



MISC 2006006104



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Filed: AS RECEIVED

Upon recording return to:

Rich Rosenblatt  
Kutak Rock LLP  
1650 Farnam Street  
Omaha, NE 68102-2186

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1/18/2006 14:38:37.06



2006006104

**FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION  
OF COVENANTS AND RESTRICTIONS**

**THIS FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION  
OF COVENANTS AND RESTRICTIONS** (this "Amendment") is granted as of January 13, 2006 by the undersigned individuals in their capacity as duly appointed members of the Architectural Review Committee of the Ak-Sar-Ben Business & Education Campus.

**PRELIMINARY STATEMENTS**

Ak-Sar-Ben Future Trust, a Nebraska nonprofit corporation ("Future Trust"), First Data Resources Inc., a Delaware corporation ("FDR"), the Board of Regents of the University of Nebraska, a body corporate existing under the laws of the state of Nebraska (the "University"), Sisters of Mercy of the Americas Regional Community of Omaha, a Nebraska nonprofit corporation ("Sisters of Mercy"), the College of Saint Mary, a Nebraska nonprofit corporation (the "College") and Omaha Public Power District, a public corporation ("OPPD") executed that certain Amended and Restated Declaration of Covenants and Restrictions for the Ak-Sar-Ben Business & Education Campus (the "Covenants") dated June 29, 2004 and filed as Instrument number 2004088370 in the Miscellaneous records of the Douglas County Register of Deeds Office, Douglas County, Nebraska and re-recorded as Instrument number 2004090157 in the Miscellaneous records of the Douglas County Register of Deeds Office, Douglas County, Nebraska pertaining to the real property legally described in Exhibit A attached hereto. Capitalized terms used in this Amendment but not defined in this Amendment shall have the meanings assigned to them in the Covenants.

The University and Future Trust have entered into a Master Agreement dated October 28, 2005 (the "Master Agreement"). The Master Agreement in part provides for (i) the University to

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transfer and convey to Future Trust a portion of the University Property described as Lot 1, Ak-Sar-Ben Business & Education Campus Replat 7, Douglas County, Nebraska (the "Future Trust Target"), and (ii) Future Trust to transfer and convey to the University a portion of the Future Trust Property described as Lot 1, Ak-Sar-Ben Business & Education Campus Replat 8, Douglas County, Nebraska, (the "University Target"). The transaction described in the preceding sentence is referred to as the "Exchange" herein.

Section 1(b) of the Covenants provides as follows:

"(b) The University Property. The University Property shall only be used for the construction and operation by the University for: (i) educational purposes of the "Peter Kiewit Institute of Information Science, Technology and Engineering" (the "**Institute**"), together with related office space, laboratories, research and development facilities and computer facilities, (ii) other University purposes and facilities, including, but not limited to, academic buildings, student housing and recreational facilities, athletic fields, maintenance facilities, motor vehicle pool facilities (as such term is defined in Section 3(d)(iv) below), surface and multi-level garage parking and access roadways for motor vehicles (including shuttle busses, trams or other services providing conveyance in the Ak-Sar-Ben Property and to other University campuses and facilities), pedestrian walkways, pedestrian links (whether open or enclosed) between buildings and between buildings and parking facilities both inside and outside the University Property, and uses ordinarily incident to the operation of a permitted principal use."

Section 1(c) of the Covenants provides as follows:

"(c) The Future Trust Property. The Future Trust Property may be used in accordance with applicable zoning and land use regulations and ordinances imposed by the City of Omaha, for any of the use types permitted for the Future Trust property pursuant to the Site Development Regulations, provided that such uses are in harmony with the planned urban village environment, except for the following uses: cemetery, major utility services, or campground. The parties hereto acknowledge that it is the intent of Future Trust to seek an amendment to the Site Development Regulations that would permit additional uses of the Future Trust Property. In the event that the Site Development Regulations are amended, the Future Trust Property may be used for any of the use types permitted for mixed use districts under Omaha Municipal Code Section 55-563, or the successor to said section, provided that such uses are in harmony with the planned urban village environment, except for the following uses: pawnshop services, agricultural sales and service, automotive sales, exterminating services, custom manufacturing, light industrial, warehousing and distribution, broadcasting tower and wind energy conservation system. The parties hereto further acknowledge that, to the extent that residential portions of the planned urban village development are not permitted within a mixed use district, it is the intent of Future Trust to seek rezoning of a portion of Original Lot 9 of the Future Trust Property so as to permit the following additional types of residential development thereon: single-family residential (attached), duplex residential and/or townhouse residential. In the event that a portion Original Lot 9 of the Future Trust Property is so rezoned, such portion of the Future Trust Property may be used for such residential development, provided that such is in harmony with the planned urban village environment and further provided that all residential units within the Future Trust Property must conform to the construction standards set forth in Section 6(c) hereof and be either owner-occupied or rented at rental rates at or above the market for similar high

quality residential developments in the Omaha metropolitan area, without federal or state rental assistance. In addition to and without limiting the foregoing, the Future Trust Property may be used for uses consistent with the use of the FDR Property and ordinarily incident to the operation of a permitted principal use. The Future Trust Property may only be used for the foregoing uses.”

Section 5 of the Covenants establishes an Architectural Review Committee (the “Committee”). The current Future Trust Representative on the Committee is Kermit A. Brashear. The current University Representative on the Committee is James R. Buck, Ed.D. The current FDR Representative on the Committee is Tracy Leas. The current Sisters of Mercy Representative on the Committee is Steve Knight.

Section 7 of the Covenants provides as follows:

“The owner of any Tract may petition the Architectural Review Committee to waive compliance with, grant a variance to any of the covenants, conditions, reservations or restrictions set forth in Sections 1, 3 and 6 of this Amended Declaration. Subject to the limitations set forth below, and based on its reasonable discretion, the Architectural Review Committee is hereby given the power to waive any such covenants, conditions, reservations or restrictions upon such request and upon a finding by the Architectural Review Committee that such request is in conformity with the general scheme for the development of the Ak-Sar-Ben Property as set forth in this Amended Declaration. Such waiver, variance, modification or amendment shall only be effective with respect to Tracts or portions of Tracts located within one thousand (1,000) feet of any boundary of the FDR Property upon the consent of the member of the Architectural Review Committee appointed by FDR (or its successor), and a sufficient number of votes from other members of the Architectural Review Committee to constitute a majority vote of the Architectural Review Committee (except in the case of a waiver or variance relating to the University Property requested by the University or any successor governmental owner charged with the operation of the Institute, in which a simple majority of Architectural Review Committee votes shall be sufficient to approve such waiver or variance). Notwithstanding any other provision contained herein, if the Architectural Review Committee shall fail to approve or disapprove any such requests for waiver, variance, modification or amendment within forty-five (45) days after such request has been submitted to the Architectural Review Committee, such request shall be deemed conclusively to have been disapproved unless or until the Architectural Review Committee takes further action on the same, if ever.”

The University and Future Trust have requested that the Committee, including the FDR Representative thereof, take the following actions:

(a) amend the Covenants such that (i) the Future Trust Target shall be released from and no longer subject to the covenants, conditions, reservations and restrictions set forth in Section 1(b) of the Covenants and (ii) the Future Trust Target shall hereafter comply with and be subject to the covenants, conditions, reservations and restrictions set forth in Section 1(c) of the Covenants and otherwise be treated as part of the Future Trust Property for purposes of the Covenants; and

(b) amend the Covenants such that (i) the University Target shall be released from and no longer subject to the covenants, conditions, reservations and restrictions set forth in Section 1(c) of the Covenants and (ii) the University Target shall hereafter comply with and be subject to the covenants, conditions, reservations and restrictions set forth in Section 1(b) of the Covenants and otherwise be treated as part of the University Property for purposes of the Covenants.

The undersigned individuals, in their capacity as duly appointed members of the Architectural Review Committee of the Ak-Sar-Ben Business & Education Campus (collectively, the "Consenting Representatives"), upon the request of the University and Future Trust, after proper opportunity to meet and review the matters which are the subject of this Amendment, hereby acknowledge and affirm the facts and findings set forth below, amend the Covenants as set forth below and take the actions set forth below on behalf of the Committee.

1. The Committee hereby finds that the request of the University and Future Trust to amend the Covenants described above is in conformity with the general scheme for the development of the Ak-Sar-Ben Property as set forth in the Covenants.

2. The Committee hereby:

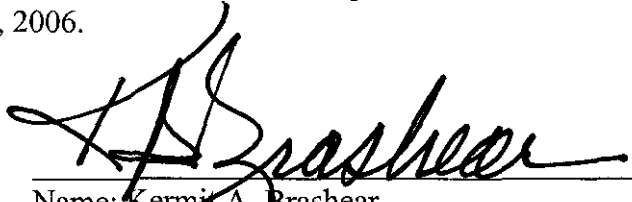
(a) amends the Covenants such that (i) the Future Trust Target is hereby released from and no longer subject to the covenants, conditions, reservations and restrictions set forth in Section 1(b) of the Covenants and (ii) the Future Trust Target shall hereafter comply with and be subject to the covenants, conditions, reservations and restrictions set forth in Section 1(c) of the Covenants and otherwise be treated as part of the Future Trust Property for purposes of the Covenants; and

(b) amends the Covenants such that (i) the University Target is hereby released from and no longer subject to the covenants, conditions, reservations and restrictions set forth in Section 1(c) of the Covenants and (ii) the University Target shall hereafter comply with and be subject to the covenants, conditions, reservations and restrictions set forth in Section 1(b) of the Covenants and otherwise be treated as part of the University Property for purposes of the Covenants.

3. Each party executing this Amendment represents and warrants that no lender or third-party consent is required in order to execute this Amendment.

4. This Waiver may be executed in any number of identical counterparts, each of which for all purposes shall be deemed an original, and all of which shall constitute collectively one document.

IN WITNESS WHEREOF, the undersigned duly appointed member of the Architectural Review Committee of the Ak-Sar-Ben Business & Education Campus has executed this Amendment as of January 5, 2006.



Name: Kermit A. Brashear  
In his capacity as the authorized representative of Ak-Sar-Ben Future Trust, a Nebraska nonprofit corporation, on the committee referenced above

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me on January 5, 2006, by Kermit A. Brashear.

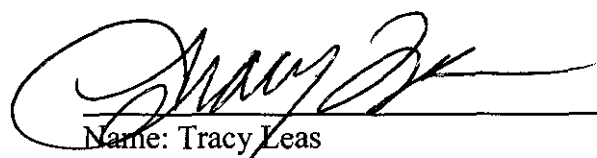


  
\_\_\_\_\_  
Notary Public

My Commission expires: Sept. 8, 2009

**\*\* FILED: AS IS**

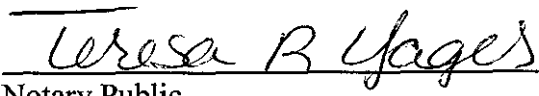
IN WITNESS WHEREOF, the undersigned duly appointed member of the Architectural Review Committee of the Ak-Sar-Ben Business & Education Campus has executed this Amendment as of 12/20, 2005.

  
Name: Tracy Leas

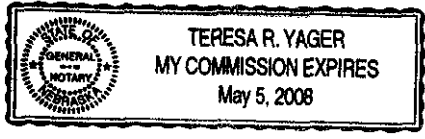
In her capacity as the authorized representative of First Data Resources Inc., a Delaware corporation on the committee referenced above

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF DOUGLAS     )

The foregoing instrument was acknowledged before me on December 30, 2005, by Tracy Leas.

  
Notary Public

My Commission expires: 05/05/08



\*\* FILED: AS IS

IN WITNESS WHEREOF, the undersigned duly appointed member of the Architectural Review Committee of the Ak-Sar-Ben Business & Education Campus has executed this Amendment as of JAN. 10, 2006

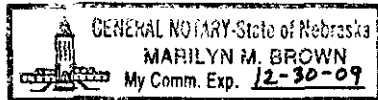
J. R. Buck

Name: James R. Buck, Ed.D.

In his capacity as the authorized representative of the Board of Regents of the University of Nebraska, a body corporate existing under the laws of the state of Nebraska on the committee referenced above

STATE OF NEBRASKA )  
COUNTY OF Douglas ) ss.

The foregoing instrument was acknowledged before me on January 10, 2006, by James R. Buck, Ed.D.



Marilyn M. Brown  
Notary Public

My Commission expires: 12-30-09

IN WITNESS WHEREOF, the undersigned duly appointed member of the Architectural Review Committee of the Ak-Sar-Ben Business & Education Campus has executed this Amendment as of January 10, 2005.

*Steve R Knight*

Name: Steve Knight  
 In his capacity as the authorized representative of the Sisters of Mercy of the Americas Regional Community of Omaha, a Nebraska nonprofit corporation, on the committee referenced above

STATE OF NEBRASKA            )  
   ) ss.  
 COUNTY OF DOUGLAS         )

The foregoing instrument was acknowledged before me on January 10, 2005, by Steve Knight.



*Laurie M. Yelinek*  
 Notary Public

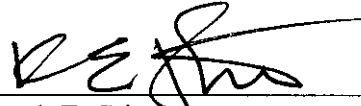
My Commission expires: November 23, 2008

\*\* FILED: AS IS



THE UNDERSIGNED hereby acknowledges and consents to the matters set forth in the forgoing Amendment.

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

By   
Kenneth E. Stinson  
Chairman

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF DOUGLAS     )

The foregoing instrument was acknowledged before me on January 5<sup>th</sup>, 2006, by Kenneth E. Stinson, the Chairman of Ak-Sar-Ben Future Trust, a Nebraska nonprofit corporation, on behalf of the corporation.

  
Notary Public

My Commission expires: 3/3/09



THE UNDERSIGNED hereby acknowledges and consents to the matters set forth in the forgoing Amendment.

FIRST DATA RESOURCES INC., a Delaware corporation

By Robert D. Beckes  
Name ROBERT D. BECKES  
Title ASSISTANT SECRETARY

STATE OF Colorado )  
 ) ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me on December 23, 2005, by Robert D. Beckes, the Assistant Secretary of First Data Resources Inc., a Delaware corporation, on behalf of the corporation.

Ann M. Prouty  
Notary Public

**ANN M. PROUTY**  
**NOTARY PUBLIC - COLORADO**  
**My Commission Expires Dec. 2, 2009**

My Commission expires: 12/2/2009

THE UNDERSIGNED hereby acknowledges and consents to the matters set forth in the forgoing Amendment.

THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA, a body corporate existing under the laws of the State of Nebraska

By David Lechner  
Name DAVID LECHNER  
Title VICE PRES. FOR BUSINESS/FINANCE

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me on the 10<sup>th</sup> day of January, <sup>2006</sup>~~2005~~, by David Lechner, the Vice Pres. for Bus/F. of the University of Nebraska, a body corporate existing under the laws of the State of Nebraska, on behalf of the body corporate.



Melisa K. Komenda  
Notary Public

My Commission expires: November 30, 2006

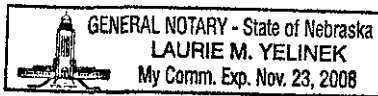
THE UNDERSIGNED hereby acknowledges and consents to the matters set forth in the forgoing Amendment.

SISTERS OF MERCY OF THE AMERICAS  
REGIONAL COMMUNITY OF OMAHA, a  
Nebraska non-profit corporation

By Steven R Knight  
Name Steven R Knight  
Title Treasurer

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me on January 10, 2006, by Steven R. Knight, the Treasurer of Sisters of Mercy of the Americas Regional Community of Omaha, a Nebraska non-profit corporation, on behalf of the corporation.



Laurie M. Yelinek  
Notary Public

My Commission expires: November 23, 2008

THE UNDERSIGNED hereby acknowledges and consents to the matters set forth in the forgoing Amendment.

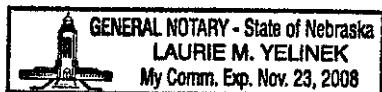
THE COLLEGE OF SAINT MARY, a  
Nebraska non-profit corporation

By Maryanne Stevens RSM  
Name MARYANNE STEVENS  
Title PRESIDENT

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF DOUGLAS     )

The foregoing instrument was acknowledged before me on January 9<sup>th</sup>, 2006, by Maryanne Stevens, the President of The College of Saint Mary, a Nebraska non-profit corporation, on behalf of the corporation.

Laurie M. Yelinek  
Notary Public



My Commission expires: November 23, 2008

THE UNDERSIGNED herby acknowledges and consents to the matters set forth in the forgoing Amendment.

OMAHA PUBLIC POWER DISTRICT, a public corporation

By *D.F. Widoe*  
Name Dale F. Widoe  
Title Vice President

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF DOUGLAS     )

The foregoing instrument was acknowledged before me on 12/28/05, 2005, by Dale F. Widoe, the Vice President of Omaha Public Power District, a public corporation, on behalf of the corporation.



*Larry J. Hagan*  
Notary Public  
My Commission expires: 5/5/07

**EXHIBIT A**

**LEGAL DESCRIPTION**

Future Trust Property:

LOTS ONE (1) AND TWO (2), AK-SAR-BEN BUSINESS & EDUCATION CAMPUS REPLAT 8, AN ADDITION TO THE CITY OF OMAHA, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA, SAID PLAT BEING RECORDED AT INSTRUMENT NUMBER 2005143821 OF THE DEED RECORDS OF DOUGLAS COUNTY, NEBRASKA

55-00230

College Property:

THAT PORTION OF LOTS ONE (1) THROUGH THREE (3), COLLEGE OF ST. MARY'S ADDITION REPLAT 1, AN ADDITION TO THE CITY OF OMAHA, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA, SAID PLAT BEING RECORDED AT INSTRUMENT NUMBER 2005060080 OF THE DEED RECORDS OF DOUGLAS COUNTY, NEBRASKA, WHICH WAS FORMERLY LOT ONE (1), AK-SAR-BEN BUSINESS & EDUCATION CAMPUS REPLAT 2, AN ADDITION TO THE CITY OF OMAHA, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA, SAID PLAT BEING RECORDED IN BOOK 1301, PAGE 597 OF THE DEED RECORDS OF DOUGLAS COUNTY, NEBRASKA.

55-06903

University Property:

LOT ONE (1) AK-SAR-BEN BUSINESS EDUCATION CAMPUS, AN ADDITION TO THE CITY OF OMAHA, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA, SAID PLAT BEING RECORDED IN BOOK 2064, PAGE 149 OF THE DEED RECORDS OF DOUGLAS COUNTY, NEBRASKA AND LOTS 1 AND 2, AK-SAR-BEN BUSINESS & EDUCATION CAMPUS REPLAT 3, RECORDED IN BOOK 1458, PAGE 434 OF THE MISCELLANEOUS RECORDS OF DOUGLAS COUNTY, NEBRASKA AND LOT ONE (1), AK-SAR-BEN BUSINESS & EDUCATION CAMPUS REPLAT 6, SAID PLAT BEING RECORDED AT INSTRUMENT NUMBER 2004161513 OF THE MISCELLANEOUS RECORDS

55-00222  
55-00225  
55-00228

55-00229

OF DOUGLAS COUNTY, NEBRASKA AND LOTS 1 AND 2, AK-SAR-BEN BUSINESS AND EDUCATION CAMPUS REPLAT 7, SAID PLAT BEING RECORDED AT INSTRUMENT NUMBER 2005143822 OF THE MISCELANEOUS RECORDS OF DOUGLAS COUNTY, NEBRASKA

FDR Property:

LOTS FOUR (4) AND FIVE (5), AK-SAR-BEN BUSINESS & EDUCATION CAMPUS, AN ADDITION TO THE CITY OF OMAHA, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA, SAID PLAT BEING RECORDED IN BOOK 2064, PAGE 149 OF THE DEED RECORDS OF DOUGLAS COUNTY, NEBRASKA AND LOTS ONE (1) THROUGH FIVE (5) AND OUTLOT ONE (1), AK-SAR-BEN BUSINESS & EDUCATION CAMPUS REPLAT 4 RECORDED AT INSTRUMENT NUMBER 2004106466 OF THE DEED RECORDS OF DOUGLAS COUNTY, NEBRASKA

55-00222

55-00226

Sisters of Mercy Property:

LOTS SIX (6) AND SEVEN (7) OF THE AK-SAR-BEN BUSINESS & EDUCATION CAMPUS REPLAT 1 RECORDED IN BOOK 2177, PAGE 665 OF THE DEED RECORDS OF DOUGLAS COUNTY, NEBRASKA

55-00223

OPPD Property:

THAT PORTION OF LOT FIVE (5) OF THE AK-SAR-BEN BUSINESS & EDUCATION CAMPUS REPLAT 1 RECORDED IN BOOK 2177, PAGE 665 OF THE DEED RECORDS OF DOUGLAS COUNTY, NEBRASKA WHICH WAS ORIGINALLY A PORTION OF LOT SEVEN (7), AK-SAR-BEN BUSINESS & EDUCATION CAMPUS, AN ADDITION TO THE CITY OF OMAHA, AS SURVEYDD, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA, SAID PLAT BEING RECORDED IN BOOK 2064, PAGE 149 OF THE DEED RECORDS OF DOUGLAS COUNTY, NEBRASKA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

55-00223

THAT PART OF THE NORTHWEST QUARTER OF SECTION 25, TOWNSHIP 15 NORTH, RANGE 12 EAST OF THE 6<sup>th</sup> P.M., DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER



OF THE SAID NORTHWEST QUARTER OF SECTION 25; THENCE NORTH  $00^{\circ}10'39''$  WEST (ASSUMED BEARINGS) FOR 1365.24 FEET ALONG THE WEST LINE OF THE SAID NORTHWEST QUARTER OF SECTION 25; THENCE SOUTH  $89^{\circ}47'15''$  EAST FOR 260.77 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH  $89^{\circ}47'15''$  EAST FOR 100.00 FEET; THENCE SOUTH  $00^{\circ}12'45''$  WEST FOR 266.57 FEET; THENCE NORTH  $64^{\circ}22'28''$  WEST FOR 45.39 FEET; THENCE ALONG A CURVE TO THE LEFT (HAVING A RADIUS OF 345.00 FEET AND A LONG CHORD BEARING NORTH  $69^{\circ}30'45''$  WEST FOR 61.80 FEET) FOR AN ARC LENGTH OF 61.88 FEET; THENCE NORTH  $00^{\circ}02'59''$  WEST FOR 225.68 FEET TO THE POINT OF BEGINNING. CONTAINS 0.56 ACRES.