



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR NORTH
OGDEN COVE SUBDIVISION, COMMONLY REFERRED TO AS, "THE COVE AT
WILLOW SPRINGS"**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 25th Day of April, 2008, by North Ogden Cove, L.C., a Utah limited liability company hereinafter referred to as "Declarant."

RECITALS:

1. Declarant, North Ogden Cove, L.C. is the owner of certain real property in *North Ogden City, State of Utah, more particularly described on the Plat of North Ogden Cove Subdivision, Phases I and II*. The described parcel of real property is hereinafter referred to as the "Subject Property."
2. Declarant desires to impose upon Subject Property certain protective covenants, conditions, restrictions, reservations, easements, liens, and charges for the benefit of Subject Property and all present and subsequent owners thereof, and all conveyances of Subject Property for any part thereof shall be subject to the Declaration;

NOW, THEREFORE, Declarant hereby imposes upon Subject Property the following easements, conditions covenants, restrictions, and reservations which shall run with Subject Property and be binding upon all parties now or hereafter having any right, title or interest therein or to any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE 1: DEFINITIONS

The following capitalized terms shall, as used in this Declaration, have the following meanings:

- 1.1 "ACC" shall mean the Architectural Control Committee.
- 1.2 "ACC Design Standards" shall mean such standards promulgated by the Declarant and/or the ACC as authorized by **Section 10.3** below.
- 1.3 "Annexed Property" shall mean and refer to any real property made subject to this Declaration by Supplement Declaration pursuant to the provisions hereof for the annexation of additional parcels of real property.
- 1.4 "Assessment" shall mean a payment required of Association members, including Regular, Special or Limited Assessments as provided in this Declaration.
- 1.5 "Association" shall mean and refer to The Cove Subdivision Homeowners' Association, Inc. a nonprofit corporation organized under the laws of the State of Utah, its successors and assigns.

- 1.6 "Association Rules" shall mean such rules promulgated by the Declarant and/or the Association pursuant to Section 6.4(e).
- 1.7 "Board" shall mean the duly elected and qualified Board of Directors of the Association.
- 1.8 "Building" includes any Dwelling Unit, house, garage, or any other partially or fully enclosed building, shed or other structure, consisting of one or more walls or roof. A building includes sheds, animal enclosures which have a partial or full roof impervious to water in whole or in part, and similar structures.
- 1.9 "Common Area" includes any lot or parcel designated as Common Area in the final plat of the subdivision or in a Supplemental Declaration subjecting additional real property to this Declaration, which parcels' owners may or may not have access to depending upon the purpose of the particular Common Area. Said areas are intended to be devoted to the common benefit and enjoyment of the Owners (subject to the provisions hereof) and are not dedicated to the public.
- 1.10 "Common Facilities" shall mean and refer to those physical improvements constructed by Declarant upon Common Area or upon the utility easements over each Lot including, without limitation, benches, bridges, walkways, pedestrian paths and bicycles paths, street lights, drainage facilities, streams, waterfalls and waterways. Common facilities shall include the pressurized irrigation system (including the master valve controller, its wires and multiple lot controllers) unless and until it, or any portion thereof, is conveyed to the Association; it being the specific intent of the Declarant that the pressurized irrigation system shall be installed by the Declarant and shall be conveyed to The Cove Subdivision Homeowners' Association, together with an easement over each Lot and Common Area for the installation, operation and maintenance of the system by the Irrigation District.
- 1.11 "Declarant" shall mean the undersigned Owner of the Property, including any successor to the Declarant, who succeeds to the ownership of substantially all of Grantor's interest in the whole of the Property.
- 1.12 "Declaration" shall mean this Declaration, as it may be amended from time to time.
- 1.13 "Dwelling Unit" shall mean any structure intended to be occupied as a single-family residence, together with the vehicular parking garage next to such dwelling unit and all projections therefrom.
- 1.14 "Drainage Lot(s)" shall mean lots that shall be used primarily for retention pond/drainage basins. Drainage Lots shall remain free of all encroachments and obstructions (including fences and trees) which may adversely affect drainage or the maintenance of the storm water facilities. Drainage Lots shall be considered Common Area.
- 1.15 Intentionally Deleted
- 1.16 "Irrigation Maintenance Lot(s)" shall mean any lot or parcel designated as open space Lots

to be owned by the Association and shall be used for either irrigation or irrigation drainage and are covered by a blanket easement in favor of the Association for maintenance of the drainage ditches, together with any other lots so designated in a Supplemental Declaration, shall be referred to as "Irrigation Maintenance Lots". The Irrigation Maintenance Lots shall be left in a natural state, maintained by the Homeowners' Association, and their future use may include pedestrian access in the event all interest parties enter into a written agreement to the pedestrian use. Absent any such written agreement, only the Association shall have access to these lots. Irrigation Maintenance Lots shall be considered Common Area.

- 1.17 "Exempt Property" shall mean all portions of the Subject Property which have been dedicated to, and accepted by, a local public authority and/or owned by a charitable or nonprofit corporation exempt from taxation, all of which properties shall be exempt from Assessments created herein.
- 1.18 "First Mortgage" shall mean any Mortgagee possessing or holding a lien on a Lot or any part thereof prior to any other Mortgage.
- 1.19 "Limited Assessment" shall mean an Assessment levied by the Association upon one or more Lots, but not upon all Lots within the Subject Property, for the purpose of securing payment by the Owner(s) thereof of amounts expended by the Association to correct a condition prohibited or to cure an Owner's breach hereunder.
- 1.20 "Lot(s)" shall mean and refer to the plots or tracts of land comprising the Property, designated by lot numbers on the Plat, or any re subdivision thereby excluding the Common Area.
- 1.21 "Member" shall mean any person who is an Owner of a Lot within the Subject Property.
- 1.22 "Mortgage" shall mean any mortgage, deed of trust, land sale contract or other security instrument by which a Lot is encumbered.
- 1.23 "Mortgagee" shall mean any person or the successor to any person named as the mortgagee, beneficiary, seller or creditor under a Mortgage.
- 1.24 "Nonconforming Building" includes any building legally existing and/or used as of the date of this Declaration which does not conform with the building restrictions set forth in Article 4 of this Declaration.
- 1.25 "Occupant" shall mean any person, association, corporation, or other entity who or which is an Owner, or has leased, rented, been licensed, or is otherwise legally entitled to occupy and use any Dwelling Unit on a Lot including their heirs, personal representatives, successors, and assigns whether or not such right is exercised.
- 1.26 "Owner" shall mean and refer to the record owner of fee simple title to any Lot, excluding those record owners having title merely for security for the performance of an obligation.

- 1.27 "Plat" shall mean and refer to those certain plats of phases of The Cove Subdivision to be recorded in the Weber County Recorders' office, which plats cover and subdivide all of the Property.
- 1.28 "Pressurized Irrigation System" shall mean all pumps, pump houses, and related facilities, including electrical power, mainlines, connecting lateral pipelines, valves, service boxes, individual lot delivery lines and facilities, and all related equipment, parts and materials, including but not limited to those items of personal property comprising the Pressurized Irrigation System as shown on the engineering record drawings prepared for the Subdivision.
- 1.29 "Property" shall mean the property defined as Subject Property in the recitals above, and shall further mean and refer to such additional real property as may hereafter be made subject to this Declaration by Supplemental Declaration pursuant to the provisions hereof for annexation of additional parcels of real property.
- 1.30 "Regular Assessment" shall mean an Assessment levied by the Association to provide funds to pay the ordinary estimated expenses of the Association.
- 1.31 "Special Assessment" shall mean as Assessment levied by the Association other than a regular or Limited Assessment.
- 1.32 "Subdivision" shall mean the whole of the Property and any additional land annexed thereto (also sometimes referred to herein as the "Subject Property.")
- 1.33 "Supplemental Declaration" shall mean an amendment to this Declaration in which addition property shall, for the purposes of this Agreement, be made subject to this Declaration all in accordance with Article 11 herein.
- 1.34 "Transition Date" shall mean the latter of the date the Declarant certifies in writing to the Association that no additional real property shall hereafter be made subject to this Declaration, and the date when the Declarant owns ten percent (10%) or less of all of the Lots, which are part of the Subject Property and any additional property annexed thereto.
- 1.35 Whenever the context so requires, the use of the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders.

ARTICLE 2: PURPOSE

- 2.1 The Subject Property is hereby made subject to the covenants, conditions and restrictions contained in this Declaration, all of which shall be deemed to be imposed upon and run with the land and each and every Lot, and shall apply to each and every Owner and Occupant thereof and their respective successors in interest, to insure proper design, development, improvement, use and maintenance of the Subject Property for the purpose of:

- a. Insuring Owners and Occupants of Buildings of quality of design, development, improvement, use and maintenance as shall protect and enhance the investment and use of all Lots and Buildings.
- b. The prevention of the erection within the Subject Property and Buildings of improper design or construction with improper or unsuitable materials or with improper quality and method of construction.
- c. Encouraging and insuring the erection of quality and attractive improvements appropriately located within the Subject Property to assure visual quality and harmonious appearance and function.
- d. Securing and maintaining proper set-backs from streets and open areas within the Subject Property and adequate open spaces.
- e. The integration of development of the different Lots by setting common general standards consistent with the ACC Design Standards from time to time.
- f. Insuring attractive landscaping and the conservation of existing natural features with minimum adverse impact on the ecosystem.

ARTICLE 3: PROPERTY USE RESTRICTIONS

The following restrictions shall be applicable to Subject Property and shall be for the benefit of and limitation upon all present and future Owners of Lots, or any interest therein, and the Association, which is hereby empowered, in addition to each Owner, to enforce the same:

- 3.1 **Use.** Each Lot shall be used only for residential purposes. As used herein "residential" shall mean the use of the Dwelling Unit on a Lot for living accommodations for not more than two (2) unrelated persons, excluding guests or the principal occupants, which guests may reside therein on a temporary basis. "Residential" is not intended, nor shall the same be construed to include the use of the Lot for the operation of a shelter home for persons unrelated to each other or unrelated to the Owner or Occupant.
- 3.2 **Easements.** There is hereby reserved for the use and benefit of the Declarant and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and Occupant, and for the use and benefit of the Association, and their successors and assigns, for the purposes incident to such use, development and maintenance of the Property, the following easements:
 - a. For the installation and maintenance of public utility facilities of all kinds, including radio and television and transmission cables, the easements so designated on the recorded Plat(s) for any portion of the Property.
 - b. For the purpose of permitting the Declarant of the Association, their

contractors and agent, to enter onto those portions of Lots contiguous to any Common Area to maintain, replace and restore landscaping and other Common Facilities within the Common Area.

- c. Any additional easements, if any, as shown and designated on a recorded Plat(s) for any portion of the Property.
- d. No Buildings or improvements shall be placed or permitted to remain on such easement areas located within any Lot which shall interfere with the intended use of purpose of such easement(s), and no other activity shall be undertaken on any Lot which may interfere with the use and access intended to be provided by such easement or the installation or maintenance of the utilities or other facilities if any, located thereon or therein.
- e. Access to public works requires a twelve (12) foot paved asphalt pathway to be constructed on the border of the following lots: 21 & 22; 23 & 24; 34 & 35; 36 & 37; 43& 44; 48 & 49; 69 & 70; 77 & 78; 109 & 110.

3.3 Subdivision. No Lot may be further subdivided, unless otherwise authorized herein.

3.4 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept or permitted within any Residential lot except as follows:

a) Two dogs or two cats or one dog and one cat per lot which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. Outside kennels for household pets shall be of chain link construction or a dog house compatible with the architecture of the home and located so as to not be visible from the street.

b) Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of their respective owners. Excessive barking shall constitute a nuisance. No dog, cat or other pet shall be permitted to roam the property unattended, and all dogs, cats or other pets shall be kept on a leash while outside a Lot. An Owner or resident may be required to remove a pet upon receipt of the third written notice from the Committee of violations of any rule, regulation or restriction governing pets within the property. Residents who walk their pets on public sidewalks or roads shall carry a bag and clean up after their pets. No pets of any kind will be allowed to remain on the property prior to the building of a home on the Lot.

3.5 Trash. All garbage, refuse and animal waste shall be properly and promptly cleaned and stored appropriately and removed from each Lot so as to prevent unsightliness, or unnecessary or unpleasant odors.

3.6 Equipment and Vehicles.

- a. No motor homes, trailers, boats, campers, recreational vehicles, and other mobile equipment, trailers, implements, and vehicles (excluding automobiles) of all kinds or nature shall be parked or stored on any Lot for more than 24 hours (to allow for loading/unloading/cleaning), unless such items are fully screened or enclosed from view by an ACC-approved fence or structure, and unless the ACC has otherwise approved the location and/or screening of said items. No vehicle should be parked or stored for a period in excess of twenty-four (24) consecutive hours on any street or on any portion of a Lot, including driveways. The primary purpose of the garage required on each Lot is for the parking and storage of automobiles and other vehicles. The Owner shall provide sufficient garage space for all automobiles and other vehicles used by the Occupants of a Lot, which vehicles shall be kept within the garage other than for temporary purposes (as determined by the ACC.) No commercial vehicle, trucks with a capacity in excess of one (1) ton, shall be parked or stored upon any Lot or street within the Subdivision.
- b. No truck, truck camper, tent, garage, barn, shack, or other outbuilding or vehicle shall at any time be used as a residence or living space on any part of Subject Property.
- c. The use of all vehicles, including but not limited to automobiles, trucks, bicycles, and motorcycles shall be subject to Association Rules or ACC Design Standards, which may prohibit or limit the use thereof within the subject property, provide parking regulations and other rules regulating the same.

- 3.7 Commercial Use Prohibited. Unless specifically admitted in a supplemental Declaration, no Lot shall be used at any time for commercial or business activity, provided however, that the Declarant or other persons authorized by the Declarant may use Lot(s) for development and sales activities related to the Subject Property. Any Owner shall be permitted to rent the Owner's Lot and Improvements thereon for residential purposes, provided that the use is limited to Section 3.1 herein and otherwise in compliance with this Declaration. Any lease allowing occupancy or residence of any Lot, or use of any portion of any Lot within the Subject Property, shall be subject in all respects to this Declaration.
- 3.8 No Offensive Use. No noxious, offensive or unsightly conditions, as determined by the ACC, shall be permitted upon any part of any Lot, nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood.
- 3.9 Agricultural Use. The Owners have been made aware that the Subject Property has been developed in an agricultural community and that there will continue to be agricultural uses of some of the surrounding properties. The agricultural uses of the surrounding properties, including the use of agricultural machinery, burning and chemical weed control and fertilization, and the raising of livestock, although restricted from the Subject Property are not necessarily restricted from neighboring

properties. This provision specifically puts the Owners on notice of such potential conditions.

- 3.10 Wildlife Area. The Owners have been made aware that the Subject Property has been indigenous to wildlife including, but not limited to, deer, elk, mountain goats, sheep, snakes, insects, badgers, raccoons, etc. and that such wildlife may be present in and around Subject Property. The Owners have been made aware that they should take the necessary precautions to protect themselves and their property from said wildlife.
- 3.11 Natural Hazard. The Owners have been made aware that certain natural hazards may affect subject property. These hazards include, but are not limited to, earthquakes, avalanches, tornados, floods, landslides, etc. To the extent possible, Declarant has performed studies to assess geological, seismic, avalanche, and debris flow risk. These studies are available to the Owners from North Ogden City at the Owners' request. To the extent possible, Declarant has followed the recommendations outlined in said studies; however, the Owners have been made aware that such natural conditions exist and reside outside the control of Declarant.

ARTICLE 4. BUILDING RESTRICTIONS

- 4.1 Plans. No Dwelling unit, building, fence, wall or other structure or substantial landscaping or screening planting shall be undertaken, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made until plans and specifications showing the nature, kind, shape, height, materials and locations of the same shall have been submitted to and approved in writing by the ACC. The ACC may, in its sole discretion, deny any improvement to any Lot.
- 4.2 Mobile Homes. No mobile home, prefabricated home, trailer, modular home, or other pre-built or pre-manufactured home shall be placed on any Lot.
- 4.3 Set Backs. All building setbacks shall comply with the regulations of North Ogden City.
- 4.4 Dwelling Unit Size. No Dwelling Unit shall be constructed or placed on any Lot containing a total floor area on all floors intended and suitable for use as living area, not including a garage, of less than:
- a. For Lots located below Mountain Road (Lots 1-19): Two thousand one hundred (2,100) square feet for ramblers and two thousand four hundred (2,400) square feet for two-story floorplans, with no less than one thousand four hundred (1,400) square feet on the main floor.
 - b. For Lots located above Mountain Road, but not located on a Private Lane (Lots 20-21; 28-33; 40-45; 52-57; 63-65; 72-75; 81-95; 102-105; 112-113; 125-144; 150-151; 157-158; 171-173): Two thousand two hundred (2,200) square

feet for ramblers and two thousand six hundred (2,600) square feet for two-story floorplans, with no less than one thousand six thousand (1,600) square feet on the main floor.

- c. For Lots located on a Private Lane (Lots 22-27; 34-39; 46-51; 58-62; 66-71; 76-80; 96-101; 106-111; 114-124; 145-149; 152-156; 159-170): Two thousand four hundred (2,400) square feet for ramblers and two thousand eight hundred (2,800) square feet for two-story floorplans, with no less than one thousand eight thousand (1,800) square feet on the main floor.

The square footage is based upon measurement from the outside of the exterior walls. In computing floor area, basement space or any floor with a finished elevation more than three feet below the natural contour of the surrounding area shall not be included. The foregoing size limitations are absolute minimums but shall not be construed to permit Dwelling Units meeting these minimum sizes. THE OWNER (OR HIS/HER BUILDER) SHOULD REVIEW THE ACC DESIGN STANDARDS. THE ACC SHALL CONSIDER THE ADVERSE AFFECT OF DWELLING UNIT SIZE MINIMUMS AND HEIGHT RESTRICTIONS ON OTHER LOTS WITHIN A PARTICULAR PHASE OF THE SUBDIVISION IN GRANTING OR WITHHOLDING ITS APPROVAL OF THE PLANS AND SPECIFICATIONS FOR THE PROPOSED IMPROVEMENTS TO A LOT. Each Dwelling Unit shall have an attached or detached fully enclosed garage adequate for a minimum of three (3) standard size automobiles. No carports shall be allowed.

- 4.5 Antennae. No exterior radio antennae, television antennae, or other antennae, including a satellite dish, shall be erected or maintained on a Lot, except as permitted in the ACC Design Standards. Satellite dishes must be no larger than thirty inches (30") in diameter and must be located in an inconspicuous place not visible from the street and/or front of the home.
- 4.6 Exterior Energy Devices. All energy production devices including, but not limited to, generators of any kind and solar energy devices, shall not be constructed or maintained on any Lot without the prior written approval of the ACC, except for heat pumps or similar appliances shown on the plans approved by the ACC.
- 4.7 Lighting. If required by the ACC, each Owner shall install, and maintain in an operative condition such exterior lighting as shall be set forth in the ACC Design Standards.
- 4.8 Roofs. The type, pitch and roof covering material(s) which shall be required on Buildings within the Property shall be as set forth in the ACC Design Standards. No gravel roofs shall be permitted.
- 4.9 Maintenance. The following provisions shall govern the maintenance of each Lot, its landscaping, and all improvements thereon:
- a. Each Owner of a Lot shall maintain all Building and improvements located

thereon in good and sufficient repair and shall keep the Buildings and improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows glazed, rubbish and debris removed, weeds controlled and otherwise maintain the same in a neat and aesthetically pleasing condition.

- b. All damage to any Building or improvements shall be repaired as promptly as is reasonably possible.
- c. A Dwelling Unit which is vacant for any reason shall be kept locked and the windows glazed in order to discourage entrance by vandals. Vacant Dwelling Units and unimproved Lots shall not be exempt from the provisions of this Declaration
- d. All structures, facilities, equipment, objects and conditions determined by the ACC, in its sole discretion, to be offensive, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view.
- e. No articles, goods, machinery, materials, or similar items shall be stored, kept or maintained on a Lot in the required set back area along a public or private right-of-way or otherwise kept in the open or exposed to public view.
- f. Any event or condition on a Lot which, in the sole discretion of the ACC, creates an unsightly or blighting influence, shall be corrected, removed, or obstructed from public view, as the case may be, by the Owner of the Lot.
- g. In the event that any Owner shall permit any Building or improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, upon forty five(45) days prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon said Lot and into any building or structure thereon, if necessary, for the purposes of correcting or repairing the same, and such Owner shall promptly reimburse the Association for the cost thereof. The Owner of the offending Lot shall be personally liable, and such Owner's Lot may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefore, or the amounts may, at the option of the Board, be levied as a Limited Assessment against said Lot and shall be enforceable in the same manner as set forth in Article 9 of this Declaration.

- 4.10 Exterior Materials and Colors. All exterior materials and colors selected and used shall be approved by the ACC prior to being placed on the home and shall be compatible with other Buildings on the Lot and on neighboring Lots to the end that

all such Buildings will present a unified and coordinated appearance. All exterior finishes and/or colors shall be approved by the ACC and shall be in accordance with the ACC Design Standards. It is strongly encouraged that "earth tones" be utilized in all exterior finishes in an effort to not detract from and to remain in harmony with the natural beauty surrounding Subject Property.

- 4.11 **Signs.** No commercial billboards or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a Dwelling Unit and Lot for rent or for sale by displaying a single, neat, reasonably sized vacancy sign or "For Sale" sign thereon. Real estate signs, signs advertising the name of the builder and/or signs advertising the name of the institution providing financing therefore may be displayed on a Lot during construction of the Buildings so long as said sign(s) is approved in writing by the ACC prior to installation. Lighted, moving or flashing signs for any purposes are prohibited. Directional signs may be used to give directions to traffic or pedestrians or give special instructions. Any directional or identification sign within the Property shall be permitted, provided the same is approved by the ACC prior to installation.
- 4.12 **Construction Time Frame.** All construction work on Dwelling Units shall be diligently and continuously pursued, and shall be completed within eighteen (18) months from the date construction is started unless an extension is authorized in writing by the Association.
- 4.13 **Outbuildings.** Outbuildings, separate garages, sheds and shelters may be constructed only simultaneously with or after a Dwelling Unit has been constructed on the Owner's Lot. All such buildings shall be constructed only after written approval thereof by the ACC. All outbuildings shall be constructed of similar or comparable exterior materials with the Dwelling Unit so as to be aesthetically compatible therewith.
- 4.14 **Fences.** All Lots may have an enclosed fenced backyard, however, no fence or wall of any kind shall be constructed on a Lot unless the plans and specifications therefore, including the location, design, material and color thereof, have been approved in writing by the ACC prior to the construction or installation. All fences and/or walls constructed on a Lot shall be in compliance with the applicable ordinance of the North Ogden City, Utah. **All fences must be constructed with wrought iron, stone, stone façade materials or similar materials. Any exceptions must be approved in writing by the ACC.**

In addition to the requirements of the ACC Design Standards applicable to fences, all fences and walls shall be subject to the following restrictions:

- a. Fences and walls shall not extend closer to any sidewalk than twenty (20) feet nor project beyond the front set back of the Dwelling Unit. No fence higher than six (6) feet shall be allowed without prior written approval of North Ogden City and the ACC.
- b. All fences and walls shall be constructed and installed and maintained in

good appearance and condition at the expense of the Owner of the Lot on which they are located and all damaged fencing and walls shall be repaired or replaced to original design, materials and color within a reasonable time after said damage occurs.

- c. No fence or wall shall interfere with the use and enjoyment of any easement reserved in this Declaration or shown on the recorded subdivision plat of the property.
- d. No fence, wall, hedge, high planting, obstruction or barrier shall be allowed which would unreasonably interfere with the use and enjoyment of neighboring Lots and streets, and shall not be allowed if, in the opinion of the ACC, the same constitutes an undesirable, noxious or nuisance effect upon neighboring Lots.
- e. All fences constructed or to be constructed on common Lot lines shall be constructed and maintained at the equal expense of the Owners of the two Lots on which they are located; provided, however, any Owner who constructs a fence on the common lot line without procuring the consent and agreement of the neighboring Lot Owner shall not be entitled to reimbursement for any portion of the costs of construction. An Owner may delay construction of any common lot line fence until the neighboring Lot Owners have built their residence.

4.15 Landscaping. The following provisions shall govern the landscaping of Lots within the Subject Property:

- a. The Owner shall prepare a landscape plan and shall submit the same to the ACC. The installation and/or construction of the landscaping shall not commence without the prior approval of the ACC of the Owner's Landscaping Plan. The use of mounds and sculptures in planting areas is encouraged. Landscaping of a Lot shall be in accordance with the approval plan.
- b. All lots shall have a minimum of:
 - i. one coniferous tree of at least eight (8) feet in height
 - ii. one deciduous tree of at least two point five (2.5) caliper inches
 - iii. eight (8) five-gallon plants
 - iv. eight (8) three-gallon plants
- c. The above referenced required landscaping for the entire lot shall be installed within six (6) months after substantial completion of the Dwelling Unit on the lot, with a reasonable extension allowed for weather.
- d. An underground automatic sprinkler system shall be installed sufficient to irrigate the landscaped areas.
- e. All parkway strips, meaning the property between the curb and the sidewalk,

should be landscaped using Xeriscape principles consistent with the rest of the community, as detailed in the ACC Design Standards.

- 4.16 Mailboxes. All mailboxes constructed or installed on any Lot shall be in compliance with the ACC Design Standards.
- 4.17 General Contractor. All construction and/or building that occurs on any Lot must be under the direct management and supervision of a licensed and insured General Contractor. At any given time, the ACC may require a copy of Utah State issued License of said General Contractor along with a copy of General Liability policy and proof of Workers Compensation.

ARTICLE 5: WATER SYSTEMS

- 5.1 Domestic Water. Each Lot shall have access to a domestic water system to be owned and operated by North Ogden City. The domestic water system will provide water for culinary and other ordinary domestic household use.
- 5.2 Secondary Irrigation. Each Lot shall have access to a secondary irrigation system to be owned and operated by Ben Lomond Irrigation. Owners shall be responsible for all standard connection and operating fees associated with irrigation of the Lots.

ARTICLE 6: HOMEOWNERS ASSOCIATION

- 6.1 Formation. It is contemplated that the Association shall be organized by the Declarant as a Utah nonprofit corporation. The Association will be incorporated and will adopt By-Laws for its governance. To the extent the Articles of Incorporation or By-Laws of the Association conflict with the provisions of this Declaration, the provisions of this Declaration shall control.
- 6.2 Membership. Each Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The ownership of a Lot shall be the sole qualification for membership and shall automatically commence when a person becomes such Owner and shall automatically terminate when such ownership is conveyed or transferred. There shall be only one Membership for each Lot. If there are multiple Owners of a Lot, Owners shall, by written instrument filed with the Association, designate the individual entitled to exercise the privileges of Membership.
- 6.3 Voting Rights. Initially there shall be two (2) classes of voting Members, Class A and Class B.
- a. Class A Members. Class A Members shall be all Owners, with the exception of Declarant until the Class B Membership, as defined below, has been converted to Class A Membership, and after such conversion all Owners shall be Class A Members. Each Class A Member's voting right shall be

based upon the amount of property owned, with one vote allocated to each Lot.

- b. **Class B Members.** The Class B Member shall be the Declarant. The Class B Member's voting rights shall be based upon the amount of Lots owned multiplied by three (3). The Class B Membership shall cease and be converted to Class A Membership on the earlier of when (i) Declarant owns less than ten percent (10%) of all the Lots; (ii) Declarant voluntarily elects to terminate its Class B Membership by written notice to the Board; or (iii) December 31, 2016.

6.4 **Association Control.** Until the Transition Date, the Declarant, or the Declarant's successor or assignee, shall have the exclusive control of the Association and the Owners, excluding the Declarant, shall not have the right to vote on any matters involving the operation of the Association or the Association's exercise of its authority. On and after the Transition Date, the membership shall be franchised and each Member shall be entitled to one vote for each Lot owned.

6.5 **Powers of Association.** The Association shall have all powers of a non-profit corporation organized under the laws of the State of Utah subject only to such limitations as are expressly set forth in the Articles, the By-Laws or this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under the Articles, By-Laws or this Declaration, and to do and perform any and all acts which may be necessary or proper for, or incident to, the proper management and operation of the Common Area and the performance of the duties of the Association and other responsibilities set forth in this Declaration, including, but not limited to, the following:

- a. **Assessments.** The power to determine the amount of and to levy Regular, Special, and Limited Assessments on the Owner and/or Lots and to enforce payment thereof in accordance with the provisions of this Declaration.
- b. **Right of Enforcement.** The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner(s) who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Articles, By-Laws, Declaration of ACC Design Standards, and to enforce by mandatory injunction or otherwise, all provisions thereof.
- c. **Delegation of Powers.** The authority to delegate its powers and duties to committees, officers, employees, or to any person, firm or corporation to act as manager, and to pay to such manager such compensation as shall be reasonable.
- d. **Liability of Board Members and Officers.** Neither any member of the Board nor any officers of the Association shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, or the ACC, provided that

said Board Member, officer, manager, or other person has, upon the basis of such information as was available, acted in good faith without willful or intentional misconduct.

- e. Association Rules. The power to adopt, amend and repeal such rules and regulations as the Association deems reasonable. Such rules shall govern the use by Owners and Occupants or any other person of Common Area, Common Facilities and other property owned or controlled by the Association; provided, however, Association Rules shall not discriminate among Owners and shall not be inconsistent with the Articles, By-Laws or this Declaration. A copy of Association Rules as they may from time to time be adopted, amended or repealed shall be mailed or otherwise delivered to each Owner and Occupant. Upon such mailings, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of any conflict between an Association Rule and any provision of the Articles, By-Laws or this Declaration, the conflicting provisions of the Association Rules shall be deemed superseded to the extent of any such inconsistency.
 - f. Emergency Powers. The Association, or any person authorized by the Association, may enter onto any Lot or into any Building or other structure on a Lot in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Occupants as practicable and any damage caused thereby shall be repaired by the Association unless said entry was necessitated by a condition caused by the Owner or Occupant.
 - g. Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements, rights-of-way or fee title in, on, through, under or of the enjoyment thereof and for the preservation of health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:
 - (1) Underground lines, cables, wires conduits and other devices for the transmission of any utility or other service.
 - (2) Public sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes.
 - (3) Any similar public or quasi-public improvements or facilities.
- 6.6 Dedication. The Association shall have the right to dedicate or transfer all or any part of the Common Area or Common Facilities to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by two-

thirds (2/3) of the members of the Association.

- 6.7 Duties of Association. In addition to the powers delegated to it by the Articles, By-Laws and this Declaration, without limiting the generality thereof, the Association or its authorized agents, if any, shall have the obligation to conduct all business affairs of common interest to all Owners and to perform each of the following duties:

Operation and Maintenance of Common Area. Perform, or provide for the performance of, the operation, maintenance and management of the Common Area, Common Facilities and landscape easement areas, if any, owned or controlled by the Association, including the repair and replacement of property or improvements thereon damaged or destroyed by casualty loss, the maintenance, repair and replacement of any facilities, if any, installed by the Declarant and/or an irrigation district for the delivery of irrigation water to the Lots, and the maintenance, management, repair or replacement of all other property owned or controlled by the Association.

- a. Taxes and Assessments. Pay all real and personal property taxes and Assessments levied against the Common Area owned or controlled by the Association or against the Association and/or any property owned by the Association. Such taxes and Assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring payment is posted prior to the sale or the disposition of any property to satisfy the payment of such taxes. In addition, the Association shall pay all other taxes, federal, state or local, including income or corporate taxes, levied against the Association in the event that the Association is denied the status of a tax exempt corporation.
- b. Utilities. Acquire, provide and/or pay for water, sewer, refuse collection, electrical, telephone, gas and other necessary services for the Common Area owned or controlled by the Association.
- c. Identification Signs. Maintain, repair and replace all permanent entry and special identification signs for the Subject Property, whether the same are located within or without the boundaries of the Subject Property.
- d. Rule Making. Make, establish, promulgate, amend and repeal Association Rules.
- e. Architectural Control Committee. Appoint and remove Members of the Architectural Control Committee, all subject to the provisions of this Declaration.
- f. Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration and the Association Rules.

- 6.8 **Improvements.** The Association shall have the right, in accordance with its Articles and Bylaws, to borrow money for the purpose of maintaining and improving the Common Area and Common Facilities and in support thereof to mortgage said property, provided the rights of such mortgagee shall at all times be subordinate to the rights of the Owners under this Declaration.
- 6.9 **Enforcement of common Area Maintenance.** Notwithstanding that the Association is obligated to maintain the Common Areas and Common Facilities contained therein as defined herein and within the Articles of Incorporation of the Association, it is hereby provided that North Ogden City (the "Agency") may elect to maintain any part or facility of the Common Areas defined herein should the Association or the Declarant fail to maintain the same. In the event the Agency determines, in its sole discretion, that the Association is not adequately maintaining the defined Common Areas or Common Facilities, the Agency shall, before undertaking maintenance of said Common Areas, provide written notice of its and/or their intention to begin maintenance of the defined Common Area or Common Facilities within a thirty (30) day period, within which time frame the Association may undertake to initiate and conclude all maintenance defects as identified by the Agency. In the event that the Association shall fail to commence and conclude maintenance of the defined Common Areas or Common Facilities, the Agency is hereby granted an irrevocable license and easement to enter upon any portion of the Common Areas to perform inspection and maintenance. Should the Agency engage in maintenance of the defined Common Areas or Common Facilities after having provided notice to the Association and having provided the Association an opportunity to undertake said maintenance, the Agency shall be entitled to and empowered to file a ratable lien against all Lots within the Subject Property with power of sale as to each and every Lot to secure payment of any and all Assessments levied against any and all Lots in the Subject Property pursuant to this Declaration, together with interest at the rate which accrues on judgments and all costs of collection which may be paid or incurred by the Agency in connection therewith. The Agency may exercise their rights under Utah Code by assessing the Lot Owners and certifying those Assessments in the same manner as real property tax. This section shall not be amended without prior written approval from the Agency. The Association shall not be dissolved or relieved of its responsibility to maintain the defined Common Areas and Common Facilities contained therein without the prior written approval from the Agency. The Association and all Lot Owners, by accepting title to a Lot, agree that all Lot Owners within the Subject Property are benefited property Owners for purposes of this section.

ARTICLE 7. HOMEOWNERS ASSOCIATION PROPERTIES

- 7.1 **Use.** Each Owner of a Lot, his family, licensees, invitees, lessees and contract purchasers who reside on the Lot, shall be entitled to use the Association properties of which the Owner is a Member, subject to the following:
- a. **Articles, Etc.** The provisions of the Articles and By-Laws of the Association applicable to the Lot, this Declaration and applicable Supplemental

Declarations and the rules, regulations and standards promulgated thereunder. Each Owner, in using the Association properties, shall comply with the same.

- b. Suspension of Rights. The right of the Association to suspend the rights to use properties owned by it (except roads and other means of access by an Owner), for any period during which any Assessment against that Owner's Lot remains unpaid; and for any infraction of the Association Rules or the Association Rules and Standards.
 - c. Dedications. The right of the Association to dedicate or transfer all or any part of properties owned by it to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Board, so long as said transfer does not diminish the security of the Mortgagees on any Lot.
- 7.2 Damages. An Owner shall be liable for any damages to the Common Area which may be sustained by reason of the negligence, reckless or intentional misconduct of said Owner or of his family, licensees, invitees, lessees or contract purchasers, both minor and adult. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be as a Limited Assessment against that Owner's Lot and may be collected as provided in Article 9.

ARTICLE 8. RIGHTS RESERVED BY DECLARANT

- 8.1 Notwithstanding anything to the contrary contained in this Declaration, Declarant expressly reserves unto:
- a. Itself, its successors and representatives, contractors and their subcontractors easements and rights-of-way on, over and across all or any part of the streets for vehicular and pedestrian ingress and egress to and from any part of the Property, or any adjacent real property owned by the Declarant, or its successors or assigns;
 - b. Itself, its successors and representatives, contractors and their subcontractors (including any district, company, unit of local government, Association or other entity providing water, sewer, gas, oil, electricity, telephone, cable television, or other similar services) easements, access and rights-of-way on, over, under and across all or part of the Common Area and utility easements on, over and under all Lots and Common Areas as provided on any recorded subdivision plat of the Property for installation, use, maintenance and repair of all lines, wires, pipes, pumps, water wells, facilities, and other things necessary for all such services, provided that any installation, maintenance or repair of such lines, wires or pipes shall be performed with reasonable care and that the surface of said easement area shall be restored to the level and condition that existed prior to the doing of work: and

- c. Itself, its agents and successors, all water and water rights over, upon or under or appurtenant to the Property, or any portion thereof, and a nonexclusive easement on, over, under and across any utility easements as provided or created on any recorded subdivision plat for the construction.

ARTICLE 9. ASSESSMENTS

- 9.1 **Agreement to Pay Assessments.** Each Owner, by acceptance of the deed therefore (whether or not it shall be so expressed in such deed) is deemed to covenant and agree to pay when due all Regular, Special and Limited Assessments made by the Association or the Declarant.
- a. **Regular Assessments.** An annual Regular Assessment shall be made by the Association in such amounts deemed appropriate by the Board. The Regular Assessments shall be based upon advance estimates of cash requirements as determined by the Board for the maintenance and operation of the Common Area and all easement areas, if any, owned or controlled by the Association and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, taxes and special assessments of local governmental units, premiums for all insurance which the Association is required or permitted to maintain hereunder, landscaping and care of grounds, lighting, water charges, trash collection, sewerage charges, repair and maintenance, legal and accounting fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s).
- b. **Limited Assessments.** The Association shall have the power to levy a Limited Assessment against Owners and Lots for maintenance and repair of any Lot or any improvement on a Lot, if such maintenance and repair is necessary to preserve the quality of the subdivision; and/or to correct a violation of the Declaration or any amendment thereto or the ACC Design Standards. No such Limited Assessment shall be levied until (a) the Board or ACC has given written notice to the Owner of the maintenance or violation cure required; (b) the Owner has refused to perform the maintenance or correct the violation within a reasonable time; and (c) the Association has incurred expenses for maintenance or correcting the violation. Thereupon, the Board shall have the power to levy a Limited Assessment against the Owner to pay for the costs of such maintenance and repair or correction of violation and any other costs or expenses, including attorney fees, arising out of or incident to such maintenance and repair of the Association.
- c. **Special Assessments.** In addition to Regular Assessments, the Association may levy at any time a Special Assessment payable over such period as the Board may deem appropriate for the following purposes:

- (1) To defray, in whole or in part, the cost of any construction or reconstruction of a Common Area or Facility, unexpected repair or replacement of a Common Area or any Facility located thereon or an easement area controlled by the Association, the furnishings of a special service or services (other than those appropriate for a Limited Assessment), or for any other expenses incurred or to be incurred as provided in this Declaration.
- (2) To cure a deficit in the common and ordinary expenses of the Association for which Regular Assessments for a given calendar year or fiscal year are or will be inadequate to pay, as determined by the Board.

9.2 Purpose of Assessments. The Assessments levied by the Association or the Declarant shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of Property and to carry out the objectives and responsibilities of the Association, and for improvements and maintenance of any Common Area, Common Facilities, and all improvements constructed thereon, the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area and Common Facilities, and including without being limited thereto, the payment of taxes and insurance on all or any part of the Property.

9.3 Collection and Enforcement. The Regular, Special, Limited and Irrigation Assessments, together with interest thereon and costs of collection and reasonable attorney fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Each such Assessment, together with interest, costs of collection and reasonable attorney fees shall also be the personal obligation of the Owner at the time when the Assessment fell due. The right to collect and enforce payment of the Assessment is vested in the Association.

If any Owner fails to pay an Assessment within ninety (90) days of its due date, the Association shall prepare a written notice of Assessment setting forth the type of Assessment, the amount of the Assessment, the amount remaining unpaid, the name of the recorded Owner of the Lot, and a legal description of the Lot. Such notice shall be signed by the President and Secretary of the Association or its acting agent, whose signatures shall be acknowledged by a notary public, and such notice shall be recorded in the office of the North Ogden City Recorder. Thereupon, and upon the failure of the Owner to pay an Assessment, the lien for Assessment herein created may be foreclosed upon as provided by law for foreclosure of a mortgage on real property and other real property liens. Notwithstanding anything to the contrary contained in the Declaration and any amendment thereof, no action may be brought to foreclose the lien of any Assessment until the expiration of thirty (30) days after written notice of default has been deposited on the Lot or to the last known address of the Owner, or otherwise as shown on the books and records of the Association. Such notice shall specify the amount and due date of the unpaid Assessments and the legal description of the Lot.

- 9.4 **Set up and Initial Regular Assessment.** Assessments shall commence as to each Lot upon the closing of the first sale of such Lot from the Declarant, or as to the remaining Lots owned by Declarant, when such Lots are no longer offered for sale to the general public. At each such closing, the Owner thereof shall pay the sum of three-hundred dollars (\$300) and all such portion of the existing Regular Assessment pro rated for the remainder of the calendar year. These initial Assessments shall be paid to the Declarant to reimburse the Declarant the set up cost and the maintenance of the Common Area and Common Facilities and other Association costs incurred or to be incurred by the Declarant prior to the Transition Date. The pro rata portion of the Regular Assessment will be paid to the Declarant for each Closing that occurs prior to the Transition Date and only paid to the Association if the Association has conducted its first annual meeting, elected a board of directors and assumed the obligations and expenses of the Association. Until the Association has conducted its first meeting, the Declarant shall have full power and authority to exercise all of the rights, duties and functions of the Association. The Declarant shall have the exclusive use of Assessments for the purpose of discharging the duties and obligations of the Association in accordance with this Article 9, without regard to or an accounting of the initial deposits or other Assessments previously paid to the Declarant.
- 9.5 **Assessment Due Date.** The due date for Regular Assessments shall be March 1, unless some other due date is established by the Board. Each Assessment shall be delinquent if not paid within fifteen (15) days after the due date set forth in any notice of Assessment.
- 9.6 **Interest and Penalties.** Any Regular, Special, Limited or Irrigation Assessments levied on Lots if not paid when due, shall bear interest at an annual rate as shall be set by the board from time to time, or if none is so set, at an annual rate of fifteen percent (15%). Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charged, the board may, in accordance with Association Rules promulgated by it, impose additional fines or charges for the failure of an Owner to pay any Assessment when due. The right of the board to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of, any other right of enforcement or sanction available to the Board in the event of non payment of an Assessment.
- 9.7 **Billing for Annual Assessment.** The Regular Assessment may be billed on a monthly basis, 1/12 per month on a quarterly basis, 1/4 per quarter, or annually, in advance.
- 9.8 **Notice and Quorum for Special Assessment.** Written notice of any meeting called for the purpose of making a Special Assessment shall be sent to all Association members not less than twenty (20) days in advance of such meeting. Such notice shall specifically indicate that a Special Assessment is to be considered at such meeting. A quorum of not less than a one-third majority of the members entitled to vote shall be required at such meeting whether in person or by proxy.
- 9.9 **Uniform Rate of Assessment.** Special Assessments must be fixed in an equal amount for each Lot that has been sold by the Declarant. All Special Assessments shall

equally apply to all Lots, and no special rate or reduction in Assessment rate shall be allowed because any Lot is unimproved or does not have a Dwelling Unit thereon, except that any Lots owned by the Declarant that are still offered for sale to the general public shall not be subject to any Assessments.

- 9.10 Subordinate to the Lien of Mortgage. The lien of Assessments provided for herein shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the Assessment lien, but the sale or transfer of any Lot pursuant to a Mortgage foreclosure, if the Mortgage is held by any person other than a prior Owner of the Lot, shall extinguish the lien of such Assessments as to payments which have become due prior to such sale or transfer.

ARTICLE 10. ARCHITECTURAL CONTROL COMMITTEE.

- 10.1 Members of the Committee. The Architectural Control Committee (ACC) shall be comprised of at least three (3) persons, all of whom shall be appointed as herein provided. A member of the ACC shall hold office until he has resigned or has been removed, but in any event, until said member's successor has been appointed. Members of the ACC may be removed at any time, with or without cause.

- 10.2 Appointment. At all times prior to the Transition Date, the Declarant shall have the sole right to appoint and remove all members of the ACC. Thereafter, all members of the ACC shall be appointed or removed by the Board.

The ACC shall have the right by a resolution in writing unanimously adopted, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of any two (2) members of the ACC shall constitute an act of the ACC.

- 10.3 Adoption of ACC Design Standards. Initially the Declarant and ultimately the ACC shall have the power to promulgate ACC Design Standards relating to the planning, construction, alteration, modification, removal or destruction of Buildings and other improvements within the Subject Property deemed necessary or desirable by the Declarant or the ACC, as the case may be, to carry out the purposes of this Declaration. The ACC Design Standards may contain provisions not limited to design standards, exterior finishes and colors, fences, landscaping, exterior lighting, mailboxes and the like. They may also include policies, procedures and rules, which in the discretion of the ACC are reasonable to maintain a quality subdivision and to protect property and home values. The Lot Owner shall review and be familiar with the current ACC Design Standards, copies of which are available from the Declarant, the Declarant's marketing representative and at various title and escrow companies, including First American Title.
- 10.4 Interpretation and Enforcement. The ACC shall have the authority to interpret and enforce any or all restrictions and covenants of this Declaration as they pertain to the Lot improvements. The ACC shall have the authority to pursue whatever action or litigation may be required to cause any Owner to remove and replace any element

that the ACC interprets as deficient or outside of this Declaration of the ACC Design Standards. This right of enforcement can include the ACC hiring any or all of such work to be done and encumbering the Lot on which said work takes place with a lien for the full amount of the cost of said work plus any other costs the ACC may incur in such enforcement.

- 10.5 Certification by Secretary. The ACC shall, upon written request, certify that improvements upon any Lot comply with this Declaration and have been duly approved by the ACC, or in the event said building or other improvements do not so comply, specifically the extent of noncompliance.
- 10.6 Variance. The ACC may authorize variances from compliance with requirements of any conditions and restrictions contained in this Declaration, the ACC Design Standards or any prior approval when, in the sole discretion of the ACC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may so require. Such variances must be evidenced in writing signed by at least two (2) members of the ACC or its assigned agent.

If a variance is granted as provided herein, no violation of this Declaration, ACC Design Standards or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration of the ACC Design Standards for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby.

The ACC shall have the right to consider and grant a variance as herein provided either with or without notice to other Owners or a hearing thereon.

The granting of a variance by the ACC pursuant to this Section shall not relieve the Owner from the Obligation to fully comply with applicable ordinances of North Ogden City, Utah.

- 10.7 Application. To request ACC approval for the construction, alteration, modification, removal or demolition of any improvements within the Subject Property, the Owner shall submit a written application in a form required by the ACC which must be signed by the Owner and contain all information requested and be accompanied by all other material to be submitted as hereafter provided.

All applications must contain, or have submitted therewith, the following material (collectively called "Plans and Specifications") prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the ACC:

- a. Site Plan. A site plan showing the location of the Building(s) and all other structures and improvements including fencing and walls on the Lot, Lot drainage and all set backs, curb cuts, driveways, parking areas, and other pertinent information relating to the improvements.

- b. **Building Plan.** A building plan which shall consist of preliminary or final blueprints, elevation drawings of the North, South, East and West sides, and detailed exterior specifications which shall include, by sample if required by the ACC, all exterior colors, materials, and finishes, including roof shingles, proposed to be used.
- c. **Landscape Plan.** A landscape plan for portions of the Lot to be landscaped which shall show the location, type and size of trees, plants, ground cover, shrubs, berming and mounding, grading, drainage, sprinkler system, fences, freestanding exterior lights, driveways, parking areas and walkways.
- d. **Plan Review Fee.** The Application shall be accompanied by a Plan Review Fee of \$400.00 for each new Residence. In the case of multiple re-submissions for review of a single Residence, additional fees may be required.

- 10.8 **Decision.** In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ACC shall use its best efforts and judgment to assure that all Improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be a quality residential development. The ACC may, in its discretion, require the Owner to furnish additional materials beyond those required herein.

Unless extended by a mutual consent of the Owner and the ACC, the ACC shall render its decision with respect to an application within thirty (30) days after the receipt of a properly submitted application. The decision of the ACC can be in the form of an approval, a conditional approval or a denial. The decision of the ACC shall be in writing, signed by a member of the ACC, dated, and a copy thereof mailed to the Owner at the address shown on the application. If no approval is received from the ACC within the thirty (30) day period then the application will be deemed denied.

A conditional approval shall set forth with particularity the conditions upon which the application is approved and the Owner shall be required to affix a copy of said conditions to the working drawings or blueprints which are to be kept on the job site during the entire course of the work to which said plans relate.

- 10.9 **Inspection and Complaints.** The ACC is empowered to inspect all work in progress on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating therefrom or is violating this Declaration of the ACC Design Standards or the approved plans and specifications.

Should the ACC determine that there has been a deviation or a violation, it shall promptly issue a notice in writing thereof to the Owner, which notice shall specify the particulars of the deviation or violation and shall demand that the Owner conform to either or both of the following directives:

- a. The Owner shall immediately cease the activity which constitutes a deviation or violation and/or
- b. The Owner shall adhere to the correct measures set forth in the written Notice.

Should the ACC determine there has been no deviation or violation, it shall promptly issue a notice of such determination to the Owner.

- 10.10 Enforcement. The ACC or its acting agent, upon approval by the Board, shall be authorized on behalf and in the name of the Association to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Property, the continuation of which violates the provisions of this Declaration, the ACC Design Standards or the approved plans and specifications.

The ACC shall not commence such legal or equitable proceedings until a written notice of the deviation or violation has been appropriately prepared and given to the Owner but thereafter the ACC shall have the sole discretion to commence such proceedings.

The authority of the ACC as herein provided shall include the power to retain legal counsel and expert witnesses, pay filing fees, deposit costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall be paid by the Association.

In the event the ACC and/or Association shall prevail in any such legal or equitable proceedings, all costs and expenses incurred in connection therewith including, but not limited to, attorney's fees shall be reimbursed to the Association by the Owner against whom said proceedings are filed and upon the failure of said Owner to reimburse the Association within five (5) days after written demand therefore is mailed to the Owner, the Association shall have the right to levy a Limited Assessment against the Owner and the Lot owned by said Owner, which Assessment shall be equal to said costs and expenses incurred plus any additional costs and expenses incurred in levying the Assessment. Said Limited Assessment shall be due and payable at such time or in such installments as may be determined by the Board, in its sole discretion. The failure of the Owner to pay said Assessments, or any installment thereof when due, shall be enforceable in the manner provided in Article 9 above.

- 10.11 Additional Damages. In addition to the costs and expenses to be reimbursed by the Owner, all other costs, expenses and damages determined by the Board to be proximately caused by the deviation or violation or the costs and expenses incurred by the Association to correct the same shall be assessed as a Limited Assessment against the Owner and the Lot owned by said Owner, which Limited Assessment shall be due and payable at such time or such installments as determined by the Board, in its sole discretion. The right of the Board to enforce said Limited Assessment shall be the same as provided in Article 9 above.

- 10.12 Non-Exclusive Remedy. The right of the Association to levy a Limited Assessment as described in Section 10.10 and 10.11 above, shall not be deemed to be an exclusive remedy of the Association and it may, in its sole discretion, without waiver or any other legal or equitable remedy, pursue enforcement of the lien of said Limited Assessment(s), proceed to collect any amount due directly from the Owner and/or pursue any other remedies available at law or in equity.

ARTICLE 11: ANNEXATION

- 11.1 Procedure. Additional land contiguous to the subject property may be annexed by Declarant without the consent of the Owners or the Association at any time. Upon the earlier of recordation of a final plat of such additional land, or the certification by the Declarant describing additional land that the Declarant intends to plat, such additional property shall, for the purposes of this Agreement, be deemed annexed property. Amendment of this Declaration to include such covenants and easements herein provided shall be made by the execution and recordation by Declarant of a Supplemental Declaration, which shall describe the additional property being annexed, and any supplemental or different covenants, conditions and restrictions applicable thereto, and any deletions or modifications to these covenants, conditions and restrictions as the Declarant may deem appropriate, and shall describe the Common Area and Common Facilities thereof. Upon the recordation of the Supplemental Declaration, the Annexed Property described therein, shall be subject to the terms and provisions of this Declaration as though included originally in this Declaration, and the definitions of Property, Common Area and Common Facilities shall automatically be amended to conform to such supplement or supplements, as shall all of the other definitions herein, including the definitions of Lot and Owner. All Owners of Lots located within the expanded property shall be subject to all easements, restrictions and reservations set forth in this Declaration and shall have the privileges of use of Common Area and Common Facilities except as otherwise provided herein and subject to the restrictions and reservations set forth in the Declaration as amended and supplemented from time to time. Upon such annexation, the Owners of the Lots within the Annexed Property, shall become Members of the Association with the same or equivalent rights, privileges, and obligations as all other Members.
- 11.2 Designation of Common Areas. Any Common Area and Common Facilities designated by Declarant as such on the plat of the newly annexed additional property or in the Supplemental Declaration or conveyed to the Association by Declarant shall be subject to the same easements and other rights for the use and enjoyment of the Owners as for the other Owners of Lots subject to this Declaration.

ARTICLE 12: GENERAL PROVISION

- 12.1 Enforcement. The Association, the Declarant, any Owner, or any First Mortgagee shall have the right to enforce, by proceedings of law or in equity, the terms and

provisions of this Declaration. Failure by the Association or any Owner to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

- 12.2 Severability. Invalidation of any one of these covenants or restrictions shall in no way affect other provisions which shall remain in full force and effect.
- 12.3 Term. This Declaration shall run with the land and shall inure to the benefit of the Association, the Owner of any Lot, and any First Mortgagees as provided herein, and their respective legal representatives, heirs, successors, grantees, and assigns, for a term of forty (40) years from the date of this Declaration.
- 12.4 Amendments. Except as otherwise provided herein, any of the covenants and restrictions of this Declaration, except the easements herein granted for utilities and water distribution facilities, may be amended by an instrument signed by members entitled to cast not less than sixty-six and two-thirds percent (66-2/3%) of the votes of the membership. Any amendment must be recorded.
- 12.5 Conveyance of Common Area. The Common Area and Common Facilities in each phase of development of the Property may be conveyed to the Association by the Declarant, free and clear of all encumbrances. Until conveyed, Declarant shall be solely responsible for the maintenance and management of Common Area and Common Facilities, and for all costs and expenses associated therewith not covered by the Assessments provided herein.
- 12.6 FHA/VA Approval. Prior to the Transition Date, the following actions may require the prior approval of the Federal Housing Administration or the Veterans Administration (FHA/VA); annexation of additional real property to the Project, mergers and consolidations, mortgaging or dedication of Common Area, dissolution or amendment of the Articles of Incorporation or Bylaws of the Association, and amendment of this Declaration.
- 12.7 Contracts or Agreements. The Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, FHA, the FHLMC, the FNMA, or the GNMA or any similar entity, so as to allow for the purchase, guarantee or insurance, as the case may be, by such entities of first mortgages encumbering building Lots in the Project with dwelling structures thereon.

IN WITNESS WHEREOF, the Declarant has set his hand and seal as of the date and year first above written.

NORTH OGDEN COVE, L.C.

Robert R. Woods

By: Robert R. Woods
Its: Manager

ACKNOWLEDGMENT

STATE OF UTAH)
) S.S.
County of Utah)

On this 25th day of April, in the year of 2008, before me, a notary public, personally appeared **Robert R. Woods known or identified to me to be the manager or a member of North Ogden Cove, L.C.**, or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public Signature *[Signature]*
Residing at A.F. Utah
My Commission Expires 10-31-11



EXHIBIT "A "

LOTS 1-139, NORTH OGDEN COVE, PHASE 1, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE WEBER COUNTY RECORDER'S OFFICE.

16-273-0001-0044 -
16-274-0001-0045 ^{AM} *16-276-0001-0021 -*
16-275-0001-0029

LOTS 140-173, NORTH OGDEN COVE, PHASE 2, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE WEBER COUNTY RECORDER'S OFFICE.

16-277-0001-0034 -