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FOR: SKY MOUNTAIN GOLF ESTATES

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**DECLARATION**  
**OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**OF**  
**SKY MOUNTAIN GOLF ESTATES**

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
SKY MOUNTAIN GOLF ESTATES

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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SKY MOUNTAIN GOLF ESTATES**

THIS DECLARATION ("Declaration") is made this 11<sup>th</sup> day of MAY, 1999, by the undersigned, SKY MOUNTAIN GOLF ESTATES, L.L.C., a Nevada limited liability company, herein referred to as "Declarant", with reference to the following facts and is as follows:

**RECITALS:**

A. Declarant is the owner of certain real property located in Washington County, State of Utah, which is more particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference ("Property"), and Declarant is developing the Property as 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 is intended to secure the development of the Property as a high quality residential Community.

D. Declarant is or may become the owner of certain other real property situate in Washington County, State of Utah, which is described in **Exhibit "A"** attached hereto and incorporated herein by this reference, all or a portion of which real property may become Annexed Property (as defined below), as described on **Exhibit "B"** to the Property, and shall include such additional Units at Declarant's discretion within the Community as allowed by the City of Hurricane.

**DECLARATION**

NOW, THEREFORE, Declarant 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 this 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 Declarant 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 described in Exhibit "B" hereto which is now owned or hereafter may be acquired by Declarant, with respect to which a Supplemental Declaration is recorded causing an annexation of such property pursuant to the provisions of Article XI below.

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 as designated on each Single Family Plat Map, or by the Condominium Owners in equal undivided interests as tenants in common with respect to all of the real property designated as Common Areas on each Condominium Map, exclusive of the Condominium Units designated thereon, together with all Improvements constructed or to be constructed on such Common Areas, including, but not limited to, any recreational facilities and all streets, roadways, 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. In addition, the Common Areas shall include the Association's rights in and to the "Landscape Easements" as granted pursuant to the terms and provisions of Section 2.20 below.

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

1.10 "Community" means and refers to the single and multi-family residential planned unit development known as 'Sky Mountain Golf Estates'.

1.11 "Condominium" means and refers to an estate in real property consisting of (a) a fee interest in a Condominium Unit, and (b) an undivided fractional interest in the Condominium Common Areas, together with all easements, rights and appurtenances belonging thereto.

1.12 "Condominium Common Areas" means and refers to the Common Areas designated on a Condominium Map, excluding any Common Areas designated thereon for ownership by the Association.

1.13 "Condominium Map" means and refers to a Plat Map pursuant to which Condominium Units are created.

1.14 "Condominium Unit" means and refers to a physical portion of that portion of the Community created by a Condominium Map designated for separate ownership or occupancy, the boundaries of which are described in Article III of this Declaration.

1.15 "Declarant" means and refers to the undersigned, SKY MOUNTAIN GOLF ESTATES, L.L.C., a Nevada limited liability company. At such time, if any, as Declarant or any successor Declarant transfers its Special Declarant's Rights to a Successor Declarant pursuant to the provisions hereof, Declarant shall mean such Successor Declarant.

1.16 "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.

1.17 "Deed of Trust" means and refers to a deed of trust or a mortgage encumbering any portion or all of the Property.

1.18 "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 10.5 and 13.5 hereof.

1.19 "Eligible Mortgage Holder" means and refers to the holder of a First Deed of Trust which has requested notification pursuant to the provisions of paragraphs 10.5 and 13.5 hereof.

1.20 "FNMA" and "FHLMC" mean and refer to, respectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

1.21 "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.

1.22 "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.

1.23 "HOA Common Areas" means any portion of the Common Areas designated on a Condominium Map as "HOA Common Areas", and all of the Common Areas designated on a Single Family Map, all of which shall be owned by the Association and shall be Association Property.

1.24 "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.

1.25 "Limited Common Areas" means and refers to those portions of the Common Areas allocated by this Declaration and the Plat Maps for the exclusive use and enjoyment of one or more but fewer than all of the Units.

1.26 "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.

1.27 "Member" means and refers to every person or entity, including Declarant, holding a membership in the Association pursuant to the provisions of this Declaration, the Articles, and the Bylaws.

1.28 "Owner" means and refers to any person, entity, or group of persons, including Declarant, 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.

1.29 "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.

1.30 "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.

1.31 "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.

1.32 "Single Family Attached Residence" means and refers to a single family residence constructed on a Lot, which residence shares an internal Party Wall with another immediately adjoining Single Family Attached Residence.

1.33 "Single Family Detached Residence" means and refers to a single family residence constructed on a Lot, which residence is not attached to any other residence.

1.34 "Single Family Map" means and refers to a Plat Map pursuant to which Lots are created.

1.35 "Single Family Residence" means and refers to a single family residence constructed on a Lot, whether attached to another residence or not.

1.36 "Special Declarant's Rights" means and refers to all rights reserved by Declarant for itself under this Declaration which are personal to Declarant and may be exercised only by Declarant, including but not limited to those set forth in Article X hereof.

1.37 "Successor Declarant" means and refers to any and all successors-in-interest of Declarant who acquire an interest in the Property, or any portion thereof, and to whom Special 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 or a Successor Declarant,

respectively, at such time that it ceases to own an interest in any portion of the Property and designates a Successor Declarant in the manner provided in this paragraph.

1.38 "Supplemental Declaration" means and refers to the Declaration described in Article I hereof whereby a portion or all of the property described in **Exhibit "B"** hereto becomes Annexed Property.

1.39 "Unit" means both a Lot and a Condominium Unit.

1.40 "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.

**ARTICLE II**

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

2.1 Ownership of Condominium Common Areas. Ownership of each Condominium within the Community shall include a fee interest in a Condominium Unit, an undivided fractional interest as a tenant in common in the Condominium Common Areas (the numerator of such fraction being one, and the denominator of such fraction being the number of Condominium Units in the Community at any given time and from time to time), an exclusive right to use that portion of the Common Areas designated as Limited Common Element on the Condominium Map or the Plans applicable thereto and being appurtenant to such Condominium Unit, and a membership in the Association.

2.2 Non-Severability of Component Parts of Condominium. No part of a Condominium or of the legal rights comprising ownership of a Condominium may be severed from any other part thereof during the period of condominium ownership prescribed herein, so that each Condominium Unit and the undivided interest in the Condominium Common Areas appurtenant to such Condominium Unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Condominium. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of a Condominium or any part thereof shall be presumed to be a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Condominium, together with all appurtenant rights created by law or by this Declaration. Further, the Condominium Common Areas shall be owned in common by all Owners of Condominiums; and no Owner may bring any action for partition thereof except as herein provided.

2.3 Ownership of Condominium Common Areas. Declarant shall transfer and convey to the Condominium Owners an undivided fractional interest in all of the Condominium Common Areas in the Community at the time of the conveyance to each such Owner of a Condominium Unit; and such fractional interest in the Condominium Common Areas shall be re-allocated automatically each time additional Condominium Units are added to the Community so that at all times the Condominium Owners' individual undivided interests in the Condominium Common Areas shall be equal.

2.4 Ownership of Remaining Common Areas. All of the Common Areas which is not Condominium Common Areas is or will be owned by the Association as HOA Common Areas. The Common Areas shall remain private property of the Association and the Condominium Unit Owners, as applicable, 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.

2.5 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 statute, 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 this Declaration;
- (e) Any and all loans for the construction of Improvements to the Common Areas which loans shall be paid by Declarant 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.

2.6 Taxes and Assessments. Each Condominium Owner shall execute such instruments and take such actions as may reasonably be specified by the Association to obtain separate real property tax assessments of the interest of each Condominium Owner in each Condominium. If, nevertheless, 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 Condominium Owner or Owners responsible therefor. Each Owner shall pay the taxes or assessments assessed against his Unit or interest therein.

2.7 Owners' Easements of Enjoyment. Except as otherwise expressly provided elsewhere in this Declaration, each Owner shall have, and Declarant and the Association each hereby grants to each Owner, a non-exclusive easement of use and enjoyment in, to, and throughout the Common Areas (excluding the Landscape Easements) and for ingress, egress, and support over and through the Common Areas, and an exclusive easement for the use and enjoyment of the Limited Common Elements appurtenant to such Owner's Unit; provided, however, that such non-exclusive easements shall be subordinate to, and shall not interfere with, the Limited Common Elements appurtenant to each Unit. Each such easement shall be appurtenant to and pass with title to each Unit, subject to the following rights and restrictions:

2.7.1 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 or any ordinances of Washington County, Utah, or of any other governmental entity.

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

2.7.3 The Association shall have the right to charge reasonable admission and other fees for the use of any recreational facility situate upon the Common Areas.

2.7.4 The Association shall have the right to assign, rent, grant licenses, or otherwise designate and control the use of any parking or storage spaces within the Common Areas (other than those portions which are part of the Limited Common Elements).

2.7.5 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.

2.8 Use of the Common Areas- Any Owner may extend his 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 rights 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 his tenants, guests 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.

2.9 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.

2.10 Easements for Encroachments. If any part of the Common Areas encroach 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 hereinafter 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 are not limited to, encroachments cause 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.

2.11 Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Areas are or may be located within the Condominium Units or may be conveniently accessible only through the Condominium Units. The Owners of other Condominium Units shall have the irrevocable right, to be



exercised by the Association as their agent, to have access to each Condominium Unit and to all Common Areas, including Limited Common Areas, from time to time during such reasonable hours as may be necessary, for the maintenance, repair, or replacement of any of the Common Areas, including any Limited Common Element, located therein or accessible therefrom, or for repairs or maintenance to improvements in or on the Condominium Unit which are the responsibility of the Association, or for making emergency repairs therein necessary to prevent damage to the Common Areas or to another Condominium Unit. The Association shall also have such right independent of any agency relations. Damage to the interior of any part of a Condominium Unit resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Condominium Unit at the instance of the Association or of Owners shall be an expense of all of the Condominium Owners; provided, however, if such damage is the result of negligence of the Owner of a Condominium Unit, then such Owner shall be financially responsible for all of such damage. Amounts owing by Owners pursuant hereto shall be collected by the Association by assessment pursuant to Article VI below.

2.12 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, Declarant 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 his Unit, his Limited Common Element, or the common facilities of the Community unless approved by the vote or written consent of the holders of not less than sixty-seven percent (67%) of the voting rights of the Members.

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

2.14 Structural and Exterior Alterations. No Condominium Owner shall make, or cause to be made, any structural alterations to the interior or exterior of the Owner's Condominium Unit or to any Condominium Limited Common Element or the Common Areas, nor shall any Owner 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 (below defined) and any institutional first mortgagee whose interest may be affected. Once 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.

2.15 Mechanic's Lien Rights. No labor performed or services or materials furnished with the consent of or at the request of an Owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against the Condominium Unit of any other Owner, or against any part thereof, or against any other property of any other Owner, unless such other Owner has expressly consented to or requested the performance of such labor or furnishings of such materials or services. Such express consent shall be deemed to have been given by the Owner of any Condominium Unit in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Condominium Common Areas, if authorized by vote of the Association, shall be deemed to be performed or furnished with the express consent of each Condominium Unit Owner. Any Condominium Unit Owner may remove his Condominium Unit from a lien against two or more Condominium Units or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by such lien which is attributable to his Condominium Unit.

2.16 Declarant's Common Areas Easement Rights; Dedication of Common Areas.

2.16.1 Reservation of Common Areas Easements in Favor of Declarant. Declarant hereby reserves unto itself such easements over, through and under the Common Areas (Excluding Limited Common Elements) as may be reasonably necessary to discharge Declarant's obligations or exercise any Special Declarant's Rights as reserved in this Declaration.

2.16.2 Reservation of Right to Grant Additional Common Areas Easements and Licenses, and to Dedicate Common Areas. Declarant 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, Declarant 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 Declarant deems appropriate and which shall be binding upon the Association. Such grants of easement or dedications 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 lines or pipes, and any and all equipment and other apparatus relating thereto. The rights reserved by Declarant in this subparagraph 2.16.2 may be exercised at any time that Declarant owns any portion of the Property.

2.17 Rights of Association to Grant Easements Over Common Areas and to Dedicate Portions of Common Areas. At such time as the rights reserved by Declarant under subparagraph 2.16.2 have expired, the Association shall be entitled to exercise the rights reserved to Declarant under subparagraph 2.16.2, provided that at least seventy-five percent (75%) of the voting power of the Association has approved such action.

2.18 Right of Association to Encumber Common Areas. The Association may encumber the Common Areas in connection with authorized obligations, but only upon the affirmative vote of not less than seventy-five percent (75%) of the voting power of the Association.

2.19 Access to Units. Each Owner shall have an unrestricted right of ingress and egress to his 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.

2.20 Landscape Easements.

2.20.1 Single Family Attached Residences. The Association is required and authorized to maintain the front and rear yard landscaping of Single Family Attached Residences;

2.20.2 Single Family Detached Residences. The Association is required and authorized to maintain only the front yard landscaping of Single Family Detached Residences.

2.20.3 Custom Lots. The Association is not required or authorized to maintain any landscaping on Custom Lots.

An Easement over and across each Lot (the "Landscape Easements"), except Custom Lots, is hereby created and granted in favor of the Association for the purpose of entering such Lots at reasonable working hours and performing such landscape maintenance functions. Each Lot Owner shall be obligated to keep the irrigation water to the Property turned on 365 days of the year. No Owner shall alter in any manner front or side yard landscaping installed and established by Declarant and maintained by the Association without the prior written approval of the Board as provided in Article VII hereof.

2.21 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.

2.22 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.

2.23 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, reconstructing 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 purposes 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.

2.24 Declarant's Obligation to Convey. Declarant shall convey fee simple title to the HOA Common Areas to the Association prior to the first conveyance of a Lot to an Owner other than Declarant, subject only to the applicable Existing Encumbrances at the time of each such conveyance.

2.25 Maintenance of HOA Common Areas. Maintenance of the HOA Common Areas and any and all Improvements thereon shall be the obligation of Declarant solely until the HOA Common Areas are conveyed to the Association and such conveyance is recorded in the official records of the County Recorder of Washington County, Utah ("Transfer Date"). From and after the Transfer Date the obligation to maintain the HOA Common Areas and the Improvements thereon shall be the obligation of the Association. The Association shall maintain and manage the HOA Common Areas and all Improvements thereon in a first class and husbandlike 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.

2.26 Declarant Ownership of Units. Except as expressly provided otherwise pursuant to the terms and provisions of this Declaration, as to each Unit owned by Declarant, Declarant shall enjoy the same rights and assume the same duties as they relate to each individual unsold Unit.

ARTICLE III  
UNIT BOUNDARIES, USE RESTRICTIONS,  
MAINTENANCE OBLIGATIONS AND PRIVATE  
EASEMENTS

A. Condominium Unit Boundaries.

3.1 Boundaries. The boundaries of each Condominium Unit created by the Declaration are shown on the Condominium Map and Plans as numbered Condominium Units, along with their identifying number, and are described as follows:

(a) Upper Boundary: The horizontal or sloping plane or planes of the unfinished lower surfaces of the ceiling bearing structure surfaces, beams and rafters and of closed fireplace dampers, extended to an intersection with the vertical perimeter boundaries.

(b) Lower Boundary: The horizontal plane or planes of the undecorated or unfinished upper surfaces of the floor, extended to an intersection with the vertical perimeter boundaries and open horizontal unfinished surfaces of trim, sills and structural components.

(c) Vertical Perimeter Boundaries: The planes defined by the inner surfaces of the studs and framing of the perimeter walls; the unfinished inner surfaces of poured concrete walls; the unfinished surfaces of the interior trim, fireplaces, and thresholds along perimeter walls and floors; the unfinished outer surfaces of closed windows and closed perimeter doors; and the innermost unfinished planes of all interior bearing studs and framing of bearing walls, columns, bearing partitions and partition walls between separate Condominium Units.

(d) Inclusions: Each Condominium Unit will include the spaces and improvements lying within the boundaries described in (a), (b) and (c) above, and will also include the spaces and the Improvements within those spaces containing any space heating, water heating and air conditioning apparatus, all electrical switches, wiring, pipes, ducts, conduits, smoke detector systems and television, telephone, electrical receptacles and light fixtures and boxes serving that Condominium Unit exclusively. The surface of the foregoing items will be the boundaries of that Condominium Unit, whether or not those items are contiguous to the Condominium Unit.

(e) Exclusions: Except when specifically included by other provisions of this Section, the following are excluded from each Condominium Unit: The spaces and Improvements lying outside of the boundaries described in (a), (b) and (c) above; and all chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and similar services to other Condominium Units and Common Areas or both.

(f) Noncontiguous Portions: Certain Condominium Units may include special portions, pieces or equipment such as air conditioning compressors, meter boxes, utility connection structures and storage portions situated in buildings or structures that are detached or semi-detached from the buildings containing the principal occupied portion of the Condominium Units. This special equipment and storage portions are a part of the Condominium Unit, even though they are not contiguous with the residential portions.

B. Uses.

3.2 Residential Use. No Unit shall be improved or used for any purpose other than residential use by a single family. Nothing contained in this Declaration shall prevent an Owner from leasing or renting his Unit; provided, however, that any lease or rental agreement shall be in writing, be for a term of at least thirty (30) days, and must specify that failure to abide by the provisions of this Declaration, the Articles, the Bylaws, and the Rules and Regulations shall be a default under the lease or rental agreement. Whether or not the written leases or rental agreement so provides, all tenants of Units are subject to and are required to abide by the provisions of this Declaration, the Articles, the Bylaws and the Rules and Regulations. No Owner shall rent or lease his Unit for transient or hotel purposes, nor shall any Unit be time shared. No Unit shall be subdivided in any manner. A copy of such lease in its fully executed form shall be delivered to the Board prior to such tenant taking occupancy of the Unit.

3.3 Parking and Vehicular Restrictions. No Owner shall park, store or keep within the Property or any portion of the Common Areas any inoperable or commercial type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck) unless said inoperable or commercial vehicle can be stored in the garage of the Unit. No Owner shall park, store or keep on his 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 (i) screened by a fence of six feet (6') in height, (ii) is parked in the rear yard of such Unit and (iii) is not parked in a position in such rear yard so as to block the view of neighboring Units and the height of any such recreational vehicle shall not exceed three feet (3') above the top of six foot (6') screen walls. The above excludes camper trucks and similar vehicles up to and including three-quarter (3/4) ton when used for everyday-type transportation and subject to approval by the Board. 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. The Board shall have the power but not the obligation to enforce all parking and vehicle use restrictions applicable to the Property, including the power to remove violating vehicles from any of the Property to the extent permitted by applicable law. Due to some limited space for guest parking with respect to the Single Family Attached Dwellings, the Owners of these Lots may park up to two (2) vehicles within their own driveway area as long as the vehicles do not block the sidewalk and such vehicles are used for daily transportation purposes. No repairs of any vehicle may be undertaken within the Property except wholly within a garage and with the garage door closed.

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 noise or other nuisance shall be permitted to exist or operate upon any portion of a Unit so as to be offensive or detrimental to any other Unit in the Property or to its occupants. Without limiting the generality of any of the foregoing provisions, no speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably disturb other Owners or residents or their guests shall be located, used or placed on any portion of the Property without the prior written approval of the Board. Alarm devices used exclusively to protect the security of a Unit and its contents shall be permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms.

3.5 Signs. Until such time as Declarant's Special Rights (set forth in Section 11.2 below) have terminated, no signs or displays of any kind shall be allowed except as allowed pursuant to the terms and provisions of Section 11.2.6 below. Thereafter, 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 one (1) customary 18" x 24" free-standing "for sale" or "for lease" sign on the Unit. Any other signage shall require Board approval. Nothing herein contained shall restrict the right of Declarant or its successors to place and the Association to maintain street signs, Community monument signs, and other Community sale signs in the Common Areas.

3.6 Antennae, Solar Panels, Basketball 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. No unsightly articles, including clotheslines, shall be permitted to remain on any Unit so as to be visible from neighboring property. There shall be no exterior fires whatsoever, 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 his Unit and the Improvements thereon in a clean and attractive condition. Any patio or balcony areas shall not be used for storage of items not to be used in such balcony or patio areas, including but not limited to firewood, boxes, bicycles, and any other unsightly items. Each Owner shall have complete discretion as to the choice of furniture, furnishings, and interior decorating; 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 and presented to the public view in a first-class manner. No plastic, aluminum foil, bedroom sheet or other unsuitable coverings may be placed in or on the windows, except for blinds, shutters or other window coverings which may be constructed of plastic materials or which were first placed in the Unit by Declarant. In any event, all window coverings in Condominium Units shall be of uniform color, material and design at all times.

3.8 Trash Containers and Collection. There shall be no exterior burning of trash, garbage or other refuse upon any portion of the Community, nor shall any Owner accumulate on or about such Owner's unit any litter, refuse or garbage, except in receptacles as next provided. Each Owner shall place and keep all trash and garbage in containers and within their garage area or such other area as is designated by the Board with respect to Condominium Units. Such trash containers are provided by the Washington County Solid Waste District. Each Owner will be assessed directly by the Washington County Solid Waste District a monthly charge for the sanitation service. In no event and at no time other than the previous twelve (12) hours before and six (6) hours after pickup by sanitation crews, and all trash containers shall be maintained so as to not be visible from neighboring property. Such trash containers must be placed for pickup on the street side of the curb and as specified by the solid waste company.

3.9 Animals. No animals, fowls, reptiles, poultry, fish or insects of any kind ("animals") shall 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, that 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 being held by a person capable of controlling the animal, and who then has in his 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.

3.10 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; except Declarant, its successors and assigns may use any portion of the Property for a model home site and display and sales offices in accordance with Article X hereof.

The limitations described above of this Section 3.9 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 on 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 his Unit per calendar year, provided that in each instance the prior written approval of such sale is obtained from the Board.

3.11 Garage Doors. No garage door shall be left open for periods in excess of one (1) hour unless a person is within the garage.

3.12 No Further Subdivision. No Unit may be further subdivided without the prior written approval of the Board; provided, however, that nothing in this Section shall be deemed to prevent an Owner from, or require the approval of the Board for, (i) selling a Unit; or (ii) transferring or selling any Unit to more than one (1) person to be held by them as tenants in common, joint tenants, tenants by the entirety, or as community property; or (iii) the leasing or renting by any Owner of all of his Unit, provided that any such lease or rental shall be subject to this Declaration.

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. Garages may be used for storage only to the extent such

storage does not preclude vehicles from being parked in the garages. Garage doors must remain closed at all times, except for reasonable periods during which the garage is actively being used.

3.15 View Obstructions. 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.

3.15.1 Single Family Attached Residences. The Association shall maintain periodic trimming, pruning and thinning of all hedges, shrubs and trees located on any portion of the yard of any Single Family Attached Residence.

3.15.2 Single Family Detached Residences. Each Owner or resident of a Single Family Detached Residence shall be responsible for periodic trimming, pruning and thinning of all hedges, shrubs and trees located on any portion of the yard of his Lot which is subject to his control or maintenance, so as to not unreasonably obstruct the view of other Owners or residents. If an Owner or resident of a Single Family Detached Residence 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.

3.15.3 Custom Lots. Each Owner or resident of a Custom Lot shall be responsible for the periodic trimming, pruning and thinning of all hedges, shrubs and trees located on his Lot. If an Owner or resident of a Custom 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.

Declarant makes 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 by Declarant, or others outside the Community may impair the view from any Unit in the Community, and the Owners hereby consent to such view impairment.

3.16 Lot and Condominium Unit Alterations. Subject to provisions of applicable law and Article VIII of this Declaration, only each Owner of a Single Family Detached Residence or Custom Lot shall have the right to modify his residence at his 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 Condominium Unit shall be made, done, or permitted to be done unless approval therefor 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.



3.17 Maintenance and Repair.

3.17.1 Single Family Attached Residences and Condominium Common Areas. The exterior features of Single Family Attached Residences and all Condominium Common Areas will be maintained by the Association in a clean and orderly manner, in a good condition and state of repair, and painted or otherwise finished in the sole discretion of the Association. Not included in the maintenance by the Association of Single Family Attached Residences shall be glass windows and screens and garage door repairs other than paint, which are the obligation of the Owner.

3.17.2 Single Family Detached Residences. The maintenance of each Single Family Detached 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 his 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 (below defined).

3.17.3 Custom Lots. The maintenance of Custom Lots 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.

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.

3.18 Certain Lot Owners' Obligations to Rebuild After Damage or Destruction. Each Owner of a Lot upon which a Single Family Detached Residence is located and each Custom Lot Owner 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 to substantially its condition immediately prior to the event causing the damage or destruction, unless the Owner of the damaged or destroyed residence submits proof to the Association that a holder of a Deed of Trust encumbering the residence has exercised its right to apply all of the insurance proceeds to the indebtedness secured by the Deed of Trust.

In the event the Lot Owner(s) of the damaged or destroyed residence fail to commence repair or reconstruction of the residence 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 forth in Section 3.30 below.

### 3.19 Maintenance Violations and Association's Right to Correct Maintenance Violation.

3.19.1 Maintenance Violation Notice. 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 (including, but not limited to, a condition which causes dust to carry to another Owner's lot), or fails to maintain his Unit, the exterior of the residence on such Unit or the Improvements thereon in accordance with the provisions of this Declaration (herein collectively "Maintenance Violation") and if no emergency exists, then the Association shall give the Owner of the Unit on which such condition exists, written notice in the manner provided in Section 12.5 below ("Maintenance Violation Notice") specifying the nature of the Maintenance Violation and a reasonable time period within which the Owner(s) must correct such Maintenance Violation, which Maintenance Violation Notice shall be no less than thirty (30) days, or, if more than thirty (30) days is reasonably required to correct such Maintenance Violation then such longer period of time as the Board deems reasonable; provided, however, such Maintenance Violation Notice shall state that the work shall be commenced within thirty (30) days after the Maintenance Violation Notice is given. 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.

3.19.2 Owner's Right to File an Objection. The Owner of the Unit to whom a Maintenance Violation Notice is given, other than an Emergency Maintenance Violation Notice, 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 appoint a committee of three (3) Board Members (the "Arbitration Panel") to 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 Arbitration Panel 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 Arbitration Panel 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 Arbitration Panel notifies the Owner in writing of its decision.

3.19.3 Circumstances Under Which Association is Obligated to Correct Maintenance Violation. If an 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 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.

3.19.4 Procedure for Filing Owner Complaints. In the event that the Board fails to give a Maintenance Violation Notice to a Unit Owner who has defaulted in his maintenance obligation hereunder, or in the event the Board has given such notice but elected not to perform the corrective

work and assess the defaulting Owner for the cost thereof, then upon the filing with the Board of a written complaint (herein "Owner Complaint") executed by the Owners of three (3) Units, then the Board shall give such Maintenance Violation Notice if none was given, and cause the Association to perform such corrective work within the time periods set forth in Section 3.31 below.

3.20 Procedure for Association's Correction of Maintenance Violation.

3.20.1 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 three (3) written bids to perform the required work and shall mail the bids to the Owner of the Lot on which a Maintenance Violation exists. Such Owner shall have the right to select the bid by notifying the Board in writing within fourteen (14) days after the bids are mailed by the Board to the Owner. In the event the Owner fails to select a bid within such time period, the Board shall select the bid. If an emergency exists, the Association may commence work to correct the Maintenance Violation immediately without notice and without obtaining written bids.

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

3.20.3 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 instalment 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.

3.21 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 hereinbelow 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.

3.22 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.

### 3.23 Yards.

3.23.1 Single Family Attached Residences. No fences, hedges, or walls for front and rear property lines shall be erected or installed on any Single Family Attached Residence except as provided by Declarant. Each Single Family Attached Residence will be provided with front and rear yard landscaping by Declarant, which will be maintained by the Association.

3.23.2 Single Family Detached Residences. No fences, hedges, or walls shall be erected or installed on any Single Family Detached Residence except as provided by Declarant without the approval of the ARC. All maintenance of fences, hedges or walls shall be the responsibility of each Owner and at their sole expense, with the exception of any rear perimeter wall that is also a perimeter wall surrounding the Community which shall be maintained by the Association. Each Single Family Detached Residence will be provided with front yard landscaping by Declarant, which will be maintained by the Association. Rear yard landscaping must be installed by all Owners of Single Family Detached Residences no later than ninety (90) days from close of escrow. 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.

Notwithstanding the foregoing, each Single Family Detached Residence Lot which is directly adjacent to the Golf Course will have full landscaping of such Lot provided and installed by Declarant as part of the initial cost of such Lot, which landscaping shall be maintained by the Association as part of its obligation to maintain the Common Area. Thereafter, the Owner of such Lot(s) may change or alter such landscaping, its features and design, including, without limitation its drainage, only with the prior written consent of the ARC and the written agreement of such Owner with the Association that such Owner thereafter shall be solely responsible for the maintenance of such landscaping.

3.23.3 Custom Lots. No landscaping will be provided for any Custom Lot by Declarant. All fences, hedges or walls erected on the yard of a Custom Lot shall be the responsibility of each Owner and at their sole expense, with the exception of any rear perimeter wall that is also a perimeter wall surrounding the Community which shall be maintained by the Association. Landscaping must be installed by all Owners of Custom Lots no later than ninety (90) days from issuance of a Certificate of Occupancy. 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.

The cost for the landscaping maintenance charged to an Owner of a Single Family Attached Residence may differ from the landscaping maintenance charge assessed to an Owner of a Single Family Detached Residence due to the amount of square footage involved and the Common Expenses for a Custom Lot may differ due to no landscaping maintenance on the part of the Association.

NO GRASS LANDSCAPING MAY BE PLACED WITHIN A FIVE FOOT (5') RADIUS OF THE FOUNDATION OF ANY RESIDENCE.

3.24 Diseases and Insects. No Owner shall permit any thing or condition to exist upon his 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, whether Single Family Attached Residence, Single Family Detached Residence, or Custom Lot, is responsible for pest control at their sole and separate expense.

3.25 Party Walls. Each wall which is built as a part of the original construction by Declarant 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 his 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. In the event of any dispute arising concerning a party wall under the provisions of this Section 3.18, each party shall choose one arbitrator, such arbitrator shall choose one additional arbitrator, and the decision of a majority of such panel of arbitrators shall be binding upon the Owners which are a party to the arbitration.

3.26 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 excavations, shafts, derricks, or pumps used to mine or drill for any substances that may be located on the Community.

3.27 Perimeter/Side Yard Walls.

3.27.1 Single Family Attached Residences. Perimeter/side yard walls for any Single Family Attached Residence will be maintained and insured by the Association.

3.27.2 Single Family Detached Residences. Each Owner shall maintain and provide insurance coverage under their homeowner's policy for any rear and side yard walls. The exceptions would be any perimeter walls surrounding the Community or wrought iron rear yard walls constructed by Declarant directly adjacent to and facing the Golf Course, which will be maintained and insured by the Association. 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.

3.27.3 Custom Lots. Each Owner shall maintain and provide insurance coverage under their homeowner's policy for any rear and side yard walls. The exceptions would be any perimeter walls surrounding the Community, or wrought iron rear yard walls directly adjacent to and facing the Golf Course which will be maintained and insured by the Association. 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.

3.28 Windows. All Units must have permanent window coverings installed within ninety (90) days after close of escrow. Window treatment other than draperies, curtains or blinds (horizontal or vertical) are subject to the prior written approval of the Board. Aluminum foil and similar material shall not be permitted in any exterior windows. Window tinting shall require the prior written approval of the Board, and shall be properly installed and maintained so as not to become damaged, scratched, discolored or otherwise unsightly. Exterior holiday decorations, including decorations on the inside of a window, may be put up thirty (30) days prior to the holiday and must be removed twenty (20) days after the holiday.

3.29 Exterior Sound Devices. No exterior speaker, or other sound devices, except security devices used exclusively for security purposes, shall be located, used, or placed on a Unit or Improvement without the prior written approval of the ARC.

3.30 Machinery and Equipment. No machinery or 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 use, maintenance, or construction of a residence or other structure. No equipment for air conditioning, heating, fuel storage or other uses shall be installed or maintained outside of or protruding through the walls, windows, or roof of any Improvement in the Community except for such equipment as is initially constructed by Declarant or thereafter as approved by the ARC.

3.31 Leasing of Units. An Owner shall be permitted to lease such Owner's 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) The Tenant is furnished with a copy of this Declaration and the Rules and Regulations;

(c) 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

(d) 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.

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.

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**ARTICLE IV**  
**THE ASSOCIATION**

4.1 **Formation.** The Association is a nonprofit corporation formed or to be formed under the laws of the State of Utah. Prior to the conveyance of the first Unit to an Owner other than Declarant, Declarant shall cause the Articles of Incorporation to be filed with the Department of Commerce, Division of Corporations and Commercial Code of the State of Utah. The Association shall be charged with the duties and invested with the powers set forth in the Articles, Bylaws, and this Declaration. The Association is not authorized to have and shall not issue any capital stock.

4.2 **Association Action; Board of Trustees and Officers; Members' 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. Except for the members of the Board appointed by Declarant in accordance with this Declaration, the Articles and the Bylaws, and the members of the first Board named in the Articles, the Board shall be composed of Members only. All members of the Board must be at least eighteen (18) years of age. The members of the first Board of Trustees of the Association named in the Articles shall serve until the first meeting of the Members of the Association which is called for the purpose of electing their successors. The first meeting of the Members of the Association shall be held not later than the earlier of (i) forty-five (45) days after the closing of the sale of the Unit which represents the fifty-first percentile interest in the total number of Units in the Community, or (ii) one (1) year after the date of the filing of the Articles of Incorporation with the State of Utah. Such meeting shall be called, noticed and conducted in accordance with the Articles and the Bylaws. Except as otherwise provided in the Articles, Bylaws, or this Declaration, all matters requiring the approval of Members shall be deemed approved if Members holding a majority of the total voting power assent to them by written consent as provided in the Bylaws or if approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws.

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 one (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. Except as otherwise provided in subparagraphs (b) and (c) of paragraph 4.3.3 below, the respective interests of each of the Members shall be equal.

4.3.3 **Voting.**

(a) **General.** Except as otherwise provided in subparagraphs (b) and (c) of this paragraph 4.3.3, each Member shall be entitled to one (1) vote for each Unit owned by such Member, provided, however, that the Association may not cast any vote otherwise allocated to it for any Unit it may own. No vote allocated to a Unit owned by the Association may be cast. The Association shall have two (2) classes of voting membership:

(b) Class A. Class A members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Unit owned. When more than one (1) person owns an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

(c) Class B. The Class B member shall be Declarant, or its successors and assigns, and shall be entitled to three (3) votes for each Unit owned. Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(i) Sixty (60) days after conveyance of seventy-five percent (75%) of the Lots to Owners other than Declarant; or

(ii) Two (2) years after Declarant has ceased to offer for sale in the ordinary course of business any Lot within the Property; or

(iii) In the event and at such time as Declarant waives by written instrument the rights reserved by Declarant under this subparagraph (c), and such written waiver is recorded in the official records of the Washington County Recorder, Declarant shall have the right to designate a person or persons who are entitled to exercise the rights reserved to Declarant under this subparagraph (c).

(d) Appointment and Removal of Members of Board and Officers of Association. Subject to the provisions of subparagraph (e) of this paragraph 4.3.3, Declarant reserves the right to appoint and remove all of the members of the Board and all of the officers of the Association until the earlier of the following events:

(i) Sixty (60) days after conveyance of seventy-five percent (75%) of Units to Owners other than Declarant (herein "Purchasers"); or

(ii) Two (2) years after Declarant has ceased to offer for sale in the ordinary course of business any Unit within the Property; or

(iii) Five (5) years after any right to annex the Annexable Area has last been exercised pursuant to Article XI hereof.

Declarant shall have the right to designate a person or persons who are entitled to exercise the rights reserved to Declarant under this subparagraph (d). The date on which the rights reserved by Declarant under this subparagraph (d) terminate is herein called "Declarant's Control Termination Date". From and after Declarant's Control Termination Date, the Board of Trustees and the officers of the Association shall be elected and appointed as provided in these Articles and the Bylaws.

(e) Persons Entitled to Serve on the Board. Except for the members of the Board appointed by Declarant in accordance with the Declaration, the Articles, and the Bylaws, and the members of the first Board named in the Articles, 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 his or her 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. Such voting member must be designated in writing to the Board by all Owners of such Unit, and the Association may preclude the vote for any such Unit by any Owner other than such designated Owner. If there is no such designation, then such Unit shall have no vote until such designation is made.

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 title to such Unit, and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of 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 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 for such other purposes as are expressly allowed by this Declaration (the "Rules and Regulations"). However, the Rules and Regulations shall not be inconsistent with or materially alter any provisions of this Declaration, the Articles, or the Bylaws. A copy of the Rules and Regulations 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 and any provisions of this Declaration, the Articles or the Bylaws, the conflicting provision of the Rules and Regulations shall be superseded by the provisions of this Declaration, the Articles, or the Bylaws.

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,

and Declarant 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 provision 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. However, any such suspension of use privileges cannot exceed a period of thirty (30) days for any one violation; and any monetary penalty cannot exceed ONE HUNDRED AND NO/100THS DOLLARS (\$100.00) for any one 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 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.

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, which manager may be an affiliate of Declarant. If Declarant enters into a professional management contract prior to turning control of the Community over to the Association, such contract shall provide that it is terminable without cause at any time. No professional management contract may impose the payment of any penalty or require advance notice of greater than ninety (90) days.

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.

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 Operation and Maintenance of Association Property. The Association shall accept and exercise jurisdiction over all property, real and personal conveyed to the Association by Declarant or others or for which the Association has duties and obligations imposed upon it pursuant to this Declaration, including all Common Areas, and easements for operation and maintenance purposes over any of the Community, and easements for the benefit of Association members within the Common Areas. 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 and all private streets, and 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 or materials for the benefit of the Association Property, including contracts with Declarant. 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.

**Certain systems and components of and comprising the Improvements require systematic maintenance and monitoring in order to insure their continued good working condition and to avoid damage occurring to other Improvements. At such time as the Association assumes responsibility for the upkeep, maintenance and repair of the Common Areas, or is required to accept such responsibility, Declarant will provide to the Association a complete list (the "Maintenance List") of those Improvements for which systematic maintenance and monitoring is required. Upon receipt of the Maintenance List from**

**Declarant, Association shall have no claim against Declarant for, and shall hold Declarant harmless from and against, any and all loss, claim, damage and liability arising out of or in connection with, or resulting from, the Association's failure to adequately maintain and monitor the Improvements in accordance with and as outlined in the Maintenance Schedule.**

Any Common Expense associated with the maintenance, repair or replacement of heat exchanger, heater outlet, enclosures and mechanical attachments will be assessed against the Condominium Unit or Units to which the Limited Common Element is assigned.

Common Expenses associated with the maintenance, repair or replacement of components and elements attached to, planted on, or a part of yards, patios, decks, exterior surfaces, trim, siding, doors, windows and elevators of Condominium Units or the Condominium Common Area will be assessed against the Condominium Unit or Units to which the applicable Limited Common Element is assigned. No additional component or element may be attached without consent of the ARC. In the event any additional component or element becomes deteriorated or unsightly, or is inconsistent with conditions of installation, it may be removed or repaired at the Condominium Unit Owner's expense as a Violation Assessment after notice and an opportunity to be heard.

If any such Limited Common Element is assigned to more than one Condominium Unit, the Common Expenses attributable to the Limited Common Element will be assessed equally among the Units to which it is assigned.

Any Common Expense associated with the maintenance, repair or replacement of the chimney serving a Condominium Unit shall be assessed against such Condominium Unit. Common Expenses associated with the cleaning, maintenance, repair or replacement of all other Limited Common Elements will be assessed against all Condominium Units in accordance with their allocated interests in the Common Expenses.

Each Unit Owner shall be responsible for removing snow, leaves and debris from all patios and balconies which are Limited Common Elements appurtenant to her Condominium Unit. If any such Limited Common Element is appurtenant to two or more Condominium Units, the owners of those Units will be jointly responsible for such removal.

**5.2.6 Exterior Maintenance.** The Association's maintenance of the Common Area shall include exterior maintenance upon each Condominium Unit including the exterior of any garage or carport which is subject to assessment hereunder, as follows: paint, repair, replacement and care of any roofs, gutters, downspouts, exterior building surfaces, solar heating equipment installed by Declarant or the Association, and other exterior improvements; provided, however, that such exterior maintenance shall not include glass surfaces. In the event that the need for maintenance or repair of a Condominium Unit is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests, or invitees of the Owner of the Condominium Unit needing such maintenance or repair, then the cost of such exterior maintenance shall be added to and become part of the assessment to which such Condominium Unit is subject.

**5.2.7 Utilities.** The Association shall acquire, provide, and pay for water, sewer, garbage disposal, refuse and other necessary utility services for the Common Area, and for Condominium Units when the Condominium Units are not separately billed. 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.

5.2.8 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.

5.2.9 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 operating 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 Nevada and Federal law.

5.2.10 Golf Course. The Association or Declarant 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.

5.2.11 Other. The Association shall carry out the other duties of the Association set forth in the Declaration, the Articles, and the Bylaws.

5.3 Limitations on Authority of Board. Except with the vote or written consent of Members of the Association holding fifty-one percent (51%) of the voting rights and a majority of the voting rights allocated to Lots not owned by Declarant, 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 for services performed in the conduct of the Association's business. 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, or Declarant, or any agent of Declarant, 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 Members, the Board, and committees of the Board, and all other books, documents and records 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 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.

5.6.2 Declarant's Obligation to Deliver Association Property and Records to Board. Within thirty (30) days after Declarant's Control Termination Date, Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by Declarant, including:

- (a) The original or a certified copy of the Declaration, the Articles, the Bylaws, minute books and other books and records of the Association and any Rules and Regulations which may have been adopted;
  - (b) An accounting for money of the Association and financial statements from the date the Association received money to Declarant's Control Termination Date. The financial statements shall fairly and accurately report the Association's financial condition prepared in accordance with generally accepted accounting principles;
  - (c) The Association's money or control thereof;
  - (d) All of the tangible personal property that has been represented by Declarant to be Association Property or all tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Areas, and inventories of those properties; unless Declarant has disclosed in a public offering statement that such personal property will remain the property of Declarant;
  - (e) All insurance policies then in force in which the Owners, the Association, or its Trustees or officers are named as insured persons;
  - (f) Any permits and approvals issued by governmental bodies applicable to the Community which are in force or which were issued within one (1) year before Declarant's Control Termination Date;
  - (g) Written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective;
  - (h) A roster of Owners and mortgagees of Lots, if known, and their addresses and telephone numbers, if known, as shown on Declarant's records;
  - (i) Contracts of employment in which the Association is a contracting party;
- and

(j) Any contract for service in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the persons performing the services.

**ARTICLE VI  
ASSESSMENTS**

6.1 Agreement to Pay. Declarant for each Improved Lot owned by it and 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 his 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. The Common Expenses may include a sanitation charge for all Owners, and may include a special monthly amount charged to Owners of those Lots which are directly adjacent to the Golf Course for the maintenance of the rear perimeter walls of such Lots which are required by this Declaration to be maintained by the Association.

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 the 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 within the Common Areas; the cost of repair, rebuilding and replacement of the Improvements to the Common Areas; the cost of all utility services to the Common Areas, including water, electricity, refuse removal, landscape maintenance services, and any other similar service attributable 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; provided, however, that the Association shall allocate equally among only Lot Owners the applicable cost incurred by the Association for maintaining the front yard of all Single Family Detached Residences and the front and rear yards of all Single Family Attached Residences Lots; and equally among only Condominium Unit Owners the cost incurred by the Association in maintaining, operating and insuring the Condominium Common Area,

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. Unless at that meeting sixty-six and two-thirds percent (66-2/3%) of all Owners vote to reject the proposed Budget, the Budget shall be deemed ratified by the Owners, whether or not a quorum is present at such meeting; provided, however, that if the Budget proposes an increase in Annual Assessments in an amount greater than one hundred fifteen percent (115%) of the Annual Assessments then in effect, then the Budget must be affirmatively approved by not less than fifty-one percent (51%) of the Owners present at such meeting. 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.

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 obligations 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. Unless at that meeting a majority of all Owners votes to reject the proposed Special Assessment, the proposed Special Assessment shall be deemed ratified by the Owners, 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 Improvement 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, in which case such motion shall be treated as if it were a petition duly submitted by Owners of three (3) or more of the Lots.

(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 Improvement.

(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 of two-thirds (2/3) of the voting power of the Association and Declarant, unless Declarant owns no Lots within the Property.

6.7.3 Levy of Capital Improvement Assessments. Capital Improvement 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 on 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 Improvement 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 6.6.5, 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 6.6.3 hereof. If such additional assessment is in excess of five percent (5%) of the original Capital Improvement Assessment, the affirmative vote or written consent of a majority of the voting power of the Association shall be required for any such further assessment.

6.8 Utilities Assessments. Any utility service delivered to the Condominium Units for which the Association is billed shall, in turn, be billed by the Association to each Condominium Unit, at a uniform rate, on a monthly basis. Such billings shall be considered an assessment levied against each Condominium Unit, and shall be enforced in accordance with the terms and provisions of this Article 6.

6.9 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.

6.10 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. However, the initial Annual Assessment period shall commence on the first day of the calendar month following the earlier of (i) the date the Common Areas or any portion thereof is transferred to the Association, and (ii) the date on which the sale of the first Unit in the initial phase of the Community is closed and recorded; and the Annual Assessment period as to all Units in each subsequent phase of the Community, respectively, shall commence on the first day of the calendar month following the date on which the sale of the first Unit to a purchaser in such phase is closed and recorded, and shall terminate on December 31 of the year in which such sale is closed and recorded. The first Annual Assessment and all Special Assessments shall be adjusted according to the number of months remaining in the fiscal year and shall be payable in equal monthly installments unless the Board adopts some other basis for collection.

6.11 Notices of Assessments; 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 \$10.00 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.

6.12 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 a 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. Unless such request for a statement of account shall be complied with within ten (10) business days following receipt of the written request and fee, all unpaid assessments which became due prior to the date of making such request shall be subordinate to the lien of a mortgagee which acquired its interest subsequent to requesting such statement.

6.13 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.

6.14 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. The lien created by this Declaration for unpaid Annual Assessments is also prior to a First Deed of Trust to the extent of the amount of such Annual Assessments which would have become due during the six (6) month period immediately preceding institution of an action to enforce the lien.

6.15 Enforcement of Lien.

6.15.1 Notice of Delinquent Assessment and Notice of Default. The Association may foreclose its lien by sale pursuant to Utah Code Ann. § 57-8-20 after:

- (a) The Association has caused to be recorded with the Washington County Recorder of 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.

6.15.2 Notice of Sale. The Association or other person conducting the sale shall, at any time after the expiration of such sixty (60) day 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.

6.16 Reserve Funds.

6.16.1 Working Capital Fund. Declarant shall establish initially, as to the Project and each subsequent phase thereof, and the Association shall maintain thereafter, a "working capital fund" to meet unforeseen expenditures or to purchase additional equipment or services (the "Working Fund"). The Working Fund shall be funded initially in an amount equal to the number of Units in the applicable phase of the Project times the initial monthly common assessment amount for such Units, but in no event less than an amount at least equal to two (2) months of estimated Common Expenses for each Unit. As to each phase of the Project, the Working Fund for each Unit shall be established and paid no later than the closing of the sale of such Unit; provided, however, that not less than six (6) months from and after the sale of the first (1st) Unit in each phase, Declarant shall pay the Working Fund as to all remaining unsold Units in such phase. Declarant may reimburse itself as to each Unit for its contribution to such fund by collecting an amount equal to the contributed amount for such Unit from the initial Owner of a Unit at the Close of escrow for the sale of such Unit. The Working Fund shall be transferred into a segregated account of the Association upon the Declarant's Control Termination Date, and are not intended to be advance payments of regular assessments. Declarant may not use any portion of the Working Fund to defray any expenses, reimburse contributions or construction costs or to make up any budget deficits.

6.16.2 Replacement Reserve Fund. In addition to the Working Fund, the Association shall establish and maintain an adequate reserve fund for the replacement of Improvements to the Common Area and Limited Common Elements that it is obligated to maintain. The replacement fund should be maintained out of regular assessments for common expenses.

6.17 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of reserves must be paid to the Owners in proportion to their liabilities for Common Expenses or credited to them to reduce their future assessments for Common Expenses.

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 on 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 insured's Declarant, 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 Declarant, the Board, and their representatives, members, and employees. After Declarant has no further interest in any portion of the Community, then the above insurance provisions regarding Declarant shall not apply.

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 as 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 on 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 and condominium 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. The Board shall review the limits of all insurance policies of the Association at least once a year and adjust the limits as the Board deems necessary or appropriate.

7.8 Form. 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 of 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. The Association shall furnish to each Owner who requests it and to Declarant 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 (except for the Secretary of the Department of Veterans Affairs, as Officer of the United States of America) 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 Distribution to Mortgagees. Any mortgagee has the option to apply insurance proceeds payable on account of a Condominium in reduction of the obligation secured by the mortgage of such mortgagee.

7.11 Owner's Insurance Responsibilities.

7.11.1 Single Family Attached Residences. Insurance for hazard, casualty and public liability coverage within each Lot including, without limitation, all structures located therein; and insurance coverage for activities of the Owner acting for the Association with respect to the Common Areas shall be provided by the Association for all Single Family Attached Residences. Owners may provide, at their own and sole expense, contents insurance and personal liability and casualty insurance.

7.11.2 Single Family Detached Residences. 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 Single Family Detached Residence.

7.11.3 Custom Lots. 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 Custom Lot.

7.11.4 Condominium Units. Insurance for hazard, casualty and public liability coverage for each Condominium Unit, and insurance coverage for activities of the Owner acting for the Association with respect to the Common Areas shall be provided by the Association for all Condominium Units. Owners may provide, at their own and sole expense, contents insurance and personal liability and casualty insurance.

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**  
**DAMAGE, DESTRUCTION, CONDEMNATION, OR OBSOLESCENCE**  
**OF CONDOMINIUM COMMON AREA**

8A. Damage or Destruction.

8A.1 Association as Attorney-in-Fact. Each of the Owners (except the Secretary of the Department of Veterans Affairs, an Officer of the United States of America) irrevocably constitutes and appoints the Association its true and lawful attorney-in-fact in its name, place, and stead for the purpose of dealing with the Condominium Common Area and the Condominium Units upon their damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute such appointment.

8A.2 General Authority of Association. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of a Condominium Unit Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the Improvements as used in the succeeding subsections mean restoring the Condominium Common Area to substantially the same vertical and horizontal boundaries as before.

8A.3 Duty and Authority to Rebuild. Any portion of the Condominium Common Area which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety or, in the case of condemnation, reasonably impracticable; or
- (b) Eighty percent (80%) of the voting power of the Association and sixty-seven percent (67%) of the institutional holders of First Deeds of Trust on Condominiums vote not to rebuild.

The Association shall have the authority and the duty to repair or reconstruct all Improvements to the Condominium Common Area which are damaged or destroyed, which authority and duty shall be exercised in accordance with the provisions of this Article.

8A.4 Estimate of Costs; Architectural Committee Approval. As soon as practicable after an event causing damage to, or destruction of, any Improvements to the Condominium Common Area, the Association shall obtain estimates that it deems reliable and complete of the costs of repair or reconstruction of that part of the property damaged or destroyed. No reconstruction or repair of damaged or destroyed Condominium Common Area Improvements shall commence until approval has been obtained from the ARC in accordance with its guidelines.

8A.5 Funds for Reconstruction. The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction of Association Property on the Condominium Common Area, as applicable. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, then the Board, pursuant to Article VI hereof, shall levy in advance a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction.



8A.6 Repair or Reconstruction. Except as otherwise provided herein, as soon as practicable after receiving the estimates, the Board shall diligently pursue to complete the repair or reconstruction of the damaged or destroyed Condominium Common Area Improvements. The Association may take all necessary or appropriate action to effect repair or reconstruction as attorney-in-fact for the Owners; and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be in substantial accordance with the original plans and specifications of the Community or may be in accordance with any other plans and specifications the Association may approve, provided that in such latter event, (i) the number of cubic feet and the number of square feet of any Condominium Unit may not vary by more than five percent (5%) from the number of cubic feet and the number of square feet for such Condominium Unit as originally constructed pursuant to such original plans and specifications, and the location of the buildings shall be substantially the same as prior to damage or destruction and (ii) written consent from the Eligible Mortgage Holders on Condominium Units to which at least fifty-one percent (51%) of the votes of Condominium Units subject to mortgages held by Eligible Mortgage Holders is first obtained. In the event of any restoration or repair not in substantial compliance.

8A.7 Disbursement of Funds for Repair or Reconstruction. The insurance proceeds held by the Association and the amounts received from the assessments provided for in Section 8A.5 constitute a fund for the payment of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contributions by each Owner to the Association.

8A.8 Decision Not to Rebuild. In the event of a determination not to rebuild, the damaged or destroyed facilities shall be cleared; and the land shall be landscaped in a manner ensuring the existence of adequate rights-of-way and legal access over and to the area. The cost of removal and landscaping shall be paid for with insurance proceeds; and the remaining proceeds shall be retained by the Association in its general or other funds or allocated or distributed as determined appropriate by the Board, provided that any such distribution of insurance proceeds shall be proportionate to the interests of all Members who are Condominium Owners.

8B. Obsolescence.

8B.1 Adoption of a Plan. The record Condominium Owners, as reflected on the real estate records of Washoe County, Nevada, representing an aggregate record ownership interest of eighty percent (80%) or more of the Condominiums may agree that the Condominium Common Area and Condominium Units are obsolete and adopt a written plan for renewal and reconstruction, which plan has the approval of sixty-seven percent (67%) of the Condominium Eligible Mortgage Holders at the time of the adoption of such plan. Written notice of adoption of such a plan shall be given to all Owners. Such plan shall be recorded in Washoe County, Nevada, real estate records.

8B.2 Payment for Renewal and Reconstruction. The expense of renewal or reconstruction shall be payable by all of the Condominium Owners as assessments against their respective Condominiums. These assessments shall be levied in advance pursuant to Article 6 hereof and shall be allocated and collected as provided in that Article. Further levies may be made in like manner if the amounts collected prove insufficient to complete the renewal and reconstruction.

8B.3 Distribution of Excess. In the event amounts collected pursuant to Section 8B.2 are in excess of the amounts required for renewal and reconstruction, the excess shall be returned to the Condominium Owners by the Association by a distribution to each Condominium Owner for an amount proportionate to the respective amount collected from each such Condominium Owner.

8B.4 Dissents From the Plan. A Condominium Owner not a party to such a plan for renewal or reconstruction shall give written notice of dissent to the Association within fifteen (15) days after the recordation of such plan. The Association shall then give written advice of such dissents to all the Condominium Owners within five (5) days after the expiration of such fifteen-day period. Within fifteen days of receipt of such notice from the Association, the record Condominium Owners, representing an aggregate record ownership of more than fifteen percent (15%) of the Condominiums may cancel the plan by written instrument recorded in Washoe County, Nevada, real estate records. If the plan is not canceled, then the Condominium of each dissenter shall be purchased according to the following procedures. If the Condominium Owner and the Association can agree on the fair market value thereof, then such sale and conveyance shall be completed within sixty (60) days thereafter. If the parties are unable to agree, the date when either party notifies the other than he or it is unable to agree with the other shall be the "commencing date" from which all periods of time mentioned herein shall be measured. Within ten (10) days following the commencing date, each party shall nominate a qualified appraiser by written nomination and shall give notice of such nomination to the other. If either party fails to make such nomination, the appraiser nominated shall, within five days after default by the other party, appoint and associate with him another qualified appraiser. If the two appraisers designated by the parties, or selected pursuant hereto in the event of default of one party, are unable to agree, then they shall appoint another qualified appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate two qualified appraisers; and from the names of the four persons so nominated, one shall be drawn by lot by a judge of any court of record in Nevada; and the person whose name is so drawn shall be the umpire. The nominations from among which the name of the umpire is to be drawn by lot shall be submitted within ten days after the failure of the two appraisers to agree, which, in any event, shall not be later than twenty days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, the decision of such umpire shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the Condominium Owner. The sale shall be consummated within sixty days after decision of the appraisers or umpire. The Association shall have the right and power to acquire, hold, convey, lease, rent, encumber, use, and otherwise deal with the Condominium so acquired.

The Association, pursuant to Article 6 hereof, may levy a Special Assessment sufficient to provide funds to pay for the Condominiums of the dissenters, provided that such assessment shall not apply to any of the Condominium Owners who are among the dissenters and shall not be a lien against the Condominium of any such Condominium Owner; and upon the Association's conveyance of any such Condominium, the Association as attorney-in-fact shall disburse the proceeds in the same manner provided in Section 8B.5 of this Declaration. The obligation of the Association to make such purchase shall be conditioned on the fair market value of the Condominium exceeding the obligations secured by liens on such Condominium, and upon the marketability of the title of the Condominium Owner. Condominium Owner shall furnish the Association an appropriate preliminary title report or commitment for title insurance evidencing marketability of his title not less than fifteen days prior to the date set for completion of the sale.

8B.5 Sale of Obsolete Community. The Owners representing an aggregate ownership interest of eighty percent (80%) or more of the Condominiums may agree that the Condominiums are obsolete and that the Community should be sold. Such an agreement must have the approval of sixty-seven percent (67%) of Eligible Mortgage Holders of record at the time such agreement is made. In such instance, the Association shall forthwith record a notice setting forth such facts, and upon the recording of such notice by the Association, the Community shall be sold by the Association as attorney-in-fact for all of the Condominium Owners free and clear of the provisions contained in this Declaration, the Condominium Map, the Articles, and the Bylaws. The sale proceeds shall be apportioned among the Condominium Owners in the same proportion as the square footage of the Condominium Owner's Unit bears to the total square footage of all the Condominium Units, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium. Each such account shall remain in the name of the Association and shall be further identified by the Condominium Unit designation and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts without contribution from one account to the other, first to mortgagees and other lienors in the order of priority of their mortgages and other liens, and the balance remaining to each respective Condominium Owner.

8C. Condemnation. If at any time or times during the continuance of the Condominium ownership pursuant to this Declaration, all or any part of the Condominium Common Area or a Condominium shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the making of awards and disbursement of the proceeds thereof shall be undertaken in accordance with the following terms and provisions:

8C.1 If a Condominium Unit is acquired by eminent domain or part of a Condominium Unit is acquired by eminent domain leaving the Unit's Owner with a remnant that may not practically or lawfully be used for any purpose permitted by this Declaration, the award must include compensation to the Condominium Unit's Owner for that Unit and its allocated interests in the applicable Common Areas. Upon acquisition, unless the decree otherwise provides, that Condominium Unit's allocated interests are automatically reallocated to the remaining Condominium Units in proportion to the respective allocated interests of those Condominium Units before the taking. Any remnant of a Condominium Unit remaining after part of a Condominium Unit is taken under this subsection is thereafter a Common Area.

8C.2 Except as otherwise provided above, if part of a Condominium Unit is acquired by eminent domain, the award must compensate the Condominium Unit's Owner for the reduction in value of the Condominium Unit and its interest in the Common Areas, whether or not any Common Areas are acquired. Upon acquisition, unless the decree otherwise provides:

(a) That Condominium Unit's allocated interests are reduced in proportion to the reduction in the size of the Condominium Unit, or on any other basis specified in this Declaration; and

(b) The portion of the allocated interests divested from the partially acquired Condominium Unit are automatically reallocated to that Condominium Unit and to the remaining Condominium Units in proportion to the respective allocated interests of those Condominium Units before the taking, with the partially acquired Condominium Unit participating in the reallocation on the basis of its reduced allocated interests.

8C.3 If part of the Common Area is acquired by eminent domain, the portion of the award attributable to the HOA Common Areas taken must be paid to the Association.

ARTICLE IX  
ARCHITECTURAL CONTROL; DEVELOPMENT STANDARDS

9A. Architectural Control.

9A.1 Architectural Review Committee. There shall be an initial "Architectural Review Committee" (sometimes hereinafter "ARC") consisting of five (5) persons, each appointed by Declarant. Until twelve (12) years following the date of conveyance by Declarant of the first Lot to a purchaser thereof, each member of the ARC shall be subject to removal at the direction of the Declarant at any time and all vacancies on the ARC shall be filled by appointment of Declarant. Commencing twelve (12) years following the date of conveyance by Declarant of the first Lot to a retail purchaser thereof or upon Declarant resigning its right to appoint ARC members, whichever shall first occur, the Board shall have the power to appoint all members of the ARC. The ARC is hereby deemed to be an independent committee of the Board and shall be subject to all requirements of any Trustees' and Officers' Liability Insurance obtained by the Association so that such members of the ARC are covered thereby; provided, however, ARC members need not be members of the Board.

9A.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 erected) have been approved in writing by the ARC. The foregoing shall not be construed in any way to allow the Owner of a Single Family Attached Residence or Condominium Unit to alter in any way the exterior portions of such Residence which are to be maintained by the Association. 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 ninety (90) days after the submission thereof to it, then such approval will not be required, provided any improvement so made conforms to all other conditions and restrictions herein contained and is in harmony with similar improvements erected within the Community. 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.

9A.3 Interpretation. All questions of interpretation or construction of any of the terms or conditions in this Article shall be resolved by the ARC, and its decision shall be final, binding and conclusive on all of the parties affected.

9A.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 therefor, and may be recovered by the ARC pursuant to a Violation Assessment or in an action at law against such individual Owner.

9A.5 Submission of Plans and Specifications. When plans and specifications for the construction of improvements are submitted to the ARC pursuant to these restrictions, said submission shall, at the request of the ARC, be accompanied by a maximum deposit of \$1,000.00 to guarantee that the construction site during the course of construction will be maintained reasonably free of debris at the end of each working day and that the construction will be completed and the drainage swales and structures will correctly drain surplus water to the street or other approved locations, all as shown on the plans and specifications submitted to the ARC for approval. In the event of a violation of this restriction, the ARC may give written notice thereof to the builder and Owner of the Unit in question that if such violation is not cured or work commenced to cure the same within forty-eight (48) hours after the mailing of said notice, the ARC may correct or cause to be corrected said violation and use said deposit, or as much thereof, as may be necessary to cover the cost of such correction work. In the event that the cost of curing said violation shall exceed the amount of said deposit, said excess cost shall be paid by the Owner of the Unit in question to the ARC. Said deposit or any part thereof remaining in the hands of the ARC at the completion of the construction work shall be returned by the ARC to the person who made the deposit.

9A.6 Inspection. Inspection of work and correction of defects therein shall proceed as follows:

(a) 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.

(b) Within ninety (90) days thereafter, the ARC or its duly authorized representative, may inspect such improvement. If the ARC finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such noncompliance within such ninety (90) day period, specifying the particulars of noncompliance, and shall require the Owner to remedy the same.

(c) If, upon the expiration of thirty (30) days from the date of such notification, the Owner shall have failed to remedy such noncompliance, the ARC shall notify the Board of such failure. After affording such Owner notice and hearing, the Board shall determine whether this is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may either remove the noncomplying improvement or remedy the noncompliance, and the Owner shall reimburse the Association

upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board thereof shall levy a special lien assessment against such Owner for reimbursement.

(d) If for any reason the ARC fails to notify the Owner of any noncompliance within ninety (90) days after receipt of said written notice of completion from the Owner, the improvement shall be deemed to be in accordance with said approved plans.

9A.7 No Waiver. The approval of the ARC to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

9A.8 Reimbursements. The members of the ARC shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder.

9A.9 Liability. Neither Declarant nor the ARC, nor any member thereof, nor their duly authorized ARC representatives shall be liable to the Association or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the ARC's duties hereunder, unless due to the willful misconduct or bad faith of the ARC. The ARC shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Property generally. The ARC shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, topography, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

9A.10 Move On. No structure of any kind shall be moved from any other place onto any Lot without the prior written permission of the ARC.

9A.11 Diligently Prosecute Work. The work of constructing any Improvement or other structure shall be prosecuted diligently from the commencement thereof and the same shall be completed within a reasonable time, not to exceed twelve (12) months from the commencement of construction, in accordance with the requirements herein contained; provided, however, that the time for completion shall be extended by the period of delays in construction caused by strikes, inclement weather or other causes beyond the control of the Owner.

9A.12 Declarant Exemption. The ARC shall have no authority or power of jurisdiction over Units owned by Declarant, and the provisions of this Article shall not apply to Units owned by Declarant until such time as Declarant conveys title to the Unit to a purchaser thereof. This Article shall not be amended without Declarant's written consent as set forth on the amendment.

9A.13 Ingress and Egress. In addition to the general easement for use of the Common Areas reserved herein, there shall be, and Declarant hereby reserves and covenants for itself and all future owners, non-exclusive reciprocal easements appurtenant to all Units for ingress and egress

of vehicular and pedestrian traffic over the Streets and over the walkways within all Common Areas and Association Property in the Property.

9A.14 Custom Lots. Declarant shall have the exclusive right to sell and convey fee title to any Lot for the express purpose of constructing a custom home. The minimum size of any custom home shall be 2,000 square feet, unless the custom home Lot is smaller than 12,000 square feet, in which case the custom home may be smaller than 2,000 square feet at the discretion of the ARC. Any custom home may be more than one (1) story in height as long as the plans comply with the requirements of the Development Standards in Article IX hereof.

9B. Development Standards.

9B.1 Intent. The intent of the Sky Mountain Golf Estates Development Standards 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.

These Development Standards provide an overall framework and comprehensive set of guidelines 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. These Development Standards additionally set forth the means by which the standards and guidelines contained herein may be changed and amended to better serve the needs of an evolving Community.

These standards have been adopted by the Board of Trustees of Sky Mountain Golf Estates Homeowners Association and the Architectural Review Committee pursuant to this Declaration.

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

9B.2 Residential Development Standards.

9B.2.1 Character. The underlying philosophy behind the review of the ARC is to maintain an orderly development of the Community by insuring that the planning and design criteria previously established are adhered to.

9B.2.2 Design. In general, the one (1) story residence is preferable in order to blend with the existing architecture of the Community; however, in certain cases, more than one (1) story may be approved by the ARC. At no time will three (3) story designs be permitted. Houses that are log, pre-manufactured, earth, berm, relocated, flat roofed, all metal frame dome or modular are never permitted on any Lot.

For Single Family Attached Residences, 1,200 square feet shall be the minimum square footage permitted.

For Single Family Detached Residences, 1,300 square feet shall be the minimum square footage permitted.

For Custom Lots, 2,000 square feet shall be the minimum square footage permitted, except as otherwise allowed pursuant to Section 9A.14 above.

For Condominium Units, 1,000 square feet shall be the minimum square footage permitted.

The above may be amended unilaterally by Declarant.

9B.2.3 Height. Except as allowed otherwise by the ARC in its sole discretion, the maximum height of any design shall be thirty (30) feet above street level, or for golf course lots thirty-five (35) feet above the lowest visible floor (excluding basements). Roofs should be predominantly low pitch to reinforce horizontal architecture, and the maximum roof pitch allowed will be 6:12, unless otherwise allowed by the ARC in its sole discretion.

9B.2.4 Colors and Materials. The colors of the Community are rich and varied and are highlighted by different light conditions. The intent is to reflect these colors on all exterior surfaces. All exterior base and accent colors shall be from those used by Declarant with the exception of custom homes which shall require the approval of the ARC. Materials should be of high quality with exterior surfaces consisting of predominantly stucco or masonry and roofing materials of concrete or clay tile in order to withstand desert weather conditions and all finishes other than glass must be rated less than forty percent (40%) reflectancy.

9B.2.5 Fencing. Owners may not install fencing on or around the front yard and any fencing may not exceed eight (8) feet on the high side of the Lot. Fencing materials and colors must be approved by the ARC. All fencing placed by Owners of custom Lots facing the golf course must install fencing consistent with fencing that is installed by the Declarant.

9B.2.6 Mail Boxes. The Community is serviced by cluster boxes provided by the United States Postal Service. Registration with the Postal Service is the responsibility of all Owners within the Community.

9B.2.7 Alterations. Pursuant to Article IX, Section 9A. above, no exterior alterations or additions shall be allowed on any Unit within the Community without the review and prior written approval by the ARC. The architectural design and materials used in any and all exterior additions, alterations, renovations or general maintenance and repairs on any Unit shall strictly conform to the design of the original plan in style, detailing and materials used. The height of any addition to an existing detached home shall not be higher than the original roof line or twelve (12) feet above the floor level of the existing structure. New color coating of concrete driveways and walkways must be approved by the ARC.

9B.2.8 Landscaping Accessory Features. Landscape accessory features including, but not limited to, statues, depictions, water fountains, wagon wheels, bird baths, pagodas, wishing wells, farm relics, bridges, mission bells, water wheels, windmills and bird houses shall be limited in height to 2'6" above the natural grade of the Lot if placed within eighteen (18) feet of the front curb line. All landscape features shall be materials compatible with the overall architectural theme of the Community.



9B.2.9 Golf Course Lots. Owners of all Lots bordering the Golf Course or green belt may construct suitable screening to protect windows, patios and outdoor living areas from errant golf balls and/or a protective screening device that includes a patio cover extension, so long as the protective screening device and accompanying patio cover extension, installed by the Owner is not less six (6) feet from the Golf Course or green belt, at the base of the structure, and not less than five (5) feet from the Golf Course or green belt to any overhang portion of the patio cover extension. Plans and samples for all screening must be approved by the ARC prior to installation. Screen materials shall at all times be kept in good condition and repair and properly painted and otherwise finished by the Owner and at Owner's sole and separate expense.

ARTICLE X  
PROTECTION OF LENDERS

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

10.2 Subordination. Except as provided otherwise by Utah Code Ann. § 57-8-20 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.

10.3 Non-Liability for Unpaid Assessments. Any beneficiary of a First Deed of Trust who acquires title to a Unit pursuant to the judicial or nonjudicial 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.

10.4 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.

10.5 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 13.5 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 10.9 below. The Association shall give written notice to Eligible Mortgage Holders in accordance with the provisions of this paragraph 10.5 and in the manner prescribed in paragraph 13.5 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.

10.6 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.

10.7 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 violations of this Declaration that have not been corrected or made the subject of remedial proceedings or Assessments.

10.8 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 operating statements as and when furnished to the Owners.

10.9 Prior Approvals. Unless fifty-one percent (51%) of Eligible Mortgage Holders have given their prior written approval, (except as to Sections (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) By act or omission, seek to abandon or terminate the Condominium regime, except as expressly allowed and provided for by this Declaration;
- (b) Change the method of determining the obligations, assessments, or other charges which may be levied against an Owner; or change the pro rata interest or obligations of any Condominium for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or change the method of determining the pro rata share of ownership of each Owner in the Condominium Common Area;
- (c) 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;
- (d) Use hazard insurance proceeds for losses to Condominium Units or Condominium Common Area or to any Association Property, for other than the repair, replacement, or reconstruction of such improvements or property, except as provided in Article VIII.
- (e) 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;
- (f) Terminate professional management and assume self-management of the Community when professional management is required by FNMA, FHLMC, HUD or VA;

- (g) Make a material change in the boundaries of any Condominium, Unit, Lot or Common Area;
- (h) Impose any material restrictions on an Owner's right to sell or transfer his Lot or Condominium Unit, or use the Common Area;
- (i) Change materially any provision herein that by its terms refers to and expressly benefits institutional holders of first deeds of trust;
- (j) Impose any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Unit;
- (k) Change the subordinate priority of the provisions of this Declaration relating to allocation of hazard insurance proceeds or condemnation awards as set forth in Section 9.6 hereof in relation to the holders of First Deeds of Trust;
- (l) Fail to maintain the insurance required by Article VII hereof; or
- (m) 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 13.5 below and at the address designated by such Eligible Mortgage Holder to the Association in the manner provided in such paragraph 13.5, 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.

10.10 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 XI  
SPECIAL DECLARANT'S AND DEVELOPMENTAL RIGHTS

11.1 General. Declarant and any Successor Declarant may be undertaking the work of constructing Improvements to and upon the Community. The completion of such construction and the sale or other disposition of Units within the Community is essential to the establishment and welfare of the Community as a planned Community. The covenants contained in this Article XI are personal to Declarant and any Successor Declarant, and may only be transferred by a written assignment duly recorded from a Declarant to a Successor Declarant, or from a Successor Declarant to another Successor Declarant.

11.2 Special Declarant's Rights. Declarant hereby reserves unto itself the right to:

11.2.1 Complete Improvements. Complete all Improvements within the Community, including, but not limited to, those indicated on Plats or Plans or described in this Declaration;

11.2.2 Sales Office. Maintain at least one (1) sales office, management office, and as many model homes as Declarant feels necessary within the Property which may be relocated from time to time. In the event Declarant develops a portion or portions of the Property as Condominium Units, Declarant shall have the right to lease a portion of the recreation building constructed on the Common Area for Declarant's use as a sales office on such terms as are agreed upon between the Association and Declarant, each negotiating in good faith.

11.2.3 Signs and Advertising. Maintain signs and flags advertising the Community, which signs may be maintained anywhere on the Community, excluding Units owned by Owners other than Declarant;

11.2.4 Easements. Use easements through the Common Areas for the purpose of making Improvements within the Community; and

11.2.5 Appointment or Removal. Appoint or remove any officer of the Association or any member of the Board at any time and from time to time prior to Declarant's Control Termination Date.

11.2.6 Resales. Declarant shall have the right in its sole discretion to designate a licensed real estate broker to transact all resales within the Community. The posting or installation of all signage with respect to resale activity within the Community requires the prior written consent of Declarant at its sole discretion.

11.2.7 Preferred Builder. Declarant shall have the exclusive right to approve and designate a preferred builder or builders for Custom Lots in the Community, and upon such designation the Owner(s) of the affected Lots shall be required to use such preferred builder(s) for the construction of any Single Family Detached Residence on such Lot.

Nothing in this Article shall give Declarant the right to damage any Unit or Improvement not owned by Declarant or interfere unreasonably with the Owners' use of the Common Areas; and Declarant's right to so use the Community shall terminate upon final completion of construction of the Community, or twelve (12) years from the recordation of this Declaration, whichever first occurs, except as required for maintenance and repair obligations conducted by Declarant which may continue after such date.

11.3 Declarant's Developmental Rights. Declarant hereby reserves unto itself the right to add real estate to the Community and create common areas within such real estate as follows:

11.3.1 Property Subject to Annexation. Declarant hereby reserves unto itself for a period of seven (7) years following the recordation of this Declaration, the right to cause to be annexed to this Declaration as part of the Community from time to time all or a portion of the real property described in Exhibit "B" to this Declaration, provided that a Final Plat Map shall have been recorded for the real property to be so annexed, and to create within the real property additional Lots. No assurances are made by Declarant prior to the annexation of any portion of a parcel of such real property as to the size or configuration of such portion, or the order in which any such portion may be annexed. If any portion of a parcel of such real property is annexed to the Community, there are no assurances that any other portion or all of such parcel will be annexed.

11.3.2 Manner of Annexation. Such real property shall be annexed, subject to approval by the Secretary of Veterans Affairs, by recording in the real estate records of the County Recorder of Washington County, Utah, a supplemental declaration ("Supplemental Declaration") executed by Declarant describing the real property to be so annexed and declaring that such property shall thereafter be deemed to be Annexed Property as defined in this Declaration and declaring that such Annexed Property shall be held, conveyed, sold, encumbered, leased, rented, used, occupied, improved or otherwise affected in any manner subject to the provisions of this Declaration. Such Supplemental Declaration may set forth any additional restrictions or covenants which may be applicable to such Annexed Property, provided that such additional restrictions shall not be in any manner inconsistent with the provisions of this Declaration. In the event of any inconsistency between the provisions of this Declaration and those of a Supplemental Declaration, the provisions of this Declaration shall control.

In order for Annexed Property to be considered qualified by the VA, FNMA or HUD, consent to such annexation must first be obtained by each of such entities, and prior to each annexation detailed plans for the development of the Annexed Property must be submitted to the VA, FNMA and HUD, and the VA, FNMA and HUD must determine that such plans are in accordance with the overall general plan previously submitted to, and approved by, the VA, FNMA and HUD. Regardless, future Improvements will be consistent with the initial Improvements in structure type and quality of construction. As to future phases for which FNMA approval is sought, the Improvements for such phases shall be substantially completed prior to annexation, and FNMA shall be furnished with title evidence, in a form satisfactory to it, which discloses any lien, easement or other encumbrance affecting the property to be added, which will affect the existing Property after such addition.

11.3.3 Effect of Annexation. Upon recordation of the Supplemental Declaration described in paragraph 11.3.2 above, the real property described in the Supplemental Declaration shall become Annexed Property as defined herein and shall be subject to all of the provisions of this Declaration.

11.4 Rights and Obligations of Owners. Without limiting the generality and effect of the provisions of Section 11.3.3 after the required annexation procedures are fulfilled, the following shall have been effected thereby:

11.4.1 Use of Common Areas. All Owners in the Community shall be entitled to use the Common Areas in the Annexed Property, subject to the provisions of this Declaration;

11.4.2 Membership. Owners of Units in the Annexed Property shall thereupon become Members of the Association, shall be subject to the provisions of this Declaration, and shall be entitled to use the Common Areas of the Community;

11.4.3 Voting Rights. All Owners of Units in the Annexed Property shall have the same membership and voting rights as other Owners. Votes shall not be cast separately by phase; and

11.4.4 Assessments. After each annexation, the Association assessments shall be reassessed with the Annexed Property being assessed for a proportionate share of the total expenses of the Community on the same basis as the other property in the Community; provided, however, that such reassessment shall not alter the amount of any assessment assessed to a Unit prior to such reassessment.

11.5 Special VA Approvals. So long as Declarant retains Special Declarant's Rights under this Declaration, the following shall require the approval of the VA: (i) annexation of additional real property to the Community, (ii) de-annexation, (iii) mergers, consolidations or dissolution of the Association, or any other action which would materially affect the basic organization of the Association, (iv) any dedication, conveyance or mortgage of the Common Areas, and (v) all amendments to the Articles and the Bylaws.

#### ARTICLE XII

##### GOLF COURSE: DECLARANT'S DISCLOSURES

12.1 Golf Course Owner Liability. To the extent permitted by applicable law, each Owner by acceptance of his 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 owner or operator of the Hurricane Municipal Golf Course known as Sky Mountain Golf Club against Declarant or against Juliet Property Company 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.

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

#### ARTICLE XIII

##### MISCELLANEOUS PROVISIONS

13.1 Duration. The provisions of this Declaration shall continue and be effective for a period of fifty (50) years from the date of 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.

13.2 Amendment. This Declaration may be amended by Declarant at any time without approval of the Association until control of the Association is turned over to the Association. Thereafter, amendments shall require the vote or agreement of not less than seventy-five percent (75%) of the voting power of the Association. 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, both Classes;
- (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 is required to maintain pursuant to the provisions of this Declaration;
- (d) Responsibility for maintenance and repairs;
- (e) Insurance or fidelity bond provisions;
- (f) Imposition of any restrictions on 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 13.5 below and at the address designated by such Eligible Mortgage Holder to the Association in the manner provided in such paragraph 13.5, 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 13.1 shall be amended only upon the written consent of the Owners of eighty percent (80%) of the Lots within the Community, and no provision of Article XI may be amended during any time that such provision is otherwise operative unless Declarant consents in writing to such amendment

### 13.3 Enforcement and Waiver.

13.3.1 Owner's Right of Enforcement. In addition to the rights of enforcement granted to the Association pursuant to the provisions of paragraph 5.12 hereof, any Owner shall have the right (but not the duty) to enforce any and all of the covenants, conditions, and restrictions now or hereafter imposed by this Declaration upon the Owners or upon any of the Property. Nothing herein shall be construed as creating a third party beneficiary contract in favor of parties who are not Owners or Eligible Mortgage Holders; provided, however, that the owner from time to time of the Golf Course shall be entitled to enforce the terms and provisions of this Declaration with respect to any provision herein which specifically mentions or relates to the use and operation of the Golf

Course Property, including, but not limited to, the maintenance of the Community in a manner consistent with a first-class residential development as initially constructed by Declarant.

13.3.2 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.

13.3.3 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.

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

13.3.5 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.

13.3.6 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 of 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.

13.4 Termination of Former Owner's Liability for Assessments. Upon the conveyance, sale, assignment, or other transfer of a Unit to a new Owner, the transferring Owner shall not be liable for any Assessments levied with respect to such Unit after notification of the Association of such transfer in the manner provided in paragraphs 4.4 and 13.5 hereof and the payment of a transfer fee as provided in paragraph 4.4 hereof. No person, after the termination of his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under this Declaration.

13.5 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. Until the Owners are notified otherwise, all notices to the Association or to the Board shall be addressed as follows:

SKY MOUNTAIN GOLF ESTATES HOMEOWNERS ASSOCIATION  
2290 South Jones Boulevard, Suite 110  
Las Vegas, NV 89102

Declaration of Covenants, Conditions and Restrictions  
Sky Mountain Golf Estates  
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All notices given by the Association to any Owner shall be sent by regular mail, or by registered or certified 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 13.5. 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.

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

13.7 Construction and Severability: Singular and Plural: Titles

13.7.1 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 this Declaration as set forth herein.

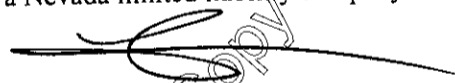
13.7.2 Restrictions and Easements Severable. The covenants, conditions, restrictions and easements contained in this Declaration shall be deemed independent and severable; and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any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

13.7.3 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 include the masculine, feminine, and neuter, as the context requires.

13.7.4 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 day and year first above written.

SKY MOUNTAIN GOLF ESTATES, L.L.C.,  
a Nevada limited liability company



BY: FRED AHLSTROM, MANAGER/MEMBER



BY: JAMES E. BETZ, MANAGER/MEMBER



BY: MADISON GRAVES, II, MANAGER/MEMBER



BY: JACOB D. BINGHAM, MANAGER/MEMBER





**EXHIBIT "A"**

**Legal Description**

**LOTS 21 THROUGH 35 INCLUSIVE AND LOTS 5 THROUGH 12 INCLUSIVE  
AS RECORDED ON FINAL PLAT FOR SKY MOUNTAIN GOLF ESTATES MAP  
1 AMENDED AS FILE 637439 IN BOOK 1318, PAGE 58, OFFICIAL RECORDS  
OF WASHINGTON COUNTY, UTAH.**

**EXHIBIT B  
"ANNEXABLE PROPERTY"**

All that portion of Section 29, Township 41 South, Range 13 West, Salt Lake Base & Meridian, Washington County, Utah, lying South of the South rim of the Virgin River less and excepting the following:

COMMENCING AT THE SOUTH ¼ CORNER OF SAID SECTION 29;  
THENCE S 89°40'47" E, 391.23 FEET ALONG THE SOUTH LINE OF SAID SECTION 29 TO THE POINT OF BEGINNING;  
THENCE N 00°19'13" E, 40.00 FEET TO A CURVE CONCAVE NORTHWESTERLY AND HAVING A 30.00 FOOT RADIUS;  
THENCE NORTHEASTERLY, 47.08 FEET ALONG THE ARC OF SAID CURVE FROM A RADIAL LINE WHICH BEARS N 00°19'13" E THROUGH A CENTRAL ANGLE OF 89°55'17";  
THENCE N 00°23'56" E, 40.09 FEET TO A CURVE CONCAVE SOUTHEASTERLY AND HAVING A 283.00 FOOT RADIUS;  
THENCE NORTHEASTERLY, 132.45 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 26°48'57";  
THENCE N 27°12'53" E, 16.83 FEET TO A CURVE CONCAVE NORTHWESTERLY AND HAVING A 167.00 FOOT RADIUS;  
THENCE NORTHERLY, 60.13 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 20°37'48";  
THENCE N 89°40'47" W, 149.05 FEET;  
THENCE N 00°04'06" W, 61.63 FEET;  
THENCE N 20°57'20" E, 163.91 FEET TO A CURVE CONCAVE WESTERLY AND HAVING A 37.24 FOOT RADIUS;  
THENCE NORTHWESTERLY, 49.16 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 75°38'25";  
THENCE N 56°18'03" W, 54.86 FEET;  
THENCE N 00°04'06" W, 61.51 FEET;  
THENCE N 89°41'33" W, 140.70 FEET;  
THENCE N 62°37'58" W, 213.15 FEET;  
THENCE N 00°05'13" W, 79.01 FEET;  
THENCE N 37°58'00" E, 121.11 FEET;  
THENCE N 47°19'09" W, 153.48 FEET TO A CURVE CONCAVE NORTHEASTERLY AND HAVING A 533.00 FOOT RADIUS;  
THENCE NORTHWESTERLY, 75.78 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 08°08'46";  
THENCE S 47°42'29" W, 160.34 FEET TO A CURVE CONCAVE SOUTHEASTERLY AND HAVING A 229.00 FOOT RADIUS;  
THENCE SOUTHWESTERLY, 25.98 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 06°29'58";  
THENCE N 53°05'01" W, 130.37 FEET;

THENCE N 00°04'17" W, 358.31 FEET  
 THENCE N 76°17'45" E, 109.31 FEET;  
 THENCE N 13°42'15" W, 364.35 FEET TO A CURVE CONCAVE  
 NORTHEASTERLY AND HAVING A 233.00 FOOT RADIUS CURVE;  
 THENCE NORTHWESTERLY, 32.95 FEET ALONG THE ARC OF SAID CURVE  
 THROUGH A CENTRAL ANGLE OF 08°06'07";  
 THENCE N 05°36'09" W, 148.68 FEET;  
 THENCE N 84°23'51" E, 428.11 FEET;  
 THENCE S 21°08'21" E, 178.37 FEET;  
 THENCE S 15°08'32" E, 332.66 FEET;  
 THENCE S 04°31'17" E, 400.61 FEET TO A CURVE CONCAVE  
 NORTHEASTERLY AND HAVING A 91.53 FOOT RADIUS;  
 THENCE SOUTHEASTERLY, 96.66 FEET ALONG THE ARC OF SAID CURVE  
 THROUGH A CENTRAL ANGLE OF 60°30'21";  
 THENCE S 00°04'06" E, 51.92 FEET;  
 THENCE S 89°41'56" E, 118.23 FEET;  
 THENCE S 64°12'28" E, 58.00 FEET;  
 THENCE S 25°47'32" W, 28.36 FEET;  
 THENCE S 89°40'47" E, 189.18 FEET;  
 THENCE S 02°22'19" E, 270.30 FEET;  
 THENCE N 89°40'47" W, 28.25 FEET;  
 THENCE S 00°03'00" E, 540.01 FEET;  
 THENCE N 89°40'47" W, 170.18 FEET TO A CURVE CONCAVE  
 SOUTHEASTERLY AND HAVING A 217.00 FOOT RADIUS,  
 THENCE SOUTHWESTERLY, 20.08 FEET ALONG THE ARC OF SAID CURVE  
 FROM A RADIAL LINE WHICH BEARS S 84°18'02" E THROUGH A CENTRAL  
 ANGLE OF 05°18'02";  
 THENCE S 00°23'56" W, 39.91 FEET TO A CURVE CONCAVE  
 NORTHEASTERLY AND HAVING A 30.00 FOOT RADIUS;  
 THENCE SOUTHEASTERLY, 47.17 FEET ALONG THE ARC OF SAID CURVE  
 THROUGH A CENTRAL ANGLE OF 90°04'43";  
 THENCE S 00°19'13" W, 40.00 FEET TO THE SOUTH LINE OF SAID SECTION  
 29;  
 THENCE N 89°40'47" W, 126.00 FEET ALONG SAID SOUTH LINE TO THE  
 POINT OF BEGINNING.

AND ALSO EXCEPTING THEREFROM LOTS 32 AND LOTS 33 THROUGH 38  
 INCLUSIVE AS RECORDED NOVEMBER 6, 1996, ON FINAL PLAT OF THE  
 CLUBHOUSE SERIES AT SKY MOUNTAIN - PHASE 2 IN BOOK 1050, PAGE 334,  
 OFFICIAL RECORDS OF WASHINGTON COUNTY, UTAH.