

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
OF  
ELK RIVER ROAD BUSINESS PARK, A SUBDIVISION  
ROUTT COUNTY, COLORADO

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereafter "this Declaration") is made this 8th day of January, 1982 by LES A. LIMAN and by THE INDUSTRIAL COMPANY OF STEAMBOAT SPRINGS, INC., a Colorado corporation (hereinafter "Declarants").

I

RECITALS

A. Declarants are the owners of the real property located in Routt County, Colorado, described as Lot 2, Taylor Subdivision (hereafter referred to as the "Property").

B. The Property is also described as Lots 1 through 16, Elk River Road Business Park, according to the plat thereof filed or to be filed with the Routt County Clerk and Recorder.

C. Declarants will retain certain Lots within the Property and will sell other Lots to individual purchasers, and before selling any of said Lots, Declarants desire to subject all of the Property to the following covenants, conditions and restrictions for the benefit of the Declarants and for the benefit of all future owners of the Lots within the Property.

D. Declarants desire to establish a mechanism for the enforcement of these covenants, for architectural and aesthetic control, and for the continued maintenance of the landscaped areas, the common areas and the common facilities within the Property.

II

DECLARATION

Declarants hereby declare that all of the Property and each and every Lot therein shall be held, used, transferred, encumbered, sold and conveyed subject to the covenants, conditions and restrictions set forth in this Declaration, all of which shall run with the land, and shall constitute burdens and benefits to the Declarants and to all owners of Lots within the Property, their heirs, successors and assigns. These covenants, conditions and restrictions shall be in addition to and shall not serve to limit applicable land use restrictions imposed by governmental authorities.

Recorded at 2:05 O'clock P.M. January 6, 1982  
EUNICE DORR, Recorder  
Reception No. 314172

## III

COVENANTS, CONDITIONS AND RESTRICTIONSSECTION 1 - DEFINITIONS:

- 1.1 "Lot" shall mean one of Lots 1 through 16, Elk River Road Business Park according to the Plat, or any smaller parcel or tract into which any such Lot shall hereafter be subdivided.
- 1.2 "Owner" shall mean any individual, partnership, trust or other entity which is the record owner of the fee simple interest in one or more Lots. If title to any Lot is held in co-ownership by two or more persons or entities, then all such co-owners shall collectively be deemed one "Owner" for purposes of this Declaration.
- 1.3 "Association" shall mean the Elk River Road Business Park Owners Association, a Colorado non-profit corporation created or to be created by Declarants.
- 1.4 "Plat" shall mean the plat of Elk River Road Business Park, a subdivision, Routt County, Colorado.
- 1.5 An Owner's "Sharing Ratio" shall be a fraction, the numerator of which is the number of Lots (including parts of re-subdivided Lots owned by such Owner), and the denominator of which is the total number of Lots (including parts of re-subdivided Lots) then within the Property and owned by all Owners, including Declarants.
- 1.6 "Board" shall mean the Board of Directors of the Association, which shall consist of three natural persons who may or may not themselves be Owners of Lots.
- 1.7 "Easement" shall mean the 40-foot wide visual buffer and landscaping easement, established by Section 3 of this Declaration, along the easterly 40 feet of Lots 1, 7, 8, 9, 15 and 16, Elk River Road Business Park.
- 1.8 "Easement Lots" shall mean Lots 1, 7, 8, 9, 15 and 16, Elk River Road Business Park.
- 1.9 "Greenbelt" shall mean the greenbelt lot shown on the Plat.

SECTION 2 - RE-SUBDIVISION:

- 2.1 Lots within the Property may be re-subdivided only with the approval of the Board and of the applicable governmental authorities.

**SECTION 3 - VISUAL BUFFER EASEMENT:**

3.1 Declarants hereby create along the easterly 40 feet of Lots 1, 7, 8, 9, 15 and 16, Elk River Road Business Park, an easement 40 feet in width which shall provide a visual buffer and landscaped area between Routt County Road No. 129 and the Property. The Easement shall abut the west right-of-way line of Routt County Road No. 129.

**SECTION 4 - ACCESS:**

4.1 No Lot within the Property, other than Lot 7, shall be permitted direct access through the Easement to Routt County Road No. 129. Access to all Lots other than Lot 7 shall be limited to Jacob Circle and Downhill Drive (Routt County Road No. 185) as shown on the Plat.

**SECTION 5 - PARKING REQUIREMENTS:**

5.1 Paved parking area. Within any Lot, there shall be provided at least one paved parking space for each 500 sq. ft. of gross leasable area within the improvements located on such Lot. Each parking space shall be at least 10' x 20' in dimension.

5.2 Overall parking area. Within each Lot, there shall be additional improved parking (not necessarily paved) so that there shall be overall a total of at least one usable parking space for each 350 sq. ft. of gross leasable area within the improvements located on such Lot.

5.3 Snow Storage. Within any Lot, there shall be provided sufficient snow storage area so that the required paved and overall parking area shall be continuously available throughout the year.

**SECTION 6 - UTILITIES:**

6.1 All utility lines shall be installed and situated underground, except for utility appurtenances which are required to be above ground for access purposes, such as transformers and manhole covers.

**SECTION 7 - BUILDING SET-BACKS:**

7.1 No structure shall be placed nearer than 30 feet to any front or rear Lot line nor nearer than 100 feet to the centerline of the ROW of Routt County Rd. #129. Side Lot line set-backs shall be as follows: A minimum of 15 feet from each side Lot line plus one additional foot for each foot of eave height in excess of 15 feet.

SECTION 8 - SIGNS:

8.1 Size. The total square footage of all signs, including all directional signs, for any use or combination of uses on any Lot shall not exceed 100 sq. ft. No single sign shall exceed 64 sq. ft. in area.

8.2 Computation of Sign Area. The area of all signs shall be computed by determining the sum of the area of each square, rectangle, triangle, portion of a circle or any combination thereof which creates the smallest continuous single perimeter enclosing extreme limits of the display surface or faces of the sign excluding reasonable frames or non-structural trim, bracing and support structure. The measured area shall include only one side of the sign, and one second sign face is authorized, provided it is attached to the approved sign, identical to the approved sign, and separated from the approved sign by an angle of at least 270° on a horizontal plane.

8.3 Location. No portion of a detached sign, or its frame, bracing or support structure shall be located closer than five (5) feet from any boundary line of a Lot, or fifteen (15) feet from any public right-of-way. No portion of a sign attached to a building shall project above the roof of the supporting building.

8.4 Illumination. No flashing or blinking signs are permitted. Illumination, if provided, shall be from an indirect source and shall be permitted only if no unfrosted light source is directly visible to any motor vehicle operated from a public road or street or from any residential area within a distance of 300 feet measured from the light source. When illuminated, no portion of the sign, including any frame, brace or support structure shall be constructed of a reflectorized surface.

8.5 Identification Sign - Elk River Road Business Park. Declarants hereby establish an easement for the erection and continuing maintenance of a sign, and access thereto, the purpose of which shall be to identify and direct the public to the Elk River Road Business Park. Said easement shall be located in the southeast corner of Lot 8 as shown on the Plat.

SECTION 9 - SAFETY, HEALTH AND AESTHETIC RESTRICTIONS:

9.1 No Nuisances. No obnoxious or offensive activities shall be carried on upon any Lot, nor shall anything be done on a Lot which may be or become an annoyance or nuisance to other Owners. The Board, acting in good faith, shall

determine in its sound discretion whether a particular activity is or will be a nuisance, and the judgment of the Board shall be binding on all Owners.

9.2 Garbage and Refuse Disposal. No Owner shall allow any rubbish, trash, garbage, refuse or obnoxious or offensive material to accumulate on any Lot. Each Owner shall be responsible for removal of garbage at sufficient periodic intervals. The burning of garbage shall be prohibited. Vacant Lots shall be kept free of debris.

9.3 Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot for commercial purposes.

9.4 Weed Control. No owner shall allow any grass or weeds on his Lot to attain a height in excess of 12 inches.

#### SECTION 10 - BUILDINGS:

10.1 Height Restriction. No building shall exceed three stories or forty-five (45) feet above the finished ground level, except that functional chimneys, antennas and other similar features may, if reasonably necessary for the use of the Lot, extend beyond such height limitation if approved by the Board, and approval shall not be withheld unreasonably.

10.2 Dock Facilities. All dock facilities shall be adequately screened from view from the roadways within the Property.

10.3 Diligence in Construction. All construction and alteration work shall be prosecuted diligently. Each building, structure or improvement shall have exterior walls and roof completed no later than twelve months after commencement of construction.

10.4 Temporary Structures. No temporary structures, including but not limited to, excavations, basements and trailers shall be permitted on any Lot, except as may be necessary during construction of a permanent structure. No temporary structure shall remain on any Lot longer than eighteen months.

10.5 No Mobile Homes. Except as may be necessary during construction of a permanent building, there shall never be placed on any Lot any mobile home or trailer.

#### SECTION 11 - OUTSIDE STORAGE:

11.1 All outside storage shall be designed, located and concealed by the use of berming, buffering and landscaping so as to reduce its visual impact from Cty. Rd. #129 to a level which is acceptable in the reasonable judgment of the Board. Visually attractive fencing may be used for screening. Outside storage

shall be defined to include construction materials, refuse containers, boats, campers and vehicles and equipment (except items being displayed for sale), salvage, pipe, steel and other items that might reasonably be defined as having objectionable visual impact. This Section 11.1 shall not be construed to permit any Owner to allow rubbish, trash or refuse to accumulate on his Lot.

SECTION 12 - LANDSCAPING:

12.1 Every Lot shall, as soon as practicable after the construction of a building thereon, be landscaped by the Owner to the reasonable specifications of the Board.

12.2 If any Owner of an Easement Lot shall desire to use the front yard or east yard of said Lot for parking or outside storage, then such shall be permitted PROVIDED THAT such Owner shall, at such Owner's sole expense, increase the landscaping of that portion of the Easement adjacent to such parking or outside storage, to the reasonable requirements of the Board and the County of Routt, so as to mitigate the visual impact of said parking or outside storage.

12.3 Each Owner shall be responsible for the continued maintenance of all landscaping within his Lot, including, with respect to Easement Lots, that portion of the Easement lying within such Owner's Lot. Said landscaping shall be kept continuously in a good, adequate and aesthetically pleasing condition, the adequacy of the landscaping maintenance to be determined in the reasonable judgment of the Board. Each Owner shall cut the grass at regular intervals, properly tend the trees and other vegetation, and remove dead leaves and other debris. If any vegetation shall die, it shall be replaced by such Owner as soon as practicable.

12.4 The Owner of Lot 8 shall maintain, in accordance with the standards set forth in Section 12.3, the landscaping surrounding the Identification Sign (Section 8.5).

12.5 The Owner of Lot 9 shall maintain, in accordance with the standards set forth in Section 12.3, the landscaping on his Lot adjacent to the Identification Sign at the entrance to the Property.

SECTION 13 - THE ELK RIVER ROAD BUSINESS PARK OWNERS ASSOCIATION:

13.1 Formation. Declarants will form the Elk River Road Business Park Owners Association, which shall be a Colorado non-profit corporation. In addition to the powers and duties set forth herein, the Association shall have

the powers and duties set forth in its Articles, its Bylaws, and its Rules and Regulations, as such shall be duly adopted and duly amended from time to time.

13.2 Members. Every Owner shall automatically be a member of the Association. Such membership shall be continuous through the period of ownership of a Lot. Declarants shall be members of the Association as respects the Lots owned by them from time to time. Termination of membership shall not release any former member from any liability or obligation incurred by virtue of ownership of a Lot, or impair any rights or remedies which the Association or others may have against such former Owner and member arising out of or in any way connected with such ownership or membership.

13.3 Classes of Membership. The Association shall have the following classes of membership:

(a) Individual Membership. Any individual acquiring any ownership interest in a Lot shall automatically become an individual member of the Association.

(b) Organizational Membership. Every corporation, partnership, association, trust or other legal entity acquiring an ownership interest in a Lot shall automatically become an organizational member of the Association. Each organizational member shall from time to time designate one individual who may represent it at meetings and vote on behalf of said member. The Association shall maintain a list of the persons entitled to vote on behalf of organizational members and, until the Association is notified to the contrary, any action taken by such persons purporting to act on behalf of the organizational members shall be binding upon such member.

13.4 Voting Rights. Until December 31, 1990, so long as either Declarant, (a) owns an interest in a Lot, or (b) is a participant (as shareholder, trustee, major creditor, limited or general partner, sole or partial owner, director or officer) in any partnership or entity owning an interest in a Lot, then said Declarant shall be entitled to cast twenty-five (25) votes in the Association for such period of time as such ownership or participation continues to and including December 31, 1990 regardless of the extent or nature of said Declarant's interest in a Lot or Lots. Each other Owner, and each Declarant, after December 31, 1990, shall be entitled to cast one vote for each Lot owned by such Owner; provided that if a Lot is owned by two or more persons in joint

tenancy or as tenants in common or otherwise, then all such persons shall collectively be deemed an Owner and the one vote allocated to such Lot may be cast and voted from time to time as such persons may collectively agree. Cumulative voting shall not be allowed and a majority of the votes present at any duly called meeting of the membership shall be sufficient for the election of Directors and the transaction of other business. Decisions of the Board of Directors shall be made according to majority rule -- one man, one vote.

13.5 Responsibilities. The Association's primary responsibilities shall be the maintenance of the Greenbelt, the roadways and any other common areas within the Property; the maintenance of common facilities such as street lights and fire hydrants; the maintenance of the Identification Sign (Section 8.5); the enforcement of this Declaration, and all other activities necessary or proper for the maintenance of the Property. The Association shall act through the Board.

SECTION 14 - ARCHITECTURAL AND AESTHETIC CONTROL:

14.1 Architectural Review. Notwithstanding anything of a permissive or mandatory nature in the foregoing sections of this Declaration, no building, structure, sign, or improvement of any kind or character, or construction work thereon, no fence, screen, wall, private road, driveway, parking lot or any alteration or modification of a Lot or any improvement thereon of any description whatsoever or any landscaping, excavation, earth moving or other similar activity, nor any re-subdivision of a Lot shall be commenced or made until detailed plans and detailed specifications and a plot plan showing the location of the structure or other alteration shall have been submitted to the Board and approved by it in writing.

14.2 Review Factors. When such plans have been submitted to the Board it shall consider, among other things, the following factors:

- (a) Suitability to the site of the proposed improvement and the materials of which it is to be constructed;
- (b) The nature of adjacent and neighboring improvements;
- (c) The quality of materials to be utilized;
- (d) The quality of the proposed workmanship and the harmony of external design with the surroundings and with existing structures;
- (e) The overall impact -- visual and otherwise -- of the proposed structure; and

(f) The adequacy of the landscaping plan.

14.3 Approval or Disapproval. The approval or disapproval of the Board of the complete, submitted plans shall be in writing, and approval shall not be unreasonably withheld. If the Board shall fail to approve or disapprove within 30 days after the submission of complete plans and specifications, then the plans will be deemed to have been approved. No major changes or deviations from such plans and specifications as approved shall be made without the prior written consent of the Board. The Board shall not be responsible for any defects in said plans and specifications or in any building or structure constructed according to such plans and specifications. No member of the Board shall be liable to any Owner, tenant, guest, invitee or any other person arising out of or in connection with the approval, disapproval or failure to approve any such plans.

14.4 Variances. Except for minor variances, the Board shall not have the power to vary the specific restrictions set forth above in Sections 2 through 12 except upon the affirmative vote of Owners holding at least 75% of the voting rights which shall be represented at a meeting of the Association duly called for the purpose of considering said variance. Minor variations from said restrictions may be approved by the Board at any time after application therefor by an Owner provided that the Board shall first provide (1) advance written notice of consideration of such application to all other Owners and (2) opportunity for any aggrieved other Owner to be heard at a meeting of the Board held to consider such application for minor variance.

SECTION 15 - ASSESSMENTS, ENFORCEMENT AND PENALTIES:

15.1 General Assessments. Each Owner shall promptly pay as general assessments his share of all common expenses incurred or to be incurred by the Association for the accomplishment of its purposes, the nature and amount of such expenses to be determined from time to time in the reasonable judgment of the Board. Each Owner shall also pay all assessments for a contingency reserve to meet common expenses and all special assessments duly made and levied. The share to be paid by each Owner shall be determined by the application of his Sharing Ratio, as defined in this Declaration, to the total amount of such expenses. In the discretion of the Board, general assessments and assessments for a contingency reserve to meet common expenses may be made as a periodic advance billing of an annual budget.

15.2 Special Assessments. Special assessments may also be levied against the Owners according to their Sharing Ratios whenever in the reasonable judgment of the Board it is necessary or advisable to do so (i) to meet increased operating, maintenance or repair expenses or costs; (ii) to provide for additional capital expenditures; or (iii) because of emergencies. Special assessments for additional improvements shall require the prior approval of Declarants and of those holding 75% of the other voting rights in the Association, unless mandated by a governmental authority.

15.3 Special Assessments for Defaults. The Board is authorized to set liquidated damage sums payable to the Association in the event of failure of an Owner, or of a guest, invitee or tenant of an Owner, to comply with any rule, regulation, provision, or resolution of the Association adopted by the Board or any term or provision of this Declaration. Such failure shall authorize the Board to levy such specified liquidated damage sum against such Owner as a special assessment, for which the Association shall have such lien and collection rights and remedies as elsewhere provided in this Section 15. If any Owner shall be in default under any affirmative obligation hereunder, for example, the obligation to landscape, remove refuse, cut weeds and grass, or the obligation of the Owner of an Easement Lot to maintain his portion of the Easement, then the Board may, a reasonable time after written demand upon the Owner, perform such obligation or cause it to be performed, and the costs of same shall be a special assessment against the defaulting Owner, for which the Association shall have such lien and collection rights and remedies as elsewhere provided in this Section 15.

15.4 Collection. If a Lot is owned by two or more owners in co-tenancy, each such co-owner shall be jointly and severally liable for each general and special assessment against and attributable to such Lot. Such assessments shall be due and payable by the end of the calendar month in which such assessment is billed. All assessments not paid by the end of the calendar month in which such assessment is billed shall bear interest after such end of month at the rate of 3% per month. Further, all assessments not paid within 60 days shall incur a late payment charge of \$100, in addition to interest. The Board is empowered to take any and all actions for collection of assessments as are provided for in this Declaration or in the articles of incorporation or bylaws of the Association, or as permitted by law or in equity. In the event the Board shall

retain an attorney to collect any past due assessments, then the Owner who has failed to pay such assessments shall also be liable to the Association for reasonable attorney's fees incurred by the Association, whether or not suit is brought.

15.5 Lien. All unpaid assessments for common expenses (including to fund any reserve), all unpaid special assessments, special assessments upon default, accrued interest, charges levied, liquidated damage sums, and reasonable attorney's fees and costs incurred in connection with the enforcement of any unpaid assessment (whether or not suit is brought) shall each and all constitute a lien on the defaulting Owner's lot in favor of the Association prior to all other liens and encumbrances except (i) the lien for real property taxes, and (ii) the lien of any first mortgage or first deed of trust of record encumbering such Lot. The Association's lien shall attach from the date when the unpaid assessment shall become due, shall bear interest from such date at the rate of 3% per month, and may be foreclosed by the Association in like manner as a mortgage on real property upon the recording of a notice thereof executed by the Board, or its agent, setting forth the amount of the unpaid indebtedness and a statement that such lien extends to reasonable attorney's fees and costs incurred in enforcing the same. In any such foreclosure action, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees. The Association shall be entitled to purchase the Lot at the foreclosure sale, and to acquire, hold, lease, mortgage or convey the same.

15.6 Compliance. Each Owner is obligated promptly to comply with and conform to this Declaration and to the articles, bylaws, and rules and regulations of the Association. In the event of non-compliance, enforcement by the Association may be by way of proceedings at law or in equity to restrain non-compliance or mandate compliance, to remove or relocate an improper structure, to foreclose the lien above provided for, to recover unpaid sums or damages, or any combination of the foregoing remedies. If any structure shall be placed on a Lot without full compliance with Section 14, then the Owner of the Lot specifically acknowledges that dismantling and removal of said structure shall be a proper remedy for such non-compliance. The Association shall be entitled to recover, in addition to any other relief awarded, its costs and attorney's fees incurred in such proceedings. The remedies of the Association

are not exclusive, and any aggrieved Owner also may sue a defaulting Owner for damages or injunctive relief or both, and in any such proceeding the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

SECTION 16 - GENERAL:

16.1 Amendment. This Declaration may be amended, terminated or released by the affirmative vote of those holding 75% of the voting rights in the Association.

16.2 No Waiver. A waiver of a breach of any of the foregoing covenants, conditions and restrictions shall not be construed as a waiver of any succeeding breach or violation.

16.3 Severability. In the event any restriction herein contained shall be invalid or be held invalid, such invalidity shall in no way affect any other restriction herein contained.

16.4 Miscellaneous. The headings of paragraphs herein are inserted for convenience only, and shall not be deemed to restrict or amplify the provisions of any part of this Declaration. Where necessary to the reasonable interpretation of any provision hereof, the singular shall be deemed to include the plural, and vice versa, and each gender shall be deemed to include any other gender. These covenants shall be construed under Colorado law.

16.5 Termination. The terms of this Declaration shall expire and terminate 50 years after the date hereof.

IN WITNESS WHEREOF, the Declarants have executed this Declaration as of the

4th day of January, 1982.

THE INDUSTRIAL COMPANY OF  
STEAMBOAT SPRINGS, INC.

By: R. W. McKenzie  
R. W. McKenzie, President



Rosalie M. Surges  
Secretary

*Les A. Liman*  
Les A. Liman

ACKNOWLEDGMENTS

BOOK 554 Page 530

STATE OF COLORADO )  
                          ) ss.  
COUNTY OF ROUTT )

Subscribed, sworn to and acknowledged before me this 4th day of January, 1982, by R. W. McKenzie as President and by Kessie M. Burgess as Secretary of The Industrial Company of Steamboat Springs, Inc.

WITNESS my hand and official seal.

My commission expires:  
6-28-84  
Box 774110  
Steamboat Springs, Co 80477  
Address

*Reggie F. Barry*  
Notary Public



STATE OF COLORADO )  
                          ) ss.  
COUNTY OF ROUTT )

Subscribed, sworn to and acknowledged before me this 4th day of January, 1982 by Les A. Liman.

WITNESS my hand and official seal.

My commission expires:  
6-28-84  
Box 774110  
Steamboat Springs, Co 80477  
Address

*Reggie F. Barry*  
Notary Public



**SUBDIVISION IMPROVEMENTS AGREEMENT**

BOOK 554 PAGE 531

THIS AGREEMENT entered into this 5th day of January 1983

The Industrial Company of Steamboat Springs, Inc.  
by and Lea A. Liman, hereinafter referred to as

Developer, and the COUNTY OF ROUTT, State of Colorado, hereinafter referred to as County.

WHEREAS, Developer, owner and subdivider of the development known as Elk River Road Business Park located in Routt County,

Colorado, has presented to the County a final subdivision plat for Elk River Road Business Park, a Subdivision located in Lot 2 of The Taylor Subdivision

all situated within County of Routt, State of Colorado; and

WHEREAS, Sections 6.1 and 6.2 of the Subdivision Regulations of Routt County dated August 1972 require the execution of a Subdivision Improvements Agreement between the County of Routt and the Subdivider whereunder the Subdivider shall agree to construct certain public improvements, the completion of which is guaranteed by an instrument properly insuring such completion,

NOW, THEREFORE:

1. Developer agrees to construct the required public improvements described and indicated on the final plat of Elk River Road Business Park. Said public improvements consist of roadways, water and sewer, and electrical improvements. Said public improvements shall be completed in compliance with the following documents:

- 1) Routt County Subdivision Regulations dated August, 1972.
- 2) Plans and specs prepared by Dismuke & Dismuke, Inc., dated November 27, 1981.
- 3) Entry landscaping plans and berm seeding specifications shown as Exhibit "C".

2. Said improvements shall be constructed in accordance with Routt County regulations, except whereas otherwise noted, and specifications in effect as of the date of this Agreement.

3. Said improvements shall be completed not later than November 30, 1983

unless County grants an extension of such completion to Developer.

Recorded at 5:05 P.M. Jan. 4, 1983  
EUNICE DORR, Recorder  
Reception No. 314173

4. The estimated cost of constructing said improvements is mutually agreed to be \$495,502.00. A summary of quantities and estimated costs is attached to this Agreement as Exhibit A.

5. Developer's performance under this Agreement is guaranteed by Surety Bond in the amount of \$495,502.00, a copy of which is attached to this agreement as Exhibit B.

6. From time to time as the required public improvements are completed, Developer may apply in writing to the County for a partial release of the collateral guaranteeing the construction of said public improvements, submitting therewith a request form showing:

- (1) Dollar amount of collateral set forth in paragraph 5 above.
- (2) Work completed including dollar value
- (3) Work not completed including dollar value
- (4) Amount of previous release of collateral
- (5) Amount of collateral requested released

Upon receipt of such application the County or its agent, which may be the City of Steamboat Springs, shall inspect the public improvements both completed and those not completed. If the County determines from such inspection that the improvements shown on the request as being completed have been completed as provided in paragraphs 1 and 2 hereof a portion of the collateral shall be released. The amount of collateral to be released to the Developer shall be the total amount of collateral less (1) 10% of the original amount of collateral and (2) 100% of the projected costs of the public improvements not completed. Notwithstanding the foregoing provisions, Developer shall not apply for a partial release of collateral in an amount less than twenty (20%) percent of the total original collateral set forth in paragraph 5 herein.

If the improvements are not constructed in accordance with specifications herein the County shall notify the Developer of non-compliance. Reasonable schedules for correction of non-compliance shall be established by the County. If the County determines, upon reasonable grounds, that the Developer will not construct the public improvements as herein provided, the County shall notify the Developer in writing. The Developer shall be afforded a hearing before the Board of County Commissioners of Routt County within thirty (30) days of the date of notification for the purpose

of providing adequate assurance of completion to the County. Unless satisfied on the basis of reasonable commercial standards that all

improvements shall be completed as required herein, the County may cancel and annul this Agreement and withdraw from the collateral securing this Agreement such funds as may be necessary, in the opinion of the County, to construct the public improvements set forth herein.

In any event, if said improvements are not completed by \_\_\_\_\_ November 30, 1983, the County may cancel and annul this Agreement without notification and withdraw from the collateral securing this Agreement such funds as may be necessary in the opinion of the County to construct the public improvements set forth herein.

7. Upon completion of said improvements, or any logical separable portion thereof, Developer shall notify the County in writing and request inspection. The County or its agent shall inspect said improvements and shall notify Developer in writing of non-acceptance or of preliminary acceptance of said completed improvements. If the improvements are not acceptable, the reasons for non-acceptance shall be stated in writing and corrective measures shall be outlined to the Developer in writing.

Until such time that the Developer has received written final acceptance of the completed improvements by the County, Developer shall be responsible for all maintenance and repairs thereto. The County shall not accept roadway improvements for maintenance from November through March of any year since deficiencies noted on inspection cannot usually be determined or corrected during said period of the year.

Upon preliminary acceptance by the County of said improvements, the collateral guarantee shall be reduced to ten (10%) percent of its original amount. Said ten percent (10%) retention shall be sufficient to insure the correction of deficiencies and/or repairs during the ensuing one year maintenance period by the Developer.

8. One year following preliminary acceptance the County shall inspect all improvements for final acceptance.

The County shall notify the Developer in writing of non-acceptance or final acceptance. If the improvements are not acceptable, the reasons for non-acceptance shall be outlined in writing to the Developer.

If the improvements are found to be acceptable, following a resolution

of acceptance by the Board of County Commissioners, the County shall release the remaining ten (10%) percent of the original collateral guarantee for improvements, and shall, as of that date, assume full maintenance responsibility for said subdivision.

This Agreement entered into and executed this 5<sup>th</sup> day of January, 1982 by:

ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS

By Paul Boggs  
Chairman

THE INDUSTRIAL COMPANY OF STEAMBOAT SPRINGS, INC.

By R. W. McKenzie  
R. W. McKenzie, President  
Les A. Liman  
Les A. Liman

## EXHIBIT "A"

ELK RIVER ROAD BUSINESS PARK  
ESTIMATED CONSTRUCTION COSTS

Water and Sewer	\$148,874
Revegetation	21,950
Yampa Valley Electric	23,950
Greeley Gas	30,000
Topsoil	22,174
Excavation-Backfill	70,000
Subgrade preparation	5,000
Culverts	8,000
Excavation-Drainways	1,001
Subbase Course	26,000
Base Course	16,000
Bituminous Surface Course	66,407
Shouldering Bituminous	2,100
Street Lights	4,000
Sign & Entry	5,000
Contingency (10%)	<u>45,046</u>
TOTAL	\$495,502

EXHIBIT "C"

The 40 foot easement which will serve as a visual buffer and landscaping easement will receive initial planting by the developer. The berm will be constructed with material picked up in the process of grading the subdivision. Topsoil or other satisfactory plant growth medium will be distributed on the berm to a depth of at least six inches. Seeding of the berm will be conducted thereafter as soon as practicable.

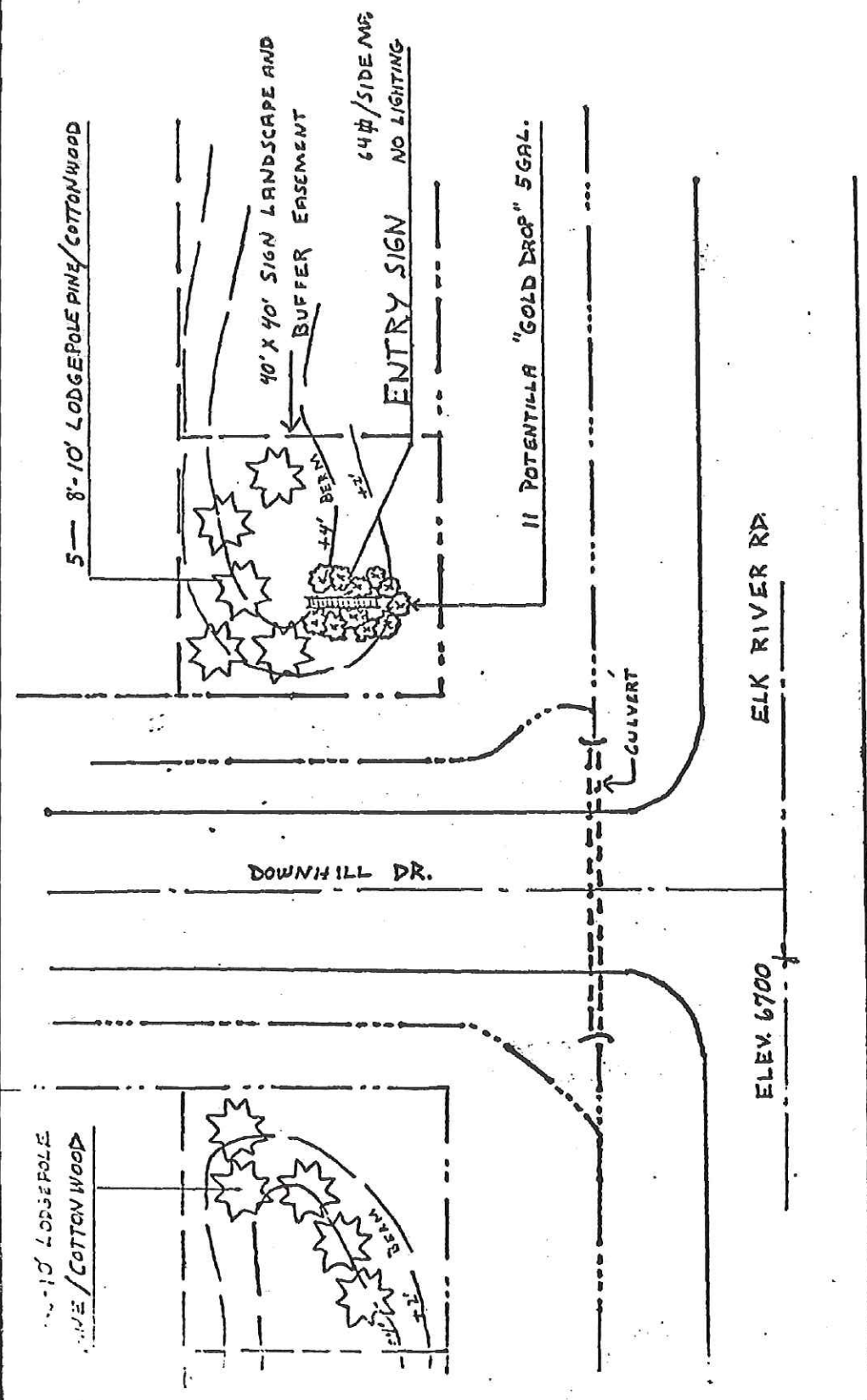
Seeding of the visual buffer and landscaping easement will be conducted utilizing the following seeding mixture. Variation from the mixture specified below will be based on availability at time of seeding. Rates of seeding given are for application by drilling. Should the broadcast method be utilized, the rate of seeding will be doubled.

Smooth Broom (Manchar)	4 lbs. pls/ac
Crested Wheat Grass (Standard)	3 lbs. pls/ac
Hard Fescue (Durar)	1 1/2 lbs. pls/ac
Western Wheat Grass	4 lbs. pls/ac
Intermediate Wheat Grass	5 1/2 lbs. pls/ac
Alsike Clover	1 lbs. pls/ac
Kentucky Bluegrass	1 lbs. pls/ac
<hr/> TOTAL	<hr/> 20 lbs. pls/ac

Additional landscaping, as illustrated in Exhibit B\*, will be placed within the sign easement located in the southeast corner of Lot #8. Additional landscaping will also be placed in a similar area in the northeast corner of Lot #9. This landscaping will include approximately six 8-10 foot Lodgepole Pine and four 8-10 foot Cottonless Cottonwoods distributed equally to the two areas. In addition, eleven Potentilla "Gold Drop" plants will be placed at the base of the entrance sign.

\*See copy of illustration marked Exhibit "C" attached.

EX 13



SCALE: 1"=20'

EXHIBIT "C"

10' LODGEPOLE PINE/COTTONWOOD

## BOND FOR FAITHFUL PERFORMANCE

WHEREAS, the Commissioners of the County of Routt, State of Colorado, and Les A. Liman and The Industrial Company of Steamboat Springs, Inc., a partnership, (hereinafter designated as the "Principal") have entered into a Subdivision Improvements Agreement (hereinafter designated as the "Agreement"), whereby Principal agrees to install and complete certain designated public improvements, which said Agreement, dated January 5, 1982 and identified as Elk River Road Business Park (hereinafter designated as "the Business Park"), described as Lot 2, Taylor Subdivision in the County of Routt, State of Colorado, is hereby referred to and made a part hereof; and,

WHEREAS, said Principal is required under the terms of said Agreement to furnish a bond for the faithful performance of said Agreement.

NOW, THEREFORE, we, the Principal and Fidelity and Deposit Company, as surety, are held and firmly bound unto the County of Routt (hereinafter called "County") in the penal sum of FOUR HUNDRED NINETY FIVE THOUSAND FIVE HUNDRED TWO AND NO/100-----(\$495,502.00) lawful money of the United States for the Payment of which sum well and truly to be made, bond ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above-bounded Principal, his or its heirs, executors, administrator, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions, in the said Agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein stipulated, and further, that if Principal shall pay all persons performing labor or supplying materials under contracts made directly with the Principal in connection with the performance of the aforesaid Agreement between the Principal and the Oblige, failing

which such persons shall have a direct right of action against the Principal and the Surety hereunder, then this obligation shall be null and void, otherwise to remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed or materials to be furnished thereunder or the plans, schedules, and specifications covering the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or materials or to the plans, schedules, and specifications.

This bond shall be for the use and benefit of Routt County, Colorado, if it should elect to proceed with said work upon the failure or refusal of the Principal by the date specified herein or any extension thereof by the County.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named on the fifth of January, 1982.

Elk River Road Business Park  
PRINCIPAL

By: Les Human, Partner

FIDELITY AND DEPOSIT OF MARYLAND  
Surety

By: Paul W. Smith  
Attorney-in-fact

Approved as to form:  
Daniel S. Maus  
County Attorney, Routt County, Colorado.

Power of Attorney  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

BOOK 554 PAGE 540

HOME OFFICE: BALTIMORE, MD.

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by C. M. PECOT, JR., Vice-President, and C. W. ROBBINS, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which reads as follows:

SEC. 2. The President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgments, decrees, mortgages and instruments in the nature of mortgages, and also all other instruments and documents which the business of the Company may require, and to affix the seal of the Company thereto.

does hereby nominate, constitute and appoint Paul W. Smith, Patricia W. Mayhercy and Wilma L. Venturi, all of Steamboat Springs, Colorado, EACH.....

its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: any and all bonds and undertakings.....

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Paul W. Smith and Patricia W. Mayhercy, dated, March 7, 1980.

The said Assistant Secretary does hereby certify that the foregoing is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 12th day of September, A.D. 1980.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

ATTEST:



C. W. Robbins  
Assistant Secretary

By [Signature]  
Vice-President

STATE OF MARYLAND } ss:  
CITY OF BALTIMORE }

On this 12th day of September, A.D. 1980, before the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and qualified, came the above-named Vice-President and Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposed and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the City of Baltimore, the day and year first above written.



[Signature]  
Notary Public Commission Expires July 1, 1982

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2 of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 16th day of July, 1969.

RESOLVED: "That the facsimile or mechanically reproduced signature of any Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company, this 5th day of January, 1980.

[Signature]  
Assistant Secretary

## AGREEMENT

This Agreement is made as of the 5<sup>th</sup> day of January, 1982, between the County Commissioners of the County of Routt, State of Colorado (hereinafter "the County") and Les A. Liman and The Industrial Company of Steamboat Springs, Inc. (hereinafter "the Developers"). The obligations of the Developers hereunder shall be binding upon the heirs, successors and assigns of the Developers and upon all persons subsequently acquiring interests in the Property described hereafter in Paragraph 1.

RECITALS:

1. Developers are contract purchasers under a certain Receipt and Option Contract dated May 5, 1981, relating to Lot 2, Taylor Subdivision, Routt County, Colorado (hereafter "the Property").
2. The Property presently has a Planned Unit Development zone designation pursuant to the Routt County zoning resolution.
3. Developers have applied to the County to change the Property's zoning to industrial zoning.
4. Developers desire to subdivide the Property so that from and after the approval of the subdivision plat, the Property will be subdivided into Lots 1 through 16, Elk River Road Business Park (hereafter "the Business Park").
5. The County has determined that it is in the County's best interests for the zone change request to be granted and for the Property to be subdivided in accordance with Developers' plans.
6. The County desires to grant the zone change request in consideration for Developers agreeing to certain restrictions on the use of the lands within the Property.
7. NOW, THEREFORE, in consideration for the County's agreement to grant the zone change, the parties hereto agree as follows:

Recorded at 3:05 O'clock P.M. *J. M. J. 1982*  
 Reception No. 314174  
 EUNICE DORR, Recorder

AGREEMENT:

8. Developers will create along the easterly 40 feet of Lots 1, 7, 8, 9, 15 and 16 of the Business Park an easement 40 feet in width (hereafter "the Easement") which shall provide a visual buffer and landscaped area between Routt County Road #129 and the Property. The Easement shall abut the west right-of-way line of Routt County Road #129.

9. Within the Easement, Developers shall construct a berm to the reasonable specifications of the County.

10. As soon as practicable after the County's approval of the subdivision plat for the Business Park, Developers shall landscape the Easement in accordance with the landscaping plan attached hereto as Exhibits A and B. ?

11. As soon as practicable after the County's approval of said subdivision plat, Developers shall landscape the greenbelt lot identified on the proposed plat, and shall place at least two picnic tables within it.

12. No Lot within the Property, other than Lot 7, shall be permitted direct access through the Easement to Routt County Road #129. Access to all Lots other than Lot 7 shall be limited to Jacob Circle and Downhill Drive (Routt County Road #185) as shown on the proposed subdivision plat for the Business Park. Developers agree that the driveway access from Jacob Circle and Downhill Drive shall be coordinated to the extent practicable to minimize road cuts and to align driveways for safe traffic flow.

13. The parties agree that there shall be a total set-back of 100 feet from the centerline of Routt County Road #129 for any building to be constructed on any Lot within the Property. The County acknowledges that this 100-foot set-back from the centerline of Routt County Road #129 shall fulfill all of the set-back requirements imposed upon

Developers by the County of Routt or any other governmental entity.

14. If Developers or any other owner of a Lot within the Property shall desire to use the front yard or east yard of Lots 1, 7, 8, 9, 15 or 16 for parking, then such shall be permitted PROVIDED that the landscaping of the portion of the Easement adjacent to such parking shall be increased to the reasonable requirements of the County so as to mitigate the visual impact of said parking.

15. Developers agree that all outside storage within the Property shall be designed, located and concealed so as to reduce its visual impact from Routt County Road #129. Such visual impact shall be reduced by the use of berming, buffering and landscaping. Visually attractive fencing may be used for screening. Outside storage shall be defined to include construction materials, refuse containers, boats, campers and vehicles and equipment (except items being displayed for sale) salvage, pipe, steel and other items that might reasonably be defined as having objectionable visual impact.

16. This Agreement shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of the parties hereto. The Property and each and every Lot therein shall be held, used, transferred, encumbered, sold and conveyed subject to the covenants and restrictions set forth in this Agreement, all of which shall run with the land, and shall constitute burdens and benefits to the parties hereto and to all owners of Lots within the Property, their heirs, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 5<sup>th</sup> day of January, 1982.

THE COUNTY OF ROUTT

By: The County Commissioners

Paul Bequaert

Robert McKenna

Pat Henderson

THE INDUSTRIAL COMPANY  
OF STEAMBOAT SPRINGS, INC.

By: R. W. McKenzie  
R. W. McKenzie, President

Les A. Liman  
Les A. Liman