

**AMENDED AND RESTATED  
DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS  
FOR  
DEER SPRINGS RANCH SUBDIVISION, PLATS A, B, C, D, E, AND F**

**PREAMBLE**

This Amended and Restated Declaration of Protective Covenants and Restrictions for Deer Springs Ranch Subdivision, Plats A, B, C, D, E and F (the "Declaration") shall hereafter completely replace the original DEER SPRINGS RANCH PROTECTIVE COVENANTS AND RESTRICTIONS FOR PLATS A, B, C, D, E, AND F recorded in the Office of the Kane County Recorder on or about December 2, 1981, as Entry No. 46443 in Book No. 071, Page No. 695-699, as amended from time to time (the "Original Declaration").

This Declaration shall specifically and expressly affect, govern and control the ownership, conveyance and use of all of the following real property located in Kane County, State of Utah:

See Exhibit "A" attached hereto and incorporated herein by this reference.

The Community Association Act, Utah Code §57-8a-101, et. seq. (the "Act"), as amended from time to time, shall supplement this Declaration. If an amendment to this Declaration adopts a specific section of the Act, such amendment shall grant a right, power, and privilege permitted by such section of the Act, together with all correlative obligations, liabilities and restrictions of that section. The remedies in the Act and the Declaration -- provided by law or in equity -- are cumulative and not mutually exclusive.

**RECITALS**

A. CLARKSON INVESTMENTS, LLC, A Utah limited liability company and successor to Clarkson Properties, Inc. a Utah corporation (fka Utah Properties, Inc.), as Declarant, has developed the real property described in Exhibit A (the "Deer Springs Ranch Subdivision").

B. The Declarant executed and recorded the Original Declaration as indicated above in order to provide for the fair and proper development, maintenance, use and conveyance of the Deer Springs Ranch Subdivision and Common Areas according to the general plan and for all such properties to be subject to the Original Declaration and the protective covenants, easements, equitable servitudes, liens and charges as described therein.

C. Declarant has also established the DEER SPRINGS RANCH OWNERS ASSOCIATION, INC. a Utah non-profit corporation (the "Association") which has been vested with powers of, among other matters, owning, maintaining and administering the Common Area, administering and enforcing the covenants and restrictions pertaining to the Properties, promulgating Rules and Regulations through its Board, and collecting and disbursing the assessments and charges hereinafter created.

D. The Declarant, together with at least three-fourths (3/4) of the Lot Owners in the Deer Springs Ranch Subdivision and Membership in the Association, hereby declare that the Original Declaration is hereby replaced in its entirety and that all properties and each Lot within the Deer Springs Ranch Subdivision shall be maintained, held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, reservations, rights, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Deer Springs Ranch Subdivision, in furtherance of a general plan for the protection, maintenance, subdivision, improvement, and sale of the Deer Springs Ranch Subdivision or any Lots thereof. The covenants, conditions, restrictions, rights, reservations, easements,

and equitable servitudes set forth herein shall run with and burden all Lots and property within the Deer Springs Ranch Subdivision and shall be binding upon all persons having or acquiring any right, title, or interest in said properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the properties and any interest therein; and shall inure to the benefit of and be binding upon and may be enforced by Declarant, the Association, each owner and their respective heirs, executors and administrators, and successors and assigns.

## **DECLARATION**

1. **DEFINITIONS.** The definitions in this Declaration are supplemented by the definitions in the Act. In the event of any conflict, the more specific and restrictive definition shall apply. Unless otherwise expressly provided, the following words and phrases when used herein shall have the meanings hereinafter specified.

1.1 Act. The Act shall mean and refer to the Community Association Act (Utah Code 57-8a-101 et seq.) as amended from time to time.

1.2 Annual Assessment. Annual Assessment (or “Assessment”) shall mean the annual charge against each Owner and his or her Lot, representing a portion of the Common Expenses, which are to be paid by each Owner to the Association in the manner and proportions provided herein.

1.3 Articles. Articles shall mean the Articles of Incorporation of the Association filed with the State of Utah, Department of Commerce, Division of Corporations and Commercial Code, as such Articles may be amended from time to time.

1.4 Association. Association shall mean DEER SPRINGS RANCH OWNERS ASSOCIATION, INC. a Utah non-profit corporation, its successors and assigns.

1.5 Beneficiary. Beneficiary shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgagee or beneficiary.

1.6 Board. Board shall mean the Board of Directors of the Association, elected pursuant to the Bylaws of the Association.

1.7 Budget. Budget shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration.

1.8 Bylaws. Bylaws shall mean the Bylaws of the Association, as adopted by the Membership and the Board, as such Bylaws may be amended from time to time.

1.9 Common Area. Common Area means that portion of Deer Springs Ranch Subdivision owned by the Association, shown on the Plat as dedicated to the common use and enjoyment of the owners and all improvements constructed thereon including, but not being limited to, cabins, Roads, water systems and holding facilities, the airstrip and all other improvements on or to the Association-owned property.

1.10 Common Expenses. Common Expenses shall mean those expenses for which the Association is responsible under this Declaration, including the actual and estimated costs of: maintenance, management, operation, repair, replacement and improvement of the Common Area; costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all utilities; gardening; certain landscaping and Improvements on the Common Area, or portions thereof; and the costs

of any other items incurred by the Association for any reason whatsoever, in connection with the Properties, for the benefit of all of the Owners.

1.11 Declarant. Declarant shall mean CLARKSON INVESTMENTS, LLC, A Utah limited liability company, its successors and any Person to which it shall have assigned any rights hereunder.

1.12 Improvement. Improvement shall mean any structure or appurtenance thereto of every type and kind, including but not limited to dwelling units and other buildings, walkways, sprinkler pipes, or areas, garages, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, ponds, antennae, hedges, wind-breaks, patio covers, railings, plantings, planted trees and shrubs, poles, signs, storage areas, exterior air conditioning and water-softening fixtures or equipment.

1.13 Lot. Each Lot is owned in fee simple by the Owner. There are a total of three hundred and five Lots within the Deer Springs Ranch Subdivision which are numbered 1 through 305.

1.14 Manager. Manager, or sometimes referred to as the “Caretaker”, shall mean the Person appointed by the Association, if any, hereunder as its agent and delegated certain duties, powers or functions of the Association as further provided in this Declaration and in the Bylaws.

1.15 Member, Membership. Member shall mean any Person holding a membership in the Association, as provided in this Declaration and shall be synonymous with Owner as defined herein. Membership shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations contained in this Declaration and the Articles, Bylaws, Rules and Regulations.

1.16 Mortgage, Mortgagee, Mortgagor. Mortgage shall mean any recorded first mortgage or first deed of trust. The term “Deed of Trust” or “Trust Deed” when used herein shall be synonymous with the term “Mortgage.” The term Mortgagee shall mean a person or entity to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. Mortgagor shall mean a Person who mortgages his, her, or its Lot to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term “Trustor” shall be synonymous with the term “Mortgagor,” and the term “Beneficiary” shall be synonymous with the term “Mortgagee.”

1.17 Notice of Members Meeting. Notice of meetings of the Members required or provided for in this Declaration shall be in writing, shall satisfy the notice requirements set forth in the Bylaws, and may be delivered either personally or by first class or registered mail. Notice of Members Meetings shall be delivered at least ten (10) days but not more than thirty (30) days prior to the date of the meeting of the Members. Notwithstanding the foregoing, notice given by other means shall be deemed fair and reasonable if given in accordance with the Utah Revised Nonprofit Corporation Act.

1.18 Owner. Owner or Lot Owner shall mean the Person or Persons, who is the owner of record (in the office of the County Recorder of Kane County, Utah) of a fee simple or an undivided fee simple interest in a Lot. Notwithstanding any applicable theory relating to a Mortgage, the term Owner shall not mean or include a Mortgagee unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.19 Person. Person shall mean a natural individual or any other entity with the legal right to hold title to real property.

1.20 Plat. Plat or Plat Map shall mean the Deer Springs Ranch Subdivision Plat which has been recorded in the Office of the Kane County, Utah Recorder, as the same has been modified or amended from time to time.

1.21 Properties. The Lots and Common Areas within the Deer Springs Ranch Subdivision shall be collectively referred to as the Properties, all of which are subject to this Declaration.

1.22 Roads. Roads or Roadways shall mean private and public roads, streets and thoroughfares on the Properties, whether or not the same are indicated on the Plat Map.

1.23 Rules and Regulations. Rules and Regulations shall mean rules and regulations as may be adopted and promulgated by the Board pursuant to the Bylaws and this Declaration, as the Board deems necessary or desirable (i) to aid it in administering the affairs of the Association, (ii) to insure that the Properties are maintained and used in a manner consistent with the interests of the Owners, (iii) to regulate the use of the Common Areas and to regulate the personal conduct of the Members and their guests thereon, and (iv) to establish penalties for the infractions thereof, as such rules and regulations may be amended from time to time.

1.24 Special Assessments. Special Assessments shall mean a charge against each Owner and his Lot, representing a portion of the costs to the Association of defraying any extraordinary expenses incurred or special projects approved as set forth herein.

2. **DESCRIPTION OF PROPERTY.** The real property included within the definition of Properties, including all Common Areas and lots, shall hereafter continue to be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration and consists of all real property described in Exhibit A hereto; TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the described real property.

All lots are subject to utilities, access and drainage easements as specified on the recorded Plat Map and established by prior use. Each owner specifically recognizes and acknowledges that each Lot includes a perpetual non-exclusive easement running 30 feet in width inside the boundaries of each Lot in the Deer Springs Ranch Subdivision. Said easement is expressly dedicated to the use by other Owners as well as the Association in order to install and maintain accesses including ingress and egress to and from other Lots as well as for the installation and maintenance of waterlines, power lines and other utilities at any time.

Notwithstanding the foregoing, none of the above-described easements shall be used for the purposes of constructing any roadway whether temporary or permanent except upon 60 days' written notice to the affected Lot Owner.

3. **OWNERS' PROPERTY RIGHTS.** Each Owner shall have a right and easement of use and enjoyment to the Common Areas including, but not limited to, the right of ingress and egress to and from his or her Lot and in and to any Common Area (which shall not include the right to cross the Lot of another Member except where a roadway exists, within a dedicated easement or such roadway is designated on the Plat Map). Such right and easement shall be appurtenant to and shall pass with title to each such Lot and in no event shall be separated therefrom. Any Owner may grant the use and enjoyment described herein to any tenant, lessee, guest, or family member, and to a contract purchaser of any such Lot. All such rights are subject to this Declaration.

All Lots shall be used, rented or leased for residential, recreational, and agricultural purposes as herein specified. No more than two single-family dwelling units shall be erected, altered, permitted, or maintained on any single Lot. The term single-family dwelling unit shall not include garages, pavilions, utility buildings

or structures or livestock buildings, bunk-houses or other buildings which may be constructed or located upon a Lot. No structure may be more than two stories (35 feet) above ground level. All Improvements to any Properties subject hereto shall conform in every particular to the zoning ordinance and building code adopted by Kane County, Utah, as amended from time to time.

#### 4. OWNERS ASSOCIATION.

4.1 Organization of Association. Declarant has caused the Association to be organized and the Articles filed with the State of Utah, Department of Commerce, Division of Corporations and Commercial Code.

4.2 Parties and Powers. The Association shall have such duties and powers as set forth in the Articles, Bylaws, and this Declaration as well as any Rules and Regulations, as such documents are amended from time to time.

4.3 Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory and shall be appurtenant to the Owner's Lot. Membership in the Association is nontransferable and shall not be separated from the Lot to which it appertains.

Notwithstanding the foregoing, each Lot may be subject to a single division or subdivision which would result in no more than two separate sub-lots of at least 9 acres each. In this case the Membership of said Lot shall be divided so that each sub-lot holds a one-half (1/2) Membership which can be voted completely independently of one another.

4.4 Non-Liability for Tort. The Association shall not be liable, in any civil action brought by or on behalf of a Member, for bodily injury occurring to a Member, or a Member's guests, invitees, licensees or trespassers, whether on the Association's Common Area or on any Lot. This immunity from liability shall not be effective if the Association causes bodily injury to the Member on the Common Area by its willful, wanton, or grossly negligent act of commission or omission.

4.5 Board Acts for Association. Except as limited in the Declaration, the Articles, or the Association Bylaws, the Board acts in all instances on behalf of the Association.

#### 5. VOTING RIGHTS.

5.1 Vote Distribution. The Association shall have a single class of voting membership. Each Lot shall be entitled to a single vote on each matter coming before the Association. However, in the event a Lot is divided, so long as each half of the Lot contains at least 9 acres of property, then each Owner of a sub-lot shall be entitled to one-half (1/2) vote to be voted independently of the other sub-lot Owner.

5.2 Multiple Ownership. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned, unless an objection is immediately made by another co-Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever, other than to determine whether a quorum exists.

6. **JURISDICTION OF ASSOCIATION.** The Association has been organized to provide for the operation, maintenance, and preservation of the Lots, Common Areas, Properties and Improvements and to administer the Common Areas of the Association. The Association shall have jurisdiction and authority over the Properties described above and the Members of the Association to the full extent allowed by law and also as provided for in this Declaration and in the Articles, Bylaws, Rules and Regulations, as such

documents may be modified from time to time. The Association may also maintain public areas within the Properties.

Notwithstanding any provision herein to the contrary, the Association through its Board shall have power to sell any Lot within the Deer Springs Ranch Subdivision owned by the Association, whether original owned by the Association or for which title is obtained through foreclosure or other means, according to the Act.

## 7. COVENANT FOR ASSESSMENTS.

7.1 Creation of Assessment Obligation. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) Annual Assessments, (2) Special Assessments, and (3) any other amount or assessment levied by the Board pursuant to this Declaration; all such assessments to be established and collected as provided in this Declaration. The Association shall not levy or collect any Annual Assessment or Special Assessment that exceeds the amount necessary for the purpose or purposes for which it is levied. All such assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the Lot and this Declaration shall constitute a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, if applicable, shall also be and remain the personal obligation of the Person who was the Owner of such property at the time when the assessment fell due. This personal obligation cannot be avoided by abandonment of a Lot or by an offer to waive use of the Common Area or any improvement thereto. The personal obligation for delinquent assessments liability shall also pass and be the joint responsibility of any new Owner ("Purchaser") successors in title whether or not it is expressly assumed by such Purchaser.

7.2 Purpose of Annual and Special Assessments. The Annual and Special Assessments levied by the Association shall be used exclusively to promote the common health, safety, benefit and welfare of the Owners and for the improvement and maintenance of the Common Area specifically including, but not being limited to the Cabins, Roads, Water Systems, Ranch Headquarters, the employment of Caretakers or Managers, and maintenance of equipment. This may also include establishing and funding a reserve to cover major repair or replacement of Improvements within the Common Area and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Bylaws or Articles.

7.3 Annual Assessments. Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided herein and in the Bylaws. The current Annual Assessment is Four Hundred Seventy-Five Dollars (\$475.00) which is due and payable by the first day of each March. The Annual Assessment shall be based upon the Budget prepared by the Board. The Board shall authorize and levy the amount of the Assessment upon each Lot, as provided herein, by a majority vote of the Board. Any Assessment not paid when due shall bear interest at the rate of 18% per annum until paid in full.

7.4 Special Assessments without Member Approval. In addition to the Annual Assessment, a Special Assessment can be assessed to pay the costs of any one or more of the following with approval of the Board but without Member Approval:

7.4.1 An extraordinary expense required by an order of a court;

7.4.2 An extraordinary expense necessary to repair or maintain the Common Area or any portion thereof for which the Association is responsible where a threat to personal safety on the Common Area is discovered. Prior to the imposition or collection of a Special Assessment pursuant to this subsection, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense

involved and why the expense was necessary and was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the notice of Assessment;

7.4.3 Taxes payable to Kane County;

7.4.4 To protect the Common Areas against foreclosure.

7.5 Special Assessments with Member Approval. Special assessments which must be assented to by more than fifty percent (50%) of all votes which Members represented in person, by proxy, or by ballot are entitled to cast at a meeting duly called and held for such purpose pursuant to the Bylaws involve:

7.5.1 The replacement or improvement of the Common Area or Improvement thereon; and

7.5.2 An extraordinary expense necessary to repair or maintain the Common Area or any portion thereof for which the Association is responsible.

7.5.3 Before any Special Assessment is levied, the Board shall deliver a Notice of Members Meeting. The quorum required for any action authorized by this Section shall be as follows: at the first meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all outstanding votes shall constitute a quorum. If a quorum is not present at any meeting another meeting may be called by the Board issuing a Notice of Members Meeting at which a quorum shall be one-half of the quorum which was required at such preceding meeting. The process of calling subsequent meetings may continue until a quorum is reached and the quorum requirement will continue to be reduced as provided for above at each subsequent meeting. No such subsequent meeting shall be held more than forty-five (45) days following such preceding meeting at which a quorum was not present.

7.6 Uniform Rate of Assessment. Annual Assessments and Special Assessments imposed pursuant to this Declaration shall be assessed equally and uniformly against all Owners and their Lots.

7.7 Preparation of Budget. At least annually the Board shall prepare and adopt a budget for the Association and the Board shall present the budget at a meeting of the Members or by mail to the Members or posted on the Association website. A budget presented by the Board is only disapproved if Member action to disapprove the budget is taken in accordance with the limitations under Section 215 of the Act.

7.8 Reserve Fund. The Board shall, on behalf of the Association, cause to be funded through Assessments an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacement to the Common Areas. The Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years and shall review and, if necessary, update a previously prepared reserve analysis every three (3) years. The Board may conduct the reserve analysis by itself or may engage a reliable person or organization to conduct the reserve analysis. The Board shall annually provide Owners a summary of the most recent reserve analysis or update and provide a complete copy of the reserve analysis or update to an Owner upon request. In formulating the budget each year, the Board shall include a reserve line item in an amount required by the governing documents, or, if the governing documents do not provide for an amount, the Board shall include an amount it determines, based on the reserve analysis, to be prudent.

## 8. **NONPAYMENT OF ASSESSMENTS; REMEDIES.**

8.1 Nonpayment of Assessments; Remedies. Pursuant to Utah Code Ann. §§ 57-8a-301, *et seq.*, any Assessment payment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute, and remain a continuing lien on the Lot provided, however, that any such lien

will be subordinate to the lien or equivalent security interest of any Mortgage on the Lot recorded prior to the date any such payment on Assessments become due. If any installment payment on the Assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum plus a late payment service charge of Ten Dollars (\$10.00) if the assessment is not paid within ten (10) days of when it is due, or such larger amount as set by the Board, provided the charge does not exceed twenty-five percent (25%) of the amount of the installment payment, and the Association may, in its discretion, bring an action either against the Owner or to foreclose the lien against the Lot. Any judgment obtained by the Association and any foreclosure commenced shall include reasonable attorney fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.

8.2 Lien. Notwithstanding the fact that this Declaration shall constitute an ongoing lien on each Lot, the Board may elect to file a claim of lien against the Lot of the delinquent Owner by Recording a notice ("Notice of Lien") setting forth (a) the amount of the claim or delinquency, (b) the interest and costs of collections which have accrued thereon, (c) the legal description of the Lot against which the lien is claimed, and (d) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer or authorized employee of the Association or duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the Notice of Lien have been fully paid or satisfied, the Association shall execute and Record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board to cover the cost of preparing and recording the release of lien. Unless paid or otherwise satisfied, the lien may be foreclosed in a like manner as a mortgage or any other manner provided by law.

8.3 Perfection of Lien and Priority. Upon the recording of Notice of Lien by the Board, such lien constitutes a lien on the Lot Owner's interest in the lot and Properties prior to all other liens and encumbrances, recorded or unrecorded, except any tax and special assessment liens on the Lot in favor of any special improvement district, and encumbrances on the interest of the Lot Owner recorded prior to the date of the recording of Notice of Lien, and that by law would be a lien prior to subsequently recorded encumbrances.

The Board may enforce the assessment lien by sale or foreclosure of the Owner's interest. The Board may bid at a sale or foreclosure and hold, lease, mortgage, or convey the Lot that is subject to the assessment lien.

8.4 Discontinuance of Voting Rights and Suspension of Common Area Facility Use. If an Owner fails or refuses to pay an Assessment when due, the Owner shall not be eligible to vote in any election of directors or on any other matter coming before the Membership and the Board shall terminate an Owner's right to use any Common Area Facilities, including cabin and fishpond use.

8.5 Statement of Account. The Board shall issue a written statement indicating any unpaid Assessment with respect to a Lot covered by the request, upon the written request of any Owner, and payment of a reasonable fee not to exceed Ten Dollars (\$10.00). The written statement shall be binding in favor of any person who relies in good faith on the written statement upon the remaining Owners, the Board and the Association. Unless the Board complies with such request within ten (10) days, any unpaid Assessment that became due prior to the date the request was made is subordinate to a lien held by the person requesting the statement.

8.6 Payment by Encumbrancer. An encumbrancer holding a lien on a Lot may pay any unpaid Assessment due with respect to the Lot. Upon such payment, the encumbrancer has a lien on the Lot for the amounts paid.



8.7 Cumulative Remedies. The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Assessments, as above provided.

8.8 Mortgage Protection. Notwithstanding all other provisions hereof, no lien created under this Article, nor any breach of this Declaration, nor the enforcement of any provision hereof shall defeat or render invalid the rights of the Beneficiary under any Recorded first Deed of Trust (meaning any deed of trust with first priority over other deeds of trust) upon a Lot made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Lot by judicial foreclosure or by means of the powers set forth in such Deed of Trust or through a deed in lieu of foreclosure, such Lot shall remain subject to the Declaration and the payment of all Assessments accruing before or subsequent to the date such Beneficiary or other Person obtains title.

9. **MAINTENANCE AND REPAIR OBLIGATIONS.** The Deer Springs Ranch Subdivision shall not be subject to any restrictions or compliance requirements such as an architectural control committee. However, the following basic obligations are required of each Owner as related to their Lot:

9.1 Maintenance Obligations of Owners. It shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration, to maintain and repair his or her Lot and all Improvements located thereon in a reasonable manner, and consistent with the area. All Properties covered hereby shall be maintained in a manner so as to create and promulgate a clean, beautiful, healthful, and natural environment. Dumping of trash, ashes, sewage, or other garbage or refuse except in designated areas is prohibited. Sewage disposal shall be accomplished in accordance with the requirements of the Utah State Health Department.

9.2 Maintenance Obligations of Association. No improvement, excavation or work which in any way alters the Common Area shall be made or done by any person other than the Association or its authorized agents. The Association shall provide for the maintenance, planting, repair, and replacement of the Common Area and all Improvements (including drainage) thereon in a safe, sanitary and attractive condition, and in good order and repair.

10. **USE RESTRICTIONS.** All real property within the Properties shall be held, used and enjoyed subject to such limitations and restrictions set forth below.

10.1 Quiet Enjoyment. No noxious or offensive activity or noise shall be carried on upon any part of the Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners or which shall in any way increase the rate of insurance.

10.2 Signs. No signs, billboards, or advertising structures of any kind shall be erected or displayed except for one "For Sale" sign. "Private Property" signs, "No Trespassing" and "No Hunting" signs shall be prohibited, except around and upon the outside perimeter of any Lot and/or the outside perimeter of the Deer Springs Ranch Subdivision or any grazing allotment where permitted by law.

10.3 Firearms. No Member or other individual shall use or discharge any firearm on any Common Area of the Deer Springs Ranch Subdivision without prior written approval of the Association. Use of firearms on or within the boundaries of any Lot is permitted upon approval of the Lot Owner. The discharging of firearms shall be allowed only within areas designated by the Association. Safety practices must be exercised in the use of firearms at all times and any careless or unlawful use of firearms shall be cause for restrictive and/or disciplinary action by the Association. All laws relating to the use of firearms, hunting, and fishing

will be strictly enforced. All damage caused to any Common Area or other property by the use or discharge of a firearm shall be the responsibility of the Member participating or allowing for the same.

10.4 Further Subdivision; Lease Provisions. Each Owner shall have the right to divide his Lot (approximately 20 acres in size) to create two sub-lots, which must contain at least 9 acres each. However, no Owner shall have any right to any further partition or subdivide his or her Lot. This provision shall not be construed to limit the right of an Owner (1) to rent or lease his entire Lot to a third party by means of a written lease or rental agreement; (2) to sell his Lot; or (3) to transfer or sell any Lot to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or some other form of joint ownership. The terms of any lease or rental agreement shall be made expressly subject to this Declaration and the Bylaws of the Association. Any failure by the lessee of such Lot to comply with the terms of this Declaration, the Bylaws of the Association, or the Rules and Regulations shall constitute a default under the lease or rental agreement. Furthermore, any damage to the Common Areas caused by any tenant of any Owner shall render both the tenant and the Owner jointly liable for any such damage.

10.5 Drainage. There shall be no interference with or alteration of the established drainage pattern over any Lot, unless an adequate alternative provision is made for proper drainage. For the purposes hereof, "established drainage pattern" is defined as the drainage which exists at the time that such Lot is conveyed to a purchaser from Declarant, and shall include drainage from the Lots onto the Common Area.

10.6 Off-road Vehicles/Motorcycles and ATV/UTV's. All ATV/UTV operators must comply with the applicable Utah Off-Highway Vehicle Laws and Rules. Additionally operators must comply with all posted speed limits and other warning or advisory signs. All vehicles operated at any location on the Properties shall only be operated by an individual of legal age. The speed limit at all locations within the Deer Springs Ranch Subdivision and surrounding areas is 25 miles per hour unless otherwise posted. No vehicle, motorcycle or ATV/UTV shall be operated on any portion of the Common Area except on previously established Roads and shall not be operated upon any Lot within the Deer Springs Ranch Subdivision except with written permission of the Owner of said Lot.

11. **DAMAGE AND CONDEMNATION.** Damage to or destruction of all or any portion of the Common Area and condemnation of all or any portion of the Common Area shall be handled in the following manner:

11.1 Insurance. If the Common Area is damaged or destroyed, the Association shall first utilize insurance proceeds and second reserve funds to cause the same to be repaired and reconstructed substantially as they previously existed.

11.2 Special Assessment. If the cost of effecting total restoration of such Common Area exceeds the amount of insurance proceeds and reserve funds, the Association shall, if and to the extent a Special Assessment is approved as provided for herein, cause the same to be repaired and reconstructed substantially as they previously existed, and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment against each Lot and its respective Owner.

11.3 Restoration. To the extent of funds available for restoration, any restoration or repair of such Common Area shall be performed substantially in accordance with the original plans and specifications subject to such changes within the scope of such original plans and specifications as may be approved by the Board.

11.4 Damage to Common Areas by Member. Each Member shall be liable to the Association for any damage to the Common Area or Improvement thereon sustained by reason of the negligence or willful

misconduct of said Member or the Persons deriving their right and easement of use and enjoyment of the Common Area from said Member, or of his respective family and guests, both minor and adult. In the event of such damage to the Common Area or Improvement thereon the Board may either assess a penalty under the Rules and Regulations established by the Board in an amount sufficient to pay all costs of the Association attributable to such damage, including deductibles and increase in insurance premiums, if any, or the Board may repair the damage to the Common Area or Improvement thereon with the proceeds from the Association's insurance and assign to the Association's insurance company, its claims against the Member who, by his own acts or the acts (both minor and adult) of his family member, guest, invitee, or assignee, damaged the Common Area or Improvement thereon. In the case of joint ownership of a Lot, the liability of the Owners thereof shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. All such expenses may be levied by the Association as a lot-specific Assessment.

11.5 Condemnation. If at any time the Common Area, or any part thereof, shall be taken or condemned by any authority having the power of eminent domain, the Association shall represent the Lot Owners in these proceedings, negotiations, settlements or agreements. All compensation and damages shall be payable to the Association and shall be used promptly by the Association to the extent necessary for restoring and replacing any Improvements on the remainder of the Common Area. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Association which are proceeds for the taking of any portion of the Common Area shall be disposed of in such manner as the Association shall reasonably determine.

## 12. **INSURANCE.**

12.1. Casualty Insurance. The Association shall secure and at all times maintain the following insurance coverages: A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all Improvements comprising a part of the Common Area. The name of the insured under each such policy shall be the Deer Springs Ranch Owners Association, Inc.

12.2. Liability Insurance. A comprehensive policy or policies insuring the Owners, the Association, and its Board, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall not be less than \$1,000,000.00 for all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against liability for property of others, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use. Such policies shall be issued on a comprehensive liability basis, shall provide a cross-liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claims of an Owner in the Deer Springs Ranch Subdivision because of negligent acts of the Association or other Owners.

12.3. Fidelity Insurance. A fidelity policy or policies to protect against dishonest acts on the part of Board, officers, Manager, employees of the Association and all others (including volunteers) who handle or are responsible for handling funds of the Association. This fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than one hundred percent (100%) of the Association's estimated annual operating expenses including reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Said policy shall also provide that it may not be canceled or

substantially modified (including cancellation for non-payment of premiums] without at least thirty (30) days prior written notice to all Mortgagees of Lots.

12.4. Additional Insurance Requirements. The following additional provisions shall apply with respect to the insurance:

12.4.1 In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature, and use. This additional insurance shall include automobile insurance on all Association-owned vehicles and workers compensation insurance on all employees.

12.4.2 Each policy of insurance obtained by the Association shall, if reasonably possible, provide: A waiver of the insurer's subrogation rights with respect to the Association, the Owners, invitees, and tenants; that it cannot be canceled, suspended, or invalidated due to the conduct of any particular Owner or Owners; that it cannot be canceled, suspended, or invalidated due to the conduct of the Association or of any Board, officer, Manager, agent or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause herein shall not apply with respect to insurance held by the Owners.

12.4.3 The Board shall periodically, and whenever requested by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Lot and to the holder of any mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by the Owner.

12.4.4 The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Lot or dwelling unit on a Lot and acts and events occurring thereon.

### 13. **GENERAL PROVISIONS.**

13.1 Enforcement. Subject to the provisions hereof, this Declaration may be enforced by the Association and any Owner as follows:

13.1.1 Breach of any of the provisions contained in the Declaration and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings instituted by any Owner and by the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

13.1.2 The result of every act or omission whereby any of the provisions contained in this Declaration are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner and by the Association.

13.1.3 The remedies herein provided for breach of the provisions contained in this Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

13.1.4 The failure of the Association to enforce any of the provisions contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter.

13.1.5 Any breach or amendment of the provisions contained in this Declaration, the Articles or the Bylaws shall not affect or impair the lien or charge of any first Mortgage made in good faith and for value on any Lot or the Improvements thereon, provided that any subsequent Owner of such property shall be bound by such provisions of the Declaration, Articles and Bylaws, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

13.1.6 The Association, through its Board, shall have the power to levy fines for violations of the Association's governing documents and fines may only be levied for violations of the governing documents. In addition to the levy of fines, the Board may also elect to pursue other enforcement remedies and/or damages permitted under the governing documents. Furthermore, pursuant to Utah Code 57-8a-218(2)(b), a tenant shall be jointly and severally liable to the Association with the Owner leasing to such tenant for any violation of the governing documents by the tenant. The Board shall adopt a rule for the procedure to enforce the governing documents and levy fines, including a schedule of fines.

13.2 Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

13.3 Rule Against Perpetuities. The rule against perpetuities and the rule against unreasonable restraints on alienation of real estate may not defeat or otherwise void a provision of this Declaration, the Articles, Bylaws, Plat, Rules or other governing document of the Association. If for any reason the Declaration does not comply with the Act, such noncompliance does not render a Lot or Common Area unmarketable or otherwise affect the title if the failure is insubstantial.

13.4 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential/agricultural/recreational community and for the maintenance of the Common Area. 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. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter. Except for judicial construction, the Board shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration.

13.5 Amendment. Any amendment to this Declaration shall require the affirmation of at least seventy-five percent (75%) of all Membership votes actually represented in person, by proxy, or by ballot that are entitled to be cast at a meeting duly called for such purpose. The Board shall cause to be delivered to all Members a Notice of Members Meeting setting forth the purpose of the meeting and the substance of the amendment proposed. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes of the Membership shall constitute a quorum. If a quorum is not present at any meeting, another meeting may be called by the Board causing to be delivered another Notice of Members Meeting, at which meeting a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the Recordation of an instrument executed by the Association. In such instrument an officer of the Association or member of the Board shall certify that the vote required by this Section for amendment has occurred.

13.6 Notice. Notwithstanding any other provision in the Declaration, Articles, Bylaws or Rules and Regulations, the Association shall provide notice to Owners in writing sent to the address listed for said

Owner for tax notices in the office of the Kane County Recorder. Any notice required to be given will be deemed received and effective upon the earlier to occur of the following:

13.6.1 when sent by facsimile, the notice is deemed effective when the sender receives a facsimile acknowledgment confirming delivery of the facsimile;

13.6.2 when placed into the care and custody of the United States Postal Service, first-class mail, and addressed to the most recent address of the recipient according to the records of the Association, the notice is deemed effective at the earliest of the following: (a) when received; (b) six (6) days after it is mailed; or (c) on the date shown on the return receipt if sent by registered or certified mail, sent return receipt requested, and the receipt is signed by or on behalf of the addressee;

13.6.3 when posted on the Association's website, the notice is deemed effective seventy-two (72) hours after it was posted;

13.6.5 when hand delivered, the notice is deemed effective immediately upon delivery; or

13.6.6 when delivered by other means, the notice is deemed effective upon such circumstances and conditions as are reasonably calculated to give notice to the Owner.

13.7 Ranch Manager or Caretaker. The Association may carry out through a Manager or Caretaker any of its functions which are properly the subject of delegation. Any Manager/Caretaker so engaged may be an independent contractor or an agent or employee of the Association. Such Manager/Caretaker shall be responsible for managing the Properties for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of a management agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

13.8 Terms of Management Agreement. Any agreement for professional management of the Common Areas, or any sponsor, or builder, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of termination fee on not more than ninety (90) but not less than thirty (30) days written notice.

13.9 Rules and Regulations. The Board shall have the authority to promulgate and adopt Rules and Regulations as the Board deems necessary or desirable (i) to aid it in administering the affairs of the Association, (ii) to insure that the Properties are maintained and used in a manner consistent with the interests of the Owners, (iii) to regulate the use of the Common Areas and to regulate the personal conduct of the Members and their guests thereon, and (iv) to establish reasonable penalties and fines for the infractions of any Rules and Regulations, this Declaration, or the Bylaws. Fines, subject to limitations under the Act, maybe assessed as an Assessment against the Lot. The Board may adopt, amend, cancel, limit, create exceptions to, expand or enforce rules and design criteria of the Association that are not inconsistent with the Declaration or the Act. Except in the case of imminent risk of harm to a Common Area, an Owner, a Lot or a dwelling, the Board shall give at least fifteen (15) days advance notice of the date and time the Board will meet to consider adopting, amending, canceling, limiting, creating exceptions to, expanding or changing the procedures for enforcing rules and design criteria. The Board may provide in the notice a copy of the particulars of the rule or design criteria under consideration. A rule or design criteria adopted by the Board is only disapproved if member action to disapprove the rule or design criteria is taken in accordance with the limitations under Section 217 of the Act

IN WITNESS WHEREOF, Declarant and the President of the Association have executed this Declaration on the \_\_\_\_ day September, 2019.

The Association:  
Deer Springs Ranch Owners Association, Inc.  
A Utah non-profit corporation

Declarant:  
Clarkson Investments, LLC  
A Utah limited liability company

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Barry E. Clarkson, President

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Dale E. Clarkson, Manager

Notary Block to Follow

STATE OF UTAH                    )  
  :SS  
WASHINGTON COUNTY        )

On this \_\_\_\_ day of September, 2019, personally appeared before me Barry E. Clarkson, who being personally known to me (or satisfactorily proved to me), and who being by me duly sworn did say that he is the President of the Deer Springs Ranch Owners Association, Inc., a Utah non-profit corporation, and that he executed the foregoing Declaration on behalf said corporation being authorized and empowered to do so by the Bylaws of said Company or resolution of its directors, and he acknowledged before me that such Corporation executed the same for the uses and purposes stated therein.

\_\_\_\_\_  
Notary Public

STATE OF UTAH                    )  
  :SS  
WASHINGTON COUNTY        )

On this \_\_\_\_ day of September, 2019, personally appeared before me Dale E. Clarkson, who being personally known to me (or satisfactorily proved to me), and who being by me duly sworn did say that he is the Manager of Clarkson Investments, LLC, the Declarant, and that he executed the foregoing Declaration on behalf said company being authorized and empowered to do so by the Operating Agreement of said Company or resolution of its managers, and he acknowledged before me that such Company executed the same for the uses and purposes stated therein.

\_\_\_\_\_  
Notary Public