



\*W2068803\*

### DEVELOPER'S AGREEMENT WITH NORTH OGDEN CORPORATION

THIS AGREEMENT entered into this 8<sup>th</sup> day of October, 2004, between Blackburn-Jones R.E. of Ogden, County of Weber, State of Utah, hereinafter referred to as Developer, and NORTH OGDEN CITY CORPORATION, a municipal corporation of the State of Utah located in Weber County, hereinafter referred to as the City, hereby agrees as follows:

1. PRELIMINARY. Developer has presented to the North Ogden City Planning Commission and the North Ogden City Council a proposed final plat for the subdivision of, and construction of improvements on, certain land in North Ogden City to be known as Haltree Phase 1a Subdivision. As consideration for the granting of said approval and acceptance, Developer has agreed and does now agree to the provisions hereof and all other ordinances of North Ogden City.

2. COMPLIANCE WITH SUBDIVISION STANDARDS. Developer agrees to comply with all of the ordinances, rules, regulations, requirements and standards of the City with respect to the construction and completion of said subdivision, and particularly to install and complete all of the off-site improvements required, within the time hereinafter stated, including but not limited to the following:

- A. Rough grading and finish grading and surfacing of streets.
- B. Curbs, gutters, waterways, and driveway approaches.
- C. Sanitary sewers, including laterals to property line of each lot.
- D. Street drainage and drainage structures.
- E. Water lines, including laterals to each property line of lot.
- F. Fire hydrants.
- G. Sidewalks and walkways.
- H. Traffic control signs.
- I. Street signs with numbers.
- J. Screening when required.
- K. Chip and seal coat on new streets.
- L. Monuments.
- M. Fencing as listed:
- N. Pressure irrigation, including laterals to each property line of lot.
- O. 10% Contingency Fund.

Said improvements and any others designated shall be done according to the specifications and requirements of the City. All work shall be subject to the inspection of North Ogden City and any questions as to conformity with the City specifications or standards or as to the technical sufficiency of the work shall be decided by the City Engineer and his/her decision shall be final and conclusive.

Developer agrees as consideration for City issuing building permits after initial acceptance of improvements to allow the City to collect and retain utility fees for the time between initial and final acceptance of the utility lines.

Updated February 6, 2001

E# 2068803 PG 1 OF 4  
DOUG CROFTS, WEBER COUNTY RECORDER  
17-NOV-04 1108 AM FEE \$.00 DEP SGC  
REC FOR: NORTH.OGDEN.CITY

16-249-0001 to 0013

Developer's Agreement  
Page 2

Building permits will be issued on condition that all improvements necessary to satisfy fire code requirements have been installed and that enough security is held in escrow to complete all required improvements for the subdivision, including any repairs or replacement after initial installation.

3. TIME FOR COMPLETION AND EXTENSION OF TIME. All of the said off-site improvements shall be fully installed and completed within two (2) years from the date of the recordation of the Final Plat. If not completed within two (2) years, the Subdivider may apply to the Planning Commission and the City Council for an extension of time of one year with additional one-year extensions after the first extension if the Planning Commission and City Council agree. Said extensions shall be subject to adequate security for the completion of said improvements being made by increasing the amount of the escrow account.

4. SECURITY FOR COMPLIANCE. As security for compliance by Developer with the ordinance, rules, regulations, requirements and standards of the city and of Developer's agreements herein stated, Developer has delivered to the City an acceptable Escrow Agreement, approved by the City Council and City Attorney, by the terms of which the Escrow Agent identified therein agrees to hold \$225,077.50 (which represents the cost of all required improvements as determined by the City Engineer plus 10% contingencies) in escrow for the use of the city in the event of Developer's failure or refusal to install, complete, construct, repair, or replace any off-site improvements in accordance with the provisions of this agreement, the escrow agreement and all City codes and ordinances. The decision of the City as to whether an improvement needs to be installed, constructed, completed or replaced will be final.

Should Developer fail or refuse to complete the said off-site improvements in accordance with the provisions hereof, and particularly within the time stated, or should Developer become insolvent before a completion thereof, then the City may, at its option, determine the cost of completing said off-site improvements on the basis of reliable estimates and bids and may apply all sums deposited in escrow against the said cost of completion and may proceed to legally obtain the escrow funds and use the proceeds therefrom to pay the cost of completing the said off-site improvements and to pay all related expenses including but not limited to court cost and attorney's fees.

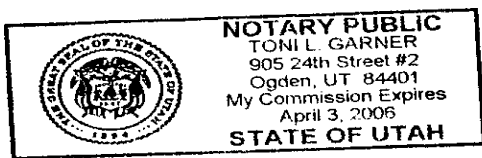
The 10% of above stated, shall constitute a guarantee that the said off-site improvements are installed in accordance with the subdivision standards of the City as to quality and service-ability and shall be held by the City for a period of one (1) year from the time the last improvement is "conditionally accepted" by the City or until one (1) year after the time the last improvements needing repair or placement is again accepted. At the end of the one year period the said 10% shall be returned to Developer provided the off-site improvements have proved to have been constructed or installed in accordance with the standards of the City as to quality and serviceability, otherwise, to be applied toward construction or installation of said improvements in accordance with City standards or the repair or replacing the same so as to bring them

**ACKNOWLEDGEMENT OF DEVELOPER OF CORPORATION**

STATE OF UTAH }

COUNTY OF WEBER }

On the 2<sup>th</sup> day of October, 2004, personally appeared before me Bruce H. Jones, who being by me duly sworn, did say that he/she is the President of Blackburn-Jones Beau Estate, Inc. that the Developer's Agreement was signed in behalf of said corporation by his/her signature under authority of a resolution of its Board of Directors, and said Bruce H. Jones acknowledged to me that said corporation executed the same.



Toni L. Garner  
Notary Public  
Ogden, Utah  
Residing at:

My Commission Expires:

April 3, 2006

North Ogden City  
Form: Sub 1  
Page 1

## COVENANT AND AGREEMENT

KNOW ALL MEN BY THESE PRESENT:

1. The undersigned Blackburn-Jones Real Estate, Inc. being the record owners of the hereinafter described real property, situated within the corporate limits of the City of North Ogden, in Weber County, State of Utah, and which the said owners are now seeking to sub-divide in accordance with the provisions of the laws of the State of Utah and the ordinances of said North Ogden City, in such case made and provided, said undersigned owners being hereinafter called "the Sub-dividers", for and in consideration of the approval of said sub-division plat and dedication as heretofore submitted to said North Ogden City Corporation, and to guarantee the installation of the special improvements required by the ordinances of said North Ogden City, do hereby covenant and agree with said North Ogden City Corporation, that the said sub-dividers will not lease nor convey any of the real property hereinafter described to any third person whomsoever without the said sub-divider having first, as a condition precedent thereto, either:

(1) within two years from the date hereof installed and fully paid for all of the special improvements specified in the applicable ordinances of North Ogden City, in full compliance with the plans and specifications approved by the City Engineer of said City for said subdivision and under his inspection and to his satisfaction in the streets fronting on the land so to be conveyed or in easements for such improvements or utilities dedicated to the public use for such purpose, and thence along the streets or utility easements aforesaid in the case of sewer and water utilities to a connection with the nearest existing outfall or supply, as the case may be, and in the case of other improvements to a connection with the existing improvements of the same kind, or to the boundary of the said hereinafter described real property nearest to the said existing improvements, whichever is closer; or

(2) filed with the North Ogden City Recorder, or deposited with a bank duly authorized to do business in the State of Utah, a good and sufficient corporate surety bond issued by a corporate surety duly authorized to execute such bonds in the State of Utah, in an amount not less than the cost of all of such special improvements not then installed, plus ten percent (10%) as estimated by the City Engineer, which bond shall be conditioned upon and shall guarantee the installation of all such improvements within such period of two years from the date hereof; and which said bond shall be approved by the City Council and by the City Attorney; or

(3) deposit with the City Recorder, or with some bank or approved Escrow Agent, under escrow agreement approved by the City Council & City Attorney, lawful money of the United States in a sum not less than the said cost as estimated by the City Engineer to complete all special improvements, not then installed, plus ten percent (10%), within such period of two years from the date hereof. All sums so deposited in escrows shall be held to secure the construction and installation of the improvements aforesaid and shall be applied from time to time in payment of the cost and expenses incident to the installation and construction thereof upon the deposit of the written certificate of the City Engineer, approved by the City Council, that the improvements or substantial portion thereof have been properly completed, specifying the cost of the completed portion thereof to be paid out of such escrow funds, and specifying the names of the persons or firms to whom such money is due for the work and materials incident to such installation of construction. When the City Engineer, with the approval of the City Council, as aforesaid, shall certify that all of the improvements have been paid in full, and have been completed according to specifications, any surplus then remaining in the hands of the City Recorder, or Escrow Agent, as the case may be, less a sum equal to 10% of the original amount escrowed (retained

Updated February 6, 2001

E# 2068803 PG4 OF6

North Ogden City  
Form: Sub 1  
Page 2

for one year guarantee period in accordance with the Developer's Agreement with North Ogden City Corporation), shall be repaid by the escrow holder to the said sub-divider, or his assigns."

2. The said sub-dividers do hereby give and grant unto said North Ogden City Corporation a lien on the said lands hereinafter described to secure the installation of all of the aforesaid improvements as hereinabove specified, together with all cost, including a reasonable attorney's fee, which said North Ogden City may reasonably incur in enforcing any of the terms and provisions hereof. The City shall, from time to time, by the City Council release of record this lien and covenant on such lots and parcels of land which this covenant has been fully performed either by the installation of the improvements and payment therefore, or by the deposit of a bond as aforesaid, or by deposit of funds in escrow, as aforesaid, to secure such installation and payment.

3. This covenant shall be deemed to be a covenant running with the lands for the benefit of said North Ogden City Corporation and its citizens.

4. This agreement shall be recorded in the office of the Weber County Recorder.

5. The lands referred to herein are situated in Weber County, Utah, and are particularly described as follows, to-wit:

IN WITNESS WHEREOF the undersigned sub-divider(s) hereunto set this hand this 8<sup>th</sup> day October, 2004.

Bruce H. Jones  
President, Blackburn-Jones

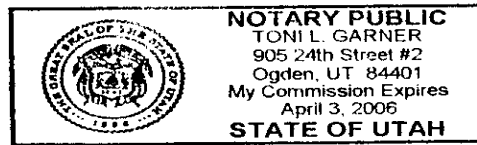
State of Utah,        }  
                                  } ss.  
County of Weber    }

On this 8<sup>th</sup> day of October, 2004, personally appeared before me Bruce H. Jones the signer(s) of the above instrument, and duly acknowledge to me that (t) he/she (y) executed the same.

Toni L. Garner  
Notary Public residing at  
Hooper, Utah

My commission expires:  
April 3, 2006

Updated February 6, 2001



Developer's Agreement  
Page 3

into conformity with City standards, Developer will pay the difference to the City on demand. The city shall not issue any building permits until the improvements needing repair, replacement, etc., are completed and again accepted.

5. **APPLICABILITY OF ORDINANCE.** This agreement does not supersede, but implements the North Ogden City Subdivision Ordinance and all other ordinances and regulations applicable to the subdivision of land and construction of improvements thereon, and Developer agrees to comply in all respects with the provisions of said ordinances. No provision of this agreement shall limit the City in its rights or remedies under said subdivision ordinance or other applicable building ordinances.

6. **SUCCESSORS ENFORCEMENT.** The terms of this agreement shall be binding upon the parties hereon, their heirs, executors, administrators, assigns or any parties legally acquiring the parties interest through foreclosure, trust deed, sale, bankruptcy or otherwise. In the event either party must take legal action to enforce the terms of this agreement, the prevailing party shall have costs of court, including a reasonable attorney's fee.

IN WITNESS WHEREOF, the undersigned parties have executed this agreement this 8<sup>th</sup> day of October, 2004.

Blackburn - Jones REI  
Bruce H Jones  
Developer  
Pres.  
Title

NORTH OGDEN CITY COPORATION

[Signature]  
Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

NORTH OGDEN CITY PLANNING COMMISSION

\_\_\_\_\_  
Chairman or Vice-Chairman