

# PROTECTIVE COVENANTS

## Chenoweth Creek Industrial Subdivision

The Dalles Industrial Center  
May 2004



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## Summary

**Purpose:** The purpose of these *Protective Covenants* is to guide the development in the Chenoweth Creek Industrial Subdivision of The Dalles Industrial Center so as to improve the working efficiency of the property, enhance the visual amenities, and provide protection from undesirable development in order to enhance property values. As a minimum, the City of The Dalles Land Use & Development Ordinance 98-1222 (LUDO) must be met.

**Setbacks:** *Front Yard* -  
CR (Commercial/Recreation) Zone: 15 feet from the front property line.  
I (Industrial) Zone: 10 feet from the front property line.

*Side Yards* - No buildings or structures within 10 feet from the side property line.

Adjacent to the Riverfront Trail , the rear yard setback shall be minimum of 5 feet, for all other rear yards there is no setback.

**Lot Coverage:** The maximum area that can be covered by the principal building, accessory buildings, and future additions shall not exceed 60 percent of the total area.

**Buildings:** The portion of the exterior of any building facing a public street and/or the Riverfront Trail shall use colors, textures, materials, windows, doors, entry ways or other elements to reduce visual monotony. These elements shall be arranged in a way that creates an attractive appearance consistent with the character of the project.

**Parking:** No on-street parking shall be permitted in the Industrial Center.

**Screening:** Sight-obscuring screening is required for outside storage and other similar uses. The screening may consist of fencing, landscaping/berming or other approved method.

**Landscaping:** *Front Yard* - the minimum area of landscaping shall be 100% of the required setback area.  
*Riverfront Trail* - the minimum area of landscaping shall be 100% of the required 5' setback.

### ***Additional Requirements***

- (a) CR (Commercial/Recreation) Zone: In addition to the front yard landscaping, an additional 8% of the total lot shall be landscaped.
- (b) I (Industrial) Zone: In addition to the front yard landscaping, an additional 4% of the total lot shall be landscaped.

There will be a minimum of five trees per acre on each lot. The use of berms, varying ground contours, and lawn is encouraged wherever possible.

Permanently installed irrigation systems are required in all landscape areas unless landscaping is "drought resistant".

## INTRODUCTION

These Protective Covenants of the Chenoweth Creek Industrial Subdivision, The Dalles Industrial Center, have been prepared in order to guide development in this specific area of The Dalles Industrial Center. The implementation of these standards will improve the working efficiency and visual amenities of the developable areas while providing latitude and flexibility to serve a wide range of industrial and commercial users. These standards provide protection from undesirable development and will enhance property values. The Port considers these standards to be minimum, assuming firms locating at its facilities will wish to do the finest possible job in their own self-interest.

The development of sites of the Chenoweth Creek Industrial Subdivision of The Dalles Industrial Center, shall conform to the standards of the Port of The Dalles and other appropriate governing bodies such as the City of The Dalles, Wasco County and the State of Oregon. As a minimum, City of The Dalles Land Use & Development Ordinance 98-1222 (LUDO) must be met.

These Protective Covenants shall be applied to, and are applicable to, the real property described as follows: Lots 2 - 25 of the Chenoweth Creek Industrial Subdivision and Lots 34 - 55 of Chenoweth Creek Industrial Subdivision No. 2, excluding Riverfront Trail lots 31, 32 and 44, The Dalles Industrial Center, City of The Dalles, County of Wasco, State of Oregon.

### Part I PLAN REVIEW

#### POLICY -

The Port of The Dalles will review all developments proposed in order to insure compliance with the Port's standards for development. The Port will accept or reject the proposed plans based upon its review of the intent of the standards, the available facts regarding the particular project and in the best interest of all concerned property owners, within the property above described. The review process will consider the unique aspects of each of the tenants's requirements. All plans and correspondence shall be submitted to the Port of The Dalles' Executive Director, 3636 Klindt Drive, The Dalles, OR 97058.

As outlined in this section, the Port will review both the preliminary plan and then a detailed plan. Whenever practical the following plan reviews may take place in conjunction with meetings with the city of The Dalles planner. The Port's review will consider two distinct areas:

1. Conformance to the detailed requirements such as setbacks, height restrictions and other specific requirements.
2. Subjective design elements such as buildings, site layout and landscaping to insure compliance with the intent of the Port to provide a quality development. Design will be reviewed with respect to compatibility, use of indigenous materials and functional efficiency.

#### PHASE I: PRELIMINARY PLAN REVIEW

This phase shall begin with a predesign conference between the Executive Director, or his nominee and the developer and/or his representative. There shall be sufficient schematic sketches to indicate how the proposal would conform with the Chenoweth Creek Industrial Subdivision, The Dalles Industrial Center. Material presented should include, but not be limited to, a site plan, building plans as necessary and a time and work phase schedule with estimated completion dates.

#### PHASE II: DETAILED PLAN REVIEW

Presentations shall address themselves to conditions of approval that may have been made earlier or to new elements which were not present previously.

Materials presented should be sufficiently informative to provide a detailed understanding of the project and should include but not be limited to:

1. A site plan at the scale as required by the City of The Dalles LUDO showing the location of all buildings, driveways, walkways, landscaping features, parking areas, traffic flow direction and open space area.
2. Any terrain change.
3. Signs and outdoor lighting.
4. Elevations for each exposure.
5. Perspective sketches or other graphical presentation as necessary.
6. Proposed construction schedule.
7. Proposed future building expansion plans.
8. Samples of materials/colors to be used.

In the event that substantial reductions or additions to the project at this phase are necessary, subsequent revised preliminary plans shall be resubmitted for review.

#### PHASE III:

1. **Underground Utilities** - As-built drawings of the underground utilities within any Port of The Dalles easement area shall be furnished to the Port after installation.
2. **Inspection of Facilities** - The Port of The Dalles will conduct inspections of the site during the construction period to determine conformance with the approved final plans. Changes which affect the previously approved plans shall be submitted to the Port for approval.
3. **Future Remodeling & Additions** - Whenever a building permit is required plans shall be submitted to the Port before any construction, remodeling, alterations, or additions are undertaken.

## Part II DEVELOPMENT STANDARDS

### A. LAND USE AND ZONING

At a minimum, the City of The Dalles LUDO shall be used. In addition:

1. No noxious or offensive trade, business, or activity shall be conducted within The Dalles Industrial Center, nor shall anything be done therein which may be or become a nuisance to The Dalles Industrial Center.
2. **Setbacks** - No buildings or structures shall be permitted in any setback. Loading operations, including maneuvering areas, are not permitted in the required front, side and rear yard setback areas unless specifically approved by the Port.

**Front Yard** - This setback is reserved entirely for landscaping (see Site Development Standards 4(a)). No buildings, structures, fences, parking, or other uses permitted in this setback.

- **CR (Commercial Recreation) Zone** - 15 feet from the front property line.
- **I (Industrial) Zone** - 10 feet from the front property line.

**Side yards** - There shall be a 10 foot setback from the side property line(s) for all buildings and structures. When mutual access is required or included as part of the plan, then there will be no side yard setback along that property line. Fences and landscaping may be placed within the side property line(s) setback.

**Rear Yard Adjacent to the Riverfront Trail** - The rear yard setback shall be minimum of 5 feet, all other rear yards have no setback.

**Corner lots** - All yard areas adjacent to streets shall be designated front yards.

### B. CONSTRUCTION & MATERIALS

1. **Height: CR Zone** - Within 50 feet of the front property line, no structure shall exceed 20 feet in height.
2. **Lot Coverage: I Zone** - The maximum area that may be covered by the principal building, accessory buildings and future additions shall not exceed 60 percent of the total lot area without prior approval of the Port.
3. **Materials** - The portion of the exterior of any building facing a public street and/or the Riverfront Trail, shall use colors, textures, materials, windows, doors, entry ways or other elements to reduce visual monotony. These elements shall be arranged in a way that creates an attractive appearance consistent with the character of the project.

Side building walls facing interior Chenoweth Creek Industrial Subdivision roadways must also incorporate design elements mentioned above.

These requirements also apply to any accessory building other than temporary structures.

Material samples may be required for review. The type, style and color of all exterior materials shall be submitted to the Port for approval upon request.

All buildings shall be of permanent-type construction. Trailers, mobile offices and other temporary structures will not be allowed except for use during construction and as a short-term, temporary use.

5. **Roof Utilities** - The Port of The Dalles will approve the color of all exposed utilities, towers, conveyors and exposed processing equipment. All roof utilities shall be screened and designed, as far as practical, to minimize noise.

### C. ACCESS

At a minimum, the City of The Dalles LUDO shall be used. In addition:

**Location and Number** - There shall be no more than two driveways to the site from any one street. Additional access for sites with more than 500 feet of street frontage will be considered on a case-by-case basis.

### D. PARKING

At a minimum, the parking standards for the City of The Dalles LUDO (sec. 7.020) shall be used. In addition:

No on-street parking will be permitted.

### E. LOADING

1. Loading operations, including maneuvering areas, are not permitted in the required front, side and rear yard setback areas unless specifically approved by the Port.
2. **Truck Loading Area** - No on-street loading or maneuvering will be permitted.
3. **Screening** - Loading areas located in side yards shall be set back and screened to minimize the effect from the street and neighboring properties. Loading doors and docks shall not be located on the street side(s) of the building unless specifically approved by the Port.

**F. SITE DEVELOPMENT STANDARDS (Landscaping)**

At a minimum, the landscaping standards for the City of The Dalles LUDO (sec. 6.010) shall be used. In addition:

1. **Landscape Plan Review** - Landscaping shall not be clustered in a single area. All landscape work proposed for each development shall be approved by the Port. The design of all landscaping will be evaluated by the Port for its compatibility with surrounding design and the local environment. Detailed landscape plans must receive Port approval prior to installation.
2. **Materials** - A mixture of deciduous and evergreen plant materials is encouraged. There shall be a minimum of five trees per acre on each lot. The use of berms, varying ground contours and lawn is encouraged wherever practical.
3. **Irrigation** - Permanent underground irrigation systems shall be provided in all landscaped areas at the building main entrances and in front yard landscape setback areas where screening occurs adjacent to the roadway landscaping. Areas not receiving irrigation shall use drought resistant plant material and/or be guaranteed to survive by landscape architect/designer, contractor or property owner.

**4. Front Yard**

- (a.) The minimum landscaping shall be an area equal to one hundred percent (100%) of the standard setback area for the appropriate zone plus any rights of way between the front property line and the street. This provision shall apply to all front yards and to yard areas adjacent to streets designated as front yards (see corner lots). This landscaping shall be located on the street side of all walks, barriers and fences.
- (b.) The landscaping in this area shall be designed to enhance the architectural design of the building. Screening of the parking, storage and loading areas may be included in this area.

**5. Additional Requirements**

- (a.) **Lots adjacent to the Columbia River and Chenoweth Creek** - A five foot wide landscape strip shall be provided adjacent to the full length of Columbia River/Chenoweth Creek. This landscape area shall be designed to make the property compatible with the Riverfront Trail.
- (b.) **CR (Commercial/Recreation) Zone:** In addition to the front yard landscaping, an additional 8% of the total lot shall be landscaped. This 8% includes the 5' wide strip referenced in Part II, F5(a) above, if required.

(c) **I (Industrial) Zone:** In addition to the front yard landscaping, an additional 4% of the total lot shall be landscaped. This 4% includes the 5' wide strip referenced in Part II, F5(a) above and/or any public rights of way between the front property line and the street, if required.

7. **Undeveloped Areas** - Noxious weed growth and roots shall be eradicated by spraying or removing. Applications of herbicides for weed control shall be made only by approved applicator licensed in the State of Oregon.
8. **Screening** - The following list is designed as a guide in the selection of material for the various screening requirements. All landscape material used for screening shall be of sufficient initial size to provide the required degree of screening within five years after installation unless otherwise specified. The effectiveness of the screening will be evaluated by the Port.

**SCREENING LIST**

<u>TYPE</u>	<u>HEIGHT(ft)</u>	<u>PURPOSE</u>
Plant Material	0 - 3	Ground Cover
Plant Material	3 - 4	Screen parking areas
Plant Material	3 - 5	Enhance property
Slat Fence (color must blend with surroundings)	6	Screen low storage, parking and loading areas
Solid Fence	6	Screen low storage, materials, equipment and loading areas
Security Fence	over 6'	Allowed with a building permit
Clipped Evergreen	6 - 10	Screen storage, parking loading areas
Semi-open Plant Material	10 - 30	Screen parking, loading and storage of container, enhance property
Deciduous Trees	10 - 30	Screen storage, Provide shade, wind break, enhance property
Evergreen Trees	10 - 30	Screen all uses, wind break, enhance property

## G. OUTSIDE STORAGE

1. No materials, supplies or equipment (including company owned or operated vehicles) including, but not limited to, trash and garbage receptacles, shall be stored in any area on a site except inside a closed building or behind a visual barrier screening such areas from the view of adjoining properties and/or public street. The adequacy of this screening will be determined by the Port.
2. Garbage and refuse containers shall be concealed by means of a screening wall of material similar to and compatible with that of the building. These elements shall be integral with the concept of the building plan, designed so as not to attract attention and located in the most inconspicuous manner possible.
3. **Flammable** - The storage and handling of flammable liquids including petroleum products shall comply with these standards and the rules and standards of the Oregon State Fire Marshal's Office, the Interstate Commerce Commission and the standards enforced by the appropriate local agency.

## H. UTILITIES

1. **Location** - All utilities shall be brought underground as much as practical into the site and to the buildings. Pad-mounted electrical transformers shall be located and screened so as to minimize the viewing from any public street and adjacent properties.
2. **Easements** - Permits or easements shall be obtained from the Port of The Dalles for all utilities crossing Port property, including sanitary sewer, storm sewer, water, gas, electricity and telephone. Conditions for such permits shall provide that:
  - (a.) Any interruption in the service of a Port facility shall be coordinated with the Port.
  - (b.) Any required removal and replacement of Port facilities in connection with the construction of utilities shall be in conformance with City of The Dalles specifications.
  - (c.) Backfilling, compacting and surface finish in Port property shall be in conformance with the applicable City of The Dalles specifications.
  - (d.) The City of The Dalles, the Port, its commissioners, agents and employees shall be indemnified from any and all claims and damages which may arise directly or indirectly from the use of the easement areas.

## I. SIGNS

At a minimum, the City of The Dalles Area Sign Ordinance 92-

1153 shall be followed. Additionally:

1. **General** - All signs are subject to Port approval prior to installation. No flashing or rotating signs will be permitted. Signs on building roofs or fences are prohibited.
2. **Wall Lettering** - Wall lettering is considered a sign and subject to Port approval prior to painting.
3. **Wall Sign** - One sign may be placed upon each of two exterior walls. The sign shall not extend above the eaves or parapet of the wall. The sign size shall not exceed the lesser of one hundred twenty five (125) square feet in surface area or five (5) percent of the wall area on which it is placed. Signs shall not be placed or externally illuminated in a manner which is detrimental to views from adjacent properties or to the safe movement of ground traffic. Sign colors and details shall be submitted to the Port for approval prior to installation.
4. **Free Standing Signs** - A single, freestanding business identification sign shall be permitted. No freestanding advertising signs or billboards will be permitted. Details of any freestanding sign shall be submitted to the Port for approval prior to installation. Directional signs such as "enter", "shipping", etc., are allowed adjacent to each driveway, but shall not exceed four (4) square feet in surface area. Details of any directional signs shall be submitted to the Port for approval prior to installation.
5. **Multiple Tenants** - Where more than one tenant occupies a land parcel under one ownership, the sign surface area of the freestanding sign may be increased upon Port approval. In addition to the wall signs permitted, one wall sign may be placed on an exterior building wall for each tenant. The sign shall not extend above the eaves or parapet of the wall. The sign size shall not exceed twelve square feet in area. Copy on the sign shall be limited to tenant name identification.
6. **Temporary signs**- One temporary real estate sign, for example, "warehouse space available", shall be permitted per street frontage. The display period shall be limited to one year, but may be extended upon Port approval.

## J. AREALIGHTING

The objective of area lighting is to light landscaped areas, freestanding signs, buildings, parking areas, storage areas, and operation areas for decorative or security reasons. The light must not dominate the buildings or landscape, but blend as an integral part of the total development. All lighting shall be shielded from adjoining properties when it would create an annoyance. All permanent utility service for lighting shall be provided by underground facilities. No overhead utility service shall be permitted.

## **Part III**

# **PERFORMANCE STANDARDS**

The following performance standards shall apply to all tenants and property owners of the Chenoweth Creek Industrial Subdivision, The Dalles Industrial Center. The intent of these standards is to avoid creation of a nuisance or unsanitary conditions. As a minimum, the City of The Dalles Land Use & Development Ordinance 98-1222 (LUDO) must be met. Each operation within the Chenoweth Creek Subdivision, shall comply to all applicable local, state and federal standards and shall not create a nuisance beyond their property boundary because of odor, vibration, noise, dust, smoke or gas. In addition, materials and debris shall be prevented from being windblown or migrating off-site.

### **A. PROPERTY USE**

The buildings and other facilities erected on the site and the uses to which the site is put shall comply with the laws, statutes, regulations, ordinances and rulings of the State of Oregon and other governing agencies having jurisdiction. The buildings and other facilities comprising the development shall comply with the site use plan as approved by the Port of The Dalles. Any subsequent changes in use will be subject to the approval of the Port.

**B. AIR QUALITY** - The emission of any air contaminant shall meet local, State and Federal air quality standards.

1. Firms that are required to obtain local, State and/or Federal permits for emissions/air quality are required to submit a copy of the permit(s) to the Port of The Dalles.
2. *Open burning* - No open burning shall be permitted.

### **C. NOISE**

Industrial and commercial noise sources shall conform to the codes and ordinances of the appropriate federal, state and/or local governmental agency having jurisdiction.

### **D. HEAT AND GLARE**

All operations producing heat or glare, including exterior lighting, shall be conducted so that they do not create a nuisance beyond the property line.

### **E. WASTE MATERIAL**

All materials, including wastes, shall be stored and all properties maintained in a manner which will not attract or aid the propagation of insects or rodents or in any way create a health hazard.

### **F. WATER AND SOLID WASTE POLLUTION**

No liquid or solid waste disposal will be allowed on the site or into adjacent drainage ditches, storm sewers, sloughs or other waterways. The discharge of treated or untreated sewage or wastes into the sanitary sewer systems shall conform to the

codes and ordinances of the appropriate federal, state and local jurisdiction.

## **G. HANDLING HAZARDOUS WASTE AND RADIOACTIVE MATERIAL**

The storage, handling and use of hazardous waste and radioactive material shall be in accordance with local, state and federal ordinances and regulations, including, but not limited to State Fire Marshal, National Fire Protection Association, Department of Environmental Quality, Environmental Protection Agency and the Federal and State Departments of Energy.

## **Part IV**

# **MAINTENANCE STANDARDS**

These maintenance standards outline the required level of upkeep and repair for structures and the surrounding property, and are the responsibility of the landowner or tenant.

### **A. BUILDINGS**

Exterior walls which have been painted or otherwise chemically treated shall not be allowed to become cracked, chipped, faded or in any way seriously deteriorated. Materials stained or otherwise treated to age naturally shall be allowed to do so. Broken windows, doors, or other exterior structures shall be replaced promptly. Structures which are not in use shall be maintained as buildings in use, or removed from the premises.

### **B. LANDSCAPED AREAS**

All plants and lawns will be maintained in a healthy, disease-free condition. Water and fertilizer shall be applied as necessary to maintain their normal color and rate of growth. Weak or broken branches shall be removed by pruning. Old flowers, seed pods, dead foliage and leaves shall not be allowed to accumulate. Plant beds shall be maintained and kept free of weeds and litter.

All landscape features shall be maintained in an attractive manner at all time. Pools shall be kept full and fountains in an operating condition. Flagpoles shall be painted, unless aluminum or other similar metal. Sculpture or other types of artwork shall be maintained in an attractive manner.

### **C. FENCING**

Fencing and other architectural screens with damaged, broken or rotten members shall be repaired or replaced. Materials with paint or other chemical treatment subject to weathering shall not be allowed to become cracked, chipped, faded or in any way seriously deteriorated. Materials stained or otherwise chemically treated to age naturally shall be allowed to do so.

### **D. PAVED AREAS AND OTHER SURFACES**

Paved areas such as truck loading, auto parking and driveways which are broken, cracked, settled or are otherwise in need of repair, shall be repaired or replaced. Dirt and litter shall not be

allowed to accumulate on paved surfaces. Grass, weeds and other plant materials that grow through joints shall be removed. Areas covered with gravel, bark dust, or wood chips shall be kept free of weeds and litter. All markings painted on paved surfaces shall be maintained so as to be clearly visible.

**E. SIGNS**

Signs shall not be allowed to become faded or deteriorated. Lighting for signs, whether internal or external, shall be maintained. Burned-out fixtures are to be replaced promptly. Signs which are no longer appropriate, due to a change of service, product line or tenant shall be removed.

**F. LIGHTING**

All exterior lighting shall be maintained at adequate levels of illumination, taking into consideration the need to conserve energy. Broken or burned-out fixtures shall be replaced promptly.

**Part V  
FUTURE PLANNING**

Upon request by the Port of The Dalles Commission, any tenant or tenants and/or landowner(s) within the Chenoweth Creek Industrial Subdivision, The Dalles Industrial Center, and subject to these Protective Covenants shall sign such applications, forms, plans, maps, plats, plat-maps or like documents as are reasonably necessary to plat or re-plat the property and change the existing partition and/or subdivision records of the City of The Dalles or Wasco County, as the case may be, for the purpose of designating or redesignating, numbering or renumbering, the tenant's and/or landowner(s) property on said maps or plats for the convenience of and in the further promotion of development and enhancement of this part of the Chenoweth Creek Industrial Subdivision, The Dalles Industrial Center.

**Part VI  
COVENANTS RUN WITH THE LAND**

The Port of The Dalles and the tenants and/or landowners agree and declare that these Protective Covenants run with all the land held, sold, or conveyed by the Port of The Dalles and/or the tenants and/or landowner(s) within the boundaries of the Chenoweth Creek Industrial Subdivision, The Dalles Industrial Center, and that said Protective Covenants are binding on and inure to the benefit of all parties having or acquiring any right, title or interest in any of the property within the real property above referenced, and all heirs, successors and assigns of such parties.

It is more specifically agreed that the real property more particularly described as follows: Lots 2-55 of the Chenoweth Creek Industrial Subdivision, the Dalles Industrial Center, City of The Dalles, County of Wasco, State of Oregon, is subject to

these Protective Covenants which run with said real property and are binding on and inure to the benefit of all parties having or acquiring any right, title or interest in said property along with all heirs, successors and assigns of such parties.

**Part VII  
INTERPRETATION AND  
ENFORCEMENT**

**A. INTERPRETATION**

When interpreting and applying the provisions of these Protective Covenants, they shall be held to be the minimum requirements adopted for the promotion and enhancement of the real property subject to them. They are not intended to repeal, abrogate, annul, or in any way to impair or interfere with any existing provision of law or ordinance, or with any other restrictions affecting the land except that they are intended to modify and amend previous Protective Covenants adopted by the Port of The Dalles affecting other property developed and sold by the Port of The Dalles on real property adjacent to the real property described herein. It is not intended by these Protective Covenants to interfere with or abrogate or annul any easement, covenant, or other agreement between parties. However, in cases in which these Protective Covenants impose greater restrictions upon the erection, construction, establishment, moving, alteration or enlargement of buildings, or the use of any building or premises that is imposed by other authorities or provisions of law or ordinance, then in such case the provisions of these Protective Covenants shall control.

**B. ENFORCEMENT**

1. **Liquidated Damages** -Any person, firm, or corporation found to be in violation of any of the provisions of these Protective Covenants by a court of competent jurisdiction shall be subject to paying liquidated damages to The Port of The Dalles in the amount of \$250 dollars per day for every day that said violations are determined to have existed.
2. **Public Nuisance** - Any building or structure set up, erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of these Protective Covenants, and any use of any land, building or premises established, conducted, operated or maintained contrary to the provisions of these Protective Covenants, and any construction, use, maintenance or repair required of tenants and/or landowner(s) in right-of-ways contrary to the provisions of these Protective Covenants shall be, and the same is hereby declared to be unlawful and a public nuisance subject to proceedings for the abatement, removal and enjoinder thereof in the manner prescribed by law.

**3. Assessments and Liens**

- (a) **Enforcement of Covenants** - If any tenant and/or landowner(s) of any property within the specific real property subject to these Protective Covenants fails to perform its obligations under these Protective Covenants which default continues for a period of fifteen (15) days following receipt of written notice of the particulars of such default, the Port of The Dalles or any other tenant and/or landowner(s) may institute legal action against the defaulting tenant and/or landowner(s) for specific performance, declaratory relief, damages, or other suitable legal or equitable remedy, or may perform the obligations of the defaulting tenant and/or landowner(s) and the defaulting tenant and/or landowner(s) shall reimburse the person performing such work for all costs incurred with respect thereto together with interest at the rate of fifteen (15%) percent per annum or the highest rate allowed by law, whichever is less, until paid. In addition, the Port of The Dalles or person curing the default shall have the right, at any time thereafter, to place a lien on the defaulting tenant and/or landowner's property for the unpaid principal balance of said costs plus interest. The lien provided for herein shall be effective upon and shall be a lien and charge upon the property of such tenant and/or landowner(s) subject and junior, however, to the lien or charge of any bona fide first mortgage or first deed of trust upon the same or any part thereof any time given or made.
- (b) **Notice** - Any requirement in these Protective Covenants for giving written notice shall be satisfied as of the time written notice is hand delivered or deposited in the U. S. Mail correctly addressed, postage prepaid, and return receipt requested.
- (c) **Severability** - Invalidation of any provision of these Protective Covenants by any court or other order shall in no way affect or invalidate any other provisions, which shall remain in full force and effect and specifically, the remedies for enforcement provided for herein shall be cumulative and not exclusive.

**Part VIII  
VARIANCES**

The Port recognizes that situations arise which may warrant exception to the standards as published herein. A written request shall be submitted to the Port stating the variance requested and the applicable section of the standards. The Port will evaluate the merits of each request and will notify the tenant of the decision of the request within forty-five days of receipt of said request.

**Part IX  
AMENDMENT**

It is acknowledged that the Port of The Dalles has authority to amend by ordinance it's Protective Covenants from time to time and as necessary in the public interest.

**Part X  
CONDITIONAL OPTION TO  
REPURCHASE**

In the event any tenant and/or landowner, or its assigns shall have not commenced the construction of a permanent building upon then undeveloped property within the Chenoweth Creek Industrial Subdivision, The Dalles Industrial Center within one (1) year of the date of the execution of the sale document(s) by such tenant and/or landowner and the Port of The Dalles as seller, conveying and/or agreeing to convey title to that property to said tenant and/or landowner, the Port of The Dalles shall have an option to repurchase said property for the original purchase price and enter into possession of said property. The Port of The Dalles must exercise this option in writing within ninety (90) days after the expiration of the one (1) year period following the execution of the sales document(s) referred to above. Final settlement shall be within sixty (60) days of the tenant's and/or landowner's receipt of notice by the Port of The Dalles that the Port of The Dalles intends to exercise the option to repurchase under the terms and conditions expressed herein and shall be at a location to be designated by the Port of The Dalles. Tenant and/or landowner or its assigns shall pay all costs of recording, all transfer taxes, documentary stamps and all other excise taxes arising from said settlement. No assessments shall be levied against remaining Chenoweth Creek Industrial Subdivision, The Dalles Industrial Center property owners for contributions toward the purchase price. At the time of final settlement the tenant and/or landowner or its assigns shall convey unto the Port of The Dalles a title to the property such as will be insured by a reputable title insurance company licensed to do business within the State of Oregon, free and clear of all liens and encumbrances, except easements and restriction of record. Anything in this paragraph to the contrary notwithstanding, upon the Port of The Dalles' receipt of a request for extension by tenant and/or landowner and upon tenant and/or landowner's demonstration of its diligence in pursuing commencement of said construction, the Port of The Dalles, its successors and assigns may extend, in its sole discretion and in writing, the time in which such construction must be commenced by the tenant and/or landowner. In the event tenant and/or landowner fails to commence construction by the expiration of the extension period, the Condition Option to Repurchase referred to herein shall remain in effect and the Port of The Dalles shall have the option to repurchase upon the terms and conditions herein upon the expiration of the extension period granted to the tenant and/or landowner by the Port of The Dalles.

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## **PART XI**

### **Appendix - Definitions**

#### **Development Standards**

Guidelines for the development of individual sites in a manner which will enhance the working efficiency and visual amenities of the total area, while providing latitude and flexibility for the individual developer.

#### **Maintenance Standards**

Guidelines which are provided to outline the required level of upkeep and repair for structures and the surrounding property.

#### **Performance Standards**

Guidelines which are provided in order to avoid the creation of nuisances or unsanitary condition.

#### **Port of The Dalles Commission**

The governing five person Board of Commissioners elected by the voters of the Port District, to establish and control the policies and activities of the Port of The Dalles.

#### **Property Line**

The boundary which describes the extent of a particular parcel of land, as described in the lease or deed.

**References to Laws:** Any reference herein to specific sections of the City of The Dalles Land use and Development Ordinance (LUDO), City of The Dalles Sign Ordinance and other applicable laws, rules and regulations in these Protective Covenants are made applicable herein as said sections were written and effective as of the date of the adoption and recording of these Protective Covenants and as the same may be modified, amended and/or redesignated in the future.

#### **Screening**

Screening refers to evergreen plant material, fences or walls of wood, masonry or other materials of sufficient height and capacity to conceal the view of a particular function of area from the street or land use on adjacent properties.

#### **Structure**

A structure includes buildings, fences, utility boxes, etc.

#### **Tenant**

Individuals and organizations which have either been assigned property and/or subleased, leased or purchased property within the real property to which these Protective Covenants are specifically made applicable.