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Register of Deeds, Douglas County, NE
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(Space above reserved for Recorder of Deeds certification)

RESTRICTIVE COVENANT
FOR THE AKSARBEN VILLAGE OPEN SPACE PROPERTY

Return to:
Matthew D. Maser
Koley Jessen P.C., L.L.O.
1125 South 103rd Street, Suite 800
Omaha, NE 68124

©

✓ 078815

RESTRICTIVE COVENANT

THIS RESTRICTIVE COVENANT ("Covenant") is made and entered into this 18th day of May, 2009 (the "Effective Date"), by the AK-SAR-BEN FUTURE TRUST, a Nebraska non-profit corporation ("Future Trust").

W I T N E S S E T H :

WHEREAS, Future Trust and AKSARBEN APARTMENTS, L.L.C., a Nebraska limited liability company ("Broadmoor"), GEORGETOWN PROPERTIES, LLC, a Nebraska limited liability company ("Georgetown"), ZONE 5, LLC, a Nebraska limited liability company ("Zone 5"), NODDLE AV2, L.L.C. ("AV2"), NODDLE AV3, L.L.C. ("AV3"), NODDLE AV4, L.L.C. ("AV4"), NODDLE AV6, L.L.C. ("AV6"), and ZONE THREE COMMONS, L.L.C. ("Commons"), each a Nebraska limited liability company (AV2, AV3, AV4, AV6 and Commons shall be collectively referred to herein as "Noddle Entities"), W & S JOINT VENTURE, LLC, a Kansas limited liability company ("W&S"), QUADTECH, LLC, a Nebraska limited liability company ("QuadTech") and DLR GROUP, INC., a Nebraska corporation ("DLR") (Broadmoor, Georgetown, Zone 5, the Noddle Entities, W&S, QuadTech and DLR, collectively, the "Owners") own the various parcels of real estate comprising the Aksarben Village Development (the "Parcels");

WHEREAS, pursuant to the Redevelopment Agreement (as hereinafter defined) for the Aksarben Village Development, Future Trust is required to construct the Open Space Improvements (as hereinafter defined) and to secure the funding sources for the costs of constructing the Open Space Improvements;

WHEREAS, in order to assist Future Trust in fulfilling its obligation under the Redevelopment Agreement to fund the cost of constructing the Open Space Improvements, Future Trust has accepted donations from the Donors (as hereinafter defined);

WHEREAS, Future Trust has agreed to impose certain restrictions, covenants and conditions on the Open Space Property for the benefit of the current and future Owners of the Aksarben Village Development and the Donors and Beneficiaries (as hereinafter defined) who will assist Future Trust with funding the cost of constructing the Open Space Improvements;

WHEREAS, in furtherance of all of the foregoing, the Open Space Property shall be held subject to the following restrictions, covenants and conditions respecting certain matters relating to naming rights and signage, all of which are for the purpose of preserving the intended use of the Open Space Property and enhancing and protecting the value, desirability, and attractiveness of the Open Space Property and the Aksarben Village Development. These restrictions, covenants and conditions shall run with the land; and

WHEREAS, the fact that Future Trust will cease to exist (following the construction of the Open Space Property and Open Space Improvements, the transfer of the Open Space Property to the City of Omaha, the sale of the land Future Trust owns in the Aksarben Village Development and the satisfaction of certain other Future Trust obligations) will in no way impact the terms and conditions of this Covenant.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Definitions.

- (a) **“Open Space Property”** shall mean or refer to that certain real estate described on Exhibit “A” attached to this Covenant, or any subsequent administrative subdivision, replat, revision or amendment thereof.
- (b) **“Aksarben Village Development”** shall mean or refer to all the real estate described on Exhibit “B” attached to this Covenant, or any subsequent administrative subdivision, replat, revision or amendment thereof.
- (c) **“Open Space Improvements”** shall mean the various amenities or features to be located on the Open Space Property, including, but not limited to the following amenities or features identified on Exhibit “C” attached to this Covenant: (i) the Open Space Property, (as an integrated facility) including the Tower identified on Exhibit “C”, (ii) the Courtyard identified on Exhibit “C”, (iii) the Ring of Champions identified on Exhibit “C”, (iv) the Shelter identified on Exhibit “C”, (v) the pavilions, picnic shelters and walkway/garden area identified on Exhibit “C” or otherwise constructed on the Open Space Property (“Pavilion/Walkway/Garden Area”), (vi) the fountains identified on Exhibit “C” or otherwise constructed on the Open Space Property and (vii) the statues to be located at locations throughout the Open Space Property, as determined by Future Trust, in its sole discretion.
- (d) **“Operation Agreement”** shall mean or refer to that certain Construction, Operation and Maintenance Agreement for the Aksarben Village Open Space Property, to be executed by and among Future Trust, Aksarben Village Master Owners Association, Inc., a Nebraska non-profit corporation (the “Master Association”), Owners and the City of Omaha, Nebraska, a municipal corporation (the “City”) and recorded in the office of the Register of Deeds of Douglas County, Nebraska, which establishes certain easements, restrictions, covenants and conditions with respect to the Open Space Property.
- (e) **“Owner”** or **“Owners”** shall mean the entities defined in the initial paragraph of this Covenant as “Owners” and any other individual, partnership, joint venture, corporation, limited liability company, trust, unincorporated association, governmental agency or other business entity that acquires a fee ownership interest in any real property contained in the Aksarben Village Development.
- (f) **“Redevelopment Agreement”** shall mean that certain Redevelopment Agreement recorded in the office of the Register of Deeds of Douglas County, Nebraska, at Book 1214, Page 252 of Miscellaneous Records, as amended by that certain (i) First Amendment to Redevelopment Agreement dated December 28, 2000 and approved by Omaha City Council Ordinance No. 35410 on December 19, 2000, (ii) Second Amendment to Redevelopment Agreement approved by Omaha City Council Ordinance No. 35381 on November 7, 2000, (iii) Third Amendment to Redevelopment Agreement approved by Omaha City

Council Ordinance No. 32537 on November 14, 2006 and (iv) Fourth Amendment to Redevelopment Agreement approved by Omaha City Council Resolution No. 1160 dated as of August 26, 2008.

2. Naming Rights for Open Space Improvements.

- (a) Designation Rights. Future Trust shall have the unilateral right to designate the name of the Open Space Improvements, which amenities or features are located at designated locations throughout the Open Space Property as determined by Future Trust, the Beneficiary or the Donor (in their sole discretion).
- (b) Designated Names. Future Trust hereby designates the following names for the Open Space Improvements, which designated names shall continue in perpetuity, subject only to the limitations set forth in subsection (c) below:
 - (i) the Open Space Property as an integrated facility shall be named "Stinson Park" (the "Open Space Name");
 - (ii) the name of the Donor for the courtyard or paddock identified on Exhibit "C" shall be "McCarthy Group" or "McCarthy" (the "Courtyard Name");
 - (iii) the name of the Donor for the ring of champions identified on Exhibit "C" shall be "Knights of Aksarben Ring of Champions" (the "Ring of Champions Name");
 - (iv) the name of the Donor for the shelter identified on Exhibit "C" shall be "Bradford" (the "Shelter" Name"); and
 - (v) the name of the Donor for the Pavilion/Walkway/Garden Area identified on Exhibit "C" shall be "HDR" or "Henningson, Durham & Richardson" (the "Pavilion Name").
- (c) Perpetuity/Limitations. The names designated above shall continue in perpetuity and shall not be subject to change, subject to the following limitations:
 - (i) Upon the unanimous written consent of each of Future Trust, the City, the Master Association, the person or entity whom the Open Space Improvement is named after (the "Beneficiary"), and the person or entity that paid the proceeds associated with the right to name the Open Space Improvement (the "Donor"), the name of the Open Space Improvement may be changed;
 - (ii) In the event the Beneficiary is a named individual other than the Donor and such named individual is associated with conduct that results in a felony criminal conviction involving moral turpitude being obtained against such named individual, then the Donor shall have the unilateral right to designate a new name for the

Open Space Improvement. In the event the Beneficiary and the Donor are the same named individual and such named individual is associated with conduct that results in a felony criminal conviction involving moral turpitude being obtained against such named individual, then the Master Association shall have the unilateral right to designate a new name of the Open Space Improvement and the Master Association shall have the right to any proceeds from such new name;

- (iii) The name of the Beneficiary and the structures proclaiming or displaying the name of the Beneficiary (the "Structures") must be maintained as necessary to meet the Established Standard (defined in Section 3 below) for such Structure at all times at the expense of the Master Association; and
- (iv) In no event shall any of the Structures be damaged or removed and not repaired or replaced by the Master Association at the Established Standard for such Structure without the consent of the Beneficiary and Donor (which consent may be withheld in their sole and absolute discretion).

3. Signage. Upon designation of the name of each Open Space Improvement, Future Trust may, but shall not be obligated to, install the following signage:

- (a) the Open Space Name may be predominantly displayed on (i) a sign or plaque mounted to the Tower identified on Exhibit "C", (ii) the tower itself (in which case the size of the name will not be subject to the restrictions set forth in this Section 3), (iii) a freestanding sign located at the corner of 67th Street and Mercy Road and (iv) a freestanding sign located at the corner of Aksarben Drive and Mercy Road, each in a location, size and design to be determined by Future Trust, in its sole discretion;
- (b) the Courtyard Name may be predominantly displayed on a freestanding sign located in or on the perimeter of the Courtyard, or on a plaque or sign mounted on an improvement to be located in the Courtyard, in a location, size and design to be determined by Future Trust, in its sole discretion;
- (c) the Ring of Champions Name may be predominantly displayed on a freestanding sign located in or on the perimeter of the Ring of Champions, or on a plaque or sign mounted on an improvement to be located in the Ring of Champions, in a location, size and design to be determined by Future Trust, in its sole discretion;
- (d) the Shelter Name may be predominantly displayed on the front of the shelter identified on Exhibit "C" (the "Shelter"), or on a free standing sign located adjacent to the Shelter or in or on the perimeter of the Shelter in a location, size and design to be determined by Future Trust, in its sole discretion; and

- (e) the Pavilion Name may be predominantly displayed on a freestanding sign located in or around the Pavilion, or on a plaque or sign mounted to one or more of the structures located in the Pavilion/Walkway/Garden Area, each in a location, size and design to be determined by Future Trust, in its sole discretion.

All signage shall be designed, installed, modified, and maintained in accordance with plans and specifications approved by Future Trust. The maximum height for letters within the sign band shall be twenty four (24") inches and the maximum height for the freestanding sign shall be five (5') feet. Once each Structure displaying or proclaiming the Beneficiary's name is initially constructed, (the condition, appearance and design of such Structure upon completion of construction, the "Established Standard"), the Master Association will be required to maintain each Structure in accordance with the Established Standard for such Structure. In addition to the specific signage described in this Section 3, Future Trust shall have the right to install or authorize the Master Association to install additional signage on the Open Space Property, subject to applicable government rules, laws, ordinances, regulations and statutes regarding signage, which signage may include but not be limited to, identification signs for the Open Space Property, facility operational signs and temporary signs for Special Events (as defined in the Operating Agreement). Upon the dissolution of the Future Trust, the Master Association shall have the right to install additional signage on the Open Space Property, as deemed necessary by the Master Association in its sole and absolute discretion, subject to applicable government rules, laws, ordinances, regulations and statutes regarding signage.

4. Term. The term of this Covenant shall begin on the Effective Date and shall terminate seventy-five (75) years after the Effective Date; provided, however, this Covenant shall automatically renew for successive twenty (20) year terms so long as the Aksarben Village Development, or any portion thereof, remains a mixed use or commercial development. Upon the dissolution of Future Trust, the Master Association shall have all rights of Future Trust under this Covenant.

5. Default and Remedies. A default shall occur under this Covenant if any party (a "Defaulting Party") shall fail to perform any of the terms, provisions, covenants or conditions to be performed or complied with by the Defaulting Party pursuant to this Covenant and any such failure shall remain uncured for a period of thirty (30) days after Future Trust, the Master Association or any other Owner (collectively, the "Non-Defaulting Party") shall have served upon the Defaulting Party written notice of such failure. The cure period shall be extended in the event a default is of such character as reasonably to require more than thirty (30) days to cure and the Defaulting Party commences to cure such default within said thirty (30) day period and shall continuously and diligently prosecute such cure to completion after commencing such cure. Notwithstanding the foregoing, if the failure of the Defaulting Party relates to a matter which is of an emergency nature involving immediate threat of damage or injury to persons or property then (i) the Non-Defaulting Party, at its option, may perform any such term, provision, covenant, or condition, or make any such payment required to cure such emergency, provided that the Non-Defaulting Party provides the Defaulting Party with notice of such failure within 48 hours after the Non-Defaulting Party discovers the same, (ii) the Defaulting Party shall promptly reimburse the Non-Defaulting Party for all such expenses and costs incurred and (iii) the Non-Defaulting Party shall not be liable or responsible for any loss or damage resulting to the Defaulting Party or anyone holding under or through the Defaulting Party on account of such cure. In the event of a breach, or attempted or threatened breach, of any terms, provisions, covenants or conditions of this Covenant, the Non-Defaulting Party shall be entitled forthwith to

full and adequate relief by injunction, damages, and all other available legal and equitable remedies from the consequences of such breach.

6. Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice hereunder by like notice to the other party. The notice addresses of the parties are as follows:

Future Trust: Ak-Sar-Ben Future Trust
Attention: Mr. Ken Stinson
3555 Farnam Street
Omaha, Nebraska 68131

With copies to: Koley Jessen P.C., L.L.O.
Attention: Matthew D. Maser
One Pacific Place, Suite 800
1125 South 103 Street
Omaha, Nebraska 68124-1079

and

McCarthy Capital Corporation
Attention: Dana C. Bradford
First National Tower, Suite 3800
1601 Dodge Street
Omaha, Nebraska 68102

Master Association: Aksarben Village Master Owners Association, Inc.
c/o Koley Jessen P.C., L.L.O.
Attention: Kendra J. Ringenberg
One Pacific Place, Suite 800
1125 South 103 Street
Omaha, Nebraska 68124-1079

7. Severability. If any term or condition of this Covenant shall, in any case, be invalid or unenforceable under applicable law, then the same and all other terms and conditions of this Covenant shall, in all other cases, not be affected thereby, and all such terms and conditions shall be valid and enforceable to the fullest extent permitted by applicable law.

8. Governing Law. This Covenant shall be governed by and construed in accordance with the laws of the State of Nebraska, without giving effect to the conflict of law principles thereof.

9. Modification. Except as expressly provided herein, this Covenant may not be modified or amended except by a writing executed and delivered by the parties to this Covenant; provided, however, that no such modification or amendment shall change the designated name of an Open Space Improvement unless the Beneficiary and Donor have joined in the execution of such documents, except as expressly permitted in this Covenant.

10. Waiver. No waiver of, acquiescence in or consent to any breach or default of any term or condition hereof shall constitute or be construed as a waiver of, acquiescence in or consent to any other, further or succeeding breach or default of the same or any other term or condition.

11. Binding Effect. All of the limitations, covenants, conditions, easements, and restrictions contained herein shall attach to and run with the Parcels and shall benefit or be binding upon (as applicable) the successors and assigns of the respective Owners, Future Trust and the Master Association. This Covenant and all the terms, covenants and conditions herein contained shall be enforceable as equitable servitudes in favor of the Parcels and any portions thereof.

12. Rights of Parties. Nothing in this Covenant, whether express or implied, is intended to confer any benefit, right or remedy under or by reason of this Covenant on any person or entity other than the parties to this Covenant and their respective successors and permitted assigns; provided, however, that the Owners, Master Association, Beneficiaries and Donors shall be deemed to be third party beneficiaries with regard to Sections 1, 2, 3 and 5 and entitled to bring actions to enforce the provisions of Sections 1, 2, 3 and 5 as if the Owners, Master Association, Beneficiaries and Donors were parties to this Covenant.

13. Incorporation of Recitals and Exhibits. The recitals to this Covenant, and the exhibits attached hereto and referred to herein, are hereby incorporated into and are a part of this Covenant.

**[Remainder of Page Intentionally Left Blank;
Signature Page to Follow.]**

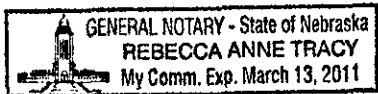
IN WITNESS WHEREOF, the parties hereto have caused this Covenant to be duly executed as of the date first written above.

AK-SAR-BEN FUTURE TRUST

By: Terry L. Moore
Its: Secretary

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that the foregoing Restrictive Covenant for the Aksarben Village Open Space Property was acknowledged before me this 18th day of May, 2009 by Terry L. Moore, Secretary ✓ of Ak-Sar-Ben Future Trust, a Nebraska non-profit corporation, on behalf of said corporation.



Rebecca Anne Tracy
Notary Public

My commission expires on March 13, 2011.

Exhibit A

Legal Description of Open Space Property

55-00231

Lot 9, Aksarben Village, a subdivision as surveyed, platted and recorded in the City of Omaha, Douglas County, Nebraska and that certain adjacent parcel described as follows:

NESW
SESW
NWSE
SWSE
25-15-12

That part of the Nebraska Highway No. 38 (West Center Road) right of way in the East Half of the Southwest Quarter and the West Half of the Southeast Quarter, all in Section 25, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, described as follows:

Beginning at the southwest corner of Lot 9, Aksarben Village, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska;

Thence along a curve to the left (having a radius of 306.31 feet and a long chord bearing South 64° 49' 20" East for (bearings referenced to the Final Plat of Ak-Sar-Ben Village) 181.15 feet) for an arc length of 183.90 feet along said north right of way line;

Thence South 89° 58' 23" East for 110.11 feet continuing along said north right of way line;

Thence North 87° 15' 04" East for 182.62 feet continuing along said north right of way line;

Thence North 00° 15' 21" West for 8.06 feet continuing along said north right of way line;

Thence North 89° 56' 42" East for 28.17 feet continuing along said north right of way line;

Thence South 28° 10' 47" East for 31.24 feet;

Thence along a curve to the right (having a radius of 152.00 feet and a long chord bearing South 26° 18' 53" East for 9.89 feet) for an arc length of 9.89 feet;

Thence South 24° 16' 48" West for 25.13 feet;

Thence along a curve to the left (having a radius of 1476.00 feet and a long chord bearing South 66° 20' 40" West for 277.74 feet) for an arc length of 278.16 feet;

Thence South 62° 56' 44" West 217.10 feet;

Thence South 63° 04' 55" West for 95.57 feet;

Thence North 24° 22' 47" West for 301.30 feet to the extended south right of way line of Mercy Street;

Thence North 61° 52' 10" East for 190.13 feet along said extended line to the Point of Beginning.

Exhibit B

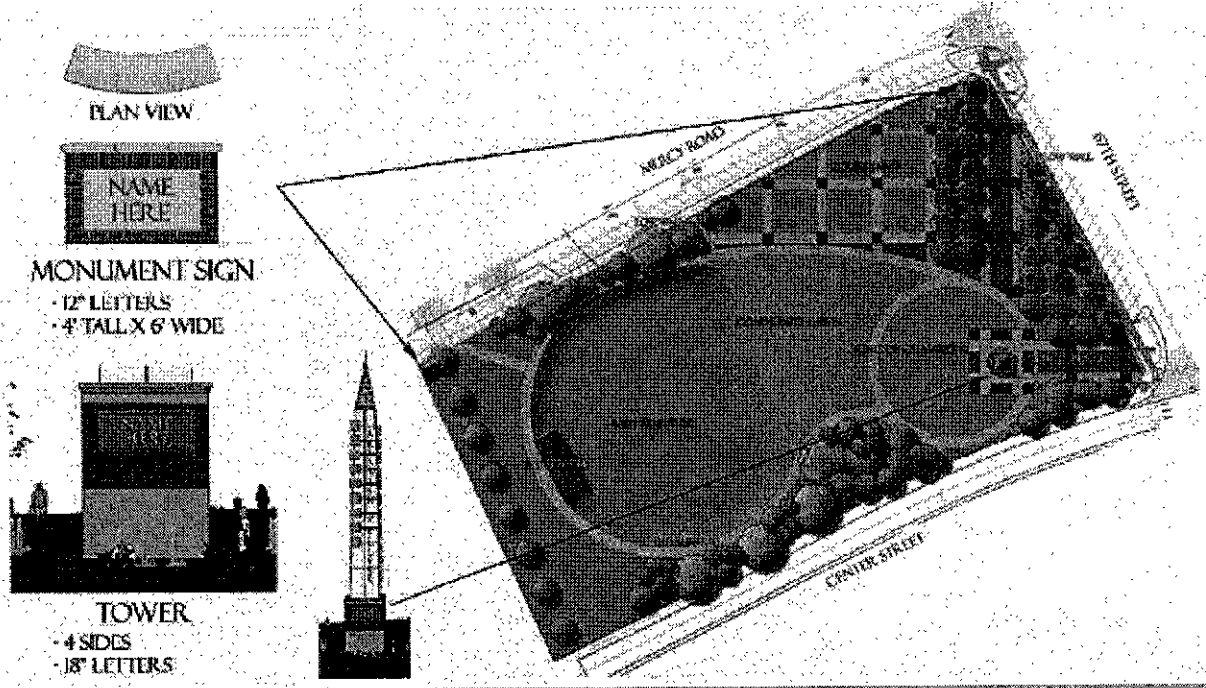
Legal Description of Aksarben Village Development


- 5 Lots One (1), Two (2), Six (6), Nine (9) and Fourteen (14), Aksarben Village, an addition to the City of Omaha, Douglas County, Nebraska. 55-00231
- 2 Lots One (1) and Two (2) of the Aksarben Village Replat 2, an addition to the City of Omaha, Douglas County, Nebraska. 55-00233
- 2 Lots One (1) and Two (2) of the Aksarben Village Replat 3, an addition to the City of Omaha, Douglas County, Nebraska. 55-00234
- 2 Lots One (1) and Two (2) of the Aksarben Village Replat 4, an addition to the City of Omaha, Douglas County, Nebraska. 55-00235
- 2 Lots One (1) and Two (2) of the Aksarben Village Replat 5, an addition to the City of Omaha, Douglas County, Nebraska. 55-00236
- 4 Lots One (1), Two (2), Three (3) and Four (4) of the Aksarben Village Replat 6, an addition to the City of Omaha, Douglas County, Nebraska. 55-00239
- 1 Lot One (1) of the Aksarben Village Replat 7, an addition to the City of Omaha, Douglas County, Nebraska. 55-00237
- 6 Lots One (1), Two (2), Three (3), Four (4), Five (5) and Six (6) of the Aksarben Village Replat 8, an addition to the City of Omaha, Douglas County, Nebraska. 55-00238
- 2 Lots One (1), Two (2) and Three (3) of the Aksarben Village Replat 9, an addition to the City of Omaha, Douglas County, Nebraska. 55-00241

Exhibit C

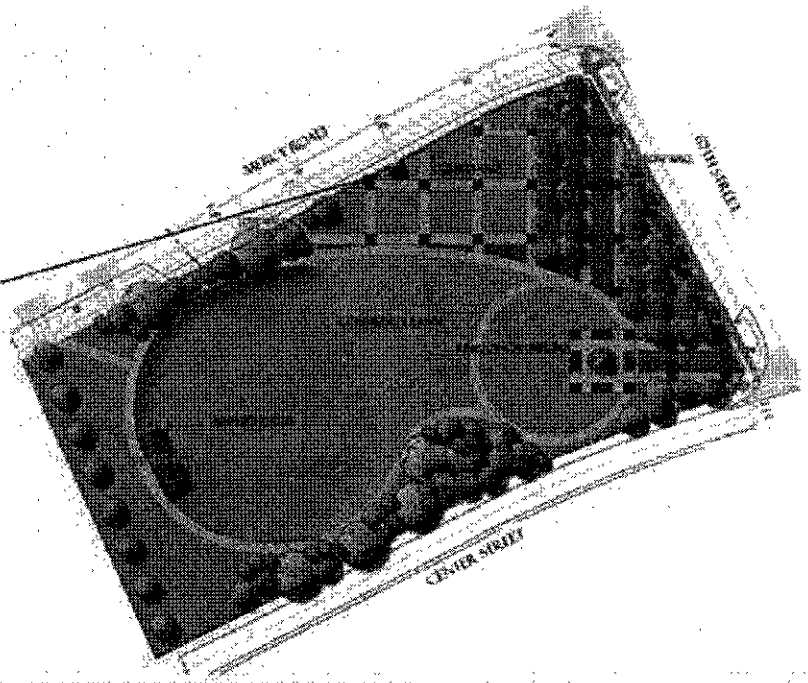
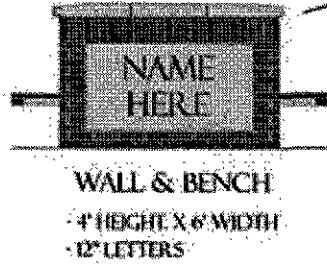
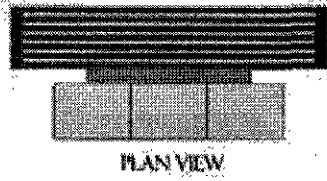
Open Space Improvements

Tower



 NAMED BY THE CITY OF SAN JOSE
NAMING EXHIBIT
AKSARBEN PARK
PARK NAME

Courtyard



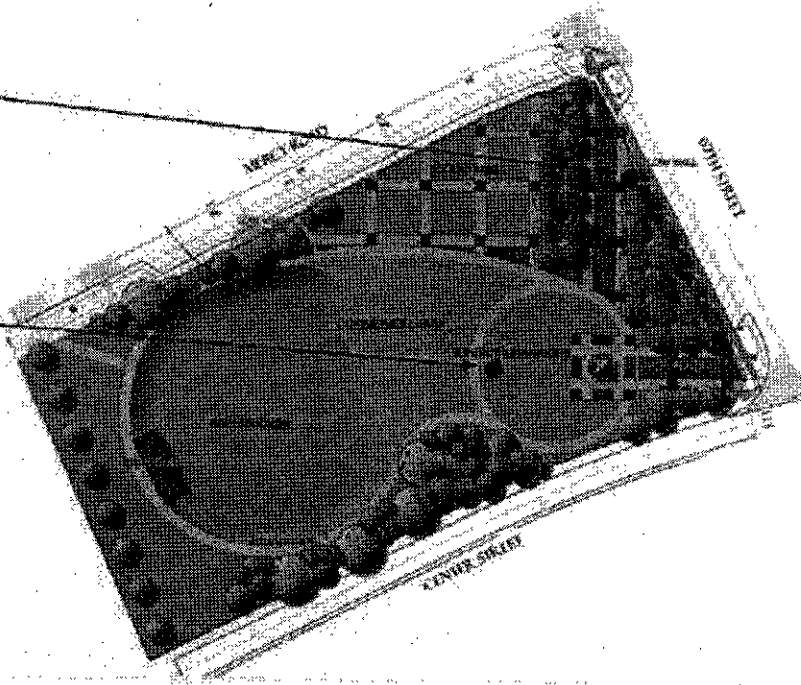
Ring of Champions

GROUND PLAQUE

RECOGNITION OF
THE AKSARBEN
FUTURE TRUSTEES,
BOARD MEMBERS,
AND OTHER
CONTRIBUTORS

GROUND PLAQUE

RECOGNITION OF
THE KNIGHTS OF
AKSARBEN



Shelter

EAST ELEVATION

SOUTH ELEVATION

FLOOR PLAN

AKSARBEN VILLAGE AMPHITHEATER

FINISHING BEAM METAL COLOR TO MATCH ADJACENT STRUCTURES

BOUNTING METAL JOIST PAINTED

EXTENDED JOIST TAILS

PAINTED STEEL ROUND COLUMN

BRICK FACE

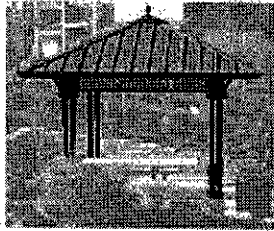
CONCRETE DECK

LIGHT FIXTURES REFER ANSAR BEN VILLAGE 006

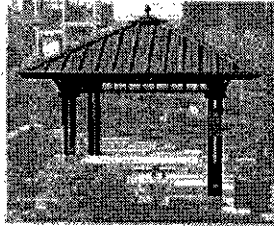
Kiewit

12.01.06

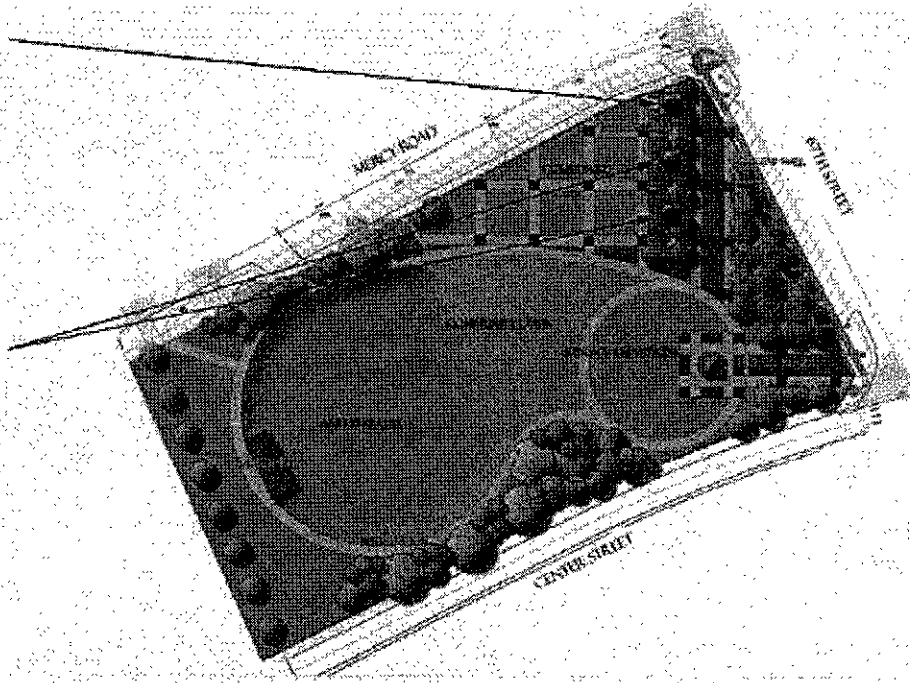
Pavilion/Walkway/Garden Area



NORTH PAVILION
- 12" LETTERS
- 10-15 FEET LONG



MIDDLE & SOUTH
PAVILIONS
- POST MOUNTED
NAME PLAQUE



 NAMING EXHIBIT
AKERSBEN PARK

PAVILIONS