

9-10-79  
FILM 1089

Recorded 3:39 PM On OCT 24 1979  
367003  
Reception No. Charlotte Houston, Boulder County Recorder

26-1

DECLARATION OF PROTECTIVE COVENANTS

THIS DECLARATION is made this 20<sup>th</sup> day of September 1979, by M.D.C. CORPORATION, a Colorado corporation, whose address is 3600 South Yosemite, Denver, Colorado 80237, hereinafter called "Declarant".

WITNESSETH:

WHEREAS, Declarant is the present record title holder and owner of that certain real property situate in the County of Boulder, State of Colorado, which is more particularly described on Exhibit A attached hereto and incorporated herein by reference, hereinafter referred to as the "Property"; and

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

NOW, THEREFORE, Declarant hereby declares that all of the Property and each and every separate parcel thereof shall be held, sold, transferred, conveyed, encumbered and used subject to the following covenants, conditions, restrictions and reservations, all of which are for the purpose of protecting and

preserving the value and desirability of, and which shall run with, the Property, and all of which shall be binding upon and inure to the benefit of all parties having any right, title or interest in and to the Property or any part thereof, their heirs, successors and assigns.

ARTICLE I

DEFINITIONS

1.1. "Building Site" shall mean any plot of land within the Property, the size and dimensions of which shall be established by the legal description in the original conveyance from Declarant to the first fee Owner of said plot of land, other than Declarant. A Building Site may also be established by Declarant by an instrument in writing, executed, acknowledged and recorded by the Declarant, which designates a plot of land as a Building Site for the purpose of these Protective Covenants.

1.2. "Declarant" means the Declarant named herein and such successor or successors as may be designated hereafter by Declarant by written notice duly recorded.

1.3. "Improvements" shall mean and include, but shall not be deemed to be limited to, buildings, parking areas, parking structures, driveways, loading areas, signs, utilities, fences, walls, lawns, landscaping, hedges, mass plantings, poles, grading changes, plazas, walkways, bridges, tennis courts, swimming pools, recreational facilities, exterior lighting facilities, waterways, holding ponds and any other physical structures or changes of any type or kind made to or upon any land within the Property.

1.4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Building Site, including contract sellers, but excluding

those having such interest merely as security for the performance of an obligation, provided, however, that an Owner may, by written notice to Declarant, assign all or part of his rights, but not his duties, hereunder to such Owner's tenant.

1.5 "Property Used in Common" shall mean and refer to those areas of the Property devoted to the common use and enjoyment of the Owners of all of the Building Sites, including, but not limited to, any parks, median strips, private streets, entrance parks, drainage areas, bicycle paths and platted landscape easements.

1.6. "Owners Association" shall mean and refer to the Colorado non-profit corporation organized by Declarant pursuant to Paragraph 9.1 below.

#### ARTICLE II

##### PERFORMANCE STANDARDS AND PERMITTED USES

2.1. Performance Standards. No noxious, illegal, dangerous or offensive trade, 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 Owners, tenants or occupants of other Building Sites within the Property by reason of unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise.

2.2. Permitted Uses. Building Sites shall be utilized only for engineering, research facilities, laboratories, light industrial uses, offices, distribution and warehousing, and such other uses allowed under local zoning ordinances which Declarant, or its designee, shall permit in its sole discretion.

2.3. Division or Combining of Building Sites. Except with respect to land owned by Declarant, no Building Site may be divided, subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership (not including joint ownership), nor may any Building Site be combined with

any other Building Site, without the prior written discretionary consent of Declarant. In connection with the consideration of a request by an Owner for consent to any such division or combination, Declarant may request such information as Declarant deems necessary or desirable to properly consider the request. After receipt of such information, the procedures and time periods for response contained in Paragraph 4.3 below shall be applicable.

### ARTICLE III

#### REGULATION OF IMPROVEMENTS

3.1. 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 Declarant, or its designee, and the City of Louisville, as more fully set forth hereafter in Article IV of these Protective Covenants.

3.2. Limitation of Consent. No consent by Declarant to waive or grant a variance from any limitation, restriction, condition, or covenant pertaining to the construction or maintenance of any Improvement shall be effective where the result of such consent would be contrary to or inconsistent with any applicable zoning ordinance, annexation or zoning agreement, planned unit development plan, or other governmental ordinance, rule or regulation, unless prior consent thereto is granted by the appropriate governmental body or official.

3.3. Setbacks. No building or structure shall at any time be erected or permitted on any Building Site within thirty (30) feet from the boundary line of any street right-of-way adjoining the same, or within ten (10) feet from the side boundary line of any Building Site, or within twenty (20) feet from the rear boundary line of any Building Site, except that there shall be no such rear setback required if railroad tracks exist along the rear lot line of any Building Site. In the

case of a Building Site having more or less than four sides, Declarant shall determine the required setbacks with respect thereto, in a manner consistent with the intent of the foregoing provisions. Subject to the provisions of Section 3.2 above, Declarant may, at its sole and absolute discretion, grant variances, in writing, from the above setback requirements when same would constitute an unreasonable hardship when applied to a particular Building Site.

3.4. Off-Street Parking. No parking shall be permitted on any street or road 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 his employees, customers and visitors. All off-street parking, access drives and loading areas shall be paved and properly graded to assure proper drainage. Parking shall not be permitted within twenty (20) feet of any street right-of-way. Proper visual screening must be provided between any parking lot and any street. Curb cuts (with X-pans) shall be utilized as opposed to driveways. Access shall be limited to one cut per off-street parking lot unless special conditions merit more cuts. Where possible, curb cuts on opposite sides of a street shall be directly across from each other. Also, where possible, curb cuts shall be provided at the common property line of two adjoining Building Sites for joint access.

3.5. Loading Areas. Truck loading and receiving areas shall not be permitted in the front yard of a Building Site without the prior written consent of Declarant. Proper visual screening must be provided between any truck loading, receiving, service or similar area and any street, unless Declarant, in its sole and absolute discretion, approves the absence of such screening, subject to the provisions of Paragraph 3.2 above.

3.6. 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 without the prior written consent of Declarant. All such outside storage areas permitted and all waste and rubbish storage facilities shall be properly screened and shall have an all-weather surface.

3.7. Landscaping.

A. Design. All Building Sites shall be landscaped only in accordance with a plan submitted to and approved in writing by Declarant 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 other customary landscape treatment for the entire Building Site, including fences, walls and screening. Each Owner shall be obligated to install on his Building Site "street trees" in accordance with Section 16.20.020 of the Louisville Municipal Code. It shall be the responsibility of the Owner of a Building Site to landscape and maintain the area between the boundary lines of said Owner's Building Site and the curbs of any public roadways adjacent to such Building Site, including any intervening sidewalks. A twenty (20) foot minimum landscaped setback adjacent to all streets shall be created. Berms and landscaping on-site, in parking areas, and adjacent to buildings shall be utilized to minimize the impact of development. Undeveloped portions of Building Sites shall be maintained at least in natural grasses. 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 the prior written approval of Declarant. Said approval shall be in general conformance and similarity to the typical landscape plan of a Building Site

approved by the City of Louisville as a part of the Planned Unit Development Plan for the Property. Notwithstanding any of the foregoing to the contrary, it shall be the responsibility of the Owners Association, after same is formed, to maintain all landscaping contained within any platted landscape easements.

B. Completion. All landscaping required hereunder or otherwise to be provided on any Building Site shall be completed 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 so permit, then such landscaping shall be completed as soon thereafter as weather conditions permit. Notwithstanding the foregoing, all landscaping of each Building Site shall be completed within one year of the issuance of the Certificate of Occupancy for the building on such Building Site. If any Owner fails to undertake and complete his landscaping within the time limit set forth above, Declarant may, at its option, after giving the Owner ten (10) days' prior written notice forwarded to such Owner (unless within said ten (10) day period the Owner of the Building Site shall proceed and thereafter pursue with diligence the completion of such landscaping) undertake and complete the landscaping of the Building Site in accordance with the approved landscaping plan. If Declarant undertakes and completes such landscaping because of the failure of an Owner to complete the same, the costs of such landscaping shall be assessed against the Owner, and if said assessment is not paid within thirty (30) days after written notice of such assessment from Declarant, said assessment will constitute a lien on the Building Site and may be enforced as set forth in Article VI hereafter.

3.8. Maintenance.

A. Construction Period. During construction, a Building Site shall be kept cleaned up on a reasonable periodic basis, and all trash, rubbish, and debris shall be promptly removed therefrom after such construction or work is completed.

B. Site and Building Maintenance. Each Owner shall keep his Improvements in a safe, clean, and neat condition; shall remove replace or restore all such items not in such condition; and shall comply in all respects with all government, health and police requirements. Each Owner, tenant or occupant shall remove at his own expense any rubbish or trash of any character which may accumulate on his property and shall keep unlandscaped areas mowed. 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. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed on any Building Site except as necessary during the construction period. Rubbish and trash shall not be disposed of at the Property by burning in open fires or incinerators.

C. Landscape and Grounds Maintenance. The landscape development shall be maintained in a neat and adequate manner which shall include lawns mowed, hedges trimmed, adequate watering, replacement of dead, diseased or unsightly landscaping, removal of weeds from planted areas and appropriate pruning of plant materials.

3.9. Signs. No signs shall be permitted anywhere within the Property without the prior written approval of Declarant. All signs shall conform with sign standards for the Property as approved by the City of Louisville, and all applicable laws and governmental regulations. Site signs shall conform to a single design, variable by material and color only.

3.10. 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, except that during the construction of a building structure, the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction. 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. The Declarant hereby reserves and shall have the right, at any time, to grant on any Building Site easements for utilities within the setbacks of any Building Sites to other Owners of Building Sites or to the suppliers of such utilities.

3.11. Mechanical Equipment. No heating, air conditioning, electrical or other equipment shall be installed on the roof of any building or structure or hung on exterior walls unless the same is screened, covered and installed in a manner which shall first have been approved in writing by Declarant, except that solar energy collectors or panels, if used, may be installed on the roof of any building or structure or in any other exposed location, if approved by Declarant.

3.12. Height Restrictions. No Improvement, building or appurtenance, including, but not limited to, water towers, standpipes, penthouses, elevators or elevator equipment, stairways, ventilating fans or similar equipment required to operate and maintain any building, fire or parapet walls, skylights, tanks, cooling or other towers, wireless radio or televisions masts, or flagpoles, shall exceed a height of 50 feet above the adjacent finished building grade without the prior, discretionary, written approval of Declarant, not to be given in contravention of any local ordinances, rules or regulations.

3.13. On-Site Drainage. Each Building Site Owner shall be required to provide adequate drainage facilities, including on-site ponds, if necessary. The amount of ponding shall be at least sufficient to accommodate the estimated change in storm water runoff resulting from the placement of buildings and parking areas on Building Sites. Said ponding storage shall be the difference between the amount of runoff generated by a five (5) year frequency storm on undeveloped ground and the runoff generated by a 100 year frequency storm on the developed ground. Discharge into on-site drainage channels, storm sewers and streets shall be limited to the runoff that should result from a five (5) year frequency storm over undeveloped ground. The change in storm water runoff between historical (undeveloped conditions) and developed conditions shall be measured as the increased flow resulting from changes in coefficient of storm water runoff and the time of concentration. An engineer's report comparing the before and after conditions and recommending methods of detention and adequate methods of drainage shall be submitted by the Owner to Declarant for approval at the same time as submission of the plans and specifications for any building as herein provided. Detention may be accomplished by providing ponding storage of storm water on roof tops, in parking areas, in the landscaped areas, in graded drainage swales and by such other methods as may be approved by the Declarant.

3.14. Mining. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed, or permitted upon any part of any Building Site, nor shall any oil, natural gas, petroleum, asphaltum, or hydrocarbon products or minerals of any kind be produced or extracted therefrom. No quarrying, mining, dredging or excavating, of any type or nature, shall be done on any Building Site.

3.15. Lighting. Lighting shall be of a type and installation such that no direct glare is viewed from adjoining properties both in and out of the Property.

3.16. Fences. Those fences facing any street shall be of a solid wood type or of a type with similar aesthetic appeal or screened from view with plant material. Fences shall not be located in the landscape setback.

3.17. Bicycle Storage. Adequate bicycle storage facilities shall be provided at each Building Site.

3.18. Vehicle Storage Restrictions. No Building Site, including drives and parking areas, shall be used as a storage, display or accommodation area for any type of abandoned vehicle, house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat or accessories thereto, commercial truck, recreational vehicle, or any type of commercial van except as a temporary expedience for loading, delivery, emergency, etc., excluding the parking of vehicles used in the normal course of business by the occupant of the Building Site.

#### ARTICLE IV

##### ARCHITECTURAL CONTROL

4.1. Approval of Plans. No Improvement shall be commenced, constructed, placed, erected or maintained upon any Building Site, nor shall any exterior addition to or change or alteration thereof be made, unless and until complete construction plans and specifications therefor, as more fully described hereafter, shall have first been submitted to and approved in writing by Declarant and the City of Louisville. Subject to city approval, the Declarant shall exercise its sole and absolute discretion to see that all Improvements conform and harmonize with all other existing or proposed Improvements with respect to external design, color scheme, shape, height, type of materials, quality of workmanship, location of Building Sites, topography, finish grade elevation, circulation patterns, vehicular access, pedestrian circulation, parking and

storage areas, landscaping and easements, so as to assure that the Property will consist of an attractive, integrated development wherein all Improvements are designed to conform to and complement natural topography and existing Improvements. All Improvements shall be in strict accordance with any and all federal, state and local laws, codes, ordinances, rules and regulations, including, but not limited to, the Annexation and Zoning Agreement for the Property, the Planned Unit Development Plan for the Property, and any other applicable zoning, subdivision and building codes.

4.2. Plans and Specifications. The construction plans and specifications to be submitted to Declarant by an Owner, at such Owner's expense, shall include the following, and shall be submitted in writing over the signature of the Owner or his authorized agent:

- a) Architectural plans and specifications, including type of materials, colors, mechanical systems and structural systems;
- b) Site plan showing the location and design of all Improvements, fences, landscaping, streets, signs, roadways, parking areas, number, size and layout of parking spaces, loading areas, sidewalks, retaining walls, easements, utilities, driveways and curb cuts;
- c) Traffic and drainage engineering studies;
- d) Complete grading and drainage plans, showing all relevant elevations, drainage and retention areas and point flows;
- e) Proposed development schedule;
- f) Description of proposed operations or uses, including number of employees, present pay scale and needed educational levels;

g) Characteristics of the process of the industrial type, with particular emphasis on measures that will be taken to mitigate adverse characteristics such as water, noise and air pollution;

h) Anticipated water and sewer needs;

i) Material transportation requirements (rail and/or truck); and

j) Such other information as Declarant or the City of Louisville may deem pertinent in the evaluation of the site plan, or may be required by Declarant in order to perform its function hereunder.

4.3. Procedures. Declarant shall approve or disapprove all plans and specifications within thirty (30) days after the submission of all such pertinent materials. In the event Declarant fails to approve or disapprove such plans and specifications within thirty (30) days of the submittal thereof, then Owner shall submit to Declarant a notice of nonaction. In the event Declarant fails to approve or disapprove such plans and specifications within ten (10) days after receipt of a notice of nonaction, then such approval shall not be required, provided that no Improvement which violates any of the covenants or restrictions contained hereon shall be erected or be allowed to remain on any Building Site. The issuance of a building permit or license, which may be in contravention of these Protective Covenants, shall not prevent Declarant from enforcing these provisions.

4.4. Disclaimer of Liability. Neither Declarant, or its designee, or their 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 these Protective Covenants, by reason of mistake in judgment, negligence or non-feasance 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 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 Declarant, its designee, or their successors or assigns, to recover any such damages.

ARTICLE V

RIGHT OF REPURCHASE BY DECLARANT

5.1. Right of Repurchase. If any Owner fails to commence construction of a building upon a Building Site purchased by such Owner within two-years from the date of the conveyance of the Building Site from Declarant to such Owner, other than Declarant, Declarant shall have the right to repurchase such Building Site at any time within one hundred eighty (180) days after the expiration of said two-year period upon giving to said Owner fifteen (15) days' prior written notice of its intention to repurchase such Building Site. Such right of repurchase shall under no circumstances extend beyond twenty-one (21) years from the date of recordation of these Protective Covenants. The repurchase price shall be the price paid by such Owner for the Building Site, less the unpaid balance of any mortgage or deed of trust or other amounts owing with respect to such Building Site, the nonpayment of which may be assessed as liens against the Building Site. The provisions of this Article shall be specifically enforceable by Declarant as set forth in Article VI of these Protective Covenants. If Declarant fails to give written notice exercising its right of repurchase within the one hundred eighty (180) day period aforesaid, said right of repurchase shall be deemed waived. "Commencement of construction of a building" as used herein means that the Owner of the Building Site: (1) has obtained the approval of Declarant as set forth in Article IV hereof; (2) has obtained permits from the appropriate governmental authorities authorizing construction of a building and Improvements as approved by Declarant; (3) has entered into a construction contract with a contractor licensed to do business in

Colorado for construction of a building; (4) has expended no less than the sum of Ten Thousand Dollars (\$10,000.00) pursuant to such construction contract for on-site construction work, and (5) is diligently pursuing the completion of the building.

## ARTICLE VI

ENFORCEMENT

6.1. Abatement and Suit. The conditions, covenants, restrictions and reservations herein contained shall run with the land, and shall be binding upon and inure to the benefit of Declarant and the Owners of every Building Site on the Property. These conditions, covenants, reservations and restrictions may be enforced as provided hereinafter by each Owner and/or by Declarant acting for itself and as trustee on behalf of all of the Owners. Each Owner, by acquiring an interest in the Property, shall appoint irrevocably Declarant as his attorney-in-fact for such purposes. Violation of any condition, covenant, restriction or reservation contained herein shall give to Declarant and to each Owner the right to bring suit in law or equity against the party or parties violating or intending to violate any such covenants, conditions, restrictions and/or reservations, to enjoin them from so doing, to cause any such violation to be remedied, or to recover damages resulting from such violation. In addition, violation of any condition, covenant, restriction or reservation herein contained shall give to 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 exist thereon contrary to the intent and meaning of the provisions hereof.

6.2. Deemed to Constitute a Nuisance. Every violation of these Protective Covenants or any part thereof is hereby declared to be and to constitute a nuisance, and every public

or private remedy allowed therefore by law or equity against an Owner, tenant or occupant shall be applicable against every such violation and may be exercised by Declarant or any Owner.

6.3. Attorneys' Fees. In any legal or equitable proceeding for the enforcement hereof 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.

6.4. Non-Waiver. The failure of Declarant or any Owner 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.

#### ARTICLE VII

##### TERM, TERMINATION, MODIFICATION AND ASSIGNMENTS

7.1. Term. This Declaration, every provision hereof and each and every covenant, condition, restriction and reservation contained herein, shall continue in full force and effect for a period of twenty-five (25) years from the date of recordation hereof, and shall thereafter be renewed automatically from year to year unless and until terminated as hereinafter provided.

7.2. 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 the Property or any portion thereof, with the written consent of the Owners of Sixty-Five Percent (65%) of the Property, on an acreage basis, (other than Property Used in Common), subject to these restrictions; provided, however, that during the initial twenty-five

(25) year term of these Protective Covenants, no such termination, extension, modification or amendment shall be effective without the prior written approval of Declarant. Any such termination, extension, modification or amendment shall be immediately effective upon the recording of a proper instrument in writing, executed and acknowledged by such Owners (and by Declarant if required herein) in the office of the Clerk and Recorder of Boulder County, Colorado.

7.3. Assignment of Declarant's Rights and Duties. All or any part of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant, in whole or in part, to any person, corporation or association, including, without limitation, the Owners 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. Any such assignment shall be recorded in the Clerk and Recorder's Office of Boulder County, Colorado. Upon any such assignment, and to the extent thereof, Declarant shall be relieved from all liabilities, obligations and duties so assigned and assumed. 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, on an acreage basis, (other than Property Used in Common) upon compliance with the requirements of Paragraph 7.2 of this Article VII.

## ARTICLE VIII

EXTENSION OF PROTECTIVE COVENANTSTO INCLUDE ADDITIONAL PROPERTY

8.1. Extension of Protective Covenants. Declarant may at any time, without the consent of any other Owner, make subject to these Protective Covenants other properties now or hereafter owned by Declarant, by executing an instrument in writing making these Protective Covenants applicable to such other properties and by recording the same in the office of the Clerk and Recorder of Boulder County, Colorado. Upon such recordation: (1) these Protective Covenants shall run with the Property already subject hereto and with such additional property as if such Protective Covenants had always applied to all of said land from the date of the initial recording of these Protective Covenants; and (2) whenever thereafter in construing this Declaration reference is made to the "Property", said term shall mean and refer to not only the Property described in Exhibit A hereto, but also such additional properties, including all Property Used in Common thereon. Such additional properties may, but need not, be contiguous to other properties owned by Declarant and made subject to these Protective Covenants.

## ARTICLE IX

OWNERS ASSOCIATION

9.1. Formation. At any time after the date hereof, so long as Declarant has not theretofore assigned its rights, powers and reservations hereunder as provided in Paragraph 7.3 hereof, Declarant may, but shall not be obligated to, form a non-profit Colorado corporation to act as the Owners Association for the Property. The Owners Association, if formed, shall have all of the Owners as the members thereof, and shall be formed for the purpose of assuming and performing the duties and obligations of Declarant hereunder (excluding Declarant's

rights under Article V hereof which shall remain with Declarant) and for the purpose of providing for: a) the maintenance, improvement, and beautification of the Property Used in Common; b) the security of the Property; and c) the welfare and safety of the occupants, tenants and Owners of Building Sites. The Owners Association shall be authorized to hold title to real property and shall accept legal title to any Property Used in Common which may be deeded to it, for the use and benefit of the members of the Owners Association. The Owners Association shall either undertake or demand from those in fact responsible, the maintenance and upkeep of such Property Used in Common. The Owners Association shall pay, or arrange for payment directly by its benefited members, on an equitable basis, for such common utility services as may be required for street lighting, water fountains, sprinkler systems and other uses in connection with the Property Used in Common. For these purposes, the Owners Association may assess its members, provided that: (a) such assessments shall be allocated among the members, according to the prorata share of the square footage of each Owner's Building Site, as it bears to the total square footage of the Property, as determined from official county or other appropriate governmental entity records, and (b) such assessment for any Building Site does not exceed in any one calendar year one dollar for each \$100.00 of assessed value of such property, as determined for real property tax purposes by the Boulder county assessor. For all members not assessed for real property tax purposes, the valuation for the purposes of this paragraph shall be made by the Owners Association on an equivalent basis. Notwithstanding anything set forth herein to the contrary, Declarant shall have no obligation to pay any of such assessments to the Owners Association, but Declarant shall pay to the Owners Association, on an annual basis, a sum equal to the difference between the cost of operating and maintaining

the Property Used in Common, exclusive of any reserves or contingencies, and the amount of funds payable by the other Owners to the Owners Association. This obligation of Declarant to subsidize the operations of the Owners Association shall terminate when Declarant relinquishes its right to appoint the Board of Directors of the Owners Association, or on December 31, 1990, whichever event first occurs. Subsequent to the occurrence of either of the aforesaid events, Declarant shall be obligated as any other Owner with respect to Building Sites then owned by Declarant to pay the assessments imposed by the Owners Association.

9.2. Assessments by the Owners Association. All members shall, within 30 days after the date on which a notice of assessment from the Owners Association is mailed or delivered, remit the amount of such assessment to the Owners Association. Any assessment not paid within the aforesaid 30-day period from the date of such notice shall bear interest after said 30-day period until paid at a per annum rate equal to the then prime rate charged by the United Bank of Denver on the date of assessment plus three (3%) percent. All assessments not paid as set forth herein, plus accrued interest, shall constitute a lien on the real property subject thereto, superior and prior to all other liens and encumbrances except the lien for general taxes and special assessments, and the lien of any first mortgage or first deed of trust of record. To evidence such lien, the Owners Association shall prepare a written notice (the "Notice") setting forth the amount of such unpaid assessment, the name of the member being assessed and a legal description of the property on which the lien is filed. The Notice shall be signed by an officer of the Owners Association and mailed to the member in default. Thirty days subsequent to such mailing, if the assessment plus interest remains unpaid, an officer of the Owners Association shall record the Notice at the Clerk and

Recorder's Office, Boulder County, Colorado. Any such lien may be enforced by the foreclosure of the real property, including Improvements, with respect to which the assessment has not been paid in like manner as a mortgage on real property is foreclosed under the laws of the State of Colorado. In any such foreclosure, the delinquent member shall be required to pay the costs, expenses and reasonable attorneys' fees in connection with the preparation and filing of the Notice as provided herein and all costs and reasonable attorneys' fees incurred in connection with the foreclosure. The Owners Association shall have the power to bid on the real property, including Improvements, being foreclosed upon. The Owners Association shall notify any first mortgagee of the real property, including Improvements, being foreclosed, if such encumbrancer has furnished its address in writing to the Owners Association. Any mortgagee holding a lien on real property, including Improvements, being foreclosed upon may, but shall not be required to, pay any unpaid assessment and upon such payment, such encumbrancer shall have a lien on the real property, including Improvements, for the amount paid, of the same rank as the lien of the Owners Association. The amount of the assessment assessed against each member shall also be the personal and individual debt of the member at the time the assessment is made, and suit to recover money judgment (together with reasonable attorneys' fees and costs as aforesaid) for unpaid assessments may be maintainable without foreclosing or waiving the lien securing the same.

9.3 Bylaws. The Owners Association, when formed, shall establish bylaws for the conduct of its affairs, which shall include reasonable notice to each member prior to any meeting. Decisions of the Owners Association shall be by majority of votes cast at any meeting, except as otherwise provided in the articles of incorporation or bylaws of same. The aggregate

number of votes for all members of the Owners Association shall be one hundred (100) and shall be divided among the respective owners in accordance with the percentage which the square footage of an Owner's Building Site is of the total square footage of all of the Building Sites within the Property. If a particular Building Site is owned by multiple fee Owners, either jointly or in common, only the total votes attributable to such Building Site shall be allowed to be exercised by such fee Owners in such manner as they may determine. The real property records of Boulder County, Colorado shall at all times be conclusive as to ownership. Each Owner may assign his voting rights to his tenant or tenants upon such terms as they may determine. Notwithstanding anything to the contrary contained herein, until Declarant has sold and conveyed 100% of the Property, as same may be expanded in accordance with Paragraph 8.1 hereinabove, or December 31, 1990, whichever first occurs, the members of the Board of Directors of the Owners Association shall be appointed by Declarant.

## ARTICLE X

MISCELLANEOUS

10.1. Notice and Acceptance. Every person or entity which now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented to every covenant, condition, reservation or restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired an interest.

10.2. Severability. 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 condition, covenant, restriction or reservation or any part thereof shall be thereby affected or impaired.

10.3. 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. Furthermore, any such sale shall not enlarge or extend the time for commencement of construction of a building upon a Building Site nor modify Declarant's right of repurchase pursuant to Article V hereof, and any subsequent Owner shall have only the time remaining, if any, to comply with such Article V.

10.4. Notices. 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; or (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.

10.5. Limited Liability. Neither the Declarant, the Owner's Association, if formed, their successors or assigns, nor any director, officer, member, agent or employee of any of them shall be liable to any party for any action or failure to act with respect to any matter concerning these Protective Covenants.

10.6. 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.

10.7. Certificate of Compliance. Upon payment of a reasonable fee set from time to time by Declarant, and upon the written request of, or authorization by, any Owner, Declarant shall issue within 15 days from receipt of the request a certificate in recordable form stating whether or not the Building Site of such Owner is in known violation of any of these Protective Covenants. Said written statement shall be conclusive upon the Declarant in favor of the persons who rely thereon in good faith. If Declarant fails to furnish such statement within 15 days, it shall be conclusively presumed that the Building Site is in conformance with these Protective Covenants.

IN WITNESS WHEREOF, M.D.C. Corporation has executed this instrument as of the day and year first above written.

M.D.C. CORPORATION,  
a Colorado corporation

By: [Signature]  
President

ATTEST:

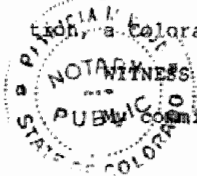
[Signature]  
Secretary

FILM 1089

26-25

STATE OF COLORADO )  
CITY AND COUNTY OF DENVER ) SS. 1

The foregoing instrument was acknowledged before me this 20th day of September, 1979, by Larry A. Mizel as President and by Marshall A. Abrahams as Secretary of M.D.C. Corporation, a Colorado corporation.



WITNESS my hand and official seal.

My commission expires: August 9, 1980

Patricia M. Wood  
Notary Public

FILM 1089

26-26

EXHIBIT A

All of COLORADO TECHNOLOGICAL CENTER, FIRST FILING,  
County of Boulder, State of Colorado, EXCEPTING AND EX-  
CLUDING Lot 19, Block 6 thereof.

DECLARATION SUPPLEMENT AND  
ANNEXATION AGREEMENT

WHEREAS, M.D.C. CORPORATION, a Colorado corporation ("Declarant") of Protective Covenants of Colorado Technological Center dated September 20, 1979 (the "Declaration") which was recorded on October 24, 1979, at Reception No. 367003 in the records of the Clerk and Recorder of the County of Boulder, Colorado; and

WHEREAS, Declarant, in accordance with Article VIII of the Declaration, desires to annex certain real property to the Property, as that term is defined in the Declaration, and to subject the same to the terms and conditions of the Declaration.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby states and declares as follows:

1. That certain real property (the "Annexed Property") described in the attached Exhibit A, which is incorporated herein by reference, is hereby merged and annexed into the Property, as defined in the Declaration, and Declarant hereby declares that the Annexed Property shall be held, sold, and conveyed subject to the easements, restrictions, covenants and conditions set forth in the Declaration, which easements, restrictions, covenants and conditions shall run with the Annexed Property and be binding on all parties having any right, title or interest in the Annexed Property, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

6

2. In all other respects, the Declaration is hereby ratified and confirmed in its entirety.

3. IN WITNESS WHEREOF, the undersigned has executed this Declaration Supplement and Annexation Agreement as of February 28, 1985.



M.D.C. CORPORATION,  
a Colorado corporation

By: [Signature]  
Title: Executive Vice President

STATE OF COLORADO )  
CITY AND COUNTY OF DENVER ) ss.

The foregoing instrument was acknowledged before me, in the City and County of Denver, this 28th day of February, 1985, by DAVID D. MANDARICH as EXECUTIVE VICE PRESIDENT of M.D.C. CORPORATION, a Colorado corporation.

WITNESS My hand and official seal.

My commission expires: 2-6-89  
My address is:

Land Title Guarantico Company  
3033 E. First Ave. - Suite 600  
Denver, Colorado 80206

[Signature]  
Notary Public



AGRam1-081:2/27/85

2170716

LEGAL DESCRIPTION

EXHIBIT A

A PARCEL OF LAND LOCATED IN THE EAST ONE-HALF OF SECTION 16, TOWNSHIP 1 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF LOUISVILLE, COUNTY OF BOULDER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST ONE-QUARTER CORNER OF SAID SECTION 16; THENCE NORTH 89°47'13" WEST ALONG THE NORTH LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 16, A DISTANCE OF 25.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY OF SOUTH 104TH STREET (COUNTY ROAD NO. 13) AS RECORDED IN BOULDER COUNTY ROAD BOOK "B" AT PAGE 345, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE SOUTH 00°46'08" WEST ALONG SAID WEST RIGHT-OF-WAY, 25.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 16, A DISTANCE OF 85.50 FEET; THENCE DEPARTING SAID WEST RIGHT-OF-WAY NORTH 89°34'00" WEST A DISTANCE OF 639.98 FEET; THENCE SOUTH 00°46'08" WEST A DISTANCE OF 346.38 FEET; THENCE NORTH 89°47'13" WEST A DISTANCE OF 184.75 FEET; THENCE SOUTH 00°46'08" WEST A DISTANCE OF 22.50 FEET; THENCE NORTH 89°47'13" WEST A DISTANCE OF 600.00 FEET TO A POINT ON THE EAST LINE OF "COLORADO TECHNOLOGICAL CENTER - FIRST FILING"; THENCE NORTH 00°12'47" EAST ALONG SAID EAST LINE A DISTANCE OF 451.89 FEET TO A POINT ON SAID NORTH LINE OF THE SOUTHEAST ONE-QUARTER; THENCE DEPARTING SAID EAST LINE SOUTH 89°47'13" EAST ALONG SAID NORTH LINE OF THE SOUTHEAST ONE-QUARTER A DISTANCE OF 146.34 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF THE EAST ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 16; THENCE NORTH 00°42'36" EAST ALONG THE WEST LINE OF SAID EAST ONE-HALF OF THE NORTHEAST ONE-QUARTER A DISTANCE OF 872.31 FEET; THENCE SOUTH 89°47'13" EAST A DISTANCE OF 1293.41 FEET TO A POINT ON SAID WEST RIGHT-OF-WAY; THENCE SOUTH 00°45'02" WEST ALONG SAID WEST RIGHT-OF-WAY, 25.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 16, A DISTANCE OF 872.31 FEET TO THE TRUE POINT OF BEGINNING.

@