

21-076-0001-0018

**AMENDMENT AND RESTATEMENT OF  
DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF  
HUNTSVILLE MEADOWS SUBDIVISION**

This Amendment and Restatement amends and restates the Declaration of Covenants, Conditions and Restrictions of Huntsville Meadows ("**Declaration**") in its entirety and is made this 1<sup>st</sup> day of November 1999, by Rondell B. Hanson, an individual ("**Declarant**"), with respect to the following recitals:

**RECITALS**

1. Declarant is the owner of that certain real property ("**Properties**") located in the County of Weber, State of Utah, which is more particularly described in Exhibit A attached hereto and incorporated herein by reference. Declarant also owns shares of stock in the Irrigation Company, as more particularly described in this Declaration.

2. Declarant intends to convey the Properties, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in this Declaration, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties and all of which shall run with the Properties and be binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

3. It is the further intention of the Declarant to sell and convey residential Lots to the Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such Owners which are set forth in this Declaration and which are intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Properties as a planned development. Finally, it is the intention of Declarant that the "Common Areas" and "Common Facilities" be owned and maintained by the Association, but reserved exclusively for the use and enjoyment of the Members of the Association, their tenants, lessees, guests and invitees, all subject to the terms and conditions of the Governing Documents.

**ARTICLE I**

**DEFINITIONS**

**1.1 "Architectural Committee"** means the committee created in accordance with Article V of this Declaration.

**.2 "Articles"** means the Articles of Incorporation of Huntsville Meadows Homeowner's Association, which are filed in the Office of the Utah Secretary of State, as such Articles may be amended from time to time.

**I.3 "Assessment"** means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of Article IV of this Declaration.

**I.4 "Association"** means Huntsville Meadows Homeowner's Association, a Utah nonprofit corporation.

**.5 "Association Rules"** means the rules, regulations and policies adopted by the Governing Board of the Association, pursuant to Section 3.8 of this Declaration, as the same may be in effect from time to time.

**I.6 "Governing Board" or "Board"** means the Governing Board of the Association.

**I.7 "Bylaws"** means the Bylaws of the Association, as such Bylaws may be amended from time to time.

**I.8 "Common Area"** means all easements and improvements located on the easements owned by the Association for the common use and enjoyment of the Owners. The Common Areas are described in Exhibit B, attached hereto. Unless the context clearly indicates a contrary intent, any reference herein to the "Common Areas" shall also include any Common Facilities located thereon.

**I.9 "Common Expense"** means any use of Common Funds authorized by the Governing Documents and includes, without limitation: (a) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area, Common Facilities, (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Governing Board, (c) any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Areas and Common Facilities that the Association is obligated to maintain or replace, and for nonpayment of any Assessments, and (d) the use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

**I.10 "Common Facilities"** means the trees, plantings, lawns, shrubs, landscaping, fences, utilities, berms, pipes, lines, lighting fixtures, structures, fire cisterns, the Irrigation Distribution System, drainage systems, retention basins and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area.

**I.11 "County"** means the County of Weber, State of Utah, and its various departments, divisions, employees and representatives. If any portion of the Properties becomes a portion of an incorporated city, then the term "County" shall be deemed to include the city in which that portion of the Properties is located.

**.12 "Declarant"** means the original developer of the Properties, namely Rondell B.

Hanson, an individual.

**.13 "Declaration"** means this instrument, as it may be amended from time to time.

**.14 "Governing Documents"** is a collective term that means and refers to this Declaration and to the Articles, the Bylaws, and the Association Rules.

**.15 "Improvement"** includes, without limitation, the construction, installation, alteration, or remodeling of any buildings, walls, decks, fences, swimming pools, landscaping, landscape structures, skylights, solar heating equipment, spas, antennas, utility lines, or any structure of any kind. In no event shall the term "Improvement" be interpreted to include projects which are restricted to the interior of any Residence.

**.16 "Irrigation Company"** means the Huntsville Irrigation Company, a Utah nonprofit corporation.

**.17 "Irrigation Distribution System"** means the pipes and other structures used to distribute irrigation water to the Lots.

**.18 "Lot"** means any parcel of real property designated by a number on the Subdivision Map for any portion of the Properties, excluding the Common Area. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other improvements constructed or to be constructed on a Lot.

**.19 "Member"** means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended.

**.20 "Mortgage"** means any security device encumbering all or any portion of the Properties, including any deed of trust. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

**.21 "Owner"** means any person, firm, corporation or other entity which owns a fee simple interest in any Lot. The term "Owner" shall include the Declarant for so long as the Declarant possesses any Lot within the Properties, and, except where the context otherwise requires, the family, guests, tenants and invitees of an Owner.

**.22 "Owner of Record" and "Member of the Association"** include an Owner and mean any person, firm, corporation or other entity in which title to a Lot is vested as shown by the official records of the Office of the County Recorder.

**.23 "Properties"** means all parcels of real property (Common Area and Lots) described in Recital 1 hereof, together with all buildings, structures, utilities, Common Facilities, and other improvements now located or hereafter constructed or installed thereon, and all appurtenances thereto.

.24 **"Regular Assessment"** means an Assessment levied on an Owner and his or her Lot in accordance with Section 4.2 hereof.

.25 **"Residence"** means a private, single family dwelling to be constructed on a Lot.

.26 **"Single Family Residential Use"** means occupation and use of a Residence for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy single family residential dwellings.

.27 **"Special Assessment"** means an Assessment levied on an Owner and his or her Lot in accordance with Section 4.3 hereof.

.28 **"Special Individual Assessment"** means an Assessment made against an Owner and his or her Lot in accordance with Section 4.4 hereof.

.29 **"Subdivision Map"** means the Delinquency Statement for any phase of development within the Properties referenced in Recital 1 of this Declaration.

## ARTICLE II

### PROPERTY RIGHTS AND OBLIGATIONS OF OWNERS

**II.1 Owners' Nonexclusive Easements of Enjoyment.** Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Areas within the Properties, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following rights and restrictions:

(a) The right of the Association to adopt Association Rules as provided in Section 3.8 hereof, regulating the use and enjoyment of the Properties for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or Tenant, to temporarily suspend the voting rights and/or right to use the common facilities, other than roads, by any Owner and/or the Owner's Tenants and guests.

(b) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the common area and common facilities and in aid thereof to mortgage said property; provided, however, that the rights of any such Mortgagee in said properties shall be subordinate to the rights of the Owners hereunder; and further provided that any such indebtedness shall be considered an expense of the Association for purposes of the Special Assessment provisions of Section 4.3 hereof.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners; provided, however, that no such

dedication or transfer shall be effective unless an instrument, approved by at least two-thirds of the voting power of the Members, and their first Mortgagees consenting to such dedication or transfer has been recorded. Furthermore, no dedication shall be permitted that impairs the ingress and egress to any Lot. Said instrument may be executed in counterparts so long as each counterpart is in recordable form.

**II.2 Persons Subject to Governing Documents.** All present and future Owners, tenants and occupants of Lots within the Properties shall be subject to, and shall comply with, each and every provision of the Governing Documents.

**II.3 Delegation of Use.**

(a) **Delegation of Use and Leasing of Residences.** Any rental or lease of a Residence shall be subject to the provisions of the Governing Documents, all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-lessor shall provide any tenant or lessee with a current copy of all Governing Documents and shall be responsible for compliance by the Owner's tenant or lessee with all of the provisions of the Governing Documents during the tenant's/lessee's occupancy and use of the Residence.

(b) **Discipline of Lessees; Exercise of Eviction Authority.** Subject to subparagraph (c) below, in the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Association may take such corrective action as it deems necessary or appropriate under the circumstances.

Any fine or penalty levied pursuant to this Section 2.3 shall be considered a Special Individual Assessment. If a Special Individual Assessment is imposed as a result of the conduct of a renter or lessee, the renter or lessee is personally obligated for the payment of such assessments in the event the Owner-lessor fails to pay the assessments prior to the delinquency date.

**II.4 Obligations of Owners.** Owners of Lots within the Properties shall be subject to the following:

(a) **Owner's Duty to Notify Association of Tenants and Contract Purchasers.** Each Owner shall notify the secretary of the Association or the Association's property manager, if any, of the names of any contract purchaser or tenant of the Owner's Lot. Each Owner, contract purchaser or tenant shall also notify the secretary of the Association of the names of all persons to whom such Owner, contract purchaser or tenant has delegated any rights to use and enjoy the Properties and the relationship that each such person bears to the Owner, contract purchaser or tenant.

(b) **Contract Purchasers.** A contract seller of a Lot must delegate his or her voting rights as a Member of the Association and seller's right to use and enjoy the Common Area and Common Facilities to any contract purchaser in possession of the property subject to the contract of sale. Notwithstanding the foregoing, the contract seller

shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

**(c) Notification Regarding Governing Documents.**

(i) As soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Lot, the Owner thereof must give the prospective purchaser (A) a current copy of the Governing Documents; (B) the Association's most current financial statement; (C) a true statement in writing from the Association ("**Delinquency Statement**") as to the amount of any delinquent Assessments, together with information relating to late charges, attorneys' fees, interest, and reasonable costs of collection which, as of the date the statement is issued, are or may become a lien on the Lot being sold; (D) a true statement in writing from an authorized representative of the Association as to the amount of the Association's current Regular and Special Assessments (if any) and fees; and (E) a notice of any change in the Association's current Regular or Special Assessments and fees that have been approved by the Board but that have not become due and payable as of the date that the information is provided.

(ii) The Association shall provide the Owner with a copy of the current Governing Documents, together with the Delinquency Statement referred to in the immediately preceding paragraph. The Association shall be entitled to impose a fee for providing the Governing Documents and Delinquency Statement equal to (but not more than) the reasonable cost of preparing and reproducing the requested materials. In addition, the Association may impose a reasonable fee to cover its actual costs incurred to change its records in connection with a change of ownership of a Lot.

**(d) Payment of Assessments and Compliance With Rules.** Each Owner shall pay when due each Regular, Special and Special Individual Assessment levied against the Owner and his or her Lot and shall observe, comply with and abide by any and all rules and regulations set forth in, or promulgated by the Association pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

**(e) Discharge of Assessment Liens.** Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Lot.

**(f) Joint Ownership of Lots.** In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this subparagraph shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

(g) **Termination of Obligations.** Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferor-Owner shall not be liable for any Assessments levied with respect to such Lot which become due after the date of recording of the deed evidencing said transfer and, upon such recording, all Association membership rights possessed by the transferor by virtue of the ownership of said Lot shall cease.

**II.5 Distribution of Irrigation Water.** Owners of Lots within the Properties shall be entitled to a portion of the water available to the Properties from the Irrigation Company, subject to the following:

(a) **The Association's Share of Water Rights.** Each year, the Irrigation Company will provide to the Association a percentage of the total water available from the Irrigation Company to all properties serviced by the Irrigation Company.

(b) **Distribution of Water.** When water is allocated to the Association by the Irrigation Company, the water will be distributed to the Lots through the Irrigation Distribution System.

(c) **Owner's Rights to Irrigation Water; Enforcement of Distribution Procedure.** Each Owner will be entitled to irrigation water only when (i) such water has been distributed to the Association by the Irrigation Company and (ii) the Association has distributed the water to such Owner in accordance with the distribution procedures established by the Association. In no event shall any Owner be entitled to any irrigation water in addition to the irrigation water distributed to such Owner by the Association or during any time when irrigation water is not being distributed to the Properties by the Irrigation Company. If any Owner violates the distribution procedures established by the Association and uses irrigation water in violation of such procedures, the Association will be entitled to exercise any and all remedies available to the Association in the Governing Documents, at law or in equity. In addition, the Association shall be entitled to impose reasonable fines and penalties for the use of irrigation water in a manner inconsistent with this Section 2.5.

(d) **Compliance with Irrigation Easement Agreement.** The Board shall be responsible for ensuring compliance by the Association with that certain Irrigation Easement Agreement between the Declarant and the Irrigation Company attached hereto as Exhibit C.

### **ARTICLE III**

#### **HOMEOWNERS ASSOCIATION**

**III.1 Initial Control of Association.** Notwithstanding anything to the contrary contained herein, the Declarant shall have sole control of the Association until 120 days following such time as the 14 Lots have been sold or otherwise transferred by the Declarant.

**III.2 Association Membership.** Every Owner of a Lot shall be a Member of the Association. Each Owner shall hold one membership in the Association for each Lot owned and the membership shall be appurtenant to such Lot.

**III.3 One Class of Membership.** Once the Declarant has transferred control of the Association to the Members, the Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

**III.4 Voting Rights of Members.** Each Member of the Association shall be entitled to one vote for each Lot owned by said Member. When more than one person holds an interest in any Lot, all such persons shall be Members, although in no event shall more than one vote be cast with respect to any Lot.

**III.5 Assessments.** The Association shall have the power to establish, fix and levy Assessments against the Owners of Lots within the Properties and to enforce payment of such Assessments.

**III.6 Transfer of Memberships.** Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant and then only to the purchaser. In the case of a sale, membership passes automatically to the purchaser upon recording of a deed evidencing transfer of title to the Lot. In the case of an encumbrance of such Lot, a Mortgagee does not have membership rights until he or she becomes an Owner by foreclosure or deed in lieu thereof. Tenants do not thereby become Members, although the tenant and Members of the tenant's family shall, at all times, be subject to the provisions of all Governing Documents.

### **III.7 POWERS OF THE ASSOCIATION**

(a) **Powers Generally.** The Association shall have the responsibility of owning, managing and maintaining the Common Areas and Common Facilities and discharging the other duties and responsibilities imposed on the Association by the Governing Documents. upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association and its Governing Board shall have the power to do any and all lawful things which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon shall be as set forth in Article VIII of the Bylaws.

(b) **Association's Limited Right of Entry.** The Association, and/or its agents shall have the right, when necessary, to enter any Lot to perform the Association's obligations under this Declaration, including (i) exterior maintenance or repair obligations, if any, on individual Residences; (ii) obligations to enforce the architectural minimum construction standards, and land use restrictions of Article VI and Article VII hereof; (iii) any obligations with respect to construction, maintenance and repair of

adjacent Common Facilities; or (iv) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, Association property or the Owners in common.

The Association's rights of entry under this subparagraph (b) shall be immediate in case of an emergency originating in or threatening the Lot where entry is required, or any adjoining Lots or Common Area, and the Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present. In all non-emergency situations, the Association or its agents shall furnish the Owner or his or her lessee with at least 24 hours' written notice of its intent to enter the Lot, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing within the Residence located on the Lot. In no event shall the Association's right of entry, as conferred hereunder, be construed to permit the Association or its agents to enter any Residence without the Owner's prior permission.

(c) **Maintenance of Fire Cisterns.** The Association and its Governing Board shall have the responsibility of maintaining the fire cisterns and insuring that the fire cisterns are kept full of water. The Association and its Governing Board shall keep the fire cisterns accessible at all times to fire protection agencies for inspection, repair or for use in fire suppression.

(d) **Maintenance of Drainage Facilities and Drainage Retention Basin.** The Association and its Governing Board shall have the responsibility of maintaining the drainage facilities and the drainage retention basin so that all drainage waters can be diverted into the retention basin.

(e) **Maintenance of Swale.** The Association and its Governing Board shall require that the Owners of Lots 4, 5, 6 and 17, as shown on the Subdivision Map, maintain the existing swale across such Lots so that drainage water from the upstream Properties can flow unimpeded across such Lots to the westerly boundary of the Properties.

### **III.8 Association Rules.**

(a) **Rule-Making Power.** The Board may enact and amend rules and regulations of general application to the Owners of Lots within the Properties.

Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences and privileges of Members thereunder. In the event of any material conflict between any Association Rule and any provision of the other Governing Documents, the conflicting provisions contained in the other Governing Documents shall be deemed to prevail.

(b) **Distribution of Rules.** A copy of the Association Rules, as they may from

time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner.

(c) **Adoption and Amendment of Rules.** Association Rules may be adopted or amended from time to time by majority vote of the Board, provided, however, that no Association Rules or amendments thereto shall be adopted by the Board until at least 30 days after the proposed rule or rule amendment has been communicated to the Owners in writing. The notice describing the proposed rule or amendment shall also set forth the date, time and location of the Board meeting at which action on the proposal is scheduled to be taken.

Any duly adopted rule or amendment to the Rules shall become effective immediately following the date of adoption thereof by the Board, or at such later date as the Board may deem appropriate. Any duly adopted rule or rule amendment shall be distributed to the Owners by mail.

**III.9 Breach of Rules or Restrictions.** Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth herein.

**III.10 Limitation on Liability of Association's Trustees and Officers.**

(a) **Claims Regarding Breach of Duty.** No trustee or officer of the Association (collectively and individually referred to as the "**Released Party**") shall be personally liable to any of the Association's Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or under the Bylaws, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Areas and Common Facilities and enforcement of the Governing Documents.

(b) **Other Claims Involving Tortious Acts and Property Damage.** No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the tortious act or omission of a volunteer member of the Board or volunteer officer of the Association shall recover damages from such Board member or officer if all of the following conditions are satisfied:

(i) The act or omission was performed within the scope of the volunteer Board member's or officer's Association duties;

- (ii) The act or omission was performed in good faith; and
- (iii) The act or omission was not willful, wanton, or grossly negligent.

The payment of actual expenses incurred by a Board member or officer in the execution of that person's Association duties shall not affect that person's status as a volunteer Board member or officer for the purposes of this Section.

## **ARTICLE IV**

### **ASSESSMENTS**

#### **IV.1 Assessments Generally.**

(a) **Covenant to Pay Assessments.** Each Owner of one or more Lots shall pay to the Association (i) Regular Assessments, (ii) Special Assessments, and (iii) Special Individual Assessments.

(b) **Extent of Owner's Personal Obligation for Assessments.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the Person who was the Owner of the Lot at the time the Assessment was levied. Each Owner who acquires title to a Lot (whether at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Lot so purchased which become due and payable after the date of such sale, although there may be an Assessment Lien on the Lot because a prior Assessment has not been paid.

(c) **Creation of Assessment Lien.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made.

(d) **No Avoidance of Assessment Obligations.** No Owner may exempt himself or herself from personal liability for Assessments, nor release the Lot from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his or her Lot or any other portion of the Properties.

#### **IV.2 Regular Assessments.**

(a) **Preparation of Annual Budget: Establishment of Regular Assessments.** Not less than 45 days prior to the beginning of the Association's fiscal year,

the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year by preparing and distributing to all Association Members a budget satisfying the requirements of Section 11.5 of the Bylaws.

**(b) Establishment of Regular Assessment by Board or Membership Approval Requirements.** The total annual expenses estimated in the Association's budget (less projected income from sources other than assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year.

**(c) Allocation of Regular Assessment.** The total estimated Common Expenses, determined in accordance with subparagraph (a), above, shall be allocated among, assessed against, and charged to each Owner according to the ratio of the square footage of each Lot within the Properties owned by the assessed Owner to the total square footage of all Lots within the Properties. Based upon this ratio, the percentage share of the total Regular Assessment allocable to each Lot within the Properties shall be as set forth in Exhibit D attached hereto and incorporated herein by reference. It is the intent of this allocation to equitably allocate Assessments in proportion to the value of common services furnished to the Owner's separate interest.

**(d) Mailing Notice of Assessment.** The Governing Board shall mail to each Owner at the street address of the Owner's Lot, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year no less than 45 days prior to the beginning of the next fiscal year.

**(e) Failure to Make Estimate.** If, for any reason, the Governing Board fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year.

**(f) Payment of Assessment.** The total Regular Assessment levied against each Owner and his or her Lot shall be all due and payable to the Association on or before January 1st of each year.

#### **IV.3 Special Assessments.**

**(a) Purposes for Which Special Assessments May Be Levied.** The Governing Board shall have the authority to levy Special Assessments against the Owners and their Lots for the following purposes:

**(i) Regular Assessment Insufficient in Amount.** If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then, the Governing Board shall levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in

whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder.

(ii) **Capital Improvements.** The Board may also levy Special Assessments for additional capital improvements within the Common Area (i.e., improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities).

(b) **Special Assessments Requiring Membership Approval.** No Special Assessments which in the aggregate exceed 10 percent of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied shall be made without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, provided that this membership approval requirement shall not apply to any Special Assessment levied to address "emergency situations".

(c) **Allocation and Payment of Special Assessments.** When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot in the same manner prescribed for the allocation of Regular Assessments.

#### **IV.4 Special Individual Assessments.**

(a) **Circumstances Giving Rise to Special Individual Assessments.** In addition to the Special Assessments levied against all Owners in accordance with Section 4.3, above, the Governing Board may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii) below. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

(i) **Damage to Common Area or Common Facilities.** In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(ii) **Expenses Incurred in Gaining Member Compliance.** In the event that the Association incurs any costs or expenses, to accomplish (A) the payment of delinquent Assessments, (B) any repair, maintenance or replacement to any portion of the Properties that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (C) to otherwise bring the Owner and/or his or her Lot into compliance

with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(iii) **Required Maintenance on Lots.** If any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash and junk automobiles; improper storage of vehicles; improper storage of farm equipment and other equipment of a similar nature; or improper weed or vegetation control, the Association shall have the right to enter said Lot, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

(b) **Levy of Special Individual Assessment and Payment.** Once a Special Individual Assessment has been levied against an Owner for any reason described, such Special Individual Assessment shall be recorded on the Association's Assessment roll, notice thereof shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within 30 days after the mailing of notice of the Assessment. Except as specifically prohibited by law, it is the intent of this Declaration that Special Individual Assessments (including without limitation those imposed to recover late payment penalties or to reimburse the association for the cost of repairing damage to the Common Areas or Common Facilities for which the assessed Member is responsible), if not paid prior to delinquency, may be collected either in an action at law or by resort to the lien and foreclosure remedies set forth herein.

**IV.5 Purpose and Reasonableness of Assessments.** Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively (a) to promote the recreation, health, safety and welfare of individuals residing within the Properties; (b) to promote the enjoyment and use of the Properties by the Owners and their families, tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Lot against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

**IV.6 Exemption of Certain of the Properties From Assessments.** The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Properties dedicated and accepted by a local public authority;
- (b) The Common Area and Common Facilities; and
- (c) Any Lot owned by the Association.

#### **IV.7 Maintenance of Assessment Funds.**

(a) **Bank Accounts.** All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Governing Board which has offices located within the State of Utah.

To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. Any interest received on such deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subparagraph (b), below.

(b) **Separate Accounts: Commingling of Funds.** Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made.

For purposes of accounting, but without requiring any physical segregation of assets, the Association shall maintain a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom.

#### **IV.7 Collection of Assessments; Enforcement of Liens.**

(a) **Delinquent Assessments.** If any installment payment of a Regular Assessment or lump sum or installment payment of any Special Assessment or Special Individual Assessment assessed to any Owner is not paid within 15 days after the same becomes due, such payment shall be delinquent and the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law beginning 30 days after the due date until the same is paid.

(b) **Effect of Nonpayment of Assessments.**

(i) **Creation and Imposition of a Lien for Delinquent Assessments.** The amount of any delinquent Regular or Special, or Special Individual Assessment, together with any late charges, interest and costs (including reasonable attorneys' fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the Lot of the Owner so assessed only when the

Association causes to be recorded in the Office of the County Recorder of the County, a Notice of Delinquent Assessment executed by an authorized representative of the Association, setting forth (A) the amount of the delinquent Assessment(s) and other sums duly imposed, (B) the legal description of the Owner's Lot against which the Assessments and other sums are levied, (C) the name of the Owner of Record of such Lot, (D) the name and address of the Association, and (E) the name and address of the trustee authorized by the Association to enforce the lien by sale. Upon payment in full of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof.

**(ii) Remedies Available to the Association to Collect Assessments.**

The Association may initiate a legal action against the Owner personally obligated to pay the delinquent Assessment, foreclose its lien against the Owner's Lot or accept a deed in lieu of foreclosure. Foreclosure by the Association of its lien may be by any means allowed under Utah law.

**(iii) Actions for Money Judgment.** In the event of a default in payment of any Assessment, the Association, in its name but acting for and on behalf of all other Owners, may initiate legal action, in addition to any other remedy provided herein or by law, to recover a money judgment or judgments for unpaid Assessments, costs and attorneys' fees without foreclosure or waiver of the lien securing same.

**V.8 Transfer of Lot by Foreclosure.** The following rules shall govern the Association's rights to enforce its Assessment collection remedies following the sale or foreclosure of a Lot.

**(a)** Except as provided in paragraph (b), below, the sale or transfer of any Lot shall not affect any Assessment lien duly recorded with respect to that Lot before the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

**(b)** The Association's assessment lien shall be extinguished as to all delinquent sums, late charges, interest, and costs of collection incurred before the sale or transfer of a Lot under a foreclosure by the holder of a prior encumbrance (but not under a deed-in-lieu of foreclosure). A "prior encumbrance" means any first mortgagee or other mortgage or lien recorded before the Association's assessment lien.

**(c)** No sale or transfer of a Lot as the result of foreclosure shall relieve the new Owner of that Lot (whether it be the former beneficiary of the first mortgage or other prior encumbrance, or a third party acquiring an interest in the Lot) from liability for any assessments thereafter becoming due or from the lien thereof.

**(d)** Any assessments, late charges, interest, and associated costs of collection that are lost as a result of a sale or transfer covered by paragraph (b), above, shall be

deemed to be a Common Expense collectible from the Owners of all of the Lots, including the person who acquires the Lot and his or her successors and assigns.

(e) No sale or transfer of a Lot as the result of foreclosure shall affect the Association's right to maintain an action against the foreclosed previous Owner of the Lot personally to collect the delinquent assessments, late charges, interest, and associated costs of collection incurred by that prior Owner prior to the sale or transfer.

**IV.9 Priorities.** When a Notice of Delinquent Assessment has been recorded, such notice shall constitute a lien on the Lot prior and superior to all other liens or encumbrances recorded subsequent thereto, except (a) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage or deed of trust with first priority over other Mortgages or deeds of trust) made in good faith and for value, provided that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a foreclosure involving a default under such first Mortgage or deed of trust, or other prior encumbrance.

## **ARTICLE V**

### **ARCHITECTURAL CONTROL**

#### **V.1 Architectural Committee Approval of Improvements.**

(a) **Approval Generally.** Before commencing construction or installation of any Improvement within the Properties, the Owner planning such improvement must submit to the Association's Architectural Committee a written request for approval. The Owner's request shall include structural plans, specifications and plot plans. Unless the Committee's approval of the proposal is first obtained, no work on the Improvement shall be undertaken.

(b) **Modifications to Approved Plans Must Also Be Approved.** Once a work of improvement has been duly approved by the Architectural Committee, no material modifications shall be made in the approved plans and specifications therefore and no subsequent alteration, relocation, addition or modification shall be made to the work of Improvement, as approved.

If work of Improvement, or any modification thereof, is proceeding without proper approval, the Association shall be entitled to exercise the enforcement remedies specified, herein including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper Architectural Committee review and approval is obtained.

**V.2 Committee Membership.** Until such time that the Declarant has sold or otherwise transferred 14 Lots, the Architectural Committee shall be composed of Declarant and

any persons or entities appointed by Declarant. Once Declarant is no longer the Owner of any of the Lots, the Architectural Committee shall be composed of three Members of the Association appointed by the Board. Committee members shall serve for one-year terms subject to the Board's power to remove any Committee member and to appoint his or her successor.

**V.3 Duties of Committee.** The Architectural Committee shall consider and act upon the proposals and plans submitted to it pursuant to this Declaration, adopt Architectural Rules, perform other duties delegated to it by the Governing Board and carry out all other duties imposed upon it by this Declaration.

**V.4 Meetings.** The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the Committee members shall constitute the action of the Committee and the Committee shall keep and maintain a written record of all actions taken.

Reasonable notice of the time, place and proposed agenda for Architectural Committee meetings shall be communicated before the date of the meeting to any Owner-Applicant whose application is scheduled to be heard. If the proposed Improvement will be visible from any neighboring Lot, the Owners of the other affected Residences shall be notified promptly of the Owner-Applicant's submittal and shall be furnished with notice of any Committee meeting where the application is scheduled to be heard.

**V.5 Architectural Rules.** The Architectural Committee may, from time to time and with approval of the Governing Board, adopt, amend and repeal rules and regulations to be known as "Architectural Rules." Said Rules shall interpret and implement the provisions hereof by setting forth (a) the standards and procedures for Architectural Committee review; (b) guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended or required for use within the Properties; and (c) the criteria and procedures for requesting variances from any property use restrictions that would otherwise apply to the proposed improvement under the Governing Documents. Notwithstanding the foregoing, no Architectural Rule shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the provisions of the Declaration shall prevail.

**V.6 Basis for Approval of Improvements.** The Committee shall grant the requested approval only if the Committee, in its sole discretion, finds that all of the following provisions have been satisfied:

- (a) The Owner has complied with the provisions of this Declaration,
- (b) The Owner's plans and specifications (i) conform to this Declaration and to the Architectural Rules in effect at the time such plans are submitted to the Committee; (ii) will result in the construction of an Improvement that is in harmony with the external design of other structures and/or landscaping within the Properties; and (iii) will not interfere with the reasonable enjoyment of any other Owner of his or her property, including, without limitation, the other Owner's rights to scenic and solar access free of

unreasonable obstructions; and

(c) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Properties and with the overall plan and scheme of development and the purposes of this Declaration.

The Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposal when considering an Owner's request so long as the committee acts reasonably and in good faith.

**V.7 Procedures for Obtaining Architectural Committee Approval of Plans and Specifications.**

(a) **Application for Final Approval.** All Owners who desire to undertake any work of Improvement must apply to the Architectural Committee and receive its prior approval. The application shall be in writing and shall contain all information that is necessary to reasonably evaluate the nature, design, location and extent of the proposed Improvement, including, at a minimum, one complete set of plans and specifications for the Improvement project (satisfying the requirements set forth in subparagraph (c) below) and such additional information as the Committee may reasonably request, either by Architectural Rule or while the project is under review.

(d) **Content of Plans and Specifications.** In order to be complete, the plans and specifications for the proposed Improvement shall include:

(i) A professionally prepared plot plan, which indicates (A) the size of the Lot, (B) Lot contour lines, (C) the location of all existing and proposed Improvements, (D) the proposed drainage plan for the Lot, as improved, and (E) the location of all proposed utility installations.

(ii) A professionally prepared (prepared by an architect or licensed building designer) set of plans showing all (A) elevations (including foundation), (B) floor plans, (C) location of all heating and/or cooling equipment, (D) decking, (E) screening devices, and (F) retaining walls.

(iii) Description of exterior materials (if not included with above plans) and samples of roofing material and exterior colors.

(iv) A complete and professionally prepared landscape plan which includes the names, location, and sizes of all proposed trees, shrubbery, and lawn area(s), identifies any trees scheduled for removal and describes the Owner's plans for replanting trees and vegetation and for stabilizing slopes during and after construction.

(v) The Owner's proposed construction schedule.

(e) **Inspection Fee and Deposits.** Once the Architectural Committee is under the control of the Association, the Architectural Rules may require that the submission of plans and specifications be accompanied by a reasonable fee.

(f) **Delivery of Plans and Specifications.** Plans and specifications shall be submitted to the Architectural Committee by personal delivery or first-class mail addressed to the Secretary of the Association or the Chairman of the Architectural Committee.

#### **V.8 Basis for Approval of Improvements.**

(a) The members of the Committee shall act reasonably and in good faith. Factors commonly considered by the Committee in reviewing proposed improvements include the quality of workmanship and materials proposed for the improvement project; the harmony of the proposed improvement's exterior design, finish materials, and color with that of the existing structures; and the proposed location of the improvement.

The Committee shall be entitled to determine that a proposed improvement or component thereof is unacceptable in the context of a particular Lot, even if the same or a similar improvement/component has previously been approved for use at another location or locations within the Properties.

**V.9 Proceeding With Work.** Upon receipt of approval of an Improvement from the Architectural Committee, the Owner shall, as soon as practicable, (a) satisfy all conditions thereof, (b) obtain any necessary grading or building permits (grading and building permits shall not be obtained prior to receipt of approval from the Architectural Committee) and (c) diligently proceed with the commencement of construction and excavation, if required, pursuant to said approval. In all cases, work on an Improvement project shall commence within one year from the date of such approval. If the Owner fails to comply with this paragraph, any approval given pursuant to this Article V shall be deemed revoked unless the Architectural Committee, upon written request of the Owner prior to the expiration of the initial one-year period, extends the time for commencement or completion. No such extension shall be granted except upon a finding by the Architectural Committee that there has been no change in the circumstances upon which the original approval was granted and that the Owner has a bona fide intention and ability to complete the Improvement project within the time specified in the extension request.

**V.10 Failure to Complete Work.** Unless the Owner has been granted an extension of time to complete the project by the Architectural Committee, construction, reconstruction, refinishing or alteration of any such Improvement must be complete within two years after construction has commenced, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner because of strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his or her agents.

**V.11 Landscaping.** Landscaping shall be deemed to be a work of Improvement requiring Architectural Committee approval hereunder. Landscaping shall include lawns, shrubs,

trees, flowers and any landscape structures. All approved landscaping must be completed within 60 days after a notice of occupancy has been filed with the County for the Owner's Residence.

**V.12 Enforcement.** In addition to other enforcement remedies set forth in this Declaration, the Architectural Committee shall have enforcement rights with respect to any matters required to be submitted to and approved by it, and may enforce such architectural control by any proceeding at law or in equity.

**V.13 Variances.** The Architectural Committee, in its sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this Article V, the minimum construction standards specified in Article VI, or in any land use restrictions specified in Article VII to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardship to Owner-applicants.

**V.14 Limitation on Liability.** Neither the Association, its Architectural Committee nor any member thereof shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any mistakes in judgment, negligence or nonfeasance arising out of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work of Improvement, whether or not pursuant to approved plans, drawings or specifications; (c) the development of any Lot within the Properties; or (d) the execution and filing of a Notice of Noncompliance, or an estoppel certificate pursuant to Section 5.18 above, whether or not the facts therein are correct, provided that such member has acted in good faith upon the basis of such information as may be possessed by him or her. The Architectural Committee will not review or in any way be responsible for the adequacy and building code compliance of any structural plans, drawings and specifications. The Architectural Committee shall only review plans, drawings and specifications to determine if such drawings comply with appropriate community standards, including, without limitation, the standards and requirements listed in Articles VI and VII.

**V.15 Compliance With Governmental Regulations.** Review and approval by the Architectural Committee of any proposals, plans or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Owner who desires to construct, install, or modify the Improvement.

## **ARTICLE VI**

### **MINIMUM CONSTRUCTION STANDARDS**

Unless a variance is requested from, and granted by, the Architectural Committee, Improvements constructed on any Lot shall conform to the following minimum construction standards:

**VI.1 Building Location.** All Residences shall be constructed in the location identified on each Lot for construction by Declarant.

**VI.2 Licensed Contractor.** Residential structures shall be constructed by a contractor licensed under the laws of the State of Utah.

**VI.3 Approval by Architectural Committee.** No building, fence, wall or other permanent structure or Improvement shall be erected, altered or placed on any Lot until building plans, specifications and a plot plan showing the location of structures on the Lots have been submitted to the Architectural Committee for review and approval as described in Article V hereof.

**VI.4 Minimum Square Footage Requirements.** Each Residence constructed on any Lot shall have a fully enclosed floor area (exclusive of roofed or unroofed porches, decks, terraces, garages, carports or other outbuildings) of not less than 2,500 square feet. Two level Residences shall contain a minimum of 3500 square feet and the main floor shall contain a minimum of 2,000 square feet. Horizontal wall elevations and vertical wall elevations on two level structures shall be broken with architectural elements and physical breaks in the façade.

**VI.5 Setback and Location of Structure.** Setbacks for any permanent structure (whether or not attached to the Residence) shall be at least 75 feet from the front Lot line.

**VI.6 No Temporary Structures.** No recreational vehicle, trailer, mobile home, camper, tent, shack, used structures, structures of a temporary character, shall be used on any Lot at any time as a Residence.

**VI.7 Utility Lines.** All utility lines running from overhead utility poles within the Properties to Improvements constructed on any Lot shall be placed underground.

**VI.8 Solar Heating Systems.** Subject to limitations imposed by Utah law, the Architectural Committee shall be entitled to adopt, as part of the Architectural Rules, reasonable regulations regarding the installation of solar heating systems. These rules may include limitations on placement and design of such systems to the extent necessary to avoid an unsightly appearance from neighboring Lots or Common Area.

**VI.9 Colors and Exterior Finishes.** All exterior colors, textures and materials, including roof materials, must be adequately described in the plans and specifications (with an indication where the colors will be used upon the finished dwelling), must be uniform on all buildings, including without limitation, Residences, garages, barns and other outbuildings and approved in writing by the Committee prior to initiation of construction. Color samples shall be submitted to the Committee along with the plans and specifications. The Committee is authorized to maintain a chart of approved colors.

**VI.10 Prohibition on A-Frame and Geodesic Dome.** No Residence shall be constructed which utilizes an "A-frame," or "geodesic dome" design.

**V.11 Roofs.** The roof design of all Residences must be approved by the Committee. Any approval by the Committee shall in no way imply any roof guarantee by such Committee.

Every Residence constructed on any of the Lots shall have a minimum roof overhang of 30" including gutters, unless deviation for a specified design and/or feature is approved by the Architectural Committee. All visible roofing on any Residence shall be uniform in design and material. Buildings may be approved without the minimum roof overhang, provided that the lack of overhang is an integral part of the specific design.

**VI.12 Drainage.** No Owner shall do any work, construct any Improvement, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Owner's or any adjacent Lots or parcels or Common Area as established in connection with the approval of the final subdivision and parcel maps applicable to the Properties by the County, except to the extent such alteration in drainage pattern is approved in writing by the Architectural Committee, the County and all other public authorities having jurisdiction. Plans and specifications submitted by an Owner to the Architectural Committee in connection with the construction of a Residence or other major structural Improvement shall include a drainage plan in sufficient detail to permit the Committee to assess the impacts, if any, of the Improvement on natural drainage courses.

**VI.13 Modular and Prefabricated Housing; Mobilehomes.** No modular housing unit or prefabricated housing unit assembled off the building site shall be permitted on any Lot.

**VI.14 Exterior Lighting and Fixtures.** Fluorescent, mercury vapor, sodium, or amber vapor lights, or standard outdoor lights of the type used for security must be enclosed in a manner that directs the light in a specific area without causing a visual impairment to passing motorists or a nuisance to neighboring properties. The issue of whether a nuisance exists shall be determined by the Architectural Committee in its sole discretion.

**VI.15 Glass and Skylights.** No natural aluminum type window or glass doors are permitted on any Residence or other building Improvement unless the frames are anodized or painted a neutral or earth tone color. Certain architectural glass treatments such as octagon- or hexagon-shaped windows, sloped glass, greenhouses or sunrooms with radius roof or wall sections, extensive use of black or heavy tint glass, mirrored or reflective glass, or brightly colored glass or polycarbonate panels are not permitted without specific prior approval of the Architectural Committee. No domed or "bubble" type skylights are permitted where visible from any eye level area within the public view.

**VI.16 Patios, Walkways and Driveways.** All driveways, patio, and walks materials shall be architecturally compatible to the design of the main structure. No natural soil or any unsecured finish is permitted.

**VI.17 Water Systems, Septic Systems and Pools.** No individual water supply system, on-site septic waste disposal system or swimming pool shall be permitted on any Lot unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of the appropriate public health authority and the Architectural Committee. Approval of such systems shall also be obtained, if required, by any responsible governmental agency.

**VI.18 Garages.** Each Residence shall have at least a two-car garage which may be either of an attached or detached design.

**VI.19 Fences.** All screening and fencing must be approved by the Architectural Committee and must be designed to conform to the design of the proposed or existing Residence; such screening must be architecturally designed and shall be constructed of wood, rock, masonry or wrought iron or a combination thereof. All screening and fencing must be maintained in a good sound structural manner.

**V.20 Landscaping.** Landscaping shall include lawns, shrubs, trees and flowers. The use of artificial materials such as plastic plants or flowers, artificial turf, or gravel gardens will be disapproved by the Committee, although nothing contained herein shall prohibit the use of large decorative rocks as a landscape element or the use of limited gravel and/or bark in flower beds between or under substantial vegetation. All approved landscaping must be completed within 60 days following receipt by the Owner of a Certificate of Occupancy for the Residence. In the event that the landscape Improvements are not completed by occupancy date, the Architectural Committee can require the Owner to post a bond in an amount not to exceed the estimated cost of completing the landscaping work.

## **ARTICLE VII**

### **USE OF PROPERTIES AND RESTRICTIONS**

In addition to the restrictions established by law or Association Rules promulgated by the Governing Board (consistent with this Declaration), the following restrictions are hereby imposed upon the use of Lots, Common Areas and other parcels within the Properties.

#### **VII.1 Use of Lots.**

(a) All Lots within the Properties shall be used solely for the construction of Residences whose occupancy and use shall be restricted to Single Family Residential Use. In no event shall a Residence be occupied by more individuals than permitted by applicable law, zoning or other local governmental regulation. This Single Family Residential Use restriction is not intended to preclude construction of a "guest house" for the housing of occasional social guests or servants' quarters for the housing of servants or the domestic employees on the premises.

(b) All Residence and related structures erected on any Lot shall conform to the minimum construction standards set forth in Article VI hereof, unless a variance has been granted by the Architectural Committee. All buildings or structures erected upon any Lot shall be of new construction, and no buildings or structures shall be moved from other locations onto any Lot.

(c) Each Lot shall be conveyed as a separately designated and legally described fee simple estate, subject to this Declaration. All Lots and the Residences and

other Improvements erected or placed thereon (including, without limitation, landscaping) shall at all times be maintained in such a manner as to prevent their becoming unsightly.

(d) The vegetation and landscaping on any Lot shall be planted or maintained by the Owner or resident in such a manner as to reduce the risk of fire, prevent or retard shifting or erosion of soils, encourage the growth of indigenous ground cover and to cause the proper diversion of water into streets and natural drainage channels.

(e) No advertising signs shall be displayed on any Lot or posted within or upon any of the Properties except that an Owner may post on his or her Lot a single "For Rent" or "For Sale" sign of reasonable dimensions and appearance as stated in the Association Policies.

(f) No drilling, refining, quarrying or mining operations of any kind shall be permitted on any Lot.

**VII.2 Common Areas.** No Improvement, excavation or work which in any way alters any Common Area or Common Facility from its natural or existing state on the date such Common Area or Common Facility shall be made or done except by the Association and then only in strict compliance with the provisions of this Declaration. Each Owner shall be liable to the remaining Owners for any damage to the Common Area and Common Facilities that may be sustained by reason of the negligence of that Owner, that Owner's family members, contract purchasers, tenants, guests, or invitees, but only to the extent that any such damage is not covered by casualty insurance in favor of the Association. Each Owner shall be responsible for the maintenance, repair, upkeep and replacement of the landscaping (other than the trees planted by the Association in the first 10 feet of the front Lot line setback which will be the responsibility of the Association) in the setback along the front Lot line of each Lot.

**VII.3 Utility and Drainage Easements.** No Owner shall construct any Improvements, place any structures or take any other actions that would impede full and unimpaired access by the Irrigation Company and any utility companies to the utility and drainage easements located around the perimeter of the Properties and shown on the Subdivision Map.

**VII.4 Prohibition of Noxious Activities.** No illegal, noxious or offensive activities shall be carried out or conducted upon any Lot or Common Area nor shall anything be done within the Properties which is or could become an unreasonable annoyance or nuisance to neighboring property Owners. Without limiting the foregoing, no Owner shall permit noise, including but not limited to barking dogs, the operation of excessively noisy air conditioners, stereo amplifier systems, television systems, motor vehicles or power tools, to emanate from an Owner's Lot or from activities within the Common Area, which would unreasonably disturb any other Owner's or tenant's enjoyment of his or her Lot or the Common Area.

**VI.5 Garbage.** No rubbish, trash, or garbage shall be allowed to accumulate on Lots. Any trash that is accumulated by an Owner outside the interior walls of a Residence shall be stored entirely within appropriate covered disposal containers and facilities which shall be

located on the Owner's Lot and screened from view from any street, neighboring Lot or Common Area. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) shall be removed from the Properties by the Owner or tenant at his or her expense. The Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this Section.

**VII.6 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private Residence or appurtenant structures within the Properties.

**VII.7 Restriction on Vehicle Repairs and Maintenance.** Major repairs or restorations of vehicles within the Properties is not encouraged and shall only be permitted if conducted entirely within the Owner's or resident's garage and in a manner that does not cause another vehicle or trailer to be parked in violation of this Section. In any specific instance involving a vehicle repair project, the Board may prohibit the activity entirely if the Board determines that the activity is being conducted in a manner that constitutes a nuisance or an unreasonable interference with the quiet enjoyment of neighbors. The restrictions imposed by this subparagraph (e) are not intended to prohibit routine vehicle maintenance, such as the changing of oil, the replacement of an air filter or other similar routine vehicle maintenance activities that can be completed in a few hours, so long as that maintenance is conducted on the Owner's/resident's driveway or in the Owner's/resident's garage.

**VII.8 Restriction on Further Subdivision and Severability.** No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof and no Owner of a Lot within the Properties shall be entitled to sever his or her Lot from the Common Area portion of the Properties.

**VII.9 Enforcement of Property Use Restrictions.** The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and tenants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action hereof, the Owner or Tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the non-complying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her appeal rights.

## **ARTICLE VIII**

### **EXTERIOR MAINTENANCE RESPONSIBILITIES**

**VIII.1 Common Area; Common Facilities.** The Association shall be solely responsible for all maintenance, repair, upkeep and replacement within the Common Area easements. The

Association shall be responsible for the maintenance, repair, upkeep and replacement of the trees (but no other landscaping) planted in the first 10 feet of the setback located along the front Lot line of each Lot.

#### **VIII.2 Recovery of Costs of Certain Repairs and Maintenance.**

(a) In the event that the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner.

(b) In the event that an Owner fails to perform maintenance functions for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within 15 days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Section 3.7(b) to enter the Owner's Lot and perform the repair or maintenance so long as the Owner has been given notice.

**VIII.3 Cooperative Maintenance Obligations.** To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

### **ARTICLE IX EASEMENTS**

**IX.1 Maintenance Easements.** An easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Common Area and any Lot to perform the duties of maintenance and repair of the Lots, Common Area, or Common Facilities.

**IX.2 Other Easements.** Each Lot and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Properties and each and Common Area as shown on the Subdivision Map.

**IX.3 Priority of Easements.** Wherever easements granted to the County are, in whole or in part, coterminous with any other easements, the easements of the County shall have and are hereby granted priority over said other easements in all respects.

### **ARTICLE X**

#### **INSURANCE**

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**X.1 Types of Insurance Coverage.** The Association shall purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, such insurance as the Governing Board deems is necessary or desirable for the protection of the Properties and the Owners.

**X.2 Individual Fire Insurance on Lot Improvements.** Each Owner shall obtain and maintain, at his or her own expense, fire and casualty coverage as may be required by the Owner's individual Mortgagee or, if no Mortgagee encumbers a Lot, fire and casualty coverage as may be determined by the Board, with respect to damage or destruction to improvements on the Owner's Lot. All such individually carried insurance shall also contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and any institutional First Mortgagee of such Lot.

**X.2 Adjustment of Losses.** The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 10.1. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

## **ARTICLE XI**

### **DAMAGE OR DESTRUCTION**

**XI.1 Common Facilities; Bids and Determination of Available Insurance Proceeds.** In the event any Common Facilities are ever damaged or destroyed, then, and in such event, as soon as practicable thereafter the Governing Board shall (a) obtain bids from at least two reputable, licensed contractors, which bids shall set forth in detail the work required to repair, reconstruct and restore the damaged or destroyed portions of the Common Facilities to substantially the same condition as they existed prior to the damage and the itemized price asked for such work, and (b) determine the amount of all insurance proceeds available to the Association for the purpose of effecting such repair, reconstruction and restoration. The Association shall not be obligated to restore the facilities to its prior appearance and condition if, in the Board's opinion, architectural or design modifications to the damaged Common Facilities will result in providing the Members with a facility available for substantially the same use and enjoyment as the destroyed Common Facility.

**XI.2 Damage or Destruction of Residences.** In the event of damage or destruction by fire or other casualty affecting a Residence, the Owner thereof shall, within six months thereafter, either:

(a) Diligently commence to rebuild the Residence in accordance with the terms hereof, including, without limitation, the architectural review provisions of Article V hereof; or

(b) Clear and level the Lot, removing all wreckage, debris and remains of the

Residence therefrom and leaving the same in a level, clean condition.

## **ARTICLE XII**

### **BREACH AND DEFAULT**

**XII.1 Remedy at Law Inadequate.** Except for the nonpayment of any Assessment, the remedy at law to recover damages for the breach, of this Declaration are inadequate. The failure of any Owner, tenant, occupant or user of any Lot, or any portion of the Common Area or Common Facilities, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers or Governing Board, or by their respective successors in interest.

**XII.2 Nuisance.** Without limiting the generality of the foregoing Section 12.1, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

**XII.3 Costs and Attorneys' Fees.** In any action brought because of any alleged breach or default of any Owner or other party hereto under this Declaration, the court may award to any party in any such action such attorneys' fees and other costs as the court deems just and reasonable.

**XII.4 Cumulative Remedies.** The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

**XII.5 Failure Not a Waiver.** The failure of any Owner, the Governing Board, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

## **ARTICLE XII**

### **NO PUBLIC RIGHTS IN THE PROPERTIES**

Nothing contained in this Declaration shall be deemed to be a gift or a dedication of all or any portion of the Properties to the general public or for any public use or purpose whatsoever.

## **ARTICLE XIV**

### **AMENDMENT OF DECLARATION**

**XIV.1 Amendment in General.** This Declaration may be amended or revoked in any respect by the vote or assent by written ballot of the Owners owning at least 12 of the Lots.

**XIV.2 Effective Date of Amendment.** The amendment will be effective upon the recording in the Office of the Recorder of Weber County a Certificate of Amendment, duly executed and certified by the president and secretary of the Association setting forth in full the amendment so approved and that the approval requirements of Section 15.1, above, have been duly met. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights of the holder of any first deed of trust or Mortgage recorded prior to the recording of such amendment. If the consent or approval of any governmental authority, Mortgagee or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

**XIV.3 Reliance on Amendments.** Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

## **ARTICLE XV**

### **GENERAL PROVISIONS**

**XV.1 Term.** The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden the Lots and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, its Governing Board, and its officers and agents, and their respective successors in interest, for the term of 60 years from the date of the recording of this Declaration, after which time the same shall be automatically extended for successive periods of 10 years each unless, within 6 months prior to the expiration of the initial 60-year term or any such 10-year extension period, a recordable written instrument, approved by 50 percent of all Owners entitled to vote and holding at least 75 percent of the voting power of the Association terminating the effectiveness of this Declaration shall be filed for recording in the Office of the County Recorder of Weber County, Utah.

**XV.2 Construction of Declaration.**

(a) **Restrictions Construed Together.** All of the covenants, conditions, and

restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Properties as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

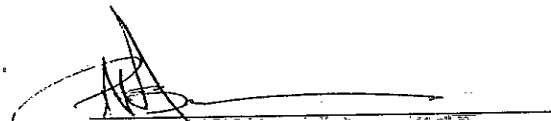
(b) **Restrictions Severable.** Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions, and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) **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.

(d) **Captions.** All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

(e) **Exhibits.** All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

Dated: November 4, 199

  
**Rondell B. Hanson,**  
**DECLARANT**

E# 1673014 BK2043 PG384

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of ORANGE

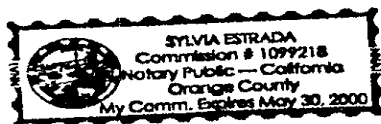
ss.

On November 4, 1999, before me, Sylvia Estrada, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Rondell B. Hanson  
Name(s) of Signer(s)

- ☒ personally known to me  
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

*[Signature]*  
Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

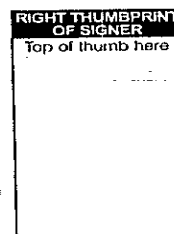
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer

- Signer's Name: \_\_\_\_\_  
☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_



**EXHIBIT A**  
**DESCRIPTION OF THE PROPERTIES**

The Huntsville Meadows Subdivision, being a part of the Northeast Quarter of Section 8, the Southeast Quarter of Section 9, the Southwest Quarter of Section 16, and the Northwest Quarter of Section 17, Township 6 North, Range 2 East, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point 1926.13 feet North 89 15'00" West (State Plane Grid Bearing) from the North Quarter Corner of said Section 16, running thence South 0 02'05" West 810.25 feet to the North right-of-way line of State Highway 39; thence North 88 32'37" West 1359.12 feet along said right-of-way line; thence North 0 15'30" East 1665.61 feet; thence South 88 45'07" East 1352.50 feet; thence South 0 02'05" West 860.44 feet to the point of beginning.

Contains 51.91 Acres.

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## **EXHIBIT B**

### **DESCRIPTION OF THE COMMON AREAS**

The Common Areas shall be located within non-exclusive easements for the benefit of the Association and the Lot Owners. The non-exclusive easements are defined as:

1. The easements shown on the Subdivision Map of the Properties for the location of a retention basin on Lots 1 and 6.
2. An easement 75 feet in width along the most Southerly boundary of Lot 5.
3. An easement across Lot 4 which is 75 feet in width along the most Southerly boundary and fifty feet in width along the radius of the street at the most easterly boundary for a distance of 200 feet from the Southeast corner of the Lot.
4. An easement for the entrance walls, landscaping, and signs identifying the Properties from Highway 39. The easement shall be across Lots 3 and 18. Each easement shall be a square measuring 50 feet long on each side. The easements shall be at the Southeast corner of Lot 3 and the Southwest corner of Lot 18.
5. The easements for fire cisterns shown on the Subdivision Map.
6. The easements for installation of irrigation lines as shown on Irrigation Plan approved by the Huntsville Irrigation Company.

**E# 1673014 BK2043 PG387**

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**EXHIBIT C**  
**IRRIGATION EASEMENT AGREEMENT**

**E# 1673014 BK2043 PG388**

**~~E# 1557393 BK1939 PG1346~~**

**EXHIBIT D**  
**ALLOCATION OF REGULAR ASSESSMENTS**

Lot Number	Percentage Share of the Total Regular Assessment
1	5.36%
2	5.36%
3	5.36%
4	5.39%
5	5.36%
6	5.37%
7	5.36%
8	5.36%
9	5.36%
10	5.39%
11	5.45%
12	5.45%
13	5.37%
14	5.37%
15	8.05%
16	5.9%
17	5.36%
18	5.38%

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E# 1673014 BK2043 PG389

## IRRIGATION EASEMENT AGREEMENT

This Irrigation Easement Agreement is made and entered into as of the 28 day of April, 1998, by and between Rondell B. Hanson, P.O. Box 1960, Newport Beach, CA 92658 (the "Developer"), and the Huntsville Irrigation Company, Inc., a Utah nonprofit corporation, 9249 East 100 South, Huntsville UT 84317 (the "Company").

### RECITALS

A. The Developer is the owner of certain real property located in the SE1/4 of Section 8, the SW1/4 of Section 9, the NW1/4 of Sec. 16 and the NE1/4 of Section 17, Township 6 North, Range 2 East, S.L.M., in Weber County, Utah, as more particularly described in Exhibit A, attached hereto and made a part hereof (the "Subject Property").

B. The Developer desires to subdivide the Subject Property and create the Huntsville Meadows Subdivision, to be comprised of lots numbered 1 through 18.

C. The Company is the owner of irrigation ditches and perpetual irrigation easements located upon the Subject Property.

D. The Developer and the Company desire to identify, confirm and agree upon the location, extent and nature of the irrigation easements held by the Company, and formally to establish and give notice of easements as a matter of public record.

E. The Developer and the Company also desire to establish as covenants running with the land the rights and obligations of the Developer with respect to the irrigation easements.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits contained herein, the Developer and the Company hereby agree as follows:

1. Ownership of Property. The Developer represents and warrants that he is the owner of the Subject Property, subject to the irrigation easements of the Company described herein, and has the power and authority to enter into this Agreement.

2. Ownership of Irrigation Easements. The Company represents and warrants that it is the owner of the irrigation easements described herein, and has the power and authority to enter into this Agreement.

3. Confirmation and Conveyance of Easements. The Developer and the Company agree that the Company holds, and the Developer hereby confirms and grants to the Company, the following non exclusive described irrigation easements along and next to the Company's existing ditches for the purposes, and subject to the restrictions and covenants, described below:

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Lateral Ditch of the Grow Ditch:

An easement along and including the existing Lateral Ditch of the Company's Grow Ditch, 20 feet wide south, from the north property line of the Subject Property, beginning at the east boundary of the Subject Property and running west along the existing Lateral Ditch boundary 1,352.5 feet more or less to the west boundary of the Subject Property.

The Center Line of the Pipe within the ROW to be no closer than four feet from the edge of the ROW.

Main Ditch of the North Field Ditch:

An easement 20 feet wide, (ten feet on either side of the existing North Field Ditch) located in the State Highway right-of-way south of the south boundary of the Subject Property, and running west along the entire length of the Subject Property. (The Main Ditch of the North Field Ditch is located outside the boundaries of the Subject Property, but is nevertheless subject to the covenants of the Developer as described herein.)

North Branch of the North Field Ditch:

An easement along and including the existing Main Ditch of the Company's North Branch of the North Field Ditch 20 feet wide, East from the East boundary of the right-of-way of the "Farm Lane" (8760 East Street along the west boundary of the Subject Property) beginning at the south boundary of the Subject Property and thence along the existing Main Ditch northerly approximately 470.2 feet along the existing Main Ditch to a point 10 feet beyond the point where the ditch turns to the west. Also, from the point approximately 460.2 feet north of the south boundary of the Subject Property where the ditch turns to the west, thence westerly to a point on the west boundary of the Subject Property where the ditch crosses the west property line of the Subject Property.

The Center Line of the Pipe within the ROW to be no closer than four feet from the edge of the ROW.

4. Improvements by Developer. The Developer agrees, prior to the sale of any lots in the Subdivision, to install and/or construct the following improvements in accordance with the following requirements and specifications:

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a. Lateral Ditch of the Grow Ditch.

- i. Size of Pipe. The Developer shall install 15-inch pipe along the entire length of the easement for the Lateral Ditch of the Grow Ditch described above. The Developer shall also install 18-inch pipe from the inlet structure at the Main Ditch of the Grow Ditch approximately 150 feet north of the northeast corner of the Subject Property to the beginning of the pipe in the Lateral Ditch of the Grow Ditch. The Developer shall also construct a new ditch to carry water to the northeast corner of the Subject Property, on the west side of and at least three feet away from the new pipeline, to permit continued use by the landowner between the inlet structure and the northeast corner of the Subject Property.
- ii. Type of Pipe. The pipe shall be PVC, 80 PSI, SDR 51, or better; provided that the Developer shall install a reinforced concrete pipe or culvert where the pipe crosses under 8650 East Street and under the Farm Lane.
- iii. Inlet Structure. The Developer shall install a new concrete inlet structure (from the Main Grow Ditch) that will return unused water back into the Main Grow Ditch at any time the Developer's internal distribution system is not using all of the water in the ditch. The inlet will require a locked/removable "Trash Grate" acceptable to the Company with one-inch by one-inch openings to prevent trash and small animals from being pulled into the pipe system. The new inlet structure will be integrated with the current four-way outlet (one in and three outs), which will be rebuilt as necessary by the Developer to accommodate the new inlet structure.
- iv. Shutoffs on the Lateral. The Developer shall install a positive shut off valve at the end of the pipe on the west side of the Farm Lane. In the event the Company determines at any time that water may be diverted from the new pipeline at any point during the irrigation turns of downstream water users, the Developer shall install additional shut offs at the "Y" in the northeast corner of the Subject Property and/or at any outlets which may be used for lots which may be established along the north boundary of the Subject Property in order to ensure that the full flow of the lateral ditch is available to water users west of the Subject Property during their irrigation turns.
- v. Continuation of Lateral (West). The Developer shall extend the lateral pipe completely under the Farm Lane to the western boundary of the Farm Lane.
- vi. Depth of Pipe. The depth and load carrying capacity of the pipe under lots, 8650 East and the Farm Lane must be approved by the Company.
- vii. Maintenance. The Developer shall be responsible for maintaining and repairing the lateral and, in particular, for ensuring that the lateral remains

clear of plugs or obstructions.

viii. Right-of-Way. The Developer shall show a right-of-way for the Lateral Ditch of the Grow Ditch 20 feet wide on the Subdivision Plat, and shall include an Owner's Dedication recital with respect to the right-of-way in form acceptable to the Company. If the right-of-way coincides with any common utility or drainage easement, the Subdivision Plat shall explicitly require that no buried or surface utility line, structure or facility shall be closer than five feet to any pipeline or the bank of any ditch in the easement.

ix. Match of Grades. On the outlet end of the pipe, the pipe flow line must match the present grade to prevent silting up of the pipe.

b. Main Ditch of the North Field Ditch.

i. Size and Type of Pipe. The Developer shall comply with the Utah Department of Transportation's Standard Specifications for Road and Bridge Construction dated 1994 in any construction, movement or crossing of the Main Ditch of the North Field Ditch in the right-of-way for State Highway U-39 along the south boundary of the Subject Property, including installation of at least a 24-inch reinforced concrete pipe.

ii. Inlet Structure. The Developer shall install a flared metal end section inlet structure at the inlet to the pipe with a "self cleaning" grate with one-inch openings that can be locked, yet removable, to prevent trash and small animals from being pulled into the pipe system. The inlet structure shall include wings to channel water into the pipe and prevent erosion.

iii. Clean Outs. The Developer shall install a man way approximately each 450 feet from the east inlet structure along any pipe, including three "on line" and one as part of the outlet structure at the west end of the pipe.

iv. Outlet Structure. The Developer shall install a concrete structure at the west end of the pipe that can divert the entire ditch either north (to the North Branch of the North Field Ditch), or south along the continuation of the North Field Ditch. This structure shall be grated on the top to prevent accidental entry into the pipe, and the grate shall be removable for clean out purposes. The outlet pipe shall extend at least five feet south of the structure to prevent hydraulics from back washing around the concrete structure.

v. Depth of Pipe. The depth and load carrying capacity of the pipe under lots, 8775 East and driveways must be approved by the Company.

vi. Match of Grades. On the outlet end of the pipe, the pipe flow line must match

the present grade to prevent silting up of the pipe.

c. North Branch of the North Field Ditch.

- i. Size and Type of Pipe. The Developer shall install 18-inch PVC pipe, 80 PSI, SDR 51, in the easement for the North Branch of the North Field Ditch described above from the Main North Field Ditch in the right-of-way for State Road 39 to its exit on the west boundary of the Farm Lane; provided that the Developer shall install a reinforced concrete pipe or culvert where the pipe passes under the Farm Lane.
- ii. Inlet Structure. The inlet structure for the North Branch of the North Field Ditch shall be the same structure as the outlet structure on the west end of the Main North Field Ditch.
- iii. Turning Point Structure. The Developer shall install a concrete structure at the turning point of the ditch from north flowing to west flowing.
- iv. Clean Outs. The Developer shall install a man way in the turning point structure.
- v. Continuation of Lateral (West). The Developer shall extend the lateral pipe completely under the Farm Lane to the western boundary of the Farm Lane.
- vi. Depth of Pipe. The depth and load carrying capacity of the pipe under lots and under the Farm Lane must be approved by the Company.
- vii. Right-of-Way. The Developer shall show a right-of-way for the North Branch of the North Field Ditch 20 feet wide on the Subdivision Plat, and shall include an Owner's Dedication recital with respect to the right-of-way in form acceptable to the Company. If the right-of-way coincides with any common utility or drainage easement, the Subdivision Plat shall explicitly require that no buried or surface utility line, structure or facility shall be closer than five feet to any pipeline or the bank of any ditch in the easement.
- viii. Match of Grades. On the outlet end of the pipe, the pipe flow line must match the present grade to prevent silting up of the pipe.

d. North Field Ditch Lateral Return.

- i. Return of Excess Water. If the Developer installs a "pressure system" for the lots served by the North Field Ditch Lateral, then the Company will allow excess water to return flow into the North Field Ditch. This will require return piping along and west of the east boundary of the Subject Property, beginning

approximately 362.53 feet north of the south boundary and running thence south along the east boundary to the North Field Ditch, joining at the inlet to the 24-inch reinforced concrete pipe of the Main Ditch of the North Field Ditch.

- ii. Inlet Structure. At the point that the North Field Ditch Lateral enters the "pressure system," the Developer shall install a concrete inlet structure that will return unused water back into the Main North Field Ditch at any time that the Developer's internal distribution is not using all of the water in the ditch. The design of the inlet structure must be approved by the Company. The inlet will require a trash grate acceptable to the Company with one-inch by one-inch openings to help prevent blockage of the pipe system. A lock system shall be incorporated to prevent a person from being swept into the pipe.
- iii. Type of Pipe. The return pipe and any pipe installed east of the Subject Property on the lateral ditch to carry inflow to the pressure system shall be 18-inch PVC pipe, 80 PSI, SDR 51.
- iv. Clean Outs. The Developer shall install one or more clean outs on the North Field Ditch Lateral if pipe is used east of the Subject Property on the lateral ditch.
- v. Depth of Pipe. If pipe is used east of the Subject Property on the North Field Ditch Lateral, then the depth and load carrying capacity of the pipe must be approved by the Company.

5. Operation and Maintenance of Water System. The foregoing irrigation structures and improvements shall be used and maintained as follows:

a. Operation and Maintenance. The Developer shall own, operate and maintain the pipe in the Lateral Ditch of the Grow Ditch within the easement described above, subject to any reasonable requirements imposed by the Company in order to facilitate interconnection with and operation of the Company's facilities and subject to the Company's continuing right and easement to convey its water through the pipe. The remaining facilities described in the preceding paragraph shall be owned, operated and maintained by the Company.

b. Delivery and Use of Company Water. Nothing contained herein shall authorize the Developer or any other person to receive or use any water belonging to the Company in any amount or at any location except in accordance with the articles, bylaws and rules of the Company.

6. Rights of the Company. The Company shall have the right to undertake all actions reasonably necessary to maintain, protect and use irrigation works within the foregoing easements, including, without limitation, the right to excavate ditches and other works, to construct banks or berms, to install, maintain and remove headgates, to apply herbicides and to remove and/or burn weeds and other vegetation within the easements, and to operate heavy equipment along and

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within the easements.

7. Restrictions on Use.

a. Structures. No building or other structure may be placed within the easements or across any pipeline or ditch within the easements, and no bushes, trees or other vegetation may be planted in easements which might interfere with the use of the easements.

b. Excavation. No excavation shall be permitted within the easements other than (i) excavations by the Company or its members, permittees, successors or assigns in the exercise of their rights in the easements, and (ii) excavations by properly licensed contractors for utility companies within concurrent utility easements, and (iii) excavations by the Home Owners Associations licensed contractors, subject to paragraphs 4(a)(viii) and 4(b)(vi), above. No excavation shall be permitted on any of the Lots affected by the easements which might jeopardize the safety, stability or integrity of the irrigation works within the easements.

c. Driveways and Roads. No driveway or road parallel to a pipeline or ditch within an easement shall be closer than three feet to the pipeline or to the bank of the ditch. No driveway or road shall be constructed across any of the pipelines or ditches unless the lot owner or other person constructing the driveway or road places a reinforced concrete pipe or culvert over the pipeline, or places a 24-inch reinforced concrete pipe in any ditch, for the full width of the driveway or road in such a manner as will protect and preserve the integrity of the affected pipeline or ditch and will not impede the flow of water in the pipeline or ditch. The owner of the lot on which the driveway or road is located shall be responsible for the maintenance of the sleeve or concrete pipe, including ensuring that no blockage occurs at or within the sleeve or pipe. Except for the Public Roads of the proposed subdivision, and Lots One and Two, of that proposed subdivision, no driveway or lot within any easement shall be paved with asphalt or tar, but all such driveways or roads shall be surfaced with gravel only.

d. Debris and Drainage. No owner of any lot affected by the foregoing easements shall place or permit to be placed or disposed of, any trash, debris, waste or other materials of any kind, solid or liquid, in any of the pipelines or ditches or within any of the easements. No grading or construction shall be permitted on any lot affected by the easements which might cause drainage from the lot to enter any of the pipelines or ditches.

e. Fences and Gates. No fence may be constructed across any of the easements unless a gate is provided no less than 12 feet in width to permit ready access by construction equipment along the easement at all hours and seasons. No gate post or other fence post shall be closer than three feet to any pipeline or to the bank of any ditch. No such gate shall be locked unless a key to such lock is provided to the Company prior to the placement of the lock. The Company reserves the right to cut any lock for which it has not been provided with a key.

f. No Blockage or Diversion. No owner of any lot shall block, impede or divert the flow of water in the pipelines or ditches at any place other than at the official point of diversion,

and then only for the hours shown on the water ticket for that ditch system, or otherwise interfere with the Company's use of the easements

8. Covenants Running with the Land. The foregoing rights of the Company and restrictions on the use of the affected lands shall be covenants burdening and running with the Subject Property and with each separate lot in the proposed subdivision for the benefit of the Company and its members and their respective lands, and may be specifically enforced. In addition, prior to the sale or conveyance of any lot in the new subdivision, the Developer agrees to form a homeowners' association which shall include as members all owners of lots in the subdivision and which shall jointly and severally assume all of the Developer's obligations hereunder. The association shall have the power to assess lot owners for the costs necessary to carry out the Developer's duties hereunder and to maintain the irrigation system of the subdivision, and shall have the power to impose liens upon the lots of any owners who do not pay their assessments. The Developer agrees further to transfer any shares of the Company owned or held by the Developer to the association for the exclusive use and benefit of the Subject Property and the owners thereof.


9. Subdivision Plat Requirements. The Subdivision Plat for the proposed subdivision shall include a separate sheet showing the irrigation plan for the subdivision, expressly including the easements and all improvements and features described herein. A copy of this Agreement shall also appear on the irrigation plan sheet of the official subdivision plat, and the Owner's Dedication for the subdivision shall expressly make any lots, roads and utility or other easements subject to the terms and conditions of this Agreement.

10. As Built Survey. Upon completion of the pipes and other structures described above, the Developer shall provide the Company with final, as-built legal descriptions of all easements, irrigation works and facilities described herein (including pipes, ditches, inlets, outlets, connections, valves and clean outs), identifying the affected lots in the subdivision and showing the as-built locations of any utility lines and other easements affecting the Company's easements.

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11. Successors and Assigns. This Agreement shall be binding on the parties hereto and on their respective successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

  
Rondell B. Hanson

HUNTSVILLE IRRIGATION COMPANY, INC.

By Huntsville Irrigation Co.  
Name: J. Meyer Green  
Title: Pres of Co.

~~E# 1557393 BK1939 PG1356~~

**EXHIBIT A**

**Subject Property**

A part of the Northeast Quarter of Section 8, the Southeast Quarter of Section 9, the Southwest Quarter of Section 16 and the Northwest Quarter of Section 17, Township 6 North, Range 2 East, S.L.M.:

Beginning at a point 1926.13 feet North 89° West (State Plane Grid Bearing) from the North Quarter Corner of said Section 16, running thence South 0°02'05" West 810.25 feet to the North right-of-way line of State Highway 39; thence North 88°32'37" West 1359.61 feet along said right-of-way line; thence North 0°15'30" East 1665.61 feet; thence South 88°45'07" East 1352.50 feet; thence South 0°02'05" West 860.44 feet to the point of beginning.

E# 1673014 BK2043 PG399

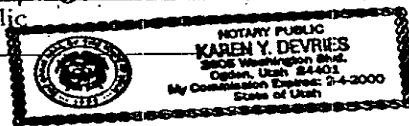
~~E# 1557893 BK1939 PG1357~~

STATE OF Utah )  
COUNTY OF Weber <sup>SS.</sup> )

The foregoing instrument was acknowledged before me this day of 1998, by Rondell B. Hanson.

My commission expires:

Karen Y. Devries  
Notary Public  
Residing at:



STATE OF UTAH )  
COUNTY OF Weber <sup>SS.</sup> )

The foregoing instrument was acknowledged before me this 28th day of April, 1998, by J. Meyer Graw, the President of Huntsville Irrigation Company, Inc.

My commission expires:

Karen Y. Devries  
Notary Public  
Residing at:



404566