

**SUMMIT COUNTY
ORDINANCE NO. 310**

**AN ORDINANCE APPROVING AND ADOPTING
THE CONSENT AGREEMENT FOR RED HAWK
WILDLIFE PRESERVE PROJECT**

Preamble

WHEREAS, the owners and developers of the Red Hawk Wildlife Preserve have applied for specific plan development approval for the Red Hawk project under Section 14.1 et. seq. of the Snyderville Basin Administrative Guidelines, Resolution No. 93-1 and Ordinance 204, as amended; and,

WHEREAS, Summit County, acting pursuant to its authority under Utah Code Ann. 17-27-101, et. seq., has made certain determinations with respect to the proposed project and, in the exercise of its legislative discretion, has elected to process the project pursuant to Section 14.1, et. seq. of the Snyderville Basin Administrative Guidelines, resulting in the negotiation, consideration and approval of this Consent Agreement after all necessary public hearings; and,

WHEREAS, the Board of Commissioners of Summit County considered a Consent Agreement on April 14, 1997, all necessary public hearings having been satisfied for consideration and adoption of such, and determined that it is in the best interests of Summit County and the health, safety, and general welfare of its citizens to adopt this Consent Agreement by Ordinance in order to resolve certain continuing disputes between the parties with respect to design, density, and uses of the Red Hawk project and to address other issues and policies as reflected in the Consent Agreement;

NOW THEREFORE, the Board of Commissioners of the County of Summit, the State of Utah, ordains as follows:

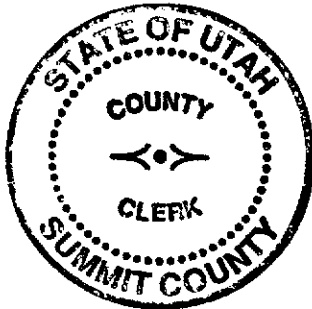
Section 1. Adoption. Ordinance No. 310, the Consent Agreement for the Red Hawk Wildlife Preserve project, Snyderville Basin, Summit County, Utah, consisting of ___ pages including exhibits and schedules which has been published in code book form, three copies of which have been filed for use and examination in the Office of the Clerk, Summit County, Utah, is hereby adopted by Summit County, and the Chairman is authorized to sign and execute the Consent Agreement on behalf of Summit County.

Section 2. No Rights Created in Third Parties. This Ordinance is not intended to, nor shall it be construed to create any rights, claims, or causes of action in third parties.

Section 3. **Savings Clause.** In the event one or more of the provisions of this Ordinance shall, for any reason, be held to be unenforceable or invalid in any respect under any applicable laws, such unenforceability or invalidity shall not affect any other provision; and in such an event, this Ordinance shall be construed as if such unenforceable or invalid provision had never been contained herein.

Section 4. **Effective Date.** This Ordinance shall take effect 15 days after passage by the Board of Commissioners of Summit County and subsequent publication in a newspaper of general circulation in Summit County, Utah.

APPROVED, ADOPTED, AND PASSED and ordered published by the Summit County Board of Commissioners, this 21st day of April, 1997.



**BOARD OF COUNTY COMMISSIONERS
SUMMIT COUNTY, STATE OF UTAH**

By: *Sheldon D. Richins*
Chairman

Commissioner Soter voted: *Aye*
Commissioner Richins voted: *Aye*
Commissioner Schifferli voted: *recused*

ATTEST:

Ruth Ann
County Clerk
Summit County, Utah

APPROVED AS TO FORM:

David L. Thomas
Deputy County Attorney
Summit County, Utah

WHEN RECORDED RETURN TO:

**Summit County Clerk
Summit County Courthouse
Coalville, Utah 84017**

**CONSENT AGREEMENT
FOR THE
RED HAWK WILDLIFE PRESERVE PROJECT
SNYDERVILLE BASIN, SUMMIT COUNTY, UTAH**

This Consent Agreement is entered into this 1st day of May, 1997, by and between Redhawk Development L.L.C., a Utah Limited Liability Company (hereinafter referred to as "Developer"), the developer of the real property consisting of the Red Hawk Wildlife Preserve development project, as described in Exhibit A, which is attached hereto and incorporated herein by this reference (hereinafter referred to as "the Project"), and Summit County, a political subdivision of the State of Utah, by and through its Board of County Commissioners ("the County").

RECITALS:

A. The Project involves initial development of 116 single family residential units on a parcel of real property currently consisting of approximately 2,299 acres located in Summit County, Utah, and potential future development of single family residential units on real property contiguous to the Project, at the option of Developer so long as the future development consists of the same density (one lot per approximately 20 acres) and is subject to design conditions as the current residential units. A portion of the Project previously was part of what has been known as the Jeremy Ranch Development.

B. There is a dispute between the County and the Developer whether development of at least 1,261 acres of the Project is exempt from the application of the standards of Summit County Ordinance 201 and 202, Temporary Zoning Regulation Ordinances (the "TRZO"), County Ordinance 204, Snyderville Basin Development Code (the "Code"), and the various subsequent amendments made to the Code.

C. Developer has various vested rights claims pending with the County which are inconsistent with current County land use planning and, if successful, would result in high density development in an area where the County desires low density development and preservation of open space values.



D. In August 1995, the County acknowledged the existence of nine lots of record within Section 7 of the Project. Each lot of record is eligible for development of a single family dwelling, provided certain requirements for building permits under the Development Code were met.

E. In January 1997, the County acknowledged the existence of eleven lots of record within Section 6 of the Project. Each lot of record is eligible for development of a single family dwelling, provided certain requirements for building permits under the Development Code were met.

F. It is in the best interests of the County to master plan the Project property to prevent piecemeal development and to ensure low density development consistent with current County land use planning values.

G. Developer is willing to modify the design and density of the Project and agree to certain other considerations to address various Summit County issues and policies.

H. Without conceding or waiving their respective positions, the parties seek to settle their disputes pursuant to Chapter 14 of the Snyderville Basin Administrative Guidelines, Resolution 93-1 (the "Administrative Guidelines") which provides for a vested rights determination and approval of a Consent Agreement.

I. The County, acting pursuant to its authority under Utah Code Annotated § 17-27-101, et seq., and its authority under Section 14.1 of the Administrative Guidelines, has made certain determinations with respect to the proposed Project, and, in the exercise of its legislative discretion, has elected to process the Project pursuant to its Administrative Guidelines and the Code, resulting in the negotiation, consideration and approval of this Consent Agreement after all necessary public hearings. Due process was afforded to all those who appeared at the public hearings.

NOW, THEREFORE, SUMMIT COUNTY AND DEVELOPER HEREBY AGREE AS FOLLOWS:

1 THE PROJECT.

1.1 Description of Project. The Project initially covered by this Consent Agreement is located on approximately 2,299 acres consisting of real property located in Summit County, Utah, together with the contiguous real property included in Exhibit "A" hereto, on which Developer proposes the development of single family residential units together with certain amenities as more fully set forth herein, to be constructed in multiple phases.

1.2 Legal Description of the Project. The legal description of the real property covered by the Project, including the potential contiguous real property, is attached hereto as Exhibit A and

incorporated into this Consent Agreement by this reference. No property may be added to the legal description for purposes of this Consent Agreement, except by written amendment.

- 1.3 Approved Use, Density and Configuration. This Consent Agreement shall vest with respect to the Project the use, density and configuration reflected on Exhibit B and as more fully set forth herein. While Exhibit B provides for 119 lots, Developer shall redesign future plats to reduce the number from 119 to 116 lots. Developer may construct an equestrian center on Lot 78. The equestrian center would include a stable area and other amenities generally associated with such centers. Use and design standards, including site design, building design, landscaping, parking, lighting, screening and signage, shall be submitted to the Director for approval. A minor permit (administrative) issued by the County shall be required to locate the equestrian center and related improvements, and to authorize its construction.

- 1.4 Specific Design Conditions. The development and construction of this Project must be consistent with those design conditions set forth in Schedule 1 to this Consent Agreement, which Schedule is incorporated in this Consent Agreement by this reference, and with those design conditions set forth in the proposed Rural Development Guidelines for the Snyderville Basin Planning District, which Guidelines are attached hereto as Exhibit C and incorporated herein by this reference. In the event there is any ambiguity or conflict between the Exhibits and design conditions in Schedule 1 and other provisions of the Rural Design Guidelines or this Consent Agreement, the more specific provisions of the design conditions in Schedule 1 shall take precedence.

- 1.5 Red Hawk Wildlife Management and Enhancement Plan. The development and construction of this Project must be consistent with the terms of the Red Hawk Wildlife Management and Enhancement Plan (the "Wildlife Plan"), which is attached hereto as Exhibit D and incorporated herein by this reference. The Wildlife Plan may be amended, as necessary, by action of the Red Hawk Wildlife Preserve Foundation, upon the recommendation and approval of the Foundation's wildlife consultants, and as approved by the County, which approval shall not be unreasonably withheld. Provided, however, that the amendment shall be in the best interest of the wildlife that inhabit the Project area.

- 1.6 Red Hawk Wildfire Prevention Plan. The development and construction of this Project must be consistent with the terms of the Red Hawk Wildfire Plan (the "Wildfire Plan"), which is attached hereto as Exhibit E and incorporated herein by this reference. The Wildfire Plan may be amended, as necessary, by action of the Red Hawk Wildlife Preserve Foundation, with approval of any such amendments by the Park City Fire Service District, which

approval shall not be unreasonably withheld. Provided, however, that the amendment shall be in the best interest of the public in providing fire fighting services in the Project area.

2 SUMMARY OF COUNTY DETERMINATION RELATING TO THE PROJECT.

2.1 County Determinations Relating to the Project.

2.1.1 Plan Approval. The Project has received a recommendation for approval of a Consent Agreement by action of the Summit County Planning Commission taken on March 25, 1997. The Board of County Commissioners has approved the Project under the Consent Agreement procedures set forth in § 14.2.6 et seq. of the Administrative Guidelines on the terms and conditions set forth in this Consent Agreement.

2.1.2 Exemption from County Ordinances. The Board of County Commissioners has determined, in the exercise of their legislative authority, that the Project is exempt from the application of Ordinances 204-207 solely to the extent that such a finding may be a condition precedent to approval of this Consent Agreement.

2.1.3 Consistency with General Plan Update. The density reflected on Exhibit B hereto and approved hereunder is generally consistent with the draft 1997 Snyderville Basin General Plan Update.

2.2 Vested Rights and Reserved Legislative Powers.

2.2.1 Vested Rights. Subject to Paragraph 2.2.2, Developer shall have the vested right to have preliminary and final subdivision plats approved, and to develop and construct the Project in accordance with the uses, density, timing and configuration of development as vested in Paragraph 1.3 under the terms and conditions of this Consent Agreement. Developer acknowledges that the provisions of this Consent Agreement, including 2.1.2, contemplate that the rights vested in the Project are exempt from the application of Ordinances 204-207 and to subsequently enacted ordinances only to the extent that such exemption is a condition precedent to grant of said vested rights; and, that all other provisions of Ordinance 204 and the relevant laws shall apply, including, but not limited to, the processing requirements (e.g. procedures for the approval of preliminary and final subdivision plats) and fees (as established by Resolution 93-1).

2.2.2 Reserved Legislative Powers.

2.2.2.1 Future Changes of Laws and Plans; Compelling, Countervailing Public Interest. Nothing in this Agreement shall limit the future exercise of the police power of the County in enacting

zoning, subdivision, development, growth management, platting, environmental, open space, transportation and other land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of the County to enact such legislation under the police power, such legislation shall only be applied to modify the vested rights described in Paragraph 2.2.1 and other provisions of this Consent Agreement based upon policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the state of Utah. Any such proposed change affecting the vested rights of the Project shall be of general application to all development activity in the Snyderville Basin; and, unless the County declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project under the compelling, countervailing public policy exception to the vested rights doctrine.

2.3 Fees.

2.3.1 Vested Rights Application Fees. Pursuant to the provisions of 4.9 and 14.1.3 of the Administrative Guidelines, Developer agrees to pay the sum of \$11,600 (\$100 per approved lot) prior to final approval of the Consent Agreement by the Board of County Commissioners. Prior to approval of any additional lots hereunder, Developer shall pay \$100 per approved lot. At such time as any plat hereunder is submitted for final County approval, Developer shall pay \$185 per lot receiving final approval under such plat. Developer shall receive such credits or adjustments toward fees that may have been paid previously toward County approval of the Project, as approved by the Director. The County may charge such standard planning and engineering review fees as are generally applicable at the time of application, pursuant to the provisions of Resolution 93-1 as amended or other applicable statutes, ordinances, resolutions or administrative guidelines. The County may charge other fees that are generally applicable, including, but not limited to, standard building permit review fees for improvements to be constructed on improved lots.

2.3.2 Future Impact Fees. The Project shall be subject to all impact fees which are (1) imposed at time of issuance of building permits, and (2) generally applicable to other property in the Snyderville Basin, and Developer waives its position with respect to any vested rights to the imposition of such fees, but shall be entitled to similar treatment afforded any other vested projects if an impact fees ordinance makes any such distinction or any other vested project is afforded different treatment pursuant to decision of the Courts of the State of Utah. If fees are properly imposed under the preceding tests, the fees shall be payable in accordance with the payment requirements of the particular impact fee ordinance and implementing resolution. Notwithstanding the agreement of the Developer to subject the Project to impact fees under the above-stated conditions, Developer does not hereby waive its right under any applicable law to challenge the reasonableness of the amount of the fees within thirty (30) days following imposition of the fees on the Project.

3 PHASING AND TIMING OF SUBDIVISION DEVELOPMENT AND CONSTRUCTION OF INFRASTRUCTURE.

- 3.1 Phases and Timing. Exhibit B depicts each phase of the 2,299 acres of the Project to be developed at this time. Developer may proceed by platting and constructing one phase at a time, or portions of a phase, with each phase or portion providing a logical extension of the road system through the Project; provided, however, that adequate public facilities exist to serve each varied phase or portion thereof. In any case, all roads within the Project, including the road linking Jeremy Ranch to the Project, shall be for private use only, and shall not be subject to public maintenance. At such time as Developer may elect to develop the contiguous property described in Exhibit "A" hereto, Developer shall submit to the County a new site plan for review by the Director and the County Planning staff. The phase or phases of the contiguous property shall follow the same approval process as the phases shown in Exhibit "B" hereto. At such time as a plat receives final approval by the County, any existing lots of record within the approved plat shall be null and void.
- 3.2 Construction of Infrastructure Improvements. Developer shall construct improvements in accordance with the engineering requirements of the County, any applicable Special Service District or County Service Area, or recommended rural development guidelines of the Director of Community Development, and the Code, as modified by any applicable terms of this Consent Agreement.
- 3.3 Dedication of Open Space. As integral consideration for this Consent Agreement, Developer agrees to preserve and maintain the Project land outside of individual building envelopes as open space subject to the restrictions of the CC&R's of the Project and/or subject to a conservation easement granted by Developer in perpetuity to an appropriate agency or entity approved by the Board of County Commissioners of Summit County.
- 3.4 Utility Capacity Verification. The parties shall verify the availability of the following for the portion of the Project subject to final plat or site plan approval at the time of each application for final plat or site plan approval within the Project: (a) sewage treatment capacity to cover anticipated development within the site plan or plat, if the Project will be served by sewer; (b) water quality and water pressure adequate for residential consumption and fire flows; (c) capacity for electrical and telephone service; and (d) road design and capacity. Developer has acknowledged to the County that it has 259 acre-feet of water available for supplying the needs of the lot owners within the Project.

Developer shall, upon approval of this Consent Agreement, commence an analysis related to the creation of a "community water system" for the Project. Developer will work with

adjacent property owners in determining the feasibility of this type of water system. Developer shall provide information related to the viability of a community water system for the Project to Summit County prior to the issuance of any building permits in Plats B, C, or D of the Project.

4 SUCCESSORS AND ASSIGNS.

4.1 Binding Effect. This Consent Agreement shall be binding on the successors and assigns of Developer in the ownership or development of any portion of the Project. Notwithstanding the foregoing, a purchaser of the Project or any portion thereof shall be responsible for performance of Developer's obligations hereunder as to the portion of the Project so transferred in accordance with the provisions of Section 4.3 hereof.

4.2 Transfer of Project. Developer shall be entitled to transfer any portion of this Project subject to the terms of this Consent Agreement upon written notice to and written consent of the County, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Developer shall not be required to notify the County or obtain the County's consent with regard to the sale of lots in single family residential subdivisions which have been platted and approved in accordance with the terms of this Agreement.

4.3 Release of Developer. Except for the sale of lots in single family residential subdivisions which have been platted and approved in accordance with the terms of this Agreement, in which case this requirement shall not apply, in the event of a transfer of all or a portion of the Project, Developer shall obtain an assumption by the transferee of Developer's obligations under this Agreement, and, in such event, the transferee shall be fully substituted as the Developer under this Agreement as to the parcel so transferred, and Developer executing this Agreement shall be released from any further obligations with respect to this Consent Agreement as to the parcel so transferred.

5 GENERAL TERMS AND CONDITIONS.

5.1 Agreements to Run with the Land. This Agreement shall be recorded against the Project's 2,299 acres described in Exhibit A hereto and the lots shown on Exhibit B hereto. The agreements contained herein shall be deemed to run with the land and shall be binding on all successors in the ownership of the Project property and subsequent lots.



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- 5.2 Construction of Agreement. This Agreement should be construed so as to effectuate the public purpose of settlement of disputes, while protecting any compelling, countervailing public interest.
- 5.3 Laws of General Applicability. Where this Agreement refers to laws of general applicability to the Project and other properties, this Agreement shall be deemed to refer to other developed and subdivided properties in the Snyderville Basin of Summit County.
- 5.4 Duration. The term of this Agreement shall commence on, and the effective date of this Agreement shall be, the effective date of the Ordinance approving this Agreement. The Term of this Agreement shall extend for a period of five (5) years following the effective date with an option on the part of Developer or the County to extend this Consent Agreement for an additional five years if the terms of the Consent Agreement have been substantially complied with unless the Agreement is earlier terminated, or its term modified by written amendment to this Agreement.
- 5.5 Mutual Releases. At the time of, and subject to, (i) the expiration of any applicable appeal period with respect to the approval of this Agreement without an appeal having been filed or (ii) the final determination of any court upholding this Agreement, whichever occurs later, and excepting the parties' respective rights and obligations under this Agreement, Developer, on behalf of itself and Developer's partners, officers, directors, employees, agents, attorneys and consultants, hereby releases the County and the County's board members, officials, employees, agents, attorneys and consultants, and the County, on behalf of itself and the County's board members, officials, employees, agents, attorneys and consultants, hereby releases Developer and Developer's partners, officers, directors, employees, agents, attorneys and consultants, from and against any and all claims, demands, liabilities, costs, expenses of whatever nature, whether known or unknown, and whether liquidated or contingent, arising on or before the date of this Agreement in connection with the application, processing or approval of the Project, including, but not limited to, the claims set forth in the lawsuit styled Westside Canadian Properties Company v. Summit County et al., Case No. 95-03-00005 PR, Third Judicial District Court in and for Summit County, State of Utah, filed January 6, 1995 (the "Lawsuit"), and any Notices of Claim and correspondence previously submitted to and filed with the County on behalf of Developer referring and relating to various issues arising out of the approval process for the Project.
- 5.6 State and Federal Law. The parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed

amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect.

- 5.7 Enforcement. The parties to this Agreement recognize that the County has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance. In the event that Developer or any user on the subject property violates the rules, policies, regulations or ordinances of the County or violates the terms of this Agreement, the County may, without electing to seek an injunction and after fifteen (15) days written notice to correct the violation (or such longer period as may be established in the discretion of the Board of County Commissioners or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such fifteen (15) days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been honored by the Developer. The County shall be free from any liability arising out of the exercise of its rights under this paragraph.
- 5.8 No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the Board of County Commissioners taken with the same formality as the vote approving this agreement, no officer, official or agent of the County has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind the County by making any promise or representation not contained herein.
- 5.9 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both parties to this Agreement.
- 5.10 Attorneys' Fees. Should any party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearings, and whether or not an action has actually commenced, the prevailing party shall be entitled to receive from the other party thereto reimbursement for all attorneys' fees and all costs and expenses. Should any judgment or final order be issued in that proceeding, said reimbursement shall be specified therein.

5.11 Notices. All notices hereunder shall be given in writing by certified mail, postage prepaid, at the following addresses:

To the County:

The Board of County Commissioners
of Summit County
Summit County Courthouse
P. O. Box 128
Coalville, UT 84017

Director of Community Development
Summit County
P. O. Box 128
Coalville, UT 84017

David L. Thomas
Deputy County Attorney
Summit County
P.O. Box 128
Coalville, UT 84017

With copies to:

Jody K. Burnett
Williams & Hunt
257 E. 200 South #500
Salt Lake City, UT 84111

To the Developer:

Redhawk Development, L.L.C.
C. Michael Nielsen
2677 E. Parleys Way
Salt Lake City, UT 84109

With copies to:

David L. Gillette, Esq.
Redhawk Development, L.L.C.
2677 E. Parleys Way
Salt Lake City, UT 84109

5.12 Applicable Law. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Utah.

5.13 Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other party within seven (7) days of receipt of said facsimile copy.

5.14 Hold Harmless.

5.14.1 Agreement of Developer. Developer agrees to and shall hold County, its officers, agents, employees, consultants, special counsel and representatives harmless from liability: (1) for damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including health, and claims for property damage which may arise from the

direct or indirect operations of the Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf which relates to the Project; and (2) from any claim that damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. This hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered or alleged to have been suffered by reason of the events referred to in this paragraph or due by reason of the terms of, or effects, arising from this Agreement regardless of whether or not the County prepared, supplied or approved this Agreement, plans or specifications, or both, for the Project. The Developer further agrees to indemnify, hold harmless, and pay all costs for the defense of the County, including fees and costs for special counsel to be selected by the County, regarding any action by a third party challenging the validity of this Consent Agreement or asserting that damages, just compensation, restitution, judicial or equitable relief is warranted by reason of the terms of, or effects arising from this Consent Agreement. County may make all reasonable decisions with respect to its representation in any legal proceeding.

- 5.14.2 Exceptions to Hold Harmless. The agreements of Developer in Paragraph 5.14.1 shall not be applicable to any claim arising by reason of the negligence or intentional actions of the County.
- 5.14.3 Hold Harmless Procedures. The County shall give written notice of any claim, demand, action or proceeding which is the subject of the Developer's hold harmless agreement as soon as practicable but not later than ten (10) days after the assertion or commencement of the claim, demand, action or proceeding. Each party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.
- 5.15 Relationship of Parties. The contractual relationship between the County and Developer arising out of this Agreement is one of independent contractor and not agency. This Agreement does not create any third party beneficiary rights. It is specifically understood by the parties that: (a) the Project is a private development; (b) the County has no interest in or responsibilities for or duty to third parties concerning any improvements to the Project unless the County accepts the improvements pursuant to the provisions of this Agreement or in connection with subdivision map approval; and (c) Developer shall have the full power and exclusive control of the Project subject to the obligations of the Developer set forth in this Agreement.
- 5.16 Compliance with County Ordinances and Administrative Guidelines. The County has reviewed the provisions of Section 4.14 of the Code (Ordinance No. 204, as amended), Ordinance No. 205 (Land Use Element), Ordinance No. 206 (Transportation and Circulation Element), Ordinance No. 207 (Environmental and Open Space Element) and § 14.1 et seq. of Resolution No. 93-1 (Administrative Guidelines) and has determined that the Developer

has substantially complied with the provisions thereof and hereby finds that the Project is consistent with the purpose and intent of the relevant provisions of the Code and the General Plan. The parties further agree that the omission of a limitation or restriction herein shall not relieve the Developer of the necessity of complying with all applicable County law not in conflict with the provisions of this Consent Agreement, along with all applicable State and Federal laws.

5.17 Annual Review. The County shall review progress pursuant to this Agreement at least once every twelve (12) months to determine if there has been demonstrated compliance with the terms hereof. If the County finds, on the basis of substantial competent evidence, that there has been a failure to comply with the terms hereof, this Agreement may be revoked or modified by the County in accordance with the provisions of §§ 5.18 and 5.19 hereof, after a public hearing which has been noticed by publication, and for which notice has been expressly provided to Developer. The County's failure to review at least annually Developer's compliance with the terms and conditions of this Agreement shall not constitute or be asserted by any party as a breach of this Agreement by Developer or County. Further, such failure shall not constitute a waiver of the County's right to revoke or modify said agreement according to the terms and conditions set forth herein.

5.18 Default.

5.18.1 Events of Default. Developer is in default under this Agreement upon the happening of one or more of the following events or conditions.

- (1) If a warranty, representation or statement made or furnished by Developer in this Agreement, including any attachments hereto, to the County is false or proves to have been false in any material respect when it was made.
- (2) A finding and determination made by the County following a periodic review under Paragraph 5.17 that upon the basis of substantial evidence the Developer has not complied in good faith with one or more of the material terms or conditions of this Agreement.
- (3) Any other event, condition, act or omission which materially interferes with the intent and objectives of this Agreement.

5.19 Procedure Upon Default.

- (1) Within thirty (30) days after the occurrence of default, the County shall give the Developer (the "defaulting party") written notice specifying the nature of the alleged

default and, when appropriate, the manner in which the default must be satisfactorily cured. The Developer shall have thirty (30) days after receipt of notice to cure the default. After proper notice and expiration of the thirty (30) day cure period without cure, the County may terminate or amend this Agreement by giving written notice in accordance with the procedure adopted by the County. Notwithstanding the thirty-day cure period provided above, in the event more than thirty days is reasonably required to cure a default and the Developer, within the thirty-day cure period, commences actions reasonably designed to cure the default, then the cure period shall be extended for such additional period as the Developer is prosecuting those actions diligently to completion. Failure or delay in giving notice of default shall not constitute a waiver of any default, nor shall it change the time of default.

- (2) The County does not waive any claim of defect in performance by the Developer, if on periodic review the County does not propose to modify or terminate this Agreement.
- (3) Any default or inability to cure a default caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to the period during which any such event prevented, delayed or stopped any required performance or effort to cure a default.
- (4) An express repudiation, refusal or renunciation of the contract, if the same is in writing and signed by the Developer, shall be sufficient to terminate this Agreement and a hearing on the matter shall not be required.
- (5) Adoption of a law or other governmental activity making performance by the applicant unprofitable or more difficult or more expensive does not excuse the performance of the obligation by the Developers.
- (6) All other remedies at law or in equity which are not consistent with the provisions of this Agreement or are available to the parties to pursue in the event there is a breach.

5.19.1 Damages Upon Termination. Except as provided in this Agreement with respect to just compensation under Paragraphs 2.3 and 5.10, neither party shall be entitled to any damages against the other party based on any theory for an alleged breach of contract as a result of the termination of this Consent Agreement; provided, however, that nothing herein shall be construed nor operate as a release, waiver, discharge, relinquishment or other limitation of

any kind or nature whatsoever to the recovery of damages or other relief for any non-contract claims which may arise after the date of this Consent Agreement.

5.19.2 Institution of Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default or breach; to specifically enforce any covenants or agreements set forth in the Consent Agreement or to enjoin any threatened or attempted violation of the Consent Agreement; or to obtain any remedies consistent with the purposes of this Consent Agreement. Legal actions shall be instituted in the Third Judicial District Court of the County of Summit, State of Utah, or in the Federal District Court for the District of Utah.

5.20 Rights of Third Parties. This Consent Agreement is not intended to affect or create any additional rights or obligations on the part of third parties, including but not limited to, the current owners of the contiguous real property included in Exhibit "A" hereto.

5.21 Survival of Developer's Obligations. Notwithstanding any provision of this Consent Agreement, or of law to the contrary and as a partial consideration for the parties entering into this Consent Agreement, the parties agree that Developer is obligated to provide to the County the following enumerated extraordinary and significant benefits even if the Developer cancels, rescinds, repudiates, refuses, revokes, or in any manner terminates or attempts to terminate this Consent Agreement:

- (1) Dedication of any open space shown on the Project Plan;
- (2) Construction of any roads or public improvements covered by a recorded plat;
- (3) Compliance with the attached exhibits and schedules;
- (4) Payment of impact fees to the extent such fees are payable under the terms of this Agreement and any applicable impact fee ordinance; and
- (5) Compliance with Developer's hold harmless covenants under this Agreement.

00632168 Bk01473 Pg00647

IN WITNESS WHEREOF, this Agreement has been executed by Summit County, acting by and through the Board of County Commissioners of Summit County, State of Utah, pursuant to Ordinance No. 310, authorizing such execution, and by a duly authorized representative of Developer as of the above-stated date.

COUNTY:

BOARD OF COUNTY COMMISSIONERS OF
SUMMIT COUNTY, STATE OF UTAH

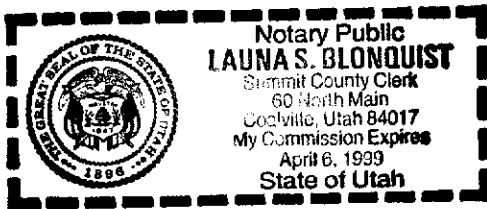
By: Sheldon D. Richins
Chairman

STATE OF UTAH }

:SS.

COUNTY OF SUMMIT }

The foregoing instrument was acknowledged before me this 5th day of May, 1997, by ~~James Soter~~ Sheldon Richins, Chairman of the Board of County Commissioners of Summit County, State of Utah.



Launa S. Blonquist
NOTARY PUBLIC

00632168 Br01473 Pg00648

DEVELOPER:

RED HAWK DEVELOPMENT, L.L.C.

RED HAWK MANAGEMENT, L.L.C.

By: *David L. Gilette*

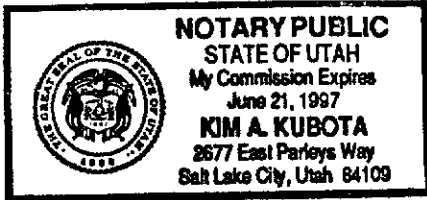
Its: *Manager of Manager*

STATE OF UTAH }

:SS.

COUNTY OF *Salt Lake* }

The foregoing instrument was acknowledged before me this *18* day of *April*, 1997, by *David L. Gilette*.



Kim A. Kubota
NOTARY PUBLIC

00632168 Br01473 Pg00649

DEVELOPER:

RED HAWK DEVELOPMENT, L.L.C.

By: *John Faskie*
Its: *manager of manager*

STATE OF UTAH }

:SS.

COUNTY OF _____ }

The foregoing instrument was acknowledged before me this ____ day of _____,
1997, by _____.

NOTARY PUBLIC

00632168 Bk01473 Pe00650

EXHIBIT "A" TO "CONSENT AGREEMENT"

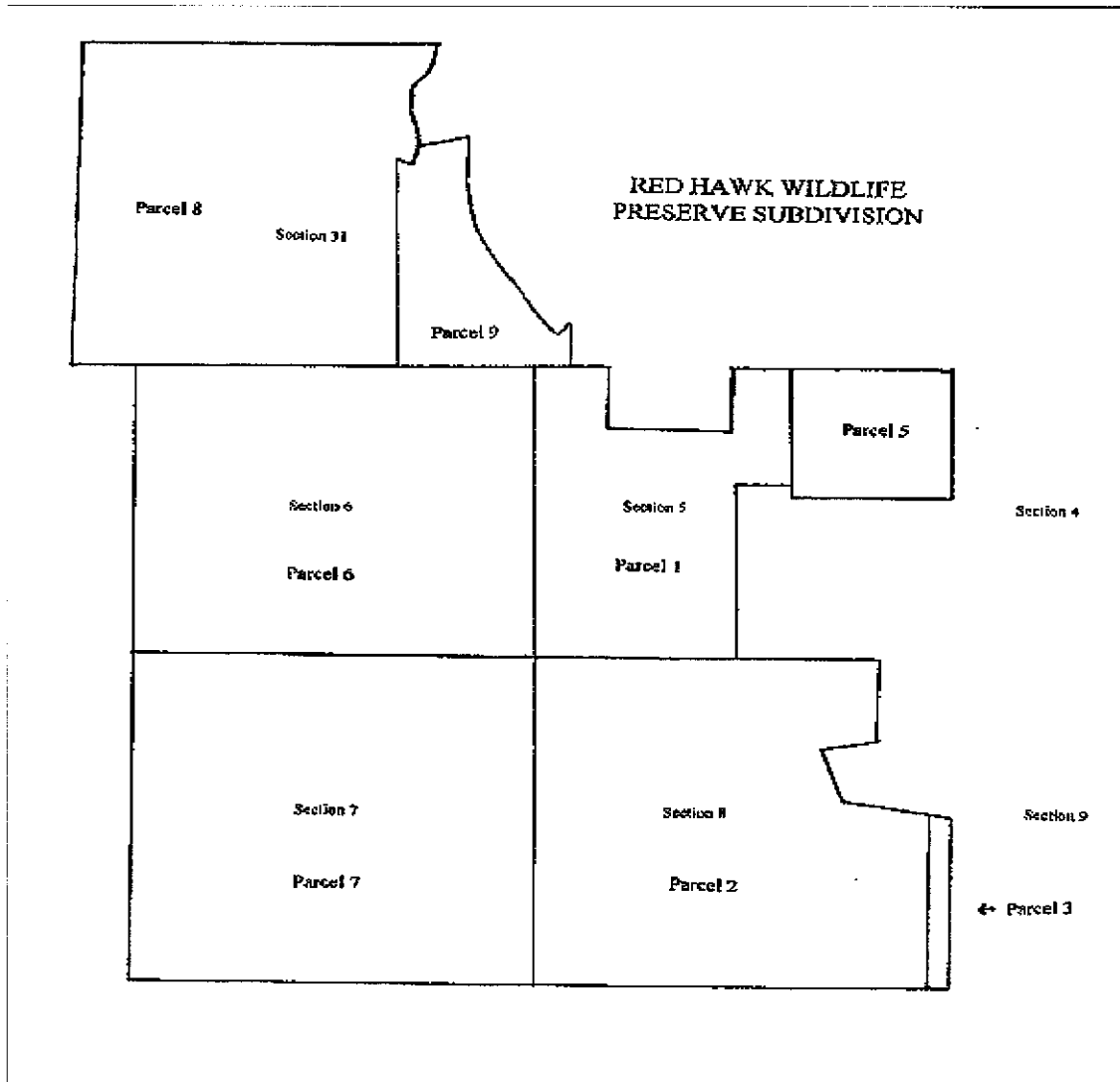
RED HAWK WILDLIFE PRESERVE PROJECT LEGAL DESCRIPTION

Parcels which are currently included in the Red Hawk Wildlife Preserve

- Parcel 1: 272 acre (approx.) parcel in Section 5, T1S, R4E, SLB&M.
- Parcel 2: 638 acre (approx.) parcel in Section 8, T1S, R4E, SLB&M.
- Parcel 3: 21 acre (approx) parcel in Section 9, T1S, R4E, SLB&M.
- Parcel 4: 0 acres (Rights of Way and Easements through Parcels 1-3.)
- Parcel 5: 108 acre parcel (approx.) owned by Milton O. Bitner Co, in Sections 4 & 5, T1S, R4E, SLB&M
- Parcel 6: 603 acre (approx.) parcel in Section 6, T1S, R4E, SLB&M
- Parcel 7: 658 acre (approx.) parcel in Section 7, T1S, R4E, SLB&M

Contiguous Parcels - These parcels may potentially be included in the Red Hawk Wildlife Preserve in the future.

- Parcel 8: 475 acre parcel owned by Porcupine Ridge, L.L.C. in Section 31, T1N, R4E, SLB&M.
- Parcel 9: 125 acre parcel owned by Milton O. Bitner Co. in Section 31, T1N, R4E, SLB&M.



RED HAWK WILDLIFE PRESERVE SUBDIVISION LEGAL DESCRIPTION
(CONTINUED)

PARCEL 1:

All of Section 5, Township 1 South, Range 4 East, Salt Lake Base and Meridian,
EXCEPTING THEREFROM the following 5 tracts:

EXCEPTION 1:

BEGINNING at a point East 981 feet: from the Northwest corner of Section 5, Township 1 South, Range 4 East; thence East 326 feet along the Section line; thence South 1000 feet; thence West 326 feet; thence North 1000 feet to BEGINNING.

TOGETHER WITH an adequate right of way at least 50 feet in width over Grantor's property and subject to right of way over existing roadways.

EXCEPTION 2:

BEGINNING at a point East 1307 feet from the Northwest corner of Section 5, Township 1 South, Range 4 East; thence East along the Section line 870 feet; Thence South 1000 feet; Thence West 870 feet; thence North 1000 feet to BEGINNING.

TOGETHER WITH an adequate right of way at least 50 feet in width over Grantor's property and subject to right of way over existing roadways.

EXCEPTION 3:

BEGINNING; at a point 2177 feet East from the Northwest corner of Section 5, Township 1 South, Range 4 East, Salt Lake Base and Meridian; thence East along the Section line 423 feet; thence South 1029 feet; thence West 423 feet; thence North 1029 feet to the point of BEGINNING.

EXCEPTION 4:

BEGINNING at the Southeast corner of Section 5, Township 1 South, Range 4 East, Salt Lake Base and Meridian; and running thence South 89°45'34" West 2652.05 feet more or less along the South line of said Section to the South quarter corner of said Section 5; thence North 00°2'50" West 2696.26 feet along the quarter Section line to the center of said Section 5; thence North 89°39'30" East 2654.72 feet more or less to the East quarter corner of said Section 5; thence East 330.01 feet to an existing fence line; thence South 00°00'06" West 2702.20 feet along said fence line to an existing iron pipe, in a fence corner; thence North 89°47'07" West 330.35 feet along an existing fence line to the point of BEGINNING.

TOGETHER WITH a right of way 100 feet in width for ingress and egress, said right of way being 50 feet on each side of the following described center line:

BEGINNING at a point which is East 290.40 feet from the Southwest corner of Section 9, Township 1 South Range 4 East, Salt Lake Base and Meridian; and running
thence North 10°24'43" East 80.35 feet; thence North 00°15'50" West 1344.26 feet;
thence North 08°17'52" West 324.59 feet; thence North 24°06'15" West 116.17 feet;
thence North 61°51'53" West 912.86 feet; thence North 58°43'03" West 276.53 feet;
thence North 34°25'07" West 302.84 feet; thence North 17°09'09" West 490.38 feet;
thence North 32°31'12" West 218.58 feet; thence North 18°30'43" West 722.90 feet;
thence North 04°59'44" West 196.12 feet; thence North 20°15'51" East 284.87 feet;
thence North 04°57'03" West 395.75 feet; thence North 11°16'06" East 112.41 feet;
thence North 51°17'55" East 345.44 feet; thence North 09°10'52" West 184.10 feet;

RED HAWK WILDLIFE PRESERVE SUBDIVISION LEGAL DESCRIPTION
(CONTINUED)

thence North 08°23'56" East 32.74 feet to the Southerly line of Section 5, Township 1 South, Range 4 East, Salt Lake Base and Meridian.

EXCEPTION 5:

BEGINNING at the Northeast corner of Section 5, Township 1 South, Range 4 East, Salt Lake Base and Meridian; and running thence South 89°57'17" East 329.76 feet to an old existing fence line; thence South 00°00'06" West 2105.14 feet along said fence line; thence West 330.01 feet; thence South 89°39'30" West 1817.02 feet; thence North 00°00'32" East 2116.71 feet to the Northerly line of said section; thence South 89°59'06" East 1816.98 feet to the point of BEGINNING.

PARCEL 2:

All of Section 8, Township 1 South, Range 4 East, Salt Lake Base and Meridian, EXCEPTING THEREFROM those portions lying within the East one-half of the East half of the Northeast quarter of the Northeast quarter of said Section and Silver Creek Estates Unit "C" Subdivision recorded September 18, 1963 as Entry No. 97485 in the office of the Summit County Recorder.

PARCEL 3:

The South 240 rods of the West 20 rods of Section 9, Township 1 South, Range 4 East, Salt Lake Base and Meridian, EXCEPTING THEREFROM any portion lying within Silver Creek Estates, Unit C (described above).

EXCEPTING from Parcels 2 & 3 those portions of the following described tract lying within said parcels:

Beginning at a point which is South 1241.49 feet and East 330.00 feet from the Northeast corner of Section 8, Township 1 South, Range 4 East, Salt Lake Base and Meridian (said point being on an existing fence corner and a 2" pipe) and running thence South 00°02'02" East 1320.00 feet along an old existing fence line; thence North 81°11'19" West 1463.43 feet to the Easterly edge of a dirt road; thence North 17°09'09" West 70.80 feet along said road; thence North 32°30'27" West 218.77 feet along said road; thence North 18°30'43" West 650.38 feet along said road; thence North 82°46'31" East 1804.65 feet to the point of Beginning.

Together with a right of way 22 feet in width for ingress and egress, said right of way being 11 feet on each side of the following described center line:

Beginning at a point which is South 1433.19 feet and West 2200.34 feet from the Southeast corner of Section 17, Township 1 South Range 4 East, Salt Lake Base and Meridian (said point being on the center line of an existing dirt road and the Northerly line of a County Road); and running thence North 12°37'36" West 90.16 feet; thence North 16°44'02" West 204.35 feet; thence North 02°00'32" East 59.86 feet; thence North 49°08'45" East 510.31 feet; thence North 79°39'38" East 258.66 feet; thence North 32°48'09" East 174.02 feet; thence North 11°01'47" West 579.08 feet, more or less, to the Southerly line of Section 17; thence North 00°22'58" West 176.11 feet; thence North 03°50'31" East 1700.84 feet; thence North 27°13'53" East 1568.28 feet; thence North 50°09'35" East 1041.33 feet; thence North 29°34'05" East 317.20 feet; thence North 06°08'20" East 687.26 feet; thence North 11°44'41" East 399.59 feet, more or less to the point of beginning of the right of way set forth next below.

Together with a right of way 22 feet in width for ingress and egress, said right of way being 11 feet on each side of the following described center line:

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RED HAWK WILDLIFE PRESERVE SUBDIVISION LEGAL DESCRIPTION
(CONTINUED)

BEGINNING at a point which is East 290.40 feet from the Southwest corner of Section 9, Township 1 South, Range 4 East, Salt Lake Base and Meridian; and running
thence North 10°24'43" East 80.35 feet; thence North 00°15'50" West 1344.26 feet;
thence North 08°17'52" West 324.59 feet; thence North 24°06'15" West 116.17 feet;
thence North 61°51'53" West 912.86 feet; thence North 58°43'03" West 276.53 feet;
thence North 34°25'07" West 302.84 feet; thence North 17°09'09" West 490.38 feet;
thence North 32°31'12" West 218.58 feet; thence North 18°30'43" West 722.90 feet;
thence North 04°59'44" West 196.12 feet; thence North 20°15'51" East 284.87 feet;
thence North 04°57'03" West 395.75 feet; thence North 11°16'06" East 112.41 feet;
thence North 51°17'55" East 345.44 feet; thence North 09°10'52" West 184.10 feet;
thence North 08°23'56" East 32.74 feet to the Southerly line of Section 5, Township 1 South, Range 4 East, Salt Lake Base and Meridian.

PARCEL 4:

The above described subject: Parcels 1 thru 3 are together with and subject to the following described rights of way and easements:

RIGHT OF WAY NO. 1

A right of way 100 feet in width for ingress and egress, said right of way being 50 feet on each side of the following described center line:

Beginning at a point which is South 1433.19 feet and West 2200.34 feet from the Southeast corner of Section 17, Township 1 South Range 4 East, Salt Lake Base and Meridian (said point being on the center line of an existing dirt road and the Northerly line of a County Road); and running thence North 12°37'36" West 90.16 feet; thence North 16°44'02" West 204.35 feet; thence North 02°00'32" East 59.86 feet; thence North 49°08'45" East 510.31 feet; thence North 79°39'38" East 258.66 feet; thence North 32°48'09" East 174.02 feet; thence North 11°01'47" West 579.08 feet, more or less, to the Southerly line of Section 17; thence North 00°22'58" West 176.11 feet; thence North 03°50'31" East 1700.84 feet; thence North 27°13'53" East 1568.28 feet; thence North 50°09'35" East 1041.33 feet; thence North 29°34'05" East 317.20 feet; thence North 06°08'20" East 687.26 feet; thence North 11°44'41" East 399.59 feet, more or less to the point of beginning of the right of way set forth next below.

RIGHT OF WAY NO. 2

A right of way 100 feet in width for ingress and egress, said right of way being 50 feet on each side of the following described center line:

BEGINNING at a point which is East 290.40 feet from the Southwest corner of Section 9, Township 1 South, Range 4 East, Salt Lake Base and Meridian; and running
thence North 10°24'43" East 80.35 feet; thence North 00°15'50" West 1344.26 feet;
thence North 08°17'52" West 324.59 feet; thence North 24°06'15" West 116.17 feet;
thence North 61°51'53" West 912.86 feet; thence North 58°43'03" West 276.53 feet;
thence North 34°25'07" West 302.84 feet; thence North 17°09'09" West 490.38 feet;
thence North 32°31'12" West 218.58 feet; thence North 18°30'43" West 722.90 feet;
thence North 04°59'44" West 196.12 feet; thence North 20°15'51" East 284.87 feet;
thence North 04°57'03" West 395.75 feet; thence North 11°16'06" East 112.41 feet;

RED HAWK WILDLIFE PRESERVE SUBDIVISION LEGAL DESCRIPTION
(CONTINUED)

thence North 51°17'55" East 345.44 feet; thence North 09°10'52" West 184.10 feet;
thence North 08°23'56" East 32.74 feet to the Southerly line of Section 5, Township 1 South, Range 4 East,
Salt Lake Base and Meridian.

RIGHT OF WAY NO. 3

Easement and right of way for an existing dirt road over, along and across the following described centerline as follows:

BEGINNING at a point which is South 89°45'34" West 1176.53 feet from the Southeast corner of Section 5, Township 1 South, Range 4 East, Salt Lake Base and Meridian; and running thence North 08°23'56" East 84.08 feet; thence North 58°44'30" East 137.13 feet; thence North 85°03'11" East 235.29 feet; thence North 46°02'01" East 160.26 feet; thence North 63°23'39" East 165.68 feet; thence North 29°18'53" East 151.62 feet; thence North 67°55'51" East 79.45 feet; thence South 74°56'05" East 185.32 feet; thence North 81°39'34" East 70.26 feet; thence North 34°50'04" East 136.37 feet; thence North 54°53'29" East 174.64 feet; thence North 38°59'35" East 160.40 feet; thence North 22°34'56" East 89.74 feet; thence North 01°38'34" East 85.45 feet; thence North 04°06'23" West 208.81 feet; thence North 09°43'41" West 381.17 feet; thence North 23°57'06" West 83.02 feet; thence North 30°21'34" West 670.40 feet; thence North 06°47'06" West 53.74 feet; thence North 04°12'57" East 92.05 feet; thence North 32°02'28" West 24.43 feet; thence North 52°10'06" West 502.71 feet to a point on the North line of the Southeast quarter of said Section, which is West 656.44 feet from the East quarter corner of said Section 5.

RIGHT OF WAY NO. 4

Easement and Right of Way for an existing dirt road over, along and across the following described centerline as follows:

BEGINNING at a point which is South 2109.33 feet and West 656.44 feet from the Northeast corner of Section 5, Township 1 South, Range 4 East, Salt Lake Base and Meridian; and running thence North 52°10'06" West 324.78 feet; thence North 15°29'16" West 205.75 feet; thence North 13°52'39" West 72.25 feet; thence North 26°48'51" West 184.15 feet; thence North 12°04'08" West 181.58 feet to a point which is South 1300.00 feet from the Northerly line of said Section.

PARCEL 5:

BEGINNING at the Southeast corner of Section 5, Township 1 South, Range 4 East, Salt Lake Base and Meridian; and running thence South 89°45'34" West 2652.05 feet more or less along the South line of said Section to the South quarter corner of said Section 5; thence North 00°2'50" West 2696.26 feet along the quarter Section line to the center of said Section 5; thence North 89°39'30" East 2654.72 feet more or less to the East quarter corner of said Section 5; thence East 330.01 feet to an existing fence line; thence South 00°00'06" West 2702.20 feet along said fence line to an existing iron pipe, in a fence corner; thence North 89°47'07" West 330.35 feet along an existing fence line to the point of BEGINNING.

TOGETHER WITH a right of way 100 feet in width for ingress and egress, said right of way being 50 feet on each side of the following described center line:

BEGINNING at a point which is East 290.40 feet from the Southwest corner of Section 9, Township 1 South Range 4 East, Salt Lake Base and Meridian; and running
thence North 10°24'43" East 80.35 feet; thence North 00°15'50" West 1344.26 feet;

RED HAWK WILDLIFE PRESERVE SUBDIVISION LEGAL DESCRIPTION
(CONTINUED)

thence North 08°17'52" West 324.59 feet; thence North 24°06'15" West 116.17 feet;
thence North 61°51'53" West 912.86 feet; thence North 58°43'03" West 276.53 feet;
thence North 34°25'07" West 302.84 feet; thence North 17°09'09" West 490.38 feet;
thence North 32°31'12" West 218.58 feet; thence North 18°30'43" West 722.90 feet;
thence North 04°59'44" West 196.12 feet; thence North 20°15'51" East 284.87 feet;
thence North 04°57'03" West 395.75 feet; thence North 11°16'06" East 112.41 feet;
thence North 51°17'55" East 345.44 feet; thence North 09°10'52" West 184.10 feet;
thence North 08°23'56" East 32.74 feet to the Southerly line of Section 5, Township 1 South, Range 4 East,
Salt Lake Base and Meridian.

PARCEL 6:

All of Section 6, Township 1 South, Range 4 East, Salt Lake Base and Meridian.

PARCEL 7:

All of Section 7, Township 1 South, Range 4 East, Salt Lake Base and Meridian

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RED HAWK WILDLIFE PRESERVE SUBDIVISION LEGAL DESCRIPTION
(CONTINUED)

LEGAL DESCRIPTION OF CONTIGUOUS PARCELS

PARCEL 8:

BEGINNING at the Southwest corner of Section 31 Township 1 North, Range 4 East, Salt Lake Base and Meridian, thence North along the section line 871.2 ft, thence East 1800 ft, thence South 24°39'42" East 958.64 ft to the South line of Section 31; thence 2200.0 ft West to the point of Beginning. (Contains 40 acres.)

also

That portion of lots 116, 117, 118, 119 of Stagecoach Estate Plat "D" Subdivision lying in the W ½ and the W 247.5 ft of the E ½ of Section 31, Township 1 North, Range 4 East, Salt Lake Base and Meridian. (Contains approx. 18.91 acres).

also

W ½ of Section 31 Township 1 North, Range 4 East, Salt Lake Base and Meridian (Contains 444.60 acres and with 247.5 ft of E ½ of Section 31 Containing 30 acres, less 40 acres)

PARCEL 9:

E ½ of Section 31, Township 1 North, Range 4 East, Salt Lake Base and Meridian containing 320.0 acres. Less the West 247.5 feet of the East ½ of Section 31 containing 30 acres, less 165.22 acres included in Stagecoach Estates Plat "D" Subdivision 470-31-C. Total acreage 124.78 acres.

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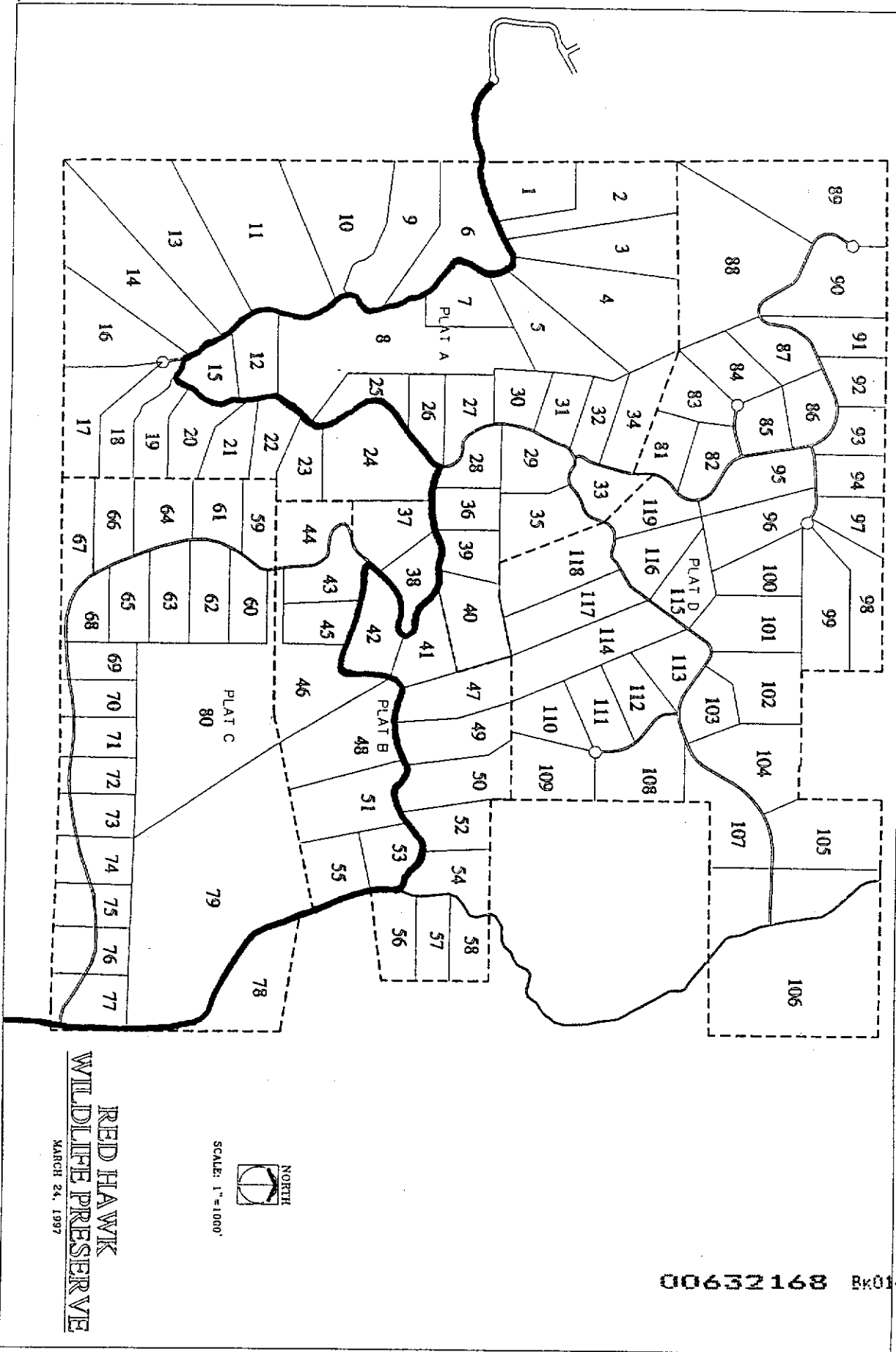


EXHIBIT "B" to Consent Agreement

————— = Required Phase I roads.