

AGREEMENT MODIFYING COVENANTS AND RESTRICTIONS

This Agreement entered into this 3 day of May, 1972, between DUCHESNE COLLEGE AND CONVENT OF THE SACRED HEART, a Nebraska corporation, referred to herein as "Duchesne", and THE OMAHA NATIONAL BANK, Trustee, referred to herein as "Trustee", and JOHN W. BUCHOLZ and JOAN P. BUCHOLZ, referred to herein as "Bucholzes".

W I T N E S S E T H:

WHEREAS, by deeds dated March 4, 1966 Trustee and Frederick H. Bucholz and Naomi T. Bucholz, conveyed certain property to Duchesne, subject to certain covenants and restrictions contained in said deeds which are recorded at Book 1280, pages 445 et seq. and 437 et seq. of the Deed Records of Douglas County, Nebraska, and

WHEREAS, said covenants and restrictions were modified by agreements recorded at Book 485, page 677 et seq. and Book 488, page 669 et seq. of the Miscellaneous Records of the Register of Deeds Office of Douglas County, Nebraska, and

WHEREAS, Trustee and Bucholzes are the "adjoining property owners" referred to in said covenants and restrictions, and are referred to herein as the adjoining property owners, and

WHEREAS, in accordance with the right so to do stated in said covenants and restrictions, said adjoining property owners and Duchesne desire to modify said covenants and restrictions as herein provided.

NOW, THEREFORE, it is agreed as follows:

I

A new Paragraph, number 3, shall be added to Paragraph B of the aforesaid covenants and restrictions, which Paragraph 3 shall be as follows:

- "3. Notwithstanding the provisions of Paragraphs 1 and 2 of this Paragraph B,
 - A. If, but only if, the hereinafter described 15.84 acres is developed in accordance with the condominium restrictions on use set forth herein, that portion of the tract containing approximately 3.18 acres and described on Exhibit A attached

hereto and made a part hereof may be used in accord with the restrictions and limitations hereinafter set forth and referred to for convenience as the 3.18 acre restrictions on use.

- B. That portion of the tract containing approximately 15.84 acres and described on Exhibit B attached hereto and made a part hereof may be used for the erection and maintenance thereon of a condominium development, provided however, such development shall meet and shall be subject to the restrictions, limitations and approval hereinafter set forth and referred to herein for convenience as the condominium restrictions on use.
- C. The 3.18 acre restrictions on use shall be as follows:
- (1) Any use shall meet all of the requirements, other than the height requirement, but including the area and density requirement, of ninth resident district zoning under the Omaha Nebraska Zoning Ordinances in effect on the date hereof, and, as to height, no portion of any structure shall exceed 80 feet in height above the existing grade.
 - (2) All retailing in the structures shall be internalized, that is, there shall be no outside ingress or egress for any retailing activity, and such internalized retailing activity shall be limited to pharmacies, restaurants, and to shops selling tobacco, confections and similar items which retailing shall be permissible without regard to the zoning required for same.
 - (3) No illuminated signing shall face in a westerly direction.
 - (4) No portion of any structure on the aforesaid 3.2 acres shall be devoted to hotel or motel use.
- D. The condominium restrictions on use, covering the aforestated 15.84 acres and referred to herein as "the condominium tract", shall be as follows:
- (1) The condominium units shall be for single family residential use, and there shall be no more than two individual family condominium units in any single structure and not more than 56 family units in the entire condominium tract, plus one gate house to be located in the southeast quarter of the condominium tract.

The individual family condominium units, except such gatehouse, shall have an inside useful living area, excluding porches, patios, terraces and garages of not less than 1,500 square feet. There shall be no detached storage or maintenance sheds or structures within 200 feet of the west boundary line of the condominium tract.

- (2) No street shall be platted through the west boundary line of the condominium tract without the express written consent of the adjoining property owners and, unless the plan for same is approved by the adjoining property owners, there shall be no streets or structures other than the fence covered in (3) immediately below and pedestrian ways not more than six feet in width, located on the west 40 feet of the condominium tract.
- (3) All fencing located on the west boundary line of the condominium tract shall be black vinyl coated chain length fence not exceeding 60 inches in height, except for posts which may be not more than 72 inches in height. All such fencing shall have an open appearance and shall be so constructed that it shall be possible to see through at least 50% of its surface area when viewed horizontally. No part of any fence shall be located closer than three feet to the west boundary line of the condominium tract, and occasional plantings shall be made in the area west of the fence.
- (4) There shall be no retailing and no illuminated signing on the condominium tract.
- (5) All exterior lighting on the condominium tract shall be directed basically downward and shall be installed and shielded so that the light generating element is not visible beyond the west boundary line of the tract. Street and parking area lighting shall be by carriage lamp poles and fixtures or similarly attractive poles and fixtures and shall not exceed 20 feet in height. All other exterior lighting, including pedestrian way lighting, in the condominium tract shall be by mushroom type fixtures not exceeding 30 inches in height.
- (6) All TV and FM antennas shall be constructed on the inside of the structures on the condominium tract and no towers or antennas of any kind, except a master TV antenna not exceeding 30 feet in height to be erected within 200 feet of

the gatehouse, shall be constructed on the outside of any structure or on the grounds of the condominium tract, with the exception of aesthetically attractive flagpoles not exceeding 30 feet in height.

- (7) All electrical power, telephone and other utility lines within the condominium tract shall be underground. All rooftop plumbing, heating, air conditioning and similar equipment shall be screened or enclosed so as not to be visible on the property owned by the adjoining property owners, and all outside trash receptacles and plumbing, heating and air conditioning and similar apparatus not covered by the foregoing shall be enclosed or screened in such a manner that it is not visible from the west property line of the tract. There shall be no outside incineration of waste on the condominium tract.
- (8) Grade transitions within the west 200 feet of the condominium tract shall be accomplished by grass slopes not exceeding one foot of vertical rise to three feet of horizontal run. With respect to the grade between the west boundary line of the condominium tract and the west line of the street running along the west boundary line, if the 1 to 3 grade slope does not bring the grade flush with the street, the difference shall be retained by a rock rubble retaining wall not exceeding three feet in height, and if the difference is in excess of three feet, the retaining wall shall, only at those points which are in excess of three feet, be a decorative concrete retaining wall, such rock or rock and concrete retaining wall to be constructed immediately adjacent to the street's west curb.
- (9) No portion of any structure on the condominium tract shall have an overall height in excess of 35 feet above the surrounding grade.
- (10) Any change from the final site layout plan and grading plan for the condominium tract approved by the property owners in accord with Paragraph 11 below and any variation from the provisions of this Paragraph D shall be made only after the prior written approval of the adjoining property owners is obtained.

(11) The final site layout plan and the final grading plan for the condominium tract have been approved by the adjoining property owners and such approval has been endorsed thereon and copies so endorsed have been retained by the parties. The development of the condominium tract, except for minor changes in location only of structures on the east one-half of such condominium tract, shall be initially made and thereafter maintained during the life of these covenants and restrictions in accord with same. However, variations of same which are within the general intent of the land use set forth herein may be made with the written consent of the adjoining property owners.

E. An easement for ingress and egress to the aforesaid 15.84 acres to be granted at this time over, across and upon the approximate 1.17 acres of the subject property described on Exhibit C attached hereto and made a part hereof.

II

Except as herein modified such covenants and restrictions shall be and remain in full force and effect.

IN WITNESS WHEREOF the parties have signed this agreement the day and year first above written.

DUCHESNE COLLEGE AND CONVENT OF THE SACRED HEART, a Nebraska corporation

(Sister) Agnes Regan
Secretary

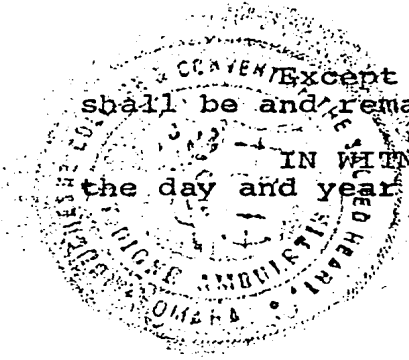
BY (Sister) Margaret Mary Miller
President

THE OMAHA NATIONAL BANK, Trustee

By Stanley C. Traub
Second Vice-President

John W. Bucholz

Joan P. Bucholz



STATE OF *Nebraska*]
] SS.
COUNTY OF *Douglas*]

On this 3 day of May, 1972, before me, the undersigned, a Notary Public in and for said County, personally came ~~Sister Margaret~~ Mary Miller, President of Duchesne College and Convent of the Sacred Heart, a Nebraska corporation, to me personally known to be the identical person whose name is affixed to the above Agreement and acknowledged the execution thereof to be her voluntary act and deed and the voluntary act and deed of said corporation; and that the corporation seal of the said corporation was thereto affixed by its authority.



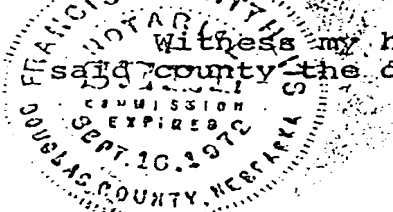
Witness my hand and notarial seal at Omaha, Nebraska, in said county the day and year last above written.

Francis P. Mantel
Notary Public

My commission expires the 16 day of Sept, 1972.

STATE OF NEBRASKA]
] SS.
COUNTY OF DOUGLAS]

On this 3 day of May, 1972, before me the undersigned, a Notary Public in and for said county, personally came Stanley A. Traub, to me known to be a Second Vice-President of The Omaha National Bank and the identical person whose name is affixed to the foregoing instrument, and he acknowledged the same to be his voluntary act and deed as such Second Vice-President and the voluntary act and deed of the Trustee.



Witness my hand and notarial seal at Omaha, Nebraska in said county the day and year last above written.

Francis P. Mantel
Notary Public

My commission expires the 16 day of Sept, 1972.

STATE OF NEBRASKA]
] SS.
COUNTY OF DOUGLAS]

On this 3 day of May, 1972, before me the undersigned, a Notary Public, duly commissioned, qualified for and residing in said county, personally came John W. Bucholz and Joan P. Bucholz,

to me known to be the identical persons whose names are affixed to the foregoing instrument and acknowledged the same to be their voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

Francis P. Matthews
Notary Public

My commission expires the 16 day of Sept, 1972.



POOR COPY

Field Notes:

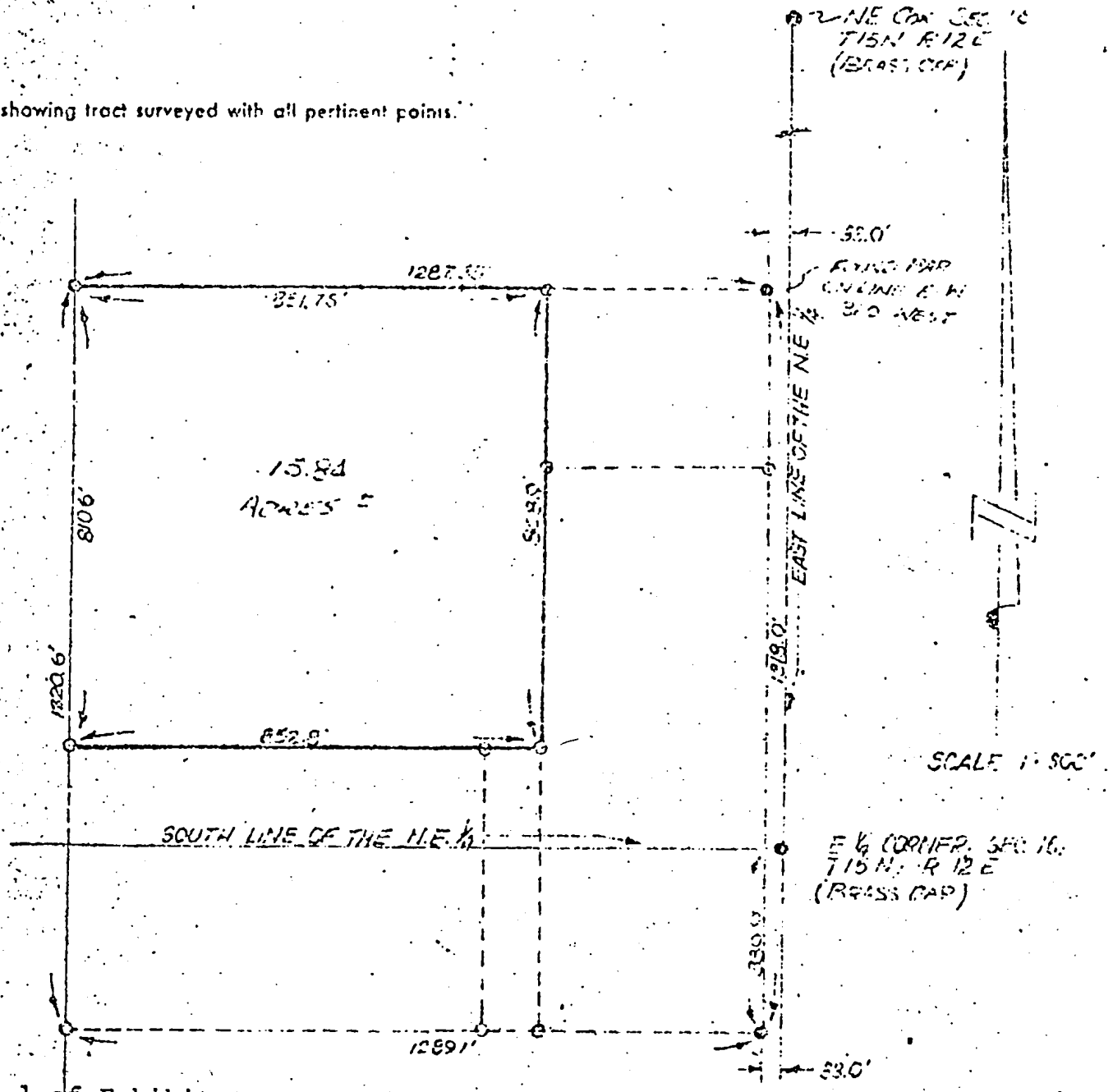
- Found Iron Pipe Monument
- Set " " "

LAND SURVEYOR'S CERTIFICATE

I hereby certify that this plat, map, survey or report was made by me or under my direct personal supervision and that I am a duly Registered Land Surveyor under the laws of the State of Nebraska.

Legal Description

Plat to scale showing tract surveyed with all pertinent points.



Page 1 of Exhibit B to Agreement Modifying Covenants and Restrictions

Signature of Land Surveyor *George E. Bernhart*

Date: October 19, 1971 No. No. 1 S. 16

LAND SURVEYOR

STATE OF NEBRASKA

DATE RECEIVED: _____

OFFICIAL ADDRESS: _____

BLDG. PERMIT NO.: _____

Field Notes

POOR COPY

LAND SURVEYOR'S CERTIFICATE

I hereby certify that this plat, map, survey or report was made by me or under my direct personal supervision and that I am a duly registered Land Surveyor under the laws of the State of Nebraska.

Legal Description

Plat to read showing tract surveyed with all pertinent points.

LEGAL DESCRIPTION

Beginning at a point nine hundred eighty-eight and no tenths (988.0) feet North and four hundred sixty-eight and six tenths (468.6) feet West of the East One-quarter corner of Section 16, Township 16 North, Range 12 East of the G. & N. M., Douglas County, Nebraska, said point being also on the South line of Meadowbrook Addition to the City of Omaha, Douglas County, Nebraska, thence easterly, in a westerly direction, along the South line of said Meadowbrook Addition, a distance of Eight hundred fifty-one and seventy-five hundredths (851.75) feet to the West line of the Southeast Quarter of the Northeast Quarter of said Section 16, thence left, in a southerly direction, along the West line of said Southeast Quarter of the Northeast, a distance of Eight hundred ten and six tenths (810.6) feet, thence left, in an easterly direction, along a straight line, a distance of Eight hundred fifty-two and eight tenths (852.8) feet, thence left, in a northerly direction, parallel to the East line of said Section 16, a distance of Eight hundred and eight and nine tenths (808.9) feet to the South line of said Meadowbrook Addition and the point of beginning, and containing a calculated area of 15.84 acres, more or less.

Page 2 of Exhibit B to Agreement Modifying Covenants and Restrictions

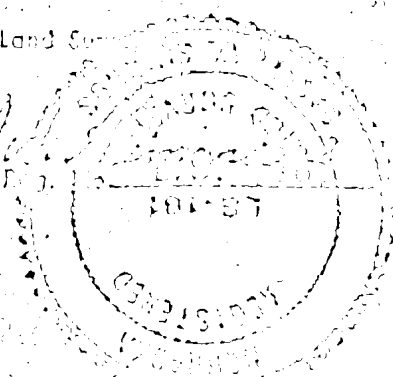
Signature of Land Surveyor

DATE RECEIVED _____

Date October 14, 1971

OFFICIAL ADDRESS _____

CITY, STATE AND ZIP _____



BOOK 509 PAGE 694

POOR COPY

To The Office of
GEORGE E. EHRHART
County Surveyor and Engineer
Douglas County

Sheet 1 of 2

Field Notes:

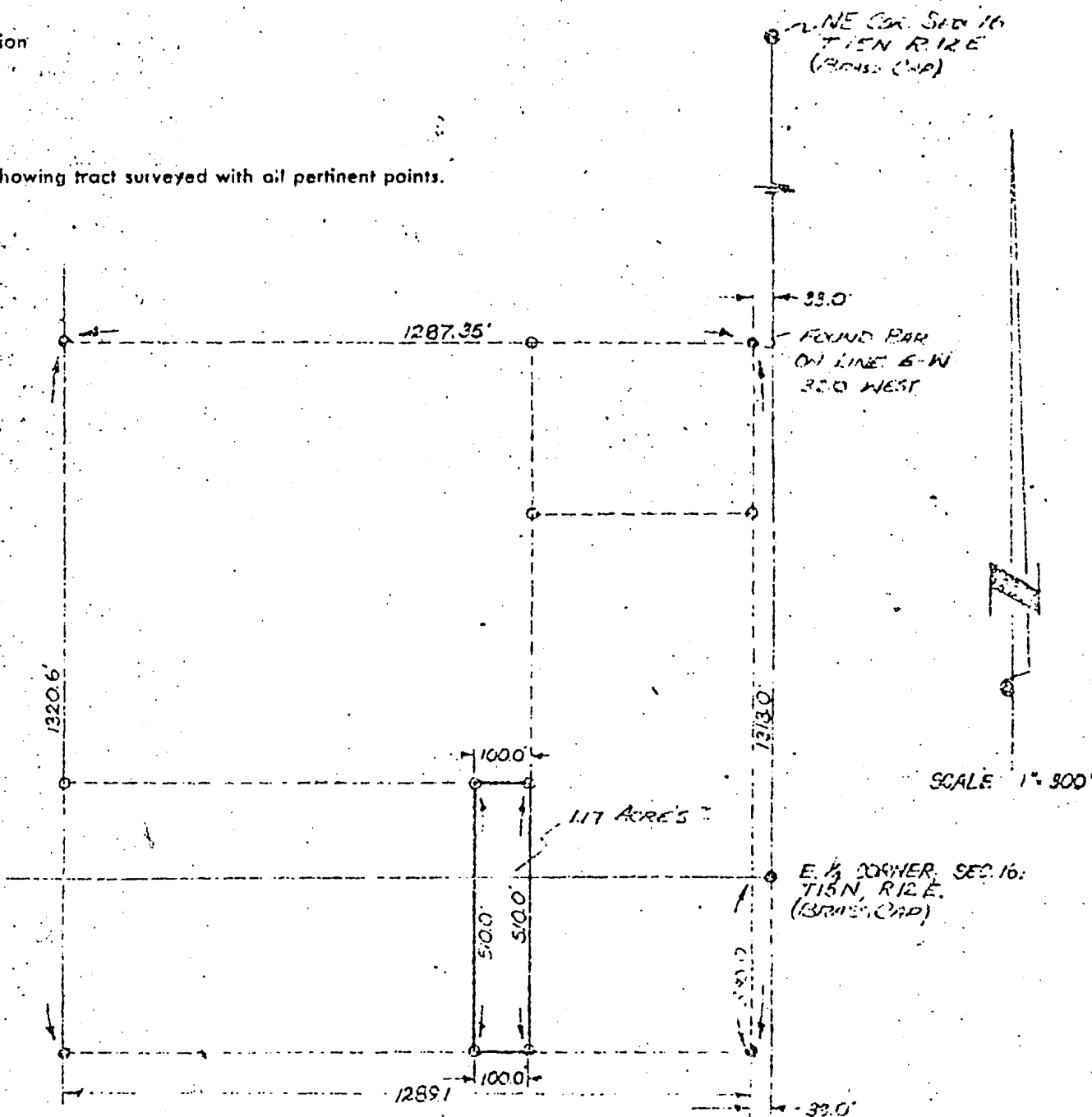
- Found Iron Pipe Monument
- Set " " "

LAND SURVEYOR'S CERTIFICATE

I hereby certify that this plat, map, survey or report was made by me or under my direct personal supervision and that I am a duly Registered Land Surveyor under the laws of the State of Nebraska.

Legal Description

Plat to scale showing tract surveyed with all pertinent points.



Page 1 of Exhibit C to Agreement Modifying Covenants and Restrictions

Signature of Land Surveyor

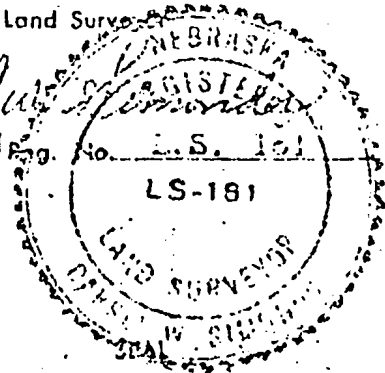
George E. Ehrhart

DATE RECEIVED: _____

Date: October 22, 1971 Reg. No. 158

OFFICIAL ADDRESS: _____

BLDG. PERMIT NO.: _____



To The Office of
GEORGE E. EHRHART
County Surveyor and Engineer
Douglas County

Sheet 2 of 2
BOOK **509** PAGE **695**

POOR COPY

Field Notes: _____

LAND SURVEYOR'S CERTIFICATE

I hereby certify that this plot, map, survey or report was made by me or under my direct personal supervision and that I am a duly Registered Land Surveyor under the laws of the State of Nebraska.

Legal Description _____

Plat to scale showing tract surveyed with all pertinent points.

LEGAL DESCRIPTION

Beginning at a point Three hundred thirty and no tenths (330.0) feet South and Four hundred sixty-eight and six tenths (468.6) feet West of the East One-Quarter corner of Section 16, Township 15 North, Range 12 East of the 6th P.M., Douglas County, Nebraska, thence continuing in a westerly direction, along the previously described course, a distance of One hundred and no tenths (100.0) feet, thence right, in a Northerly direction, parallel to the East line of said Section 16, a distance of Five hundred ten and no tenths (510.0) feet, thence right, in an Easterly direction, parallel to the penultimately described course, a distance of One hundred and no tenths (100.0) feet, thence right, in a Southerly direction, parallel to the East line of said Section 16, a distance of Five hundred ten and no tenths (510.0) feet to the point of beginning and containing a calculated area of 1.17 acres, more or less.

Page 2 of Exhibit C to
Agreement Modifying
Covenants and Restrictions

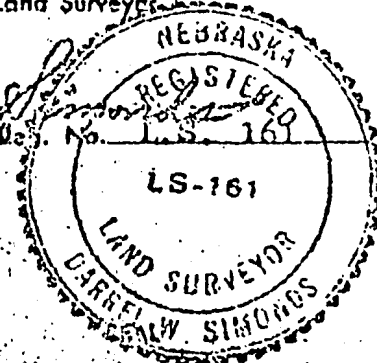
Signature of Land Surveyor _____

DATE RECEIVED: _____

Date October 19, 1970 No. LS-161

OFFICIAL ADDRESS: _____

BLOG. PERMIT NO.: _____



Field Notes:

POOR COPY

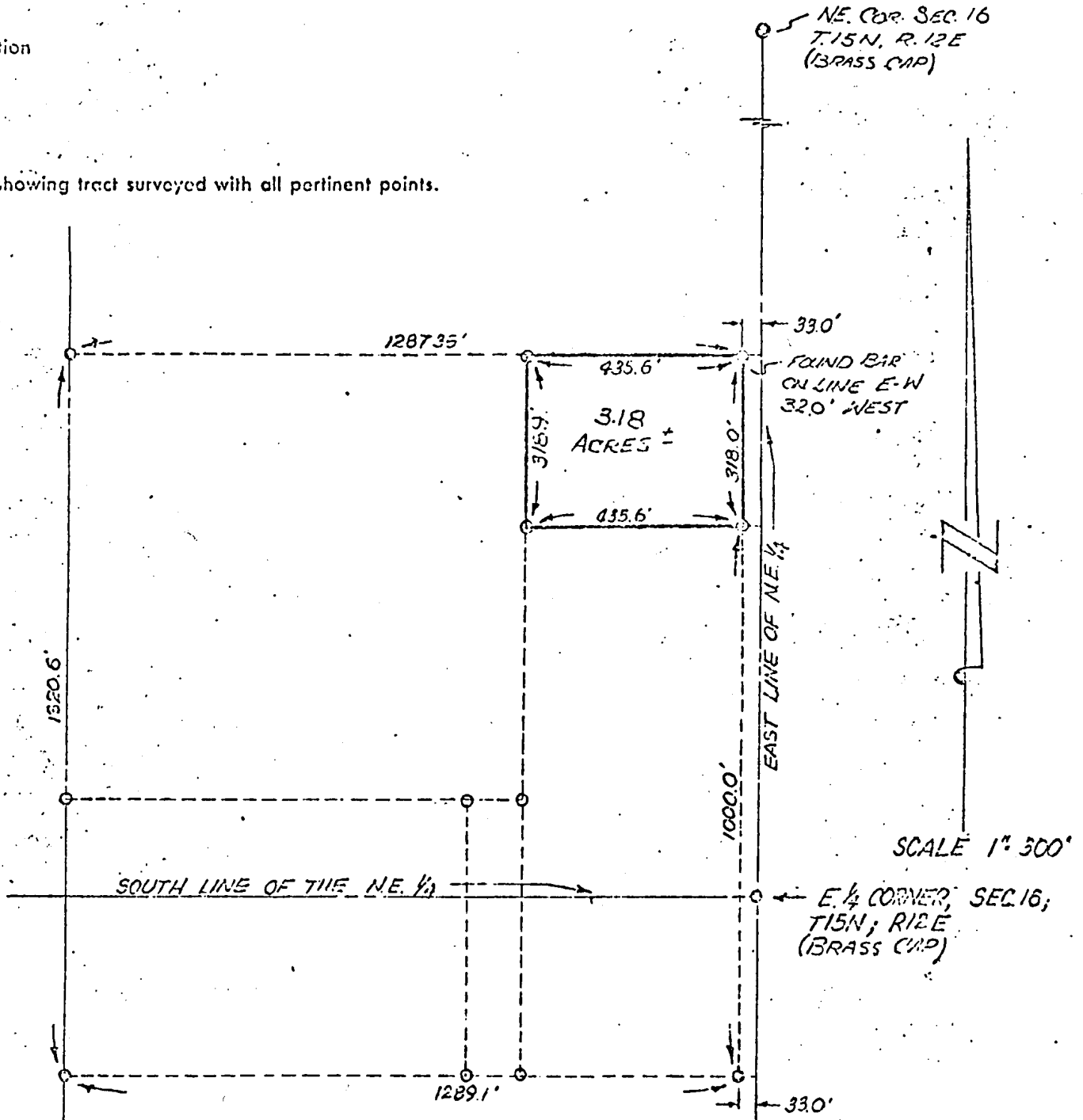
- Found Iron Pipe Monument
- Set " " " "

LAND SURVEYOR'S CERTIFICATE

I hereby certify that this plat, map, survey or report was made by me or under my direct personal supervision and that I am a duly Registered Land Surveyor under the laws of the State of Nebraska.

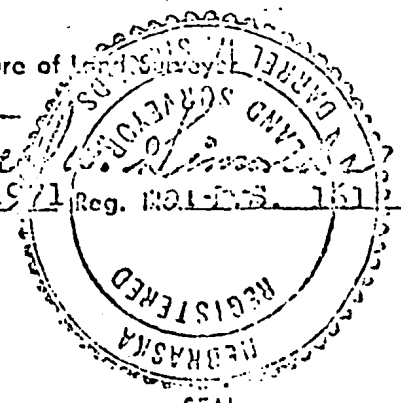
Legal Description

Plat to scale showing tract surveyed with all pertinent points.



Page 1 of Exhibit A to Agreement Modifying Covenants and Restrictions

Signature of _____



DATE RECEIVED: _____

Date: October 19, 1971 Reg. NO. 161

OFFICIAL ADDRESS: _____

BLDG. PERMIT NO.: _____

SEAL

To The Office of
GEORGE E. HERBERT
County Surveyor and Engineer
Douglas County

Sheet 2 of 2

BOOK **509** PAGE **697**

POOR COPY

Field Notes:

LAND SURVEYOR'S CERTIFICATE

I hereby certify that this plat, map, survey or report was made by me or under my direct personal supervision and that I am a duly Registered Land Surveyor under the laws of the State of Nebraska.

Legal Description

Plat to scale showing tract surveyed with all pertinent points.

LEGAL DESCRIPTION

Beginning at a point Six hundred seventy and no tenths (670.0) feet North and thirty-three and no tenths (33.0) feet West of the East One-Quarter corner of Section 16, Township 15, North, Range 12 East of the 6th P.M., Douglas County, Nebraska, thence left, in a Westerly direction, along a straight line, a distance of Four hundred thirty-five and six tenths (435.6) feet, thence right, in a Northerly direction, parallel to the East line of said Section 16, a distance of Three hundred eighteen and nine tenths (318.9) feet to the South line of Meadowbrook Addition to the City of Omaha, Douglas County, Nebraska, thence right, in an Easterly direction, along the South line of said Meadowbrook Addition, a distance of Four hundred thirty-five and six tenths (435.6) feet to a point thirty-three and no tenths (33.0) feet Westerly of the East line of said Section 16, thence right, in a Southerly direction, parallel to and thirty-three and no tenths (33.0) feet Westerly of the East line of said Section 16, a distance of Three hundred eighteen and no tenths (318.0) feet to the point of beginning and containing a calculated area of 3.18 acres, more or less.

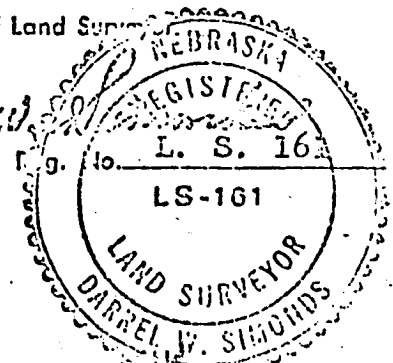
Page 2 of Exhibit A to
Agreement Modifying
Covenants and Restrictions

31. ENTERED IN NUMERICAL INDEX AND RECORDED IN THE REGISTER OF DEEDS OFFICE IN DOUGLAS COUNTY, NEBRASKA
MAY 19 72 3:00 P.M. C. HAROLD OSTLER, REGISTER OF DEEDS

Signature of Land Surveyor

Darrel W. Simonds

Date **October 19, 1971** P.M. No. **L. S. 16**



DATE RECEIVED: _____

OFFICIAL ADDRESS: _____

BLDG. PERMIT NO.: _____