

DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE

MOUNTAIN AIR ESTATES SUBDIVISION

ENT 67237 BK 3784 PG 574
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
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RECORDED FOR UPPER PHILLIPS DEVELOPMENT

PREAMBLE

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PREAMBLE

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Conditions, covenants, restrictions and easements affecting the property of MOUNTAIN AIR ESTATES SUBDIVISION, owned and being developed by UPPER PHILLIPS DEVELOPMENT CO.,L.L.C., hereinafter called the "Declarant".

WITNESSETH:

This Declaration is made this 25th day of SEPTEMBER, 1995, by the Declarant as follows:

WHEREAS, Declarant is the owner of the real property described in that certain Plat Map entitled MOUNTAIN AIR ESTATES SUBDIVISION, recorded in the official records of the Utah County Recorder as Entry No. 60467 on 9/12/, 1995 (hereinafter "Plat Map") and are desirous of subjecting all of said real property or any subdivision thereof to all of the covenants, conditions, restrictions, reservations of easements, liens, and charges hereinafter set forth, each and all of which is and are for the benefit of and shall pass with said real property, and each and every parcel of lot thereof, and shall apply to and bind the successors in interest, and any owner thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the value in said real property described above (hereinafter "Properties") and in any additional properties which may be annexed thereto pursuant to the provisions of this Declaration to create a non-profit corporation under the Utah Non-Profit Corporation and Cooperative Association Act to which should be delegated and assigned the powers of owning, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; (hereinafter "Association"); and

WHEREAS, Declarant shall cause such Association, the members of which shall be respective Owners of Lots in the Properties, and Owners of the Lots in real property annexed pursuant to this Declaration, to be formed for the purpose of exercising the functions aforesaid; and

WHEREAS, Declarant shall develop and convey all of the Properties (as hereinafter defined), pursuant to a "General Plan of Development" (hereinafter "General Plan"), a copy of which is attached as Exhibit "A" and incorporated herein by reference, for all of the Properties and subject to certain protective covenants, conditions, restrictions, reservation of easements, equitable servitudes, liens and charges, all running with the Properties as hereinafter set forth.

NOW THEREFORE, it is hereby declared that all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of

which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, improvement and sale of the Properties, or any portion thereof. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall run with the Properties and shall be binding upon all persons having any right, title, or interest in the properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon Declarant, its successors in interest and each Owner and his respective successors in interest; and may be enforced by any Owner, his successors in interest, and by the Association. The term "Owner" and "Association" as used herein shall be hereinafter defined. Notwithstanding the foregoing, no provision of this Declaration shall be construed as to prevent or limit Declarant's right to complete development of the Properties and construction of improvements thereon, nor Declarant's right to maintain model homes, constructions, sales offices and similar facilities on any Properties owned by Declarant or Declarant's right to post signs incidental to construction and/or sales.

NOW THEREFORE, Declarant shall consummate the incorporation of the Association within thirty (30) days after the closing of the seventh (7th) Lot.

NOW THEREFORE, until such time as the Association is incorporated, the Declarant shall be empowered to enforce all the covenants, conditions, restrictions and all other provisions described herein the Declaration, and every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties does and shall hereby conclusively acknowledge such empowerment and agree to be bound thereby.

NOW THEREFORE, at such time as the Association is incorporated, the governing body shall become a Board of Trustees as described in the Association's Articles of Incorporation.

ARTICLE I. DEFINITIONS

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Unless otherwise expressly provided, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

SECTION 1. "ASSOCIATION" shall mean the Mountain Air Estates Property Owners Association, a corporation formed under the Utah Non-Profit Corporation, and Co-operative Association Act, and its successors and assigns.

SECTION 2. "ARTICLES" shall mean the Articles of Incorporation of the Mountain Air Estates Property Owners Association.

SECTION 3. "BOARD OF TRUSTEES" shall mean the governing body of the Association from the time of the Association's incorporation.

SECTION 4. "COMMON ASSESSMENT" shall mean the charge against each Owner and his Lot, representing a portion of the total costs of the Association of maintaining, improving, repairing, replacing, managing and operating the utilities originally installed by the developer, which are to be paid uniformly and equally by each Owner to the Association, as provided herein.

SECTION 5. "SPECIAL ASSESSMENTS" shall mean a charge against a particular Owner and his Lot, directly attributable to the Owner, equal to the costs incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

SECTION 6. "RECONSTRUCTION ASSESSMENTS" shall mean a charge against each Owner and his Lot, representing a portion of the costs of the Association for reconstruction of any portion or portions of the utility improvements originally installed by the developer pursuant to the provisions of the Declaration.

SECTION 7. "BENEFICIARY" shall mean a mortgagee under a mortgage of beneficiary or holder under a deed of trust, as the case may be, and the assignees of such mortgage, beneficiary or holder.

SECTION 8. "PLAT MAP" shall mean and refer to that plat map entitled MOUNTAIN AIR ESTATES SUBDIVISION, recorded in the official records of the Utah County Recorder as Entry No. 60467 on 9/12, 1995.

SECTION 9. "COMMON EXPENSES" shall mean the actual and estimated costs of maintenance, management, operation, repair and replacement of the utility improvements originally installed by the developer (including unpaid special assessments and reconstruction assessments), including any costs not paid by the Owner responsible for the payments; costs of management and administration of the Association including, but not

limited to, compensation paid by the Association to managers, accountants, attorneys, and other employees or contractors; the costs of all utilities, gardening and other services; the costs of bonding the members of the management body; any taxes paid by the Association; the costs of any item or items designated by, or in accordance with other expenses incurred by, the Association for any reason whatsoever in connection with the Properties, for the benefit of all of the Owners.

SECTION 10. "DECLARATION" shall mean this instrument as it may be amended from time to time.

SECTION 11. "DEED OF TRUST" shall mean and refer to a mortgage or deed of trust, as the case may be.

SECTION 12. "LOT" shall mean and refer to a lot as the same is designated as such upon said Plat Map.

SECTION 13. "FAMILY" shall mean (1) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of not more than three persons not also related, inclusive of their domestic servants, who maintain a common household and a residence on a lot.

SECTION 14. "IMPROVEMENT" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to buildings, outbuildings, walkways, sprinkler pipes, carpets, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting strips, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures of equipment.

SECTION 15. "PROPERTIES" shall mean and refer to all of the real property described in said Plat Map.

SECTION 16. "MEMBER" shall mean any person or entity holding a membership in the Association as provided herein.

SECTION 17. "MORTGAGE"; "MORTGAGEE" shall mean any mortgage or deed of trust or other conveyance of a Lot to secure the performance of an obligation, which will be void and reconveyed upon the completion of such performance. The term "deed of trust" or "trust deed" when used herein shall be synonymous with the term "mortgage." The term "mortgagee" shall mean a person or entity to whom a mortgage is made and shall include the beneficiary of a deed of trust; "mortgagor" shall mean a personal entity who mortgages his or its property to another, i.e., the maker of a mortgage, and shall include the trustor of a deed of trust. The term "trustor" shall be synonymous with the term "mortgagor," and the term "beneficiary" shall be synonymous with the term "mortgagee." The term "first mortgagee" shall include any mortgagee or the beneficiary under any deed

of trust, hold a first and prior lien upon any Lot to that of any other mortgagee.

SECTION 18. "OWNER" shall mean and refer to the person or persons or other legal entity or entities, including Declarant, holding fee simple of record to any Lot which is a part of the Properties, including sellers under executory contracts of sale, but excluding those having such interests merely as security for the performance of an obligation.

SECTION 19. "PERSON" shall mean a natural individual or any other entity with the legal right to hold title to real property.

ARTICLE II. DURATION AND EFFECT OF DECLARATION

A. DURATION OF COVENANTS: The covenants and restrictions of this Declaration shall run with and bind the Properties and shall inure to the benefit of and be enforceable by the Association or any Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns. Thereafter, the Owners possessing at least seventy-five percent (75%) of the voting rights in the Association may sign and have recorded an instrument in writing agreeing to change such covenants in whole or in part to eliminate the same. Nothing herein shall limit the amendment provisions as hereinafter provided. Any person or entity entitled to enforce these covenants, conditions, and restrictions shall in fact do so through proceedings at law or in equity against any person or persons violating or attempting to violate any of these covenants, conditions, or restrictions shall be entitled to recover attorneys fees, costs of court and other damages incurred as a result of the enforcement.

B. SEVERABILITY: Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect to the extent permitted by law.

ARTICLE III. MEMBERSHIP IN THE ASSOCIATION

A. MEMBERSHIP: Every Owner of a Lot shall be a member of the Association, and no lot shall have more than one membership in the Association. Memberships in the Association shall not be assignable, except to the successor in interest of the Owner and to the Owner's Lot, and every membership in the Association shall be appurtenant to and may not be separated from the fee Ownership of such Lot. Ownership of a Lot shall be the sole qualification for membership in the Association.

B. TRANSFER OF MEMBERSHIP: The Association membership held by any Owner of a Lot shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of the Lot giving rise to such membership and then only to the purchaser or mortgagee of such Lot. Any attempt to make a prohibited transfer is void, and shall not

be reflected upon the books and records of the Association. In the event an Owner of a Lot shall fail or refuse to transfer the membership registered in his name to the purchaser of his Lot upon transfer of fee title thereto, the Board of Trustees of the Association shall have the right to record the transfer upon the books of the Association. The Board of Trustees of the Association shall have the right to charge a reasonable special assessment against any Owner, and his Lot, equal to the cost to the Association of effectuating any such transfer of his membership upon the books of the Association.

C. EASEMENTS FOR CITY AND COUNTY PUBLIC SERVICE USE: There shall be reserved in favor of Declarant and all future Owners within the Mountain Air Estates Subdivision, easements for city, county and federal public services including, but not limited to, the right for police to enter upon any part of the Properties for the purpose of enforcing the law. Any county or governmental easements over the Mountain Air Estates project as shown on said Plat Map are hereby recognized.

D. NO EXEMPTION FROM LIABILITY. No Owner may exempt himself from personal liability for assessments to be levied by the Association, nor release the Lot or other property owned by him from the liens and charges hereof, by abandonment of his Lot or any other property in the Properties.

E. EXERCISE OF VOTING RIGHTS, ETC. BY PURCHASERS OF LOTS ON EXECUTORY CONTRACTS: It is understood that from time to time a Lot may be sold on contract with the purchaser under such contract having the right to the possession of such Lot but not the right to transfer of title to the Lot and membership in the Association until all of the sums under the contract are fully paid by the purchaser. In such event, transfer of membership in the Association to the prospective Owner of the Lot shall not be transferred upon the books of the Association until such time as legal title to a Lot is transferred to the purchaser upon completion of the contract. However, a notation shall be made on the books of the Association that the Lot is being purchased under contract and that the prospective purchaser shall have the right to exercise the voting and other rights of such membership to the exclusion of the contract seller so long as the purchaser is not in default under the contract.

F. VOTING RIGHTS: With respect to exercising any and all voting rights in the affairs of the Association or as provided in this Declaration, an Owner of each Lot shall have one (1) vote for each full Lot he owns as reflected upon the records of the Utah County Recorder. In the event a Lot is owned jointly by more than one person, all of such joint owners shall be considered as a single Owner, for voting purposes, with no Lot experiencing increased voting rights as a result of multiple ownership. There shall be no split voting as to the voting rights attending any Lot all votes attributable to a Lot must be cast unanimously or not at all. Any co-owners or co-owner present at a meeting of the Association shall be entitled to cast the vote attendant to their or his Lot, regardless of the absence of their or his co-owner or co-owners; provided, however, that if unanimity cannot be reached by all of the co-owners of a Lot in attendance at such a meeting as to how the

Lot's vote should be cast, no vote shall be cast with respect to such a Lot.

ARTICLE IV. ANNUAL AND SPECIAL MEETINGS OF THE ASSOCIATION

The annual meetings of the members of this Association shall be held at a time and place designated by the Board of Trustees with the annual meeting being held on the third Tuesday of January of each year, provided that the Board of Trustees shall give at least ten (10) days notice in advance to each member by mail of the time and place of said annual meeting. On similar notice, special meetings of the members may be called by the Chairman of the Board, the President, or by a majority of the Trustees. The Trustees shall meet at such times and places as may be necessary to transact the business of the Association upon the call of the Chairman of the Board or the President, or a majority of the Trustees.

ARTICLE V. DUTIES AND POWER OF THE ASSOCIATION

The association, acting through the Board of Trustees, shall have the power and duty to:

(a) Designate the placement of such signs as the Association shall deem appropriate and maintenance of the same, and the placement of such fences separating the Mountain Air Project from publicly dedicated roads and highways as the Association deems appropriate, and the proper maintenance of such fences. At such time as any fencing adjacent to and alongside the Hobble Creek Road is replaced, the new fence shall comply with the minimum setback requirements of Utah County.

(b) Maintain any and all private water lines, or other improvements.

(c) Maintain such policy or policies of liability and fire insurance in furthering the purposes of and protecting the interests of the Association and Members and as directed by this Declaration and/or the Articles of Incorporation or Bylaws of the Association.

(d) The Association may, but shall not be obliged to, employ or contract with a professional manager to perform all or any part of the duties and responsibilities of the Association, and shall have the power to delegate its powers to committees, officers and employees. Any such agreement shall be for a term not in excess of three (3) years, subject to cancellation by either party without cause or payment of a termination fee upon ninety (90) days or less written notice

(e) After fifteen (15) days written notice, without being liable to any Owner, enter upon any Lot, for the purpose of enforcing by peaceful means the provisions of this declaration, or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain or repair any such area as required by this Declaration.

Institute any and all proceedings necessary to enforce this Declaration.

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(f) Require the necessary spraying and cutting of weeds around the lot Owner's dwelling to reduce fire hazards and take other necessary measures, such as removal of brush and fire hazards along Hobble Creek Road.

(g) Remove any fire hazard in any Owner's Lot which the Lot Owner refuses to remove immediately upon oral or written notification from the Association. Costs for the Association removing such a hazard shall be immediately reimbursed by the Lot Owner and shall constitute a lien upon the Lot until reimbursed; such costs advanced shall be reflected by a Special Assessment and enforced as such as provided below.

(h) Require each lot Owner to provide fire and erosion control measures with respect to the Mountain Air Estates project.

(i) Maintain and repair any drainage ditch situated on any Lot not properly maintained by the Owner after fifteen (15) days' written notice to the Owner when the Owner, in said 15 day period, fails to correct any failure to maintain and repair said drainage ditch. Costs expended by the Association in this regard shall be reimbursed by the Lot Owner immediately and shall constitute a lien and Special Assessment on said Lot until reimbursed.

(j) Levy and collect all assessments as provided herein in sufficient quantity to enable the Association to adequately perform its duties hereunder.

(k) Invoke such additional powers as shall be reasonable and necessary for the Association to accomplish the purposes of its creation as set forth in its Articles of Incorporation and this Declaration.

ARTICLE VI. COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1. ASSESSMENTS: Declarant, for each Lot owned by it within the Properties, hereby covenants and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) Annual Common Assessments for Common Expenses, (2) Special Assessments, and (3) Reconstruction Assessments, such assessments to be established and collected as hereinafter provided. Such assessments, together with interests, applicable costs, and reasonable attorneys fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which said assessment is made. Each such assessment, together with interest, applicable costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. Subject to the provisions of this Declaration protecting First Mortgagees, the personal obligation for delinquent assessments shall pass

to the successors in interest of such Owner. The Association shall be obligated to assess sufficient assessments to adequately fulfill its repair, maintenance, and replacement obligations as provided in this Declaration.

SECTION 2. PURPOSE OF COMMON ASSESSMENTS: The Common Assessments levied by the Association shall be used to promote the common health, safety, benefit, recreation and welfare of the Owners and for the maintenance of the original utility improvements installed by the developer situated upon the Lots and the Properties as provided herein. Nothing in this Declaration shall be construed in such a way as to permit the Association to use any assessments to abate any nuisance or annoyance emanating from outside the boundaries of the Properties. Nothing contained herein shall limit, preclude or impair the establishment of additional Mountain Air Estates maintenance funds by the Association, so long as the amounts deposited into any such fund are earmarked for specific purposes authorized by this Declaration.

SECTION 3. BASIS OF COMMON ASSESSMENTS: Common assessments shall be levied annually on the first day of January of each year. Written notice shall be given each Lot Owner of the annual Common Assessment on or before the first day of January of each year. Such notice shall be deemed effective when deposited in the United States mail, postage fully prepaid, addressed to the last known address of each Owner.

Common Assessments may be increased at any time during a given year should the Association deem it necessary to adequately accumulate funds to fulfill the purposes of the Common Assessment.

The Common Assessments shall be equally apportioned among the Lot Owners by dividing the total amount by the number of Lots in the Mountain Air Estates Subdivision, including any Lots hereafter annexed to the project. Should a new Lot be added to the project during a given year, the assessments of the previously existing Lots shall not be reduced, although the new Lot shall be required to pay an assessment identical to the previously existing Lots, but prorated to pay only so much of the assessment as is attributable to the remainder of the year in which the assessment is made.

The initial Common Assessment for each Lot shall begin in 1996 and shall be \$ _____ per Lot per year, commencing with respect to Lot Owners other than Declarant on the date such Lot was sold by Declarant, either by contract or otherwise. An additional annual Common Assessment shall be assessed against each Lot Owner in the amount of \$ _____ per Lot per year commencing against each Lot Owner at the time any construction to place an improvement on his Lot is commenced. For purposes of this paragraph, an improvement shall mean a home, barn, shed, or any facility requiring culinary water and/or electrical power hookup.

SECTION 4. RECONSTRUCTION ASSESSMENTS: In addition to the Common

Assessments authorized above, the Board of Trustees of the Association may levy, in any assessment year, a Reconstruction Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any reconstruction or replacement of any portion of any utility improvement originally installed by the developer.

SECTION 5. SPECIAL ASSESSMENTS: The Association may levy Special Assessments against selected Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their guests or agents.

SECTION 6. NOTICE OF CHANGE IN THE AMOUNT OF COMMON ASSESSMENTS, OR RECONSTRUCTION ASSESSMENTS: Notice of any change in the amount of any Common Assessment or Reconstruction Assessment shall be sent to every Owner subject thereto at least thirty (30) days prior to the effective date of such change. The due date shall be established by the Board of Trustees.

SECTION 7. CERTIFICATE OF ASSESSMENT: The Association shall, upon demand and for reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments against a Lot is binding upon the Association as of the date of its issuance.

SECTION 8. ALLOCATION OF ASSESSMENT PAYMENTS: The respective assessments may be paid by an Owner to the Association in one check or payment or in separate checks or payments attributable to the various assessment funds. In the event a check or payment is not designated to be paid to a particular fund, or in the event a check or payment is designated to be paid to several funds but the amount is insufficient to pay all of the assessments with respect to such funds, the check or payment shall be allocated first to Common Assessments and second to any Reconstruction Assessment.

ARTICLE VII. EFFECT OF NON-PAYMENT OF ASSESSMENTS AND REMEDIES OF THE ASSOCIATION

SECTION 1. EFFECT OF NON-PAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any Common Assessment, Special Assessment or Reconstruction Assessment not paid within thirty (30) days after the due date shall bear interest from the due date of such assessment at the rate of eighteen percent (18%) per annum. If any assessment is not paid within thirty (30) days after it is due, the Owner responsible therefor may be required further by the Board of Trustees to pay a late charge of Five Dollars (\$5.00) or five percent (5%) of the amount of the delinquent assessment, whichever is greater. The Association may bring an action at law against the Owner personally obligated to pay the same, record a lien against the Lot, and/or foreclose the lien against the Lot. The Association shall charge a fee of Fifty Dollars (\$ 50.00), to cover the cost of preparing and recording the lien. No Owner may waive or otherwise escape liability for

the assessments provided for herein by abandonment of his lot. If any assessment is not paid within thirty (30) days after its due date, the board shall mail a notice to the Owner and to each First Mortgagee of a Lot which has requested a copy of the notice. The notice shall specify (1) the fact that the assessment is delinquent, (2) the action required to cure the default, (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured; and/or, at the election of the Board of Trustees, a suit may be instituted on behalf of the Association by the Board of Trustees to foreclose a lien upon the real property of the defaulting member of the Association, which foreclosure proceedings shall be in the same manner as is provided for the foreclosure of a Trust Deed or mortgage upon real property by the laws of the State of Utah at the date of commencement of such foreclosure action. In any action to foreclose any such lien, the Association shall be entitled to costs, including reasonable attorney's fees, and such penalties for delinquent charges and assessments that shall have been established by the Association. The notice shall further inform the Owner of his right to cure the default and/or to bring a court action to assert the non-existence of a default or any other defense of the Owner to action of foreclosure. If the delinquent assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of the annual assessment to be immediately due and payable without further demand and may enforce the collection of the full assessment and all charges thereon in any manner authorized by law and this Declaration.

SECTION 2. NOTICE OF ASSESSMENT: No action shall be brought to enforce any assessment lien herein, unless at least thirty (30) days has expired following the date a Notice of Assessment is deposited in the United States mail, postage, prepaid, to the Owner of the Lot, and a copy thereof has been recorded by the Association in the office of the County Recorder in which the Properties are located; said Notice of Assessment must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid assessment at eighteen percent (18) per annum, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant. Such Notice of Assessment shall be signed and acknowledged by an officer of the Association. The lien shall continue until fully paid or otherwise satisfied.

SECTION 3. FORECLOSURE SALE: Any such sale provided for above may be conducted by the Board of Trustees, its attorneys or other persons authorized by the board in accordance with the provisions of the Utah Code Annotated, 1953 As Amended, applicable to the exercises of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

SECTION 4. CURING OF DEFAULT: Upon the timely curing of any default for which a Notice of Assessment was filed by the Association, the officers thereof shall record an appropriate Release of Lien. A certificate executed and acknowledged by any two (2)

members of the Board stating the indebtedness secured by the liens upon any Lot created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon on good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, not to exceed Ten Dollars (\$10.00).

SECTION 5. CUMULATIVE REMEDIES: The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided, from the Lot Owner(s) individually.

SECTION 6. SUBORDINATION OF THE LIEN TO MORTGAGES: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage (meaning any recorded mortgage with first priority or seniority over other mortgages) made in good faith and for value and recorded prior to the date on which the assessment came due. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or deed in lieu thereof, shall extinguish the lien of such assessments which became due prior to such sale or transfer, but not the liability of such assessment to any former Lot Owner(s) individually. However, no sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due.

ARTICLE VIII. ARCHITECTURAL CONTROL

SECTION 1. MEMBERS OF COMMITTEE. The Architectural Committee (hereinafter "Committee"), shall consist of three (3) members. New members of the Committee shall be appointed by the Board of Trustees and shall hold office until such time as they have resigned or have been removed or their successor(s) have been appointed, as provided herein. Members of the Committee may be removed at any time without cause. The Board of Trustees shall have the right to appoint and remove all members of the Committee. Members of the Committee shall be selected from Members of the Association.

SECTION 2. TYPES, DESIGN AND PLACEMENT OF STRUCTURES. No Improvement shall be erected, placed or altered on any Lot in Mountain Air Estates until the plans thereof, specifications and the plot plan showing the locations of such structures have been approved in writing by the Committee. Such approval will concern itself with the acceptability and harmony of the external design, building material, color, etc., with existing or future structures in Mountain Air Estates Subdivision, and as to the location of the structures with respect to lot lines, topography and finished ground elevation. In the event said Committee, or its designated representatives, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, such approval will not be required and this Declaration shall be deemed to

have been fully complied with. At the time such plans, etc., are received by the Committee, the Committee shall issue to the applicant a dated receipt briefly listing the items submitted. No improvements can be commenced based on approval because the Committee failed to act within the thirty (30) days required unless the Lot Owner has in his possession the dated receipt evidencing the delivery of the Lot Owner's plans to the Committee.

The Committee may condition its approval of proposals or plans and specifications on such changes therein as it deems appropriate and may require submission of additional plans and specifications or other information prior to approving or disapproving materials submitted. The Committee may also issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee payable to the Association to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Committee may provide the amount of such fee, which shall be uniform or may be determined in any other reasonable manner, such as considering the reasonable cost of construction, alterations or additions contemplated, provided, however, that in no event shall such fee exceed Two Hundred Dollars (\$200.00). Such fee shall be held by the Committee for the benefit of the Association to pay for reimbursement to the Committee for out-of-pocket expenses or reimbursement to the Association for out-of-pocket expenses incurred by the Committee or the Association due to the performance of the Committee of its duties hereunder. Any fees remaining at the end of a calendar year not used or necessary for such reimbursement, shall be paid to the Association and placed in the Common Assessment fund for the general benefit of all Members. The Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Until receipt by the Committee of all required plans and specifications, the Committee may postpone review of any plans submitted for approval.

SECTION 3. MEETINGS OF THE COMMITTEE. The Committee shall meet from time to time as necessary to perform its duties hereunder. Lot Owners must submit plans or requests in writing to The Committee and shall receive a receipt of acknowledgment from the Committee. Approval of any Lot Owner plans or requests requires the affirmative vote of two of the three Committee members. The Committee may from time to time, by resolution unanimously adopted in writing, designate a Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances and approvals.

SECTION 4. NO WAIVER OF FUTURE APPROVALS. The approval of the Committee of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatsoever subsequently or additionally submitted for approval or consent.

SECTION 5. COMPENSATION OF MEMBERS. The members of the Committee shall received no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance or their duties hereunder.

SECTION 6. INSPECTION OF WORK. The Committee shall make periodic inspections of the progress of work whose plans and specifications have been approved, and the Committed may, at any time, cause such work to cease and remedial action taken by the Lot Owner should the Committee determine that construction is not in compliance with the plans and specifications approved by the Committee. The Committee shall specifically describe by notice all work deficiencies and the Owner shall have fifteen (15) days to fully comply and remedy the deficiencies. If the Owner fails to take such remedial measures as required by the Committee, the Association may undertake such remedial work, including removal of all previous work done by the Owner, and levy a Special Assessment against such Owner's Lot for the cost of the Association in remedying the non-complying work.

SECTION 7. NON-LIABILITY OF COMMITTEE MEMBERS. Neither the Committee nor any member thereof, nor its duly authorized Committee representative shall be liable to the Association, or to any Owner for any loss, damage, or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Committee.

SECTION 8. VARIANCE. The Committee may, in writing, authorize variances from compliance with any of the architectural provisions of the Declaration or any Supplemental declaration, including restrictions upon height, size, floor areas or placement of structures, or similar restrictions, when circumstances such as typography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances can not be in conflict with Utah County or any other governing authorities as may be evidenced by an approved building permit.

SECTION 9. NOTIFICATION OF ARCHITECTURAL REVIEW. The Committee shall notify owners of adjoining property and property immediately opposite on the same street when building or remodeling plans are submitted to the Committee for approval. Such notification shall be made at least ten days prior to the Committee action on said plans, and the comments and suggestion of neighbors shall be considered by the Committee.

ARTICLE IX. MAINTENANCE AND REPAIR OBLIGATIONS

SECTION 1. MAINTENANCE OBLIGATIONS OF OWNERS. Subject to the duty of the Association to provide for maintenance as provided in this declaration, it shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding Committee approval, to maintain, repair, replace and restore areas subject to his exclusive control, safely in a neat, sanitary and attractive condition. If all or any portion of any Lot or residence is damaged or destroyed by fire or other casualty, it shall

be the duty of the Owner of said Lot or residence to rebuild, repair or reconstruct said residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

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SECTION 2. TIME LIMITATION. Subject to the provisions of this Declaration regarding Committee approval, the Owner or Owners of any damaged residence shall be obligated to proceed with all due diligence hereunder, and the responsible party shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within one (1) year after commencement of construction, unless prevented by causes beyond his reasonable control.

ARTICLE X. USE RESTRICTIONS

All real property within the Properties shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Declarant in Article III hereof:

SECTION 1. SINGLE FAMILY RESIDENCE. Subject to the right of Declarant to use its Lots for the sale and promotion of the Properties, each Lot shall be used as a residence for a single family and for no other purpose; provided, however, that a portion of a Living Unit can be used to conduct a business or profession of: (1) such use as is approved by all appropriate governmental and quasi-governmental bodies having jurisdiction over such matters; (2) such use as is approved by the Committee; (3) such use as is approved by the Declarant; and (4) such use as is of a type traditionally conducted in a single-family residence. No Lot or Living Unit shall be used, occupied, or altered in violation of law so as to detract from the appearance or value of any other Lot, or Living Unit, or so as to create a nuisance or interfere with the rights of any Owner. No aluminum foil, newspaper, or any other similar materials may be used to cover the windows in any Living Unit or other structure. Nothing in this Section 1 shall be construed to preclude the use and maintenance of a reasonably discreet and circumspect fine arts studio by any Lot Owner upon his Lot, provided that the same is not violative of any governmental zoning ordinance or other rule, law, or regulation, or of any of the remaining covenants and restrictions hereunder.

SECTION 2. BUILDINGS. No structure shall be erected, altered, placed, or permitted to remain on any lot other than one detached family dwelling which must include a private garage for no fewer than two (2) nor more than a four (4) car width. Other structures incidental to the use of the Lot must be approved the Committee.

Living Unit styles, designs, alterations or additions will conform to standards determined by the Committee. Log home construction shall not be permitted. Exterior construction materials shall be limited to stone or stone veneer, cement, stucco, brick or brick veneer and/or wood. The use of aluminum siding shall not exceed ten (10) percent of the total

exterior surface area of the building except in the case of soffits and facias. All exterior colors shall be in tones approved by the Committee. All roofs shall be of a non-combustible construction material as per the Urban Interface requirements. No roof shall have a pitch of more than ten feet in twelve feet. Location of all storage, utility or accessory buildings; exterior roof-mounted or side mounted air conditioners and antennas shall be installed only where they are not visible from Hobble Creek Road. Satellite dishes shall be installed only in rear yards or where they are not visible from Hobble Creek Road and shall not exceed eight (8) feet in height. Tower type radio, television, or telephone antennas shall not be allowed.

It is understood that barns, storage sheds, tack rooms, and other types of rural buildings, except outhouses for the disposal of human wastes, may be constructed on the property so long as they are in conformity with a harmonic development of the properties and receive approval of the Committee.

No shack, garage, barn, or other outbuilding shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation. No mobile homes, trailers, campers, modular homes, prefabricated housing, tents or shacks shall be used at any time as a residence, either temporarily or permanently nor shall be moved onto any Lot, it being the intention hereof that all Living Units and other buildings erected on Lots or within the Property shall be new, permanent, on site construction of good quality workmanship and materials.

No main residential structure shall be permitted on any lot covered by these Covenants, the habitable enclosed ground floor area (excluding basement floor area, open porches and garages) of which is less than two thousand five hundred (2,500) square feet for a one story Living Unit. No structure shall be built upon any lot with a height exceeding two stories above the existing ground elevations unless approved by the Committee.

Section 3. BUILDING LOCATION. No building shall be located on any lot less than fifty (50) feet from Hobble Creek Road for all lots covered by these Covenants, nor less than fifty (50) feet from any side lot line, unless approved by the Committee.

No barn or coop shall be constructed closer than one hundred (100) feet from any side lot line, nor shall any corral, pen or coop be constructed or maintained closer than twenty (20) feet to any open waterway that drains into a natural stream. Surface drainage from corrals, pens, or coops shall not be permitted to drain into a waterway that drains into natural streams.

SECTION 4. LIMITATION OF LANDSCAPED AREA. No more than an aggregate of one quarter (1/4) acre of any lot shall be landscaped or cultivated. No fertilizer or pesticide shall be applied on any portion of any Lot except that allowed to be landscaped or cultivated. For purposes of this Section 4, "landscaped or cultivated" shall include areas from which a crop is removed (including gardens) but shall not include (a) areas of a Lot

used for pasture, or (b) any area which is not planted, such as, but without limitation, buildings, patios, driveways, sidewalls, and the portion of any recreational area which is not planted. Natural vegetation or pasture shall be allowed to grow in all portions of each Lot which are not landscaped or cultivated or otherwise improved. All provisions of this Section 4. shall be in accordance with the Urban Interface Requirements.

SECTION 5. COMPLETION OF LANDSCAPING. All landscaping (as relates to those areas viewed from Hobble Creek Road) on each lot shall be completed within six months following the time that the residence located thereon has been occupied. This duty to landscape shall not be applicable during the cold months (November through March).

SECTION 6. ROADS AND PARKING RESTRICTIONS.
No vehicles shall be parked on the Hobble Creek Canyon Road.

SECTION 7. BUILDING TIME. The building time for the exterior portion of any structure shall not exceed 24 months from start to finish. All debris, excavation dirt, etc., associated with the building process shall be removed within this specified building time. Excavation dirt shall either be removed entirely or shall be spread out and reseeded within this specified time so as to return the lot to a pleasing appearance.

SECTION 8. LOT MAINTENANCE AND APPEARANCE. Each owner shall be required to reasonably, necessarily, and adequately maintain his property to keep it in a reasonable state of appearance and preservation.

No open storage of building materials, except during the course of actual construction, shall be permitted on any lot, nor shall junk, unlicensed cars or other unsightly items ever be maintained or stored on any lots. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container, and any such container shall be kept within an enclosed structure or appropriately screened from view from any other Lot or from Hobble Creek Road.

Any detached camper units, boats, trailers, farm machinery, etc., shall be maintained or stored only in areas enclosed or screened from view from Hobble Creek Canyon Road.

No trucks, graders, or other construction equipment may be parked on any lot except during the periods of construction which actually require such equipment.

SECTION 9. CULINARY WATER. An underground culinary water system will service lots in the Mountain Air Estates Subdivision and will be brought to some reasonable point to each lot line parallel to and alongside of Hobble Creek Road. Each lot owner must install, at his own expense, a water line extension to his building site from the main water line, a water meter and shut-off valve and a lateral to his home at the time of construction upon his lot. The Lot Owner shall give the Declarant at least two (2) weeks notice prior to hooking up to the main water line and the contractor performing such work must be

from an approved list provided by Declarant.

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SECTION 10. FIRE PROTECTION. An eight inch (8") underground culinary water system has been engineered to provide fire protection for the subdivision as approved by the Utah County Fire Marshall. The Association shall be responsible for the installation of fire hydrants as required by Utah County.

SECTION 11. TRASH COLLECTION AND BURNING POLICIES. Open fires are permitted only on county-approved burn days or on days when a permit can be obtained; all fires must be closely monitored by a responsible adult with adequate resources immediately available to put the fire out quickly; no fires are permitted which pose a threat to the property of others or which produce offensive odors or dark clouds of smoke; the burning of wet trash or garbage is prohibited; open fire barbecue pits must be approved by the Committee; and except in burn areas approved by the Committee, fire debris must be buried or removed within seven (7) days.

Trash cans must be covered and kept out of sight in suitable enclosed areas. Normal trash and garbage removal will be the responsibility of the individual Lot Owners.

SECTION 12. ELECTRICAL POWER AND TELEPHONE SERVICE. Electrical power will be available to each lot. Hook-up arrangements must be made with the electrical power company and the telephone company. Lot owners are responsible for any associated hook-up costs or fees.

SECTION 13. SEWAGE FACILITIES. Sewage disposal shall be through septic tanks and drain fields as prescribed by Utah County and State Health Department. Construction and maintenance of said facilities are the responsibility of each lot owner.

SECTION 14. LOT ILLUMINATION. Yard or porch lights for illuminating one's own yard, of which may be left on all night may not be excessively bright; i.e., may not intrude on the privacy of neighbors or unduly intrude on their views. However, this lighting restriction does not apply to lights used for outdoor evening parties and recreational activities on one's own lot.

SECTION 15. DOMESTIC ANIMALS AND PETS. Domestic and farm animals may be maintained by the Lot Owners under the following conditions:

(a) No more than three (3) dogs six (6) months of age or older may be kept on any Lot unless additional dog(s) are approved by the Committee.

(b) No more than four (4) cats six (6) months of age or older may be kept on any Lot unless additional cat(s) are approved by the Committee.

(c) No more than three (3) horses be kept on any Lot unless additional horses are approved by the Committee.

(d) Commercial raising of farm animals or other types of animals and pets shall not be

permitted.

(e) House pets may be maintained by Lot Owners within reason and subject to the nuisance provisions described below.

(f) Typical domestic pets may be maintained by Lot Owners within reason and subject to the nuisance provisions described below.

(g) Wild, caged pets are not permitted unless permission is granted in writing by the Board of Trustees.

If animals (such as dogs) maintained by a Lot Owner kill or maim animals owned by other Lot Owners, the owner of the animal or animals killed or maimed shall be reimbursed at fair market value for their loss by the owner of the animal which did the deed. The Committee is authorized to order the removal of any animal or animals deemed by the Committee to be an undue nuisance or menace to other Lot Owners. Each Lot Owner maintaining domestic animals and pets shall provide adequate sanitation so as to minimize noxious or offensive odors. Owners shall not permit pets to roam through the development or defecate on the property of others.

SECTION 16. CORRALS AND CORRAL FENCES. One corral may be built on each lot, the size of which may not exceed an area covering more than one-fourth (1/4) acres. The corral fence shall be approved by the Committee and shall be maintained in good condition.

The Committee shall require that the fencing along the Hobble Creek Road and that fencing extending therefrom to the Lot Owner's dwelling and between lot lines shall be the same throughout the Subdivision. It is the intent of the Committee to see that a uniform fence design and system is used throughout Mountain Air Estates in those areas that are clearly visible from Hobble Creek Road. No wire fences of any type shall be allowed. All fences or hedges must be approved by the Committee.

SECTION 17. ECOLOGICAL CONSIDERATIONS. The Declarant has designated separate privately owned (by Lot Owner) "NATURAL PRESERVE AREAS" (hereinafter "Preserve") specific to each Lot in the Subdivision as shown on Exhibit "B" and as described by the following elevations:

- Lot #1, all areas above the 5600 ft. elevation level.
- Lot #2, all areas above the 5600 ft. elevation level excepting property below the 5800 ft. elevation level as shown on Exhibit B.
- Lot #3, all areas above the 5600 ft. elevation level.
- Lot #4, all areas above the 5600 ft. elevation level.
- Lot #5, all areas above the 5600 ft. elevation level.
- Lot #6, all areas above the 5600 ft. elevation level.
- Lot #7, all areas above the 5800 ft. elevation level.
- Lot #8, all areas above the 5800 ft. elevation level on the West portion of the Lot and all areas above the 5600 ft. elevation level on the East portion of the Lot as shown on Exhibit B.
- Lot #9, all areas above the 5800 ft. elevation level.
- Lot #10, all areas above the 5800 ft. elevation level.

The following restrictions shall apply to the private PRESERVE:

1. No fencing of any kind will be allowed;
2. No removal of living trees or shrubs nor any natural vegetation will be allowed.

Furthermore, there shall be no removal of living trees or shrubs on any building lot on any areas outside the PRESERVE except as approved by the Committee.

Planting of indigenous trees and shrubs is encouraged. Planting a preponderance of non-indigenous trees and shrubs in areas open to view from Hobble Creek Road must be approved by the Committee.

The Association shall require the Lot Owners to spray herbicides on noxious plants in some areas to enhance the beauty of the area and to reduce fire hazards. The Association may also require from time to time that Lot Owners cut weeds and grasses and clear brush and dead trees in certain areas to reduce fire hazards.

All Lot Owners are requested to use biodegradable detergents, soaps, etc., since such materials find their way into the sewer system and must eventually be added back into the environment. The pouring into the sewer system of non-biodegradable substances is specifically prohibited. No portion of any Lot shall in any manner become a disposal site for toxic or hazardous wastes. Without limiting the generality of the foregoing, no gasoline, diesel fuel, motor oil, or petroleum products shall be dumped or disposed of on any portion of any Lot.

SECTION 18. MOTORCYCLES AND OTHER VEHICLES. Excessively noisy vehicles are restricted from being used on any Mountain Air Estates property. Off-road vehicles shall not be used after 10 p.m. The purpose of this section is to control undue noise, dust, and fumes, and to promote safety. The Board of Trustees shall be the judge of whether a vehicle is excessively noisy.

SECTION 19. FIREARM POLICY. Hunting and/or shooting with firearms shall not be permitted within the Subdivision.

SECTION 20. SIGNS. No sign shall be erected without the prior written consent of the Committee.

ARTICLE XI. INSURANCE

SECTION 1. INSURANCE OBLIGATIONS OF OWNERS. Each Owner shall insure his entire residence against loss or damage by fire or by any other casualty, in an amount not less than one hundred percent (100%) of the insurance value (based on current replacement cost), under the standard form of extended endorsement and broad form now in use in the State of Utah or under such other insurance as may be required by any Mortgagee of the residence.

SECTION 2. WAIVER OF SUBORDINATION. As to each policy of insurance maintained by the Association, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Manager, Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

SECTION 3. LIABILITY INSURANCE. The Association shall obtain comprehensive public liability insurance, including medical payments, liquor liability insurance and malicious mischief, in the amount of \$500,000.00 per occurrence for personal injury and/or property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. Such insurance shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of a Lot Owner because of negligent acts of the Association or other Lot Owners.

SECTION 4. OTHER INSURANCE AND GENERAL. The Association may also obtain, through the Board, Workmen's Compensation Insurance and other liability insurance as it may deem desirable, insuring each Lot Owner and the Association, Board of Trustees and Manager, from liability; the premiums for which are common expenses included in the Common Assessments made against the Owners. Such insurance policies shall have

severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of a Lot Owner because of the negligent acts of the Association or other Lot Owners.

All policies shall be reviewed at least annually by the Board of Trustees and the limits increased at its discretion.

ARTICLE XII. MORTGAGE PROTECTION CLAUSE

Notwithstanding any and all provisions of this Declaration to the contrary, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control):

(a) Each First Mortgagee of a Mortgage encumbering any Lot, at his written request, is entitled to written notification from the Association of any default by the Mortgagor of such Lot in the performance of such Mortgagor's obligation under this Declaration, the Articles of Incorporation of the Association or the Bylaws of the Association, which default is not cured within thirty (30) days after the Association learns of such default.

(b) Each First Mortgagee of a Mortgage encumbering any Lot which obtains title to such Lot pursuant to the remedies provided in such Mortgage or by foreclosure of such Mortgage, shall take title to such Lot free and clear of any claims of unpaid assessments or charges against such Lot which accrued prior to the acquisition of title to such Lot by the Mortgagee.

(c) Unless at least seventy-five percent (75%) of first Mortgagees (based upon one vote for each Mortgage owned), or Members holding seventy-five percent (75%) of the voting rights in the Association have given their prior written approval, neither the Association nor the Owners shall:

(1) By act or omission seek to abandon, partition, alienate, subdivide, release, hypothecate, encumber, sell or transfer, directly or indirectly, the improvements, utility or otherwise, which are owned by the Association and/or public or private utility companies.

(2) Change the method of determining the obligation, assessments, dues or other charges which may be levied against a Lot Owner;

(3) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the Lot improvements (including residences,) the exterior maintenance of said improvements.

(d) First Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

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(e) All First Mortgagees who have requested the same shall be given:

(1) thirty (30) days written notice prior to the effective date of any proposed, material amendment to this Declaration or the Articles of Incorporation or Bylaws of the Association and prior to the effective date of any termination of an agreement for professional management of the Properties following a decision of the Owners to assume self-management of the Properties.

Neither this Declaration nor the Articles nor the Bylaws of the Association will be amended in such a manner that the rights of any first Mortgagee will be adversely affected.

ARTICLE XIII. ANNEXATION OF ADDITIONAL PROPERTY

SECTION 1. ADDITIONS BY DEVELOPER. If Declarant, its successors or assigns, shall develop, or cause to be developed other real property located in the County of Utah, State of Utah, Declarant or its successors or assigns shall have the right from time to time to add such Property as an Annex to the Subdivision, or any portion or portion thereof to the Subdivision and to bring such Annexed Property within the general plan and scheme of this Declaration without the approval of the Association, its Board of Trustees, or Members; provided that such a right of Declarant and its successors and assigns shall terminate five (5) years from date of recording this Declaration, and provided all governmental authorities having jurisdiction over the Association and the Annexed Property approve such annexation.

SECTION 2. ANNEXED PROPERTY TO BE A PART OF THE ASSOCIATION. Any Annexed Property shall become and constitute a part of the Association, become subject to this Declaration and encompassed within the General Plan and scheme of covenants, conditions, restrictions, reservation of easements and equitable servitude contained herein, and become subject to the functions, powers and jurisdiction of the Association; and the Owners of Lots in said Annexed Property shall automatically become Members of the Association. No addition of territory shall substantially increase assessments.

ARTICLE XIV. GENERAL PROVISIONS

SECTION 1. ENFORCEMENT. This Declaration, the Articles of Incorporation and the Bylaws may be enforced by the Association as follows:

(a) Breach of any of the covenants contained in the Declaration, the Articles or the Bylaws and the continuation of any such breach may be enjoined, abated or remedied by

appropriated legal proceedings by an Owner, by the Association or the successors-in-interest of the Association. Any judgement rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

(b) The result of every act of omission whereby any of the covenants contained in the Declaration, the Articles or the Bylaws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any owner, by the Association or its successors-in-interest.

(c) The remedies herein provided for breach of the covenants contained in the Declaration, the Articles or the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Association to enforce any of the covenants contained in the Declaration, the Articles or the Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

(e) A breach of the covenants, conditions or restrictions contained in the Declaration, the Articles or the Bylaws shall not affect or impair the lien or charge of any bona fide First Mortgage or Deed of Trust made in good faith and for value on any residential Lot or the improvements thereon, provided, however, that any subsequent Owner of such property shall be bound by said covenants, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

(f) **Penalty for Non-Compliance.** After fifteen (15) days' written notice of a violation of the Protective Covenants, a \$50.00 penalty shall be automatically assessed any property owner who has not remedied the violation. (Note: The Declaration Article V (e) also states that after 15 days notice the Association may "enter upon any Lot, for the purpose of enforcing by peaceful means the provisions of this declaration, or for the purpose of maintaining or repairing any such "area and "institute any and all proceedings necessary to enforce this Declaration.)

SECTION 2. INTERPRETATION. The provision of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community. The article and section heading have been inserted for convenience only, and shall not be considered or referred to in resolving question of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

SECTION 3. AMENDMENTS. This Declaration may be amended on by the affirmative

vote or written consent of the Owners holding not less than seventy-five (75%) percent of the voting power of the association; provided, however, that the prior written approval of one hundred percent (100%) of all First Mortgagees must be obtained also, before Article XII may be amended.

SECTION 4. NO PUBLIC RIGHT OR DEDICATION. Nothing contained in this Declaration shall be deemed to be a gift of dedication of all or any part of the Properties to the public, or for any public use.

SECTION 5. CONSTRUCTIVE NOTICE AND ACCEPTANCE. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion or the Properties does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

SECTION 6. NOTICES. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered at the time a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

SECTION 7. SEPARATION OF EASEMENT PROPERTY FROM LOTS. No Lot Owner shall separate easement property from his Lot.

SECTION 8. FORECLOSURE TO INCLUDE TRUSTEE'S SALE. When the term "foreclosure" is used in this Declaration, it shall include, but not be limited to, the institution of formal court foreclosure proceedings with respect to a mortgage or deed of trust or the sale of property under a Trustee's sale under any deed of trust.

SECTION 9. COUNTY APPROVAL AND COMPLIANCE WITH STATE AND LOCAL LAWS. It is understood that nothing in this Declaration shall be construed to exempt any person or entity from fully complying with all State and local laws and ordinances annexing any property to the Properties, or engaging in any activity whatsoever; in addition, all Owners shall fully comply with all the State and local laws and ordinances in the use and management of their Lots, including construction.

SECTION 10. ARTICLES OF INCORPORATION TO INCLUDE AMENDMENTS. When the Articles are referred to in this Declaration, the term shall include such Articles as amended from time to time, including, but not limited to the Articles of Incorporation of the Mountain Air Estates Property Owners Association; any reference to "Bylaws" of the Association shall not necessarily require that such formal bylaws be

adopted, and this Declaration shall be valid and binding notwithstanding the absence of such bylaws.

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ARTICLE XV. FAILURE OF ARCHITECTURAL COMMITTEE TO INSIST ON STRICT PERFORMANCE NO WAIVER

The failure of the Committee or Board of Trustees to insist in any one or more instances, upon the strict performance of any of the terms, conditions, or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice of or to institute any action, shall not be construed as a waiver or a relinquishment for the future, of such term, covenant, condition, or restriction but such term, covenant, condition, or restriction shall remain in full force and effect. The receipt by the Committee or Board of Trustees of any assessment from a Lot Owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Committee or Board of Trustees of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Committee or Board of Trustees.

GENERAL PLAN OF DEVELOPMENT

Upper Phillips Development Co., L.L.C. (hereinafter "Developer"), hereby declares its intentions to develop the real property described in that certain Plat Map entitled MOUNTAIN AIR ESTATES SUBDIVISION (hereinafter "Subdivision"), recorded in the official records of the Utah County Recorder as Entry

NO. 60467 on 9/12,
1995 according to the following terms and conditions:

1. The development shall be planned and executed in accordance with the Utah County Zoning Regulations as described in the Utah County Code; and, in accordance with all applicable government regulations and ordinances.

2. The Developer shall complete the following utility improvements:

(a) An eight inch (8") underground culinary water system shall be furnished and installed to service all Lots in the Subdivision. Each Lot owner will furnish and install, at his own expense, a water service lateral, pressure reducing valve, water meter box, water meter, etc., to his residence before occupancy is granted by the Utah County Zoning Dept. The size of the water service lateral, water meter, and pressure reducing valve, etc., shall be determined by the owner and general contractor and shall conform with all U.B.C., Utah County Code, and Hidden Creek Water Company requirements.

Note: The above mentioned eight inch (8") underground culinary water system has been engineered to provide fire protection for the subdivision as approved by the Utah County Fire Marshall. The Association shall be responsible for installation of fire hydrants as required by Utah County.

(b) Electrical primary power mains shall be installed to provide service access to each Lot in the Subdivision. Each Lot owner shall be responsible to coordinate with the Power Utility Company and their general contractor for service and all associated fees therewith. The Lot Owner shall also be responsible for all construction costs of the power utility connection to their residence.

(c) Telephone mains shall be installed to provide service access to each Lot in the Subdivision. Each Lot owner shall be responsible to coordinate with the Telephone Utility Company and their general contractor for service and all associated fees therewith. The Lot Owner shall be responsible for all construction costs of the telephone utility connection to their residence.

The Developer makes no commitment and is under no obligation to provide any improvements, utility or otherwise, except for the improvements described in this Section 2.

3. The Developer shall draft and record with Utah County, a "Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the "MOUNTAIN AIR ESTATES SUBDIVISION" (hereinafter "Declaration") and shall enforce the Declaration until such time as The MOUNTAIN AIR ESTATES PROPERTY OWNERS ASSOCIATION (hereinafter "Association") is incorporated to administer the Declaration.

4. The Association may according to certain provisions in the Declaration annex additional properties which shall participate in membership within the Association and become subject to the Declaration. The Developer makes no commitment and is under no obligation to provide any improvements, utility or otherwise to any additional properties annexed by the Association.

IN WITNESS WHEREOF the undersigned have executed this General Plan of Development this 25 day of September, 1995.

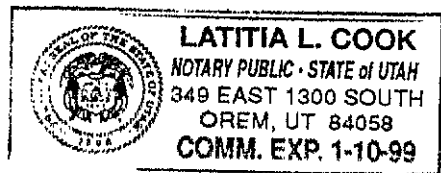
UPPER PHILLIPS DEVELOPMENT CO., L.L.C.

Tracy MacDonal
Tracy MacDonald, President

STATE OF UTAH,)
)ss
County of Utah)

On the 25th day of September, A.D. 1995
personally appeared before me TRACY MACDONALD, President

the signer of the within instrument who duly acknowledged to me that she executed the same.

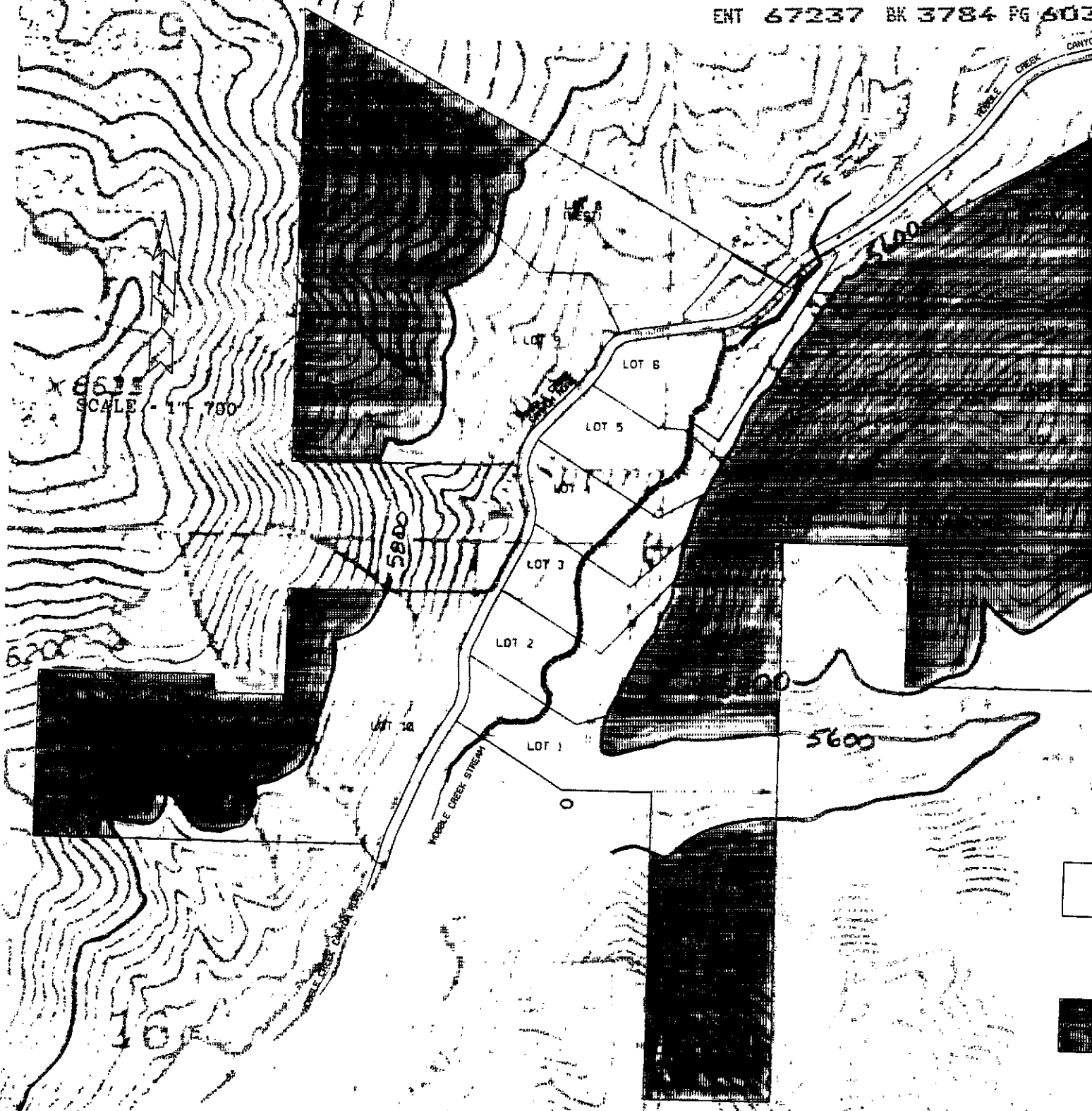


Latitia L. Cook
Notary Public

My commission expires 1-10-99 Residing in Orem, Utah

MOUNTAIN AIR ESTATES SUBDIVISION EXHIBIT "B"

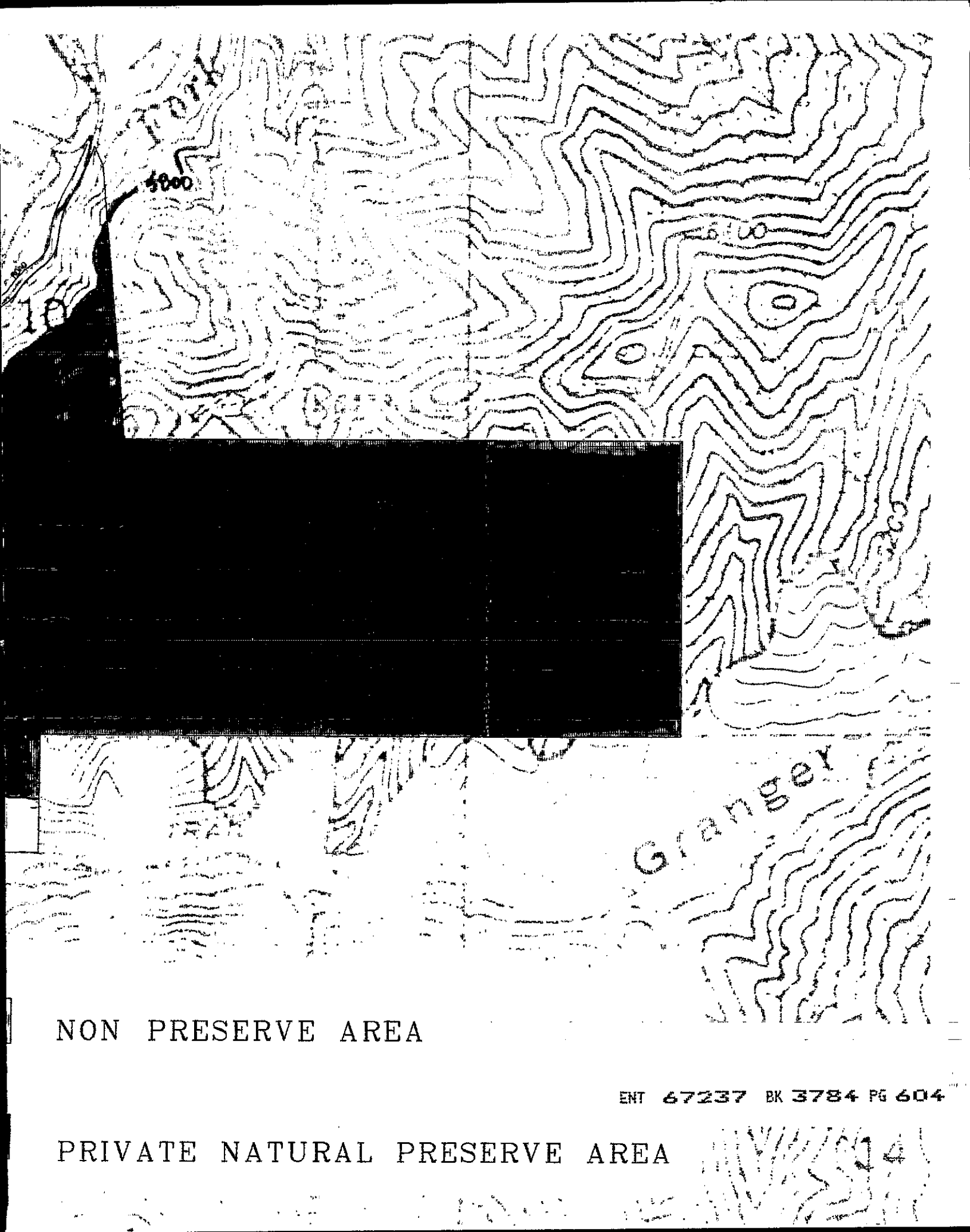
ENT 67237 BK 3784 PG 603



SCALE - 1" = 700'

5800

5600



NON PRESERVE AREA

ENT 67237 BK 3784 PG 604

PRIVATE NATURAL PRESERVE AREA