

WHEN RECORDED RETURN TO:
Deer Crest Associates I, L.C.
P.O. Box 8888
Park City, UT 84060

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00198238 Bk00363 Pg00670-00681

OPEN SPACE AGREEMENT

WASATCH CO RECORDER-ELIZABETH H PARCELL
1997 NOV 03 10:02 AM FEE \$144.00 BY MWC
REQUEST: DEER CREST ASSOCIATES I LC

DEER CREST PROJECT

Ski Area Recreation and Forest Conservation Area

This OPEN SPACE AGREEMENT is entered into this 31st day of October, 1997 between DEER CREST ASSOCIATES I, L.C. ("DCA") and WASATCH COUNTY (the "County").

A. DCA is the developer of the Deer Crest Project ("Deer Crest Project") located in part in Wasatch County Utah. The Deer Crest Project has been approved by Wasatch County pursuant to that certain First Amended Findings and Order on Density Determination dated as of August 5, 1996 and recorded in the official records of the Wasatch County Recorder as Entry Number 188648 in Book 328 at Page 684 (the "Amended Density Determination").

B. DCA has received final approval for the platting of the first 89 single family lots of the Deer Crest Project, and in connection with the recordation of the final plat, has agreed to record an agreement preserving certain portions of the Deer Crest Project as open space in partial compliance with the requirements of the Amended Density Determination.

THE PARTIES AGREE AS FOLLOWS:

1. Open Space Preservation. DCA hereby agrees to preserve the real property described in Exhibit A attached hereto as open space. The real property described in attached Exhibit A is referred to as the "Recreation and Forest Conservation Area." The above open space preservation covenants are subject to the reserved rights, limitations and agreements set forth below.

2. Permitted Uses and Activities within the Recreation and Forest Conservation Area. The Recreation and Forest Conservation Area is intended to be used for the construction, use, maintenance, repair and reconstruction of ski runs, ski lifts and structures used for ski and recreational purposes and related ski facilities, and biking and hiking trails. The Recreation and Forest Conservation Area may also be used for the following uses and activities:

- a. The construction, use, maintenance, repair and reconstruction of roads, bridges, and tunnels, and the construction, repair and maintenance of any retaining walls or other slope retention structures and any cuts, fills or

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other changes to the natural terrain required in connection with the roads, bridges and tunnels.

- b. The construction, use, maintenance, repair and reconstruction of any utility lines, utility facilities and related service roads.
 - c. The right of DCA, the Deer Crest Master Association or Deer Crest lot owners to install fire suppression equipment and to modify existing foliage adjacent to lots in order to improve fire safety.
 - d. All recreational activities and any temporary or permanent above ground improvements associated with such activities.
 - e. The construction of up to 10,000 square feet of commercial space as permitted by the Amended Density Determination, subject to the submission of plans for such space and subject to further approval by Wasatch County.
3. Hiking and Biking Trails.
- a. Public Access to Hiking and Biking Trails. DCA hereby grants the general public the non-exclusive right of access to those hiking and biking trails generally shown on Exhibit B for hiking and biking purposes. The rights of the general public shall be subordinate to the rights of Deer Valley Resort Company or any successor in the operation of biking trails within the Recreation and Forest Conservation Area and the rights of the Deer Crest Master Association pursuant to the Master Declaration of Covenants, Conditions and Restrictions for Deer Crest. The rights of the Deer Crest Master Association and any operator of hiking and biking trails shall include the rights to establish reasonable rules and regulations based on health, safety and welfare considerations relating to the use of hiking and biking trails for hiking and biking purposes. These rules and regulation may include restrictions on the hours of use, the need to stay on designated trails and other similar matters. Trail rules and regulations shall be subject to County approval. The public hiking and biking trails may also be closed from time to time on a temporary basis for construction and maintenance and for private events. The public may not be charged for the non-event use of hiking and biking trails for those purposes.
 - b. Location of Hiking and Biking Trails with Public Access. The hiking and biking trails that are the subject of public access shall be identified and included within one or more specific easement instruments to be recorded against any affected property including the Recreation and Forest Conservation Area. Upon the recordation of instruments containing

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specific legal descriptions for the hiking and biking trails, the public access grant in this Open Space Agreement shall be deemed superseded and shall be of no further force or effect. DCA contemplates the recording of this separate instrument affecting the Recreation and Forest Conservation Area within two years from the date of this Open Space Agreement.

- c. Private Trails. DCA and the Deer Crest Master Association reserve the right to designate and mark certain trails, not shown on Exhibit B, exclusively for the purposes of its residents.

4. Public Access to Ski Facilities, Ski Runs and Ski Trails. The public shall have a limited right to use certain ski facilities, ski runs and ski trails to the extent operated and permitted by Deer Valley Resort Company or any successor in the operation of skiing facilities within the Recreation and Forest Conservation Area. Deer Valley or any such successor operator may charge a fee for access to and use of ski facilities, ski runs and ski trails and may establish rules and regulations limiting such access and use. In the event the Deer Crest Master Association becomes the operator of the ski facilities, ski runs and ski trails, the Deer Crest Master Association may operate the ski facilities, ski runs and ski trails in accordance with the provisions of the Amended Density Determination.

5. Deer Crest Owner Access to and Right to Use and Maintain the Recreation and Forest Conservation Area. DCA hereby reserves to itself and grants to the Deer Crest Master Association for the benefit of the owners of lots and units within the Deer Crest Project, the Deer Crest Master Association and their respective guests and invitees, a perpetual non-exclusive right of access to and the perpetual non-exclusive license to use the Recreation and Forest Conservation Area for all recreational and maintenance purposes. The rights of access and use granted by this paragraph shall be superior to the rights of all third parties to the Recreation and Forest Conservation Area and shall not be terminated by any conveyance of those lands to any other party. Nevertheless, the right of access of those persons to and use of the ski facilities, ski runs and ski trails shall be subject to and limited in accordance with the provisions of paragraph 4, and the right to maintain the lands shall be subject to the terms of any effective ski area maintenance agreement. In addition, the Deer Crest Master Association shall have the rights set forth in paragraph 7.

6. Ownership of Recreation and Forest Conservation Area. DCA may retain ownership of the Recreation and Forest Conservation Area until after DCA shall have completed construction of all roads, bridges, tunnels, ski facilities, ski runs, ski trails, hiking and biking trails and other improvements affecting the Recreation and Forest Conservation Area. At any time prior to completion of those improvements but no later than three (3) years after completion of those improvements, DCA hereby agrees to convey the Recreation and Forest Conservation Area in whole or in part to one or more of (i) the Deer Crest Master Association, (ii) Deer Valley Resort Company, (iii) another entity designated to operate the ski facilities, ski runs and ski trails or (iv) a separate legal entity controlled by any of the foregoing that is formed to hold title to the subject land. All conveyances shall be subject to this Agreement, the rights of DCA or the Deer

Crest Master Association to construct, use, maintain, repair and reconstruct roads, utilities and hiking and biking trails within the subject areas, and the rights of DCA, the Deer Crest Master Association, Deer Valley Resort Company, or any other operator of ski facilities on the subject land to construct, use, maintain, repair and reconstruct ski facilities, ski runs and ski trails within the subject areas.

7. Option to Operate Ski Facilities. In the event Deer Valley Resort Company or any successor operator of ski facilities on the Recreation and Forest Conservation Area exercises an option to terminate its operation, integration and license agreement pursuant to which the operator has been granted the right to operate the ski facilities located on the Recreation and Forest Conservation Area, or in the event the right to operate the ski facilities is terminated pursuant to the terms of any ski area maintenance agreement with respect to which the County is a party, then the Deer Crest Master Association shall have the option to elect to become the operator of the ski facilities. The option must be exercised by the giving of written notice from the Deer Crest Master Association to the County within 90 days after the Deer Crest Master Association receives notice of the termination. The Deer Crest Master Association's right to operate the ski facilities shall be subject to compliance by the Deer Crest Master Association with the requirements of the then applicable ski area maintenance agreement to become a successor operator of the ski facilities, including, without limitation, the obtaining of the consent of the County.

8. Relationship to Other Agreements. This Open Space Agreement is intended to set forth the open space preservation covenant applicable to the Recreation and Forest Conservation Area and to describe the rights of the Deer Crest Master Association, Deer Crest lot and unit owners and their respective guests and invitees and the general public to those lands. This covenant is intended to be binding on the successors to DCA in the ownership or operation of activities on the Recreation and Forest Conservation Area. The following additional agreements are also intended to describe certain additional rights and obligations with respect to the Recreation and Forest Conservation Area, which rights and obligations set forth in the other agreements shall be subject to the terms of this Agreement:

- a. The right of Deer Valley to operate, maintain, repair, or replace ski facilities, ski runs and ski trails within the Recreation and Forest Conservation Area is set forth in a certain Operation, Integration and License Agreement between DCA, the Deer Crest Master Association and Deer Valley Resort Company. This agreement may or may not be recorded and may be amended or replaced from time to time.
- b. The respective obligations of DCA and Deer Valley Resort Company to maintain the ski facilities and ski runs within the Recreation and Forest Conservation Area is more fully set forth in the Ski Area Maintenance Agreement among DCA, Deer Valley Resort Company and the County. This agreement shall be recorded and may be amended or replaced from time to time.

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c. The rights and responsibilities of the Deer Crest Master Association with respect to the Recreation and Forest Conservation Area are set forth in the Master Declaration of Covenants, Conditions and Restrictions for Deer Crest, which shall be recorded contemporaneously with this Open Space Agreement. The Recreation and Forest Conservation Area constitutes a portion of the Common Elements under the authority of the Deer Crest Master Association by reason of the rights and interests granted to the Deer Crest Master Association in this Agreement.

9. Notices. All notices and other communications provided for in this Agreement shall be in writing and shall be sufficient for all purposes if (i) sent by fax to the fax number set forth below or at such other number as the respective party may designate by notice as provided herein, and concurrently sent by 1st class U.S. mail, (ii) personally delivered, or (iii) sent by certified or registered U.S. mail, return receipt requested, postage prepaid, and addressed to the respective party at the fax number and address set forth below or at such other address as such party may hereafter designate by written notice to the other parties as herein provided.

To DCA: Deer Crest Associates I, L.C.
c/o LCC Properties Group, L.C.
136 Heber Avenue, Suite 308
P.O. Box 8888
Park City, UT 84060
Fax: (435) 655-8120

To Wasatch County: Wasatch County
25 North Main Street
Heber City, UT 84032
Attn: County Planner
Fax: (435) 654-5116

If personally delivered, notices and other communications under this Agreement shall be deemed to have been given and received and shall be effective when personally delivered. If sent by fax and mail in the form specified in this section, notices and other communications under this Agreement shall be deemed to have been given and received and shall be effective when faxed and deposited in the U.S. mail, whichever shall last occur.

10. Costs. Except as otherwise specifically provided in this Agreement, each party shall pay its own costs and expenses incurred in preparation and execution of and performance under this Agreement.

11. Entire Agreement. This Agreement (including the exhibits attached hereto) constitutes the entire agreement between the parties hereto relative to the subject matter hereof. This Agreement may not be amended or modified except in writing executed by all of the parties hereto.

12. Interpretation. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Utah. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

13. Counterparts and Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, binding between the executing parties, and all of which shall together constitute one and the same instrument. Original, facsimile or power of attorney signatures shall be binding upon the executing party.

14. No Waiver. Acceptance by either party of any performance less than required hereby shall not be deemed to be a waiver of the rights of such party to enforce all of the terms and conditions hereof. Except as otherwise expressly provided herein, no waiver of any such right hereunder shall be binding unless reduced to writing and signed by the party to be charged therewith.

15. Covenants Run With the Land. Each right and obligation in this Agreement (whether affirmative or negative in nature) (a) shall constitute a covenant running with the land; (b) shall benefit and bind every person having any fee, leasehold or other interest in any portion of the property described herein; and (c) shall benefit and be binding upon any person whose title is acquired by voluntary conveyance, judicial foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. DCA shall not have any obligations under this Agreement after it has transferred its interest in the subject property. DCA's rights and obligations under this Agreement may be transferred in whole or in part to and assumed by Deer Valley, the Deer Crest Master Association, any entity controlled by either Deer Valley, the Deer Crest Master Association, or another operator of the ski facilities contemplated in this Agreement with the written approval of the County, which approval shall not be unreasonably withheld.

16. Public Benefit. Nothing contained in this Agreement shall be deemed a gift or dedication of any portion of the property to the general public on an unlimited basis or for the public or for any public purpose.

17. Attorneys' Fees. In the event of any legal, equitable or administrative action or proceeding brought by any party against any other party under this Agreement, the prevailing party shall be entitled to recover the reasonable fees of its attorneys, and any costs incurred in such action or proceeding including costs of appeal, if any, in such amount as the court or administrative body having jurisdiction may award.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

County: WASATCH COUNTY

By: Brent R. Peterson
Its: Brent R. Peterson



STATE OF Utah)
COUNTY OF Wasatch)
:ss.

The foregoing instrument was acknowledged before me on the _____ day of October, 1997, by _____, as _____ of Wasatch County.

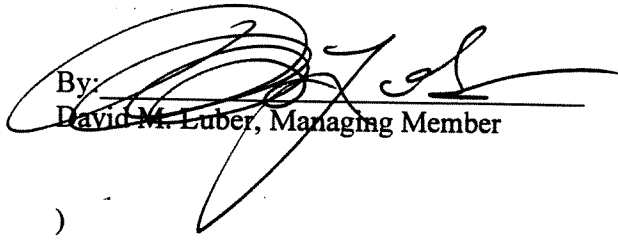
Notary Public
Residing at _____

My Commission Expires:

DCA:

DEER CREST ASSOCIATES I, L.C.

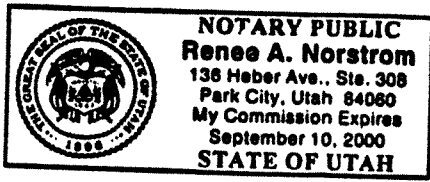
By LCC Properties Group, L.C., its Managing Member

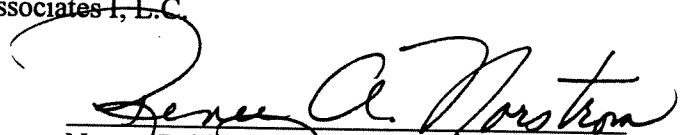
By: 
David M. Luber, Managing Member

STATE OF UTAH)
COUNTY OF Summit)

:SS
)

The foregoing instrument was acknowledged before me on the ___ day of October, 1997, by David M. Luber, Managing Member of LCC Properties Group, L.C., the managing member of Deer Crest Associates I, L.C.




Notary Public
Residing at Park City

My Commission Expires:
9/10/2000

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EXHIBIT "A"
TO
OPEN SPACE AGREEMENT

LITTLE BALDY RECREATION
AND FOREST CONSERVATION OPEN SPACE
EASEMENT DESCRIPTION

October 16, 1997

Beginning at a point on the Summit-Wasatch County line, said point being located South 00°30'11" West 5068.58 feet along the Section line and East 5100.21 feet from the East Quarter Corner of Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, and running thence along the County line the following five (5) courses: 1) North 51°35'50" West 408.17 feet; 2) North 40°47'43" West 296.74 feet; 3) North 26°08'13" West 279.53 feet; 4) North 12°53'14" East 499.61 feet; 5) North 12°51'25" East 530.41 feet; thence South 65°42'00" East 341.71 feet; thence North 56°10'00" East 328.31 feet; thence North 73°58'00" East 128.92 feet; thence North 45°32'34" East 304.70 feet; thence North 24°18'00" East 451.78 feet; thence North 85°42'00" West 141.78 feet; thence North 49°26'40" East 248.94 feet; thence South 85°42'00" East 141.78; thence North 53°41'55" East 921.96 feet; thence South 85°42'00" East 130.00 feet; thence North 63°01'02" East 146.41 feet; thence North 89°18'31" East 250.00 feet; thence South 84°41'29" East 160.00 feet; thence South 71°41'29" East 190.00 feet; thence South 50°41'29" East 180.00 feet; thence South 05°26'45" East 210.35 feet; thence South 77°30'44" East 885.04 feet; thence South 59°20'50" West 622.88 feet; thence South 59°20'50" West 562.78 feet; thence South 56°18'15" West 193.14 feet; thence South 56°18'15" West 699.77 feet; thence South 49°29'40" West 160.17 feet; thence South 53°39'37" West 342.90 feet; thence South 33°15'48" West 281.97 feet; thence South 13°32'07" West 256.73 feet; thence South 30°14'49" West 281.06 feet; thence South 69°36'33" West 546.57 feet; thence South 78°02'09" West 303.50 feet; thence South 39°00'52" West 290.49 feet to the POINT OF BEGINNING.

Containing 125.90 acres more or less.

SUBJECT TO the following two (2) easements and non-exclusive rights-of-way:

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OPEN SPACE EASEMENT – ACCESS EASEMENT NO. 1
CENTERLINE OF DEER CREST ESTATES DRIVE – WEST CONNECTION

A 100.00 foot access easement for the benefit of the Deer Crest Subdivision – Phase 1, located in the West Half of Section 23, Township 2 South, Range 4 East, Salt Lake Base and Meridian, being 50.00 feet either side of the following described centerline:

Beginning at a point on the Summit-Wasatch County line which is North $16^{\circ}56'51''$ West 1809.66 feet from at the Southeast Quarter Corner of Section 15, Township 2 South, Range 4 East, Salt Lake Base and Meridian (Basis of bearing being North $00^{\circ}13'07''$ West between the Southeast Corner of Section 15 and the East Quarter Corner of Section 15, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said corners being found monuments); and running thence South $61^{\circ}51'08''$ East, 305.64 feet to a point on a 500.00 foot radius curve to the right, radius point bears South $28^{\circ}08'52''$ West; thence Southeasterly along the arc of said curve 294.39 feet, thru a central angle of $33^{\circ}43'58''$ to the point of tangency; thence South $28^{\circ}07'10''$ East 188.26 to a point on a 160.00 foot radius curve to the right, radius point bears South $61^{\circ}52'50''$ West, and thence Southerly along the arc of said curve 78.32 feet thru a central angle of $28^{\circ}02'53''$ to the point of tangency; thence South $00^{\circ}04'18''$ East 51.70 feet to a point on a 100.00 foot radius curve to the left, radius point bears North $89^{\circ}55'42''$ East; thence Southerly along the arc of said curve 56.02 feet thru a central angle of $32^{\circ}05'55''$ to the point of tangency; thence South $32^{\circ}10'12''$ East, 152.98 feet to a point on a 135.00 foot curve to the right, radius point bears South $57^{\circ}49'48''$ West; thence Southerly along the arc of said curve 203.44 feet to the point of tangency; thence South $54^{\circ}10'18''$ West 533.22 feet to a point on a 500.00 foot radius curve to the left, radius point bears South $35^{\circ}49'42''$ East; thence Southerly along the arc of said curve 111.28 feet thru a central angle of $12^{\circ}45'04''$, to the point of tangency; thence South $41^{\circ}25'13''$ West, 144.80 feet to a point on a 250.00 foot curve to the left, radius point bears South $48^{\circ}34'47''$ East; thence Southeasterly along the arc of said curve 677.60 feet thru a central angle of $155^{\circ}17'44''$ to the point of tangency; thence North $66^{\circ}07'29''$ East, 198.40 feet to a point on a 375.00 foot radius curve to the right, radius bears South $23^{\circ}52'31''$ East; thence Easterly along the arc of said curve 185.35 feet thru a central angle of $28^{\circ}19'10''$ to the point of tangency; thence South $85^{\circ}33'21''$ East, 77.17 feet to a point on a 275.00 foot radius curve to the left radius point bears North $04^{\circ}26'39''$ East; thence Northeasterly along the arc of said curve 84.54 feet thru a central angle of $17^{\circ}36'50''$ to the point of tangency; thence North $76^{\circ}49'49''$ East 411.36 feet to a point on a 1000.00 foot radius curve to the right radius point bears South $13^{\circ}10'11''$ East; thence Easterly along the arc of said curve 131.17 feet thru a central angle of $07^{\circ}30'56''$ to the point of tangency; thence North $84^{\circ}20'44''$ East 191.49 feet to a point on a 350.00 foot curve to

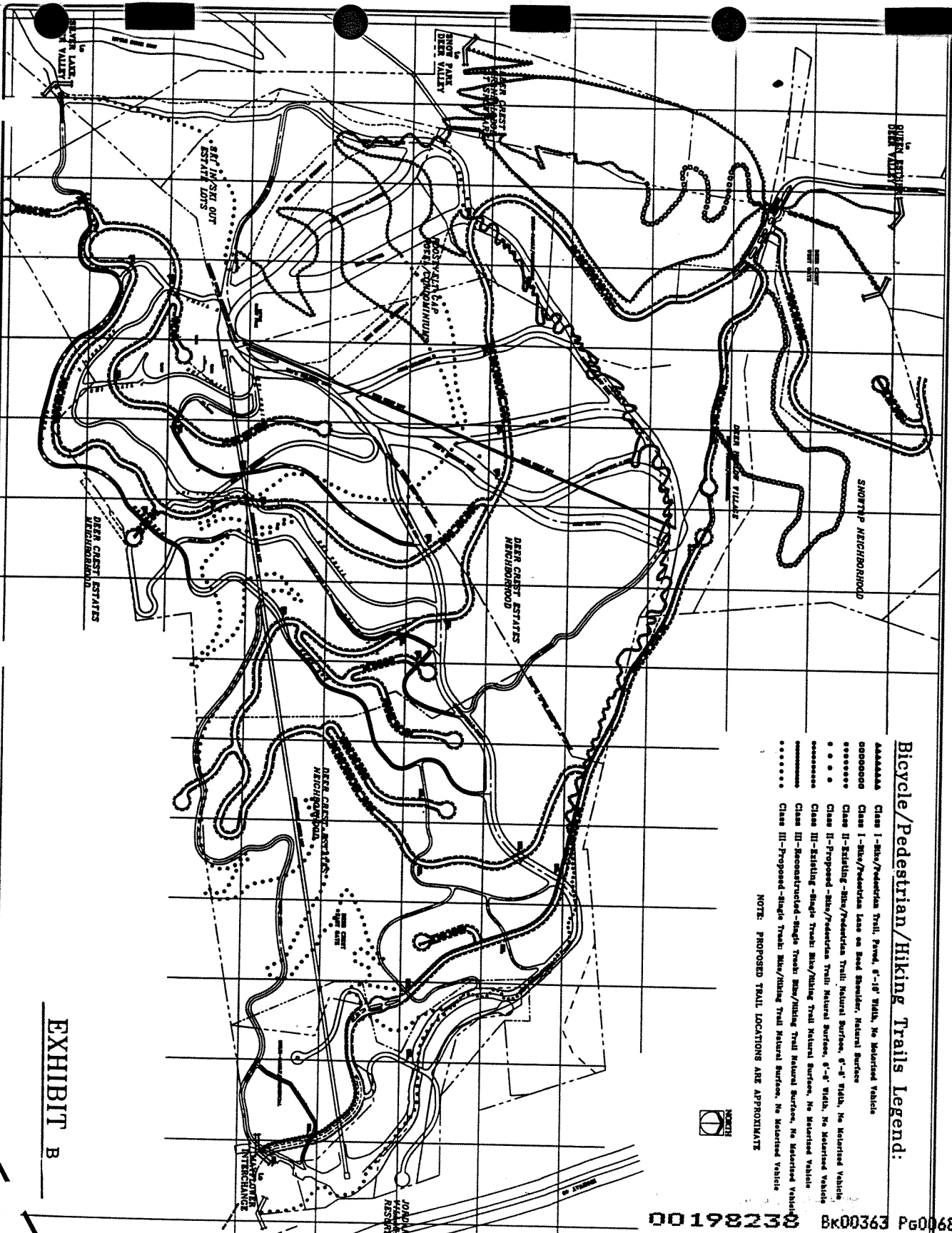
the right radius point bears South 05°39'16" East; thence Southeasterly along the arc of said curve 194.40 feet thru a central angle of 31°49'26" to the point of tangency; thence South 63°49'50" East 451.59 feet to a point on a 300.00 foot radius curve to the left radius point bears North 26°10'10" East; thence Easterly along the arc of said curve 166.08 feet thru a central angle of 31°43'08" more or less to a point at the intersection of the centerline of Deer Crest Estates Drive and the Westerly boundary of Deer Crest Subdivision Phase 1 and terminating.

OPEN SPACE EASEMENT – ACCESS EASEMENT NO. 2
CENTERLINE OF SUMMIT DRIVE CONNECTION

A 100.00 foot access easement for the benefit of the Deer Crest Subdivision – Phase 1, located in the West Half of Section 23, Township 2 South, Range 4 East, Salt Lake Base and Meridian, being 50.00 feet either side of the following described centerline:

Beginning at a point on the centerline of Deer Crest Estates Drive (Right of Way No.1) which is South 89°08'01" East, 1362.01 feet from the Southeast Corner of Section 15, Township 2 South, Range 4 East, Salt Lake Base and Meridian (Basis of bearing being North 00°13'07" West between the Southeast Corner of Section 15 and the East Quarter Corner of Section 15, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said corners being found monuments); and commencing thence South 26°10'10" West 23.63 feet to a point on a 70.00 foot radius curve to the left, radius point bears South 63°49'50" East, and running thence Southerly along the arc of said curve 94.12 feet thru a central angle of 77°02'08" to a point of tangency; thence South 50°51'57 East, 190.07 feet to a point on a 700.00 foot radius curve to the right, radius point bears South 39°08'03" West; thence Southeasterly along the arc of said curve 101.63 feet thru a central angle of 08°16'10" more or less to the point of intersection with the center line of Summit Drive and the Westerly boundary of Deer Crest Subdivision Phase 1 and terminating.

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Bicycle/Pedestrian/Hiking Trails Legend:

- Class I - thru/Pedestrian Trail, Paved, 6'-10" Width, No Motorized Vehicle
- Class I - thru/Pedestrian Lane on Road Shoulder, Natural Surface
- Class II - Stalling - thru/Pedestrian Trail, Natural Surface, 6'-8" Width, No Motorized Vehicle
- Class II - Proposed - thru/Pedestrian Trail, Natural Surface, 6'-8" Width, No Motorized Vehicle
- Class III - Stalling - thru/Pedestrian Trail, Natural Surface, 6'-8" Width, No Motorized Vehicle
- Class III - Proposed - thru/Pedestrian Trail, Natural Surface, No Motorized Vehicle
- Class III - Proposed - single Track, 6" or 8" wide, No Motorized Vehicle
- Class III - Proposed - single Track, 6" or 8" wide, No Motorized Vehicle

NOTE: PROPOSED TRAIL LOCATIONS ARE APPROXIMATE



EXHIBIT B

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<p>DEER CREST TRAILS LAYOUT</p> <p style="font-size: small;">DEER CREST ASSOCIATES L. L. C. 514017</p>	<p>DATE: 11/11/03 BY: [Signature]</p>	<p>THE JACK JOHNSON COMPANY</p> <p style="font-size: small;">1777 1st Park Blvd. • Park City, Utah 84098 (801) 439-0000 • Fax (801) 439-1000</p>	
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