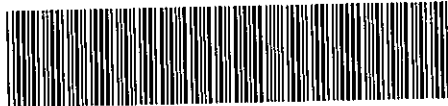


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REGISTER OF DEEDS
DOUGLAS COUNTY, NE

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**DECLARATION OF PROTECTIVE COVENANTS
STARWOOD SOUTH**

**SECOND AMENDMENT
(RESTATED)**

THIS SECOND AMENDMENT TO AND RESTATED DECLARATION OF PROTECTIVE COVENANTS, made this 29 day of June, 1999, by Carol J. Gendler, Trustee of the Carol J. Gendler Revocable Trust and Irvin Gendler, Trustee of the Irvin Gendler Revocable Trust (collectively "Declarant").

RECITALS

Declarant has heretofore platted Starwood South, a subdivision, in Douglas County, Nebraska. Protective Covenants were executed on January 28, 1997, and recorded in the office of the Register of Deeds of Douglas County, Nebraska on December 5, 1997 and recorded in Book 1231 at Page 334. The First Amendment to Protective Covenants were executed on December 2, 1997 and recorded in the office of Register of Deeds of Douglas County, Nebraska on December 5, 1997 and recorded in Book 1231 at Page 341.

The First Amendment modified Paragraph 1 of the Declaration. The Second Amendment modifies Paragraph 3 and Paragraph 5 of the Declaration.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which Declarant acknowledges, Declarant hereby declares and make the Lot subject to the following Covenants, conditions and restrictions which shall run with said real property and be binding upon all persons hereafter having any right, title or interest in the Lots, all as duly amended and restated herein:

1. **USE.** All Lots are for industrial, commercial, retail, office, manufacturing, or warehousing purposes; and, all Lots shall be used for such purposes only, and under the conditions hereinafter set forth. No Lots in Starwood South may at any time be used for any purpose of use in violation of the laws of the United States, State of Nebraska, or the County of Douglas. No trade, use, or occupation shall be implemented on or about the said property or within any improvements constructed thereon which shall be in conflict with the uses permitted by the City of Omaha Zoning ordinances with reference to the classification and use applicable to the said property. The permitted uses will be those applicable to City of Omaha Zoning ordinances LI (Limited Industrial District) for Lots 7 & 8; and , GI (General Industrial District) for Lots 1 through 6, and Lots 9 through 13, except the following:

a. Uses specified in Zoning Code Section 55-505(b) and (c).

b. Any other industry or business whose manufacturing processes or methods of operation cannot be regulated or controlled so as to limit to their property the deleterious

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effects of their methods of operation, particularly as regards noise, air pollution, order, litter, vibration, glare, or explosion hazard.

Outlot 1 is presently subject to City of Omaha Zoning ordinances DR (Development Reserve District). This Declaration shall not be applicable to said Lot unless the City of Omaha rezones said Lot for industrial, commercial, office, manufacturing, or warehousing purposes."

2. **CONSTRUCTION LIMITATIONS.** Building construction shall conform to all applicable building codes and zoning regulations having jurisdiction. Building systems and components shall reflect those systems and components commonly associated with commercial and industrial construction. Structural systems shall be comprised of structural steel (conventional and pre-engineered systems) or concrete components. Exterior wall systems shall be comprised of glass, brick masonry, decorative concrete masonry units, precast concrete wall systems, plaster and synthetic plaster materials. It is encouraged to utilize materials requiring minimal maintenance and upkeep. Materials other than those mentioned above may be submitted for approval. The exterior fenestration shall utilize a high percentage of glass, masonry and concrete, or combination thereof. This fenestration shall be a consistent composition of building materials on all exterior elevations.

3. **SETBACK, PARKING.** All lots shall be subject to the City of Omaha Zoning ordinance with reference to building set-backs and parking areas.

All vehicular parking (customer, visitor, and employee), truck maneuvering and unloading must be on private property. All exterior lighting that is located on the building or in the parking areas will be directed to the property on which it is located. In no case shall any servicing or dismantling of automobiles or other vehicles be permitted in the parking areas or any area except in an enclosed structure out of public view. No storage or parking shall be allowed of non-driveable vehicles requiring body shop work. No outside storage (as defined in Paragraph 5 below) shall be allowed of vehicles requiring minor body shop repair, and in all events same shall be limited to twenty (20) vehicles.

4. **LOADING AREAS.** All loading and unloading operations shall be off-street. In no case shall loading or unloading be permitted in the parking or lawn areas or in a location which will interfere with ingress or egress thereto. All loading areas shall be hard surfaced with a suitable dustless material. No loading areas shall be constructed facing any public street or highway without prior written approval of Declarant.

5. **OUTSIDE STORAGE.** No article of merchandise or other material shall be kept, stored, or displayed outside the confines of a walled building unless it be so screened by fences, walls, or plantings that it cannot be seen from any public street; provided however, subject to applicable zoning restrictions, non-building outside area use of Lot may be used for retail sales, provided that the portion so used does not exceed 10% of existing Lot building area floor space, and further provided that lawn and garden sales use shall not exceed 25% of

existing building area floor space, and for such retail sale purpose above screening provision shall not apply. In no event shall any part of the required parking or lawn areas be used for the storage or abandonment of any property. No outside storage shall be permitted closer to any street than the building set-back requirement without prior written approval of Declarant. "Outside Storage" as used herein is defined as leaving an item in place for more than eight hours per day for more than five calendar days.

Subject to applicable zoning restrictions, the provisions of this Paragraph 5 shall not apply to retail automobile sales.

6. TEMPORARY STRUCTURES, MOVING. No trailer, tent, shack, garage, barn, or any temporary structure that shall be moved onto premises or erected thereon shall, be used for temporary or permanent operation of the proposed occupant's business or permitted to remain on premises unless and until such structure and the duration of its use on the premises has been approved in writing by the undersigned. No noxious or offensive trades, services, or activities shall be conducted on any building site nor shall anything be done thereon which may be or become an annoyance or nuisance to the owner, tenant, or occupant of other building sites within Starwood South area by reason of unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke, or noise.

No building constructed in another area or addition may be moved onto or permitted to remain on any lot in this subdivision.

7. ERECTION OF SIGNS. No Owner, lessee, or occupant of any Lot shall use, or permit to be used, any portion of the Lot under its control for the erection of signs, billboards, or displays, other than those directly connected with the business operated on said site. No flashing signs or light, revolving beacons, strobe lights, or similar electrical or mechanical mechanisms, whether permanent or temporary in nature, shall be permitted. No signs shall be erected or maintained on the roof of any building. Written approval from Declarant is required prior to the erection or modification of any sign, other than a sign attached to a building and identifying the address and/or the occupant thereof.

8. LANDSCAPING, GRADING. Grading and drainage shall be designed in accordance with the subdivision master plan and meet the City of Omaha standards. The use of retaining walls is discouraged. Where required, retaining walls shall be poured concrete, a masonry retaining wall system such as Keystone, or landscape timbers (designed by a registered structural engineer) where the wall height does not exceed six (6) feet in height. Graded slopes shall have a maximum slope of 3:1, and shall be landscaped to prevent erosion.

Landscaping shall meet the requirements of the City of Omaha Zoning Ordinance for industrial zoned areas. Landscaped areas shall be designed to project an attractive image with trees, shrubs, lawn, etc., and shall be properly maintained in a sightly and well kept condition. Plant material that is diseased, destroyed, etc., shall be replaced with new plant material during the next planting season.

9. MAINTENANCE OF UNDEVELOPED AREAS. That portion of each Lot which is not improved through the construction of building, parking facilities, loading facilities, and lawn area, as hereinbefore provided, shall be seeded to a cover planting which grows to a height not to exceed approximately eighteen (18) inches, and shall be continuously and attractively maintained. In no event and at no time shall any Lot be planted to cultivated row crops. Each Lot Owner shall be responsible for the maintenance of the property beyond the lot line up to the edge of the pavement of the abutting street or streets.

10. APPROVAL OF PLANS.

a. No building, fence, wall, driveway, or other external improvements, above or below the surface of the ground, shall be built, erected, placed, altered, or otherwise maintained or permitted to remain on any Lot, nor shall any grading or excavation be commenced without the express written approval of the Declarant. "Approval of Declarant" (including disapproval) shall also mean approval (or disapproval) by another person designated by Declarant in a writing duly recorded in the Office of the Register of Deeds and indexed against the Subdivision as approving authority in lieu of Declarant.

b. Documents submitted for approval shall be clear, concise, complete, consistent, and legible. Samples of materials to be included in the improvement may be required of the applicant at the discretion of Declarant. Submittals for approval shall be made in duplicate and comments and action of Declarant will be identically marked on both copies of said submittals. One copy will be returned to the applicant and one copy will be retained as part of the permanent records of Declarant. Each applicant shall submit to Declarant the following documents, materials and/or drawings:

(i) Site plan, indicating specific improvement and indicating Lot number, street address, grading, surface drainage, and sidewalks.

(ii) Complete construction plans, including, but not limited to, floor areas of each level, wall sections and exterior elevations clearly indicating type and extent of exterior materials and roofing.

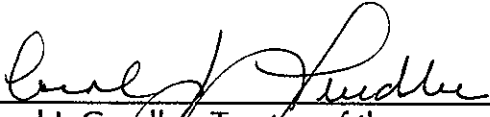
c. The applicant's name, address, and telephone number shall appear on each set of plans submitted to Declarant.

d. The approval or disapproval of Declarant, as required by these covenants, shall be in writing. Failure of Declarant to give either written approval or disapproval of submitted plans within thirty (30) days after receipt of all of the documents, by mailing such written approval or disapproval to the last known address of the applicant as shown on the submitted plans, shall operate as approval of the plans and specifications submitted.

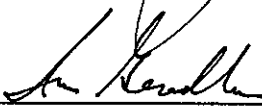
11. SEVERABILITY. If any term or provision of this Declaration, or the application of it to any person or circumstance shall, to any extent, be invalid and unenforceable, the remainder of this Declaration and the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term and provision thereof shall be valid and shall be enforced to the extent permitted by law.

12. ENFORCEMENT. Any Owner of any part of Declarant Tract shall have the right to enforce, by proceedings at law or in equity, all restrictions, conditions, covenants, and reservations now or hereafter imposed by the Protective Covenants either to prevent or restrain any violation of same or to recover damages of such violation. Failure by 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. In the event any entity which is entitled to the benefits of this Declaration brings any action at law or equity to enforce this Declaration, the prevailing party of such action shall be entitled to recover from the other party its reasonable attorney's fees and all court costs, in addition to all other appropriate relief.

13. BINDING. These Covenants are to run with the land and shall be binding on all parties claiming under them until January 1, 2020, at which time said covenants shall be automatically extended for successive period of ten (10) years, unless by a vote of the Owners of a majority of Lots it is agreed to change these covenants in whole or in part. However, by a vote of the Owners of seventy-five percent (75%) of the total area of Lots, these restrictive Covenants may be altered or amended at any time.



Carol J. Gendler, Trustee of the
Carol J. Gendler Revocable Trust

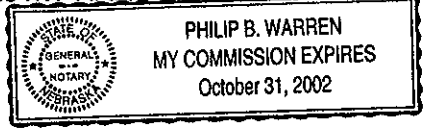


Irvin Gendler, Trustee of the Irvin Gendler
Revocable Trust

STATE OF NEBRASKA)
) ss:
COUNTY OF DOUGLAS)

On this 21 day of June, 1999, before me, a Notary Public in and for said County, personally appeared Carol J. Gendler, Trustee of the Carol J. Gendler Revocable Trust and Irvin Gendler, Trustee of the Irvin Gendler Revocable Trust, known to me to be the identical persons whose names are affixed to the above and foregoing instrument, and they acknowledged the execution thereof to be their voluntary act and deed.

WITNESS MY HAND and Notarial Seal the day and year last above written.



Philip B. Warren
Notary Public