

Entry No. 231554 231564

REQUEST OF **SUMMIT COUNTY TITLE**

FEE ALAN SPRIGGS, SUMMIT CO. RECORDER

\$ 48.00 By *Jensen*

RECORDED 3-11-85 at 3:00 M

DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
OF THE RECREATIONAL FACILITIES
FOR RED PINE COMMUNITY

THIS DECLARATION is made and executed this 12 day of February, 1985, by PARK WEST DEVELOPMENT CORP., a Utah Corporation (hereinafter "Developer").

RECITALS:

A. Developer is the owner of unencumbered fee title to that certain Parcel more particularly described in Section 2.1 of this Declaration and to the Recreational Facilities created from and on said Parcel.

B. Developer has heretofore created the following five condominium projects which are contiguous to or in close proximity of the Recreational Facilities: Red Pine Chalets, Phase I; Red Pine Chalets, Phase II; Red Pine Chalets, Phase III; Red Pine Chalets, Phase IV; and Red Pine Townhouses.

C. Developer has created the Recreational Facilities for the use and benefit of the condominium unit owners (and the guests, licensees, and invitees of such owners) within said five condominium projects and one or more future condominium project that qualify for such use and benefit in accordance with this Declaration.

D. Developer deems it desirable, for the efficient preservation and maintenance of said Recreational Facilities, to create an entity which possesses the power to own, maintain, and administer the Recreational Facilities, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purposes, Developer has, in conjunction with the recordation of this Declaration, caused to be incorporated under the laws of the State of Utah, as a nonprofit corporation, RED PINE COMMUNITY ASSOCIATION.

E. Developer desires by filing this Declaration to subject the Parcel more particularly described in Section 2.1 of this Declaration and the Recreational Facilities

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located thereon to the covenants, restrictions, easements, charges, limitations, and liens hereinafter set forth, and to provide for the future conveyance of unencumbered fee title to said Parcel and the Recreational Facilities to said Association. It is the purpose, intent and effect of this Declaration that the Members' rights and easements of use and enjoyment in and to said Parcel and the Recreational Facilities and the Members' other rights hereunder and the Association's right to receive unencumbered fee title thereto and the Association's other rights hereunder shall be and are prior in right, superior to, and uneffected by any trust deed, mortgage, mechanic's lien, judgment or other lien or encumbrance of any kind whatsoever which is granted, created, or permitted by or otherwise effects the Developer or his interests from and after the time this Declaration is filed for record.

F. Developer anticipates that in the future one or more additional condominiums project may be created within the Entire Tract, and Developer desires that there exist the right to subject said additional condominium projects to the terms and provisions of this Declaration.

NOW, THEREFORE, for the foregoing purposes, Developer grants and conveys the rights and privileges set forth herein and makes the following declaration and dedication respecting the Parcel described in Exhibit "B" hereto and the Recreational Facilities situated thereon. This Declaration contains covenants, conditions and restrictions relating to said Parcel which are and shall be enforceable equitable servitudes which shall run with the land and shall be binding upon Developer, its successors, and assigns and upon all Unit Owners or subsequent Unit Owners, their grantees, mortgagees, successors, heirs, personal representatives, devisees, and assigns.

ARTICLE I

Definitions

The following terms when used in this Declaration, including the recitals above, unless the context shall require otherwise, shall have the following meanings:

1.1 Affiliated Companies shall mean any corporation, partnership, or other entity which is controlled by or under common control with Developer.

1.2 Association shall mean and refer to Red Pine Community Association, a Utah nonprofit corporation.

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1.3 Condominium Unit or Unit shall mean and refer to one of separately numbered and individually described Condominium Units described on a Record of Survey Map of a Condominium Project.

1.4 Declaration shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions concerning the Red Pine Community.

1.5 Developer shall mean and refer to Park West Development Corp., a Utah Corporation, and to its successors, assigns, or Affiliated Companies. The purchase of one or more Units or parcels of land shall not, per se, confer upon any person or entity any of the rights or obligations of Developer hereunder unless such rights are expressly assigned by Developer and accepted in writing by such person or entity.

1.6 Entire Tract shall mean and refer to the following described tracts of real property in Summit County, State of Utah, together with all appurtenances thereto:

The Southeast 1/4 of the Southeast 1/4 of Section 36, Township 1 South, Range 4 East, SLB & M.

The Southwest 1/4 of the Southwest 1/4 of Section 31, Township 1 South, Range 4 East, SLB & M.

1.7 Member shall mean and refer to every person or entity who holds membership in the Association.

1.8 Owner shall mean and refer to each person or entity which is an owner or holder of record (in the office of the County Recorder of Summit County, Utah) of the fee in, or a contractual interest to purchase, any Unit. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party shall have acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.9 Parcel shall mean and refer to each portion of real property which, subject to the conditions set forth in this Declaration, is subjected now or at any time hereafter by the procedures described herein, to the terms of this Declaration with the intention that it shall thereby comprise a portion of the Recreational Facilities.

1.10 Project or Condominium Project shall mean and refer to any condominium project created pursuant to the

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Utah Condominium Ownership Act which is located within the Entire Tract and which has elected to join the Red Pine Community and has qualified to do so in accordance with either Article VI or X of this Declaration.

1.11 Recreational Facilities shall, at any point in time, mean, refer to, and consist of the Parcel and all improvements on said Parcel.

1.12 Red Pine Community or the Community shall, at any point in time, mean, refer to, and consist of the Recreational Facilities and all Condominium Projects within the Entire Tract.

1.13 Undeveloped Land shall, at any point in time, mean, refer to, and consist of such portion of the Entire Tract as is then neither included within any Project or the Parcel nor improved with completed structures and related on and off site improvements ordinarily in existence when a tract of land is considered to be fully developed.

ARTICLE II

Properties Subject to this Declaration

2.1 Initial Parcel. The Parcel which initially shall be held, transferred, occupied, and otherwise dealt with subject to the provisions of this Declaration consists of the real property situated in Summit County, State of Utah, described on Exhibit "B" attached hereto and incorporated herein by this reference.

2.2 Improvements. The improvements constructed on the Parcel described on Exhibit "B" hereto consist of: (i) One community center building containing, among other improvements, a reception room, several closets, one clubroom (divisible into two clubrooms by a divider), on sauna, one spa room, showers, two dressing rooms, laundry facility, apartment and four offices, two swimming pools and one wading pool; and (ii) roads and streets.

2.3 Limitation. The Parcel described on Exhibit "B" to this Declaration comprises only a portion of the Entire Tract. A description of the Entire Tract is set forth herein solely for purposes of identification and certain limitations contained herein. This Declaration is not intended to create and should not be deemed to constitute any lien, encumbrance, restrictions, or limitation upon any real property or interest in real property other than:

2.3.1 The Parcel which is described on Exhibit "B" hereof which is expressly subjected to the terms of this Declaration;

2.3.2 Such other interests in real property as may hereafter be expressly subject to the terms hereof and become a portion of the Parcel and/or the Recreational Facilities; and

2.3.3 Such Condominium Units as may now or hereafter be expressly subjected to the terms hereof by virtue of being a part of one of the Condominium Projects.

ARTICLE III

Membership, Voting Rights and Management of the Association

3.1 Incorporation. The Association shall be incorporated under the Utah Non-Profit Corporation Act.

3.2 Board of Directors. The Association shall be governed by a Board of Trustees to be composed of Members of the Association or in the event such Member is a corporation, trust, partnership, or other entity, an officer, trustee, partner or other individual who is a manager of such entity as the case may be. One Trustee shall be elected and shall serve from each of the Existing Projects, as defined in Article VI, which elects to join the Community and Association. One Trustee shall be appointed by the Developer, but only for so long as Developer is a Member. At such time as Developer adds an additional Project to Red Pine Community in accordance with the provisions of Article X, such Project (or if developed separately, all Projects added pursuant to the provisions of Article X) shall be entitled to elect one Trustee to the Board of Directors. Subsequent to the expiration of Developers request to add additional projects as set forth in Article X, Developer shall thereafter be required to appoint as a Trustee a person representing the operator of the ski resort as a Trustee.

3.3 Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be automatic and shall be appurtenant to the Unit in which the Owner has the necessary interest. Neither membership in the Association or any of the votes attributable to the membership shall be separated from the Unit to which the same appertains. Until such time as Developer ceases to hold an equitable or legal interest or a recorded right to acquire an equitable or legal interest in the Park West Ski

Report or in any Undeveloped Land, Developer shall be a Member whether or not it is an Owner.

3.4 Voting Rights. The Association shall have one class of voting membership. Each Unit shall have appurtenant thereto the number of votes set forth in Exhibit "A" attached hereto and incorporated herein by this reference, which votes may be cast by the Members which are the Owners of such Unit. When a new Project joins the Red Pine Community, Exhibit "A" shall be amended to specify the number of votes appurtenant to each Unit in such Project according to the formula described on said Exhibit. Developer shall be entitled to one (1) vote.

3.5 Management. The Association shall be responsible for the control, operation and management of the Recreational Facilities in accordance with the provisions of this Declaration, such administrative, management and operational rules and regulations as it may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by it. In addition to all other powers conferred herein or by law upon the Association, the Association shall have the following authority and powers:

3.5.1 The authority, without the vote or consent of the Members or any other person(s), to grant or create on such terms as it deems advisable, utility and similar easements over, under, across, and through the Recreational Facilities; provided, however, that no such easement shall be granted without the written consent of Developer if such easement would interfere with Developer's rights reserved herein;

3.5.2 The authority to execute and record, on behalf of all Members, any amendment to this Declaration which has been approved by the vote or consent necessary to authorize such amendment; provided, however, that no amendment to this Declaration may be made without the Developer's written consent thereto if such amendment would affect the rights of Developer reserved herein;

3.5.3 The authority to enter into contracts which in any way concern the Association or the Recreational Facilities, so long as any vote or consent of the Members required hereunder has been obtained;

3.5.4 The power and authority to purchase, otherwise acquire, and accept title to any interest in real property, so long as such action has been authorized by the vote and consent which is required hereunder;

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3.5.5 The power and authority to erect, maintain, alter, remodel, reconstruct, rebuild, replace, or remove any existing improvements, or any improvements to be constructed in the future, on the Parcel; and

3.5.6 The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Association to perform its functions as agent for the Members and the Projects.

3.6 Power and Authority of Association. Any instrument executed by the Association that recites facts which, if true, would establish the Association's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

3.7 Restrictions on Authority. The Association shall not, without the prior favorable vote of seventy-five percent (75%) of the votes of Members of the Association, have the authority to purchase or sell any real property, encumber any of the Recreational Facilities, increase the area described within the Entire Tract, or to incur any indebtedness in excess of \$25,000; provided, however, that this figure shall be adjusted each year proportionate to the change in the consumer price index.

3.8 Additional Facilities. The Association shall, subject to any necessary approval, have the authority to provide such facilities, in addition to those for which provision has already been made, as it may deem to be in the best interests of the Members.

3.9 Manager. The Association may carry out through a Manager any of its functions which are properly the subject of delegation. Any Manager so engaged may be an individual, partnership, or corporation, and shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Recreational Facilities for the benefit of the Association and the Members, and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted hereunder to be performed by the Association. Any agreement for professional management for the Recreational Facilities which may be entered into by the Association shall call for a term not exceeding two (2) years and shall provide that such management agreement may be terminated by the Association without penalty and upon not more than ninety (90) days' prior written notice.

3.10 Certificates. Neither the issuance nor the holding of membership certificates or shares of stock shall be necessary to evidence membership in the Association. However, the Board of Trustees of the Association is authorized to issue membership certificates if it deems such to be advisable or appropriate.

3.11 Multiple Ownership. In the event there is more than one Member with respect to a particular Unit, the vote or votes relating to such Unit shall be exercised as such Members may determine among themselves. A vote or votes cast at any Association meeting by any of such Members, whether in person by proxy, shall be conclusively presumed to be the vote or votes attributable to the Unit concerned unless an objection is immediately made by another Member with respect to the same Unit. In the event such an objection is made, the vote or votes attributable to such Unit shall not be counted for any purpose whatsoever other than to determine whether a quorum is present.

ARTICLE IV

Property Rights in the Recreational Facilities

4.1 Members' Easements of Enjoyment. Each Member shall have a right and easement of enjoyment and use in and to the Recreational Facilities during, but only during, any period of time that such Member has the right of occupancy to, and is in fact in occupancy of, the Unit to which his Membership relates. Such right and easement shall be appurtenant to and shall pass with title to the Unit concerned and in no event shall be separated therefrom except in the case of Developer. Such right and easement of enjoyment and use shall be a right to non-exclusive use, subject to reasonable restrictions as hereinafter set forth (including rules and regulations promulgated by the Association), of Recreational Facilities for recreation, social and physical needs and desires; and to contribute to the common health, security and happiness of the Members. Any Member may delegate the right and easement of enjoyment and use described herein to any member of Member's family, to any guest, or to any tenant, lessee, or contract purchaser who resides in or is authorized to use such Member's Unit; provided, however, that such delegation is not inconsistent with the Declaration of Condominium of any Project. Developer as a Member shall have all the rights of a Member, even though Developer owns no Unit.

4.2 Title to Recreational Facilities. Developer hereby covenants for itself, its successors, and assigns

that it shall cause to be conveyed existing and future Recreational Facilities to the Association as follows:

4.2.1 On or before sixty (60) days from the date on which this Declaration is recorded in the office of the Summit County Recorder, Developer shall convey to the Association title to the Parcel described in Exhibit "B" hereto free and clear of all liens and encumbrances (other than the lien of current general taxes; covenants, conditions and restrictions currently of record; and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities or other liens and encumbrances consented to by the Association in writing), and shall provide to the Association, at Developer's expense, an owner's policy of title insurance in the amount of One Hundred Thousand Dollars (\$100,000.00) showing the state of title as described in this Section 4.2.1; and

4.2.2 Concurrently with and as a condition of any Project joining the Red Pine Community, title to the real property and improvements thereon that are to become a part of the Recreational Facilities, if any, shall be subjected to this Declaration and shall be conveyed by Developer to the Association free and clear of all liens and encumbrances (other than the lien of current general taxes and the lien of any current assessments, charges, or taxes imposed by governmental or quasi-governmental authorities or other liens and encumbrances consented to by the Association in writing). With respect to any private roads or streets which are to become a part of the Recreational Facilities, a project joining Red Pine Community may, with the consent of the Association, grant an easement for use of such roads or streets in lieu of a conveyance of title thereto.

4.3 Extent of Members Easement. A Member's right and easement of use and enjoyment concerning the Recreational Facilities created hereby shall be subject to the following:

4.3.1 The right of the Association, as provided in Rules and Regulations, to suspend a member's right to the use and enjoyment of any of the Recreational Facilities for any period during which an assessment on such Member's Unit remains unpaid and for a period not exceeding sixty (60) days for any non-monetary infraction by such Member (or his guests, licensees, and invitees) of the provisions of this Declaration or of any Rules or Regulations promulgated by the Association;

4.3.2 The right of the Association to impose reasonable limitations on the number of guests, licensees,

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or invitees of any Member who at any given time shall be permitted to use the Recreational Facilities; provided, however, that except for the specific rights granted Developer as set forth in Section 8.3, such limitations shall not discriminate against any class or type of Member;

4.3.3 The right of the County of Summit, and any other governmental or quasi-governmental body having jurisdiction over the Recreational Facilities to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Recreational Facilities for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service;

4.3.4 The right of the Association to dedicate or transfer all or any part of the Recreational Facilities to any public agency, authority, or utility for such municipal, governmental, and/or non-commercial purposes and subject to such conditions as may be agreed to by the Association, provided that no such dedication or transfer by the Association shall be effective unless: (i) written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken; (ii) an instrument signed by Members entitled to cast sixty-seven percent (67%) of the votes in the Association has been recorded agreeing to such dedication, transfer, purpose or condition; and (iii) so long as the Developer has the right to consent under Section 11.5 hereof, the Developer has consented in writing; and

4.3.5 The right of the Association, subject to Section 3.7 hereof, to borrow money for the purpose of improving the Recreational Facilities and to mortgage the Recreational Facilities, or any part thereof, to carry out such improvements.

4.4 Form of Conveyancing. Any deed, lease, mortgage, deed of trust, or other instruments conveying or encumbering title to a Unit shall contain language substantially as follows as a part of the legal description:

Together with: a right and easement of use and enjoyment in and to the Recreational Facilities described, and as provided for, in that certain "Declaration of Covenants, Conditions, and Restrictions of the Recreational Facilities for the Red Pine Community" recorded in Book _____ at pages _____ through _____, of the Summit County Recorder's Office, as said Declaration may be amended or supplemented.

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Whether or not the description employed in any such instrument is in the above specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit, and the easement of use and enjoyment provided for herein shall remain appurtenant to and shall automatically accompany any conveyance or transfer of a Unit.

ARTICLE V

Covenants for Maintenance Assessment

5.1 Personal Obligation of Assessments and Lien. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Unit, be deemed to covenant and agree to pay to the Association the periodic and the special assessments described in this Article together with the interest and costs of collection hereinafter provided. All such amounts not paid when due shall, together with the interest and the costs of collection hereinafter provided, be, constitute, and remain:

5.1.1 A charge and continuing lien upon the Unit with respect to which such assessment is made; and

5.1.2 The personal obligation of the person or persons who are the Owners of the Unit at the time the assessment falls due. No Owner may exempt himself or his Unit from liability for payment of assessments by waiver of his rights concerning the Recreational Facilities or by abandonment of his Unit, and such personal liability shall not pass to the Owner's successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the due date at the rate of eighteen percent (18%) per annum and the Association may bring action either against the Owner who is personally liable or to foreclose the lien against the Unit. Any judgment obtained by the Association shall include reasonable attorneys' fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.

5.2 Delinquent Assessments by Project. Notwithstanding the provisions of Section 5.1 hereof, if any amount described in Section 5.1 remains unpaid for more than ninety (90) days, assessments may be made upon each of the Projects which have elected, and which have qualified, to join the Red Pine Community, and upon the Project's payment of the same, the Project shall be assigned the lien

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described in Section 5.1.1 and the right against the Owner described in Section 5.1.2, and shall have the right to deny the delinquent Owner (and their guests, licensees and invitees) all privileges to use the Recreational Facilities until all arrearages, penalties, and interest have been paid in full. All such assessments shall, when made, become a general obligation of each respective Project and, in the event any such assessment is not paid to the Association within twenty (20) days following notice thereof to the appropriate Project,

5.2.1 Said amount shall bear interest from the date of assessment at the rate of 18% per annum, and

5.2.2 Said Project shall be required to pay a penalty equal to 5% of said unpaid assessment, and

5.2.3 The Owners of Units in said Project may, at the election of the Association, be denied the privileges associated with use of the Recreational Facilities.

5.3 Purpose of Assessments. Assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the Members of the Association, to the extent such matters relate to the Recreational Facilities. The use made by the Association of funds obtained from assessments may include, but shall not be limited to, the following:

5.3.1 Taxes and insurance on the Recreational Facilities;

5.3.2 Maintenance, repair, and improvement of the Recreational Facilities, including but not limited to utilities, chemicals, pool supplies, ground maintenance, snow removal etc.;

5.3.3 Management and supervision of the Recreational Facilities, including but not limited to security;

5.3.4 Establishing and funding a reserve to cover major repair or replacement of improvements within the Recreational Facilities; and

5.3.5 Any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles of Incorporation.

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5.4 Special Assessments. The Association through its Board of Trustees may levy special assessments for the purpose of defraying, in whole or in part:

5.4.1 Any expense or expenses not reasonably capable of being fully paid with funds generated by regular periodic assessments; or

5.4.2 The cost of any purchase, construction, reconstruction, or unexpectedly required repair or replacement of an improvement of any real or personal property; provided that any such special assessment in excess of \$10,000.00 must be assented to by a majority of the votes present in person or represented by proxy at a meeting duly called for that purpose, and provided further that, prior to June 30, 1984, any special assessment permitted under this Section 5.4, other than one for the repair or replacement of items damaged by major casualty, shall require the approval of 100% of the Members. Written notice setting forth the purpose of the meeting shall be sent to all members at least twenty (20) but not more than thirty (30) days prior to the meeting date.

5.5 Quorum Required. The quorum required for any action authorized by Section 5.4.2 above shall be as follows: At the first meeting called, the presence of Members (or of proxies entitled to cast votes) representing a majority of all the votes shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 5.4.2) at which meeting a quorum shall be one-half of the number which was required at the immediately preceding meeting.

5.6 Initial Assessments. Periodic assessments shall be made on a calendar basis. The Association through its Board of Trustees shall give written notice to each Owner as to the amount of the periodic assessment with respect to his Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. Such periodic assessment shall be due and payable in equal monthly installments on the first day of each and every month or other periods of time as the Association shall deem appropriate; provided, however, that the first periodic assessment for each Unit located within an "Existing Project" (as defined in Section 6.1) shall be for the period commencing with the date on which this Declaration is recorded in the office of the Summit County Recorder, Summit County, Utah, and ending at the end of the regular periodic assessment period in which the particular "Existing Project" in question joins Red Pine Community in accordance with the

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terms and conditions of Article VI. The first periodic assessment hereunder shall be made within thirty (30) days of the first "Existing Project" joining Red Pine Community and shall be adjusted and reassessed within thirty (30) days subsequent to each "Existing Project" joining Red Pine Community, so that each Unit within all of the "Existing Projects" shall pay its ratable portion (calculated on the basis of the formula set forth below) of the aggregate amount assessed all of the "Existing Projects". To the extent any "Existing Project" has made any payment in accordance with Section 6.3 hereof, the Units in such "Existing Project" shall receive a credit toward their first periodic assessment. Notice to Unit Owners of the initial assessment shall be made within thirty (30) days of the date thereof; provided that in the event the reassessments are made as of the result of an "Existing Project" joining Red Pine Community and provided that such reassessment does not result in a change in the amount of assessment to any previously assessed Unit Owner, no additional notice need be given to such Unit Owner. Failure of the Board of Trustees to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of any Unit for such assessment, but the due date thereof shall be deferred to a date thirty (30) days after such notice shall have been given. Both periodic and special assessments relating to the Recreational Facilities shall be allocated among all Units on the basis of the number of votes in the Association appurtenant to each Unit, as said basis is described on Exhibit "A" attached hereto and incorporated herein by reference, or as hereafter amended from time to time; provided, however, that until a Unit has been both fully improved with all utilities installed and "occupied" for the first time, meaning such time as the Unit is sold, leased, rented or otherwise permitted to be occupied by Developer, the periodic assessment applicable to such Unit shall be ten percent (10%) of the periodic assessments fixed for other similar Units. Notwithstanding the foregoing, no Unit in the Red Pine Townhouses Condominium Project which was sold at a foreclosure sale prior to recording of this Declaration, shall be deemed to have been "occupied" at any time for purposes of this Section 5.6 unless and until such Unit is sold, leased, or rented for the first time by the purchaser at such foreclosure sale.

5.7 Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Unit and upon the payment of a reasonable fee for such service, the Association shall issue a certificate stating whether or not all assessments respecting such Unit are current, and, if not, the amount of the delinquency. Such

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certificate shall be conclusive in favor of all persons who in good faith rely thereon.

5.8 Subordination of the Lien for Assessments. The line of the assessments provided herein shall be subordinate to the lien of any first mortgage or first trust deed now or hereafter encumbering title to a Unit. Sale or transfer of a Unit pursuant to a decree of foreclosure or by strict foreclosure or any other proceeding or deed in lieu of foreclosure which relieves such Unit from assessments previously levied shall not relieve such Unit from liability for any assessment assessed after such acquisition of title, nor from any lien of any such subsequent assessment.

ARTICLE VI

Admittance of Five Existing Projects to the Community

6.1 Application to Existing Projects. The procedure set forth in this Article VI governs the method by which the five existing condominium projects (hereinafter referred to as "Existing Projects") listed in Recital "B" on page 1 of this Declaration may join the Red Pine Community and qualify to use and otherwise benefit from the Recreational Facilities. Additional condominium projects may join the Community and use and benefit from the Recreational Facilities but only in accordance with Article X of this Declaration.

6.2 Procedure. During the one (1) year period immediately following the date this Declaration is recorded in the office of the Summit County Recorder, each Existing Project shall have an irrevocable right to join the Red Pine Community and qualify to use and otherwise benefit from the Recreational Facilities by, and only by: (i) legally adopting and recording an amendment to the Declaration of Condominium of such Existing Project containing the provisions set forth on Exhibit "C" to this Declaration; and (ii) deeding to the Association free and clear of liens and encumbrances all portions of Chalet Drive formerly located within such Existing Project, which portion shall thereafter automatically constitute a portion of the Parcel. With respect to those portions of Chalet Drive to be deeded to the Association, the Association may, if it elects, accept an easement in lieu of a deed thereto.

6.3 Interim Use of Recreational Facilities. In the event that an Existing project desires to have the Recreational Facilities available for the use of its unit owners during the portion of such period prior to joining the Community, the Association is authorized to allow such

use provided that such Existing Project pays to the Association on a monthly basis a sum equal to one month's estimated regular assessments that would be charged to the unit owners of such Project if all the Existing Projects had previously joined the Community.

ARTICLE VII

Insurance and Taxes

7.1 Coverage. The Association shall secure and at all times maintain or cause to be maintained the following insurance coverages:

7.1.1 A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Recreational Facilities. The name of the insured under each such policy shall be in form and substance similar to: "Red Pine Community Association, a Utah nonprofit corporation, for the use and benefit of its individual Members".

7.1.2 A policy or policies insuring the Owners, Members, the Developer, the Association, and its Trustees, officers, agents and employees against any liability incident to the ownership, use, or operation of the Recreational Facilities which may arise among themselves, to the public, and to any invitees or tenants of the Owners and Members. Limits of liabilities under such insurance shall not be less than \$1,000,000 for any one person injured, \$5,000,000 for all persons injured in any one accident, and \$250,000 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced.

7.2 Additional Provisions. The following additional provisions shall also apply with respect to insurance:

7.2.1 In addition to the insurance described above, the Association shall secure and at all times maintain insurance against all risks as are or hereafter may be customarily insured against in connection with developments similar to the Recreational Facilities.

7.2.2 All policies shall be written by an insurance carrier licensed to transact business in the State of Utah which has a financial rating of "AA" or better from the Best Insurance Reports.

7.2.3 The Association shall have the authority to adjust losses.

7.2.4 Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Projects, Owners, or their mortgagees.

7.2.5 Each policy of insurance obtained by the Association shall, if reasonably possible, provide: a waiver of the insurer's subrogation rights with respect to the Association. Developer, the Management Committee, the Owners, the Projects, their management committees, and their respective directors, officers, agents, committee members, employees invitees and tenants; that it cannot be cancelled, suspended or invalidated due to the conduct of the Association or of any trustee, committee member, officer, agent or employees of the Association without fifteen (15) days' prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

7.3 Taxes. The Association shall pay or cause to be paid all taxes duly imposed upon the Recreational Facilities by any taxing district or by any city, county, state, or federal taxing authority.

ARTICLE VIII

Use Restrictions

8.1 Use of Facilities. Except as specifically set forth in this Article and elsewhere in this Declaration, the Recreational Facilities shall be used exclusively for recreational purposes and shall at no time be used for offices, retail or wholesale sales, manufacturing, construction, real estate sales or management, rental of real or personal property, or other activities which are conducted for profit-making purposes.

8.2 Limited Commercial Use. The Recreational Facilities, or portions thereof, may be used for limited commercial uses provided that the Developer and the Association, by its Board of Trustees, shall agree in writing that such uses are consistent with and complementary to, the recreational purposes of the Recreation Facilities. With respect to such limited commercial use of such Recreational Facilities, the Association may make such charges as it deems appropriate, provided, however, that no charge (other than assessments as provided in this

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Declaration) shall be made to any Member for uses generally provided to all Members.

8.3 Exception for Developer. Notwithstanding the restrictions contained in Sections 8.1 and 8.2 above, Developer shall have the non-exclusive right to use any part of the Recreational Facilities reasonably necessary or appropriate in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate creation and improvement of additional Projects as provided in Article X or the promotion of the Park West Resort area generally; provided, however, that Developer shall be obligated to pay to the Association any overhead and costs that the Association shall reasonably determine is a direct result of such use of Recreational Facilities utilized for such purposes.

ARTICLE IX

Expansion of Facilities

9.1 Additions to Recreational Facilities. Subject to the requirements of Section 9.2 hereinbelow, the Recreational Facilities may be expanded by recordation of an instrument:

9.1.1 Which describes the real property being added;

9.1.2 Which describes, in general, the improvements, if any, situated or to be situated on such real property; and

9.1.3 In which is specifically expressed an intention that such real property shall comprise a portion of the Parcel and the Recreational Facilities and be subject to all of the terms and conditions of this Declaration. The instrument accomplishing the foregoing may be a Record of Survey Map, a Declaration of Condominium, or other instrument. From and after the recordation of such an instrument, the Recreational Facilities shall include the real property involved and all improvements located thereon, and thereafter such real property and improvements shall be subject to all of the provisions of this Declaration.

9.2 Limitation. Except as set forth in Article X, the right to expand the Recreational Facilities through the addition of real property to the Parcel shall be limited as follows:

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9.2.1 Any real property and improvements thereon to be added to the Recreational Facilities must be acceptable to the Association for addition prior to the recordation of the instrument described in Section 9.1 hereof.

9.2.2 Any instrument adding any real property or improvements thereon to the Recreational Facilities must be properly executed, acknowledged, and delivered to the Association before or simultaneously with such real property or improvements being subjected to the terms of this Declaration and must be executed by the Association to signify its acceptance under the foregoing Section 9.2.1 such instrument to be thereafter recorded in the Office of the County Recorder of Summit County, Utah, by the Association.

9.2.3 Title to such real property and improvements being conveyed to the Association concurrently with or by the recordation of such instrument, with the status of title thereto being acceptable to the Association in its sole discretion.

9.3 No Obligation to Developer. Except to the extent specifically indicated herein, this Declaration is not intended, and shall not be construed so as to impose upon Developer any obligation respecting or to restrict Developer in any way with regard to:

9.3.1 The submission of any portion of the Entire Tract to the provisions of this Declaration;

9.3.2 The creation, construction, or addition to the Community of any real property, improvements or projects; and

9.3.3 The carrying out in any particular way or within any particular time of any developmental activities which may be undertaken.

9.4 Developer's Right to Enlarge Community. Developer has certain rights to enlarge the Community as set forth in Article X.

ARTICLE X

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Additional Project

10.1 Right to Include. Developer shall have the right, subject to the conditions set forth in Section 10.2 hereinbelow, to include additional condominium projects

(hereinafter referred to as "New Projects"), exclusive of condominium projects containing time period units, within the Red Pine Community and to subject such New Projects to the terms of this Declaration; provided, however, that such New Projects are located solely within the boundaries of the Entire Tract. Upon entry into the Association, any such New Project shall participate in, and its Owners shall be

Members of, the Association on the same basis as the existing Projects and their respective Owners. Upon entry into the Red Pine Community, Developer and the Association shall cause an amendment of the Declaration to be duly executed and recorded in the offices of the Summit County Recorder, State of Utah, setting forth, among other matters, the inclusion of such New Projects into the Red Pine Community and the basis for assessment for all Units of such New Project and existing Projects.

10.2 Conditions for Entry. Prior to the entry of a New Project into the Red Pine Community pursuant to Section 10.1 hereinabove, the following conditions precedent shall be satisfied:

10.2.1 Such New Project, or such New Project and all other New Projects previously added to Red Pine Community pursuant to this Article X, shall collectively consist of not more than 60 Units with a normal sleeping capacity not exceeding 360 (360 pillows). Such New Projects shall be within the boundaries of the Entire Tract and shall not be statutory time share condominium projects. Nothing herein shall prohibit subsequent owners from multiple ownership or timeshare of their unit.

10.2.2 Such New Project shall acknowledge and agree to be bound by all the terms, conditions and provisions of this Declaration, as amended, prior to its admittance to the Red Pine Community, by legally adopting as part of its Declaration of Condominium the provisions set forth in Exhibit "C" attached hereto.

10.2.3 In the event that any recreational facilities are constructed by Developer with the intention of deeding such facilities to the Association, such recreational facilities shall be of a nature, type, location, design and structure which (1) are architecturally, aesthetically, and functionally compatible with the existing Recreational Facilities; (2) are calculated to maintain approximately the same density of use for each of the Recreational Facilities and otherwise avoid overcrowding or overburdening of any existing Recreational Facility; (3) are of a kind usually found in condominium

recreational facilities; and (4) comply with all building, zoning, health, safety and other laws, rules, regulations and restrictions including all declarations and restrictions affecting the Entire Tract. Fee simple title to all such facilities intended to be included as part of the facilities of the Association shall be conveyed to the Association free and clear of all encumbrances, except those specifically approved by the Association in writing.

10.3 Termination Date for Addition of New Project. The right of Developer to add a New Project to Red Pine Community shall terminate seven (7) years from the date that this Declaration is recorded in the office of the County Recorder, Summit County, State of Utah (hereinafter referred to as the "Termination Date").

ARTICLE XI

General Provisions

11.1 Duration. Except where permanent easements or other permanent rights or interests are herein created, the covenants, conditions, restrictions, and mutual easements of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Unit subject to this Declaration, his respective legal representatives, heirs, devisees, successors, and assigns, for a period of thirty (30) years from the date of recordation of this Declaration, at which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by the then Owners of at least eighty percent (80%) of the Units has been recorded, agreeing to change said covenants in whole or in part. No such agreement or change shall be effective unless made and recorded thirty (30) days in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Member at least sixty (60) days in advance of any action taken and no such agreement to change shall be effective with respect to any permanent rights or interests relating to the Recreational Facilities.

11.2 Notices. Any notice required to be sent to any Member, Owner, or mortgagee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as Member, Owner, or mortgagee on the records of the Association at the time of such mailing. It shall be the obligation of each Member to provide the Association with notice of his membership, a copy of the

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instrument creating his interest in a Unit giving rise to such membership, and a current mailing address.

11.3 Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and the failure of the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event that it becomes necessary to enforce the covenants and restrictions contained herein, the prevailing party in any such action shall be entitled to an award of reasonable attorney's fees and costs against the non-prevailing party, such award to become part of any judgment or order rendered.

11.4 Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions; provided, however, that no rule, regulation, or procedure shall place an undue burden upon the Developer's rights hereunder or his activities in accordance therewith.

11.5 Amendment. Except as set forth in Article X above and except where a higher percentage vote is required by a specific provision of this Declaration, any amendment to this Declaration shall require the consent of the Developer and the affirmative vote of at least a majority of all Members present in person or represented by proxy at a meeting duly called for such purpose; provided, however, that the consent of the Developer shall not be required if:

11.5.1 Such amendment does not adversely affect the rights or property of Developer;

11.5.2 Developer, as defined herein, no longer owns any Undeveloped Land or any interest in the Park West Ski Resort.

Written notice setting forth the purpose of the meeting and the substance of the amendments proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date, such notice to include a proxy by which Members may vote in favor or against the proposed amendment. The quorum required for any such meeting shall be as follows: At the first meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall

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constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in the foregoing portion of this Section 11.5) at which a quorum shall be one-half of the number which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the immediately preceding meeting.

Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the Association. In such instrument an officer of the Association shall certify that the vote required for amendment has occurred.

Provisions requiring the consent of the Developer as set forth in this Declaration shall terminate upon the occurrence of the event set forth in Section 11.5.2 hereinabove.

11.6 Mortgagee Protection. The lien for unpaid assessments provided for under Article V shall be subordinate to any first mortgage (or trust deed) affecting a Unit, but only to the extent of assessments which become due prior to foreclosure of the mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure. Unless seventy-five percent (75%) of all holders of first mortgages (or trust deeds) on the individual Units (based upon one vote for each Unit encumbered by a particular mortgagee or trust deed beneficiary) have given their prior written approval, neither the Association nor any other party shall be entitled to:

11.6.1 Partition or subdivide the Recreational Facilities;

11.6.2 Dedicate or transfer any part of the Recreational Facilities other than for roadways or utility easements; or

11.6.3 By act or omission seek to abandon the arrangement which is established by this Declaration.

11.7 Determination of Ownership. For purposes of sending all notices to Owners which are required under this Declaration, the Association shall rely on the most current information furnished to them as to the ownership of Units and/or the addresses of Owners. Unless a new Owner shall produce evidence of transfer of title at or prior to any meeting (which evidence is satisfactory to the Association)

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only the person(s) shown on the records of the Management Committee shall be entitled to vote at such meeting.

11.8 Assignability of Developer's Rights. All or any portion of the rights and/or obligations of Developer under this Declaration or in any way relating to the Entire Tract or the Recreational Facilities may be assigned.

11.9 Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

11.10 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Developer, all parties who now have or hereafter acquire any interest in a Unit, or in the Community, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units, in all Projects, in the Parcel, and in the Community shall be subject to the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments and determinations contemplated by this Declaration. By owning or acquiring any interest in a Unit, in a Project, or in the Community, the party owning or acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

11.11 Effective Date. This Declaration and any amendment hereof shall take effect upon its being recorded in the office of the County Recorder of Summit County, Utah.

ARTICLE XII

Tennis Court Declaration

Within thirty (30) days following the incorporation of the Association, Developer shall execute, have notarized and recorded with respect to ownership and operation of the tennis courts, a Declaration of Covenants and Easements in the form attached hereto as Exhibit "D".

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ARTICLE XIII

Apartment Lease

This Declaration and all of Developer's covenants and agreements contained herein are expressly subject to the execution and recordation by the Association of a lease in the form attached hereto as Exhibit "E". Developer's obligations (set forth in Section 4.2.1 hereof) to convey title to the Parcel shall be completed in escrow in conjunction with the granting of such lease.

EXECUTED on the date and year aforesaid.

PARK WEST DEVELOPMENT CORP.,
a Utah Corporation

By

Its

J. E. Roberts
President

STATE OF UTAH)

: SS

COUNTY OF)

On the 12 day of February, 1985, personally appeared before me J. E. Roberts, who being by me duly sworn, did say that he is the President of PARK WEST DEVELOPMENT CORP., and said J. E. Roberts duly acknowledged to me that said corporation executed the same.

My Commission Expires:

8-22-87

Chris B. Lushbery
NOTARY PUBLIC, Residing at:

Summit County



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EXHIBIT "A"

Voting Privileges and Assessments

Voting Privileges: Each Unit shall have appurtenant thereto one vote for each person who can be provided sleeping accommodations within such Unit under a normal configuration. For example, the following types of Units would receive the number of votes shown opposite each. For this purpose, it is assumed that a "normal configuration" would include sleeping on sleeper sofas in living rooms and in the loft sleeping areas of two bedroom Chalet Units.

One Bedroom Red Pine Chalet Units	4
Two Bedroom Red Pine Chalet Units	8
Red Pine Townhouse Units	8

Assessments: All assessments made by the Association to the Owners of a particular Unit shall be in the ratio of the number of votes appurtenant to such Unit to the number of votes appurtenant to all Units in Red Pine Community.

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EXHIBIT "B"

Legal Description

The real property referred to as the "Parcel" in the Declaration to which this Exhibit is attached is located in Section 36, T 1 S, R 3 E, SLBM, which is in Summit County, Utah, and is more particularly described as follows:

Commencing at a point which is North 565' and West 407' from the Southeast corner of said Section thence North 70', thence East 102.51' to the Western line of a roadway known as Chalet Drive, thence North along said Western line 674', more or less, to the intersection with the right-of-way of Park West Drive, thence East 30' to the center line of Chalet Drive, thence South 864', more or less, to a point on said center line which is 449.2' North of the Southern section line, which point is also a point of an 80.0' radius curve to the right, the radius point of which bears West 80.0' thence Southwesterly along the arc of said curve 125.66', thence West along said center line, more or less, to a point of intersection with the right-of-way of Red Pine Road, thence North 10 degrees West 30' to a point on the Northern line of Chalet Drive, thence Easterly along said Northern line to a point which is West 448' from the East section line of said Section 36, thence North 154.775', thence North 45 degrees 0' East 58' more or less to the point of beginning.

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EXHIBIT "C"

The following provisions must legally constitute a portion of the Declaration of Condominium (as initially recorded or as subsequently amended) of any condominium project which joins the Red Pine Community:

ARTICLE _____

Red Pine Community Recreational Facilities

____.1 Recreational Declaration. A certain "Declaration of Covenants, Conditions and Restrictions of the Recreational Facilities of the Red Pine Community" (referred to in this Article as the "Recreational Declaration") was recorded in the office of the Summit County Recorder on _____, 1983, as Entry No. _____, in Book _____ at Pages _____. All terms used in this Article _____ which are defined in the Recreational Declaration shall have the meanings ascribed to them therein. As more fully provided for in the Recreational Declaration, the _____ has qualified to become a part of the Red Pine Community and each Owner of a Unit in said Project has become a Member of the Red Pine Community Association, a Utah nonprofit corporation, and has been granted a nonexclusive and limited right and easement to use and enjoy the Recreational Facilities.

____.2 Binding Effect of Recreational Declaration. The Recreational Declaration and all the terms and provisions thereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, with respect to all interests in real property (including, without limitation, units, limited common areas, and common areas) associated with or comprising a part of the _____ and shall be binding upon and inure to the benefit of all person who voluntarily, by operation of law, or otherwise now or hereafter hold any interest in said Project (including, without limitation, unit owners and purchasers, the association of unit owners, the declarant or developer, mortgagees, and trustees and beneficiaries under deeds of trust). Each person shall comply with, and all such interests shall be subject to, the terms of the Recreational Declaration, the Articles of Incorporation of the Red Pine Community Association, and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by the Recreational Declaration and said Articles.

____.3 Priority of Assessments. Unpaid regular and special assessments provided for in the Recreational Declaration shall constitute a lien upon condominium units in the _____ equal in priority and on the same footing as the lien for any unpaid assessments provided for in this Declaration of Condominium relating to the same period of delinquency.

____.4 Conflicts. In the event of a conflict between any provision(s) of this Declaration and any provision(s) of the Recreational Declaration, the provisions of the Recreational Declaration shall govern.

____.5 Prohibition Concerning Amendments. This Article _____ shall not be amended without the prior affirmative vote of at least eighty percent (80%) of Members present in person or by proxy at a duly noticed meeting of the Members of the Red Pine Community Association, the notice of which meeting must specify the exact terms of the proposed amendment and provide each Member with a proxy whereby he may vote for or against approval of such amendment.

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EXHIBIT D

DECLARATION AND AGREEMENT OF
COVENANTS AND EASEMENTS
(Tennis Facilities)

THIS DECLARATION AND AGREEMENT OF COVENANTS AND EASEMENTS (hereinafter "Declaration") is made on the _____ day of _____, 1984, by PARK WEST DEVELOPMENT CORP., a Utah Corporation (hereinafter referred to as the "Declarant") and RED PINE COMMUNITY ASSOCIATION (hereinafter referred to as the "Association").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of a parcel of real property located in Summit County, State of Utah, more particularly described on Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, Declarant has constructed upon such property four tennis courts and fencing complimentary thereto, which tennis courts have been used by the Unit Owners of the following five (5) condominium projects which are contiguous to or in close proximity to such tennis courts: Red Pine Chalets, Phase I; Red Pine Chalets, Phase II; Red Pine Chalets, Phase III; Red Pine Chalets, Phase IV; and Red Pine Townhouses; and

WHEREAS, it is the intention of the Declarant that the tennis courts shall be for the use, benefit and enjoyment of the Declarant, its successors and assigns, as well as Members of Red Pine Community (as defined herein) all in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises set forth hereinabove, the Declarant hereby declares and certifies as follows:

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ARTICLE I

Definitions

In addition to the terms defined in the Recitals to this Declaration, the following terms, when capitalized herein, shall have the meanings set forth below, unless the context otherwise requires:

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1.1 Tennis Facilities: The term "Tennis Facilities" shall mean and include the tennis courts, nets and fences located upon the real property located in Summit County, State of Utah, more particularly described upon Exhibit "A" attached hereto and incorporated herein.

1.2 Red Pine Community: The term "Red Pine Community" or "Community" shall, at any point in time, mean, refer to and consist of the "Recreational Facilities" and all "Condominium Projects" as those terms are defined in that certain Declaration of Covenants, Conditions, Restrictions of the Recreational Facilities for the Red Pine Community, recorded in Book _____ at Pages _____ through _____, of the Summit County Recorder's Office, as said Declaration may be amended or supplemented from time to time.

1.3 Association: The term "Association" shall mean and refer to Red Pine Community Association, a Utah non-profit corporation.

1.4 Member: The term "Members" shall mean and refer to every person or entity who holds membership in the Association.

1.5 Permitted Users: The term "Permitted Users" shall mean: (1) the Declarant; (2) employees, agents, guests and invitees of the Declarant; (3) Members; (4) guests and invitees of Members; (5) employees and agents of the Association; (6) tenants of Members; and (7) guests and invitees of Members.

1.6 Condemnation: The term "Condemnation" shall mean a taking under the power of eminent domain or a voluntary transfer or conveyance under threat of such taking.

1.7 Declarant. The term "Declarant" shall mean and refer to Park West Development Corp., a Utah Corporation, and to its successors, assigns or Affiliated Companies.

ARTICLE II

STATEMENT OF INTENT

2.1 Intent. It is the intent of this Declaration to provide for the operation, use and enjoyment of the Tennis Facilities by the Permitted Users notwithstanding the fact that such Tennis Facilities are owned by the Declarant.

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ARTICLE III

EASEMENTS, RIGHTS AND PRIVILEGES

3.1 Tennis Facility Easements. Declarant hereby establishes in favor of Members and the Declarant, a non-exclusive right, privilege and easement to use, and to permit the Permitted Users to use, in common with all other Members and Permitted Users the Tennis Facilities for the uses and purposes for which they were designed, subject, however, to the provisions of Section 4.1 and to the following:

(a) During the period that such party is responsible for maintenance of the Tennis Facilities, the Declarant or the Association, as the case may be, may establish such reasonable nondiscriminatory rules and regulations as may from time to time be deemed necessary or desirable for the proper and efficient operation of the Tennis Facilities, provided such rules and regulations are applicable to all Permitted Users and the exercise of the rights, easements and privileges granted herein shall be subject to such rules and regulations;

(b) At no time may the Declarant or the Association levy any charge to Members (and their respective families) or tenants, guests and invitees of Members who are using a Member's Unit (except that the Association may levy assessments pursuant to the Declaration of Covenants, Conditions and Restrictions of the Recreational Facilities for Red Pine Community pursuant to such Declaration) for the use of the Tennis Facilities, but the Declarant and/or Association may institute a validation system for the purpose of preventing or discouraging abuse of such Tennis Facilities by persons other than those entitled to the use thereof;

(c) The easements, rights and privileges created in this Section 3.1 are not intended, and shall not be construed, as a dedication of any portion of the Tennis Facilities for public use, and the Declarant shall have the right to take from time to time whatever steps, including temporary closures (not exceeding 24 hours at any one time) of such facilities or portions thereof, as may be necessary to avoid such dedication.

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ARTICLE IV

OPERATION OF TENNIS FACILITIES

4.1 The parties hereto acknowledge that the Tennis Facilities presently consist of four finished tennis courts, and a fence system around the perimeter of such courts. Until such time as the Declarant elects to assume the full responsibility for upkeep and maintenance of the Tennis Facilities as provided hereinbelow, the Association herewith and hereby covenants, at its own expense, to maintain or cause the maintenance of the Tennis Facilities in good order, condition and state of repair in at least as good a condition as such Tennis Facilities now exist. Notwithstanding any provision contained hereinabove, during such time that the Association is responsible for the maintenance of the Common Facilities as provided herein, such Tennis Facilities shall be available solely for the use of (1) Members; (2) employees, agents, guests and invitees of the Association; (3) tenants of Members; and (4) guests and invitees of Members.

At such time as the Developer notifies the Association in writing of its election, the Declarant, its successors and assigns, shall at its own expense, maintain or cause the maintenance of the Tennis Facilities in good order, condition and state of repair in at least as good a condition as the Tennis Facilities exist on the date of such election. As of such date and subsequent thereto, the Tennis Facilities shall be available for the use of all Permitted Users as provided herein.

4.2 Taxes. All real estate taxes, assessments and other charges that may be levied, assessed, or charged against the Tennis Facilities shall be the responsibility of either the Association or the Declarant, respectively, during such time as such party is responsible for maintenance of the Tennis Facilities as provided herein.

4.3 Maintenance Responsibilities. It is anticipated that the Declarant and/or Association, as the case may be, may contract for the maintenance and repair of the Tennis Facilities, but such arrangement shall not relieve the Declarant and/or Association, as the case may be, from its obligation to maintain the Tennis Facilities. The Tennis Facilities shall be maintained in good repair and in a safe and sound condition, clean and free of rubbish, debris and other hazards. The obligation to maintain the Tennis Facilities shall include, but not be limited to, the following:

(a) maintenance of the surface of all Tennis Facilities, including the repairing or resurfacing of such Tennis Facilities when necessary with materials in quality, appearance and durability equal to the original materials; the removal of debris and waste materials and the washing and sweeping of tennis areas as required; and the painting and repairing of striping or markers as required;

(b) performance of necessary maintenance of all landscaping associated with the Tennis Facilities, if any, including the trimming, watering and fertilization of all grass, ground cover, shrubs and trees, removal of dead or waste material and replacement of any dead or diseased grass, ground cover, shrubs or trees.

4.4 Right to Perform. In the event that Declarant or Association, as the case may be, fails to discharge any of its obligations under this Article IV or any other Article of this Agreement within a reasonable time after receiving written notice thereof from the other party hereto, such non-defaulting party shall have the right to perform such obligations or pay such costs and charge the same to the other party responsible therefore. All costs and expenses incurred by the non-defaulting party shall bear interest at 12% per annum from the date the same are incurred.

ARTICLE V

INDEMNIFICATION

5.1 Indemnification. During such period as the Declarant or the Association, as the case may be, is responsible for the operation and maintenance of the Tennis Facilities, such party shall defend and hold harmless the other party from and against any and all claims for injury or death to persons or damage to or loss of property, arising out of the use, operation and maintenance of the Tennis Facilities and occasioned in whole or in part by any act or omission of such controlling party, or its members, officers, agents, employees and/or Permitted Users.

ARTICLE VI

INSURANCE

6.1 Property Insurance. During such time as the Declarant or the Association, as the case may be, is responsible for maintenance of the Tennis Facilities, such party shall keep the Tennis Facilities insured, at such party's sole expense, against loss or damage from the risks

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covered by standard multi-peril package policy of property insurance on the facilities. Such policy shall be in an amount not less than eighty-five percent (85%) of the full replacement value of the Tennis Facilities. The policy of insurance shall provide for waiver of subrogation against all Members or tenants of Members with respect to the Community.

6.2 Liability Insurance. During such period of time that the Declarant or the Association, as the case may be, shall be responsible for the maintenance of the Tennis Facilities, such party shall maintain, at its sole expense, general public liability insurance against claims for personal or bodily injury or death and property damage occurring upon or about the Tennis Facilities, with limits of not less than \$1,000,000.00 for injury or death to a single person arising out of any one occurrence, \$3,000,000.00 for injury or death to any number of persons arising out of any one occurrence and \$500,000.00 for any incident of property damage.

ARTICLE VII

DAMAGE OR DESTRUCTION

7.1 Obligations to Rebuild. In the event of damage to or destruction of the Tennis Facilities, the Declarant or Association who is then responsible for the maintenance of the Tennis Facilities, unless otherwise agreed to by the other party in writing, shall repair, rebuild and restore the same to substantially the same size and quality existing prior to such damage and destruction. Such repair and rebuilding and restoration shall be performed promptly and diligently in a workmanlike manner and, once commenced, shall be carried through continuously to conclusion, subject only to unavoidable delays. In the event of any damage to or destruction of the Tennis Facilities, any proceeds from the property insurance maintained with respect to such Tennis Facilities pursuant to Section 6.1 hereof shall be paid to the party then responsible for maintenance of such Tennis Facilities to be applied to the repair, restoration or rebuilding of such Tennis Facilities.

In the event the Declarant or the Association, as the case may be, is not required to repair, rebuild and restore any Tennis Facilities, such party shall promptly clear the site of such improvements and restore the same to a slightly condition.

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ARTICLE VIII

CONDEMNATION

8.1 Condemnation. If there is a taking in condemnation of any portion of the Tennis Facilities so that the remaining facilities cannot be restored, this Declaration and the easements, rights, restrictions, covenants and obligations created hereunder shall be terminated by recordation in the office of the Recorder of Summit County, State of Utah, of an instrument signed by the Declarant and the Association. The proceeds of such condemnation shall be payable to Declarant and the Association for the benefit of the Members, or their respective successors and assigns, as their respective interests may appear.

ARTICLE IX

ENFORCEMENT

9.1 Enforcement. The Declarant and/or the Association shall have the right to enforce each and every provision of this Declaration and proceed, at law or in equity, against any person or persons who have violated or are attempting to violate any provision hereof, the enjoin and prevent them from doing so, to cause such violation to be remedied and/or to recover damages for such violation.

9.2 Attorneys' Fees. In any legal or equitable proceedings for the enforcement of, or to restrain the violation of, this Declaration, or any provision thereof, the losing party or parties shall pay the attorneys' fees of the prevailing party or parties in such amount as fixed by the Court in such proceedings.

9.3 Cumulative Remedies - Waiver. All remedies provided herein or at law or in equity shall be cumulative and non-exclusive. The failure of any party entitled under the provisions hereof to enforce any provision herein contained shall in no event be deemed a waiver of the right to do so thereafter or waiver of the right to enforce any other provision hereof.

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ARTICLE X

TERM - MODIFICATION

10.1 Term. This Declaration and all easements, rights, restrictions, covenants and obligations contained

herein shall continue in full force and effect for the time and duration of Red Pine Community as set forth and provided in that certain Declaration of Covenants, Conditions and Restrictions of the Recreational Facilities for the Red Pine Community, recorded in Book _____ at Pages _____ through _____, of the Summit County Recorder's Office, as said Declaration may be amended or supplemented from time to time.

10.2 Termination or Modification. This Declaration may be amended, modified or terminated by the recordation, in the office of the recorder of Summit County, State of Utah, of a written instrument signed by the Declarant and the Association.

ARTICLE XI

MISCELLANEOUS

11.1 Mortgages. Any mortgage, deed of trust or other security agreement ("mortgage") affecting the Tennis Facilities shall at all times be subject and subordinate to the terms of this Declaration, and upon foreclosure of or sale under the power of sale contained any such mortgage with respect to the Tennis Facilities, the purchaser shall acquire title to the Tennis Facilities subject to all the terms of this Declaration.

11.2 Covenants Running with the Land. The easements, rights, restrictions, covenants and obligations contained in this Declaration shall run with the land and shall be binding upon and inure to the benefit of the Declarant and the Association and their respective successors and assigns.

11.3 No Joint Venture. Nothing contained in this Declaration shall be construed to make the Declarant and the Association partners or joint venturers or to render one liable for the debts or obligations of the other.

11.4 Third Parties. This Declaration is for the exclusive benefit of the Declarant and the Association and the Permitted Users and not for any other persons. Nothing contained in this Declaration, express or implied, is intended to confer upon any person, other than the parties designated hereinabove, any rights or remedies under or by this Agreement.

11.5 Severability. If any provision, or any portion thereof, of this Declaration, or the application thereof to any person, entity or circumstances shall, to any extent, be held invalid, inoperative or unenforceable, the remainder of

this Declaration or the application of such provision or portion thereof to any other persons, entities or circumstances shall not be affected thereby; the remainder of this Declaration shall be given effect as if such invalid or such inoperative portion had not been included; and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

11.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

11.7 Notice. Any notice, request, demand, approval or consent given or required to be given under this Declaration shall be in writing and shall be deemed to have been given when mailed by United States registered or certified mail, postage prepaid, to the Declarant or the Association, as the case may be, at the address given by such party to the other from time to time. The Declarant or the Association may, at any time, change its address for the above purposes by mailing notice to the other party in the manner provided above.

11.8 Headings. The Article and Section headings contained herein are for convenience and reference only, and in no way define or limit the scope or content of this Agreement, and such headings shall not be considered in any construction or interpretation of this Declaration or any party thereof.

11.9 Transfer of Title. Upon any sale or transfer of title to the Tennis Facilities, or any party thereof, the Declarant shall, concurrently with the filing for record of the instrument of conveyance or transfer, give the Association written notice of the transfer and of the identity of the transferee.

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IN WITNESS WHEREOF, Declarant and Association have executed this Declaration and Agreement of Covenants and Easements as of the day and year first above written.

DECLARANT:

PARK WEST DEVELOPMENT CORP.

By _____
Its _____

ASSOCIATION:

RED PINE COMMUNITY ASSOCIATION

By _____
Its _____

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JER

EXHIBIT E

APARTMENT LEASE

THIS AGREEMENT executed in duplicate this _____ day of _____, 1984, at Salt Lake City, Utah, between the RED PINE COMMUNITY ASSOCIATION, hereinafter referred to as "Lessor", and PARK WEST DEVELOPMENT CORP., hereinafter referred to as "Lessee".

1. Lessor does hereby lease to Lessee, and Lessee does hereby lease from Lessor the basement apartment of the Red Pine Clubhouse building.

2. The term of this lease shall be for a period of twenty-five (25) years commencing February 1, 1984. This lease shall not be extended except by an instrument in writing executed by both parties. The holding over by Lessee after the expiration of the term set forth above shall not be deemed a month to month tenancy or any other lawful tenant in the absence of an agreement in writing executed by both parties establishing such tenancy.

3. Lessee shall pay to Lessor a monthly rental of \$75.00 for each month during the term of this lease. Rent shall be paid to Lessor at such place as Lessor may hereafter designate by notice in writing.

4. Lessee may, either voluntarily or by operation of law, assign this lease or any rights given to Lessee hereunder, and Lessee may sublet the demised premises or any portion thereof, without the prior written consent of Lessor. Notwithstanding the foregoing, Lessor reserves and Lessee grants to Lessor a right of first refusal to acquire by assignment or to sublease the demised premises as follows: In the event Lessee obtains an offer to assign this lease to a person or entity which is not a related person or entity, or to sublease the demised premises for a term longer than six (6) months, a copy of such offer shall be delivered to Lessor and Lessor shall have a period of thirty (30) days to accept an assignment or to sublet the demised premises, as the case may be, on the same terms as those contained in the offer received by Lessee. In the event Lessor elects not to take an assignment of this lease or to sublet the demised premises or in the event Lessor fails to communicate its election to Lessee before expiration of thirty (30) days, Lessee shall thereafter have the right for a period of sixty (60) days to assign this lease or sublet the demised premises but only in accordance with the terms of the offer delivered to Lessor. The term "related person" shall mean any person who owns, directly or indirectly, more than twenty percent (20%) of the

outstanding stock of Lessee. The term "related entity" shall mean an entity of which fifty percent (50%) or more is owned by one or more parties which own fifty percent (50%) or more of the outstanding stock of Lessee.

5. Lessee acknowledges that it has examined the demised premises and the good condition thereof except as herein otherwise specified. Upon expiration of this lease from any cause whatever, Lessee shall surrender the premises in their original good condition, reasonable wear and tear excepted. Lessee shall remove all trash and debris from the premises and shall leave the premises in broom clean condition.

6. Lessee shall forthwith repair at its expense all damage resulting from the act or neglect of Lessee and those persons who come into any portion of the building of which the demised premises are a part as the invitee of Lessee. If Lessee fails to make such repairs, Lessor may, but shall not be obligated so to do, make such repairs, and Lessee shall reimburse Lessor for the cost thereof upon demand as an additional payment of rent under this lease.

7. The demised premises are limited strictly to the interior of the demised apartment and shall not entitle Lessee to any use of the ground space surrounding the building of which the demised premises form a part, other than for the purposes of ingress and egress. Lessor shall not be required to furnish to Lessee any facilities, storerooms, laundry rooms or other premises, not otherwise available to members of the Red Pine Community Association, provided, however, that Lessee shall be subject to any and all rules and regulations promulgated for the use of such facilities. The use of any such laundry room, storeroom or other facilities shall be at the risk of the person using the same, and neither Lessor nor its agents or employees shall be liable for any injury to person, loss by theft or otherwise, or damage to property resulting from use of such facilities.

8. If Lessor, its agents or employees, should render any service to Lessee, such as acceptance of packages, or any other service of any kind or character, or in the event Lessor permits any person or firm not in the employment of Lessor access to the building of which the demised premises are a portion for the purpose of performing services for Lessee, the rendition of such accommodation services or the granting of access to such persons for the purpose of performing any service function is a courtesy to Lessee for which no charge has been included in the sum charged as rent. Lessor shall not be obligated to perform, or permit

the performance of, such services, nor the continuation thereof. Neither Lessor, its agents or employees, shall be responsible for any loss, damage or injury of any nature which may result from the rendition of such accommodation services or by reason of the activities of any person or firm given access to the premises as hereinabove set forth.

9. The demised premises shall be used solely for residential, office or storage uses and shall not be used to operate any retail establishment or for any illegal purpose nor contrary to any provision of law affecting the same.

10. Should Lessor, for any reason, be unable to deliver possession of the demised premises at the time specified for the commencement of the term of this lease, Lessor shall not be liable for any damage caused thereby, and Lessee shall be entitled to appropriate credit on the rent reserved hereunder for such period as delivery of possession cannot be made. If Lessor is unable to deliver possession within 10 days after the time specified for commencement of this lease, Lessee shall have the right to cancel this lease and to a refund of all sums paid to Lessor.

11. Neither the delivery of keys by Lessee to Lessor, its agents or employees, nor any act on the part of Lessee shall serve to constitute a termination of this lease prior to the expiration of the term hereof unless such delivery or other act is acknowledged in writing by Lessor and Lessee as constituting a termination of this lease.

12. If Lessee shall fail to pay the rent reserved herein when the same becomes due and payable, or if Lessee shall fail to keep, observe or perform any other covenant, condition or obligation of this lease on his part to be kept or performed, including but not limited to Lessee's failure to observe rules and regulations promulgated for Lessor's members, or if Lessee shall abandon the demised premises, Lessor, in addition to all other rights and remedies it may have at law, shall have the option to do any of the following after first giving Lessee ten (10) days written notice of such failure.

(a) Re-enter and remove all persons and property from the premises, storing said personal property in a public warehouse or elsewhere at the cost of, and for the account of, the Lessee. No such re-entry or taking possession of the premises by Lessor shall be construed as an election on the part of Lessor to terminate this lease unless a written notice of such intention is given by Lessor to Lessee.

(b) To collect by suit or otherwise each installment of rent or other sum as it becomes due hereunder, or to enforce by suit or otherwise, any other term or provision hereof on the part of Lessee required to be kept or performed.

(c) Terminate this lease, in which event Lessee agrees to surrender immediately possession of the premises, and to pay to Lessor, in addition to all other sums to which Lessor may be entitled, all damages suffered by Lessor by reason of Lessee's default, including the cost of recovering the premises.

13. In the event that any personal property remains upon the demised premises upon termination of this lease or upon re-entry by Lessor under rights given to Lessor by this lease, Lessor shall have the right to remove the same and it shall have a lien upon all such property for the purpose of securing to Lessor the reimbursement to Lessor of all costs of every nature incurred in removing the said personal property from the demised premises, including a reasonable attorney's fee. To enforce the said lien, Lessor may sell all or any part of such property, at public or private sale, and in such manner and at such times and places as Lessor, in its sole discretion, may deem proper. Such sale may be made only with due notice to Lessee and with demand upon Lessee for reimbursement of the said costs. The proceeds realized upon any such sale shall be applied first to the payment of expenses of the sale, reimbursement of costs to remove the property from the demised premises, costs of storage pending sale, and reasonable attorney's fees incurred in connection therewith; any balance remaining shall be applied to the payment of any other sums which may then or thereafter be due to Lessor from Lessee, after satisfying all of the obligations previously enumerated, the balance, if any, shall be paid over to Lessee.

14. The prevailing party in any legal action regarding this lease shall be entitled (in addition to its damages and other remedies obtained) to all expenses which may be incurred in prosecuting any action, including reasonable attorney's fees, by reason of any breach of this agreement by the other party.

15. Neither the acceptance by Lessor of any installment of rent after its due date nor the waiver by Lessor of any other breach by Lessee of this agreement shall constitute a waiver by Lessor of any future default on the part of Lessee.

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16. This lease contains the entire agreement between Lessee and Lessor relating to the leasing of the demised premises. No representation which is not incorporated herein shall be binding and all representations which have been made are incorporated herein or, if not so incorporated, shall be deemed to have been waived. All preliminary negotiations between the parties are merged into, and superseded by, the provisions of this lease. This lease shall not be enforceable until executed by both Lessee and Lessor.

17. All notices to be given Lessee shall be given in writing personally or by depositing the same in the United States mail, postage prepaid, and addressed to Lessee at Box 1598, Park City, Utah 84060, or such other place or places as may be designated in writing from time to time by Lessee. All notices to be given to Lessor shall be given in writing personally or by depositing the same in the United States mail, postage prepaid, and addressed to Lessor at _____, or such other place or places as may be designated in writing from time to time by Lessor.

EXECUTED the day and year first hereinabove set forth.

LESSOR:

RED PINE COMMUNITY ASSOCIATION

By _____
Its _____

LESSEE:

PARK WEST DEVELOPMENT CORP.

By _____
Its _____

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