

**DECLARATION OF BUILDING AND USE RESTRICTION
OF
COTTONWOOD COMMERCIAL PARK**

PART A. PREAMBLE

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, THE UNDERSIGNED, being the owner (hereinafter the "Declarant") of the following described real property (hereinafter the "Subdivision") located in Morgan County, State of Utah, to-wit:

See Attached Exhibit "A"

Does hereby establish the nature of the use and enjoyment of all Lots in said subdivision and do declare that all conveyances of said Lots shall be made subject to the following conditions, restrictions and stipulations:

PART B. BUILDING AREA COVENANTS

1. Definitions. As used herein

(a) "Lot" or "Lots" refers to a portion of the property which is described by metes and bounds and is conveyed from Declarant to the first purchaser of the Lot. The Lots are not created by the recordation of a plat by the Recorder's Office of Morgan County.

(b) "Subdivision" refers to the real property described above (Exhibit "A") as divided up into Lots. Use of the term "Subdivision" is not to give any inference that the real property is subdivided pursuant to the recordation of a subdivision plat with the Recorder's Office of Morgan County.

(c) "Street" refers to the right-of-way and runs along each Lot in the Subdivision. Title to the right-of-way shall be retained by Declarant until such time as the right-of-way shall be conveyed and dedicated to the County of Morgan. If for any reason whatsoever the County of Morgan refuses to accept conveyance of the Street, owners agree to equally share the cost of maintaining, replacing and repairing the Street and to equally pay the cost of snow removal of the same. All owners agree to form a Lot association for the purpose of maintaining the Street if the County of Morgan refuses to accept ownership of the Street.

2. Land Use and Building Type. No building shall be erected, altered, placed or permitted to remain on any Lot other than a building designed for industrial uses not to exceed two-stories in heights. All construction to be of new materials, except that used brick may be used with prior written approval of the Architectural Control Committee. All Lots shall be used for industrial purposes and no structure of any kind shall be moved upon the premises unless approved by the Architectural Control Committee as provided in Part C.

3. **Construction Materials.** The minimum permitted improvements and quality shall be as follows:
- (a) The exterior siding of all buildings shall be of masonry, brick, native rock or stone, or stucco. Wood, vinyl, or metal exterior siding is not permitted.
 - (b) Soffit and fascia areas may be of aluminum, steel or vinyl siding, or by other materials approved by the Architectural Control Committee.
4. **Prohibited Uses.** No Lot shall be used for any purpose or business which is considered dangerous or unsafe, or which constitutes a nuisance, or is noxious or offensive by reason of emission of dust, odor, gas, smoke, fumes, or noise.
5. **Loading Docks.** No loading docks shall be constructed facing on any public or private street or highway. All loading docks must be constructed on the side or rear of the building.
6. **Storage Yards.** Outdoor storage yards shall be screened from public view and shall be placed so as to conform with the building line restriction set forth in paragraph 9 of this Declaration.
7. **Parking.** Owners of Lots shall not permit their employees or tenants to park on the Street in front of the Lots. It will be the responsibility of such owners, their successors, assigns, or other persons holding under them to provide adequate off-street parking for employees and visitors within their property lines. All parking areas observable from the Street shall be covered with a hard, dust-free, paved surface. Parking areas screened from public view need not be covered with a hard dust-free, paved surface.
8. **Building Site Ratio.** The ratio of building coverage to the total site area will be subject to the approval of the Architectural Control Committee, but in no case may be the ratio exceed forty percent (40%).
9. **Building Location.**
- (a) No building shall be located on any Lot nearer than fifty (50) feet to the front Lot line, or nearer than ten (10) feet to any side Street line, except accessory buildings located completely to the rear of the main structure on any Lot may be located within one (1) foot of the side yard provided the location is prior approved by the Architectural Control Committee pursuant to Part C, paragraph 2 and by Morgan County.
 - (b) No building shall be located on any Lot nearer than twenty (20) feet to the building on either side of the building on each Lot. However, the plot plans submitted by the Owner must show emergency access and must be approved by the Architectural Control Committee.
 - (c) For the purpose of this covenant, eaves, steps, and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of any building on a Lot to encroach upon another Lot.
 - (d) No building shall be erected or placed on any Lot having a width of less than one hundred (100) feet at the point where it is proposed to locate the part of the building closest to the front Street.

10. Subdividing of Lots. Once a Lot has been created by Declarant and conveyed to a purchaser, the Lot so conveyed shall not be resubdivided without the prior written approval of the Architectural Control Committee. Further, if a part of a Lot shall be sold before an improvement shall have been erected thereon, then the line between the part sold and the part retained shall be the property line to which the setback requirements shall apply.

11. Condition of Property. The owner of any site or Lot shall at all times keep the premises, buildings, improvements and appurtenants in a safe, clean, wholesome condition and comply with all respects with all government, health, fire, and police requirements and regulations; and the owner will remove at his or its own expense any rubbish of any character whatsoever which may accumulate on such site or Lot. In the event such owner fails to comply with any or all of such specifications or requirements, then the Architectural Control Committee, or any one member thereof, shall have the right, privilege and license to enter upon such premises and make any and all corrections or improvements that may be necessary to meet such standards and to charge such owner the expenses incurred in doing so.

12. Construction. If, at the expiration of three (3) years from the date of conveyance of a Lot from the Declarant to a purchaser, any purchaser shall not have begun in good faith the construction of a permanent building upon such Lot, the Declarant retains the option to rescind such contract, refund the purchase price, and enter into possession of such land. However, the Declarant, its successors or assigns, may extend in writing the time at which such construction may be begun. No incomplete building shall be permitted to remain incomplete for a period in excess of one (1) year from the date the building was started unless approved by the Architectural Control Committee as provided in Part C.

13. Signs. Plans and specifications for the construction, installation or alterative of all outdoor signs shall be first submitted to and have the written approval of the Architectural Control Committee or its successors and assigns.

14. Landscaping. Within one year of occupancy of any building in the subdivision, the front seventeen (17) feet of each Lot shall be planted in lawn or other acceptable landscaping approved by the Architectural Control Committee. the owner shall also plant and maintain _____ trees every _____ feet along the front of owner's property in a location designated by the Architectural Control Committee in order to maintain uniformity throughout the subdivision. The trees, lawns, shrubs, or other plantings shall be properly nurtured and maintained or replaced by the owner at the owner's expense.

15. Damage to Other Lots or Structures. The owner of a Lot shall be liable for any damage done to another Lot, or to improvements thereon, caused by the Lot owner or by Lot owner's contractors.

16. Slope and Drainage Control. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slope control areas of each Lot and all improvements in them shall be maintained continuously by the Lot owner, except for those improvements for which a public authority or utility company is responsible.

PART C. ARCHITECTURAL CONTROL COMMITTEE

1. Membership. In the event of death or resignation of any member of the Architectural Control Committee, the remaining members of the Committee shall have full authority to select a successor. Neither the members of the Committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. A majority of the committee may designate a representative to act for it. At

such time that all Lots owned by the Declarant are sold, the aforementioned Declarant shall be released from responsibility of the committee. At any time after all Lots owned by the Declarant are sold, the record Lot owners of a two-thirds majority of the existing recorded Lot owners shall have the power, through a duly recorded written instrument, to change the membership of the Committee or to withdraw from the committee or restore to it any of its powers and duties. The Architectural Control Committee is initially composed of:

Michael W. Babcock

2. Procedure. Before commencing construction on any Lot, each Owner shall submit a detailed plot plan showing the location of any proposed structure to be constructed upon the Lot, including detailed drawings and specifications of each such building. The committee shall review the documents submitted by an Owner within thirty (30) days from their submission to the committee. The committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee, or its designated representative, fails to approve or disapprove within 30 days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required, and the related covenants shall be deemed to have been fully complied with.

3. Immunity. Notwithstanding the foregoing provisions, the Architectural Control Committee shall have no affirmative obligation to be certain that all elements of the design comply with the restrictions contained in this declaration, and no member of the Architectural Control Committee shall have any liability, responsibility, or obligation, whatsoever, for any decisions or lack thereof, in the carrying out of the duties as a member of such committee. Such committee and its members shall have only an advisory function, and the sole responsibility for compliance with all of the terms of the declaration shall rest with each Lot owner. Each Lot owner agrees to save, defend, and hold harmless the Architectural Control Committee and each of its members on account of any activities of the Architectural Control Committee relating to such Lot owner's property or buildings to be constructed on his or her property.

4. Architectural Control Committee Discretion. The Architectural Control Committee reserves the right to be "subjective" in approving or disapproving the construction of any building to be built in the subdivision in order to enhance and protect the value, desirability, and attractiveness of the Lots. It is contemplated by this Declaration, and agreed to by all Lot owners, that there will be variations and adjustments made by the Architectural Control Committee in approving or disapproving building plans. The process of approval by the Architectural Control Committee will be subjective, but not arbitrary, in approving building plans in substantial conformity with this Declaration.

PART D. GENERAL PROVISIONS

1. Accepted Declarant Activities. Nothing in this Declaration shall prevent Declarant, Declarant's transferee or the employees, contractors, or sub-contractors of Declarant or Declarant's transferee from going on any part or parts of the subdivision whatever they determine may be reasonably necessary or advisable in connection with the development of the subdivision, including, but not limited to, conducting the business of establishing the subdivision as industrial property in the disposing of Lots by sale, lease, or otherwise; and the maintaining of such sign or signs on any of the Lots owned or controlled by the Declarant or the Declarant's transferee as may be reasonably necessary. As used in this section, the words "Declarant's transferee" specifically exclude individual purchases of improved Lots.

2. Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these covenants are recorded, after which time, said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by a two-thirds (2/3) majority of the existing Lot owners has been recorded, agreeing to change said covenants in whole or in part.

3. Enforcement. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages. The rights granted herein to enforce this Declaration of Protective Covenants shall be cumulative and are not intended to exclude any other remedies which may be available to any other person in law or in equity. Any person or persons who bring a successful action to enforce this Declaration shall be entitled to an award for reasonable attorney's fees and costs incurred in prosecuting such action.

4. Severability. Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

5. Acceptance of Restrictions. All purchasers of property described above shall, by acceptance of delivery of any deed, or by purchasing under a contract, or by acquiring any interest in any Lot listed herein, or any portion thereof, be conclusively deemed to have consented and agreed to all restrictions, conditions, covenants and agreements set forth herein.

6. Modification. This Declaration of Protective Covenants may be modified, amended, supplemented, or cancelled by an instrument signed by a two-thirds (2/3) majority of the existing Lot owners of record of all Lots in the Subdivision so long as Declarant owns any Lots in the Subdivision, this Declaration of Protective Covenants may not be modified, amended, supplemented or cancelled, even by an instrument signed by two-third majority of the existing Lot Owners of record of all Lots in the Subdivision, without the concurrence and written approval by Declarant.

Dated this 22nd day of JANUARY, 1996.

COTTONWOOD COMMERCIAL PARK

Michael W. Babcock
Michael W. Babcock

Seldon O. Young
Seldon O. Young

STATE OF UTAH)
: ss
COUNTY OF MORGAN)

On the 22ND day of JANUARY, 1996, personally appeared before me MICHAEL W. BABCOCK and SELDON O. YOUNG, the signers who executed the same.

IN WITNESS WHEREOF I have herewith set my hand and affixed my seal this 22ND day of JANUARY, 1996.

Residing at: 2202 S.W. Hill
My Commission Expires: 5-1-1997

Ronald L. Lawson
Notary Public



EXHIBIT "A"

A part of Lot 2 of Section 30, Township 5 North, Range 2 East, Salt Lake Base and Meridian: Beginning at a point on an existing boundary line fence which bears North 1335.00 feet from the West Quarter Section Corner of said Section 30, and running thence South 88°25'47" East 1304.3 feet along said boundary line fence to the county road to Cottonwood Canyon; thence along said road South 0°18' West 669.01 feet; thence North 88°25'47" West 1300.80 feet; thence North 669.09 feet to the point of beginning.