

93-43535

REVIEWED  
*J*  
LEGAL COUNSEL

DECLARATION OF  
RESTRICTIVE COVENANTS

321 - 1574

Declaration of Restrictions and Covenants: This Declaration, made this 1st day of December, by Deschutes County, a political subdivision of the State of Oregon hereinafter referred to as "Declarant".

PURPOSE AND INTENT

The purpose and intent of these Restrictive Covenants are to give guidance and provide for for the orderly growth of the Lapine Industrial Park. In doing so, it is imperative that the community maintain a clean environment and provide for the health and safety of the Industrial Park occupants and the residents of Lapine and the surrounding areas. The restrictions contained herein are intended to supplement local building, zoning and fire codes and shall not be construed as allowing a use not otherwise permitted by law.

DEC - 6 AM 10:50  
COUNTY CLERK

ARTICLE I

RECITALS

- A. Declarant is the owner of certain real property in Deschutes County, State of Oregon, described in Exhibit A, which is attached hereto and by reference made a part hereof. Said real property was officially platted as the Lapine Industrial Site and Lapine Industrial Site Phase II, but is commonly referred to as the Lapine Industrial Park, and which shall for the purpose of these Restrictive Covenants be herein after referred to as the "Industrial Park".
- B. In order to establish a general plan for the improvement and development of the Industrial Park, Declarant desires to import on it mutual, beneficial restrictions for the benefit of all the lands in the Industrial Parks and for the benefit of Declarant and the future owners and/or lessees or sublessees of those lands, and whereafter the covenants recited herein shall be deemed to bind and run with the land.

1 - RESTRICTIVE COVENANTS - LAFINE INDUSTRIAL PARK

County Counsel

**ARTICLE II****LAND USE**

- A. No land shall be used for any purpose other than general industrial uses and those commercial activities reasonable supportive thereof. The Declarant reserves the right, however, further to limit or restrict the use of lot or lots under the provisions herein below.
- B. No business shall be permitted to operate on any lot or any portion thereof which causes or permits any one (1) of the following occurrences within the LaPine Industrial Park.
1. Manufacturers, treats, stores, incinerates or disposes of any hazardous or toxic substances as the primary function of its normal conduct of operations.
  2. Emits chlorofluorocarbons, halon or other ozone depleting substance as a result of the primary function of its normal conduct of operations.
  3. Causes an undue fire hazard.
  4. Constitutes or causes a nuisance.
  5. Causes noises, noxious odors, noxious gases, smoke or other conditions which are determined to be harmful or detrimental to public health, safety or welfare of persons living or working in the vicinity of the Industrial Park.
  6. Causes or permits a violation of any law of the United States of America, the State of Oregon and Deschutes County.

**ARTICLE III****USE REGULATIONS**

- A. A building or premises shall be used only for the following purposes as each individual and each subsequent use is individually approved by the Deschutes County subject to such conditions and restrictions as Deschutes County may impose. Deschutes County shall give strong consideration to the recommendations and conditions forwarded to it by the LaPine Economic Development Board or its successor. In the case of a mixed use proposal, each and every specified use must

2 - RESTRICTIVE COVENANTS - LAPINE INDUSTRIAL PARK

be approved. Manufacturing and warehousing uses include any use permitted in a "R-I" zone.

From time to time as certain uses are proposed that do not conform but where such uses are deemed appropriate by the LaPine Economic Development Board, Deschutes County will consider amending its zoning regulation.

#### **ARTICLE IV**

##### **SET BACKS**

No building, or any part thereof or projection therefrom, shall be erected nearer any property boundary line than as follows:

- A. Adjoining street frontage, setbacks shall be fifty (50) feet minimum.
- B. At least one side yard set back shall be twenty (20) feet minimum, to allow for a private drive to provide access to the rear of the property.
- C. All other setbacks shall be ten (10) feet, minimum except when any building or structure is adjacent to a railroad spur. Where a property line abuts a railroad spur, setbacks may be waived or reduced adjacent to the spur only to allow loading docks or warehouse facilities as approved.
- D. Distances between structures on any single lot shall be at least twenty (20) feet.
- E. All fences adjoining street frontage shall maintain a minimum twenty (20) foot setback.

#### **ARTICLE V**

##### **PLANS AND SPECIFICATIONS**

- A. Construction and alterations of all improvements in the Industrial Park shall be in accordance with the requirements of all applicable building, zoning, fire codes and other codes and regulations. Where codes and regulations may conflict, the more restrictive shall apply.

### **3 - RESTRICTIVE COVENANTS - LAPINE INDUSTRIAL PARK**

**ARTICLE VI****MAINTENANCE**

- A. Each lot owner shall at all times keep his premises, building, improvements and appurtenances in a safe, clean, neat and sanitary condition and shall comply with all laws, ordinances and regulations pertaining to health and safety. Each business operating at the Industrial Park will have available for inspection all reports required by regulatory agencies regarding storage and disposal of any materials. Copies of said reports will be made available to Declarant or Declarant's assignee upon request.
- B. During construction it shall be the responsibility of each lot owner and/or lessee to insure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials, and that construction materials, trailers, shacks and the like, are kept in a neat and orderly manner.

**ARTICLE VII****COVENANTS RUN WITH LAND: ENFORCEABILITY**

- A. The foregoing covenants and restrictions shall run with, bind and inure to the benefit of all land conveyed now and in the future, and the land in the Industrial Park retained by the Declarant, and the Declarant covenant and agree to hold such land retained by it subject to all the terms, provisions and conditions of these covenants and restrictions and that any and all sales, leases, mortgages or other disposition of such remaining land or any part thereof shall be subject to these covenants and restrictions. The Declarant reserves the right however, from time to time hereafter to delineate, plan, grant or reserve within the remainder of the Industrial Park not hereby conveyed such public streets, roads, sidewalk ways and appurtenances thereto, and such easements for drainage and public utilities, as it may deem necessary or desirable for the development of the Industrial Park (and from time to time to change the location of the same) free and clear of these restrictions and covenants, and to dedicate the same to public use or to grant the same to Deschutes County and/or to an appropriate municipal corporation or public utility corporation.
- B. Said covenants and restrictions shall be jointly and severally enforceable, or individually enforceable, by either or both Declarant and Declarant's successors and assigns, if any, and/or by any owner or lessee of property within the area described within Exhibit "A," provided, however, that only the Declarant or their assignees,

**4 - RESTRICTIVE COVENANTS - LAPINE INDUSTRIAL PARK**

under Article VIII hereof, shall have the right to exercise the discretionary powers herein reserved to the Declarant.

- C. Violation of any of said restrictions or conditions, or breach of any covenant or agreement herein contained shall give the Declarant only, or assignees under Article VIII, in addition to all other remedies, the right (but not the obligation) to enter upon the land as to which such alleged violation or breach exists and summarily to abate and remove any erection or thing or correct any condition that may constitute such violation of breach has not been remedied and corrected within thirty (30) days after delivery of notice of such violations or breach from either Declarant or its said assignees to the occupant of the premises on which the violation or breach has occurred or in the alternative within thirty (30) days after mailing such notice, by certified mail, return receipt requested, postage prepaid, to the owner or lessee of such premises at his or its last known address.
- D. The result of every action or omission where by any restriction or covenant herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance.
- E. In any legal or equitable proceeding for the enforcement of or to restrain the violation of this Declaration or any provision hereof, the losing party or parties shall pay the attorney's fees and costs of the prevailing party or parties, in such amount as may be fixed by the court in such proceeding. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.
- F. Declarant may from time to time at any reasonable hour or hours, and upon 24 hour written notice, enter and inspect any property subject to these restrictions to ascertain compliance therewith.

#### ARTICLE VIII

##### ASSIGNMENT OF AUTHORITY

Declarant, Deschutes County, may from time to time delegate any or all of its rights, powers, discretion and duties here under to such agent or agents as it may nominate. It may also permanently assign any or all of its powers and duties (including discretionary powers and duties), obligations, rights, title, easements and estates reserved to it by this deed to any one or more corporations, associations or persons that will accept the same. Any such assignment shall be in writing recorded in the Deschutes County recorder's office and the assignee shall join therein for the purpose of evidencing its acceptance of the same, and such assignee shall thereupon have the same rights, title, powers, obligation, discretion

##### 5 - RESTRICTIVE COVENANTS - LAPINE INDUSTRIAL PARK

and duties as are herein reserved to said Declarant and the Declarant shall there upon be released therefrom.

#### ARTICLE IX

##### SIGNS

All signs shall be submitted to Deschutes County for approval in accordance with Sign Ordinance No. 81-009, Chapter 15.08.

#### ARTICLE X

##### SEWAGE DISPOSAL

Declarant and Declarant's successors desire sewer service to Declarant's property. Declarant's successors agree to connect into the LaPine Sewer District System when said system reaches the subject real property, and when use of the real property or a land use permit requires sewage facilities.

Declarant's successors agrees to pay all applicable sewer development charges in accordance with the policies of the LaPine Sewer District.

Sewer services shall be supplied only through facilities constructed and installed to LaPine Sewer District standards and specifications. All facilities except service connection lines shall be installed within public right of ways or public easements. Easements shall be granted to the LaPine Sewer District free and clear of all liens and encumbrances.

Declarant's successors agree to perform all work necessary to install on the subject property, at a location approved by the LaPine Sewer District, a backflow prevention device approved by the Oregon State Health Division and the LaPine Sewer District. Said device must pass inspection by a certified backflow prevention inspector.

Sewer effluent produced by industrial firms, which cannot be processed by LaPine Sewer District, shall be pretreated by the industry producing such wastes, prior to its transmittal to the District. A detailed report as to the characteristics of the sewer effluent and how it will be pretreated shall be filed through and approved by the LaPine Sewer District. Said reports shall be in the form required by the District, and shall be filed with the District prior to initial operation and prior to any change on discharge characteristics. Tenants will connect to sewer system within ninety (90) days when it becomes available.

#### 6 - RESTRICTIVE COVENANTS - LAPINE INDUSTRIAL PARK

**ARTICLE XI****WATER SERVICE**

Declarant and Declarant's successors desire that the real property be connected with a community water system and agree to connect into such a system when service is available, and when either the use of the real property or a land use permit require on site water service.

Declarant's successors agree to pay all applicable water system development charges. Water system services shall be supplied only through facilities constructed and installed to applicable state or county standards. All facilities except service connection lines shall be installed within public right of ways or public easements. Easements shall be granted to the community water system free and clear of all liens and encumbrances.

**ARTICLE XII****PARKING**

- A. No parking will be permitted on the streets in the Industrial Park and each lot owner and/or sublessee shall provide on his property necessary and adequate parking facilities and private driveways. Present and future vehicle parking, including trucks, trailers, employee and visitor vehicle parking, shall be provided on the premises and shall comply with all provisions of the applicable zoning regulations. All parking areas are to be constructed to provide dust free all weather surfaces with macadam, concrete or other material as approved by the County Planning Division.
- B. Adequate space shall be provided on site for automobile and trucks maneuverability, loading and unloading of vehicles used in the industrial transportation process.
- C. Handicapped parking spaces shall be provided for both employees and visitors with at least one space for visitors.
- D. No use permitted by this Article shall require the backing of traffic into a public or private street or road right-of-way.

**ARTICLE XIII****ADDITIONAL RESTRICTIONS**

- A. All outdoor refuse collection areas shall be neat and orderly at all times.
- B. Each and every site shall consist of at least one whole and entire lot. No owner shall initiate action to reduce the size of any lot or further subdivide any lot without the specific written approval of Deschutes County.
- C. There shall be only one ingress and one egress from properties accommodating uses permitted per each 300 feet or fraction thereof of street frontage. If necessary to meet this requirement, permitted uses shall provide for shared ingress and egress.
- D. All uses permitted by this covenant shall be screened from adjoining residential uses by a approved sight obscuring fence.
- E. No use shall be permitted which has been declared a nuisance by state statute, county ordinance or a court of competent jurisdiction.

**ARTICLE XIV****MISCELLANEOUS PROVISIONS**

- A. Every person who now or hereafter owns or leases or acquires any right, title or interest in or to any portion of said property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in said property.
- B. All restrictions and other provisions herein contained shall be deemed subject and subordinate to all mortgages and deeds of trust now or hereafter executed upon land subject to these restrictions, and none of said restrictions shall supersede or in anyway reduce the security or affect the validity of any portion of said mortgage or deed of trust; provided, however, that if any portion of said property is sold under a foreclosure of any mortgage or under the provisions of any deed of trust, any purchaser of such sale, and his successors and assigns, shall hold any and all property so purchased subject to all the restrictions, covenants and other provisions of this Declaration.

8 - RESTRICTIVE COVENANTS - LAPINE INDUSTRIAL PARK

- C. All restrictions, covenants and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part and parcel of said property; shall create mutual, equitable servitude upon each parcel in favor of every other parcel; and shall create reciprocal rights and obligation between the respective owners an/or lessees of all parcels of the property and privity of contract and estate between all grantees of said parcels, their heirs, successors and assigns.

In addition, all restrictions contained herein shall operate as covenants running with the land for the benefit of the land described in EXHIBIT A hereto and shall inure to the benefit of all grantees of said land, their heirs, successors and assigns, and shall apply to and bind the grantees of any and all parcels of the property, their heirs, successors and assigns.

- D. Paragraph headings; where used herein, are inserted for convenience only and are not intended to be a part of the Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

#### ARTICLE XV

#### ENVIRONMENTAL POLLUTION

- A. The provisions of this section supplement other provisions contained herein, that might be applied concerning the property owner's obligations, responsibilities and liabilities for environmental pollution, present and future, and for compliance with the laws, regulations or orders of any governmental agency concerning environmental pollution, present and future, on the premises. To the extent that the provisions of this section conflict with any such other provisions, the provisions of this section shall control. Where terms of this section use terms that are found in applicable state and federal environmental pollution laws, those terms shall have the same meaning as they have in those state and federal environmental pollution laws.
- B. Property owners covenant that they shall not, without complying with state or federal environmental pollution or health and safety laws, generate, store, process or dispose of or release or discharge into the environment, hazardous, toxic, radioactive or other dangerous substances on, in or about the subject premises.
- C. Property owner covenant's that they will be liable for and will report, clean up, remove and remediate in conformance with applicable state and federal law any release, threatened release or discharge into the environment of hazardous, toxic, radioactive or other dangerous substances regulated under state or federal environmental pollution or health and safety laws that are hereafter found on or in the premises or that are traceable to the premises.

#### 9 - RESTRICTIVE COVENANTS - LAPINE INDUSTRIAL PARK

- D. With respect to those releases, threatened releases, and discharges for which property owner has covenanted above to assume responsibility and liability, property owner agrees to indemnify, defend and hold the Declarant, its officers, agents and employees harmless from and against any claims, demands, causes of action or suits for damages, reimbursement or any other cost of compliance, including, but not limited to, remedial action costs, removal costs, natural resources damages, penalties, punitive damages, interest costs, attorney fees and damages of any kind to third parties, arising from the discharge, release or threatened release on, in, or about the premises of any hazardous, toxic or radioactive or other dangerous substances.

#### ARTICLE XVI

#### GENERAL PLANNING STANDARDS FOR LAPINE INDUSTRIAL PARK

- A. A scale drawing in color of any sign, trademark or advertising device to be used on any lot or the exterior of any building or structure will be submitted to Deschutes County, in triplicate for the written approval by Deschutes County. Normally the occupant's trademark and/or trade name may be displayed on the building in the manner in which they are generally used by the occupant.
- B. No loading docks shall be permitted on any building, that when a truck and trailer is parked at the dock will cause any part of the truck to protrude into the roadway.
- C. All material, supplies, or products stored outside a permanent structure overnight will be neat, orderly, and secured by a masonry wall or other appropriate fencing at least six (6) feet in height. All fencing adjoining street frontage and side property lines shall be sight-obscuring approved by Deschutes County.
- D. All setback areas facing roads between the front building line and the curb (roadway), with the exception of driveways, parking lots, sidewalks, and other walk ways shall be used for the planting or growing of trees, shrubs, lawns and other ground covering or material as approved by Deschutes County. If developed lots are not properly maintained, Deschutes County or its assignee, may undertake such maintenance as may be necessary, at the expense of the occupant. However, Deschutes County shall not be obligated in any manner to undertake such maintenance.
- E. All unused land area that is planned for future building expansion or other purposes shall be maintained and kept free of unsightly plant growth, rubbish and debris.

#### 10 - RESTRICTIVE COVENANTS - LAPINE INDUSTRIAL PARK

- F. These general planning standards and regulations are subject to amendment, modification or termination by Deschutes County and/or its successors, at any time.

## ARTICLE XVII

### AMENDMENT, TERMINATION, EXTENSION

- A. Any of the covenants contained herein may be amended exclusively by Declarant prior to conveyance of any portion of the real property described in Exhibit "A," by recording said amended covenants in the Real Property Records of Deschutes County, Oregon. Following conveyance of any portion of the real property described in Exhibit "A," said covenants may be amended by vote of the owners. To amend said covenants the then owners of 75% of the legal lots of record within the area described in Exhibit "A" must vote to amend.

Amendments to this Declaration shall become effective upon recordation in the Real Property Records of Deschutes County, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provision of this Declaration.

If an owner consents to any amendment to this Declaration it will be conclusively presumed that such owner has the authority to consent, and no contrary provision in any mortgage, contract or other encumbrance between the owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right, privilege, or protection of the Declarant without written consent of the Declarant or the assignee of such right, privilege or protection.

- B. This Declaration shall run with and bind the real properties described in Exhibit "A," and shall inure to the benefit of and shall be enforceable by Declarant, Declarant's successors and assigns and any owner of real property described within Exhibit "A," their respective legal representatives, heirs, successors and assigns for a period of 40 years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of 10 years, unless an instrument in writing signed by the then owners of 75% of the legal lots of record within the area described as Exhibit "A" has been recorded within the year preceding each extension, agreeing to amend, in whole or in part, or terminate this Declaration, in which case this Declaration shall be amended or terminated as specified therein.

ARTICLE XVIII

WAIVER AND SEVERABILITY

Any waiver or failure to enforce any provision of these covenants and restriction in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or similar situation at any other location in the Industrial Park or of any other provision of these covenants and restrictions. Invalidation of any provision contained herein, through the adjudication of a court of competent jurisdiction shall not affect the validity of any other provision, and all other provisions thereof shall remain in full force and effect.

DATED this 1st day of December, 1993.

BOARD OF COUNTY COMMISSIONERS  
OF DESCHUTES COUNTY, OREGON

[Signature]  
TOM THROOP, Chair

[Signature]  
NANCY POPE SCHLANGEN, Commissioner

[Signature]  
BARRY H. SLAUGHTER, Commissioner

ATTEST:

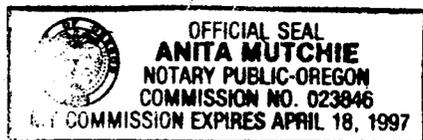
[Signature]  
Recording Secretary

land\lapine3.ccr

STATE OF OREGON     )  
                                  ) ss.  
County of Deschutes    )

Before me, a Notary Public, personally appeared TOM THROOP, NANCY POPE SCHLANGEN and BARRY H. SLAUGHTER, the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED this 1st day of December, 1993.



[Signature]  
Notary Public for Oregon  
My Commission Expires: 4-18-97

12 - RESTRICTIVE COVENANTS - LAPINE INDUSTRIAL PARK

EXHIBIT "A"

Lots 1, 2, 8, 9, and 10, LA PINE INDUSTRIAL SITE, all in Deschutes County, Oregon, and;

Lots 6, 7, and 8, Block 1, and Lots 1, 2, 3, 4, 5, 6, 7, and 8, Block 2 and Lots 1, 2, and 13, Block 3, LA PINE INDUSTRIAL SITE PHASE II, all in Deschutes County, Oregon,

and;

T. 22 S., R. 10 E., Section 13, West of the Burlington Northern Railway Right of Way, and T. 22 S., R. 10 E., Section 14, N $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ , West of Burlington Northern Railway Right of Way, Willamette Meridian, Deschutes County, Oregon.

STATE OF OREGON )  
COUNTY OF DESCHUTES ) SS.

I, MARY SUE PENHOLLOW, COUNTY CLERK AND RECORDER OF CONVEYANCES, IN AND FOR SAID COUNTY, DO HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS RECORDED THIS DAY:

93 DEC -6 AM 11:17  
MARY SUE PENHOLLOW  
COUNTY CLERK

exhibita.lis

BY: T. Moore DEPUTY  
NO. 93-43535 FEE 0.00  
DESCHUTES COUNTY OFFICIAL RECORDS