

Return to:



\*W2594314\*

Parcel Identification Numbers:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E# 2594314 PG 1 OF 12  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
06-SEP-12 1218 PM FEE \$1.00 DEP SPY  
REC FOR: WEBER COUNTY PLANNING

9-4-12

## IRREVOCABLE TRANSFER OF DEVELOPMENT RIGHT CONSERVATION EASEMENT

THIS IRREVOCABLE GRANT OF TDR CONSERVATION EASEMENT (hereinafter "Easement") is made this 4<sup>th</sup> day of Sept. 2012, by Snowbasin Resort Company (hereinafter "Grantor") to Weber County (hereinafter "Grantee") and to Weber Basin Water Conservancy District (hereinafter "Grantee") in perpetuity as holder of the Easement pursuant to Utah Code Annotated 57-18 ("Land Conservation Easement Act") and the Ogden Valley Destination and Recreation Resort Zone DRR-1 ("Resort Zoning Regulation").

### WHEREAS:

1. The Land Conservation Easement Act is intended to promote the preservation and maintenance of land and water areas for natural, scenic or open conditions or for recreational, agricultural, cultural, or wildlife habitat uses consistent with the protection of open lands.
2. The Ogden Valley Destination and Recreation Resort Zone DRR-1 is intended to provide flexible development standards to Resorts that are dedicated to preserving open space and recreational resort opportunities while promoting the goals and objectives of the Ogden Valley General Plan.
3. Weber County ("County") and Snowbasin Resort Company ("Snowbasin") have entered into a Zoning Development Agreement whereby the County has agreed to rezone Snowbasin property ("Snowbasin Resort") described on Exhibit A as DRR-1 under certain circumstances and conditions.
4. Consistent with the foregoing laws, regulations, ordinances and agreements, and subject to the specific terms of this Easement contained herein, the Grantor and Grantees intend and have the common purpose of encumbering the 26-acre parcel as further described on Exhibit B attached hereto ("Protected Property") by placing development restrictions on the Protected Property and allowing the transfer of development unit rights, which shall run with the land and bind the Protected Property in perpetuity.

**NOW, THEREFORE**, to permit the transfer of certified developmental rights from the Protected Property, and in consideration of the covenants, terms, conditions and restrictions hereafter set forth and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor does grant and convey to Grantees, forever and in perpetuity, an Easement in the Protected Property resulting in the transfer to Snowbasin Resort of 521 (91%) of the 571 development rights off of the Protected Property described in Exhibit E and, for and in consideration of the recitals and the mutual covenants, terms, conditions, and restrictions contained herein.

I. **Nature of Easement.** This Easement shall be irrevocable and perpetual. It is an easement in gross, and as such, is inheritable and assignable and runs with the land as an incorporeal interest in the Protected Property enforceable with respect to the Protected Property by the Grantees and their respective successors and assigns, against the Grantor and its heirs, successors, and assigns.

II. **Purpose.** The purpose of this Easement is to:

Protect and preserve open space qualities of the Ogden Valley floor by transferring 521 (91%) of the 571 development rights off of the Protected Property (which is located on the shores of Pineview Reservoir) to Snowbasin Resort. This statement of purpose is intended as a substantive provision of the Easement. Any ambiguity or uncertainty regarding the application of the provisions of this Easement will be resolved so as to further this purpose.

III. **Permitted Uses and Activities.** As owners of the Protected Property, the Grantor retains the right to perform any act consistent with the applicable zoning, to the extent such act is not prohibited or limited by the requirements of this Easement. Such act(s) shall be limited to the developable area as shown on Exhibit C and, more specifically, include the following which are consistent with applicable zoning for the area in which the Protected Property is located:

- 50 development units. Development units may include single family units, multi-family units, rental residential units, hotel rooms, or any combination thereof. One development unit shall be equal to one dwelling unit or one hotel room.
- Infrastructure, commercial development, and amenities needed to serve the 50 development units
- The right to allow or restrict public access. This is not intended to affect the rights granted by a certain easement granted in Book 686 Page 450.
- Existing easements as shown on Exhibit C.
- Agriculture as a non-conforming use.
- Special event parking.
- Boat parking area.

Approved to  
Change  
8/22/12

A. **Prohibited Uses and Activities.**

Grantor may not use any of the 521 development rights transferred herein on the Protected Property. No other uses or activities shall be prohibited except anything inconsistent with the terms of this Easement and applicable zoning. Any excluded listing of a prohibited use or activity does not constitute an approved use or imply that uses are allowed to be inconsistent with the applicable zoning for the area in which the Protected Property is located.

**IV. Water Rights.**

Grantor hereby agrees to not convey, transfer, encumber or otherwise separate or change historical water use and rights on the Protected Property until such time as that the existing agricultural use ceases and a final and permanent residential development has begun on said property.

- V. Enforcement & Monitoring.** Grantees shall have the right to enforce the terms of this Easement by entering the Protected Property, provided that twenty four (24) hour advance notice is provided to Grantor, for the purpose of inspecting the Protected Property for suspected/reported violations. In addition, Grantees shall have the right to enter the Protected Property once a year, at a mutually agreed time for the purpose of inspection and compliance monitoring regardless of whether Grantees have reason to believe that a violation of this Easement exists. The County may enforce the 50 unit development right limitation on the Protected Property through its standard development approval process and/or other zoning enforcement process. Weber Basin Water Conservancy District may enforce this Easement as it relates to any development near the shoreline of Pineview Reservoir, or to any deterioration of said shoreline or any contamination of the waters of Pineview Reservoir. In addition, Grantees may, at their discretion use any available legal or equitable remedy (including but not limited to the provisions of Utah Code Ann. 57-18-6) to secure and restore compliance with the standards set forth in the Easement. Exhibit C depicts a baseline of the relevant features and existing conditions of the Protected Property for monitoring and enforcement purposes.

- VI. Additional Transferrable Units.** Additional units may be transferred off of the Protected Property and would be eligible for matching and/or bonus units per the Resort Zoning Regulation.

- VII. Termination and Extinguishment.** This Easement and the transfer of development rights described herein are permanent and may not be terminated or extinguished.

- VIII. Subordination.** Grantor has clear title to the Protected Property which is not encumbered by a mortgage, deed of trust or other instrument securing the Protected Property and its unrestricted value as collateral. If Grantor ever encumbers the Protected Property by a mortgage, deed of trust or other instrument securing the Protected Property and its unrestricted value as collateral, such encumbrance shall be subordinate to this Easement and as such, any beneficiary, by exercising any right

granted to them under such encumbering instrument, cannot and will not modify, extinguish or affect the Grantees' right to enforce the terms of this Easement.

**IX. Costs and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to ownership, operation, upkeep, and maintenance of the Protected Property.

A. **Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Protected Property.

B. **Hold harmless.** This Easement does not alter the Grantor's liability arising out of contractual or tort actions, including but not limited to actions brought for personal injury or property damage, that occur on or about the Protected Property. The Grantor shall hold harmless, indemnify, and defend the Grantees from and against all liabilities, penalties, costs, losses, damages, claims, or judgments in any way connected to its contractual liability and to any injury or to the death of any person, or damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, unless due to the negligence of Grantees. This subsection shall not be construed to relieve either the Grantor or the Grantees from any liability for which it would otherwise be responsible for injuries to its employees occurring on the Protected Property in the course and scope of their duties.

**X. Transfer of Protected Property:** Upon transfer of the Protected Property, or any interest in the Protected Property, from one landowner to another, the conveyance document shall expressly refer to this Easement and be subject to its terms, covenants, conditions, and restrictions, which shall run with the land and bind the Protected Property in perpetuity. Any failure to comply with this Section X shall not adversely affect the Grantees' right to enforce the terms of this Easement in any way.

**XI. Recordation.** Grantees shall record this instrument in the Office of the Weber County Recorder and may re-record it at any time.

**XII. Notices.** Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to another party under the terms of this Easement shall be in writing and either served at or mailed to:

GRANTOR(S): Snowbasin Resort Company  
P.O. Box 460  
Huntsville, Utah 84317

GRANTEE: Weber County  
2380 Washington Blvd., Suite 240  
Ogden, UT 84401

GRANTEE: Weber Basin Water Conservancy District

2837 East Highway 193  
Layton, Utah 84040

or to such other address as any party from time to time shall designate by written notice to others.

**XIII. General Provisions.**

- A. Amendment. If circumstances arise under which an amendment to this Easement would be appropriate, the owner of the Protected Property and the Grantees may jointly amend this Easement provided that such an amendment does not diminish the effectiveness of this Easement in carrying out its purpose. All amendments to this Easement shall be by a written instrument signed by Grantor and Grantees or their respective successors or assigns.
- B. Controlling Law. The interpretation or performance of this Easement shall be governed by the laws of the State of Utah. Any legal proceeding regarding this Easement shall be initiated in the courts of Weber County, Utah.
- C. Interpretation. This Easement shall be interpreted to resolve any ambiguities and questions of the validity of specific provisions to give maximum effect to its preservation purpose, as stated above. If the Grantor has any doubt concerning the Easement, covenants, conditions, limitations or restrictions herein contained with respect to any particular use of the said Protected Property, they may submit a written request to the Grantees for consideration and of such use.
- D. Entire agreement. This Easement sets forth the entire agreement of the parties with respect to the issues addressed herein and supersedes all prior discussions, negotiations, understandings, or agreements relating to these issues, all of which are merged herein.
- E. No forfeiture. Nothing in this Easement shall result in a forfeiture or revision of Grantor's title in any respect.
- F. Successors. As stated in the above terms and recitals, all covenants, terms, conditions, and restrictions of this Easement shall run with the land and be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.
- G. Severability. If any portion of this Easement is declared unlawful or invalid, the remainder of the Easement shall remain in full force and effect.
- H. Authority of Signatories. The individuals executing this Easement warrant and represent that they are duly authorized to execute and deliver this Easement.

- I. Expenses of Enforcement. In any proceeding to enforce, interpret, rescind or terminate this Easement or in pursuing any remedy provided hereunder or by applicable law, the prevailing party shall be entitled to recover from the other party or parties all costs and expenses, including a reasonable attorney's fee, whether such proceeding or remedy is pursued by filing suit or otherwise, and regardless of whether such costs, fees and/or expenses are incurred in connection with any bankruptcy proceeding. For purposes of hereof, the term "prevailing Party" shall include, without limitation, a party who agrees to dismiss an action or proceeding upon the other's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought. The provisions set forth in this paragraph shall survive the merger of these provisions into any judgment.
  
- J. Specific Performance. Each of the parties acknowledges and agrees that the other parties would be damaged irreparably and that it would be extremely impracticable to measure in full all of the resulting damages in the event any of the provisions of this Easement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each of the parties agrees that the other parties shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Easement and to enforce specifically this Easement and the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having jurisdiction over the parties and the matter, in addition to any other remedy to which they may be entitled, at law or in equity. Each party expressly waives the defense that a remedy in damages will be adequate (without, however, waiving its respective right to pursue the remedy of damages if it elects to do so).
  
- K. Compliance with the Land Conservation Easement Act. Grantor acknowledges and agrees that Grantees have complied with all requirements of the Land Conservation Easement Act in connection with the creation of this Easement, including, without limitation, the provisions of Utah Code § 57-18-4 (4), and that Grantor is aware of the types of conservation easements available, the legal effect of each easement, and that it has contacted an attorney concerning any possible legal and tax implications of granting a conservation easement.

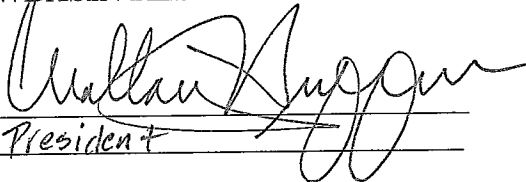
TO HAVE AND TO HOLD unto GRANTEES, their respective successors and assigns forever.

IN WITNESS WHEREOF the parties have, by their authorized officers set their hands as of the

day and year first stated above.

**GRANTOR:**

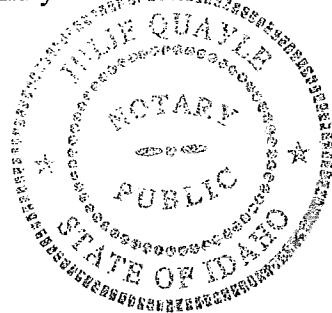
**SNOWBASIN RESORT COMPANY**

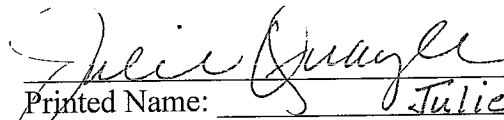
By   
 Its President

STATE OF IDAHO )  
 )ss.  
 COUNTY OF Blaine )

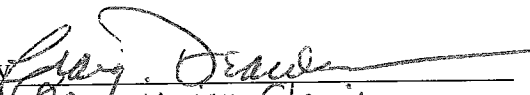
On this 19<sup>th</sup> day of April, 2012, before me personally appeared Wallace Huffman, the President of Snowbasin Resort Company and executed the within and forgoing instrument on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



  
 Printed Name: Julie Quayle  
 NOTARY PUBLIC in and for the State of  
 Idaho, residing at Blaine County, Idaho.  
 My Commission Expires: 11-1-2017

**ACCEPTED BY WEBER COUNTY UTAH**

By   
 Its Commission Chair

STATE OF UTAH )  
 )ss.  
 COUNTY OF WEBER )

On this 4<sup>th</sup> day of September, 2012, before me personally appeared Craig L. Dearden, the Commission Chair of Weber County, Utah and executed the within and forgoing instrument on behalf of said county.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Fatima M Fernelius  
 Printed Name: \_\_\_\_\_  
 NOTARY PUBLIC in and for the State of  
 Utah, residing at Weber County.  
 My Commission Expires: \_\_\_\_\_

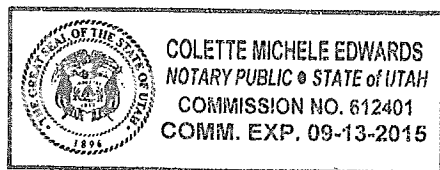
ACCEPTED BY WEBER BASIN WATER CONSERVATION DISTRICT

By [Signature]  
 Its General Manager / CEO

STATE OF UTAH )  
 )ss.  
 COUNTY OF WEBER )

On this 1<sup>st</sup> day of April, 2012, before me personally appeared  
Jage, I Flint, the General Manager/CEO of Weber Basin  
 Water Conservancy District and executed the within and forgoing instrument on behalf of said  
 \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

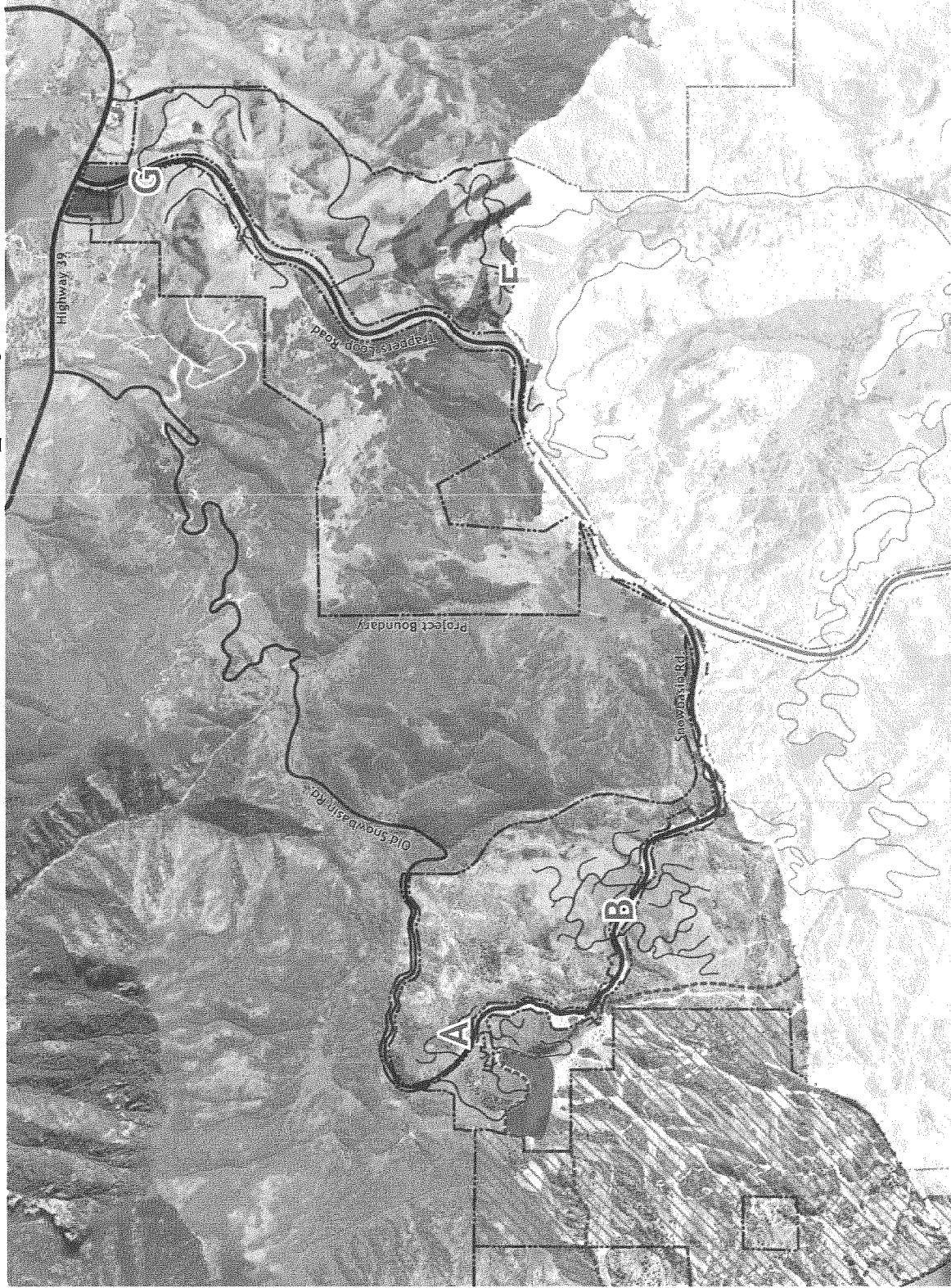


Colette Michele Edwards  
 Printed Name: Colette Michele Edwards  
 NOTARY PUBLIC in and for the State of  
 Utah, residing at Davis County.  
 My Commission Expires: 9-13-2015



# Exhibit A

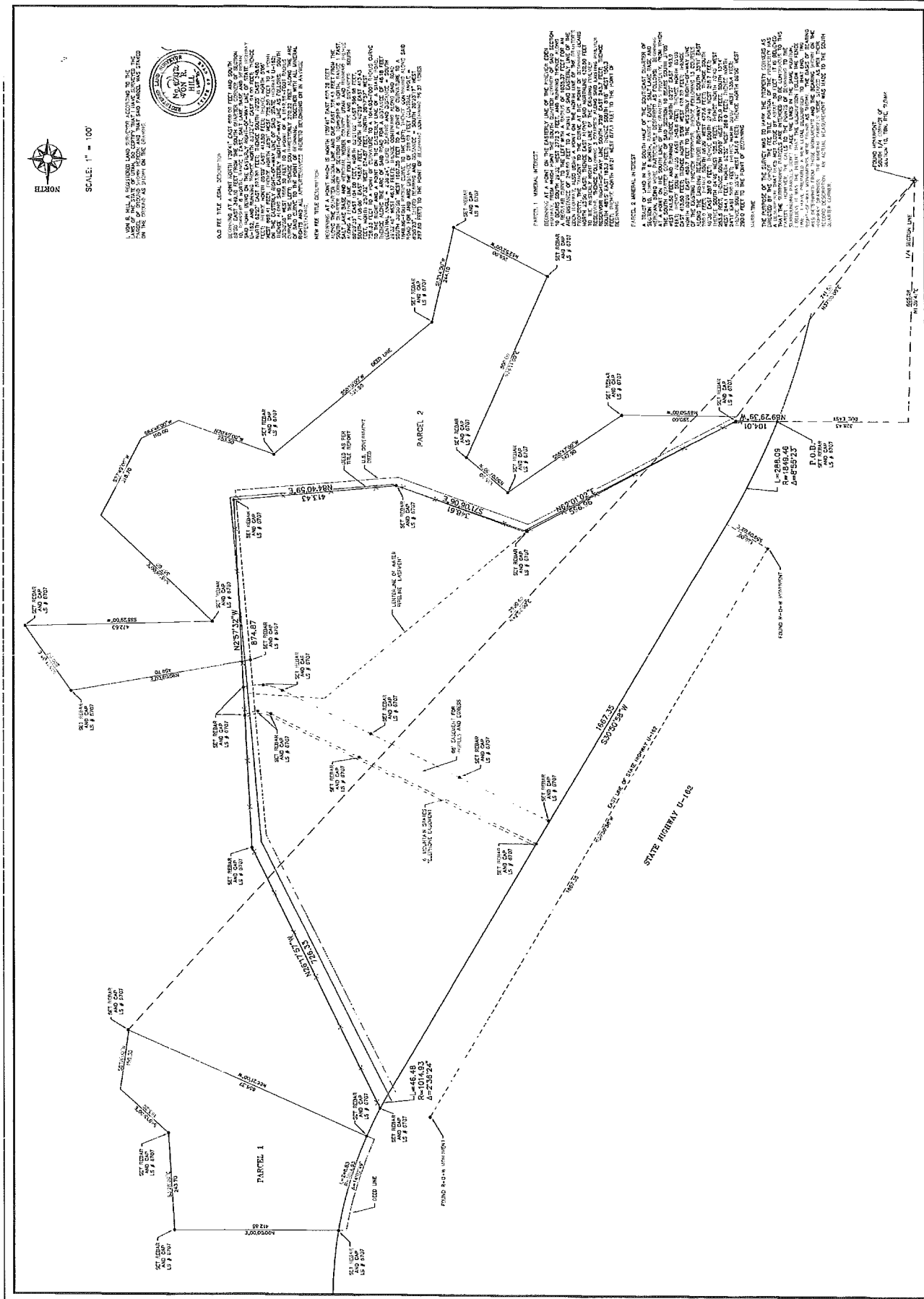
## Snowbasin Resort Property



- ■ ■ ■ ■ Snowbasin Project Boundary
- · · · · Snowbasin Ski Area Boundary
- ▨ USFS Special Use Permit Area
- Roads
- Single Family residential
- ▤ Multi-family residential
- ▥ Condominiums
- ▧ Mixed use development
- ▩ (Areas D and F) Golf and Golf Infrastructure
- (Area G) Community Park

# Exhibit B

# Protected Property



## EXHIBIT B-1

### PROTECTED PROPERTY LEGAL DESCRIPTION

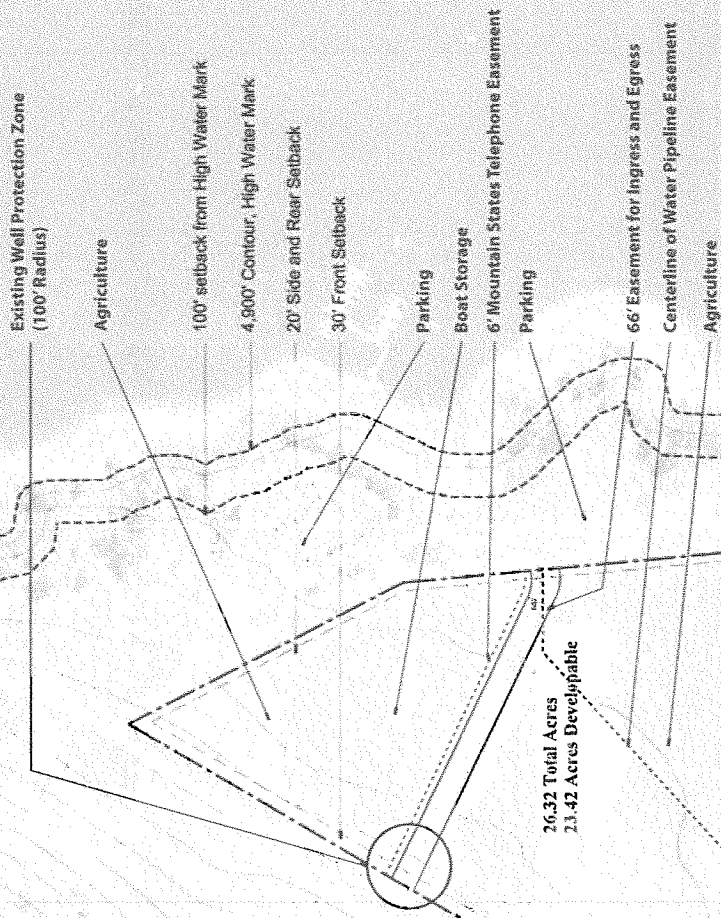
BEGINNING AT A POINT WHICH IS NORTH 1°39'41" EAST 605.28 FEET  
ALONG THE QUARTER SECTION LINE AND DUE EAST 328.43 FEET FROM THE  
SOUTH QUARTER CORNER OF SECTION 10, TOWNSHIP 6 NORTH, RANGE 1 EAST,  
SALT LAKE BASE AND MERIDIAN, WEBER COUNTY, UTAH AND RUNNING THENCE  
ALONG A FENCE LINE THE FOLLOWING 8 COURSES AND DISTANCES: SOUTH  
89°29'39" EAST 104.00 FEET, NORTH 62°01'02" EAST 596.96 FEET,  
SOUTH 71°06'06" EAST 348.61 FEET, NORTH 84°40'59" EAST 413.43  
FEET, NORTH 2°57'32" WEST 874.87 FEET, NORTH 26°17'57" WEST  
726.33 FEET TO A POINT OF CURVATURE TO A 1014.93--FOOT RADIUS CURVE  
TO THE RIGHT AND A POINT ON THE EASTERLY LINE OF A STATE ROAD;  
THENCE ALONG THE ARC OF SAID ROAD FOR A DISTANCE OF 46.18 FEET  
(CENTRAL ANGLE = 2°36'24", CHORD BEARING AND DISTANCE = SOUTH  
29°32'46" WEST 46.17 FEET); THENCE CONTINUING ALONG SAID ROAD  
SOUTH 30°50'58" WEST 1667.35 FEET TO A POINT OF CURVATURE TO A  
1849.86--FOOT RADIUS CURVE TO THE LEFT; THENCE CONTINUING ALONG SAID  
ROAD FOR AND ARC DISTANCE OF 288.09 FEET (CENTRAL ANGLE =  
8°55'23", CHORD BEARING AND DISTANCE = SOUTH 26°23'17" WEST  
287.80 FEET) TO THE POINT OF BEGINNING CONTAINING 26.32 ACRES.

# Exhibit C - Protected Property

COO

Transferrable Development Right Site Plan

DESIGN WORKSHOP  
10 July, 2012



SNOWBASIN MASTER PLAN  
SNOWBASIN RESORT COMPANY

Approved to Change 8/22/12  
*[Signature]*