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AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS, EASEMENTS AND  
RESTRICTIONS  
FOR  
SUN PEAK, HOA

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

This Amended and Restated Master Declaration for Sun Peak (the “Declaration”), a master planned development property located in Summit County, Utah (the Property) recorded by the Sun Peak Association is effective as of the date it is recorded in the Summit County Recorder’s Office.

RECITALS:

A. This document supersedes and replaces the original Master Declaration of Covenants, Conditions, Easements and Restrictions for Sun Peak recorded on June 17, 1992 as Ent 360955, Bk 668, beginning at Pg. 485 with the Summit County Recorder’s Office and any previous amendments thereto (“Original Declaration”)

B. Consistent with the Utah Community Association Act and pursuant to the rights set forth in the Original Declaration authorizing amendment of the Original Declaration, which along with and subject to future Amendments shall be the sole Declaration, this Declaration supersedes and replaces in its entirety the Original Declaration and any other previously recorded or unrecorded declarations or amendments thereto.

C. The Amended and Restated Bylaws of the Association attached hereto as an Exhibit supersede and replace any previous bylaws of the Association and any amendments thereto.

D. This Declaration is adopted to: 1) clarify and define the rights and obligations of the Association and the Owners, in and to the Property, 2) conform to the Utah Community Association Act and other Utah Law, and 3) further the effort to efficiently and economically provide a quality living environment and protect and enhance the value of the Sun Peak Community.

E. According to the records of the Office of Recorder for Summit County, Utah, upon information and belief the previous Declarant does not own any land within the Sun Peak Community and no assignment of Declarant rights has been recorded and all rights of the Declarant, as defined in the Original Declaration, have expired pursuant to the terms of the Original Declaration and the Act. Accordingly, no Declarant approval is required for this Declaration.

F. The Association and Owners hereby desire to establish the terms and conditions for the mutual benefit and burden of the Association, all current and future Owners, Occupants, Lenders, and others acquiring any interest in the Property.

F. The Board of Trustees has obtained the approval of the Owners necessary to adopt and record this Declaration and the attached Exhibits.

## ARTICLE 1 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:

1.1 “Act” shall mean where applicable the Community Association Act codified beginning at Section 57-8a-101 as amended or the Utah Condominium Ownership Act codified beginning at Section 57-8-1 as amended.

1.2. “Assessment Unit” shall mean the numerical value placed on each Neighborhood 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 3 of this Declaration.

1.3. “Association” or “Master Association” shall mean the Sun Peak Master Association described in Article 2 of this Declaration, and as the context requires, the officers and Trustees of that Association.

1.4. “Committee” shall mean the Architectural Design Review Committee created under this Declaration.

1.5. “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 Neighborhood Parcel to establish Condominium Units within that Neighborhood Parcel.

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

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

1.8 “Design Guidelines” means that set of design standards and objectives as amended from time to time, which can also be supplemented by additional declarations recorded for each Neighborhood Parcel to define, among other things, size and height of Improvements allowed on each Neighborhood Parcel, which shall govern the architectural styles and materials of all Improvements within the Sun Peak Community.

1.9 “Declaration” shall mean this Amended and Restated 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.

1.10 “Estate Lot” shall mean a Lot that is designated as an Estate Lot as shown on a recorded subdivision Plat.

1.11 “Neighborhood Parcel” shall mean one of Neighborhood Parcels in the Neighborhood Subdivisions as listed in Exhibit A attached hereto.

1.12. “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.

1.13. “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.

1.14 “Governing Documents” shall refer to this Declaration, the Plat, the Bylaws, the Rules, any Articles and any other documents or agreements binding upon all Owners.

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 Neighborhood Parcel.

1.16 “Lessee” means the lessee or tenant under a lease, oral or written, of any dwelling, in the Sun Peak Community including an assignee of the lessee's or tenant's interest under a lease.



1.17. “Lot” shall mean any numbered individual building Lot (but not any open space lot) created within any Neighborhood Parcel including any dwelling thereon, and unless the context clearly indicates otherwise, also any Condominium Unit or estate lot within any Neighborhood Parcel as shown on the recorded subdivision Plat.

1.18. “Membership” shall mean the Membership in the SunPeak 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 herein.

1.19. “Neighborhood Association” shall mean an association of owners within one or more Neighborhood Parcels that is established by a Neighborhood Declaration or Condominium Declaration for such Neighborhood Parcel(s) for the purpose of managing those amenities and providing those services which are unique to the Neighborhood 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.

1.20. “Neighborhood Declaration” shall mean any site-specific set of covenants, conditions, and restrictions filed on a Neighborhood 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 Neighborhood Parcels to be added to and become subject to the Neighborhood Declaration initially filed with respect to only one Neighborhood Parcel.

1.21. “Occupant” shall mean any person occupying all or any portion of a Lot or Condominium Unit for any period of time, regardless of whether such person is a tenant or the owner of such property.

1.22. “Open Space” shall mean any areas designated on the Plat or any Subdivision Plat as such, 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 5.

1.23. “Owner” shall mean the person or persons having title to any Lot or Condominium Unit within the Sun Peak Community. Owner shall mean the person holding fee simple title, and buyers under any contract for deed, but shall exclude any person or entity holding title for purposes of securing performance of an obligation.

1.24. “Property” shall mean all of the land described on the attached Exhibit A, which includes Neighborhood Parcels, Open Space, and roads, trails and any common areas, and also any Lots or Condominium Units within any Neighborhood Parcels.

1.25. “Plat” shall mean any recorded Plat that subdivided any Neighborhood Parcel into Lots or Condominium Units 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 Neighborhood Parcel.

1.26. “Sun Peak Community”. The Sun Peak Community shall mean all of the Lots, Condominium Units and Open Space as shown on the Neighborhood Parcels as referenced in Exhibit A hereto and shall include any amenities and common facilities for the benefit of the Members.

1.27. “Trustees” or “Board” shall mean the duly elected and acting board of trustees of the Sun Peak Master Association.

## ARTICLE 2 MASTER ASSOCIATION

2.1 Introduction. It is the intent of the Association for Sun Peak to be 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 that the Sun Peak 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. The Association is established by this Declaration from among the Members to supervise, manage and maintain those amenities and provide those services within the Sun Peak Property that are common to or for the benefit of all Owners and Neighborhood Parcels, and to enforce the design review process and other conditions of this Declaration, in order to develop a cohesive and functional community.

2.2 Master and Neighborhood Associations Described. All Lots, Condominium Units within the Neighborhood Parcels, Open Space, amenities and common facilities shall be subject to this Master Declaration. Some Neighborhood Parcels may also be subject to a Neighborhood Declaration and have membership in a Neighborhood Association.

(a) The Master Association is a body comprised of the Members who are Owners of Lots or Condominium Units in the Sun Peak Community and who shall elect and act through the Board of Trustees of the Master Association. The Master Association provides design review of all improvements in compliance with the Architectural Design Guidelines for the Sun Peak Community. The Master Association is also 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 the Sun Peak Community, and to enforce the Architectural Covenants within the Sun Peak Community.

(b) Any Neighborhood Association if created within a Neighborhood Parcel and approved by the Master Association, may have additional Covenants, Conditions and Restrictions (a “Neighborhood Declaration”). The Neighborhood Declaration shall be consistent with the provisions of this Declaration. If approved by the Master Association 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 Sun Peak Owners, and to enforce Covenants, Conditions or Restrictions that are unique to that Neighborhood Parcel or Condominium.

2.3 Master Homeowners Association Purposes. To effectively enforce these Covenants, Conditions and Restrictions, a Utah nonprofit corporation named the Sun Peak Association was created. The Association was established to perform through its Board all of the

functions and exercise all of the rights and powers set forth in this Declaration and available under law for the benefit of the Owners and the enforcement of these covenants.

2.4 General Membership. Every Lot or Condominium Unit shall have appurtenant to it one Membership interest in the Association. Any sale, conveyance, hypothecation, or other transfer of a Lot or Condominium Unit shall automatically transfer the Membership to the same extent, notwithstanding any term or provision to the contrary effecting such transfer. Each individual Member shall be entitled to cast the number of votes which attach to their Lot, Condominium Unit and Membership, which is 1 vote per Membership attaching to a multifamily Lot or Condominium Unit, 1.5 votes per Membership attaching to a standard single-family Lot and 2 votes per Membership attaching to an Estate Lot. Voting rights shall vest for all individual Lots or Units within a Neighborhood Parcel following November 1 of the year during which the first Lot or Unit within the Neighborhood Parcel is sold to a resident (as opposed to developer) Owner.

2.5 Enforcement Powers. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person, for himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration. In addition, each such Person by so doing acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and evidences his, her or its agreement that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, Lessees and transferees thereof. The Association shall have the power to enforce the provisions of this Declaration 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 litigate on behalf of the Association resulting from the enforcement of these Covenants or the other exercise of its powers. The Board 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 Sun Peak Community at all public meetings concerning zoning, variances or other matters of general application and interest to the Owners. Owners may appear individually.

2.6 Maintenance Responsibilities. The Association owns and has been granted easements over portions of the Sun Peak Community, including those portions identified on Plats 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 Sun Peak Community. 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 Sun Peak Community. The costs of management, maintenance and operation are to be assessed to the Members of the Association.

2.7 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.

2.8 Insurance. The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.

(a) Property Insurance. The Association shall maintain a policy of property insurance covering the common areas, and any structures, improvements, service equipment and fixtures thereon including Special Coverage for theft, vandalism and malicious mischief and Full Replacement Value Coverage.

(b) Comprehensive General Liability (CGL) Insurance. For so long as the Association has any obligation to maintain the common areas and Open Space, the Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident in regards to the use, repair, replacement, maintenance, or ownership of common areas and Open Space and the Owner's membership in the Association. The coverage limits under such policy shall not be less than two million dollars (\$2,000,000) covering all claims for death of or injury to any one (1) person or property damage in any single occurrence.

(c) Directors and Officers Insurance. For so long as anyone serves on the Board, the Association shall obtain Directors and Officers liability insurance protecting the Board, the officers, committee members and the Association, to the extent such a policy is available, against claims such as wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract. In the discretion of the Board, the policy may also include coverage for any manager and any employees of the Association and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager.

(d) Fidelity Insurance. Fidelity coverage in the minimum amount of \$100,000 against the dishonesty of employees, managers, destruction or disappearance of money or securities, and forgery. This policy shall also cover persons who serve the Association without compensation.

(e) Insurance Proceeds. The Association shall receive the proceeds of any settlements resulting from any insurance purchased by the Association. In the event of damage or destruction due to fire or other disaster, if the insurance proceeds are sufficient to reconstruct the damaged area, the Association shall promptly cause such reconstruction to occur. If the insurance

proceeds are not sufficient for such purpose, the Association may levy an assessment against the Owners for such deficiency.

2.9 Meetings of the Membership. Meetings of the Membership shall be held as set forth in the Association's Bylaws.

2.10 Trustees and Officers. The Association shall act through its Board of Trustees and Officers as set forth in its Bylaws.

### ARTICLE 3 ASSESSMENTS & FEES

3.1 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 herein. 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 Lot or Condominium Unit. 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. Each Owner by accepting title, covenants with the Association to pay the Assessment or installments thereof when due whether the Lot or Condominium Unit is vacant or improved. 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 landscape maintenance, Open Space maintenance, property taxes on Open Space, insurance, water for irrigation, administrative, management, legal and accounting expenses, reimbursement of expenses incurred by the Board and any committee in performance of their obligations, establishment and continuing funding of reasonable reserves for replacements, maintenance and contingencies and enforcement of these covenants.

3.2 Annual Assessment. It shall be the duty of the Board to calculate the regular annual assessment against each Lot and Condominium Unit 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 on or before December 31<sup>st</sup> of each year.

3.3 Notice of Assessment. 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 Board. 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.

3.4 Individual Assessment. An Individual Assessment may be levied by the Association against a particular Lot or Condominium Unit within the Project for: (a) Costs incurred in bringing an Owner, Lot or Condominium Unit into compliance with the provisions of the Governing Documents; (b) Fines, late fees, collection charges, and interest; and (c) Attorneys' fees, costs and other expenses relating to any of the above.

3.5 Payment. Assessments of the Association allocable to each Lot or Condominium Unit shall be paid by the Owner of that Lot or Condominium Unit. Assessments shall be collected upon such schedule as the Board may establish.

3.6 Creation of Lien and Personal Obligation of Assessments. Each Owner by becoming the Owner of a Lot or Condominium Unit is deemed to covenant and agree to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration and Utah law. The Assessments, together with interest, late charges, costs of collection, court costs and all other costs, including but not limited to reasonable attorney's fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot or Condominium Unit and shall be a continuing lien upon the Lot or Condominium Unit against which each such Assessment is made. Each Assessment, together with interest, late fees, collections charges, court costs and all other costs, including but not limited to reasonable attorneys fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of each Person who was an Owner of the Lot or Condominium Unit at the time when the Assessment became due and the subsequent Owner(s) of the Lot or Condominium Unit after the Assessment became due. The lien created by this Declaration against the applicable Lot or Condominium Unit shall continue to secure payment of such delinquent Assessment (including, but not limited to, any and all interests and late charges) until the same are fully paid. To the extent permitted by law, the Owner(s) and any future Owner(s) of a Lot or Condominium Unit are jointly and severally liable for all Assessments related to that Lot or Condominium Unit accruing prior to and during the time that an Owner is an Owner. No Mortgagee shall be personally liable for any Assessment or other proper charges due the Association, except in the event such Mortgagee shall acquire title to the Lot or Condominium Unit through a foreclosure or deed in lieu of foreclosure or otherwise. Any Mortgagee who so acquires title shall also be liable for Assessments or other proper charges due the Association arising on or subsequent to the date such Mortgagee became the record owner of the Lot or Condominium Unit.

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

3.8 Delinquency. Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Board may, at its option, invoke any or all of the remedies granted in this Article. The Association's choice of one remedy shall not prejudice or

constitute a waiver of the Association's right to exercise any other remedy. Each Owner, by taking title to a Lot or Condominium Unit, vests in the Association, or its assigns, the right and authority to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.

3.9 Rules Regarding Billing and Collection Procedures. The Board shall have the right and responsibility to adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a certificate of payment) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents. If the Board does not otherwise adopt or establish billing and collection procedures in its rules, the following shall apply: The Assessments shall be due within thirty (30) days of invoicing. Payments received after thirty (30) days from invoicing may be charged an initial late fee of \$30. Thereafter, an additional late fee charge of \$30.00 per month shall be added for each month that an Owner's account has an unpaid balance. In addition to late fees, interest may accrue on all unpaid balances, including on any unpaid prior attorney fees and late charges, at the rate of two percent (2%) per month or such other amount as may be set forth by the Association in the Rules and allowed by law. Delinquent accounts may be turned over by the Association to attorneys or to a collection company and additional collection charges and attorneys' fees and costs may be added to the amounts owed.

3.10 No Offsets. All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Board is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.

3.11 Certificate of Payment. Consistent with Utah Law, the Association, within ten (10) business days after receipt of written demand, shall furnish to any Owner liable for Assessments or such other Person for whom an Owner has given written permission in a form acceptable to the Association, a written statement or certificate, signed by an officer or authorized agent of the Association, setting forth whether the Assessments relating to a specified Lot or Condominium Unit have been paid and the amount of delinquency, if any. Each such certificate shall be conclusive in favor of a Person who relies on the written statement in good faith. The Board is authorized to charge a \$10.00 fee for issuance of a certificate; provided, however, the Board may increase or decrease this fee amount if the new amount is identified in the Rules and is consistent with Utah law.

3.12 Action at Law. The Association may bring an action to recover a delinquent Assessment personally against the Owner obligated to pay the same. Any attorneys' fees and costs incurred in such action shall be assessed against the delinquent Owner and the Owner's Lot or

Condominium Unit and added to the amount in delinquency (plus judgment interest and collection charges, if appropriate).

3.13 Foreclosure Sale. The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. The Board shall appoint a trustee, who qualifies under Utah Code Ann. § 57-1-21(1)(a)(i). The Association shall convey and warrant to the Trustee, with power of sale, the Lot or Condominium Unit and all improvements to the Lot or Condominium Unit for the purpose of securing payment of Assessments under the terms of the Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

3.14 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration (whether such liens are now in existence or are created at any time in the future), the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.

3.15 Termination of Delinquent Owner's Rights. The Association shall have all rights provided for in the Act to terminate a delinquent Owner's right to vote and right to utilize the recreational amenities and other common facilities; provided, however, that before termination of such rights the delinquent Owner be provided at least fourteen (14) days prior notice, in accordance with the notice requirements in the Bylaws, of:

- (a) the impending termination of rights if payment is not received;
- (a) the amount(s) past due, including any interest and late charges; and
- (b) the right to request a hearing before the Board.

3.16 Requiring Tenant to Pay Rent to Association.

(a) Pursuant to and as provided for in the Act, the Association shall have a right to demand and collect rent from any tenant occupying any Lot or Condominium Unit for which an Assessment is more than sixty (60) days late; provided, however, that before requiring a tenant to pay lease payments to the Association, the Owner be provided at least fifteen (15) days' prior notice, in accordance with the notice requirements in the Bylaws, of:

- (i) the Association's intent to demand the Owner's tenant pay his/her lease payments to the Association if payment is not received within fifteen (15) days;
- (ii) the amount(s) past due, including any interest, late charges, collection costs and attorneys' fees; and
- (iii) that any costs of collection, including, but not limited to attorneys' fees and other assessments that become due may be added to the total amount due and to be paid through collection of the tenant's lease payments;



(b) If the Owner fails to pay the amount owing after fifteen (15) days, the Association may exercise its rights to collect the lease payments from the delinquent Owner's tenant by delivering written notice to the tenant, in accordance with the notice requirements in Article 8, that:

(i) due to the Owner's failure to timely pay Assessments, the Association has notified the Owner of the Association's intent to collect all lease payments until the amount owing is paid, in full;

(ii) Utah law requires the tenant to make all future lease payments, beginning with the next monthly or other periodic payment, to the Association, until the amount owing is paid, in full; and

(iii) the tenant's payment of the lease payments to the Association does not constitute a default under the terms of the tenant's lease agreement with the Owner.

(c) The Association shall mail to the Owner a copy of the notice given to the tenant.

(d) The tenant to whom notice is given shall pay to the Association all future lease payments as they become due and owing to the Owner beginning with the next monthly or other period payment until the Association notifies the tenant that the amount owed by the Owner is paid.

(e) The delinquent Owner shall credit each payment that his/her tenant makes to the Association pursuant to this Section against any obligation that the tenant owes to the Owner as though the tenant made such payment to the Owner and Owner may not initiate suit or other action against the tenant for failure to make any lease payment that the tenant pays to the Association as required hereunder.

(f) Within five (5) business days after the amount owing is paid, in full, the Association shall notify the tenant, in accordance with the notice provisions in the Bylaws, that the tenant is no longer required to pay future lease payments to the Association and a copy of said notice shall be mailed to the Owner.

3.17 Attorneys' Fees Incurred as a Result of a Default. The Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including but not limited to attorneys' fees and costs incurred to:

(a) obtain advice about a default;

(b) collect unpaid Assessments;

(c) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments;

- (d) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding;
- (e) examine the debtor or others related to collections;

(f) monitor any bankruptcy proceedings including, but not limited to, regular monitoring of an Owner's progress in a chapter 13 plan for the duration of the plan;

(g) file relief from stay motions, objections, or other adversary proceedings in bankruptcy (and all related activities including seeking and responding to discovery, taking depositions or examinations, introduce evidence, hiring and paying expert witnesses, filing motions and other pleadings, attending trials, hearings, or other court proceedings, including as reasonably necessary related to assert any non-dischargeability of debts, to assert claims against the bankruptcy estate or codebtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments); and

(h) foreclose a lien, secure lien rights, or prepare any notice of lien. This provision is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

3.18 Association Responsibility after Foreclosure. If the Association takes title to a Lot or Condominium Unit pursuant to a foreclosure (judicial or non-judicial), the Association shall not be bound by any of the provisions related to the Lot or Condominium Unit that are otherwise applicable to any other Owner, including but not limited to obligations to pay assessments or maintain the Lot or Condominium Unit.

3.19 Reinvestment Fee on Sale or Transfer of Lot or Condominium Unit. Each time legal title to a Lot transfers from one Owner to another Owner, the new Owner of such Lot or Condominium Unit shall pay to the Association a Reinvestment Fee in an amount set by the Board as follows:

(a) The Reinvestment Fee shall be less or equal to the maximum percentage of the sale price of the Lot or Condominium Unit as allowed for under Utah Law, in addition to any other required amounts. The Reinvestment Fee may be set by the Board, by adoption of a Rule. Unless and until the Board sets a different Reinvestment Fee it shall be one half of one percent (0.5%) of the sale price. The Reinvestment Fee shall be due within thirty (30) days after the effective date of the deed or similar instrument transferring title. The Reinvestment Fee shall constitute an Assessment against the Lot or Condominium Unit.

(b) The Reinvestment Fee may be used by the Association to pay costs directly related to the transfer of the burdened property as well as: (a) common planning, facilities, and infrastructure; (b) obligations arising from an environmental covenant; (c) community programming; (d) resort facilities; (e) open space; (f) recreation amenities; (g) charitable purposes; or (h) Association expenses.

(c) The Reinvestment Fee is not due and may not be enforced against: (a) an involuntary transfer; (b) a transfer that results from court order; (c) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (d) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution, or similar court order; (e) a transfer between an entity and a principal of the entity created or structured for estate or tax planning purposes; and (f) the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of a common interest association's costs directly related to the transfer of the burdened property, not to exceed \$250.

(d) The Association shall have the authority to record any notice required by law to effectuate this provision.

#### ARTICLE 4 DESIGN REVIEW

4.1 Architectural Design Guidelines. It is the intention and purpose of this Declaration to impose Design Guidelines on Sun Peak as a whole, and specific development constraints and requirements on the Sun Peak Community which cause the construction of dwellings and improvements 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. The Sun Peak Design Guidelines set forth in Exhibit B have been adopted by the Association to govern the architectural features of the development. All development within the Property is subject to these design guidelines and shall conform with them. The Design Guidelines are deemed to be mandatory and not advisory, and each Owner shall comply with the Design Guidelines in the construction of their Improvements. The 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.

4.2 Design Review Committee Created. The Design Review Committee was established and empowered to oversee and enforce the Design Guidelines and other provisions set forth in this Declaration and Neighborhood Declarations or otherwise promulgated by the Association. The Design Review Committee will consist of three (3) persons whom shall be elected by the Board.

4.3 Approval by Design Review Committee. No Subdivision Plat, Condominium Record of Survey Map, Road Dedication Plat may be recorded, and no Excavation, Fill, or other Improvement may be constructed, installed, maintained or allowed to stand in the Sun Peak Community without the prior written approval of the Design Review Committee. Any 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 Design Review Committee and must contain a signature block for the Design Review Committee's approval to be indicated on the face thereof. 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 Neighborhood Parcel without the prior written approval of the Design Review Committee. Approval of the Design Review Committee will be sought in the following manner:

(a) Plans Submitted. Site plans for Improvements on any Neighborhood Parcel must be submitted to the Design Review Committee 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 Neighborhood 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 Neighborhood Parcel.

(b) Review Fee. The Association shall charge a fee as determined by the Design Review Committee in accordance with Utah Law for reviewing requests for approval of any construction, installation, alteration, addition, change, replacement or other work pursuant to the Master Declaration, which fee shall be payable at the time the application for approval is submitted to the Design Review Committee. If the Design Review Committee deems it reasonably necessary under the circumstances, an amount to cover the reasonable costs of professional consultation to the Design Review Committee by an architect, engineer or attorney may also be charged. No submission will be deemed complete and accepted until the Design Review Committee receives the fee. The Design Review Committee shall acknowledge by written receipt the payment of the fee and the submission of the plans which shall start any related time periods set forth in this Declaration or the Design Guidelines.

(c) Review. Within thirty (30) days from acknowledgement outlined in 4. 3 (b), the Design Review Committee will review plans and make an initial determination whether or not the plans are complete. If not, the plans will be rejected with an explanation by the Design Review Committee as to why the plans are not complete or do not comply. If they are in compliance, the Design Review Committee will approve the plans in writing. The Design Review Committee may also approve the plans subject to specific modifications or conditions. Owners may desire to submit preliminary plans for review. The Design Review 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 set forth in this Declaration or the Design Guidelines. Upon approval of a complete submission, the Design Review Committee and the Owner will each sign a copy of the plans, one set which shall be left with the Design Review Committee. Any construction that is not in strict compliance with the approved plans is prohibited.

(d) Written Record. The Design Review Design Review 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 Design Review 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 4.2 (b), the submission is deemed to have been approved.

4.4 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 Lot or Condominium Unit or would not comply with the overall intent of the Design Guidelines. Variances may be granted by the Design Review Committee, which shall keep a written record of the variance and the reasons why it was considered necessary to grant it.

4.5 Additional Review Costs. In reviewing any proposal, the Design Review Committee may require the services of professionals to assist in the review process. The Owner making application is expected to pay the reasonable costs of the Design Review 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 Design Review 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 themselves and their successors and assigns, waives any and all claims against the Design Review 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.

4.6 Levels of Design Review. The Design Review 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 Design Review Committee shall apply them in a manner that results in an attractive and well-designed community. The level of design review on each Neighborhood Parcel will depend in large part on the uses permitted.

4.7 Trustees and Committee not Liable. The Trustees and the Design Review Committee and its members shall not be liable to the applicant for any damages, or to the Owners of any Lots within the Sun Peak Community for their actions, inactions, or approval or disapproval of any set of plans submitted to the Design Review Committee for review. In the absence of bad faith or malicious actions, the Owners shall have no claim against the Trustees or Design Review 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 against another Owner if they believe the Design Review Committee has acted improperly.

4.8 Limitations on Review. The Design Review 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 Design Review Committee prior to construction.

4.9 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 Design Review Committee for the work proposed. Any work commenced without Design Review Committee approval may be subject to fines and enjoined by the Association at the expense of the person on whose behalf the work was commenced.

4.10 Approval to Proceed. The Design Review Committee shall issue a written Certificate of Approval to the Owner once the plans have been approved and all other conditions of construction set forth in this Declaration and the Design Guidelines 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 Design Review Committee.

## ARTICLE 5 RESTRICTIONS ON ALL PROPERTY

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

5.1 Governing Regulations. The lawfully enacted 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 Sun Peak Community, and no Neighborhood 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.

5.2 No Mining Uses. No Owner shall use the Property for mining, drilling or quarrying activity at any time.

5.3 Limitations on Business or Commercial Uses. No portion of the Sun Peak Community may be used for any commercial business use, except for those Neighborhood Parcels on which such uses are specifically permitted, provided however that nothing in this provision is intended to prevent the use by any Owner of their dwelling for a home occupation as permitted by County ordinance which is consistent with the residential character of the neighborhood and is not a nuisance, hazardous or offensive use. No home occupation will be permitted, however, which requires or encourages the Owner's clients, customers, patients or other to come to the Lot or Condominium Unit to conduct business, or which regularly requires any employees at the Lot or Condominium Unit outside of the Owner's immediate family or household.

5.4 Restrictions on Signs. Except as specifically provided, no signs will be permitted on any Neighborhood Parcel, except for traffic control signs for Roadways or Trails placed by the County or Association. All signs must be approved by the Design Review Committee. Within

each Neighborhood 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. Such sign shall be removed as soon as the Lots or Condominium Units within that Neighborhood Parcel have been sold.

5.5 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 Neighborhood Parcel except for temporary construction offices as provided below.

5.6 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.

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

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

5.9 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.

5.10 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.

5.11 No Hazardous Activity. No activity may be conducted on any Lot or Condominium Unit 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 or herbicide to any Open Space, except under the direction and authorization of the Association. No Neighborhood 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.

5.12. No Unsightliness. No unsightliness is permitted on any Lot or Condominium Unit. 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 on or adjacent to Lot (except during periods of actual loading and unloading pursuant to rules established by the

Board); 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. The Board may establish rules regarding the parking of motor vehicles, boats, campers and trailers on the streets within the Sun Peak Community.

5.13. No Annoying Lights. Any outdoor lighting shall be subject to approval by the Design Review 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.

5.14. 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.

5.15. 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.

5.16. 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.

5.17. Protection of Springs and Streams. Although well-drained alluvial soils appear to predominate the Property, streams and springs are present. Dwelling construction or Improvements should not alter or impede the natural flow of groundwater. An Owner planning to construct or improve 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.

5.18. Vehicles Restricted to Roadways. No motor vehicle will be operated in the Sun Peak Community 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.

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



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

5.21 Single Family Use. Dwellings are to be used as single-family residences. Under no circumstances shall any Dwelling, or any portion of a Dwelling, be rented or leased on a nightly or short-term basis (i.e., for a period of less than thirty (30) consecutive calendar days). Any set of circumstances that gives rise to the rental or lease of a Dwelling for less than thirty (30) consecutive calendar days (including, but not limited to, a series of subleases involving a single long-term tenant) and/or the rental or lease of a Dwelling for use as something other than a single family residential Dwelling, shall be prohibited; provided, however, that exceptions shall be permitted if a bona fide lease has been executed for a Dwelling for a period of thirty (30) or more consecutive calendar days which is terminated prematurely due to circumstances not known or existing at the time the lease was entered into. The prohibitions contained in this section shall be subject to any applicable exemptions as set forth in the Act if any exemptions are applicable.

The Board shall create procedures to determine and track the number of rentals in the Sun Peak Community subject to the rental restrictions and ensure consistent administration and enforcement of the rental restrictions. Notwithstanding any provision herein to the contrary, the rental and lease prohibitions contained in this section do not supersede or replace the existing rental and lease prohibitions for Willow Draw Plats A-F and the Condominium Units in the Cove at Sun Peak.

## ARTICLE 6 USES OF OPEN SPACE

6.1 General. It was the intention of the original developer to cluster the Neighborhood 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, Open Space was identified in the Sun Peak Community that is to remain substantially free from development. Except as provided in this Article, 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 Sun Peak Community subject to reasonable rules and restrictions established by the Board. Ownership of Open Space shall be free of Assessments and shall have no voting rights attached.

6.2 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 Sun Peak Community 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.

6.3 Trail System. The Board may, in its discretion, cause the construction of trail Improvements within the Open Space parcels. Trail Improvements, if constructed, shall be used only for hiking, bicycling, cross-country skiing, skiing, horseback 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.

6.4 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.

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

6.6 Limitations on Sale or Encumbrance. The Association shall hold the Open Space, 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 the Board on behalf of the Association may at any time:

(a) Grant easements for underground or approved above ground utility lines, buildings, or facilities including wells, reservoirs and pipelines, whether they serve the Sun Peak Community or others;

(b) Enter into agreements with qualified ski resort operators for the expansion of ski facilities into the Sun Peak Development.

(c) Enter into agreements that allow or facilitate the construction and operation of a ski lift or ski training facility on the Open Space;

(d) 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.

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

## ARTICLE 7 ENFORCEMENT

7.1 Violation Constitutes Nuisance. The violation of any provision of this Declaration is deemed to be a nuisance, and the Owner of the applicable Lot or Condominium Unit, on which the violation occurs is responsible for the removal or abatement of the nuisance.

7.2 Association's Right to Enforce. The Association through its Board shall have the right to enforce, by proceedings at law or in equity, all covenants contained in this Declaration, including the right to prevent the violation of any such covenants and the right to recover damages and other sums for such violation, including, but not limited to, attorneys' fees and costs incurred in conjunction with such enforcement.

(a) Each Owner, by taking title to a Lot or Condominium Unit, acknowledges and agrees that because a breach of the Governing Documents will result in immediate and irreparable injury to the Association and its Members for which they will not have an adequate remedy at law, the Association, if any such breach shall occur, be attempted, or be threatened, shall be entitled to an order of specific performance and to a temporary and permanent injunction enjoining such breach and to any and all other remedies to which the Association may be entitled pursuant to the Governing Documents or applicable law, without posting bond or furnishing other security and without proving damages or irreparable injury, together with an award of attorneys' fees.

(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.

7.3 Adopting and Enforcing Rules. The Association through its Board may adopt Rules for the regulation and operation of the Association and the Sun Peak Community. If Rules are adopted, they shall be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other Governing Documents. The Rules may supplement, clarify, and add detail to issues or items addressed in the other Governing Documents so long as the Rules do not contradict the same. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to a judicial determination if any is timely sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rules.

7.4 Enforcement Rights. In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association through its Board may: (a) impose fines; (b) collect rents directly from tenants if Owners fail to pay Assessments; (c) suspend voting rights and amenity privileges; and (d) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.

7.5 Discretion in Enforcement.

(a) Subject to the discretion afforded in this section, the Board shall enforce and implement the Governing Documents uniformly and consistently.

(b) The Board shall use its business judgment to determine whether to exercise the Association's powers and authority granted herein and/or under the Act, including whether to (i) impose fines, (ii) pursue legal action for a violation of the Governing Documents, (iii) Suspend amenity privileges (iv) compromise a claim made by or against the Board or the Association; and (v) pursue a claim for an unpaid Assessment.

(c) Consistent with Subsection (b) of this Section, the Association may not be required to take enforcement action if, after fair review and acting in good faith and without conflict of interest, the Board determines that under the particular circumstances: (i) the Association's legal position does not justify taking any or further enforcement action; (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (iii) a minor or technical violation has or may have occurred and the violation is not material as to a reasonable individual or does not justify expending the Association's resources; or (iv) it is otherwise not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.

(d) Subject to Subsection (e) of this Section, if the Board decides to forego enforcement, the Association is not prevented nor does it waive any rights from later taking enforcement action.

(e) The Board shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.

7.6 Establishing Hearing Procedures. The Board shall have the authority to create a reasonable hearing process applicable in case the Association shall take adverse action related to any particular Owner or group of Owners or in case a hearing process is required by law. The Board shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents, and in any such process, shall have the authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process. The Board may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum for: (a) at least two weeks' notice of the hearing to the Owners, and (b) a reasonable time period under the circumstances for the Owner(s) to present their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue.

ARTICLE 8  
NOTICE

8.1 Notices. Any notice to be given to an Owner, a Lender, or the Association under the provisions of the Governing Documents shall be in writing and shall be deemed valid if provided by any of the below methods:

(a) Notice to an Owner from the Association:

(i) by a written notice delivered personally to the Owner, which shall be effective upon delivery;

(ii) by a written notice placed in the United States mail, first-class postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or, if no such address shall have been furnished, to the street address of such Owner. If the owner does not provide a mailing address or email, the Board of Trustees may for all purposes act and rely on the information concerning ownership found in the official records of the Summit County recorder. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;

(iii) by email correspondence to an Owner: (1) sent to an email address provided by the Owner for the purpose of Association communications, or (2) emailed to an email address from which the Owner has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered. Any notice sent by email shall be deemed delivered seventy-two (72) hours after it is sent;

(iv) by facsimile (whether to a machine or to an electronic receiving unit) to an Owner sent to a facsimile number provided by the Owner for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered. Any notice sent by facsimile shall be deemed delivered seventy-two (72) hours after it is sent; or

(v) by any other method that is fair and reasonable given the circumstances and the subject matter of the notice or otherwise allowed by law.

(vi) Notwithstanding anything to the contrary in this Section, the Association shall send all notices to an owner by U.S. Mail if such Owner, by written demand, demands to receive notices from the Association by mail. In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than one notice per Lot or Condominium Unit. In case any two co-Owners send conflicting notice demands, notice shall be proper if mailed by first-class mail to the Lot or condominium Unit address.

(vii) In case posting of a notice on the Lot or Condominium Unit is permitted, such posting is effective when posted on the front or primary access door to the Lot or Condominium Unit and any such posting may be removed by the Association the sooner of either (1) two (2) days

after the event or action for which notice was given or (2) ten (10) days after the posting.

## ARTICLE 9 CONSTRUCTION COVENANTS

9.1 Introduction. In order to ensure that the construction on any Neighborhood 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 Neighborhood 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.

9.2 Pre-Construction Conference. Prior to the commencement of construction, the Owner and Contractor will meet with the Design Review Committee to review these regulations and coordinate the construction activities within the Property. At the conference, or prior to the Design Review 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 Design Review Committee prior to the commencement of construction.

9.3 Portable Office or Trailer. Any Contractor who desires to bring a portable office or trailer on to a Neighborhood Parcel shall first apply for and receive written approval from the Design Review Committee. The Design Review 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.

9.4 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.

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

9.6 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 Design Review Committee and removed from the site as soon as construction of the Improvements has been completed.

9.7 Construction Parking and Vehicles. Construction crews must park their vehicles on the Neighborhood Parcel on which they are working and shall not use or park on any other Lot, Open Spaces or any other Property. The Board may establish specific parking rules for construction crews.

9.8 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.

9.9 Blasting. Blasting may be necessary in the Sun Peak Community, and in the event that it is necessary to blast in conjunction with the construction of any Improvement, the Owner must notify the Design Review Committee in advance. In addition, the Contractor must comply with all ordinances and regulations of the County applicable to blasting. Notice to the Design Review 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 Design Review Committee.

9.10 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.

9.11 Soil Conservation, Dust. At all times when the surface of the Neighborhood 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.

9.12 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.

9.13 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.

9.14 Repair or Damage. The Owner is responsible for the prompt repair of any damage to 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 Condominium 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 10 OWNERS' MAINTENANCE OBLIGATIONS

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

10.1 Duty to Maintain. It is the obligation of the Owner of each Lot or Condominium Unit to maintain the Lot or Condominium Unit and the Improvements to the Lot or Condominium Unit including Landscaping in a good state of repair and in an attractive, safe, sanitary and marketable condition.

10.2 Repair by Association. In the event that an Owner permits the Lot, Condominium Unit 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 or Condominium Unit and take corrective action to abate or repair the condition. All costs of abatement and repair 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 Condominium Unit for the reasonable cost of the repairs made. Unpaid amounts will bear interest at the lawful judgment rate under applicable state law.

10.3 Alterations of Exterior Appearance. The Owners will maintain their Lots, Condominium Units and Improvements in substantially the same condition and appearance as that



approved by the Design Review Committee. No subsequent exterior alterations, additions, improvements or remodeling, whether structural or cosmetic, will be made without the advance consent of the Design Review Committee.

10.4 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 Design Review 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 Design Review 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 11 ANNEXATION

11.1 Annexations. Annexations may be made by the Association 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, the Owner of any real property who desires to annex it shall file of record an annexation declaration as more particularly described below.

11.2 Conveyances of Open Space. Prior to the conveyance of any Lot or Condominium Unit 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.

11.3 Annexation Declaration. The annexations authorized hereunder 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 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 Sun Peak 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 or Condominium 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 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.

## ARTICLE 12 GENERAL PROVISIONS

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

12.1 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.

12.2 Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration.

12.3 Conflicting Provisions. In the case of any conflict between Utah law and any of the Governing Documents, the order of priority from the highest to the lowest shall be Utah law, the Master Declaration, the Neighborhood Declaration, the Plat, the Articles, the Bylaws, and then the Rules. If there is a conflict between the Governing Documents and any Additional Covenants (or rules or policies adopted pursuant to any such Additional Covenants), the Governing Documents shall control.

12.4 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

12.5 Interpretation of Declaration and Applicability of the Act. The Association intends that the Sun Peak Community shall be governed by the Act, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern to the extent allowed by the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration

to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.

12.6 Cumulative Remedies, Waiver. All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law; simultaneously, consecutively, or alternatively. 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.

12.7 Variances. The Board, at its option and in extenuating circumstances, may grant variances from the provisions set forth in this Declaration if the Board determines, in its discretion: (a) either that a provision would create an unreasonable hardship or burden on an Owner or occupant, or that a change of circumstances since the recordation of this Declaration has rendered such provision obsolete and unreasonable to enforce; and (b) that the activity permitted under the variance will not have any negative financial affect or any other materially adverse effect on the Owners or occupants in the Sun Peak Community and is consistent with any community-wide standards. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Board. No variance may be granted that is inconsistent with any County Ordinance or the Act.

12.8 Indemnification. The Association shall indemnify and hold harmless each and every director, officer and manager of the Association, each and every member of the Design Review Committee, and each and every member of any committee appointed by the Board (collectively, "Association Officials" and individually an "Association Official") against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon an Association Official in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an Association Official, unless the liability for such expenses arises out of his or her own intentional misconduct. No Association Official shall have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Association (except indirectly to the extent that such Association Official may also be a Association Member and therefore subject to Assessments hereunder to fund a liability of the Neighborhood Association), and the Neighborhood Association shall indemnify and forever hold each such Association Official free and harmless from and against any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Association Official may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any Association Official who may be entitled to indemnification hereunder to enable such Association Official to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Association Official by reason of his or her being, or having been, an Association Official. In the event it is ultimately determined that an Association Official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section or otherwise under the Articles,

Bylaws or applicable law, such Association Official shall promptly upon demand repay to the Association the total of such funds advanced by the Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate as exclusively determined by the Board from the date(s) advanced until paid. The right of any person to be indemnified shall be subject always to the right of the Association by the Board, in lieu of such indemnity, to settle any such claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

The indemnification herein provided shall continue as to any person who has ceased to be a Board member, officer, Committee member, manager or employee, and shall inure to the benefit of the heirs, executors, and administrators of any such person.

12.9 Term of Covenants, Renewal. This Declaration shall automatically renew fifty (50) years from the date this Amended and Restated Declaration is 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.

12.10 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 voting rights of the Membership, any amendment must be in writing and be properly recorded in the office of the Summit County Recorder. This Declaration may not be repealed by amendment

12.11 Constructive Notice. Every person who owns, occupies or acquires any right, title or interest in any Lot or Condominium Unit 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 their Lot or Condominium Unit, whether or not there is any reference to this Declaration in the instrument by which the person acquires the interest in the Lot or Condominium Unit.

12.12 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 Sun Peak Community. 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.

[SIGNATURE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, SUN PEAK ASSOCIATION has executed this Amended and Restated Declaration of Covenants, Conditions and Restrictions as of the date first set forth above.

Sunpeak Association  
a Utah Corporation

\_\_\_\_\_  
Dave Georger, President

STATE OF UTAH            )  
                                  : ss.  
COUNTY OF SUMMIT    )

Before me, a Notary Public, in and for said county, personally Dave Georger, who is the President of the Sunpeak Association, executed the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions and acknowledged that he executed the same on behalf of the Sunpeak Association for the purposes expressed.

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

\_\_\_\_\_  
Date

# EXHIBIT A DESCRIPTION OF NEIGHBORHOOD PARCELS

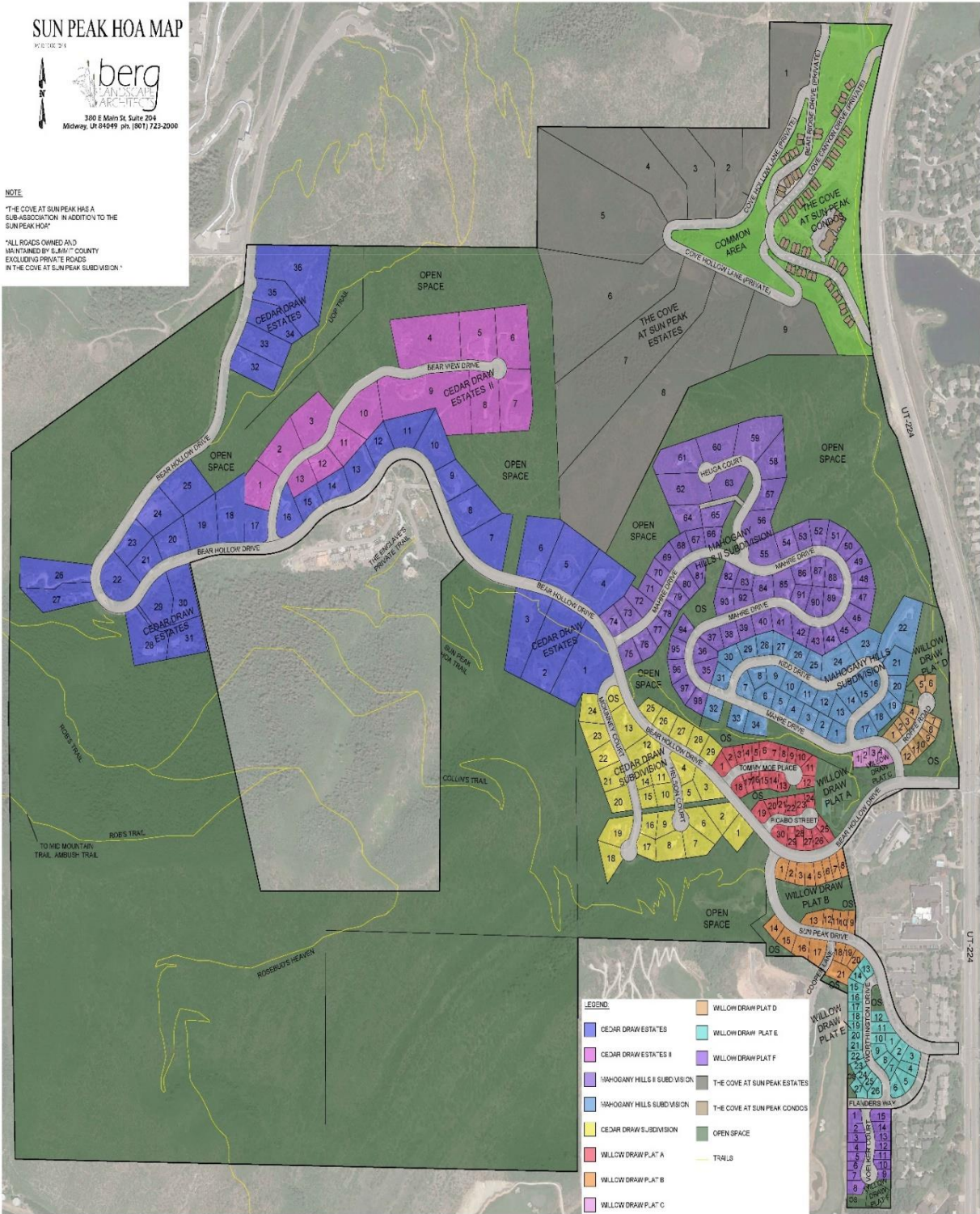


EXHIBIT B  
RECORDING DESCRIPTION