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WASATCH COUNTY CORPORATION
For: DEER HAVEN CONDOMINIUM

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**SECOND AMENDED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
DEER HAVEN CONDOMINIUM OWNER'S ASSOCIATION**

Heber City, Wasatch County, Utah

**SECOND AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
DEER HAVEN CONDOMINIUM OWNERS ASSOCIATION**

THIS SECOND AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF DEER HAVEN CONDOMINIUM OWNERS ASSOCIATION made and executed this 16th day of March 2021, by The Lofts at Deer Haven LLC, a Utah Limited Liability Company, with its principal place of business located in Heber City, State of Utah (hereinafter referred to as respectively "Declaration" and "Declarant").

RECITALS:

1. Declarant, The Lofts at Deer Haven LLC, is the record owner of that certain tract of property located in Wasatch County, Utah, and more particularly described in Article II of this Declaration.
2. Declarant previously caused to be recorded an Original Declaration and then an Amended Declaration of Covenants, Conditions and Restrictions of Deer Haven Condominium Owners Association (the "Amended Declaration") pursuant to Utah Code Ann. §57-8-1 *et. seq.* in the Office of the Wasatch County Recorder as Entry 494844 in Book 1340, at Pages 1525-1551, to create a condominium project, to provide for preservation of the values and amenities of the Property and for maintenance of the Common Areas (as defined below) and to provide for harmonious occupancy.
3. Declarant desires to amend, restate and replace in its entirety the First Amended Declaration with this Second Amended Declaration, which shall be effective upon recording.
4. Declarant deems it desirable for the preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Declarant has, in conjunction with recordation of this Declaration, caused or will cause to be organized under the laws of the State of Utah, a nonprofit corporation, Deer Haven Condominium Owner's Association, Inc.
5. Declarant intends that the Owners, Occupants, Lenders, and all other persons hereafter acquiring any Interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is recorded in furtherance of establishing a general plan of condominium ownership for the Property; and for establishing rules for the use, occupancy, management, and enjoyment thereof all for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Condominium and the quality of life therein.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of the Property described in Article II hereof shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, obligations, and liens hereinafter set forth.

I. DEFINITIONS

1.1. "Act" shall mean the Condominium Ownership Act, codified at Sections 57-8-1 through 57-8-39, Utah Code Annotated, pertaining to the creation, ownership and management of a Condominium in the State of Utah.

1.2. "Administrative Control" shall mean the period before the Declarant voluntarily or by requirement under this Declaration turns over the control of the Deer Haven Condominium Owner's Association Board to the Condominium Unit Owners.

1.3. "Allocated Interest" shall mean the undivided Interest (expressed as a fraction or percentage in this Declaration) in the Common Areas and Facilities, the Common Expense liability, and votes in the Association allocated to each Unit.

1.4. "Articles" shall mean the Articles of Incorporation by which the Association is formed under the nonprofit corporation law of the State of Utah.

1.5. "Assessments" shall mean the charges against Owners to defray the Common Expenses as well as miscellaneous Special Assessments, Special Assessments for capital improvements, and Special Assessments imposed for the purpose of restoring and reconstructing the Condominium in the event of casualty, all as provided in this Declaration. Assessments shall include all those assessments issued by the Deer Haven Owner's Association in accordance with this Declaration.

1.6. "Association" shall refer to Deer Haven Condominium Owner's Association, whose membership shall include the owners of Units within the Project. The Association has been or will be incorporated as a Utah nonprofit corporation.

1.7. "Association Rules" shall mean and refer to the rules and regulations adopted by the Association pursuant to this Declaration and in furtherance of the Bylaws and Section 57-8-8 of the Act.

1.8. "Board" shall mean the Board of Directors or Trustees of the Association elected or appointed pursuant to the Bylaws and serving as the management body of the Association.

1.9. "Bylaws" shall mean the Bylaws adopted by the Association pursuant to Section 57-8-16 of the Act adopted for the purpose of regulating the affairs of the Association, as the same may be amended from time to time.

1.10. "Common Areas and Facilities" shall mean those areas designated as such within the Project, excluding the Units, as set forth on the Plat attached as Exhibit B. The designation of common areas within the Project are for the benefit of the Owners and Occupants of the Units, and their guests and invitees.

1.11. "Common Expenses" shall mean the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Areas and Facilities which are maintained by the Association; (b) deficiencies arising by reason of unpaid Assessments; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees; (d) utilities (other than separately metered utilities for the Units), trash pickup and disposal, extermination, security, gardening and other related services; (e) insurance and bonds required by this Declaration or any additional insurance and bonds obtained by the

Board in its discretion; (f) the establishment of reasonable reserves as the Board shall deem appropriate in its discretion for the periodic maintenance, repair, and replacement of the Common Areas and Facilities, which shall in no event be less than two (2) months of the estimated Assessments for each Unit; and (g) other miscellaneous charges incurred by the Association or the Board pursuant to this Declaration, the Bylaws or Association Rules in furtherance of the purposes of the Association or in discharge of the duties and powers of the Association.

1.12. "Condominium" means this business condominium project wherein fee simple title to single units in a multi-unit project, together with an undivided interest in the Common Areas and Facilities of the property are owned separately by the Unit Owners.

1.13. "Condominium Unit" shall mean and refer to a discreet office space that is sold as a separate unit within the condominium building, together with all improvements located in or with respect to the Condominium Unit concerned which are used in connection with such Unit.

1.14. "Declarant" shall mean The Lofts at Deer Haven LLC, a Utah Limited Liability Company, and the successors and assigns of Declarant's rights hereunder.

1.15. "Declaration" shall mean this Declaration including all exhibits attached hereto, which are hereby incorporated by this reference, and any and all amendments hereof and supplements hereto.

1.16. "Development" shall at any point in time mean, refer to, and consist of the Building and improvements on the Project then in existence.

1.17. "Exclusive Limited Common Area and Facility" means a portion of the Common Areas and Facilities, if any, specifically designated as a Limited Common Area and Facility in this Declaration or the Plat and allocated by this Declaration or the Plat for the exclusive use of one or more but fewer than all of the Units.

1.18. "Lender" shall mean a holder of a mortgage or deed of trust on a Unit.

1.19. "Member" shall mean and refer to every person who holds a membership in the Association.

1.20. "Mortgage" shall mean any mortgage, deed of trust or trust deed or the act of encumbering any Condominium Unit or any property by a mortgage, trust deed or deed of trust.

1.21. "Mortgagee" shall mean any person named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.22. "Occupant" shall mean a Person or Persons, other than an Owner, in possession of, or using a Unit, including, without limitation, family members, tenants, guests, or invitees.

1.23. "Officers" shall mean and refer to the Officers of the Association as duly elected or appointed in accordance with the terms and conditions of the articles of incorporation and bylaws of the Association.

1.24. "Owner" shall mean and refer to the person or entity who is the Owner of record (in the office of the County Recorder of Wasatch County, Utah) of a fee or an undivided interest in any Condominium Unit. Notwithstanding any applicable theory relating to a mortgage, deed of trust or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. Declarant shall be considered the record Owner of any Unit prior to its initial conveyance by Declarant.

1.25. "Parcel" shall mean the real property which is subject to this Declaration, and which is legally described on Exhibit "A", and all the buildings, improvements and permanent fixtures located thereon, and all easements and rights appurtenant thereto.

1.26. "Person" shall mean a natural individual, corporation, limited liability company, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency or other legal entity capable of holding title to real property.

1.27. "Plat" shall mean and refer to any development plat, any plat of a condominium office building, or any plat or map similar to any of the foregoing: (a) which covers the Property; (b) which describes or creates one or more Condominium Units within the building; and (c) which is filed for record in the office of the County Recorder of Wasatch County, Utah.

1.28. "Property" shall mean the Parcel, together with all the buildings, improvements and permanent fixtures located thereon, and all easements and rights appurtenant thereto.

1.29. "Restrictions" shall mean the covenants, conditions, assessments, easements, liens and restrictions set forth in this Declaration.

1.30. "Supplemental Declarant Rights" shall mean the rights granted to Declarant in this Declaration to do any of the following:

- (a) Construct any improvements provided for in this Declaration;
- (b) Maintain sales offices, models, and signs advertising the Condominium;
- (c) Use easements upon the Common Areas and Facilities for the purpose of making improvements or marketing units within the Parcel; and
- (d) Appoint or remove any Officer or Board Member of the Association prior to the Turnover Date, as defined herein.

1.31. "Supplemental Declaration" shall mean a written instrument recorded in the records of the County Recorder of Wasatch County, Utah, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.

1.32. "Turnover Date" shall mean the date upon which Declarant shall have sold at least nine of the eleven units to separate Unit Owners.

1.33. "Unit" shall mean either a separate physical part of the property intended for any type of independent use, including one or more rooms situated in a building comprising part of the Condominium, designed or intended for independent ownership and occupancy as a Unit. The respective Allocated Interest in the Common Area and Facilities is appurtenant to the Unit.

1.34. "Unit Number" shall mean the number, symbol, or address that identifies one Unit in the Condominium.

II. PROPERTY DESCRIPTION

2.1. Submission. The Property which is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists of the following-described real property situated in Wasatch County, State of Utah.

SEE THE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND INCORPORATED HEREIN BY REFERENCE.

EXCLUDING all water rights and all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, and related facilities, provided, however, that lines and systems specifically conveyed to the Association by Declarant shall not be included within this exclusion.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across and through and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or any assignee of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (1) to construct the building as shown on the approved plans; and (ii) to improve the Common Areas with such facilities, including, but not limited to, roads, recreational facilities, walkways and various landscaped areas, designed for the use and enjoyment of all the Members as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservation, the above-described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservation hereby effected shall, unless sooner terminated in accordance with its terms, expire fourteen (14) years after the date on which this Declaration is filed for record in the office of the County Recorder of Wasatch County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; all mineral reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described tract or any portion thereof, including without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; and all easements and rights-of-way of record.

DESCRIPTION OF THE UNITS, LIMITED COMMON AREAS AND FACILITIES, COMMON AREAS AND FACILITIES, ALLOCATED INTERESTS AND PLAT

2.2. Description of Boundaries of Each Unit and Unit Number. The Unit Numbers of each of the Units within the Condominium are set forth on the Plat. If a boundary is not a common wall, the boundary is defined as the legal description set forth on the plat. The horizontal boundaries of each Unit that shares or may share a common wall as a boundary shall be the underside of the finished but undecorated ceiling and the top of the finished but undecorated floor of the Unit as shown on the Plat. The vertical

boundaries of each Unit that shares or may share a common wall shall be the interiors of the finished but undecorated walls located on the perimeter lines of the respective Units as shown on the Plat. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and other materials constituting any part of the finished surfaces are part of the Unit, and all other and structural portions of the walls, floors, columns, or ceilings are part of the Common Areas and Facilities. If any pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water, or sewer lines, or any other similar fixtures lie partially or wholly within or outside the designated boundaries of a Unit, any portion serving only that Unit is a Limited Common Area and Facility allocated solely to that Unit and any portion serving more than one Unit or any portion of the Common Area and Facilities is part of the Common Areas and Facilities. Subject to the preceding sentence, each Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes as shown on the Plat, and all interior partitions and other fixtures and improvements within such boundaries shall be part of the Unit. An Owner shall have the right to own and combine two (2) or more Units, subject to the requirements of applicable local and state law. Conveyance of a Unit includes the use of the Limited Common Areas and Facilities appurtenant to said Unit.

2.3. Description of Exclusive Limited Common Areas and Facilities for Entrances. The common areas so designated on the Plat, if any, shall be designated as Exclusive Limited Common Areas for purposes of this Declaration. Exclusive Limited Common Areas and Facilities shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit.

2.4. Description of Common Areas and Facilities. The Common Areas and Facilities shall consist of the entire Condominium, excluding the Units and any Exclusive Limited Common Areas and Facilities appurtenant thereto.

2.5. Undivided Interest of Each Unit in the Common Areas and Facilities. Each Unit in the Condominium shall have the Allocated Interest in the Common Areas and Facilities as set forth in Exhibit "B".

2.6. Votes in the Association. In all matters to be voted upon by the Association, each Unit in the Condominium shall be entitled to the percentage of votes that directly corresponds with each Unit's Allocated Interest as set forth in Exhibit "B", attached hereto and incorporated herein by reference, the Articles of Incorporation of the Association, and the Bylaws of the Association.

2.7. Allocated Interest of Each Unit in the Common Expenses of Condominium. Each Unit in the Condominium shall have responsibility for the Common Expenses of the Condominium in accordance with each Unit's Allocated Interest. For example, if Unit 1 has an Allocated Interest of 50% it would be responsible for 50% of the Common Expenses of the Condominium. The Allocated Interest will apply to any and all assessments imposed on the Units by the Association.

2.8. Current Statement of Allocated Interest. The Allocated Interest of each Unit for purposes of this Declaration is set forth in Exhibit "B", attached hereto and incorporated herein by reference.

2.9. Plat. The Plat is hereby incorporated into, and made an integral part of, this Declaration and all requirements and specifications set forth on the Plat and which are required by the Act are deemed included in this Declaration.

III. CREATION OF THE CONDOMINIUM

3.1. Submission. Declarant hereby submits and subjects the Property to a Condominium pursuant to the Act, and in furtherance thereof, makes and declares the Restrictions contained in this Declaration, and Declarant hereby declares and agrees that the Condominium and all of the Units shall be held, conveyed, transferred, sold, leased, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of Declarant, the Association, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors and assigns.

3.2. Name and Location. The Condominium shall be named and known as the Deer Haven Condominium. The Condominium project is located in Heber City, Wasatch County, Utah, and the legal description of the real estate included in the Condominium is the Parcel set forth on EXHIBIT "A". The name of the Association is the Deer Haven Condominium Owner's Association, which has jurisdiction over all Units within the Project.

3.3. Interpretation of Declaration and Applicability of the Act. Declarant intends that the Condominium shall be governed by the Act, except where (in compliance with the Act) Declarant has included specific provisions in this Declaration which legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration which are contrary to the Act shall govern the Condominium.

3.4. Agent for Service of Process. Mike Petersen, 67 East 500 South #103, Heber City, Utah 84032, shall be the person to receive service of process for the Condominium pursuant to Section 57-8-10(2)(d)(iii) of the Act until such time as the Board shall duly appoint a new agent and file a supplement hereto.

ARTICLE 4 MAINTENANCE AND UTILITIES

4.1. Maintenance of Common Areas and Facilities. Each Owner shall be responsible for his or her portion, as established by the Allocated Interest, of all maintenance, repairs, and replacements of the Common Areas and Facilities, including without limitation: (a) the maintenance of all external walls of the Units (except for those shared walls or areas designated as Exclusive Limited Common Area addressed in section 4.2 below); (b) the maintenance of the roof and roofing of the Units; (c) repair and replacement of all window, skylights, and door glass or equivalent materials and the interior and exterior cleaning of such window and door glass; (c) the maintenance of (in an open and unobstructed condition) all septic, sewer and drainage pipes, tanks and systems, water, septic, sewer and all other utility lines serving any Unit between the points at which the same enter the respective Unit and the points where the same join the utility lines serving other Units in the Condominium; (d) maintenance, replacement, repair and restoration of all of the following: lighting fixtures including exterior building mounted lights, fans, plumbing fixtures, stoves, refrigerators, hot water heaters, air conditioning units (including compressors, condensers and forced air units), intercoms, security systems, and such other appliances, fixtures, and decorations as exist in the Common Areas; (e) the maintenance of exterior screens, and shutters in a clean and sanitary condition, free of pests and rodents, and in good order and repair; and (f) any and all assessments for common area or exclusive limited common area maintenance assessed to the Units. An Owner may make non-structural

alterations within its Unit or combined Units which do not affect an Exclusive Limited Common Area or the other Units. The Owner shall not make any structural or exterior alterations of the Common Areas and Facilities or the Exclusive Limited Common Areas and Facilities without the prior written approval of the Board.

4.2 Maintenance of Common Areas and Facilities and Non-exclusive Limited Common Areas and Facilities. The Units shall be subject to, and shall pay in full, any assessment issued by the Condominium Association for the following:

(a) Maintain, repair, replace and otherwise manage the Common Areas and Facilities, including, but not limited to, the landscaping, parking areas, and streets, if any, located thereon and maintain all parking areas and exterior parking lights, walkway and landscape area lights which are designated as common areas;

(b) Replace injured and diseased trees or other vegetation in any Common Areas and Facilities, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil or for aesthetic purposes;

(c) Place and maintain upon any Common Areas and Facilities, such signs, markers and lights as the Board may deem appropriate for the proper identification use and regulation thereof, subject to the approval of the Board;

(d) Pay all electrical, water, septic and sewer, gas and other utility charges or fees for services furnished to the Common Areas and Facilities as the same become due and payable; and

(e) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Areas and Facilities and the beauty thereof, in accordance with the general purposes specified in this Declaration.

4.3. Maintenance of Units. Each owner of a Unit shall maintain its Unit in a manner that maintains the safety, attractive appearance and value of the Condominium. If an Owner fails to so maintain his Unit or make repairs thereto in such a manner as may be deemed reasonably necessary in the judgment of the Board to preserve and protect the attractive appearance and value of the Condominium, or if an Owner shall fail to observe any covenant or restriction imposed on such Owner by the terms of the Declaration, then the Board or its authorized representative shall give written notice to such Owner stating with particularity the nature of the default and the collective action which the Board determines to be required and requesting that the same be carried out within a period of fourteen (14) days after the giving of such written notice. If such Owner fails to carry out such action within the period specified by the notice, the Board may cause such action to be taken and may levy a Special Assessment for the cost thereof on such Owner, such Special Assessment to be due and payable within thirty (30) days after the Board gives written notice thereof and to be secured by the Assessment lien created in Section 6.1 of this Declaration.

4.4. Utilities. Gas and electrical utilities shall be metered separately for each Unit, and each Unit Owner shall be responsible to pay for these utilities when billed. All utilities and utility charges for individual Units shall be the responsibility of the respective Unit Owner (except those utility costs, which are metered collectively, and paid by the Association as a Common Expense item).

**ARTICLE 5
MANAGEMENT**

5.1. Organization. The Association will be organized no later than the date the first Unit in the Condominium is conveyed to an Owner other than Declarant to serve as the governing body for all Owners and shall make provisions for the maintenance, repair, replacement, administration and operation of the Common Areas and Facilities, assessment of expenses, payment of losses, division of profits, acquisition of hazard insurance and disposition of such hazard insurance proceeds, and other matters as provided in the Act, the Declaration and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the Declaration, the Articles and the Bylaws.

5.2. Management. The governing body of the Association shall be a Board of Directors. The Board shall consist of not less than three (3) less and not more than five (5) members. Each Unit shall be entitled to one member on the Board, by appointment. Except as otherwise provided in this Declaration, the Bylaws, or Association Rules, the Board may act in all instances on behalf of the Association.

5.3. Right of Association to Enter Units. The Association acting through the Board or its duly authorized agent shall have the right at all times upon reasonable notice (and at any time in case of an emergency) to enter upon or in any Unit to abate any infractions, to make repairs, or correct any violation of any of the Restrictions herein set forth, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such assessment to be secured by the lien provided in Section 6.1.

5.4. Association Rules. The Board, as established may adopt and administer Association Rules in furtherance of the Bylaws for the regulation and operation of the Condominium.

5.5. Availability of Condominium Documents. The Association will maintain current copies of this Declaration, the Articles, Bylaws, and Association Rules concerning the Condominium and the Association's own books, records, and financial statements available for inspection, upon the reasonable request, during normal business hours by any Owner or Lender (or any insurer or guarantor of a Lender).

**ARTICLE 6
COVENANT FOR ASSESSMENTS**

6.1. Creation of Lien and Personal Obligation for Assessment. Each Owner, including Declarant to the extent Declarant is an Owner as defined herein, of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree to pay to the Association such Assessments to be fixed, established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, collection charges, attorneys' fees, court costs and other costs of collection as hereinafter provided shall be secured by a continuing lien upon the Unit against which each such Assessment is made in favor of the Association. Each such Assessment, together with such interest, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due. The personal obligation shall not pass to the successor in title of an Owner unless expressly assumed by such successor.

6.2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the Owners, the management, maintenance care, preservation and protection of the Condominium, enhancing the quality of life in the Condominium and the value of the Condominium including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and Facilities, or in furtherance of any other duty or power of the Association.

6.3. Regular Assessment. The Board shall determine the amount of the regular Assessments, if any, to be paid by each Owner. Each Owner shall thereafter pay to the Association his regular Assessment in installments as determined by the Board.

6.4. Capital Improvement Assessments. In addition to regular Assessments, the Board may levy in any fiscal year a capital improvement Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction) of a described capital improvement upon the Common Areas and Facilities, including the fixtures and personal property related thereto. The Board shall not impose a capital improvement Assessment exceeding ten percent (10%) of the then estimated annual Common Expenses without the approval of Owners holding a majority of the Allocated Interests in the votes of the Association. All amounts collected as capital improvement Assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account or the Association's account for reserve funds, to be held in trust for such purposes and said funds shall not be commingled with any other funds (other than reserve funds) of the Association.

6.5. Percentage Assessments. Except as otherwise provided herein, all Assessments (other than Special Assessments) shall apply based on the Allocated Interest for each Unit as contained in EXHIBIT "B", as amended from time to time.

6.6. Rules Regarding Billing and Collection Procedures. The Board shall have the right and responsibility to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of regular and Special Assessments, provided that said procedures are not inconsistent with the provisions hereof.

6.7. Certificate of Payment. The Association shall, within twenty (20) business days after written demand, furnish to any Owner liable for Assessments a recordable written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any.

6.8. Special Assessments. Special Assessments shall be levied by the Board against a Unit and its Owner to reimburse the Association for:

(a) costs incurred in bringing an Owner and his Unit into compliance with the provisions of the Declaration, the Articles, the Bylaws or Association Rules;

(b) costs associated with the maintenance, repair or replacement of any Common Area, Exclusive Limited Common Area, or Facility assigned to such Unit;

(c) any other charge designated as a Special Assessment in this Declaration, the Articles, the Bylaws or Association Rules; and,

(d) attorneys' fees, interest and other charges relating thereto as provided in this Declaration.

6.9. Date of Commencement of Assessments. Regular and other Assessments as to Units within the Condominium shall commence as to all Units as determined by the Board.

6.10. Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners in proportion to the Allocated Interests of each Unit in the Common Expenses of the Condominium, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

ARTICLE 7

EFFECT OF NON-PAYMENT OF ASSESSMENTS AND REMEDIES

7.1. Due Date and Delinquency. Assessments shall be issued no less than yearly, unless otherwise agreed to by the Board. Payment for assessments shall be due on January 1, of each year. Any Assessment, which is not paid within thirty (30) days after it becomes due, shall be delinquent. Whenever an Assessment is delinquent, the Board may at its option invoke any or all of the sanctions provided for herein.

7.2. Collection Charge. If any Assessment is delinquent, the Owner shall be obligated to pay the collection charge established by the Board as provided for in the Bylaws. The amount of such collection charge until paid shall constitute part of the Assessment lien as provided for in Section 6.1 of this Declaration.

7.3. Interest. If any Assessment is delinquent, interest at the rate established by the Board as set forth in the Bylaws at the time may be assessed on the amount owing from the date due until such time as it is paid.

7.4. Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay same or foreclose the Assessment lien, provided, however, that the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise the other. The costs of preparing and filing the complaint shall be assessed against the delinquent Owner and his Unit and reasonable attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest and/or collection charges, if appropriate) in the event that a judgment is obtained by the Association. Each Owner vests in the Association or its assigns the right and power to bring actions at law and/or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.

7.5. Foreclosure Sale. Any foreclosure provided for in this Declaration is to be conducted in compliance with applicable provisions relating to the foreclosure of realty mortgages in the State of Utah. The Association, upon approval by a majority of the Allocated Interests in the votes of the Association, may

through its duly authorized agents have and exercise the power to bid on the Unit at the foreclosure sale and to acquire, hold, lease, mortgage and convey such Unit,

7.6. Suspension of Votes. The Board may suspend the obligated Owner's right to vote on any matter at regular or special meetings of the Association and the Owner's right to use all or any portion of the Common Area and Facilities (exclusive of the Limited Common Areas and Facilities appurtenant to the Owner's Unit) for the entire period during which an Assessment or other amount due under any of the provisions of the Declaration remains delinquent.

ARTICLE 8 EASEMENTS

8.1. General Easements to Units for Ingress/Egress and Common Usage.

a) Easements for Ingress and Egress. Subject to this Declaration and the Association Rules, non-exclusive reciprocal easements are hereby reserved and created for the purpose of establishing access to each Unit, ingress and egress to each Unit, and use and enjoyment in favor of each Owner, upon, across, over, under and through the Condominium. These easements shall remain unobstructed at all times. If a door lies in the path of an easement, it will require a crash bar on the side of the door leading to the exit area in case of an emergency.

b) Easements for Common Usage. Subject to this Declaration and the Association Rules, non-exclusive reciprocal easements are hereby reserved and created for the purpose of the use of all pipes, wires, ducts, cables, conduits, and public utility lines across all Units, either presently existing or required in the future, which easements shall be appurtenant to each Unit. The Association, acting through the Board or its authorized agent, and public utility companies providing service to the Condominium, shall have non-exclusive easements with the right of access to each Unit to make inspections, to remove violations, and to maintain, repair, or replace each Unit.

8.2. Public Utilities. Easements and rights over the Condominium for the installation and maintenance of electricity lines, telephone lines, cable television, water lines, gas lines, sanitary sewer lines, drainage facilities, and such other public utilities needed to serve the Condominium are hereby reserved by Declarant and, after the Turnover Date, to the Association, together with the right to grant and transfer the same; provided, however, such easements and rights shall not unreasonably interfere with the use of the Common Areas and Facilities and the Units by the Owners or Occupants. Declarant or the Association shall have the power to grant and convey, in the name of all of the Owners as their attorney-in-fact, to any other person easements and right-of-way in, on, over or under the Common Areas and Facilities for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any similar public or quasi-public improvements or facility, and each Owner in accepting the deed in a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association and Declarant (as long as Declarant owns one or more Units in the Condominium) as attorney in fact of such Owner to execute any and all instruments conveying or creating such easements or right-of-way. However, no such easement can be granted if it would permanently interfere with the use, occupancy, or enjoyment by any Owner or such Owner's Unit.

8.3. Easements for Encroachments. If any portion of the Common Areas and Facilities now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or the Common Areas and Facilities, or if any such encroachment shall occur hereafter as a result of the manner in which the buildings have been constructed or due to settling, shifting, alteration, replacement, repair, or restoration by Declarant or the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist so long as the buildings stand.

8.4. Development Easements for Declarant. Until all Units have been sold by Declarant, there are hereby reserved to Declarant, together with the right to grant and transfer the same to others, including Declarant's sales agents, representatives and assigns, easements and rights upon, across, over, under and through the Condominium for construction, display (including the use of the Units as models), maintenance, sales and exhibit purposes (including the use of signs and other advertising devices) in connection with the erection, remodeling and sale or lease of Units within the Condominium; provided, however, that no such use by Declarant or its agents shall otherwise restrict Owners or Occupants in the reasonable use and enjoyment of their Units.

8.5. Parking. There are no designated parking stalls that shall be used for the sole purpose of one or more of the Units. All parking is available for use by Unit Owners. Unit Owners understand that assessments for parking lot maintenance, snow removal, landscaping, etc., will be assessed to The Lofts at Deer Haven LLC by the Association, and will be split amongst the Units in accordance with their Allocated Interests.

ARTICLE 9 USE RESTRICTIONS

9.1. Signs. Prior to the placement of any signs on any Unit in the Condominium, the Unit Owner shall obtain the prior written consent of Heber City.

9.2. Nuisance. No noxious or offensive activity shall be carried on upon the Condominium, nor shall any activity which might be or become an annoyance or nuisance to Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Condominium in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body. Nothing included herein shall be construed to prevent the owners of **units 2 and 4** from engaging in all forms of construction necessary to construct such buildings as anticipated or deemed necessary by a unit owner with the approval of the association.

9.3. Permitted Uses. This Condominium is intended to be a mixed use of business and professional office and residential units. Subject to the other limitations contained in this Article 9 inclusive, and the restrictions specifically mentioned herein, the Owner of a Unit may conduct any business within the Unit but only as authorized by the applicable laws and ordinances of Heber City as amended from time to time.

(a) No smoke shops, vape shops or similar uses or establishments are allowed in the Condominium.

(b) No hair salons, nail salons or other similar uses or establishments are allowed in the Condominium.

(c) No tattoo parlors or similar uses or establishments are allowed in the Condominium.

(d) No restaurants or similar uses or establishments are allowed in the Condominium.

(e) No uses which cause unusual or unreasonable noxious noises, odors, fumes, etc.

9.4. Parking/Visitor Parking. The following applies to all Common Area and Limited Common Areas and Facilities as designated in the Condominium Declaration:

(a) Unless otherwise specifically authorized in writing by the Association, no automobiles or other vehicles of any type (including, without limitation, motorcycles, trailers, campers, vans, recreational vehicles or boats) shall be stored within any portion of the Common Areas or Limited Common Areas and Facilities. The Association may adopt Association Rules relating to the admission and temporary parking of vehicles within the Condominium and Common Areas, and the use of the visitor parking spaces identified on the Plat, if any, including, without limitation, the right to loan or license the visitor parking spaces in the discretion of the Association, the right to remove or cause to be removed any vehicles that are improperly parked, restrictions on the time visitor spaces may be used, and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such rules. Any charges so assessed shall be Special Assessments. Nothing included herein shall be construed to prevent Declarant from using temporary structures or trailers for construction and/or sales purposes or engaging in all forms of construction and sales activities within the Condominium.

9.5. External Fixtures. No external items such as, but not limited to, television and radio antennas, satellite dishes, other than those provided in connection with the original construction of the Condominium, and any replacements thereof, shall be constructed, erected, or maintained on any Unit in the Condominium without the prior written consent of the Board. The foregoing notwithstanding, nothing included herein shall be construed as preventing Declarant and its agents and assigns from engaging in all forms of construction and sales activities within the Condominium.

9.6. Outside Speakers and Amplifiers. No radio, stereo, broadcast or loudspeaker units and no amplifiers of any kind shall be placed upon or outside, or be directed to the outside of, any Unit without the prior written approval of the Board.

9.7. Unsightly Items. All rubbish, debris or unsightly materials or objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon. Refuse containers and machinery and equipment not a part of the Units, shall be prohibited upon any Unit unless obscured from view of adjoining Units and Common Areas and Facilities. Trash and garbage not disposed of by equipment contained within the Units shall be placed in containers by Owners and Occupants for removal from the Condominium in accordance with Association Rules applicable thereto adopted by the Board. The Board may adopt rules applicable to the provisions of this Section and their enforcement, including the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such rules. Any charges so assessed shall be Special Assessment. The foregoing notwithstanding, nothing included herein shall be construed as preventing Declarant and its agents and assigns from engaging in all forms of construction and sales activities within the Condominium.

9.8. Animals. No animals, livestock, birds, reptiles, or poultry of any kind shall be raised, bred, sold or kept in any Unit or upon the Condominium.

9.9. Landscape Maintenance. The Declarant and the Association shall have the right to maintain all landscaping in the Common Areas and Facilities and Limited Areas and Facilities. The Declarant and the Association shall have the right to access all areas of the Condominium, which are necessary for such landscape maintenance.

9.10. Subdivision of Units or Further Restrictions. No Unit shall be split, subdivided, or separated into two or more Units, and no Owner of a Unit shall sell less than all of the Unit.

9.11. Architectural Control. No exterior changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board or any committee established by the Board for that purpose. By way of illustration but not of limitation the following are considered exterior changes; painting, landscaping, repairs, excavation, screens, doors, evaporative coolers, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations or other work which in any way alters the exterior appearance of the Property. The Board, or committee established by the Board for that purpose, may designate the design, style, model and manufacturer of any exterior improvement or alteration, which is acceptable to the Board. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. No interior structural changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board, or any committee established by the Board for that purpose. By way of illustration but not of limitation the following are considered interior structural changes: moving, removing, or altering "load-bearing" walls, doorways, and the like.

9.12. Association Rules. The Association shall have the power to make and adopt reasonable Association Rules with respect to activities which may be conducted on any part of the Condominium. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate such Association Rules shall be conclusive unless, at a regular or special meeting of the Association, Owners representing a majority of the Allocated interests in the votes of the Association vote to the contrary.

9.13. Variances. The Board may, at its option and in extenuating circumstances, grant variances from the Restrictions set forth in Article 9 of this Declaration if the Board determines in its discretion: (a) either (i) that a Restriction would create an unreasonable hardship or burden on an Owner or Occupant, or (ii) that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete, and (b) that the activity permitted under the variance will not have any substantial adverse effect on the Owners or Occupants of the Condominium and is consistent with the high quality of life intended for owners and users of the Condominium. No Variances may be granted which would materially damage or impair the rights of the other Unit Owners.

9.14. Environmental Matters. Without limiting, and in addition to any other provisions of this Declaration, no Owner or Occupant shall engage, or allow anyone to engage, in any activity or cause or allow the use, generation, manufacture handling, treatment, presence, discharge, emission, disposal, transportation or storage thereof of any Hazardous Materials (as hereafter defined) on or upon the Condominium or within the Parcel. Further, Owners and/or Occupants shall comply with all applicable

federal, state, local and otherwise environmental laws, standards, rules, regulations, codes, ordinances, permits, licensing conditions or court or administrative orders, now or hereafter in effect.

(a) As used herein, the term "Hazardous Materials" shall mean or refer to any petroleum or petroleum products, or constituents, pollutants, and dangerous substance, toxic substances, hazardous wastes, hazardous materials or hazardous substances or any other substance that is now or hereafter prohibited, restricted or controlled by federal, state, or local laws, code, ordinance or regulations, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 6901, et seq, the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq), the Toxic Substance Control Act (15 U.S.C. 2601 et seq) and the Water Pollution Control Act (33 U.S.C. 1317 et seq).

ARTICLE 10 INSURANCE

10.1. Authority to Purchase. Commencing not later than the date a Unit is conveyed to a Person other than Declarant, the Association shall have the authority to and shall obtain and maintain, to the extent reasonably available, the insurance required under Utah Code. Ann. § 57-8-29; provided, however, the Association shall always comply with the insurance requirements of the Act.

10.2. Comprehensive Public Liability Insurance. The Association shall carry at all times a comprehensive Public Liability Insurance Policy on the entirety of the Project, including the parking lot and parking stalls at a minimum of \$2,000,000.00 per incident, with an aggregate coverage amount of \$4,000,000.00. The minimum limits set forth in this section may be amended by a majority vote of the Board. The Unit Owners shall pay for this insurance in accordance with their Allocated Interests.

10.3. Insurance Generally. The Board may obtain such other policies of insurance in the name of the Association as the Board deems appropriate to protect the Association and the Owners. If an insurance policy is purchased by the Association, the Board shall have the power to impose assessments to pay for the insurance premiums.

10.4. Insurance Obtained by Owners.

(a) Property Insurance. The Board shall carry property insurance that covers the entire Project, including all property, building and contents, in an amount sufficient to cover total loss or destruction of the respective units. The cost of this insurance shall be assessed to the Unit Owners in accordance with their Allocated Interests. All policies must contain a waiver of subrogation by the insurer as to any and all claims against the Association, Owners, Occupants and their respective agents and employees, and any defenses based on co-insurance or on invalidity arising from acts of the insured. Each Unit shall also be required to enter into a written contract agreeing to hold the other harmless and also waiving all rights of subrogation should a fire start in one of the Units that harms or destroys the adjoining Unit.

(b) Commercial General Liability Insurance. A Unit Owner or Occupant/Leasee shall be required to carry general liability insurance in an amount not less than \$1,000,000.00 per occurrence, with an aggregate of \$2,000,000.00 coverage at all times. All units, or in the alternative, all leasees within the Units, shall be required to name the other lessees and Units in the Condominium as an additionally insured

party under their general liability insurance, and shall be required to provide proof of such to the Board. Each Unit Owner shall have the obligation to assure its leasees are carrying the appropriate insurance, and to provide proof of such to the Board. Failure to do so shall give the Board power to obtain the necessary insurance and to impose a special assessment on the Unit Owner.

ARTICLE 11 DESTRUCTION OF IMPROVEMENTS

11.1. Destruction of Common Area. In the event of partial or total destruction of any portion of the Common Areas and Facilities within the Condominium, the Board shall promptly take the following action:

(a) The Board shall ascertain the cost of reconstruction by obtaining fixed price bids, including the obligation to obtain performance and lien payment bonds;

(b) The Board shall determine the amount of insurance proceeds, if any, payable by contacting the appropriate representative of the insurer carrying the policy covering the Condominium; and

(c) Pursuant to Section 57-8-30 of the Act, if the Insurance proceeds are sufficient to reconstruct the building, such proceeds shall be applied to such reconstruction.

11.2. Destruction of Unit. No Unit, if partially or entirely destroyed, shall have an obligation or requirement to rebuild, but shall have an obligation to reconstruct any destroyed Exclusive Limited Common Area shared with another Unit, and may not leave its unit in an uninhabitable or dangerous condition if the Unit Owner chooses not to rebuild.

11.3. Negotiations with Insurer. The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Areas and Facilities, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Area and Facilities. Any settlement made by the Association in good faith shall be binding upon all Owners and Lenders.

ARTICLE 12 EMINENT DOMAIN

12.1. Total Taking of a Unit. If a Unit is taken by eminent domain, or sold under threat thereof, or if part of a Unit is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant which may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for his Unit and Allocated Interest in the Common Areas and Facilities, regardless of whether any Common Areas and Facilities are taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Areas and Facilities shall automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute, and record an amendment to the Declaration in compliance with the Act. Any remnant of a Unit remaining after part of a Unit is taken, if such has no legal use, or a use so limited as to destroy the practical value of the piece, becomes a Common Area and Facility.

12.2. Partial Taking of a Unit. Except as provided in Section 12.1, if part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used under this Declaration, the award must compensate the Owner for the reduction in the value of his Unit and Allocated Interest in the Common Areas and Facilities, regardless of whether any Common Areas and Facilities are taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Areas and Facilities shall remain the same, but if the decree provides for a reduction of the Allocated Interest for such Unit, the reduced amount shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Allocated Interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.

12.3. Taking of an Exclusive Limited Common Area and Facility. If the portion of the Condominium taken by eminent domain, or sold under threat thereof, is comprised of or includes any Exclusive Limited Common Area and Facility or portion thereof, the portion of the award attributable to the Limited Common Area and Facility so taken shall be divided among the Owners of the Units to which such Exclusive Limited Common Area and Facility was allocated at the time of the acquisition.

12.4. Taking of the Common Areas and Facilities. If the portion of Condominium taken by eminent domain, or sold under threat thereof, is not comprised of, or include, any Unit or Limited Common Area and Facility, the Board shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring the portion of the Condominium so taken, and the portion of the award not used for restoration shall be divided among the Owners in proportion to their Allocated Interest in the Common Areas and Facilities before the taking.

12.5. Taking of Entire Condominium. In the event the Condominium in its entirety is taken by eminent domain, or sold under threat thereof, the Condominium is terminated, and the provisions of the Act apply.

12.6. Proceeds. Nothing in this Declaration shall be construed to give an Owner or any other party priority over any rights of the first Mortgagee of a Unit pursuant to its Mortgage in the case of payment of insurance proceeds or condemnation awards for paid on account of the Condominium or any portion thereof, including Limited Common Area and Facility, being taken by eminent domain.

ARTICLE 13 LIMITATIONS UPON PARTITION AND SEVERANCE

13.1. No Partition. The right to partition the Condominium is hereby suspended, except that the right to partition shall revive and the Condominium may be sold as a whole when the conditions for such action set forth in Article 11 dealing with Destruction of Improvements, and Article 12 dealing with Eminent Domain have been met; provided, however, nothing contained in this Section shall be construed as limiting partition by joint Owners, upon the prior written approval of an applicable Lender, of one or more Units as to individual ownership of such Units provided the Condominium is not terminated.

13.2. No Severance. The elements of a Unit and other rights appurtenant to the ownership of a Unit, including interest in Common Areas and Facilities and Limited Common Areas and Facilities, if any, are inseparable, and each Owner agrees that he shall not, while this Declaration is in effect, make any conveyance of less than an entire Unit and such appurtenances. Any conveyance made in contravention of

this Section, including under any conveyance, encumbrance, judicial sale or other transfer (whether voluntary or involuntary) shall be void.

13.3. Proceeds of Partition Sale. If an action is brought for the partition of the Condominium by sale, whether upon the occurrence of an event of destruction and a decision not to reconstruct or the taking of all or a portion of the Condominium by eminent domain, Owners shall share in the proceeds of such sale in the same proportion as their Allocated Interest in the Common Areas and Facilities (or as otherwise provided by the Act), but in such event, the liens and provisions of all Lenders or Assessment liens encumbering Units within the Condominium to encumbered shall extend to each applicable Owner's interest in the proceeds of such partition and sale. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds.

ARTICLE 14 GENERAL PROVISIONS

14.1. Enforcement. The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions and other provisions now or hereafter imposed by this Declaration, or any amendments thereto, including the right to prevent the violation of any such Restrictions, and the right to recover damages and other sums for such violation. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws

14.2. No Waiver. Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or Association Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.

14.3. Cumulative Remedies. All rights, options and remedies of Declarant, the Association, the Owners or the Lenders under this Declaration are cumulative, and no one of them shall be exclusive of any other, and Declarant, the Association, the Owners and the Lenders shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

14.4. Severability. Invalidation of any one or a portion of the Restrictions or provisions set forth in this Declaration or in the Bylaws or Association Rules by judgment or court order shall in no way affect any other Restrictions or provisions contained herein or therein which shall remain in full force and effect.

14.5. Covenants to Run with the Land: Term. The Restrictions and other provisions of this Declaration shall run with and bind the Condominium as equitable servitudes and also as covenants running with the land and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, unless and until the Condominium is terminated in accordance with section 14.19 below.

14.6. Allocation Upon Termination. Unless provided otherwise herein, upon any liquidation or termination of all or part of the Condominium, the Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related thereto. Each Owner hereby appoints the

Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation shall be made payable to the Association, who will hold such proceeds for the benefit of the Owners and their Lenders. Owners shall share in the proceeds of such termination or liquidation in the same proportion as their Allocated Interest in the Common Areas and Facilities (or as otherwise provided by the Act), but in such event, the liens and provisions of all Lenders or Assessment liens encumbering Units within the Condominium so encumbered shall extend to each applicable Owner's Interest in such proceeds. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds.

14.7. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a commercial condominium community and for the maintenance of the Condominium. The Article and Section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

14.8. Gender and Number. Whenever the context of this Declaration requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

14.9. Nuisance. The result of every act or omission whereby any provision or Restriction contained in this Declaration or any provision contained in the Bylaws or Association Rules is violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable with respect to the abatement thereof and may be exercised by the Association or any Owner. Such remedy shall be deemed cumulative to all other remedies set forth in this Declaration and shall not be deemed exclusive.

14.10. Attorneys' Fees. In the event any action is instituted to enforce any of the provisions or Restrictions contained in this Declaration, the Bylaws or Association Rules, the party prevailing in such action shall be entitled to recover from the other party thereto, as part of the judgment, reasonable attorneys' fees and costs of suit.

14.11. Notices. Any notice to be given to an Owner, a Lender or the Association under the provisions of this Declaration shall be in writing and shall be delivered as follows:

(a) Notice to an Owner shall be delivered personally or placed in the first class United States Mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Unit. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners.

(b) Notice to a Lender shall be delivered by first class United States Mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender in Wasatch County, Utah, or if no such office is located in Wasatch County, to any office of such Lender. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.

(c) The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, or to any Lender or Lenders, to the address or addresses for the giving of notice pursuant to this Section, shall be deemed conclusive proof of such mailing.

(d) Notice to the Association shall be delivered by registered or certified United States Mail, postage prepaid, addressed to the office of the statutory agent of the Association or as follows:

DEER HAVEN OWNER'S ASSOCIATION
c/o Mike Petersen
67 East 500 South #103
Heber City, UT 84032

Any notice so deposited in the mail shall be deemed delivered upon the date of receipt.

14.12. Effect of Declaration. This Declaration is made for the purposes set forth in the recitals in this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. Declarant shall have no liability whatsoever if any of the provisions of this Declaration, the Bylaws or Association Rules are determined to be unenforceable in whole or in part or under certain circumstances.

14.13. Personal Covenant. To the extent the acceptance of a conveyance of a Unit creates a personal covenant between the Owner of such Unit and Declarant, other Owners or the Association, such personal covenant shall terminate and be of no further force or effect from and after the date when a Person ceases to be an Owner except to the extent this Declaration provides for personal liability with respect to the Assessments incurred during the period a Person is an Owner.

14.14. Non-Liability of Officials. To the fullest extent permitted by law, neither the Board nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence if such Board member or officer acted in good faith within the scope of his or their duties.

14.15. Use of Funds Collected by the Association. All funds collected by the Association, including Assessments and contributions to the Association paid by Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for non-profit purposes of the Association in managing, maintaining, caring for and preserving the Common Areas and Facilities and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Areas and Facilities and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).

14.16. Notification of Sale and Transfer Fee. Concurrently with the consummation of the sale or other transfer of any Unit, or within fourteen (14) days after the date of such transfer, the transferee shall notify the Association in writing of such transfer and shall accompany such written notice with any

nonrefundable transfer fee payable pursuant to the Association Rules, to cover Association documentation and processing. The Board may establish a transfer fee, from time to time, which shall be no more than the amount of the then current regular monthly assessment. The written notice shall set forth the name of the transferee and his transferor, the street address of the Unit purchased or acquired by the transferee, the transferee's mailing address, the date of the sale or transfer and the name and address of the transferee's Lender, if any. Prior to the receipt of such written notice, all notices required or permitted to be given by the Association to the Owner shall be deemed to be duly made or given to the transferee if duly and timely made and given to the transferee's predecessor in interest. The transfer fee shall be the personal obligation of the new Owner and shall be secured by the lien in Section 6.1 hereof Notwithstanding the other provisions hereof, this Section shall not apply to a Lender who becomes an Owner by a foreclosure proceeding or any deed or assignment in lieu of foreclosure.

14.17. Owner Liability and Indemnification. Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Areas and Facilities that may be sustained by reason of the negligence of that Owner or such Owner's family members, tenants, guests or invitees, but only to the extent that any such damage is not covered by casualty insurance in favor of the Association. Each Owner, by acceptance of a deed for a Unit, agrees personally and for family members, tenants, guests and invitees to indemnify each and every other Owner, and to hold such other Owners harmless from, and to defend such Owners against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner, including any Limited Common Areas and Facilities, if any, except to the extent (a) that such injury or damage is covered by liability insurance in favor of the Association or any other Owner, or (b) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other person temporarily visiting such Unit.

14.18. Conflicting Provisions. In the case of any conflict between this Declaration and the Bylaws, or Association Rules, this Declaration shall control. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow the Declaration to contain provisions contrary to the Act, the Act shall control, and this Declaration shall be deemed modified accordingly. Notwithstanding the above, this Declaration shall be deemed modified and amended only to the extent necessary to come into compliance with the Act.

14.19. Termination of the Condominium. Notwithstanding anything to the contrary herein, and in accordance with Utah Code Ann. § 57-8-22, the Unit Owners agree that should a zoning change, variance or other action from Heber City ever allow for the termination of the Condominium and the subdividing of the Condominium into lots, such action shall be taken if at least 51% of the Allocated Interests of the Owners vote in favor of terminating the Condominium.

ARTICLE 15 AMENDMENTS

15.1. Amendments by Declarant Prior to First Sale. Except as provided elsewhere in this Declaration, prior to the conveyance of the first Unit to an Owner other than a Declarant, this Declaration and any amendments thereto may be amended or revoked by the execution by Declarant of an instrument amending or revoking the same.

15.2. Amendments by Declarant After First Sale. Declarant shall have the unilateral right (without obtaining the approval of the Owners, the Association, or existing Lenders) to amend this Declaration until the Turnover Date, if such amendment is required solely: (i) to comply with applicable law or to correct any error or inconsistency of the Declaration and if such amendment does not adversely affect the rights of any Owner or Lender, or (ii) to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments (including, without limitation, the Veterans Administration, Federal Housing Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or any similar agency). If such amendment bears recitation that it is recorded based on such technical error or the requirements of any of the foregoing agencies, such amendment shall not require approval of any Owners or Lenders.

15.3. General Amendment Requirements. Except as permitted by Article 3, Section 15.1, Section 15.2, or as otherwise permitted or required by the Act, this Declaration may be amended only by vote or agreement of Owners of not less than 51% of the Allocated Interest. Prior to the Turnover Date, this Declaration shall not be amended without Declarant's prior written consent.

15.4. Protection of Declarant's Rights. An amendment shall not terminate or decrease any unexpired Development Right, Special Declarant Right, or period of Declarant control unless the Declarant approves or consents in writing.

15.5. Execution of Amendments. An amendment or revocation which only requires the execution of an instrument by Declarant as hereinabove provided shall be effective when executed by Declarant and when recorded in the Office of the County Recorder of Wasatch County, Utah. An amendment which requires the affirmative written assent or vote of the Owners as hereinabove provided shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment has been so approved and the Declarant, if the Declarant's consent is also required, and when the amendment has been recorded in the Office of the County Recorder of Wasatch County, Utah.

15.6. Lender Approval. Subject to the foregoing, any provision of this Declaration which expressly requires the approval of a specified percentage of the Lenders for action to be taken under said provision can be amended only with the affirmative written assent or vote of not less than the same percentage of the Lenders; provided that in the event approval is requested in writing from a Lender with respect to a proposed amendment and a negative response is not returned within sixty (60) days following the Lender's receipt of the request, by certified or registered mail, with a return receipt requested, the Lender shall be deemed to have approved the proposed amendment.

15.7. Mortgagee Notice. Each Mortgagee and guarantor of a Mortgage on any Unit shall receive timely written notice of (a) any condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage; (b) any 60-day delinquency in the payment of assessments; (c) charges owed by the owner of any Unit on which it holds the Mortgage; (d) a lapse, cancellation, or material modification of any insurance policy maintained by the homeowners' association; and (d) any proposed action that requires the consent of a specified percentage of Mortgagees.

[Acknowledgements and Signatures on following Page]

EXHIBIT A

LEGAL DESCRIPTION (excluding mineral rights)

Parcel No. 00-0004-4169

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.

Parcel No. 00-0004-4177

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.

Parcel No. 00-0011-8260

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.