

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
2002-42518  
2002 OCT 25 A 8:19 PM

*Glenn J. Dowling*  
REGISTER OF DEEDS

Counter AKA  
Verify JK  
D.E. JK  
Proof JK  
Fee \$ 76.00  
Ck  Cash  Chg   
**FNT**  
**(76.00)**

After recording, please return to:

James F. Kasher, #12139  
CROKER, HUCK, KASHER, DEWITT  
ANDERSON & GONDERINGER, P.C.  
2120 South 72<sup>nd</sup> Street, Suite 1250  
Omaha, Nebraska 68124

**FIRST AMENDMENT TO  
RESTRICTIVE COVENANTS FOR  
HILLTOP INDUSTRIAL PARK,  
A SUBDIVISION  
IN SARPY COUNTY, NEBRASKA**

THIS FIRST AMENDMENT TO RESTRICTIVE COVENANTS is made on the date hereinafter set forth by HILLTOP INDUSTRIAL PARK, L.L.C., a Nebraska limited liability company, hereinafter referred to as "Declarant," together with those other parties signing below (collectively along with the Declarant referred to as the "Owners").

**WITNESSETH:**

WHEREAS, the Declarant is the Declarant under certain Restrictive Covenants for those lots described therein in Hilltop Industrial Park, a subdivision in Sarpy County, Nebraska (the "Covenants"), which Restrictive Covenants were filed for record in the office of the Register of Deeds of Sarpy County, Nebraska, on March 11, 1998; and

WHEREAS, the Owners are the owners of certain real estate hereinafter referred to as the "Properties" in the County of Sarpy, State of Nebraska, described as follows:

Lots 1 thru 7, inclusive; Lots 15 thru 20, inclusive; Lots 22 thru 26, inclusive, in Hilltop Industrial Park; Lots 1, 2 and 3 in Hilltop Industrial Park Replat 1, being a replat of Lots 8 thru 14, inclusive, Hilltop Industrial Park; and Lot 1 in Hilltop Industrial Park Replat 2, being a replat of Lot 21, Hilltop Industrial Park, and Lot 5, Hilltop Industrial Park Replat 1, all subdivisions being in Sarpy County, Nebraska;

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and

WHEREAS, the Owners desire to confirm the application of the terms and provisions of the Covenants to the Properties by amending and restating the Covenants in their entirety for the purpose of protecting the continuing value and desirability of the Properties.

NOW THEREFORE, the Owners hereby declare that the following Covenants are to run with the land and shall be binding on all present and future owners of all or any part of the Properties.

If the present or future owners of any of those lots comprising the Properties (the "Lots"), or their grantees, heirs, or assigns, shall violate or attempt to violate any of these Covenants, it shall be lawful for any other person or persons owning any part of said real estate to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and to prevent him or them from so doing and to recover damages for such violation.

Invalidation of any of these Covenants by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

1. Limitations as to Type of Construction. All buildings erected on the Lots shall be approved by Declarant and shall be of either approved masonry construction such as brick, stone, painted or colored architectural concrete over a steel or concrete frame, or of painted metal material; provided, however, that at least half of any exterior building wall facing any public street shall be glass, brick, stone, or other approved material, construction.

For buildings and structures completed prior to adoption of this First Amendment, Declarant shall not withhold approval of exterior finish materials or type of construction for future additions or alterations that are consistent with those used on the original building or structure.

2. Approval of Plans. Before commencing the construction, grading, excavation for, or alteration of buildings, enclosures, fences, landscaping, signs, grading or drainage work, loading docks, parking facilities, storage yards or any other structures or permanent improvements on or to any site or Lot, the property owners shall first submit site plans or plans and specifications thereof to Declarant for its written approval. Declarant shall have the right to require such documents, materials, drawings or other clarification as it shall determine to be necessary to consider the subject building project. In the event that Declarant shall fail to approve or disapprove such building plans, specifications or site plans within thirty (30) days after they have been submitted to it, such approval will not be required and this Covenant will be deemed to have been complied with.

Approval of Declarant (including disapproval) as to various items in these Covenants shall also mean approval (or disapproval) by another person designated by Declarant in a writing duly

Handwritten signature and date: 10/14/02

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recorded in the Office of the Register of Deeds and indexed against the subdivision as approving authority in lieu of Declarant.

3. Building Set-Backs. There shall be a minimum set-back of seventy (70') feet from both 132<sup>nd</sup> Street and Cornhusker Road and one hundred fifty (150') feet from all other public streets. There shall otherwise be a minimum side yard and rear yard set-back of ten (10') feet from the respective Lot line. Signs, awnings, canopies or other similar items shall not extend more than two (2') feet from any building into the set-back area.

4. Landscaping. The front yard shall be landscaped and properly maintained as a lawn area except that part used for driveways or parking, provided, however, that no part thereof may be used for driveways or parking without the prior approval of Declarant. The lawn area in the front yard between the street and the set-back line of the building shall be sprinkled with an underground automatic sprinkler system approved by Declarant. The front yard of each improved Lot shall have three-inch (3") caliper small leaf Linden trees (or similar type approved by Declarant) installed no more than fifty (50') feet apart at or about fifteen (15') feet from the curb line on the street.

The minimum distance between any two buildings on the same tract shall be twenty (20') feet.

5. Compliance with Government Regulations, Etc. The owner of any site or Lot shall at all times keep the premises, buildings, landscaping, improvements and appurtenances in a safe, clean, wholesome condition and comply in all respects with all government, health, and fire requirements and regulations. Any owner will remove at its own expense any rubbish, debris or trash of any character whatsoever which may accumulate outside the building on its Lot. In the event said owner fails to comply with any or all of the aforesaid requirements, or if it fails to establish or maintain the lawn area required by Paragraph 4 hereof, then after ten (10) days written notice to said owner, Declarant shall have the right, privilege and license to enter upon the premises and make any and all corrections or improvements that may be necessary to meet such standards, all at the sole cost and expense of said owner, which shall be a lien on said Lot if not paid within fifteen (15) days of submission of a bill to said owner.

6. Outside Storage or Display. No articles of merchandise or other material shall be kept, stored or displayed outside the confines of a walled building unless it be screened by fences, walls or plantings. In no event shall any part of the required parking or lawn areas be used for the storage or abandonment of any property. No area outside the confines of a walled building shall be used to display any article of merchandise held for the purpose of sale. No outside storage shall be permitted closer to any street than the building set-back requirement without prior written approval of Declarant

7. Parking Facilities. All vehicular parking (customer, visitor and employee) shall be off-street. The number of vehicular parking spaces shall be sufficient at all times to conduct maximum business on each individual tract. Parking areas shall not be used for

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any purpose other than the parking of automotive vehicles belonging to customers, visitors and employees. In no case shall any storage, servicing or dismantling of automobiles or other vehicles, or loading or unloading operations be permitted in the required parking areas. All parking areas shall be hard surfaced with a suitable dustless material.

8. No Temporary Structures. No trailer, tent, shack, garage, barn or any temporary structure that shall be moved onto any Lot 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 Declarant. A building upon which construction has begun must be completed within one (1) year from the date the foundation was dug for said building.

9. No Offensive Usages. No noxious or offensive trades, services or activities shall be conducted on any building site or Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the owner, tenant or occupant of other Lots within the Hilltop Industrial Park area by reasons of the unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise.

10. Erection of Signs. No owner, lessee or occupant of any Lot shall use, or permit to be used, any portion of the property under his control for the erection of signs, billboards or displays, other than those directly connected with the business operated on said Lot. No signs shall be erected or maintained on the roof of any building. Written approval 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. No sign shall be placed on any Lot other than on a building as otherwise provided herein, which is more than five (5') feet in height above the presently existing grade level of the Lot or more than eighteen (18') feet in length.

11. Moving in Existing Structures. No building constructed in another area or addition may be moved onto or permitted to remain on any Lot in this subdivision.

12. Maintenance of Undeveloped Areas. That portion of each Lot which is not improved through the construction of buildings, 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 attractively maintained. The landowner is, in accordance with existing Nebraska Statutes, responsible for maintenance of the property up to the edge of the pavement on the abutting street or streets.

13. Power and Telephone Easements. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District and US West Communications, their successors and assigns, to erect, operate, maintain, repair and renew underground conduit and wires for the carrying and transmission of electric current

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for light, heat and power, and for all telephone, telegraph and message service, below a five foot (5') strip of land adjoining the rear and side boundary lines of said lots in said addition; said license is granted for the use and benefit of all present and future owners of lots in said addition; provided, however, that said side Lot easement is granted upon the specific condition that if both of said utility companies fail to construct underground conduit and wires along any of said Lot lines within thirty-six (36) months of the date hereof, or if any underground conduits and wires are constructed but are thereafter removed without replacement within sixty (60) days after their removal, such side Lot easement shall automatically terminate as to such unused or abandoned easement ways and provided further, the above easement is subject to the right of the undersigned to install or contract for the installation of lines for cable television within the above described easement area. All telephone, cable television and electric power service lines from property line to building shall be underground.

14. Amendments. For a period of ten (10) years following the date hereof, the Declarant shall have the right to amend, modify or supplement all or any portion of these Restrictive Covenants from time to time by executing and recording one or more duly acknowledged Amendments to Restrictive Covenants in the Office of the Register of Deeds, Sarpy County, Nebraska.

15. Annexation. Additional phases of Hilltop Industrial Park will become subject to these Covenants as they are platted and recorded. Declarant may file a statement with the Register of Deeds of Sarpy County confirming that the additional phase is subject to these Covenants, and no further action need be taken to accomplish this purpose

16. Duration. These Covenants are to run with and bind the land for a term of fifteen (15) years from the date this Declaration is recorded, and shall be automatically renewed and extended for successive periods of five (5) years each, unless and until the then owners of a majority of the land (by square footage of Lots) within the subdivision execute and record an instrument amending or terminating these Covenants in the Office of the Register of Deeds, Sarpy County, Nebraska.

17. Severability. If any paragraph or part thereof of this instrument shall be invalid, illegal or inoperative for any reason, the remaining parts so far as possible and reasonable shall be effective and fully operative.

R. W.  
10/14/02



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FIRST AMENDMENT TO  
RESTRICTIVE COVENANTS FOR  
HILLTOP INDUSTRIAL PARK,  
A SUBDIVISION  
IN SARPY COUNTY, NEBRASKA

McHILL, L.L.C., a Nebraska limited  
liability company

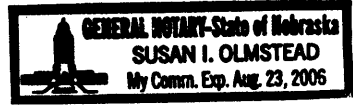
By: Brent S. Thornquist

Title: Managing Member

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF DOUGLAS        )

The foregoing instrument was acknowledged before me this 17 day of  
October, 2002, by Brent S. Thornquist,  
\_\_\_\_\_ of McHILL, L.L.C., a Nebraska limited liability company, on  
behalf of the company.

Susan I. Olmstead  
Notary Public











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RESTRICTIVE COVENANTS FOR  
HILLTOP INDUSTRIAL PARK,  
A SUBDIVISION  
IN SARPY COUNTY, NEBRASKA

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HILLTOP GROUP, L.L.C., a Nebraska limited liability company,  
By: First Management, Inc., a Nebraska corporation, Managing Member

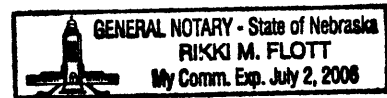
By: Randall Wieseler

Title: President

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF DOUGLAS        )

The foregoing instrument was acknowledged before me this 17 day of October, 2002, by Randall Wieseler, \_\_\_\_\_ of FIRST MANAGEMENT INC., a Nebraska corporation, Managing Member of HILLTOP GROUP, L.L.C., a Nebraska limited liability company, on behalf of the limited liability company.

Rikki M. Flott  
Notary Public





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IN SARPY COUNTY, NEBRASKA

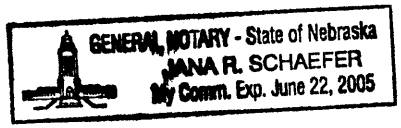
S3 DEVELOPMENT COMPANY, L.L.C., a  
Nebraska limited liability company

By: *Matthew O Schaefer*

Title: PARTNER

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF DOUGLAS        )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of  
October, 2002, by Matthew O Schaefer,  
\_\_\_\_\_ of S3 DEVELOPMENT COMPANY, L.L.C., a Nebraska  
limited liability company, on behalf of the company.



*Jana R Schaefer*  
Notary Public

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