

MASTER DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SUN PEAK  
SUMMIT COUNTY, UTAH

This Master Declaration for Sun Peak, a master planned development property located in Summit County, Utah (the Property) is filed this 19<sup>th</sup> day of June, 1992 by Summit Ranch, J.V., a California General Partnership, referred to below as the “Declarant:”

RECITALS:

A. Declarant is the owner of the real property located in Summit County, Utah, particularly described in **Exhibit A** attached hereto and incorporated herein by this reference.

B. Declarant intends to develop a residential subdivision on the Property including single-family residential, multifamily residential, and community social and recreation facilities for the use and benefit of the Owners and their guests. Possibly commercial lodge facilities will be developed on Parcel 16, and possibly ski facilities on Parcels 17 and 18. Declarant intends to develop and sell the Property under a uniform plan of development, subject to certain protective covenants conditions and restrictions all as set forth in this Declaration, which are deemed to be covenants running with the land, mutually burdening and benefiting all of the Property and each of the Development Parcels.

C. Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to these protective covenants, conditions, restrictions and equitable servitudes, all of which are created for the mutual benefit of the Owners

of the Property, the Development Parcels, and the individual Lots and/or Condominium Units created within the Development Parcels. It is the intention of the Declarant in imposing these covenants, conditions and restrictions to create a consistent pattern and quality of development, to protect and enhance the property values and aesthetic values of the Property by eliminating inconsistent uses or improvements, all for the mutual protection and benefit of the Owners of the Property. The covenants, conditions and restrictions are intended to, and shall in all cases run with the title of the land, and be binding upon the Owners, their successors, assigns, heirs, lien holders, and any other person holding any interest in the Property, and shall inure to the benefit of all other Property in SunPeak. The covenants, conditions and restrictions shall be binding upon the Declarant as well as its successors in interest, and may be enforced by the Declarant, by the Association, or by any Owner.

## ARTICLE I DEFINITIONS

Unless the context clearly requires the application of a more general meaning, the following terms, when used in this Declaration, shall have the following meanings:

1.01. “Annexation Property” means the real property described in **Exhibit C** to this Declaration and commonly known as Parcels 16, 17, 18 and 22 of SunPeak. The Annexation Property is owned by Declarant, but shall not initially be subject to this Declaration. At present Parcel 16 is potentially a site for a lodge/hotel and commercial development, Parcels 17 & 18 are potentially sites for ski-related facilities and Parcel 22 is potentially a site for future residential development site. These uses may change depending on Declarant’s development plans at Declarant’s sole discretion and with County approval. Depending on Declarant’s development progress and County approvals, Declarant shall determine what use is most appropriate for the various Parcels in the Annexation Property and whether all or a portion thereof should be made subject to this Declaration and the restrictions, membership rights and assessment obligations set forth herein. Declarant shall not be obligated to annex all or any part of the Annexation Property, nor develop it in any particular manner. Provisions regarding annexation are set forth in Article X of this Declaration.

1.02. “Design Guidelines” means that set of design standards and objectives attached as **Exhibit B**, as amended from time to time, and also as supplemented by additional declarations recorded for each Development Parcel to define, among other things, size and height of Improvements allowed on each Development Parcel, which shall govern the architectural styles and materials of all Improvements within the SunPeak Community.

1.03. “Assessment Unit” shall mean the numerical value placed on each Development Parcel and Association Membership for purposes of determining its rate of assessment by the Association and the number of votes to which that Membership is entitled. The Assessment Unit value for each Parcel and any individual lots or units into which such Parcel may be subdivided is set forth in Article VI of this Declaration.

1.04. “Association” or “Master Association” shall mean the SunPeak Master Association described in Article II of this Declaration, and as the context requires, the officers and Trustees of that Association. The Association is established by this Declaration from among the Members to supervise, manage and maintain those amenities and provide those services within the SunPeak Property that are common to or for the benefit of all Owners and Development Parcels, and to enforce the design review process and other conditions of this Declaration, in order to develop a cohesive and functional community.

1.05. “Committee” shall mean the Architectural Design Review Committee created under Article IV of this Declaration.

1.06. “Condominium Record of Survey Map” shall mean any Record of Survey Map as defined by the Utah Condominium Ownership Act that is filed on any Development Parcel to establish Condominium Units within that Development Parcel.

1.07. “Condominium Unit” shall mean any individually owned condominium unit, as defined by the Utah Condominium Act, created within any Development Parcel, and may include office, commercial or residential Condominium Units.

1.08. “County” shall mean Summit County, Utah, and its appropriate Boards, Commissions, Officers and departments.

1.09. “Declarant” shall mean and refer to Summit Ranch, J.V., a California corporation, having its principal place of business in Rancho Cordova, California, and the signer of this Declaration, or its successor in interest, if such successor is designated as a successor Declarant by written

instrument recorded in the County.

1.10 “Declaration” shall mean this Master Declaration of Covenants, Conditions and Restrictions, together with any subsequent amendments or additions, and any other matters or conditions shown on the official Master Plat of Sun Peak Community, which are incorporated into this Declaration by reference.

1.11 “Development Parcel” shall mean one of the numbered Parcels 7 through 15, 19 & 20, shown on the Master Plat for SunPeak Community. Each Development Parcel is subject to re-subdivision and improvement as provided in Article VI of this Declaration and the limitations imposed by any applicable Neighborhood Declaration and Subdivision Plat for that Development Parcel. Parcel 21 shown on the Master Plat is also subject to this Declaration but is Open Space not subject to re-subdivision or substantial improvement. For purposes of this Declaration, Parcels 1–6, inclusive, are part of the SunPeak Center Declaration of Covenants, Conditions and Restrictions, and are not to be considered part of this project, and are not subject to this Declaration, and Parcels 16, 17, 18 & 22 are not initially part of the Sun Peak Community, but have the irrevocable right to annexation.

1.12. Intentionally Deleted.

1.13. “Excavation” shall mean any disturbance to the surface of the land, including the removal of native vegetation, and also including trenching which results in removal of soil or rock from a depth of more than 12 inches from the natural surface of the land, or any grading of the surface. Excavation shall include any activities for which an excavation or grading permit would be required under the Uniform Building Code as adopted by the County.

1.14. “Fill” shall mean the depositing of earth, soil, rock or other materials to the surface of the land, whether imported from off-site or resulting from the regrading of excavated material from on-site, to raise the natural elevation of the surface. Fill shall also include any fill material as defined under the Uniform Building Code, as adopted by the County.

1.15. “Improvement” shall mean all structures and appurtenances of every type and kind, including, for example, but not limited to, buildings, apartments, dwellings, offices, garages, storage buildings, walkways, retaining walls, sprinklers pipes, driveways, landscaping, pools, decks, tennis courts, sport courts, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior or any building, and also the construction of any

roads, underground utilities, drainage works, driveways, parking lots, trails and similar infrastructure constructed within any Development Parcel.

1.16. “Lot” shall mean any numbered individual building Lot (but not any open space lot) created within any Development Parcel, and unless the context clearly indicates otherwise, also any Condominium Unit within any Development Parcel.

1.17. “Membership” shall mean the Membership in the SunPeak Master Association established under this Declaration and “Member” means the person entitled to exercise the voting rights which attach to each Membership. Each Membership is subject to assessment as provided in Article VI.

1.18. “Neighborhood Association” shall mean an association of owners within one or more Development Parcels that is established by a Neighborhood Declaration or Condominium Declaration for such Development Parcel(s) for the purpose of managing those amenities and providing those services which are unique to the Development Parcel(s) specifically made subject to that Neighborhood Declaration. A Neighborhood Association is always referred to herein as such; any reference to simply “Association” means the Master Association.

1.19. “Neighborhood Declaration” shall mean any site specific set of covenants, conditions, and restrictions filed on a Development Parcel, including any Declaration of Condominium as defined in the Utah Condominium Ownership Act. A Neighborhood Declaration may provide for annexation which would permit one or more adjoining Development Parcels to be added to and become subject to the Neighborhood Declaration initially filed with respect to only one Development Parcel.

1.20. “Open Space” shall mean any areas designated on the Plat or any Subdivision Plat as such, and may be owned by Declarant, dedicated to the public, granted to a nonprofit conservation group, owned by the Association, leased to third parties, or some combination of these or other options which result in the preservation of the Open Space for aesthetic and recreation purposes all as provided in Article V.

1.21. “Owner” shall mean the person or persons having title to any Development Parcel, Lot or Condominium Unit within the SunPeak Property. Owner shall mean the person holding fee simple title, including the Declarant, and buyers under any contract for deed, but shall exclude any person or entity holding title for purposes of securing performance of an obligation.

1.22. "Plat" shall mean the Parcelization Map of the SunPeak Community which divides the Property into Open Space, Roadways and Development Parcels, as approved by the County in an amendment to the Class II permit dated 05/12/92 with a future addition of an amenity parcel known as Parcel 8A which shall consist of a portion of Parcel 7 and 8, and any other amendments that may be made from time to time. For purposes of this Master Declaration, the term "Plat" shall not include the subsequently filed Subdivision Plats or Condominium Record of Survey Maps filed on each of the Development Parcels, unless specifically stated. Development Parcels 1-6 are shown on the Plat, but are not subject to this Declaration.

1.23. "Property" shall mean all of the land described on the attached **Exhibit A**, which includes Development Parcels, Open Space, and roads, trails and any common areas, and also any Lots or Condominium Units created within any Development Parcels.

1.24. "Subdivision Plat" shall mean any subsequently filed Plat that subdivides any Development Parcel into Lots for the construction of Improvements such as single-family dwellings, multifamily dwellings or other Improvements. Unless the context clearly limits the use of the term to a formal subdivision of land for the creation of Lots, it shall also be construed to include any Condominium Record of Survey Map recorded on any Development Parcel.

1.25. "Trustees" shall mean the duly elected and acting board of trustees of the Sun Peak Master Association.

## ARTICLE II MASTER ASSOCIATION

2.01. Introduction. Within SunPeak, there are presently fourteen (14) designated Development Parcels which will be developed and improved by the Declarant or others in the manner set forth below in Article VI. Development of most Development Parcels will be residential and will involve further subdivision for single-family, townhouse or condominium homes. The Declarant will cause the installation of the primary access road through the SunPeak Community, and extend (or make provisions to extend) water, sewer, power, gas and other utility services to the boundary of each of the Development Parcels in sufficient capacity to serve the Development Parcels. In addition, the Declarant has designated preliminary easements for the future road system and

possible emergency access(es) within the Development Parcels. It is the intent of the Declarant to create a diverse community, with a variety of housing options, provided that there is a consistency in design, quality of construction and general appearance. It is also the intention of the Declarant that the SunPeak Community provide natural amenities and additional recreational amenities for its residents, and that the mechanism for providing and maintaining those amenities is provided through this Declaration.

2.02. Master and Neighborhood Associations Described. All Development Parcels and Open Space will be subject to this Master Declaration and shall have Memberships in the Master Association. Some Development Parcels may additionally be subject to a Neighborhood Declaration and may have membership in a Neighborhood Association.

(a) The Master Association is a body comprised of the Members who are Owners of Lots or Development Parcels for development purposes and who shall elect and act through the Board of Trustees of the Master Association. The Master Association is intended to provide general design review of all improvements in compliance with the Architectural Design Guidelines for the Property. The Master Association shall also be responsible for management, operation, maintenance and control of those amenities and common facilities that are for the use and benefit of all of the Owners within SunPeak, and to enforce the Architectural Covenants within the Property. Each of the Development Parcels shall be entitled to the number of appurtenant Memberships in the Master Association set forth in Article VI. Voting within the Master Association will be initially as specified in Article VI, except as provided below in Section 2.04. Individual Owners shall be Members of the Master Association upon acquisition of a Lot or Condominium Unit which is subject to assessment under this Declaration. Until such acquisition by an individual Owner, the Membership rights attaching to a Development Parcel shall be exercised as a block by the Declarant or successor owner of the Development Parcel in question.

(b) Within at least some Development Parcels, it is anticipated that additional Covenants, Conditions and Restrictions (a Neighborhood Declaration) may be created by the developer of that Development Parcel, which Neighborhood Declaration shall be consistent with the provisions of this Declaration. On those Development Parcels where the Improvements are Condominium Units, the Declaration of Condominium may be the only Neighborhood Declaration filed. Each Neighborhood Declaration shall create a Neighborhood Association which shall manage,

operate and maintain those amenities that are of a neighborhood nature, and not available for the general use and benefit of all SunPeak Owners, and to enforce Covenants, Conditions or Restrictions that are unique to that Development Parcel or Condominium. Where Development Parcels may be improved with similar residential Improvements and/or shared recreation facilities and are contiguous, one Development parcel may be annexed to and become part of the Neighborhood Association established for a previously developed Development Parcel. Such annexation may be provided for in a Neighborhood Declaration when the Declarant believes it is appropriate, to eliminate the need for inefficiently small or unnecessarily duplicative Neighborhood Associations. There is no requirement or need for a Neighborhood Association for a Development Parcel if it is not subdivided or if it contains no common area maintenance or facilities which are appropriately used and maintained by the Owners within only one or a limited number of Development Parcels. Any Neighborhood Declaration must be approved by the Board in writing prior to recordation.

2.03. Master Homeowners Association Purposes. To effectively enforce these Covenants, Conditions and Restrictions, the Declarant has created a Utah nonprofit corporation named SunPeak Master Association. There will be one Membership in the Association for each Owner and one vote for each Assessment Unit within the Development Parcels of SunPeak. The Association is established to perform through its Trustees all of the functions and exercise all of the rights and powers set forth below and available under law for the benefit of the Owners and the enforcement of these covenants.

2.04. General Membership. Initially, Memberships in the Association are deemed an appurtenance to the Development Parcel in the number specified in Article VI. Memberships are transferable only in conjunction with the transfer of the title to all or a subdivided portion of the Development Parcel. Membership in the Master Association is limited to the owner of an entire Development Parcel, prior to any re-subdivision of the Development Parcel, and shall pass to individual Owners of Lots or Condominium Units after their purchase of a subdivided portion of the Development Parcel. Following subdivision of a Development Parcel, each individual Member shall be entitled to cast the number of votes which attach to his Lot and Membership, which is one (1) vote per Membership attaching to a multifamily Lot or Unit, ~~two~~ (1.5) votes per Membership attaching to a standard single-family Lot and ~~three~~ (2) votes per Membership attaching to an estate lot, Voting rights shall vest for all individual Lots or Units within a Development Parcel following



November 1 of the year during which the first Lot or Unit within the Development Parcel is sold to a resident (as opposed to developer) Owner.

2.05. Special Class of Membership for Declarant. Declarant shall be entitled to a voting Membership in the Association for so long as the Declarant owns any Development Parcel or Lot within the Property. Declarant shall have a special class of membership which shall entitle the Declarant to three (3) times the votes allocated to each Development Parcel so long as Declarant owns the whole Development Parcel. The special voting rights attributable to Declarant's special Membership shall be in addition to any votes the Declarant has as a result of its Ownership of individual Memberships appurtenant to any individual Lots it owns. Declarant's special class of Membership shall terminate on the tenth (10<sup>th</sup>) anniversary of the recording of this Declaration, or the sale of the last of the Development Parcels by Declarant, whichever occurs first. The Special Membership of the Declarant is not subject to assessment. However, regular Membership appurtenant to any individual Lot owned by the Declarant will be fully assessable.

2.06. Enforcement Powers. The Association shall have the power to enforce these Covenants by actions in law or equity brought in its own name and the power to retain professional services needed for the enforcement of these Covenants and to incur expenses for that purpose. The officers of the Association shall have the authority to compromise claims and litigation on behalf of the Association resulting from the enforcement of these Covenants or the other exercise of its powers. The trustees of the Association shall have the exclusive right to initiate enforcement actions in the name of the Association, however this shall not limit the individual rights of Owners to personally enforce these Covenants in their own name. The Association may appear and represent the interests of the SunPeak Community at all public meetings concerning zoning, variances or other matters of general application and interest to the Owners. Owners may appear individual.

2.07. Maintenance Responsibilities. The Association may own or be granted easements over portions of the Property within the Sun Peak Community, including those portions identified on the Plat as Open Space. The responsibility to maintain and properly control the use of these parcels, when granted, vests in the Association, which has the power to perform maintenance services, construct Permitted Improvements if required and approved, and in all other respects manage or supervise the management of those portions of the Property. The Association shall be responsible for the management, operation and maintenance of recreation facilities, club house, entrance parcel,

and any other amenities that are created for the use and benefit of all of the Owners within the SunPeak Community. The costs of management, maintenance and operation are to be assessed to the Members of the Association.

2.08. Management by Independent Contractor. The management responsibilities of the Association may be carried out through the use of one or more independent contractors to perform specific functions of the Association, provided that the Association will maintain supervisory responsibility over such contractors. The Association may also provide for such services on its own, and is empowered to hire employees as necessary for its purposes. The costs of outside management services, as well as any professional services required by the Association, are to be assessed to the Members of the Association.

2.09. Insurance. The Association will carry liability insurance on all portions of the Property which it owns or controls, and casualty insurance on any structures it owns or controls. The face amounts of any liability policies will be consistent with the policy limits reasonably and customarily carried by similar property owners associations for similar types of activities in the County with a minimum of ONE MILLION DOLLARS (\$1,000,000) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Property insurance will be in an amount sufficient to have any loss fully insured. Policy terms and amounts will be reviewed by the Association on a regular basis. The Association may, at its option, obtain liability, errors and omissions, and similar coverages protecting the Trustees in the performance of their obligations under this Declaration. Costs of insurance are to be assessed to the Members of the Association.

2.10. Association's Obligation to Accept Grant of Open Space. The Owners, and the Association, irrevocably agree to accept a grant of the fee or an easement to portions of the Property or additional land which may be designated as Open Space. Any such grant will be made free of liens and financial encumbrances, other than taxes, assessments and exceptions existing at the time of transfer and shall be made subject to this Declaration. Open Space granted to the Owners or Association may be subject to conservation easements or similar third-party limitations on the uses in addition to this Declaration. Declarant is under no obligation to grant or arrange for the grant of any of the Additional Land to the Owners or the Association. Consideration for any such grant will not exceed TEN DOLLARS (\$10), and the Declarant will bear all of the transactional expenses. The Declarant shall also be entitled, in its sole discretion, to grant the Open Space parcels or easements

across such to a nonprofit land conservation association, wildlife conservation association, public entity or similar organization.

2.11. Assessments. The Association has the power to levy assessments against each Membership as necessary to carry out its functions. Assessments will be made in proportion to voting rights as set forth in Article VI. An assessment is deemed to have been levied if it has been approved by a simple majority of the votes of Trustees at a properly convened meeting. Notice of the Assessment will be sent to each Owner of a Development Parcel or, following subdivision thereof, to the Owner of a Lot. The Assessment will be levied against the Membership, and it shall be an obligation appurtenant to the Membership. Assessments will be levied annually as provided herein and in the Bylaws of the Association. The Declarant and each other Owner of all or any part of a Development Parcel, by accepting title, covenants with the Association to pay the Assessment or installments thereof when due. The Assessment against each Assessment Unit will be equal, whether the Lot or Condominium Unit represented by that Assessment Unit is vacant or improved. Development Parcels which are not subdivided will be assessed on the basis of their allocated Assessment Units as provided in Article VI. Assessments will be made annually to meet the anticipated and recurring expenses of the Association including, but not limited to, the costs of common area or entry landscape maintenance, Open Space maintenance, property taxes on Open Space, insurance, water for irrigation, administrative and accounting expenses, reimbursement of expenses incurred by the Trustees and Committee in performance of their obligations, and enforcement of these covenants. Notice of the Assessment and the proposed amount of the annual Assessment will be given in advance along with the notice of the annual meeting or special meeting of the Association, provided that the amount of the proposed assessment may be increased or decreased at the meeting in which it is approved by the Trustees. The Association may also levy special assessments to cover unanticipated expenses or shortfalls. Special assessments may be levied without approval of the Members except that, if the aggregate thereof in any year exceeds ten percent (10%) of the regular assessment amount for that year, imposition shall require prior approval by a simple majority of the Membership voting rights in a meeting called for that purpose or by written balloting as may be provided in the Bylaws.

2.12. Payment. The annual assessments of the Association allocable to each Lot or Development Parcel shall be paid by the Owner of that Lot or Parcel. Regular annual assessments

shall be collected monthly, quarterly or upon such other schedule (not more often than monthly) as the Trustees of the Association shall establish in accordance with its Bylaws.

Some Development Parcels may be developed as condominiums or otherwise require that ownership of any Lot will mandate membership in a Neighborhood Association established for that particular portion of the Property, where Neighborhood Association itself levies and collects assessments and has powers of collection (i.e., lien and personal obligation) similar to those provided for in this Declaration for the Association. In such instance, except from time to time as the Master Association may expressly advise in writing, the Association shall be responsible for collecting from each Owner the assessments which would be payable directly to the Master Association by individual Owners.

2.13. Assessments Constitute Lien, Mortgagee Protection. Any validly imposed assessment by the Association shall constitute a lien against the Development Parcels, Lots and Condominium Units within the SunPeak Community. The Association may enforce its Assessment against the individual Lot or Condominium Unit, including the right to file liens and proceed to foreclosure on those liens if necessary. The Association shall have the right to foreclose on that lien when any assessment remains unpaid for a period of more than ninety (90) days from the date the assessment was due, but if the lien is not foreclosed upon, it may be renewed from year to year by recording a new notice of the lien, together with accumulated interest. The lien of the Association against any Lot shall have priority from the date that the first Notice of Lien on a specific Lot is recorded in the office of the Summit County Recorder, and is subordinate to any previously recorded liens or encumbrances filed against that Lot, specifically including any purchase money mortgage or trust deed. Notwithstanding the lien rights of the Association, the obligation to pay assessments is a personal obligation of the Owner of each Lot, and the Association may also proceed to collect against the Owner, or the prior Owner of any Lot in the event of a sale. However, the Association shall not be required to release its lien against any Lot until the delinquency giving rise to the lien is actually paid in full.

2.14. Commencement and Adjustment of Assessments. The Association assessments provided for in this Declaration shall commence as a block upon every Development Parcel which is subject to this Declaration as of the first day of the month following the conveyance of any Development Parcel or Lot by Declarant to another Owner. Assessments shall commence on a Lot

by Lot basis within a development parcel as of the first day of the month following the first conveyance of any individual Lot within that Development Parcel to an individual Owner.

It is contemplated that, from time to time during the development of the Property, Development Parcels will be divided into residential subdivisions. It is also possible that land use regulations with respect to a Development Parcel may change from time to time. However, as indicated below, the regular annual assessments are to be adjusted only annually. Therefore, for the purpose of fixing annual assessments, except for the first annual assessment, the Board shall refer to the status of the Development Parcels and Lots as of November 1 of the year preceding the calendar year for which it is fixing annual assessments. Similarly, the voting rights of a Development Parcel or Lot for each calendar year, except for the calendar year in which the first annual assessment is levied, shall be fixed according to the status of such Development Parcel or Lot as of the preceding November 1. Thus, if a Development Parcel is subdivided into Lots after November 1, 1992, but prior to November 1, 1993, its status as a Development Parcel for assessment and voting purposes will not be affected until January 1994.

It shall be the duty of the Trustees to calculate the regular annual assessment against each Lot and against each Development Parcel and notify the Owners thereof once each calendar year, as follows:

Between November 1<sup>st</sup> and November 30<sup>th</sup> of each year, the Trustees shall fix the annual assessments for the next calendar year based on the projected budget for that year. Written notice of the amount so fixed and the dates established for payment thereof shall be sent to every Owner, or to any association responsible for collecting pursuant to Section 6.02, on or before December 31<sup>st</sup> of each year.

All regular annual assessments shall be prorated according to the number of months remaining in the calendar year during which they are to be paid.

2.15. Statement of Account. Any Owner may request and the Association shall provide within twenty (20) days of receiving the request, a statement of the account applicable to either his or her individual Lot showing the assessments to be paid in full, or the amount of any past due assessments. The Buyer or lender for whom such a statement was prepared will be entitled to rely on its accuracy, and will not be held liable for any amounts not shown on the statement.

2.16. Indemnity of Association Trustees and Officers. The Association will indemnify the

officers, agents and trustees of the association against any and all claims arising against them personally which are a result of the good faith exercise of the powers, duties and responsibilities of their office under this Declaration.

2.17. Notice Meeting. Notice of any meeting of the Board of Trustees shall be sent to the Members at their last known address (which may be determined from the most recent property tax assessment if no other address is known). Notice will be mailed not less than fifteen (15) days, nor more than forty-five (45) days in advance of the meeting. Any notice will state the purpose of the meeting, and the time, date and place of the meeting. At any such meeting, a quorum will exist if thirty-three percent (33%) of the Members are present in person or by written proxy. If fewer than thirty-three percent (33%) are present, and notice was properly given, those present at the meeting may vote to continue the meeting to any date within thirty (30) days. Five (5) days' written notice of the continued meeting will be given by mail, and at the subsequent continued meeting, those Members present will constitute a quorum. The Chairman of the Board of Trustees will give notice of any meetings, and will chair or provide for a Co-Chairman from another one of the Trustees for the meetings of the Members.

2.18. Special Meeting. When circumstances warrant, a special meeting of the Members may be called by giving notice by mail. No business may be conducted at a special meeting without a full quorum of at least thirty-three percent (33%) of Members present in person or by written proxy.

2.19. Number of Trustees, Term of Office. There shall be five (5) Trustees of the Association. The initial Trustees will be named by Declarant as the Development Parcels are sold. Members or the Board of Trustees will serve for terms of two (2) years, or until their successors have been elected. At such time as all of the Development Parcels are sold, the Trustees will draw lots to divide the Trustees into terms of one (1) or two (2) years, with three (3) of the Trustees then in office to serve one (1)-year terms, and two (2) to serve two (2)-year terms. Thereafter, newly elected successor Trustees will serve for staggered two (2)-year terms. Members of the Board of Trustees may serve consecutive terms. As the terms of the Declarant's appointees expire, the Trustees shall be elected by the Members of the Association. Two (2) Trustees shall be Owners of one or more Lots or Units within one of the Development Parcels designated for multifamily development which are Parcels 7, 8, 9, 10 and 20; two (2) Trustees shall be an Owners of one or more single-family Lots within one of the Development Parcels designated Parcels 11, 12 and 13; and one (1) Trustee shall

be an Owner of one or more estate lots within one of the Development Parcels designated Parcels 14, 15, 15A, 19 and 20. Any Owner in any property annexed shall have the right to serve as a Trustee for the designation most closely equivalent.

2.20. Voting. Within the Board of Trustees, each Trustee will have an equal vote, representing to the best of his or her judgment the best interests of the Development Parcel(s) he or she represents and the best interests of the SunPeak Community as a whole.

### ARTICLE III DESIGN REVIEW COMMITTEE

3.01. Introduction. It is the intention and purpose of this Declaration to impose Design Guidelines on SunPeak as a whole, and specific development constraints and requirements on each of the Development Parcels, described in supplemental declarations recorded for each Development Parcel. It is the intention of the Declarant to cause the construction of Dwellings and Improvements which are compatible with the mountain landscape. The placement, massing, dimensions, materials, colors and public aspects of the Improvements will be guided, but still allow for diversity in style and vitality in design. To accomplish this goal, the Declarant hereby establishes a Design Review Committee, which is empowered to oversee and enforce the Design Guidelines set forth in this Declaration. The Design Guidelines are deemed to be mandatory and not advisory, and each Owner shall comply with the Design Guidelines in the construction of his Improvements.

3.02. Design Committee Created. The Committee will consist of three (3) persons. The initial committee will consist of three (3) people appointed by the Declarant, who do not need to be Trustees, Members or Owners. At the time fifty percent (50%) of the Development Parcels are sold to persons other than the Declarant, one member of the Committee will be elected from the Board of Trustees, to replace an appointee of the Declarant. At the time that one hundred percent (100%) of the Development Parcels are sold to persons other than the Declarant, or following the tenth (10<sup>th</sup>) anniversary of the recording of the Plat (whichever occurs first) all three (3) members of the Committee will be elected by the Trustees, and the Declarant's rights will terminate, except that any rights the Declarant is entitled to in its capacity as an Owner will survive.

At all times at least two (2) members of the Committee shall have a professional degree

or other background in design, land planning, engineering, architecture, law or some other field which is related to the functions to be performed by the Committee. The two (2) members shall have degrees in differing fields. If the preceding sentence is not complied with for any reason, then the Committee shall establish a client relationship with a licensed architect or engineer for the purpose of rendering advice with respect to plan submittals and other review matters before the Committee.

3.03. Approval by Committee. Except with respect to land divisions or Improvements done by Declarant, no Subdivision Plat, Condominium Record of Survey Map, Road Dedication Plat may be recorded, and no Excavation, Fill or other Improvement to any Development Parcel may be constructed, installed, maintained or allowed to stand in SunPeak without the prior written approval of the Committee. Any such proposed Subdivision Plat, Condominium Record, Survey, Dedication, Excavation, Fill or Improvement plan submitted for approval by the County must first have been approved by the Committee, and must contain a signature block for the Committee's approval to be indicated on the face thereof. The prior approval and review fee provisions of this Section shall not apply to Declarant. No excavation, grading, filling, draining, landscaping, or installation or removal of existing vegetation or construction of Improvements of any kind shall be made on any Development Parcel without the prior written approval of the Committee. Approval of the Committee will be sought in the following manner:

(a) Plans Submitted. Site plans for the proposed subdivision, Condominium or other Improvements on any Development Parcel must be submitted to the Committee for review. If a Subdivision Plat will be recorded on that Development Parcel, the proposed Subdivision Plat must also be submitted for review. It is recommended that preliminary plans be submitted before the expense of final construction drawings is incurred. The plan must be in sufficient detail to show the location on the Development Parcel of all roads, easements, drainage and utility facilities, the location of each Lot within the subdivision, or in the case of multifamily buildings, the location of the buildings and all roads, parking and other circulation areas. Each submission shall also include a draft of any proposed Neighborhood Declaration for that Development Parcel.

(b) Review Fee. The applicant will pay a review fee to the Committee of FIFTY DOLLARS (\$50) for each proposed Condominium Unit and TWO HUNDRED DOLLARS (\$200.00) for each Property Lot designated as estate lots, for example lots in Parcel 14 and ONE HUNDRED DOLLARS (\$100.00) for each Property Lot designated as single family lots, for example lots in Parcel



12. The purpose of the fee is to document the date of submission, but the Committee may also use the proceeds to pay for its expenses in reviewing the plans and giving notice of meetings. No submission will be deemed complete and accepted until the Committee receives the fee. The Committee shall acknowledge by written receipt the payment of the fee and the submission of the plans which shall start any related time periods in Section 3.03.

(c) Review. Within thirty (30) days from acknowledgement outlined in 3.03 (b), the Committee will review plans and make an initial determination whether or not the plans are complete and comply with the conditions imposed by the Declarant. If not, the plans will be rejected with an explanation by the Committee as to why the plans are not complete or do not comply. If they are in compliance, the Committee will approve the plans in writing. The Committee may also approve the plans subject to specific modifications or conditions. Owners may desire to submit preliminary plans for review. The Committee will review preliminary plans, without fee, and make its comments known to the Owner, provided, however, that no preliminary review is to be considered an approval, and no approval will be granted on less than a complete submission and no preliminary review is covered under any time period in Section 3.03. Upon approval of a complete submission, the Committee and the Owner will each sign a copy of the plans, one set which shall be left with the Committee. The Committee will sign the Subdivision Plat or otherwise give written confirmation to the Owner that the proposal has been approved, so that Owner may demonstrate that approval to the County. Any construction that is not in strict compliance with the approved plans is prohibited.

(d) Written Record. The Committee will maintain a written record of its actions, and maintain in its files a copy of all plans approved or rejected for a period of five (5) years.

(e) Failure to Act. If the Committee has not approved, rejected or asked for additional information or revision of any submission within forty-five (45) days after payment of the review fee and submission of complete plans as shown in 3.03 (b), the submission is deemed to have been approved.

3.04. Variances. Variances to the Design Guidelines contained in this Declaration may be granted when strict application would create an unforeseen or unreasonable hardship to the Owner of any Development Parcel or would not comply with the overall intent of the Design Guidelines. Variances may be granted by the Committee, which shall keep a written record of the variance and

the reasons why it was considered necessary to grant it.

3.05. Additional Review Costs. In reviewing any proposal on a Development Parcel, the Committee will likely require the services of professionals in the development industry to assist in the review process. The Owner making application is expected to pay the reasonable costs of the Committee, provided, however, that no architect or engineer will be hired without advance notice to the Owner making application of the intention to hire a review architect or engineer. Whenever the Committee retains outside professional services in its review, the reviewing architect or engineer is acting only in an advisory capacity, and the Owner making application, for himself and his successors and assigns, waives any and all claims against the Committee in the event that advice from, or conditions imposed by, the reviewing professional prove ineffective, unnecessary or inappropriate to the circumstances. The costs of such review will be billed directly to the applicant.

3.06. Levels of Design Review. The Committee will use its best efforts to provide a consistent pattern of enforcement, and consistent application of the Design Guidelines of this Declaration. These Design Guidelines are, of necessity, general in nature, and the Committee shall apply them in a manner that results in an attractive and well-designed community. The level of design review on each Development Parcel will depend in large part on the uses permitted on that Parcel. The levels of review are as follows:

(a) Multifamily. On those Development Parcels designated for improvement as multifamily housing (whether rental or condominium), the Committee shall have complete design review of the site plan and the architectural designs of the proposed buildings. The Committee shall also review utility and street extensions as needed to extend services to adjoining Development Parcels, so that there is adequate capacity provided, and also so that the location of extended utilities complies with the regulations of the utility companies and meets the reasonably foreseeable needs of the adjoining parcel in terms of location and capacity, so that expensive duplications or relocations of utility facilities can be avoided.

(b) Subdivisions, Single-Family Housing. On those Development Parcels designated for single-family Lots, the Committee shall have two stages of review. The first shall be the site planning and design of the subdivision itself, including all engineering, utility and street extensions, and the lay-out of the proposed Lots, roads, trail easements to connect to the Open Space, and similar site planning and engineering considerations. The Committee will review the location of

extended utilities and streets to see that they meet the reasonably foreseeable needs of the adjoining parcel in terms of location and capacity, so that expensive duplications or relocations of utility facilities can be avoided. Following the recording of the Subdivision Plat, the Committee shall also have the right to review the specific architectural designs for each proposed dwelling within the Property for compliance with the Design Guidelines. This shall not preclude the Neighborhood Association within the Development Parcel from its own review, provided that no approval by the Neighborhood Association shall override a denial or rejection by the Committee.

Every Owner and the Design Review Committee shall take cognizance of the County requirements that Lots fronting on Sun Peak Drive must provide turning space on the Lot so that vehicles are not required to back into that roadway. This statement shall be acknowledged in writing at close of escrow by any Owner purchasing a Lot fronting on Sun Peak Drive.

(c) Neighborhood Declarations. In any case where a Neighborhood Declaration and/or Subdivision Plat will be filed, the proposed Neighborhood Declaration and Subdivision Plat must be submitted to the Committee for its review and approval.

3.07. Declarant, Trustees and Committee not Liable. The Declarant, the Trustees and the Committee and its members shall not be liable to the applicant for any damages, or to the Owners of and Lots within the Property for their actions, inactions, or approval or disapproval of any set of plans submitted to the Committee for review. In the absence of bad faith or malicious actions, the Owners shall have no claim against the Declarant or Committee as a result of the performance or failure to perform the duties created by this Declaration. Each Owner has the right to enforce this Declaration against another Owner, and may seek independent redress if he believes the Committee has acted improperly.

3.08. Limitations on Review. The Committee shall have no authority over the enforcement of building codes (including structural, mechanical or fire), zoning ordinances, or other statutes, laws or ordinances affecting the development or improvement of the Property and shall have no liability to any Owner whose plans were approved in a manner that included any such violation. Corrections or changes to plans as may be subsequently required to bring them into conformity with any applicable codes must be reviewed and approved by the Committee prior to construction.

3.09. Building Permit Application. No Owner will apply for a building permit, including grading permits for site work, without first having obtained the written approval of the Committee

for the work proposed. Any work commenced without Committee approval may be enjoined by the Association at the expense of the person on whose behalf the work was commenced.

3.10. Approval to Proceed. The Committee shall issue a written Certificate of Approval to the Owner once the plans have been approved and the pre-construction conference required in Article X has been held, and all other conditions of construction set forth in Article X have been satisfied. Such issuance shall be within ten (10) days after the satisfaction of the last remaining condition. The certificate will include reference to the dated plans approved by the Committee.

#### ARTICLE IV RESTRICTIONS ON ALL PROPERTY

The following Restrictions on use apply to all Property within the SunPeak Community:

4.01. Governing Regulations. The lawfully enacted zoning regulations of Summit County, Snyderville Basin Sewer Improvement District, Park City Fire Service District, and any building, fire and health codes are in full force and effect in the SunPeak Community, and no Development Parcel may be occupied, developed or improved in a manner that is in violation of any such statute, law or ordinance. If the Covenants, Conditions and Restrictions in this Declaration are more stringent than applicable zoning, it is the intent that the provisions of this Declaration control. This Declaration shall not authorize any uses, improvements or activities that are prohibited by any local, state or federal law or regulation.

4.02. No Mining Uses. Neither Owner nor Declarant shall use the Property for mining, drilling or quarrying activity at any time.

4.03. Limitations on Business or Commercial Uses. No portion of the Property may be used for any commercial business use, except for those Development Parcels on which such uses are specifically permitted (Parcel 16, specifically and Parcels 17, 18 and 22 potentially), provided however that nothing in this provision is intended to prevent the use by any Owner of his dwelling for a home occupation as permitted by County ordinance. No home occupation will be permitted, however, which requires or encourages the Owner's clients, customers, patients or other to come to the Lot to conduct business, or which regularly requires any employees at the Lot outside of the Owner's immediate family or household.

4.04. Restrictions on Signs. Except as specifically provided, no signs will be permitted on any Development Parcel or within the Property, except for traffic control signs for Roadways or Trails placed by the County, project entry or marketing signs constructed by the Declarant. All signs must be approved by the Committee. Within each Development Parcel, signs indicating that a Lot or Condominium Unit is for sale may be used for up to six (6) months, provided that no such sign may exceed three square feet. The Owner of each Development Parcel may erect a sign of not more than 32 square feet at the entrance to the Development Parcel announcing the availability of Lots and giving sales information after the Design Review Committee has approved such Owner's development plans. Such sign shall be removed as soon as the Lots or Units within that Development Parcel have been sold to individual Owners.

4.05. No Mobile Homes or Used Buildings. No mobile homes, trailer houses, manufactured housing, or used buildings or buildings moved from other locations may be placed on any Development Parcel except for temporary construction offices as provided below.

4.06. Completion Required Before Occupancy. No Dwelling Unit may be occupied prior to its completion and the issuance of a certificate of occupancy by the County.

4.07. Wood-Burning Fireplaces. To limit increases in air pollution, no residence unit shall have more than three (3) wood-burning fireplace, stove, furnace or device. No coal-fired fireplaces, stoves, furnaces or devices will be permitted in the Property.

4.08. Animals. Only ordinary domesticated household pets may be kept on any Lot or in any residence unit. Horses and other nonhousehold animals are specifically prohibited.

4.09. Underground Utilities. All gas, electrical, telephone, television and any other utility lines installed to serve any Development Parcel are to be underground, including lines within any Property Lot which service Improvements entirely within that Lot. There are existing overhead electric lines that are part of the general utility grid which may remain overhead.

4.10. No Oil or L.P. Gas Tanks. The primary heat sources for all Improvements shall be solar, natural gas delivered by pipeline or electric heat. Except for temporary periods during construction of the Dwelling not to exceed twelve (12) months unless approved by the Board, no heating oil, propane, butane or other bulk fuel storage tank may be installed on the Property.

4.11. Maintenance of Property. All Lots, and the Improvements on them including landscaping, shall be maintained in a clean, sanitary, attractive and marketable condition at all times.

No Owner shall permit his Lot or the Improvements on it to fall into disrepair. Upon failure or neglect of any Owner to properly maintain any landscaping or Improvements on any Lot or to otherwise comply with these covenants within thirty (30) days after written notice by the Board, the Trustees may, but shall not have obligation to, cause the landscaping or Improvements thereon to be suitably maintained and/or brought into compliance and the Owner shall be responsible and liable for the expenses of such repairs. Failure to pay such expenses, upon written demand by the Board, may result in lien against the property in the manner in which liens are provided herein.

4.12. No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out on any Lot, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Lots.

4.13. No Hazardous Activity. No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be dangerous or hazardous, or which would cause the cancellation of conventional property casualty insurance. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, and setting open fires other than contained barbecues. No bulk fuel such as gasoline, diesel or propane will be stored on the Property for any purpose. The use of pesticides will be in strict compliance with applicable regulations, and no Owner will apply any pesticide to any Open Space, except under the direction and authorization of the Trustees. No Development Parcel, Lot or Condominium Unit will be occupied, used or developed in a manner that is in violation of applicable federal, state or local environmental laws or regulations.

4.14. No Unsightliness. No unsightliness is permitted on any Lot. This shall include, without limitation, the open storage of any building materials (except during the construction of any Improvements); open storage or parking of farm or construction equipment, inoperable motor vehicles, boats, campers, trailers, trucks larger than pick-up trucks (except during periods of actual loading and unloading); accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; household refuse or garbage except as stored in tight containers in an enclosure such as a garage; lawn or garden furniture except during the season of use; and the storage or accumulation of any other material, vehicle or equipment on the Lot in a manner that is visible from the Public View.

4.15. No Annoying Lights. Any outdoor lighting shall be subject to approval by the Architectural Committee, and no outdoor lighting shall be permitted except for lighting that is designed to aim downward and limit the field of light to the confines of the Lot on which it is installed. This shall not apply to street lighting maintained by the County or the State. The flood lighting of private tennis courts or similar sports courts is deemed to be annoying to abutting Owners, and is expressly prohibited.

4.16. No Annoying Sounds. No speakers, or other noise making devices may be used or maintained on any Lot which creates noise that might reasonably be expected to be unreasonably or annoyingly loud from adjoining Lots, except for security or fire alarms.

4.17. Sewer Connection Required. All Lots are served by sanitary sewer service, and no cesspools, septic tanks or other types of waste disposal systems are permitted on any Lot. All dwellings, offices or other habitable spaces must be connected to the sanitary sewer system in accordance with the rules and regulations of the Snyderville Basin Sewer Improvement District.

4.18. Drainage. An Owner shall not alter the natural drainage pattern of his Lot, except in accordance with any grading, water diversion or fill plans approved by the Design Review Committee and the County.

4.19. Protection of Springs and Streams. Although well-drained alluvial soils appear to predominate the Property, streams and springs are present. Dwelling construction should not alter or impede the natural flow of groundwater. An Owner planning to construct a dwelling on a Lot proximate to streams or springs shall seek the advice of an experienced design professional, particularly if the dwelling is to include basement space and shall provide such written review to the Design Review Committee.

4.20. Vehicles Restricted to Roadways. No motor vehicle will be operated on the Property except on roadways and driveways. No snowmobiles or unregistered motorcycles will be operated on the Property except while loading the equipment for lawful transport on public streets. The operation of any vehicle on any Open Space within the Property is strictly prohibited, except for maintenance work being conducted under the supervision and authority of the Association.

4.21. No Hunting. The hunting, trapping and harassment of wildlife, by firearms or any other means, is expressly prohibited within the Property. The discharge of firearms of every kind and description is expressly prohibited within the SunPeak Community, including the Open Space

parcels.

4.22. Fencing. Fencing shall be permitted only for decorative or screening purposes in conformance with the Architectural Design Guidelines.

4.23. No Commercial Uses. No Owner may use his or her property, Lot or Condominium within SunPeak for any commercial purpose, except that home offices, artists' studios and similar occupations may be conducted from a residential site; provided however that no employees outside of the Owner's immediate family may be required to work on the property, and that customers, clients or patrons are not invited to the property to conduct business. No retail sales are permitted. Development Parcel 16 is designated as a Commercial Lodge Parcel, and this provision shall not be construed as limiting the rights of the Owner of that Development Parcel to conduct typical hotel lobby retail and service activities, including restaurants, taverns and shops intended primarily to serve the needs of lodge guests.

## ARTICLE V USES OF OPEN SPACE

5.01. General. It is the intention of the Declarant to cluster the Development Parcels in the central area of the Property near the core of a sweeping and open natural setting. In order to achieve the goal of blending the Development into the site with the minimum visual impact, the Declarant has identified Open Space on the Plat that is to remain substantially free from development. Except as provided in this section, no Improvement of any kind shall be installed, constructed, maintained or allowed to stand in any of the Open Space areas. The Open Space shall be accessible to all Owners of the SunPeak Community subject to reasonable rules and restrictions of the Association. Ownership of Open Space shall be free of Assessments and shall have no voting rights attached.

5.02. Public Utility Facilities. Public utility facilities, including the construction, maintenance and use of underground electrical, telephone and cable television lines, services, and vaults and appurtenances for supplying utility services to any portion of the Property or to the Winter Sports Park are permitted in the Open Space. Any above-ground transformers, junction boxes, and other similar utility control and transfer points and above ground appurtenances and related facilities must



be screened with vegetation.

5.03. Trail System. The Association may, in its discretion, construct trail Improvements within the Open Space parcels. Trail Improvements, if constructed, shall be used only for hiking, bicycling, cross-country skiing, skiing, horse back riding, and other non-motorized travel. No motor vehicles of any kind or description may be operated on the trail system except for authorized vehicles engaged in the construction or maintenance of the trail or Improvements within the trail. Reasonable appurtenances to the trail system are permitted, such as benches, informational or regulatory signs, trash containers, drinking fountains, exercise stations, bicycle racks, and similar items for the use and enjoyment of persons making use of the trails; provided however that this shall not be construed as allowing trailhead parking lots, rest rooms, maintenance buildings, or any other enclosed structure.

5.04. Ski Lifts and Snow Making. With substantial financial commitment, it may be possible to connect SunPeak with the existing Park West Ski Area by building ski lifts and trails over Open Space Parcel 21. Declarant is not proposing to make that investment, but has provided for such possible connection through the Class II permit to preserve that opportunity to the Owners should they later determine that such a connection is in their best interest, and can be made economically practical. However, the Association itself shall not operate ski lift equipment on a commercial basis. The Association may enter into contracts with third-party ski resort operators to manage and operate the ski lifts, provided that the Association shall be properly and adequately indemnified against claims arising from negligent operation of the ski lifts, runs or other related facilities. The decision when to build the ski lifts, if at all, will be made by the Association with approval of at least a 80% majority of the Members for the Special Assessment(s) necessary to pay the construction costs of any such ski Improvements to be paid by the Association. To the extent that Declarant voluntarily undertakes any Improvements to Parcel 17, 18 or 21 while it is the Owner thereof, it shall pay for such Improvements or, if Declarant elects in compliance with 5.04 (e) below, third parties shall pay for such Improvements. Should Declarant build such Improvements for the use of the Owners of the SunPeak Community, no later than thirty-six (36) months from completion of construction of Improvements, the Declarant shall convey any such Improvements and the Parcel upon which such Improvements are constructed to the Association.

If and when ski lifts and related facilities are developed by Declarant or by the

Association, the use thereof shall be limited to the Owners of the SunPeak Community and their invited guests or tenants, subject to the following:

(a) The right of the Association to establish reasonable rules and regulations.

(b) The right of the Association to establish reciprocal use rights with the Owners and authorized users of the Park West Ski Area, if the Association concludes such to be practical and desirable.

(c) The right of an operator with whom the Association contracts to establish reasonable fees, approved by the Association Trustees, for the use of certain specific facilities.

(d) The right of the Owner of Parcels 1-6 of the adjoining Sun Peak Center and their tenants and invitees to make use of any ski facilities upon payment of such fee and subject to such other conditions as the Association may establish to compensate for such use given that such Owners will not be subject to Assessment pursuant to this Declaration.

(e) Declarant may decide, in Declarant's sole judgment, that ski lift facilities and snow making equipment may be installed in Parcels 17 and 18 and operated as a junior ski training center by a non-profit organization. Declarant would donate Parcels 17 and 18, without improvements, to a non-profit organization (subject to a remainder interest in favor of the Association) and such non-profit organization would then construct a ski-training facility and no right of use would be provided to the Owners. Should facilities be constructed for such use, the non-profit organization would provide, among other things, liability insurance to the Association and the Owners, insuring the Association and the Owners against any and all liabilities resulting from the use of the facilities and any easement area over or upon any of the SunPeak property permitted or otherwise, which would include property damage and personal liability insurance in the minimum amount of ONE MILLION DOLLARS (\$1,000,000.00). In addition, the non-profit organization would maintain all equipment and facilities in clean, operable, sanitary and attractive condition. No hazardous activity or unsightliness would be permitted. Night lighting of ski slopes would be permitted only until 9:00 pm on any evening and all facilities would be required to be closed and vacated no later than 9:30 pm on any evening. Snow making equipment would be allowed to operate only in the months of November, December, January and February. The non-profit organization would provide property insurance for any Improvements constructed which would provide for the immediate reconstruction or removal of any Improvements damaged by fire, earthquake, natural or man-made disaster.

Should the non-profit organization abandon the Improvements for a period of twelve consecutive (12) months, the remainder interest in favor of the Association shall vest and the Association, as owner, shall have the irrevocable right, after a majority vote of the members at a special meeting to do so, to notify the non-profit organization in writing of its intent to remove the Improvements and restore the Parcels to Open Space, or to operate the Improvements for the benefit and enjoyment of the Owners subject to 5.04 (a) – (d) above and the Association shall have no liability or cost to the non-profit organization for such removal or use.

5.05. Vehicles Prohibited. The use of any off road motor-vehicle, including snowmobiles, is prohibited in the Open Space except for those vehicles involved in the authorized maintenance or construction of any permitted Improvement, or those vehicles engaged in maintenance of the trails.

5.06. No Camping or Open Fires. The Open Space is not to be used for camping at any time. No open fires, barbecues or similar burning may occur on the Open Space.

5.07. Limitations on Sale or Encumbrance. While the Open Space is owned by the Declarant, Declarant agrees that it will not sell, lease, encumber or otherwise dispose of the Open Space except as provided in Section 6.01, except that this shall not prohibit the conveyance of the Open Space to the Association. The Association shall hold the Open Space conveyed to it by the Declarant, if any, for the benefit of the Members, and shall not sell, lease, encumber or otherwise dispose of the Open Space, or any part of it, except that:

(a) The Owner of the Open Space may at any time grant easements for underground or approved above ground utility lines, buildings, or facilities including wells, reservoirs and pipelines, whether they serve the SunPeak Community or others;

(b) Per Section 5.04 the Owner of the Open Space may at any time enter into leases with qualified ski resort operators for the expansion of ski facilities into the Property, provided that any such lease shall place all of the burdens of such operation on the ski resort operator, including maintenance and operation expense, and a general indemnity and hold harmless provision to protect the Association against claims from persons injured on the ski facilities;

(c) The Owner of the Open Space may enter into leases with nonprofit organizations that allow or facilitate the construction and operation of a ski training facility on the Open Space;

provided that no such lease shall allow for exclusive possession of the Open Space outside of the ski season; and

(d) The Owner of the Open Space may convey title to the Open Space, or grant conservation easements or make similar arrangements with nonprofit land or wildlife conservation organizations to preserve the Open Space, or make similar grants, leases or easements which enhance and preserve the Open Space amenity, provided that any such arrangement shall permit access to the Open Space by the Owners.

5.08. Waiver of Damage Claims. Each Owner for himself and his successors and assigns waives all claims for damages, injuries, or any other claim resulting from the Owner's use of the Open Space, including claims for damages resulting from the gross negligence of the Association in the management and maintenance of the Open Space.

5.09. Additions. Any portion of a Development Parcel which is not part of a residential Lot or Common Area managed by a Neighborhood Association may be conveyed to the Owner of Parcel 21 and become part of the Open Space of the SunPeak Community as a whole.

## ARTICLE VI

### PERMITTED USES ON DEVELOPMENT PARCELS

It is intended that most Development Parcels will be further subdivided or developed in a manner that is consistent with this Declaration. The process of re-subdivision will be governed by the following:

6.01. Boundary Adjustment. The Plat was drawn on the basis of preliminary engineering information, and it is possible that minor adjustments in the boundaries of the Development Parcels may be necessary to achieve good site planning within each Development Parcel. The Declarant, for so long as it is the Owner of the Open Space, shall have the right to add or delete Open Space to any Development Parcel or to make Open Space within any Development Parcel part of the Community Open Space. Such addition to or deletion from a Development Parcel shall not extend more than 200 feet from the designated boundary lines of the Development Parcel as shown on the Plat. No such adjustment will eliminate any already existing trail connection to Open Space, or eliminate access to any other Development Parcel. Any area added to the buildable area of a

Development Parcel shall become free of Open Space restrictions.

6.02. Uses Permitted. The land uses and the development program for each Development Parcel is set forth below. Any use not permitted by this Declaration is prohibited. All uses must comply with the Design Guidelines which are a part of this Declaration.

6.03. Conditions of Development. Within each Development Parcel, there are specific conditions of development that are necessary for the overall preservation of the purposes of this Declaration, including providing road and utility stubs to adjoining Development Parcels, providing adequate capacities, and payment of proportionate shares of the costs of the basic utility and road extensions to the Development Parcel. No Subdivision Plat will be considered by the Committee that does not comply with the development conditions on that Parcel.

6.04. Type and Density of Development, Allocation of Votes and Assessments. Although use designations and densities may change as provided herein, each Development Parcel shall be subject to all applicable building and zoning requirements, and any specific covenants imposed by Declarant in its deed of property to an Owner. For purposes of calculating the initial votes and Assessment Units allocated to each Development Parcel, it shall be treated as having the number of Lots equivalent to its initial authorized density, as follows:

(a) Parcel 7:

- (1) Initial Uses: multifamily residential.
- (2) Initial Density: 40 units.
- (3) Initial votes and Assessment Units: 40, one per authorized residential unit.

(b) Parcel 8:

- (1) Initial Uses: multifamily residential.
- (2) Initial Density: 60 units.
- (3) Initial votes and Assessment Units: 60, one per authorized residential unit.

(c) Parcel 9:

- (1) Initial Uses: multifamily residential.
- (2) Initial Density: 20 units.
- (3) Initial votes and Assessment Units: 20, one per authorized residential unit.

(d) Parcel 10:

- (1) Initial Uses: multifamily residential.

- (2) Initial Density: 10 units.
- (3) Initial votes and Assessment Units: 10, one per authorized residential unit.

(e) Parcel 11:

- (1) Initial Uses: Single-Family residential.
- (2) Initial Density: 40 units/40 lots.
- (3) Initial votes and Assessment Units: 60, one and one half per authorized residential

unit.

(f) Parcel 12:

- (1) Initial Uses: Single-Family residential.
- (2) Initial Density: 75 units/75 lots.
- (3) Initial votes and Assessment Units: 112.5, one and one half per authorized residential

unit.

(g) Parcel 13:

- (1) Initial Uses: Single-Family residential.
- (2) Initial Density: 30 units/30 lots.
- (3) Initial votes and Assessment Units: 45, one and one-half per authorized residential

unit.

(h) Parcel 14:

- (1) Initial Uses: Single-Family residential (estate lots).
- (2) Initial Density: 35 units/35 lots.
- (3) Initial votes and Assessment Units: 70, two per authorized residential unit.

(i) Parcel 15:

- (1) Initial Uses: Single-Family residential.
- (2) Initial Density: 15 units/15 lots.
- (3) Initial votes and Assessment Units: 30, two per authorized residential unit.

(j) Parcel 15A:

- (1) Initial Uses: Single-Family residential (estate lots).
- (2) Initial Density: 5 units/5 lots.
- (3) Initial votes and Assessment Units: 10, two per authorized residential unit.

(k) Parcel 16:

(1) Initial Uses: Hotel, condominium lodging, restaurant and hotel lobby-type commercial uses. Possible conversion to Single Family residential (estate lots). Parcel 16 is covered by the SunPeak Center Declaration of Covenants, Conditions and Restrictions unless Declarant elects, in Declarant's sole discretion, to convert Parcel 16 to single family or multi-family lots. If and when this Parcel is converted to a single family or multi-family lots, this Parcel shall have the irrevocable right and obligation to become annexed to the Association and shall receive the proportionate share of votes per unit equal to those of other single family or multi-family Development Parcels. Potential Memberships if annexed for the use described above would be one half (.5) for each dwelling unit and one (1) for each 1,000 square feet of commercial space.

(2) Initial Density: 140 dwelling units, plus 8,000 square feet of net leasable commercial space, exclusive of kitchen and hotel "back of the house" functions.

(3) Initial votes and Assessment Units: NONE – NOT A PART

(l) Parcel 17:

(1) Initial Uses: Junior Ski training facilities, and related offices, rest rooms, including without limitation lifts, grooming equipment, snow making equipment and similar support uses necessary or convenient for the operation of the ski facility.

(2) Initial votes and Assessment Units: NONE – NOT A PART

(m) Parcel 18:

(1) Initial Uses: Ski lifts and ski runs, snow making and other uses necessary or convenient for operating a ski hill of a non-commercial nature relative to Parcel 17.

(2) Initial votes and Assessment Units: NONE – NOT A PART

(n) Parcel 19:

(1) Initial Uses: Single-Family residential (estate lots).

(2) Initial Density: 10 units//10 lots.

(3) Initial votes and Assessment Units: 20, two per authorized residential unit.

(4) An access road may be constructed through the Parcel if desired by the Declarant, for a secondary entrance/exit from the Winter Sports Park or Sun Peak.

(o) Parcel 20:

(1) Initial Uses: Single-Family or Multi-Family residential.

(2) Initial Density: 80 units/80 lots.

(3) Initial votes and Assessment Units: 120, one and one half per authorized residential unit or 80, one per authorized multi family unit.

(p) Parcel 21: Parcel 21 is an Open Space Parcel, with the uses and Improvements as described in Article V.

(q) Parcel 8A:

(1) Uses: Recreational facilities caused to be constructed by Declarant at Declarant's sole cost and expense, including but not limited to, junior Olympic sized pool, two (2) tennis courts, landscaping, various picnic facilities, approximately 2,500 square foot community clubhouse with kitchen and restroom facilities.

(2) Assessment Units and Votes: NONE

(r) Change. It is possible the Declarant, at its sole discretion and subject to County approval, may change the designation of one or more Development Parcels from multifamily to single family use or vice versa. It is also possible that Development Parcels 17 and/or 18 may be changed to single family or multifamily use if Declarant determines that a ski-facility (training or otherwise) is not feasible or that Parcel 16 may become single family or multi family if a hotel or lodging complex is determined by Declarant to be infeasible. If such change occurs, the votes and assessments units allocated to each Development Parcel will be adjusted and reallocated effective January 1<sup>st</sup> in accordance with the Development Parcel's approved status as of the previous November 1<sup>st</sup>, in accordance with Section 2.14.

6.05. Amenities. No later than the second anniversary of the recording of the first final map in the SunPeak Community, which recording was made on May 28, 1992, construction shall begin on the recreational facilities listed above on Parcel 8A. Said facilities shall be completed within eighteen (18) months of start of construction and shall be fully deeded and transferred to the Association upon completion. Said facilities are for the use of the Owners, their tenants and guests of the SunPeak Community subject to the following:

(a) The right of the Association to establish reasonable rules and regulations.

(b) The right of the Association to establish a reasonable use by the Owners of Parcels 1-6 and 17 of the adjoining Sun Peak Center and their tenants and invitees to make use of any recreational facilities upon payment of such fee and subject to such other conditions as the Association may establish to compensate for such use given that such Owners will not be subject



to Assessment pursuant to this Declaration.

ARTICLE VII  
ARCHITECTURAL DESIGN GUIDELINES

7.01. Architectural Design Guidelines. The Declarant has prepared a booklet dated May 1992 entitled “Sun Peak Architectural Design Guidelines,” which has been adopted by the Declarant under this Declaration to govern the architectural features of the development. All development within the Property is subject to these design guidelines, and shall conform with them. However, the guidelines distinguish between and establish differing criteria and options for the Improvements to be built on each of the three categories of residential Development Parcels – estate lots, single-family lots and multifamily Development Parcels. The Architectural Design Guidelines shall apply under this Declaration and be enforced directly by the Master Association. The Architectural Design Guidelines may be amended from time to time by the Master Association, provided that any amendment shall require a seventy-five percent (75%) majority of the votes of the Trustees of the Master Association. All site work, utility construction and sub-grade work must comply with the standards adopted by Summit County, Snyderville Basin Sewer Improvement District, Silver Springs Water Company, and the applicable public utilities.

ARTICLE VIII  
CONSTRUCTION COVENANTS

8.01. Introduction. In order to ensure that the construction on any Development Parcel causes the minimum inconvenience and annoyance to the Owners of other Lots, particularly those Lots which have already been developed, the following construction regulations shall be enforced. These regulations shall be made a part of the construction contract between the Owner of a Development Parcel and the Contractor constructing the Improvements on that Lot. The Owner shall be bound by these regulations, and violations committed by the Contractor or its employees, subcontractors or others shall be deemed a violation by the Owner for which Owner is liable.

8.02. Pre-Construction Conference. Prior to the commencement of construction, the Owner

and Contractor will meet with the Committee to review these regulations and coordinate the construction activities within the Property. At the conference, or prior to the Committee granting its approval, the Owner must supply a construction site plan showing the location of material storage areas, the portable toilet, any construction office or trailer, and the trash dumpster. This plan must be approved by the Committee prior to the commencement of construction.

8.03. Portable Office or Trailer. Any Contractor who desires to bring a portable office or trailer on to a Development Parcel shall first apply for and receive written approval from the Committee. The Committee will work closely with the Contractor and Owner to determine the best possible location for the portable office. The temporary office may not be installed earlier than seven (7) calendar days prior to commencement of construction, and must be removed upon the first to occur (i) the issuance of a Certificate of Substantial Completion of the Improvements, (ii) the termination, expiration or cancellation of the Building Permit, or (iii) the suspension of construction activities for a period of sixty (60) days, not including weather delays.

8.04. Construction Debris Removal. The Contractor must comply with City ordinances requiring the placement and maintenance of a trash container or dumpster on the Lot. The Contractor shall collect trash at the end of each work day and deposit construction trash, packing material, unusable scraps and other debris in a suitable container, protected from the wind and regularly services. No trash may be burned, buried or otherwise disposed of on the Property.

8.05. Construction Area Appearance. The Lot must be maintained in a reasonably organized and neat condition at all times during the construction of Improvements.

8.06. Sanitary Facilities. The Contractor is responsible for the installation and maintenance of an approved portable toilet facility during construction. The portable toilet must be located on the Lot at a location approved by the Committee, and removed from the site as soon as construction of the Improvements has been completed.

8.07. Construction Parking and Vehicles. Construction crews must park their vehicles on the Development Parcel on which they are working, and shall not use or park on any other Lot, Open Spaces or any other Property.

8.08. Conservation of Landscape Materials. To the extent reasonably possible, native plant material removed from a Lot during the construction process should be preserved for replanting on the Lot. Topsoil, rock outcroppings, boulders, springs and seeps should be preserved. Tree

removal is strongly discouraged, and only those trees which will unreasonably interfere with construction, or which are located within the building area or any driveway will be removed.

8.09. Blasting. Blasting may be necessary in the SunPeak Community, and in the event that it is necessary to blast in conjunction with the construction of any Improvement, the Owner must notify the Committee in advance. In addition, the Contractor must comply with all ordinances and regulations of the County applicable to blasting. Notice to the Committee shall be at least thirty (30) days in advance to allow reasonable review of the governmental permits and opportunity to take any appropriate protective action or notice to neighboring areas. No blasting, impact digging or pile driving causing seismic vibrations may be undertaken without the consent of the Committee.

8.10. Hours of Work. Daily working hours on the site shall be limited to the period beginning one-half hour after sunrise and ending one-half hour before sunset, unless otherwise restricted by County ordinances. The Contractor is responsible for controlling noise emanating from the site.

8.11. Soil Conservation, Dust. At all times when the surface of the Development Parcel is disturbed by construction activity, and re-vegetation has not been completed, the Contractor shall practice reasonable dust, sedimentation and erosion control measures as described in the USDA Soil Conservation Service Guidelines. Excavated material must be controlled in a manner that prevents erosion onto Open Space or adjoining Lots.

8.12. Removal of Mud or Debris. The Contractor is responsible for cleaning up and removing mud or any plant material or other debris from the construction site that is deposited on the roadways of the Property.

8.13. Duration of Construction. No construction shall be undertaken without a Building Permit and all other necessary permits from the County, Snyderville Basin Sewer Improvement District and any other governmental entity having jurisdiction over construction on the site. No materials, tools, temporary offices or portable toilets, excavation or construction equipment or similar materials or equipment may be delivered to the site prior to the issuance of the Permit. It is the obligation of the Owner to proceed with construction with all reasonable speed once construction has commenced, and in any event, construction of subdivision improvements and utility infrastructure shall be substantially complete within a period of one (1) year from the date of commencement. All landscaping and soil stabilization work must be completed as soon as possible

after completion of the underground work on multifamily or subdivision parcels, and on single-family Lots, no later than the summer following completion of the exterior of the dwelling.

8.14. Repair or Damage. The Owner is responsible for the prompt repair of any damage to the Property caused by or incidental to Owner's construction. The Association may issue a notice of outstanding repair need to an Owner establishing a reasonable deadline for the repair to be effected. If the Owner fails to comply by the deadline established, the Association may cause the needed work to be done and may bill the Owner for the cost thereof, which bill may become a lien on the Owner's Lot or Unit or may be sued upon as an unsecured debt. In addition, the Association, if necessary, shall initiate legal action against any Owner for the repair of damage that occurs from construction activity pertaining to that Owner's Lot. Repairs will be to County standards, unless a more stringent requirement is created by these Covenants or the Neighborhood Association's Supplemental Covenants, in which case the repair will comply with the more stringent standard.

## ARTICLE IX OWNERS' MAINTENANCE OBLIGATIONS

It is the obligation of each Owner to properly maintain his Lot at all times in order to preserve and enhance the enjoyment of the Project:

9.01. Duty to Maintain. It is the obligation of the Owner of each Lot to maintain his Lot and the Improvements to the Lot in a good state of repair and in an attractive, safe and healthy condition.

9.02. Repair by Association. In the event that an Owner permits his Lot or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary or an unsightly condition in violation of this Declaration, the Association may give written notice to the Owner describing the condition complained of and demanding that the Owner correct the condition within thirty (30) days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to pay the reasonable costs of any work performed under this provision within fifteen (15) days of receipt of the bill

therefor, and consents to the Association placing a lien on his Lot or Development Parcel for the reasonable cost of the repairs made. Unpaid amounts will bear interest at the lawful judgment rate under applicable state law.

9.03. Alterations of Exterior Appearance. The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as that approved by the Architectural Committee. No subsequent exterior alterations, additions, improvements or remodeling, whether structural or cosmetic, will be made without the advance consent of the Committee.

9.04. Repair Following Damage. In the event of casualty loss or damage to the Improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Committee, provided however, that alterations or deviations from the originally approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent further damage, or to prevent injury or dangerous conditions following loss or damage, before reconstruction begins. Such temporary measures may be taken without the consent or approval of the Architectural Committee, provided that any such measures must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. No damaged structure will be permitted to remain on any Lot for more than ninety (90) days, weather permitting, without repairs commencing, and any damaged structure which does remain unrepaired after ninety (90) days following the occurrence of damage is deemed a nuisance which may be abated by the Association.

## ARTICLE X

### ANNEXATION

10.01. Annexations. Any or all of the Annexation Property may be annexed to and made subject to this Declaration by any of the methods hereinafter set forth.

10.02. Unilateral Annexations. Declarant shall have the right to annex from time to time all or any portion of the Annexation Property, so as to be subject to this Declaration and so that Membership in the Association shall be appurtenant to ownership thereof. Such annexation shall

not require the approval of either the Association, its Board or Members; provided, however, that said right of Declarant shall terminate as of the date when Declarant ceases to own any portion of the Property described in **Exhibit A** to this Declaration, or ten (10) years from the date when this Declaration is recorded, whichever occurs first.

10.03. Other Annexations. In addition to the provision for annexation specified in Section 14.02. above, annexations may be made by Declarant or other Owner of a portion of the Annexation Property with the approval by vote or written consent of members entitled to exercise not less than two-thirds (2/3) of the voting power of the Membership of the Association. Upon obtaining the requisite approval pursuant to this Section 10.03, the Owner of any real property who desires to annex it shall file of record an annexation declaration as more particularly described in Section 10.05 below.

10.04. Conveyances of Open Space. Prior to the conveyance by Declarant of any Lot or Parcel within the real property annexed to this Declaration, fee simple title to any Open Space Area to be owned by the Association within said annexed real property, if any, shall be conveyed to the Association free and clear of any and all encumbrances and liens, except current real property taxes, which taxes shall be prorated to the date of transfer, and reservations, easements, covenants, conditions and restrictions then of record, including those set forth in this Declaration.

10.05. Annexation Declaration. The annexations authorized under Sections 10.02. and 10.03. hereof shall be made by filing of record an annexation declaration, or other similar instrument, with respect to the additional real property which shall be executed by Declarant or the Owner thereof and shall extend this Declaration to such real property. The filing of record of said annexation declaration shall constitute and effectuate the annexation of the additional real property described therein, and thereupon said real property shall become and constitute a part of SunPeak development, become subject to this Declaration and encompassed within the general plan and scheme of the covenants, conditions and restrictions contained herein, and become subject to assessment by the Association and to the functions, powers and jurisdiction of the Association, and the Owners of Lots and Units in said real property shall automatically become Members of the Association.

The annexation declaration may contain such additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect

the different character, if any, of the added real property, or as Declarant may deem appropriate in the development of such real property, and as are not inconsistent with the general plan and scheme of this Declaration. In no event, however, shall such annexation declaration revoke, modify or add to the covenants, conditions and restrictions established by this Declaration as the same pertain to the Property initially subject to this Declaration.

Also, the annexation declaration must contain a specific designation of those annexed plots of land, if any, which are zoned for residential development, together with each such Parcel's voting rights and proportionate share of assessments burden which shall be consistent with the voting rights and assessments set forth in Article VI (i.e., one (1) per multifamily unit, one and one half (1.5) per single-family Lot, two (2) per estate Lot. Votes and assessments shall be based initially on initial density and shall be subject to later adjustment in accordance with Section 2.14. above.

## ARTICLE XI GENERAL PROVISIONS

The covenants, conditions and restrictions contained in this Declaration may be enforced as follows:

11.01. Violation Constitutes Nuisance. The violation of the provisions of this Declaration is deemed to be a nuisance, and the Owner of the Property on which the violation occurs is responsible for the removal or abatement of the nuisance.

11.02. Remedies.

(a) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by the Declarant (for so long as the Declarant is the Owner of any Lot), by any other Owner, or by the Association in its own name. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment all of the reasonable costs of enforcement, including attorneys' fees and costs of court.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. These covenants are to be construed

as being in addition to those remedies available at law.

(c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The failure to take enforcement action shall not be construed as a waiver of the covenants contained in this Declaration in the future or against other similar violations.

11.03. Severability. Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

11.04. Limited Liability. Neither the Declarant, the Trustees or the Architectural Committee or its individual members, not any other Owner, shall have personal liability to any other Owner for actions or inactions taken under these covenants, provided that such actions or inactions are the result of the good faith exercise of their judgment or authority under these covenants, and without malice.

11.05. Covenants Reciprocal Among Development Parcels. The covenants, conditions and restrictions established by this Declaration are reciprocal among all Development Parcels within the Property, and the Owner of any Development Parcel, the Neighborhood Association formed on any Development Parcel, or the individual Owner of any Lot or Condominium Unit created within any Development Parcel, shall have standing to enforce these covenants, conditions and restrictions against the Owners of any other Lot, Condominium or Development Parcel within the Property.

11.06. Term of Covenants, Renewal. This Declaration shall automatically renew fifty (50) years from the date it is first recorded with the Summit County Recorder, provided, however, that in the last year prior to expiration and at least ninety (90) days prior to the day of expiration, the Owners of ninety percent (90%) of the Lots may, by written notice which is recorded with the Summit County Recorder, agree to change or retire the covenants.

11.07. Amendment, Mortgagee Not Bound. At any time while this Declaration is in effect, the Association may amend the provisions of this Declaration by a vote of fifty-one percent (51%) of the possible votes of the Membership, provided no such amendment shall limit the rights of the Declarant to appoint Trustees or the Committee without the written consent of the Declarant, or increase the project density above that approved by the County. Any amendment



must be in writing and be property recorded in the office of the Summit County Recorder. No amendment which would have a financial impact on or impair the existing lien of the holder of any mortgage or trust deed on any Lot will be binding upon such holder unless the mortgage or trust deed holder joins in the amendment. This Declaration may not be repealed by amendment. No amendment shall have the effect of increasing the overall density within the SunPeak Community beyond that permitted by this Declaration and the Class II permit granted by Summit County.

11.08. Constructive Notice. Every person who owns, occupies or acquires any right, title or interest in any Lot in the Property is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the covenants, conditions and restrictions against his Lot, whether or not there is any reference to this Declaration in the instrument by which he acquires his interest in the Lot.

11.09. Notices. All notices under this Declaration are deemed effective seventy-two (72) hours after mailing, whether delivery is proved or not, provided that any mailed notice must have postage pre-paid and be sent to the last known address of the party to receive notice. Notices delivered by hand are effective upon delivery.

11.10. Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Property. Paragraph headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

11.11. Limitation of Restrictions on Declarant. Declarant is undertaking the work of planning, developing and selling the Property. The completion of that work and the sale or other disposal of the Lots or Parcels is essential to the establishment and welfare of the Property. In order that such work may be completed as rapidly as possible, nothing in this Declaration shall be understood and construed to:

(a) Prevent Declarant, its contractors or subcontractors from doing on the Properties or any part thereof whatever is reasonably necessary or advisable in connection with the completion of such work; or

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part of the Properties such structures as may be reasonably necessary for the conduct of its

business of completing said work and establishing said Property as a residential and recreational community and disposing of the Properties in Lots or Parcels by sale, lease or otherwise, or

(c) Prevent Declarant from conducting on any part of the Properties its business of completing said work and of establishing said Properties as residential development and of disposing of the Properties in Lots by sale, lease or otherwise, or

(d) Prevent Declarant from maintaining such sign or signs on any of the Properties as may be necessary for the sale, lease or disposition thereof.

(e) The exemption in this Section 11.11. shall automatically expire upon the conveyance to any owners of the last Lot or Parcel in the development owned by Declarant.

Executed on the date stated above.

Summit Ranch, J.V., a California General Partnership

By: \_\_\_\_\_

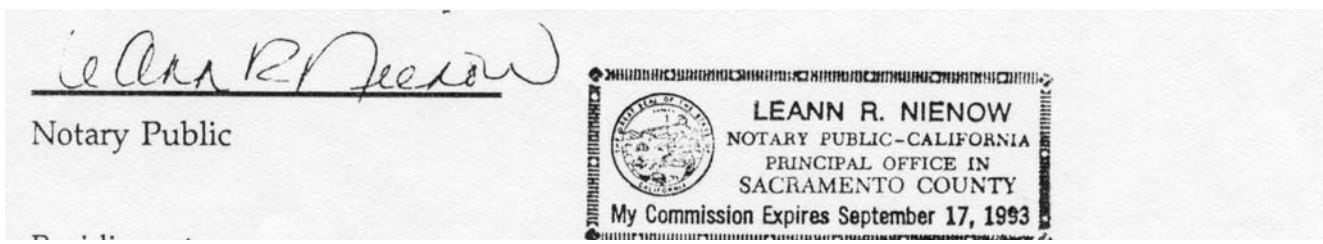
Its: Managing Partner

State of California )

:ss

County of Sacramento)

On the 17<sup>th</sup> day of June, 1992, C.C. Myers, appeared before me and each acknowledged that he is the General Partner of Summit Ranch, J.V., a California general partnership, which is the Declarant in the above instrument, and that he executed the same on behalf of the partnership with proper authority.



Residing at:

3286 Fitzgerald Road  
Rancho Cordova, CA 95672

Commission Expires:

09/17/93

## EXHIBIT LIST

- A. Legal Description of the Property
- B. Design Guidelines
- C. Legal Description of Annexation Property

EXHIBIT "A"

DESCRIPTION OF AFFECTED PROPERTY

EXHIBIT "A"

PARCEL A:

All of Section 25, Township 1 South, Range 3 East, Salt Lake Base and Meridian.

EXCEPTING THEREFROM: Beginning at the Northeast corner of said Section 25, and running thence West 1650 feet along the North line of said Section 25; thence South 1650 feet; thence East 1650 feet to the East line of Section 25; thence North 1650 feet along said East line to the point of Beginning.

PARCEL B:

All of the North half of the Northeast quarter, the Southwest quarter of the Northeast quarter, and the Northwest quarter of Section 36, Township 1 South, Range 3 East, Salt Lake Base and Meridian.

PARCEL C:

That portion of the following described parcel lying West of State Highway 224:

BEGINNING AT a point 80 rods South from the Northwest corner of Section 30, Township 1 South, Range 4 East of the Salt Lake Base and Meridian; and running thence East 3347.7 feet, more or less, to the west line of the right-of-way of the Denver & Rio Grande Western Railroad Company; thence South 3 degrees 02' East along said line 1320 feet more or less, to the South line of the Northeast quarter of said Section 30; thence West 777.76 feet, more or less, to the center of said Section 30; thence South 160 rods to the South line of said Section 30; thence West 160 rods to the Southwest corner of said Section 30; thence North along the Section line 240 rods, more or less, to the point of BEGINNING.

EXCEPTING THEREFROM: A rectangular piece of land with dimensions of 42 feet by 52 feet as indicated by an iron fence as it actually is situated within the following description:

Commencing at a point 190 feet West and 50 feet North, more or less, from the Southeast corner of the Southwest quarter of the Southwest quarter of Section 30, Township 1 South, Range 4 East, Salt Lake Base and Meridian; and running thence North 150 feet; thence West 150 feet; thence South 150 feet; thence East 150 feet to the place of beginning, situated in the Southwest quarter of said Section 30, Township and Range aforesaid; together with a right-of-way of 10 feet in width for egress and ingress over and across Buyer's adjoining land from and to State Highway No. 224 or such other public highway as will provide convenient and reasonable access to the tract herein excepted.

PARCEL D:

That portion of the following described parcel lying west of State Highway 224:

BEGINNING at the Northwest corner of Section 31, Township 1 South, Range 4 East, Salt Lake Base and Meridian and running thence East along the North line of Section 31, 80 rods, more or less, to the Northeast corner of the Northwest quarter of the Northwest quarter; thence South along the 40 line 550 feet, more or less, to the North line or parcel described in Book W. at page 602, as Entry No. 95041; thence North 86 degrees 48'00" West 320 feet, more or less, to the Northwest corner of said Parcel; thence south along the West boundary line of said Parcel 100 feet; thence West 220 feet, more or less, to a point which is 787.16 feet East of the West line of said Section 31; thence Southerly 250 feet, more or less, to the corner of a tract of land conveyed to William Archibald by Warranty Deed recorded in Book O, at page 456; thence South 76.73 feet along the boundary of the parcel described in Book O, at page 456; thence North 89 degrees 30' West 787.16 feet to the west line of Section 31; thence North along said west line 979 feet to the point of beginning.

PARCEL E:

The East half of the Northeast quarter, and the Northeast quarter of the Southeast quarter of Section 26, Township 1 South, Range 4 East, Salt Lake Base and Meridian.

PARCEL F:

That portion of the following described parcel lying west of State Highway 224:

BEGINNING at a point which is 979 feet South from the Northwest corner of Section 31, Township 1 South, Range 4 East, Salt Lake Base and Meridian; and running thence South along the Section line 303.95 feet; thence North 89 degrees 43' East 621 feet; thence North 237.64 feet; thence North 85 degrees 24' East 365 feet, more or less, to the James F. Murnin Parcel; thence North along the west line of the said James F. Murnin Parcel 80 feet; thence West 200 feet, more or less, to a point which is South 89 degrees 30' East 787.16 feet and North 50.00 feet from the point of beginning; thence South 50 feet; thence North 89 degrees 30' West 787.16 feet to the point of BEGINNING.

EXCEPTING FROM PARCELS C AND D that portion of the subject property deeded to the Utah Department of Transportation by virtue of that certain Warranty Deed recorded February 24, 1988 as Entry No. 284722 in Book 464 at page 770, records of Summit County, Utah, to wit:

A parcel of land in fee for the widening of highway SR-224 known as Project No. 060, being part of an entire tract of property situated in the SW  $\frac{1}{4}$  NW  $\frac{1}{4}$  and the W  $\frac{1}{2}$  SW  $\frac{1}{4}$  of Section 30, and in the NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  of Section 31, all in Township 1 South, Range 4 East, Salt Lake Base and Meridian. The boundaries of said land are described as follows:

Beginning at the Easterly boundary line of said entire tract, at a point 1343.98 feet South 0 degrees 04'26" East and 870.47 feet East from the Northwest corner of said Section 30; thence South 26 degrees 07'11" West 88.41 feet to a point 90 feet perpendicularly distant Westerly from the center line of said project at Engineer Station 82+00; thence South 14 degrees 56'09" West 157.11 feet to a point 85 feet perpendicularly distant Westerly from said center line; thence Southerly 662.05 feet along the

Arc of a 2949.79 foot radius curve to the left (Note: tangent to said curve at its point of beginning bears South 16 degrees 45'35" West); thence South 4 degrees 40'29" West 206.48 feet to a point 95 feet radially distant Westerly from said center line; thence Southerly 619.89 feet along the arc of a 2959.79 foot radius curve to the left (Note: tangent to said curve at its point of beginning bears South 0 degrees 05'59" East); thence South 9 degrees 57'37" East 207.66 feet to a point 110 feet radially distant Westerly from said center line; thence Southerly 169.62 feet along the arc of a 2974.79 foot radius curve to the left (Note: tangent to said curve at its point of beginning bears South 16 degrees 09'59" East); thence South 14 degrees 32'10" East 237.49 feet to a point 130 feet perpendicularly distant Westerly from said center line; thence South 36 degrees 03'58" East 104.40 feet to a point 100 feet perpendicularly distant Westerly from said center line; thence South 19 degrees 22'00" East 700 feet along a line parallel with said center line; thence South 8 degrees 25'23" East 210.70 feet to a point 140 feet perpendicularly distant Westerly from said center line; thence Southerly 86.30 feet along the arc of a 1769.86 foot radius curve to the right (Note: tangent to said curve at its point of beginning bears South 19 degrees 22'00" East); thence South 22 degrees 27'38" East 141.17 feet to a point 120 feet radially distant Westerly from said center line; thence Southerly 370.87 feet along the arc of a 1789.86 foot radius curve to the right (Note: tangent to said curve at its point of beginning bears South 12 degrees 04'24" East); thence South 0 degrees 12'03" East 54.27 feet along a line parallel with said center line; thence South 8 degrees 10'14" East 252.44 feet to a point 85 feet perpendicularly distant Westerly from said center line; thence South 12 degrees 14'37" East 153.37 feet to a point 53 feet perpendicularly distant Westerly from said center line; thence South 0 degrees 12'03" East 127.50 feet along a line parallel with said center line to a Southerly boundary line of said entire tract; thence East 25.839 feet to the Westerly right-of-way line of State Route 224; thence Northerly along said Westerly right-of-way line as surveyed by Cummock Engineering to the point of beginning as shown on the official map of said project on file in the office of the Utah Department of Transportation.

EXCEPTING FROM PARCEL D THE FOLLOWING:

Beginning at the Northeast corner of the Northwest quarter of the Northwest quarter of Section 31, Township 1 South, Range 4 East, Salt Lake Base and Meridian, said point of beginning is North 89 degrees 52' East 19.52 chains (record) from the Northwest corner of said Section 31; running thence from the point of beginning North 89 degrees 52' East along the section line 84.52 feet to the Westerly right-of-way line of State Highway No. 224; thence along the said Westerly right-of-way line of Highway No. 224 South 0 degrees 26'55" East 573.56 feet; thence North 86 degrees 44'20" West 25.78 feet; thence North 0 degrees 13'00" West 180.96 feet; thence West 62.59 feet more or less to the East line of the Northwest quarter of the Northwest quarter; thence North along said East line 390.91 feet to the point of beginning.

EXCEPTING FROM PARCELS D AND F THE FOLLOWING:

Beginning at a point which is South 1131.57 feet and East 1018.96 feet from the Northwest corner of Section 31, Township 1 South, Range 4 East, Salt Lake Base and Meridian, and running thence North 89 degrees 30' West 370.00 feet; thence North 15 degrees 44'53" West 390.44 feet; thence North 38



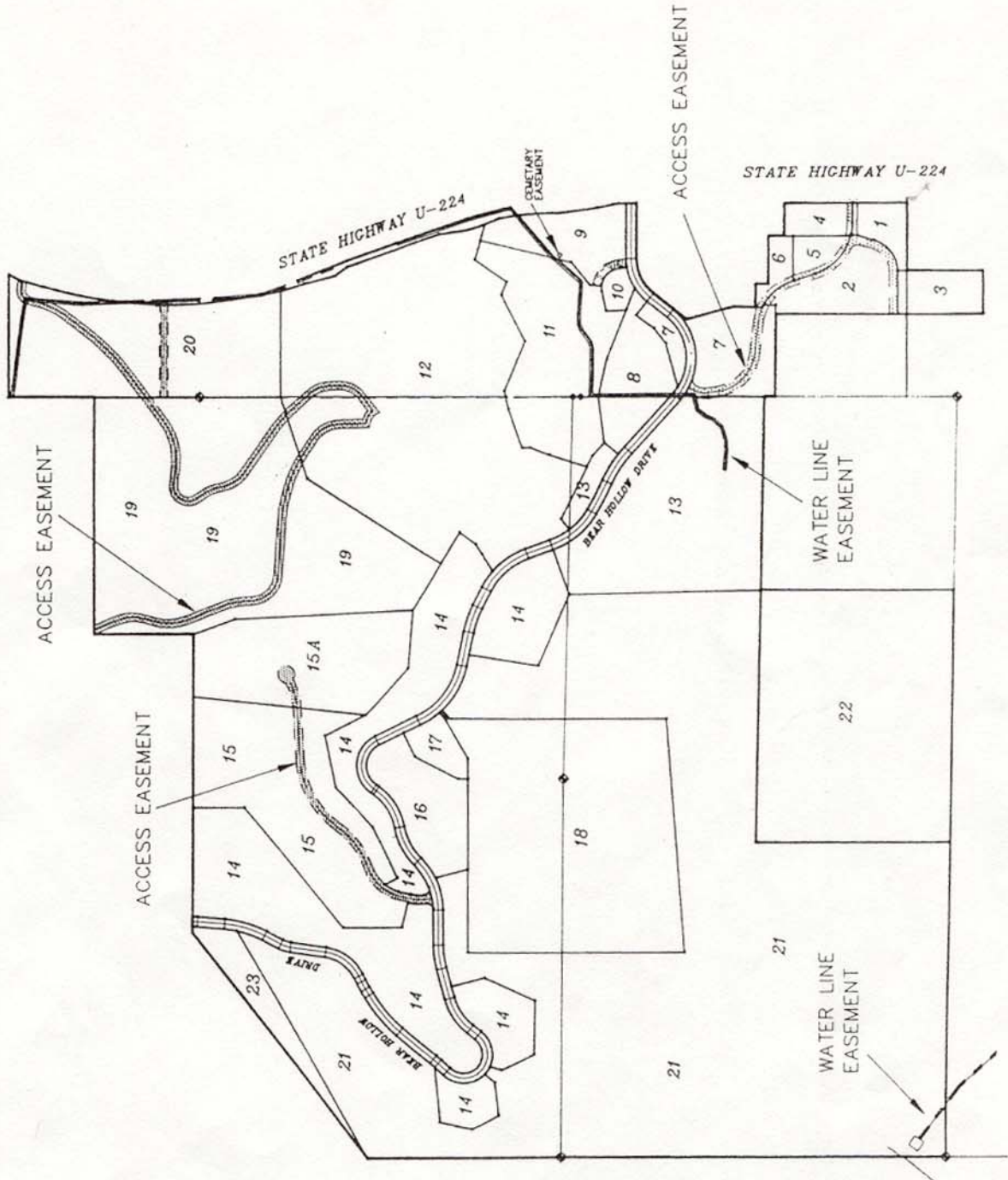
Degrees East 309.28 feet to the point of curvature of a 315.00 foot radius curve to the right (radius point bears South 52 degrees East) and running along said curve 285.88 feet; thence East 389.43 feet; thence South 0 degrees 13' East 286.96 feet; thence North 86 degrees 48' West, 355.77 feet; thence South 100.00 feet; thence South 86 degrees 48' East 112.62 feet; thence South 0 degrees 28' East 168.00 feet; thence North 86 degrees 48' West 111.96 feet; thence South 208.67 feet to the point of beginning.

WINTER SPORTS PARK EXCEPTION:

**EXCEPTING THEREFROM:** Beginning at the Northeast corner of Section 25, Township 1 South, Range 3 East of the Salt lake Base and Meridian, said corner being a brass cap monument set by the Summit County Surveyor in 1975, thence South 0°04'26" East, 1645.34 feet along the East Section line of said Section 25, to a point on the boundary between the Sun Peak Parcel and the LDS Church Parcel, said point being the True Point of Beginning.

Thence South 00°04'26" East 300.00 feet along said Section line; thence leaving the Section line West 1,652.50 feet; thence South 700.00 feet; thence North 89°50'17" West 2120.00 feet; thence South 51°55'24" West 2018.43 feet to the West line of said Section 25; thence North 89°47'29" West 1338.79 feet; thence North 0°20'06" West 4068.54 feet; thence North 89°47'04" East 1339.22 feet to the Northeast corner of said Section 26; thence South 01°31'52" West 179.08 feet along Section line to the Northwest corner of said Section 25; thence South 89°50'17" East 3737.03 feet along the Section Line; thence South 1650.00 feet; thence East 1652.11 to the True Point of Beginning.

MASTER PLAT OF SUNPEAK COMMUNITY  
SUMMIT COUNTY UTAH



SCALE 1:10,000

