

AGENDA

SPECIAL MEETING OF THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA

**Friday, October 21, 2005
1:00 p.m.**

Board Room, Varner Hall, 3835 Holdrege Street. Lincoln, Nebraska

**Eppley Administration Building, Room 110A, University of Nebraska at Omaha,
6001 Dodge Street, Omaha, Nebraska**

**Business Services Conference Room, Room 119, Founders Hall, University of
Nebraska at Kearney, 905 West 25th Street, Kearney, Nebraska**

**Cuming County Courthouse Meeting Room, University of Nebraska Northeast
Research and Extension Center, 200 South Lincoln, West Point, Nebraska**

- I. Call to Order
- II. Roll Call
- III. Approve the real property exchange and acquisition for future expansion of the University of Nebraska at Omaha campus. Addendum III-B-1
- IV. Adjourn

TO: The Board of Regents

Business Affairs

MEETING DATE: October 21, 2005, Special Meeting

SUBJECT: Real property exchange and acquisition for future expansion of the University of Nebraska at Omaha campus.

RECOMMENDED ACTION: Approve Master Agreement with Ak-Sar-Ben Future Trust providing for the (i) the exchange of parcels of land located in the Ak-Sar-Ben Business and Education Campus, and (ii) the acquisition of the Chili Greens property and approximately 17 acres of real property in the vicinity of 64th and Center Streets in Omaha.

PREVIOUS ACTION: September 16, 2005 - The Regents approved a non-binding Memorandum of Understanding with Ak-Sar-Ben Future Trust providing the negotiation of a binding definitive agreement for the (i) the exchange of parcels of land located in the Ak-Sar-Ben Business and Education Campus, and (ii) the acquisition of the Chili Greens property and approximately 17 acres of real property in the vicinity of 64th and Center Streets in Omaha.

September 16, 2005 - The Regents adopted a resolution authorizing the University Administration to proceed with the purchase of real property in the vicinity of 64th and Center Streets in Omaha for the development of the south campus of the University of Nebraska at Omaha.

EXPLANATION: In accordance with the Memorandum of Understanding with Ak-Sar-Ben Future Trust (AFT) approval of this agenda item will approve a Master Agreement between the University and Ak-Sar-Ben Future Trust providing for the (i) the exchange of parcels of land located in the Ak-Sar-Ben Business and Education Campus, and (ii) the acquisition of the 54 acre Chili Greens property and approximately 17 acres of real property in the vicinity of 64th and Center Streets, all as shown on the attached site plan.

In the land exchange AFT will acquire parcel A-4 and the University will acquire parcel A-3, both located within the Ak-Sar-Ben Business and Education Campus. This exchange of parcels will assist AFT with its development of its site south of the UNO south campus, and will accommodate the University's future development across from the Scott Village student housing complex.

In addition, the University will pay \$1,750,000 to AFT to acquire

parcel A-1 (Chili Greens), and will commit to use its reasonable best efforts to acquire the parcels of real estate within parcel A-2 (the Center Street 17 acres).

Both AFT and the University have committed to construct infrastructure(street improvements, traffic control devices, storm water and sanitary sewer facilities) within their respective properties by December 31, 2010.

The proposed purchase by the University of the 54 acre Chili Greens property and the Center Street 17 acres in the vicinity of 64th and Center Streets will provide the Board of Regents with a needed site for future development of the UNO campus in manner which will be compatible with the Ak-Sar-Ben Future Trust development north of Center Street.

The public may examine and obtain copies of the Master Agreement by contacting the Office of the University Corporation Secretary during normal University business hours at 402-472-7142

SOURCE OF FUNDS:

University of Nebraska Foundation

SPONSOR:

Nancy Belck
Chancellor, University of Nebraska at Omaha

APPROVAL:

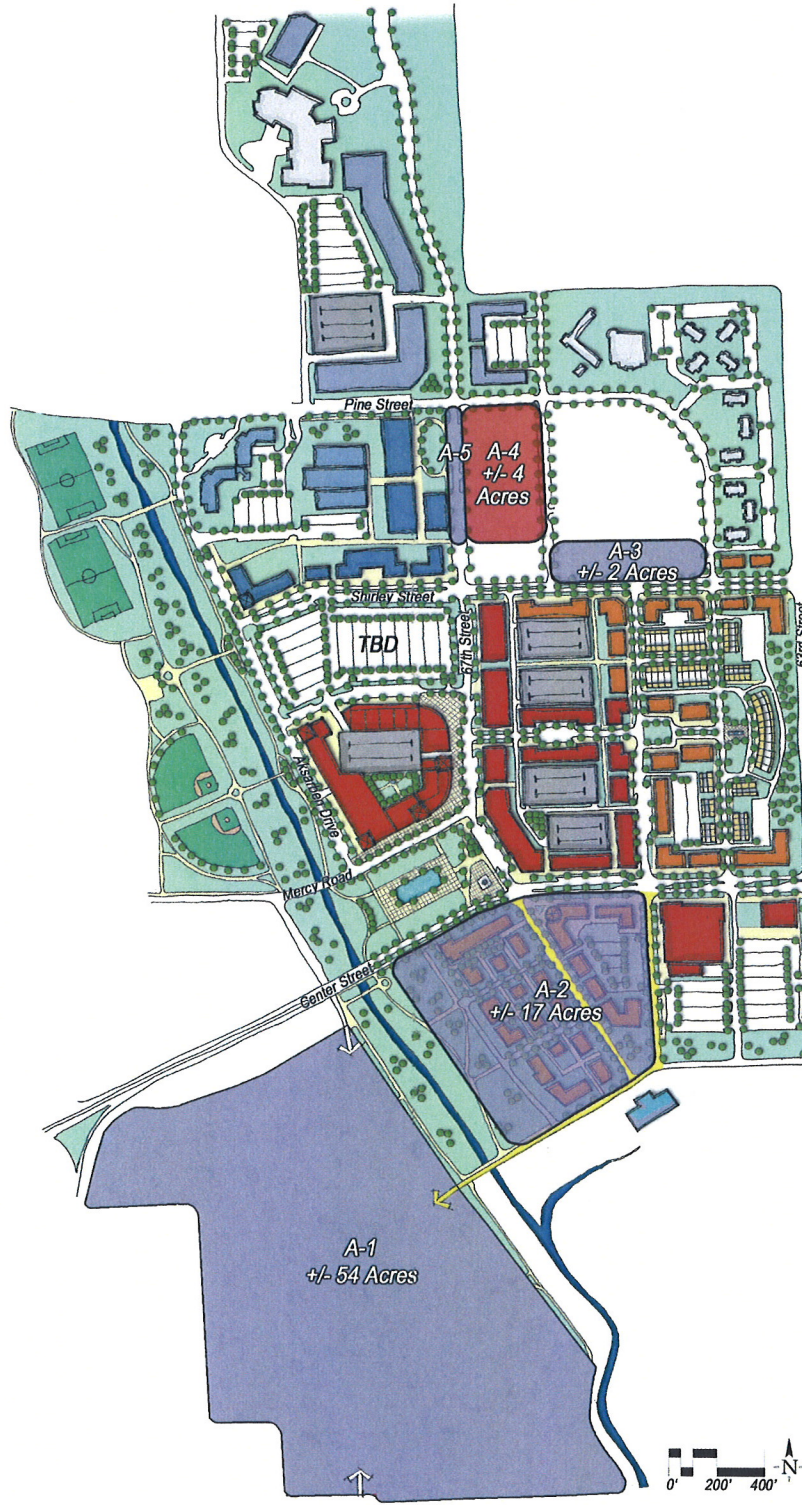
James B. Milliken, President

DATE:

October 19, 2005

ag101405.aft.land.rev

EXHIBIT A
SITE PLAN DEPICTING PARCELS OF REAL PROPERTY



MASTER AGREEMENT

THIS MASTER AGREEMENT (this “Agreement”) is made and entered into as of the day of October, 2005 by and between **AK-SAR-BEN FUTURE TRUST**, a Nebraska nonprofit corporation (“AFT”), and the **BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA**, a public body corporate of the State of Nebraska (the “University”).

PRELIMINARY STATEMENTS:

AFT owns or intends to obtain ownership or control of (a) the approximately two-acre parcel generally described in Exhibit A attached to this Agreement and legally described in Exhibit B attached to this Agreement (the “University Target”) and (b) the approximately 54-acre parcel generally described in Exhibit A attached to this Agreement and legally described in Exhibit B attached to this Agreement (“Chili Greens”).

The University owns or intends to obtain ownership or control of (a) the approximately four-acre parcel generally described in Exhibit A attached to this Agreement and legally described in Exhibit B attached to this Agreement (the “AFT Target”) and (b) the parcels comprising the approximately 17-acre area generally identified as the “Center Street 17” in Exhibit A attached to this Agreement (the “Center Street 17”).

Subject to the terms and conditions set forth in this Agreement, AFT shall convey fee title to the University Target and Chili Greens to the University or its designee, the University shall pay certain sums to AFT and convey fee title to the AFT Target to AFT or its designee, the University plans to acquire ownership or control of all of the real property comprising the Center Street 17 and the parties shall perform certain other covenants and obligations as further set forth in this Agreement.

AGREEMENT:

For and in consideration of the mutual covenants and promises hereinafter set forth, the parties hereto do hereby mutually covenant and agree as follows:

Section 1. Agreement To Exchange Real Property.

(a) Subject to and upon each and every one of the terms and conditions set forth in this Agreement, AFT agrees to convey the Fee Interest in the University Target and Chili Greens to the University or its designee. For purposes of this Agreement, the term “Fee Interest” shall be deemed to include fee simple title to the real property in question, together with all of the improvements of every kind in, on, over and under such real property and all right, title and interest in and to all easements, rights-of-way, appurtenances and other rights and benefits thereunto belonging. In addition, and also subject to and upon each and every one the terms and conditions set forth in this Agreement, AFT agrees to transfer to the University all of its interest in the inventory of

Chili Greens personal property described in Exhibit F attached to this Agreement (the “Chili Greens Personal Property”).

(b) Subject to and upon each and every one of the terms and conditions set forth in this Agreement, the University agrees to convey the Fee Interest in the AFT Target to AFT or its designee and to pay the sum of \$1,750,000 (the “Cash Payment”) in good funds to AFT, subject to adjustment as provided in this Agreement. For purposes of this Agreement, the term “Property” shall be deemed to collectively include the University Target, Chili Greens and the AFT Target.

Section 2. Due Diligence. Each party has previously provided to the other party copies of any of the following items in its possession concerning those portions of the Property it may own:

- (a) title insurance policies, commitments and reports;
- (b) surveys, maps and other graphical depictions; and
- (c) environmental, soils, building inspection and other reports detailing environmental or other conditions.

At any time prior to the Closing Date or any termination of this Agreement, each party shall have the right, at its sole cost and expense and upon prior notice to the other party, to enter upon that portion of the Property owned by the other party to conduct inspections of the physical characteristics of such Property reasonably necessary to determine the suitability of such Property for such inspecting party’s intended use. The party inspecting such portions of the Property or authorizing its agents to so inspect such Property shall keep such Property free of all liens and claims arising from such inspections and shall restore such Property to its condition prior to such inspections upon any termination of this Agreement.

Section 3. Closing.

(a) Subject to the terms and conditions of this Agreement, the closing of the transfer and exchange of the Property described in Section 1 of this Agreement (the “Closing”) shall take place on or before October 31, 2005 (the “Closing Date”) by way of escrow with each party depositing in advance all monies and executed documents it is obligated by this Agreement to deliver at Closing with Security Land Title Company, a Nebraska corporation (“Title Company”) and instructing Title Company to release such monies and documents and perform the Closing in accordance with such party’s written instructions.

(b) The parties shall each execute, acknowledge and deliver deeds conveying their respective Properties as required by this Agreement into escrow with the Title Company on the Closing Date, which deeds shall temporarily describe the Property being conveyed by way of pictorial descriptions. The Title Company shall hold such deeds in escrow, to be released upon completion of all measures necessary to create legal descriptions sufficient to legally convey such portions of the Property, including but not limited to replatting or subdividing the same in accordance with applicable law (the

“Platting”). Each party agrees to take all actions, file all applications, sign all instruments and pay all sums necessary to accomplish the Platting. Upon completion of the Platting, each party authorizes the Title Company to attach legal descriptions to each deed to convey the Property in question and to immediately record such deeds. Each party’s duties set forth in this subsection shall survive the Closing.

Section 4. Conditions to Closing.

(a) AFT shall not be obligated to proceed with Closing until all of the following conditions have been waived by AFT or satisfied:

(i) the University shall execute a special warranty deed for the AFT Target in favor of AFT, free and clear of any and all liens, encumbrances, covenants, conditions and restrictions, except for the AFT Target Permitted Exceptions (as defined below);

(ii) Title Company shall have provided assurances to AFT that it will issue an owner’s policy of title insurance upon recording the deed as set forth above, in form and substance reasonably satisfactory to AFT subject only to the AFT Target Permitted Exceptions (the “AFT Title Policy”);

(iii) the University shall have executed and delivered to AFT or the Title Company all affidavits and governing resolutions and such further documents as reasonably may be required in order to obtain the AFT Title Policy;

(iv) the University or its designee shall have paid the Cash Payment to AFT, as adjusted according to the terms of this Agreement; and

(v) all agreements and conditions required to be performed or complied with by the University prior to or at the time of Closing in connection with the Closing shall have been duly performed or complied with by the University prior to or at such time and all representations, warranties and covenants of the University set forth herein shall be true and correct as of the Closing Date.

The University shall satisfy all of the above conditions on or before the Closing Date.

(b) The University shall not be obligated to proceed with Closing until all of the following conditions have been waived by the University or satisfied:

(i) AFT shall execute special warranty deeds for the University Target and Chili Greens in favor of the University or its designee, free and clear of any and all liens, encumbrances, covenants, conditions and restrictions, except for the University Target Permitted Exceptions (as defined below) and the Chili Greens Permitted Exceptions (as defined below), respectively. AFT shall execute, or cause Lessee (as defined herein) to execute, a quitclaim bill of sale to transfer all of its interest in the Chili Greens Personal Property to the University or its designee;

(ii) Title Company shall have provided assurances to the University that it will issue owner's policies of title insurance upon recording the deeds as set forth above, in form and substance reasonably satisfactory to the University subject only to the University Target Permitted Exceptions and the Chili Greens Permitted Exceptions, respectively (the "University Title Policy");

(iii) AFT shall have executed and delivered to the University or the Title Company all affidavits and governing resolutions and such further documents as reasonably may be required in order to obtain the University Title Policy; and

(iv) all agreements and conditions required to be performed or complied with by AFT prior to or at the time of Closing in connection with the Closing shall have been duly performed or complied with by AFT prior to or at such time and all representations, warranties and covenants of AFT set forth herein shall be true and correct as of the Closing Date.

AFT shall satisfy all of the above conditions on or before the Closing Date.

Section 5. Transaction Costs and Prorations. The costs of Closing shall be paid at or prior to Closing by and among the parties as follows:

(a) the University and AFT each shall pay the cost of the Title Policy respecting the real property they will own subsequent to Closing;

(b) the University and AFT each shall pay 50% of the cost of any escrow closing fee charged by Title Company;

(c) the University shall pay the cost of the documentary stamp tax paid to file the special warranty deeds transferring the University Target and Chili Greens, all documentary stamp tax levied upon the Cash Payment and the fee to record such deeds;

(d) the University shall pay recording costs to release any liens and items which are not AFT Target Permitted Exceptions against the AFT Target;

(e) AFT shall pay the cost of the documentary stamp tax paid to file the special warranty deed transferring the AFT Target and the fee to record such deed; and

(f) AFT shall pay recording costs to release any items which are not University Target Permitted Exceptions or Chili Greens Permitted Exceptions, and any liens against the same.

All general real estate tax assessments against the Property which become delinquent in the year in which Closing takes place shall be treated as though all are current taxes, and those taxes shall be prorated between the University and AFT as of the Closing Date. In the event that it is necessary to prepay any real estate taxes in connection with any replatting of any portion of the Property, the owner thereof shall prepay all such taxes and other party shall reimburse the prepaying party at Closing for any portion thereof attributable to such nonpaying party's

ownership thereof. The current owner of the Property in question shall be responsible for paying all other taxes, special assessments, insurance premiums, utilities bills, service agreement fees and any other costs relating to the use or ownership of such Property for the period prior to Closing. Such obligations shall survive the Closing of this Transaction. At or prior to the Closing Date, either party may contact any utility provider serving the Property and place such providers on notice of the pending new ownership of the Property and obtain final readings for billing and proration purposes. Each party's duty to pay its share of prorated operating costs as described above shall survive Closing and in the event that such sums are calculated or submitted to either party after Closing, the responsible party shall remit such sums to the other party within 30 days of demand accompanied by appropriate supporting documentation.

Section 6. Representations and Warranties of University. The University represents and warrants to AFT as follows:

(a) **Organization, Standing and Authorization.** The University is a public body corporate duly formed, validly existing and in good standing and has all requisite power and authority to own and convey the AFT Target, to enter into and perform this Agreement and to carry out the transaction contemplated by this Agreement (the "Transaction"). The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of the University are and shall be duly authorized to execute and deliver such documents. This Agreement and all documents to be executed and delivered by the University are and shall be binding upon and enforceable against the University in accordance with their respective terms.

(b) **Compliance With Other Instruments.** The execution, delivery and performance by the University of this Agreement and the consummation of the Transaction will not violate, or constitute a default under, any provision of the University's organizational documents or the statutes which govern the creation and continued existence of the University or by which any of its property is bound.

(c) **Absence of Breaches or Defaults.** The University is not, and the authorization, execution, delivery and performance of this Agreement and the documents, instruments and agreements provided for herein and the consummation of the Transaction will not result, in any breach or default under any other document, instrument or agreement to which the University is a party or by which the University or the AFT Target is subject or bound.

(d) **Title.** The University owns the AFT Target in fee simple absolute, free of any liens, claims or encumbrances except for those liens, claims or encumbrances (the "AFT Target Permitted Exceptions") identified in Exhibit C attached to this Agreement.

(e) **Litigation.** There are no claims, causes of action or other litigation or proceedings pending or threatened with respect to (i) the University which would materially interfere with the consummation of the Transaction or (ii) the University's ownership or operation or the condition of the AFT Target or any part thereof (including disputes with mortgagees, developers, governmental authorities, utility companies, contractors, adjoining landowners or suppliers of goods or services).

(f) ***No Other Agreements or Options.*** Except for the AFT Target Permitted Exceptions and the leases and service agreements described below, neither the University nor the AFT Target is subject to any commitment, obligation or agreement, including, but not limited to, any letter of intent, right of first refusal, option to purchase or lease granted to a third party, which could or would prevent the University from completing or impair the University's ability to complete the Transaction.

(g) ***No Mechanics' Liens.*** There are no outstanding accounts payable, mechanics' liens or rights to claim a mechanics' or other lien in favor of any materialman, laborer or other person or entity in connection with labor or materials furnished to or performed on any portion of the AFT Target; no work has been performed or is in progress nor have materials been supplied to the AFT Target or agreements entered into for work to be performed or materials to be supplied to the AFT Target prior to the date hereof which will not have been fully paid for on or before the Closing Date or which might provide the basis for the filing of liens against the AFT Target or any portion thereof. The University shall be responsible post-Closing for any and all claims for mechanics' liens and accounts payable that have arisen or may subsequently arise due to agreements entered into for and/or any work performed on or materials supplied to the AFT Target prior to the Closing Date.

(h) ***Leases and Service Contracts.*** The AFT Target is not subject to any lease, license or other occupancy agreement except as set forth in Exhibit D attached to this Agreement. The University has not entered into any service, management or maintenance agreement relating to or affecting the use, operation or management of the AFT Target except as set forth in Exhibit E attached to this Agreement. The University shall, at its sole cost and expense, terminate any and all leases, licenses, other occupancy agreements and any and all service, management and maintenance agreements concerning the AFT Target prior to the Closing Date unless waived by AFT, in which event the University shall assign such agreements to AFT at Closing and any amounts collectible or payable under such agreements shall be prorated between the parties to the Closing Date.

Except as set forth in this Agreement, the University will convey the AFT Target to AFT in its "As-Is" condition with no express or implied warranties. The University makes no representation or warranty regarding the completeness or accuracy of any Diligence Materials it has provided to AFT. Except as otherwise set forth in this Agreement, AFT hereby releases the University from any and all claims and liability arising from the condition, ownership, use, operation or management of the AFT Target.

Section 7. Representations of AFT. AFT represents and warrants to the University as follows:

(a) ***Organization, Standing and Authorization.*** AFT is a nonprofit corporation duly formed, validly existing and in good standing and has all requisite power and authority to own and convey the University Target and Chili Greens, to enter into and perform this Agreement and to carry out the Transaction. The individuals signing this Agreement and all other documents executed or to be executed pursuant

hereto on behalf of AFT are and shall be duly authorized to execute and deliver such documents. This Agreement and all documents executed and delivered by AFT are and shall be binding upon and enforceable against AFT in accordance with their respective terms.

(b) ***Compliance With Other Instruments.*** The execution, delivery and performance by AFT of this Agreement and the consummation of the Transaction will not violate, or constitute a default under, any provision of AFT's organizational documents or the statutes which govern the creation and continued existence of AFT or by which any of its property is bound.

(c) ***Absence of Breaches or Defaults.*** AFT is not, and the authorization, execution, delivery and performance of this Agreement and the documents, instruments and agreements provided for herein and the consummation of the Transaction will not result, in any breach or default under any other document, instrument or agreement to which AFT is a party or by which AFT, the University Target or Chili Greens is subject or bound.

(d) ***Title.*** AFT owns the University Target and Chili Greens in fee simple absolute, free of any liens, claims or encumbrances except for those liens, claims or encumbrances (the "University Target Permitted Exceptions" and the "Chili Greens Permitted Exceptions," respectively) identified in Exhibit C attached to this Agreement, and AFT has such interest as transferred by Lessee to AFT in the Chili Greens Personal Property.

(e) ***Litigation.*** There are no claims, causes of action or other litigation or proceedings pending or threatened with respect to (i) AFT which would materially interfere with the consummation of the Transaction or (ii) AFT's ownership or operation or the condition of the University Target or Chili Greens or any part thereof (including disputes with mortgagees, developers, governmental authorities, utility companies, contractors, adjoining landowners or suppliers of goods or services).

(f) ***No Other Agreements or Options.*** Except for the University Target Permitted Exceptions and the Chili Greens Permitted Exceptions and the leases and service agreements described below, none of AFT, the University Target nor Chili Greens is subject to any commitment, obligation or agreement, including, but not limited to, any letter of intent, right of first refusal, option to purchase or lease granted to a third party, which could or would prevent AFT from completing or impair AFT's ability to complete the Transaction.

(g) ***No Mechanics' Liens.*** There are no outstanding accounts payable, mechanics' liens or rights to claim a mechanics' or other lien in favor of any materialman, laborer or other person or entity in connection with labor or materials furnished to or performed on any portion of the University Target or Chili Greens; no work has been performed or is in progress nor have materials been supplied to the University Target or Chili Greens or agreements entered into for work to be performed or materials to be supplied to the University Target or Chili Greens prior to the date hereof

which will not have been fully paid for on or before the Closing Date or which might provide the basis for the filing of liens against the University Target or Chili Greens or any portion thereof. AFT shall be responsible post-Closing for any and all claims for mechanics' liens and accounts payable that have arisen or may subsequently arise due to agreements entered into for and/or any work performed on or materials supplied to the University Target and Chili Greens prior to the Closing Date.

(h) ***Leases and Service Contracts.*** Neither the University Target nor Chili Greens is subject to any lease, license or other occupancy agreement except as set forth in Exhibit D attached to this Agreement. AFT has not entered into any service, management or maintenance agreement relating to or affecting the use, operation or management of the University Target or Chili Greens except as set forth in Exhibit E attached to this Agreement. Except as set forth below, AFT shall, at its sole cost and expense, terminate any and all leases, licenses, other occupancy agreements and any and all service, management and maintenance agreements concerning the University Target and Chili Greens prior to the Closing Date unless waived by the University, in which event AFT shall assign such agreements to the University at Closing and any amounts collectible or payable under such agreements shall be prorated between the parties to the Closing Date. The parties acknowledge that the Lease is currently set to expire on the Closing Date pursuant to that certain Agreement dated June 27, 2005 (the "Termination Agreement") executed by and between AFT and Great Western Bank, a Nebraska corporation ("Lessee"). In the event that Lessee fails to vacate Chili Greens on or before the Closing Date or otherwise breaches the Lease or the Termination Agreement, AFT shall assign all of its right, title and interest in and to the Lease and the Termination Agreement to the University who will proceed directly against Lessee, and AFT shall thereafter be released from all liability arising from the Lease and the Agreement.

Except as set forth in this Agreement, AFT will convey the University Target and Chili Greens to the University in its "As-Is" condition with no express or implied warranties. AFT makes no representation or warranty regarding the completeness or accuracy of any Diligence Materials it has provided to the University. Except as otherwise set forth in this Agreement, the University hereby releases AFT from any and all claims and liability arising from the condition, ownership, use, operation or management of the University Target and Chili Greens.

Section 8. Casualty and Condemnation.

(a) ***AFT Target.*** From the date hereof until Closing, the University is considered the owner of the AFT Target for all purposes and shall be entitled to receive all insurance proceeds and/or condemnation awards that may become payable with respect thereto except as otherwise set forth below. Any and all risks associated with ownership of the AFT Target shall be borne by the University until Closing. If the AFT Target, any interest therein or any portion thereof shall suffer any casualty or shall be taken, condemned or transferred in lieu thereof (which the University shall not consent to without AFT's prior written consent) prior to the Closing Date, or in the event that any of the foregoing are threatened or authorized prior to the Closing Date, the parties shall nevertheless proceed to Closing subject to the terms and conditions of this Agreement

and in the event Closing occurs AFT shall receive all insurance proceeds and condemnation awards respecting such casualty or taking.

(b) **University Target.** From the date hereof until Closing, AFT is considered the owner of the University Target and Chili Greens for all purposes and shall be entitled to receive all insurance proceeds and/or condemnation awards that may become payable with respect thereto except as otherwise set forth below. Any and all risks associated with ownership of the University Target and Chili Greens shall be borne by AFT until Closing. If the University Target, Chili Greens or any interest therein or any portion thereof shall suffer any casualty or shall be taken, condemned or transferred in lieu thereof (which AFT shall not consent to without the University's prior written consent) prior to the Closing Date, or in the event that any of the foregoing are threatened or authorized prior to the Closing Date, the parties shall nevertheless proceed to Closing subject to the terms and conditions of this Agreement and in the event Closing occurs the University shall receive all insurance proceeds and condemnation awards respecting such casualty or taking.

Section 9. Remedies. In the event that either party shall breach any of its duties and obligations set forth in this Agreement, the nonbreaching party may seek any and all remedies available at law or in equity, including but not limited to the remedy of specifically enforcing this Agreement, to which remedy the parties hereby irrevocably and knowingly consent.

Section 10. Brokerage Commission. Each of the parties represents and warrants to the other that neither party dealt with, negotiated through or communicated with any other broker in connection with this transaction. Each party shall indemnify, defend and hold harmless the other party from and against any and all claims, loss, costs and expenses, including reasonable counsel fees, resulting from any claims that may be made against such party by any broker claiming a commission by, through or under the other party.

Section 11. Operational Control. The University acknowledges that in the event that Closing shall fail to occur on or before October 31, 2005, AFT shall have no duty to continue to (i) operate Chili Greens, including but not limited to the golf course, dome, pro shop, restaurant/bar, social or other events or any other business conducted at Chili Greens or (ii) maintain the land, improvements or personal property located upon Chili Greens, including but not limited to the golf course and appurtenances thereto.

Section 12. Affirmative Covenants. The University and AFT shall perform their respective duties and obligations set forth below in conformance with any applicable time limitations set forth below.

(a) The University shall acquire all interests, take all actions and execute, acknowledge and deliver all instruments necessary to dedicate to the City of Omaha, at no cost to AFT, all land sufficient to extend the 67th Street right-of-way from Pine Street to the southern boundary of Lot 2 AK-Sar-Ben Business and Education Campus Replat 5, identified as parcel A-5 in Exhibit A. Such efforts shall include obtaining such dedications from any third parties necessary for such extension, including the Scott Technology Center and its affiliates. The parties acknowledge that such right-of-way is

the main arterial roadway of the proposed Ak-Sar-Ben Village Development and is a material inducement to AFT to execute and perform this Agreement. The University shall complete such dedication on or before September 30, 2006.

(b) The University shall take all actions and execute, deliver and record all instruments necessary to ensure that any future real property located south of Pine Street owned or controlled by the University or any of its affiliates (except for the use of Chili Greens by the University for University off-street parking facilities, recreational areas and athletic fields and related facilities) shall be developed in a manner consistent with the basic urban design principles employed in connection with the development of the area depicted as the "North Project Area" in Exhibit A. Such principles generally include:

- (i) Wide, pedestrian-friendly sidewalks with extensive landscaping and specialty lighting;
- (ii) Plazas and other small gathering spaces incorporated into the pedestrian system;
- (iii) Buildings that front on the sidewalks with little or no setbacks;
- (iv) Localized streets with on-street parking;
- (v) Off-street parking facilities, be they structures or surface lots, located behind and screened by buildings; and
- (vi) Building architecture and design which present a consistent theme, rhythm and use of materials.

(c) As of the date of this Agreement, the University of Nebraska Foundation has purchased or has under contract to purchase approximately 68.6 % of the total privately owned land area of the Center Street 17 for University use. The University will use its reasonable best efforts to obtain ownership of the remainder of the Center Street 17. The University shall commence construction of improvements and building structures (the "Center Street 17 Improvements") on the portion of the Center Street 17 it is able to acquire on or before January 1, 2009. In the event it is impractical or impossible to commence construction by this date due to the lack of adequate funding for the same as determined by the Board of Regents, AFT agrees to grant any reasonable request of the University to extend the time of performance of such duty, provided that the University has adopted a definitive development plan for the Center Street 17 and provides AFT with a plan and time schedule to secure adequate funding to commence construction.

(d) Once funds become available to allow the University to develop the Center Street 17 and Chili Greens, the University shall take all actions and execute, deliver and record all instruments necessary to ensure that unless otherwise agreed all portions of the Center Street 17 owned by the University and Chili Greens shall be used for University purposes, such as student housing, academic buildings, athletic facilities

and off-street parking facilities, or for purposes that are complementary to the teaching, research and service mission of the University, such as business incubator facilities and affiliated educational or research facilities; provided, however, that the forgoing restrictions shall not prohibit the University from operating Chili Greens as a golf course, golf training facility and special events facility in the same manner as Chili Greens is being operated as of the date of this Agreement, from the Closing Date until January 1, 2009.

(e) The University shall cause to be constructed all "Infrastructure" within the areas depicted as "University Infrastructure" in Exhibit A to service the Center Street 17 and Chili Greens. As used in this Agreement, the term "Infrastructure" shall mean all street improvements, traffic-control devices, storm-water facilities, storm and sanitary sewers, utilities and other infrastructure and improvements necessary to permit the orderly development and use of real property such that it is adequately serviced for its proposed uses. The University shall cause the Infrastructure described above to be completed, operational and available for public and private use on or before December 31, 2010. In the event it is impractical or impossible to accomplish the foregoing by said date due to the lack of adequate funding for the Infrastructure as determined by the Board of Regents, AFT agrees to grant any reasonable request of the University to extend the time of performance of such duty, provided that the University shall provide AFT with a plan and time schedule to secure adequate funding for completion of such Infrastructure.

(f) AFT shall cause to be constructed all "Infrastructure" within the areas depicted as "AFT Infrastructure" in Exhibit A to service the AFT Target and the Ak-Sar-Ben Village Development. AFT shall cause the Infrastructure described above to be completed, operational and available for public and private use on or before December 31, 2010. In the event it is impractical or impossible to accomplish the foregoing by said date, the University agrees to grant any reasonable request of AFT to extend the time of performance of such duty, provided that AFT shall provide the University with a plan and time schedule for completion of such Infrastructure.

Section 13. Notice. All notices, requests, demands and other communications pertaining to this Agreement shall be in writing and shall be given by hand delivery, by prepaid registered or certified mail with return receipt requested, by an established national overnight courier providing proof of delivery for next-business-day delivery, or by facsimile, addressed as follows:

If to the University:	University of Nebraska 3935 Holdredge Street Lincoln, NE 68583-07445 Attention: Donal J. Burns, Corporation Secretary
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with a copy (which shall not

constitute notice) to:

James Buck
Vice Chancellor for Administration
University of Nebraska at Omaha
EAB 112
Omaha, NE 68182

Vice President and General Counsel
University of Nebraska
3835 Holdredge Street
Lincoln, NE 68583-0745

If to AFT:

Ak-Sar-Ben Future Trust
1000 Kiewit Plaza
3555 Farnam Street
Omaha, NE 68131
Attention: Ken Stinson
Telephone: (402) 486-6436
Facsimile: (402) 486-6317

with copies
(which shall not
constitute notice) to:

Michael McCarthy and Dana Bradford
McCarthy Capital Corporation
First National Tower
Suite 3800
1601 Dodge Street
Omaha, NE 68102
Telephone: (402) 932-8600
Facsimile: (402) 991-0020

Michael L. Curry, Esq. and
Richard J. Rosenblatt, Esq.
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Telephone: (402) 346-6000
Facsimile: (402) 346-1148

Section 14. Miscellaneous.

(a) The provisions of this Agreement shall not be amended, waived or modified except by an instrument, in writing, signed by the parties hereto to be charged.

(b) In construing this Agreement, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include every other and all genders.

(c) All sections and descriptive headings of this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

(d) This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

(e) This Agreement constitutes the entire understanding between the parties with respect to the Property and supersedes and replaces all previous agreements and understandings between the parties with respect thereto.

(f) The waiver of any party of any breach or default by any other party under any of the terms of this Agreement shall not be deemed to be, nor shall the same constitute, a waiver of any subsequent breach or default on the part of any other party.

(g) AFT may not assign its rights or obligations hereunder without the University's prior written consent, which shall not be unreasonably withheld. The University may not assign its rights or obligations hereunder without AFT's prior written consent, which shall not be unreasonably withheld.

(h) This Agreement shall be used as instructions to the Title Company as escrow agent, which may attach hereto its standard conditions of acceptance of escrow; provided, however, that in the event of any inconsistency between such standard conditions of acceptance and the terms of this Agreement, the terms of this Agreement shall prevail.

(i) This Agreement shall be construed and enforced pursuant to the laws of the State of Nebraska.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

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

By _____
Name _____
Title _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

BOARD OF REGENTS OF THE
UNIVERSITY OF NEBRASKA, a public body
corporate of the State of Nebraska

Attest:

Donal J. Burns
Corporation Secretary

By _____
Name _____
Title _____

IN WITNESS WHEREOF, Title Company has executed and delivered this Agreement solely to witness its agreement to perform the escrow functions described in this Agreement.

SECURITY LAND TITLE, a Nebraska corporation

By _____
Name _____
Title _____

EXHIBIT A
SITE PLAN DEPICTING PARCELS OF REAL PROPERTY

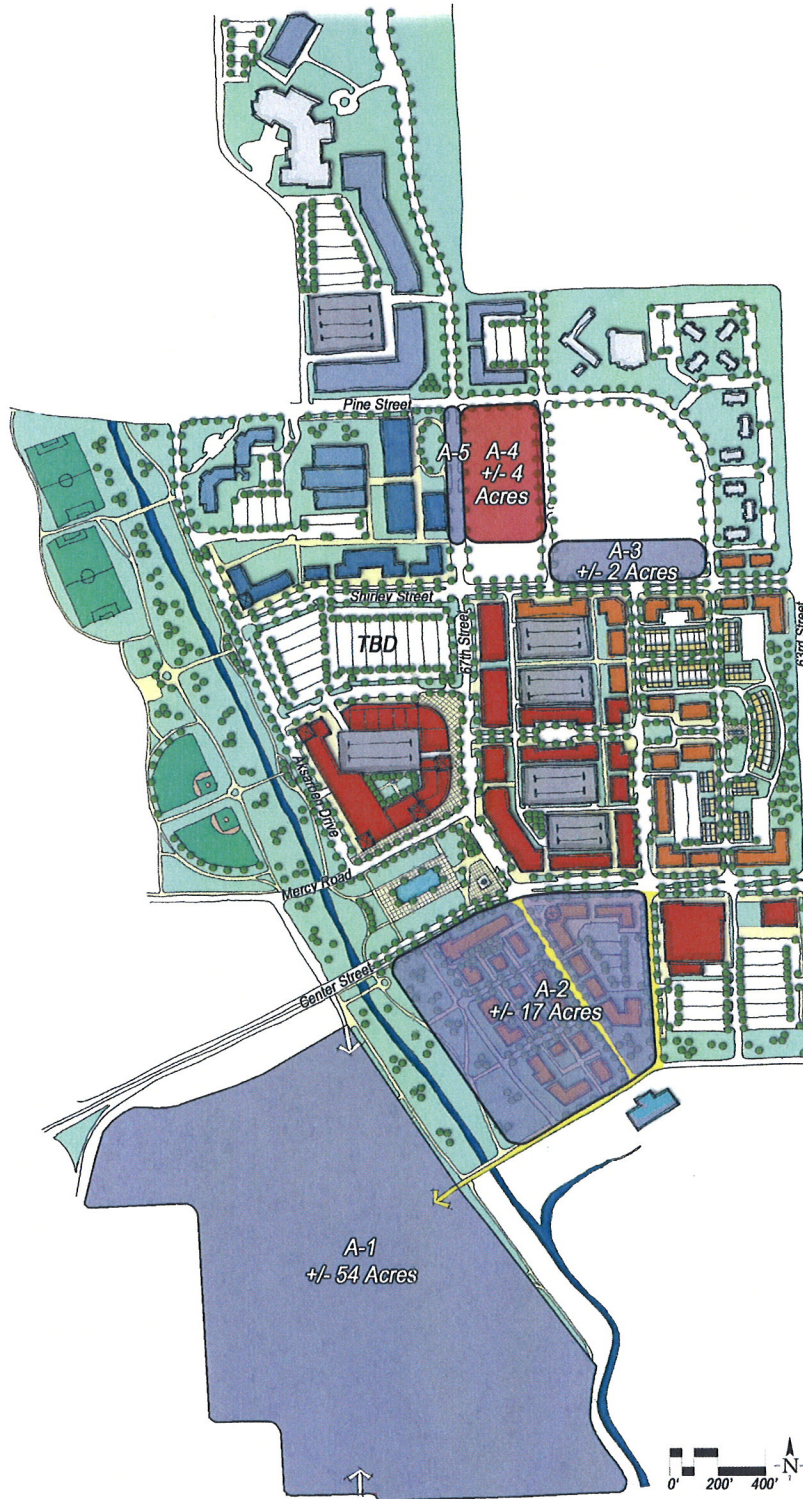


EXHIBIT B

LEGAL DESCRIPTIONS

AFT Target Legal Description:

[To be completed upon platting.]

University Target Legal Description:

[To be completed upon platting.]

Chili Greens Legal Description:

Lots 1 and 2, Arboretum Addition, an Addition to the City of Omaha, Douglas County, Nebraska

EXHIBIT C

PERMITTED EXCEPTIONS

AFT Target Permitted Exceptions:

1. [To be completed upon receipt of title commitment.]
- 2.
- 3.

University Target Permitted Exceptions:

1. [To be completed upon receipt of title commitment.]
- 2.
- 3.

Chili Greens Permitted Exceptions:

1. [To be completed upon receipt of title commitment.]
- 2.
- 3.

EXHIBIT D

LEASES AND OCCUPANCY AGREEMENTS

AFT Target Leases and Occupancy Agreements:

None

University Target Leases and Occupancy Agreements:

None

Chili Greens Leases and Occupancy Agreements:

1. Lease Agreement dated December 27, 1996 executed by and between the County of Douglas and Douglas Recreation Corp (as lessor) and The "Hole" Enchilada, L.L.C. (as lessee), as amended by that certain Amendment to Lease Agreement dated August 28, 1997 by and between AFT (as successor lessor) and The "Hole" Enchilada (collectively, the "Lease"), which Lease was assigned to Lessee pursuant to the Trustee's Deed and Assignment dated January 2, 2004, and recorded in the Office of the Douglas County Register of Deeds on January 5, 2004 as Instrument No. 2004-001055.

EXHIBIT E

SERVICE AGREEMENTS

AFT Target Service Agreements:

- 1.
- 2.
- 3.

University Target Service Agreements:

- 1.
- 2.
- 3.

Chili Greens Service Agreements:

- 1.
- 2.
- 3.

EXHIBIT F

CHILI GREENS PERSONAL PROPERTY

<u>Item</u>	<u>Item</u>
60" Round Table	Speaker System
Wooden Chairs	Range Balls
Red Chairs	Picker Carts
China Place Settings	Flat Top Grill
Chafing Dishes	Coat Racks
Bowls	Pizza Oven
Beverage Servers	Silverware
Trays	Thermal Coffee
Ice Machine (doesn't work)	Thermal Food Transport
Glasses	Bar Stools
Restaurant Tables	Hot Dog Machine
Ice Machine	Popcorn Machine
Fryers	Misc. Tools
Stove	1982 Cushman Truckster
Grill	1997 Cushman Truckster
Freezer	Cushman
Deli Cooler	Cushman
Shelving	1993 Cushman Sprayer
Microwave	1980 Cushman Aerifyer
Sink Unit	1987 Jacobsen Greensking
Computers	1987 Jacobsen Greensking
Television	1982 Jacobsen 5111
Desks	1992 Jacobsen LF-100
Bureau	1992 Jacobsen Turf
File Cabinets	2000 Ransome Greensmower
Security Monitor	2000 Ransome vert-cut heads
Leather Desk Chair	Vicon Spreader
Desk Chairs	Toro Greenmaster 322-d
Safe	Toro TopDresser 2300
Fax/Copy Machine	Ford Tractor Loader
Printer	German Box Scraper
Laser Printer	1977 Seeder
Phone	1990 Chevrolet Pickup
Bookshelf	Turfco Sod Cutter
Dome Mat	Homelite Trash pump
Dividers	Red Max Trimmer
Counter	2000 Red Max Trimmer
Kitchen Utensils	Echo Trimmer 2400
Pans	Montgomery Lawnmower
Patio Table	Century Battery Charger
8' Banquet Table	Coleman air compressor