

September 24, 2024

Jesse Hough  
1197 34 Road  
David City, NE 68632

**Re: Aspen Estates Amended and Restated Declaration**

Dear Jesse:

Please find enclosed the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of Aspen Estates which was recorded at the Register of Deeds Office in Butler County, Nebraska.

Very truly yours,



Bob Dailey

RGD:rp  
Enc.

RECORDED  
BUTLER COUNTY, NEBRASKA  
INST. 24-01361 PGS (13)  
DATE September 19, 2024  
TIME 11:04 Am  
*Sharon Woolsey*  
COUNTY CLERK/REGISTER OF DEEDS  
BY: Sharon Woolsey, Deputy

After recording, return to:  
Bob Dailey  
1601 Dodge Street, #3700  
Omaha, NE 68102

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS OF ASPEN ESTATES**

35-16-02 PT SE 1/4 NE 1/4 & PT E 1/2 SE 1/4; SECTION 35, TOWNSHIP 16 NORTH, RANGE 2 EAST, BUTLER COUNTY, NEBRASKA (39.84 ACRES, MORE OR LESS) PARCEL 1-- 36.26 ACRES, MORE OR LESS; PARCEL 2--49.22 ACRES, MORE OR LESS; PARCEL 6--7.44 ACRES; ACCESS EASEMENT  
36-16-02 W 1/2 SW 1/4 & SW 1/4 NW 1/4; SECTION 36, TOWNSHIP 16 NORTH, RANGE 2 EAST, BUTLER COUNTY, NEBRASKA (119.45 ACRES, MORE OR LESS) PARCELS 1, 2, 3, 4, 5, 6, 7, 8, 9 & 10 ACCESS EASEMENT

BOOK 24 PAGE 01361

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS OF ASPEN ESTATES**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF ASPEN ESTATES (this "Amendment") is made and entered into 3/2/2024, 2024 (the "Effective Date") by H-KO FARMS, LLC, a Nebraska limited liability company ("Declarant.")

**PRELIMINARY STATEMENT**

There was previously recorded a Declaration of Covenants, Conditions, Restrictions and Easements of Aspen Estates (the "Declaration"), which was recorded February 16, 2023 at Inst. No. 2023-00185 with the Butler County, Nebraska Register of Deeds concerning that real estate described as Parcels 1-10 as shown on the survey (the "Survey") attached as Exhibit A and incorporated by reference herein (hereinafter collectively referred to as the "Lots" and individually as each "Lot").

When the Declaration was recorded, the Declarant was the owner of all of the Lots.

Pursuant to Article IV.3 of the Declaration, Declarant may unilaterally amend the Declaration as provided herein.

The Declarant desires to provide for the preservation of the values and amenities of the Lots, for the maintenance of the character and residential integrity of the Lots, and for the acquisition, construction, and maintenance of Common Facilities for the use and enjoyment of the residents of the Lots.

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

ARTICLE I.

1. Lots 1 through 10, inclusive, shall be used exclusively for single-family residential purposes, except for such parts of the Lots as may hereafter be conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Facility.

2. No residence, building, fence (other than fences constructed by Declarant), swimming pool, out buildings, solar heating or cooling device, or other external improvement, above or below the ground (herein collectively referred to as "Improvement") shall be constructed, erected, placed, or permitted to remain on any Lot, nor shall any grading or excavation for any Improvement be commenced, except for Improvements which have been approved by Declarant, its successors and assigns, as follows:

A. An Owner desiring to erect an Improvement shall deliver one set of construction plans, landscaping plans and plot plans to Declarant (herein collectively referred to as the "plans"). Such plans shall include a description of type, quality, color, and use of materials

proposed for the exterior of such Improvement and proposed elevations of the Lot, including foundation and driveway and all proposed set-backs. Concurrent with submission of the plans, Owner shall notify Declarant of the Owner's mailing address.

B. Declarant shall review such plans in relation to the type and exterior of Improvements constructed, or approved for construction, and landscaping on neighboring Lots and in surrounding area, and any general scheme or plans formulated by Declarant with regard to views, retaining natural environmental area, and character of the Properties. In this regard, Declarant intends that the Lots shall form a quality residential community with Improvements constructed of high-quality materials, including but not limited to homes and landscaping with spectacular views and preservation of natural environmental areas to the extent possible. The decision to approve or refuse approval of a proposed Improvement, including but not limited to homes and landscaping, shall be exercised by Declarant to promote development of the Lots and to protect the values, character, and residential quality of all Lots. If Declarant determines that the proposed Improvement will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, Declarant may refuse approval of the proposed Improvement.

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

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

3. No single-family residence shall be created, altered, placed, or permitted to remain on any of Lots 1 through 10, inclusive, other than one detached single-family dwelling, with an attached two or three car garage, which does not exceed two stories in height. Such dwellings on any Lot shall conform to the surrounding dwellings of similar regime and any general scheme or plans formulated by Declarant. No additional buildings or structures may be erected, placed, or maintained on any Lot, other than barns, detached garages, outbuildings, sheds, fences, and patio walls. No such additional buildings or structures shall be used as a permanent dwelling, but may contain living quarters that are used from time to time on a temporary basis. All Improvements on any Lot shall comply with all side yard and set back requirements of the Zoning Code of Butler County, Nebraska, and any other applicable laws of any governing authority. No mobile, modular-style, or prefabricated home shall be placed or installed on any Lot without prior written consent from Declarant, with the exception that an Owner may obtain from Declarant a one year permit for a mobile home to be temporarily placed on a Lot for the sole purpose of serving as temporary housing during construction of Owner's permanent dwelling on the Lot. The Architectural Control Committee will have sole discretion on approving plan size and appearance.

4. All foundations shall be constructed of poured concrete or concrete block.

5. Declarant has or may create a water drainage plan by grading the Properties and installing improvements and easements for storm drainage in accordance with generally accepted engineering principles. No building shall be placed, nor any Lot graded, to interfere with such water

drainage plan nor cause damage to the building or neighboring buildings. Silt fences shall be used to comply with this paragraph.

6. Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the Improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot. No residential dwelling shall be occupied by any person as a dwelling for such person until the construction of such dwelling has been completed, except for minor finish details as determined and approved by the Declarant.

7. Subject to the specific requirements set forth below and all federal, state, and local laws, dogs, cats and other small animals which are of the customary household pet variety (including birds), in each case which do not make objectionable noise or constitute a nuisance to owners of neighboring Lots, may be kept on any Lot; provided that the total combined number of such household pets that may be kept on any Lot shall be restricted to no more than 5 per Lot, no more than 3 of which can be the same species. Any dog that barks or makes other noise outside the home of any Lot at any time shall wear electronic collars to prevent such barking or other noise. The construction plans, specifications, and the location of any dog house, dog run, kennel, or other shelter for pets must first be approved in writing by Declarant.

8. Subject to the specific requirements set forth below and all federal, state, and local laws, cows, horses, sheep, goats or hogs may be kept on any Lot provided that such large livestock animals do not constitute a nuisance to owners of neighboring Lots. The total combined number of such large livestock animals that may be kept on any Lot shall be restricted to no more than 2 per acre of Lot size. The construction plans, specifications, and the location of any stable or other shelter for livestock must first be approved in writing by Declarant.

9. No residence shall be constructed on a Lot unless the entire Lot is owned by one owner of such Lot, except if parts of two or more Lots have been combined into one Lot which is at least as wide as the narrowest Lot, as shown on the Survey, and is as large in area as the largest Lot shown on the Survey.

10. Declarant does hereby reserve unto itself the right to require the installation of siltation fences or erosion control devices and measures in such location, configurations, and designs as it may determine appropriate in its sole and absolute discretion.

## ARTICLE II HOMEOWNERS ASSOCIATION

### 1. Definitions.

A. "Architectural Review Committee" shall mean the Architectural Review Committee appointed by the Board from time to time.

B. "Association" shall mean and refer to the ASPEN ESTATES HOMEOWNERS ASSOCIATION, INC., its successors and assigns.

C. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

D. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may be subject to the jurisdiction of the Association.

E. "Lot" shall mean and refer to any of Parcels 1-10 shown on the Survey.

F. "Declarant" shall mean and refer to H-KO FARMS, LLC, its successors and assigns.

G. "Common Facility" or "Common Facilities" shall mean the Access Road (the "Access Road") as shown on the Survey and the community mailbox located ~~at~~ near the south end of the Access Road as identified on the Survey. The Access Road may be used by all Owners for pedestrian and vehicular access, subject to those rules and regulations promulgated by the Association.

2. The Association. Declarant has caused or will cause the incorporation of ASPEN ESTATES HOMEOWNERS ASSOCIATION, INC., a Nebraska nonprofit corporation. The Association has as its purpose the promotion of the health, safety, welfare, and enjoyment of the residents of the Lots, including:

A. The acquisition (by gift, purchase, lease, or otherwise), construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep, and replacement of Common Facilities for the general use, benefit, and enjoyment of the Owners. Common Facilities may include dedicated and nondedicated roads, paths, ways and green areas for ASPEN ESTATES which Common Facilities may be situated on property owned or leased by the Association, on public property, on private property subject to an easement in favor of the Association or on property dedicated to or owned by a Sanitary Improvement District.

B. The promulgation, enactment, amendment, and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Owners. The rules and regulations may permit or restrict use of the Common Facilities by Owners, their families, their guests, and/or by other persons.

C. The exercise, promotion, enhancement, and protection of the privileges and interests of the Owners; and the protection and maintenance of the residential character of ASPEN ESTATES.

3. Owners' Easements of Enjoyment and Delegation of Use. Every Owner shall have a right and easement of enjoyment in and to the Common Facilities which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. The right of the Association, its lessor, successor, and/or assigns, to promulgate reasonable rules for the use of any Common Facility;

B. The right of the Association to suspend the voting rights and right to use of the Common Facilities by an Owner for any period during which any assessment against the Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and

C. The right of the Association to dedicate or transfer all or any part of the Common Facilities to any public agency, authority, or utility for such purposes and subject to

such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3rds) of the Owners has been recorded.

Any Owner may delegate, in accordance with the rules and regulations of the Association, its right of enjoyment to the Common Facilities to the members of his/her family.

4. Membership and Voting. The "Owner" of each Lot shall be a Member of the Association. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. With the exception of the Class B membership, as set forth below, the Owner of each Lot, whether one or more, shall have one vote on each matter properly before the Association. Membership shall be appurtenant to ownership of each Lot and may not be separated from ownership of each Lot.

The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- a. when the total votes outstanding in the Class A membership equal three-fourths (3/4ths) of the total votes outstanding in the Class B membership, or
- b. on June 1, 2025, or sooner at Declarant's discretion.

5. Purposes and Responsibilities. The Association shall have the powers conferred upon nonprofit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors of the Association (the "Board") shall include but shall not be limited to the following:

A. The acquisition (by gift, purchase, lease, or otherwise), development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.

B. The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

C. The expenditure, commitment, and payment of Association funds to accomplish the purposes of the Association including but not limited to payment for purchase of insurance

covering any Common Facility against property damage and casualty; and purchase of liability insurance coverages for the Association, the Board, and the Owners.

D. The exercise of all the powers and privileges and the performance of all the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

E. The acquisition by purchase or otherwise, holding or disposition of any right, title, or interest in real or personal property, wherever located, in connection with the affairs of the Association.

F. The deposit, investment, and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit, or the like.

G. The employment of professionals and consultants to advise and assist the Officers and the Board in the general administration and management of the Association, and execution of such documents and doing and performance of their duties and responsibilities for the Association.

H. The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

6. Mandatory Duties of Association. The Association shall maintain in generally good and neat condition any and all entrance ways, fences, signs and landscaping which have been installed by Declarant or the Association on easements or other areas. Further, the Association shall be responsible for the maintenance and upkeep, including grading, re-graveling, repairing and preventing erosion, and snow removal as needed, of the Common Facilities including Access Road.

7. Covenant for and Imposition of Dues and Assessments. Declarant, for each Lot owned, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay dues and assessments as provided for herein. The Association may fix, levy, and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board and shall be payable at the times and in the manner prescribed by the Board.

8. Abatement and Proration of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board shall abate one hundred (100%) percent of the dues or assessments due in respect of any Lot owned by Declarant. Upon Declarant's transfer of its ownership interest in a Lot, said abatement shall cease. Dues and assessments shall be prorated on a monthly basis.

9. Liens and Personal Obligations for Dues and Assessments. The dues and assessments, together with interest thereon, costs, and reasonable attorney's fees shall be the personal obligation of the Owner of each Lot at the time when the dues and assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorney's fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and



assessments and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

10. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes, powers and responsibilities of the Association.

11. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 13, below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

A. Beginning January 1, 2024, \$750.00 per Lot; or

B. In each calendar year beginning on January 1, 2025, 125% of the aggregate dues charged in the previous calendar year.

12. Road Maintenance and Upkeep Assessments. In addition to the dues referred to above, the Board may levy road maintenance assessments for the purpose of defraying, in whole or in part, the maintenance and upkeep expenses for the Access Road; provided, however, that Lot 2 shall be exempt and excluded from any such special road maintenance and upkeep assessments assessed pursuant to this Section.

13. Excess Dues and Assessments. With the approval of seventy-five percent (75%) of the Owners, the Board may establish dues and/or assessments in excess of the maximums established in this Declaration.

14. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided above.

15. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request; the amount of any delinquent sums; and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.

16. Effect of Nonpayment of Assessments - Remedies of the Association. Any installment of dues or assessment which is not paid when due shall be delinquent. Delinquent dues or assessment shall bear interest from the due date at the rate of rate of sixteen percent (16%) per annum or the legal rate of interest, whichever is less, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs, and reasonable attorney's fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Facilities or abandonment of its Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due together with interest, costs, and attorney's fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

17. Subordination of the Lien to the Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any first mortgage, contract, or deed of trust as collateral for

a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessments lien.

### ARTICLE III. EASEMENTS

1. An easement has been created for the Access Road which was recorded as the Access Easement recorded February 16, 2023 at Inst. No. 2023-00183 with the Butler County, Nebraska Register of Deeds.

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

### ARTICLE IV. GENERAL PROVISIONS.

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

2. Declarant may at its discretion add a second phase to this Declaration.

3. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of this Declaration. Thereafter the covenants, restrictions, and other provisions of this Declaration shall automatically renew for successive ten (10) year periods unless terminated or amended by the Owners of not less than seventy-five percent (75%) of said Lots, which termination or amendment shall thereupon become binding upon all Lots. For a period of ten (10) years following the date hereof, Developer, its successors or assigns, shall have the sole, absolute, and exclusive right to amend, modify, or supplement all of any portion of this Declaration from time to time by executing and recording one or more duly acknowledged Amendments to the Declaration in the Office of the Register of Deeds of Butler County, Nebraska. Thereafter, this Declaration. may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration.

4. All of the covenants and restrictions are made for the mutual and reciprocal benefit of each and every Lot and are intended to create mutual and equitable servitude upon each of said Lots in favor of each and all other Lots and to operate as covenants running with the land for the benefit of each and all other Lots and their respective owners. THE COVENANTS AND RESTRICTIONS SHALL BE BINDING UPON THE OWNER OR OWNERS OF EACH LOT, UPON ANY PURCHASER OR PURCHASERS OF ANY SUCH LOT AND UPON THE HEIRS, LEGAL REPRESENTATIVES, SUCCESSORS OR ASSIGNS OF ANY SUCH OWNER OR OWNERS OR PURCHASER OR PURCHASERS EXACTLY AS IF EACH SUCH PARTY HAD PERSONALLY SIGNED AND ACCEPTED THIS DECLARATION.

5. Declarant, or its successor or assign, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, or at such time of Declarant no longer owning any lots subject to this Declaration, the rights of Declarant shall

automatically transfer to the Association and the Association may exercise such rights or appoint another entity, association, or individual to serve as Declarant, and the Association or such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

6. Invalidation of any one or more provisions of this Declaration by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

*[Signature page follows.]*

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this Aug 21, 2024 2024.

H-KO FARMS, LLC, "Declarant"

By: [Signature]  
Jesse Hough, Member

STATE OF NEBRASKA        )  
  )        ss.  
COUNTY OF BUTLER        )

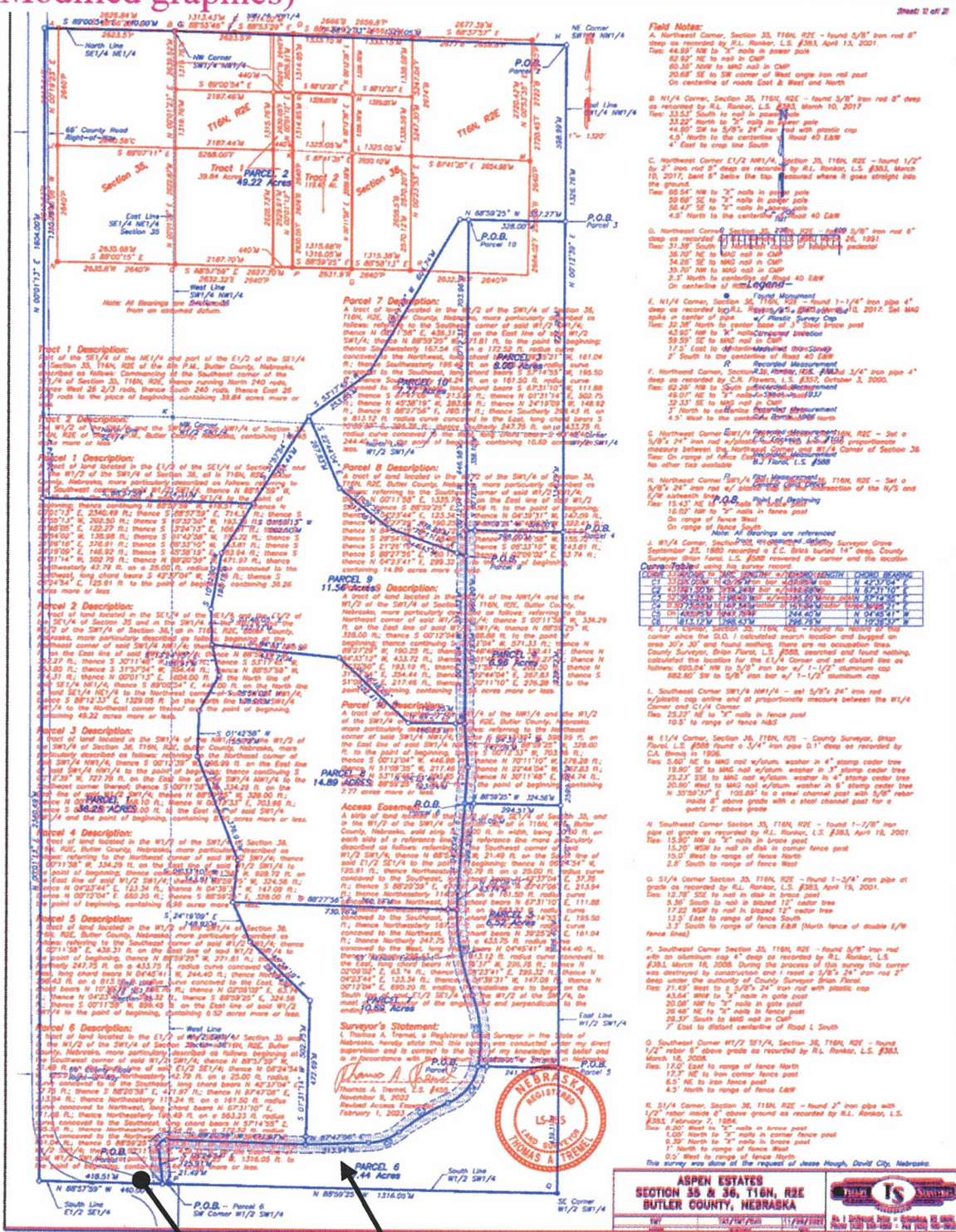
The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of August, 2024, by Jesse Hough, Member of H-KO FARMS, LLC.

[Signature]  
Notary Public

State of Nebraska - General Notary  
CAROL L. FUXA  
My Commission Expires  
March 7, 2026

EXHIBIT A

(Modified graphics)



Mailbox Access Road

BOOK 24 PAGE 01361

(Modified graphics)

