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RANDALL A. COVINGTON
UTAH COUNTY RECORDER
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RECORDED FOR MOUNTAIN WEST TITLE COMPANY
ELECTRONICALLY RECORDED

Stonehaven Professional Park
Commercial Subdivision
Lehi, Utah

**DECLARATION OF EASMENTS, CROSS EASMENTS,
COVENANTS AND DEED RESTRICTIONS**

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COVENANTS AND DEED RESTRICTIONS**

Stonehaven Professional Park Commercial Subdivision

THIS DECLARATION (this "Declaration") is made this the 27 day of January 2006 by the following parties:

- (i) The undersigned Owners of Stonehaven Professional Park Commercial Subdivision Lot 1, Stonehaven Professional Park Commercial Subdivision Lot 2, Stonehaven Professional Park Commercial Subdivision Lot 3, Stonehaven Professional Park Commercial Subdivision Lot 4, and Stonehaven Professional Park Commercial Subdivision Lot 5, AND
- (ii) Tobler Properties I, LLC, a limited liability company registered in the State of Utah, and Tobler Properties II, LLC, a limited liability company registered in the State of Utah, ("Declarant"), whose address is 1010 North 520 East Orem, Utah 84097

IN CONSIDERATION of the mutual benefits to be derived from this Declaration, the Parties consisting of the Owners of the following parcels of property: Stonehaven Professional Park Commercial Subdivision Lot 1, Stonehaven Professional Park Commercial Subdivision Lot 2, Stonehaven Professional Park Commercial Subdivision Lot 3, Stonehaven Professional Park Commercial Subdivision Lot 4, and Stonehaven Professional Park Commercial Subdivision Lot 5, and now formed Association called Stonehaven Professional Park Commercial Subdivision Association and as signature below, agree as follows:

1. **Definitions.** As used in this Declaration, each of the following terms shall have the meaning indicated:

1.1. “Adjacent Property” means the land located in the City of Lehi, Utah County, Utah, address as follows:

North East corner, Approximately 3.85 Acres
 (see legal description as Exhibit B)
 1200 East State Street
 Lehi, Utah 84043

Together with all Improvements on such land.

1.2 “Buildings” means all buildings located in the Development at any time which are intended for permanent use of occupancy, including the area directly below such buildings, all projections and extensions of, and additions to, such buildings and all areas used exclusively by the occupants of such buildings, including, without limitation, drive through areas, trash enclosures, playgrounds and platforms, ramps, docks and signage affixed to the outside of such buildings. “Building” means any of the Buildings.

1.3 “Common Area” means the Common Utility Facilities, the Landscaping, the Vehicular and Pedestrian Areas and all other parts of the Development, except for the area 5 foot around the footprint of the Buildings and any other Buildings that are construction on or after the date of the Declaration. All portions of the Common Area shall initially be improved and developed in accordance with Paragraph 2 by the Owner of the Parcel on which such portions are located. The Common Area shall be maintained by the Association through a Manager pursuant to Paragraph 4.2.

1.3.1 “Limited Common Area” means the area outside the footprint of the building to a maximum of 5 foot envelope, except for those areas on which the buildings are constructed on the date of this Declaration. All portions of the Limited Common Area shall initially be improved and developed in accordance with Paragraph 2 by the Owner of the Parcel on which such portions are located. The Limited Common Area shall be maintained by the Association through a Manager pursuant to Paragraph 4.2.

1.3.2 “Ownership Voting and Common Area Expenses” All Common Area expenses shall be paid prorated as to the Ownership percentages of the total square feet of Building allowed on each lot according to the approved and recorded plat of the Stonehaven Professional Park Commercial Subdivision as of the date below. Voting rights shall be approximately equivalent to the percentage of buildable

space on each lot found here after. Ownership buildable space and voting rights are figured as follows:

<u>Lot 1</u>	5,000 square feet	12 %
<u>Lot 2</u>	5,000 square feet	12 %
<u>Lot 3</u>	11,900 square feet	31 %
<u>Lot 4</u>	11,000 square feet	27 %
<u>Lot 5</u>	7,700 square feet	18 %
<u>Total</u>	40,630 square feet	100.00 %

1.4 “Common Expenses” means the following:

1.4.1 Reasonable costs, expenses, fees, and other amounts (including appropriated reasonable reserves) paid or incurred by the Manager in connection with the improvement (excluding the initial improvement and development), operation, management, maintenance and repair of the Common Area and the performance of the Manager’s duties and rights under Paragraphs 4 or 5 or any other provision of this Declaration, (including, without limitation, all reasonable costs, expenses, fees and other amounts which are properly capitalized under generally accepted accounting principles) relating to utilities, cleaning, sweeping, ice, snow and rubbish removal, landscaping, resurfacing, re-striping, replacing damaged or worn-out Improvements (including lighting) located on the Common Area, insurance, licenses and permits, supplies, traffic regulation and control, fire, police protection and other security services, personnel (other than managerial personnel) necessary to perform any of the foregoing and depreciation allowance on any machinery or equipment owned by the Manager and used exclusively in connection with such matters;

1.4.2 Managerial, clerical and overhead costs, expenses, fees and other amounts, all of which shall be deemed to be equal to fifteen percent (15%) of the total of all other Common Expenses; and

1.4.3. Common Expenses due but not paid to the Manager, which are determined by the Manager not to be legally or practicably recoverable (after reasonable effort) from the responsible Owner, together with all interest on, and costs and attorneys’ fees incurred in connection with, such unpaid Common Expenses; provided, however, that if such unpaid Common Expenses are later received by the Manager from or on behalf of the responsible Owner, any amounts previously paid by any other Owners pursuant to this Paragraph 1.4.3 shall be refunded pro rata to such other Owners. Any assessment for public improvements levied against the entire

Development, rather than against individual Parcels, shall be paid by each Owner in accordance with its Common Expense Share, and shall be part of the Common Expenses.

1.5. “Common Expense Share” means the product obtained by multiplying the Common Expenses for the relevant period by a fraction indicated in 1.3.2, which shall be either of the following, as selected by the Manager in its discretion as the most equitable method of calculation:

1.5.2. A fraction, the numerator of which is the gross acreage of the Parcel concerned, and the denominator of which is the total gross acreage of all Parcels (see 1.3.2 for percent of each lot compared to the overall parcel). The Common Expense Share shall be adjusted from time to time by written notice given by the Manager.

1.6. “Common Utility Facilities” means all pipes, lines, wires, conduits and related facilities for electricity, natural gas, other fuels or power sources, telephone, sewage, storm drainage and all types of water that are intended, designed or used for the benefit of the Common Area or more than one Parcel. The Common Utility Facilities shall be used for the purposes set forth in Paragraph 3.2 and shall be maintained as part of the Common Area by the Manager pursuant to Paragraph 4.

1.7. “Development” means the Parcels and any real property defined as an additional part of the Development in any amendment to this Declaration executed and recorded pursuant to Paragraph 13, together with all Improvements located on the Parcels or such additional real property.

1.8. “Development Guidelines” means standards, requirements and restrictions which are placed by the City of Lehi and the approved Ordinances, and standards above the minimum standards set by the City of Lehi that may be adopted from time to time by the Manager pursuant to Paragraph 2.5.

1.9. “Flood Area” means the area of each Building concerned, measured from the exterior surface of the exterior walls of such Building, including all levels of any multi-floor Building, but excluding any basements, mezzanines not generally open to the public and equipment penthouses of such Building.

1.10. “Improvements” means all Buildings, Common Utility Facilities, Landscaping, parking areas, roads, driveways, walkways, curbs, gutters, medians, flower boxes, sidewalks, trails, exterior lighting, fences, walls, signs, utility systems and facilities and other improvements located on the realty concerned. “Improvement” means any of the Improvements.

1.11. “Landscaping” means all outdoor areas in the Development landscaped with lawn, flowers, ground cover, shrubbery, trees, ponds, fountains, gardens or similar improvements.

1.12. “Majority of the Owners” means the Owners holding a 70% vote of the aggregate Common Expense Shares.

1.13 “Manager” means Tobler Properties I, LLC., or until such time as Tobler Properties I, LLC., shall elect in the sole and complete discretion of Tobler Properties I, LLC., to hire a third party licensed and bonded Property Management company; Tobler Properties I, LLC., shall provide notice of it’s election to hire a third party licensed and bonded Property Management company and said third party licensed and bonded Property Management company shall be selected by a majority vote of the Ownership, for the term of the contract; Tobler Properties I, LLC., shall continue as Manager prior to and during any period of time that a third party licensed and bonded Property Management company is not under contract to provide the duties of Manager.

1.14 “Mortgage” means a mortgage or a deed of trust recorded in the Official Records.

1.13. “Mortgagee” means the mortgagee under a mortgage or the beneficiary under a deed of trust recorded in the Official Records.

1.14. “Official Records” means the official records of the Utah County, Utah Recorder.

1.15. “Owner” means the fee owner of record in the Official Records of the Parcel concerned. If any Parcel has more than one Owner, the liability of each such Owner under this the term “Owner” shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the realty concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

1.16. “Parcels” means the parcel of land located in Utah County, Utah, described as follows:

Stonehaven Professional Park Commercial Subdivision Lot 1,
 Stonehaven Professional Park Commercial Subdivision Lot 2,
 Stonehaven Professional Park Commercial Subdivision Lot 3,
 Stonehaven Professional Park Commercial Subdivision Lot 4,
 and/or Stonehaven Professional Park Commercial Subdivision Lot
 5,

Together with all Improvements on such land, and any real property defined as an additional Parcel or as an additional part of any Parcel in an amendment to this Declaration executed and recorded pursuant to Paragraph 13. "Parcel" means any of the Parcels.

1.17. "Qualified Mortgagee" means a Mortgagee of which each Owner has been given written notice, including such Mortgagee's name and address.

1.18. "Taxes" means all taxes, assessments, charges and fees imposed, assessed or levied by any governmental or other public authority on or against the realty concerned.

1.19. "Vehicular and Pedestrian Areas" means all areas located in the Development the time concerned that are designed to be used for the parking of motor vehicles or for pedestrian or vehicular movement, including, without limitation, parking areas, roads, driveways, walkways and sidewalks, but excluding any platforms, ramps and docks comprising a portion of the exterior of any Buildings.

1.20 "Parking Allowance" means for each Parcel; two parking stalls for each Building plus one parking stall for every 300 square feet of Building constructed within each parcel.

2 Improvements.

2.1 Manager Approval.

Except for maintenance and repair of the Common Area done by the Manager in accordance with this Declaration, no excavation, grading or similar work in the Development shall be commenced, no Improvement in the Development shall be constructed or installed, and no alteration, refurbishing or repainting of the exterior of any Improvement shall be performed, unless and until complete plans (including, without limitation, exterior elevations and exterior building materials, colors and signage) have first been submitted to, and approved in writing by, Tobler Properties I, LLC., and the City of Lehi. (Such plan submission and approval requirements shall not apply to repairs or alterations which do not (a) affect the size or the external design or appearance of a pre-existing Improvement, (b) change the permitted use, or (c) change the then-existing parking ratio.) In determining whether to approve or disapprove plans submitted, the Manager shall use its reasonable, good faith judgment to assure that all Improvements are of good quality and sound construction, functionally harmonize with existing surroundings and Improvements and comply with the other requirements of this Declaration and the

Development Guidelines of Lehi City. The Manager may, however, approve and submit to Lehi City for approval, plans which entail a variance from such requirements so long as in the reasonable judgment of the Manager such variance is necessary or appropriate. The fact that Improvements comply with applicable zoning and other laws shall not necessarily mean that such Improvements will be permissible under this Declaration. Any plans submitted to the Manger shall be submitted to the City of Lehi for approval by the Manager in writing within thirty (30) days after submission.

2.2 **Use.** No part of the Development may be occupied for any use which violated any applicable law, ordinance, rule, or regulation of the City of Lehi or which is inconsistent with this Declaration. Buildings shall be used only for commercial purposes which provide dental, medical, and/or professional services, further any and all services and products related to the practice of dentistry must first be approved in writing by Tobler Properties I, LLC, it is the intent that sole provider of any and all services and products related to the practice of dentistry within the Stonehaven Professional Park Commercial Subdivision shall be provided soley within and upon Stonehaven Professional Park Commercial Subdivision Lot 3. All Buildings shall be:

2.2.1. first-class buildings designed for dental, medical, and/or professional services or other commercial use of the type and quality typically found in first-class, high-quality commercial developments AND AS approved by the City of Lehi. The core and shell of the building shall be similar in style and architecture to the building constructed on Lot 3 thus providing a consistent and professional campus;

2.2.2. constructed and operated in such a manner as will preserve the fire insurance rating on any other then-existing Buildings; and

2.2.3. constructed in compliance with all applicable state, county, and municipal subdivision, building, zoning, sign and other laws, ordinances, rules and regulation.

2.3 **Construction.** Prior to or in conjunction with the construction and completion of any Building, related Landscaping and Vehicular and Pedestrian Areas shall be constructed by the Owners of the Building concerned in accordance with this Declaration. All buildings will follow a similar and congruent landscape plan in order to preserve the consistency and integrity of the campus. Vehicular and Pedestrian Areas shall be surfaced with asphalt or concrete, shall be adequately striped or otherwise marked and shall be graded and constructed in such a way as to ensure adequate water drainage. After the initial improvement and development of any Landscaping or Vehicular and Pedestrian Areas, the same shall not

be demolished, removed or altered in any material respect without the prior written approval of the Manager, such approval not to be unreasonably withheld. Note: All improvements must be consistent with and in accordance to the plans and specifications submitted to and approved by Tobler Properties I, LLC., and the City of Lehi, and further comply with this Declaration and all applicable law, ordinance, rule, or regulation of the City of Lehi.. Owner shall reimburse the Manager, according to the process and procedures outlined herein, for any and all costs and expenses incurred by Manager related to the improvement upon the Parcel of the Owner for any and all Landscaping and Vehicular and Pedestrian Areas.

2.4. **Maintenance.** Each Owner shall maintain repair all Improvements situated on such Owner's Parcel which are not required by this Declaration to be maintained by the Manager. If any Building is damaged or destroyed, within a reasonable time after such occurrence the Owner of the Parcel on which such Building is or was located shall either cause such Building to be replaced or restored or cause all debris to be removed and the site of such Building to be left in a level, clean and sightly condition pending construction of another Building.

2.5 **Development Guidelines.** The Development Guidelines are those established by the City of Lehi in the ordinances approved for this development.

3. **Common Area Easements.**

3.1. **Access Easements.** Each Parcel shall have appurtenant thereto and be benefited by, and the Vehicular and Pedestrian Areas shall be subject to and be burdened by, a perpetual, nonexclusive right-of-way and easement for vehicular and pedestrian ingress and egress and vehicular parking (without charge) on, over and across those areas designed for such use. The use of such right-of-way and easement shall be limited to parking for the public and general commercial purposes, which shall include reasonable and customary deliveries. Once constructed, no Vehicular and Pedestrian Areas shall be reconfigured so as to eliminate or substantially impair the right-of-way and easement created pursuant to this Paragraph 3.1 without the prior written approval of the Manager.

3.2. **Utility Easements.** Each Parcel shall have appurtenant thereto and be benefited by, and the Adjacent Property and the Common Area shall be subject to and be burdened by, a perpetual, nonexclusive right-of-way and easement for the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of underground utility pipes, lines, wires, conduits, and related facilities (including, without limitation, any

underground Common Utility Facilities and, whether or not the same are part of Common Utility Facilities, underground pipes, lines, wires, conduits and related facilities for electricity, natural gas, other fuels or power sources, telephone, sewage, storm drainage and all types of water) under, through and across the Adjacent Property and the Common Area. If the rights provided for in this Paragraph 3.2 are exercised, the Owner intended to be served by the easement concerned shall pay the cost involved with such exercise and, at such Owner's sole cost, exercise. Each utility pipe, line, wire, conduit and related facility located within the Development shall be located underground to the extent reasonably possible.

3.3 **No Obstruction.** Except to the extent approved by the Manager pursuant to Paragraph 2.1, no Owner shall permit to be constructed or placed on any portion of the Common Area any fence, wall, barricade or other obstruction, whether temporary or permanent in nature, which materially limits or impairs vehicular and pedestrian traffic over any part of the Development, or shall otherwise obstruct or interfere with the free flow of such traffic, except as may be reasonably necessary or appropriate during periods that construction activities are ongoing or to the extent that the Manager reasonably deems it necessary to do so temporarily to prevent a public dedication of, or the accrual of any rights of the public in, the Common Area. Any obstruction or interference permitted under this Paragraph 3.3 shall be done in a manner reasonably calculated to minimize its impact on businesses within the Development.

3.4 **Parking.** No Owner of any Parcel shall allow a use of the owned Parcel that would cause more parking spaces to be occupied at any one time that is greater than that which is allocated to each Parcel by the Parking Allowance.

4. **Manager's Duties Regarding Common Area.**

4.1. **Generally.** The Manager is as described in 1.13. The Manager shall timely perform or cause to be performed (for example, through subcontractors, including affiliates of the Manager) the duties set forth in this Paragraph 4, for which the Manager shall be reimbursed in accordance with this Declaration. All reasonable costs, expenses, fees and other amounts incurred or payable by the Manager in connection with the duties set forth in this Paragraph 4, whether or not such costs, expenses, fees, or other amounts are properly capitalized under generally accepted accounting principles, are part of the Common Expenses payable by the Owners under Paragraph 5. The Manager shall have no obligation to perform, and no liability for failure to perform, any obligation set forth in

this Declaration, the cost of which is to be reimbursed (in whole or in part) by the Owners, if the funds to pay for such obligation are not timely received by the Manager pursuant to this Declaration.

4.2 **Maintenance of Common Area.** After the Common Area is initially improved and developed, the Association shall hire a Manager who shall keep the Common Area in a reasonably clean, orderly and usable condition and in a good state of maintenance and repair, consistent with a first-class commercial development (except that as regard the Common Utility Facilities, the Manager shall be obligated to accomplish the foregoing only to the extent that such matters are not the responsibility of or accomplished by the respective utility companies involved); provided, however, that each Owner shall be solely responsible to provide and pay for the watering of all Landscaping located on such Owner's Parcel. The foregoing shall include, without limitation, maintenance, repair and replacement, as necessary and appropriated of all Landscaping and their Improvements located on the Common Area, including, without limitation, maintaining, repairing and replacing asphalt, parking lot lighting and parking medians and keeping the Common Area reasonably free of snow, ice and rubbish.

4.3 **Insurance on Common Area.** The Owners shall maintain commercial general liability insurance insuring all Owners and such other persons who hold a leasehold estate or other interest in any Parcel and who are designated as a named insured in a writing delivered to the Manager by the Owner of such Parcel, as their respective interest may appear, against all claims for personal injury, death or property damage occurring on the Common Area. Such insurance shall be carried with a responsible company and shall afford at least the coverage provided by a "combined single limit" of not less than \$1,000,000 per occurrence, and not less than \$2,000,000 in the aggregate, for bodily injury, death and property damage, which may be increased by the Manager in its reasonable discretion from time to time.

4.4. **Damage of Common Area.** If all or any part of the Common Areas if damage or destroyed through casualty, the Manager shall, as soon as reasonably possible, rebuild and restore the same to substantially the same condition as existed prior to the damage or destruction. Prior to such rebuilding and restoration, each Owner shall, within thirty (30) days after notice of the amount due, contribute an amount equal to the product obtained by multiplying the Common Expense Share of such Owner by the projected cost of such rebuilding and restoration (net of any insurance proceeds or recoveries from persons causing such damage actually received by the Manager). Appropriate additional payment by, or refunds to, each Owner shall be made on completion of such rebuilding or restoration. Alternatively, the Manager may collect the actual or projected

cost of such rebuilding or restoration following commencement or completion of such rebuilding or restoration.

4.5. **Default of Manager.** If the Manager fails to perform any obligation under this Paragraph 4 and such failure continues for a period of thirty (30) days after written notice of such failure is given to the manager by any Owner, Mortgagee, or the City of Lehi, or if the performance of such obligation would reasonably require more than thirty (30) days, if the Manager fails to commence such performance within such (30) day period or thereafter diligently prosecute such performance to completion, the Owner, Mortgagee, or City of Lehi giving such notice may, on written notice to the Manager, and each other Owner, perform such obligation in the stead of the Manager. Such Owner or Mortgagee shall be reimbursed for such performance in the same manner as if the obligation had been performed by the Manager.

5. **Common Expenses.**

5.1. **Budget.** At least annually, the Manager shall submit to each Owner a proposed budget for the Common Expenses for the following year. No Owner shall unreasonably withhold or delay its approval of such budget. Each Owner shall give the Manager written notice of its approval or disapproval of such budget within thirty (30) days after receipt. If any Owner fails to give such notice within such thirty (30) day period, such Owner shall be deemed to have approved such budget. Any disapproval of such budget shall be accompanied by a reasonably detailed explanation for such disapproval. If a majority of the Owners approve or are deemed to have approved such budget, the Manager and all such disapproving Owners shall reasonably cooperate to address and resolve the reasons for such disapproval as soon as reasonably possible so as to arrive at a budget which is approved are deemed to be approved by the majority of the Owners. Whenever a budget is revised as a result of Owners disapproval, the Manager shall submit such revised budget to each Owner, and the foregoing process shall be repeated, having the same time periods for approval and disapproval.

5.2. **Collection** The Manager is expressly authorized by each Owner to incur all costs, expenses, fees and other amounts included within the definition of "Common Expenses" set forth in Paragraph 1, and each Owner shall contribute such Owners Common Expense Share in the Manner described in this Paragraph 5. The Manager shall make reasonable, good faith effort to collect from each Owner such Owners Common Expense Share and may, at its option, do either of the following: (a) invoice each Owner for such Owner's Common Expense Share on a monthly, quarterly or other periodic basis as the actual amount of the

Common Expense Share becomes known (in which event, the Common Expense Share shall be due and payable within thirty (30) days after the delivery of such invoice); or (b) invoice each Owner in advance based on the manger's reasonable estimate of the Common Expense Share for the period concerned, which estimate shall be provided to each Owner at least annually. If the Manger adopts the second alternative, each Owner shall pay such Owner's Common Expense Share in equal installments on the first day of each month, and within ninety (90) days after the end of each calendar year, the Manager shall furnish each Owner with a reasonably detailed final statement of the actual amount of such Owner's Common Expense Share for such calendar year. If such final statement reveals that the monthly installments made by an Owner aggregate less than such Owner's Common Expense Share for such final statement is furnished. If such final statement reveals that an Owner's payments aggregate more than such Owner's Common Expense Share for such calendar year the excess amount shall, at the option of the Manger, either be returned to such Owner or be applied by the Manger to amounts next due from such Owner under this Paragraph 5. Any amount required to be paid under this Paragraph 5 which is not timely paid shall accrue interest on and after the date due until paid in full, before and after judgment, at the rate of eighteen percent (18%) per annum. In addition, a late charge of five percent (5%) of such payment may be charged by the Manager for any payment not made within ten (10) days after the date due. Such late charge is payable not as a penalty, but in order to compensate the Manger for the additional expense involved in handling the delinquent payment. The acceptance by the manager of any payment that is less than the entire amount then due shall be on account only and shall not constitute a waiver of the obligation to pay such entire amount. All records and accounts maintained by the Manager which relate to the Common Expenses shall be open to examination and audit by any Owner on at least ten (10) days' prior written notice to the Manager

5.3 Certain Obligations and Rights. The obligations of each Owner under Paragraph 5.2 and all other provisions of this Declaration are the personal obligations of such Owner and may be enforced by the Manger or, on written notice to the Manger and each Owner, by any other Owner. No Owner may avoid or diminish the personal nature of such obligations by waiver of the use and enjoyment of the Common Area, by abandonment of such Owner's Parcel or any Improvements on such Owner's Parcel or by waiver of any of the services or amenities provided for in this Declaration. Suit to recover a money judgment for any amount due may be maintained without foreclosing or waiving the lien described in Paragraph 5.4. All remedies set forth in this Paragraph 5 are cumulative and are in addition to any remedies otherwise available at law or in equity, which shall include the right to restrain by injunction any violation or threatened violation of this Declaration and to compel by decree specific

performance, it being agreed that the remedy at law for any breach may be inadequate.

5.4 **Lien**. If not paid when due, the amounts payable under this Paragraph 5 or any other amounts payable to the Manager under this Declaration may be secured by a lien against the delinquent Owner's Parcel. Such lien shall be evidenced by a notice of lien recorded by the Manger in the Official Records. A copy of such notice of lien shall be given to the delinquent Owner and any Mortgagee holding a Mortgage covering such Owner's Parcel within ten (10) days following recordation. Such notice of lien shall set forth the unpaid amount, the date such amount was due, the name of such Owner and a description of the property subject to such lien, and shall be signed and acknowledged by the manger. Any such lien may be foreclosed in the same manner as is provided under applicable law for the foreclosure of mortgages covering real property, and shall be subject and subordinate to (a) each Mortgage recorded at the time such notice of lien is recorded, (b) this Declaration, (c) each (recorded or unrecorded) utility right-of-way and easement existing at the time such notice of lien is recorded, (d) the interest of each tenant under each lease (whether recorded or unrecorded) existing at the time such notice of lien is recorded, and (c) the lien for general taxes and other governmental assessments, but shall be prior and superior to all other interests, whether recorded or unrecorded at the time such notice of lien is recorded

5.5 **Default**. If any Owner fails to perform any obligation under this Declaration and such failure continues for a period of thirty (30) days after written notice of such failure is given to such Owner by the Manger, or if the performance of such obligation would reasonably require more than thirty (30) days, if such Owner fails to commence such performance within such thirty (30) day period or thereafter diligently prosecute such performance to completion, the Manger may, on written notice to such Owner, perform such obligation in the stead of such Owner. The Manger shall be reimbursed by such Owner on demand for all costs and expenses (including attorneys' fees) incurred in connection with such performance, with interest on such costs and expenses, both before an after judgment, at the rate of eighteen percent (18%) per annum.

6. **Taxes**.

Each Owner shall pay, prior to delinquency, all Taxes on such Owner's Parcel, unless the collection of such Taxes and any sale or forfeiture of such Parcel for nonpayment of such Taxes is prevented or suspended through appropriate legal proceedings. If any Parcel is not assessed and taxed as an independent parcel for tax purposes, the Taxes allocable to such Parcel shall be an equitable proportion of the Taxes for all of the land

and Improvements included within each relevant tax parcel assessed, such proportion to be determined by the Manger from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

7. Insurance.

Each Owner shall maintain commercial general liability Insurance providing coverage against bodily injury, death and property damage occurring, or by reason of activities, on or about the Development. Such insurance shall be carried with a responsibly company, shall afford at least the coverage provided by a "combined single limit" of not less than \$1,00,000 per occurrence, and not less than \$2,000,000 in the aggregate, for bodily injury, death and approval of the Manger, any Owner may comply with the requirements of this Paragraph 7 by the purchase of blanket coverage, and may elect such deductible provisions as are consistent with good business practices. Each Owner shall, on request, furnish the Manger with a certificate issued by its insurer evidencing that insurance is in force which complies with the requirements of this Paragraph 7.

8. Indemnification.

Each Owner shall indemnify, defend and hold harmless the Manger and each other Owner from and against all losses, damages, claims, causes of action, demands, obligations, suits, controversies, costs, expenses (including, without limitation, litigation expenses and attorneys' fees, whether incurred with or without the filing of suit, on appeal or otherwise), liabilities, judgments and liens, of whatever kind or character, which are caused by such Owner, including, without limitation, those caused by the use, deposit, storage, disposal, transportation or release of any hazardous substances, hazardous wastes, pollutants or contaminants on any part of the Development by (a) the indemnifying Owner, (b) any person leasing or occupying the parcel owned by such indemnifying Owner, or © any agent, employee, contractor, invitee or licensee of either the indemnifying Owner or any person leasing or occupying the Parcel owned by such indemnifying Owner.

9. Prohibited Uses

The following uses are prohibited in the Development:

- a. All uses that do not comply with the Ordinances set forth by the City of Lehi and this Declaration,

- b. Any other use that, by a super majority vote of the Owners, that is deemed by the Owners does not fit the use of this development.

10. **Title Protection.**

Except as set forth in Paragraph 5.4, breach of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in any part of the Development, and shall not defeat, impair or render invalid the lien of, or other rights under, any Mortgage covering any part of the Development.

11. **Mortgage Protection.**

11.1. **Obligations of Mortgage.** Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Mortgagee interested under any Mortgage affecting any part of the Development shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Declaration (other than those provisions, if any, concerning a consent to be given by a Mortgagee, if a Mortgagee's failure to give such consent is wrongful).

11.2. **Notice: Right to Cure.** Any Owner, on delivering to any other Owner any notice, demand or other communication pursuant to the provisions of this Declaration, shall at the same time deliver by certified mail, return receipt requested, copies of such notice to each Qualified Mortgagee of such other Owner at the latest address provided to such Owner by such other Owner or such Qualified Mortgagee. Although otherwise effective with respect to the Owner receiving such notice, no notice delivered to any Owner shall affect any rights or remedies of any Qualified Mortgagee unless a copy of such notice has been delivered to such Qualified Mortgagee shall have the right to remedy a default, or cause the same to be remedied within the time allowed to the defaulting Owner plus, in the case of monetary defaults, and additional fifteen (15) days and, in the case of non-monetary defaults, an additional thirty (30) days; provided, however, that if a non-monetary default to remedy such default if such Qualified Mortgagee commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

11.3. **Performance.** Each Qualified Mortgagee shall have the right to act for and in place of the Owner of the Parcel by its Mortgage, to the extent permitted by the applicable Mortgage or otherwise agreed to by such Owner in writing. Any Owner shall accept performance by or on

behalf of any Qualified Mortgagee as if the same had been performed by the other Owner. Such acceptance shall not create any additional rights as against such Owner in such Qualified Mortgagee, nor shall have the right, to the extent the Owner of the Parcel covered by the Mortgage concerned agrees in writing, to appear on a legal action or proceeding on behalf of such Owner in connection with Parcel.

11.4. **Recognition.** On request, Manager agrees to execute, acknowledge and deliver to any Qualified Mortgagee an instrument prepared by the Qualified Mortgagee concerned, acknowledging that such Qualified Mortgagee is a "Qualified Mortgagee" entitled to the benefits of the Paragraph 11.

11.5 **Estoppel.** The Manager shall, within fifteen (15) days after the request of any Owner, execute and deliver to the requesting Owner an estoppel certificated in favor of the requesting Owner and such other person as the requesting Owner shall designate setting forth the following:

11.5.1 that, to the knowledge of the Manager, such Owner in not in default under the Declaration or, in the alternative, that such Owner is in default under this Declaration, setting forth in reasonable detail the nature of such default;

11.5.2 any reasonably requested information regarding Common expenses and liens recorded pursuant to Paragraph 5.4, to the extent that the Common Expenses and such liens relate to such Owner's Parcel; and

11.5.3 such other information as the requesting Owner may reasonably request.

The requesting Owner's Mortgages and purchasers shall be entitled to rely on any estoppel certificate executed by the Manager pursuant to this Paragraph 11.

12. **Covenants to Run with Land.**

Each provision of the Declaration shall constitute a covenant running with the land, and shall be binding on and shall insure to the benefit of the Manager and each Owner and their respective successors and assigns, all of which persons may enforce any obligation created by this Declaration. This Declaration shall be binding on each part of the Development, and all interests in any part of the Development shall be subject to this Declaration. The interests in and rights concerning any portion of the Parcels held by or vested in subordinate to the Declaration, and the Declaration shall be prior and superior to such interests and rights. By in

any way coming to have any interest in or occupying any part of the Development, the person so coming to have such interest or occupying agrees to be bound by the Declaration; provided, however, that no such person shall have liability under this Declaration as an Owner until such persons becomes an "Owner," as defined in Paragraph 1, nor shall such person have liability under this Declaration for any acts committed prior to the time such person became an Owner.

13. **Amendment.**

13.1 **Requisite Parties.** This Declaration may only be amended by an instrument recorded in the Official Record that has prior to recording been executed by the Manager and each Owner, except as follows:

13.2 **No Other Person Required.** Unless it is a required party to the amendment concerned under paragraph 13.1, no other person (including, without limitation, any person holding an interest in or occupying any Parcel) needs to execute such amendment in order to make such amendment in all respects effective, valid, binding and enforceable; provided, however, that no amendment to this Declaration shall affect the rights of any Mortgagee holding a Mortgage which constitutes a lien on the realty directly involved in such amendment (if such lien is recorded prior to the recordation of such amendment) unless such Mortgagee consents to such amendment in writing. All requisite parties to an amendment shall not withhold condition or delay the approval or execution of such amendment in a manner which is unreasonable.

14. **Attorneys' Fees.**

If any action is brought because of a default under or to enforce or interpret this Declaration, in addition to the relief to which such party is entitled, the party prevailing in such action shall be entitled to recover from the unsuccessful party reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

15. **Release On Transfer.**

On and after the date an Owner transfers (other than merely for purposes of security) or is otherwise divested of such Owner's ownership interest in any Parcel, such Owner shall be relieved of all liabilities an obligations under this Declaration related to such Parcel, except for such liabilities or obligations as may be accrued as of the date of such transfer or divestiture.

16. **No Merger.**

The easements, covenants, restrictions and other provisions contained in this Declaration shall remain in full force and effect despite the fact that all or a part of the Development may be owned by the same person from time to time, it being the intention of the Parties to create a common scheme for the development and operation of the Development which will not be terminated by the doctrine of merger or otherwise, unless this Declaration is terminated in accordance with Paragraph 19.

17. **Force Majeure.**

The Manger and any Owner or other person obligated under this Declaration shall be excused from performing any obligation set forth in this Declaration, except the payment of money, so long as (but only so long as) the performance of such obligation is prevented or delayed by an act of God, weather, avalanche, fire, earthquake, flood, explosion, act of the elements, war, invasion, insurrection, riot, malicious mischief, vandalism, larceny, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, order of government or civil defense authorities or any other cause reasonably beyond the control of the Manager, the Owner or other person prevented or delayed.

18. **Certain Agreements.**

The purpose of this Declaration is to create certain easements, covenants, restrictions and other provisions which are to apply among the Parcels and which are to define and govern the rights and obligations as between those persons interested in a given Parcel, on the one hand, and those persons interested in other Parcels, on the other. Accordingly, this Declaration shall not alter any agreements which allocate rights and obligations of persons having an interest in the same Parcel among such persons or third parties, but such agreements shall not limit the liability or obligation of any person under this Declaration.

19. **Effective Dates and Duration.**

This Declaration and any amendment to this Declaration shall take effect as of the date on which it is recorded in the Official Records. This Declaration shall remain effective until terminated and extinguished by an instrument recorded in the Official Records and executed by cash Owner of the Development and the Mortgagee under each Mortgage then affecting the Development.

20. Notices.

Any notice or demand to be given by the Manager to any Owner or by any Owner to the Manager or another Owner shall be given in writing by personal service, telecopy (provided that a hard copy of any such notice has been dispatched by one of the other means for giving notice within twenty-four (24) hours after telecopying), express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, and addressed to such Owner at the address set forth for such Owner in the Official Records or in the taxing records or, if different, at another address provided by such Owner. Any Owner may change the address at which it desires to receive notice on written notice of such change to the Manager and each other Owner. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

21. Interpretation.

This Declaration shall insure to the benefit of, and shall be binding on, the Parties and their respective successors and assigns. Titles and headings of Paragraphs of this Declaration are for convenience of reference only and shall not affect the construction of any provisions of this Declaration. This Declaration shall be governed by, and constructed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to valid under applicable law; but, if any provision of this Declaration shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provisions or the remaining provisions of this Declaration. Except as otherwise provided in this Declaration, no remedy provided in this Declaration shall be exclusive of any other remedy at law or in equity (whether existing on or created after the date of this Declaration), and all remedies under this Declaration may be exercised concurrently, independently or successively from time to time. The failure on the part of any person to promptly enforce any right under this Declaration shall not operate as a waiver of such right, and the waiver of any default shall not constitute a waiver of any subsequent or other default.

22. Binding.

Stonehaven Professional Park Commercial Subdivision Lot 2

By PF Tobler

Title manager

Date 1-27-06

STATE OF UTAH)
 ss
COUNTY OF UTAH)

On the 27 day of January 2006, personally appeared before me Penney F. Tobler, Managing Member of Tobler Properties II, LLC., the signer of the within instrument, who duly acknowledged to me that she executed the same.



Notary Public Brian C Bate
my commission expires: 08/01/07

DECLARANT:

Stonehaven Professional Park Commercial Subdivision Lot 3

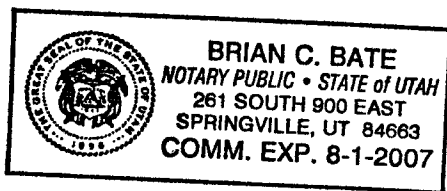
By PF Tobler

Title manager

Date 1-27-06

STATE OF UTAH)
 ss
COUNTY OF UTAH)

On the 27 day of January 2006, personally appeared before me Penney F. Tobler, Managing Member of Tobler Properties I, LLC., the signer of the within instrument, who duly acknowledged to me that she executed the same.



Notary Public Brian C. Bate
my Commission expires: 08/01/07

DECLARANT:

Stonehaven Professional Park Commercial Subdivision Lot 4

By PJ Tobler

Title Manager

Date 1-27-06

STATE OF UTAH)

ss

COUNTY OF UTAH)

On the 27 day of January 2006, personally appeared before me Penney F. Tobler, Managing Member of Tobler Properties II, LLC., the signer of the within instrument, who duly acknowledged to me that she executed the same.



Notary Public Brian C. Bate
my Commission expires: 08/01/07

DECLARANT:

Stonehaven Professional Park Commercial Subdivision Lot 5

By PJ Tobler

Title Manager

Date 1-27-06

STATE OF UTAH)
) SS
 COUNTY OF UTAH)

On the 27 day of January 2006, personally appeared before me Penney F. Tobler, Managing Member of Tobler Properties II, LLC., the signer of the within instrument, who duly acknowledged to me that he executed the same.

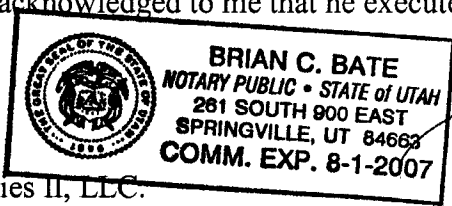


Notary Public Brian C. Bate
 my commission expires: 08/01/07

DECLARANT: Tobler Properties I, LLC.
 By PJ Tobler
 Title manager
 Date 1-27-06

STATE OF UTAH)
) SS
 COUNTY OF UTAH)

On the 27 day of January 2006, personally appeared before me Penney F. Tobler, Managing Member of Tobler Properties I, LLC., the signer of the within instrument, who duly acknowledged to me that he executed the same.

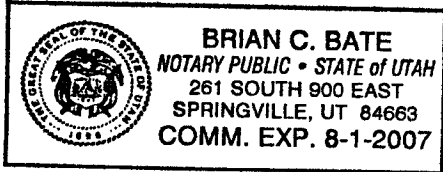


Notary Public Brian C. Bate
 my commission expires: 08/01/07

DECLARANT: Tobler Properties II, LLC.
 By PJ Tobler
 Title manager
 Date 1-27-06

STATE OF UTAH)
) SS
 COUNTY OF UTAH)

On the 27 day of January 2006, personally appeared before me Penney F. Tobler, Managing Member of Tobler Properties I, LLC., the signer of the within instrument, who duly acknowledged to me that he executed the same.



Notary Public

Brian C. Bate
my commission expires: 08/01/07