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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
THE PRESERVE AT PARK CITY
SUMMIT COUNTY, UTAH

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THE PRESERVE
AT PARK CITY

October 2004

THE PRESERVE

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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
THE PRESERVE AT PARK CITY DEVELOPMENT
SUMMIT COUNTY, UTAH**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE PRESERVE AT PARK CITY DEVELOPMENT is made this 8th day of November, 2004, by MACDONALD UTAH HOLDINGS, LLC, a Utah limited liability company and THE PRESERVE AT PARK CITY, LLC, a Utah limited liability company ("The Preserve") referred to herein as "Declarant".

RECITALS:

A. The Preserve is the owner of certain real property located in Summit County, State of Utah, and more particularly described on Exhibit "A" hereto (the "The Preserve Property"). The Preserve Property is referred to herein as the "Property".

B. Declarant has obtained certain rights to develop the residential units on the Property pursuant to a subdivision plat approved by Summit County and pursuant to a Consent Agreement with Summit County dated May 1, 1997, amended May 1, 2003.

C. Declarant will develop and convey all of the Lots within the subdivision subject to certain protective covenants, conditions and restrictions all as set forth in this Declaration, and which are deemed to be covenants running with the land mutually burdening and benefiting each of the Lots within the subdivision.

D. Declarant desires to provide for a Homeowner's Association and Site and Design Review Committee ("Committee") as organizations and forums for the enforcement of the covenants, conditions, and restrictions set forth herein.

DECLARATION:

DECLARANT HEREBY DECLARES that all of the Lots within the Subdivision as well as any annexed to the Subdivision shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to the protective covenants, conditions, restrictions and equitable servitudes set forth in this Declaration, all of which are created for the mutual benefit of the owners. It is the intention of the Declarant in imposing these covenants, conditions and restrictions to protect and enhance the property values and aesthetic values of the Lots by eliminating inconsistent uses or improvements, all for the mutual protection and benefit of the Owners. The covenants, conditions and restrictions are intended to, and shall in all cases run with the title of the land, and be binding upon the successors, assigns, heirs, lien holders, and any other person holding any interest in the Lots, and shall inure to the benefit of all other Lots in the

Subdivision. The covenants, conditions and restrictions shall be binding upon the Declarant as well as its successors in interest and may be enforced by the Declarant or by any Owner.

Notwithstanding the foregoing, no provisions of this Declaration shall prevent the Declarant from doing any of the following, which shall be deemed to be among Declarant's reserved rights in addition to such rights as may be described elsewhere in this Declaration: (1) installation and completion of the Subdivision Improvements; (2) use of any Lot owned by the Declarant as a model home, or for the placement of a temporary construction or sales office; (3) installation and maintenance of signs incidental to sales or construction which are in compliance with applicable County ordinances; (4) assignment of Declarant's rights under this Declaration in whole or in part to one or more persons intending to construct homes within the Subdivision; (5) retention of Declarant's rights with respect to subsequent phases of the Subdivision; (6) construction of any improvements, including homes, by Declarant as approved by the County; (7) access over any Lot for the installation and maintenance of improvements; and (8) erection of permanent or temporary signs for use during the selling and marketing of the project.

ARTICLE I

DEFINITIONS

Unless the context clearly requires the application of a more general meaning, the following terms, when used in this Declaration, shall have the following meanings:

“Additional Improvements” shall mean Improvements other than those constructed by Declarant.

“Association” shall mean The Preserve Homeowners Association, whether incorporated or not, and as the context requires, the officers and Trustee directors of the Association. There may be allowed sub-associations and sub-association budgets.

“Board” shall mean the majority of the Board of Trustees of the Association

“Bylaws” shall mean the bylaws of the Association as adopted and amended from time to time by the Association’s Board of Trustees.

“County” shall mean Summit County, Utah, and its appropriate departments, officials, and boards.

“Committee” shall mean the Site and Design Review Committee as set forth herein.

“Declarant” shall mean and refer to The Preserve, and any successor to in the ownership of Lots where ownership is conveyed in connection with a total or limited assignment and assumption of Declarant’s rights and obligations under this Declaration.

“Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions, together with any subsequent amendments or additions.

“Design Guidelines” shall mean those requirements governing the location and siting of structures and improvements and architectural design of structures and other improvements on the Property.

“Building Activity Envelope” shall mean the area designated on the Plat within which principal development activity may occur. With respect to all Lots, no development activities or changes in the natural conditions of any land shall occur outside the Building Activity Envelope except as approved by the Design Committee.

“Driveway” shall mean the driveway from any major or minor road to a homesite.

“ Dwelling ” shall mean the single family residence or guest residence built or to be built on any Lot, including the attached garage.

“ Equestrian Center ” shall mean the lot located at the south-eastern border of the property, which is so designated on the Plat.

“ Family ” shall mean one household of persons related to each other by blood, adoption or marriage, or one group of not more than five people not so related living together as a unit who maintain a common household.

“ Improvement ” shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, dwellings, garages, barns, accessory buildings, walkways, retaining walls, sprinklers, pipes, driveways, fences, landscaping, pools, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

“ Lot ” shall mean any numbered building Lot shown on any official plat of all or a portion of the Subdivision.

“ Major Roads ” shall mean the primary subdivision roads as shown on the subdivision plat.

“ Minor Roads ” shall mean all other subdivision roads, including but not limited to service roads and access roads within The Preserve

“ Owner ” shall mean the person or persons having title to any Lot. Owner shall mean the person holding fee simple title, including the Declarant, and buyers under any contract for deed, but shall exclude any person or entity holding title for purposes of securing performance of an obligation.

“ Person ” shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah.

“ Plat ” shall mean the official subdivision plat of The Preserve Development as approved by the County and recorded in the office of the Summit County Recorder as it may be amended from time to time.

“ Preserve’s Entry Feature ” shall mean the gates and gatehouses as constructed at The Preserve

“ Private Trail System ” shall mean those public and private trails on the Plat

“ Project ” shall mean the Preserve Development.

“Property” shall have the meaning set forth in the recitals.

“Subdivision” shall mean all phases of The Preserve Development and all Lots, Common Areas, and other property within the Subdivision as shown on the Plats covering the Entire Property.

“Subdivision Improvements” shall mean all subdivision improvements to be installed outside of the boundaries of Lots or within easements as identified on the Plats that are necessary to provide public road access and utility service to the Lots, and including other construction work required to comply with any conditions of the County or other governmental agencies to the approval of the Subdivision or any Plat thereof.

“Trustees” shall mean the duly elected and acting Board of Trustees of the Association.

“Wildfire Prevention Plan” shall mean the terms and conditions of the Wildfire Prevention Plan adopted by the Declarant for The Preserve pursuant to the Amended Consent Agreement.

“Wildlife Management and Enhancement Plan” shall mean the terms and conditions of the Wildlife Management and Enhancement Plan adopted by the Declarant for The Preserve pursuant to the Amended Consent Agreement.

ARTICLE 2

DECLARATION – PURPOSES

2.1 Declaration. This instrument (the “Declaration”) is a declaration of covenants, conditions and restrictions for The Preserve. The Preserve is a residential subdivision being developed in multiple phases pursuant to the Snyderville Basin Development Code of Summit County, Utah. This Declaration shall be binding and effective as to all phases. The Final Subdivision Plat for Phase I was recorded on December 17, 2003 in the office of the Summit County Recorder in Coalville, Utah (the “Final Subdivision Plat”). As the Final Subdivision Plat for each subsequent phase is recorded, this Declaration shall be amended to add to the property covered by this Declaration, all of the property located within each new phase.

2.2 General Purposes. Declarant is the developer of The Preserve. Declarant intends that all owners, trust deed beneficiaries, mortgagees and any other persons or entities now or hereafter acquiring any interest in the Preserve shall hold such interest subject to all the rights, privileges, obligations and restrictions set forth in this instrument. In addition, Declarant shall create a homeowners association as a Utah non-profit corporation to be called The Preserve Homeowners Association (the “Association”) for the Preserve which shall perform certain obligations described herein and to own, hold, operate and manage property for the common benefit of all Owners of The Preserve

2.3 Continuing Effect of this Declaration. To further the purposes herein expressed, Declarant, for itself, its successors and assigns, with respect to all of the lands to be included in each phase of The Preserve, as depicted on the Final Subdivision Plat, and all subsequent Final Subdivision Plats for subsequent phases of The Preserve, including Common Areas, hereby declare that all said lands shall at all times be owned, held, used and conveyed subject to the terms, provisions, conditions and restrictions contained in this instrument, which terms, provisions, conditions and restrictions shall constitute covenants running with the land and shall be binding upon and inure to the benefit of Declarant, the Homeowners Association and all Owners, trust deed beneficiaries and mortgagees of Lots in The Preserve as to their respective interests and to any person or legal entity acquiring any interest in any of said lands.

ARTICLE 3

THE ASSOCIATION MEMBERSHIP/VOTING

3.1 Formation of Association. The Association shall be a nonprofit Utah corporation known as The Preserve Home Owners' Association, and is charged with the duties and invested with the powers prescribed by law and as set forth in its Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws of the Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with the Declaration.

3.2 Board of Trustees and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with its Articles and Bylaws as the same may be amended from time to time. The Association by and through the Board shall (a) govern and manage all Property conveyed by the Declarant and any other Association Property and (b) enforce the provisions of this Declaration. The initial Board shall be composed of no less than three (3) members. The Board also may appoint various Committees. The Board shall determine the compensation to be paid for any employee of the Association. The Declarant shall have the right to appoint and remove members of the Board until the sooner of: (i) the sale of Seventy Five percent (75%) of the Lots in The Preserve or (ii) five (5) years after the sale of the first fifty percent (50%) Lots by Declarant. By instrument signed by Declarant and duly recorded in the real estate records of Summit County, Utah, Declarant may elect to relinquish this right to appoint and remove members of the Board sooner than provided above.

3.3 Association Rules. The Association may from time to time adopt, amend and repeal rules and regulations to be known as the "Homeowners Association Rules" by a majority vote of the Board. The purpose of the Association Rules shall be to implement, supplement or otherwise carry out the purposes and intentions of this Declaration. The Homeowners Association Rules shall not be inconsistent with this Declaration, or the Design Guidelines.

3.4 Limited Liability. Neither the Declarant, the Association, nor any of their past, present or future, officers or directors, employees, agents, Committee, members shall be liable to any Owner or to any other person for any damage, act, omission to act, simple negligence or other matter of any kind or nature, except for gross negligence. As to employees of the Association, the limits of liability set forth in the sentence immediately preceding shall only apply where: (i) such persons were employees of the Association at the time of alleged damage, act, omission to act, simple negligence or other matter of any kind or nature, except gross negligence and, (ii) said employee was acting within the scope of his or her job or responsibility. Without limit to the foregoing, neither the Association nor the Board shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice. Acts taken upon the advice of legal counsel, certified

public accountants, registered or licensed engineers, architects or surveyors shall conclusively be deemed to be in good faith and without malice.

3.5 Membership. This Association shall be a membership association without certificates or shares of stock. The Members of the Association shall be (i) those persons or entities, including Declarant, who are the Owners, from time to time, of Lots in The Preserve as shown on the Final Subdivision Plat(s), and (ii) Declarant, who may retain, at its election a special membership, after it shall cease to be the owner of any Lots in The Preserve. Other than Declarant, membership in the Association shall automatically terminate when an Owner of one of the Lots or any adjacent property ceases to be an owner of such Lot or adjacent property.

3.6 Election. The Association shall have two classes of membership. Declarant shall be the only Class A member and shall be entitled to cast 3 votes for each Lot it owns in the election of Trustees and for any other matter that is presented to the Association. All other Owners shall be Class B members and shall be entitled to cast one vote for each Lot he or she owns in the election of Trustees and for any other matter that is presented to the Association. Where there is more than one record Owner of a Lot, the several record Owners of such Lot collectively shall have only one vote, and shall be required to designate, by prior written notice to the Association, the particular Owner who shall cast the one vote appurtenant to the Lot. If the several Owners of any Lot are unable or unwilling to designate a particular Owner to vote, then the membership appurtenant to that Lot shall not be entitled to vote on any Association affairs until such designation is made. Any of the multiple Owners appearing at the meeting in person or by proxy is deemed to be acting with proper authority for all of the other Owners of that Lot unless the other Owners are also present or have filed written objections to that Owner's representation of the other Owners of the Lot in question.

The affirmative vote of a majority of the total of all Members entitled to vote on any matter shall constitute approval of such matter, except for matters which specifically require more than a majority vote under the terms of this Declaration or under the Bylaws of the Association, in which case the higher percentage vote requirement shall apply. Subject to the right of Declarant to appoint and remove members of the Board, as set forth above, in any election of the Board, every Owner entitled to vote (multiple Owners of one Lot being entitled collectively to one vote) shall have the number of votes for each Lot owned times the number of Board members to be elected. The candidates receiving the highest number of votes, up to the number of Board members to be elected, shall be deemed elected. At any regular or special meeting of the Members of the Association, a quorum shall be present for voting purposes when Owners entitled to vote are present in person or by written proxy representing at least 50% of the total votes of lot owners entitled to votes. If no quorum is present, meetings may be postponed and rescheduled for future time(s) when a quorum is present.

3.7 Notice of Election, Notice of Meeting. Unless otherwise provided in the Bylaws of the Association, notice of any meeting for the election of members to the Board of Trustees or for any other purpose shall be sent to the Owners at their last known address (which may be determined from the most recent property tax assessment if no other address is known). Notice

will be mailed not less than 30 days, nor more than 60 days in advance of the meeting. Any notice will state the purpose of the meeting, and the time, date and place of meeting. At any such meeting, a quorum will exist if Owners holding 51% of the total voting power within the Association are present, and notice was properly given. Those present at the meeting may vote to continue the meeting to any date within 30 days. Notice of the continued meeting will be given by mail, and at the subsequent continued meeting, a quorum will consist of those members present. The Chairman of the Board of Trustees will give notice of any meetings, and will chair meetings of the Owners.

3.8. Special Meetings. When circumstances warrant, a special meeting of the Owners may be called as provided in the Bylaws. No business may be conducted at a special meeting without a full quorum of the Owners (as defined in 2.7) being present in person or by written proxy.

3.9. Number of Trustees, Term of Office. Unless otherwise provided in the Bylaws of the Association, there shall be five (5) members of the Board of Trustees, who will serve for terms of three years, until their successors have been elected, or until they're replaced by the Declarant pursuant to section 3.2 hereof. At such time as the first Board of Trustees is named, whether by appointment by the Declarant or by election from among the Owners, the Trustees will draw lots to divide themselves into terms of one, two and three years. Members of the Board of Trustees may serve consecutive terms.

3.10 Binding Effect. Each Owner, his lessees, their families and guests, the heirs, successors or assigns of an Owner, or any Mortgagee, and any other persons using or occupying a Lot, shall be bound by and shall strictly comply with the provisions of this Declaration, the Bylaws, the Articles, any deed restrictions and covenants and all rules, regulations and agreements lawfully made by the Association.

3.11 Enforcement. The Association and Declarant shall each have the right and power to bring suit in their respective names for legal or equitable relief for any lack of compliance with any provisions of this Declaration or rules promulgated by the Board or the Committee, or to enforce decisions of the Committee. In addition, the Association shall have the right to impose on any Owner monetary fines and obtain all appropriate injunctive relief for any lack of compliance with provisions of this Declaration or rules promulgated by the Board, or Committed and where such fines are not paid within the time provided, such fines may be collected as an Assessment Lien. The failure of the Association or Declarant to insist upon the strict performance of any such provisions or to exercise any right or option available to it, or to serve any notice or to institute any action, shall not be a waiver or a relinquishment for the future of any such provisions or the enforcement thereof. Any Owner aggrieved by a lack of compliance by another Owner may also bring suit for legal and equitable remedies. If any court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to reimbursement of its costs and expenses, including reasonable attorneys' fees, in connection therewith.

3.12 Power of the Association. Each Owner agrees that the Association has all the powers granted to it by this Declaration and by the Utah Nonprofit Corporation and Co-operative Association Act and any amendments thereto or replacements thereof. Such powers shall include, without limitation, all of the following:

- (a) Levying Assessments against Owners;
- (b) Imposing a lien on Lots for any unpaid or uncollected Assessments or penalties, and foreclosing any such liens;
- (c) Enforcing any deed restrictions and covenants;
- (d) Acquiring, holding, owning, leasing, mortgaging and disposing of property;
- (e) Adopting rules and regulations;
- (f) Defending, prosecuting or intervening in litigation on behalf of all Members;
- (g) Borrowing money for Association purposes and the right to pledge future income in order to secure such borrowings. The right to "pledge future income" shall include the right to impose a Special Assessment for repayment of such borrowings and to assign such Special Assessment (and all lien and collection rights appurtenant thereto) to the lender as security for repayment thereof, provided, however, the right to impose a Special Assessment hereunder shall at all times be subject to the limitations of this Declaration.
- (h) Exercising any other right, power or privilege given to it expressly by this Declaration, the Articles and By-laws, or by law or by the operative documents of and rules and regulations adopted by the Association, and every other right, power or privilege reasonably to be implied from the existence of any right, power or privilege given to it herein or reasonably necessary to effectuate any such right, power or privilege.
- (i) Promulgating reasonable rules and regulations regarding guests which balance the rights of Owners to the full use and benefit of their property against the objective of preserving The Preserve as an exclusive private community with reasonably restricted access. To this end, the Association may, when necessary to prevent interference with other Owners use and enjoyment of their property, adopt reasonable rules and regulations which:
 - (i) Control the use by guests of (a) Common Area facilities and (b) and Easements across other Lots; and/or
 - (ii) Limit the number of guests and the duration of their stay on the Preserve over extended periods of time; provided however, that no limits on the number of guests or the duration of their stay shall be enacted or revoked unless approved by seventy-five (75%) percent of the Members of the Association, present in person or by written proxy when a quorum has been established at any regular or special meeting of the Members of the Association.

3.13 Other Association Functions. The Association may undertake, to the extent the Board in its sole discretion so elects, to provide functions or services for the benefit of all, or some, Members on such basis as the Board may reasonably determine. Such functions may be

provided by the Association's employees or an independent contractor retained by the Association. With respect to any functions or services, the Board may establish "cost centers" for the operation thereof. A "cost center" shall mean the identification and aggregation of all costs reasonably estimated by the Board to be attributable to a particular function or service. Where cost centers are established, the Board shall have the discretion, based on benefits received, to determine which Member shall be charged for such benefits and what amounts shall be paid by each such Member. No Owner shall, without the consent of such Owner having been first obtained, be charged a disproportionate or unequal share for any cost center functions or services greater than what such share would have been if the cost center function was charged equally to all Owners.

3.14 Notice to Maintain. An Owner shall immediately report to the Association, in writing, the need for any maintenance, repair or replacement of any improvement within The Preserve which is the responsibility of the Association to provide. In the event of any disagreement as to the need for, or the responsibility of, the Association to provide the said maintenance, repair or replacement, the good faith decision of the Board shall be final.

3.15 Mechanics' Liens. Declarant shall be responsible for the release of all mechanics' liens filed with respect to the Association Property, or any part thereof, if any such liens arise or are alleged to arise from labor performed or materials furnished at the direction of Declarant, its agents, contractors or subcontractors. Except as the result of labor performed or materials furnished at the direction of the Board, no labor performed or materials furnished with respect to Association Property or any Lot shall be the basis for filing a lien against any Association Property. No labor performed or materials furnished at the direction of the Board shall be the basis for filing a lien against any Lot.

3.16 Ownership, Operations, and Maintenance of Association Property. The Association Property, shall, at all times, be owned, operated, and maintained by the Association consistent with the provisions of this Declaration and the Development Agreement in trust for the use, benefit and enjoyment of the Owners of all Lots in The Preserve and their family members, guests and invitees.

3.17 Special Provisions Regarding Association Property. To the fullest extent permitted by law, the holder of any lien, mechanics lien, judgment or any other creditor of the Association in the event such creditor becomes the owner of any Association Property, shall have no right to cause such property to be utilized, appropriated, consumed or otherwise used, except to the benefit of The Preserve and in accordance with this Declaration. There shall be no sales, leases or other dispositions of Association Property, and no amendment to this Declaration may repeal or change this requirement. However, notwithstanding this provision, dispositions by the Association of worn, obsolete or damaged property, dispositions pursuant to a threat of condemnation (as provided below), or any other sale or leases performed in the ordinary course of operations at The Preserve are permitted.

3.18 Statement of Account. Any Owner may request the Association to provide a statement of his account to any lender or prospective buyer of such Owner's Lot reflecting the current status of that Lot showing the assessments for the Lot, indicating whether they have been paid in full, or the amounts of any past due assessments. The buyer or lender for whom such a statement was prepared will be entitled to rely on its accuracy and will not be held liable for any amounts not shown on the statement.

3.19 Indemnity of Association Trustees and Officers. The Association will maintain appropriate insurance coverage to indemnify the officers, agents and trustees of the Association against any and all claims arising against them personally which are a result of the good faith exercise of the powers, duties and responsibilities of their office under this Declaration.

ARTICLE 4

ARCHITECTURAL CONTROLS

4.1 Site and Architectural Review Committee. The Committee shall be composed of at least three (3), but not more than five (5), natural persons appointed by the Board. Persons serving on the Committee shall serve at the pleasure of the Board. The Board may remove a member of the Committee and appoint a new member at any time, provided that at all times there shall be a least three (3) persons serving. Members of the Committee may or may not be Board members or Members of the Association and may include one or more paid professionals, such as an architect, to perform such services. The Committee shall enforce the current Design Guidelines as set forth by the Declarant or the Association. The Committee shall have and shall exercise all the powers, duties and responsibilities set out in this Declaration. The Committee may hire a secretary or other personnel to perform administrative, clerical and other functions. The operating costs of the Committee, including the services of its planning consultants, professions and other staff, shall be covered through a fee paid to the Committee by Owners applying for plan review and approval. The Committee shall make available to all Owners a current fee schedule. The Design Guidelines shall also set forth the fee schedule, and the fee schedule may be modified from time to time in accordance with the provisions herein for the amendment and updating of the Design Guidelines. Fees must be paid in full before any review by the Committee commences and the unused portion of any fee is refundable.

4.2 Authority. Except as otherwise provided in this Declaration, no improvements of any kind or changes in the natural condition of any property shall be erected, altered or permitted to remain on any Lots or elsewhere in The Preserve unless complete architectural plans, specifications and site plan showing the location and orientation for such construction, alteration or landscaping are approved by the Committee prior to the commencement of the work. Work subject to Committee approval may include, but is not limited to, the construction of dwellings or other structures (including but not limited to), outbuildings, well enclosures and pipelines, fences, grading, planting, ponds, parking areas, walls, garages, roads, driveways, antennae, satellite dishes, flag poles, or the like, any renovation, expansion or refinishing of the exterior of an existing structure, nor any excavating, clearing, landscaping or other site alterations. Any work performed by or on behalf of Declarant to any of the property within The Preserve including, but not limited to, the construction of amenities, subdivision infrastructure and the like, shall not require approval of the Committee.

4.3 The Committee Review Process. The process for reviewing development applications will be defined by the rules adopted by the Association and the Committee. Development applications for individual Lots submitted by Owners shall be in substantial conformance with the provisions of Sections 4.4, 4.5, and 4.6 below.

4.4 The Pre-Design Meeting. The Committee review process shall commence with an informal work session with the Committee board, Committee's designated planning consultants, the Owner and the Owner's architect or design professional. The purpose of this

meeting is to agree on basic parameters for development of the Lot that fully respond to the desires of the Owner and the land use philosophy and operating policies of The Preserve. The primary focus of the work session will be an in-depth analysis of the Owner's site, its physical constraints, and the particular visual and environmental sensitivities that must guide its development. The Committee will review the Design Guidelines with participants, discuss how they apply to the project at hand, and explain the reasoning that determined the Building Activity Envelope on the Owner's Lot. It is very important that this meeting be scheduled *after* the Owner has selected a design team so that all of those who will be involved in the planning of the site may attend. Also, it is important that the meeting take place *before* any conceptual plans are drawn for the Owner. However, it is recommended that the Owner prepare for the meeting by completing a certified site survey, by gathering images that illustrate the style of building contemplated and by making a preliminary list of the facilities and building elements to be constructed on the site. The outcome of the work session will be a mutual understanding of the site constraints, the design opportunities unique to the site, the potential visual impacts on neighboring lots, the possibility of environmental impacts that may require mitigation, and any other site-specific concerns that the Committee may have. It is expected that this early dialogue will give the Owner constructive input when he is most able to use it and, in this way, will avoid the adversarial and potentially expensive effort that often attends conventional design and review procedures. At the discretion of the Committee, the requirement for this meeting may be waived for applications that concern minor changes to existing structures or landscape.

4.5 Preliminary Design Review. Formal Committee review begins with the Owner's submittal of conceptual site, building plans and any required review fees. Conceptual review is intended to provide more detailed direction and guidance to the Owner and the Owner's design team by the specific identification of any site or development issues and concerns that, in the opinion of the Committee, must be resolved. Owners or other entities who anticipate constructing improvements on lands within The Preserve shall submit preliminary sketches with a site plan of such improvements to the Committee for informal and preliminary approval or disapproval. Conceptual drawings typically indicate overall design and site planning directions, but are not intended to fully resolve all technical or design issues. They illustrate (1) the siting of conceptual building program elements; (2) the preliminary resolution of building form and massing; (3) the Owner's general thoughts about architectural character, style and materials; (4) the visual and functional linkages; (5) the view of relationships with neighboring sites; (6) the grading required for driveway access and the siting of the building; and (7) the general extent of site disturbance. The Design Guidelines shall provide additional specific requirements for the submission of conceptual plans. Persons contemplating the purchase of any Lot may submit preliminary sketches with site plans for purposes of obtaining an informal approval hereunder. The Committee shall not be committed or bound by any preliminary or informal approval or disapproval. Upon request of an Owner, a conceptual review meeting of the Committee may be scheduled with three weeks advance notice. The conceptual review is an open meeting. At least fourteen (14) days prior to the meeting, individual notices will be sent to all adjacent property Owners and a general notice will be posted inviting any interested property owner in The Preserve. Although not required to do so, the Owner and his design representative are strongly encouraged to make an informal presentation at the meeting to outline the development program

and design goals. Feedback from the Committee members will be more substantive if the underlying rationale for the applicant's design decisions is well articulated. The Committee will evaluate the conceptual plans for conformity with the Design and Development Guidelines and the concepts discussed during the pre-planning meeting. Within two weeks following the conceptual review meeting, the Committee shall issue a written response to the applicant that records outstanding issues and concerns and summarizes the Committee members' comments. If unresolved issues appear to warrant it, the Committee may recommend an interim meeting with the applicant before his plans are finalized and submitted for final review.

4.6 Final Plan Review. Final plan review cannot occur prior to the completion of conceptual design review. Upon request by an Owner, and with at least four (4) weeks advance notice, an on-site field visit and a final review meeting of the Committee will be scheduled. The final review by the Committee is an open meeting. At least fourteen (14) days prior to the meeting, individual notices will be mailed to all adjacent property Owners and a general notice will be posted inviting any interested property owner in The Preserve. A complete package of final plans must be submitted to the Committee no later than one week prior to the scheduled meeting. It is strongly recommended that the Owner's design team attend the final plan review to present the plans. The Committee will review the construction drawings and final site plans for conformity with the Design and Development Guidelines and determine that all outstanding issues discussed in previous review sessions have been resolved. The Committee shall adopt additional specific requirements for the submission of final plans. All copies of the complete plans and specifications shall be signed for identification by the Owner or his architect. The Committee shall have the right to request whatever additional specific information, plans, specifications, reports and the like it deems necessary to evaluate the development proposal throughout the approval and construction process. The Committee shall certify to the Owner, in writing, when the submittal is complete. The majority vote of the members of the Committee shall be required for approval of the plans. Within fourteen (14) days of the meeting, the Committee in its sole discretion, shall either approve, approve with conditions or disapprove the final plan in writing. Written notice of approval will be sent to the applicant and to the Summit County Community Development Department. If an application is denied, the applicant may resubmit a revised plan at any time. Subsequent review may be subject to the payment of an additional fee. In the event the Committee fails to take any action within sixty (60) days after the submittal of a complete package of final plans has been certified in writing by the Committee as complete, all of such submitted architectural plans shall be deemed to be approved. The Committee shall not unreasonably disapprove architectural plans. The Committee shall disapprove any architectural and site-development plans submitted to it which do not contain sufficient information for it to exercise the judgment required of it by these covenants. If the plans are approved, written notice of the approval will be sent to the applicant and to the Summit County Building Department. If an application is denied, the applicant may resubmit a revised plan at any time, with review subject to payment of an additional fee.

4.7 Building Permit. An Owner may apply for a building permit from the County at any time after final approval of the Owner's plans have been given by the Committee. The Owner's approved plans must be stamped by the Committee; those stamped plans will be the

building department submittal set. If the plans submitted to the County differ in any way from the plans approved by the Committee, all approvals of the Committee shall be deemed automatically revoked. An Owner shall not submit to the County any application for a building or site modification permit within The Preserve before the Committee has reviewed plans and determined that they comply with the Design and Development Guidelines. The Committee approval is necessary prior to the filing of a building permit or site modification permit application with the County. The issuance of a building permit by the County for any plans not finally approved by the Committee shall not in any way negate, waive or limit the requirement for final approval of all plans by the Committee before any development activity can occur on any Lot in the Preserve.

4.8 General Standards. The Committee shall evaluate, among other things: (i) the materials to be used on the outside of buildings or structures, (ii) exterior colors, (iii) harmony of architectural design with other structures within The Preserve, (iv) height and other design features, (v) location with respect to topography and finished grade elevations, and (vi) harmony of landscaping with the natural setting and native vegetation, and (vii) consistency with the Design and Development Guidelines.

4.9 Rules and Regulations. The Committee may promulgate, adopt, amend and/or replace rules and regulations necessary to implement these covenants by the affirmative vote of a majority of the Committee. Rules and regulations may include submission requirements concerning the type of information, reports, plans and specifications and the like which need to be submitted with any application, site specific limitations or restrictions for each Lot, and may also include guidelines governing the development of each Lot. These rules and regulations need not be uniform for each Lot and shall take into account the unique character of each Lot. By way of illustration only and without requirement to do so, the Committee rules and regulations may address, and the Committee shall have the power and authority to regulate, any or all of the following: application procedures and processing fees; charges by any outside professionals or other costs incident to evaluating any application, security deposits or other financial arrangements which are required of an Owner who is developing a Lot to guarantee the repair of any damage to Roads or other subdivision infrastructure and for revegetation and restoration of lands; colors and materials, including but not limited to, roofs, chimneys, siding, masonry and glazing; setbacks, height limitations, building profiles and driveway locations; construction staging, construction hours which may be controlled during certain times of the year, storage for construction materials, location of temporary construction facilities such as trailers, dumpsters and toilets; routing of utility extensions; drainage, grading and erosion control; landscape and vegetation, fencing, lighting, signage and trails; concerns or objectives regarding maintenance of agricultural lands and preservation of wildlife; and privacy and visual characteristics.

4.10 Construction Rules. Other than construction performed by the Declarant, with regard to any construction project affecting the exterior of any Dwelling and any construction of Dwellings, the Committee may impose reasonable rules and regulations to minimize the

inconvenience to adjoining Owners during the period of construction. The Committee may impose rules requiring pre-construction conferences and regulations regarding portable offices and trailers, construction debris removal, construction area appearance, sanitary facilities, construction parking and vehicles, construction signs, hours of work, soil conservation and dust, removal of mud, and duration of construction.

Concurrent with Final Plan Submittal, the Owner shall deposit with the Committee a performance deposit to be determined by the Design Guidelines. Furthermore, Owner shall execute and deliver to the Committee, as appropriate, a Deposit Agreement in the form per the Design Guidelines. The performance deposit shall to be held in escrow pending the completion (including clean up) of all improvement(s) described in the final, approved plans and constructed on the Owner's individual Lot(s).

In the event that the Owner, the Contractor or their respective agents, representatives or employees (i) cause any Damage, (ii) fail to construct the improvements in accordance with the approved plans or (iii) fail to comply with the Guidelines, the Declaration or any rules or regulations adopted or promulgated by either the Committee, the Declarant or the Committee may use the performance deposit to, among other things, (a) repair and/or rectify the Damage or (b) enforce the Guidelines, the Declaration and any other rule or regulation thus violated and cure any defect or problem caused by said non-compliance. Following the Committee's use of all or any portion of the performance deposit, the Owner shall immediately pay to the Declarant or the Association, as the case may be, an amount sufficient to replenish the performance deposit to the sum initially deposited. Failure to replenish the performance deposit within seven (7) days following the Committee's delivery of written demand shall be deemed a material breach of the Guidelines and the Declaration and shall entitle the Committee to (i) deny Contractor's access to the community (including any of Contractor's suppliers, subcontractors, employees and material men) and (ii) lien the Lot in an amount equal to the performance deposit deficiency. Upon tendering the performance deposit, the Owner shall execute and deliver to the Committee a Notice of Voluntary Lien in a form pursuant to the Design Guidelines' requirements.

4.11 Site and Architectural Review Committee Not Liable. Neither the Committee, the Board, the Association or any of its Members, nor the Declarant shall be liable for damages to any person submitting any plans for approval, or to any Owner or owners of lands within The Preserve, by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such plans. The Committee shall have no liability or responsibility for any representations made to any Owner or prospective owner by any third parties. The decision of the Committee shall be governed by these covenants and any rules or regulations duly adopted by the Committee pursuant to these covenants.

4.12 Written Records. The Committee shall keep and safeguard complete and permanent written records of all approved applications, including one set of the final approved architectural and site development plans, and of all actions of approval or disapproval and all other formal actions taken by it under the provisions of this instrument. The records of the

Committee shall be maintained by the Association at a location which it designates within The Preserve.

4.13 Inspection and Compliance. The Committee shall have no duty or obligation to make inspections of any construction; however, nothing herein shall prevent the Committee from making inspections prior to, during, or after construction. Upon the completion of any work for which approved plans and specifications are required, the Owner shall give written notice of completion to the Committee. Within thirty (30) days after receipt of such notice, the Committee may inspect the work to determine its compliance with the approved plans. If the Committee finds that the work was not done in substantial compliance with the approved plans or any construction or change in natural conditions on any Lot was undertaken without first obtaining approval from the Committee, written notice shall be sent by the Committee to such Owner specifying the noncompliance and requiring the Owner to cure such noncompliance within thirty (30) days or any extension thereof granted. If the Owner fails to cure the noncompliance or to enter into an agreement to cure on a basis satisfactory to the Committee within said thirty (30) day period or any extension thereof as may be granted, the Board may, at its option, cause the non-complying improvement to be removed or the noncompliance to be cured. Upon demand, the Owner shall reimburse the Association for all costs and expenses incurred by the Committee and/or the Board in taking corrective action, plus all costs incurred in collecting amounts due, including reasonable attorneys' fees and costs (the "Compliance Assessment"). The Owner shall be personally liable for all such costs and expenses, and the Association also shall have a lien against the non-complying Lot for the amount of all such costs and expenses. Any amounts not paid, without waiver of any other right or remedy, may be collected as an Assessment Lien. Such lien shall be (i) evidenced by a statement executed by the Association and recorded in the real estate records of Summit County, Utah, (ii) subordinate only to the first Mortgage, and (iii) subject to foreclosure in the manner provided by Utah law for mortgages upon real property. Notwithstanding any other provisions hereof, the Committee shall not be responsible for: (a) determining that any construction or construction documents conform to applicable building codes, zoning or other land use regulations, (b) the accuracy or content of any construction documents or specifications prepared by any architect, engineer or any other person, (c) construction means, methods, techniques, sequences or procedures, safety precautions or subsequent loss, damage or failures due to soil or any other natural or man-made conditions that may exist, or (d) any failure to carry out any construction in accordance with plans or specifications.

4.14 Variances. The Committee may authorize variances from non-compliance with any of the architectural provisions of this declaration, and the Design Guidelines when circumstances such as topography, natural obstructions, hardship, esthetic or environmental considerations may require, and subject to County approval. Such variances must be evidenced in writing, must be signed by a majority of the Committee. If such variances are granted, no violation of the covenants, conditions, or restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and provision hereof covered by

the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the Lot.

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ARTICLE 5

LAND USES; EASEMENTS

5.1 Development of The Preserve. Declarant reserves the right for itself (and to the extent necessary, such right is hereby extended to the Board of Trustees) and their agents, employees and contractors, to enter upon The Preserve and to do whatever Declarant deems necessary or advisable in connection with construction or other work to be performed by Declarant for the development of The Preserve subdivision improvements, including but without limitation, the construction and installation of domestic water system, fire protection, drainage, irrigation, and water storage facilities (including existing springs, seeps, drainages, ponds and creating others as deemed necessary), the installation of all utilities, the construction of all roads and driveways, grading and landscaping, the construction of all buildings and other improvements, the erection or placement of such temporary structures as may be reasonably necessary to facilitate such development. No rights reserved in this paragraph shall extend into any Building Activity Envelope on any Lot after the closing on the sale to an Owner other than the Declarant.

5.2 Annexation of Additional Property. The Declarant shall have the right to annex subject to this Declaration additional property into the Project without the consent of any other Owner. The annexation of all or any portion of the additional property shall be effected by the Declarant recording a written instrument setting forth the legal description of the additional property being annexed and stating that such portion of the additional property is annexed and subjected to the Declaration. Property annexed by the Declarant need not be contiguous with other property of the Project.

5.3 Development Plan. Notwithstanding any other provision of this Declaration to the contrary, the Declarant, without obtaining the consent of any other Owner, shall have the right to make changes or modifications to its development plan with respect to any property owned by the Declarant in any way which the Declarant desires, including, but not limited to, changing the density of all or any portion of the property owned by the Declarant or changing the nature or extent of the uses to which such property may be devoted.

5.4 Maintenance and Repair of Major Roads and Minor Roads. The Association shall be responsible for snow plowing, maintenance and repair of Major and Minor Roads within the Project. Each Owner shall be responsible for removal of snow from the driveway and sidewalks on such Owner's Lot. If an Owner elects to hire a contractor to perform some or all of such Owner's snow removal duties under this section, such Owner must use the contractor then used by the Association for snow removal, so as to reduce the number of snow removal vehicles within the Project and thereby promote coordination and safety within the Project.

5.5 Utility Easements. In addition to rights reserved within the recorded Plat, the Declarant hereby reserves rights: (a) the Declarant and Association may grant

nonexclusive easements for utilities, ditches, irrigation and drainage purposes, including, without limitation, for the installation, relocation, operation, maintenance, repair and replacement of lines, pumps, pipes, transformers, towers, tanks, wires, conduits, culverts, ditches, ponds and other facilities or systems and for ingress and egress to and from the same over and across The Preserve other than Development Activity Envelopes, and (b) without extinguishing the aforementioned reserved rights and general easements, from time to time to substitute thereon or more specific easements for the use by utility companies or others by recording of an instrument in the real estate records of the County. Unless the written consent of Declarant is first obtained, utility companies shall have no right to use easements over the Preserve to serve properties adjacent to the Preserve.

Where Declarant shall grant any easements to utility companies to serve properties adjacent to the Preserve, Declarant shall be entitled to receive any consideration paid by such adjacent property owner or the utility company for such easement. Where necessary, Declarant shall have the right, without obtaining the consent of any Owner, Mortgagee or the Association, to amend the Plat as applicable to reflect any relocation of existing easements shown thereon or the granting of new easements for any of the purposes permitted hereunder.

5.6 Operations Easements. There is hereby reserved to Declarant and the Association the right from time to time to enter upon Lots or any other portions of the Preserve to perform or carry out any of the Preserve operations, including without limitation any controlled burning, cutting of trees and shrubs to enhance wildlife habitat, spring, seep, drainage or pond maintenance, ditch or fence maintenance or repair or operation of the water system to serve the Preserve or any other actions reasonably required to implement wildlife, agricultural, weed control or livestock control or other Association-approved operations; for inspection of the Lots during reasonable hours in order to verify the performance by Owners or other Persons of all items of maintenance and repair for which they are responsible; for inspection, maintenance, repair and replacement of portions of the Common Area accessible only from such Lots; for review, inspection, correction, and mitigation of emergency conditions on one or more Lots or on portions of the Common Area accessible only from such Lots; for the purpose of enabling the Association, the Board, the Committee or any other Committees appointed by the Board to exercise and discharge during reasonable hours their respective rights, powers and duties; and for inspection during reasonable hours of the Lots in order to verify that the Owner and their guests, tenants and invitees, are complying with the provisions of this Declaration and other relevant project documents.

5.7 Guardhouses, Security Gates and Security Devices. Guardhouses, security gates (manned or unmanned) and/or other security structures or devices designed to limit access and to provide more privacy for Owners and Occupants may be constructed, removed, modified, or relocated from time to time within or adjacent to the Project. Each Owner and Occupant, and their families, guests and invitees, acknowledge that any such guardhouse, security gate or other security device may restrict or delay entry into or access within the Project by police, fire department, ambulances and other emergency vehicles or personnel. Each Owner and Occupant and their families, guests and invitees agree to assume the risk that any such guardhouse, security gate or other security device will

restrict or delay entry into or access within, the Project by police, fire department, ambulances and other emergency vehicles or personnel. Neither the Declarant, any Declarant Affiliate or the Association or any Trustee, officer, agent or employee of the Declarant, any Declarant Affiliate or the Association shall be liable to any Owner or Occupant or their families, guests and invitees for any claims or damages resulting, directly or indirectly, from the construction, existence or maintenance of any such guardhouse, security gate or other security device. Declarant may modify or relocate such guardhouses, security gates, or security devices at any time without notice or liability to or consent of any Owners or Occupants. Declarant makes no representations regarding, and shall have no liability for the adequacy or degree of security or protection provided by any guardhouse, security gate or other facility constructed as part of the project.

5.8 Emergency Access Easement. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar public safety and emergency response agencies or persons, now or hereafter servicing the Preserve and its residents and to Declarant and the Association, including the Preserve Manager or any Association employees, to enter upon all Roads and driveways located in the Preserve and on any Lots or other property in the Preserve in the lawful performance of their duties. Private security contracts or other security arrangements made by Owners must first be approved by the Association.

5.9 Wildlife Management and Enhancement Plan. The Association, through its employees or agents and the Wildlife Consultant, are hereby granted the right to enter upon any Lot to monitor, implement and carry out the Wildlife Management and Enhancement Plan. Entry may be accomplished on foot, by horseback, or by motorized vehicle, including the Preserve Manager's automobiles, trucks, all terrain type vehicles

5.10 Wildfire Prevention Plan. The Association, through its employees or agents and the Wildlife Consultant, are hereby granted the right to enter upon any Lot to monitor, implement and carry out the Wildfire Prevention Plan. Entry may be accomplished on foot, by horseback, or by motorized vehicle, including the Preserve Manager's automobiles, trucks, all terrain type vehicles.

5.11 The Preserve Public Trail System. There is hereby created for the use and enjoyment of Owners and their guests and members of the public accorded such rights by the Association and the Snyderville Basin Special Recreation District ("SBRRD"), a public trail system ("Public Trail System"). The Public Trail System shall be operated and maintained by the SBRRD at its expense per the SBRRD/Declarant Trails Agreement dated May 14th, 2003. The Public Trail System easements are shown on the recorded Preserve plats. Portions of the Public Trail System may be closed periodically to accommodate elk, deer, and moose and other big game calving, migration or other wildlife concerns.

5.12 The Preserve Private Trail System. There is hereby created for the use and enjoyment of Owners and their guests to the extent guests are accorded such rights by the Association, the use of The Preserve's Private Trail System ("Private Trail System"). It is intended to provide specific lots access to the Public Trail System; the easements are shown on

the recorded Preserve plats. The Private Trail System shall be installed and maintained by the Association. Owners, members of their families and their guests or invitees assume all risk in connection with use of the Private Trail System. Notwithstanding the provisions of this Declaration regarding amendments, unless the prior written consent of all Owners is first obtained, no amendment to this Paragraph shall be adopted which would limit or impair the right of any Owner to use the Preserve Public or Private Trail System for hiking, horseback riding, jogging, cross country skiing, snowshoeing or other purposes as allowed in this Declaration together with the right to enter upon other Lots in the Preserve for such purposes; provided however, Declarant and/or the Association may modify or relocate specific Private Trail System locations on any Lot to accommodate the Owner thereof.

5.13 Major and Minor Road Easements. There is hereby reserved to the Association and Declarant a 100 foot permanent and perpetual easement under, over and across all Major and Minor Roads as shown on the Plat for purposes of operating, installing, constructing, maintaining, and repairing Major and Minor Roads, operating, installing, constructing, maintaining, inspecting, the water distribution system, power, gas, telecommunication, cable, and other utilities and for such other purposes as are described in this Declaration. The Association and Declarant permanently and perpetually dedicate all Major and Minor Roads for the use, benefit and enjoyment of all Owners, their family members, guests and invitees and for use by Declarant, the Association, and the employees, agents, and representatives thereof. Relative to the construction and maintenance of any Major or Minor Roads, Declarant and the Association shall have the right to install cattle guards, gates, including but not limited to, security and entry gates, security gate house, fences, signage, speed bumps or dips, culverts, guardrails and the like. There is further reserved to Declarant and the Association the right to enlarge the width of any Major or Minor Road shown on the Plat; provided, only, that such enlargement does not encroach into any Building Activity Envelope. In the event Declarant or Association shall determine to enlarge the width of any Major or Minor Road, Declarant or Association shall have the right to amend the Plat as applicable for that purpose without requirement to obtain the consent of any Owner or Mortgagee, or the Association. The width of any Major or Minor Road may be enlarged for road purposes or to accommodate a security gate house.

5.14 Driveway Easements. The Declarant or the Association may determine that it is necessary for a single Driveway to service more than one Lot. No Owner of a Lot on which a Driveway is placed shall have the right to interfere with the right of an Owner of another Lot which is serviced by that Driveway to access their respective Lot.

5.15 Ownership of Easements. Any easements or rights reserved by Declarant shall remain vested in Declarant until such time as Declarant has executed and delivered an instrument in writing transferring the same to the Association or benefiting any successor or assign of Declarant, or any water or other utility company benefiting the Preserve lands. Where the instrument recites a complete transfer of a particular easement or right, Declarant shall be relieved from all continuing responsibilities in and shall be indemnified by the Association with respect to any liability arising therefrom or relating therein. With respect to any of the Preserve easements created by this Declaration and with respect to any easements hereafter granted by

Declarant or the Association that benefit the Owner of any Lot such as roads, utilities, ditches and trails, no such easements may be vacated, extinguished, impaired or limited (other than temporary limitations for maintenance, repair or replacement), except upon the written consent of the Owner of such Lot and any Eligible Mortgage Holder thereon, and no amendment to this Declaration may repeal or change this requirement except upon the written consent of all Owners and all Eligible Mortgage Holders.

5.16 Performance Standards/Indemnification. Notwithstanding the provisions of this Declaration, all activities undertaken by Declarant, the Association or their assigns within or in connection with the easements and reservations described in this Section shall be performed in a good and workmanlike manner in a reasonable timeframe and in compliance with all applicable construction, health, safety and other laws, jurisdictions, regulations and codes. Declarant shall be released from all liability with respect to any such activities upon the acceptance of such improvements by the Association. Natural vegetation shall be disturbed as little as possible (excepting agricultural and wildlife enhancement activities), and any disturbed areas shall be re-graded and re-vegetated to the extent necessary to restore the same as closely as practicable to its natural condition. All such activities shall be performed at the sole cost and expense of Declarant, the Association, or their assigns, and all areas subject to said easements shall be kept free from mechanics' or materialmen's liens of any kind which may arise from the aforementioned activities. Nothing herein shall limit the ability of the Association as provided in this Declaration to assess Owners for costs for activities undertaken in connection with the easements and reservations described in this Declaration. The Association, and their respective assigns shall indemnify, defend (including, reasonable attorney's fees and costs), save and hold harmless any Owner's and such Owner's partners and their respective affiliated companies, employees and agents, from and against any and all losses, liabilities, damages, expenses, claims or demands for personal injury, death, property damage, or any other form of loss or damage suffered by any person or persons (collectively "Liabilities") arising from the exercise by Declarant or the Association, as the case may be, or their respective assigns, of any of the easement rights created in this Declaration and for claims covered by insurance, to the extent of such insurance coverage, this indemnification shall apply even if any of such Liabilities arise from or are attributable to the concurrent negligence of any Owner. Further, neither the Association nor Declarant shall be liable under this indemnification for the exercise of such easements or reservations by third parties such as police and fire protection.

5.17 Prohibition Against Owners Granting Easements. Owners are prohibited from granting any easements or right-of-ways over their Lots, except as permitted herein or expressly approved by the Association.

ARTICLE 6

ASSESSMENTS

6.1 Assessments. The Association has the power to levy assessments against each Lot as necessary to carry out Association functions. All assessments will be equal on all Lots, whether vacant or improved. Assessments will be made annually but shall be paid in equal periodic installments established from time to time by the Association and shall be made to meet the anticipated and recurring costs, expenses and other expenditures of the Association including, but not limited to, the costs of reimbursement of expenses incurred by the Board and Committee in performance of their obligations, the costs of complying with and enforcing rights under these covenants, acquisition of liability insurance, working capital, and contingency reserves. Notice of the assessment and the proposed amount of the annual assessment will be given in advance along with the notice of the annual meeting of the Association. The amount of the proposed assessment may be increased or decreased at the meeting at which it is approved by the Owners.

The Association may also levy Special Assessments to cover unanticipated expenses or shortfalls for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, or for other extraordinary expenses. No Special Assessment will be levied without approval of a majority of the votes (except in the event of an emergency) held by a quorum of the Owners in attendance in person or by proxy at a meeting called for that purpose. The term "emergency" shall mean any loss or damage, actual or threatened, to persons or property. Prior to adopting any emergency Special Assessment, the Association shall make reasonable efforts, via mail, telephone, email, or facsimile, to notify each Owner of the amount and purpose of the emergency Special Assessment to be levied.

6.2 Funding for Wildlife Management and Enhancement and Wildfire Prevention Plan. Implementation of the Wildlife Management and Enhancement and Wildfire Prevention Plans shall be a financial obligation of the Association to be funded through a continuing Annual Assessment chargeable to each Lot. The obligations of the Association with respect to Wildlife and Wildfire Plans may include, but are not limited to, payment for the services of one or more wildlife and wildfire consultants to assist in the implementation of the Wildlife and Wildfire Plans. There shall be an on going obligation on the part of the Association to continue activities on The Preserve for purposes of monitoring, maintaining and improving wildlife habitat and wildfire conditions. This shall include any monitoring by the Army Corp of Engineer's jurisdictional wetlands and waters of the U.S.

6.3 Assessments on Lots Owned by Declarant. No assessments shall be levied against Lots owned by Declarant that do not have a completed Dwelling. Assessments levied against Lots owned by Declarant that have a completed Dwelling shall not include any portion of costs incurred for management and administration of the Association or for reserves for capital repairs, replacements, or improvements.

6.4 Assessments Constitute Lien, Mortgagee Protection. Any validly imposed assessment by the Association shall constitute a lien against the affected, assessed Lots in The Preserve. The Association shall have the right to foreclose on the lien against an affected Lot if such lien is valid and a default exists and pursuant to the procedures available for judicial or non-judicial foreclosure for mortgages and/or trust deeds in the state of Utah when any assessment remains unpaid for a period of more than 90 (ninety) days from the date the assessment was levied. Alternatively, if a valid lien that is in default is not foreclosed upon, it may be renewed from year to year by recording a new notice of the lien, together with accumulated interest. The lien of the Association against any Lot shall have priority from the date that the first Notice of Lien on a specific Lot is recorded in the office of the Summit County Recorder, and is subordinate to any previously recorded liens or encumbrances filed against that Lot, specifically including any purchase money mortgage or trust deed. Notwithstanding the lien rights of the Association, the obligation to pay any assessments is a personal obligation of the Owner of each Lot, and the Association may proceed to collect against the Owner, or the prior Owner of any Lot (in the event of a sale) without any obligation to first take recourse against the Lot and Improvements to which the Lien has attached. The legal and administrative costs of any foreclosure or non-judicial proceeding, interest on all amounts due and owing, and all late fees shall be added to the assessment amount past due and shall constitute part of the assessment. Interest shall be charged on all assessments at a rate of 1.5% per month, beginning 15 days after such amount is due. In addition, a late fee of 5% shall be charged for each assessment installment paid 15 days or more after the installment is due. No Mortgagee or Beneficiary under a Trust Deed who takes title by foreclosure or non-judicial sale, or accepts a deed in lieu of foreclosure or non-judicial sale, shall be held liable for the unpaid assessments of the Owner whose Lot was acquired by the Mortgagee or Beneficiary under a Trust Deed. However, all other successor Owners shall be deemed to assume the obligation to pay unpaid assessments on the Lot.

6.5 Statement of Account. Any Owner may request the Association to provide a statement of his account to any lender or prospective buyer of such Owner's Lot reflecting the current status of that Lot showing the assessments for the Lot, indicating whether they have been paid in full, or the amounts of any past due assessments. The buyer or lender for whom such a statement was prepared will be entitled to rely on its accuracy and will not be held liable for any amounts not shown on the statement.

ARTICLE 7

GENERAL RESTRICTIONS

7.1 **General Statement** The following restrictions on use apply to all Lots within the Subdivision. Lots differ relative to the size and the number, and type of structures allowed; the allowances are designated within the recorded plat. In addition, certain Lots are allowed an equestrian area, which is designated within the recorded plat. If there are any discrepancies contained herein as it relates to Lot specific allowances and restrictions, the recorded plat shall govern.

7.2 **Zoning Regulations**. The lawfully enacted zoning regulations of Summit County, and any building, fire, and health codes are in full force and effect in the Subdivision, and no Lot may be occupied in a manner that is in violation of any such statute, law, or ordinance.

7.3 **No Mining Uses**. The property within the Subdivision shall be used for residential purposes only, and no mining, drilling, prospecting, mineral exploration or quarrying activity will be permitted at any time.

7.4 **No Business or Commercial Uses**. No portion of the Subdivision may be used for any commercial business use, provided, however, that nothing in this provision is intended to prevent (a) the Declarant from using one or more Lots for purposes of a construction office or sales office during the actual period of construction of any Improvements, including the Subdivision Improvements, or (b) the use by any Owner of his Lot for a home occupation. No home occupation will be permitted, however, which requires or encourages the Owner's clients, customers, patients or others to come to the Lot to conduct business, or which requires any employees outside of the Owner's immediate family or household. No retail sales of any kind may be made in the Subdivision, other than sale of Lots, and the structures located thereon, in the Project, by the Declarant, his successors and assigns, or the Owner of the Lot.

7.5 **Restrictions on Signs**. No signs will be permitted on any Lot or within the Subdivision, except for traffic control signs placed by the County or Declarant or temporary signs warning of some immediate danger. The Declarant may erect signs within the Subdivision in accordance with County sign regulations during the marketing of the Subdivision announcing the availability of homes or Lots and giving sales information.

7.6 **Additional Improvements**. No Additional Improvements shall be constructed on any Lot unless such Additional Improvements conform to all applicable building requirements and other requirements of the County and in conformance with Article III of this Declaration.

7.7 **No Used or Temporary Structures**. No temporary structure, mobile home, trailer house, or any other non-permanent structure may be installed or maintained on any Lot.

7.8. Number of Dwellings. Note that each lot differs as it relates to the size, number, and type of structures allowed; the allowances are designated within the recorded plat(s). In addition, certain lots are allowed an equestrian area, which is designated within the recorded plat. If there are any discrepancies contained herein as it relates to Lot specific allowances and restrictions, the recorded plat shall govern. Only one primary Dwelling may be constructed on any Lot. On certain plat-designated Lots, a guest house and/or a barn may also be constructed. No other outbuilding or habitable structure may be permitted on any Lot, except those Lots as indicated on the plat. Each main Dwelling shall have an attached garage for at least three (3) cars and no more than four (4) cars, which shall not be more than 1500 square feet in size.

7.9 Construction Timing of Dwellings. Upon purchase of a Lot, an Owner is not required to begin construction of a Dwelling by a set time. However, if an Owner chooses to construct a Guesthouse prior to the primary residence, a Lot master plan must be submitted and approved by the Committee prior to the Guesthouse submittal process beginning. Construction of the primary residence must begin within two (2) years of completion of such Guesthouse. If primary residence submittal has not begun within the aforementioned timeframe, the Declarant and the Association reserve the right to assess penalties until compliance is achieved pursuant to the Enforcement provisions of this Declaration.

7.10 Building Activity Envelope Allowances. With respect to each Lot, a Building Activity Envelope is designated on the plat. No development activity or changes in natural conditions of any lands shall occur outside Building Activity Envelopes except as may be approved in writing by the Committee consistent with the Design Guidelines or as otherwise specifically permitted in this Declaration, the Amended Consent Agreement and the County land use regulations. With regard to The Preserve, all development activity shall occur within the Development Activity Envelope, except: (i) subdivision infrastructure such as roads, utilities and ditches, driveways and utility connections, The Preserve operations and amenities; (ii) easements, rights-of-way and other conditions noted in the Plat or created, reserved or granted under this Declaration; (iii) those structures, improvements, or activities which may be situated outside Development Activity Envelopes as allowed by the Amended Consent Agreement and County land use regulations; and (iv) activities in furtherance of the Wildlife Management and Enhancement Plan and Wildfire Prevention Plan, including, but not limited to, vegetation manipulation, water management (springs, seeps, ponds, drainage ways), and reclamation. No structure or improvements (including residences, barns, fences, etc.) shall be erected within one hundred feet (100) feet of the edge of the pavement of any road fronting a Lot, except as permitted by the Committee.

7.11 Alternative Building Activity Envelopes. Lots within The Preserve have been designed to optimize views, facilitate driveway access, and to encourage development that conforms to the natural terrain with minimal grading. The boundaries of each Building Activity Envelope have been determined with the objective of promoting the rural mountain character of the community and minimal visibility of development as viewed from both inside and outside The Preserve.

In consideration of the size of the Lot and the desire to provide the Owner with the maximum design flexibility, the Committee will consider proposals for alternative Building Activity Envelope on any Lot. Provided it can be conclusively demonstrated that the alternative Building Activity Envelope accomplishes the objectives outlined above The Owner shall demonstrate to the Committee that the proposed alternative Building Activity Envelope is an improvement to visual, topographic or other substantial location concerns.

If the Committee and the owner cannot agree that the alternative Building Activity Envelope accomplishes the planning objectives of The Preserve, then the conceptual development indicated on the site analysis diagram will constitute the default location. Once a Building Activity Envelope has been established, the owner then must abandon all other possible Building Activity Envelopes. Committee approval shall be confirmed by the Summit County planning staff that such relocation meets the intent of the above criteria.

In addition to and without limiting the foregoing, unless the Committee approves a variance from said restriction, all buildings, structures, landscaping, and fencing on each Lot, (with the exception of utility lines and driveways), shall be constructed within the designated Building Activity Envelopes and pasture locations shown in the recorded plat(s). Subject to Committee approval any modification, decks or patios attached to the main dwelling may be extended outside the Building Activity Envelope as long as no trees, rock outcrops or other significant vegetation are removed or destroyed in connection with or as a result of the extension of said decks or patios outside said Building Activity Envelope.

7.12 Existing Springs, Seeps, Stock/Wildlife Ponds The Preserve's history includes several decades of free range ranching. Therefore there are several seeps, springs, drainages and ponds throughout the property. The Declarant and/or HOA may periodically repair, modify, enhance these features, or otherwise alter them to ensure their integrity, purpose and safety, or for other necessary reason. No Lot Owner, without Declarant or Association/Committee approval, may repair, modify, enhance or otherwise alter the springs, seeps, drainages, or ponds.

7.13 Erosion Control. Each owner in The Preserve shall be responsible to insure that no erosion or water drainage shall take place from his Lot which may adversely affect neighboring properties and/or roads.

7.14 Dwelling and Barn Maximum and Minimum Sizes. The structures which may be constructed on Lots shall have a minimum and maximum living floor area, exclusive of garages, balconies, porches, and patios, as follows:

Primary Residence:

All Primary Residences maximum sizes are plat-designated and are either 8,000 or 10,000 square feet (this excludes Lots 18, 19, and 20, whose maximum size is 15,000 square feet). The minimum Primary Residence size for all Lots is 4,000 square feet.

Guest House:

On Lots where a Guest House is permitted, the maximum size is 2,500 square feet. The minimum Guest House size is 1,000 square feet.

Barn:

On Lots where a barn is permitted, the maximum footprint for a barn is 2,500 square feet. Each pasture and barn is limited to the number of horses allowed on each Lot, which is plat-designated.

7.15 Residential Structure Height Requirements. As required pursuant to the Amended Consent Agreement, the following height requirements shall apply:

Lots 2 and 3 through 10 and Lots 32, 33, 34, and 42, shall not exceed a building height of 28 feet; all other Lots shall not exceed the county standard of 32 feet. All Lots shall conform to the Design Guidelines. Using the method prescribed by Summit County, building height is measured from any ridge or high point of the roof to the existing grade immediately below that point or the finish grade, whichever is lower. Existing grade means the ground surface elevation prior to the start of construction. The Committee shall determine such measurements and any variations due to mitigating design considerations must be approved by the Committee, at the sole discretion of the Committee.

7.16 Fences. Perimeter fencing of Building Activity Envelopes and pastures only shall be permitted consistent with the fencing provisions of the Design Guidelines. Interior fencing, screens, or walls which are associated or connected with a building are permitted if they are of such design materials, locations, and heights, as may be approved by the Committee and in conformance with the Design Guidelines. Other than Lot entrances, no fences are allowed outside the Building Activity Envelopes. All fences within The Preserve shall be designed in a wildlife-friendly manner and will be consistent in design and material throughout the project. The owner shall submit to the Committee a proposed fence location site plan for approval prior to installation.

7.17 Residence Siting. Placement of the residence and garage to be constructed on any Lot shall be subject to the prior approval of the Committee.

7.18 Driveways. With respect to driveways within each Building Activity Envelope, driveway design, location, surfacing material and construction methods shall be approved by the Committee. Each Owner shall be responsible for the maintenance and repair of the driveway area inside their Lot. The Association shall provide all maintenance and snow plowing on major and minor roads.

7.19 Driveway Entry Feature: Each Owner is required, at their sole cost, to install the Preserve's Entry Feature as shown within the Design Guidelines. Such installation must follow the same process for any improvement with the project. Once installed, Owner is responsible to maintain the Driveway Entry Feature.

7.20 Chimneys, Vents. Chimneys must be enclosed in an approved stone or siding material. Exposed metal flues are permitted if consistent with the Design Guidelines. All chimney tops on any one residence must be of identical design. Vent stacks must be combined to the extent possible to minimize the number of roof penetrations, and should generally not be visible from the street. All chimneys and vents must be painted or anodized to a dark earth tone color.

7.21 Swimming Pools and Sport Courts. Committee shall review submittals for swimming pools and sport courts on a case-by-case basis; the Committee has sole discretion as to whether such facilities will be allowed. The feasibility, location and screening of such facilities will be reviewed by the Committee.

7.22 Tennis Courts: Tennis courts are not allowed unless the Owner can show that such facility will not have an adverse effect on surrounding property and does not require considerable grading or landscaping.

7.23 Antennas. All antennas must be enclosed within the residence. Any satellite dishes must be no larger than 18 inches in diameter and located and screened in a manner approved in advance by the Committee so that they are not highly visible from any adjoining Lot or the road fronting the Lot. Solar panels will be permitted only with the consent of the Committee, and if permitted, must lie flat against the roof and may not differ in pitch or color from the roof surface on which they are mounted.

7.24 Balconies and Decks. Any balcony or deck that is more than twenty-four inches (24") above the as built surface of the Lot immediately below the balcony area must be constructed in compliance with the following: all railings must have at least three (3) horizontal members; all posts or pillars supporting any deck must be between eight (8) and sixteen (16) inches in width, including vertical members in railings. The area under any deck must either be landscaped or screened from view by siding stained to match the house. The area under any deck shall not be used for storage of equipment, firewood, building material, or similar material unless the area under the deck is enclosed with, at a minimum, siding stained to match the house.

7.25 Landscaping. Landscaping and irrigation may only be installed within the Building Activity Envelope, pasture and adjacent to the driveway. A complete landscaping and irrigation plan (showing landscaping layout and proposed plantings) shall be submitted to the Committee with each submittal for approval. All areas of the Lot damaged by construction must be revegetated under an approved plan. Landscaping plans shall be submitted with the overall site plan for improvements on each Lot. Retention or incorporation of natural vegetation is encouraged.

(a) Landscaping Required. As soon as practical following completion of the construction of the residence, but in no event later than the summer immediately following completion of construction, each Owner is required to landscape his Lot. The Owner may, with Committee approval, plant lawns and gardens, plant shrubbery, trees or other ornamental plantings or replace natural species.

(b) Drought Tolerant Plants Recommended. The use of drought tolerant species of grasses, shrubs and trees is strongly recommended.

7.26 Basements. Basements are not allowed without the permission of the Committee. Walk out basements are allowed as approved by the Committee.

7.27 Entry Gates. Individual entry gates to Lots are allowed but must be located no closer than 100 feet to the road. Any entry gate must be reviewed and approved by the Committee and the Park City Fire District.

7.28 Kennels and Dog Runs. Kennels and dog runs shall be completely screened from the view of all adjoining Lots.

7.29 No Re-Subdivision. No Lot may be subdivided without the consent of the Committee and the County. No subdivision of any Lot may result in the construction of any additional Dwelling Units within the Project.

7.30 Combination of Lots. Subject to the limitations set forth in this section, any jurisdictional requirements, and approval by the Declarant, a Lot Owner may combine no more than 2 adjoining Lots within the Subdivision.

(a) Dwelling Size, Placement. The maximum size of a Dwelling on the combined Lots shall not exceed 150% of the average of the maximum allowable dwelling sizes for the Lots in question if developed independently. The resulting building mass should be concentrated at the center of the combined Lots, and should not be placed entirely or predominately on one of the Lots.

(b) Combination Deemed Permanent. The combination of Lots is deemed to be permanent and the Lots may not be independently sold once construction has commenced on the Improvements for the combined Lots. The Owner of any Lots that have been combined will execute and deliver to the Committee a notice in recordable form, containing the combined Lots which cannot subsequently be subdivided. The Committee shall record this Notice with the Summit County recorder upon the commencement of construction of the dwelling on the Lots combined, which notice will state that the two Lots have been combined and cannot subsequently be subdivided.

(c) Other Restrictions. All other requirements of these CC&R's and the Design Guidelines shall apply without regard to the fact that the Improvements are located on combined Lots.

(d) Membership. The combined Lots shall have only one membership in the Association.

7.31 Completion Required Before Occupancy. No Dwelling may be occupied prior to its completion and the issuance of a certificate of occupancy by the County.

7.32 Animals. No animals, other than ordinary household pets (not to exceed three) may be kept on any Lot except such equestrian Lots that are limited to the number of horses allowed by the Plat. No house pet shall be permitted to make an unreasonable amount of noise or create a nuisance. No structure (excepting equestrian facilities) for the care, housing or confinement of any pet shall be visible from neighboring property. Notwithstanding the foregoing, no pets may be kept on or in any Lot which, in the opinion of the Board, results in an annoyance to other Owners in the vicinity. All pets shall be leashed when not on the property owned by the pet's owner or on which the pet's owner is a Resident or guest, and persons walking any pet shall promptly and properly remove of the pet's waste. Each Owner shall be responsible for preventing pets from entering the Common Areas and Lots held by other Owners.

7.33 Equestrian Lots. Equestrian Lots shall be designed and maintained per the Equestrian section of the Design Guidelines and shall be of high quality and an operation which will not interfere with the use and enjoyment of The Preserve by other Owners and will not interfere with the wildlife interests and aesthetic values of The Preserve. The following minimum objectives must be achieved:

(a) Pastures, trees and shrubs within the Lot shall continue to thrive and be protected from overgrazing or other damage by horses.

(b) Waste from livestock must be managed to control flies and odors such that the maintenance of horses does not interfere with the use and enjoyment of The Preserve by each Owner.

(c) Adequate feed, water and other essential care must be provided for any livestock maintained on the Lot.

(e) Trailers and other equestrian equipment associated with the maintenance of horses must be enclosed in approved structures.

(f) Dust must be controlled at all times. The equestrian area must not be overgrazed and vegetation cover must be maintained.

7.34 Underground Utilities. All wired or piped utilities in the Subdivision are to be underground, including lines within any Lot which service installations entirely within that Lot. No propane tanks or oil tanks may be installed on any Lot except for temporary heat during construction. Any areas of natural vegetation or terrain disturbed by the burying of utility lines shall be re-vegetated to Committee standards by and at the expense of the Lot Owner no later than the next growing season.

7.35 Service Yards. There shall be no clothes lines, service yards, or storage yards maintained on any Lot. Exterior mechanical equipment must be screened in a manner approved by the Committee so that it is not visible from adjoining Lots.

7.36 Maintenance of Property. All Lots, and the Improvements on them, shall be maintained in a clean, sanitary and attractive condition at all times. No Owner shall permit his Lot or the Improvements on it to fall into disrepair.

7.37 No Noxious or Offensive Activity. No noxious or offensive activity or nuisance shall be permitted on any Lot, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Lots.

7.38 No Hazardous Activity. No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, or which would cause the cancellation of a conventional homeowner's insurance policy. This includes without limitation, hunting, trapping, the discharge of firearms or fireworks, and setting open fires.

7.39 No Unsightliness. No unsightliness is permitted on any Lot. This shall include, without limitation, the open storage of any building materials (except during the construction of any Dwelling unit or addition); open storage or parking of farm or construction equipment, boats, campers, camper shells, trailers, trucks larger than pick-up trucks (except during periods of actual loading and unloading) or inoperable motor vehicles; accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; household refuse or garbage except as stored in tight containers in an enclosure such as a garage; and the storage or accumulation of any other material, vehicle, or equipment on the Lot in a manner that it is visible from any other Lot or any public street. For this section, "Vehicles" includes cars, trucks and vans of all sizes, motorcycles, motorbikes, mopeds, mini-bikes, motor scooters, all-terrain vehicles, off road vehicles, motor homes, recreational vehicles, trailers, travel trailers, tent trailers, camper shells, detached campers, boats, boat trailers, mobile homes, or other similar machinery or equipment, whether motorized or not, whether wheeled or not and whether or not in operating condition. Notwithstanding the foregoing: (a) up to one car, van or truck having a capacity of one ton or less may occasionally be parked in driveways or other improved parking areas on a Lot so long as the same are in operating condition and are regularly used for transportation of passengers; (b) additional cars, vans or trucks having a capacity of one ton or less may be parked from time to time on driveways or other improved parking areas on a Lot to accommodate visitors or guests of the Owner of that Lot (provided that the Committee may adopt rules or regulations relating to the number or frequency of guest or visitor vehicle parking, if it determines, in its discretion, that such rules are necessary); (c) service, repair or delivery vehicles may be parked on a Lot but only for the period reasonably required to effect the needed service, repair or delivery; and (d) a temporary construction trailer may be placed and maintained on a Lot in connection with construction of Improvements on that Lot, but only if that temporary construction trailer, its location on the

Lot and the period during which it will be permitted to remain on the Lot are approved in writing by the Committee. Except for emergency repairs, no Vehicle shall be repaired, constructed or reconstructed on the Property except within a fully-enclosed garage. No Vehicle shall be parked on any roadway or street within or adjacent to the Property, except for temporary parking (not exceeding 24 hours) of Vehicles of an Owner's guest.

7.40 No Annoying Lights. Any outdoor lighting shall be subject to approval by the Committee, and no outdoor lighting shall be permitted except for low wattage lighting that is designed to aim downward and limit the field of light to the confines of the Lot on which it is installed.

7.41 No Annoying Sounds. No speakers, or other noise making devices may be used or maintained on any Lot which create noise that is annoyingly loud to adjoining Lots, except for security or fire alarms.

7.42 Septic System. The Preserve will be served by individual septic systems. Lot owners must abide by all jurisdictional requirements for the approval and installation of these systems. Lot owner shall install their septic drain field within the Building Activity Envelope at their cost. If topographic or geotechnical reasons do not allow the septic system to be installed within the approved Building Activity Envelope, lot owner may, by written request to the Committee, request a specific exception for the septic system to be located outside the Building Activity Envelope.

7.43 No Fuel Storage. No fuel oil, gasoline, propane, or other fuel storage tanks may be installed or maintained on the property. Dwellings shall be heated with natural gas, solar, or electric heat. Propane or other such containerized fuels may be used only during construction of the Dwelling until the permanent heating system is installed and operational. Notwithstanding the foregoing, propane tanks for outdoor barbecues shall be permitted.

7.44 Drainage. No Owner shall alter the direction of natural drainage from his Lot, nor shall any Owner permit accelerated storm run-off to leave his Lot without first using reasonable means to dissipate the flow energy.

7.45 Vehicles Restricted to Roadways. No motorized vehicle will be operated in the Subdivision except on improved roads and driveways, other than by the Association's maintenance personnel.

7.46 No Transient Lodging Uses. The Lots are to be used for residential housing purposes only, and shall not be rented in whole or in part for transient lodging purposes, boarding house, "bed and breakfast", or other uses for providing accommodations to travelers. No lease of any Dwelling on a Lot shall be for a period of less than 30 days. No Dwelling on a Lot shall be subjected to time interval ownership.

ARTICLE 8

OWNERS' MAINTENANCE OBLIGATIONS

8.1 **General Statement** It is the obligation of each Owner to maintain his Lot at all times in order to preserve and enhance the enjoyment of the Subdivision.

8.2 **Duty to Maintain.** It is the obligation of the Owner of each Lot to maintain his Lot and the Improvements to the Lot in a good state of repair and an attractive, safe, and healthy condition.

8.3 **Alterations of Exterior Appearance.** The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as that approved by the Architectural Committee. No subsequent exterior alterations, improvements or remodeling, whether structural or changes in paint color or siding or trim materials will be made without the advance consent of the Committee.

8.4 **Repair Following Damage.** In the event of casualty loss or damage to the Improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Committee, provided however that alterations or deviations from the originally approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent further damage, or to prevent injury or dangerous conditions following loss or damage, before re-construction begins. Such temporary measures may be taken without the consent or approval of the Architectural Committee, provided that any such measures must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. No damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing, and any damaged structure which does remain un-repaired after 90 days following the occurrence of damage is deemed a nuisance.

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ARTICLE 9

GENERAL PROVISIONS

The covenants, conditions, and restrictions contained in this Declaration may be enforced as follows:

9.1 Remedies.

(a) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by the Declarant (for so long as the Declarant is the Owner of any Lot) or by any other Owner. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including attorney's fees and costs of court.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. These covenants are to be construed as being in addition to those remedies available at law.

(c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The failure to take enforcement action shall not be construed as a waiver of the covenants contained in this Declaration in the future or against other similar violations.

9.2 **Severability.** Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

9.3 **Violation Deemed a Nuisance.** Any violation of these Covenants which is permitted to remain on the property is deemed a nuisance, and is subject to abatement.

9.4 **Limited Liability.** Neither the Declarant nor the Architectural Committee or its individual members, nor any other Owner shall have personal liability to any other Owner for actions or inactions taken under these covenants, provided that any such actions or inactions are the result of the good faith exercise of their judgment or authority, under these covenants, and without malice.

9.5 Amendment.

Subject to the other provisions of this Declaration, at any time while this Declaration is in effect, the provisions of this Declaration may be amended upon approval of 75% of the Owners of the Lots and with the consent of the Declarant (so long as Declarant remains an owner of any Lot). Any amendment must be in writing. No such amendment will be retroactively binding upon the holder of any mortgage or trust deed holder.

Notwithstanding anything to the contrary in this section no amendment may be made to this Declaration which violates the provisions of the Amended Consent Agreement without the written consent of Summit County.

So long as the Declarant owns any Lot, the Declarant may amend this Declaration without the consent or approval of any other Owner or Person.

So long as the Declarant or any Declarant Affiliate owns any Lot, no amendment to this Declaration shall be effective unless approved in writing by Declarant (or unless the Declarant expressly waives in writing its right to approve such amendments).

Any amendment approved pursuant to this section of this Declaration shall be executed by the Declarant and the Association and shall be recorded.

9.6 Constructive Notice. Every person who owns, occupies, or acquires any right, title or interest in any Lot in the Subdivision is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the covenants, conditions and restrictions against his Lot, whether or not there is any reference to this Declaration in the instrument by which he acquires his interest in any Lot.

9.7 Notices. All notices under this Declaration are deemed effective 72 hours after mailing, whether delivery is proved or not, provided that any mailed notice must have postage pre-paid and be sent to the last known address of the party to receive notice. Notices delivered by hand are effective upon delivery.

9.8 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform development within the Subdivision. Paragraph headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

9.9 Inherent Risks of The Preserve. By taking title to a Lot, the Owner shall be deemed to be aware of and have agreed to, and shall be deemed to have explained and made known to said Owner's spouse, children, other relatives, visitors and invitees who come onto the Preserve to visit or at the invitation of said Owner (collectively the "Informed Persons"), the following facts: (i) that the Preserve is a rural development and the roads are designed as

country lanes to preserve the rural environment as much as is feasible; (ii) that the wildfire hazard rating for the Preserve is considered "high", and the response time for the nearest fire protection station is extended due to the remote location of many of the Lots; (iii) that the Preserve encourages the presence of wildlife and horses, within the Preserve; (iv) that narrow, winding roads, remote locations, and the presence of wildlife and livestock pose inherent risks of danger and suffering injury, including, without limitation, death, physical or emotional injury or damage to person, property or third parties, all of which injuries or damage may require costly emergency and/or medical care; and (v) that eliminating the risks of living in an environment such as the Preserve would be anathema to the Owner's decision to live in this particular environment, and would greatly reduce the benefits of living in the Preserve, which benefits the Owner is deemed to want more than the removal of such risks. Therefore, every Owner and every Informed Person shall be deemed, by virtue of coming onto the Preserve, to have made the voluntary decision to confront the risks posed by the existence of country lanes, remote locations, wildlife and livestock, and to have accepted and assumed all of the risks posed by the existence of such roads, locations, wildlife and livestock within the Preserve.

Nothing contained in this provision is intended to absolve Declarant or the Association from any duty to abide by all applicable zoning and building ordinances, including, when applicable, any ordinance of Summit County to construct fences, unless the same is waived through official action of the County.

9.10 Release and Indemnification. Every Owner, by taking title to a Lot, shall be deemed (i) to have released and forever discharged and to have agreed to indemnify and hold harmless, Declarant and the Association from any and all claims, demands, losses, damages, injuries or causes of action, which are in any way connected with or result from the design of narrow, winding roads or Lots in remote locations, or the involvement or contact with wildlife or livestock within the Preserve, including any such claims, demands or causes of action which allege negligent acts or omissions of the Declarant or the Preserve; (ii) to have released Declarant and the Association from any duty that either may have to protect the Owner from these risks, which risks Owner, by taking title to a Lot, has acknowledged he or she does not want eliminated because of the detrimental impact on the benefits of the Preserve that would result from eliminating such risks; and (iii) to have indemnified and held harmless Declarant and the Association from any and all claims or causes of action which are brought by or on behalf of the Informed Persons with respect to any matters similar to those from which the Owner has released and indemnified Declarant and the Association pursuant to the previous provisions of clauses (i) and (ii) of this Paragraph 8. The releases and indemnifications contained in this Paragraph 8 shall include an indemnification of Declarant and the Association by an Owner from any and all attorneys' fees and costs incurred by either of them in enforcing their rights under the provisions of this Section 8.

9.11 Rules and Regulations. Notwithstanding the provisions of Paragraphs 7 and 8, the Association shall have the right, in furtherance of its rights and duties set out in this Declaration, its articles and bylaws, and other law, to enact and adopt such rules and regulations managing wildlife and the keeping of livestock on the Preserve. Adoption of such rules and regulations will not serve to eliminate the assumption of the risks contained in Paragraphs 7 and 8.

Executed on the date stated above.

MACDONALD UTAH HOLDINGS, L.L.C.
A UTAH LIMITED LIABILITY COMPANY
and
THE PRESERVE AT PARK CITY, LLC
A UTAH LIMITED LIABILITY COMPANY

By: _____


Kirkpatrick MacDonald
Managing Member

STATE OF UTAH

COUNTY OF SUMMIT

The foregoing instrument was acknowledged before me by Kirkpatrick MacDonald, Managing Member of MacDonald Utah Holdings, L.L.C. and of The Preserve at Park City, LLC




Notary Public

BK1658 PG1772

EXHIBIT A:

LOTS 1 THROUGH 20 OF 'THE PRESERVE PHASE I PLAT' as recorded
December 17th, 2003 in Summit County, Utah.