



MISC 2014069229



SEP 04 2014 13:34 P 9

Fee amount: 58.00  
FB: 23-03916  
COMP: MS

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
09/04/2014 13:34:09.00



2014069229

After recording, return to:  
Robert G. Dailey  
McGrath North Mullin & Kratz, PC LLO  
1601 Dodge Street, Suite 3700  
Omaha, NE 68102

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS OF BLUEBARN HILL REPLAT 1, AN ADDITION TO THE  
CITY OF OMAHA, DOUGLAS COUNTY, NEBRASKA**

THIS DECLARATION, dated July 14, 2014, is made by CHICKS & BRICKS, LLC, a Nebraska limited liability company, hereinafter referred to as "Declarant".

PRELIMINARY STATEMENT

Declarant is the owner of real property in Douglas County, Nebraska described as follows:

Lot 1 and Lot 2, Bluebarn Hill Replat 1, an Addition to the City of Omaha, Douglas County, Nebraska.

Such lots are herein referred to collectively as the "Lots" and individually as a Lot, and are shown on the Administrative Subdivision (the "Plat") for Bluebarn Hill Replat 1 attached hereto as Exhibit A. Lot 1, Bluebarn Hill Replat 1, shall sometimes hereinafter be individually referred to as "Lot 1" and Lot 2, Bluebarn Hill Replat 1 may sometimes be individually referred to as "Lot 2". As used herein, the term "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation.

Declarant desires to provide for the preservation of the values and amenities of the Lots and for the maintenance of the character and integrity of the Lots.

NOW, THEREFORE, Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots. These restrictions, covenants, conditions and easements shall run with the Lots and shall be binding upon all parties having or acquiring any right, title or interest in each of the Lots, or any part thereof, as is more fully described herein. The Lots are, and shall be, subject to all and each of the following conditions and other terms:

**ARTICLE I.**  
**RESTRICTIONS AND COVENANTS**

1. Lot 1 shall be used exclusively for the operation of a live performance theater and no other use.

2. No building, fence, wall, driveway, patio, patio enclosure, swimming pool, basketball backboard, dog house, poolhouse, flag pole, or other external improvement, including landscaping, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any of the Lots, nor shall any grading or excavation for any Improvement be commenced, except for Improvements which have been approved by Declarant as follows:

(a) An Owner desiring to erect an Improvement on any Lot shall deliver two sets of construction plans, detailed landscaping plans, and site plans to Declarant (herein collectively referred to as the "Plans"). The Plans shall include a description of the type, quality, color and use of materials proposed for the exterior of such Improvement.

(b) Declarant shall review such plans in light of the conditions and restrictions in this Declaration. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Declarant in its sole discretion to promote the harmony of the external design of the other improvements constructed within Bluebarn Hill and to protect the value, character and quality of all Lots in a manner consistent with this Declaration. If Declarant determines that the external design and location of the proposed Improvement does not conform with the standards or requirements of this Declaration as determined by Declarant, does not conform with the surrounding improvements and topography or will not protect and enhance the integrity and character of all the Lots and neighboring lots, if any, as a quality community, Declarant may refuse approval of the proposed Improvement in Declarant's sole discretion.

(c) Written notice of any approval of a proposed Improvement shall be mailed to the Owner upon submission of the plans. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the plans. If notice of approval is not mailed within such period, the proposed Improvement shall be deemed disapproved by Declarant.

(d) No Lot Owner, or combination of Lot Owners, or other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of the Declarant with respect to the approval or disapproval of any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

If Declarant determines that the proposed Improvement will not protect and enhance the integrity and character of all of the Lots, Declarant may refuse approval of the proposed Improvement.

3. The parties hereto acknowledge that a portion of Lot 1, identified as "Green in the City" on the drawing attached hereto as Exhibit B, is intended to be used solely as a landscaped area. No buildings or structures of any kind, except as approved by Declarant in writing, will be allowed in the landscaped area. The landscaped area will be landscaped in accordance with a

plan approved by Declarant pursuant to the same procedures as set forth in Article I.2 above. Upon completion of the installation of landscaping in accordance with the plan approved by Declarant, the Owner of Lot 1 shall maintain the landscaping area in the Green in the City area in accordance with the original plans therefore with no changes made to the same except as approved by Declarant in writing.

4. No advertising signs, for sale signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on Lot 1; provided however advertising signs and billboards shall be permitted on Lot 2. No Lot be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof.

5. No exterior television or radio antenna, satellite receiving disc, or exterior solar heating or cooling device of any type shall be permitted on Lot 1.

6. No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on the Lot except during actual construction operations, and then only in as neat and inconspicuous a manner as possible.

7. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure) for more than fourteen (14) days within a calendar year. No motor vehicle may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No vehicle of any kind and no boat, camper, trailer, auto-drawn or mounted trailer, mobile home, truck or any other vehicle may be parked overnight on the street. No grading or excavating equipment, tractors or semitractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this Article I, Section 6 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of Improvements during the period of construction.

8. No incinerator, trash burner, fuel tank, tree house, tool shed, windmill or similar structure shall be permitted on any Lot. No garbage or trash can or container shall be permitted outside, except for any restaurant or coffee shop located on Lot 2 and except for trash pickup purposes. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubbish or cutting shall be deposited on any street, road or Lot. No clothes line shall be permitted outside of any dwelling at any time.

9. Exterior lighting installed on Lot 1 shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots and the location, type and direction of the same shall first be approved by Declarant.

10. No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line unless otherwise approved by Declarant. No fence may be installed without the prior approval of the Declarant. In all events, installed fences must comply with applicable set back requirements imposed by the City of Omaha.

11. Construction of any Improvement shall be completed within 2 years from the date of commencement of excavation or construction of the Improvement. Grading plans must be

submitted to and approved by Declarant prior to commencement of Improvements to any Lot. Declarant shall review the grading plans in light of commercially recognized development and engineering standards. During construction, all adjoining streets and sidewalks will be kept free and clear of dirt, mud and refuse at all times and Owner and all contractors working on any Improvement shall comply with all national, state and local laws, rules and regulations regarding clean air and water.

12. All driveways and approaches between the sidewalk and curb on Lot 1 shall be constructed of concrete or brick. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete or brick. No asphalt overlay of driveway approaches will be permitted.

13. Any exterior air conditioning condenser unit shall be placed in the rear yard or any side yards so as not to be visible from public view. Other than professionally landscaped materials, no grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waste materials, and no vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches.

14. No temporary structure of any character, and no carport, trailer, modular home, open basement, storage or tool shed, outbuilding or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently.

15. All utility service lines from each lot line to a dwelling or other Improvement shall be underground.

16. No tree situated upon Lot 1 may be moved, removed, cut or destroyed unless complete plans describing the exact tree or trees to be moved, removed, cut or destroyed, and the reason therefore, shall have been submitted to and approved in writing by Declarant in accordance with Section 2 of this Article I. For purposes of this Section, "tree" shall mean and refer to a tree of any type with a diameter larger than one inch (1") at a height of five (5) feet. Each Owner shall repair and maintain in good condition any and all trees, shrubs, and bushes placed in and along the public sidewalk easement area on or adjacent to that Owner's Lot. Should any of such trees, shrubs or bushes be removed, die, or deteriorate into a poor condition, the Owner of the Lot shall, at its expense, replace such trees, bushes or shrubs with trees, bushes or shrubs of the same or similar quality. In the event such replacement does not occur upon thirty (30) days written notice from the Declarant, then the Declarant may cause such replacement to occur and charge the Owner of the Lot for such replacement as allowed hereinafter.

17. All Lots shall be kept in a neat and clean manner at all times and no offensive or unsightly appearance shall be maintained or allowed to exist upon any of the Lots, nor shall any trash, ashes or other refuse be thrown, placed or dumped on any Lot, nor shall anything ever be done which may become an annoyance or nuisance in the neighborhood.

## **ARTICLE II. EASEMENTS AND RESTRICTIONS**

1. Declarant hereby grants to Lot 2 and all future Owners of Lot 2 an air, light and unobstructed view easement over and across Lot 1 according to the following terms:

- (a) No portion of any building, improvement, structure or any type of equipment or device shall be erected on Lot 1 that will exceed the height limit set forth in this Subsection (a). Specifically, all portions of any building, improvement, structure or any type of equipment or device to be erected on the East 170 feet of Lot 1 shall be confined vertically by a sloping plane with a constant north edge lying along the North line of Lot 1 at an elevation of 1116.58 feet and sloping downward to a line lying along the Southernmost line of Lot 1 at an elevation of 1109.58 feet. The vertical datum herein is referenced to the North rim of a sanitary sewer manhole located 50 feet North of the Northeast corner of Lot 1, and the elevation of said North rim is herein understood to be 1077.64 feet (February 2014). Any obstruction built on Lot 1 above the height restriction in the first sentence of this Subsection (a) shall be considered an unauthorized interference with the easement rights granted herein and shall be removed on demand at the expense of the Owner of Lot 1, and its heirs, successors and assigns.
- (b) No heating, ventilating or air-conditioning equipment, vents, communication devices or any other equipment whatsoever may be located on the roof of any building located on Lot 1.
- (c) The roof of any structure located on Lot 1 shall be designed, built and maintained as a decorative or green roof, and the design of same must first be approved by Declarant in writing before any construction work may be commenced on Lot 1. The roof of any building on Lot 1 shall be maintained in a neat and orderly condition at all times in compliance with the original design for said roof as approved by Declarant, and no alterations to the design and look of said roof may be altered without Declarant's written approval, which may be withheld in Declarant's sole discretion.

2. Declarant expects that a commercial, retail and/or residential development and related amenities and facilities (including restaurants) will be constructed, operated and maintained on Lot 2 and share common boundaries with Lot 1. Purchasers and Owners of Lot 1 are hereby put on notice that: (i) some of the activities on Lot 2 will be of a commercial nature and not residential; (ii) activities conducted on Lot 2 will occur at all times during the day, early in the morning, late in the evening and sometimes 24 hours per day, 365 days per year; (iii) normal operations and maintenance of Lot 2 will involve businesses that may be noisy, emit light during the evening and early morning hours, involve normal commercial vehicular traffic as well as the traffic of commercial vehicles for maintenance, deliveries, trash pickup and snow removal; (iv) commercial grade lighting on high-rise poles on Lot 2 may emit light onto Lot 1; and (v) typical recreational activities on Lot 2 thereon may result in noise and traffic affecting Lot 1. The Owner of Lot 1 takes title to Lot 1 subject to all the preceding activities and events.

3. The Declarant hereby declares, grants and establishes easements on Lot 1 in favor of all Owners of Lot 2 for intrusion of light, noise and odors during all hours of the day and night. The easements granted in this Article are for the use and benefit of the owner or owners of Lot 2 and their successors and assigns, and any tenant, licensee, permittee, visitor, customer or invitee of the Owners of Lot 2 (collectively, the "Grantees"). Without limiting the foregoing, Grantees shall include any person or entity which contracts to manage any activities on Lot 2.

4. None of the Grantees shall have any liability, obligation or expense to any Owner of Lot 1 with respect to any nuisance occurring as a result of operations occurring on Lot 2. By accepting title to Lot 1, each Owner hereby covenants that it will not sue any of the Grantees or

for any personal or bodily injury which results directly or indirectly from any nuisance, noise, odor or light emanating from Lot 2.

5. The Owners or lessees of Lot 2 may from time to time change the configuration and layout of Lot 2 and no Owner of Lot 1 shall have any right to object to, or in any manner limit changes to Lot 2. Further, the Owner of Lot 1 shall not have the right to object to any activity, plan or development on Lot 2.

6. No permanent buildings, trees, retaining walls or loose rock walls shall be placed in any easementways located on Lot 1, but the same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforementioned uses or rights granted herein.

### **ARTICLE III. SUBDIVISION OF LOT 2**

It is hereby acknowledged that Lot 2 may, subsequent to the recording of this Declaration, be converted into a condominium regime or regimes containing multiple units constituting separately owned parcels, and may contain both residential and commercial units. Declarant shall not be obligated to convert Lot 2 into a condominium regime. In the event Lot 2 is converted into a condominium regime or regimes, each unit owner within said regime or regimes shall be the beneficiary of all of the easements, covenants and restrictions contained herein; provided, however, Declarant shall continue to retain all of the rights granted to Declarant herein.

### **ARTICLE IV. GENERAL PROVISIONS**

1. Except for the authority and powers specifically granted to the Declarant, the Declarant or any owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all easements, reservations, restrictions, conditions, obligations and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. The covenants and restrictions of this Declaration shall run with and bind the land for a period of 50 years from and after the date this Declaration is recorded. This Declaration may be amended by Declarant, or any person, firm, corporation, partnership, or entity designated in writing by Declarant, in any manner which it may determine in its full and absolute discretion for a period of 20 years from the date hereof. Thereafter this Declaration may be only amended by an instrument signed by all of the Owners of the Lots covered by this Declaration, and if Lot 2 is converted into multiple condominium units (as described in Article III above), each condominium unit owner shall be deemed a separate Owner.

3. By written consent of the Declarant, for a period of 20 years from the date hereof, any or all of the covenants, conditions, restrictions, and easements as they apply to the Lots may be waived, modified, or amended for any Lot or Lots, in any manner, for such a time period, and on such conditions, if any, which the Declarant may determine in its full and absolute discretion. Declarant's decision on any requested waiver, modification or amendment shall be final and there shall be no right of appeal of Declarant's decision. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to


Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any requested waiver, modification, or amendment.

4. Declarant or its successor or assign may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant or Declarant may assign its rights as Declarant hereunder to any other person or entity.

5. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.


14<sup>th</sup> IN WITNESS WHEREOF, Declarant has caused these presents to be executed this day of July, 2014.

CHICKS & BRICKS, LLC, a Nebraska limited liability company

By:   
Nancy Mammel, Manager

STATE OF New Mexico )  
COUNTY OF SANTA FE )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of July, 2014, by Nancy Mammel, Manager of Chicks & Bricks, LLC, a Nebraska limited liability company, on behalf of Chicks & Bricks, LLC.

  
Notary Public



OFFICIAL SEAL  
JOEL VALENCIA  
NOTARY PUBLIC-State of New Mexico  
My COMMISSION Expires 01/31/2016

EXHIBIT A

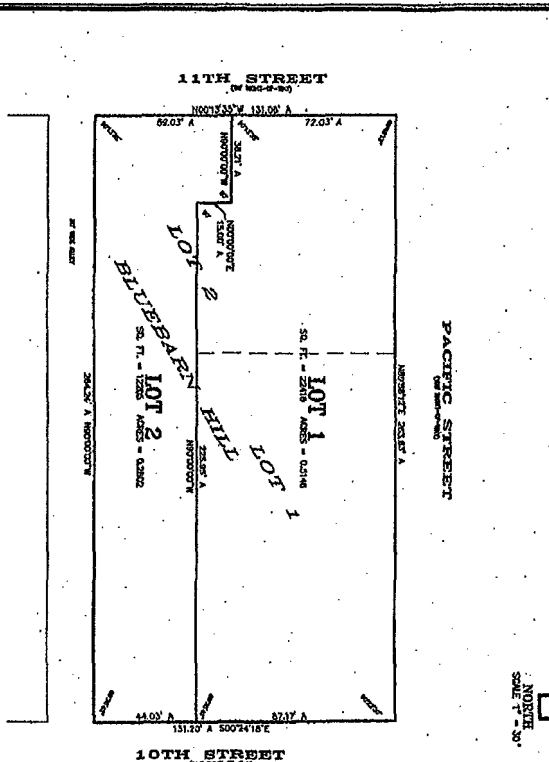
REC: 2014/02  
 JAN 24 2014 08:43 P 6

DOUGLAS COUNTY  
 BUSINESS REVIEW

PLANNING & ZONING DEPARTMENT

APPROVED FOR REVISION

2014/01/29/2



↑ NORTH  
 SCALE 1" = 30'

ADMINISTRATIVE SUBDIVISION  
 BLUEBARN HILL REPLAT 1  
 LOTS 1 AND 2,  
 BEING A REPLAT OF  
 BLUEBARN HILL,  
 DOUGLAS COUNTY, NEBRASKA.

OWNER'S CERTIFICATION  
 I HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS INSTRUMENT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT I AM THE OWNER OF THE PROPERTY DESCRIBED IN THE INSTRUMENT AND HAVE NOT BEEN ADVISED BY ANY OTHER PERSON THAT THE PROPERTY IS SUBJECT TO ANY OTHER CLAIM OR INTEREST.

DATE: 02/14  
 BY: [Signature]  
 AS: OWNER

ADDITIONAL ENDORSEMENT OF INSTRUMENT  
 THE FOREGOING INSTRUMENT WAS ADMINISTERED BEFORE ME IN THE CITY OF OMAHA, NEBRASKA, ON BEHALF OF THE ABOVE-NAMED PARTY BY [Signature] AT THE OFFICE OF THE COMMISSIONER OF RECORDS.

DATE: 02/14  
 BY: [Signature]

COUNTY TREASURER'S CERTIFICATE  
 THIS IS TO CERTIFY THAT I HAVE RECEIVED AS DUES, TAXES AND FEES OF RECORD AGAINST THE PROPERTY DESCRIBED IN THE INSTRUMENTS REFERENCED AND DEDUCTED IN THE PLAT AS SHOWN IN THE RECORDS OF THIS OFFICE.

DATED THIS 9th DAY OF FEBRUARY 2014.  
 COUNTY TREASURER: [Signature]

APPROVAL OF THE CITY PLANNING DIRECTOR  
 APPROVED AS A SUBDIVISION OF [Signature]  
 IN COMPLIANCE WITH SECTION 21-101.03, CHURCH, PARSONS & COMPANY, WITH PLAT REQUIREMENTS WARD FOR SECTION 21-101.03, CHURCH, PARSONS & COMPANY, WITH PLAT REQUIREMENTS WARD

DATE: [Signature]



SURVEYOR'S CERTIFICATE  
 I, LARRY A. VAN RUITEL, A SURVEYOR LICENSED IN THE STATE OF NEBRASKA, DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS INSTRUMENT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT I AM THE SURVEYOR OF THE PROPERTY DESCRIBED IN THE INSTRUMENT AND HAVE NOT BEEN ADVISED BY ANY OTHER PERSON THAT THE PROPERTY IS SUBJECT TO ANY OTHER CLAIM OR INTEREST.

DATE: 02/14  
 BY: [Signature]



<p>PROJECT NO: EC4121264</p>																
<p>REVISIONS</p> <table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	NO.	DATE	DESCRIPTION													<p>EBERHART &amp; GERTIN &amp; ASSOCIATES</p> <p>2000 PAVILION DRIVE              SUITE 100              OMAHA, NE 68102</p> <p>• ENGINEERING              • PLANNING              • LAND SURVEYING</p>
NO.	DATE	DESCRIPTION														
<p>DATE: 1/27/14</p> <p>DESIGNED BY: [Signature]</p> <p>CHECKED BY: [Signature]</p> <p>DATE: 1/27/14</p>	<p>BLUEBARN HILL REPLAT 1              ADMINISTRATIVE SUBDIVISION              S.W. CORNER OF 10TH &amp; PACIFIC STREETS              OMAHA, NEBRASKA</p>															
<p>SHEET NO. 43C31</p> <p>1 OF 1</p>	<p>DATE: 02-30-2014</p>															



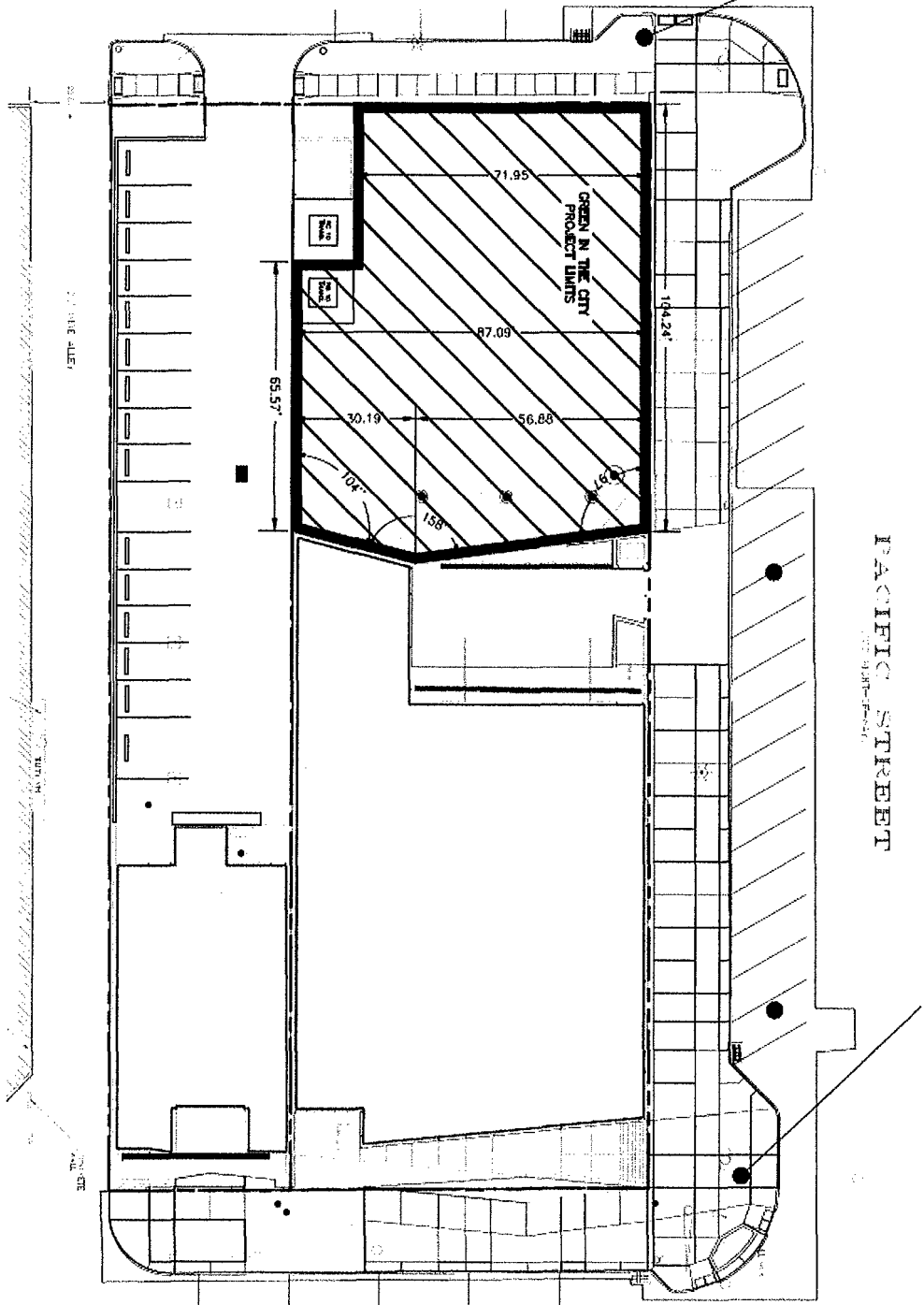


EXHIBIT B