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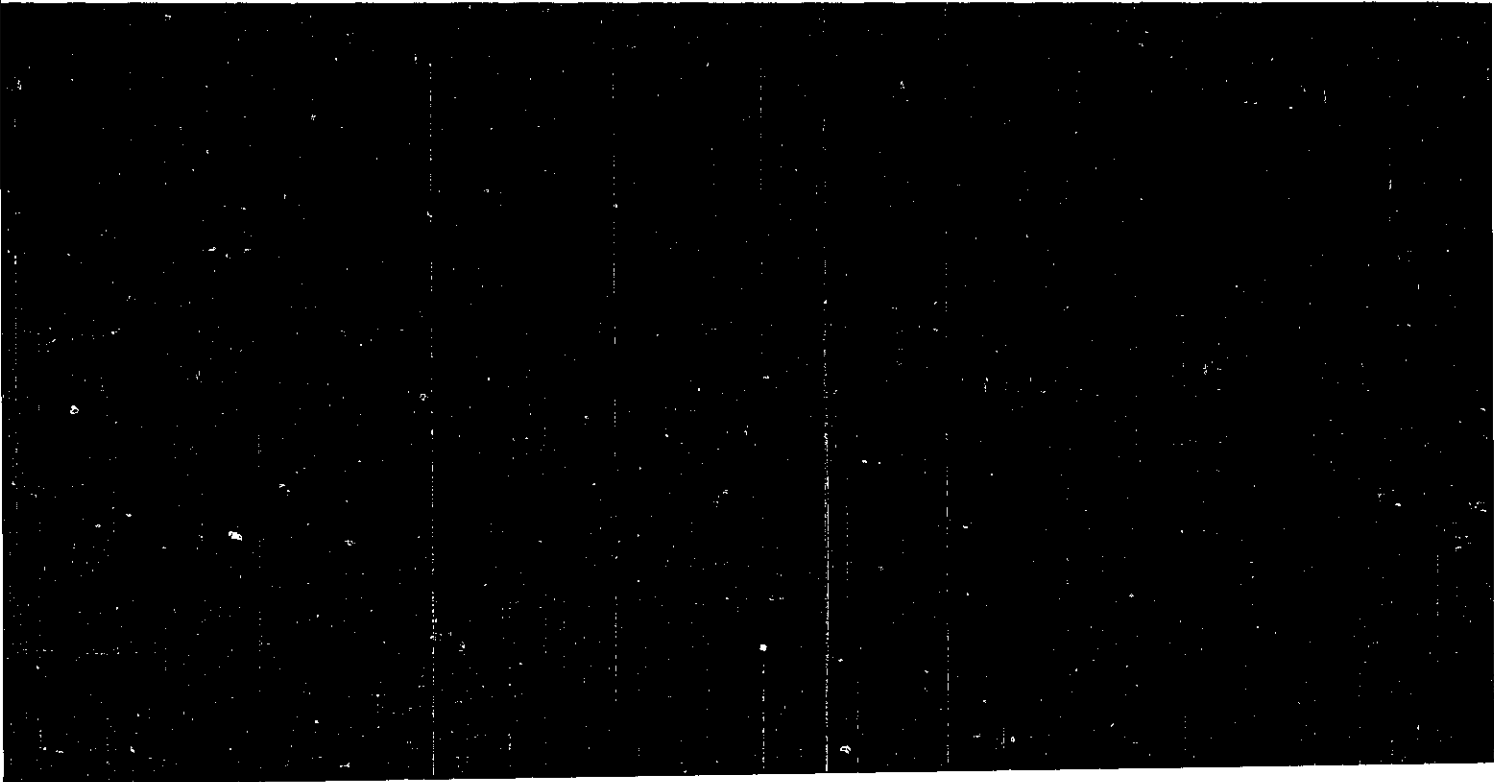
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AMENDMENT AND MODIFICATION  
OF  
DECLARATION OF PROTECTIVE COVENANTS

THIS AMENDMENT AND MODIFICATION DECLARATION is made this 25 day of March, 1976, by GLENDON R. ANDERSON, managing partner of FORT COLLINS BUSINESS CENTER, a general partnership, 430 Link Lane, Fort Collins, 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, and all lots in the Replat of Lots 11, 12, 13, 14, 15, 16 and 17 of Fort Collins Business Center, First Filing, situate in Section 7, Township 7 North, Range 69 West of the Sixth P.M., Larimer County, Colorado;

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

1.2. Declarant is desirous of amending and modifying the Declaration of Protective Covenants applicable to said property and 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 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 planting, poles, signs and any structures of any type or kind.

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(c) Declarant shall mean Glendon R. Anderson, managing partner of Fort Collins Business Center, its 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; (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 emission of fumes, odors, glare, vibration, gasses, radiation, dust, liquid waste, smoke or noise. Violation of the standards promulgated by any applicable governmental authority, including the State of Colorado Environmental Control Commission and Larimer County, Colorado, shall be prima facie evidence of annoyance and nuisance and may be summarily abated by appropriate ex parte injunctive relief.

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 variations 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 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 two hundred (200) square feet of gross floor area used for offices.

(b) One parking space for each one thousand (1,000) square feet of gross floor area used for warehouse purposes.

(c) One parking space for each two hundred (200) square feet of gross floor area used for commercial retail or service use.

(d) One parking space for each six hundred (600) square feet of gross floor area used for heavy and light industrial purposes.

(e) One parking space for each two hundred fifty (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 fronts.

5.5. Outside Storage and Fencing. No fencing shall be erected within seventy-five (75) feet from the center line of any public street and shall be subject to the approval of the Architectural Review Committee.

All outside storage, including 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. No outside storage will be allowed within seventy-five (75) feet from the center line of any public street.

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, completed, and adequately maintained and watered 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.

(c) The ultimate size of trees, hedges, and shrubs shall be subject to the control of the Architectural Review Committee. Trees shall not be permitted to grow so that the branches protrude over adjoining lots. Shrubs and hedges shall be pruned so that there shall be no protrusion over adjoining lots. All landscaping shall be adequately watered, fertilized, and treated, if necessary, to control insects. Dead leaves and branches shall not be allowed to accumulate.

5.7. Maintenance.

(a) Each Owner of any Building Site shall keep his buildings, improvements, landscaping 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 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 line wires, conduits, pipes or sewers 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 the 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 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. The initial members shall be Glendon R. Anderson, Vernon R. Sunset, and R. Gene Greenwalt.

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, and shall include the approval of all applicable government agencies.

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 recover 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.

9.3. Certificate of Compliance. Upon payment of a *reasonable fee not to exceed FIFTY DOLLARS (\$50.00)* 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 land from the date of inception of these Covenants; and (2) whenever thereafter in construing this Declaration reference is made to "the Property" said term shall mean and include not only the Property described herein, but also such additional properties. Such additional properties may be but need not be contiguous to other properties owned by Declarant and made subject to these Covenants.

ARTICLE XII

12.1. No Waiver. All of the conditions, covenants, restrictions and reservations contained in this Declaration of Protective Covenants shall be construed together, but if it shall at any time be held that any one of said conditions, covenants, restrictions and reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other conditions, covenants, restrictions and reservations or any part thereof shall be thereby affected or impaired.

12.2. Owner's Liability Subsequent to Sale. Upon sale of a Building Site, the Owner so selling shall not have any further liability for the obligations thereon which accrue against the Building Site sold after the date of the conveyance; provided, however, that nothing herein shall be construed so as to relieve

an Owner of any Building Site from any liabilities or obligations incurred prior to such sale pursuant to this Declaration of Protective Covenants.


12.3. Benefits and Burdens. The terms and provisions contained in this Declaration of Protective Covenants shall bind and inure to the benefit of the Declarant, the Owners of all Building Sites located within the property, the Owners of additional property made subject to this Declaration of Protective Covenants and their respective heirs, successors, personal representatives and assigns.

12.4. Notice. Any notices required or permitted herein shall be in writing and mailed, postage prepaid by registered or certified mail, return receipt requested and shall be directed as follows: If intended for a Building Site Owner, (1) to the address of the Building Site if improved; (2) if the Building Site is not improved, to the address set forth in the purchase contract or purchase contract application; (3) if none of the foregoing, to the last known address of the Owner. If intended for Declarant, to the address previously set forth herein.

12.5. Singular and Plural. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

12.6. Mortgage. The term "mortgage" as used herein shall include deeds of trust and trust deeds.

IN WITNESS WHEREOF, GLENDON R. ANDERSON, Managing Partner and Declarant of FORT COLLINS BUSINESS CENTER, has executed this instrument the day and year first above written.

  
GLENDON R. ANDERSON, Managing  
Partner and Declarant

STATE OF COLORADO )  
 ) ss.  
COUNTY OF LARIMER )

The foregoing instrument was subscribed and sworn to before me this 28<sup>th</sup> day of March, 1976, by Glendon R. Anderson as Managing Partner and Declarant of Fort Collins Business Center.

Witness my hand and official seal.  
My commission expires:



*Glendon R. Anderson*  
\_\_\_\_\_  
Notary Public

