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**INDENTURE OF PROTECTIVE COVENANTS**

**THIS INDENTURE OF PROTECTIVE COVENANTS** ("Indenture") is made and entered into as of the 17 day of January, 2001, by Rufus T. Amis ("Developer").

**WHEREAS**, Developer owns fee simple title to that certain real property located in the City of Omaha, Douglas County, Nebraska which is more particularly described on Exhibit A, Exhibit B and Exhibit C, attached hereto and incorporated herein (the "Property");

**WHEREAS**, Developer wishes to develop portions of the Property and to sell portions of the Property, either as it may exist or as it may hereafter be subdivided, for commercial development by third parties; and

**WHEREAS**, Developer wishes to ensure the proper use and appropriate development and improvement of the Property so as to provide a harmonious development that will promote the general welfare of the owners and tenants of the Property and will protect and enhance the present and future value of such Property.

**NOW, THEREFORE**, Developer declares that the Property shall be held, sold and conveyed subject to this Indenture as set forth below:

**A. DEFINITIONS**

1. "Built Upon Lot" shall mean a Lot upon which a building has been constructed.
2. "Lot" shall mean the initial three (3) parcels separately described in Exhibits A, B and C to this Indenture and any parcel or parcels subsequently created by any Subdivision of the initial three (3) parcels which may occur now or hereafter.
3. "Subdivide" or "Subdivision" shall mean the division of any Lot by the transfer of a fee interest in less than all of the square footage of such Lot, or any subsequent further subdivision of the resulting Lots, whether or not such division is considered a subdivision under applicable local zoning regulations.
4. General. All terms not specifically defined in this Indenture, such as "set-back", "structure", "height", "front yard", "side yard" and "rear yard" shall have the same meanings in this Indenture as is ascribed to such terms under the applicable zoning regulations of the City of Omaha. Additionally, all methods of measurement, such as determination of structure height and distance from Lot lines, shall be determined by reference to the methods incorporated in the zoning regulations of the City of Omaha.

**B. BUILDING SET-BACKS, SIDE YARD, REAR YARD, HEIGHT AND USE**

1. Set-backs. The applicable zoning regulations with respect to each Lot shall govern the height, side yard, rear yard and building set-back requirements and also the permitted use of such Lot. However, notwithstanding the provisions of the applicable zoning

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regulations, the minimum side and rear yard set-back on each Lot will be fifteen (15) feet from the respective Lot line and the minimum front yard set-back on each Lot will be thirty-five (35) feet from the front Lot line.

2. Height. No structure will exceed forty-five (45) feet in height.
3. Use. The permitted uses for each Lot within the Property will be those uses which are permitted under the zoning classification applicable to the Lot in question. Data centers and communications centers and their related improvements, including, but not limited to, cooling towers and diesel generators are expressly permitted on the Property. Notwithstanding the foregoing, the following uses shall be prohibited on the Property, regardless of the zoning regulations:

(1) Scrap & Salvage Services

(2) Resource Extraction

(3) Putrescible & Non Putrescible Landfill

(4) Stock Yards

(5) Meatpacking & Related Industries

### **C. OUTSIDE STORAGE AND EXTERIOR MAINTENANCE**

1. Storage. Every primary use, other than surface parking, shall be operated within a completely enclosed structure. Temporary waste and rubbish storage facilities and other equipment and facilities accessory to the primary use, such as cooling towers, generators, and HVAC units, must be screened from view of public streets, bikeways, pedestrian pathways, and transit corridors by architectural or landscape features. No materials, supplies, equipment, finished products or semi-finished products, raw materials, or articles of any nature shall be stored or permitted to remain outside on any Lot, provided that construction materials may be stored or permitted to remain outside on any Lot temporarily during the construction of an improvement thereon. No loading dock shall be erected on any Built Upon Lot abutting any streets, unless the front of such loading platform or dock shall be set back at least ninety (90) feet from all abutting street right-of-way lines. No noxious or offensive activities shall be conducted which may become a nuisance to the occupants of other Lots within the Property by reason of sound, vibration, heat, glare, radiation, fumes, odor, gases, liquid waste, dust or smoke. No article of merchandise, equipment or other material shall be kept, stored or displayed in front or outside the confines of the walled building on any Lot unless it be enclosed by a wall or fence at least six (6) feet high, provided however that any storage area shall be shielded from the line-of-sight of any street or adjoining property, by either (a) concrete or masonry wall, or (b) earth berm, or (c) approved impervious fencing. Chain link fencing of any kind will not be accepted as an effective means of screening such objects under this provision. No materials, equipment, inventory or racks shall extend above the height of such screening.

2. Exterior Maintenance. Each owner, tenant or occupant of any Built Upon Lot shall keep said Built Upon Lot and the buildings, improvements and appurtenances thereon properly maintained and repaired and in safe, clean, neat wholesome condition, and shall comply in all respects with all governmental statutes, ordinances, regulations, health and police and fire requirements. Each such owner, tenant or occupant shall remove, at its own expense, any rubbish or trash of any character which may accumulate on its Lot and shall keep landscaped areas maintained. Rubbish and trash shall not be disposed of on any Lot by burning in open fires.

#### **D. LANDSCAPING/GRADING**

Those areas on each Built Upon Lot which are immediately surrounding the portion of the Lot on which the building or buildings are constructed shall be either (a) planted and maintained in grass and shrubbery as a lawn area, or (b) shall be surfaced with walks, driveways, or parking area constructed of asphalt or concrete. The area immediately surrounding the building must be improved with one of the above two choices or a combination of the two above choices within ninety (90) days after completion of the exterior of the first building upon such Lot or as soon as practicable in the following planting season. Notwithstanding the foregoing, undeveloped portions of Built Upon Lots need not be planted or maintained in grass or shrubbery as a lawn area if such areas are seeded, mowed and maintained with a cover planting which grows to a height not to exceed eighteen (18) inches. Plant material that is diseased, destroyed, etc., shall be replaced with new plant material as soon as reasonably practical. All property lines, abutting a street right-of-way, shall have a minimum landscape buffer of ten (10) feet. At no time after any Lot has been rezoned for use by the City of Omaha shall any part of the land on said Lot be planted to cultivated row crops.

Grading and drainage shall be designed in accordance with City of Omaha standards. The use of retaining walls is discouraged. Where required, retaining walls shall be poured concrete, masonry retaining wall systems such as Keystone, or landscape timbers. Graded slopes shall have a maximum slope of 3:1, and shall be landscaped, seeded or planted to prevent erosion.

#### **E. TEMPORARY STRUCTURES**

No trailers, tent, shack, garage, barn or any temporary structure (other than temporary construction shelters, structures and trailers, emergency or disaster recovery structures and trailers and temporary leasing or sales offices which remain on the Property for less than one (1) continuous year) that shall be moved onto Property or erected thereon shall be used for temporary or permanent operation of the proposed occupant's business or permitted to remain on the Property.

#### **F. TYPE OF CONSTRUCTION**

Building construction shall conform to all applicable building codes and zoning regulations having jurisdiction. 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, prefinished metal wall panels, and/or plaster or synthetic plaster materials. The exterior

fenestration of walls facing public streets shall utilize a high percentage of glass, masonry and concrete, or combination thereof. It is encouraged to utilize materials requiring minimal maintenance and upkeep.

#### **G. PARKING FACILITIES**

All vehicular parking (customer, visitor and employee), truck maneuvering and unloading must be on private property. All exterior lighting that is located on any building or in the parking areas will be directed to the Lot on which it is located. In no case shall any storage, servicing or dismantling of automobiles or other vehicles or equipment be permitted in the parking areas or any area except in an enclosed structure out of public view.

#### **H. ERECTION OF SIGNS**

No owner, lessee or occupant shall use any part of any Lot for erection of signs, billboards, or displays other than those directly advertising the business conducted on such Lot. Neither flashing lighted signs or lights on the signs which shine other than on the face of the sign will be permitted. Also, no signs will be permitted to be erected on the roofs of buildings or on the top of the façade of buildings.

#### **I. STREET LINE-OF-SIGHT OBSTRUCTIONS**

No fence, wall, hedge, shrub, plant, or tree which obstructs sight lines at elevations between two (2) and eight (8) feet above any roadway shall be placed or permitted to remain on any corner of any building site within the triangular area formed by street right-of-way lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines.

#### **J. ENFORCEMENT**

If the present or future owners of any of said Property, or their grantees, tenants, licensees, heirs or assigns, or any other person claiming any right, title or interest in a portion of the Property under such present or future owners shall violate any of the provisions of this Indenture, it shall be lawful for any other person or persons owning part of said Property to prosecute proceedings at law or in equity against the person or persons violating or attempting to violate any such provision of the Indenture and to prevent such party from so doing.

#### **K. AMENDMENTS AND TERMS**

Subject to the provisions of this Section, the terms of this Indenture may be amended at any time during the term of this Indenture and/or the restrictions contained herein may be varied or waived by an instrument signed by owners of Lots making up not less than seventy-five percent (75%) of the total square footage of the Property. Notwithstanding the foregoing, the provisions of this Indenture may not be amended to make the provisions hereof apply to any land which is exempted from their application pursuant to Section L, unless such written amendment is signed by the owners of Lots making up one hundred percent (100%) of the total square footage of the Property. No land may be added to the Property without the written consent of the owners of Lots making up one hundred percent (100%) of the total square footage of the Property.

**L. NON-APPLICABILITY**

If any Lot is zoned by the applicable zoning authority as a classification other than “LI,” “GI” or “HI” (each such Lot being referred to herein as an “Exempted Lot”), this Indenture shall have no further force and effect on such Exempted Lot for so long as such Exempted Lot is zoned other than “LI,” “GI” or “HI”.

**M. DURATION**

The terms and provisions of this Indenture shall run with the land and shall be binding on all present and future owners of all or any part of the Property for a period of fifteen (15) years after the date hereof.

**N. SEVERABILITY**

Each of the provisions of this Indenture shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

IN WITNESS WHEREOF, the undersigned Developer, being owners of all said real estate, have executed this Indenture this 17 day of January, 2001.

*R.T. Amis, by Lynn Frederick Amis,  
his Attorney in fact*

R.T. Amis, by  
Lynn Frederick Amis, his Attorney in Fact

State of Arizona )  
  )ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 17 day of January, 2001, by Lynn Frederick Amis, as attorney in fact on behalf of R.T. Amis, Jr.

*H. Tim Holtzman*  
\_\_\_\_\_  
Notary Public  
My Commission Expires: Sept 2 2002

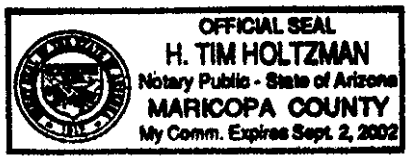


EXHIBIT A

LEGAL DESCRIPTION

THAT PART OF THE NORTHEAST QUARTER AND THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 16 NORTH, RANGE 12 EAST OF THE 6TH P.M., DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SECTION 34; THENCE SOUTH 02°27'38" EAST (BEARINGS REFERENCED TO THE NEBRASKA STATE PLANE SYSTEM, NAD 83) FOR 105.21 FEET ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SECTION 34 TO THE SOUTH RIGHT OF WAY LINE OF IDA STREET AND THE TRUE POINT OF BEGINNING; THENCE ALONG A CURVE TO THE RIGHT (HAVING A RADIUS OF 951.26 FEET AND A LONG CHORD BEARING SOUTH 59°22'57" EAST FOR 425.92 FEET) FOR AN ARC LENGTH OF 429.56 FEET ALONG SAID SOUTH RIGHT OF WAY LINE; THENCE SOUTH 46°26'46" EAST FOR 145.22 FEET ALONG SAID SOUTH RIGHT OF WAY LINE; THENCE ALONG A CURVE TO THE RIGHT (HAVING A RADIUS OF 40.00 FEET AND A LONG CHORD BEARING SOUTH 02°56'18" EAST FOR 55.08 FEET) FOR AN ARC LENGTH OF 60.75 FEET TO THE WEST RIGHT OF WAY LINE OF THE NORTHWEST CONNECTOR; THENCE ALONG A CURVE TO THE LEFT (HAVING A RADIUS OF 1362.34 FEET AND A LONG CHORD BEARING SOUTH 22°37'13" WEST FOR 839.68 FEET) FOR AN ARC LENGTH OF 853.57 FEET ALONG SAID WEST RIGHT OF WAY LINE; THENCE SOUTH 04°40'14" WEST FOR 316.73 FEET ALONG SAID WEST RIGHT OF WAY LINE; THENCE ALONG A CURVE TO THE RIGHT (HAVING A RADIUS OF 98.65 FEET AND A LONG CHORD BEARING SOUTH 72°14'41" WEST FOR 50.30 FEET) FOR AN ARC LENGTH OF 50.86 FEET TO THE NORTH RIGHT OF WAY LINE OF VERNON AVENUE; THENCE NORTH 59°17'29" WEST FOR 17.24 FEET ALONG SAID NORTH RIGHT OF WAY LINE TO THE WEST LINE OF THE NORTHEAST QUARTER OF SECTION 34; THENCE NORTH 59°17'29" WEST FOR 78.10 FEET ALONG SAID NORTH RIGHT OF WAY LINE TO THE WEST RIGHT OF WAY LINE OF IRVINGTON ROAD; THENCE NORTH 22°34'54" WEST FOR 230.58 FEET ALONG SAID WEST RIGHT OF WAY LINE TO THE SOUTHWEST CORNER OF LOT 7, IRVINGTON 1ST ADDITION, A SUBDIVISION, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA; THENCE NORTH 89°43'13" EAST FOR 122.77 FEET TO THE SOUTHEAST CORNER OF LOT 7; THENCE NORTH 36°26'04" WEST FOR 48.29 FEET TO AN ANGLE POINT IN THE EAST LINE OF SAID LOT 7; THENCE NORTH 22°58'50" WEST FOR 335.25 FEET TO THE SOUTHEAST CORNER OF LOT 1, IRVINGTON 1ST ADDITION; THENCE NORTH 31°05'49" WEST FOR 55.33 FEET TO AN ANGLE POINT IN THE EAST LINE OF SAID LOT 1; THENCE NORTH 07°03'53" WEST FOR 64.84 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 84°34'33" WEST FOR 115.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE NORTH 22°44'38" WEST FOR 426.78 FEET ALONG THE EAST RIGHT OF WAY LINE OF IRVINGTON ROAD; THENCE NORTH 87°03'24" EAST FOR 296.84 FEET ALONG THE EAST RIGHT OF WAY LINE OF IRVINGTON ROAD; THENCE NORTH 02°57'20" WEST FOR 211.82 FEET; THENCE SOUTH 87°02'35" WEST FOR 372.48 FEET; THENCE NORTH 22°31'06" WEST FOR 171.65 FEET ALONG THE EAST RIGHT OF WAY LINE OF IRVINGTON ROAD; THENCE ALONG A CURVE TO THE RIGHT (HAVING A RADIUS OF 40.00 FEET AND A LONG CHORD BEARING NORTH 40°31'59" EAST FOR 52.40 FEET) FOR AN ARC LENGTH OF 57.13 FEET ALONG THE SOUTH RIGHT OF WAY LINE OF IDA STREET; THENCE NORTH 81°26'49" EAST FOR 64.27 FEET ALONG SAID SOUTH RIGHT OF WAY LINE; THENCE NORTH 89°02'32" EAST FOR 195.18 FEET ALONG SAID SOUTH RIGHT OF WAY LINE; THENCE ALONG A CURVE TO THE RIGHT (HAVING A RADIUS OF 951.26 FEET AND A LONG CHORD BEARING SOUTH 81°38'18" EAST FOR 308.09 FEET) FOR AN ARC LENGTH OF 309.45 FEET ALONG SAID SOUTH RIGHT OF WAY LINE TO THE POINT OF BEGINNING.

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SE NW  
NW NE  
SW NE