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PEGGY FOY SULSER, Recorder  
WASATCH COUNTY CORPORATION  
For: THE LOFTS AT DEER HAVEN LLC

Parcel No. 00-0004-4169  
Parcel No. 00-0004-4177  
Parcel No. 00-0011-8260

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
RECIPROCAL EASEMENTS**

**BY**

**Tony's Tacos Mexican Restaurant LLC (Parcel No. 00-0004-4169)**

**Star B LLC (00-0004-4177)**

**and**

**The Lofts at Deer Haven LLC (Parcel No. 00-0011-8260)**

**Heber City, Wasatch County, Utah**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS ("Declaration") is made as of the date hereinafter set forth by Tony's Tacos Mexican Restaurant LLC, a Utah Limited Liability Company ("Lot 1 Owner"), Star B LLC, a Utah Limited Liability Company ("Lot 2 Owner") and The Lofts at Deer Haven LLC, a Utah Limited Liability Company ("Lot 3 Owner") (collectively, the "Owners").

### RECITALS

A. Lot 1 Owner is the fee owner of that certain real property situated in Wasatch County, Utah, bearing Parcel No. 00-0004-4169 and described on Exhibit A, attached hereto and hereby incorporated by reference (the "Lot 1 Parcel") on which is operated a building primarily used for a restaurant.

B. Lot 2 Owner is the fee owner of that certain real property situated in Wasatch County, Utah, bearing Parcel No. 00-0004-4177 and described on Exhibit B, attached hereto and hereby incorporated by reference ("the "Lot 2 Parcel") on which is operated a building primarily used for orthodontic services;

C. Lot 3 Owner is the fee owner of that certain real property situated in Wasatch County, Utah, bearing Parcel No. 00-0011-8260 and described on Exhibit C, attached hereto and hereby incorporated by reference (the "Lot 3 Parcel", and together with the Lot 1 Parcel and Lot 2 Parcel, the "Property").

D. The Lot 3 Owner desires to develop the Lot 3 Parcel into an office building, as depicted on the site plan attached hereto as Exhibit D; and

E. The Owners each desire to establish for its own benefit and for the mutual benefit of all future Owners and Occupants of the Property, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth herein (hereinafter collectively referred to as the "Restrictions"), which shall run with and be a burden upon the Property.

### DECLARATION

NOW, THEREFORE, the Owners, as owner of the Property and for the purposes above set forth, declares as follows:

### ARTICLE 1 DEFINITIONS

Reference in this Declaration to any of the following terms shall mean:

1.1 "Building" shall mean any permanently enclosed structure placed, constructed or located on a Parcel, which for the purpose of this Declaration shall include any building appurtenances such as stairs leading to or from a door, transformers, trash containers or compactors, canopies, supports, loading docks, truck ramps, and other outward extensions of such structure intended to be used exclusively by the Occupant of the Building.

1.2 "Building Area" shall mean those areas shown on the Site Plan to be utilized for construction of Buildings and related improvements intended for retail or other related use by Occupants.

1.3 "Common Area" shall mean and include (a) all Driveways located within the Property; (b) the Storm Drain; and (b) Parking Areas located within the Property designated as Common Area on the Site Plan. If

a Parking Space is not designated as Common Area on the Site Plan, then it shall not be Common Area for purposes of this Declaration.

1.4 “Driveways” shall mean the driveways and private roadways within the Property providing ingress, egress and access to the Property and any Parcel as shown on the Site Plan.

1.5 “Lease” shall mean a lease for the use or occupancy of any portion of the Property for commercial retail or related purposes.

1.6 “Mortgage” shall mean a mortgage, or a deed of trust recorded in the Official Records.

1.7 “Mortgagee” shall mean the mortgagee under a mortgage or the beneficiary under a deed of trust recorded in the Official Records.

1.8 “Occupant” shall mean any Person from time to time entitled to the use and occupancy of any portion of the Building Area under this Declaration or any Lease, license or concession agreement, or other similar instrument or agreement.

1.9 “Official Records” shall mean the official records of the Wasatch County, Utah Recorder.

1.10 “Owner” shall mean each of the Persons owning the fee interest, or any portion thereof, of a Parcel within the Property. Whenever in this Declaration action, approval, or consent is required of the Owners, unless specifically requiring consent or action by all the Owners, action, approval or consent shall be based on a majority voting interest of the Owners with such voting interest based on the square footage of land owned by such Owners within the Property.

1.11 “Parcel” shall mean the legal lots located within the Property as respectively described in Exhibit A, Exhibit B and Exhibit C, and as shown on Exhibit D.

1.12 “Parking Areas” shall mean only that portion of the Common Area used for parking of motor vehicles including, without limitation, incidental and interior roadways, trash enclosures, walkways, curbs and landscaping within the areas used for such parking, together with all improvements which at any time are erected thereon, but excluding truck ramps, loading or delivery areas located in the Common Area as show on the Site Plan. The Parking Areas shall not include Parking Spaces not designated as Common Area on the Site Plan. Any enlargement of or addition to the Parking Areas shall automatically be included in the definition of Parking Areas for purposes of this Declaration. Shared Parking Stalls shall specifically include, but not be limited to the eighteen (18) Parking Stalls located in the western parking lot and area, on both the west and east sides of that parking area of The Lofts at Deer Haven, LLC, aka Deer Haven property, and the seven (7) Parking Stalls along the eastern boundary line of the east parking lot and area of Star B LLC, but only as available during the week, or after hours and on weekends during the day and evenings when the business associated with Star B LLC is closed. These defined Shared Parking Stalls should also be considered and designated by reference, as Common Areas on the Site Plan, as lined out in the Site Plan, Exhibit D.

1.13 “Parking Spaces” shall mean all the parking spaces located within the Property, as identified on the Site Plan. The Parking Spaces, as necessary, include spaces that are not Common Area, known as Private Parking Spaces. Shared Parking Spaces are specifically defined in Paragraph 1.12 above, and in the Site Plan, Exhibit D.

1.14 “Private Parking Spaces” shall mean all the parking spaces located within the Property, as identified on the Site Plan, that are not also designated as Common Area and/or Parking Areas. The Private Parking Spaces adjacent to each Parcel shall belong to the respective owner of that Parcel, as shown on the Site Plan, but unless designated as private, may also be shared Parking Spaces, as designated on the Site Plan. Specifically, Tony’s Tacos shall be entitled to four off site, designated private parking stalls on Deer Haven’s northwest corner of its parking lot, in consideration for loss of comparative four stalls as a result of Deer Haven’s west access through and over Tony Taco’s property, and as more specifically designated on the Site Plan. These shall be the first four parking stalls in that said corner. Tony’s Tacos shall also have exclusive parking on their property, including but not limited to those parking stalls in the northeast corner of Tony’s Tacos property, adjacent to their trash dumpster.

1.15 “Person” or “Persons” shall mean individuals, partnerships, associations, corporations, limited liability companies, trusts, governmental agencies or any other forms of business or legal entity.

1.16 “Qualified Mortgagee” shall mean a Mortgagee of which each Owner have been given written notice, including such Mortgagee’s name and address.

1.17 “Site Plan” shall have the meaning ascribed to such term in Recital D above.

1.18 “Storm Drain” shall mean and refer to that certain storm drain, storm sewer, surface water drain/sewer or stormwater drain system shown on the Site Plan designed to drain excess rain and ground water from the Parking Areas, Parking Spaces and other impervious surfaces.

1.19 “Tenant” shall mean the tenant or Occupant under a Lease.

1.20 “User” shall mean each Owner, together with the employees, customers, agents, Tenants, Occupants and invitees of each such Owner.

## ARTICLE 2 GRANT OF EASEMENTS

### 2.1 Grant of Easements.

(1.a) Ingress, Egress and Parking. Each Owner hereby grants and conveys to each other Owner and for the use of the Owners’ Users, in common with others entitled to use the same, a non-exclusive, perpetual easement for the ingress, egress and parking of vehicles over and across Driveways and Parking Areas, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the Driveways and Parking Areas, as the same may from time to time be constructed and maintained for such use. The easement herein established shall be appurtenant to and for the benefit of each Parcel, and shall be binding upon, enforceable against and burden each Parcel. Such easement rights shall be subject to the following reservations as well as the other applicable provisions contained in this Declaration:

(1.a.i) Each Owner or Occupant reserves the right at any time and from time to time to exclude and restrain any Person who is not a permitted User from using its Parcel;

(1.a.ii) Each Owner or Occupant reserves the right to temporarily erect or place barriers in and around areas on its Parcel which are being constructed and/or repaired in order to ensure either safety of Persons or protection of property;

(1.a.iii) Each Owner reserves the right to close, if necessary, all or any portion of the Common Area on its Parcel to such extent as may be legally necessary to prevent a dedication thereof or the accrual of any rights of any person, other than the Parties to this Agreement, or of the public therein;

(1.a.iv) Each Owner reserves the right to use portions of the Common Area while engaged in making additional improvements or repairs or alterations to its respective Parcel;

(1.a.v) No person shall be permitted to construct or maintain any building on the Parking Spaces, which would materially limit or otherwise interfere with the use of such Parking Spaces;

(1.a.vi) Each Owner shall have full credit of all Parking Areas for purposes of satisfying any governmental parking requirements pertaining to any of the Parcels, and therefore, each Owner shall be entitled to share such shared parking stalls without restrictions from each other; and

(1.a.vii) Neither Owner shall unreasonably overburden the Parking Areas and shall not grant any parking rights to Users that exceed reasonable use of the Parking Areas by both Owners.

(1.a.viii) Each easement granted for the benefit and access of each Parcel in this Article 2 shall also be for the benefit of each Owner and Occupant of the respective Parcel and their respective permitted Users.

(1.b) Other Common Area Easements. Each Owner further declares and grants for the benefit of each Parcel, the following non-exclusive, perpetual easements to use the Common Areas for the following purposes:

(1.b.i) Minor encroachments of building walls, overhangs, support columns, canopies and eaves; and

(1.b.ii) Reasonable access to the Storm Drain for purposes of ordinary use and construction, maintenance, repair and replacement.

(1.c) No Easement Over Private Parking Spaces. Notwithstanding any other provision herein, no easement or other right of use or possession is granted over or across designated Private Parking Spaces. No Person has any right to occupy or use, at any time or for any purpose, a designated Private Parking Space belonging to another Owner. Each Owner has the obligation to actively monitor and ensure that its Occupants and permitted Users do not encroach on a designated Private Parking Space belonging to another Owner. Each Owner or Occupant has the right at any time and from time to time to exclude and restrain any Person who is not a permitted User from using its designated Private Parking Space.

(1.d) Construction, Maintenance, Repair and Reconstruction. Each Owner further declares and grants the following non-exclusive, permanent easements over each of the Parcels for the benefit of each other Parcel within the Property for the purpose of facilitating the construction, maintenance, repair and replacement of buildings and other improvements within the Building Areas and Common Area:

(1.d.i) A non-exclusive, perpetual easement for the construction, maintenance, repair, replacement, rearrangement and remodeling of buildings and improvements within Building Areas and of landscaping, pedestrian walkways and other improvements in the Common Area not substantially affecting or changing the Common Area except as permitted or required herein. All such work shall be conducted in the most expeditious manner reasonably possible to minimize the interference with use of Common Area and the work shall be diligently prosecuted to completion. In connection with work or construction performed within Building

Areas, incidental encroachment upon Common Area may occur as a result of the use of ladders, scaffolding, storefront barricades and similar facilities resulting in temporary obstruction of portions of the Common Area, all of which are permitted hereunder as long as their use is kept within reasonable requirements of construction work expeditiously pursued. Common Area may be utilized for ingress and egress of vehicles transporting construction materials and equipment and persons employed in connection with any work provided for herein and temporary storage of materials being utilized in connection with such construction, subject to all of the other terms of this Declaration;

(1.d.ii) In order to accommodate any buildings and related improvements within the Building Areas, including, without limitation, underground piers, footings and/or foundations, which may inadvertently be constructed beyond a Parcel's boundary line, an easement, not to exceed a maximum lateral distance of twelve (12) inches, in, onto, over, under and across that portion of an adjacent Parcel's boundary line for the maintenance, repair and replacement of such encroaching building improvements.

(d) No Merger. Notwithstanding an Owner's ownership of more than one Parcel, the easements granted hereunder (i) shall be binding on, enforceable against and burden, and shall be appurtenant to and for the benefit of each Parcel individually, without merger as a result of such common ownership, and (ii) upon conveyance of a Parcel so that such Parcel ceases to be under common ownership, neither the Owner conveying such Parcel nor the Owner acquiring such Parcel shall need to execute additional documentation to evidence the existence of such easements, and such easements shall relate back to and shall be deemed to have been created as of the date this Declaration is recorded.

### ARTICLE 3 USE AND OPERATION OF PROPERTY

3.1 Building Upkeep and Maintenance. Each Owner shall, at such Owner's sole cost and expense, provide for appropriate upkeep and maintenance of the exterior of the Buildings and improvements located on such Owner's Parcel in a neat and clean condition of repair to ensure that the Property and each part thereof is maintained in a first class manner. All repairs made by the Owners shall be at least equal in quality and cost to the original work and shall be made by such Owner in accordance with all laws, ordinances and regulations whether heretofore or hereafter enacted. Notwithstanding the foregoing, each Owner may require Tenants under a Lease to maintain their respective leased premises.

3.2 No Walls, Fences or Barriers. Except as otherwise expressly stated herein, no walls, fences or barriers of any sort or kind shall be constructed or erected in the Property, or any portion thereof, which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement of Users, including, without limitation, pedestrians and vehicular traffic between the various Parcels; *provided, however*, curb stops and other reasonable traffic controls, including, without limitation, directional barriers and parking stops, as may be necessary to guide and control the orderly flow of traffic, may be installed by each Owner on their respective Parcels.

3.3 Storm Drain Interference. No Owner may interfere with or alter the Storm Drain at any time, except in case of an emergency to avoid loss of life or property. All operation, maintenance, repair and replacement of the Storm Drain shall be performed by a professional with requisite skill and experience. THE STORM DRAIN POSES INHERENT RISKS THAT COULD BE DANGEROUS TO LIFE AND/OR PROPERTY. Each Owner and has the obligation to actively monitor and ensure that its Occupants and permitted Users do not enter on, interfere with or alter the Storm Drain. Each Owner or Occupant has the right at any time and from time to time to exclude and restrain any Person from entering on, interfering with or altering the Storm Drain.

3.4 Immediate Parcel 3 Construction Obligations. The Owner of Parcel 3 shall, upon the earlier to occur of one (1) year after the date hereof, or completion of construction of the Building on its Parcel conduct, at its sole cost and expense, the following (the "Parcel 2 Construction Obligations"):

- (4.i) Demolish existing landscaping, curb and asphalt within the Parking Areas necessary for construction of the contemplated Building on Parcel 3;
- (4.ii) Relocate the existing storm drain to the area shown on the Site Plan;
- (4.iii) Installation of new landscaping as needed following construction of the Building located on Parcel 2; and
- (4.iv) Install new asphalt and parking lot striping within the Parking Areas in a manner shown on the Site Plan, as depicted on the site plan attached hereto as Exhibit
- (4.v) The Parcel 3 Construction Obligations shall be performed and completed in a good and workmanlike manner, lien free and in compliance with all Applicable Laws and permits.

#### ARTICLE 4 COMMON AREA MAINTENANCE

4.1 Common Area Maintenance by Owners. Each Owner shall operate and maintain the Common Area on its Parcel in accordance with the requirements of this Article 4. Each Owner shall maintain the Common Area on its Parcel in a visually appealing, safe condition and good state of repair. The unimproved Common Area, if any, shall be mowed and kept litter-free. All Common Area improvements shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced to maintain the architectural and aesthetic harmony of the Property as a whole. In the event Common Area maintenance or repair requires repair or maintenance of the Common Area on both parcels (such as resealing of the Parking Areas or repair of the Storm Drain), each Owner shall cooperate in good faith with the other to conduct such repair or maintenance and shall split the cost thereof on a proportionate basis.

4.2 Damage or Destruction of Common Area. Upon any damage or destruction to the Common Areas on a Parcel, each Owner will promptly after the occurrence of the event of damage or destruction, other than damage caused by ordinary use, wear and tear, restore, repair or rebuild such damaged or destroyed Common Areas.

4.3 Self-Help. In the event any Owner does not maintain, repair or restore the Common Area as required by this Article 4, and continues to fail to do so following thirty (30) days written notice and opportunity to cure from the non-defaulting Owner, the non- defaulting Owner(s) shall be entitled to maintain the Common Area as provided herein, and non- defaulting Owner(s) shall be entitled to receive reimbursement for such costs plus interest at eight percent (8%) per annum. The non-defaulting Owner shall have an easement over the defaulting Owner's property to conduct such maintenance, repair and replacement in accordance with this Section.

#### ARTICLE 5 PROPERTY TAXES

5.1 Payment of Property Taxes. Each Owner shall pay or cause to be paid directly when due all real property taxes and other taxes and assessments which may be levied or assessed against its respective Parcel and

any and all taxes assessed pursuant to law or ordinance hereinafter enacted, by way of substitution for or in addition to all or any part of the taxes or assessments levied or assessed against said Parcel.

5.2 Contest of Property Taxes. Each Owner may contest (or allow to be contested) in good faith any real property tax or other special tax or assessment levied upon its Parcel. Any such contested tax or assessment shall be paid, however, prior to the time when the Parcel subject thereto can be subjected to sale under any applicable law pursuant to a proceeding which may result in impairment of the rights created hereunder. The Owners who are not parties to such contest shall execute such documents as may be necessary to establish or evidence the contesting Owner's right to contest any such tax, assessment or charge. The Owner making such contest shall indemnify the other Owners against any loss, cost, damage, injury or expense arising out of or relating to the conduct of such contest, but no Owner shall be charged with responsibility as a result of any such contest for any increased taxes allegedly resulting therefrom.

## ARTICLE 6 CONSTRUCTION AND DEVELOPMENT OF PROPERTY

6.1 Buildings. Subject to the provisions contained in this Declaration, and Heber City, Wasatch County and State Codes, Rules, Standards and Regulations, each Owner may develop and construct (or cause to be developed and constructed) within that portion of the Building Area within its respective Parcels, buildings and improvements and may remodel and reconstruct existing buildings and improvements located in the Building Area. Any building erected in any Building Area, or any remodeling or reconstruction work undertaken on any existing buildings in the Building Area, shall at all times be of new material, first quality construction and architectural design and shall be consistent with the construction and design of other buildings in the Property. Each Owner further agrees that any construction activities performed or authorized by it shall not:

(1.a) Cause any unreasonable increase in the cost of constructing improvements upon another Owner's Parcel;

(1.b) Unreasonably interfere with construction work being performed on any other part of the Property; or

(1.c) Unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Property by any other Owner or User.

6.2 Indemnification for Construction Activities. Each Owner agrees to defend, protect, indemnify and hold harmless each other Owner and Occupant from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from any construction activities performed or authorized by such indemnifying Owner; provided, however, that the foregoing shall not be applicable to either events or circumstances caused by the negligence or willful act or omission of such indemnified party, its licensees, concessionaires, agents, servants, employees, or anyone claiming by, through, or under any of them, or claims covered by the release set forth in Section 7.3.

6.3 Construction Work Generally. All construction, alteration or repair work undertaken upon any Parcel shall be accomplished in the most expeditious manner possible without, however, any obligation to incur overtime or other extraordinary costs. The Person undertaking such work shall take all necessary measures to minimize any disruption or inconvenience caused by such work to other Users of the Property and make adequate provisions for the safety and convenience of all Users of the Property. Such work shall be accomplished by the Person undertaking it in such manner as to minimize any damage or adverse effect which might be caused by



such work to other Users and/or Parcels. The Person undertaking such work shall repair at its own cost and expense any and all damage caused by such work and shall restore the affected portion of the Property upon which such work is performed to a condition equal to or better than the condition existing prior to beginning such work. The foregoing repair obligations shall not be deemed to give any Person a right to do work on other Owners' Parcels not otherwise permitted by this Declaration. In addition, the Person undertaking such work shall pay all costs and expenses associated therewith and shall indemnify and hold the other Owners harmless from all damages, losses, liabilities, judgments, demands, liens, costs, expenses and claims attributable to the performance of such work.

6.4 Utility Connections. Any work performed by a Person to connect to, repair, relocate, maintain or install any storm drain, utility line, sewer, water line, gas line, telephone conduits or any other utility service shall be subject to all conditions set forth in Section 6.3 hereof and, in addition, shall be performed without interference with the provision of such services to any other User. Any work of installation, alteration, replacement or repair of utility installations which requires interference with the paving in the Parking Areas or Driveways in the Common Area shall be undertaken with particular care so as to minimize the impact upon traffic circulation within the Common Area and access of all Users to the various business establishments in the Property.

6.5 Emergency Work. Notwithstanding any other notice provision contained in this Article 6, in the event of emergency conditions, any Owner may undertake the necessary construction work to remedy the emergency condition, provided that the Owner undertaking such work does so in good faith, gives notice thereof to the other Owner upon the occurrence of the emergency condition, or as soon thereafter as possible, and otherwise conforms to the applicable provisions of this Declaration.

6.6 Fencing Off Construction. Each Owner, at its own cost and expense, shall temporarily fence off or cause to be temporarily fenced off any development, construction, repair, alteration or remodeling work performed by the Owner or its Occupants. Fencing shall be of a height and construction sufficient to protect existing facilities in the Property from dust and other inconveniences occasioned by such work.

## ARTICLE 7 INDEMNIFICATION AND INSURANCE

7.1 Indemnity. Each Owner shall indemnify, defend and hold the other Owners and their Occupants harmless from and against all claims, expenses, liabilities, loss, damage and costs, including any actions or proceedings in connection therewith and including reasonable attorneys' fees incurred in connection with, arising from, due to or as a result of: (i) the death of, or any accident, injury, loss or damage, howsoever caused, to any Person or loss of, or damage to, the property of any Person as shall occur in or about any portion of such Owner's Parcel, other than Common Areas; the death of, or any accident, injury, loss or damage to any Person or damage to the property of any Person resulting from the negligence or willful act or omission of an Owner or its Users, wherever the same may occur; or (iii) by reason of injury to or death of persons, damage to property or claims of lien for work or labor performed, materials or supplies furnished arising out of or in connection with use by an Owner or its Occupants or their Users of the easements granted hereunder or exercise of the rights granted herein, except claims resulting from the negligence or willful act or omission of the indemnified Owner or any Occupant or User of any such Owner's Parcel, wherever the same may occur.

7.2 Insurance.

(2.a) Each Owner, at its sole cost and expense, shall keep or cause to be kept such Owner's Parcel and the Buildings and Common Areas thereon reasonable insurance typical of the types of Buildings constructed on the Property, including property insurance and commercial general liability insurance.

(2.b) Such policy or policies of insurance shall contain a waiver of subrogation clause as to the other Owners. In the event of such loss, the insured Owner agrees to look to the insurance coverage only. It being further understood that at no time will the Owners be responsible to pay for or contribute to the deductibles under another Owner's insurance policies.

(2.c) If an Owner's construction activities require the use of another Parcel, then such Owner shall cause the Owner of such other Parcel to be an additional insured on each policy for commercial general liability and each such policy shall provide that it may not be canceled, allowed to expire or reduced in amount or coverage below the requirements set forth above without at least thirty (30) days prior written notice to each insured. If any of the insurance policies required above are canceled, expire or the amount or coverage thereof is reduced below the level required, then all construction activities and use of any other Parcels in connection with such construction activities shall immediately stop until either the required insurance is reinstated or replacement insurance is obtained, and evidence thereof is given to the Owner of such Parcel.

7.3 Mutual Release. Each Owner for itself and, to the extent it is legally possible for it to do so, on behalf of its insurer and without affecting the coverage provided by insurance required to be maintained by any other Owner hereunder, hereby releases and waives any right to recover against the other Owners and their respective Users for any liability for: (a) damages for injury to, or death of, persons; (b) any loss or damage to property including, without limitation, the property of any Owner, Occupant or User located upon or in the Property; (c) any loss or damage to buildings or other improvements in the Property or the contents thereof; or (d) claims arising by reason of any of the foregoing, to the extent that such damages and/or claims are covered (and only to the extent of such coverage) by insurance actually carried by or on behalf of each Owner. The provisions of this Section 7.3 are intended to restrict each Owner (to the extent permitted by law) to recovery against insurance carriers to the extent of such coverage, and waive fully, and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier.

## ARTICLE 8 EMINENT DOMAIN

In the event of a partial taking of a Parcel, the Owner of the portion of the Parcel so condemned shall, at its sole discretion, either restore the remaining portion of the Parcel owned by such Owner as nearly as possible to the condition existing just prior to such condemnation or repair the portion of the Parcel not taken and landscape any areas left unimproved in an attractive manner, without contribution from any Owner of the Parcel not so taken.

## ARTICLE 9 EFFECT OF BREACH UPON PURCHASERS AND MORTGAGEES

9.1 Title and Mortgagee Protection. The breach of this Declaration shall not entitle any Person to cancel, rescind or otherwise terminate its obligations hereunder. No breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but the covenants and restrictions, easements and conditions herein contained shall be binding upon and effective against the Owner of any Parcel, or any portion thereof, whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

### 9.2 Mortgagee Protection.

(2.a) Obligations of Mortgagee. 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 Property 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).

(2.b) Notices; 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 the notifying 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 in accordance with the immediately preceding sentence. Each 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, an 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 reasonably requires more than thirty (30) days to cure, each Qualified Mortgagee shall have the right 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.

(2.c) Performance. Each Qualified Mortgagee shall have the right to act for and in the place of the Owner of the Parcel covered 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 such Qualified Mortgagee be subrogated to any interest or right of such Owner. Each Qualified Mortgagee shall have the right, to the extent the Owner of the Parcel covered by the Mortgage concerned agrees in writing, to appear in a legal action or proceeding on behalf of such Owner in connection with such Parcel.

(2.d) Recognition. On request, each Owner 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 this **Section 9.2**.

## ARTICLE 10 COVENANTS TO RUN WITH LAND

Each provision of this Declaration shall constitute a covenant running with the land, and shall be binding on and shall inure to the benefit of each Owner and their respective successors and assigns and as their interests may appear, all of which persons may enforce any obligation created by this Declaration. This Declaration shall be binding on each part of the Property, and all interests in any part of the Property shall be subject to this Declaration. The interests in and rights concerning any portion of the Parcels held by or vested in the Parties or any other person on or after the date of this Declaration shall be subject and subordinate to this Declaration, and this 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 Property, the Person so coming to have such interest or occupying agrees to be bound by this Declaration; *provided, however*, that no such person shall have any right or liability under this Declaration as an Owner until such person becomes an "Owner," as defined in Section 1.14, nor shall such person have liability under this Declaration for any acts committed prior to the time such person became an Owner.

## ARTICLE 11 AMENDMENTS TO DECLARATION

11.1 Requisite Parties. This Declaration may be amended only by an instrument recorded in the Official Records, executed by each Owner.

11.2 No Other Person Required. Unless it is a required party to the amendment concerned under Section 11.1, no other Person (including, without limitation, any Person holding an interest in or occupying any Parcel, whether as a tenant under a lease or otherwise) 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 that 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 that is unreasonable.

## ARTICLE 12 GENERAL PROVISIONS

12.1 Tony Taco's Financial Contribution. As its financial contribution for the reconstruction and improvement of its private parking stalls, shared parking stalls, common areas and easements for and of access over its property and through the adjoining properties of the Parties, Tony's Taco shall pay to The Lofts at Deer Haven LLC, \$10,000.00, in monthly installments of \$1,000.00 per month, at no interest, beginning in June, 2020, and continuing thereafter, each month until paid in full.

12.1 Breach and Attorneys' Fees. In the event of breach or threatened breach of this Declaration, only record Owners of a Parcel shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. 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.

12.2 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 and obligations under this Declaration related to such Parcel, except for such liabilities or obligations as may have accrued as of the date of such transfer or divestiture.

12.3 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 Property may be owned by the same person from time to time, it being the intention of the Owners to create a common scheme for the development and operation of the Property that will not be terminated by the doctrine of merger or otherwise, unless this Declaration is terminated in accordance with Section 12.67.

12.4 Force Majeure. 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, for so long as (but only for 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, terrorism, 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 Owner or other Person (collectively, a "Force Majeure").

12.5 Certain Agreements. The purpose of this Declaration is to create certain easements, covenants, restrictions and other provisions that are to apply among the Parcels and that 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 that 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.

12.6 Effective Dates and Duration. This Declaration and any amendment to this Declaration shall take effect as of the date on which they are 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 each Owner of the Property.

12.7 Notices. Any notice or demand to be given to any Owner or by any Owner or another Owner shall be given in writing by personal service, fax (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 faxing), 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 and each other Owner. Any notice or demand given under this Declaration 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 that was not properly communicated shall not defeat or delay the giving of a notice.

12.8 Not A Public Dedication. Nothing herein contained shall be deemed a gift or dedication of any portion of the Property or of any Parcel or portion thereof to the general public or for any public use or purpose whatsoever, it being the intention and understanding that this Declaration shall be strictly limited to and for the purposes herein expressed solely for the benefit of the Owners. The Owners may take such action as may be necessary to prevent any such public dedication or appropriation, including, but not limited to, temporary closure of the Property by barriers at entrance-ways on non-business holidays or other appropriate times not disruptive to the businesses of the Owners. In no event shall such closure exceed the minimum reasonable time required to prevent such dedication or appropriation and such closures shall be carried out so as to minimize any adverse impact on the operation of the business of any Owner.

12.9 Severability. If any term, provision, covenant or condition of this Declaration, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void, or unenforceable, all provisions, covenants and conditions of this Declaration and all applications thereof not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

12.10 General Provisions. This Declaration shall inure to the benefit of, and shall be binding on, the Owners and their respective successors and assigns. Titles and headings of Sections of this Declaration are for convenience of reference only and shall not affect the construction of any provision of this Declaration. This Declaration shall be governed by, and construed 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 be 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 provision 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.

12.11 Tenants. The benefits and burdens of this Declaration shall extend to each User. Each Owner shall be solely responsible to ensure that all such Users on such Owner's Parcel abide by all of the terms and conditions of this Declaration. Each Owner shall be solely responsible for the actions of all of Owner's Users.

12.12 Time. Time is of the essence of this Declaration.

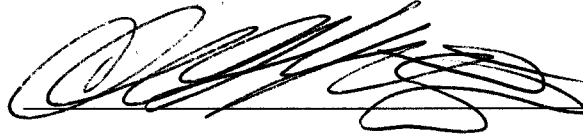
12.13 Legal Representation/Conflict Waiver. The parties acknowledge and agree that they have each consulted to the extent they desire with their own separate legal counsel with regard to this lease. The parties further acknowledge and agree that the law firm of Gordon Law Group, P.C. represents only the Lot 3 Owner with regard to the negotiation and drafting of this Declaration. Lot 1 Owner and Lot 2 Owner each hereby waives any and all actual or potential conflicts of interest and consents to GLG representing only the Lot 3 Owner with regard to the negotiation and drafting of this Declaration.

*[Signatures on the Following Pages]*

IN WITNESS WHEREOF, Owners have executed this Declaration as of this 21<sup>st</sup> day of May 2020.

**LOT OWNER 1:**

TONY'S TACOS MEXICAN RESTAURANT LLC,  
a Utah Limited Liability Company



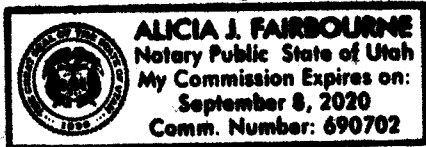
By: CELIA C. GUTIERREZ

Its: MEMBER & OWNER.

STATE OF UTAH                    )  
  :SS  
COUNTY OF WASATCH        )

On this 21<sup>st</sup> day of May, 2020, Celia C. Gutierrez personally appeared before me and affirmed that he/she executed the foregoing DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS in his/her capacity as Manager of Tony's Tacos Mexican Restaurant LLC, and that he/she has been duly authorized by the company to make this dedication on its behalf.

Alicia J. Fairbourne  
NOTARY PUBLIC



LOT OWNER 2:

STAR B LLC,  
a Utah Limited Liability Company

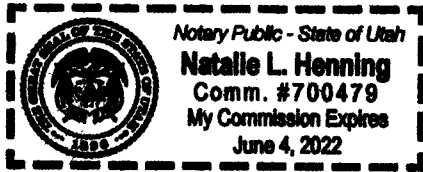
Jared Brown

By: [Signature]  
Its: Manager

STATE OF UTAH            )  
  :SS  
COUNTY OF WASATCH    )

On this 26 day of May, 2020, Jared Brown personally appeared before me and affirmed that he/she executed the foregoing DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS in his/her capacity as Manager of Star B LLC, and that he/she has been duly authorized by the company to make this dedication on its behalf.

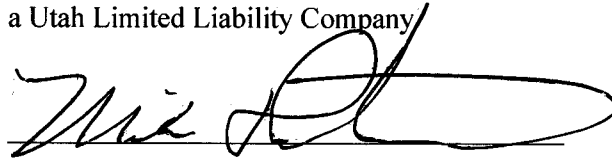
[Signature]  
NOTARY PUBLIC





**LOT OWNER 3:**

The Lofts at Deer Haven LLC,  
a Utah Limited Liability Company

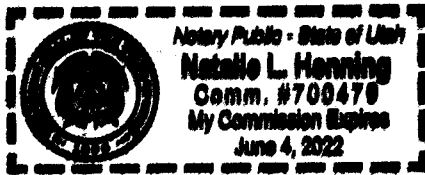


By: Mike Petersen

Its: member

STATE OF UTAH                    )  
  :SS  
COUNTY OF WASATCH        )

On this 21 day of May, 2020, Michael Petersen personally appeared before me and affirmed that he/she executed the foregoing DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS in his/her capacity as The Lofts at Deer Haven LLC, and that he/she has been duly authorized by the company to make this dedication on its behalf.

  
NOTARY PUBLIC

**EXHIBIT A**

**Legal Description of Parcel 1**

That certain real property located in Wasatch County, Utah more particularly described as follows:

---

Ent 356666 Bk 1009 Pg 0571

**LEGAL DESCRIPTION**

The North half of Lot 2, Block 30, Heber City Survey of Building Lots, situated in the Southwest Quarter of the Northwest Quarter of Section 5, Township 4 South, Range 5 East, Salt Lake Base and Meridian, according to the official plat thereof, records of Wasatch County, State of Utah.

*Tax ID No.:* OHE-0120

**EXHIBIT B**

**Legal Description of Parcel 2**

That certain real property located in Wasatch County, Utah more particularly described as follows:

ALL OF THE SOUTH HALF OF LOT 2, BLOCK 30, HEBER CITY SURVEY OF BUILDING LOTS, situated in the Southwest Quarter of the Northwest Quarter of Section 5, Township 4 South, Range 5 East, Salt Lake Base and Meridian, according to the official plat thereof, records of Wasatch County, State of Utah.

**EXHIBIT C**

**Legal Description of Parcel 3**

That certain real property located in Wasatch County, Utah more particularly described as follows:

---

Ent 451844 Bk 1223Pg 1424

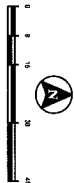
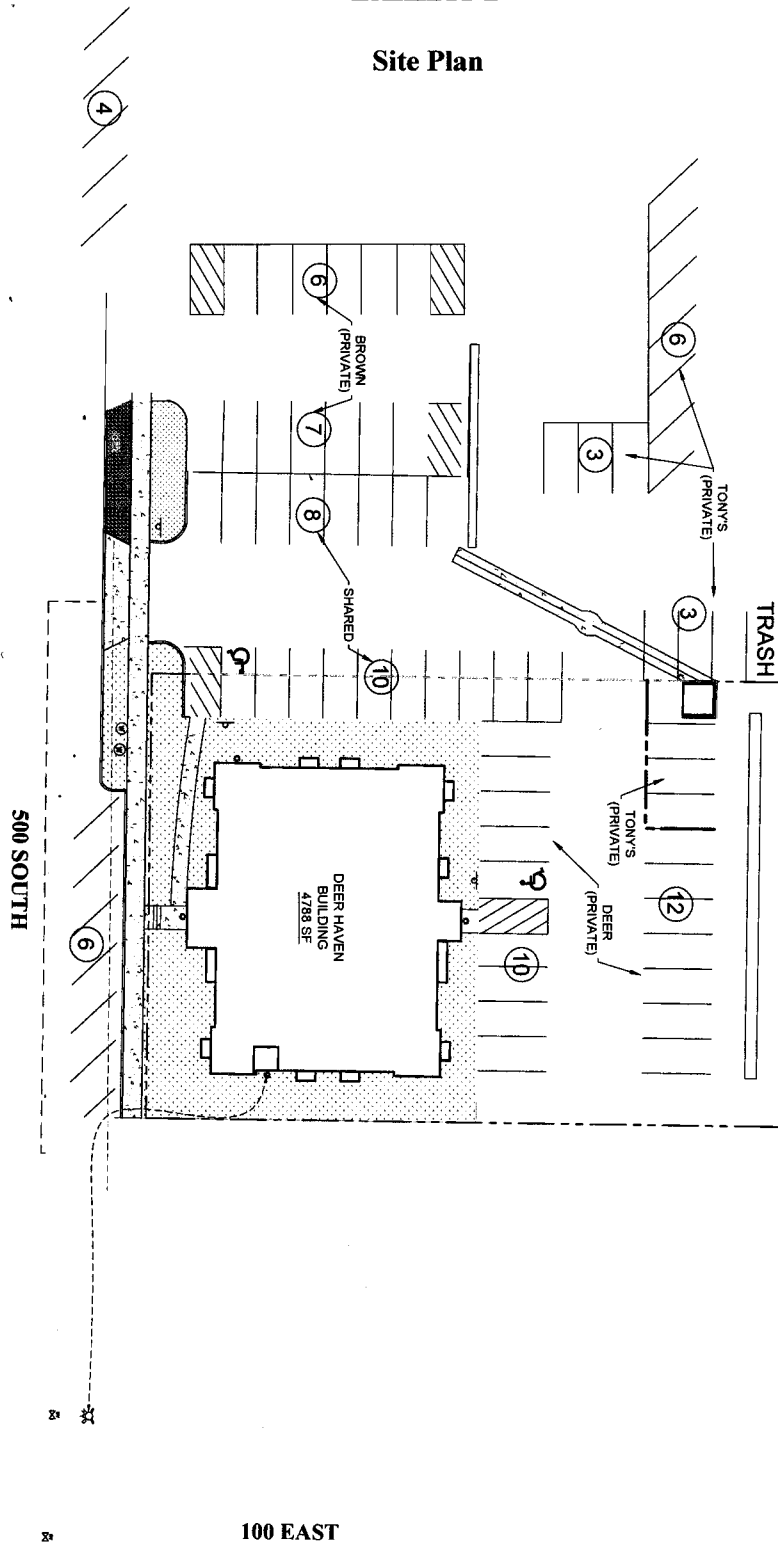
**EXHIBIT "A"  
LEGAL DESCRIPTION**

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1, BLOCK 30, HEBER CITY SURVEY OF BUILDING LOTS, AND RUNNING THENCE SOUTH 88°12' EAST 114.32 FEET, THENCE NORTH 0°48' EAST 165.99 FEET. THENCE NORTH 89°12' WEST 114.32 FEET TO THE NORTHWEST CORNER OF SAID LOT, THENCE SOUTH 0°48' WEST 165.99 FEET MORE OR LESS TO THE PLACE OF BEGINNING.

P:\102501\_Aasanga\dwg\102501-CC-PRINCEN\BY.dwg, 2/7/2008 9:47:30 AM, C:\msd11\dwg\102501-CC-PRINCEN\BY.dwg, 2/7/2008 9:47:30 AM  
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**EXHIBIT D**

**Site Plan**



ATTENTION:  
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 DATE: 04/27/2008  
 PROJECT: 10023  
 SHEET: 1 OF 1

HEBER CITY, UT  
**67 E 500 S RE-DEVELOPMENT**  
 HOA PARKING EXHIBIT

**T-O ENGINEERS**  
 CONSULTING ENGINEERS, SURVEYORS & PLANNERS  
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 BOISE • CODY • COCHRAN • DENVER • HEBER CITY  
 MERIDIAN • RAMPART • SPOKANE

REVISIONS		BORDER SIZE	
NO.	DESCRIPTION	DATE	STATUS
			DESIGNED
			DRAWN
			CHECKED
			APPROVED

