

AMENDED AND RESTATED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

FORT PIERCE INDUSTRIAL PARK

THIS AMENDMENT TO THE DECLARATION of Covenants Conditions and Restrictions of Fort Pierce Industrial Park is made by **Fort Pierce Development, L.C.**, (herein called the "Declarant"), pursuant to Section 19 thereof, and executed this 15th day of SEPTEMBER, 1999, AND AMENDS AND RESTATES THE DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF FORT PIERCE INDUSTRIAL PARK, recorded February 7, 1995, as Entry No. 491628, in Book 884, at Page 786 et seq., records of Washington County, and any amendments or additions thereto, with regard to all that real property described in Exhibit "A", attached hereto and made a part hereof (herein called the "Property"):

To establish a general plan for the improvement and development of the Property; to insure adherence thereto so as to avoid improper development and use of the Property; and to provide adequately for consistent quality of improvement and use, Declarant desires to subject the Property and each parcel thereof (for the benefit of all parcels within the Property), to these Covenants, Conditions and Restrictions. Declarant intends for each parcel within the Property to be held, improved and conveyed subject to these Covenants.

NOW, THEREFORE, Declarant hereby declares that the Property is now held, and shall be transferred, sold, leased, conveyed and occupied subject to these Covenants, Conditions and Restrictions herein set forth, each and all of which is and are for and shall inure to the benefit of and pass with each and every parcel of the Property and apply to and bind the heirs, assigns and successors in interest of each and every owner of a parcel or parcels of the Property.

1. Operation as Covenants. Declarant hereby declares that the Property is now held, and shall be transferred, sold, leased, conveyed and occupied subject to the Covenants, Conditions and Restrictions herein set forth, each and all of which shall run with the land and remain in full force and effect and apply to and bind the heirs, grantees, assigns and successors in interest of each and every owner of a parcel or parcels of the Property. Each purchaser of any parcel of the Property covenants and agrees to use the Property only in accordance with the provisions hereof and to refrain from using the Property in any way inconsistent with or prohibited by the provisions of this Declaration. It is the intent and purpose of these Covenants, Conditions and Restrictions to create mutual and equitable servitudes upon the Property in favor of all other parcels located therein, creating reciprocal rights and obligations between the respective owners of parcels of the Property, and creating a privity of contract and estate between the owners of said parcels.

2. Purpose of Covenants, Conditions and Restrictions. It is the intent of these Covenants, Conditions and Restrictions to allow general manufacturing, industrial, warehousing and marketing activities to be carried out within a building or buildings on the Property, which do not contribute excessive noise, dust, smoke or vibration to the surrounding environment and do not contain a high hazard potential due to the nature of the products, material or processes involved. It is the further intent and purpose of these Covenants, Conditions and Restrictions to control the user-occupant density on the Property, to expressly prohibit certain uses of the Property, and to protect the character of the Property.

3. Permitted Uses. Each parcel of the Property is restricted to selected industrial, manufacturing, warehousing and marketing enterprises that are compatible with the development. Each parcel is also restricted to aesthetically attractive and harmonious structures and improvements including landscaping as approved by the Special Review Board, below, one of whose functions shall be to adjudge whether a proposed use conforms to the purposes herein provided.

4. Prohibited Uses. No parcel of the Property shall be used for any purpose or business that is prohibited by the zoning applicable to the Property at any given time. Further, the following uses or any use substantially similar to any of the following is expressly prohibited in the Property:

- (a) Residential purposes, except for the dwelling of watchmen or other employees whose residence on the Property forms an integral part of the operation as approved by the Special Review Board;
- (b) The manufacture, storage, distribution or sale of explosives;
- (c) The salvage, wrecking or stripping of wrecked vehicles, or the storage in bulk of junk, secondhand or unsightly materials of any type;
- (d) Stock and feed yards;
- (e) Food processing which involves the slaughter of animals or the use of animal carcasses; and
- (f) Recreational activities including courses for vehicular racing, the use of specialized recreational equipment, spectator sports, performance arenas, and entertainment establishments of a commercial nature.

5. Special Review Board. A Special Review Board shall be created to perform the duties listed in this Declaration. The Special Review Board shall consist of three (3) members who shall be designated by the Declarant until the end of the Development Phase (defined in Section 19 below), at which time the owners of the lots shall elect the Special Review Board. Each owner shall have a say in the election in proportion to his or her square footage ownership of the Property. Ownership shall be determined by recorded deeds in the County Recorder's Office. The Board shall select one of its members to serve as its chairman. Neither the members of the Board nor its designated representatives shall be entitled to any compensation for services performed pursuant to this Declaration.

6. Approval of Special Review Board. Before commencing the construction or alteration of all buildings, enclosures, fences, loading docks, parking facilities, storage yards, or any other structures or permanent improvements on or to any site or lot within the Property, the property owner shall first submit the following materials to the Special Review Board for its written approval:

- (a) Site plans, including setback lines, roads, parking areas, loading and maneuvering areas, external lighting, utilities and utility easements and grading and planting plans, which plans shall show existing grades and natural vegetation;
- (b) Floor plans, cross sections and elevations of all sides of the buildings, structures or improvements and location and detail of signs;
- (c) Samples of the actual materials proposed for all external surfaces;
- (d) A professionally designed landscape, irrigation, and drainage plan;
- (e) An accurate architect's or artist's depiction or scale model of the project; and
- (f) Appropriate specifications.

The Special Review Board shall have the right to refuse to approve any such plans and specifications and shall have the right, in so doing, to take into consideration the suitability of the proposed structure, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of said building, or other planned structure, on the outlook from adjacent or neighboring property. The Board shall adopt development guidelines as it deems necessary

to inform owners of the standards that will be applied in approving or disapproving proposed uses and constructions. Such guidelines shall in no event be less restrictive than the restrictions stated herein, and they may be modified in the same manner as provided for modification of this Declaration. The Board will be guided by this Declaration, the ordinances of the City of St. George, including the Uniform Building Code as adopted, and other applicable rules and regulations. In the event such Board, or its designated representative, shall fail to approve or disapprove building plans, specifications, or site plans within sixty (60) days after they have been submitted to the Board, such approval will not be required and this covenant will be deemed to have been complied with. The Board shall have the power to enforce its decisions in accordance with this Declaration, the ordinances of the City of St. George, and all other applicable law. It shall not be liable for damages by reason of any action, inaction, approval or disapproval by it with respect to any request made pursuant hereto.

7. Performance Guidelines. In order to further the intent of the covenants contained in this Declaration, the owner of any site or lot shall at all times keep the premises, buildings, improvements and appurtenances in a safe, clean and wholesome condition and must comply in all respects with all government, health, fire and police requirements and regulations; the owner will remove at his or its own expense any rubbish of any character whatsoever which may accumulate on such site or lot. Specifically, all uses permitted hereunder shall operate in conformance with the limitations set forth in each subsection below:

- (a) Vibration. No vibration shall be produced which is transmitted through the ground and is discernible without the aid of instruments at the lot line or at any point beyond the lot line.
- (b) Noise. All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness. In no event shall the sound-pressure level of noise radiated continuously from a facility at nighttime exceed at the lot line an octave band of frequency of those recommended values set out in the American Standard Specification for an Octave Band Filter Set for the Analysis of Noise and Other Sounds, Z24.10-1953, of the American Standards Association.
- (c) Air Pollution. No visible emissions shall be discharged into the atmosphere from any source where the opacity is sufficient to obscure an observer's view to a degree equal or greater than No. 1 on the Ringelmann Chart, except upon demonstration that the emission contains less than one-tenth pound (1/10 lb.) of particulate matter per thousand pounds (1,000 lbs.) of dry gases, adjusted to twelve percent (12%) carbon dioxide or fifty percent (50%) excess air. Visible emissions of any kind at ground level past the lot line of the Property on which the source of the emissions is located are prohibited. There shall not be discharged into the atmosphere any contaminate for which threshold limit values are listed for working atmosphere by the American Conference of Governmental Industrial Hygienists in such quantity that the concentration of the contaminant at ground level at any point beyond the boundary of the Property shall at any time exceed the threshold limit.
- (d) Odors. No condition or operation will be allowed which results in the creation of odors of such intensity and character as to be detrimental to the health and welfare of the public or which interferes unreasonably with the comfort of the public.
- (e) Electromagnetic Radiation. It shall be unlawful to operate, or cause to be operated, any planned or intentional source of electromagnetic radiation for any purpose which does not comply with the then current regulations of the Federal Communications Commission regarding such sources of electromagnetic radiation, unless special circumstances exist which may be reviewed by the Special Review Board and, upon recommendation from that Board, the requirements of such regulations may be modified. It shall be unlawful to operate or to cause to be operated any source of electromagnetic interference, the radiation or transmission from which exceeds reasonable standards, employing standard field strength measuring techniques.

- (f) **Radioactive Materials.** The handling of radioactive materials, the discharge of such materials into air and water, and the disposing of radioactive wastes, shall be in conformance with the regulations of the Nuclear Regulatory Commission as set forth in Title 10, Chapter One, Part 20--Standards for Protection Against Radiation, as amended.
- (g) **Glare and Heat.** No direct or sky-reflected glare, whether from floodlights or from high temperature processes such as combustion or welding or otherwise, so as to be visible at the lot line, shall be permitted. These regulations shall not apply to signs or floodlighting of parking areas otherwise permitted by this Declaration. There shall be no emission or transmission of heat or heated air so as to be discernible at the lot line.
- (h) **Liquid or Solid Waste.** There shall be no discharge at any point into any public or private sewage disposal system or stream or into the ground, of any liquid or solid materials except in accordance with the regulations and standards established by the City of St. George, Utah, and other applicable state and federal laws.
- (i) **Garbage and Refuse Disposal.** No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or any other waste. Such trash, rubbish, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition, and no rubbish, trash, papers, junk or debris shall be burned upon any lot.
- (j) **Water Supply.** No individual water supply system shall be used or permitted on any lot or group of lots unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the State Health Department. Approval of such system as installed shall be obtained from such authority.
- (k) **Fencing.** Fencing for an industrial site shall be at least six feet (6') high. The Special Review Board shall determine whether chain link fencing will be adequate, or whether opaque fencing such as masonry or chain link fencing with opaque slats is a necessity. The materials to be used for fencing will be subject to approval of the Special Review Board; however, wooden fencing is prohibited.
8. **Minimum Area and Yard Spaces.** No building may be erected or located less than:
- (a) twenty-five feet (25') from the public street line of 1500 East street and less than sixty feet (60') from any other public street property line;
- (b) less than ten feet (10') from any side property line;
- (c) less than twenty feet (20') from any other building on an adjacent site.

The ratio of building coverage to the total site area will be subject to the approval of the Special Review Board, but in no case may the ratio exceed forty percent (40%). The front yard spaces required by the set backs provided in this paragraph shall contain only paved walks, paved driveways, parking lots, lawns and landscaping. Not less than five percent (5%) of the net lot area shall be landscaped. Landscaping shall mean decorative plazas, pools, or the planting of grass, shrubs, or trees, or other comparable surface cover. Such landscaped areas shall be maintained at all times by the owner, and shall at all times be kept adequately watered, mowed, trimmed and planted. All parking and landscaped areas shall be kept safe, clean and attractive.

9. **External Appearance.** All significantly exposed and noticeable projections outside of any building, including mechanical and electrical equipment, cooling towers, transformers, ducts, vents, etc., but excluding communications equipment, shall, to the extent reasonably possible, be screened from public view by appropriate enclosures. All plans submitted to the Board for approval shall show such projections and enclosures.

10. Loading Docks. No loading dock shall be constructed facing on any public street unless such loading dock and every part thereof is at least seventy-five feet (75') from the right-of-way line of the street on which such loading dock fronts.

11. Landscaping Standards.

- (a) Landscape, irrigation, drainage, and planting shall be an integral part of the project design and construction plans submitted to the Board for approval;
- (b) All planted areas shall be adequately watered;
- (c) All grounds and exterior areas shall be clean, neat and properly maintained at regular intervals;
- (d) All fencing material shall be permanent and properly maintained.

12. Parking. Each owner of a parcel shall provide adequate off-street parking to accommodate all parking needs for the site. Parking shall be provided on the basis of one square foot (1 sq. ft.) of parking area for every square foot of building area, with provision for one (1) parking space for every vehicle used in conducting the business, and four (4) parking spaces for every five (5) employees working on the largest shift, together with adequate visitor parking. Owners of lots shall not permit their employees or tenants to regularly park during business hours on public streets within the boundaries of the Property. All parking areas shall be covered with a hard, dust-free, paved surface. Vehicular access to a parking area shall be permitted only by paved access roadways. Parking structures shall not be calculated as building area. Any parking in the front of buildings (public street side) shall be limited to visitor's and short-term employee parking only.

13. Signs. No sign shall be erected or maintained on the Property except in conformity with the provisions of the St. George City ordinances. In addition to the requirements of said ordinances and in modification thereof, the following shall be required:

- (a) Only one (1) single-faced or double-faced sign shall be permitted per street frontage. Signs not attached to the building shall be ground signs not exceeding thirty-five square feet (35 sq. ft.) in area (single-face).
- (b) A single sign shall be allowed on the front of each facility, and of a size not to exceed one square foot (1 sq. ft.) for each horizontal linear foot of building wall facing the street on which the sign faces.
- (c) Signs shall be designed as a part of the architectural design of the building so as to add to the aesthetic appearance of the building and Property. Animated or flashing signs are prohibited.
- (d) Special purpose signs, relating to construction of improvements on the Property, future tenant identification signs, or signs intended to give special directions or instructions for a limited period of time, may be permitted for limited periods of time provided they are in conformity with applicable zoning ordinances and regulations.
- (e) These sign restrictions shall not apply to the commercial activities, signs and billboards of the Declarant while the Declarant is marketing lots.

14. Number of Tenants Per Building. For a period of five (5) years from the date of this Declaration, no building shall be occupied or used by more than two (2) tenants or users simultaneously without the specific written consent of the Special Review Board, nor shall more than two (2) businesses be conducted simultaneously in one building without the specific written consent of the Board. The multiple occupancy and/or use of a building under this Paragraph does not change the character of the

parcel on which the building was constructed or the application of the requirements of this Declaration. No owner, other than the Declarant, shall initiate action to reduce the size of any lot or further subdivide any lot within ten (10) years from the date of this Declaration.

15. Time Limitation on Construction. Each owner, other than the Declarant, shall be required to obtain a building permit and begin construction of an acceptable building within two (2) years from the date of purchase of a lot. The Special Review Board has the right to extend this two-year period on terms agreeable to it.

16. Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented 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 the Property.

17. Duration of Restrictions. The covenants and restrictions contained herein shall run with and bind the land for a period of twenty (20) years from the date this document is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, subject to amendment as herein set forth.

18. Enforcement. The restrictions, covenants and conditions contained in this document are for the benefit of the Declarant, and the owner or owners of any lot, part or portion of the Property. Each such restrictive covenant and condition shall inure to the benefit of and pass with each lot, part or portion of the Property and shall apply to and be binding upon each successor in interest. These restrictions, covenants and conditions are covenants of equitable servitude, and the actual or threatened breach thereof, or the continuance of any breach or noncompliance therewith, may be enforced, enjoined, abated, or remedied by appropriate proceedings at law or in equity by the Declarant or the owner or owners of any lot, part or portion of the Property; provided, however, that no such enforcement shall affect or impair the lien of any bona fide mortgage or trust deed which was given in good faith and for value, except that any subsequent owner of a lot, part or portion of the Property shall be bound and obligated by the restrictions, covenants and conditions, whether the ownership is obtained by foreclosure, at a trustee's sale, or otherwise. All attorneys fees and costs and expenses incurred in any such enforcement action shall constitute a lien on such lot owner's lot, and shall also be a personal obligation of the lot owner, enforceable at law, until payment is made.

19. Construction and Amendment. The provisions of these Protective Covenants shall be liberally construed to effect all of their intended purposes. During the Development Phase (defined below), the covenants and restrictions contained herein may be modified, amended or repealed in whole or in part at any time and from time to time by the Declarant or his successor or assigns by recorded instrument. The "Development Phase" shall be the time from the date of the recording of the Plat of Subdivision until such time as Developer transfers legal title to more than ninety percent (90%) of the number of lots to bona fide purchasers. After the Development Phase, this Declaration, or any provision hereof, or any covenant or restriction contained herein, may be modified or amended, as to the whole of said Property or any portion thereof, with the written consent of the owners of sixty-five percent (65%) of the lots within the Property, provided however that so long as Declarant owns a lot, no such modification shall be effective without Declarant's written consent.

EXHIBIT 'A'SURVEYOR'S CERTIFICATE

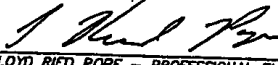
I, LLOYD RIED POPE, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL ENGINEER AND REGISTERED LAND SURVEYOR AND THAT I HOLD CERTIFICATE OF REGISTRATION NUMBERS 4401 AND 5921 AS PRESCRIBED UNDER THE LAWS OF THE STATE OF UTAH. I FURTHER CERTIFY THAT BY AUTHORITY OF THE OWNERS I HAVE MADE A SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAT AND DESCRIBED BELOW, AND HAVE SUBDIVIDED SAID TRACT OF LAND INTO LOTS AND PUBLIC STREETS TO BE KNOWN AS:

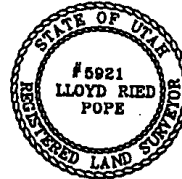
FORT PIERCE INDUSTRIAL PARK

AND THAT THE SAME HAS BEEN CORRECTLY STAKED ON THE GROUND AS SHOWN ON THIS PLAT.

BOUNDARY DESCRIPTION

BEGINNING AT THE EAST 1/4 CORNER OF SECTION 17, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE N 89°44'59" E 329.86 FEET ALONG THE CENTER SECTION LINE; THENCE N 0°15'30" W 659.16 FEET; THENCE N 89°45'15" E 659.69 FEET; THENCE S 0°15'35" E 659.11 FEET; THENCE S 0°16'34" E 579.71 FEET; THENCE S 23°43'30" W 811.07 FEET TO A POINT ON THE 1/16 LINE; THENCE S 89°45'42" W 659.815 FEET ALONG THE 1/16 LINE TO A 1/16 CORNER; THENCE EXTENDING THE LINE S 89°45'42" W 1930.20 FEET TO A POINT ON A 2920.00 FOOT RADIUS CURVE TO THE LEFT (LONG CHORD BEARING IS N 18°44'19" E 560.27 FEET); THENCE NORTHEASTERLY 561.14 FEET ALONG THE ARC OF SAID CURVE TO THE POINT OF A 50.00 FOOT RADIUS REVERSE CURVE TO THE RIGHT (LONG CHORD BEARING IS N 55°01'54" E 66.65 FEET); THENCE NORTHEASTERLY 72.95 FEET ALONG THE ARC OF SAID CURVE; THENCE S 83°10'11" E 768.20 FEET; THENCE N 6°49'49" E 66.00 FEET; THENCE N 83°10'11" W 754.27 FEET TO THE POINT OF A 50.00 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARING IS N 36°34'31" W 72.65 FEET); THENCE NORTHWESTERLY 81.32 FEET ALONG THE ARC OF SAID CURVE TO THE POINT OF A 2920.00 FOOT RADIUS REVERSE CURVE TO THE LEFT (LONG CHORD BEARING IS N 4°18'35" E 580.985 FEET); THENCE NORTHEASTERLY 581.95 FEET ALONG THE ARC OF SAID CURVE TO THE POINT OF A 7440.527 FOOT RADIUS COMPOUND CURVE TO THE LEFT (LONG CHORD BEARING IS N 1°35'47" W 51.078 FEET); THENCE NORTHWESTERLY 51.08 FEET ALONG THE ARC OF SAID CURVE; THENCE N 89°44'59" E 1668.76 FEET TO THE POINT OF BEGINNING. CONTAINING 88.861 ACRES


LLOYD RIED POPE - PROFESSIONAL ENGINEER NO. 4401
REGISTERED LAND SURVEYOR NO. 5921



6-24-94

DATE:

IN WITNESS WHEREOF, Declarant has caused this Amended and Restated Declaration of Covenants, Conditions and Restrictions to be executed this 15th day of SEPTEMBER, 1999.

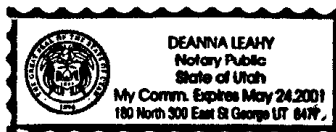
FORT PIERCE DEVELOPMENT, L.C.

By Mansfield L. Jennings
MANSFIELD L. JENNINGS, Manager

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On this 15th day of Sept., 1999, before me personally appeared Mansfield L. Jennings whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the Manager of "Fort Pierce Development, L.C. a Utah limited liability company and that the foregoing was signed by him on behalf of that Company by proper authority and he acknowledged before me that the Company executed the document and the document was the act of the Company for its stated purpose.

Deanna Leahy
NOTARY PUBLIC
Address: St. George
My Commission Expires: 5/24/01



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