95-02898

PLEASE RETURN TO:
HEARTLAND TITLE SERVICES, INC.
1320 S 119th ST
OMAHA, NE 68144

AMENDMENT TO DECLARATION OF COVENANTS

BROOK VALLEY BUSINESS PARK

THIS AMENDMENT IS MADE THIS 20TH DAY OF FEBRUARY, 1995 BY BROOK VALLEY LIMITED PARTNERSHIP, A NEBRASKA LIMITED PARTNERSHIP (HEREINAFTER REFERRED TO AS "DECLARANT"),

WHEREAS, THE DECLARANT IS THE OWNER OF THE FOLLOWING DESCRIBED REAL PROPERTY:

Lot 1 EXCEPT the North 30.00 feet of the West 456.00 feet of said Lot 1, TOGETHER WITH Lot 2 EXCEPT the East 300 feet of the North 582.03 feet of said Lot 2, TOGETHER WITH all of Lot 3, TOGETHER WITH that part of Lot 4 more particularly described as follows: Beginning at the Northwest corner of said Lot 4; thence North 87°38'24" East (Assumed bearing) 471.84 feet on the North line of said Lot 4 to the Northeast corner thereof; thence Southeasterly on the Easterly line of said Lot 4 on a non-tangent 275.00 foot radius curve to the left, chord bearing South 11°35'43" East, chord distance 88.27 feet, an arc distance of 88.65 feet; thence South 69°10'11" West 478.14 feet on a non-tangent line to the West line of said Lot 4; thence North 21°21'40" West 116.97 feet on the West line of said Lot 4; thence North 00°08'15" East 128.13 feet on the West line of said Lot 4 to the point of beginning, TOGETHER WITH all of Lots 5 through 17, both inclusive, TOGETHER WITH the East 49.39 feet of Lots 18 and 21, TOGETHER WITH all of Lots 22 through 26, both inclusive, TOGETHER WITH all of Lot 28, ALL in BROOK VALLEY BUSINESS PARK, a Subdivision, as surveyed, platted and recorded, in Sarpy County, Nebraska, AND

THE DECLARANT HAS AGREED TO AMEND SAID DECLARATION OF COVENANTS WHICH WERE RECORDED ON THE 25TH DAY OF FEBRUARY, 1993 AT INSTRUMENT NO. 93-003605 OF THE RECORDS OF SARPY COUNTY, NEBRASKA, BY DELETING ARTICLE II, PARAGRAPH B OF SAID COVENANTS AND AMENDING PARAGRAPH A TO READ AS FOLLOWS: ALL BUILDING WALLS THAT FACE STREETS, EXCEPT ANCILLARY BUILDINGS, SHALL BE APPROVED MASONRY CONSTRUCTION SUCH AS BRICK, STONE, PAINTED CONCRETE BLOCK, ARCHITECTURAL CONCRETE OR ARCHITECTURAL PLASTER.

THE DECLARANT HEREIN STATES THAT THE REMAINDER OF SAID DECLARATION OF COVENANTS SHALL CONTINUE ON IN FULL FORCE AND EFFECT AND ARE HEREBY RATIFIED AND AFFIRMED BY THE UNDERSIGNED.

IN WITNESS WHEREOF, THE DECLARANT HAS EXECUTED THIS AMENDMENT ON THE DATE FIRST MENTIONED ABOVE.

* now known as Lots 31, 32, part of Lots 30 and 33, Brook Valley Business Park

BROOK VALLEY LIMITED PARTNERSHIP,
a Nebraska Limited Partnership

By: Prime Realty, Inc., general partner

By: James V. McCart
James V. McCart, President

STATE OF Nebraska)
) ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me, a Notary Public, on this 20, day of March 1995, by James V. McCart.

Lori Kenyon NOTARY PUBLIC

My Commission expires 6-25-98

GENERAL NOTARY-State of Nebraska
LORI KENYON
My Comm. Exp. June 25, 1998

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BROOK VALLEY BUSINESS PARK

DECLARATION OF COVENANTS

THIS DECLARATION OF COVENANTS (hereinafter referred to as the "Declaration") is made and executed by BROOK VALLEY LIMITED PARTNERSHIP, a Nebraska limited partnership (hereinafter referred to as the "Declarant")

WITNESSETH:

WHEREAS, the Declarant is the Owner of the following described real property:

> Lots Thirty-four (34) through Forty-seven (47), inclusive, in Brook Valley Business Park, a Subdivision, as surveyed, platted and recorded, Sarpy County, Nebraska, and

WHEREAS, the Declarant will convey said lots, subject to certain protective covenants, as herein set forth.

NOW, THEREFORE, the Declarant hereby declares that all of the Lots described above shall be held, sold and conveyed subject to the following covenants, all of which are for the purpose of enhancing and protecting value, desirability and attractiveness of said lots. These covenants shall run with said real property and be binding upon all parties having or acquiring any right, title, or interest in the above described real property, or any part thereof, and shall inure to the benefit of each Owner thereof.

I. DEFINITIONS

(a) "Accessory Structure shall mean a structure which is incidental to and customarily associated with a specific principal use or building on the same site.

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(b) "Declarant" shall mean and refer to Brook Valley Limited Partnership, a Nebraska limited partnership whose sole general partner is Prime Realty, Inc., a Nebraska corporation.

(c) "Lot" shall mean and refer to any plot of land platted as a Lot as shown upon the recorded initial Subdivision plat of Brook Valley Business Park, or as any such Lot may hereafter be subdivided, re-platted or reconfigured, in whole or in part.

(d) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot within the Subdivision, including contract sellers, but excluding those persons having such interest merely as security for the performance of an obligation (including the trustee under a deed of trust). "Owner" shall include Declarant when the Owner of a Lot.

(e) "Subdivision" shall mean Brook Valley Business Park, as surveyed, platted and recorded, Sarpy County, Nebraska.

II **LIMITATIONS AS TO TYPE OF CONSTRUCTION**

All building walls that face strets, except ancillary buildings, shall be approved masonry construction such as brick, stone, painted concrete block, architectural concrete, or architectural plaster.

III. **BUILDING SET-BACKS**

There shall be a minimum front yard set-back of 75 feet from any street and a minimum side yard and rear yard set-back of 25 feet from the respective lot lines or 75 feet from any street.

The front yard and all other landscaped areas, including that area between the street paving and the property line, shall be planted with grass and properly maintained as a lawn area except that part used for driveways or parking. Parking shall not be permitted closer than twelve (12) feet to the paving line of all streets.

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

IV LIMITATIONS AS TO PERCENTAGE OF LAND COVERED BY BUILDINGS

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The total coverage of buildings and structures, including docks and loading platforms, shall not exceed sixty (60) percent of the area of each individual tract.

V. PARKING FACILITIES

All vehicular parking (customer, visitor and employee) shall be off-street. The minimum number of vehicular parking spaces required shall equal at least forty (40) percent of the number of employees normally engaged at one time in the business or industry conducted on each individual tract. Parking areas shall not be used for 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 suitable dustless material. Automobiles, trucks and other self-propelled vehicles parked out of doors within the Subdivision must be in operating condition.

VI. 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 agrees 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. However, ion no event, shall a loading or unloading area face 108th Street or Harrison Street.

VII. 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. 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

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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.

VIII. 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 site. No flashing signs or lights, revolving beacons, strobe lights or similar electrical or mechanical mechanisms, whether permanant or temporary in nature, shall be permitted. 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 indentifying the address and/or the occupant thereof.

IX. MAINTENANCE OF UNDEVELOPED AREAS

That portion of each tract which is not improved through the construction of building, parking facilities, loading facilities and lawn area, as hereinbefore provided, shall be seeded to 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 property beyond the lot line up to the edge of the pavement of the abutting street or streets.

X. OFFENSIVE USES

No noxious or offensive activity shall be carried on upon any Lot, no shall anything be done thereon which is, becomes or produces, an annoyance, nuisance or hazard to the Owner or occupant of other property within the Subdivision, including, but no limited to, unsightliness or the emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke noise or "Hazardous Substance," as defined in 101(14) of CERCLA (42 U.S.C. 9601 (14)) or any applicable present or future state or local law, rule, regulation or ordinance, as amended from time to time.

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XI. ZONING AND BUILDING REGULATIONS

In addition to the foregoing, the use and building regulations, as now or hereafter imposed by the provisions of the zoning and building regulations of all governmental entities having jurisdiction shall apply throughout the Subdivision, except as such may be modified by duly constituted authority.

XII. 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 ion duplicate and comments and action of Declarant will be indentically 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.

XIII. COMPLIANCE WITH GOVERNMENT REGULATIONS, ETC.

The Owner of each Lot shall, at all time, keep the premises, buildings, improvements and appurtenances in a safe, clean, wholesome condition and in all respects in compliance with applicable rules, regulations, ordinances and statutes of all governmental authorities having jurisdiction. All lots shall be kept free of rubbish, debris, merchandise and building material; however, building materials may be placed on Lots when construction is started on the main building structure intended for such Lot. Vacant Lots shall not be used for dumping of earth or other waste materials and shall be maintained level and smooth enough for machine mowing. A building upon which construction has begun must be completed within on year from the date the foundation was dug for said building.

XIV. SIDEWALKS

Concrete sidewalks, four feet wide by four inches thick, shall be constructed by the Owner of each Lot in accordance with the sidewalk standards and regulations approved by the City Council of the City of LaVista prior to the time of completion of the main structure on said Lot.

XV. EXCEPTIONS OR MODIFICATIONS

Exceptions to, or modifications of, these protective covenants as unusual circumstances or special situations may warrant must be submitted to Declarant for prior written approval.

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XVI. DURATION

(a) These covenants are 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 within the Subdivision execute and record an instrument terminating these covenants. Hereafter, this Declaration may be amended by an instrument executed by the Owners of not less than seventy-five percent (75%) of the land within the Subdivision. For purposes of determining the "Owners of a majority of the land within the Subdivision" or "seventy-five percent (75%) of the land within the Subdivision," each Lot Owner shall be entitled to one vote for each square foot of land within the Subdivision to which fee simple title is held by such Owner.

(b) The Declarant, or any Owner or contract purchaser of a Lot, shall have the right to enforce, by proceeding at law or in equity, all restrictions and covenants now or hereafter imposed by the provision of this Declaration, either to prevent or restrain any violation of the same, or to recover damages for such violation. Failure by the Declarant, any Owner or contract purchaser to enforce any covenant or restriction herein contained shall, in no event, be deemed a waiver of the right to do so thereafter.

XVII. 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.

XVIII. NOTICES

All notices to be given pursuant to the Declaration shall be in writing and must be given by United States mail, certified or registered,

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postage prepaid, properly addressed to the Owner of each Lot (and any prime lessee, where applicable) by name and address as shown on the then current property tax rolls in Sarpy Count, Nebraska. All notices to Declarant shall be sent to it at the following address:

Brook Valley Limited Partnership
c/o James V. McCart
6410 South 120th Plaza
Omaha, Nebraska 68137

XIX. ATTORNEY'S FEES

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.

XX. SUCCESSORS AND ASSIGNS

The Declaration created hereby shall inure to the benefit of, and be binding upon, the Owners of all Lots within the Subdivision and their respective successors and assigns; provided, however, that if any Owner sells any portion or all of its interest in any Lot, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising out of this Declaration after the sale and conveyance of title.

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INSTRUMENT NUMBER
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REGISTER OF DEEDS

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date first set forth above.

BROOK VALLEY LIMITED PARTNERSHIP,
a Nebraska limited partnership

By: Prime Realty, Inc., general partner

By: James V. McCart
James V. McCart, President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 15th day of August, 1994, by James V. McCart, President of Prime Realty, Inc., a Nebraska corporation, on behalf of said corporation, general partner of Brook Valley Limited Partnership, a Nebraska limited partnership, on behalf of said limited partnership.

GENERAL NOTARY-State of Nebraska
LINDA L. DECKER
My Comm. Exp. Dec. 22, 1995

Linda L. Decker
Notary Public

Counter ✓
Verify
D.E.
Proof ✓
Film
Mail
Fee # 6230
Cr ☐ Cash ☐ Chg ☒

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