

MEADOW GATE BUSINESS PARK

a Robert Saxton Development

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration is made on the date hereinafter set forth by L. Robert and Annette G. Saxton Properties, L.L.C., a Utah Limited Liability Company, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, the Declarant is and acts on behalf of the owners of the real property known as, or to be known as, the Meadow Gate Business Park, which is more particularly described in "Exhibit A" attached hereto and by this reference incorporated herein, hereinafter referred to as the "Entire Property"; and

WHEREAS, the Property consists of the land above described, together with certain commercial buildings hereafter to be constructed upon the Property, and

WHEREAS, the Declarant has constructed, will construct or allow construction of the commercial buildings and other improvements upon the Property in accordance with the plans and drawings set forth in the Record of Survey Map to be filed in the office of the County Recorder for Cache County, Utah, and

NOW, THEREFORE, Declarant hereby declares that the Entire Property described above shall be held, sold, conveyed, transferred, developed, leased, subleased, and occupied subject to the following covenants, conditions and restrictions which shall run with the Entire Property or any portion thereof and which are for the purpose of protecting the value and desirability of the Entire Property, and every portion thereof, and shall be binding upon all parties having any right, title, or interest in the Entire Property or any portion thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

Ent 994680 Bk 1565 Pg 1156
Date: 13-Apr-2009 11:33 AM Fee \$45.00
Cache County, UT
Michael Glead, Rec. - Filed By SP
For CACHE TITLE COMPANY

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**ARTICLE I
DEFINITIONS**

Section 1. "Association" shall mean and refer to the "MEADOW GATE BUSINESS PARK OWNERS ASSOCIATION", its successors and assigns. By filing this declaration with the County Recorder's office, the Association, along with its governing abilities, shall be in force with all authority and power as outlined herein.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the business park. The Owners shall include the future owners of other parcels as shown in Exhibit "A".

Section 3. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association is described on Exhibit A attached hereto and incorporated herein.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the business park with the exception of the Common Area.

Section 5. "Declarant" shall mean and refer to all Owners currently affected herein and as have signed below and L. Robert and Annette G. Saxton Properties, L.L.C., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

**ARTICLE II
PROPERTY RIGHTS**

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Section 1. Owners' Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area that shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed

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- sixty (60) days for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3rds) of the Owners has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws adopted by the Association, his right of enjoyment to the Common Area and facilities to a member of the owner's family, or owner's tenants, or contract purchasers who occupy the property.

**ARTICLE III
MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every owner of a lot that is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment.

Section 2. Voting Rights: All Owners shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

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**ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant and current Lot Owners, for each Lot owned within the Properties, hereby covenant, and each future Lot Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments,

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together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. The maximum annual assessment shall be set first by the Declarant and recorded in the Association's minutes. Thereafter, the annual assessment shall be governed as follows:

- (a) From and after January 1 of the year immediately following the the recording of this document, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3rds) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (b) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

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Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto; provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of

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proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the recording of this declaration. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance. Declarant shall not have to pay any assessments on any Lots or Properties it owns until a Dwelling Unit on said Lot is completed and a permit of occupancy has been issued.

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Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve (12) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided

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for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V
SPECIFIC STANDARDS AND RESTRICTIONS ON USE

Section 1. Entire Property: Each Lot shall be developed pursuant to a conditional use permit issued by the Smithfield City and with approval of the Association. No portion of the Entire Property may be occupied by any use that is in violation of applicable ordinances, laws, and regulations of any governmental entity having jurisdiction over the use of any portion of the Entire Property.

Section 2. Partial Prohibition: No portion of the Entire Property shall be used for activities other than those related to, compatible with other businesses within Meadow Gate Business Park. The type and location of all uses shall be approved by the Association.

Section 3. Performance Standards: No Lot or Improvement shall be used for any offensive business purpose, nor for any activity which does not comply with federal, state, and local laws and regulations regarding noise, odor, air quality, water quality, waste water discharge, electrical interference, and hazardous materials. Lot Owners shall maintain good housekeeping standards, keeping lots free of rubble and trash. Lot Owners shall not store, maintain or keep fire hazards, explosives or dangerous materials within the Park.

Section 4. Insurance: All lot owners, and/or their tenants, shall maintain property insurance and business liability insurance.

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ARTICLE VI
ARCHITECTURAL AND DEVELOPMENT CONTROLS

Section 1. Architectural and Development Control Committee: The Association shall appoint a three (3) member Architectural and Development Control Committee, herein referred to as the “Committee”, the function of which shall be to insure that all improvements on the Entire Property harmonize with existing surroundings and structures and meet the restrictions and requirements described in this Declaration or as contained in any Development Guidelines established by the Committee.

Section 2. Submission to Committee: No Improvement shall be constructed and no significant alteration of any Improvement situated on a Lot shall be performed, unless complete plans and specifications therefore have first been submitted to and approved in writing by the Committee, which approval shall not be unreasonably refused.

Section 3. Approval Procedure: Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period, it shall be deemed to have approved the material submitted; provided, however, that with respect to any such material which constitutes a variation or waiver of any of the requirements in this Declaration stated, such variation or waiver shall be deemed to have been refused. Approval by the Committee shall be in addition to, and shall not supercede compliance with all Association requirements involving, but not limited to, the conditional use permit controlling the development of the lot.

Section 4. Standards: In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Entire Property conform to and harmonize with the requirements and restrictions of this Declaration.

Section 5. Development Guidelines:

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- (a) The Committee shall adopt such Development Guidelines as it deems necessary to inform owners and interested parties of the standards which will be applied in approving or disapproving proposed construction.

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- (b) Such guidelines may amplify but may not be less restrictive than the regulations and restrictions stated in this Declaration and shall be binding upon all Owners of Lots within the Entire Property provided, however, that such Owners may modify such guidelines with written exception from the Committee.
- (c) Such guidelines shall specifically state the rules and regulations of the Committee with respect to the submission of plans and specifications for approval, time or times within which such plans and specifications must be submitted, and state such other rules, regulations, and policies which the Committee will consider in approving or disapproving proposed construction of or alteration to Improvements.

Section 6. Basis for Approval: Review and approval by the Committee must be based upon the standards set forth in this Declaration and in the Development Guidelines. The Committee shall consider not only the quality of the specific proposal but also its effect and impact upon neighboring Lots, the Entire Property, and the surrounding residential neighborhoods.

Section 7. No liability for damages: The Committee shall not be liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any requirement made pursuant to this Article.

Section 8. Declarant's Obligation: Declarant and existing owners hereby covenant in favor of each Owner and future Owners that all Improvements erected by it shall be architecturally compatible with respect to one another, with this Declaration, and with the Development Guidelines.

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**ARTICLE VII
IMPROVEMENTS**

Improvements on Lots shall be constructed strictly in accordance with the following restrictions and requirements:

Section 1. Construction of Improvements: Temporary Structures: No temporary building or other temporary structure shall be permitted on any Lot; provided, however, that trailers,

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temporary buildings and the like shall be permitted for construction purposes during the construction period of a permanent building. Such structures shall be placed as inconspicuously as practicable, shall cause no inconvenience to Owners or Occupants of other Lots, and shall be removed no later than the date of the issuance of an occupancy permit for the Building in connection with which the temporary structure was used.

Section 2. Location of Buildings: Setbacks: Buildings on all Lots shall in accordance with Smithfield City Ordinance and Association guidelines and standards.

Section 3. Building Standards: Buildings shall be constructed according to the following standards and guidelines:

- (a) Materials: All structures must be finished on all sides with materials approved by the Committee. Colors: All buildings shall be finished in colors which will blend with the environment.
- (b) Height: Building height is restricted to a maximum set by the Committee.
- (c) Outside Storage: If allowed by the Committee, all storage and storage activities outside of the main buildings, except loading and unloading, shall be conducted within a building or enclosure constructed with the same exterior finish as the main building. The design of all storage buildings and enclosures shall be approved by the Committee.

Section 4. Parking Areas: Parking Areas shall be constructed and maintained by the Owner as follows:

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- (a) Parking Surfaces: All parking spaces, parking areas and driveways must be constructed in accordance with standards established by the Association.
- (b) Parking Setbacks: All parking areas shall be set back a certain number of feet from all dedicated public streets, in accordance with Smithfield City ordinance and standards set by the Committee.
- (c) Overnight Parking: No overnight parking on the driveway is allowed.
- (d) Parking Requirements: Parking requirements may be modified by the Committee in its judgment and discretion.

Section 5. Site Landscaping:

- (a) Landscaping and lighting plans shall be submitted to the Committee for approval as a part of the site plan.
- (b) Landscaping Completion. All site landscaping requirements shall be completed within ninety (90) days of completion of the building construction.

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However, this requirement may be varied by the Committee.

- (c) Maintenance of Lot. Buildings, outbuildings, fences, landscaping and other improvements shall be continuously maintained to preserve a well-kept appearance. If the appearance of a Lot falls below reasonable levels, the Committee, or other committee appointed by Lot Owners as provided for below, shall so notify the Owner in writing and the Owner shall have thirty (30) days thereafter to restore the property to an acceptable level of maintenance. Should the Owner fail to do so, the Committee or the other committee may order the necessary work performed at the Owner's expense. No rubbish shall be stored or allowed to accumulate on Lots. Personal property of the Lot Owner in the process of being repaired shall not be left in the visible sight of neighbors for more than thirty (30) days, unless repairs occur. No excavation for stone, gravel or earth shall be made on Lots, unless such excavation is made in connection with the erection of a building or structure thereon and approved by the Committee.

Section 6. Signs. Signs shall be in conformance with standards and guidelines established by the Committee.

Section 7. Maintenance: Buildings, Landscaping, and other improvements shall be continuously maintained by Lot Owners so as to preserve a well kept appearance (e.g., free of weeds and trash). If the Committee is not satisfied with the level of maintenance on a Lot, it shall so notify the Owner in writing and the Owner shall have thirty (30) days thereafter in which to restore its Lot to a level of maintenance acceptable to the Committee. If in the Committee's opinion, the Owner has failed to bring the Lot to any acceptable standard within such thirty (30) day period, the Committee may order the necessary work performed on the Lot at the Owner's expense. Failure to properly maintain improvements and landscaping shall be adequate grounds assessment of fines in order to pay for costs of landscaping and maintenance.

Section 8. Utility Connections: All utility lines, connections and installations must be underground and rise within a building or fixture. Any external transformers, meters, or similar fixtures shall be installed with the approval of the Committee, and should be installed below ground level or shall be located no more than three (3) feet from a building, must be installed no more than three (3) feet above ground level and must be screened.

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Section 9. Mechanical Equipment: All mechanical equipment incidental to any building,

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including roof mounted mechanical equipment, shall be totally enclosed or screened so as to be an integral part of the architectural design of the building to which it is attached or related unless otherwise approved by the Committee.

**ARTICLE VIII
GENERAL PROVISIONS**

Section 1. Severability. If any provision, paragraph, sentence, clause, phrase, or word of this Declaration should under any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.

Section 2. Topical Headings and Conflict. The Headings appearing at the beginning of the paragraphs of this Declaration are only for convenience of reference and are not intended to describe, interpret, define or otherwise affect the content, meaning or intent of this Declaration of any paragraph of this Declaration or provision hereof. In case any provisions hereof shall conflict with Utah law, Utah shall be deemed to control.

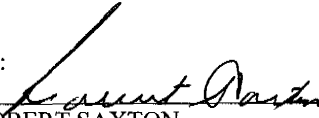
Section 3. Modification and Amendment. Any modification of or amendment to this Declaration shall become effective upon majority vote by all Lot Owners.

Section 4. Effective Date. This Declaration shall take effect upon recording in the office of the County Recorder of Cache County, Utah.

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DATED this 24th day of March, 2006. 2009

By:


ROBERT SAXTON,
Manager, L. Robert & Annette G. Saxton
Properties, L.L.C.

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Lot Owners

<u> Sandra M. Lyman, D.D.S. </u> _____, Lot owner	_____, Lot owner
_____, Lot owner	_____, Lot owner
_____, Lot owner	_____, Lot owner
_____, Lot owner	_____, Lot owner
_____, Lot owner	_____, Lot owner
_____, Lot owner	_____, Lot owner
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_____, Lot owner	_____, Lot owner
_____, Lot owner	_____, Lot owner

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ACKNOWLEDGEMENT

STATE OF UTAH)
:SS
COUNTY OF CACHE)

On this ___ day of _____ 2009, personally appeared before me ROBERT SAXTON, Manager of L. Robert and Annette G. Saxton Properties, L.L.C., who being by me duly sworn, and that the said instrument was signed by with proper authority of behalf of said L.L.C.

Notary Public

STATE OF UTAH)
:SS
COUNTY OF CACHE)

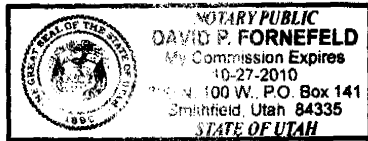
On this 3rd day of April 2009, personally appeared before me the following Lot Owners:

SCOTT M. LYMAN, DDS

[Handwritten signature of Scott M. Lyman]

who proved to me their two valid forms of identification, and attested to me that they signed the foregoing Declaration.

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[Handwritten signature of David P. Fornefeld]
Notary Public

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Exhibit "A"

Lots, 1, 2, 3, 4, 5, 6, 7, and 8, MEADOW GATE BUSINESS PARK, as shown by the official plat thereof filed August 14, 2006, as Filing No. 923258 in the office of the Recorder of CACHE County, Utah.

Tax Parcel No. 08-186-0001 thru 08-186-0008

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