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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
NEWBERRY BUSINESS PARK**

Declaration of Restrictions and Covenants: This Declaration is made this 1<sup>ST</sup> day of Feb. 2002 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 the orderly development and operation of the Newberry Business Park, also known as the La Pine Industrial Site Phase III, which is described in Exhibit A. Newberry Business Park is being developed as a planned industrial complex with controlled uses and design standards. Except where this Declaration conflicts with any applicable government regulations, this Declaration shall be binding upon all owners, lessees, licensees, occupants, and users of the property subject to this Declaration and their successors in interest as set forth herein. In the event any of the development standards or use restrictions of this Declaration should conflict with a more restrictive standard or requirement set by an applicable Federal, State, County, or local government ordinance, the more restrictive standard or requirement shall apply.

**DESIGN PHILOSOPHY**

Newberry Business Park is being developed to foster the creation of family wage jobs in the La Pine Area by providing improved sites for smaller users within the La Pine Industrial Park. However, it is also a purpose of the Declarant to provide a business environment that will enhance La Pine's image as a business location in Deschutes County. The design standards of Newberry Business Park are more restrictive than those in other areas of the Industrial Park. This is done in order to establish, preserve and protect a quality environment for its tenants and the La Pine community. It is the intent of the Declarant to ensure strict conformance with these Restrictive Covenants in order to adhere to this design philosophy.

**SECTION 1. DEFINITIONS**

- 1.1 Block: The term Block shall mean those areas designated as Blocks on subdivision or partition maps according to the records of Deschutes county.
- 1.2 Declarant: The term Declarant shall mean Deschutes County. Declarant is the owner of the property being developed as the Newberry Business Park.

- 1.3 Declaration: The Declaration shall mean this Declaration of Covenants, Conditions and Restrictions for Newberry Business Park.
- 1.4 Design Review Committee: The Design Review Committee is that committee established by the La Pine Industrial Group, Inc., as provided for in Section 3 of this Declaration.
- 1.5 Earthtones: Subdued colors which are generally found in the surrounding landscape.
- 1.6 Improvements: The term improvements shall include, but is not limited to, any buildings, outbuildings, private roads, driveways, parking areas, fences and barriers, retaining walls and stairs, decks, electrical and gas distribution facilities, hedges, windbreaks, plantings, planted trees and shrubs, signs, loading areas and all other structures or exterior landscaping, vegetation, or ground cover of every type and every kind above the land surface.
- 1.7 La Pine Business Park District Zoning Ordinance; That portion of the Deschutes County Code which applies to the Newberry Business Park.
- 1.8 La Pine Industrial Group, Inc. ("LIGI"): The non-profit corporation contracted by the Declarant to manage the development, marketing and operation of Newberry Business Park.
- 1.9 Lot: The term Lot shall mean the fractional part of Blocks as divided and subdivided on subdivision or partition maps according to the records of Deschutes County.
- 1.10 Newberry Business Park ("NBPOC"): The term Newberry Business Park shall mean all of the real property contained within the La Pine Industrial Site, Phase III, now or hereafter made subject to this Declaration.
- 1.11 Newberry Business Park Owners Committee: The Newberry Business Park Owners Committee (NBPOC) shall be that committee of Owners formed pursuant to Section 7 herein.
- 1.12 Owner: Owner shall mean and refer to either all holders of fee title to any Lot, or any other person or persons entitled to possession of the Lot pursuant to a contract of lease requiring that such person or persons pay real property taxes on the Lot.
- 1.13 Streets: The term Streets shall mean any street, highway or other thoroughfare within or adjacent to Newberry Business Park as shown on any recorded subdivision or partition map, or survey map of record, whether designated thereon as street, boulevard, place, drive, road, terrace, way, lane, circle or otherwise.

## **SECTION 2. PROPERTY SUBJECT TO THE COVENANTS, CONDITIONS AND RESTRICTIONS FOR NEWBERRY BUSINESS PARK**

- 2.1 General Declaration Creating Newberry Business Park: Declarant hereby declares that all of the real property located in Deschutes County, Oregon, described in Exhibit A is and shall be hypothecated, encumbered, leased, occupied, built upon, or otherwise used, improved or transferred in whole or in part subject to this Declaration. All of said Restrictions are declared and agreed to be in furtherance of the general plans of the

subdivision and are established with the purpose of protecting the desirability and attractiveness of said real property and every part thereof. All of the Covenants, Conditions and Restrictions of Newberry Business Park run with all of said property for all purposes and shall be binding upon and inure to the benefit of Declarant and all Owners and their successors in interest as set forth in this Declaration.

**2.2 Addition of Other Real Property by Grantor:**

- (A) Declarant may, at any time during the term of this Declaration, add all or a portion of any land now or hereafter owned by Declarant in the La Pine Industrial Park to the property which is covered by this Declaration, and upon recording of a notice of addition of real property, as set forth below, the provisions of this Declaration specified in said notice shall apply to such added land in the same manner as if it were originally covered by this declaration. Thereafter, to the extent this Declaration is made applicable thereto, the rights, powers and responsibilities of Declarant and Owners of parcels within such added land shall be the same as in the case of the land described in Exhibit A.
- (B) The notice of addition of real property referred to above shall contain at least the following provisions:
  - (1) A reference to this Declaration stating the date of recording and the recording information where the Declaration is recorded.
  - (2) A statement that the provisions of this Declaration or some specified part thereof shall apply to such added real property.
  - (3) A legal description of such added real property.
  - (4) Such other or different covenants, conditions and restrictions as Declarant shall, in its discretion, specify to regulate and control the use, occupancy, and improvement of such added real property.

**SECTION 3. ARCHITECTURAL CONTROLS**

- 3.1 **Design Review Committee:** Declarant has contracted with the La Pine Industrial Group, Inc. (LIGI), a non-profit corporation, to manage the development, marketing and operation of Newberry Business Park. Declarant directs the La Pine Industrial Group, Inc., to create a Design Review Committee for the purpose of applying and enforcing these conditions, covenants and restrictions. Such Design Review Committee shall be comprised of not less than three members of which at least two members shall be LIGI Directors.
- 3.2 **Approval Required:** No improvements, as defined in Section 1.7 above, shall be erected, placed, altered, maintained, or permitted to remain on any land subject to this Declaration until final plans and specifications have been submitted to and approved in writing by the Design Review Committee.
- 3.3 **Procedure:** Prior to applying for a site plan review or a building permit, any owner proposing to construct any improvements within the Newberry Business Park (including any exterior alteration, addition, destruction or modification to such improvements) shall

follow the procedures and be subject to the approvals required by Paragraphs 3.4 through 3.8 below. Failure to follow such procedures or obtain such approvals as required by Paragraphs 3.4 through 3.8 below shall be deemed a breach of this Declaration.

3.4 Required Documents: Any Owner proposing to utilize, improve or develop real property within the Newberry Business Park shall submit to the Design Review Committee the following items for review:

- (A) A site plan, with a minimum scale of 1" = 20', showing the location, size, configuration and layout of any building, structure or facility (or, where applicable, any alteration, addition, modification or destruction thereto) including appurtenant facilities for parking, tanks, storage, loading, deliveries, fences, vehicular and pedestrian traffic and circulation, and utilities plan.
- (B) Architectural plans and drawings showing the nature, style and dimensions of any building, structure, facility, fence, wall, barrier or deck (or, where applicable, any addition, modification or destruction thereof), including the exterior materials types, colors, appearance, and the type of screening for roof-mounted fixtures and the type of screening for exterior equipment and tanks and other exterior storage areas. Metal clad buildings will be approved only on the condition that such buildings are designed, constructed and maintained so as not to have the appearance of a metal building. The scale of plans shall be 1 inch = 20 feet or larger.
- (C) A landscape plan showing the nature, type, size, location and layout of all landscaping, vegetation and irrigation systems proposed to be planted or installed (or, where applicable, removed or destroyed), together with the location of any proposed signing.
- (D) A topographical plan showing the elevation, slope and grade of any site work (including the nature, location and utilization of any removal or filling of soil) proposed to be done in conjunction with any proposed improvement, development, modification or destruction of any building, structure, or facility or any planting, installation or removal of any landscaping, vegetation, or ground cover.
- (E) A signage plan showing, to scale, the proposed signage, including color samples. This plan may be submitted following the submissions for construction approval but must be submitted and approved prior to completion of construction and order of signage fabrication.

3.5 Review: All plans and drawings identified in Paragraph 3.4 above shall be submitted to the Design Review Committee for review prior to application for a site plan review and/or a building permit from Deschutes County. Such plans and drawings shall be accompanied with a check payable to the La Pine Industrial Group, Inc., or the NBPOC in the event that LIGI no longer has an interest in the Newberry Business Park. in the amount of \$100.00. No plans shall be reviewed until the design review fee is paid in full and all items specified in this section are submitted within 30 days following receipt of such plans and drawings. The Design Review Committee shall review the plans and shall inform the Owner in writing whether the plans conform to the development concept for Newberry Business Park. Those plan that are professionally executed better aid the

Design Review Committee in determining the conformity of the plans. In the event the Owner is not notified as to the conformity of the plans within the 30-day review period, the plans are conclusively presumed to be approved as submitted. In the event any aspect of any of the plans does not conform to the Newberry Business Park development concept, the Owner shall resubmit those non-conforming portions of the plans for review in accordance with the procedures outlined in Paragraph 3.4 above, and this Paragraph. No work may be performed relating to any improvement unless and until all aspects of all plans required under Paragraph 3.4 above have been approved by the Design Review Committee. Any site plans, construction plans or similar plans and drawings submitted to Deschutes County in connection with the construction of any improvement in the Newberry Business Park must bear the prior written approval of the Design Review Committee.

- 3.6 **Architectural Guidelines:** The development concept for the Newberry Business Park shall be determined by the Design Review Committee in accordance with applicable statutes, ordinances, regulations, zoning and other governmental land use controls. Architectural guidelines setting forth various aspects of the development concept, in addition to this Declaration, may be published from time to time by the Design Review Committee, but the Design Review Committee shall not be required to do so. The Design Review Committee shall have the right to alter, rescind, or amend any published guidelines without prior notice to any party; provided however, that once approval has been given pursuant to Paragraph 3.5 above, work may proceed in accordance with the approved plans and drawings, notwithstanding any changes in the development concept. All such guidelines shall be in general conformity with this Declaration.
- 3.7 **Inspection:** All work related to any building, structure or facility or any landscaping, vegetation, ground cover or other improvements within the Newberry Business Park shall be performed in strict conformity with the plans and drawings approved under Paragraph 3.5 above. The Design Review Committee shall have the right to inspect any such work to determine its conformity with the approved plans and drawings, and reserves the right to order a stop to all work if, in good faith, it believes that any such work is non-conforming. In the event that it is determined in good faith by the Design Review Committee that certain work is non-conforming, a stop work notice may be issued, without necessity of court order, which shall require the Owner to correct all non-conforming work specified in the notice before the remainder of the proposed work may be completed. Continued work without correction of any such non-conforming items shall be deemed a breach of this Declaration. The Design Review Committee or officer, director, employee, agent, or servant of Declarant shall not be responsible for damages, loss, delay, cost or legal expense occasioned through a stop work notice given in good faith even if it is ultimately determined that such work was in conformity with the approved plans and drawings.
- 3.8 **Waiver:** Any condition or provision of Paragraphs 3.3 through 3.7 above may be waived by the Design Review Committee in their exclusive discretion. Any waiver shall be in general conformity with the development concept and development standards for the Newberry Business Park. Any such waiver shall not be deemed a general waiver of any aspect of the development concept or the required procedures and approvals specified under Paragraphs 3.3 through 3.7. The granting of a waiver as to one Owner shall not automatically entitle any other Owner to the waiver of the same or similar conditions or provisions. No waiver shall be valid unless it is in writing, signed by an authorized

representative of the Design Review Committee and delivered by certified mail to the party claiming the benefit of such waiver.

#### **SECTION 4. REGULATION OF IMPROVEMENTS**

- 4.1 **Completion of Construction:** After commencement of construction of any structure, the Owner shall diligently continue construction of the structure, to the end that the structure shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof.
- 4.2 **Excavation:** No excavation shall occur except in connection with construction of an improvement, and upon completion thereof, exposed openings shall be backfilled and disturbed ground shall be graded and leveled in accordance with approved plans.
- 4.3 **Building Construction**
- (A) Windows and doors are function elements of buildings, however, the size and placement / organization of these elements should also take into consideration their aesthetic impact.
  - (B) Building forms and building articulation shall be used to reduce the apparent scale of larger buildings and to create architectural interest.
- 4.4 **Landscaping**
- (A) Every site on which a building shall have been placed shall be landscaped according to plans approved as specified herein and maintained thereafter in a sightly and well-kept condition. The Design Review Committee may, at its discretion, specify types of plants and other landscaping materials that may or may not be allowed with consideration for climate, soils, drainage, impacts on adjacent properties, pollens, or other factors.
  - (B) Landscaping shall be used to soften and screen parking and delivery areas from the street and neighboring prop[erties] where possible. Also, where possible, landscaping shall soften areas of fencing exposed to public and neighboring views.
  - (C) The Owner shall also be responsible for the maintenance of any landscaping in the road or street right-of-way adjacent to its property which is not otherwise improved.
  - (D) Landscaping, as approved by the Design Review Committee, shall be installed within one hundred and eighty (180) days of occupancy or completion of the building, whichever occurs first.
  - (E) All areas within improved Lots proposed for future expansion shall be maintained in a weed-free condition and shall not otherwise constitute a nuisance.
- 4.5 **Signs**
- (A) No sign shall be permitted, other than the following:

- (1) Those identifying the name, business and products of the person or firm occupying the premises, and
  - (2) Those offering the premises for sale or lease when specifically approved by the Design Review Committee in writing.
- (B) Signs and identification on building sites shall only be of such size, design and color as is specifically approved by the Design Review Committee in writing.

#### 4.6 Parking Areas

All provisions for parking shall be in conformance with the La Pine Business Park District Zoning Ordinance which requires that all parking be accommodated on-site and that no on-street parking is allowed. If parking requirements increase as a result of a change in use or number of employees, additional off-street parking shall be provided to satisfy the intent of this Section.

#### 4.7 Storage and Loading Areas

- (A) No materials, supplies or equipment shall be stored in any areas on a site except inside a closed building, or behind a visual barrier, as approved by the Design Review Committee, screening such areas so that they effectively reduce visibility from the neighboring property or streets. Screening may be accomplished by dense planting.
- (B) Loading docks shall be set back in accordance with the La Pine Business Park District Zoning Ordinance and screened to minimize the effect from the street. In no event shall the loading or unloading of vehicles cause the vehicle to extend into the street.
- (C) Refuse collection areas shall be visually screened so as to reduce visibility from streets and neighboring properties. No refuse collection areas shall be permitted between a street and the front of any building.

### SECTION 5. REGULATION OF OPERATIONS

#### 5.1 Permitted Operations and Uses

- (A) Unless otherwise specifically prohibited herein, any industrial or commercial operation and use permitted in the La Pine Business Park District Zoning Ordinance will be permitted, provided the Design Review Committee consents thereto in writing, if it is performed or carried out entirely within a building that is so designed and constructed that the enclosed operations and uses do not cause or produce a nuisance to adjacent sites, such as, but not limited to, vibration, sound, electro-mechanical disturbance, radiation, air or water pollution, dust emission of odorous, toxic or non-toxic matter. All lighting is to be shielded and confined within property lines.
- (B) An exception to applicable portions of Paragraph 5.1 (A) shall be made during periods when a breakdown in equipment occurs in such a manner as to make it evident that the effect was not reasonably preventable.

- 5.2 **Right of Entry:** During reasonable hours, and subject to reasonable security requirements, members of the NBPOC, the Design Review Committee, or their authorized representative shall have the right to enter upon and inspect any building, site or parcel and the improvements thereon for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with and neither the members of the NBPOC, the Design Review Committee, nor their authorized representatives shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

## **SECTION 6. COVENANT OF MAINTENANCE AGREEMENT**

- 6.1 **Creation of the Lien and Personal Obligations of Assessments:** The Declarant, hereby covenants for the Newberry Business Park, each Owner of any Lot by acceptance of a deed or contract of purchase therefore, whether or not it shall be so expressed in any such deed or other conveyance or agreement for conveyance, is deemed to covenant and agrees to pay to the NBPOC regular annual, special, or other regular periodic assessments or charges, such assessment to be fixed, established and collected from time to time as hereinafter provided. The regular and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be the personal obligation of the person who was the Owner of such property at the time such assessment was levied. The obligation shall remain a lien on the property until paid or foreclosed, but shall not be a personal obligation of successors in title unless expressly assumed by them.
- 6.2 **Nature of Assessments:** The assessments levied by the NBPOC shall be used exclusively for the improvement and maintenance of the landscaping, irrigation, lighting and signage within the road right of ways of Newberry Business Park. After consideration of current maintenance costs and future needs, the NBPOC may fix a regular flat assessment on a monthly, quarterly, or annual basis. The regular periodic flat charges must be fixed at a uniform rate for all Lots not exempt and may be collected on a monthly, quarterly, or annual basis in the discretion of the NBPOC. Such assessment is to be based on the total acreage of a Lot as compared to total acreage within all Lots and Blocks of Newberry Business Park, excluding dedicated streets. The landscaping and maintenance assessment for the calendar year 2001 shall not exceed \$300.00 per year, per Lot, or such fraction thereof per month for each Lot. Inflation and increases in material and labor costs in the future are expected to cause increases in the assessment.
- 6.3 **Assessment Dates:** All Lots shall be subject to the annual, quarterly, or monthly assessments provided for herein, effective the first day of the month following the month an Owner takes possession of any Lot. The NBPOC shall fix the amount of the regular assessment at least thirty (30) days in advance of each assessment period. Written notice of the assessment shall be sent to every Owner subject thereto. The due dates shall be established by the NBPOC.
- 6.4 **Remedies for Nonpayment of Assessments:** Any assessments that are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of the delinquency at the lesser rate of 18% per annum or the highest rate allowed by law per annum. The NBPOC shall file in the office of the County Clerk of Deschutes County, State of Oregon,



within thirty (30) days after delinquency, a statement of the amount of any such charges for the assessment, together with interest, which have become delinquent, with respect to any Lot and said property, and upon payment in full thereof, shall execute and file a proper release of the lien securing the same. The aggregate amount of such assessments, together with interest, costs and expenses and a reasonable attorney's fee for the filing and enforcement thereof, shall constitute a lien on the Lot, with respect to which it is fixed from the date the note of delinquency thereof is filed in the office of the County Clerk, until the same has been paid or released as herein provided. Such lien may be enforced by the NBPOC in the manner provided by law with respect to liens upon real property, as provided in ORS Chapter 50. The Owner of said property at the time said assessment is levied shall be personally liable for the expenses, costs and disbursements including reasonable attorney's fees of the NBPOC of processing and, if necessary, enforcing such liens, all of which expense, costs and disbursements and attorney's fees shall be secured by said lien, including fees on appeal, and such Owner at the time such assessment is levied, shall also be liable for any deficiency remaining unpaid after any foreclosure sale. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of his Lot.

- 6.5 Subordination of Lien to Mortgages: The lien of the assessments provided for herein shall be inferior, junior, and subordinate to the lien of any first mortgages and trust deeds now or hereafter placed upon said property or any part thereof. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage or trust deed, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to amounts thereof which became due prior to such sale or transfer, and such lien shall attach to the net proceeds of sale, if any, remaining after such mortgages and other prior liens and charges have been satisfied. No sale or transfer shall relieve such Lot from liability or any assessments thereafter becoming due or from the lien thereof.

## **SECTION 7. NEWBERRY BUSINESS PARK**

- 7.1 Control by the Design Review Committee: The Design Review Committee established byLIGI, shall exclusively exercise all architectural, landscaping, signing and lighting controls as well as those other duties prescribed under this Declaration, including but not limited to assessments, so long as the La Pine Industrial Group, Inc., holds an interest in Newberry Business Park or until the La Pine Industrial Group, Inc., elects to terminate its interest in Newberry Business Park as set forth in Paragraph 7.2 below (whichever occurs first).
- 7.2 For purposes of this Declaration,LIGI, shall be deemed to hold an interest in Newberry Business Park if any one of the following conditions is met:
- (A) Declarant holds title to any Lot in Newberry Business Park and contracts withLIGI, to manage the development, marketing, and operations of Newberry Business Park.
  - (B) Declarant transfers its ownership of Lots in Newberry Business Park, by any means, to another entity that contracts withLIGI, to manage the development, marketing, and operations of Newberry Business Park.

- (C) **LIGI, through its Design Review Committee, elects to exercise architectural, landscaping, signing and lighting controls over any lot within the Newberry Business Park or elects to exercise any other duties under this Declaration, even though the La Pine Industrial Group, Inc., does not hold title to any Lot within Newberry Business Park.**

**7.2 Termination of LIGI Interest: Paragraph 7.1 notwithstanding, theLIGI's interest in Newberry Business Park shall terminate either upon termination of its contract with the Declarant or at such time that a certificate of occupancy has been issued by Deschutes County for the use and occupancy of a permanent building, structure or facility on every Lot within Newberry Business Park, which ever occurs first. In addition, theLIGI, reserves the right to terminate its interest in Newberry Business Park at any time. At such time that theLIGI's interest in Newberry Business Park is terminated (whether voluntarily or involuntarily), theLIGI shall cause to be recorded in the Official Records of Deschutes County, Oregon, a declaration stating that theLIGI, no longer holds any interest nor desires to exercise any further controls over development in Newberry Business Park. Copies of such declaration shall be provided to each Owner of a Lot within the Newberry Business Park contemporaneously with recordation of the declaration. Recordation of such declaration shall formally terminate theLIGI's interest in Newberry Business Park and all rights of architectural, landscaping, signing and lighting controls, as well as any other duties of theLIGI, under this Declaration (except for those duties prescribed by Paragraph 7.4 below).**

**7.3 Formation of Newberry Business Park Owners Committee (NBPOC): LIGI shall be the NBPOC until termination under 7.2. Upon formal termination of the LIGI's interest in Newberry Business Park, LIGI shall form an Oregon non-profit organization called the Newberry Business Park Owners Committee (NBPOC). NBPOC shall be governed by a five-person board of directors. NBPOC shall succeed to all powers, responsibilities and right of LIGI under this Declaration.**

**7.4 Organization of NBPOC**

- (A) **Within 30 days prior to the termination of LIGI's interest, the initial board of directors for NBPOC shall be elected. Persons eligible for the initial NBPOC board of directors shall be limited to directors, officers, employees, agents, Owners or partners of any corporation, partnership, joint venture or proprietorship owning any Lot within Newberry Business Park. LIGI shall solicit from, and then circulate to all Lot Owners, a list of nominees for the initial board of directors' positions within the 30-day NBPOC organizational period. LIGI shall then conduct an election of the initial board of directors. The five nominees obtaining the five highest vote totals shall constitute the initial board of directors.**
- (B) **The total number of votes entitled to be cast for each NBPOC director's position shall be based upon the total number of Lots of Newberry Business Park, excluding dedicated streets. Each Lot Owner shall have the right to cast one vote for each Lot owned. The initial board of directors of NBPOC shall meet within ten (10) days after their election and may at that time adopt any governing documents, including bylaws, guidelines, procedures, or rules and regulations, relating to NBPOC and the Newberry Business Park.**

- 7.5 **Failure to Organize:** In the event LIGI is unsuccessful in organizing the board of directors of NBPOC within the 30-day organizational period specified by Paragraph 7.4 (A) above, LIGI shall have no further responsibilities relating to NBPOC and the NBPOC board of directors shall be organized exclusively by the Owners of Lots within Newberry Business Park. Such failure of organization of the NBPOC board of directors shall not affect the existence of Newberry Business Park or the effectiveness of this Declaration.

## **SECTION 8. DURATION AND AMENDMENT OF THIS DECLARATION**

- 8.1 **Duration:** The Covenants, Conditions and Restrictions of Newberry Business Park shall continue to remain in full force and effect at all times with respect to all property, and each part thereof, now or hereafter made subject thereto (subject however to the right to amend and repeal as provided for herein) for a period of thirty (30) years from the date this Declaration is recorded. However, unless within one (1) year from the date of said termination there shall be recorded an instrument directing the termination of this Declaration signed by Owners of not less than two-thirds (2/3) of the property then subject to this Declaration, based on the number of Lots subject to these Restrictions (excluding dedicated streets) this Declaration, as in effect immediately prior to the expiration date, shall be continued automatically without further notice for an additional period of ten (10) years and thereafter for successive periods of ten (10) years unless within one year prior to the expiration of such period the Covenants, Conditions and Restrictions for Newberry Business Park are terminated as set forth above in this Section.
- 8.2 **Amendment:** This Declaration or any provisions thereof, of any Covenant, Condition or Restriction contained herein, may be terminated, extended, modified or amended, as to the whole of said property or any part thereof with a written consent of the Owners of two-thirds (2/3) of the property subject to these Restrictions based on the number of Lots owned as compared to the total number of Lots subject to these Restrictions (excluding dedicated streets). Provided, however, that as long as Declarant owns at least twenty-five percent (25%) of the property subject to these Restrictions, no such termination, extension, modification or amendment shall be effective without the written approval of Declarant. Provided, further, that the provisions of Sections 4 and 5 of this declaration shall inure to the benefit of and be enforceable solely by the NBPOC without the consent of any other Owner, person or entity and shall not give any third party any right or cause of action on account of the terms of this Declaration.
- 8.3 **Recordation:** Any amendment, deletion or repeal of this Declaration shall not become effective until recorded in the Official Records of Deschutes County, Oregon.

## **SECTION 9. ENFORCEMENT**

- 9.1 This Declaration shall be specifically enforceable by the Declarant, the NBPOC and its Design Review Committee, or by any Owner of any Lot in the Newberry Business Park. Any breach of this Declaration shall subject the breaching party to any and all legal remedies, including damages or the destruction, removal or the enjoining of any offending improvements or condition.
- 9.2 In the event that legal suit or legal action is instituted for the enforcement of this Declaration or for any remedy for the breach of this Declaration, the prevailing party shall

recover that party's reasonable attorney fees incurred in such suit or action (or any appeal therefrom) as adjusted by the trial or appellate court.

**9.3 Nonqualifying Improvements and Violation of General Protective Covenants:** In the event any Owner constructs or permits to be constructed on such Owner's Lot any improvement contrary to the provisions of this Declaration, or causes or permits any improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on such Owner's Lot, then the NBPOC may notify the Owner in writing of any such specific violations of this Declaration and may require the Owner to remedy or abate the same in order to bring the Owner's Lot, the improvements thereon, and the Owner's use thereof, into conformance with this Declaration. If the Owner is unable, unwilling, or refused to comply with the NBPOC's specific directives for the remedy or abatement, or the Owner and the NBPOC cannot agree to mutually acceptable solutions within the framework and intent of this Declaration, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, then the NBPOC shall have, in addition to any other rights or remedies provided in this Declaration, at law or in equity, the right to do any or all of the following:

- (A) **Fines.** Impose reasonable fines against such Owner in the manner and amount the NBPOC deems appropriate in relation to the violation.
- (B) **Remove Cause of Violation.** Enter onto the offending Lot, without being subject to any trespass, conversion or any other claim for damages, and remove the cause of such violation or alter, repair or change the item which is in violation of the Declaration in such a manner as to make it conform thereto, in which case the NBPOC may assess such Owner for the entire cost of the work done.
- (C) **Suit or Action.** Bring suit or action against the Owner on behalf of the NBPOC and other Owners to enforce this Declaration.
- (D) **Interest, Expenses and Attorney's Fees.** Any amount not paid to the NBPOC when due in accordance with this Declaration shall bear interest from the due date until paid at a rate three (3) percentage points per annum above the prevailing Portland, Oregon prime rate at the time, or such other rate as may be established by the NBPOC, but not to exceed the lawful rate of interest under the laws of the State of Oregon. A late charge may be charged for each delinquent assessment in an amount established from time to time by resolution of the the NBPOC, not to exceed thirty percent (30%) of such assessment. In the event LIGI shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the the NBPOC.

**9.4 Attorney Fees:** In the event the NBPOC shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder to foreclose a lien, the Owner-defendant shall pay to the NBPOC all costs and expenses incurred by it in connection with such suit or action including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorney's fees at trial and upon any appeal or petition for review thereof.

**SECTION 10. EFFECT OF DECLARATION**

The Covenants, Conditions and Restrictions of this Declaration shall run with the land included in Newberry Business Park and shall bind, benefit and burden each Lot in Newberry Business Park, including any additions thereto. The terms of this Declaration shall inure to the benefit and shall bind Declarant and the NBPOC, along with all their successors, assigns, heirs, administrators, executors, mortgagees, lessees, invitees or any other party claiming or deriving any right, title or interest or use in or to any real property in the Newberry Business Park. The use restrictions and regulations set forth in Section 4 and Section 5 of this Declaration shall be binding upon all Owners, lessees, licenses, occupants and users of the property known as Newberry Business park and their successors in interest as set forth in this Declaration, including any person who holds such interest as security for payment of an obligation including any mortgages or other security holder in actual possession of any Lot by foreclosure or otherwise and any other person taking title from such security holder.

DECLARANT:

Dated this 1<sup>st</sup> of February, 2002

BOARD OF COUNTY COMMISSIONERS

*Tom Dewolf*  
TOM DEWOLF, Chair

*Dennis R. Luke*  
DENNIS R. LUKE, Commissioner

*Michael M. Daly*  
MICHAEL M. DALY, Commissioner

ATTEST:

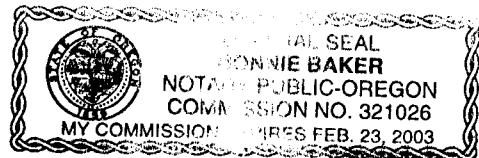
*Bonnie Baker*  
Recording Secretary

STATE OF OREGON            )  
  ) ss.  
  )

Before me, a Notary Public, personally appeared TOM DEWOLF, DENNIS R. LUKE, and MICHAEL M. DALY the above-named Board of County Commissioners of Deschutes County, Oregon and acknowledged the foregoing instrument on behalf of Deschutes County, Oregon.

DATED this 1<sup>st</sup> day of February, 2002.

*Bonnie Baker*  
Notary Public for Oregon  
My Commission Expires: Feb. 23, 2003



After Recording return to:

Leland F. Smith  
PO Box 3539  
Sunriver, OR 97707-0539

