

STATE OF COLORADO, COUNTY OF WYBA

RECORDED AT... 3:02... 1265598

EARL SAMPER, RECORDER

DECLARATION OF PROTECTIVE COVENANTS

FOR

FORESIGHT PARK FOR INDUSTRY, FILING NO. THREE

PURPOSE: FORESIGHT PARK FOR INDUSTRY, FILING NO.

THREE, is hereby made subject to the following conditions, covenants, restrictions and reservations, all of which shall be deemed to run with the aforesaid land and each and every parcel thereof, to insure proper use and appropriate development and improvement of said premises so as to:

- (a) Provide in the Grand Junction area; attractive sites for industrial location;
- (b) Protect the owners and tenants of building sites against such improper use of surrounding premises and buildings as will depreciate the value of their property.
- (c) Guard against the erection thereon of structures built of improper or unsuitable materials, or with improper quality and methods of construction;
- (d) Insure adequate and reasonable development of said property;
- (e) Encourage the erection of attractive permanent improvements appropriately located to prevent an inharmonious appearance and function;
- (f) Provide adequate off-street parking space and loading facilities; and
- (g) Contribute to the economic development of the Grand Junction area specifically, Western Colorado generally, and provide a harmonious development that will promote the general welfare of the community's occupants and property owners of the aforesaid subdivision.

ARTICLE I - Definitions of Terms

The following terms and words as used hereinafter shall be defined as follows:

- (a) Foresight Park For Industry - shall mean and include the subdivision in Mesa County, Colorado, known as Foresight Park for Industry, Filing No. One, Foresight Park for Industry, Filing No. Two, and Foresight Park for Industry, Filing No. Three, together with any subsequent filing or filings of Foresight Park for Industry to which these Protective Covenants may hereinafter be extended pursuant to Article XIV hereof.
- (b) Building site - shall mean a plot of land, the size and dimensions of which shall be established by the legal description in the original conveyance from Declarant to the next subsequent owner thereof. 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 purposes of these Protective Covenants. If two or more building sites, as defined hereinabove, are acquired by the same owner in fee, such commonly owned building sites may, at the option of said owner be combined and treated as a single building site for purposes of this Declaration of Protective Covenants, provided that where two or more building sites are so combined, the location of the improvements shall always be subject to the prior written approval of the Architectural Control Committee.
- (c) Declarant - shall mean Colorado West Improvements, Inc., and any other party or parties hereinafter designated as a Declarant for purposes of this Declaration of Protective Covenants in any deed to such a party or parties from a Declarant.
- (d) Improvement - shall mean and include all construction and work necessary or appurtenant to conditioning a building site for occupancy for a permitted use and shall include but not be limited to buildings,

parking areas, driveways, access roads, loading areas, sign, utilities, fences, lawns and landscaping.

- (e) Owner - shall mean the party or parties owning fee title to a building site.
- (f) Street - shall mean a right-of-way dedicated to the public for use as a public street.
- (g) One parking space - shall mean an area measuring 8.5 feet by 20 feet or more.
- (h) Parking Area - shall mean that area occupied by parking spaces together with adequate ingress, egress and circulation to the parking spaces.
- (i) Front lot line - shall mean the boundary line of a building site which abuts upon any street.
- (j) Side lot line - shall mean any boundary line of a building site which is not a front lot line, but which extends to a front lot line.
- (k) Rear lot line - shall mean the line opposite and most distant from the front lot line.
- (l) Front yard - shall mean the space between the front lot line and a line parallel thereto and sufficiently removed therefrom to satisfy the front yard requirements set forth in paragraphs (a) and (e) of Article III.
- (m) Side yard - shall mean the space between a side lot line and the building.
- (n) Rear yard - shall mean the space between the rear lot line and a line parallel thereto and sufficiently removed therefrom to satisfy the rear yard requirements set forth in paragraphs (d), (e) and (f) of Article III.

ARTICLE II - Permitted Uses and Performance Standards

- (a) No noxious or offensive trades, services

or activities shall be conducted on the premises, nor shall anything be done there on which may be or become an annoyance or nuisance to the owners of the other building sites or their tenants by reason of unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise.

- (b) Building sites shall be used only for engineering, research facilities, laboratories, light industrial uses, offices, warehousing, supportive service facilities and such other uses as the Architectural Control Committee shall determine in its sole discretion to be in harmony with the purposes and development of the Foresight Park for Industry, Filing No. Three.

ARTICLE III - Required Yards

- (a) All building sites shall have front yards of not less than 35 feet which shall remain free of buildings and structures, open storage and loading and parking areas, except that up to 20 percent of a front yard may be devoted to customer parking spaces with the prior written approval of the Architectural Control Committee.
- (b) All building sites shall have side yards of not less than 15 feet on each side of the buildings, and no buildings or structures shall be permitted in the side yards, provided, however, that where buildings on contiguous building sites are planned as an integrated architectural unit, side yard requirements may be varied with the prior written approval of the Architectural Control Committee.
- (c) No fence or wall (other than a retaining wall) shall be permitted to be constructed within the front yard or side yards except upon prior written approval of the Architectural Control Committee.
- (d) All building sites shall have rear yards of not less than 25 feet. No buildings or structures shall be permitted in rear yards

except that fences or walls may be permitted, subject to prior written approval of the Architectural Control Committee.

- (e) In the case of building sites having more or less than four sides, the Architectural Control Committee shall determine the required yards with respect thereto in a manner which said Committee deems to be consistent with the intention of the foregoing provisions of this Article III, and the decision of the Architectural Control Committee in such cases shall be final.

ARTICLE IV - Street Parking

- (a) No parking shall be permitted on any street or access road, either public or private, or at any other place than the paved parking spaces provided for and described hereinbelow, and each owner and tenant shall be responsible for compliance by its employees and visitors.

ARTICLE V - Off-Street Parking and Loading

- (a) Adequate off-street parking shall be provided by each owner and tenant for customers and employees. The minimum standards shall be the total of the following:
 - 1. One parking space for each one and a half employees per shift based on largest shift employment.
 - 2. One parking space for each 200 square feet of gross floor space in commercial retail or service use.
- (b) Each owner shall also provide adequate paved space for the circulation of traffic in the parking areas, which shall not be a part of the off-street parking space required under subparagraph (a) above.
- (c) Each owner shall provide access roads to the street, which shall not be a part of the off-street parking required under subparagraph (a) above. Access points from the street to the building site shall have a maximum width of 26 feet per access point.

- (d) Adequate off-street loading and maneuvering space shall be provided for every use, which shall not be a part of the off-street parking space required under subparagraph (a) above.
- (e) Truck loading and receiving areas shall not be permitted in the front yard of a building, provided that the Architectural Control Committee may approve such necessary areas in the front yard of a building when the facilities are so screened as not to be visible from the public street in front of the building.
- (f) All off-street parking, access drives and loading areas shall be paved and properly graded to assure proper drainage.

ARTICLE VI - Landscaping, Outside Storage and Maintenance

- (a) Building sites shall be landscaped in accordance with a plan submitted to and approved in writing by the Architectural Control Committee. Such landscaping shall include sodding, planting of trees, shrubs and other customary landscape treatment for the entire site, including adequate screening of parking areas.
- (b) The landscape development, having once been installed, shall be maintained in a neat and adequate manner which shall include lawns mowed, hedges trimmed, watering when needed, removal of weeds from planted areas and replacement of nursery stock if required.
- (c) The approved plan for landscaping the site may not be altered without submitting the revised plan for written approval of the Architectural Control Committee.
- (d) All materials, supplies, equipment, finished products or semi-finished products, raw materials, or articles of any nature, stored outside shall be screened, such screening to be approved by the Architectural Control Committee.
- (e) Each owner and tenant shall keep its premises, buildings, improvements and appurtenances in a safe, clean, neat, wholesome condition, and

shall comply in all respects with all government, health and police requirements. Each owner and tenant shall remove at its own expense any rubbish or trash of any character which may accumulate on its property and shall keep unlandscaped areas mowed. Rubbish and trash shall not be disposed of on the premises by burning in open fires or incinerators.

ARTICLE VII - Utility Connections

All electrical and telephone connections and installations of wires to buildings shall be made underground from the nearest available power source. No transformer 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 land, and where placed on the surface shall be adequately screened and fenced, and all such installations shall be subject to the prior written approval of the Architectural Control Committee.

ARTICLE VIII - Signs - Advertising Space

- (a) Directional signs of two square feet or less may be erected as needed.
- (b) One name plate sign identifying the permitted use shall be permitted on each building site.
- (c) One advertising sign identifying the product or service provided by the business shall be permitted.
- (d) The total square footage of sign space permitted under paragraphs (b) and (c) above, on any one building site shall not exceed a total of 30 square feet.
- (e) Flashing or moving signs shall not be permitted.
- (f) Maximum height of any attached sign shall not exceed the actual height of the building. The

maximum height of a free standing sign shall not exceed four (4) feet.

- (g) All proposed plans for signs to be erected, including details of design, materials, location, size, height, color and lighting shall be subject to the prior written approval of the Architectural Control Committee.
- (h) The provisions with respect to signs contained in this Article VIII shall not apply to signs identifying the Foresight Park For Industry, nor to temporary signs related to construction, sale or lease of land or buildings in Foresight Park For Industry, Filing No. Three, provided that such temporary signs are approved by the Architectural Control Committee.

ARTICLE IX - Owners and Tenants Association

There is hereby established the Owners and Tenants Association for Foresight Park For Industry, Filing No. Three, sometimes referred to as the "Owners and Tenants Association" and "the Association". Each fee owner of land in Foresight Park For Industry, Filing No. Three, including Declarant, shall be a member. Each fee owner shall be entitled to one vote in the Association for each full 10,000 square feet of land owned in Foresight Park For Industry, Filing No. Three. Each fee owner may assign any vote to which he is entitled to his tenant or tenants on such terms as they may agree upon, and while any tenant is entitled to a vote, he or it shall be deemed a member of the Association in the place of the fee owner to the extent of the vote or votes assigned.

The Association is formed to provide for the maintenance, improvement and beautification of areas and facilities of Foresight Park for Industry, Filing No. Three, used in common such as outlots in streets, street-lighting and

park and open areas, and to undertake such other activities as are related to maintaining Foresight Park For Industry, Filing No. Three, as a desirable development for members of the Association. The Association shall cause to be organized or designated some legal entity or nominee which shall be authorized to hold title to real property. Such legal entity or nominee shall accept and retain legal title to those islands in the street system of Foresight Park For Industry, Filing No. Three, which are shown on the plats of the subdivisions comprising Foresight Park For Industry, Filing No. Three, as outlots, and to such other open or park areas as may hereafter be deeded thereto by Declarant. Such legal entity or nominee shall hold such legal title for the use and benefit of the members of the Association. The Association shall be responsible for the maintenance and upkeep of such outlots and open or park areas, and any improvements thereon. The Association shall pay, or arrange for payment directly by its members on an equitable basis, for such utility services as may be required for street lighting, water fountains, sprinkler systems and other uses in connection with such commonly used facilities. To these ends set forth hereinabove, the Association may assess its members, provided that such assessments are made upon affirmative vote of not less than two-thirds of all votes then outstanding among all members of the Association, and provided further that the amount of such assessment shall be made against the members in direct proportion to the number of votes which each has.

Such assessments shall not constitute a lien against property owned or leased by the members, but shall constitute a debt owned by them to the Owners and Tenants Association.

The Association may establish its own By-Laws for the conduct of its affairs, which shall include reasonable notice to each member prior to any meeting. Decisions of the Association shall be by majority of votes cast at any meeting, except as otherwise provided hereinabove.

ARTICLE X - Architectural Control Committee

There is hereby established an Architectural Control Committee which shall ultimately consist of five members. The initial Committee shall consist of three members and shall include a licensed architect, a person with experience in land planning, and a representative of Declarants. The Committee shall be expanded to five members at such time as Declarant may decide, from among owners and tenants at Foresight Park for Industry, Filing No. Three. While the Architectural Control Committee consists of three members, all of such members shall be appointed by Declarant. After the Architectural Control Committee has been expanded to five members, the Declarant shall continue to appoint all members until such time as the Owners and Tenants Association is organized and By-Laws are adopted; upon the adoption of such By-Laws, the Owners and Tenants Association shall elect from its membership two qualified people who will immediately replace the two members appointed by the Declarant from among the owners and tenants. Declarant shall continue

to appoint the remaining three members among whom shall be a licensed architect and a person with experience in land planning, until such time as Declarant assigns the right of designation of the full Committee to the Owners and Tenants Association. Declarant shall pay any fees charged by the licensed architect and the member experienced in land planning for their service on the Architectural Control Committee as long as they are appointed by Declarant.

The term of office of the members of the Architectural Control Committee shall be for one year, and shall run from the 30th day of January each year, through the 29th day of January of the succeeding year. In the event of the death, retirement, incapacity or temporary absence of a member, the parties appointing or electing such member, may appoint or elect a successor to him, or in the event such absence is temporary, a temporary successor to him.

A Chairman of the Architectural Control Committee shall be selected annually from among the members of the Committee by the Declarant so long as Declarant continues to appoint any members to the Committee. Thereafter the Chairman shall be elected annually from among the members of the Committee by majority vote of the members. The Chairman, following his election, shall take charge of and conduct all meetings and shall provide for reasonable notice to each member of the Committee prior to any meeting, setting forth the place

and time of said meeting, which notice may be waived, however, by any member or members. In the event of the death, retirement, incapacity or temporary absence of the Chairman, the parties appointing or electing the Chairman may appoint or elect a successor to him, or if the absence is temporary, a temporary successor to him.

While the Architectural Control Committee consists of three members, the vote of two members, one of whom shall be the Chairman, shall constitute the action of the Architectural Control Committee on any matter before it. While the Architectural Control Committee consists of five members, the vote of three members, one of whom shall be Chairman, shall constitute the action of the Architectural Control Committee on any matter before it.

No building, improvement or landscaping shall be erected, placed or altered on any building site nor shall any construction be commenced thereon until plans for such building or other improvement or landscaping have been approved by action of the Architectural Control Committee, provided that improvements and laterations which are completely within a building may be undertaken without such approval. The Architectural Control Committee shall exercise its best judgment to see that all buildings, improvements and landscaping conform and harmonize with existing structures and landscaping at Foresight Park For Industry, Filing No. Three, as to external design, quality and type of construction, materials, color, siting, height, grade and finished

ground elevation, and the actions of the Architectural Control Committee through its approval or disapproval of plans and other information submitted pursuant hereto, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

The Architectural Control Committee shall reply to all submittals of plans made in accordance herewith in writing within thirty days of receipt thereof. Where prior written consent or approval of the Architectural Control Committee is required under this Declaration of Protective Covenants with respect to construction, installation or location of any building or other improvements or landscaping, such improvement shall conclusively be deemed to have been constructed, installed or located in compliance with this Declaration of Protective Covenants unless a legal action shall be commenced objecting thereto within thirty days of the completion of such construction, installation or location.

All communications and submittals shall be addressed to the Architectural Control Committee for Foresight Park For Industry, Filing No. Three in care of Foresight Park for Industry, Filing No. Three, Attention: Executive Director, Post Office Box 1330, Grand Junction, Colorado, 81502, or to any such address as the Chairman of the Architectural Control Committee shall hereafter designate in writing addressed to owners and tenants of land in Foresight Park for Industry by certified mail.

The following information, in four copies, two of which

shall be returned, shall be submitted in writing to the Architectural Control Committee in connection with its consideration of any plans:

- (a) Architectural plans for the proposed building or buildings, which shall include outline specifications designating materials and mechanical, electrical and structural systems, and samples of external colors.
- (b) A site plan for traffic engineering analysis, showing location and design of buildings, driveways, driveway intersections with streets, parking areas, loading areas, maneuvering areas and sidewalks.
- (c) A grading plan and a planting plan, including screen walls and fences, for analysis of adequacy of visual screening, erosion control, drainage and landscape architectural design.
- (d) A site plan showing utilities and utility easements.
- (e) An estimate of the maximum number of employees contemplated for the proposed development.
- (f) Plans for all signs to be erected, including details for signs, materials, locations, design, size, color and lighting.
- (g) A description of proposed operations in sufficient detail to permit judgment of the extent of any noise, odor, glare, vibration, smoke, dust, gases, hazard radiation, radioactivity, electrical radiation or liquid wastes that may be created.
- (h) A description of proposed operations in sufficient detail to permit judgment as to whether or not they are permitted uses under the terms of then existing zoning ordinances, and these Covenants.
- (i) Any other information as may be required by the Architectural Control Committee in order to insure compliance with requirements contained herein.

Neither the Architectural Control Committee, nor any member, employee or agent thereof shall be liable to any owner or tenant or to anyone submitting plans for approval, or to any other party by reason of mistake in judgment, negligence or non-feasance, arising out of or in connection with the approval, disapproval or failure to approve any such plans or for any other action in connection with its or their duties hereunder. Likewise, anyone so submitting plans to the Architectural Control Committee for approval, by submitting such plans, and any person when he becomes an owner or tenant, agrees that he or it will not bring any action or suit to recover any damages against the Architectural Control Committee, or any member, employee or agent of said Committee.

ARTICLE XI - Buildings

Construction or alteration of all buildings in Foresight Park For Industry shall meet the standards provided in these restrictions:

- (a) Any building erected on the premises shall be designed by a licensed architect or engineer who shall be approved in advance in writing by the Architectural Control Committee.
- (b) No buildings or other structures, or combination of buildings or structures, shall be erected, altered, placed or maintained on the premises which shall occupy more than 50 percent of the land area of a building site. The combined area of the buildings, structures and parking areas on any building site shall not exceed 70 percent of the area of the building site.

- (c) 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 the Architectural Control Committee.
- (d) During construction, all building sites shall be kept cleaned up on a daily basis, and all trash, rubbish and debris removed therefrom after any construction work is done thereon.

ARTICLE XII - Duration and Amendment

- (a) This Declaration of Protective Covenants, any any amendments hereto, shall remain in effect until May 24, 2011, unless sooner terminated as hereinafter provided.
- (b) These Protective Covenants may be amended from time to time hereafter, or terminated, by an instrument in writing executed and acknowledged by all Declarants then owning land in Foresight Park For Industry, Filing No. Three, and by owners of more than one-half of the acreage of Foresight Park for Industry, Filing No. Three, other than acreage owned by Declarant. At such time as no Declarant shall own land in Foresight Park for Industry, Filing No. Three, these Protective Covenants may be amended, or terminated, by an instrument in writing executed and acknowledged by owners of more than two-thirds of the acreage in Foresight Park for Industry, Filing No. Three. Amendments made pursuant to the provisions of this Article XII (b) shall inure to the benefit of and be binding upon the owners of all land in Foresight Park for Industry, Filing No. Three, the Declarant, and any others having an interest therein, as tenants or otherwise, their respective heirs, successors and assigns. A certificate of a licensed abstract company showing record ownership of the premises and those parties having status of Declarants shall be evidence of such ownership and status for voting purposes.

- (c) Notwithstanding anything herein to the contrary, this Declaration of Protective Covenants, as amended may be extended beyond May 24, 2011, for successive five year periods by instruments in writing executed and acknowledged by the then owners of more than two-thirds of the acreage in Foresight Park For Industry, Filing No. Three. A certificate of a licensed abstract company showing record ownership of the premises shall be evidence of ownership for voting purposes.

ARTICLE XIII - Enforcement

The conditions, covenants, restrictions and reservations herein contained shall run with the land, and be binding upon and inure to the benefit of the Declarants and owners of every part and parcel of the premises. These conditions, covenants, restrictions and reservations may be enforced, as provided hereinafter, by each Declarant and owner, as well as by the Architectural Control Committee acting for itself and as Trustees for such purposes. Violation of any condition, covenants, restriction or reservation herein contained shall give to the Declarant; the Architectural Control Committee and to the owners, or any of them the right to bring proceedings in law or equity against the party or parties violating or attempting to violate any of said covenants, conditions, restrictions and 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 such covenants, conditions, restrictions and reservations shall give to the

Architectural Control Committee, acting as such Trustees, the right to enter upon the premises and remove at the expense of the owner thereof any structure, thing or condition that may be or exist thereon contrary to the provisions hereof. Every act, omission to act, or condition which violates the covenants, conditions, restrictions and reservations herein contained shall constitute a nuisance and every remedy available in law or equity for the abatement of public or private nuisances shall be available to the Declarant, the owners and Architectural Control Committee. In any legal or equitable proceedings to enforce the provisions hereof or to enjoin their violation, the party or parties against whom judgment is entered shall pay the attorneys' fees of the party or parties for whom judgment is entered in such amount as may be fixed by the Court in such proceedings. Such remedies shall be cumulative and not exclusive.

ARTICLE XIV - Extension of Covenants to Adjoining Lands

Any owner or owners of land which adjoins the land already subject to these Protective Covenants may apply to the Architectural Control Committee to have said adjoining land made subject hereto. With the written approval of all members of said Committee to the inclusion of such adjoining land within the system of these Protective Covenants, the owner or owners thereof may make such land subject hereto by executing an instrument in writing applying these Covenants to such adjoining land, and by recording the same in the

real property records of Mesa County, Colorado. Upon such recordation, these Covenants shall run with the land already subject hereto and with such adjoining land as if said Covenants had always applied to all of said land from the inception of these Covenants, and shall inure to the benefit of and be binding upon the owners of all of such land, the Declarant, and any others having an interest therein, as tenants or otherwise, their respective heirs, successors and assigns. The sworn statement of persons declaring themselves to be the Architectural Control Committee and approving the inclusion of such land within the system of these Protective Covenants shall be sufficient evidence of compliance with this provision.

Any land owner extending these Covenants to his or its adjoining lands pursuant to this Article XIV, as well as any party so designated in any deed from such owner, shall be a "Declarant" for purposes of this Declaration of Protective Covenants.

Any land owner wishing to make his or its adjoining land subject to these Protective Covenants, subject, however, to exceptions or modifications, may do so by following the procedures provided in this Article XIV and by having such Protective Covenants, containing such exceptions or modifications, approved by the Architectural Control Committee in writing prior to recordation. The sworn statement of persons declaring themselves to be the Architectural Control Committee

and approving the Covenants to be recorded, shall be sufficient evidence of compliance with this provision.

the term "adjoining land" as used in this Article XIV shall mean any land adjacent to land already subject to these Protective Covenants, whether or not separated by any street, roadway, right-of-way, or easement.

ARTICLE XV - Separability

Invalidation of any of these covenants or any part thereof by judgments or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

ARTICLE XVI - Execution in counterpart

This Agreement may be executed by the various owners of property within Foresight Park for Industry, Filing No. Three, in any number of counterparts with the same force and effect as to their rights and obligations, as if all such owners had affixed their proper corporate or individual signatures and seals on a single instrument.

COLORADO WEST IMPROVEMENTS, INC.
A Colorado corporation

By: [Signature] President

ATTEST:
[Signature]
Secretary



