

AMENDED AND RESTATED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
Sky Mountain Golf Estates

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AMENDED AND RESTATED DECLARATION OF
CONVENANTS, CONDITIONS AND RESTRICTIONS
FOR

SKY MOUNTAIN GOLF ESTATES

THIS DECLARATION ("Declaration") is made this 1st day of November, 2008, by the undersigned, Sky Mountain Golf Estates Homeowners Association, Inc., a Utah nonprofit corporation, herein referred to as "Association", with reference to the following facts and is as follows:

R E C I T A L S :

A. This Declaration relates to a single family residential subdivision, specifically as a planned unit development under the name of "SKY MOUNTAIN GOLF ESTATES", hereinafter from time to time the "Community".

B. This Declaration is designed to create equitable servitudes and covenants appurtenant to and running with the Property imposing conditions, covenants and restrictions for the development, operation, protection and maintenance of the Property, because of the unique aspects of concern to Owners (below defined), with rights and powers reasonably necessary to control the operation and maintenance of the Property, including without limitation the right to assess the Owners for the cost of such operation and maintenance.

C. This Declaration supersedes and replaces in its entirety the previously recorded Declaration ("Original Declaration") recorded as Entry No. 00647269, Book 1333, page 2147 et seq., Washington County Recorder's Office and any amendments thereto.

D. This Declaration shall be binding upon all of the real property described in **Exhibit "A,"** which is attached hereto and is incorporated by reference.

E. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

F. This document does not and is not intended to create a condominium within the meaning of the Utah Condominium Property Code, Title 57-8-1 et seq., however, the Property described herein, and the resulting Association shall be subject to Utah's Community Association Act, Title 57-8a-101 et seq., and shall be entitled to avail itself of all of the statutory provisions therein.

DECLARATION

Now, therefore, Association hereby declares that the Property is and shall be held, conveyed, encumbered, leased, used, occupied, improved, and otherwise affected in any manner subject to the covenants, conditions, restrictions, easements and other provisions of the Declaration, all of which are hereby declared to be in furtherance of a general plan for the development, improvement, and sale of the Property, and are further declared to be for the purpose of enhancing, maintaining, and protecting the value and attractiveness of the Property. All provisions hereof shall be deemed to run with the land as covenants running with the land or as equitable servitudes, as the case may be, and shall constitute benefits and burdens to Association and its assigns and to all persons hereafter acquiring or owning any interest in the Property, however such interest may be obtained.

ARTICLE I
DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the meanings set forth in this Article.

1.1 “Annexed Property” means and refers to any or all of the property to which a Supplemental Declaration is recorded causing an annexation.

1.2 “Articles” or “Articles of Incorporation” means and refers to the Articles of Incorporation of the Association.

1.3 “Association” means and refers to SKY MOUNTAIN GOLF ESTATES HOMEOWNERS ASSOCIATION, its successors and assigns, a Utah nonprofit corporation.

1.4 “Association Property” means and refers to all real and personal property now or hereafter owned by or leased to the Association or in which the Association has a recognizable legal or equitable present or future interest.

1.5 “Beneficiary” means and refers to a beneficiary under a deed of trust or a mortgagee under a mortgage, and/or the assignee of such beneficiary or mortgagee.

1.6 “Board” or “Board of Trustees” means and refers to the governing Board of the Association.

1.7 “Bylaws” means and refers to the Bylaws of the Association.

1.8 “Common Areas” means and refers to that portion of the Property which is designated as Common Areas on each Plat Map and which is owned or to be owned by the Association, together with all Improvements constructed or to be constructed on such Common Areas, including, but not limited to, any recreational facilities, sanitary sewer lines and facilities within the Property (exclusive of Lots) which have not been accepted for dedication by the applicable governmental entity having jurisdiction.

1.9 “Common Expenses” shall have the meaning set forth in paragraph 6.4.1 hereof.

1.10 “Community” means and refers to the residential planned unit development known as “Sky Mountain Golf Estates”.

1.11 “Community Wide Standard” The standard of conduct, maintenance, design or other activity generally prevailing throughout the properties. The Board of Directors and the Design Review Committee may more specifically determine such standard.

1.12 “Declaration” means and refers to this instrument entitled “Declaration of Covenants, Conditions, and Restrictions for Sky Mountain Golf Estates” and any and all amendments thereto.

1.13 “Deed of Trust” means and refers to a deed of trust or a mortgage encumbering any portion or all of the Property.

1.14 “Eligible Insurer” means and refers to an insurer or guarantor of a First Deed of Trust which has requested notification pursuant to the provisions of paragraphs 9.5 hereof.

1.15 “Eligible Mortgage Holder” means and refers to the holder of a First Deed of Trust which has requested notification pursuant to the provisions of paragraph 9.5 and 11.2 hereof.

1.16 “FNMA” and “FHLMC” means and refer to, respectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

1.17 “First Deed of Trust” means and refers to a Deed of Trust having priority over all other Deeds of Trust encumbering the same portion of the Property.

1.18 “Golf Course”, “Golf Course Facilities” or “Golf Course Property” mean and refer to the Sky Mountain Golf Course and related facilities owned and/or operated by the City of Hurricane, its successors and assigns, and which has been constructed outside the Community, and all appurtenances thereto, including the maintenance and other buildings, vehicles and equipment associated therewith. Said terms are not to be confused with “Sky Mountain Golf Estates,” which is the Community that is the subject matter of this Declaration.

1.19 “HOA Open Space” means any portion of the Common Areas designated as “Open Space” on a Plat Map, all of which shall be owned by the Association and shall be Association Property.

1.20 “Improvements” means and refers to all structures and appurtenances thereto of every type and kind, including but not limited to buildings, residence structures, outbuildings, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting, planted trees, shrubs, poles, signs, exterior air conditioning, satellite dishes, antennae, fixtures or equipment, which have been or will be constructed on the Property.

1.21 “Lot” means and refers to any portion of the Property designated as a Lot on any recorded Plat Map thereof and intended for improvement with a single family residence, whether or not the Lot is so improved. The boundaries of each Lot and the number identifying the Lot are set forth on the Plat Map.

1.22 “Member” means and refers to every person or entity holding a membership in the Association pursuant to the provisions of the Declaration, the Articles, and the Bylaws.

1.23 “Membership” means and refers to the owner(s) of each unit who shall have one (1) membership in the Association. The number of memberships in the Association shall be equal to the number of units within the property.

1.24 “Owner” means and refers to any person, entity, or group of persons holding a fee simple interest in an Unit, or who is the buyer of an Unit under a recorded contract of sale, in which case the seller under such recorded contract of sale shall cease to be an Owner unless and until such contract is terminated.

1.25 “Plat” or “plat Map” means and refers to each final plat map for Sky Mountain Golf Estates recorded with the Washington County Recorder’s Office, and any and all amendments thereto.

1.26 “Property” means and refers to that certain real property described in Exhibit “A” attached hereto and all other real property which is encumbered from time to time by this Declaration pursuant to a Supplemental Declaration, together with all Improvements now or hereafter located thereon, and together with all easements, rights and appurtenances belonging thereto.

1.27 “Rules and Regulations” means and refers to such rules and regulations as the Board from time to time may adopt pursuant to the terms of this Declaration concerning the use of the Community or any part thereof.

1.28 “Single Family Map” means and refers to a Plat Map pursuant to which Lots are created.

1.29 “Single Family Residence” means and refers to a single family residence constructed on a Lot, whether attached to another residence or not. Casitas are considered to be appurtenances of a single family residence.

1.30 “Successor Declarant” means and refers to any and all successors in interest of the Declarant who acquire an interest in the Property, or any portion thereof, and to whom Declarant’s Rights have been assigned by a written assignment executed by the transferor Declarant and the transferee Successor Declarant which is duly recorded in the Office of the County Recorder of Washington County, Utah. Declarant and each Successor Declarant shall cease to be the Declarant of a Successor Declarant, respectively, at such time that it ceased to own an interest in any portion of the Property and designated a Successor Declarant in the Manner provided in this paragraph.

1.31 “Unit” means a Lot

1.32 “Visible from Neighboring Property” The phrase “visible from neighboring property” means, with respect to any given object, that such object is or would be visible to a person six feet (6’) tall standing at the finished floor elevation of any neighboring property.

1.33 “Voting Member” means a member of the Association, or an authorized representative who acts for or on behalf of the owner(s) of an individual unit when casting a vote on matters of the Association. Each unit in the property is entitled to one (1) vote.

ARTICLE II

DESCRIPTION OF PROPERTY RIGHTS AND OBLIGATIONS, COMMON INTERESTS, RIGHTS OF ENJOYMENT, AND EASEMENTS

2.1 Ownership of Common Areas. All of the Common Areas are or will be owned by the Association as HOA Common Areas. The Common Areas shall remain private property of the Association, unless dedicated to a public authority pursuant to the provisions hereof, and nothing contained herein shall be construed as a dedication to the public of the Common Areas or any portion thereof.

2.2 Encumbrances Against Common Areas. Title to the Common Areas is or may be subject to the following encumbrances (“Existing Encumbrances “):

- (a) The lien of real property taxes and assessments;
- (b) The obligations imposed, directly or indirectly, by virtue of any statutes, law, ordinance, resolution, or regulation of the United States of America, the State of Utah, County of Washington, or any other political subdivision or public organization having jurisdiction over the Property, or by virtue of any organization or political body created pursuant to any such statute, law, ordinance, or regulation;
- (c) Any and all easements and other rights shown on the Plat Map;
- (d) All easements and other rights and obligations created by the Declaration;

(e) Any and all loans for the construction of Improvements to the Common Areas which loans shall be paid by Association as the same become due and payable; and

(f) Any other lien, encumbrance, or defect of title of any kind whatsoever (other than of the type that would at any time or from time to time create a lien upon the Common Areas to secure an obligation to pay money) that would not materially and actually prejudice Owners in their use and enjoyment of their Units and the Common Areas.

2.3 Taxes and Assessments. If, any taxes or special district or other assessments may be, in the opinion of the Association, a lien on the Community or any part thereof, then the Association shall pay the same and assess the same to the Owners responsible therefor. Each Owner shall pay the taxes or assessments assessed against their Unit, or interest therein.

2.4 Owners' Easements of Enjoyment. Except as otherwise expressly provided elsewhere in this Declaration, each Owner shall have, and the Association hereby grants to each Owner, a non-exclusive easement of use and enjoyment in, to, and throughout the Common Areas and for ingress, egress, and support over and through the Common areas. Each such easement shall be appurtenant to and pass with title to each Unit, subject to the following rights and restrictions:

2.4.1 The Association shall have the right to adopt, amend, and enforce Rules and Regulations affecting use of the Common Areas; provided, however, that such Rules and Regulations shall not be in conflict with the provisions of this Declaration.

2.4.2 The Association shall have the right to limit the number of guests of an Owner utilizing the Common Areas

2.4.3 The Association shall have the right to charge reasonable admission and other fee for the use of any recreational facility situated upon the Common Areas.

2.4.4 The Association shall have the right to assign, rent, grant licenses, or otherwise designate and control the use of any parking or storage space within the Common Areas.

2.4.5 The Association shall have the right to borrow money to improve, repair or maintain the Common Areas, provided any encumbrance against the Common Areas may be granted only as provided in this Declaration.

2.5 Use of the Common Areas. Any Owner may extend their rights of use and enjoyment in the Common Areas, including any recreational facilities, to such Owner's family members, guests, and invitees, subject, however, to the provisions of this Declaration and the Rules and Regulations. If an Owner has rented all of such Owner's Unit to a tenant(s), then the Owner, such Owner's family, members, guests, and invitees shall not be entitled to use and enjoy the recreational facilities of the Common Areas while the Owner's Unit is occupied by such tenant(s). Instead, the tenant(s), while occupying such Unit, shall be entitled to use and enjoy the recreational facilities of the Common Areas and, during the period of such tenants' occupancy, such tenant(s) can extend to other persons the right of use and enjoyment in the same manner as if such tenant(s) were an Owner. Each Owner shall notify the secretary of the Association of the names of any tenants of such Owner's Unit. Each Owner or tenant also shall notify the secretary of the Association of the names of all persons to whom such Owner or tenant has extended any rights of use and enjoyment in the Common Areas and the relationship that each such person bears to the Owner or tenant. All permitted rights of use and enjoyment of the Common Areas are subject to suspension as set forth below in this Declaration. Each Owner shall at all times be responsible for any and all activities of their tenants, guest and invitees using the Common Areas. No Improvements within the Common Areas shall be altered or removed, except at the express direction of the Association.

2.6 Association's Right to Use of Common Areas. The Association shall have a non-exclusive easement to make such use of the Common Areas as may be necessary or appropriate to perform the duties

and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain in the Common Areas maintenance and storage facilities for use by the Association.

2.7 Easement for Encroachments. If any part of the Common Areas encroaches or shall hereinafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same does and shall exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same does and shall exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but and not limited to, encroachments caused by initial construction, settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Community or any part thereof. Notwithstanding the foregoing, no such encroachment shall exist to the extent it is caused by the willful misconduct of the Owner of the encroaching Unit or the failure of such Unit's Owner to cause the Unit to be repaired or reconstructed after damage or destruction in accordance with approved plans and specifications.

2.8 Utility Easements. There is reserved for the benefit of each Unit easements for utility services over, under, or through such portions of the Community and other Units, where such utilities are constructed when construction of the Community is completed. In addition, Association reserves, and the Association is granted, the right to establish and convey subsequent utility easements; and each Owner in accepting a deed to a Unit, expressly consents to such easements. However, no such easement can be granted if it would interfere with the use, occupancy, or enjoyment by any Owner of their Unit or the common facilities of the Community unless approved by a vote of the membership.

2.9 Easements Deemed Created. All conveyances of Units hereafter made shall be constructed to grant and reserve such reciprocal easements as shall give effect to the provisions of this Article II even through no specific reference to such easements or to the sections pursuant to which they are created appear in any such conveyance.

2.10 Structural and Exterior Alterations. No Owner shall paint, decorate, change or add any item to any exterior of the Owner's Unit or any building or other structure in the Community without first obtaining written consent of the ARC. Prior to obtaining such consent of the ARC, it shall be the Owner's obligation to obtain any and all necessary approvals for such alterations from the appropriate governmental body exercising jurisdiction over such matter and present such approval to the ARC with their architectural application.

2.11 Association's Common Areas Easement Rights; Dedication of Common Areas.

2.11.1 Reservation of Common Areas Easements in Favor of Association. Association hereby reserves unto itself such easements over, through and under the Common Areas as may be reasonably necessary to discharge Association's obligations.

2.11.2 Reservation of Right to Grant Additional Common Areas Easements and License, and to Dedicate Common Areas. Association hereby reserves unto itself the right to grant easements and rights of way on, over, through and under the Common Areas for the purposes described below and for the benefit of the Owners, the Association, and the right to offer for dedication any portion of the Common Areas to any political subdivision, or any public or quasi-public entity or utility. Furthermore, Association reserves the right to enter into a license agreement for the benefit and use of the HOA Common Areas by the members of the Sky Mountain Homeowner's Association, Inc., which license agreement shall be on such terms as Association deems appropriate and which shall be binding upon the Association. Such grants of easement or dedication may be for any or all of the following described purposes: constructing, erecting, operating, or maintaining on the Common Areas, at any time (i) roads, streets, trails, walks, driveways, vehicle parking areas, parkways, and park areas; (ii) poles, wires, or conduits for transmission of electricity, telephonic communication or cable or antenna television for the

Community and the necessary apparatus incident thereto; and (iii) public and private sewers, sewage disposal systems, storm drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas line or pipes, and any and all equipment and other apparatus relating thereto.

2.12 Rights of Association to Encumber Common Areas. The Association may encumber the Common Areas in connection with authorized obligations, but only upon the affirmative vote using the voting guidelines established in amended Article XI, section 11.2.

2.13 Access to Units. Each Owner shall have an unrestricted right of ingress and egress to their Unit. Such right of access shall be appurtenant to each such Unit; and any transfer of such Unit, of whatever kind, which does not include such right of access shall be void.

2.14 Drainage Easements. There may be drainage easements within the Property which will exist between Lots and which must be maintained free of all debris by the affected Lot Owners. In the event such drainage ways are not kept free of debris by the affected Lot Owners or are altered in a manner which impairs their functional ability, the Association shall have the right to enter upon the affected Lots for the purpose of removing such debris or removing such alteration, as applicable; and the cost of such removal shall be borne by the affected Lot Owners and shall be deemed a Special Assessment (below described) established and enforceable in accordance with the terms and provisions of Article VI of this Declaration. No Owner shall alter the grade or do any other thing which alters or disrupts the flow of water through said drainage channels in the manner originally established by Declarant.

2.15 Easements for Repair, Maintenance, and Emergencies. The Association shall have an easement for access through and on the Common Areas and each Unit for providing utilities, for maintaining and repairing the Common Areas, Association Property and other Improvements as required hereunder, and for making emergency repairs necessary to prevent damage to the Common Areas or any Unit.

2.16 Easement for Golf Cart Path. Nonexclusive easements on, over and across portions of the Common Areas and Property have been created in favor of the City of Hurricane, its successors and assigns, for the purpose of constructing, adding to, reconstruction and maintaining a paved access road for use by the City of Hurricane and its successors and assigns, agents, employees, contractors, licensees and invitees for purpose of pedestrian and vehicular ingress and egress to and from the Golf Course Property, the locations of which are set forth on the Plat Maps.

2.17 Maintenance of HOA Common Areas. Maintenance of the HOA Common Areas and any and all Improvements thereon shall be the obligation of Association. The Association shall maintain and manage the HOA Common Areas and all Improvements thereon in a professional manner. The Association shall maintain all utilities, equipment and other apparatus within the HOA Common Areas, unless such item of maintenance is the obligation of a utility company, the City of Hurricane, Washington County, or other governmental entity.

ARTICLE III

UNIT BOUNDARIES, USE RESTRICTIONS,
MAINTENANCE OBLIGATIONS AND PRIVATE
EASEMENTS

A. Uses.

3.1 Leasing of Units. An Owner shall be permitted to lease their Unit provided that:

(a) The Owner and all tenants (“Tenant”) enter into a written lease which provides that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Rules and Regulations, and that any failure by the Tenant to comply with the terms of such documents shall be a default under the lease;

(b) Any lease or rental agreement shall be in writing, be for a term of at least thirty (30) days, and no Owner shall rent or lease their Unit for transient or hotel purposes, nor shall any Unit be timed shared;

(c) The Tenant is furnished with a copy of the Rules and Regulations;

(d) The lease grants to the Association as a third-party beneficiary the right to evict the Tenant for failure to comply with this Declaration or the Rules and Regulations; and

(e) The Secretary of the Association has been furnished with the name(s) and mailing addresses of the Tenant within five (5) business days after execution of the lease.

(f) Each Owner shall be responsible and liable for all activities of such Owner’s Tenant which are in violation of this Declaration or the Rules and Regulations.

3.2 Residential Use. No Unit shall be improved or used for any purpose other than residential use by a single family. No Unit shall be subdivided in any manner.

3.3 Parking and Vehicular Restrictions.

3.3.1 Except for emergency vehicle repairs, no automobile, motorcycle, motorbike or other motor vehicle of any kind shall be constructed, reconstructed or repaired on any Lot. No inoperable vehicle or vehicle which, because of missing fenders, bumpers, hoods or other parts or because of lack of proper maintenance or licensing, is, in the sole opinion of the Board or Architectural Committee, unsightly or detracts from the appearance of the community shall be stored, parked or kept on any lot.

3.3.2 No motor vehicle classed by manufacturer rating as exceeding one ton, or commercial may be parked on a lot unless it fits entirely inside the garage. Commercial vehicles shall mean any vehicle that:

- a. Displays the name, trade name, telephone number or other identifying information of any business and/or
- b. Otherwise bears the appearance of a commercial vehicle by reason of its normal contents (e.g., trade goods, extensive tools, ladders, tool racks, etc.)

3.3.3 No Owner shall park, store or keep on their Unit any recreational vehicle (including, but not limited to, any camper unit, house/car or motor home); any bus, trailer, trailer coach, camp trailer, boat, aircraft or mobile home; or any other similar vehicle, unless the recreational vehicle is stored in accordance with the Architectural Guidelines.

3.3.4 In addition, no Owner shall park, store or keep anywhere within the Property any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board.

3.3.5 Parking of any vehicle in any unpaved landscaped area shall not be permitted. Owners may park up to two (2) vehicles within their own driveway area or on the street fronting their unit as long as the vehicles do not block the sidewalk and such vehicles are used for daily transportation purposes unless such vehicle is deemed to be commercial in nature. A third vehicle may be parked in the driveway area if the unit has an approved concrete parking pad adjacent to the driveway.

3.3.6 No repairs of any vehicle may be undertaken within the Property except wholly within a garage and with the door closed

3.3.7 The Board shall have the power but not the obligation to enforce all parking and vehicle use restrictions applicable to the Property. The Board shall have the right to have any truck, mobile home, travel trailer, camper shell, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Association documents towed away at the sole expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, then the cost incurred by the Association in towing the vehicle or equipment shall be assessed against the Owner and said Owner's lot.

3.4 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere within the Property, and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, or offensive. No illegal, noxious or offensive activities shall be carried on or conducted upon any Lot or within any portion of the Common Areas, nor shall anything be done within the Properties which is or may become an unreasonable annoyance or nuisance to the neighborhood. Excessive noise levels may be determined at the discretion of the Board which may, but shall not be obligated to, rely on the standards, if any, established by Hurricane City, County Ordinance, State law or other applicable governmental regulations dealing with such matters.

3.5 Signs. No sign, poster, billboard, advertising device or other display of any kind shall be displayed without the approval of the ARC, except the Owner or resident may place two (2) customary 18" x 24" free-standing "for sale" or "for lease" signs on the Unit. No more than one (1) sign may be placed in

the front yard of a unit, one (1) additional sign may be placed in the side or back yard. Any other signage shall require Board approval. Nothing herein contained shall restrict the right of Association to maintain street signs, Community monuments signs, and other Community signs in the Common Areas. Political and/or election related signs may not be displayed.

3.6 Antennae, Solar Panels, Sports Equipment. No clothes lines, television antennae, satellite dishes, wiring, installation of air conditioning or solar heating equipment, or other equipment or items of any kind, including, without limitation, sports equipment, shall be installed on the exterior of the building or be allowed to protrude through the walls, the windows, the roof of any building or the balconies, unless the prior written approval of the Board is secured.

3.7 Appearance of Unit; Unsightly Articles. Articles, including, but not limited to clotheslines, must be approved in writing by the Board or Architectural Committee. Exterior fires are not allowed, except barbecue fires contained within receptacles designed therefor, such that they do not create a fire hazard and except as specifically authorized in writing by the Association (and subject to applicable ordinances and fire regulations). Each Owner shall keep their unit and the Improvements thereon in a clean and attractive condition.

3.7.1 Outdoor recreational equipment including but not limited to large playhouses, swing sets, slides, and trampolines shall not be allowed within the property excepting those already in place at the date of the adoption of this document unless a variance is granted by the Board of Trustees. If such items exist prior to the adoption of this document, they will be required to be staked or otherwise secured.

3.7.2. Certain recreational items and toys will be allowed at a residence within the HOA including but not limited to atvs, bicycles, portable basketball standards, scooters, skate boards, and motorcycles. While these types of items may be in evidence and enjoyed on the property, these items must be stored in an orderly fashion in the back yard, inside the garage or inside the residence during hours of darkness.

3.8 Windows Each Owner shall have complete discretion as to the choice of furniture, furnishings, and interior decoration; however, all draperies, curtains, shutters, or other window coverings shall be of good quality and of such color, design and construction so as to be in accord with the attractive appearance of the Community. Plastic, aluminum foil, bedroom sheet or other unsuitable coverings may not be placed in or on the windows, except for blinds, shutters or other window coverings which may be constructed of plastic materials. Window tinting shall require the prior written approval of the ARC and shall be properly installed and maintained so as not to become damaged, scratched, discolored or otherwise unsightly.

3.9 Trash Containers and Collection. Each Owner shall place and keep all trash and garbage in containers and within their garage area or such other area as approved by the ARC. Other than twelve (12) hours before and twelve (12) hours after pickup by sanitation crews trash containers shall be maintained so as to not be visible from neighboring property or from the street. Every effort should be made to secure garbage by bagging and/or securing lid of can. Such trash containers must be placed for pickup on the street side of the curb and as specified by the solid waste company.

3.10 Animals. Animals, fowls, reptiles, poultry, fish or insects of any kind (“animals”) shall not be raised, bred or kept within the Property, except that a reasonable number of dogs, cats or other household pets may be kept within a residence, provided that they are not kept, bred or maintained for any

commercial purpose, nor in unreasonable quantities nor in violation of any applicable local ordinance or any other provision of this Declaration and such limitations as may be set forth in the Rules and Regulations. As used in this Declaration “unreasonable quantities” shall ordinarily mean more than two (2) pets per household; provided, however, the Board may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to other Owners in the Property. Animals belonging to Owners, residents, or their guests within the Property must be either kept within an enclosure or on a leash or other restraint not to exceed 20 feet in length and which is being held by a person capable of controlling the animal, and who then has in their possession a proper or adequate utensil or other means of cleaning up immediately all feces of such animal. Furthermore, to the extent permitted by law, any Owner shall be liable to each and all remaining Owners, residents, their families and guests for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Property by an Owner or resident or by members of their family or guests; and it shall be the absolute duty and responsibility of each such Owner to immediately clean up after such animals which have used any portion of the Common Areas.

3.11 Business or Commercial Activity. No part of the Property shall ever be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including without limitation any activity for which the provider is compensated in any way or receives any form of consideration, regardless of whether the activity is engaged in full or part time, generates or does not generate a profit, or requires or does not require a license

The limitations described above of this Section 3.11 shall not preclude any of the above-described activities which are conducted without external evidence thereof provided that all of the following conditions are fulfilled: (i) such activities are conducted in conformance with all applicable governmental ordinances; (ii) the patrons or clientele of such activities do not routinely or in significant numbers visit the Lot or park automobiles or other vehicles within the Property; (iii) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from outside the boundaries of the residence of such Lot; (iv) no such activity increases the liability or casualty insurance obligation or premium of the Association; and (v) such activities are consistent with the residential character of the Property and otherwise conform with the provisions of this Declaration.

Notwithstanding the foregoing, an Owner may conduct not more than two (2) “garage sales” on or from their Unit per calendar year

3.12 No Further Subdivision. No Unit may be further subdivided without the prior written approval of the Board.

3.13 Drainage. There shall be no interference with the established drainage in the Property unless an adequate alternative provision, previously approved in writing by the ARC, is made for proper drainage. For the purpose hereof, “established” drainage is defined as the drainage which exists at the time a Unit is conveyed to an Owner by Declarant or later grading changes which are shown on plans approved by the ARC.

3.14 Use of Garages. Garages may be used only by the Owner of such garages or the occupants of the Unit to which such garage is appurtenant. Garage doors shall not be left open for periods in excess of one (1) hour unless unit occupant is working in the garage, with the exception of vehicle repair which shall only be performed with the garage door closed.

3.15 Views There are no representations or warranty with respect to the presence or absence of any view from any portion of any Unit. Any existing view may change or be blocked or impaired

depending upon construction, landscaping or other activities undertaken on remaining land located within the Community or on land located outside the boundaries of the Community.

Each Owner, by accepting title to a Unit in the Community, hereby acknowledges that construction, landscaping or other installation of Improvements outside the Community may impair the view from any Unit in the Community, and the Owners hereby consent to such view impairment.

However, notwithstanding the foregoing, no vegetation, improvement or other obstruction shall be planted, constructed, or maintained on any Lot in such location or of such height as to unreasonably obstruct the view from any other Lot without the prior written approval of the ARC.

3.16 Maintenance of Lots Each Owner or resident of a lot shall be responsible for the periodic trimming, pruning and thinning of all hedges, shrubs and trees located on their lot. If an Owner or resident of a lot fails to perform necessary trimming, pruning or thinning, the Association shall have the right, after ten (10) days prior notice requesting such work be done and the Owner or resident not having done so, to enter upon such lot for purposes of performing such work and the cost thereof, together with interest thereon as provided by applicable law, shall be charged to such Owner, and shall be deemed a Maintenance Violation.

3.17 Lot and Unit Alterations. Subject to provisions of applicable law and ARC Guidelines each Owner shall have the right to modify their residence at their sole cost and expense, so long as (i) such modifications do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Property; and (ii) such modifications do not change the appearance of the Common Areas or the exterior appearance of a Lot or any other portion of the Property without the prior written approval of the ARC. No improvement, construction, repair or other work that alters the exterior appearance of any Improvement upon any Unit shall be made, done, or permitted to be done unless approval thereof is first obtained from the ARC in accordance with this Declaration and the procedures established by the ARC, and from the appropriate governmental authority, if required. Construction must be completed in a reasonable amount of time which shall be established by the ARC.

3.18 Maintenance and Repair. No building, structure, or other improvement within the Community shall be permitted to fall into disrepair. No Owner shall do any act or work that will impair the structural soundness or safety of any improvement located in the Community.

The maintenance of each residence in a clean and orderly manner, in a good condition and state of repair, and painted or otherwise finished shall be the obligation of the Owner and at their sole and separate expense. If an Owner or resident fails to perform necessary maintenance and repair, the Association shall have the right, after ten (10) days prior notice requesting such work be done and the Owner or resident not having done so, to enter upon such Lot for purposes of performing such work and the cost thereof, together with interest thereon as provided by applicable law, shall be charged to an Owner, and shall be deemed a Maintenance Violation.

3.19 Certain Lot Owners' Obligations to Rebuild After Damage or Destruction. Each Owner of a Lot upon which a Residence is located shall carry casualty insurance insuring the residence on such Owner's Lot with coverage for all hazards, except earthquakes and floods and other acts of God which are normally excluded from standard form coverage policies ("Excluded Hazard"), which insurance shall be maintained in an amount equal to the full replacement cost of such residence. The Association shall have no duty to enforce the foregoing provision of this Declaration; provided, however, that if a residence is damaged or destroyed and the event causing the damage or destruction was not an Excluded Hazard, then the Owner(s) of the residence shall be jointly and severally liable to the Association to rebuild the residence on the Lot within community standards as established in the Architectural Guidelines.

In the event the Lot Owner(s) of the damaged or destroyed residence fail to commence repair or reconstruction of the residence including the removal of debris associated with the initial damage or destruction, within the longer of one hundred twenty (120) days after the event causing the damage or

destruction, or forty-five (45) days after the insurance proceeds are made available for reconstruction purposes, then the failure to commence repair or reconstruction shall be deemed to be a Maintenance Violation as set for the in Section 3.20 below.

Each Owner shall maintain and provide insurance coverage under their homeowner's policy for any rear and side yard walls or wrought iron rear yard walls. If an Owner or resident fails to perform necessary maintenance and repair, the Association shall have the right, after ten (10) day prior notice requesting such work be done and the Owner or resident not having done so, to enter upon such Lot for purposes of performing such work and the cost thereof, together with interest thereon as provided by applicable law, shall be charged to an Owner, and shall be deemed a Maintenance Violation.

3.20 Maintenance Violations and Association's Right to Correct Maintenance Violation.

3.20.1 Maintenance Violation Notice. A maintenance violation exists if any Owner allows, permits or causes any condition to exist on such Owner's Unit or within such Owner's residence which in the sole reasonable discretion of the Board is unsightly, unsanitary or hazardous, or is deemed not to conform to Community Wide Standards (including, but not limited to, a condition which causes dust to carry to another Owner's lot), or fails to maintain their Unit, the exterior of the residence on such Unit or the Improvements thereon in accordance with the provisions of this Declaration and if no emergency exists, then written notice will be given specifying the nature of the Maintenance Violation and a reasonable time period within which the Owner(s) must correct such Maintenance Violation. If an emergency exists, then the Association shall give the Owner of the Unit on which such condition exists, whatever notice is appropriate under the circumstances in whatever manner is appropriate under the circumstances, including no notice.

3.20.2 Owner's Right to File an Objection. The Owner of the Unit to whom a Maintenance Violation Notice is given, shall have the right to file a written objection thereto with the Secretary of the Association within ten (10) days after such Owner is deemed to have received such Maintenance Violation Notice. In the event such an objection is filed, and within thirty (30) days after the objection is filed, the Board shall hold a hearing regarding such Maintenance Violation. Notice of such hearing and the time and place thereof, shall be given to the Owner to whom the Maintenance Violation Notice is given and any other Owners who have filed Owner Complaints (defined below) at least five (5) business days prior to the date set for such hearing. The Board shall give written notice of its decision to the Owner against whom the Maintenance Violation Notice was given as to whether or not a Maintenance Violation exists and the nature of such violation. Copies of such decision shall be mailed to all persons who filed an Owner Complaint. The decision of the Board shall be conclusive as to whether or not a Maintenance Violation in fact exists. The notice period within which a Maintenance Violation must be cured shall be tolled from the date of filing such objection until the date the Board notifies the Owner in Writing of its decision.

3.20.3 Circumstances Under which Association is Obligated to Correct Maintenance Violation. If any emergency exists or if the Owner fails to correct a Maintenance Violation within the period specified in the notice (as such Period may have been tolled by the filing of an objection), then the Association, acting through the Board, shall have the right, but not the obligation (unless an Owner Complaint is filed), to undertake and perform such work through its agents and employees as the Board may deem be necessary or desirable to remedy the Maintenance Violation. In the event an Owner Complaint is filed, the Association shall be required to correct the Maintenance Violation as set forth below. In the event an Owner Complaint is not filed, neither the Association,

the Board, nor any of their agents or employees shall be liable for failure to correct a Maintenance Violation.

3.21 Procedure for Association's Correction of Maintenance Violation.

3.21.1 Bids. In the event the Association elects, or is required by the terms of this Declaration, to correct a Maintenance Violation and if no emergency exists, then prior to commencement of work to correct the Maintenance Violation and promptly after the expiration of the cure period afforded a defaulting Owner, the Board shall obtain a written bid to perform the required work and shall mail the bid to the Owner of the Lot on which a Maintenance Violation exists. Such Owner shall have the right to approve the bid by notifying the Board in writing within fourteen (14) days after the bid is mailed by the Board to the Owner. In the event the Owner fails to approve the bid within such time period, the Board shall approve the bid and commence work. If an emergency exists, the Association may commence work to correct the Maintenance Violation immediately without notice and without obtaining a written bid.

3.21.2 Special Assessment. When the bid has been approved or when an emergency exists, the Board shall levy a Special Assessment pursuant to Article VI hereof against the Owner to the Lot on which a Maintenance Violation exists to pay for the cost of correcting the Maintenance Violation.

3.21.3 Performance of Corrective Work by Association. The Board shall have the duty to cause the corrective work to be commenced promptly after the Special Assessment has been levied against the defaulting Owner; provided, however, that if the cost of such corrective work exceeds two (2) times the amount of the periodic installment of the Annual Assessment against one Lot for the fiscal year in which the Maintenance Violation is required to be corrected, then the Association may, in the sole discretion of the Board, elect to levy a Special Assessment against the defaulting Owner prior to performing the corrective work, and perform such corrective work when the Special Assessment is paid in full. Neither the Association, the Board, nor any of the Association's agents or employees shall be liable for any damage which may result from any work performed by the Association to cure a Maintenance Violation.

3.22 Association's Right of Entry for Repair, Maintenance and Emergencies. Each of the Unit Owners hereby grants to the Association and its duly authorized agents, representatives, employees and contractors the right of entry onto such Owner's Unit and residence, and within the Improvements thereon, which right shall be irrevocable, to make such repairs and perform such maintenance work which the Association is required or entitled to do pursuant to the provisions of this Declaration. Except as provided herein below with respect to emergencies, such right of entry shall be exercised only during reasonable hours and after reasonable notice. In the event any officer of the Association believes, in his or her sole discretion, that an emergency situation exists and that immediate repairs are necessary to prevent or mitigate damage to the Common Areas or to the residence or Unit of another Owner, then such officer shall have the right to exercise such right of entry without notice.

3.23 Utility Service. No lines, wires, devices or structures for transmission of electric current or telephone, television, or radio signals shall be constructed, placed, or maintained anywhere within any Lot unless the same shall be contained in conduits or cables placed and maintained underground or concealed in or under buildings or approved structures. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone services incidental to the construction of improvements.

3.24 Yards. All maintenance of fences, hedges or walls erected on a lot shall be the responsibility of each Owner at their sole expense. Front landscaping must be installed prior to issuance of a Certificate of Occupancy. Side and rear landscaping must be installed by no later than ninety (90) days from issuance of a Certificate of Occupancy. If an Owner or resident fails to install required landscaping or perform necessary maintenance and repair, the Association shall have the right, per the guidelines described in 3.20,

to enter upon such Lot for purposes of performing such work and the cost thereof, together with interest thereon as provided by applicable law, shall be charged to an Owner, and shall be deemed a Maintenance Violation.

3.25 Diseases and Insects. Owner shall not permit any thing or condition to exist upon their Lot that shall induce, breed, or harbor infectious plant or tree diseases or noxious insects or harbor infectious plant or tree diseases or noxious insects, rodents, birds, or other animals, i.e., rabbits, etc. The owner of each Lot is responsible for pest control at their sole and separate expense.

3.26 Party Walls. Each wall which is built as a part of the original construction and placed on the property line between Lots shall constitute a party wall. In the event that any party wall is not constructed exactly on the property line, the Owners affected shall accept the party wall as the property boundary. The cost of reasonable repair and maintenance of party walls shall be shared by the Owners who use such wall in proportion to such use (e.g., if the party wall is the boundary between two Owners, then each such Owner shall bear half of such cost). If a party wall is destroyed or damaged by fire or other casualty, any Owner whose Lot has use of the wall may restore it, and any other Owner whose Lot makes use of the wall shall contribute to the cost of restoration thereof in proportion to such use. The foregoing shall not prejudice the right of any such Owner to call for a larger contribution from another Owner pursuant to any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any provision of this Section 3.18, an Owner who by their negligent or willful act causes a party wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements. The right of any Owner to contribution from any other Owner under this Section 3.18 shall be appurtenant to the land and shall pass to such Owner's successors in title

3.27 Mineral Exploration. No portion of the Community shall be used in any manner to explore for or to remove any oil or other hydrocarbons, minerals of any kind, gravel, or earth substance. No drilling, exploration, refining, quarrying, or mining operations of any kind shall be conducted or permitted to be conducted thereon; nor shall wells, tanks, tunnels, mineral excavation, shafts, derricks, or pumps used to mine or drill for any substances that may be located on the Community.

3.28 Machinery and Equipment. No heavy machinery or construction equipment of any kind shall be placed, operated, or maintained upon or adjacent to any Unit except such machinery or equipment as is usual and customary in connection with and during the construction or approved improvement of a residence or other structure. No equipment for air conditioning, heating, fuel storage or other uses shall protrude through the walls, windows, or roof of any Improvement in the Community except for such equipment needed during the initial construction of a unit unless prior approval has been received from the Board or Architectural Committee.

ARTICLE IV THE ASSOCIATION

4.1 Formation. The Association is a nonprofit corporation formed under the laws of the State of Utah. The Association is charged with the duties and invested with the powers set forth in the Articles, Bylaws, and this Declaration and laws of the State of Utah. The Association is not authorized to have and shall not issue any capital stock.

4.2 Association Action; Board of Trustees and Officers; Member's Approval. Except as to matters requiring the approval of Members as set forth in the Articles, Bylaws, and this Declaration, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with this Declaration or the Bylaws, or their amendments. The Board shall be composed of Members only. All members of the Board must be at least eighteen (18) years of age.

4.2.1 Nominating Committee. At least thirty (30) days prior to the annual meeting of the Association, the Board of Trustees shall select from the Owners a nominating committee of not

less than three (3) members, none of whom shall be members of the then Board of Trustees. The nominating committee shall recommend to the Association at least one nominee for each position of the Board of Trustees to be filled at that particular annual meeting. Nomination for positions on the Board of Trustees may also be made by petition filed with the Secretary of the Board of Trustees.

4.2.2 Trustee Election-The Board of Trustees shall consist of no less than three (3) members and no more than five (5) members except during the first year following the amendment of this declaration which shall require there to be five (5) members to allow for alternating terms to commence. The election of Trustees shall take place at the annual meeting. Trustees shall be elected for a term of two years except in the first year following this amendment during which three Trustees shall be elected for a one year term and two Trustees shall be elected for a two year term to allow for alternating terms. Officers shall be elected by the Trustees at the first regular Board meeting following the annual meeting. Officers shall be elected every year. The first regular Board meeting shall occur within 10 days of the annual meeting.

4.3 Membership.

4.3.1 Membership Qualifications. The Members of the Association shall be the Owners of the Units. The Owner(s) of each Unit shall have (1) membership in the Association. The number of memberships in the Association shall be equal to the number of units within the Property.

4.3.2 Members' Rights and Duties. As used in this Declaration, the term "Member" shall refer to the Owner of a Unit if there is one Owner, or collectively to all of the Owners of a Unit if there is more than one Owner. Each Member shall have the rights, duties, and obligations set forth in this Declaration, the Articles, Bylaws, and Rules and Regulations, as the same may from time to time be amended.

4.3.3 Voting.

(a) General Each Member shall be entitled to one (1) vote for each Unit owned by such Member. No vote allocated to a Unit owned by the Association may be cast. All members shall be notified of issues up for vote at least 30 days in advance of vote deadline.

(b) Persons Entitled to Serve on the Board. all members of the Board shall be Members of the Association. In all events where the person serving or offering to serve as an officer of the Association or member of the Board is not the record Owner, such person shall file proof of their authority in the records of the Association.

4.3.4 Exercise of Voting Rights. In the case of a Unit owned by two (2) or more persons or entities, the voting power shall be exercised by only one of them.

4.4 Transfer of Membership. The Association membership of the Owner(s) of a Unit shall be appurtenant to such Unit, and shall not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except on a transfer of the title to such Unit, and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of the title or interest to a unit shall operate automatically to transfer the appurtenant membership rights in the Association to the new owner(s). Prior to any transfer of title to a Unit (including the sale of a Unit under a recorded contract of sale), either the transferring owner or the acquiring owner shall give notice to the Board of such transfer, including the name and address of the acquiring owner and the anticipated date of transfer. The Association shall have the right to charge a reasonable transfer fee payable to the Association on the date of transfer of the title to

the Unit, which transfer fee shall be assessed against the Unit as a Violation Assessment if not paid when due.

ARTICLE V
POWERS AND DUTIES OF THE ASSOCIATION

5.1 Powers. The Association shall have all the powers of a nonprofit corporation organized under the laws of the State of Utah and the powers conferred upon it pursuant to Utah Code Ann. § 16-6-18, *et seq.*, subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws, and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under this Declaration, the Articles, and the Bylaws, and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including, without limitation, the following:

5.1.1 Assessments. The Association shall have the power to establish, fix, and levy assessments as set forth in Article VI hereof (herein collectively “Assessments”) and to enforce payment of such Assessments in accordance with the provisions of this Declaration.

5.1.2 Rules and Regulations. The Board shall have the power to adopt, amend, and repeal the rules and regulations regulating the use of the Common Area and community standards. The Board shall also have the power to adopt, amend and repeal resolutions. However, the Rules and Regulations and Resolutions shall not be inconsistent with or materially alter any provisions of this Declaration, the Articles, or Bylaws. A copy of the Rules and Regulations or Resolutions as adopted, amended, or repealed, shall be mailed or otherwise delivered to each Member. In case of any conflict between any provision of the Rules and Regulations or Resolutions and any provisions of this Declaration, the conflicting provision of the Rules and Regulations or Resolutions shall be superseded by the provisions of this Declaration.

5.1.3 Right of Enforcement.

(a) General. The Association in its own name and on its own behalf, or on behalf of the Owners of two (2) OR MORE Units who consent, any Member on its own behalf, shall have the power and authority to commence and maintain actions for damages, or to restrain and enjoin any actual or threatened breach of any provisions of this Declaration, the Articles, the Bylaws, the Rules and Regulations, or any resolutions of the Board, to enforce by mandatory injunction, or otherwise, all of these provisions, to intervene in litigation or administrative proceedings on matters affecting the Community. The Court in any such action may award the successful party reasonable expenses in prosecuting such action, including reasonable attorney fees.

(b) Suspension of Voting Rights; Fines. The Association shall have the power and authority to suspend the voting rights, suspend an Owner’s right to use any recreational amenities comprising the Common Areas, and can assess monetary penalties against any Owner of a Unit or other person entitled to exercise such Owner’s rights or privileges for any violation of this Declaration, the Articles, Bylaws or Rules and Regulations. Any such suspension of use privileges shall not exceed a period of thirty (30) days for any one violation, or until such time as an ongoing violation is cured. Any monetary penalty shall not exceed FIVE HUNDRED DOLLARS (\$500.00) for any one violation of 30 days or less duration. However, in the event that the violation is not cured within 30 days from the date a violation notice is issued, then the monetary penalty shall be ONE HUNDRED DOLLARS (\$100.00) per day until the violation is cured. The maximum monetary penalty that may be assessed for any one violation shall not exceed One Thousand DOLLARS (\$1000.00). Repeated incidents of the same violation may result in the assessment of the maximum fine for each violation. In the event it is

determined that such violation exists, the Board may impose a Violation Assessment against such Owner in the Manner provided in Section 6.5 hereof to collect any fine which remains unpaid for a period of ten (10) days or more. Before invoking any such suspension or fine, the Board shall give such Owner or other person notice and opportunity to be heard with respect to such violation, which notice shall provide not less than ten (10) days prior written notice of such hearing and reasonable detail with respect to the matter of which complaint is being made. The Association does not have the power or authority to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of such Owner's Unit if the Owner does not comply with provisions of this Declaration or of the Articles, the bylaws, or the Rules and Regulations, except when the loss or forfeiture is the result of a court judgment, arbitration decision, or a foreclosure or sale under a power of sale based on failure of the Owner to pay assessments levied by the Association.

5.1.4 Delegation of Powers; Professional Management; Other Services. The Association, acting by and through the Board, can delegate its powers, duties, and responsibilities to the committees of Members, employees, agents and independent contractors, including a professional managing agent. The Association may obtain and pay for legal, accounting, and other services necessary and desirable in connection with the operation of the Community and the enforcement of this Declaration.

5.1.5 Personal Property. The Association may acquire and hold for the use and benefit of all the Owners tangible and intangible personal property, and may dispose of the same by sale or otherwise. (ie. Gym equipment, clubhouse furniture, pool furniture, etc.)

5.1.6 Other Services and Properties. The Association shall have the power to obtain or pay for, as the case may be, any other property, services, taxes, or assessments which the Association or the Board is required to secure or pay for pursuant to the terms of this Declaration, the Articles, or the Bylaws, including security services for the Community generally, or which, in its opinion, shall be necessary or proper for the operation of the Association, and to incur liabilities and make contracts respecting the same.

5.2 Duties of the Association. In addition to the duties delegated to it by its Articles or the Bylaws, and without limiting their generality, the Association, acting by and through the Board, or persons or entities described in paragraph 5.1.4 above, has the obligation to conduct all business affairs of common interest to all Members and to perform each of the following duties:

5.2.1 Professional Management. The Association may engage the services of a professional manager to manage the Community. The Association shall operate, maintain, and otherwise manage or provide for the operation, maintenance, and management of any and all Association Property and the Common Areas, and all their facilities, improvements, and landscaping, including but not limited to any other property acquired by the Association including personal property. Such operations and management shall be conducted in a first class manner, and the Association Property shall be maintained in a good state of repair. In this connection, the Association may enter into contracts for services for the benefit of the Association property. The term of any such service contract shall not exceed one (1) year and shall be terminable by either party, with or without cause, and without payment of a termination fee, upon thirty (30) days' written notice.

5.2.2 Taxes and Assessments. The Association shall pay all taxes and assessments levied against all Association Property or against the Association. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes. The Association shall acquire, provide and pay for water, sewer, garbage disposal, refuse and other necessary utility services for the Common area. The term of any contract to

supply any of the listed services shall not exceed one (1) year, or if the supplier is a regulated public utility, the shortest term not to exceed one (1) year for which the supplier will contract at the applicable regulated rate.

5.2.3 Insurance. The Association shall obtain and maintain, from reputable insurance companies, the insurance described in Article VII.

5.2.4 Enforcement of Restrictions and Rules. The Association shall perform such other acts, whether or not expressly authorized by this Declaration that may be reasonably necessary to enforce any of the provisions of this Declaration, the Articles, Bylaws, Rules and Regulations, or Board resolutions. There is hereby reserved to the Association such easements as are necessary to perform its duties and obligations or to exercise its rights as set forth in this Declaration, the Bylaws, Articles, or the Architectural Committee Rules.

5.2.5 Audited Financial Statement. Within one hundred twenty (120) days of the end of each fiscal year of the Association, the Association shall cause to be prepared and made available to any Eligible Insurer or Eligible Mortgage Holder who requests it, an audited financial statement for such fiscal year.

5.2.6 Title to Property Upon Dissolution. Upon dissolution of the Association, the Association shall convey the assets of the Association to an appropriate public agency or agencies or to a nonprofit corporation, association, trust or other organization organized and operated for purposes similar to those for which the Association was created, or in such other manner as may be proper for the Association so to do under applicable State of Utah and Federal law.

5.2.7 Golf Course. The Association shall have no responsibility of any nature whatsoever for the use, maintenance, repair, continuance or operation of the Hurricane Municipal Golf Course, known as Sky Mountain Golf Club.

5.3 Limitations on Authority of Board. Except with the vote or written consent of Members of the Association holding fifty percent plus of the voting rights, the Board shall not take any of the following actions:

- a) Sell during any fiscal year Association Property having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; or
- b) Pay compensation to members of the Board or to officers of the Association in excess of the annual assessed dues. However, the Board may cause a member of the Board or an officer to be reimbursed for expenses incurred in carrying on the business of the Association.

5.4 Personal Liability. No member of the Board, or of any committee of the Association, or any officer of the Association, or any Manager, Agent or employee, acting as such, shall be personally liable to any Member, or to any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person or entity if such person or entity has, on the basis of such information as may be possessed by him or it, acted in good faith without willful or intentional misconduct.

5.5 Meetings of Members. Meetings of Members shall be noticed and held as provided in the Articles, the Bylaws, and this Declaration.

5.6 Association Books and Records and Association Property.

5.6.1 Right of Inspection. All membership registers, accounting records, and minutes of meetings of the Association, and the physical properties of the Association, shall be made

available for inspection by any Member of the Association, or his, her or its duly appointed representative, or any mortgagee, at any reasonable time and for a purpose reasonably related to membership in the Association, at the office of the Association or at such other place as the Board prescribes. The right of inspection shall include the right to make copies of documents.

The Board shall establish by resolution reasonable rules with respect to (a) notice to be given in writing to the custodian of the records of the Association by the Member representative or mortgagee desiring to make an inspection, (b) hours and days of the week when an inspection may be made, and (c) payment of the cost of reproducing copies of documents requested by a Member or by a representative or mortgagee.

ARTICLE VI

ASSESSMENTS

6.1 Agreement to Pay. Each Owner for each Lot owned by such Owner hereby covenants and agrees to pay to the Association such Assessments as are made pursuant to paragraphs 6.4, 6.5 and 6.6 of this Declaration.

6.2 Personal Obligations. Each Assessment or installment thereof, together with any late charges, interest, collection costs, and reasonable attorney fees, shall be the personal obligation of the person or entity who is the Owner of the Unit at the time such Assessment (or installment) became due and payable. If more than one person or entity is the Owner of the Unit, the personal obligation to pay such Assessment (or installment) respecting such Unit shall be both joint and several. Subject to the provisions of paragraph 9.3 hereof, a purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid Assessments against the Unit, up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such Assessments. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosure or waiver of the lien securing the same. No Owner may avoid or diminish such personal obligation by non-use or abandonment of their Unit.

6.3 Purpose and Amount of Assessments. The Assessments levied by the Association shall be the amount estimated to be required, and shall be used exclusively, to promote the health, safety, and welfare of the Members of the Association, for the performance of the duties of the Association as set forth in this Declaration, and for the repair, maintenance and upkeep of the Common Areas and any other Association Property.

6.4 Annual Assessments.

6.4.1 Definitions. As used herein, "Annual Assessment" shall mean the amount of the Association budget (Budget") for each fiscal year to pay the Common Expenses (defined below) as established pursuant to the provisions of this Article. As used herein, "Common Expenses" means the expenditures made by the Association in the performance of its obligations hereunder, and the financial liabilities of the Association during the applicable fiscal year, including an allocation to reserves, and shall include, but are not limited to, expenditures for the following purposes: (i) to operate, manage, maintain and repair the Common Areas and other Association Property, and to administer the operation of the Association; (ii) to provide for reasonable reserves consistent with sound business practice for the repair and replacement of Improvements to the Common Areas and any Association Property, and for such other purposes as are consistent with good business practice; and (iii) to provide for the possibility that some Assessments may not be paid on a current basis. Without limiting the generality of the foregoing, Common Expenses shall include all charges, costs, and expenses whatsoever incurred by the Association for or in connection with Association administration, including, but not limited to, the maintenance of the Common Areas; any taxes and assessments assessed against Association Property, any taxes

assessed against the Association itself, insurance premiums, including fire and other casualty insurance, liability insurance, workers compensation insurance, and other insurance obtained pursuant to this Declaration; payment of any liability of the Association whatsoever for loss or damage arising out of or in connection with the Common Areas or any fire, accident, or nuisance occurring with the Common Areas; the cost of repair, rebuilding and replacement of the Improvements to the Common Areas; the unpaid share of any Assessment levied during the previous fiscal year against any Owner who has defaulted in payment thereafter the extent that the same becomes uncollectible; accounting and legal fees, management fees, and cleaning, janitorial and lawn care fees, and other necessary expenses of upkeep, maintenance, management and operation incurred with respect to the Common Areas and the Improvements thereon.

6.4.2 Allocation of Annual Assessments. The Annual Assessments shall be allocated equally among the Units on the date the Annual Assessment for the applicable fiscal year is deemed approved.

6.4.3 Procedure for Establishing Annual Assessments. Not less than ninety (90) days before the beginning of each fiscal year of the Association, the Board shall meet for the purpose of preparing the Proposed budget of the Common Expenses (defined below) for the next succeeding fiscal year and establishing the Annual Assessment for such fiscal year. Within thirty (30) days after adoption of the proposed Budget by the Board for such fiscal year, the Board shall provide a summary of the Budget to all Owners, and shall set a date for a meeting of the Owners to consider ratification of the Budget, which date shall be not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. The Board shall be authorized to adopt the annual budget, thus establishing the regular assessment payable by the Owners, unless the percentage increase in the regular assessment over the previous year's regular assessment exceeds an increase of fifteen percent (15%) over the previous year's assessment. If the proposed budget would require an increase in the regular assessment greater than fifteen percent (15%) over the prior year's assessment, at that meeting the budget must be affirmatively approved by at least a simple majority (50%+) of the owners voting. They may be present to vote, vote by mail, or vote via verifiable electronic means. If the proposed Budget is so rejected or not approved, as applicable, the Budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent Budget proposed by the Board.

6.5 Special Assessments. If the Board determines that the estimated total amount of funds necessary to defray the Common Expenses for a given fiscal year is or will become inadequate to meet the Common Expenses for any reason, including, but not limited to, delinquencies in the payment of Assessments, or in the event the Association has insufficient reserves to perform its obligation under this Declaration, then the Board shall determine the approximate amount of such shortfall, shall provide a summary thereof to all of the Owners with the Board's recommendation for a special assessment ("Special Assessment") to meet such shortfall, and shall set a date for a meeting of the Owners which is not less than fourteen (14) nor more than thirty (30) days after the mailing of the summary and a ballot. Owners may vote by mail, verifiable electronic means or may vote in person. At that meeting, the proposed Special Assessment shall be deemed ratified by the Owners provided 50%+ of the owners voting consent to the special assessment, whether or not a quorum is present at such meeting, and shall become a Special Assessment against, and allocated equally to, the Owners of the Lots. The Board may, in its discretion, provide for payment of any Special Assessment in any number of installments or provide that it is payable in one (1) installment within such time period as the Board Deems reasonable. All Special Assessments shall be allocated in the manner set forth in subparagraph 6.4.2.

6.6 Violation Assessments. The Board shall levy a violation assessment against the Owners of a Unit ("Violation Assessment"): (i) to pay for the cost of curing any maintenance violation of such Owners and/or any other work performed by the Association for such Owners' account pursuant to the provisions of this Declaration, and any costs or expenses incident thereto, including but not limited to attorneys' fees and court costs, and (ii) to collect liquidated damages and fines levied by the Association pursuant to the terms of this Declaration and any and all attorneys' fees and court costs.

6.7 Capital Improvement Assessments.

6.7.1 Association's Power to Levy; Definition. The Association shall have the power to levy assessments for Capital Improvements ("Capital Improvements Assessments") on the terms and conditions set forth below. As used herein "Capital Improvement" means (i) any Improvement upon the Common Areas which is not a repair or replacement of an existing Improvement, or (ii) any expenditure relating to the Common Areas which is outside the ordinary course of business of the Association.

6.7.2 Petition; Association Approval.

(a) Owners of not less than twenty-five percent (25%) of the Lots comprising the Community from time to time may petition the Association for the construction, installation, or acquisition of, or expenditure for, a Capital Improvement. Such petition shall be in writing and be in such form and shall contain such information as the Board may reasonably require. The Board may, on its own motion, move for the construction, installation, or acquisition of, or expenditure for, a Capital Improvement.

(b) Upon receipt of a petition for a proposed Capital Improvement or if the Board desires to propose a Capital Improvement, the Board shall obtain three (3) estimates from licensed contractors for the construction of the Capital Improvements.

(c) The Board shall submit the Capital Improvement proposal to the Members at the annual meeting or a special meeting called for such purpose. The Capital Improvement Assessment shall be deemed approved upon the affirmative vote 67% of owners that cast a vote once a quorum has been established.

6.7.3 Levy of Capital Improvements Assessments. Capital Improvements Assessments shall be levied in equal proportions against the Owners of all of the Lots. The Owner of each Lot shall be assessed a fractional portion of such Assessment, the numerator of which fraction shall be one and the denominator of which shall be the sum of the number of Lots within the Property of the date such Assessment is levied. A Capital Improvement Assessment shall be paid in such installments and during such period or periods as shall be voted upon by the Members at the time such Assessment is approved. If no terms of payment are specified by such vote of the Membership, then the Capital Improvement Assessment shall be due and payable upon terms set by the Board.

6.7.4 Expenditure for Capital improvement. After the levy of the Capital Improvement Assessment and the collection of the entire Capital Improvement Assessment, or a sufficient portion thereof as, the Board deems prudent, then the Board shall cause the Capital Improvement to be constructed, installed, or acquired, or shall contract for the extraordinary expenditure constituting the Capital Improvement.

6.7.5 Deficiency in Capital Improvements Assessment. If at any time and from time to time a Capital Improvement Assessment proves or appears likely to be inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may, subject to the limitations set forth in this paragraph 6.5, levy a further Capital Improvement Assessment in the amount of such actual or estimated inadequacy, which shall be assessed to the Owners of all of the Lots within the Subject Property and any Annexed Property in the ratios defined in paragraph 6.7.3 hereof. If an additional assessment is needed for the original Capital Improvement the additional assessment shall be deemed approved upon the affirmative vote of 67% of owners that cast a vote once a quorum has been established.

6.8 Rate of Assessment. Except as otherwise specifically provided in this Declaration, all Assessments levied by the Association must be fixed at an equal rate for all Units; and the amount assessed to each Unit shall be determined by dividing the total amount assessed by the total number of Units then within the Community and subject to assessment.

6.9 Assessment Period. The Annual Assessment period shall coincide with the fiscal year of the Association, which shall commence on January 1 of each year and shall terminate on December 31 of such year.

6.10 Notices of Assessment; Delinquencies. Any Assessment installment hereunder which is not paid within fifteen (15) days following the date it is due shall be deemed delinquent. All delinquent Assessments shall bear interest at the rate of twelve percent (12%) per annum from the date the Assessment becomes delinquent hereunder until paid, and, in addition, a late charge of \$20.00 shall be due for each delinquent installment. The Association shall give written notice of all Assessments to the Owners of the Units, which notice shall specify the amount of the Assessment and the date or dates payment of the same is due and shall be given in the manner provided for notices in this Declaration. Notice of a Violation Assessment is required to be sent only to the Owners of the Unit against whom the Violation Assessment is made. One notice of an Assessment shall be sufficient to meet the requirements of this paragraph, even though the Assessment may be payable in installments. Failure of the Association to give notice of any Assessment shall not affect the liability of the Owner of the Unit for such Assessment; provided, however, that the date when payment of the first installment of such Assessment shall become due in such a case shall be deferred to a date fifteen (15) days after such notice shall have been given, and the first installment of such Assessment shall not be deemed delinquent until fifteen (15) days after such deferred due date. If the delinquent installments of Common Assessments and any charges thereon are delinquent for more than 60 days from the date such installment first came due, the Board, or its authorized agent, may declare all of the unpaid balance of the annual Common Assessment to be immediately due and payable without further demand and may enforce the collection of the full Common Assessment and all charges thereon in any manner authorized by law and this Declaration. If, however, the Common Assessment is accelerated and an Owner subsequently files bankruptcy or the Board otherwise decides acceleration is not in the Association's best interest, the Board, at its option and in its sole discretion, may elect to decelerate the obligation.

6.11 Statement of Account. Upon payment of a reasonable fee, not to exceed Twenty-Five Dollars (\$25.00), and upon written request of any Owner or any mortgagee, prospective mortgagee, or prospective purchaser of an Unit, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit, the amount of the current periodic assessment, and the date that such assessment becomes or became due, and if there is any credit for advance payments. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

6.12 Collection of Assessments. The right to collect and enforce Assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative can enforce the obligations of the Owners to pay Assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity; or the Board may enforce by judicial proceedings or, to the extent permitted by applicable law, through the exercise of the power of sale granted to the Board pursuant to applicable statutes and laws, and this Declaration. Suit to recover a money judgment against an Owner for unpaid assessments together with all other amounts due hereunder shall be maintainable without first foreclosing against the Unit which is subject to the lien for such assessment or waiving the lien rights granted hereby.

6.13 Assignment of Rents. Any Owner who leases their Lot and becomes more than 60 days delinquent in the payment of Assessments levied hereunder does hereby presently assign to the Association, absolutely and regardless of possession of the Lot, may demand that the tenant pay to the Association all future lease payments due to the Owner until the amount due to the Association is paid. The Association must notify in writing the owner and the Tenant and act in accordance with the Utah Code annotated 57-8a-205.

6.14 Lien for Assessments; Priority. All sums assessed to any Unit pursuant to this Declaration, and all fines imposed by the Association against the Owner of a Unit, together with interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association from the date the Assessment or fine becomes due. If an Assessment or fine is payable in installments, the full amount of the Assessment or fine is a lien from the time the first installment thereof becomes due. Such lien shall be prior to all other liens and encumbrances on such Unit, except for (a) valid tax and special assessment liens in favor of any governmental assessing authority; (b) liens and encumbrances recorded before the recordation of this Declaration; and (c) a First Deed of Trust recorded before the date on which the Assessment or fine sought to be enforced became delinquent.

6.15 Enforcement of Lien.

6.15.1 Trust Deed for Assessments. By acceptance of a deed for a Lot, each Owner as Trustor, conveys and warrants to Trustee in trust for the Association as Beneficiary, with power of sale, the Owner's Lot and all improvements thereon for the purpose of securing payment of all assessments (including basis of collection) provided for in this Declaration. For purposes of this Section and Utah Code Ann. §§ 57-1-19, et seq., as amended from time to time, the Trustee shall mean the attorney for the Association and the Association may provide notice and disclosure of a substitution of Trustee by recording a "Substitution of Trustee" in the records of the County Recorder. Each Owner hereby also grants to the Association and Trustee, all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann. §§ 57-1-19, et seq.

6.15.2 Notice of Delinquent Assessments and Notice of Default. The Association may foreclose its lien by sale pursuant to a non-judicial trust deed foreclosure according to Utah law after:

(a) The Association has caused to be recorded with the Washington County Recorder or the county in which the Property or any part thereof is situated ("the County Recorder") a notice of delinquent assessment (herein "Notice of Delinquent Assessment"), which states the amount of the Assessments or fines which are due together with all interest and late charges thereon in accordance with the provisions of this Declaration, a description of the Unit against which the lien is imposed, and the name of the record Owner of the Unit; and

(b) The Association or other person conducting the sale has executed and caused to be recorded with the County Recorder, a notice of default and election to sell the Unit to satisfy the lien ("Notice of Default"), which shall contain the same information as the Notice of Delinquent Assessment, but which shall also describe the deficiency in payment and the name and address of the person authorized by the Association to enforce the lien by sale; and

(c) The Owner of the Unit or his successor in interest has failed to pay the amount of the lien, including interest and late charges, and costs, fees and expenses incident to its enforcement for a period of sixty (60) days which commences on the first day following the later of:

(i) the day on which the Notice of Default is so recorded; and

(ii) The day on which a copy of the Notice of Default is mailed by certified or registered mail, return receipt requested, to the Owner of the Unit or his successor in interest at his address if known, or otherwise to the address of the Unit.

6.15.3 Notice of Sale. The Association or other person conducting the sale shall, at any time after the expiration of such sixty (60) days period and before selling the Unit, give notice of

the time and place of the sale ("Notice of Sale") in the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the Notice of Sale must be mailed, on or before the date of first publication or posting, by certified or registered mail, return receipt requested, to the Owner of the Unit or his successor in interest at his address if known, or otherwise to the address of the Unit. Such sale shall be conducted in any manner permitted by law. Each Owner who is liable for payment of the Assessment shall be required to pay the costs and expenses of such foreclosure proceeding including, but not limited to, the cost of preparation of all notices (whether or not such notice has been given to the Owner at the time payment is made), reasonable attorney fees, and title insurance costs.

All such costs and expenses of the foreclosure shall be secured by the lien being foreclosed. Each Owner who is liable for payment of the Assessment shall be required to pay to the Association any and all Assessments against such Owner which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use, and otherwise deal with the Unit. The Association shall be entitled to bid on credit up to and including the amount secured by the lien being foreclosed.

A further notice stating the satisfaction and release of any such lien shall be executed by the Association and recorded in Washington County, Utah, upon payment of all sums secured by such lien.

Any encumbrancer holding a lien on a Unit may, but shall not be required to, pay any amounts secured by a lien for unpaid assessments, and upon such payment, such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including rights of priority.

In the case of foreclosure, the owner shall pay a reasonable rental for the unit, and the plaintiff in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security.

6.16 Reserve Funds. The Association shall establish and maintain an adequate reserve fund for maintenance, replacement or enhancement of Improvements to the Common Area and Limited Common Elements that it is obligated to maintain. The amount of the replacement fund shall be determined by the Board of Trustees and shall be maintained out of regular assessments for common expenses. The Board shall periodically obtain reserve studies and updates to assist the Board in determining an appropriate amount for repair and replacement reserves for the Association; provided, however: (1) the results of any such studies and reports shall be advisory only and the Board shall have the right to provide for reserves which are greater or less than those shown in the study; and (2) in establishing replacement and repair reserves for the Association, the Board may take into account the past incidences of required repairs at the Association. The funds established in the reserve fund shall be allocated for asset management only and shall not be utilized for shortfalls in the operating budget.

6.17 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of reserves may be credited to the Owners to reduce their future assessments for Common Expenses or may be carried over to the following fiscal year to meet budget requirements at the discretion of the Board.

ARTICLE VII INSURANCE

7.1 Insurance to be Obtained. The Association shall obtain and maintain in full force and effect at all times insurance coverage, provided by companies duly authorized to do business in Utah, generally as set forth in this Article, and specifically as required by the Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), United States

Department of Veterans Affairs (“VA”), and the United States Department of Housing and Urban Development (“HUD”) if the Community has been, or is intended to be, qualified with such entities.

7.2 Casualty Insurance. The Association shall obtain a policy of insurance equal to full replacement value (i.e., 100% of current “replacement cost” exclusive of land, foundation, excavation, and other items normally excluded from coverage) on all insurable Improvements upon the Common Areas and any other Improvements under the control of the Association (including all building service equipment and the like and any fixtures or equipment within such Improvements) and all other personal property commonly owned by the Association. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association shall comply with the above requirements by the purchase of a policy containing such coverage with “deductible” provisions as in the Association’s opinion are consistent with good business practice, provided that in no event shall such deductible be in an amount greater than the lesser of \$10,000.00 or one percent (1%) of the face amount of such policy.

7.3 Liability Insurance. The Association shall purchase broad form comprehensive liability coverage in such amounts and in such forms as it deems advisable to provide adequate protection. Such coverage shall be in an amount generally required by private institutional mortgage investors for Communities similar in construction, location, and use, and in no event shall be less than \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles of behalf of the Association and activities in connection with the ownership, operation, maintenance, and other use of the Community. The liability insurance shall name as separately protected the Association, the Board, and their representatives, members, and employees, with respect to any liability arising out of the maintenance or use of any Association property. Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against, the Board, and their representatives, members, and employees.

7.3.1 Directors and Officers Insurance The Association shall additionally purchase Directors and Officers liability insurance to protect the Trustees from liable in the execution of their duties. Said policy shall be at least \$ 1,000,000.00 per occurrence.

7.4 Workers Compensation and Employer’s Liability Insurance. The Association shall purchase workers compensation and employer’s liability insurance and all other similar insurance in respect of employees of the Association in the amounts and in the forms now or hereafter required by law.

7.5 Fidelity Insurance. The Association shall purchase insurance covering officers and employees of the Association and employees of any manager or managing agent, whether or not any such persons are compensated for their services, against dishonest acts on their part, or in lieu thereof, a fidelity bond, naming the Association obligee, written in an amount equal to at least the estimated maximum of funds, including reserves in the custody of the Association or the management agent at any given time during the term of the fidelity bond. However, the bond shall not be less than a sum equal to three (3) months aggregate assessments of all Units, plus reserve funds.

7.6 Other Insurance. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Community, including any personal property of the Association located thereon. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood, and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for PUD projects established by FNMC and/or FHLMC, as applicable, so long as either or both of them are a mortgagee or Owner of a Unit except to the extent such coverage is not available or has been waived in writing by FNMA or FHLMC, as the case may be.

7.7 Premiums and Reviews. Except as provided above, premiums for all of the foregoing insurance carried by the Association shall be a common expense and shall be included in the assessments or charges made by the Association.

7.8 Forms. Casualty insurance shall be carried in a form or forms naming the Association the insured, as trustee for the Owners, which policy or policies shall specify the interest of each Owner (Owner's Name and Unit number), and which policy or policies shall provide a standard loss payable clause providing for payment of insurance proceeds to the Association as trustee for the Owners and for the respective first mortgagees which from time to time shall give notice to the Association of such first mortgages; and such proceeds shall be used in accordance with the provisions of this Declaration.

Each policy shall also provide that it cannot be canceled by either the insured or the insurance company until after thirty (30) days written notice is first given to the Association and to each first mortgagee. All policies of insurance shall provide for a waiver or subrogation by the insurer as to claims against the Association, the Board, employees, and agents, and against each Owner and each Owner's employees, agents, and guests, and shall provide that the insurance cannot be canceled, invalidated, or suspended on account of the conduct of the Association, the Board, employees, and agents or of any Owner or such Owner's employees, agents, or guests, and shall provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or mortgagee and that the insurance policy shall not be brought into contribution with insurance maintained by any Owner or mortgagee. Upon request, the Association shall furnish to each Owner who requests it a true copy of such policy together with a certificate identifying the interest of the Owner.

7.9 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the Value and extent of any loss under any policy carried pursuant to Sections 7.2, 7.3, 7.4, 7.5, or 7.6. The Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

7.10 Owner's Insurance Responsibilities. Insurance in the form of at least a standard homeowner's policy including hazard, casualty and public liability coverage shall be the responsibility and expense of each Owner of a Residence.

In the event of damage done to any Unit as a direct result of another Owner, and said damage is not repaired by that Owner, the Association shall have the right to perform the work and assess the Owner causing the damage.

ARTICLE VIII

ARCHITECTURAL CONTROL; DEVELOPMENT STANDARDS

8A. Architectural Control.

8A.1 Architectural Review Committee. There shall be an "Architectural Review Committee" (sometimes hereinafter "ARC") consisting of one or more members of the Board of Trustees and may also have non-Trustee members in an advisory capacity. The Board shall have the power to appoint all members of the ARC. The ARC shall have the authority to establish Design Guidelines and Standards. The Design Guidelines and Standards may be amended from time to time by the ARC and/or the Board.

8A.2 ARC Approval. No building or other structure or improvement, including, but not limited to, landscaping, shall be erected, placed or altered upon any Lot until the location and the complete plans and specifications thereof (including, without limitation, the exterior color board and finish materials of each building, shed, structure, fence and/or wall to be created) have been approved in writing by the ARC. The ARC shall provide guidelines for the submission of

plans and specifications which may be amended by the ARC from time to time. Such guidelines shall set forth both procedural requirements of submittal to the ARC as well as architectural, landscaping and other applicable substantive specifications. Failure to comply with the requirements for ARC approval shall be deemed sufficient basis for the ARC to refuse to review the submission. In the event the ARC fails to approve or disapprove the location, plans and specifications or other request made of it within sixty (60) days of submittal of plans will be deemed to be an approval if the Owner complies with the following procedure: After sixty (60) days have passed from the submittal of plans without a reply from the Architectural Review Committee, the Owner must send a certified letter to the Architectural Review Committee requesting a response. If the Architectural Committee does not respond with an approval or denial of the plans within seven (7) days after the Owner receives receipt of delivery of the certified letter, the plans shall be deemed to be approved. No alteration shall be made in the exterior color design or openings of any building or other construction unless written approval of said alteration shall have been obtained from the ARC. The grade, level or drainage characteristics of any Lot shall not be altered without the prior written consent of the ARC. When the ARC issues an approval as provided for herein, a copy of the plans and specifications shall be returned to the ARC for permanent record. Anything herein to the contrary notwithstanding, approval by the ARC is not exclusive and all plans and specifications required to be approved by the City of Hurricane and/or Washington County, whether through the building permit process or otherwise, shall be so approved prior to the commencement of any work. Upon the completion of any work for which approved plans are required under this Article, the Owner shall give written notice of completion to the ARC, who will inspect for completion of the work and compliance with plans originally submitted and approved.

8A.3 Interpretation. All questions of interpretation or construction of any of the terms or conditions in this Article shall be resolved by the Board with the input of the Architectural Committee. The decision of the Board shall be final, binding and conclusive on all of the parties affected.

8A.4 Violations. In the event violation of these restrictions exists, or in the event of the failure of any individual Owner to comply with a written directive or order from the ARC, then in such event, the ARC shall have the right and authority to perform the subject matter of such directive or order, including, if necessary, the right to enter upon the Unit and the cost of such performance shall be charged to the Owner of the Unit in question, which cost shall be due within five (5) days after receipt of written demand therefore, and may be recovered by the ARC pursuant to a Violation Assessment or in an action at law against such individual Owner.

8B. Community Wide Standards and Design Guidelines.

8B.1 Intent. The intent of the Sky Mountain Golf Estates Community Wide Standards and Design Guidelines (Guidelines) is to protect and enhance the spectacular views of the surrounding mountains and golf course; to respect the climatic conditions and environment of the region and to maintain and enhance Community property values. Also within this intent, it is important to allow individual ideas to flourish and enrich the Community, provided that standards are maintained.

The Guidelines provide an overall framework and comprehensive set of standards to allow the Community to develop and progress in an orderly and cohesive manner. They establish criteria for architectural style and design, landscape concepts, site improvements, colors and materials. They also establish a process for judicious review of proposed new developments and changes within the Community. The Guidelines additionally set forth the means by which they may be changed and amended to better serve the needs of an evolving Community.

The Guidelines have been adopted by the Board of Trustees of Sky Mountain Golf Estates Homeowners Association and the Architectural Review Committee pursuant to this

Declaration. Copies of the Guidelines are available at the office and will be made available to all Owners.

To the extent that any local government ordinance, building code or regulation requires a more restrictive standard than that found in the Guidelines, the local government standard shall prevail. To the extent that the local ordinance is less restrictive than the Guidelines or this Declaration, the Guidelines and this Declaration shall prevail.

ARTICLE IX
PROTECTION OF LENDERS

9.1 Encumbrance of Parcels Permitted. Any Owner may encumber such Owner's Unit with a Deed of Trust.

9.2 Subordination. Except as provided otherwise by Utah Code Ann. § 57-8a-203 or Article VI hereof, any lien created or claimed under Article VI of this Declaration is subject and subordinate to the lien of any First Deed of Trust encumbering any Unit, unless the priority of such First Deed of Trust is expressly subordinated to such assessment lien by a written instrument duly recorded.

9.3 Non-Liability for Unpaid Assessments. Any beneficiary of a First Deed of Trust who acquires title to a Unit pursuant to the judicial or non judicial foreclosure remedies provided in the Deed of Trust shall take the Unit free of any claims for unpaid assessments or Association charges against the encumbered Unit that accrue greater than six (6) months prior to the time such beneficiary so acquires ownership of the Unit; provided, however, after the foreclosure of any such Deed of Trust, such Unit shall remain subject to this Declaration; and the amount of all regular and special assessments, to the extent they relate to expenses incurred subsequent to such foreclosure sale, shall be assessed hereunder to the grantee or purchaser thereunder.

9.4 Breach of Covenants. A breach by an Owner of any of the provisions of this Declaration shall not defeat or render invalid the lien of any Deed of Trust made in good faith and for value as to the Community or any portion thereof; provided, however, the provisions of this Declaration shall be binding upon the Owner whose title thereto is acquired under foreclosure, trustee's sale, or otherwise.

9.5 Notice to Eligible Mortgage Holders, Insurers and Guarantors. The holder of any First Deed of Trust shall be entitled to become an "Eligible Mortgage Holder" pursuant to the provisions of this Declaration and any insurer or guarantor of a First Deed of Trust shall be entitled to become an "Eligible Insurer" hereunder by notifying the Association of its name, address and the address of the Unit encumbered by the First Deed of Trust which it holds or insures in the manner provided in paragraph 9.10 below. Such notification shall be deemed to be a request with respect to such Unit for written notice from the Association of (i) any default in the payment of Assessments which remains uncured for a period of sixty (60) days; (ii) any condemnation or casualty loss that affects a material portion of the Community or the Unit; (iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (iv) any proposed action described in paragraph 9.9 below. The Association shall give written notice to Eligible Mortgage Holders in accordance with the provisions of this paragraph 9.5 and in the manner prescribed in paragraph 9.10 below. Any holder of a First Deed of Trust encumbering any Unit, or any portion of the Property, who does not so request notice shall not be deemed to be an Eligible Mortgage Holder under the terms of this Declaration. Unless and until notice is given to the Association as provided in this Declaration by a mortgage holder, insurer or guarantor, such mortgage holder, insurer or guarantor shall not be entitled to notice of default, nor to any right, distribution or notice pursuant to this Declaration.

9.6 Insurance Proceeds and Condemnation Awards. No provision of this Declaration or the Articles shall give an Owner, or any other party, priority over any rights of the holders of First Deeds of Trust in the case of a distribution to Owners of insurance proceeds or condemnation awards.

9.7 Appearance at Meetings. Because of its financial interest in the Community, any beneficiary of a First Deed of Trust may appear (but cannot vote) at meetings of the Members and the Board, and may draw attention to violation of this Declaration that have not been corrected or made the subject of remedial proceedings or Assessments.

9.8 Examination of Records. The holders of First Deeds of Trust shall have the right to examine at reasonable times the books and records of the Association and can require the submission of financial data concerning the Association, including annual audit reports and operation statements as and when furnished to the Owners.

9.9 Prior Approvals. Unless fifty-one percent (51%) of Eligible Mortgage Holders have given their prior written approval, (except as to Section (a), (b), (c) and (d) which shall require a sixty-seven percent (67%) approval), (each Eligible Mortgage Holder having one vote for each Unit encumbered by it), neither the Association, nor any Member shall do the following:

(a) Change the method of determining the obligations, assessments, or other charges which may be levied against an Owner.

(b) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Association or the Owners shall not be deemed to be a transfer within the meaning of this section;

(c) Use hazard insurance proceeds for losses to any Association Property, for other than the repair, replacement, or reconstruction of such improvements or property.

(d) By act or omission, change, waive, or abandon the provisions of this Declaration, or the enforcement thereof, pertaining to control of the exterior appearance of structures in the Community, and the maintenance of the Common Area;

(e) Terminate professional management and assume self-management of the Community when professional management is required by FNMA, FHLMC, HUD or VA;

(f) Make a material change in the boundaries of any Lot or Common Area;

(g) Impose any material restrictions of an Owner's right to sell or transfer their Lot or Unit, or use the Common Area;

(h) Change materially any provision herein that by its terms refers to and expressly benefits institutional holders of first deeds of trust;

(i) Impose any right of first refusal or similar restriction of the right of an Owner to sell, transfer, or otherwise convey their Unit;

(j) Change the subordinate priority of the provisions of this Declaration relating to allocation of hazard insurance proceeds or condemnation awards as set forth in relation to the holders of First Deeds of Trust;

(k) Fail to maintain the insurance required by Article VII hereof; or

(l) Change the purposes to which any Unit or the Common Area are restricted.

In the event any Eligible Mortgage Holder is notified in the manner provided in paragraph 11.4 below and at the address designated by such Eligible Mortgage Holder to the association in the manner provided in such paragraph 11.4, of any proposed decision or action described in subparagraphs (a) through

(e), inclusive, above, and fails to submit a written response within thirty (30) days after notice of such proposed decision or action, then such Eligible Mortgage Holder shall be deemed to have given its approval of such decision or action and such implied approval shall be conclusive as to all persons relying thereon in good faith.

9.10 Notices to Eligible Mortgage Holders. Upon written request from an Eligible Mortgage Holder, such Eligible Mortgage Holder shall be entitled to written notification from the Association of the following:

(a) Any condemnation or casualty loss that affects either a material portion of the Community or the Unit securing its mortgage;

(b) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds the mortgage;

(c) A Lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

(d) Any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

ARTICLE X
GOLF COURSE: ASSOCIATION'S DISCLOSURES

10.1 Golf Course Owner Liability. To the extent permitted by applicable law, each Owner by acceptance of their deed to a Unit shall be deemed to have waived conclusively any right to bring any action or proceeding, or to assert a claim in any manner, against the Association for compensation for any loss, damage or injury to person or property caused by the impact of a golf ball which enters upon any portion of the Property from the Golf Course, whether or not such ball is struck in a negligent manner, but excluding willful or intentional acts.

10.2 Golf Course Association Liability. Association shall have no responsibility whatsoever for the use, maintenance, repair, continuance or operation of the Golf Course.

ARTICLE XI
MISCELLANEOUS PROVISIONS

11.1 Duration. The provisions of this Declaration shall continue and be effective for a period of fifty (50) years from the date of first recordation hereof and shall be automatically extended for successive periods of ten (10) years each until (i) the Owners of at least eighty percent (80%) of the Units within the Community shall execute a written instrument, which may be executed in counterparts, in recordable form declaring that the provisions of this Declaration shall terminate, and (ii) such written instrument is recorded in the office of the Recorder of Washington County, Utah.

11.2 Amendment. All amendments to this Declaration shall require first, that a quorum be established and, second that 67% of the votes cast approve the proposed amendment as follows:

11.2.1 A quorum must be established. A quorum is established when the time by which all ballots must be received passes so that a quorum can be determined; whereupon the President of the

Board shall certify that a quorum is present. A quorum is defined as the representation in person, by proxy or by ballot of members entitled to cast at least fifty percent (50%) of the votes by all Members.

11.2.2 Approval. Once a quorum is gathered, this Declaration shall only be amended after the affirmative vote of at least sixty-seven percent (67%) of the votes cast by Members who are voting in person, by proxy or by faxed or mailed ballot at such a meeting duly called for the purpose of amending this Declaration. By way of illustration, if the Association had 100 Members, at least 50 Members must vote in order to establish a quorum, if only those 50 Members vote, 34 affirmative votes would pass a proposed amendment, if 60 Members vote, 41 affirmative votes would be required, and so forth. All such amendments must be in writing, and prepared, executed, recorded and certified on behalf of the Association by the President of the Association. Such amendment shall be recorded in the Office of the County Recorder of Washington County, State of Utah.

Any substantive amendment to any of the following described provisions of this Declaration requires the written consent of fifty-one percent (51%) of the Eligible Mortgage Holders (except items (a), (b), (e), (g) and (h) which require a sixty-seven percent (67%) approval):

- (a) Voting rights;
- (b) Assessments, assessment liens, or the priority of assessment liens;
- (c) Reserves for maintenance, repair, and replacement of the Common Areas Improvements which the Association required to maintain pursuant to the provisions of this Declaration;
- (d) Responsibility for maintenance and repairs;
- (e) Insurance or fidelity bond provisions;
- (f) Other than reasonable rental restrictions, the imposition of any restrictions of an Owner's right to sell or transfer such Owner's Lot;
- (g) Any provision that expressly benefits mortgage holders or mortgage insurers or guarantors; or
- (h) Provisions pertaining to termination of this Declaration.

In the event any Eligible Mortgage Holder is notified, in the manner provided in paragraph 11.4 below and at the address designated by such Eligible Mortgage Holder to the Association in the manner provided in such paragraph 11.4, of any proposed substantive amendment to this Declaration in the nature of the amendments described in subparagraphs (a) through (h), inclusive, above, and fails to submit a written response within thirty (30) days after notice of such proposed amendment, then such Eligible Mortgage Holder shall be deemed to have given its approval of such amendment and such implied approval shall be conclusive as to all persons relying thereon in good faith. A certificate signed by the Secretary of the Association as to any Eligible Mortgage Holder's failure to so respond shall be deemed to be sufficient evidence of such approval.

Paragraph 11.1 shall be amended only upon the written consent of the Owners of eighty percent (80%) of the lots within the Community.

11.3 Enforcement and Waivers.

11.3.1 Violations and Nuisance. Every act or omission whereby a covenant, condition, or restriction of the Declaration is violated in whole or in part is hereby declared to be a

nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action.

11.3.2 Violation of Law. Any violation of any state, municipal, or local law, ordinance, or regulation pertaining to the ownership, occupation, or use of any portion of the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures herein set forth.

11.3.3 Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.

11.3.4 Nonwaiver. The failure to enforce the provisions of any covenant, condition, or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of this Declaration.

11.3.5 Notice. Before a Member commences any legal action against the Association for a violation of any provision of the Declaration, such Member must first:

- (a) Provide written notice to the Association of any such alleged violation and of intent to take judicial action, which notice shall be delivered to the Association not less than thirty (30) days prior to filing any lawsuit;
- (b) Obtain or provide the Association with legal and reasonable access to the Common Areas or the private property or residence alleged to be in violation; and
- (c) Allow the Association, or its agents, a reasonable time in which to remedy or cure any such alleged violation.

11.4 Notices. All notices hereunder to the Association or the Board shall be sent by regular mail, or registered or certified mail, return receipt requested, addressed to the Board at the address of the Manager, or to such other place as the Board may designate from time to time by notice in writing to the Owners of all of the Units.

All notices given by the Association to any Owner shall be sent by regular mail, or by registered or certified mail, electronic mail, return receipt requested, to such Owner's Unit address or to such other address as may be designated by such Owner from time to time, in writing, to the Board. All notices to Eligible Mortgage Holders shall be sent by registered or certified mail, return receipt requested, at the address to which such Eligible Mortgage Holder has last requested that notice be sent by notifying the Association in the manner provided in this paragraph 11.4. All notices shall be deemed to have been received within seventy-two (72) hours after the mailing thereof, except notices of change of address which shall be deemed to have been given when actually received.

11.5 Approvals. Any consent or approvals by the Board or Architectural Review Committee shall be in writing.

11.6 Construction and Severability; Singular and Plural; Titles.

11.6.1 Restrictions and Easements Construed Together. All of the covenants, conditions, restrictions and easements of this Declaration shall be liberally construed together to promote the purposes of the Declaration as set forth herein.

11.6.2 Restrictions and Easements Severable. The covenants, conditions, restrictions and easements contained in this Declaration shall be deemed independent and severable; and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision.

11.6.3 Singular Includes Plural. The singular shall include the plural and the plural the singular unless the context requires the contrary; and the masculine, feminine, or neuter shall each the masculine, feminine, and neuter, as the context requires.

11.6.4 Captions. All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions of any paragraph.

IN WITNESS WHEREOF, the undersigned have executed this declaration as of the 1st day of November 2008.

Michael E. Heins, President

Daniel J. Dwyer, Secretary

Gordon A. Russell, Treasurer

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting President of SKY MOUNTAIN GOLF ESTATES HOMEOWNERS ASSOCIATION, a Utah nonprofit corporation, and THAT the foregoing Declaration constitutes the amendment of the CC&Rs of said Association, as duly adopted by a vote of the required Membership at a meeting held for that purpose on the 1st day of November, 2008.

IN WITNESS WHEREOF, I have hereunto subscribed my name of said Association on this 1st day of November, 2008.

Michael E. Heins, President

STATE OF UTAH)

) SS

County of Washington)

On the 4th day of November, 2008, personally appeared before me, Michael E. Heins, Daniel J. Dwyer and Gordon a Russell, who being first duly sworn did say that they are the President, Secretary and Treasurer of the Association and that the seal affixed to the foregoing instrument is the seal of said Association and that said instrument was signed and sealed in behalf of said Association by authority of its Board of Trustees; and each of them acknowledged said instrument to be their voluntary act and deed.

Notary Public for Utah

EXHIBIT A

LEGAL DESCRIPTION

The following lots are subject to this Declaration of Covenants, Conditions and Restrictions.

Sky Mountain Golf Estates Phase 1 Amended: Lots 1-55

Sky Mountain Golf Estates Map 3: Lots 93-111, 114-121, 143

Sky Mountain Golf Estates Phase 4: Lots 122, 144-154

Sky Mountain Golf Estates Phase 5: Lots 155-163, 165, 166

Sky Mountain Golf Estates Phase 6: Lots 167-174, 176, 189-198

Sky Mountain Golf Estates Phase 7: Lots 176-184

Sky Mountain Golf Estates Phase 8: Lots 185-188, 199, 200

Sky Mountain Golf Estates Phase 9: Lots 201-221

Sky Mountain Golf Estates Phase 10 Amended: Lots 222-228

Lot B Legal: S: 29 T: 41S R: 13W BEG S 89*40'47 E ALG SEC/L 709.45 FT & N 0* W 949.90 FT FM S1/4 COR SEC 29 T41S R13W TH N 45*39'28 W 163.70 FT TO ELY R/W LN STONE RIDGE DR BEING PT CURV NON-TNGY CUR CNCV NW HAV RAD 205 FT CTRL ANG 60*25'48 CHD 206.33 FT BEAR N 21*26'48E; TH NELY ALG CUR & R/W LN 216.21 FT; TH S 58*30'59 E 25.23 FT; TH S 21*29'53 E 80.94 FT; TH S 03*42'19 W 59.22 FT; TH S 02*14'05 E 98.61 FT; TH S 09* W 61.10 FT TO POB

Lot C Legal: S: 29 T: 41S R: 13W BEG S 89*40'47 E ALG SEC/L 676.98 FT & N 0* W 940.01 FT FM S1/4 COR SEC 29 T41SR13W TH N 89*40'47 W 190.42 FT TO ELY R/W LN STONE RIDGE DR; TH ALG R/W LN N 25*47'32 E 28.37 FT TO PT CURV TNGT CUR CNCV SE HAV RAD 205.81 FT CTRL ANG 30*03'05 ; TH NELY ALG CUR 107.95 FT; TH N 55*50'37 E 14.06 FT TO PT CURV TNGT CUR CNCV NW HAV RAD 205 FT CTRL ANG 04*11'12 ; TH NELY ALG CUR 14.98 FT; TH S 45*39'28 E 163.70 FT; TH S 09* W 10 FT; TH N 89*40'47 W 30.91 FT TO POB