor entertainment, sports, recreational and educational activities, including without limitation, concerts, festivals and fair activities; and

WHEREAS, the Parties each desire to effectuate the use of the Grandstand License Area in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the Parties hereby agree and covenant as follows:

1. **Ratification.** The Parties hereby ratify each of the foregoing recitals and incorporate same as a material part of this Agreement.

2. **Future Trust Use of the Grandstand License Area.** The University hereby agrees during the continuance of this Agreement to permit Future Trust, from time to time and only so long as the Grandstand remains in place and usable, to use the Grandstand License Area for outdoor entertainment, sports, recreation and educational activities, including without limitation, concerts, festivals and fair activities as provided herein.

3. **Access.** The University agrees that during the continuance of this Agreement no barricade or other obstruction will be installed or constructed on the Grandstand License Area so as to prohibit a use allowed pursuant hereto; provided, however, the University shall have the right to temporarily erect barriers or obstructions when deemed necessary or appropriate to the University in order to accommodate construction, maintenance, repair or demolition or removal of structures or other improvements on the University Property. Future Trust shall be afforded

reasonable right of access to the Grandstand License Area for permitted, approved uses.

4. **Rules, Procedures and Restrictions.** The University will in consultation with Future Trust from time to time establish necessary rules and procedures regarding the intended use of the Grandstand License Area by Future Trust and its agents, contractors, tenants, permittees and invitees, including installation and removal of any stage or other structures or equipment; provided, however, such rules and procedures of the University shall not unreasonably restrict the use of the Grandstand License Area by Future Trust.

5. **Compliance with other Agreements and Regulations.** The use of the Grandstand and Grandstand License Area at all times must comply with the terms and conditions of the Covenant and Easement Agreement, the Donation Agreement and all applicable zoning and other laws and regulations.

6. **Operation and Costs.** Future Trust shall be solely responsible for the operation, maintenance and repair of the Grandstand and Grandstand License Area with regard to permitted, approved uses pursuant hereto. All costs, charges and expenses incurred by Future Trust in operating, maintaining and repairing the Grandstand and Grandstand License Area with regard to the permitted, approved uses of the Grandstand License Area pursuant

hereto including, but not limited to the costs and expenses in connection with maintaining Federal, State or local governmental standards; the cost of all materials, supplies and services purchased or hired therefor; expenses for cleaning, lighting, sanitary control, removal of snow, trash, garbage and other refuse, installation, maintenance, repair and removal of any stage, fixtures and equipment; and the depreciation and rental value of machinery and equipment owned or used in the operation of the Grandstand and Grandstand License Area with regard to the permitted, approved uses pursuant hereto (Operating Costs), shall be paid by Future Trust.

7. **Insurance**. Future Trust agrees to maintain in conjunction with its use of the Grandstand License Area pursuant to this Agreement a policy or policies of public liability insurance for injury, death or damage which might result from such use of the Grandstand License Area in amounts not less than \$1,000,000 as to injury or loss of life of one person, \$5,000,000 as to injury and loss of life to all persons arising out of a single accident or disaster, and \$100,000 for property damage liability. The University shall be named as an additional insured on each such policy of insurance.

8. **Requests for Use**. Requests for use of the Grandstand License Area shall be submitted in writing by Future Trust to the



University at least thirty (30) days prior to the scheduled use. Requests must include a description of the requested use and expected attendance in the Grandstand. The approval by the University of a requested use of the Grandstand License Area that complies with the University's rules and procedures, adopted pursuant to Section 4 of this Agreement, may not be unreasonably withheld or delayed. The Chancellor of the University of Nebraska at Omaha shall from time to time designate an individual with authority at the University of Nebraska at Omaha to whom Future Trust shall direct all requests for use of the Grandstand License Area. Approval by such individual of a request for such use shall be considered the approval of the University for the purposes of this Agreement. Requests shall be deemed disapproved by the University if written approval of the request is not provided to Future Trust within ten (10) business days of the receipt of same.

9. **Termination.** This Agreement shall be terminable by Future Trust upon one (1) month prior written notice to the University. This Agreement shall be terminable by the University upon nine (9) months prior written notice to Future Trust of a change in the University's need for use of the Grandstand License Area, which change in need will materially alter the University's use of the Grandstand License Area so as to cause the continued use of the Grandstand License Area by Future Trust in accordance herewith to

be inconsistent with the University's intended use thereof. The University shall use its best efforts to reasonably accommodate the continued use of the Grandstand License Area by Future Trust as long as such continued use is not inconsistent with any need of the University for use of such property as determined by the Board of Regents of the University.

10. University Use of the Grandstand. In consideration of the use of the Grandstand License Area by Future Trust as provided herein, Future Trust agrees to permit the University to occasionally use the Grandstand for University sponsored events in accordance with Future Trust policies and regulations, without charge to the University, except for payment to Future Trust of the reasonable expenses Future Trust shall incur in conjunction with any such use of the Grandstand by the University.

11. Benefit. This Agreement is intended to benefit Future Trust and shall not be deemed to constitute a gift, grant or dedication of any portion of the Grandstand License Area to the general public or for any public purpose whatsoever; it being the intention of the University and Future Trust that the Grandstand License Area will be strictly limited to the private use of Future Trust and its permittees as herein provided.

12. Conditions to Obligations. The respective obligations of the Parties hereto are specifically subject to and contingent upon

the closing of the transactions contemplated by the Project Agreement, Supplemental Project Agreement and Donation Agreement and this Agreement shall be effective upon such closing (Effective Date).

13. **General Provisions.**

13.1 **Execution on Behalf of University.** By the execution and approval of this Agreement by the University, the University hereby authorizes the Chancellor and the Vice Chancellor for Business and Finance of the University of Nebraska at Omaha to execute any and all documents and other instruments necessary to effectuate the terms of this Agreement, or any other agreement to be executed by the University in connection herewith or to take such other actions as may be necessary or appropriate for the University to consummate its obligations under this Agreement.

13.2 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

13.3 **Entire Agreement.** This Agreement contains the entire integrated agreement between the parties respecting the subject matter of this Agreement and supersedes all prior understandings and agreements, whether oral or in writing, among the parties respecting the subject matter of this Agreement.

13.4 **Recording.** Either party may record this Agreement or upon request a memorandum of this Agreement; provided, however, upon termination, the University will execute and record an affidavit acknowledging such termination.

13.5 **Legal Advice, Neutral Interpretation, Headings.** The Parties, each of them, have received independent legal advice from their respective attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. Provisions of this Agreement shall be construed as to their meaning, not for or against any party based upon any attribution to such party as the source of the language in question. Headings used in this Agreement are for convenience of reference only and shall not be used in construing this Agreement.

13.6 **Choice of Law.** This Agreement shall be governed by the laws of the State of Nebraska.

13.7 **Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants and conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be effected or impaired or invalidated thereby.

13.8 **Waiver of Covenants, Conditions or Remedies.** The waiver by one party of the performance of any covenant, condition or promise under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by it of any other covenant, condition or promise under this Agreement. The waiver by any party of the time for performing any act under this Agreement shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy approved by law, and the provision of this Agreement for any remedy shall not exclude other consistent remedies unless they are expressly excluded. The terms and provisions of this Agreement shall be specifically enforceable by the Parties.

13.9 **Exhibits.** All exhibits to which reference is made in this Agreement are deemed incorporated by this Agreement.

13.10 **Amendment.** This Agreement may be amended at any time by the written agreement of the Parties. All amendments, changes, revisions and discharges of this Agreement, in whole or in part, from time to time, shall be binding upon the Parties despite any lack of legal consideration, so long as the same shall be in writing and executed by the Parties.

13.11 **Binding Effect.** This Agreement shall bind and adhere to the benefit of the University and Future Trust.

13.12 **Relations of Parties.** The parties agree that nothing contained herein shall cause any party to be an agent or legal representative of the other for any purpose whatsoever, nor shall this Agreement be deemed to create any form of business organization between the Parties, nor is any party granted any right or authority to assume or create any obligation or responsibility on behalf of the other party, nor shall any party be in any way liable for any debt of the other.

13.13 **Time of the Essence.** Time shall be of the essence as to all dates and times of performance.

13.14 **Further Acts.** Each party agrees to perform any further acts and to execute, acknowledge and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

13.15 **Manner of Giving Notice.** All notices and demands which either party is required or desires to give to the other shall be given in writing by personal deliver, express courier service or by telecopy followed by next day delivery of a hard copy to the address or telecopy numbers set forth below for the respective party, provided that if any party gives notice of a change of name, address or telecopy number, notices to that party

shall thereafter be given as demanded in that notice. All notices and demands so given shall be effective upon receipt by the party to whom notice or demand is being given.

If to the University: Corporation Secretary  
University of Nebraska  
3835 Holdrege Street  
Lincoln, Nebraska 68583  
Telecopy: (402) 472-1237

with a copy to: Vice President & General  
Counsel  
University of Nebraska  
3835 Holdrege Street  
Lincoln, Nebraska 68583  
Telecopy: (402) 472-2038

If to Future Trust: Kenneth E. Stinson,  
Chairman  
Ak-Sar-Ben Future Trust  
1000 Kiewit Plaza  
Omaha, Nebraska 68131  
Telecopy: (402) 271-2936

with a copy to: Kermit A. Brashear, Esq.  
Brashear & Ginn  
800 Farnam Plaza  
1623 Farnam Street  
Omaha, Nebraska 68102  
Telecopy: (402) 348-1111

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year opposite each signature below, effective as of the Effective Date.

BOARD OF REGENTS OF THE  
UNIVERSITY OF NEBRASKA, a public  
body corporate

Date: 6-25-97

By: *L. Dennis Smith*  
L. Dennis Smith, President

By: *James C. Van Horn*  
James C. Van Horn, Vice  
President for Business and  
Finance

AK-SAR-BEN FUTURE TRUST, a  
Nebraska nonprofit corporation

Date: 6/27/97

*James I. Moore*  
James I. Moore, President  
*Kenneth E. Shinson*  
KENNETH E. SHINSON, Chairman

ACKNOWLEDGMENT OF THE UNIVERSITY

STATE OF NEBRASKA     )  
                                  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of June, 1997 by L. Dennis Smith and James C. Van Horn, respectively the President and Vice President for Business and Finance of the Board of Regents of the University of Nebraska, a public body corporate organized and existing under and by virtue of the laws of the State of Nebraska on behalf of the University.

My commission expires:

*Patricia Henry*  
Notary Public



06/23/97-14:15  
UN Gen. Counsel  
0443h1

NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS



ACKNOWLEDGMENT OF FUTURE TRUST

STATE OF NEBRASKA     )  
                                  ) ss.  
COUNTY OF Douglas    )

The foregoing instrument was acknowledged before me this 27  
day of June, 1997 by ~~James L. Moore~~ <sup>Kenneth E. Stinson</sup>, the ~~President~~ <sup>Chairman</sup> of  
Ak-Sar-Ben Future Trust, a Nebraska nonprofit corporation, on  
behalf of the corporation.

My commission expires: 11/21/98

Judy L. Novak  
Notary Public



NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS

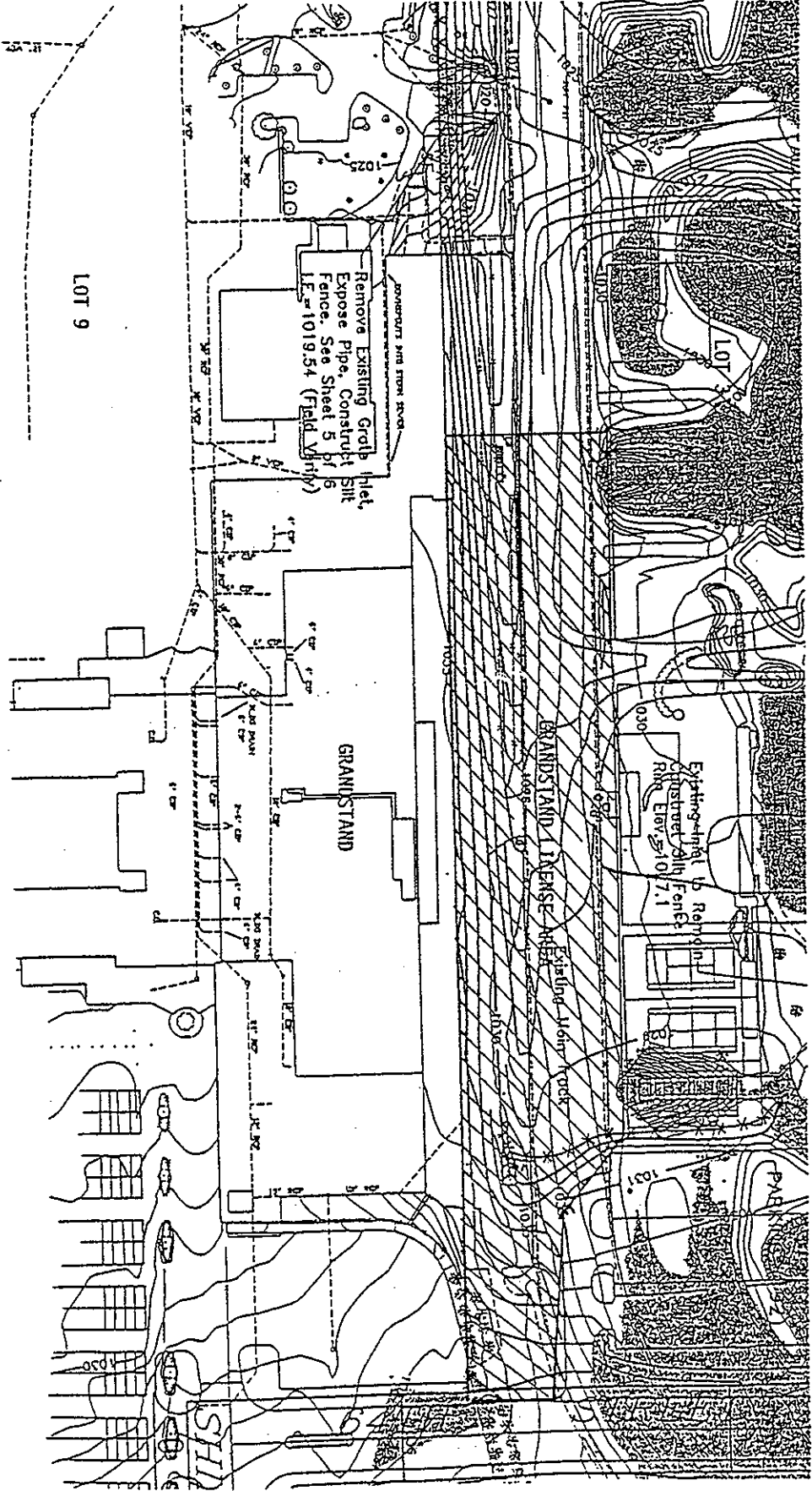
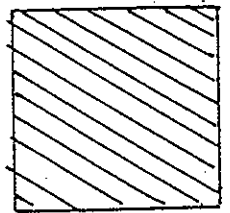


**BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA**  
**AK-SAR-BEN FUTURE TRUST**  
**USE AGREEMENT**

Exhibit "B"  
 Grandstand Location.

Portions of Lots 3 and 9 of the Ak-Sar-Ben Business and Education Campus an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

Grandstand License Area =



North  
 ↑

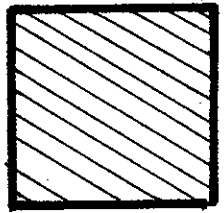
GRADING & STORM WATER POLLUTION PREVENTION PLAN	
Lamp, Gynearson & Associates, Inc. 5172 Commercial Street Omaha, Nebraska 68131 AK-SAR-BEN BUSINESS AND EDUCATION CAMPUS 67TH AND PACIFIC STREETS	
SHEET NO. 1 OF 5	DATE: 10/19/54

**BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA  
AK-SAR-BEN FUTURE TRUST  
USE AGREEMENT**

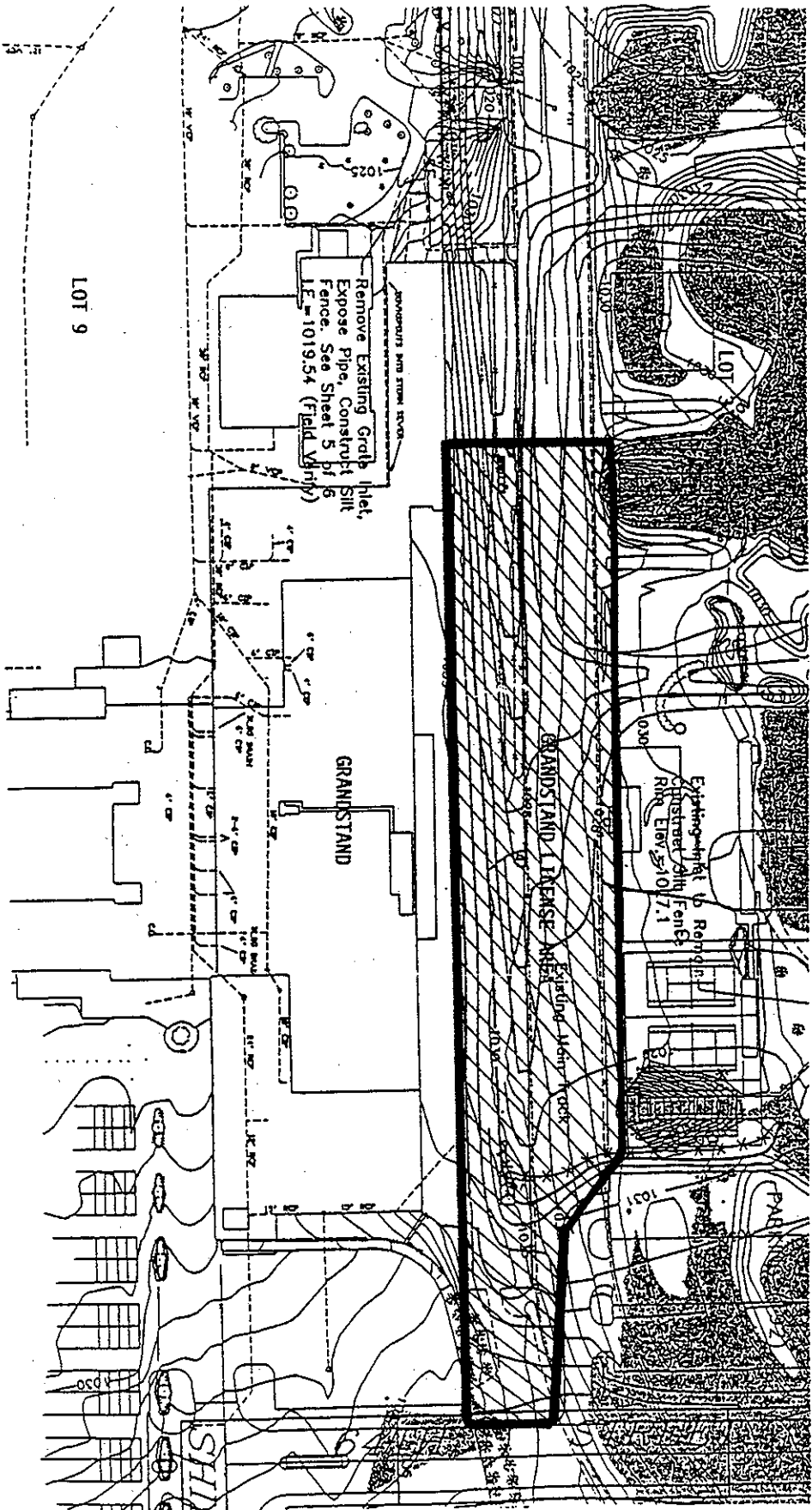
**Exhibit "C"  
Grandstand License Area**

Portions of Lots 3 and 9 of the Ak-Sar-Ben Business and Education Campus an addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

Grandstand License Area =



North  
↑



<p align="center"><b>GRADING &amp; STORM WATER POLLUTION PREVENTION PLAN</b></p>	
<p align="center"><b>Lamp, Iynearson &amp; Associates, Inc.</b></p>	
<p align="center">AK-SAR-BEN BUSINESS AND EDUCATION CAMPUS 67TH AND PACIFIC STREETS</p>	
<p align="center">DATE: 10/15/03 SCALE: AS SHOWN PROJECT NO.: 03-001</p>	
<p align="center">DRAWN BY: [Signature] CHECKED BY: [Signature] APPROVED BY: [Signature]</p>	