

857136

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
BENNOR SUBDIVISION PHASE I**

THIS DECLARATION is made by Daniel Ward, President, Ward Construction, LLC, referred to as Declarant.

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Campbell County, Wyoming, which is more particularly described on the plat map as the same that is filed for record with the County Clerk and Recorder of Campbell County in connection with the Subdivision designated by Campbell County as BENNOR SUBDIVISION PHASE I situate in Campbell County; and,

WHEREAS, in order to establish a general plan for the improvement and development of the Properties, Declarant desires to subject the Properties to certain conditions, covenants, and restrictions, up and subject to which all of the Properties shall be held, improved and conveyed; and,

WHEREAS, Declarant will convey the said Properties, subject to certain protective covenants, conditions, restrictions, liens and charges as set forth;

NOW, THEREFORE, Declarant declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part, her heirs, successors, and assigns, shall inure to the benefit of each Owner, and which are intended not to be merely personal.

NOTICE: A PROFESSIONAL ENGINEER SHOULD REVIEW THE FOLLOWING BUILDING SITES:

- LOT 2 OF BLOCK 5
- LOTS 1, 8 AND 9 OF BLOCK 3
- LOTS 6 AND 9 OF BLOCK 4
- LOTS 2, 10 AND 11 OF BLOCK 2

BUILDING SITES LOCATED UPSTREAM OF CULVERTS SHOULD NOT BE PLACED AT AN ELEVATION LOWER THAN THE CREST OF THE ROAD CROSSING DRAINAGES.

**ARTICLE I
DEFINITIONS**

SECTION 1: Association shall mean and refer to BENNOR SUBDIVISION PHASE I, HOMEOWNERS association, its successors and assigns.

SECTION 2: Owner shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of obligation.

SECTION 3: Properties shall mean and refer to that certain real property with the subdivision and such conditions as may be brought within the jurisdiction of the Association.

SECTION 4: Common Area shall mean the private access road, water facilities and other properties owned by the Association for the common use and enjoyment of the owners.

SECTION 5: Lot shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

SECTION 6: Declarant shall mean and refer to Daniel Ward, President, Ward Construction, LLC, his successors and assigns.

SECTION 7: Member shall mean and refer to every person or entity that holds membership in the Association. See Article V.

SECTION 8: The term covenants shall mean and refer collectively to the covenants, conditions, restrictions, reservations, easements, liens, and charges imposed by or expressed in this Declaration.

SECTION 9: The term Board of Directors or Board shall mean and refer to the duly elected Board of Directors of the Association. There shall be three (3) directors serving three (3) year terms. The initial Board shall consist of one (1) director serving for one (1) year, one (1) director serving for a two (2) year term, and one director serving for a three (3) year term. Thereafter, each director shall serve a three (3) year term. Elections shall be held each year during January. The owner of each lot shall be entitled to one vote. The Directors are responsible to handle the financial matters of the Association and shall report annually to all Association members. The association shall continue to have new members as the subdivision lots are sold.

SECTION 10: The water well and system will supply forty-seven (47) lots within Phase 1 only. If approved by DEQ, a water supply system for Phase 2 can be constructed at a later time. The water system while privately owned by Ward Construction, LLC, is considered a public water supply by the USEPA and the Wyoming DEQ and will be required to meet all applicable state and federal compliance rules and regulations. Ward Construction, LLC will be entitled to charge fees for water consumption, maintenance of the water system, testing or other costs associated with the operation of the system. If the water system is expanded to cover Phase 2, approximately forty-five percent (45%) of the capacity will be required by Phase 1, and Ward Construction, LLC will develop fifty-five percent (55%) of the capacity for use in Phase 2. Transfer of ownership of the water delivery system may occur as soon as the financing obligations to Ward Construction, LLC are paid in full and upon formation of an Improvement and Service District to continue operation and maintenance of water delivery system.

SECTION 11: AREAS WITHIN THE SUBDIVISION HAVE SOIL PERCOLATION RATES IN EXCESS OF 60 MINUTES PER INCH. ADDITIONAL SITE INVESTIGATION MUST BE COMPLETED ON EACH LOT PRIOR TO THE DESIGN AND CONSTRUCTION OF CONVENTIONAL SEPTIC SYSTEMS TO ENSURE THAT SUBSURFACE CONDITIONS ARE SUCH THAT REGULATORY DESIGN STANDARDS, INCLUDING SEPARATION DISTANCES, CAN BE MET. WHERE REGULATORY DESIGN STANDARDS AND SEPARATION DISTANCES CANNOT BE MET DUE TO SUBSURFACE CONDITIONS, AN ALTERNATIVE SEPTIC DISPOSAL SYSTEM DESIGNED TO MEET REGULATORY STANDARDS AND CERTIFIED BY A WYOMING LICENSED PROFESSIONAL ENGINEER IS REQUIRED.

ARTICLE II

NATURE AND PURPOSE OF COVENANTS

The covenants, conditions and restrictions set forth in the DECLARATION constitute a general scheme for the development, protection and maintenance of the Properties to enhance the value, desirability, and attractiveness of the lots and Common Areas. These covenants, restrictions, and conditions are imposed upon Declarant and upon the Owners of all lots. Said covenants, conditions, and restrictions are for the benefit of all lots, and shall bind the Owners of all such lots. Such covenants, conditions, and restrictions shall be a burden upon and a benefit to not only the original Owner of each lot, but also his successors and assigns. All such covenants, conditions, and restrictions are intended as and are declared to be covenants running with the land or equitable servitudes upon the land, as the case may be. The Owners and the Association shall have the right to enforce these covenants.

ARTICLE III

PROPERTY RIGHTS

SECTION 1 - OWNER'S EASEMENTS OF ENJOYMENT: Every owner shall have a right and an easement of enjoyment and use in and to the Common Areas, if any, which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

a. The right of the Association to assess and charge a reasonable maintenance, operation and usage fee and to impose such charge or assessment as a lien against any property for which such charge or lien has not been paid in accordance with this Declaration of Covenants, Conditions and Restrictions.

b. The right of the Association to suspend the voting rights for any period during, which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

c. The right of the Association to dedicate or transfer all of any part of the Common Area to any public agency, authority, or entity, but only with the permission of the agency, authority or entity for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless such dedication or transfer is approved by two-thirds (2/3) of the members;

d. The right of the Association to borrow money for the purposes of improving or operating said facilities and to mortgage said properties and the rights of such mortgages in such properties shall be subordinate to the rights of the homeowners;

e. The right of the Association, through its Board of Directors, to adopt and publish rules and regulations and usage fees with respect to the Common Areas, if any.

f. No lot owner(s) may sue to partition the common areas. The common areas are for the benefit of all lot owners and not for a particular individual.

SECTION 2 - DELEGATION OF USE: Any owner may delegate his right of enjoyment and use in and to the Common Area, to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE IV USE OF RESIDENTIAL LOTS AND COMMON AREA

SECTION 1 - USE: Each lot within the properties shall be constructed, improved, used and occupied only for private residential purposes consistent with the Zoning Regulations for Campbell County in effect on the date that said construction, improvement, use or occupation begins. Each lot shall only have one residence. The residence shall be a single family dwelling. A single family dwelling shall be a stick built home or a UBC modular or HUD manufactured homes. The UBC modular or HUD manufactured home shall not be over five (5) years old at the time the home is placed on the lot. This Subdivision shall require a minimum twenty-four (24) feet width dimension to be qualified to be placed as a UBC modular or HUD manufactured home on any lot; single wide mobile homes are not allowed. [This Subdivision shall not allow any trailers whatsoever.]

SECTION 2 - PETS AND OTHER ANIMALS: Dogs, cats, or usual and ordinary household pets may be kept in any dwelling subject to the conditions below. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot for any commercial purpose. Pets will be permitted, provided they are kept under control.

SECTION 3 - TRASH COLLECTION: Trash collection will be the responsibility of each landowner. Trash shall be removed at minimum, a weekly collection schedule for each lot.

SECTION 4 - COVENANTS: These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of 30 years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods often (10) years, unless an instrument signed by three-fourths (3/4) majority of the then owners of the lots has been recorded agreeing to the change of said covenants in whole or in part, EXCEPT the Covenants dealing with the Private Recreation Area can be amended only by an instrument signed by 100% of the lot owners.

SECTION 5 - VEHICLES: Only those motor vehicles in normal operating condition, licensed for the current year, and in general daily use shall be kept on the property. No major repairs can be made to any vehicle unless performed inside the homeowner's garage. No inoperable vehicles, trailers, equipment of any kind and no farming implements shall be permitted to accumulate or be stored on the property.

SECTION 6 - NUISANCES: No nuisances or offensive activity shall be carried on within the subdivision, nor shall anything be done or permitted which shall constitute a public nuisance; nor shall anything be done or permitted which will endanger any person. No speeding or reckless driving will be permitted in the subdivision.

SECTION 7 - ENFORCEMENT: Enforcement shall be by proceedings at law or in equity against any person or persons in accordance with the provisions contained herein.

SECTION 8 - EASEMENTS: No owner shall place any permanent structure, foundation, accessory building, or object over an easement. The Homeowner's Association has the right to require owners to remove said permanent structure, foundation, accessory building, or object from an easement. Permanent includes, but is not limited to, a foundation, etc. attached to the land.

SECTION 9 - LOCAL IMPROVEMENT DISTRICT (LID): If the Association becomes insolvent and the LID agrees to take over the duties of the Association (to the limit that state law allows), then each lot owner agrees to abide by the LID rules and regulations. The landowners association will cooperate with LID to the greatest extent possible.

SECTION 10 - SIGNS: Signs shall not be permitted other than a FOR SALE sign not to exceed 2' x 3' in size or name/residence signs of any size done in a professional manner and posted in accordance with local laws and regulations. DECLARANT has the right to erect larger signs.

SECTION 11 - OTHER STRUCTURES: No structure of a temporary character, basement, tent, shack, garage, barn, or other out-building shall be used on any lot at any time as a residence, either temporarily or permanently, except for a development construction or sales office, which shall be removed upon the sale of the last lot. No trailer, camper, boat, truck larger than a three-quarter (3/4) ton pickup, or similar equipment shall be permitted to remain upon any property within the Properties, unless placed or maintained within an enclosed area or properly stored.

SECTION 12 - CULVERTS AND DRAINAGE: The individual property owners will be responsible to provide and install culverts for drainage at their respective lot approaches to the roadway. The maintenance of the culverts at the lot approaches will be the responsibility of the respective property owner. Culverts must be installed as per Campbell County Specifications, 18" diameter minimum with 12" of minimum cover. A PROFESSIONAL ENGINEER SHOULD REVIEW THE FOLLOWING BUILDING SITES ON LOT 2 OF BLOCK 5, LOTS 1, 8 & 9 OF BLOCK 3, LOTS 6 & 9 OF BLOCK 4, AND LOTS 2, 10 & 11 OF BLOCK 2. THESE BUILDING SITES ARE LOCATED UPSTREAM OF CULVERTS AND SHOULD NOT BE PLACED AT AN ELEVATION LOWER THAN THE CREST OF THE ROAD.

ARTICLE V

MEMBERSHIP AND VOTING RIGHTS

Every owner of a lot shall be a member of the Association. Membership shall not be separated from ownership of any lot. All owners shall be entitled to one vote for each lot. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. When two or more persons are stockholders in a corporation holding an interest in any lot, one, and only one, shall be a member for voting purposes.

ARTICLE VI
COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1 - CREATION OF THE LIEN AND PERSONAL OF ASSESSMENTS: The DECLARANT, for each lot owned within the properties, covenants, and each owner of any lot by acceptance of a deed, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual, or more frequent if necessary for operating reasons, assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as provided. The assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

SECTION 2 - PURPOSE OF ASSESSMENTS: The assessments levied by the Association shall be used exclusively to promote health, safety, and welfare of the residents in the properties and for the maintenance, preservation, replacement and operation of the Common Areas, if any and Association costs. The assessments shall first be used to maintain the water system. When an Improvement District is formed, and meets the requirements setout herein, and the Improvement District takes over the water system, then the Assessment shall be used for paving the roads. The paving assessment will be at Seven Thousand Two Hundred (7200) feet per lot for five (5) years on all forty-seven (47) lots. The accumulated assessment money shall be used for paving Phase 1 (this is the fifty percent match currently required to meet grant requirement

SECTION 3 - MAXIMUM ANNUAL ASSESSMENT: Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum equal assessment shall be Six Hundred Dollars (\$600.00) per year per occupied lot at Fifty Dollars (\$50.00) per month. Water services not turned on at the meter will pay a base rate of Thirty-five dollars (\$35.00) per month during non-usage. The base rate is Fifty dollars (\$50.00) per month for the first ten thousand (10,000) gallons [One Dollar Fifty Cents (\$1.50) per thousand after minimum]. The DECLARANT shall be responsible for the remaining amount of the yearly costs of the lots which are unsold. The DECLARANT shall bill monthly costs to lot owners.

a. From and after January 1 of the year immediately following the conveyance on the first lot to an owner, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.

b. From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

SECTION 4 - SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS: In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the said utilities and Common Areas, if any; including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

SECTION 5 - NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 3 AND 4: Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than fifteen (15) days nor more than forty-five (45) days in advance of the meeting. A quorum shall be 51% of all members with said percentage to be made up of people attending in person and those voting by proxy.

SECTION 6 - RATE OF ASSESSMENT: Both annual and special assessments must be fixed at uniform rates for all lots not owned by DECLARANT and may be collected on a monthly basis.

SECTION 7 - DATE OF COMMENCEMENT OF ANNUAL AND SPECIAL ASSESSMENTS DUE

DATES: The annual and special assessments provided for herein shall commence as to each lot on the first day of the month following the conveyance of such lot by DECLARANT. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner. The due dates and collection methods shall be established by the Board of Directors, and, unless otherwise provided, the Association or its assigns shall collect each month from the owner of each lot one-twelfth (1/12) of the annual assessment for such lot. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. Such certificates shall be conclusive evidence of payment of any assessment stated to have been paid.

SECTION 8 - EFFECT OF NONPAYMENT OF ASSESSMENTS - REMEDIES OF THE ASSOCIATION:

a. **DELINQUENCY:** Any assessment provided for in this Declaration, which is not paid when due, shall be delinquent. With respect to each assessment not paid within fifteen (15) days after its due date, the Association may, at its election, require the owner to pay a "late charge" in a sum to be determined by the Association, but not to exceed \$10.00 per each delinquent assessment, plus interest at the rate of ten percent (10%) per annum on such assessment.

b. **CREATION OF LIEN:** The amount of all delinquent regular and special assessments plus interest and any expenses reasonably incurred in collecting and/or enforcing such assessments, including reasonable attorney's fees, shall be and become a lien upon the lot so assessed, which shall attach to the lot as of the time the Association caused to be recorded in the office of the County Clerk of Campbell County, Wyoming, a Notice of Assessment Lien, which shall state:

- i. The amount of the delinquent assessment and such related charges as may be authorized by this Declaration;
- ii. The name of the owner of record or reputed owner of the lot;
- iii. A description of the lot against which the lien has been assessed.

The notice shall be signed by two officers of the Association. The assessment lien shall also be deemed to secure all of the foregoing items which shall become due and/or incurred relative to the lot after the recordation of the Notice of Assessment Lien until the completion of the enforcement of the lien or the payment of the full amount secured by the lien, or other satisfaction to be made in connection therewith. No proceeding or action shall be instituted to foreclose the lien until the notice of intention to proceed to foreclose the lien has been delivered by the Association to the owner of the lot affected by the lien at least thirty (30) days prior to the commencement of any such action or proceeding. The assessment lien may be enforced by judicial foreclosure; provided, however, that said method of enforcement shall not be exclusive, but shall be in addition to any other rights or remedies which the owners or the Association may have by law or otherwise. The Association shall also have the right to bid at any such foreclosure sale and to hold, lease, mortgage, and convey such lot upon its purchase. Upon repayment of the full amount secured by an assessment lien, including all authorized charges in accordance with the foregoing, or upon any other satisfaction duly made, the Association shall cause to be recorded a notice setting forth the fact of such payment and/or satisfaction and of the release of the assessment lien. Any assessment lien as to any lot shall at all times be subject and subordinate to any mortgage or deed of trust on the lots which is created in good faith and for value and which is recorded prior to the date of recordation of the assessment lien. In the event any assessment lien is destroyed by reason of the foreclosure of any prior mortgage or deed of trust on a lot, the interest in the lot of the purchaser at the foreclosure sale may be subjected to a lien to secure assessments levied on the lot in the same manner as provided in this Article.

c. **CURING THE DEFAULT:** Upon the timely curing of the default for which a notice of claims or lien was filed by the Association, the officers of the Association are authorized to file or record, as the case may be, an appropriate release of such notice, upon payment of the

defaulting owner, of a fee to be determined by the Association, but not to exceed Fifty Dollars (\$50.00) to cover the costs of preparing and filing or recording such release, together with the payment of such other costs, interest or fees as shall have been incurred.

d. **CUMULATIVE REMEDIES:** The assessment lien and the rights to judicial foreclosure shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have in these covenants and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

e. **MORTGAGE PROTECTION CLAUSE:** No breach of the covenants, conditions, or restrictions, nor any lien so created, shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of said covenants, conditions, and restrictions shall be binding upon and effective against the owner whose title is deprived through foreclosure of trustee's sale, or otherwise.

SECTION 9 - SUBORDINATION OF THE LIEN TO MORTGAGES: The lien of the assessments shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. The sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments becoming due or from the lien.

SECTION 10 - INSURANCE ASSESSMENTS: The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for the improvements subject to the jurisdiction of the Association, excepting of course, individually owned residences and other structures, against loss or damage by any hazard in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard, and shall also obtain a broad form public liability policy covering all Common Areas, if any, and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be common expenses.

In the event of damage or destruction by any casualty to any property covered by insurance written in the name of the Association, the Board of Directors shall, with concurrence of the mortgagees, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a Federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board of Directors, or by an agent duly authorized by the Board of Directors. The Board of Directors shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed improvements. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all owners in such proportions as the Board of Directors deem fair and equitable in the light of the damage sustained to make up any deficiency. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the owners in such proportions as the Board of Directors deem fair and equitable.

ARTICLE VII

The Board of Directors may in its discretion appoint a Management Committee composed of three (3) or more representatives, one (1) Board member and two (2) owners to supervise the management of the maintenance, preservation and use of the Common Area and related facilities.

ARTICLE VIII GENERAL PROVISIONS

SECTION 1 - ENFORCEMENT: The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or imposed by the provisions of this Declaration. Failure by the

Association or by any owner to enforce any covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 2 - SEVERABILITY: Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

SECTION 3 - AMENDMENT: The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. For additional provisions see Article IV, Section 4.

IN WITNESS WHEREOF, the undersigned, being the DECLARANT, has set his hands and seals on 1 day of July, 2005.

DECLARANT:

By: Daniel W. Ward
Daniel Ward
President, Ward Construction, LLC.

STATE OF WYOMING)
) SS.
COUNTY OF CAMPBELL)

The foregoing Declaration of Covenants, Conditions, and Restrictions was acknowledged before me this 1 day of July, 2005, by Daniel Ward, President of Ward Construction, LLC.



Becky Mallon
Notary Public
My Commission Expires: 8/25/07

OF WYOMING) ss.
Camp County)
and this 19th day of September, A.D., 2005 at 12:12 o'clock P. M. and recorded in Book 2093
Photos on page 74-81 Fees 29.00
Travis Saunders RECORDED
and Ex-Officio Register of Deeds ABSTRACTED
INDEXED
CHECKED By Deputy Liane Hackett