

WHEN RECORDED PLEASE MAIL TO:



\*W2106415\*

John W. Hansen  
5730 South 1475 East, Suite 200  
Ogden, Utah 84403

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE HOWARD SUBDIVISION

This Declaration is made and executed this \_\_\_\_ day of March, 2005, by  
F. Burton Howard and Caroline Howard ("Howard"), and John W. Hansen ("Hansen"),  
hereinafter collectively referred to as "Declarants".

10-110-0001 TO 0010

### RECITALS

A. Declarants Howard are the record owners and Declarant Hansen is the developer of those certain tracts of Property more particularly described in Exhibit "A" (attached and hereby incorporated) of this Declaration. Declarants desire to create a homeowners association to manage, maintain and care for the Common Area and the pond, pumping facilities and secondary water distribution lines located in the Common Area.

B. Declarants desire to provide for preservation of values and amenities in said development, for maintenance of the Common Area, and for promotion of the health, safety and social welfare of each Owner of a part thereof. To this end and for the benefit of the Property and of the Owners thereof, Declarants desire to subject the Property described in Exhibit "A" to the covenants, restrictions, easements, charges and liens hereinafter set forth.

C. Declarants deem it desirable, for the efficient preservation of value in the development, to create an association which possesses the power to maintain and administer the Common Area, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose the Declarants have herein created, in conjunction with the recordation of this Declaration, an unincorporated association, the characteristics of which are defined herein and which shall be known as The Howard Subdivision Owners Association.

NOW, THEREFORE, for the foregoing purposes, Declarants hereby declare that all of the Property described in Exhibit "A" of this Declaration is and shall be held, occupied, improved, transferred, sold, leased and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with the Property and be binding on all parties having any right, title or interest in the property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

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DOUG CROFTS, WEBER COUNTY RECORDER  
31-MAY-05 246 PM FEE \$56.00 DEP SGC  
REC FOR: F.BARTON.HOWARD

## ARTICLE I DEFINITIONS

1.01 When used in this Declaration ( including the foregoing portion hereof entitled "Recitals"), unless the context clearly indicates otherwise, the following terms shall have the meaning indicated.

1.02 **Association** shall mean and refer to the Howard Subdivision Owners Association, an unincorporated association subject to the Community Association Act, 75-8a-101 et seq, Utah Code Annotated (the "Act"). The name in which contracts shall be entered into, title to property shall be acquired, held, dealt in and disposed of, bank accounts shall be opened and suits shall be brought and defended by the management committee or officers thereof on behalf of the agents for the unit owners in the manner specified by the Act, the declaration, or the bylaws, is: "The Howard Subdivision Association".

1.03 **Common Area** shall mean and refer to that part of the Property which is not included within the Lots or public streets, including all improvements other than public utility lines now or hereafter constructed or located thereon. The Common Area shall include a holding pond, pumping facilities and secondary water distribution lines located in the Common Area. The legal description of the Common Area is set forth in Exhibit "B", attached, and is referred to as Parcel "A" on the subdivision plat recorded herewith.

1.04 **Declaration** shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions of Howard Subdivision, as the same may be amended from time to time (The Declaration may at times also be referred as the CC&Rs).

1.05 **Declarants** shall mean and refer to F. Burton Howard, Caroline Howard, and John W. Hansen, and their successors and assigns if such successors or assigns should acquire all or substantially all of the Declarants' undeveloped and partially undeveloped Lots.

1.06 **Lot** shall mean and refer to any of the nine (9) separately numbered parcels of land shown on the Plat Map comprising the Howard Subdivision.

1.07 **Manager** shall mean and refer to the person, firm or company, if any, designated from time to time by the Association to manage, in whole or part, the affairs of the Association and the Property.

1.08 **Member** shall mean and refer to every person or entity who holds membership in the Association.

1.09 **Mortgage** shall mean any first mortgage or first deed of trust by which a Lot or any part thereof is encumbered.

1.10 **Mortgagee** shall mean ( i) any person named as the mortgagee or beneficiary under any Mortgage by which the interest of any Owner is encumbered, or ( ii) any successor to the interest of such person under such Mortgage.

1.11 **Owner** shall mean and refer to the owner of record (in the office of the County Recorder of Weber County, Utah), whether one or more persons or entities, of a fee or undivided fee interest in any Lot, including contract sellers, but not including purchasers under contract until such contract is fully performed and legal title is conveyed of record.

1.12 **Plat** shall mean and refer to the subdivision plat of Howard Subdivision, prepared and certified by Gary L. Newman (a duly registered engineer or land surveyor), executed and acknowledged by the Declarants on the \_\_\_\_\_ day of \_\_\_\_\_, 2005, and filed for record in the office of the County Recorder of Weber County, Utah, on the \_\_\_\_\_ day of \_\_\_\_\_, 2005, as Entry No. \_\_\_\_\_, as the same may be amended from time to time.

1.13 **Property** shall mean and refer to the tract of real property covered by the Plat, a description of which is set forth in Exhibit "A" of this Declaration.

1.14 **Subdivision** shall mean all the Property, Common Area and Lots in the Howard Subdivision.

## **ARTICLE II NATURE AND INCIDENTS OF OWNERSHIP**

1.01 The Property and Lots shall be held, occupied, sold, leased, transferred and conveyed subject to the provisions of this Declaration. The Property is hereby divided into Lots, each consisting of a fee simple interest in a Lot and an undivided fee simple interest in the Common Area in accordance with the attached Exhibit "C", which sets forth the respective percentage of undivided interest in the Common Area appurtenant to each Lot. Such undivided interest in the Common Area is hereby declared to be appurtenant to the respective Lots. The percentage of undivided ownership interest in the Common Area which is appurtenant to each Lot has been computed by determining the ratio between the total square footage of each Lot (as set forth in Exhibit "C"; and subtracting from lots 5 and 6 the square footage that may not be irrigated from the Association's Common Area water pond) and the aggregate square footage of all Lots in the Subdivision (with such minor adjustments in some or all of the resulting percentage interests as may have been necessary to assure that the total undivided interest respecting the Subdivision equals 100%). A Unit Owner's percentage of ownership interest in the Common Areas shall be the same for all purposes, including voting and assessment of common expenses. Declarants have conveyed to the Association 7.5 shares of Warren Irrigation Company stock, which may be used by members of the Association as provided in Exhibit "C".

## **ARTICLE III ASSOCIATION MEMBERSHIP AND VOTING**

1.01 **Membership.** Every Owner shall be a member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it is appurtenant. Any devise, encumbrance, conveyance or other disposition of a Lot shall be

construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the Owner's membership in the Association and the rights appurtenant thereto. Membership shall begin automatically and immediately upon becoming an Owner, and shall terminate immediately and automatically upon ceasing to be an Owner. No person or entity other than an owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Lot.

**1.02 Voting Rights.** The Association shall have the following-described two classes of voting membership:

**Class A.** Class A Members shall be all Owners, but excluding the Declarants until the Class B membership ceases. Class A Members shall be entitled to vote the percentage interest in the Common Area as provided in the attached Exhibit "C".

**Class B.** The Class B Member shall be the Declarants. For each Lot in Declarants' name, the Class B Member shall be entitled to vote three times the percentage interest in the Common Area as provided in the attached Exhibit "C". The Class B Membership shall automatically cease and be converted to a Class A Membership on the first to occur of the following events:

- ( a ) When the total number of votes held by all Class A Members exceeds the total number of votes held by the Class B Member.
- ( b ) The expiration of three (3) years after the date on which this Declaration is filed for record in the office of the County Recorder of Weber County, Utah.

**1.03 Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as the Owners thereof may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall conclusively be presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

**1.04 Appointment of Management Committee by Declarant.** Until the date three (3) years after this Declaration is filed for record in the Official Records of the County Recorder of Weber County, Utah, the Declarants shall have the right and option to appoint, remove and replace all of the members of the Management Committee of the Association. In the event the Declarants fail to exercise this option or in the event the Declarants by written notice to the Association voluntarily turns over to the Members the responsibility for electing the Management Committee before the termination of said three-year period, the Management Committee shall be elected by the Members of the Association in accordance with the Declaration and Bylaws of the Association.

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**1.05 Consent in Lieu of Vote.** In any case in which this Declaration requires

for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such a requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership concerned.

#### **ARTICLE IV OWNERS RIGHTS IN COMMON AREA**

**1.01 Owners' Easements of Use and Enjoyment.** Every Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Such right and easement shall be subject to the following:

- (a) The right of the Association to adopt, rescind, amend and enforce rules and regulations governing the use of the Common Area.
- (b) The right of Weber County and any other governmental or quasi-governmental authority having jurisdiction over the Property to access and ingress and egress over and across any private open space contained within the Common Area for purposes of providing police and fire protection, and providing any other municipal or governmental service.
- (c) The Association is granted an easement over that portion of Lot 5 that borders Lot 4 (as indicated on the Plat), which easement exists (in addition to containing utility lines) for the purpose of providing the Association with access to the Common Area to maintain, replace and repair the holding pond and pump facilities appurtenant to the Association's irrigation system. This foot easement shall be kept free of any buildings, shrubs, plants and trees, and shall be maintained as a common expense of the Association to provide vehicular access to the Common Area. The description of the easement is more fully provided in Exhibit "D", attached hereto.
- (d) The rights and easements set forth below in Article V of this Declaration.

#### **ARTICLE V OTHER EASEMENTS**

**1.01 Reserved Rights and Easements to Complete Development.** There is hereby reserved to Declarants, and the Declarants shall have such easements and rights of ingress and egress over, across, through and under the Property and any improvements now or hereafter constructed thereon as may be reasonable necessary, desirable or convenient to construct a residence on each and every Lot and to improve the Common Area with such structures and facilities designed for the use and enjoyment of all members as the Declarants may reasonable deem to be appropriate. Said reserved right and easement shall be transferable and shall include, without limitation, a right and easement to enter the Common Area during the period of

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construction and sale of the Property, and to maintain such facilities and perform such operations as in the sole discretion of Declarants may be reasonably necessary, desirable or convenient. The rights and easements reserved to Declarants in this Section 5.01 shall terminate on the date seven (7) years after this Declaration is filed for record in the office of the County Recorder of Weber County, Utah.

**1.02 Utilities and Easements.** If pursuant to the rights and easements reserved in Section 5.01 above, the Property or any improvement thereon is traversed or partially occupied by a permanent utility line or similar or related improvement (including, but not limited to lines, pipes, wires, conduit and other equipment for culinary or secondary water, sewer, storm water, gas, telephone, electricity, television cable or multiple mailboxes) a perpetual easement for such utility or improvement and for the maintenance, repair and replacement thereof shall exist. In addition, there is hereby reserved to Declarants, and until the date seven (7) years after this Declaration is filed for record in the office of the County Recorder of Weber County, the Declarants shall have the right and power to grant specific easements and rights of way, both temporary and permanent, over, under or across any part of the Common Area, to such utility companies and public authorities and on such terms and conditions as the Declarants may in their sole discretion deem to be reasonable necessary or appropriate to provide for construction, maintenance and operation of the Common Area and the Lots. From and after the date upon which the Common Area are conveyed by the Declarants to the Association, the Association shall have the right and power, without consent or approval of the Members, to grant such rights of way and easements for public utilities over any part of the Common Area as the Management Committee may deem to be consistent with the intended uses of the Common Area. The Management Committee is granted an easement over the Property described in Exhibit "D", attached (which easement burdens Lots #5), for the purpose of having access for maintenance and repair to the Common Area, as more fully described in Section 4.01(c) herein.

**1.03 Easements for Maintenance and Repair.** There is hereby granted to the Association, its officers, agent and employees (including employees of the Manager, if any) a right and easement to have access to all of the Common Area and to have access to the Lots from time to time during such reasonable hours as may be necessary or appropriate to perform the Association's obligations of maintenance and repair, to maintain any utilities for which an easement has been granted, to prevent damage to the Common Area or any residence or to perform any other function which the Association is obligated or permitted to perform under this Declaration, Bylaws or rules and regulations of the Association. Any damage caused thereby shall be repaired by the Association and at the expense of the Association.

## **ARTICLE VI OPERATION AND MAINTENANCE**

**1.01 Operation and Maintenance of Common Area by Association.** Subject to the rights and duties of the Declarants and of the Owners as set forth in this Declaration, the Association shall provide and be responsible for the management, control, operation, care, maintenance, repair, replacement and upkeep of the Common Area, and shall keep the same safe, operational, and in good working order.

**1.02 Rules and Regulations.** The Association shall have the power and the authority to promulgate, rescind, amend and enforce reasonable rules and regulations governing the use of the Common Area; provided, however, that such rules and regulations shall be consistent with the rights and obligations established by this Declaration. The Association shall furnish to each Owner copies of all such rules and regulations promulgated by the Association, and copies of all amendments thereto and rescissions thereof.

**1.03 Manager.** The Association may by written contract delegate in whole or in part to a professional Manager such of the Association's duties, responsibilities, functions, and powers hereunder as are properly delegable.

**1.04 Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**6.05 Septic System.** Lot Owners are required to install an "at-grade septic system" on their Lots and shall be solely responsible for the maintenance and repair of their own septic system.

## **ARTICLE VII ASSOCIATION'S INSURANCE AND TAXES**

**1.01 Public Liability Insurance.** The Association shall obtain and maintain at all times a broad form of comprehensive liability insurance coverage, in such amounts and in such forms as the Association deems advisable to provide adequate protection for the Association, its Management Committee, the Manager (if any), agents and employees of the Association and the Members against liability for personal injury, death, and property damage arising from or incident to the ownership, operation, management, maintenance, repair, use, and other functions related to the Common Area. Said policy or policies of insurance shall provide a cross-liability endorsement pursuant to which the rights of the named insureds among themselves are not prejudiced.

**1.02 Fire and Casualty Insurance.** In the event that the Common Area shall include any building, structures, recreational facilities or other insurable improvements having an aggregate value in excess of One Thousand Dollars (\$1000.00), the Association shall obtain and keep in full force and effect at all times a policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full replacement value of all insurance improvements comprising part of the Common Area. The insured under any such policy shall be the Association.

**1.03 Fidelity Insurance or Bond.** The association may purchase, in such amounts and in such forms as it deems appropriate, fidelity insurance or a bond to cover against dishonesty of officers, agents or employees, destruction or disappearance of money or securities, and forgery.

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**1.04 Officers and Directors Liability Insurance.** The Association may purchase and maintain insurance on behalf of any person who is a member of the Management Committee or other officer, director, agent or employee of the Association in such forms and amounts as the Association may deem necessary or appropriate in accordance with its Bylaws to protect any such person against liability asserted against him or incurred by him in any such capacity or arising out of his status as such.

**1.05 Additional Insurance.** In addition to the insurance coverage required by this Declaration, the Association shall have the power and authority to obtain and maintain other similar and dissimilar insurance coverage in relation the Common Area and the Association's duties and responsibilities hereunder, which additional insurance coverage may be in such amounts and in such forms as the Association from time to time deems appropriate.

**1.06 Adjustment and Contribution.** Exclusive authority to adjust losses under policies hereafter purchased and maintained by the Association hereunder shall be vested in the Association. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.

**1.07 Taxes and Assessments on Common Area.** The Association shall pay all taxes, assessments, charges, and impositions of every kind and nature which are lawfully assessed or imposed by any governmental or public authority with respect to the Common Area for the period commencing on the date specified in Section 9.03 (a) below for commencement of annual assessments. The Association shall pay such taxes and assessments without regard to whether the record owner of the Common Area is the Declarants or the Association.

## **ARTICLE VIII BUILDING STANDARDS AND ARCHITECTURAL CONTROL**

**8.01 Architectural Control Committee.** No structure shall be erected, placed or altered on any lot in the Subdivision until the construction plans and specifications and a plot plan showing the location of the structure have been approved in writing by the Architectural Review Committee (hereinafter "ARC"), as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. The ARC shall consist of the members of the Management Committee. All decisions of the ARC shall be made by majority vote. Members of the ARC shall not be entitled to compensation for their services.

**8.02 Compliance with Declaration.** Notwithstanding the foregoing provisions, the ARC members shall have no affirmative obligation to be certain that all construction in the Subdivision complies with the restrictions contained herein and no ARC member shall have any liability or responsibility for any decision or lack thereof, in carrying out the duties of a ARC Member. The sole responsibility for compliance with the provisions of this Declaration shall rest with the lot owners in the Subdivision.

**8.03 Residential Lots.** All Lots in the Subdivision shall be known and

described as residential lots. No structure shall be erected, altered, placed or permitted to remain on any Lot which is not a single family dwelling not to exceed two stories in height with no less than a two-car garage. Any other outbuildings must be approved in advance by the ARC. Carports are prohibited.

**8.04 Dwelling Quality and Size.** Any rambler or single level dwelling shall have at least 1,650 square feet on the main level, exclusive of basement, open porches and garages. A two-story dwelling shall have a minimum of 2,000 square feet on the top two levels, exclusive of basement, open porches and garages. Any dwelling in excess of two levels shall have a minimum of 1,750 square feet above ground, exclusive of basement, open porches and garages.

**8.05 Construction Methods and Materials.** The exterior front of any structure erected in the Subdivision shall have at least 50 percent of its area covered with brick, native stone or stucco. All other sides of any structure shall have at least the four feet about the foundation covered with brick, native stone or stucco. Other exterior materials must be approved by the ARC. There shall be no log homes, log-like siding, vinyl siding or aluminum siding permitted. All buildings shall have a roof of at least a 4x12 pitch. All shingles shall be architectural asphalt shingles or bar tile or wood shake shingles.

**8.06 Temporary Structures Prohibited.** No structure of a temporary nature, such as a trailer, basement, tent, shack, garage or other outbuilding shall be used on any lot at any time as a residence.

**8.07 Continuing Application.** The provisions of this Section shall apply not only to all initial construction and development of and within the Property, but also in connection with any alteration, addition, restoration or reconstruction of buildings which are now or may hereafter be constructed or installed on any portion of the Property. All buildings shall be constructed or installed in accordance with the plans and specifications approved by the Association. No buildings shall be altered and no approved plans and specifications shall be modified in any respect pertaining to the exterior appearance or design of the subject buildings (or any other aspect of the same which is reflected in the plans and specifications previously approved by the Association) unless such alterations or modifications are approved in writing by the Association.

## **ARTICLE IX ASSESSMENTS**

**9.01 Covenant to Pay Assessments.** The Declarants, for each Lot owned by it, and for and as owner of the Property and every part thereof, hereby covenants and each Owner of any Lot by acceptance of instruments of conveyance and transfer thereof, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all annual and special assessments, such assessments to be fixed, established, levied and collected from time to time as hereinafter provided. No Owner may exempt himself or his Lot from liability from payment of the assessments provided for herein or diminish the amount of such liability by waiver or non-use of his rights concerning

his Lot.

**1.02 Purpose of Assessments.** The annual and special assessments levied by the Association hereunder shall be used exclusively to promote the health, safety and welfare of the residents of the Property, to operate, maintain and improve the Common Area, and to perform any other functions which the Association is obligated or permitted to perform under this Declaration. Without limiting the generality of the foregoing provisions of this Section 9.02, the uses made by the Association of assessments collected hereunder may include, among other things, payment of the costs of the following: Expenses of management, including fees for a Manager if any; taxes and special assessments; all insurance that the Association is required or permitted to maintain hereunder; wages and related expenses for the services of such personnel as the Association may determine to be necessary or desirable for the proper performance of its functions hereunder whether such personnel are furnished or employed directly by the Association or by a person or entity with whom it contracts; legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration; other necessary or desirable services for the improvement and maintenance of the Common Area or for the common use and benefit of the Owners as herein provided; any deficit remaining from a previous period; creation of a reasonable contingency, reserve, surplus and/or sinking fund; all goods and services procured by the Association in performing its responsibilities for maintenance of the Common Area and the exterior of the Lots hereunder; and any other expenses necessary or desirable to enable the Association to perform or fulfill its obligations, purposes, or functions under this Declaration.

**1.03 Annual Assessments.** Annual assessments shall be determined and levied by the Association against each and every Lot as follows:

- (a) **Commencement of Annual Assessments.** Annual assessments hereunder shall commence with respect to Lots conveyed to Class A members as of the first day of the first calendar month following the date on which the deed or conveyance of Lot from Declarants to an Owner who is a Class A Member is recorded in the official records of the County Recorder of Weber County, Utah. No assessments shall commence with respect to lots owned by Declarants until they are sold and conveyed to Class A members.
- (b) **Annual Assessment.** The Association may fix the annual assessment at an amount necessary to pay all expenses for maintenance of the Common Area. Annual Assessments may be collected on a monthly, quarterly or annual basis as determined by the Management Committee.

**1.04 Special Assessments.** In addition to the annual assessments provided for above, the Association may levy special assessments for the purpose of defraying, in whole or in part: (i) any expense or expenses not reasonably capable of being fully paid with funds generated by annual assessments; or (ii) the cost of any construction, reconstruction or unexpectedly required repair or replacement of items on or an improvement of the Common Area. Any such special assessment must be assented to by sixty percent (60 %) of the votes of each class of

membership which Members present in person or represented by Proxy are entitled to cast at a meeting duly called for that purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least then (10) but not more than thirty (30) days prior to the meeting date. Any special assessments levied hereunder shall be divided among and assessed to the Lots in accordance with the rates specified in Paragraph 9.05 below, and shall be payable over such periods and on such terms as the Association may determine.

**1.05 Rate of Assessments.** Both annual and special assessments shall be fixed according to the percentage interest in the Common Area as provided in Exhibit "C". Notwithstanding any contrary provisions of this Declaration, this Section 9.05 may be amended only upon the affirmative vote of seven (7) of the nine (9) Lot Owners consenting and agreeing to such amendment by an instrument duly recorded in the official records of Weber County, Utah.

**1.06 Quorum Requirements.** The quorum required for any action authorized by Section 9.04 above shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called ( subject to the notice requirements set forth in Section 9.04 at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

**1.07 Late Fees and Interest.** Any annual or special assessment not paid when due shall incur a late fee of not more than \$25.00 per month (as determined by the Management Committee) and shall bear interest at the rate of one percent (1%) per month from the date such portions become due until paid.

**1.08 Lien for Assessments.** All sums assessed to or levied against any Lot by the Association pursuant to the provisions of this Article IX, together with interest thereon and costs of collection hereof as herein provided, shall be secured by a lien on such Lot in favor of the Association. To further evidence such liens for sums assessed pursuant to this Article IX, the Association may (but shall not be obligated to) prepare a written notice of lien setting forth the amount of the assessment, the amount remaining unpaid, a description of the Lot, and the name of the record Owner thereof. Such notice shall be recorded in the office of the County Recorder for Weber County, State of Utah. No such notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien shall exist solely by reason of this Declaration, and the preparation and recording of any such notice of lien shall not be required in order to create or perfect such lien, but shall be solely at the discretion and for the convenience and better protection of the Association. The Association may enforce such lien by judicial foreclosure in the same manner in which mortgages on real property may be foreclosed under Utah law. If the Committee elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Unit hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated. Section 57-1-23 (1953), as amended. In any such foreclosure, the Owner of the Lot involved shall be required to pay all costs and expenses incurred by the Association in such

proceeding, including court costs and reasonable attorney fees, and such costs and expenses shall be secured by the lien being foreclosed.

**1.09 Personal Obligation of Owner.** The amount of each annual assessment and each special assessment against any Lot shall be the personal obligation of the owner of such Lot to the Association. The Association may maintain a suit to recover a money judgment for such personal obligations without foreclosing or waiving the lien securing the same. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay all cost and expenses incurred by the Association in connection therewith, including court costs and reasonable attorney fee.

**1.10 Statement of Account.** Upon payment of a reasonable fee not to exceed \$25.00 and upon written request of any Owner or any Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot, the Association shall issue a written statement setting forth any unpaid amounts of prior annual and special assessments against such Lot, the amount of the current annual assessment against such Lot and the due date or due dates thereof, the amount of any obligations for reimbursement of the Association owing by the Owner of such Lot, and any credits or pre-paid items with respect to such Lot. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

**1.11 Liability of Purchaser.** Subject to the provisions of Section 9.10, a purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Lot up to the time of the grant or conveyance; provided, however, that the provisions of this Section shall not prejudice such purchaser's right to recover from such seller the amount paid by the purchaser for such assessments.

## **ARTICLE X USE RESTRICTIONS**

**1.01 Residential Uses Only.** Each Lot is intended to be improved with a Home to be used for single family residential purposes, and is restricted to such use. No Lot or Home shall be used for business or commercial activity; provided, however, that nothing contained herein shall be deemed to prevent any Owner from leasing his Lot and Home, subject to all of the provisions of this Declaration.

**1.02 Trash.** No rubbish, trash, garbage or other waste material shall be kept or permitted upon any Lot or the Common Area, except in sanitary containers. No metals, bulk material or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Property. No materials shall be kept or stored on any lot that would be unsightly or a fire hazard.

**1.03 Nuisances.** No noxious or offensive activity (including but not limited to the repair of motor vehicles) shall be carried on, in or upon any Lot or the Common Area nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any other Owner. Parking of junk cars (those not properly licensed and regularly used) in the Subdivision is prohibited. No loud noises or noxious odors shall be permitted on the Property.

and the Association shall have the right to determine, in accordance with the Bylaws, if any noise, odor or activity producing such noise, odor or interference constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior 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 interfere with television or radio reception of any Owner in the Property, or exposed to the view of other Owners without the prior written approval of the Association.

**1.04 Prohibition of Damage and Certain Activities.** No damage to, or waste of, the Common Area or any part thereof shall be committed by any Owner or any guest of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste of the Common Area caused by such Owner, his family, guests, tenants, or invitees. No Lot or Home shall be used, occupied or altered in violation of the law, so as to jeopardize or cause a hazard to any person or other property, so as to create a nuisance or interfere with the rights of any Owner, or in any way which would result in cancellation or increase in the cost of any insurance which the Association or any other Owner is required to maintain under this Declaration.

**1.05 Restrictions on Further Subdivision.** No Lot shall be further subdivided or separated into smaller lots nor shall any Lot or fractional portion thereof be sold or conveyed so as to be held in divided ownership.

**10.06 Signs.** No sign of any kind shall be displayed to the public view on any lot except one professional sign of no more than 5 square feet advertising the property for sale.

**10.07 Fences.** No fence, wall or other similar structure shall be constructed or placed on any Lot nearer the street than the front house line, nor shall any fence, wall or similar structure be constructed to a height greater than 6 feet.

**10.08 Obstructions.** No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between 2 and 6 feet about the Subdivision roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and lines connecting them a points 20 feet from the intersection of the street lines or in the case of a rounded property corner, from the intersection of the street lines extended. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to prevent obstruction of such sight lines. No poplar trees shall be permitted with the Subdivision.

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**10.09 Water Drain Lines.** Owners of Subdivision Lots shall be responsible to install and maintain any necessary underground water drain lines within the bounds of such Lots.

**10.10 Easements.** Easements and rights of way shall be reserved to the Declarants, their successors and assigns, on and over the Subdivision, as shown on the recorded plat, for the erection, construction and maintenance and operation thereon or therein of drainage pipes or conduits, pipes, manholes, poles, wires and other means of conveying to and from Lots

in the Subdivision, gas, electricity, water, telephone, sewage and other services for the convenience of lot owners in the Subdivision.

**10.11 Enforcement of Covenants.** The Management Committee or any owner of any Lot in the Subdivision may enforce the covenants contained herein through any proceeding at law or in equity against any person violating them to enjoin or prohibit any violation and to recover any damages suffered by any Lot Owner.

## **ARTICLE XI MORTGAGE PROTECTION**

**1.01 Notice of Owners' Default.** From and after the time a Mortgagee makes written request to the Association therefore, the Association shall notify such Mortgagee in writing in the event that the Owner of the Lot encumbered by the Mortgage held by such Mortgagee neglects for a period of thirty (30) or more days to cure any failure on his part to perform any of his obligations under this Declaration.

**1.02 Subordination of Assessment Liens to Mortgages.** The lien on a Lot for unpaid assessments provided for under Article IX shall be subordinate to the Mortgage affecting such Lot, and the Mortgagee thereunder which comes into possession of the Lot shall take the same free of such lien for unpaid assessments, but only to the extent of assessments which accrue prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure.

## **ARTICLE XII GENERAL PROVISIONS**

**1.01 Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the operation of the Property. Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include all other genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define, limit, or otherwise affect the content, meaning, or intent of this Declaration or any Article, Section, or provision hereof. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof. Failure to enforce any provision, covenant, condition or restriction of this Declaration shall not operate as a waiver of any such provision, covenant, condition, or restriction or any other provision, covenant, condition, or restriction.

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**1.02 Compliance and Enforcement.** Each Owner and other occupant of the Property shall comply with the provisions, covenants, conditions, and restrictions of this Declaration, all rules and regulations promulgated hereunder by the Association, and all decisions and resolution of the Association adopted pursuant to the foregoing, as the same may be amended, modified, revised, or adopted from time to time. Failure on the part of any Owner

or other occupant of the Property to comply with any of the foregoing shall be grounds for an action to recover damages or for injunctive relief or both, maintainable by the Association or in a proper case, by an aggrieved Owner. In the event of any action by the Association to enforce the provisions, covenants, conditions, or restriction of this Declaration or rules and regulations promulgated hereunder, whether by formal legal proceedings or otherwise, the Association shall be entitled to recover from the offending Owner all costs and expenses incurred by the Association in connection therewith, including court costs and reasonable attorney fees. The obligations, provisions, covenants, conditions and restrictions contained in this Declaration with respect to the Association shall be enforceable by the Declarants or by any Owner through a proceeding for a prohibitive or mandatory injunction. The rights and remedies herein provided shall be in addition to all other rights and remedies of this Declaration, rules and regulations promulgated by the Association, and decisions and resolutions of the Association adopted pursuant thereto.

**1.03 Registration of Mailing Address.** Each Owner shall register with the Association from time to time his current mailing address. All notices and demands intended to be given to or served upon any Owner may be hand delivered or sent by first-class U. S. mail postage prepaid, and addressed to the Owner at his registered mailing address, or if no address has been registered, to the Owner at the address of his Lot.

**1.04 Obligation of Owners.** All obligations of an Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing or selling under contract his Lot. The Owner of a Lot shall have no obligation for assessments hereunder or other obligations hereunder (except interest and costs of collection with respect to prior obligations) accruing after he conveys such Lot.

**1.05 Amendment.** Except as otherwise provided herein, this Declaration may be amended only by an instrument duly executed and acknowledged by Members holding at least two-thirds (2/3) of the votes of each Class of Membership and recorded in the Official Records of the Court Recorder of Weber County, Utah. The foregoing right of amendment shall be subject to the following paramount right: For a period of three (3) years from the date this Declaration is filed for record in the Official Records of the County Recorder of Weber County, Utah, the Declarants shall have and is hereby vested with the right to amend this Declaration and the Plats by an instrument duly executed and acknowledged by Declarants and recorded in the Official Records of the County Recorder of Weber County, Utah. Such right of amendment shall apply without regard to the subject matter or the nature of the amendment involved, provided only that such right of amendment shall be subject to the specific provisions of Article XI above (Mortgagee Protection) and Section 9.05 above (Rate of Assessments) and that any such amendment shall be consistent with applicable law.

**1.06 Covenants to Run with Land.** This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarants, all parties who hereafter acquire any interest in a Lot or in the Common Area, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Living Unit shall comply with, and all interests in all Lots or in the Common Area shall be

subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determination contemplated by this Declaration. By acquiring any interest in a Lot or in the Common Area, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

**1.07 Declarants's Rights Assignable.** The rights of the Declarants under this Declaration or in any way relating to the Property may be assigned to any person or entity who acquires all or substantially all of the Declarants's rights and interests in and to the undeveloped and partially undeveloped Lots.

**1.08 Effective Date.** This Declaration and any amendment hereof shall take effect upon recording in the office of the County Recorder of Weber County, State of Utah.

IN WITNESS WHEREOF, the undersigned have executed this Declaration the day and year first above written.

DECLARANTS

HOWARD SUBDIVISION

By F. Burton Howard  
F. Burton Howard

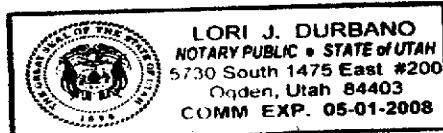
By Caroline Howard  
Caroline Howard

By John W. Hansen  
John W. Hansen

STATE OF UTAH )  
:ss.  
COUNTY OF WEBER )

On the 31 day of March, 2005, personally appeared before me, the undersigned Notary Public, F. Burton Howard, Caroline Howard, and John Hansen, who acknowledged to me that they did in fact execute this Declaration.

Lori J. Durbano  
NOTARY



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## Exhibit "C"

### INTEREST IN COMMON AREA & WATER USAGE PER LOT

Lot Number	Square Footage of Irrigable Portion of the Lot	Percentage Interest in Common Area based Irrigable Portion of the Lot	Gallons of Irrigation Water per Week
Lot # 1	43,466	7.99	48,402
Lot # 2	43,728	8.04	48,694
Lot # 3	47,360	8.71	52,738
Lot # 4	74,880	13.76	83,384
Lot # 5	52,854 <sup>1</sup>	9.71	58,856
Lot # 6	60,547 <sup>2</sup>	11.13	67,423
Lot # 7	57,498	10.57	64,028
Lot # 8	64,548	11.86	71,879
Lot # 9	99,204	18.23	110,471
<b>TOTAL</b>	<b>544,085</b>	<b>100.00%</b>	<b>605,880 <sup>3</sup></b>

<sup>1</sup> The total square footage lot #5 is 206,103, but only 52,854 may be irrigated from the Association's Common Area water pond.

<sup>2</sup> The total square footage lot #6 is 292,263, but only 60,547 may be irrigated from the Association's Common Area water pond.

<sup>3</sup> Based on 7.5 Shares of Warren Irrigation Company water shares @ 6.0 cubic feet per second for thirty minutes.

## Exhibit "A"

### **BOUNDARY DESCRIPTION OF HOWARD SUBDIVISION**

A Part of the Northwest Quarter of Section 13, Township 6 North, Range 3 West, Salt Lake Base and Meridian, U.S. Survey, more particularly described as follows:

Beginning at the Northwest Corner of Section 13, Township 6 North, Range 3 West, Salt Lake Base and Meridian, U.S. Survey, and running thence South  $89^{\circ}04'07''$  East, along the North Line of said Section, 2014.36 feet; thence South  $00^{\circ}24'09''$  West 74.81 feet; thence South  $57^{\circ}55'09''$  West 119.47 feet; thence South  $62^{\circ}48'59''$  West 979.83 feet; thence South  $69^{\circ}10'37''$  West 208.80 feet; thence South  $42^{\circ}46'45''$  West 108.92 feet; thence North  $89^{\circ}03'19''$  West 744.05 feet; thence North  $89^{\circ}35'51''$  West 33.00 feet; thence North  $00^{\circ}24'09''$  East 760.32 feet, to the point of beginning.

Contains 23.208 Acres, more or less

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## Exhibit "B"

### **DESCRIPTION FOR COMMON AREA RESERVOIR**

A part of the Northwest Quarter of Section 13, Township 6 North, Range 3 West, Sale Lake Base and Meridian, U.S. Survey:

Beginning at a point 692.87 feet South  $0^{\circ}24'00''$  West along the Section line and 850.45 feet East from the Northwest corner of said Quarter Section; running thence North  $36^{\circ}02'07''$  West 49.88 feet; thence North  $27^{\circ}39'46''$  East 137.76 feet; thence North  $17^{\circ}32'03''$  West 148.79 feet; thence South  $89^{\circ}04'07''$  East 633.26 feet; thence South  $62^{\circ}48'59''$  West 480.92 feet; thence South  $69^{\circ}10'37''$  West 208.80 feet to the point of beginning.

Contains 2.268 Acres

E 21064 15 P619 0F20

## Exhibit "D"

### **DESCRIPTION FOR ACCESS ROAD EASEMENT ACROSS LOT # 5**

A 20.0 foot wide strip being 10.0 feet either side of the following described centerline:

Beginning at point 420.34 feet South  $0^{\circ}24'09''$  West along the Section line and 630.23 feet East from the Northwest corner of Section 13, Township 6 North, Range 3 West; running thence South  $38^{\circ}41'49''$  East 349.18 feet.

E 21064 15 P620 0F20