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MAY - 7 1999

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

10-216-0101 thru 0105  
All Sugar Street Commercial Subdiv Plat No 1

THIS DECLARATION, made this 4 day of May, 1999, by Sugar Street Industrial Park LLC, hereinafter referred to as "Grantor";

10-217-0201

Lot 201 Sugar Street Commercial Subdiv Plat No 2

WITNESSETH:

WHEREAS, the Grantor is the Owner of real property described in this Declaration; and more particularly described as Sugar Street Commercial Subdivision Plat No. 1 (one) lots 101,102,103,104,105 and Sugar Street Commercial Subdivision Plat No. 2 (two) lot 201.

WHEREAS, Grantor is desirous of subjecting said real property to the Protective Covenants hereinafter set forth, each and all of which is and are for the benefit of said property and for each subsequent Owner and Occupant thereof;

NOW THEREFORE, Grantor hereby declares that the real property identified as Sugar Street Industrial Park, as subdivided by plat and recorded May 4 1999, in the Office of the Recorder of Davis County, State of Utah, shall be held, transferred, sold, conveyed, leased, subleased and occupied subject to the conditions, covenants, restrictions, easements and reservations hereinafter set forth;

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SHERYL L. WHITE, DAVIS CNTY RECORDER  
1999 MAY 7 10:47 AM FEE 35.00 DEP DJW  
REC'D FOR USDS

I. PURPOSE OF THIS DECLARATION.

This Declaration is made to require development, improvement and use of SSIP-I&II so as to:

- (a) protect the Owners and Occupants of Building Sites against such use of neighboring Building Sites as might depreciate the value of their property;
- (b) encourage the erection of attractive, permanent improvements appropriately located to insure harmonious appearance and functions;
- (c) assure adequate off-street parking space and off-street truck loading and maneuvering facilities;
- (d) encourage the development of esthetic, architectural and engineering design, including compatible landscaping and, in general, provide a harmonious development that will promote the general welfare of the Owners and Occupants of SSIP-II.

II. DEFINITION OF TERMS.

The following terms and words are defined for use herein as follows:

- (a) Building - shall mean and include, but not be limited to the main portion of a structure built for permanent use and all projections or extensions thereof,

including by not limited to garages, outside platforms and docks, storage tanks, carports, canopies, enclosed malls and porches;

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(b) Building Site - shall mean a tract of real property within SSIP-I&II, as determined by the legal description in a conveyance or lease from Grantor. If fee simple title to two (2) or more adjacent Building Sites, as defined herein above, is acquired by the same Owner, such commonly-owned Building Site may, at the option of said Owner, be combined and treated as a single Building site for the purposes of this Declaration, provided that the location of the Improvements on such combined Building Site shall be subject to prior written approval;

(c) Declarations - shall mean this Declaration of Covenants, conditions and Restrictions, together with all of the provisions contained herein;

(d) Improvements - shall mean and include, but not be limited to buildings, out buildings, driveways, exterior lighting, fences, landscaping, lawns, loading areas, parking areas, railroad tracks, retaining walls, roads, screening walls, signs, utilities and walkways located on a building Site;

(e) Landscaping - a space of ground covered with lawn and /or ground cover combined with shrubbery, trees and the like, which may be complemented with earth berms, masonry of similar materials all harmoniously combined with themselves and with other improvements on the Building Site;

(f) Lawn - a space of ground covered with grass, kept neatly mown and maintained;

(g) Occupant - shall mean an entity, whether it be an individual, corporation, joint venture, partnership or association, which has purchased, leased, rented or has otherwise legally acquired the right to occupy and use any Building, Building Site or portions of any Building or Building Site, whether or not such right is exercised;

(h) Owner - shall mean an entity, whether it be an individual, corporation, joint venture, partnership or association, which is record owner of any fee simple estate, or which has an equity of redemption in a Building Site;

(i) Sign - shall mean and include every advertising message, announcement, declaration, demonstration, display, illustration, insignia, surface or space erected or maintained in view of the observer thereof for identification, advertisement or promotion of the interests of any person, entity, product or service. The definition of sign shall also include the sign structure, supports lighting system and any attachments, ornaments or other features used to draw the attention of observers. This definition does not include any flag, badge or ensign of any government or governmental agency erected for and used to identify said government or governmental agency;

(j) Street - shall mean any public street or highway, whether presently constructed, dedicated by plat map or contemplated in the future, under a street plan approved by any public authority.

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### III. LAND USE.

Building Sites within SSIP-I&II shall be used for high quality commercial and industrial purposes. The foregoing shall not, however, prevent Grantor from constructing, owning, operating, leasing or conveying real property within SSIP-I&II for service facilities consistent with the purposes of this Declaration.

### IV. RESTRICTIONS AND REQUIREMENTS ON IMPROVEMENTS.

The following restrictions and requirements are imposed on the property subject to this Declaration and are binding on all Owners and Occupants, and may be enforced against such Owners and Occupants jointly and/or severally.

(a) Temporary Structures - No temporary Buildings or other temporary structures shall be permitted on any Building Site; provided, however, trailers, temporary buildings and the like shall be permitted for construction purposes during the construction period of a permanent Building. The location and nature of such structures must be submitted to and approved by Grantor and shall be placed as inconspicuously as practicable, shall cause no inconvenience to Owners or Occupants of other Building Sites, and shall be removed not later than thirty (30) days after the date of substantial completion for beneficial occupancy of the Building(s) in connection with which the temporary structure was used;

(b) Location of Buildings - All Buildings shall be set back at least twenty (20) feet from each property line of the Building Site, and thirty (30) feet in front of building, except for underground Improvements such as storage tanks which may be placed within those portions of setback areas which are not included in the ten (10) foot landscaped area as identified in Paragraph (f) of this Section.

(c) Parking, Loading and Unloading Areas - No parking shall be permitted on any street or drive, or any place other than parking areas located upon Building Sites. Each Owner and Occupant shall be responsible for compliance by its employees and visitors.

All parking of delivery vehicles & of large commercial vehicle visible from public roads shall be visually screened as well as practicable by the use of landscaping materials.

All driveways and areas for parking, maneuvering, loading and unloading shall be paved with asphalt, concrete or similar materials.

Paved parking areas on any Building Site shall have landscaping islands intermittently placed therein.

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Loading areas shall not encroach into setback areas along street frontages. Off-street loading space shall be designed to include an additional area or means of ingress and egress which shall be adequate for maneuvering.

- (d) Screening of Service Facilities and Storage Areas - Garbage and refuse containers shall be contained within Buildings, or shall be concealed by means of a masonry dumpster enclosure, or of material similar to and compatible with that of the Building. Fuel and other storage tanks shall be installed underground wherever practicable or screened from public view. Such improvements shall be integrated with the concept of the Building plan, be designed so as not to attract attention, and shall be inconspicuously located. Unless specifically approved in writing for display and similar purposes, no materials, supplies or equipment shall be stored in any area on a Building Site except inside a closed building or behind a visual barrier which screens such areas so they are not visible to the general public from the front view of neighboring Building Sites or public streets. However, Grantor reserves the right to authorize in its discretion exceptions to the above screening provisions on Building sites when in Grantor's judgment, such exceptions are consistent with the purposes of this Declaration.
- (e) Landscaping - Every Building Site shall be landscaped in accordance with plans submitted and approved in writing as provided herein. Landscaping shall be installed within ninety (90) days after completion of Building construction or as soon thereafter as weather will permit;
- (f) Landscaping - Adjacent to Streets - Each Building Site shall be completely landscaped for a minimum depth of ten (10) feet inside the property boundary line along street frontages which shall constitute one-half of the twenty (20) foot requirement. Landscape shall constitute seven (7) per cent of property area. The following species and specifications will be required in the Landscaped area. 2" inch caliper of the following species; Linden, Snow cloud, and Canadian Cherry. And a specification of eight (8) feet height will be required on Austrian Pines, and Scottish Pine. Location and quantities as required by local planning & zoning ordinances, and or a minimum of one tree per 30 feet of lineal street landscaped area frontage.
- (g) Exterior Materials, Colors - Architecturally and esthetically suitable building materials shall be applied to or used on all sides of a Building which are visible to the general public and /or to the front view of neighboring Building Sites. Colors shall be harmonious and compatible with colors of the natural surroundings and other adjacent Buildings. Medal cladding of exterior surfaces shall be prohibited except by special exception granted by the Architectural & Development Control Committee All exterior materials shall be subject to approval or disapproval by the Architectural & Development Control Committee and Layton City;

disapproval of plans. Grantor shall either approve or disapprove plans submitted in writing within thirty (30) days from the date on which they are received, failure to either approve or disapprove within this period shall constitute approval of said plans, unless written notice from review committee is received within thirty days, asking for an extension of an additional thirty days. Extensions shall not exceed one extended period. Wherever approval in writing is required by the terms of this Declaration, such requirement shall mean written approval of Grantor in the following manner:

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- (a) All applications to Grantor shall be addressed as follows:

Sugar Street Industrial Park, LLC.  
1815 West Gentile  
Layton, UT 84041

or to any such address as the Grantor shall hereafter designate in writing, addressed to Owners and Occupants by certified or registered mail;

(b) Grantor shall exercise its best judgment to see that all Buildings and Improvements, including signs, constructed within SSIP-I&II conform to the purposes and requirements of this Declaration; provided, however, Grantor and its employees or agents shall not be liable to any Owner or Occupant or to anyone submitting plans for approval, or to any other party by reason of a mistake in judgement, negligence or non-feasible arising out of or in connection with the approval, disapproval or failure to approve any such plans;

(c) Upon receipt of approval of plans, Owner or Occupants shall diligently proceed with the commencement and completion of all approved construction. Unless work on the approved construction shall be commenced within one (1) year from the date of such approval and diligently pursued thereafter, then the approval shall automatically expire, unless Grantor has given a written extension of time;

(d) Approval of plans by the grantor may be secured prior to acquisition of a Building Site pursuant to the terms of a sales contract and provided a full set of construction documents are submitted for review.

If after initial construction of a Building upon a Building Site, Owner or Occupant submits plans for alteration, addition or reconstruction, and having received a decision of Grantor, feels that said decision is not consistent with the provisions of this Declaration, such Owner or Occupant may submit the decision to determination by arbitration in the following manner:

The party desiring arbitration shall serve upon Grantor a written notice naming an arbitrator. Within ten (10) days after the delivery of said notice, Grantor shall likewise appoint an arbitrator and notify the party desiring

(h) Utilities - Mechanical Equipment - Roof Projections - All utility lines, including electrical, shall be underground. Pad-mounted transformers, switch gear and similar equipment, which must be installed above ground line, shall be screened with suitable landscaping consistent with safety and other regulations of the Utility Companies.

All mechanical equipment shall be located or screened so as not to be visible when viewed from the streets by the general public, or from any adjacent residential uses within Sugar Street Industrial Park, Phases I&II. Penthouses and mechanical equipment screening shall be aesthetically incorporated into the architectural design of the Buildings and of materials compatible with those of the Building.

Architectural Review Committee shall have Jurisdiction over these issues. Antennae shall be visually marked to the extent practicable and consistent with electromagnetic considerations.

(i) Pollutants - No trades, services or activities shall be conducted in SSIP-I&II, nor shall anything else be done therein which may be or become an annoyance or nuisance to the Owners or Occupants by reason of unsightliness or excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid wastes, smoke or noise;

(j) Exterior Lighting - All exterior and security lighting shall have underground service and shall be designed, erected, altered and maintained in accordance with plans and specifications approved in writing to the end that lighting shall be compatible and harmonious throughout SSIP-I&II. Any lighting adjacent to residential uses, needs to be approved by Layton City.

(k) Maintenance - Each Owner and Occupant of SSIP-I&II shall be responsible for keeping its Building Site or Sites, whether or not improved, Buildings and other Improvements, including lawn and landscaping, maintained in a safe, clean, neat and orderly condition and shall prevent rubbish, dumpage, replaced equipment or machinery and the like from accumulating on its Building Site. Grantor has the right to maintain, if not complete, at the expense of building owner or its tenants at a rate equal to fair market value.

(l) Fences - Fences along street frontages shall be erected behind the 10-foot landscaping area required in Paragraph (f) of this Section. All fencing materials shall be subject to the approval or disapproval of the Architectural & Development Control Committee.

V. APPROVAL OF PLANS.

No construction or exterior alterations of any Building or other Improvements, including signs, may be commenced without written approval by Grantor of the plans for such construction or alteration. Plans shall address all items within these Covenants, or be subject to

arbitration of such appointment, and if Grantor fails within said ten (10) days so to do, the arbitrator appointed by the party desiring arbitration shall proceed in the determination of plan approval and his decision as to such approval shall be final. If Grantor appoints an arbitrator within the prescribed time, the two arbitrators so appointed shall choose a third arbitrator. If the two arbitrators so chooses shall fail to agree upon the selection of a third arbitrator within a reasonable time, such arbitrator shall be appointed, upon application of either party, by any judge of the District Court of the United States for the district which shall then include the locality in which the Building Site is situated, but such application shall not be made until such party shall have given ten (10) days written notice to the other party of its intention so to do. The board of arbitrators, constituted as aforesaid, shall proceed to determine whether or not the proposed plans shall be approved and the decision of the board, or of any two members thereof, as to such shall be binding upon the parties hereto. All expenses of such arbitration shall be apportioned equally between the parties to the arbitration.

VI. CONFLICTS.

Zoning ordinances, building codes and regulations and any other governmental restrictions and requirements shall be observed. In the event of any conflict between this Declaration and any such governmental codes, regulations, restrictions and requirements, the more restrictive standards shall apply. Any approval of Grantor required in this Declaration does not in any way relieve Owners and Occupants from obtaining approvals required by any governmental body having jurisdiction.

VII. NOTICE TO BE GIVEN BY OWNERS.

Any Owner of Building Site within SSIP-I&II, who shall transfer to another entity, whether such entity be an individual, corporation, joint venture, partnership of association, any title, interest, in or right of occupancy to such Building Site or portions thereof, shall give actual notice of the requirements of this Declaration of Covenants, Conditions, and Restrictions to such entity.

VIII. ENFORCEMENT.

Enforcement of the provisions of this Declaration shall be by any appropriate proceeding at law or in equity against any owner, occupant, person, corporation, or other entity violating or attempting to violate said provisions, either to restrain such violation, to enforce liability, or to recover damages, or by any appropriate proceeding at law or in equity against the land to enforce any lien or charge arising by virtue hereof. Grantor shall not be liable for enforcement of or for failure to enforce said provisions, and failure of Grantor or of any Owner or Occupant to enforce any of the provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

IX. MORTGAGES - DEEDS OF TRUST.

Breach of any of the foregoing Covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value within SSIP-I&II; but of said Covenants shall be binding upon and effective against any Owner of said premises whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

X. DURATION, MODIFICATION AND TERMINATION.

The Conditions, Covenants, Restrictions and Reservations set forth in the Declaration shall run with and bind the land within SSIP-I&II and shall be and remain in effect, and shall inure to the benefit of, and be enforceable by Grantor or the Owner of any property subject to this Declaration, their heirs, successors and assigns for subject to this Declaration, their heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded; provided however, that this Declaration may be amended or terminated by Grantor by an instrument in writing, properly executed, acknowledged and filed with the Davis County recorder; and provided further that such amendment or termination shall not adversely affect any Owner's or Occupants rights to use its Building Site for purposes consistent with this Declaration.

XI. SEVERABILITY.

In validation of any one or more of the provisions of this Declaration by judgment or court order, shall in no way affect any of the other provisions which shall remain in full force and effect.

XII. SIGNS.

All signs must be approved in writing and must conform to the following standards in addition to any sign regulations adopted by Layton City. All existing signs not conforming to these standards, which conformed to the Layton City regulations when erected, are considered to be a legal nonconforming sign, the continued use of which shall be governed by Layton City sign regulations relating to nonconforming signs.

1. Only the following signs are allowed:
  - (a) Public necessity signs identifying danger or hazard on or near the premises.
  - (b) Property signs offering the property for sale or lease, or announcing contemplated improvements.
  - (c) On-premises business signs directing attention to a use, product, or service conducted on the premises on which it is located.
  - (d) Identification signs indicating nature of buildings or uses other than commercial or industrial.

(e) Service signs giving information to public such as directions to parking facilities.

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2. In addition to signs prohibited in Layton City sign regulations, the following signs are specifically prohibited:

(a) Off-premises business signs advertising products or services not provided on the premises.

(b) Roof signs erected partly or wholly on or over the roof of a building.

(c) wall signs painted or giving the appearance of being painted on the wall of a building.

3. In addition to a front yard setback required by Layton City, a side yard setback of at least fifteen (15) feet is required.

4. Maximum height of ground signs supported by a fixed, permanent frame or support in the ground shall be ten (10) feet above the adjacent finish ground elevation or one half (1/2) of the height of the average main mass of the building for which the sign is erected, whichever is greater.

5. Business signs shall be limited to one or more signs not exceeding one (1) square foot for each two (2) linear feet of frontage occupied by owner or occupant, but in no case shall the total area of all business signs associated with one building exceed one hundred seventy (170) square feet.

6. Where buildings are owned or occupied by more than one business entity in the same building, business signs must be standardized flat signs. The developer or owner shall submit his selected standards for approval. Standards must include shape, background color, and size which will be limited to twelve (12) square feet per occupant, except that developer or owner may select a predominant occupant for whom he may make separate submittal for sign approval. Size, type, and location of the predominant occupant sign shall conform to the on-premises business sign standards herein.

7. Where five or more business entities occupy the same building or group of buildings on one building site under common ownership, an approved directory service sign will be allowed in addition to the on-premises business sign. Size of a directory sign shall be limited to an area of ten (10) square feet plus two (2) square feet for each occupant, provided, however, that the total area of the directory sign shall not exceed fifty (50) square feet.

