

E# 1270857 BK 1699 P62957
DOUG CROFTS, WEBER COUNTY RECORDER
26-JAN-94 1117 AM FEE \$41.00 DEP MH
REC FOR: MARK.J..SLETTEN

DECLARATION OF

COVENANTS, CONDITIONS AND RESTRICTIONS

OF

North Pointe Subdivision

~~PLATTED BY VERIFIED BY
ENTERED BY MICROFILMED BY~~

THIS DECLARATION is made on the date set forth below by North Pointe Subdivision, a Utah Limited Liability Company (referred to in this Declaration as "Declarant").

SECTION 1: RECITALS

1.01. Description of Real Property. Declarant is the owner of that certain real property located in Weber County, Utah, which is more particularly described on Exhibit "A" attached hereto and by reference incorporated in this Declaration.

1.02. Common Plan for Project. By this Declaration, Declarant intends to establish a common scheme and plan for architectural approval and control of the Project.

SECTION 2: DEFINITIONS

2.01. "Architectural Control Guidelines" or "Guidelines" shall mean the written architectural review standard, if and, promulgated by the Architectural Control Committee as provided in the Section below entitled "Architectural Control."

2.02. "City" shall mean North Ogden City, Utah, the City in which the Project is located.

2.03. "Declarant" shall mean North Pointe Subdivision, a Utah Limited Liability Company successors and assigns.

2.04. "Improvement" shall mean Structures, as defined herein, substantial plants such as trees, hedges, shrubs, bushes and major landscaping of any kind "Improvement" shall also mean any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface or subsurface water form, upon, under or across any portion of the Project. "Improvement" shall also mean any utility line, conduit, pipe or other related facility or equipment.

2.05. "Lot" Shall mean any parcel of land shown on the Map, including the legal re-subdivision of any such Lot into any additional parcel or parcels, provided, however, that such re-subdivision is not prohibited by this Declaration.

NO SIGNATURE OR NOTARY
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2.06. **"Map"** shall mean that subdivision map entitled "North Pointe Subdivision," which Map recorded January 19, 1994.

2.07. **"Mortgage"** shall mean a mortgage or deed of trust encumbering a Lot. A "mortgage" shall include the beneficiary under a deed of trust.

2.08. **"Owner"** shall mean each person or entity, including Declarant, holding a record fee ownership interest in a Lot. "Owner" shall not include persons or entities who hold an interest in a Lot merely as security for the performance of and obligation.

2.09. **"Project"** or **"Property"** shall mean the real property described on Exhibit "A" attached hereto, including any Improvements erected thereon.

2.10. **"Residence"** shall mean a dwelling structure on a Lot.

2.11. **"Structure"** shall mean any tangible thing or device to be fixed permanently or temporarily to real property including, without limitation, any building, garage, driveway, walkway, concrete pad, asphalt pad, fence, wall, pole, sign, antennae, sprinkling system, swimming pool, spa, tennis court or trash enclosures.

SECTION 3: ARCHITECTURAL CONTROL

3.01. **General Limitation.** Subject to the exemptions described below, no Improvement and/or Structure may be constructed, erected, painted, altered or changed on any portion of the Project with out the prior written approval of the Architectural Control Committee ("Committee").

3.02. **Exemptions.** Notwithstanding the Subsection above entitled "General Limitation," Committee approval shall not be required for the following: (a) Improvements constructed by, at the direction of, or with the approval of Declarant; (b) normal maintenance of exempt or previously approved Improvements; (c) repair or rebuilding of an exempt or previously approved Improvement; (d) changes to the interior of an exempt or previously approved Structure; (e) work reasonably required to be performed in an emergency for the purpose of protecting any person or property from damage.

3.02. **Architectural Control Committee.**

a. **Number and Appointment.** The Committee shall be composed of three (3) members. The initial members shall be appointed by Declarant. Declarant shall have the right to appoint replacements at any time to the Committee for a period of three (3) years from the date of recordation of this Declaration. After the initial three (3) year period, the Committee members shall have the full authority to designate a successor in the event of death or resignation of a member. Except for the power of the Declarant to appoint all members during the initial three (3) year period, at any time thereafter the then record owners of the majority of Lots shall

have the power, through a duly recorded written instrument, to change the membership of the Committee. The initial Committee shall be composed of Jay Nilson, Raymond Ramsey, and Mark Sletten.

b. **Operation.** The Committee shall meet from time to time as necessary to properly perform its duties hereunder. A majority of the Committee members may designate a representative of the Committee to act for it. Except as provided elsewhere herein, any decision may be made by the Committee upon an affirmative vote of two-thirds (2/3) of its members. The Committee shall keep and maintain a record of all actions from time to time taken by the Committee at meetings or otherwise, and shall maintain files of all documents submitted to it. The members of the Committee shall not receive any compensation for services rendered. All members of the Committee shall be entitled to reimbursement from fees collected by the committee for reasonable expenses incurred by them in connection with the performance of their duties.

c. **Duties.** The Committee may adopt Architectural Control Guidelines ("Guidelines") as provided below and shall perform other duties imposed upon it by this Declaration or applicable laws and regulations.

d. **Address.** The address of the Committee shall be determined by resolution of the Committee. Such address shall be the place for the submittal of plans and specifications and the place where current copies of the Guidelines shall be kept.

e. **Guidelines.** The Committee may, from time to time, adopt or amend Guidelines prospectively. Said Guidelines shall interpret and implement the provisions of this Section entitled "Architectural Control" by setting forth more specific standards and procedures for committee review. All guidelines shall be in compliance with all applicable laws and regulations of any governmental entity having jurisdiction over Improvements in the Project, shall incorporate high standards of architectural design and construction engineering, shall be in compliance with the minimum standards set forth herein, and otherwise shall be in conformity with the purposes and provisions of this Declaration. A copy of the current Guidelines, if any shall be available for inspection and copying by any Owner at any reasonable time during customary and normal business hours.

f. **Standards.** The following minimum standards shall apply to any Improvements constructed, painted, altered or changed on the Project:

(1) All Improvements shall be constructed, painted and changed in compliance with the applicable zoning laws, building codes, this Declaration, and all other laws, ordinances and regulations applicable to Project Improvements.

(2) All one-story Residences shall have a minimum area of One Thousand-Five Hundred (1,500) square feet (excluding garages, basements, accessory buildings, covered or uncovered patios and porches). All two-story Residences shall have a minimum size

of One Thousand-Seven Hundred Fifty (1,750) square feet (excluding garages, basements, accessory buildings, covered and uncovered patio and porches.

(3) All Lots shall have a minimum of an attached double car garage.

(4) All Lots shall be landscaped with a combination of trees, shrubs, ground cover, lawn, natural vegetation, and limited decorative rock, bark, and similar materials. Berming may be utilized so long as it does not disrupt proper drainage within the Project. Landscaping shall be designed so as to compliment, protect and harmonize with the natural terrain, existing trees and vegetation and shall be consistent with generally accepted, customary and conventional landscape designs. Stone, gravel, concrete and similar materials shall be used only for complimentary and supplementary purposes and no Lot shall be covered entirely with such materials.

(5) All exterior and decorative lighting shall be designed to eliminate glare and annoyance to other Lot Owners. Lighting shall be shielded and directed downward. Colored landscaping lighting shall be prohibited, unless approved by the Architectural Control Committee.

(6) In reviewing proposed Improvements for approval, the Committee shall consider at least the following:

(a) Does the proposed Improvement conform to the purposes and provisions of the Project Documents?

(b) Is the proposed Improvement of a quality of workmanship and materials comparable to other Improvements that are proposed or existing on the Project?

(c) Is the proposed Improvement of a design and character which is harmonious with proposed or existing Improvements and with the natural topography in the immediate vicinity?

(d) Will the proposed Improvement unreasonably interfere with or otherwise impair the view or solar access of other portions of the Project?

3.04. Committee Approval Process - Approval Application. Any person proposing to construct, paint, alter or change any Improvement on the Project which requires the prior approval of the committee shall apply to the committee in writing for approval of the work to be performed and the time schedule for performing such work. The Committee may charge and applicant a reasonable fee for application review.

In the event additional plans and specifications for the work are required by the Committee, the applicant shall be notified of such requirement within thirty (30) days of receipt by the Committee of his initial application or the application shall be deemed sufficiently

submitted as of that date. If timely notified, the applicant shall submit additional plans and specifications may include, but not be limited to showing the nature, kind, shape, color, size, materials and location of the proposed work, or the size, species and location of any plants, trees, shrubs and other proposed landscaping.

3.05. **Review and Approval.** Upon sufficient submission of an application for Committee review the Committee shall proceed expeditiously to review all of the documents to determine whether the proposed work is in compliance with the provisions and purposes of the Project Documents and all Guidelines of the Committee in effect at the time the documents are submitted. In the event the Committee fails to approve an application, it shall notify the applicant in writing of the specific matters to which it object. In the event the Committee fails to notify the applicant of the action taken by the Committee within thirty-five (35) days after sufficient submission of an application, the application shall be deemed approved. One set of plans as finally approved shall be retained by the Committee as a permanent record.

3.06. **Commencement, Completion of Approved Work.** Upon receipt of the approval of the Committee, the applicant shall proceed to have the work commenced and diligently and continuously pursued to completion in substantial compliance with the approval of the Committee including all conditions imposed therewith. The approval of the Committee shall be effective for a period of one (1) year after the date of the approval subject to the right of the Committee to provide for a shorter or longer period at the time of its approval, or subsequently to extend the period upon a showing of good cause, and in the event the approved work is not commenced within the effective period of the approval, then the applicant, before commencing any work shall be required to resubmit his application for the approval of the Committee.

All approved work shall be completed within one (1) year after the date of commencement, or such other reasonable period specified by the Committee at the time of approval, with the period of time subject to extension by the number of days that work is delayed by causes not under the control of the applicant or his contractor or as otherwise extended by the Committee. Upon completion of approved work, the applicant shall give written notice thereof to the Committee.

If for any reason the Committee fails to notify the applicant of any noncompliance within sixty (60) days after receipt of said notice of completion from the applicant, the improvement shall be deemed to be completed in accordance with said approved plans.

3.07. **Inspection Non-Compliance.** The Committee, or any authorized representative shall have the right during normal business hours, after forty-eight (48) hours notice to the Owner thereof, to enter upon any portion of the Project for the purpose of determining whether or not any work is being performed or was performed in compliance with this Declaration and the Guidelines.

If at any time the Committee determines that work is not being performed or was not performed in compliance with this Declaration and the Guidelines, whether based on a failure

to apply for or obtain approval, a failure to comply with approval, a failure to timely commence or complete approved work or otherwise, the Committee shall notify the owner in writing of such non-compliance specifying the particulars of non-compliance, and demanding that the owner remedy such non-compliance within a reasonable and specified period.

In the event that the Owner fails to remedy such non-compliance within the specified period, the Committee shall have the right and duty to remedy the non-compliance in any appropriate manner permitted by this Declaration and the Guidelines, or as otherwise permitted by law or in equity, including but not limited to removing the non-complying Improvement, correcting the non-complying Improvement, completing the non-complying Improvement, or recording a notice of non-compliance or non-completion on the property, as appropriate. The Owner shall have the obligation to reimburse the Committee for any costs incurred in enforcing these provisions and such costs may be recovered by the Committee in an action of law against such individual lot owner.

3.08. Waiver. The approval by the Committee of any plans, drawings or specifications for any Improvements constructed or proposed, or in connection with any other matter requiring the approval of the Committee shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter submitted for approval. Where unusual circumstances warrant it, the Committee may grant reasonable variances from the architectural control provisions hereof or from the Guidelines. Such variances shall be made on a case-by-case basis and shall not serve as precedent for the granting of any other variance.

3.09. Estoppel Certificate. Within thirty (30) days after written demand is delivered therefor to the Committee by any Owner or Mortgagee, and upon payment to the Committee of a reasonable fee (as fixed from time to time by resolution of the Committee), the Committee shall execute and deliver in recordable form, if requested, any estoppel certificate executed by any two (2) of its members, certifying, with respect to any Lot of said Owner or Mortgagee, that as of the date thereof either: (a) all improvements made and other work done upon or within said Lot comply with the requirements of the Committee and this Declaration; or (b) such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such noncompliance. Such statement shall be binding upon the Committee in favor of any person who may rely thereon in good faith.

3.10. Liability. Neither the Declarant, the Committee, nor any Committee member thereof shall be liable to any Owner or to any third party for any damages, loss, or prejudice suffered or claimed on account of: (a) the approval or disapproval of plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) the development of any property within the Project; (d) the execution and filing of an estoppel certificate pursuant to Section 3.09; or (e) the execution and filing of a notice of non-compliance or non-completion pursuant to Section 3.07, whether or not the facts therein are correct, if the Declarant, the Committee or such Committee member has acted in good faith on the basis of such information

as may be possessed by them. Specifically, but not by way of limitation, it is understood that plans and specifications are not approved for engineering design, and by approving such plans and specifications neither Declarant, the Committee, or any Committee member thereof, assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications.

SECTION 4: USE RESTRICTIONS

4.01. **Use of Lots.** No Lot, or any portion thereof, shall be occupied and used except for the site of a single family Residence by the Owners, their contract purchasers, lessees, tenants, or social guests. This subsection is intended to exclude every form of boarding or lodging house, sanitarium and hospital, and the like. No trade or business or commercial activity shall be carried on or conducted upon any Lot, except as follows:

(a) Declarant, its successors or assigns, may use any Lot in the Project owned by Declarant for a model home site and display and sales office during construction and until the last Lot is sold by Declarant, or until five (5) years from the date of closing of the first sale of a Lot in the Project, whichever occurs first; and

(b) This Subsection shall not prohibit home occupations so long as they are merely incidental to the use of the Lot as a Residence, are permitted by local law, are conducted in such a manner as to not adversely affect other Owners' use and enjoyment of the Project, and have received prior written approval from the Committee.

4.02. **Vehicle Restrictions.** No trailer, camper, mobile home, recreational vehicle, commercial vehicle, truck (other than a standard size pickup truck), inoperable automobile, boat or similar equipment shall be permitted to remain upon any area within the Property, except within an enclosed garage structure or within an enclosed yard area, other than temporarily, not to exceed two (2) weeks within any six (6) month period. Commercial vehicles shall not include sedans or standard size pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Committee. No noisy or smoky vehicles shall be operated on the Property. No off-road unlicensed motor vehicles shall be operated upon the Property.

4.03. **Signs.** No sign of any kind shall be displayed to the public view on or from any portion of the Property without the approval of the Committee except as follows:

a. One sign of customary and reasonable dimensions advertising a Lot for sale, lease, rent or exchange, displayed on a Lot; and

b. Such signs as may be used by Declarant or its assignees in connection with the development of the Project and sale of Lots; and

c. Such other signs or notices as are required by law or as are otherwise necessary to perfect a right provided for in law.

4.04. **Animals.** No animals or birds of any kind shall be raised, bred, or kept on any Lot or portion of the Property; except the usual and ordinary household pets such as dogs, cats, or birds may be kept, provided that they are not kept, bred, or maintained for any commercial purposes, and they are kept under reasonable control at all times. Notwithstanding the foregoing, no pets may be kept on the Property which result in an annoyance or nuisance to other Owners.

4.05. **Trash: Storage of Materials.** All garbage and trash shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. It shall be placed and kept in covered sanitary containers where it is not visible from any neighboring Lot except for a reasonable time prior to or after collection. All woodpiles or storage piles shall be kept screened and concealed from view of other Lots and streets. Garbage and trash shall be placed for pick up as required by the disposal service and any rules adopted by the Committee.

4.06. **Antennae: Roof Projections.** No antennae, towers, aerials or other facilities for the reception or transmission of radio or television broadcasts or other means of communication shall be erected or maintained on any Lot except installations within Structures constructed on a Lot or by underground conduits. No such item or equipment shall be erected or maintained upon the outside of any building on the Properties unless the same has been approved in writing by the Architectural Control Committee.

4.07. **Building Location.** No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines as required by North Ogden City.

4.08. **Window Coverings.** Windows shall be covered only by drapes, shades or shutters and shall not be painted or covered by foil, cardboard, sheets or similar materials.

4.09. **Clotheslines.** No exterior clotheslines or other outside clothes drying or airing facility shall be erected or maintained on the properties in any location where the same would be visible from any street or neighboring lot.

4.10. **Major Appliances.** No major appliances, including without limitation clothes washers, clothes dryers, refrigerators or freezers may be kept, stored or operated on any balcony, patio, porch or other exterior area of any Structure or Improvement.

4.11. **Sight Distance at Intersections.** No fence, wall, hedge or shrub planting which obstructs sightlines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sightline limitations shall apply on any lot within ten (10) feet

from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sightlines.

4.12. **Drainage.** No Owner shall do any act or construct any improvement which would interfere with the natural or established drainage systems or patterns within the Project without the approval of the Committee.

4.13. **Nuisances: Offensive Activities.** No noxious, illegal, or seriously offensive activities shall be carried on within any Lot, or in any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to, or which may in any way interfere with the quiet enjoyment of, each Owner's Lot, or shall in any way increase the rate of insurance for any other Lot (or Owner).

4.14. **Temporary Structures.** Structures which are temporary in character, including, without limitation, any trailer, tent, shack, garage, barn or other out-building, shall not be used as a residence on any Lot at any time; provided, however, that: (a) Declarant reserves the right to construct and maintain temporary buildings, structures and vehicles on the Property in connection with the construction and administration of initial Improvements; and (b) this subsection shall not be construed or interpreted to prohibit the erection or construction of structures permitted pursuant to the Civil Code of the State of Utah.

4.15. **Compliance with Declaration.** Each Owner, contract purchaser, lessee, tenant, guest, invitee or other occupant of a Lot shall comply with the provisions of this Declaration.

SECTION 5: MORTGAGEE PROTECTION

5.01. **Mortgages Permitted.** Any Owner may encumber his Lot with Mortgages.

5.02. **Priority of Mortgage.** Notwithstanding any other provision of this Declaration, it is hereby provided that a breach of any of the conditions contained in this Declaration by any Owner or of any re-entry by reason of such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said Lot or any part thereof.

5.03. **Effect of Breach.** No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value, but all of the covenants, conditions, restrictions, declarations, easements and limitations of this Declaration shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

SECTION 6: GENERAL PROVISIONS

6.01. **Term.** The declarations, covenants, conditions, restrictions, limitations and easements of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be binding on the Owners of any Lots, their legal representatives, heirs, grantees, tenants, successors and assigns, subject to this Declaration, for a term of thirty (30) years from the date this Declaration is recorded. Thereafter, subject to the Subsection below entitled "Amendment; Revocation", they shall be automatically extended for successive periods of ten (10) years.

6.02. **Notices.** Notices provided for in this Declaration and the Guidelines shall be in writing and shall be deemed sufficiently given when delivered personally or within seventy-two (72) hours after deposit in the United States mail, postage prepaid, addressed to an Owner at the last address such Owner designates to the Committee for delivery of notices, or in the event of no such designation, at such Owner's last known address, or if there be none, at the address of the Owner's Lot. Notices to the Committee shall be addressed to the address designated by the Committee by written notice to all Owners.

6.03. **Amendment; Revocation.** Until conveyance of the first Lot, Declarant shall have the unilateral right to amend or revoke this Declaration. After the first conveyance of a Lot, this Declaration shall be: (a) amended only upon the written approval of the then record Owners of at least sixty-six and two-thirds percent (66-2/3%) of the Lots; or (b) revoked only upon the written approval of the then record Owners of at least seventy-five percent (75%) of the Lots. If co-Owners of a Lot are unable to agree among themselves as to how their vote shall be cast in the matters addressed in this Subsection, they shall forfeit the vote on the matter in question. If only one Owner exercises the vote of a particular Lot, it shall be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. An amendment or revocation shall be effective when it has received the required percentage approval and has been recorded in the Office of the County Recorder.

6.04. **Severability.** Should any provision or portion of this Declaration be declared invalid or in conflict with any law of the jurisdiction where this Project is located, the validity of all other provisions and portions of this Declaration shall remain unaffected and in full force and effect.

6.05. **Headings.** The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

6.06. **Enforcement.** The various restrictive measures and provisions of this Declaration are declared to constitute mutual equitable covenants and servitudes for the protection and benefit of each Lot in the Project and failure by Declarant or any other person or persons entitled so to do to enforce any measure or provision upon violation thereof shall not stop or prevent enforcement thereafter or be deemed a waiver of the right to do so.