

Assessor Parcel No.  
See Exhibit "B" attached hereto

DOC # 20080049225

Amended Restrictive Covenants  
Russell Shirts Washington County Recorder  
12/31/2008 01:39:47 PM Fee \$ 82.00  
By PETERSON STEVEN

Page 1 of 11



WHEN RECORDED PLEASE MAIL TO:  
Steven E. Peterson  
Ballard Spahr Andrews & Ingersoll, LLP  
One Utah Center, Suite 800  
201 South Main Street  
Salt Lake City, UT 84111

**FOURTH AMENDMENT  
TO  
AMENDED AND RESTATED DECLARATION OF CONDOMINIUM  
FOR  
THE CONDOMINIUMS AT RED MOUNTAIN,  
A CONDOMINIUM DEVELOPMENT**

This Fourth Amendment to Amended and Restated Declaration of Condominium for The Condominiums at Red Mountain, a Condominium Development ("Fourth Amendment") is executed pursuant to the provisions of that certain Declaration described in Recital "B" below and pursuant to the provisions of the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Ann.), by Pivotal Mark II, L.L.C., an Arizona limited liability company ("Declarant").

**RECITALS**

A. The Condominiums at Red Mountain Owners Association, Inc., a Utah nonprofit corporation ("Condominium Association") is the association of condominium unit owners at The Condominiums at Red Mountain situated in Washington County, Utah ("Project") located on the real property described in Exhibit "A" attached hereto and incorporated herein by this reference.

B. On February 11, 2003, Declarant recorded with the office of the County Recorder for Washington County, State of Utah (the "Recorder"), an Amended and Restated Declaration of Condominium for The Villas at Red Mountain, a Condominium Development, in Book 1521, at Pages 2439 through 2517, with Recorder's entry number 803265 ("Declaration") covering the Project. In connection with the recording of the Declaration, Declarant also recorded a Record of Survey Map ("Map") for Phase 1 of the Project with the Recorder, a reduced copy of such Map was attached as Exhibit D to the Declaration.

C. On March 25, 2003, Declarant and the Condominium Association recorded with the Recorder a First Amendment to Amended and Restated Declaration of Condominium for The Villas at Red Mountain, a Condominium Development, in Book 1532, at Pages 514 through 522, with Recorder's entry number 810382 ("First Amendment"), exercising Declarant's Option to Expand the Project and making certain other amendments to the Declaration. In connection with

the recording of the First Amendment, Declarant also recorded a supplemental Record of Survey Map for Phase II of the Project with the Recorder.

D. Declarant and the Condominium Association previously recorded with the Recorder a Second Amendment to Amended and Restated Declaration of Condominium for The Condominiums at Red Mountain, a Condominium Development (f/k/a The Villas at Red Mountain) ("Second Amendment"), to change the name of the Project from "The Villas at Red Mountain, a Condominium Development" to "The Condominiums at Red Mountain, a Condominium Development" and making certain other amendments to the Declaration. In connection with the recording of the Second Amendment, Declarant also recorded an amended Map for Phases I and II of the Project with the Recorder.

E. The definition of "Map" also includes the supplemental Record of Survey Map for Phase II recorded in accordance with Declarant's exercise of its Option to Expand the Project described in Recital C above, and the amended condominium plats for Phases I and II of the Project as described in Recital D above.

F. Declarant and the Condominium Association also previously recorded with the Recorder a Third Amendment to Amended and Restated Declaration of Condominium for The Condominiums at Red Mountain, a Condominium Development (f/k/a The Villas at Red Mountain) ("Third Amendment"), making certain amendments to the Declaration.

G. Pursuant to Section 12.6 of the Declaration, prior to the expiration of the Period of Declarant Control, Declarant may unilaterally amend the Declaration for any purpose, provided that such amendment shall not materially adversely affect the substantive rights of any Owner, and shall not materially adversely affect title to any property without the consent of the affected Owner.

H. As of the date of this Fourth Amendment, the Period of Declarant Control has not expired.

I. Declarant desires to amend the Declaration to clarify certain obligations of Declarant and the Condominium Association related to maintenance of the Project, and to make certain other amendments to the Declaration, as set forth and described in this Fourth Amendment.

NOW, THEREFORE, Declarant hereby amends the Declaration as follows:

1. Defined Terms and Status of Recitals. Capitalized terms used and not otherwise defined in this Fourth Amendment shall have the meaning or meanings given to them in the Declaration. The Recitals set forth above shall constitute a portion of the terms of this Fourth Amendment.

2. Definition of Resort Quality Standard. The following Section 2.40 defining the Resort Quality Standard is hereby added to the Declaration:

2.40 "Resort Quality Standard" means the standards of construction, operation, service, maintenance, repair and refurbishment of the Project which shall be at the level

of service and quality of a luxury condominium and lodging project and reasonably likely to protect and preserve the assets that comprise the Project and optimize the long-term value of the Project over the life of the Project as Declarant shall determine in its sole and exclusive discretion so long as it has any Developmental Rights under this Declaration, and thereafter the owner of the Red Mountain Spa. The definition of Resort Quality Standard may not be amended without the prior written consent of Declarant so long as it has any Developmental Rights under this Declaration, and thereafter the owner of the Red Mountain Spa.

3. Developmental Rights in Resort Quality Standard. The following Section 12.7 pertaining to Declarant's authority to implement and enforce the Resort Quality Standard is hereby added to the Declaration:

12.7 Resort Quality Standard. So long as Declarant has any Developmental Rights under this Declaration, Declarant, and thereafter the owner of the Red Mountain Spa, hereby reserves the right to unilaterally promulgate certain rules, guidelines and restrictions regarding the appearance, design, maintenance, upkeep, decorating, furnishing and cleanliness of the Project, which rules, guidelines and restrictions shall be referred to as the "Resort Quality Standard." The Resort Quality Standard as applicable to both the operational and physical components of the Project shall be subject to change over time, as Declarant, or the owner of the Red Mountain Spa, determines is necessary or desirable, in order to adapt to technology, general market conditions, consumer preferences, trends and standards in the resort industry.

4. Management Committee's Obligations Under Resort Quality Standard. The following Section 14.5 pertaining to the Management Committee's responsibility to operate the Project in accordance with the Resort Quality Standard is hereby added to the Declaration:

14.5 Resort Quality Standard. The Management Committee shall provide for the repair, replacement, management and maintenance of the Common Areas and Facilities and any Units that it may own or lease, or in the future may own or lease, in accordance with the Resort Quality Standard so that the Project will reflect a high grade of maintenance. In this connection, the Condominium Association may, subject to any applicable provisions on Special Common Assessments, in the discretion of the Management Committee, reconstruct, repair, replace or refinish any Unit that it may own or lease, or any improvement or portion thereof upon the Common Areas and Facilities, and do all such other and further acts which the Management Committee deems necessary to preserve and protect the Units it may own or lease, or in the future may own or lease, and the Common Areas and Facilities and the beauty thereof, in accordance with the Resort Quality Standard and the general purposes specified in this Declaration. Each Unit Owner agrees to repair and maintain its Unit in the same fashion as all other Units are repaired and maintained in the Project in accordance with the Resort Quality Standard. In the event that any such Unit should fall into a state of disrepair and in the event that the Owner of such Unit should fail to correct such condition or state of disrepair promptly following written notice from the Management Committee, the Management Committee shall have the right, at the expense of the Owner and without

liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said state of disrepair.

5. Trademarks and Goodwill. The following Article 36, establishing rights and related protections in Trademarks and goodwill is hereby added to the Declaration:

36. RESERVATION OF RIGHTS TO PROJECT NAME.

36.1 Trademarks. Declarant is the owner of all rights in the "Condominiums at Red Mountain," "Villas at Red Mountain," "Red Mountain" and "Red Mountain Spa" names and trademarks, including all related trademarks, trade names, service marks, designs and logos, including the goodwill associated therewith ("Trademarks"), including but not limited to all rights in the Trademarks in connection with the Project, and any variant or combination of the Trademarks. Neither the Condominium Association nor the Owners have any license to use or other interest in the Trademarks. In addition, Declarant reserves the right to utilize the Trademarks in connection with other Declarant or Declarant affiliate projects in its sole and exclusive discretion. By accepting a deed or other instrument of conveyance to a Unit in which this Declaration is deemed to be incorporated, each Owner hereby agrees and acknowledges (i) the ownership of the Trademarks in Declarant, (ii) all use of the Trademarks in the Project shall inure to the benefit of and be on behalf of Declarant, (iii) nothing in this Declaration shall give the Condominium Association or Owner any right, title or interest in the Trademarks other than the non-exclusive right to use the Trademarks in accordance with this Section 36.1, and (iv) the great value of the goodwill that Declarant has developed in the Trademarks, and hereby stipulates that he, she or it will do nothing to damage such goodwill.

36.2 Association Rights. Notwithstanding the foregoing reservation of rights by Declarant, the Condominium Association and Owners may identify the Project as "The Condominiums at Red Mountain." The Condominium Association may use the term "The Condominiums at Red Mountain" in its name for a period of ten (10) years from the recording of this Declaration, with automatic consecutive five (5) year extensions unless Declarant, in its sole and exclusive discretion, provides a written "Termination Notice" to the Condominium Association (which Termination Notice shall be deemed to be notice to each Owner) that it shall no longer be permitted to use the "The Condominiums at Red Mountain" mark to identify the Project or the Condominium Association. Upon receipt of a Termination Notice, the Condominium Association and each Owner shall immediately take steps to cease all use of the Trademarks identified in the Termination Notice to identify the Project, and shall immediately take the steps necessary to cease and desist from using any and all Trademarks as soon as possible as further described in the Termination Notice, but in any event, within three (3) months.

36.3 Compliance with Standards. The Condominium Association shall comply with all standards and instructions as Declarant may reasonably establish with respect to the style, appearance and manner of use of the Trademarks. The Management Committee shall promptly notify Declarant of any unauthorized use of the Trademarks by any third party and will confer with Declarant about appropriate action. Declarant shall

have the sole right to determine whether any unauthorized use of the Trademarks is an infringement and whether to take any action.

36.4 Enforcement. The provisions of this Article 36 may be enforced by any remedy at law or equity, including mandatory and/or prohibitory injunctions, and the remedies hereunder are cumulative to any other rights or remedies that may be granted by law. By accepting a deed or other instrument of conveyance to a Unit in which this Declaration is deemed to be incorporated, each Owner hereby agrees and acknowledges that in the event of non-performance of any of the above described restrictions, Declarant's remedies at law shall be deemed inadequate to enforce the terms of this Article 36. The failure of Declarant to exercise any right, power or option granted to it under this Article 36, or to insist upon strict compliance with the terms hereof by the Condominium Association, an Owner and any other Person shall not constitute a waiver of any term and/or condition of this provision with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with the terms and/or conditions set forth herein. Notwithstanding any provision of this Declaration to the contrary, this Article 36 shall not be amended without the prior written consent of Declarant, which consent may be withheld for any reason or no reason as Declarant shall determine in its sole and exclusive discretion.

6. Easement for Swimming Pool and Related Facilities. The following Section 23.8 pertaining to certain easement rights in the swimming pool and related facilities of the Project is hereby added to the Declaration:

23.8 Easement for Swimming Pool and Related Facilities. Declarant hereby reserves, on behalf of itself, its successors and assigns, and grants to any owners association, or other entity (the "Successor") owning all or part of any land withdrawn pursuant to the Option to Contract set forth in Section 12.5 of this Declaration a perpetual, nonexclusive easement over the Property for access to and use of the swimming pool and related facilities. Declarant hereby covenants, on behalf of itself, its successors and assigns, that Declarant or Successor shall pay its pro rata share of the costs of operation and maintenance of the swimming pool and related facilities from the date of recording of this Fourth Amendment. The Declarant's or Successor's pro rata share shall be based upon a fraction the numerator of which is the number of units expected to be developed by the Declarant or Successor on the Withdrawable Land, which is 28, and the denominator of which is 52, which is the aggregate number of units with rights to use the swimming pool both in the Condominium Association and the Withdrawable Land. Declarant or Successor shall be responsible for the same share whether or not 28 units are actually developed in the Withdrawable Land. The Declarant or Successor shall have access to review the books and records of the Condominium Association related to the costs of operation and maintenance of the swimming pool and related facilities in order to confirm its appropriate pro rata share. The easement granted pursuant to this Section 23.8 shall be appurtenant to and run with the Withdrawable Land.

7. Declaration Remains in Effect. This Fourth Amendment shall be considered supplemental to the Declaration, to the Map, to the First Amendment, to the Second Amendment

and to the Third Amendment, as all of the same may further be amended. Except as expressly amended by the foregoing, and notwithstanding anything contained in the Declaration to the contrary, which provisions, if any, are hereby amended to be consistent with this Fourth Amendment, the Declaration (as previously amended) and the Map shall remain in full force and effect and shall not be cancelled, suspended or otherwise abrogated by the recording of this Fourth Amendment. In the event of any conflict or inconsistency between the provisions of this Fourth Amendment and the Declaration, this Fourth Amendment shall control.

8. Authority. Declarant hereby certifies that Declarant may execute this Fourth Amendment without the consent or signature of any other party or Owner pursuant to Section 12.6 of the Declaration.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, this Fourth Amendment is hereby executed this 30<sup>th</sup>  
day of December, 2008.

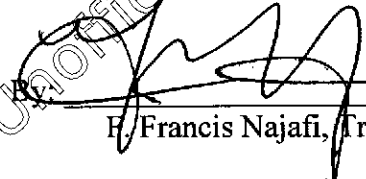
**DECLARANT:**

**PIVOTAL MARK II, L.L.C.,**  
an Arizona limited liability company

By: Pivotal Spa I, L.L.C.  
Its: Administrative Member

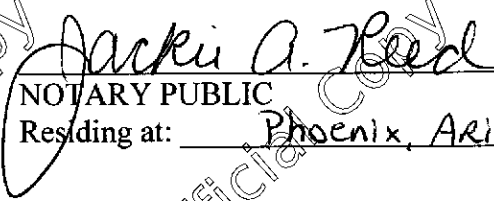
By: Pivotal Group X, L.L.C.,  
Its: Administrative Member

By: F. Francis Najafi, Trustee of the Najafi  
Family Trust  
Its: Administrative Member

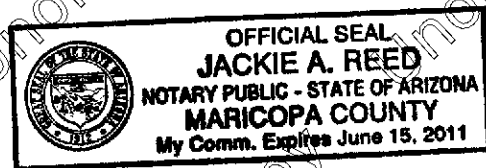
  
\_\_\_\_\_  
F. Francis Najafi, Trustee

STATE OF ARIZONA )  
  :SS.  
COUNTY OF MARICOPA

The foregoing instrument was acknowledged before me this 30 day of  
December, 2008, by F. Francis Najafi, Trustee of the Najafi Trust dated July 30, 1996, the  
Administrative Member of Pivotal Group X, L.L.C., an Arizona limited liability company, the  
Managing Member of Pivotal Spa I, L.L.C., an Arizona limited liability company, the Manager  
of Pivotal Mark II, L.L.C., an Arizona limited liability company.

  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: Phoenix, Arizona

My Commission expires:  
6-15-11



**CONSENT, SUBORDINATION AND NONDISTURBANCE  
COVENANT OF LIENHOLDER**

The undersigned PIVOTAL DEBT FUND, L.L.C., an Arizona limited liability company ("Lienholder") as the beneficiary under that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated October 17, 2003, between Pivotal Mark II, L.L.C., an Arizona limited liability company, as trustor, and Lawyers Title of Arizona, Inc., as trustee, for the benefit of Lienholder, recorded in the official records of Washington County, Utah on October 17, 2003 in Book 1589, Page 2208, Entry No. 846146 ("Deed of Trust"), consents to all of the provisions contained in the attached Fourth Amendment to Amended and Restated Declaration of Condominium for The Condominiums at Red Mountain, a Condominium Development, and covenants and agrees that the lien of the Deed of Trust shall be junior, subordinate and subject to said Fourth Amendment, and that any foreclosure of the Deed of Trust, whether judicially or through the exercise of power of sale, or the exercise of any other rights and remedies thereunder shall not terminate or otherwise adversely affect the continuing validity and enforceability of any of the terms and provisions of the attached Fourth Amendment.

DATED this 30 day of December, 2008.

PIVOTAL DEBT FUND, L.L.C.,  
an Arizona limited liability company

By: [Signature]  
Name: F. Francis Najafi  
Its: member

STATE OF Arizona )  
 ) :ss.  
COUNTY OF Maricopa )

On the 30 day of December, 2008, personally appeared before me F. Francis Najafi, who, being by me duly sworn, did say that he/she is the member of Pivotal Debt Fund, L.L.C., an Arizona limited liability company.

Jackie A. Reed  
NOTARY PUBLIC  
Residing at: Phoenix, Arizona

My Commission expires:  
6-15-11





**Exhibit "A"**

**Project Legal Description**

All of Units M1, M2, M3 and M4 as established and described in that certain Final Plat of The Villas at Red Mountain, Phase I, recorded January 2, 2003, in Book 1512, at Page 1910, Instrument No. 796847, in the office of the County Recorder for Washington County, State of Utah, as the same may be amended from time to time; and all of Units N1, N2, N3, N4, O1, O2, O3, O4, P1, P2, P3, P4, Q1, Q2, Q3, Q4, R1, R2, R3, R4, S1, S2, S3, S4, T1, T2, T3, T4, U1, U2, U3, U4, V1, V2, V3, V4, W1, W2, W3, W4, X1, X2, X3, X4, Y1, Y2, Y3 and Y4 as established and described in that certain Final Plat of The Condominiums at Red Mountain, Phase 2, Amended, recorded November 16, 2004, in Book 1688, at Page 0183, Instrument No. 911209, in the office of the County Recorder for Washington County, State of Utah, as the same may be amended from time to time; and the accompanying Amended and Restated Declaration of Condominium for The Villas at Red Mountain, a Condominium Development, recorded February 11, 2003, in Book 1521, at Page 2439, Instrument No. 803265, in the official records of Washington County, Utah, as amended by that certain First Amendment to Amended and Restated Declaration of Condominium for The Villas at Red Mountain, a Condominium Development, recorded March 25, 2003, in Book 1532, at Page 514, Instrument No. 810382, in the official records of Washington County, Utah, as such Declaration may be further amended from time to time, together with the undivided fee ownership interest in the Common Areas and Facilities appurtenant to said Units as set forth in said Condominium Declaration.

**Exhibit "B"**

Assessor Parcel Numbers

**Condominiums at Red Mountain  
Tax Parcel Assessor Numbers**

I-CRMT-1-	M1
I-CRMT-1-	M2
I-CRMT-1-	M3
I-CRMT-1-	M4
I-CRMT-2-	N1
I-CRMT-2-	N2
I-CRMT-2-	N3
I-CRMT-2-	N4
I-CRMT-2-	O1
I-CRMT-2-	O2
I-CRMT-2-	O3
I-CRMT-2-	O4
I-CRMT-2-	P1
I-CRMT-2-	P2
I-CRMT-2-	P3
I-CRMT-2-	P4
I-CRMT-2-	Q1
I-CRMT-2-	Q2
I-CRMT-2-	Q3
I-CRMT-2-	Q4
I-CRMT-2-	R1
I-CRMT-2-	R2
I-CRMT-2-	R3
I-CRMT-2-	R4
I-CRMT-2-	S1
I-CRMT-2-	S2
I-CRMT-2-	S3
I-CRMT-2-	S4
I-CRMT-2-	T1
I-CRMT-2-	T2
I-CRMT-2-	T3
I-CRMT-2-	T4
I-CRMT-2-	U1
I-CRMT-2-	U2
I-CRMT-2-	U3
I-CRMT-2-	U4
I-CRMT-2-	V1
I-CRMT-2-	V2
I-CRMT-2-	V3
I-CRMT-2-	V4
I-CRMT-2-	W1
I-CRMT-2-	W2
I-CRMT-2-	W3

**Condominiums at Red Mountain  
Tax Parcel Assessor Numbers**

I-CRMT-2-	W4
I-CRMT-2-	X1
I-CRMT-2-	X2
I-CRMT-2-	X3
I-CRMT-2-	X4
I-CRMT-2-	Y1
I-CRMT-2-	Y2
I-CRMT-2-	Y3
I-CRMT-2-	Y4