

DECLARATION OF PROTECTIVE COVENANTS

THIS DECLARATION made this 4 day of August, 1973 by JOHN M. FAHRENKROG, 1776 So. Jackson St., Denver, Colorado, hereinafter called the "Declarant".

ARTICLE I

Recitals

1.1. The Declarant is the present record title holder of certain real property situate in the County of Larimer, State of Colorado, more particularly described as follows:

All lots in the FORT COLLINS BUSINESS CENTER, First Filing, more or less located in the Westerly 3/4 of Section 7, Township 7 North, Range 68 West, County of Larimer, State of Colorado

and which land is referred to herein as "the property".

1.2. Declarant is desirous of subjecting the property to the conditions, covenants, restrictions, and reservations hereinafter set forth to insure proper use and appropriate development and improvement of said property.

ARTICLE II

Definitions

2.1. Definition of terms:

(a) "Building Site" shall mean any plot or lot in the property. If two or more building sites, as defined hereinabove, are acquired by the same owner in fee, its commonly owned Building Sites may, at the option of said owner, be combined and treated as a single building site for purposes of the covenants contained herein.

(b) "Improvements" shall mean and include but not be limited to buildings, parking areas, loading areas, fences, walls, hedges, landscaping, mass plantings, poles, signs and any structures of any type or kind.

(c) "Declarant" shall mean John M. Fahrenkrog, his successors and assigns.

(d) "Owner" shall mean the party or parties owning fee title to a Building Site; provided, however, that any Owner may, upon written notice to Declarant, assign all or part of his rights but not his duties hereunder to Owner's tenant.

#### ARTICLE III

##### Purpose

3.1. The Property is hereby made subject to the following conditions, covenants, restrictions and reservations, all of which shall be deemed to run with the Property and each and every parcel thereof, to insure proper use and appropriate development and improvement of said premises so as to (a) protect the Owners and tenants of Building Sites against such improper development and use of surrounding Building Sites as will depreciate the value and use of their Building Sites; (b) prevent the erection on the Property of structures constructed of improper or unsuitable materials or with improper quality and methods of construction; (c) insure adequate and reasonably consistent development of the Property; (d) encourage and insure the erection of attractively designed permanent improvements appropriately located within the Property in order to achieve harmonious appearance and function; (e) provide adequate off-street parking and loading facilities; and (f) generally promote the welfare and safety of the occupants, tenants and Owners of Building Sites.

#### ARTICLE IV

##### Permitted Uses

4.1. 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 the Property by reason of unsightliness or the excessive omission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise.

4.2. Building Sites shall be utilized only for engineering, research facilities, laboratories, light and heavy industrial uses, offices, warehousing and such other uses as the Architectural Review Committee shall permit in its sole discretion.

#### ARTICLE V

##### Regulation of Improvements

5.1. Improvements, Generally. No improvements shall be constructed, erected, placed, altered, maintained or permitted on any Building Site until plans and specifications therefor have been approved by the Architectural Review Committee as more fully set forth in Article VII, Paragraph 7.2 of these Covenants.

5.2. Setbacks. No building or structure shall at any time be erected on any Building Site within seventy-five (75) feet from the center line of any public road or thirty (30) feet from the property line, whichever is greater, or within twenty (20) feet from the rear boundary line of any Building Site. Any variation of the above may be done only with the prior written approval of the Architectural Review Committee.

5.3. Off-Street Parking. No parking shall be permitted on any street or at any place other than on the paved parking spaces provided for and described hereinbelow. Each Owner and Tenant shall be responsible for compliance with the foregoing by his employees and visitors. Adequate off-street parking shall be provided by each Owner and tenant for customers and visitors. The location, number and size of parking spaces shall be subject to approval by the Architectural Review Committee pursuant to Article VII hereof. The minimum standard shall be the total of the following:

- A. One parking space for each 300 square feet of gross floor area used for offices.
- B. One parking space for each 1,000 square feet of gross floor area used for warehouse purposes.
- C. One parking space for each 150 square feet of gross floor area used for commercial retail or service use.
- D. One parking space for each 600 square feet of gross floor area used for heavy and light industrial purposes.
- E. One parking space for each 250 square feet of gross floor area used for other permitted purposes.

All off-street parking and access drives and loading areas shall be paved and properly graded to insure proper drainage.

5.4 Loading Areas. All vehicles shall be parked within the building site when loading or unloading at a building site. No loading dock shall be erected on any building site fronting on any streets, unless the front of such loading platform shall be set back at least sixty (60) feet from the property line abutting the street on which said loading dock fronts. No vehicle parking shall be permitted nearer than five (5) feet from the street property lines, or five (5) feet from the rear or side property lines, unless with written approval of the Declarant or his designee.

5.5. Outside Storage. No materials, supplies, equipment, ~~finished or semi-finished products or articles of any nature~~ shall be stored or permitted to remain on any Building Site outside of the building. Waste and rubbish storage facilities shall be properly screened and shall not be installed, constructed or utilized without prior written consent of the Architectural Review Committee. Additionally, the area between any Building Site and existing (if any) and potential (0-open zone) residential areas, must be properly screened. All such screening shall be subject to prior approval by the Architectural Review Committee.

5.6. Landscaping.

A. All Building Sites shall be landscaped only in accordance with a plan submitted to and approved in writing by the Architectural Review Committee prior to any development of the Building Site. Such landscaping plan shall include information regarding the type of sodding, the type of seeding, types of trees, hedges and shrubs and information regarding every other customary landscape treatment for the entire site, including fences, walls and screening. All landscaping plans shall also include an underground lawn sprinkling system.

Further, it shall be the responsibility of the Owner of a Building Site to landscape and maintain the area between the lot lines of said Owner's Building Site and the curbs of any public roadways adjacent to such Building Site. All landscaping shall be undertaken and completed in accordance with such approved plan and said plan may not be altered, amended or revised without submitting the revised landscaping plan for prior written approval by the Architectural Review Committee.

B. All landscaping required hereunder or otherwise to be provided on any Building Site shall be completed (completion for such purposes shall include payment therefor) within sixty (60) days after the substantial completion of construction of any buildings to be constructed on the Building Site; provided, however, if weather conditions do not at such time permit, then such landscaping shall be completed as soon thereafter as weather conditions permit.

5.7. Maintenance.

A. Each Owner of any Building Site shall keep his buildings, improvements and appurtenances thereon in a safe, clean, maintained, 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 his own expense

any rubbish or trash of any character which may accumulate on its Building Site. Rubbish, trash, garbage or other waste shall be kept only in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. Rubbish and trash shall not be disposed of on the premises by burning in open fires.

#### ARTICLE VI

##### Easement and Utility Connections

6.1. The Declarant hereby retains such rights of way and easements as may be necessary or convenient for the purpose of erecting, constructing, maintaining, repairing and operating railroad track and utility services over, across, under and through each building site in the designated set back areas between the building lines and the property lines, including public utility wires and conduits for lighting, power and telephone, gas lines, sanitary sewer, storm sewer and water, and the Declarant shall have the right to grant rights of way and/or easements to others to carry out this purpose. Any contract for the laying of such tracks, line wires, conduits, pipes or swers shall also provide that the property shall be restored to the same condition they were in prior to the doing of such work.

6.2. Utility Connections: All utility connections, including all electrical and telephone connections and installations of wires to buildings shall be made underground from the nearest available power source. No transformer, electric, gas or other meter of any type or other apparatus shall be located on any power pole nor hung on the outside of any building, but the same shall be placed on or below the surface of the Property and where placed on the surface shall be adequately screened and fenced and all such installations shall be subject to prior written approval of the Architectural Review Committee.

6.3. Signs. No signs shall be permitted anywhere within the Property without prior written approval of the Architectural Review Committee. All signs shall conform with written sign standards for the Property as adopted by the Architectural Review Committee and all applicable laws and governmental regulations.

## ARTICLE VII

### Approval of Plans

7.1. Architectural Review Committee. There is hereby established an Architectural Review Committee whose members shall be appointed by the Declarant. This Committee shall consist of three members including a licensed architect, a person with building construction experience and the Declarant or his representative. Members of the Architectural Review Committee shall serve at the pleasure of Declarant. The vote of two members shall constitute the action of the Architectural Review Committee.

7.2. No improvements shall be constructed, erected, placed, altered, maintained or permitted on any Building Site until plans and specifications with respect thereto in manner and form satisfactory to the Architectural Review Committee showing the proposed improvements, plot layout and all exterior elevations, materials and colors, signs and landscaping, traffic engineering, number and size and layout of parking spaces, grading, easements and utilities, proposed building use and number of employees, and such other information as may be requested by said Committee have been submitted to and approved in writing by the Architectural Review Committee. Such plans and specifications shall be submitted in writing over the signature of the Owner of the Building Site or the Owner's authorized agent.

7.3 Approval shall be based, among other things, on adequacy of Building Site dimensions, conformity and harmony

of external design with neighboring structures, effect of location and use of improvements on neighboring Building Sites, operations and uses; relation of topography, grade and finished ground elevation of the Building Site being improved to that of neighboring Building Sites; proper facing of main elevation with respect to nearby streets; and conformity of the plans and specifications to the purpose and general plan and intent of these restrictions. The Architectural Review Committee shall not arbitrarily or unreasonably withhold its approval of such plans and specifications.

7.4. If the Architectural Review Committee fails either to approve or to disapprove such plans and specifications (including resubmission of disapproved plans and specifications which have been revised) within thirty (30) days after the same have been submitted to it (provided that all required information has been submitted), it shall be conclusively presumed that said plans and specifications have been approved subject, however, to the restrictions contained in Article IV hereof. The Architectural Review Committee shall notify the Owner in writing upon receipt of all required plans and specifications and the aforesaid 30-day period shall commence on the date of such notification.

7.5. Neither the Architectural Review Committee nor Declarant or his respective successors or assigns shall be liable in damages to ~~anyone submitting plans to them for~~ approval, or to any Owner of land affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans and specifications. Every person who submits plans to the Architectural Review Committee for approval agrees, by submission of such plans and specifications, and every Owner or tenant of any of said Building Sites agrees, by acquiring title thereto or an interest



therein, that he will not bring any action or suit against the Architectural Review Committee or Declarant to recovery any such damages.

#### ARTICLE VIII

##### Sight Line Obstructions

8.1. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

#### ARTICLE IX

##### Enforcement

9.1. Abatement and Suit. The conditions, covenants, restrictions and reservations herein contained shall run with the land, and be binding upon and inure to the benefit of the Declarant and the Owners of every Building Site on the Property. These conditions, covenants, reservations and restrictions may be enforced as provided hereinafter by Declarant acting for itself, the Architectural Review Committee, and as trustee on behalf of all of the Owners of Building Sites. Each Owner by acquiring an interest in the Property shall appoint irrevocably the Declarant as his attorney-in-fact for such purposes; provided, however, that if a Building Site Owner notifies Declarant of a claimed violation of these conditions, covenants, restrictions and reservations and Declarant fails to act within thirty (30) days after receipt of such notification, then, and in that event only, an Owner may separately, at his own cost and expense, enforce the conditions, covenants, restrictions and reservations herein contained. Violation of any condition, covenant, restriction or

reservation herein contained shall give to the Declarant the right to enter upon the portion of the Property wherein said violation or breach exists and to summarily abate and remove at the expense of the Owner any structure, thing or condition that may be or exists thereon contrary to the intent and meaning of the provisions hereof, or to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of these conditions, covenants, restrictions and reservations to enjoin or prevent them from doing so, to cause said violation to be remedied or to recover damages for said violation.

9.2. Deemed to Constitute a Nuisance. Every violation of these Covenants or any part thereof is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed therefor by law or equity against an Owner, tenant or occupant shall be applicable against every such violation and may be exercised by Declarant.

A. In any legal or equitable proceeding for the enforcement or to restrain the violation of this Declaration or any provision hereof, the losing party or parties shall pay the reasonable attorneys' fees of the prevailing party or parties in the amount as may be fixed by the Court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

B. The failure of the Declarant to enforce any of the conditions, covenants, restrictions or reservations herein contained shall in no event be deemed to be a waiver of the right to do so for subsequent violations or of the right to enforce any other conditions, covenants, restrictions or reservations, and Declarant shall not be liable therefor.

7.3. Certificate of Compliance. Upon payment of a reasonable fee not to exceed TEN DOLLARS (\$10.00) and upon written request of any Owner, mortgagee, prospective Owner, tenant or prospective tenant of a Building Site, Declarant shall issue an acknowledged certificate in recordable form

setting forth generally whether or not said Owner is in violation of any of the terms and conditions of these Covenants. Said written statement shall be conclusive upon Declarant in favor of the persons who rely thereon in good faith. Such statement shall be furnished by Declarant within a reasonable time, but not to exceed ten (10) days from the receipt of a written request for such written statement. In the event Declarant fails to furnish such statement within ten (10) days, it shall be conclusively presumed that the said Building Site is in conformance with all of the terms and conditions of these covenants.

#### ARTICLE X

##### Termination, Modification & Assignments

10.1. Term. This Declaration, every provision hereof and every covenant, condition, restriction and reservation contained herein shall continue in full force and effect for a period of fifteen (15) years from the date hereof, and shall thereafter be renewed successively every five (5) years unless and until terminated as hereinafter provided.

10.2. Termination and Modification. This Declaration or any provision hereof, or any covenant, condition, restriction, or reservation contained herein, may be terminated, extended, modified or amended, as to the whole of said property or any portion thereof, with the written consent of the Owners of Sixty-Five Percent (65%) of the property (other than property used in common) subject to these restrictions; provided, however, that during the initial fifteen (15) year term of these Covenants, no such termination, extension, modification or amendment shall be effective without the written approval of Declarant. Such termination, extension, modification or amendment shall be immediately effective upon recording a proper instrument in writing, executed and acknowledged by such Owners (and by Declarant as required herein) in the office of the Clerk and Recorder of Larimer County, Colorado.

10.3. Assignments of Declarant's Rights and Duties.

Any and all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to any person, corporation or association which will assume any or all of the duties of Declarant hereunder, and upon any such person, corporation or association's evidencing its consent in writing to accept such assignment, said assignee shall, to the extent of such assignment, assume Declarant's duties hereunder, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Further, upon such assignment, with the consent of the owners as set forth in Article X, Paragraph 10.2, these covenants may be amended to provide for pro-rata assessments to cover expenses for the maintenance, repairs, replacements and services required for the streets, rights-of-way, common security and common facilities, if any. Upon such assignment, and to the extent thereof, Declarant shall be relieved from all liabilities, obligations and duties hereunder. The term "Declarant" as used herein includes all such assignees and their heirs, successors and assigns. If at any time Declarant ceases to exist and has not made such an assignment, a successor Declarant may be appointed by the Owners of Sixty-Five Percent (65%) of the property (other than property used in common) upon compliance with the requirements of Paragraph 10.2 of this Article X.

ARTICLE XI

Extension of Covenants to Include Additional Property

11.1. Declarant may at any time make subject to these Protective Covenants other properties now or hereafter owned by Declarant by executing an instrument in writing applying these Covenants to such other properties and by recording the same in the office of the Clerk and Recorder of Larimer County, Colorado. Upon such recordation (1) these Covenants shall run with the property already subject hereto and with such additional property as if such Covenants had always applied to all of said