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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
05/06/2013 15:16:38.00



2013045146

Prepared by & Return to: Michael C. Carter, 11506 Nicholas St., Suite 200, Omaha, NE 68154 (402) 493-2800

**EASEMENTS, COVENANTS
AND RESTRICTIONS
LFS/AK, LLC
OMAHA, NEBRASKA**

This Declaration of Easements, Covenants and Restriction ("ECR") is made and executed on this 3rd day of May 2013, by LFS/AK, LLC ("LFS/AK") as developer of subdivision or shopping center a development and sub-division of Omaha, Nebraska to be recorded in accordance with the laws, regulations and ordinances of City of Omaha, County of Douglas, State of Nebraska which property is more particularly described in Exhibit A-1, attached hereto and made a part hereof ("Property") and current lot owners.

**Article I
Recitals**

55-00248

55-00247

1.1 LFS/AK is the fee simple owner of Lots 1, 2, and 3 Aksarben Center Replat 1 and Lot 1 Aksarben Center, as surveyed and recorded in Douglas County, Nebraska.

1.2 LFS/AK shall convey Lot 1 Aksarben Center referred to as Commercial Lot and Lot 3 of Aksarben Center Replat 1, hereinafter the Hotel Lot.

1.3 LFS/AK desires that the Property be developed pursuant to a general plan of improvement for commercial, hotel, and senior housing use in accord with the requirements and provisions of the plat of subdivision, use permits and zoning restrictions and requirements as approved by the City of Omaha, and further desire that the Property be subject to easements, covenants and restrictions herein after set forth to insure proper use and appropriate development and improvement of the Property.

**Article II
Definitions**

For purposes of this ECR, the following terms shall have the following meanings:

- A. "Lots" or "Tract" shall mean any subdivided portion of the Property as shown on Exhibit B.
- B. "Owner" shall mean the party or parties owning fee simple title to Lots 1, 2, and 3 of Aksarben Center Replat 1 and lot 1 of Aksarben Center, according to the records of Douglas County, Nebraska.
- D. "Common Drives" are shown on Exhibit A which shall not include public streets.
- E. "Building Areas" shall mean those portions of each Lot that an Owner may elect to

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construct building improvements so long as the size and location does not violate this ECR, any Amendments thereto or laws of the City of Omaha, Nebraska.

- F. "**Parking Area**" shall mean the portion of each Lot, which is paved and striped for ingress, egress and parking use by Owners, customers, agents, invitees, tenants and employees in accord with the parking requirements of this ECR and the City of Omaha, Nebraska parking requirements.
- G. "**Sidewalks**" shall mean those portions of the Lots and Tracts of the Property required to be paved for pedestrian's traffic exclusively.
- H. "**Landscape areas**" shall be the portion of setback areas, lawns, bushes, trees, flowers, hedges or any other type of landscaping on all Lots, as set forth in the Mixed Use Agreement ("Mixed Use Agreement") attached.
- I. "**Tenant**" shall mean any occupant of any building located on any Lot or any portion of any building whether such occupancy is pursuant to a written lease or an oral tenancy, including an occupant holding over possession upon expiration of its lease term.
- J. "**Mortgagee**" shall mean any mortgagee under a mortgage or any trustee or beneficiary under a deed of trust constituting a lien on any Lot.

Article III Uses

3.1 All Lots may be used for commercial purposes of the type normally found in a retail shopping center, including without limitations, financial institutions, convenience stores including gas pumps, service shops, fast food and sit down restaurants, general offices and retail stores. The Hotel Lot may additionally be used for a hotel. Lot 1 and lot 2, Aksarben Centre Replat 1, may additionally be used for residential use, including senior housing.

3.2 No business of manufacturing, wholesale, distribution or industrial operation; pornographic or "triple-X video, triple-X bookstore" or similar business appealing to customers prurient interest shall be conducted on any Lot without the written consent of each and every Owner of all Lots in the Property. No business may be conducted which may be or become an annoyance or nuisance to any Owner or Tenant or occupant of any other Lot by reason of unsightliness, excessive emission of noxious fumes or odors, vibration, gases, radiation, dust, liquid waste, smoke or noise (other than that which may reasonably occur during construction of improvements on a Lot). No business may violate the Mixed Use Agreement or any other restriction of record.

Article IV Improvements

4.1 Buildings:

(a) The architectural design shall be approved within reasonable expectations and standards with respect to complimentary aesthetic qualities within Aksarben Center, by LFS/AK, or its assigns, and after senior housing is constructed on Lot 2, Aksarben Center Replat 1, LFS/AK, or its assigns may assign such right to owner of Lot 2, its assigns or successors. LFS/AK, or its assigns, shall approve all buildings for compliance with this provision, provided such architectural plans and specifications shall be submitted to LFS/AK, or its assigns, prior to commencement of construction and any modification or alteration in the future. LFS/AK or its assigns shall approve or reject such architectural plans within **ten (10) days thereafter receipt of written request provided LFS/AK**. However, LFS/AK, or its assigns, may, but shall not be required to, assign such approval right to a third party. LFS/AK or its assigns or successors may enforce this section by injunctive relief.

(b) When the construction of any building has commenced, work must proceed diligently and must be completed within a reasonable time thereafter. **Adequate screening shall be required to reduce dirt, dust and debris from entering other lots.** Any damage to adjacent properties or Lots including lawns or landscaping shall be replaced at the expense of the Lot owner or Lot owner's builder that caused such damage.

(c) Any building on the Property shall be constructed in such a manner, which shall preserve the sprinkler rates for insurance for other buildings on The Property.

(d) No improvements or alterations shall materially change or alter the drainage of the Property

(e) All ground mounted HVAC equipment and all garbage collection facilities and dumpsters of any kind located on each Lot shall be screened or fenced, using materials set forth herein, from view from adjacent Lots. **Such refuse area shall have a concrete slab. Enclosing walls shall be of the same or compatible materials as the building.** Gates are not required on compactor screens under this agreement; **however, the refuse truck opening shall be arranged in such a manner as not to expose the receptacles to general view.**

(f) Any buildings or structures on the Commercial Lot shall not exceed 2 stories in height and be constructed in the envelope shown on Exhibit "A".

4.2 Ingress/Egress and Parking Areas:

(a) Owners of each Lot and their tenants, customers, employees, invitees and agents shall have an easement for ingress and egress from one Lot to another on the Property through and across the public roads and no owner may materially modify or change the flow of vehicular or pedestrian traffic designated on the plat of the subdivision, as approved by the City of Omaha. This grant of easement for ingress and egress on one Lot to the other shall run with the land and is only for the benefit of any and all assignees, successors in interest, tenants, and buyers or other persons or entities that may be legally entitled to use and occupancy of any Lot. In addition, a permanent and perpetual reciprocal parking easement to run with the land is hereby granted for the customers and invitees on the area outlined in solid gray on Exhibit "A". The owner of the Commercial Lot and Hotel Lot shall maintain, repair and replace such and based on the following percentage :Lot 1 – 43% and Lot 3 – 57%.

(b) All parking areas, access drives and loading areas shall be paved with concrete or asphalt and graded in accord with the Property grading plan designated.

(c) Each and every Owner or Tenant occupying any Lot shall independently maintain its Parking Area to accommodate a minimum of, (i) in the case of retail or service use, five (5) parking spaces for each one thousand (1,000) square feet of Floor Area, (ii) in the case of fast food or sit down restaurants, ten (10) parking spaces for each one thousand (1,000) square feet of Floor Area; (iii) and insofar as any lodging facility is concerned there shall be 1.0 car spaces for each unit; (iv) in the case of office use, four (4) parking spaces for every one thousand (1000) square feet of rentable square feet; and, (v) the senior housing facility shall have twenty five (25) car spaces on Lot 1 of replat 1; and, (vi) .7 stalls for every living unit on Lot 2 replat 1.

(d) No Owner or Tenant may commence doing business on any Lot in the Property unless and until the Parking Area of said Lot is paved and striped for parking in accord with this ECR.

4.3 Landscape Areas:

(a) All Landscaping Areas shall be consistent with landscape plan submitted to the City and approved by LFS/AK or its designee. Any further modifications to the landscape shall be submitted to LFS/AK or its designee for approval.

(b) All landscaping plans shall include an underground lawn sprinkling system connected to an adequate source of water and which is automatically activated as frequently as necessary to maintain green, healthy condition of all lawns, trees, shrubs and other plants on each and every Lot. Provided further, it shall be the responsibility of the Owner of each and every Lot to landscape and maintain the area between the lot lines of the Owner's Lot and the curbs of any roadways or the Common Drive adjacent to any Lot.

(c) All landscaping and underground sprinkler systems shall be completed within sixty (60) days after the substantial completion of construction of any building to be constructed on any Lot, provided however, if weather conditions do not at such time permit, then such landscaping shall be completed as soon thereafter as weather conditions permit.

4.4 Drainage Easement:

(a) Lot owner of Lot 3 Aksarben Center Replat 1 and Lot 1 of Aksarben Center shall have a permanent drainage easement into the detention cell on Lot 1 Aksarben Center Replat 1. Lot owner of Lot 1 Aksarben Center Replat 1 shall construct and maintain such detention cell at its sole cost and expense. Provided Lot 1 of Replat 1 may modify such cell with out the consent of Lot 3 Replat 1 and Lot 1, Aksarben Center provided such detention cell is adequate in size for Lot 1 Aksarben Center and Lot 3 Replat 1 drainage. Said detention cell is shown as the diagonal striped area set forth on Exhibit "A".

Article V Signs

5.1 All signs shall comply with the codes, rules and regulations pertaining to signs as promulgated by the City of Omaha, Nebraska and be approved by LFS/AK. Lot owners shall submit its proposed sign for approval prior to construction and LFS/AK, or its designee shall approve or deny the sign with in 10 days. No sign of any type shall be placed upon the roof of any building on the Property. Each building constructed on Lots shall be permitted a maximum of one (1) monument sign not to exceed twelve (12) feet in height, plus additional signage located on the face of such building. Further, no more than three (3) excepting each tenant signs for multi tenant buildings on any building, no flashing signs, no temporary signs, other than "For Sale or Lease", or banners shall be allowed.

5.2 Tenants under lease within the tracts shall be required to conform to specific size and type of individually lit letters, or other signage approved by the City of Omaha. **Owner of the Commercial Lot shall at its expense construct one monument sign in the area set forth on Exhibit "A" for name recognition of the various users of all lots within this agreement.** Owner of the Commercial Lot may sell and assign such rights to such signage in it sole discretion; provided, however, Owner of Lot 1 Aksarben Center Replat 1 shall have the first right to purchase a sign panel.

Each sign occupant shall pay its prorata share of expenses based upon total signage area which shall include maintenance and utilities.

Article VI Utilities

6.1 Construction of Utilities: LFS/AK shall cause to be installed electricity, gas, water, sanitary sewer and storm sewer in accord with the utility plan of the subdivision plat, as designated in engineering plans as approved by the City of Omaha.

6.2 Easements: Each Owner of each Lot shall cooperate in granting appropriate easements to the appropriate governmental or quasi governmental agencies or utility companies and the other Lot Owners for the installation, maintenance, repair and replacements of utilities services as set forth in the plat of the subdivision.

Article VII Maintenance

7.1 Maintenance Obligations: Each Owner of each Lot shall keep and maintain its Lot and improvements in good condition and repair. Maintenance shall include, without limitations, the following:

- (a) Maintain parking surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;
- (b) Remove all debris, filth and refuse and periodically sweep said Areas to keep such Areas in a clean and orderly condition;
- (c) Remove snow and ice from parking areas and Sidewalks in a reasonable manner and not placed in other parcels, so that they may be used by customers and patrons of the Owners and Tenants in accordance with the provisions of this Agreement;
- (d) Operate, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required in accordance with the original design;
- (e) Maintain all perimeter walls, exterior building walls and all retaining walls in a good condition and state of repair.
- (f) Maintain (with a minimum of four application process of fertilizer, weed and insect control), mow, weed, trim and replace shrubs and other landscaping as is necessary.
- (g) Maintain an underground sprinkler system for all landscaping.
- (h) Maintain and replace any appropriate and necessary signs and markers.

7.2 Expenses. Except as defined in paragraph 4.2 (a), respective owner(s) shall pay the expenses of maintaining the Building Areas, Parking Areas, Sidewalks, and Landscapes Areas on their respective Lot(s).

7.3 Assessment for Failure to Maintain. If any Owner fails to maintain its Lot as provided herein, any other Lot Owner may, at its option, after giving the Defaulting Owner fifteen (15) days written notice to perform or have performed such maintenance, may undertake such maintenance as a result of the failure of Defaulting Owner to perform same. The costs of such maintenance shall be made by written demand for payment to the Defaulting Owner of such Lot. If such assessment is not paid within thirty (30) days after written demand such assessment shall constitute a lien on the Lot, such lien shall attach on the Lot, and be enforceable by Owner.

Article VIII Miscellaneous

8.1 Severability. All of the conditions, covenants, restrictions and reservations contained in this Declaration shall be construed together, but if it shall at any time be held that any one of such conditions, covenants, restrictions and reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other conditions, covenants, restrictions and reservations or any part thereof shall be thereby affected or impaired.

8.2 Owner's Liability Subsequent to Sale. Upon the sale of a Lot, the Owner so selling shall not have any further liability for the obligations hereon which accrue against the Lot after the date of the conveyance; provided, however, that nothing herein shall be construed so as to relieve an Owner of any Lot from any liabilities or obligations incurred prior to such sale pursuant to this Declaration.

8.3 Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Declarants that this Declaration shall be strictly limited to the purposes expressed herein. Provided, however, LFS/AK, or its assigns may, but is not required to, dedicate any land it deems advisable.

8.4 Benefits and Burdens. The terms and provisions contained in this Declaration shall be binding upon and inure to the benefit of the Declarants, and the Owners of all Lots located within the Property and their respective heirs, successors, personal representatives, and assigns. Each Tenant shall be subject to this Declaration, but no Tenant shall take any rights hereunder or be deemed to be a third party beneficiary hereof.

8.5 Notice. Any notices required or permitted herein shall be in writing and sent by Federal Express or other receipted overnight courier service or mailed, postage prepaid, by registered or certified mail, return receipt requested, and shall be directed as follows: If intended for a Lot Owner, to the Owner of such Lot by name and address as shown on the then current real property tax rolls in Douglas County, Nebraska. If intended for LFS/AK, to its registered agent or to such other address as LFS/AK may designate in any Supplement hereof executed by LFS/AK or its representative and recorded in the office of the Register of Deeds or Douglas County, Nebraska.

8.6 Singular and Plural. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires.

8.7 Mutual Indemnification.

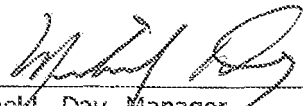
THE OWNER OF EACH OF THE LOTS SHALL INDEMNIFY AND HOLD THE OWNERS OF THE OTHER LOTS HARMLESS WITH RESPECT TO INJURIES, DAMAGES AND LIABILITIES WHICH ARISE ON SUCH RESPECTIVE OWNER'S LOT UNLESS SUCH INJURY OR DAMAGE IS CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE OWNER OF ANOTHER LOT OR SUCH OWNER'S AGENTS, INVITEES, AND/OR EMPLOYEES.

8.8 Insurance. The Owner or Tenant of each Lot shall secure and maintain as to the portion of the parking lots, driveways and/or walkways traversing any portion of such owner's Lot public liability insurance coverage covering such party's Lot, insuring against the risk of bodily injury, property damage and personal injury liability with respect to such Lot, in an amount of not less than Three Million Dollars (\$3,000,000.00).

8.9 Hazardous Material. All operations or activities upon, or any use or occupancy of any Lot, or any portion thereof, by such party, its assignees, subtenants, and their respective agents, servants, employees, representatives and contractors (collectively, "**Affiliates**"), throughout the term of this Agreement, shall be in all respects in compliance with all federal, state and local laws, regulations, statutes, ordinances or orders then governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, release, spillage, leakage, dumping, discharge or disposal of any Hazardous Materials ("**Environmental Laws**"). As used herein, "**Hazardous Materials**" shall mean any hazardous or toxic waste, substance or petroleum product as defined for purposes of any Environmental Laws and all amendments thereto.

IN WITNESS WHEREOF, Declarant has executed this ECR as of the date first above written.

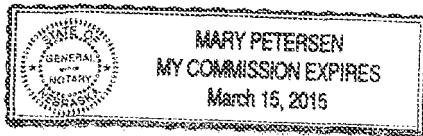
LFS/AK, LLC,
A Nebraska limited liability company

By: 
Michael L. Day, Manager

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

BEFORE ME, the undersigned Notary public in and for said county personally appeared **Michael L. Day**, as Manager of LFS/AK, LLC, a Nebraska limited liability company, and the identical person whose signature is affixed to the foregoing Instrument, and he, being first duly sworn, acknowledged execution of the same to be his voluntary act and deed and the voluntary act and deed of said company.

IN WITNESS WHEREOF, I have hereunto affixed my hand and Notarial Seal this 3rd day of May, 2013.



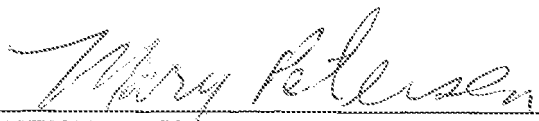
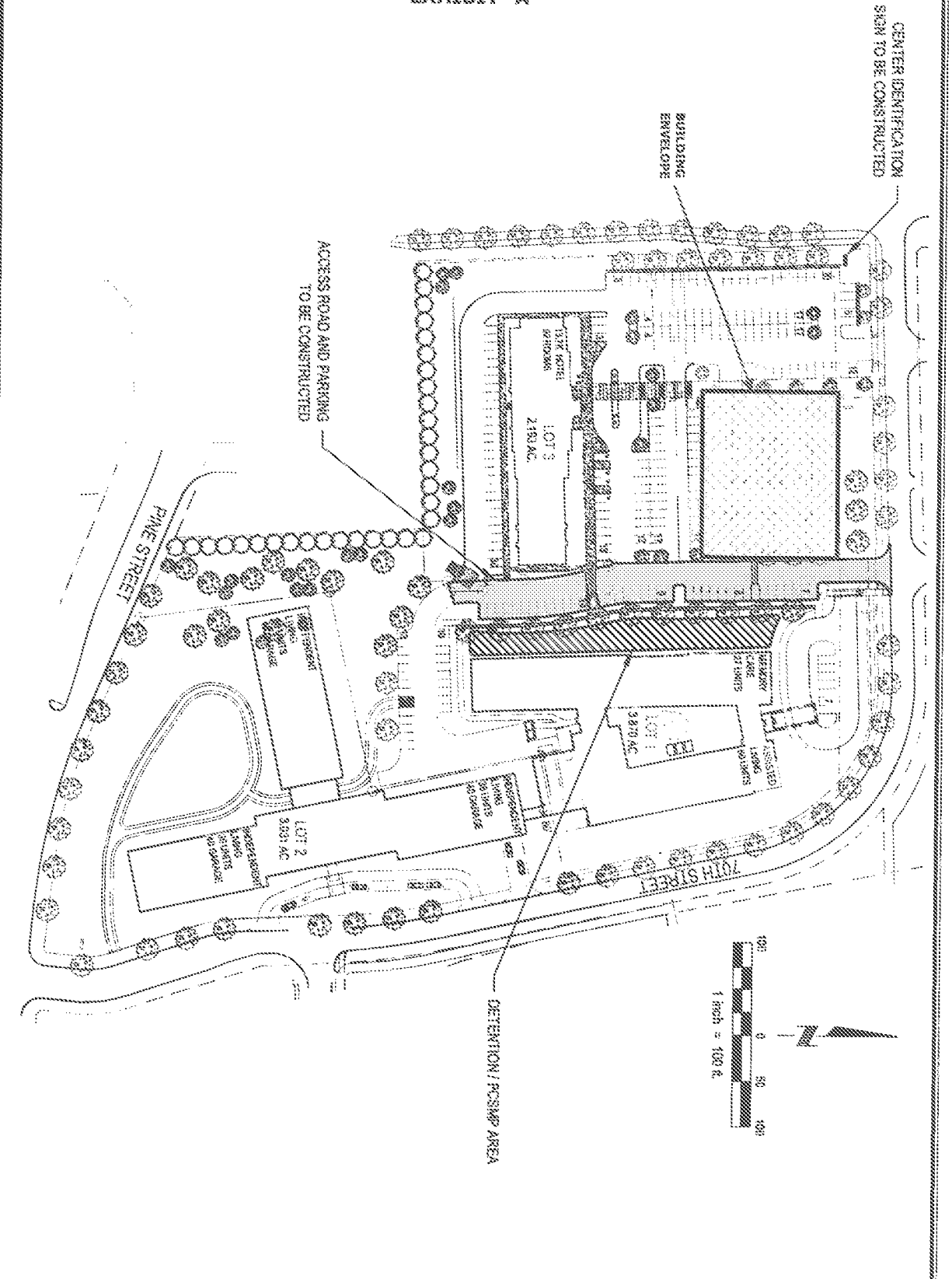

NOTARY PUBLIC

EXHIBIT "A"



Aksarben Center, including
Aksarben Center Replat 1

	<table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>REVISION</th> </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> </table>	NO.	DATE	REVISION										<p>AKSARBEN CENTER DASBWR, NE</p>	<p>E & A CONSULTING GROUP, INC. ENGINEERING • PLANNING • ENVIRONMENTAL COMPLIANCE • FIELD SERVICES</p> <p>1000 LULLINGWOOD DRIVE, SUITE 300 DURHAM, NC 27705-1000 919.487.0000</p>	
	NO.	DATE	REVISION													
<p>EX-1</p>	<p>PURCHASE AGREEMENT EXHIBIT</p>	<p>8</p>														

EXHIBIT "A-1"

Legal Description

Lots 1, 2, and 3 Aksarben Center Replat 1 and Lot 1 Aksarben Center, as surveyed and recorded in Douglas County, Nebraska.

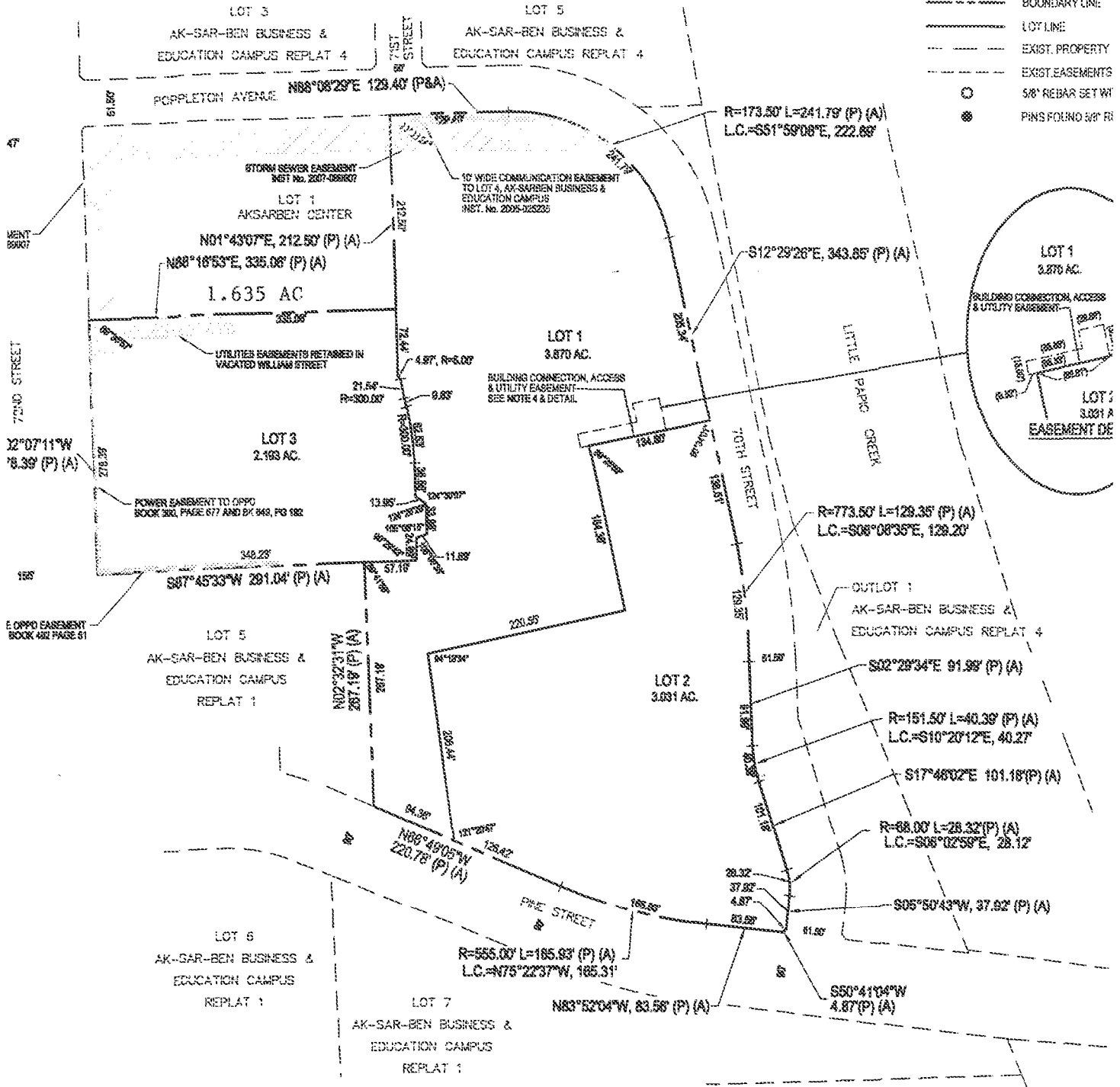
EXHIBIT B



1 inch = 100 ft.

LEGEND

- BOUNDARY LINE
- LOT LINE
- - - EXIST. PROPERTY
- - - EXIST. EASEMENTS
- 5/8" REBAR SET WT
- PINS FOUND 5/8" RI



Revisions	
No.	Description
4-11-13	
JMT	
TRH	
1" = 100'	
sd	

ADMINISTRATIVE SUBDIVISION

AKSARBEN CENTER REPLAT 1
DOUGLAS COUNTY, NEBRASKA