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Box 29

**DECLARATION OF RESTRICTIONS
AND
GRANT OF EASEMENTS**

THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS (this "Declaration") is made as of May 6, 1994 by PRAIRIE SYSTEMS, INC. ("Declarant"), a Nebraska corporation.

RECITALS:

(A) Declarant is the Owner of the entire tract of real estate described in Exhibit A attached hereto (such real estate being hereinafter referred to as the "Premises"), which Declarant intends to subdivide into two groups of parcels, one of which groups is referred to herein as Parcel A ("Parcel A"), which Declarant presently intends to hold and develop, and the other of which groups is referred to herein as Parcel B ("Parcel B"), which Declarant presently intends to sell to MCI, all as shown on Exhibit A attached hereto.

(B) Declarant desires to cause the Premises to be developed as an office park having an integrated site design.

(C) Declarant desires to impose certain temporary construction easements over Parcel A and Parcel B for the benefit of Declarant and the future Owners and their respective employees and invitees.

(D) Declarant desires to impose and provide for the enforcement of restrictive covenants upon the usage and development of the Premises.

NOW, THEREFORE, Declarant hereby imposes the following covenants, conditions and restrictions and grants the following easements on the Premises, which shall run with the equitable and legal title to the land and shall be for the benefit or burden, as the case may be, of the Owners of any portion of the Premises, their respective heirs, legal representatives, successors and assigns, and any mortgagees.

(1) **Definitions.** The following words and phrases shall have the following meanings:

(a) "Initial Buildings" means the Initial Parcel A Building and the Initial Parcel B Building.

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A	FEE-70 ⁵⁰	R	FB
	DEL.	C/O	COMP. <i>sf</i>
	LEGAL PG 227	SCAN	AV

GEORGE I. PROLEKIN
REGISTERED
DORIS L. COOK, F.A.B.

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(b) *"Initial Parcel A Building"* means the building which Declarant currently intends to construct on Parcel A that will be substantially in accordance with the plans and specifications identified on Exhibit B hereto.

(c) *"Initial Parcel B Building"* means the building which MCI currently intends to construct on Parcel B that will be substantially in accordance with the plans and specifications identified on Exhibit C hereto.

(d) *"MCI"* means MCI Telecommunications Corporation, a Delaware corporation.

(e) *"Mixed Use Agreement"* means that certain Mixed Use District Development Agreement entered into among the City of Omaha, Declarant and MCI as of May 5, 1994 which includes, without limitation, architectural, landscaping and grading requirements for the Premises.

(f) *"Owner"* means each person, partnership, corporation, limited liability company or other entity now or hereafter holding fee title to any Parcel.

(g) *"Premises"* shall have the meaning given to such term in Recital A of this Declaration.

(h) *"Parcel"* means any legal lot duly subdivided within the Premises.

(i) *"Parcel A"* means that portion of the Premises defined in Recital A of this Declaration.

(j) *"Parcel B"* means that portion of the Premises defined in Recital A of this Declaration.

(k) *"Supermajority"* means the Owners holding eighty percent (80%) or more of the votes under this Declaration. There shall be a total of one hundred (100) votes, which shall initially be divided between Parcels A and B with 38 votes for Parcel A and 62 votes for Parcel B. If the Owner of Parcel A or Parcel B subdivides its Parcel and sells one or more of the resulting subdivided Parcels, such Owner may record an amendment to this Declaration setting forth its allocation of votes to the Parcel or Parcels to be sold, which allocation need not be made on a pro rata land area basis. Such amendment shall be recorded prior to the sale of such Parcel, unless the deed conveying such Parcel specifies the number of votes being transferred with ownership of the Parcel, in which event either the transferor or transferee may record the amendment, attaching thereto as an exhibit a photocopy of said deed. If a Parcel is sold prior to the recordation of an amendment allocating votes to such Parcel and the deed conveying such Parcel fails to specify the number of votes being conveyed with

ownership of said Parcel, then the number of votes to be allocated to such Parcel shall automatically be calculated on a pro rata land area basis. For such calculation Parcels A and B shall be deemed to contain 25.597 acres and 41.635 acres, respectively.

(2) *Temporary Construction Easements.* Declarant hereby grants and creates a temporary construction easement to the respective Owners (which term, for the purposes of this section, includes Owner's employees and invitees) of Parcel A and Parcel B to use so much of Parcel A and Parcel B as may be necessary, consistent with sound construction practice, during and in connection with the initial construction of the Initial Buildings. The use by either Owner of such temporary construction easement shall be subject to the prior written approval of, and ongoing regulation by, the other Owner. Such approval shall not be unreasonably withheld or delayed and such regulation shall be reasonable; provided, however, the size and scope of such easement shall be designed, and the use of the easement shall be effected, in a manner that minimizes any interference with the use and enjoyment by the Owner of the affected Parcel and provided further that the duration of such easement shall not extend beyond the period of time reasonably required to effect the construction, subject to delays for causes beyond the constructing Owner's control. Any material damage to the affected Parcel caused by such construction shall be promptly repaired or restored at the expense of the constructing Owner. The foregoing temporary construction easement shall be deemed automatically terminated with respect to (i) Parcel A at the time a certificate of occupancy is issued for the Initial Parcel B Building, and (ii) Parcel B at the time a certificate of occupancy is issued for the Initial Parcel A Building.

(3) *Development.* (a) Declarant wishes to cause all buildings that are developed on the Premises to be aesthetically compatible with the Initial Buildings. No building constructed on the Premises shall utilize, as an exterior skin material, wood, concrete block or metal, and reflective mirror-type glass shall not be used in windows. No part of any building footprint shall lie within 75 feet of the common boundary line between Parcel A and Parcel B.

(b) Declarant acknowledges that the exterior elevations, skin materials and landscaping of the Initial Buildings are compatible with each other.

(c) The exterior elevations, skin materials and landscaping of every building constructed on the Premises other than the Initial Buildings shall be aesthetically compatible with the Initial Buildings.

(d) Prior to commencing construction of any building and/or other material improvements on the Premises (other than the Initial Buildings substantially as described above), the Owner wishing to undertake such construction (the "Submitting Owner") shall deliver to the other Owner(s) written notice of the project along with plans and specifications for the building and/or other improvements and, with respect to any such

building, (a) a site plan showing the building footprint proposed, (b) elevations of each exposed side of such building, (c) a description of the exterior skin material and windows and (d) a landscaping plan (all of the foregoing items to be delivered to the other Owners are referred to collectively as the "Plans"). The Owner(s) receiving said notice and Plans shall have a period of 30 days after receipt in which to notify the Submitting Owner, in writing, that the receiving Owner(s) believe(s) that one or more aspects of the Plans of the proposed building and/or other improvements will be aesthetically incompatible with the Initial Buildings. Such notice shall specify in reasonable detail the ways in which such Owner(s) believe(s) the proposed building and/or other improvements would be incompatible. During the following 30-day period (the "Resolution Period"), the Owners shall negotiate with each other in good faith in an attempt to resolve such issues. If the Submitting Owner and a Supermajority of the Owners are unable to resolve the Plan dispute(s) within the Resolution Period, then within 30 days after the end of the Resolution Period, the Submitting Owner may, by written notice to the other Owners, elect to submit such contested issues to binding arbitration in accordance with Section 18 below. In the absence of a timely written demand for arbitration, the Owner wishing to commence construction may proceed with the building and/or other improvements in accordance with its original Plans, modified to the extent that the protesting Owner(s) or a Supermajority of the Owners did in fact agree in writing upon appropriate modifications addressing the concerns of the protesting Owner(s).

(e) Any and all material alterations, deletions, additions and changes of any type or nature whatsoever to (i) the exterior of then existing buildings or other material improvements on the Premises, or (ii) any Plans approved by the Owners pursuant to the preceding subsection, shall be subject to the approval of the Owners in the same manner as required for approval of the construction of buildings and/or other material improvements set forth in the preceding subsection.

(f) No building, improvement or other structure shall be constructed on the Premises in violation of applicable laws or ordinances.

(g) Equipment located on the roof of a building (e.g., HVAC condensers) shall be screened so that it is not visible from street level. Telecommunications equipment shall also be so screened, provided that if such screening would interfere with the operation of the telecommunications equipment, the Owner shall take alternate reasonable steps to reduce the visual impact of same, such as painting it to blend in with the building.

(h) No spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Parcel which in any manner will allow light to be directed on any adjoining Parcel or any part thereof.

(i) No Owner shall engage in or permit any activity which interferes with the reasonable enjoyment by other Owners of their respective Parcels. Noise from the

periodic use or maintenance of backup emergency electrical generating equipment shall not be such an interfering activity provided such use or maintenance for other than emergency purposes only occurs during nonbusiness hours (business hours being defined as 7 a.m. to 7 p.m. Monday through Friday (except holidays recognized by banks in the State of Nebraska)).

(4) **Maintenance.** (a) Each Owner shall maintain its Parcel in good and clean condition and repair, such maintenance to include, but not be limited to, the following:

(i) maintaining the surface of the roadways, parking areas and sidewalks in a level, smooth and evenly covered condition with the type of surface material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability;

(ii) removing all snow, papers, debris, filth and refuse and thoroughly sweeping the area to the extent necessary to keep the area in a clean and orderly condition;

(iii) placing, keeping in repair and replacing any necessary or appropriate directional signs, markers and lines;

(iv) repairing and replacing when necessary such artificial lighting facilities as shall be reasonably required;

(v) maintaining all landscaped areas and making replacement of shrubs and other landscaping as is necessary; and

(vi) maintaining all perimeter walls in a good condition and state of repair.

(b) If an Owner sells its Parcel, or any portion thereof, then, after the date of such sale, the selling Owner shall have no further obligation under this Section 4 with respect to such Parcel or portion thereof sold; provided, however, the selling Owner shall remain liable for obligations incurred prior to such sale.

(5) **Restrictions on Use of the Premises.** A Parcel may only be used for (a) office use, (b) telecommunications services, including, but not limited to, data storage and processing, switching, customer service and telemarketing and (c) such other uses as are permitted under the Mixed Use Agreement.

(6) **Indemnification.** Each Owner shall indemnify and hold all other Owners harmless from any and all liability, damage or expense in connection with any cause of action, lawsuit, claim or judgment arising from personal injury, death or property

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damage arising out of the use of the Parcel owned by such Owner, unless caused by the negligence or intentional act of such other Owner or its employees, agents or invitees.

(7) ***Obligation To Rebuild or Raze.*** In the event that any building on the Premises shall be damaged or destroyed (partially or totally) by fire, the elements or any other casualty, the Owner of such building shall, at its expense, within a reasonable time after such destruction, and with due diligence repair, rebuild and restore the same as nearly as practical to the condition existing just prior to such damage or destruction, or, alternatively, the Owner of such building shall be required to clear, clean and raze the damaged building and either landscape or pave the damaged area. The Owner of such damaged or destroyed building shall have the right to make reasonable alterations as part of the reconstruction.

(8) ***Remedies.*** If an Owner defaults in any of its obligations or covenants hereunder, any other Owner or any mortgagee holding a first lien against any of the Parcels in the Premises (a "First Mortgagee") shall be entitled to enforce this Declaration by all remedies available at law or in equity, including, but not limited to, seeking an injunction and maintaining an action for damages.

(9) ***Easements, Covenants, Conditions and Restrictions Running With the Land.*** The easements, covenants, conditions and restrictions contained herein shall run with the legal and equitable title to the Premises and shall be for the benefit of each Owner and its respective mortgagees.

(10) ***Dedication.*** Nothing contained in this Declaration shall be deemed to create a gift of all or any portion of the Premises to the general public or as a dedication for public use or public purpose, it being the intention of each Owner that this Declaration shall be for the exclusive benefit of the Premises, or any portion thereof, the Owner and its mortgagees; provided, however, that dedication shall be made by an Owner for any public rights of way, utilities or other public improvements deemed necessary by the City of Omaha to serve the Premises as contemplated by the Mixed Use Agreement.

(11) ***No Waiver.*** The failure of the Owner or First Mortgagee of any Owner to enforce the covenants, conditions and restrictions of this Declaration for any period of time or at any time shall not be construed or deemed to be a waiver of any such covenants, conditions or restrictions, and nothing herein contained, or anything done (except an express written waiver signed by the party against whom enforcement of the waiver is sought) or admitted to be done by the Owner or First Mortgagee pursuant to this Declaration or the laws of the state where the Premises are located, shall be construed or deemed to constitute a waiver, and such Owner or First Mortgagee shall have the right at any time or times thereafter to insist upon strict performance by the other Owner obligated hereunder. An enforcement of any right or remedy hereunder by

the Owner, either prior to, simultaneously with or subsequent to any other action taken hereunder, shall not be deemed an election of remedies.

(12) *Notices.* All notices required or permitted to be delivered under this Declaration shall be made in writing and delivered to an Owner at the official notice address or addresses established by that Owner. The present address of Declarant for receipt of notices is Two Old Mill, Suite 240, 10855 West Dodge Road, Omaha, NE 68154. Each Owner may, by notice to all other Owners, establish its official notice address or addresses and may, by subsequent notice, change same from time to time. If an Owner fails to establish an official notice address, its notice address shall be the address to which the real property tax bills for the Owner's Parcel are sent as listed in the county tax assessor's office. Notices shall be sent by United States mail or by nationally utilized overnight delivery service, postage prepaid and return receipt requested. Notices shall be deemed given on the date upon which delivery is received or refused, as the case may be, as indicated on the return receipt.

(13) *Severability.* If any easement, covenant, condition or restriction contained herein, or application thereof to any entity, person or circumstance, is held to be invalid or void by any court of competent jurisdiction, such invalidity shall in no way affect the remainder of such easements, covenants, conditions or restrictions to other entities, persons or circumstances.

(14) *Amendment.* This Declaration may not be modified or amended in any respect whatsoever or rescinded, in whole or in part, except with the written consent of the Supermajority duly executed and acknowledged and recorded in the Office of the Register of Deeds of Douglas County, Nebraska. Except with respect to an amendment contemplated in the definition of "Supermajority", no modification or rescission of this Declaration shall affect the rights of any lienholder unless the lienholder consents in writing to the modification or rescission.

(15) *Interpretation.* In the event the covenants, conditions and restrictions contained in this Declaration address or fail to address issues also addressed by applicable laws, regulations or ordinances, the more restrictive shall apply.

(16) *Successors and Assigns.* The easements, covenants, conditions and restrictions contained in this Declaration shall be binding upon and inure to the benefit of each Owner and its heirs, executors, administrators, successors and assigns.

(17) *Headings.* The headings used in this Declaration are for convenience and reference only and shall not be deemed to expand or limit the meaning of this Declaration.

(18) *Arbitration.* If a Submitting Owner has given timely notice of its wish to arbitrate a dispute concerning the alleged incompatibility of plans submitted by such

Submitting Owner, binding arbitration shall proceed as follows. Within 10 days of receiving the notice, the Submitting Owner and each Owner alleging an incompatibility of the Plans shall appoint one architect to serve as an arbitrator, and, to the extent the number of architects appointed is an even number, the architects appointed by such Owners shall select one additional architect by mutual agreement to serve as an arbitrator within five days of their appointment. If an Owner fails to appoint an architect to serve as an arbitrator within the 10-day period set forth above, then an architect shall be appointed on such Owner's behalf by agreement of a majority of all other Owners appointing architects. The arbitration proceeding shall commence as soon as reasonably possible thereafter in Omaha, Nebraska, in accordance with the then-current rules of the American Arbitration Association. The decision of a majority of the architects serving as arbiters shall be final and binding on each and every Owner, and the decision may be entered in any court having jurisdiction. Each Owner shall pay its own costs associated with the arbitration proceeding including, without limitation, its attorneys' or expert fees and fees for the architect it selected to serve as an arbitrator or which was selected on such Owner's behalf, provided, however, that all other costs of the proceeding shall be shared equally between or among the Owners, and subject always to the award of the arbitrators which may provide that all or a portion of the costs be paid by one or more Owners.

(19) *Duration.* Unless otherwise cancelled or terminated as provided herein, the duration of this Declaration shall be for a period of 10 years from the date of this Declaration. This Declaration shall be automatically renewed and reinstated for successive, additional 10-year periods, unless the Supermajority record a notice of such termination in the Douglas County Public Records on or before 180 days prior to the end of any such 10-year period.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed as of the day and year first above written.

PRAIRIE SYSTEMS, INC.

By: *J. Richard Abramson*

J. Richard Abramson, President

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 6 day of May, 1994, by J. Richard Abramson, President of Prairie Systems, Inc., a Nebraska corporation, on behalf of such corporation.

Maxine M. Kelley

Notary Public

My Commission expires:

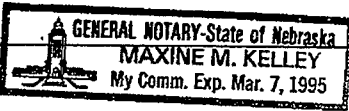
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GENERAL NOTARY - State of Nebraska
MAXINE M. KELLEY
My Comm. Exp. Mar. 7, 1995

EXHIBIT A

LEGAL DESCRIPTION

A TRACT OF LAND LOCATED IN THE SE 1/4 OF SECTION 23, T16N, R12E OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SE CORNER OF SAID SECTION 23; THENCE ALONG THE SOUTH LINE OF SAID SECTION 23, N89°48'56"W (ASSUMED BEARING), 139.07 FEET; THENCE N00°11'04"E, 50.00 FEET TO THE NORTH LINE OF STATE STREET, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE ALONG SAID NORTH LINE, N89°48'56"W, 656.71 FEET; THENCE N00°11'04"E, 521.31 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT; THENCE ALONG SAID CURVE, HAVING A RADIUS OF 300.00 FEET AND A CHORD BEARING N47°45'19"W, 46.21 FEET, AN ARC DISTANCE OF 46.26 FEET TO A POINT OF TANGENCY; THENCE N43°20'17"W, 42.03 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT; THENCE ALONG SAID CURVE, HAVING A RADIUS OF 300.00 FEET AND A CHORD BEARING N48°03'57"W, 49.45 FEET, AN ARC DISTANCE OF 49.51 FEET; THENCE N37°12'22"E, 71.72 FEET; THENCE N21°13'10"W, 724.73 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF INTERSTATE 680; THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE, THE FOLLOWING THREE (3) COURSES:

- 1) N60°18'56"E, 25.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT;
- 2) ALONG SAID CURVE, HAVING A RADIUS OF 718.51 FEET AND A CHORD BEARING N79°19'07"E, 249.71 FEET, AN ARC DISTANCE OF 250.98 FEET;
- 3) N89°19'11"E, 692.70 FEET TO THE WEST LINE OF 72ND STREET;

THENCE ALONG SAID WEST LINE, THE FOLLOWING THREE (3) COURSES:

- 1) S05°50'39"E, 501.00 FEET;
- 2) S00°06'59"E, 860.51 FEET;
- 3) S33°20'16"W, 70.39 FEET TO THE TRUE POINT OF BEGINNING,

CONTAINING AN AREA OF 25.597 ACRES, MORE OR LESS.

SESE
SWSE
NWSE
NESE

WORLD COMMUNICATIONS PARK

TOTAL AREA = 67,232 ACRES



7 8 T H
I H N I K K S

1 - 6 8 0

Parcel A

PRAIRIE SYSTEMS
AREA = 25,697 AC.

Parcel B

MCI
AREA = 41,635 AC.

SW CORNER OF THE
SE 1/4 OF SECTION 23
T16N, R12E

EXHIBIT A

7 2 N D
S T R E E T

SW CORNER OF
SECTION 23
T16N, R12E

S T A T E
S T R E E T

EXHIBIT A

LEGAL DESCRIPTION

A TRACT OF LAND LOCATED IN THE SE 1/4 OF SECTION 23, T16N, R12E OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SE CORNER OF SAID SECTION 23; THENCE ALONG THE SOUTH LINE OF SAID SECTION 23, N89°48'56"W (ASSUMED BEARING), 139.07 FEET; THENCE N00°11'04"E, 50.00 FEET TO THE NORTH LINE OF STATE STREET; THENCE ALONG SAID NORTH LINE N89°48'56"W, 656.71 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTH LINE; N89°48'56"W, 1811.63 FEET TO THE EAST LINE OF 78TH STREET; THENCE ALONG SAID EAST LINE, N00°01'37"E, 717.66 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF INTERSTATE 680; THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE, THE FOLLOWING THREE (3) COURSES:

- 1) N68°27'39"E, 1389.29 FEET;
- 2) N60°15'53"E, 74.94 FEET;
- 3) N60°18'56"E, 157.50 FEET;

THENCE S21°13'10"E, 724.73 FEET; THENCE S37°12'22"W, 71.72 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT; THENCE ALONG SAID CURVE, HAVING A RADIUS OF 300.00 FEET AND A CHORD BEARING S48°03'57"E, 49.45 FEET, AN ARC DISTANCE OF 49.51 FEET TO A POINT OF TANGENCY; THENCE S43°20'17"E, 42.03 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT; THENCE ALONG SAID CURVE, HAVING A RADIUS OF 300.00 FEET AND A CHORD BEARING S47°45'19"E, 46.21 FEET, AN ARC DISTANCE OF 46.26 FEET; THENCE S00°11'04"W, 521.31 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING AN AREA OF 41.635 ACRES, MORE OR LESS.

EXHIBIT B

Those plans and specifications for Prairie's proposed building being prepared by Kirkham Michael & Associates as of the date of this Declaration.

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EXHIBIT C

Those plans and specifications for MCI's proposed building being prepared
by Austin Company as of the date of this Declaration.

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