

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

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OPEN SPACE AGREEMENT

WASATCH CO RECORDER-ELIZABETH H PARCELL  
1997 NOV 03 10:07 AM FEE \$30.00 BY MWC  
REQUEST: DEER CREST ASSOCIATES I LC

DEER CREST PROJECT

Deer Crest Estates Subdivision—Phase I  
Open Space 1 through Open Space 9

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

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

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

THE PARTIES AGREE AS FOLLOWS:

1. Open Space Preservation. DCA hereby agrees to preserve the following real property as open space (the "Open Space"):

Open Space 1 through Open Space 9 as shown on the plat of Deer Crest Estates Subdivision—Phase I recorded in the official records of the Wasatch County Recorder.

The above open space preservation covenants are subject to the reserved rights, limitations and agreements set forth below.

2. Permitted Uses and Activities within the Open Space. The Open Space is intended to be used for general recreational purposes including the construction, use, maintenance, repair and reconstruction of ski runs and ski trails and structures used for ski and recreational purposes and related ski facilities, and biking and hiking trails. The location of these recreational facilities and trails are shown on the Plat or will be established by the final

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construction plans as approved by the County. The Open Space may also be used for the following uses and activities:

- a. The construction, use, maintenance, repair and reconstruction of roads, bridges, and tunnels and the construction, repair and maintenance of any retaining walls or other slope retention structures and any cuts, fills or other changes to the natural terrain required in connection with the roads, bridges and tunnels.
  - b. The construction, use, maintenance, repair and reconstruction of any utility lines, utility facilities and related service roads.
  - c. The right of DCA, the Deer Crest Master Association or Deer Crest lot owners to install fire suppression equipment and to modify existing foliage adjacent to lots in order to improve fire safety.
  - d. All recreational activities and any temporary or permanent above ground improvements associated with such activities.
3. Hiking and Biking Trails.
- a. Public Access to Hiking and Biking Trails. DCA hereby grants the general public the non-exclusive right of access to the hiking and biking trails generally shown on Exhibit B for hiking and biking purposes. The rights of the general public shall be subordinate to the rights of Deer Valley Resort Company or any successor in the operation of skiing facilities and biking trails within the Open Space and the rights of the Deer Crest Master Association pursuant to the Master Declaration of Covenants, Conditions and Restrictions for Deer Crest. The rights of the Deer Crest Master Association and any operator of hiking and biking trails shall include the rights to establish reasonable rules and regulations based on health, safety and welfare considerations relating to the use of hiking and biking trails for hiking and biking purposes. These rules and regulations may include restrictions on the hours of use, the need to stay on designated trails and other similar matters. Trail rules and regulations shall be subject to County approval. The public hiking and biking trails may also be closed from time to time on a temporary basis for construction and maintenance and for private events. The public may not be charged for the non-event use of hiking and biking trails for those purposes.
  - b. Location of Hiking and Biking Trails with Public Access. The hiking and biking trails that are the subject of public access shall be identified and included within one or more specific easement instruments to be recorded against the Open Space. Upon the recordation of instruments containing

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

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

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

5. Ownership of Open Space. DCA may retain ownership of the Open Space until after DCA shall have completed construction of all roads, bridges, tunnels, ski facilities, ski runs, ski trails, hiking and biking trails and other improvements affecting the Open Space., DCA hereby agrees to convey the Open Space in whole the Deer Crest Master Association no later than three (3) months after completion of those improvements. The conveyance shall be subject to this Agreement, the rights of DCA or the Deer Crest Master Association to construct, use, maintain, repair and reconstruct roads, utilities and hiking and biking trails within the subject areas, and the rights of DCA, the Deer Crest Master Association, Deer Valley Resort Company, or any other operator of ski facilities on the subject land to construct, use, maintain, repair and reconstruct ski facilities, ski runs and ski trails within the subject areas.

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

To DCA:

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

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To Wasatch County:

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

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

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

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

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

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

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

12. Covenants Run With the Land. Each right and obligation in this Agreement (whether affirmative or negative in nature) (a) shall constitute a covenant running with the land; (b) shall benefit and bind every person having any fee, leasehold or other interest in any portion of the property described herein; and (c) shall benefit and be binding upon any person whose title is acquired by voluntary conveyance, judicial foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. DCA shall not have any obligations under this Agreement after it has transferred its interest in the subject property. DCA's rights and obligations under this

Agreement may be transferred to and assumed by the Deer Crest Master Association with the written approval of the County, which approval shall not be unreasonably withheld.

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

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

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

County:

WASATCH COUNTY

By:

Its:

*[Handwritten signature]*  
*[Handwritten signature]*

STATE OF Utah

)

:ss.

COUNTY OF Wasatch

)

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

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

Residing at \_\_\_\_\_

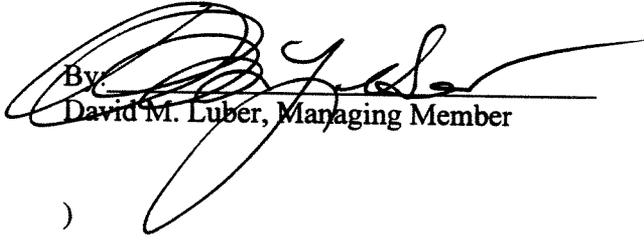
My Commission Expires:  
\_\_\_\_\_

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DCA:

DEER CREST ASSOCIATES I, L.C.

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

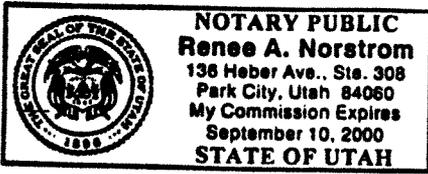
By   
David M. Lubber, Managing Member

STATE OF UTAH )

COUNTY OF Summit )

:SS

The foregoing instrument was acknowledged before me on the 31<sup>ST</sup> day of October, 1997, by David M. Lubber, Managing Member of LCC Properties Group, L.C., the managing member of Deer Crest Associates I, L.C.



  
Notary Public  
Residing at Park City

My Commission Expires:  
9/10/2000

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