

RECORD REQUEST OF  
WESTERN STATES TITLE

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ALAN SPENCER  
SUMMIT COUNTY RECORDER

REC'D BY BH # 29<sup>00</sup>

S-10595

DECLARATION OF COVENANTS, CONDITIONS

AND RESTRICTIONS

FOR

EVERGREEN

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AND RESTRICTIONS  
FOR  
EVERGREEN

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DECLARATION OF COVENANTS, CONDITIONS

AND RESTRICTIONS

FOR

EVERGREEN

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THIS DECLARATION, made on this 8 day of APRIL, 1987, by DEER VALLEY RESORT COMPANY, a Utah limited partnership, hereinafter designated "Declarant":

R E C I T A L S:

A. Declarant is the owner of certain property in Park City, Summit County, State of Utah, which is more particularly described as follows:

Beginning at a point which is North 1519.85 feet and East 830.77 feet from the southwest corner of Section 22, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point being on the northerly right-of-way of Royal Street East as dedicated, said point also being on a 2275.83 foot radius curve to the left (center bears South 15° 34' 41" West 2275.83 feet of which the central angle is 00° 34' 52"); thence northwesterly along the arc of said curve and along said right-of-way 23.08 feet to a point on 797.95 foot radius curve to the right (center bears North 14° 59' 49" East 797.95 feet of which the central angle is 00° 08' 38"); thence northwesterly along said right-of-way of Royal Street East and along the arc of said curve 2.00 feet to a point on the northerly right-of-way of Silver Lake Drive, the following eight calls being along said right-of-way;

- 1) thence North 20° 00' 00" East 15.00 feet to a point on a 95.00 foot radius curve to the right (center bears South 70° 00' 00" East 95.00 feet of which the central angle is 70° 00' 00");
- 2) thence northeasterly along the arc of said curve 116.06 feet to a point on a 200.17 foot radius curve to the left (center bears North 200.17 feet of which the central angle is 50° 00' 00");
- 3) thence northeasterly along the arc of said curve 174.68 feet;
- 4) thence North 40° 00' 00" East 59.61 feet to a point on a 499.69 foot radius curve to the left (center bears North 50° 00' 00" West 499.69 feet of which the central angle is 35° 00' 00");

- 5) thence northeasterly along the arc of said curve 305.24 feet;
- 6) thence North 05° 00' 00" East 285.00 feet to a point on a 140.00 foot radius curve to the right (center bears South 85° 00' 00" East 140.00 feet of which the central angle is 98° 00' 00");
- 7) thence northeasterly along the arc of said curve 239.46 feet;
- 8) thence South 77° 00' 00" East 70.00 feet;

thence North 46° 14' 41" East 327.87 feet; thence North 32° 00' 00" East 259.20 feet to a point on the southerly right-of-way of Silver Lake Drive, said point being on a 225.00 foot radius curve to left (center bears South 13° 10' 07" West 225.00 feet of which the central angle is 06° 40' 07"); the following two calls being along said right-of-way;

- 1) thence northwesterly along the arc of said curve 26.19 feet;
- 2) thence North 83° 30' 00" West 65.00 feet;

thence South 39° 46' 57" West 175.00 feet; thence North 74° 09' 27" West 90.54 feet; thence North 60° 44' 10" West 116.16 feet; thence North 23° 36' 31" East 156.70 feet to a point on the southerly right-of-way of Silver Lake Drive, the following nine calls being along said right-of-way;

- 1) thence North 53° 30' 00" West 143.15 feet to a point on a 1175.00 foot radius curve to the left (center bears South 36° 30' 00" West 1175.00 feet of which the central angle is 14° 00' 00");
- 2) thence northwesterly along the arc of said curve 287.11 feet;
- 3) thence North 67° 30' 00" West 178.98 feet to a point on a 265.00 foot radius to the left (center bears South 22° 30' 00" West 265.00 feet of which the central angle is 97° 30' 00");
- 4) thence southwesterly along the arc of said curve 450.95 feet;
- 5) thence South 15° 00' 00" West 378.08 feet to a point on a 475.00 foot radius curve to the left (center bears South 75° 00' 00" East 475.00 feet of which the central angle is 37° 00' 00");
- 6) thence southeasterly along the arc of said curve 306.74 feet;
- 7) thence South 22° 00' 00" East 428.60 feet to a point on a 95.00 foot radius curve to the right (center bears South 68° 00' 00" West 95.00 feet of which the central angle is 150° 15' 00");
- 8) thence southwesterly along the arc of said curve 249.12 feet;

- 9) thence North  $51^{\circ} 45' 00''$  West 12.86 feet to a point on the easterly right-of-way of Royal Street as dedicated, said point also being on a 115.00 foot radius curve to the left (center bears North  $38^{\circ} 55' 50''$  West 115.00 feet of which the central angle is  $25^{\circ} 06' 43''$ );

thence northeasterly along the arc of said curve and said right-of-way 50.40 feet to a point on the northerly right-of-way of Silver Lake Drive, the following eight calls being along said right-of-way;

- 1) thence South  $51^{\circ} 45' 00''$  East 12.63 feet to a point on a 45.00 foot radius curve to the left (center bears North  $38^{\circ} 15' 00''$  East 45.00 feet of which the central angle is  $150^{\circ} 15' 00''$ );
- 2) thence northeasterly along the arc of said curve 118.00 feet;
- 3) thence North  $22^{\circ} 00' 00''$  West 428.60 feet to a point on a 525.00 foot radius curve to the right (center bears North  $68^{\circ} 00' 00''$  East 525.00 feet of which the central angle is  $37^{\circ} 00' 00''$ );
- 4) thence northwesterly along the arc of said curve 339.03 feet;
- 5) thence North  $15^{\circ} 00' 00''$  East 378.08 feet to a point on a 315.00 foot radius curve to the right (center bears South  $75^{\circ} 00' 00''$  East 315.00 feet of which the central angle is  $97^{\circ} 30' 00''$ );
- 6) thence northeasterly along the arc of said curve 536.03 feet;
- 7) thence South  $67^{\circ} 30' 00''$  East 178.98 feet to a point on a 1225.00 foot radius to the right (center bears South  $22^{\circ} 30' 00''$  West 1225.00 feet of which the central angle is  $05^{\circ} 51' 27''$ );
- 8) thence southeasterly along the arc of said curve 125.24 feet to a point on the northerly right-of-way of Oak Court, said point also being on a 14.50 foot radius curve to the left (center bears North  $28^{\circ} 21' 27''$  East 14.50 feet of which the central angle is  $68^{\circ} 29' 28''$ ), the following eight calls being along said northerly right-of-way;
  - 1) thence northeasterly along the arc of said curve 17.33 feet to a point on a 90.00 foot radius curve to the right (center bears South  $40^{\circ} 08' 01''$  East 90.00 feet of which the central angle is  $64^{\circ} 08' 01''$ );
  - 2) thence northeasterly along the arc of said curve 100.74 feet;
  - 3) thence South  $66^{\circ} 00' 00''$  East 75.00 feet to a point on a 150.00 foot radius curve to the left (center bears North  $24^{\circ} 00' 00''$  East 150.00 feet of which the central angle is  $59^{\circ} 30' 00''$ );

- 4) thence northeasterly along the arc of said curve 155.77 feet;
- 5) thence North  $54^{\circ} 30' 00''$  East 97.00 feet to a point on a 400.00 foot radius curve to the right (center bears South  $35^{\circ} 30' 00''$  East 400.00 feet of which the central angle is  $10^{\circ} 46' 42''$ );
- 6) thence northeasterly along the arc of said curve 75.25 feet to a point on a 17.50 foot radius curve to the left (center bears North  $24^{\circ} 43' 18''$  West 17.50 feet of which the central angle is  $46^{\circ} 01' 51''$ );
- 7) thence northeasterly along the arc of said curve 14.06 feet to a point on a 48.00 foot radius curve to the right (center bears South  $70^{\circ} 45' 09''$  East 48.00 feet of which the central angle is  $41^{\circ} 54' 10''$ );
- 8) thence northeasterly along the arc of said curve 35.10 feet;

thence North  $28^{\circ} 51' 01''$  West 62.58 feet; thence North  $58^{\circ} 30' 58''$  East 116.83 feet; thence North  $81^{\circ} 30' 19''$  East 233.96 feet; thence South  $24^{\circ} 33' 04''$  West 76.27 feet; thence South  $33^{\circ} 30' 00''$  West 300.00 feet; thence South  $25^{\circ} 25' 46''$  West 247.00 feet to a point on the northerly right-of-way of Silver Lake Drive, the following two calls being along said right-of-way;

- 1) thence South  $83^{\circ} 30' 00''$  East 40.00 feet to a point on a 275.00 foot radius curve to the right (center bears South  $06^{\circ} 30' 00''$  West 275.00 feet of which the central angle is  $10^{\circ} 11' 11''$ );
- 2) thence southeasterly along the arc of said curve 48.89 feet;

thence North  $32^{\circ} 00' 00''$  East 318.62 feet; thence North  $40^{\circ} 00' 00''$  East 225.00 feet; thence North  $63^{\circ} 25' 24''$  East 83.84 feet; thence South  $05^{\circ} 00' 00''$  West 390.00 feet; thence South  $05^{\circ} 30' 00''$  East 172.05 feet; thence South  $12^{\circ} 00' 00''$  West 100.00 feet to a point on the northerly right-of-way of Silver Lake Drive; thence East 63.85 feet along said right-of-way; thence North  $19^{\circ} 59' 54''$  East 240.00 feet; thence South  $59^{\circ} 33' 15''$  East 157.81 feet; thence South 202.42 feet; thence South  $25^{\circ} 00' 00''$  West 355.93 feet; thence West 80.00 feet; thence North  $18^{\circ} 56' 41''$  West 141.92 feet to a point on the southerly right-of-way of Silver Lake Drive; thence South  $76^{\circ} 30' 00''$  West 60.27 feet along said right-of-way; thence South  $06^{\circ} 49' 45''$  East 218.35 feet; thence South 435.00 feet; thence South  $89^{\circ} 59' 52''$  West 403.00 feet; thence North  $31^{\circ} 30' 08''$  West 390.00 feet; thence North  $36^{\circ} 47' 46''$  West 200.00 feet; thence North  $09^{\circ} 37' 00''$  West 57.12 feet to the southerly right-of-way of Silver Lake Drive, the following eight calls being along said right-of-way;



- 1) thence North  $77^{\circ} 00' 00''$  West 70.00 feet to a point on a 90.00 foot radius curve to the left (center bears South  $13^{\circ} 00' 00''$  West 90.00 feet of which the central angle is  $98^{\circ} 00' 00''$ );
- 2) thence southwesterly along the arc of said curve 153.94 feet;
- 3) thence South  $05^{\circ} 00' 00''$  West 285.00 feet to a point on a 549.69 foot radius curve to the right (center bears North  $85^{\circ} 00' 00''$  West 549.69 feet of which the central angle is  $35^{\circ} 00' 00''$ );
- 4) thence southwesterly along the arc of said curve 335.79 feet;
- 5) thence South  $40^{\circ} 00' 00''$  West 59.61 feet to a point on a 250.17 foot radius curve to the right (center bears North  $50^{\circ} 00' 00''$  West 250.17 feet of which the central angle is  $50^{\circ} 00' 00''$ );
- 6) thence southwesterly along the arc of said curve 218.32 feet to a point on a 45.00 foot radius curve to the left (center bears South 45.00 feet of which the central angle is  $70^{\circ} 00' 00''$ );
- 7) thence southwesterly along the arc of said curve 54.98 feet;
- 8) thence South  $20^{\circ} 00' 00''$  West 11.14 feet to a point on the aforementioned northerly right-of-way of Royal Street East, said point also being on a 2275.83 foot radius curve to the left (center bears South  $16^{\circ} 12' 33''$  West 2275.83 feet of which the central angle is  $00^{\circ} 37' 52''$ );

thence northwesterly along the arc of said curve and right-of-way 25.07 feet to the point of beginning.

Contains 27.89 acres, more or less.

Excepting therefrom the following parcel:

Beginning at a point which is North 2497.44 feet and East 2177.38 feet from the Southwest corner Section 22, Township 2 South, Range 4 East, Salt Lake Base and Meridian, said point also being on the northerly right-of-way of Silver Lake Drive;

thence North  $13^{\circ} 01' 57''$  East 160.35 feet to a point on the southerly right-of-way of Silver Lake Drive; thence East 54.40 feet along said right-of-way; thence South  $13^{\circ} 01' 57''$  West 146.16 feet to a point on the northerly right-of-way of Silver Lake Drive; thence South  $76^{\circ} 30' 00''$  West 59.24 feet along said right-of-way to the point of beginning.

Contains 0.19 acres, more or less.

upon which ~~real~~ property Declarant intends to develop a Subdivision containing Lots (as those terms are hereinafter defined).

B. Declarant will develop and convey all of the Lots contained in the Subdivision pursuant to a general plan and subject to certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all running with the title to said Lots as hereinafter set forth.

C. Declarant hereby declares that all of the Lots shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of all Lots in the Subdivision, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Subdivision, or any portion thereof. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall run with the Lots and shall be binding upon all persons having any right, title or interest in any Lot or Lots, their heirs, successors and assigns; shall inure to the benefit of each and every Lot and any interest therein; and shall inure to the benefit of and be binding upon Declarant, its successors in interest and each Owner and his respective successors in interest; and may be enforced by any Owner and his successors in interest.

Notwithstanding the foregoing, no provisions of this Declaration shall be construed as to prevent or limit Declarant's rights to complete development of the Subdivision and improvements thereon, nor Declarant's rights to maintain model homes, construction, sales or leasing offices or similar facilities on any Lot owned by Declarant nor Declarant's right to post signs incidental to construction, sales or leasing.

## ARTICLE I

### Definitions

Unless otherwise expressly provided, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

Section 1. "Architectural Committee" shall mean the committee created pursuant to Article IV hereof.

Section 2. "City" shall mean the municipal government of Park City, Utah, and its appropriate officers and departments.

Section 3. "Declarant" shall mean and refer to Deer Valley Resort Company, a Utah limited partnership, its successors and assigns so long as Declarant assigns such rights of Declarant hereunder to any such person by an express written assignment.

Section 4. "Declaration" shall mean this instrument as it may be amended from time to time.

Section 5. "Deed of Trust" shall mean and refer to a mortgage or a deed of trust, as the case may be.

Section 6. "Design Guidelines" shall mean the Design Guidelines, Deer Valley, Park City, Utah, a copy of which is attached hereto as Exhibit A and by this reference made a part hereof.

Section 7. "Dwelling Unit" shall mean and refer to a building located on a single Lot designed and intended for use and occupancy as a residence by a single Family and its domestic employees and guests.

Section 8. "Family" shall mean (1) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of not more than five (5) persons not all so related, inclusive of their domestic servant, who maintain a common household in a residence on a Lot.

Section 9. "Improvement" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to buildings, out buildings, walkways, sprinkler pipes, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment.

Section 10. "Lot" shall mean and refer to any residential Lot shown upon any recorded plat of the Subdivision.

Section 11. "Mortgage" shall mean any mortgage or deed of trust or other conveyance of a Lot to secure the performance of an obligation, which will be void and reconveyed upon the completion of such performance. The term "deed of trust" or "trust deed" when used herein shall be synonymous with the term "mortgage". The term "Mortgagee" shall mean a person or entity to whom a mortgage is made and shall include the beneficiary of a deed of trust; "Mortgagor" shall mean a person or entity who mortgages his or its property to another (i.e., the maker of a mortgage), and shall include the trustor of a deed of trust. The term "Trustor" shall be synonymous with the term "Mortgagor", and the term "beneficiary" shall be synonymous with the term "Mortgagee". The term "first mortgagee" shall include any Mortgagee or the beneficiary under any deed of trust who, by virtue of his mortgage or deed of trust, holds a first and prior lien upon any Lot to that of any other mortgagee.

Section 12. "Owner" shall mean and refer to the person or persons or other legal entity or entities, including Declarant, holding fee simple interest of record to any Lot, including sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation.

Section 13. "Person" shall mean a natural individual or any entity with the legal right to hold title to real Property.

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Section 14. "Plat Map" shall mean and refer to that plat of "Evergreen" which will be recorded in the official records of the Summit County Recorder concurrently with the recordation hereof.

Section 15. "Properties" shall mean and refer to all of the real Property described in Paragraph A of the Recitals to this Declaration.

Section 16. "Record, Recorded, Filed and Recordation" shall mean, with respect to any document, the recordation of such document in the office of the County Recorder of the County of Summit, State of Utah.

Section 17. "Subdivision" shall mean Evergreen which has been divided or separated into lots as shown on the Plat Map.

## ARTICLE II

### Architectural Control

#### Section 1. Architectural Committee.

(a) The Architectural Committee shall consist of three members. The Committee shall initially consist of members selected by the Declarant. At such time as 90% of the Lots are sold or in five years following the date hereof, whichever comes later, all members of the Committee shall be selected by Owners of the Lots at meetings called for that purpose. Said Architectural Committee shall have and exercise all of the powers, duties and responsibilities set out in this instrument.

(b) In elections for members of the Architectural Committee, or any other matter presented to a vote of the Owners, each Owner shall be entitled to one vote for each Lot which is owned by said Owner. When more than one person holds such interest or interests in any Lot ("co-owner"), all such co-owners shall be Owners and may attend any meetings of the Owners, but only one such co-owner shall be entitled to exercise the votes to which the Lot is entitled. Such co-owners may from time to time all designate in writing one of their number to vote. The vote for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if such designation has been revoked, the votes for such Lot shall be exercised as the majority of the co-owners of the Lot mutually agree. Unless a written objection from a co-owner is delivered to the meeting, it shall be presumed that the voting co-owner is acting with the consent of his or her co-owners. No votes shall be cast for any Lot where the majority of the co-owners present in person or by proxy and representing such Lot cannot agree to said votes or other action. The non-voting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership.

(c) Written notice of any meeting called for the purpose of electing members of the Architectural Committee or taking any action by the Owners shall be sent to all Owners not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of the Owners, in person or by proxy, of fifty-one percent (51%) of the Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be the Owners of twenty-five percent (25%) of the Lots. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

Section 2. Approval by Architectural Committee. No improvements of any kind, including but not limited to dwelling houses, swimming pools, ponds, parking areas, fences, walls, tennis courts, garages, drives, antennae, flag poles, curbs and walks shall ever be erected, altered, or permitted to remain on any lands within the Subdivision, nor shall any excavating, clearing, removal of trees, or shrubs, or landscaping be done on any lands within the Subdivision, unless the complete plans and specifications therefor are approved by the Declarant and by the Architectural Committee prior to the commencement of such work. A fee of \$200.00 shall be paid to the Architectural Committee to cover costs and expenses of review. Improvements, to be made after the initial improvements, which will cost less than \$500.00 shall be submitted as directed to Declarant and the Architectural Committee for approval but the fee of \$200.00 shall not be required. The Declarant and the Architectural Committee shall consider the materials to be used on the external features of said buildings or structures, including exterior colors, harmony of external design with existing structures within said subdivision, the building bulk or mass of said buildings or structures, the location with respect to topography, existing trees and finished grade elevations and harmony of landscaping with the natural setting and surroundings, and shall ascertain whether the architecture conforms to the Design Guidelines. The complete architectural plans and specifications must be submitted in quadruplicate and must include at least four different elevation views. One complete copy of the plans and specifications shall be signed for identification by the Owner and left with the Architectural Committee. In the event that either Declarant or the Architectural Committee fails to take any action within 45 days after complete plans for such work have been submitted to them, then all of such submitted plans shall be deemed to be disapproved.

Section 3. Variances. The Declarant and the Architectural Committee have the authority to deviate from the requirements contained herein in extenuating circumstances, when following these covenants would create an unreasonable hardship or burden for an Owner. An affirmative vote of Declarant and of two-thirds (2/3) of the members of the Architectural Committee must be gained for a variance to be granted. The Declarant and the Architectural Committee do not, however, have authority to allow deviation beyond the guidelines of the Park City Land Management Code.

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Section 4. General Requirements. The Declarant and Architectural Committee shall exercise their best judgment to see that all improvements, construction, landscaping, and alterations on the lands within the Subdivision conform and harmonize with the natural surroundings and with existing structures as to external design, materials, color, siting, height, topography, grade and finished grade elevation in keeping with the Design Guidelines.

Section 5. Preliminary Approvals. Persons who anticipate constructing improvements on lands within the Subdivision, whether they already own lands or are contemplating the purchase of such lands may submit preliminary sketches of such improvements to the Declarant and the Architectural Committee for informal and preliminary approval or disapproval. All preliminary sketches shall be submitted in duplicate and shall contain a proposed site plan together with sufficient general information on all aspects that will be required to be in the complete plans and specification to allow the Declarant and Architectural Committee to act intelligently on giving an informed preliminary approval or disapproval until such time as complete plans are submitted and approved or disapproved.

Section 6. Plans. The Declarant and Architectural Committee shall disapprove any plans submitted to it which are not sufficient for it to exercise the judgment required of it by these covenants.

Section 7. Declarant and Architectural Committee Not Liable. The Declarant and Architectural Committee shall not be liable in damages to any person submitting any plans for approval, or to any Owner or Owners of lands within the Subdivision, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, with regard to such plans. Neither Declarant nor the Architectural Committee nor any member thereof, nor their duly authorized representative shall be liable to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Declarant's or the Architectural Committee's duties hereunder unless due to the willful misconduct or bad faith of the Declarant or the Architectural Committee. Any person or group acquiring the title to any Property in the Subdivision or any person submitting plans to the Declarant or the Architectural Committee for approval, by so doing shall be deemed to have agreed and covenanted that he, she, or they will not bring any action or suit to recover damages against the Declarant or the Architectural Committee, its members as individuals, or its advisors, employees, or agents.

Section 8. Written Records. The Declarant and the Architectural Committee shall keep and safeguard complete written records of all applications for approval submitted to them (including one set of all preliminary sketches and all architectural plans so submitted) and of all actions of approval or disapproval and all other actions taken by it under the provisions of this instrument which records shall be maintained for a minimum of five years after approval or disapproval.

Section 9. Limited Extent of Committee Review. The Architectural Committee and the Declarant shall review and approve or disapprove all plans submitted to them for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result on the immediate vicinity and the Subdivision generally. The Architectural Committee and the Declarant shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall their approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

Section 10. Completion Required Before Occupancy. No Building within the Property shall be occupied until and unless the owner of any Building shall have completed the Building in accordance with, and complied with, all approved plans and specifications.

### ARTICLE III

#### Restrictions on all Property

Section 1. Zoning Regulations. No lands within the Subdivision shall ever be occupied or used by or for any Building or purpose or in any manner which is contrary to the zoning regulations applicable thereto validly in force from time to time.

Section 2. No Mining, Drilling or Quarrying. No mining, quarrying, tunneling, excavating or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock, and earth, shall ever be permitted on the surface of the Property.

Section 3. No Business Uses. The Lots within the Property shall be used exclusively for residential living purposes, such purposes to be confined to approved residential Buildings within the Property. No Lots within the Property shall ever be occupied or used for any commercial or business purposes provided, however, that nothing in this Article VIII, Section 3 shall be deemed to prevent (a) Declarant or its duly authorized agent from using any Lot owned by Declarant as a sales model, or (b) any Owner or his duly authorized agent from renting or leasing said Owner's residential Building from time to time for periods of not less than two nights duration, subject to all of the provisions of this Declaration.

Section 4. Restriction of Signs. With the exception of a sign no larger than six (6) square feet identifying the architect and a sign of similar dimension identifying the prime contractor to be displayed only during the course of construction and a sign no larger than six (6) square feet for the owner to advertise his home or lot for sale, no signs or advertising

devices, including but without limitation, commercial, political, informational or directional signs or devices, shall be erected or maintained on any of the Property, except signs approved in writing by the Architectural Committee as to size, materials, color and location: (a) as necessary to identify ownership of the Lot and its address; (b) as necessary to give directions; (c) to advise of rules and regulations; (d) to caution or warn of danger; and (e) as may be required by law.

Section 5. Restrictions on Animals. No animals other than ordinary household pets may be kept or allowed to remain on any of the Property.

Section 6. No Resubdivision. No Lot shall be resubdivided and no Building shall be constructed or allowed to remain on any tract that comprises less than one full Lot.

Section 7. Underground Utility Lines. All water, gas, electrical, telephone and all other utility lines within the limits of the Property must be buried underground and may not be exposed above the surface of the ground.

Section 8. Service Yards. All clothes lines, equipment, service yards or storage piles on any Lot in the Property shall be kept screened by approved planting or fencing so as to conceal them from the view of neighboring Lots, access roads and area surrounding the Property.

Section 9. Maintenance of Property. All Property and all improvements on any Lot shall be kept and maintained by the Owner thereof in clean, safe, attractive and sightly condition and in good repair.

Section 10. No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Property nor shall anything be done or placed on any Property which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others.

Section 11. No Hazardous Activities. No activities shall be conducted on any Property and no improvements constructed on any Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Property and no open fires shall be lighted or permitted on any Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

Section 12. No Unsightliness. No unsightliness shall be permitted upon any of the Property. Without limiting the generality of the foregoing, (a) any unsightly structures, facilities, equipment, tools, boats, vehicles other than automobiles, objects and conditions shall be enclosed within an approved Building or appropriately screened from view, except equipment and tools when in actual use for maintenance or repairs; (b) no trailers, mobile homes, tractors, truck campers or trucks other than pickup trucks shall be



kept or permitted to remain upon the Property; (c) no vehicle, boat or equipment shall be constructed, reconstructed, repaired or abandoned upon any of the Property; (d) no lumber, grass, shrub or tree clippings, plant waste, metals, bulk materials or scrap shall be kept, stored or allowed to accumulate on any of the Property, except in service yards meeting the requirements of Article VIII, Section 8; (e) refuse, garbage and trash shall be placed and kept at all times in a covered container and such container shall be kept within an enclosed structure or appropriately screened from view; (f) hanging, drying or airing of clothing or household fabrics shall not be permitted on Lots if visible from Buildings, Lots or areas surrounding the Property.

Section 13. No Annoying Lights, Sounds or Odors. No light shall be emitted from any Lot or Property which is unreasonably bright or causes unreasonable glare or does not comply with the Design Guidelines; no sound shall be emitted from any Lot or Property which is unreasonably loud or annoying including but without limitation, speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively to protect any of the Property or Buildings; and no odors shall be emitted from any Lot or Property which are noxious or offensive to others.

Section 14. No Cesspools or Septic Tanks. No cesspools or septic tanks shall be permitted on any Property. Any other type of sewage disposal system shall be installed only after approval by the Architectural Committee and all governmental health authorities having jurisdiction.

Section 15. Water Systems. No water wells or individual private water supply systems shall be permitted on any Lot.

Section 16. Drainage. No owner shall have the right to alter or obstruct the then normal flow of runoff water or storm drainage into, from or across any of the Lots.

#### ARTICLE IV

##### Restriction on Lots

Section 1. Number and Location of Buildings. No buildings or structures shall be placed, erected, altered, or permitted to remain on any Lot other than one single family dwelling together with related nonresidential structures and improvements.

Section 2. Residence Floor Area. The single-family dwelling which may be constructed on a Lot on the Properties shall have a maximum living floor area, exclusive of garages, balconies, porches, and patios of 7,500 square feet and a minimum living floor area, exclusive of garages, balconies, porches and patios of 2,000 square feet.

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Section 3. Single Family Dwelling to be Constructed First. No garage or other structure shall be constructed on any Lot until after commencement of construction of the single family dwelling on the same Lot except as otherwise specifically permitted by the Architectural Committee. All construction and alteration work shall be prosecuted diligently, and each building, structure, or improvement which is commenced on any Lot shall be entirely completed within 18 months after commencement of construction.

Section 4. Setbacks and Building Placement. The placement of buildings shall respect existing land forms and generally shall follow contours and fit into land massing rather than ignoring and dominating these forms. Unless the Architectural Committee shall approve a variance from said restriction, all buildings and structures on any Lot shall be constructed within the area designated as the "Area of Disturbance" for said Lot as set forth in the Plat Map, except that with the approval of the Architectural Committee, decks or patios attached to the main dwelling may be extended outside said Area of Disturbance so long as no trees, rock out-crops or brush are removed or destroyed in connection with or as a result of extension of said decks or patios outside said Area of Disturbance.

Section 5. Height Limitations. No building on any Lot shall be erected to a height greater than 28 feet as measured from natural grade to a point midway between the lowest part of the eaves or cornice and ridge of a hip or pitched roof. The maximum height of the ridge shall be 33 feet measured from natural grade. This measurement applies to all elevations of the building, the intent being that buildings will conform with and reflect the natural contour of the land. All garages shall be limited in height to a single story.

Section 6. Towers and Antennae. No towers, and no exposed, or outside, radio, television or other electronic antennae, including T.V. dish antennae, shall be allowed or permitted to remain on any Lot. It is recommended that lightning rods be installed on all structures.

Section 7. Used or Temporary Structures. No used or previously erected or temporary house, structure, house trailer, mobile home, camper, or nonpermanent outbuilding shall ever be placed, erected, or allowed to remain on any Lot except during construction periods, and no dwelling house shall be occupied in any manner prior to its completion.

Section 8. Fences. In general, perimeter fencing will not be allowed. Perimeter fencing is defined to mean fences along or near Lot lines or fencing not connected with a building or structure. Interior fencing, screens or walls which are associated or connected with a building are permitted if they are of such design, materials, and heights as may be approved by the Architectural Committee and conform to the Design Guidelines.

Section 9. Landscaping and Preservation of Existing Site Vegetation. All buildings should be located to preserve and utilize existing tree masses. Except for those trees which are within the perimeter of the outer roof lines of buildings, the plans for which have been approved by Architectural Committee, trees with a caliper measurement of 3 inches or more, measured at a point on the tree trunk 4 feet above natural grade may not be removed, cut, destroyed or in any way harmed without approval in writing from the Architectural Committee. With respect to those trees, shrubs, bushes, and other vegetation required to be removed for the purposes of construction, access, utility runs and related matters, all vegetation to be cut or removed must be identified clearly with red surveyor's flagging, inspected and approved by the Architectural Committee in writing prior to the issuance of excavation permits from the City. Landscaping shall be in accordance with the landscaping standards of the Design Guidelines.

Section 10. Driveway Access. All individual driveway access locations within the Subdivision shall be designed to function well with the site location and layout of each appropriate residential building. Care shall be taken in siting driveways to allow for the least amount of site and vegetation disturbance. The maximum grade of any driveway shall not exceed 12%. The minimum width of any drive shall be 16 feet, with the maximum width of 20 feet, prior to entering a garage. Where possible, driveways shall parallel the slope to lessen site impact. The approaching private driveway shall align itself with the intersecting road at approximately 90° for 20 feet (32 feet from center line of pavement). A maximum 3% grade will be designed along the center line of this portion of the drive. Cross slope will be 2%. The sides of the private drive will begin warping into the appropriate grade of the 10% road at the same 20 foot distance. When necessary to cut and fill, a balance shall be sought. Exception will be allowed in order to save specimen vegetation. Retaining walls shall be used with cuts in excess of 4 feet. Fill areas shall be contoured to 2 feet horizontal to 1 foot vertical slopes and if the disturbed area fails to catch existing grade within ten feet, a retaining wall shall be used.

Section 11. Architectural.

(a) Roofs. All buildings shall be constructed with a minimum roof overhang of not less than three feet on all elevations. In order to minimize roof leaks, all roofs shall be cold roofs or double roofed, with the underlay roof being three-ply asphalt hot mopped covered by fire resistant wood shingles or wood shakes, thick butt asphalt shingles, or similar roofing materials and must be designed so that all roof areas drain.

(b) Walls. All lower walls, i.e., foundation walls, shall be required to be faced with natural stone.

(c) Icicles and Ice Buildup. Building designs must consider and address the danger caused by falling ice and ice accumulation on walks and building entrances.

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(d) Structural Certification. All building designs must be approved and certified by a qualified licensed structural engineer. Particular attention should be given to snow loads on roofs and frost line depth for foundations and plumbing installations.

(e) Balconies and Patios. To the extent possible, balconies and patios shall be located so that they face in a southerly direction. Northerly exposure of patios and balconies should be avoided unless covered.

(f) Insulation and Weatherstripping. The following are the minimum insulating and weatherstripping requirements in all heated buildings.

1. All outside walls - minimum insulation factor of R-19;
2. All ceilings separating attic from roof - minimum insulation factor R-30;
3. All vaulted ceilings that are also the roof - minimum insulation factor R-30;
4. Exposed underfloor areas - minimum insulation factor R-25;
5. Perimeter concrete foundation walls to be insulated with a minimum of two inch rigid insulation on the outside of wall;
6. All outside windows shall be double glazed;
7. All outside doors and windows shall be weather-stripped on all edges.

(g) Flashings and Roof Gutters. Flashing or roof gutters or other metal fittings on the exterior of buildings shall be copper or Cor-Ten Steel or other material which takes on a natural patina or shall be painted to match adjacent materials on buildings.

(h) Automatic Fire Sprinkler Systems. To the extent required by the Park City Fire Marshall, all buildings must contain an automatic fire sprinkler system or such other approved in writing automatic fire extinguishing system which meets the requirements of the Uniform Building Code for structures of that composition and construction. In addition to interior sprinkling, all structures shall have exterior building materials which meet the fire spread standards defined in Table 42-A of the Uniform Building Code unless protected by exterior sprinkling system meeting the standards of Section 3802 of the Uniform Building Code. These references are to the 1982 Edition of the Uniform Building Code, but structures shall comply with successor provisions of that Code in subsequently adopted codifications.

Section 12. Protection to Minimize Problem of Frozen Pipes. Water lines and sewer wastelines shall not be installed in the outside walls, overhangs, or in uninsulated attic or crawl spaces.

Section 13. Sewer Ejector Pumping Systems. The owners of Lots No. 19, 20, 21, 22 and 23, and any party utilizing said lots shall be obligated to construct, maintain and operate on each of said lots a sewer ejector pumping system sufficient to transmit all sewage emanating from any building or structure on said lot to the transmission lines of the Snyderville Basin Sewer Improvement District, or such other entity as furnishes sewer disposal services in connection with said Lot, and meeting all requirements of the Snyderville Basin Sewer Improvement District or such other entity.

Section 14. Slope Easements. Declarant reserves the right to excavate or fill to create slopes and to install structural retaining walls or systems within the areas designated "Slope Easement" on the Plat. Unsupported slopes in the Slope Easement areas shall not be steeper than a 50% grade unless soils tests prove, in the case of rock, a  $\frac{1}{2}$  to 1 slope for 8 vertical feet with a 4 foot horizontal bench may be used. It is anticipated that such excavation and filling shall be completed before any Owner commences construction of Improvements. The Slope Easement shall not prevent any Owner from proceeding to construct any Improvement at any time including Improvements located within the Slope Easement.

#### ARTICLE V

##### Maintenance Obligations

Section 1. Maintenance Obligations of Owners. It shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding Declarant and Architectural Committee approval, to maintain, repair, replace and restore his residence and Lot in a neat, sanitary and attractive condition. In the event that any Owner shall permit any improvement, which is the responsibility of such Owner to maintain, to fall into disrepair or not to be so maintained so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Declarant or Architectural Committee shall have the right, but not the duty, upon thirty (30) days' prior written notice to the Owner of such Lot, to correct such condition and to enter upon such Owner's Lot to make such repairs or to perform such maintenance and the cost thereof shall be charged to the Owner. The Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection may be added.

Section 2. Variance in Exterior Appearance and Design. Any Owner who has suffered damage may apply for approval to the Declarant and the Architectural Committee for reconstruction, rebuilding or repair of his residence in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for

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such approval shall be made in writing together with full and complete plans and specifications, working drawings and elevations showing the proposed reconstructions and the end result thereof. The Declarant and the Architectural Committee shall grant such approval only if the design proposed by the Owner would result in a finished residence in harmony with exterior design of other residences on the Properties. Failure of the Declarant or the Architectural Committee to act within thirty (30) days after receipt of such a request in writing coupled with the drawings and plot plans showing the full and complete nature of the proposed changes shall constitute disapproval thereof.

## ARTICLE VI

### General Provisions

Section 1. Enforcement. This Declaration may be enforced as follows:

(a) Breach of any of the covenants contained in this Declaration and the continuation of any such breach may be enjoined, by the Declarant, any Owner or by the Architectural Committee. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

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

(c) The remedies herein provided for breach of the covenants contained in this Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure to enforce any of the covenants contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter.

(e) A breach of the covenants, conditions or restrictions contained in this Declaration shall not affect or impair the lien or charge of any bona fide first Mortgage made in good faith and for value on any residential Lot or the improvements thereon, provided, however, that any subsequent Owner of such property shall be bound by said covenants, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise, but shall not be liable for prior breach.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Limited Liability. Neither Declarant, the Architectural Committee nor any member, agent or employee of Declarant or the Architectural Committee shall be liable to any party for any action or for failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

Section 4. Duration of Declaration. Any provision, covenant, condition or restriction contained in this Declaration or any Supplemental or Amended Declaration which is subject to the common law rule sometimes referred to as the "rule against perpetuities", shall continue and remain in full force and effect for the period of twenty years or until this Declaration is terminated as hereinafter provided, whichever first occurs. All other provisions, covenants, conditions and restrictions contained in this Declaration or in any Supplemental or Amended Declaration shall continue and remain in full force and effect until January 1, 2011 A.D., provided however, that unless at least one year prior to said time of expiration, there is recorded an instrument directing the termination of this Declaration, executed by Declarant and by the Owners of not less than 90% of the Lots then subject to this Declaration, said other provisions, covenants, conditions and restrictions shall continue automatically for an additional ten years and thereafter for successive periods of ten years unless, at least one year prior to the expiration of any such extended period of duration, this Declaration is terminated by recorded instrument directing termination signed by the Declarant and by the Owners of not less than 90% of the Lots then subject to this Declaration as aforesaid.

Section 5. Amendment or Revocation. At any time while any provision, covenant, condition or restriction contained in this Declaration or any Supplemental or Amended Declaration is in force and effect, it may be amended or repealed by the recording of a written instrument specifying the amendment or the repeal, executed by Declarant and by the Owners of not less than 90% of the Lots then subject to this Declaration. No such amendment or repeal shall be effective with respect to the holder or successor or assign of the holder of a Mortgage recorded prior to recording of the instrument specifying the amendment or repeal unless such holder executes the said instrument.

Section 6. No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Subdivision to the public, or for any public use.

Section 7. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in any Lot in the Subdivision does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions

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is contained in the instrument by which such person acquired an interest in the properties, or any portion hereof.

Section 8. Reservation of Easements.

(a) No Owner of a Lot shall interfere with the established drainage pattern over his Lot. For purposes of this Declaration, "established drainage" on any Lot is defined as the drainage pattern and facilities in existence at the time that such Lot is conveyed to a purchaser from Declarant.

(b) Declarant further expressly reserves (for a period not to exceed five (5) years after conveyance of the first Lot), for itself and its agents and employees, easements of access, ingress and egress, over the Lots, for the purpose of maintaining, repairing and installing water and other utility lines, drainage structures, sewer pipelines and laterals if necessary, in accordance with the provisions of this Declaration, and as otherwise provided by law.

(c) Declarant expressly reserves for the benefit of the Owner of each Lot in the Subdivision an easement to ski across any portion of any other Lot which portion is designated as "Ski Easement" on the Plat Map for the purpose of gaining access between said Owner's Lot and ski runs at the Deer Valley Resort. Said easement shall be for the use and benefit of the Owners of Lots in the Subdivision, the members of their families and their guests. The existence of this easement shall not limit or restrict the right of the Owner of any Lot in the Subdivision to construct buildings or structures upon said Lot at the locations and in the manner permitted by this Declaration.

Section 9. Easements for City and County Public Service Use.

There shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Subdivision, easements for city, county, state and federal public services, and for public utilities, including but not limited to, the right of the police to enter for the purpose of enforcing the law.

Section 10. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, at the mailing address of such person, as listed on the tax roles or other records of the Summit County Assessor's or Treasurer's Office.

Section 11. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall



include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

Section 12. Severability. Invalidity or unenforceability of any provision of this Declaration or of any Supplemental or Amended Declaration in whole or in part shall not affect the validity or enforceability of any other provision or valid and enforceable part of a provision of this Declaration.

Section 13. Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provision, restriction, covenant or condition contained in this Declaration.

IN WITNESS WHEREOF, Deer Valley Resort Company has executed this Declaration the day and year first above written.

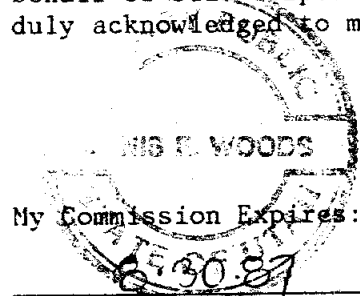
DEER VALLEY RESORT COMPANY

By Royal Street of Utah, a Utah corporation, its general partner

By *William A. Prince*  
Vice President

STATE OF UTAH )  
                  : ss.  
COUNTY OF SUMMIT )

On the 9<sup>th</sup> day of April, 1987, personally appeared before me William A. Prince, who, being by me duly sworn, did say that he is the Vice President of Royal Street of Utah, a Utah corporation, which is the general partner of Deer Valley Resort Company, a Utah limited partnership, and acknowledged to me that the above and foregoing instrument was signed on behalf of said corporation as such general partner, and said William A. Prince duly acknowledged to me that said partnership executed the same.



*Chris E. Woods*  
NOTARY PUBLIC  
Residing at: Park City, UT

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