

When recorded return to:

NORTH OGDEN COVE HOA  
C/O Jean Barclay  
787 E Nebo  
North Ogden, UT 84414



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Leann H. Kilts, WEBER COUNTY RECORDER  
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REC FOR: MOUNTAIN VIEW TITLE - OGDEN  
ELECTRONICALLY RECORDED

AMENDED AND RESTATED DECLARATION  
  
OF  
  
COVENANTS, CONDITIONS AND RESTRICTIONS  
  
FOR  
  
NORTH OGDEN COVE 2<sup>ND</sup> AMENDMENT  
  
AMENDMENT DATE: SEPTEMBER 8, 2020

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THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereafter "Declaration") is made on the date evidenced below by the North Ogden Cove Home Owners Association (hereafter "Association").

## RECITALS

A. This Amended and Restated Declaration of Covenants, Conditions and Restrictions, including Bylaws, supersedes and replaces the Declaration of Covenants, Conditions and Restrictions for North Ogden Cove Subdivision dated July 16, 2012, in its entirety and including all subsequent amendments or supplements thereto (the "Original Declaration").

B. Pursuant to Section 12.4 of the Original Declaration, at least sixty six and two-thirds percent (66-2/3%) of the votes of the membership have affirmatively approved the adoption of this document.

C. The property subject to this Declaration is the North Ogden Cove subdivision in Weber County, Utah (the "Subdivision"). Exhibit "A" of this Declaration further defines the property subject to this Declaration. All Lots therein are part of the Association and each Owner of Lot is a member thereof. The Association is created as a planned development and contains certain Common Area and easements for the benefit of the Owners of Lots therein.

D. The Association desires to provide for the preservation and enhancement of the property values and improvements of the Property and for maintenance of the Common Area, including the private streets, and to establish certain covenants, conditions and restrictions for and against the Subdivision to both burden and benefit the Subdivision, subject to the terms, covenants and conditions of this Declaration.

E. These Recitals shall be deemed covenants as well as recitals.

NOW, THEREFORE, the Association declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions restrictions, easements, charges and liens hereinafter set forth:

## 1. DEFINITIONS

1.1. **"Architectural Control Committee" or "ACC"** means the Architectural Control Committee created pursuant to this Declaration.

1.2. **"Assessment"** shall mean any charge imposed or levied by the Association on or against an Owner or Lot pursuant to the terms of this Declaration, the Bylaws or applicable law.

1.3. **"Association"** shall mean the North Ogden Cove Home Owners Association, Inc., a Utah nonprofit corporation.

1.4. **"Board of Directors" or "Board"** shall mean the Board of Directors of the Association.

1.5. ***“Common Area”*** shall mean and refer to the Private Lanes and Islands, as defined herein and shown on the Map.

1.6. ***“Common Expenses”*** shall mean the actual and estimated expenses of maintenance, improvement, repair, operation, insurance, and management of the Common Area, except the Private Lanes, expenses of the administration of the Association and any reasonable reserve for such purposes as determined by the Board, and all sums designated Common Expenses by or pursuant to the Declaration. Common Expenses do not include expenses incurred related to the Private Lanes, as provided for elsewhere herein.

1.7. ***“Declarant”*** shall mean Westside Investments, L.C., and any successor who succeeds to the ownership of substantially all of its interest in the whole of the Property.

1.8. ***“Declaration”*** shall mean and refer to this Declaration.

1.9. ***“Governing Documents”*** shall mean and refer to a written instrument by which the Association may exercise powers or manage, maintain, or otherwise affect the property under the jurisdiction of the Association, including Articles of Incorporation, Bylaws, Plat, this Declaration, rules and regulations and architectural guidelines.

1.10. ***“Improvement”*** shall mean any structure, Residence, building, Landscaping, garage, fence, wall, non-living or living screen, or other structure of Landscaping, or other meaningful addition or alteration constructed or added to a Lot.

1.11. ***“Island”*** shall mean those Common Area parcels of land within the Property contiguous to a Private Lane and which are enclosed and bounded on all sides by a Private Lane and another road.

1.12. ***“Landscaping”*** shall mean lawn, shrubs, flowers, trees and natural foliage located or placed upon a Lot.

1.13. ***“Lot”*** shall mean any individual parcel shown upon the Map of the Subdivision, which may be legally conveyed by reference only to the number of such Lot designated on the Map.

1.14. ***“Map” or “Plat”*** shall mean the official subdivision plat map for the Property recorded in the office of the Weber County Recorder, state of Utah, as the same may be amended from time to time.

1.15. ***“Mortgage”*** shall mean any instrument creating a lien with respect to a Lot including a mortgage, deed of trust or any similar security agreement.

1.16. ***“Mortgagee”*** shall mean the holder of the obligation secured by a Mortgage.

1.17. ***“Owner”*** shall mean the recorded owner of a fee simple title to any Lot which is a part of the Subdivision. In an event that more than one party shall be the record Owners of a Lot, then

for all purposes under this Declaration, all such parties shall be required to act jointly as the Owner of such Lot.

**1.18. "Private Lane"** shall mean those certain private roads within the Subdivision which provide access for ingress and egress to certain Lots, and as may be designated as private drives on the Map.

**1.19. "Private Lane Lots"** shall mean 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, which Lots are located immediately adjacent to a Private Lane.

**1.20. "Property," "Project" or "Subdivision"** shall mean all the real property described in Exhibit "A" hereto, consisting of all Lots and Common Area of the Subdivision.

**1.21. "Residence"** shall mean a single building designed and constructed for residential occupancy.

## **2. SUBMISSION & PURPOSE**

**2.1. Submission.** The Property and Lots referred to in Exhibit "A" are hereby submitted to the Utah Community Association Act, Utah Code Title 57, Chapter 8a, as the same shall be amended from time to time (the "Act"), and shall be held, sold, conveyed, leased, occupied, resided upon and hypothecated subject to the covenants, conditions and restrictions of this Declaration, which covenants, conditions and restrictions shall run with the land, are established for the purpose of protecting and preserving the value of each and every part of the Property, and which shall be binding upon each and every party which shall at any time have any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner thereof. The Project is not a cooperative and does not contain condominiums.

**2.2. Purpose of Declaration.** The purpose of this Declaration is to ensure the maintenance of the Common Areas and to ensure the use of the Property for attractive residential purposes, to prevent nuisances, to prevent the impairment of the attractiveness of the Property, and to maintain the desired tone of the Subdivision, and thereby to secure to each Owner the full benefit, enjoyment and value of their home, with no greater restriction on the free and undisturbed use of their site than is necessary to ensure the same advantages to the other Owners.

## **3. MAINTENANCE OBLIGATIONS**

**3.1. Owner's Responsibility.** It shall be the duty of each Owner, at his or her sole cost and expense, to maintain, repair, replace, and restore his or her Lot and all improvements thereon. Owners shall, at all times, maintain their Lots and all appurtenances thereto in good repair and in a state of clean and neat appearance.

### **3.2. *Maintenance by Association.***

3.2.1. Common Areas; Neglected Lots. The Association shall maintain, repair and replace all Common Area of the Property. In the event of failure of an Owner of a Lot to maintain such Lot, the Board shall be empowered to maintain, repair, and otherwise manage such Lot, including the improvements and landscaping thereon in accordance with the provisions of this Declaration, the cost of which shall be charged to the Owner of such Lot and shall be collected in the same manner as an assessment.

3.2.2. Private Lanes and Islands. The Association shall maintain the Islands, including the original landscaping, in good repair and in a state of clean, neat and attractive appearance but shall have no authority to alter or improve an Island beyond required maintenance, repair and replacement necessary to maintain the Islands consistent with how the Islands were originally improved by the Declarant except with the prior approval of a majority of all Owners other than the Declarant. The Association shall maintain, repair and replace the Private Lanes within the Property, including cleaning, periodic resurfacing, and snow removal. The cost of maintenance, repair and replacement of the Private Lanes shall be assessed to the Owners of the Private Lane Lots, as provided in Article 7. If, however, any of the Private Lane Lots adjacent to any Private Lane are occupied by the Owners, the occupying Owners may elect to accept responsibility for snow removal for the Private Lane and/or maintenance of the Islands as needed, and not incur the expense of the Association removing snow from the Private Lane. If the qualifying Owners of the Private Lane Lots chose to accept responsibility for snow removal, they shall jointly inform the Association in writing and, upon notice, the Association will not undertake snow removal from the designated Private Lane and will not assess the Private Lane Lot Owners for the cost of snow removal.

3.2.3. 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.

#### 4. GENERAL RESTRICTIONS AND REQUIREMENTS

**4.1. *Land Use and Building Type.*** Each Lot shall be used exclusively for the construction and occupancy of a Residence and related landscaping and other incidental and related Improvements. Except as may be specifically provided in this Declaration, no building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single family dwelling and ancillary structures authorized and approved pursuant to the Architectural Guidelines.

**4.2. *Subdivision and Consolidation of Lots.*** No Lot may be divided, subdivided or separated into smaller parcels. If two or more Lots are consolidated into one Lot, the resulting Lot may not be divided, subdivided or separated back into separate Lots or into smaller parcels subsequent to the consolidation. Two or more Lots may only be consolidated into one Lot with prior written approval from the Board and after compliance with all laws, ordinances and regulations. In the event two or more Lots are consolidated into one Lot, the assessment obligation and voting rights of each pre-consolidated Lot shall not change and such Lots consolidated into one Lot shall not be treated as one Lot by the Association, but shall continue to be treated, for the purposes of assessments and voting, as separate Lots as such Lots existed as of the date of the recording of this Declaration.

**4.3. *Governmental Regulations.*** All applicable governmental rules, regulations, and ordinances of the City, County or otherwise, must be complied with regarding activities within the Subdivision. When a subject is covered both by this Declaration and a governmental rule, restriction or ordinance, the more restrictive requirements shall be met.

**4.4. *Nuisances, Unreasonable Annoyance and Noxious Activities.*** No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance, disturbance, nuisance or danger to the Subdivision. Except for legitimate construction and maintenance purposes, no excessively loud noises shall be permitted in the Subdivision and no person shall make, continue, or cause to be made or continued, any loud, unnecessary or unusual noise which either annoys, disturbs, injures or endangers the comfort, repose, convenience, health, peace or safety of others in the Subdivision. Any person having the charge, care, custody, or control of an animal or animals shall take action to prevent the animal(s) from causing a nuisance to the Subdivision or any Lot Owner.

**4.5. *Signs.*** Except for one "for sale" and "for rent" sign, not exceeding twenty-four (24) inches in height and thirty-six (36) inches long temporarily placed on a Lot by the Owner, no

signs, posters, displays or other advertising devices of any character shall be erected or maintained on, or shown or displayed to the public view on any Lot without the express written approval having been first obtained from the Board. The Association may cause all unauthorized signs to be removed.

**4.6. *Antennas.*** All television and radio antennas, satellite dishes or other electronic reception devices shall be completely erected, constructed and placed in a manner and location consistent with any rules, regulations or architectural guidelines as may be adopted by the Board from time to time. At a minimum, any satellite dish shall be installed in such a manner so as to minimize its visual impact on surrounding properties. It shall be located in the least visually obtrusive location consistent with acceptable signal reception. All wiring must be concealed. Location of an FCC approved dish may not be restricted by the Association so as to cause unreasonable delay in installation; unreasonably increase the cost of the equipment or its installation, maintenance, or use; or preclude reception of an acceptable quality signal. No dish may encroach upon the Common Area or the property of another Owner.

**4.7. *Animals.*** The Association may by rule implement reasonable restrictions on pets and the keeping of animals, provided no rule shall restrict the right of an Owner to keep at least two dogs and two cats per Lot. Those animals which are permitted shall not cause any noise or disturbance that would be deemed a nuisance to other Owners or residents within the Property. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners thereof and Owners shall be responsible for removal of wastes of their animals from other Lots. An Owner may be required to remove an animal if such animal is being kept in violation of this Declaration or the rules and regulations governing pets within the Property.

**4.8. *Wildlife Area.*** The Owners have been made aware that wildlife is indigenous to the Subject Property, 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 the Property. The Owners have been made aware that they should take the necessary precautions to protect themselves and their property from said wildlife.

**4.9. *Natural Hazard.*** The Owners have been made aware that certain natural hazards may affect the 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.

**4.10. *Storage of Vehicles and Materials.***

(a) No trailer or recreational vehicle, including but not limited to campers, boats, motor homes, and similar equipment (hereinafter referred to as a "Recreational Vehicle") shall be permitted to be parked for more than forty eight (48) hours in any 30 day period, upon any portion of the roads, Common Area or upon the driveways of any Lot. In no event shall any recreational



vehicle, boat, camper, trailer, tent trailer, utility trailer, or mobile home be used for camping or for overnight accommodations by the Lot Owner or by the Lot Owner's guests in or on the driveways or front side-yards of a Lot. Other than as provided above, recreational and other utility vehicles must be parked behind the front foundation line of a home in the side or rear yards. Tarps and similar temporary coverings shall not be allowed. Notwithstanding that certain streets within the Subdivision are public streets, no Owner shall park recreational or other utility vehicles, as described above, on the public streets of the Development other than as provided above.

(b) No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any part of the Lot unless such vehicle is within a garage. A vehicle is deemed in an "excessive state of disrepair" when the Board reasonably determines that its presence offends the Owners of the other Lots. If an Owner fails to remove a vehicle deemed to be in an extreme state of disrepair within seventy-two (72) hours after the date and time on which written notice is securely placed on such vehicle or delivered to the responsible Owner by the Board, the Board may have such vehicle removed from the Property and assess the Owner the expense of such removal and any storage necessitated thereby.

(c) The Board may adopt rules to govern the enforcement of this subsection which rules may include assessing an Owner the expense of removing any automobile, vehicle or equipment parked in violation of this subsection and the cost of any storage thereof.

**4.11. *Rubbish and Unsightly Debris, Garbage, etc.*** Notwithstanding any other provision in this Declaration, no Owner shall allow his or her Lot to become physically encumbered with rubbish, unsightly debris, garbage, weeds, equipment, or other things or materials so as to constitute an eyesore as determined by the Board.

**4.12. *Temporary Structures, etc.*** No structure of a temporary character, or trailer, camper, tent, shack, garage, shed or other outbuilding shall be used on any Lot either temporarily or permanently, unless first expressly approved in writing by the Board.

**4.13. *Non-Residential Uses Prohibited.*** No part of the Property shall be used for any commercial, manufacturing, mercantile, vending or other such non-residential purposes, provided however, that professional and administrative occupations may be carried on within the Residence so long as there exists no meaningful external evidence thereof.

**4.14. *Drilling Operations.*** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon any Lot nor shall oil wells, tunnels, mineral excavations or shafts be permitted. No derrick or other structure designed for use in drilling for oil or natural gas or water shall be erected, maintained or permitted upon any Lot.

**4.15. *Swamp Coolers.*** No swamp coolers will be allowed in this Subdivision unless expressly authorized, in writing, by the Board.

**4.16. *Association Rules and Regulations.*** In addition to the restrictions and requirements in this Article, the Board from time to time may, by resolution and in accordance with the

procedures in the Act, adopt, modify, or revoke such reasonable rules and regulations governing the conduct of persons and the operation and use of the Lots and Common Area as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. Such rules and regulations may include reasonable parking and vehicle restrictions applicable to the roads within the Subdivision and shall in all cases be limited to enforcing the guidelines and terms of the Declaration and Bylaws. Reasonable fines may be levied and collected as an assessment for violations of said rules and regulations or of this Declaration or other Governing Documents of the Association. Rules and Architectural Guidelines adopted, amended, or modified by the Board or ACC may be disapproved by the Owners in accordance with the procedures in the Act.

## **5. ARCHITECTURAL CONTROL AND REVIEW**

**5.1. *The ACC and Establishment of Architectural Guidelines.*** To ensure compliance with this Declaration and to ensure a consistent, high quality and integrated design throughout the Property, and to provide a level of comfort for residents during construction activity, the Board may appoint an Architectural Control Committee ("ACC") or act as the ACC itself, and such ACC shall have the purpose of, and authority to, (1) promulgate and administer reasonable Architectural Guidelines containing standards for the exterior design, materials, construction, and aesthetics of the Improvements on the Property (subject to approval of Owners as provided in Section 5.9 below) and to set forth procedures for the submission of plans for approval consistent with this Declaration; and (2) to review all applications for construction on or modification or improvement of any Lot. The Architectural Guidelines as they exist at the time of recording this Declaration are attached hereto as Exhibit C. However, the attached Architectural Guidelines are subject to amendment from time to time and it is the responsibility of each Owner, builder or other person to obtain the current and applicable Architectural Guidelines from the ACC.

### **5.2. *Review of Plans and Specifications.***

5.2.1 Prior to the commencement of any excavation, construction or remodeling of any structure or of any addition to any structure, or modification of the natural topography of any Lot, or installation of fences or landscaping elements, approval of the ACC is required. The Board should be contacted to obtain an application form for submission of plan approval by the ACC.

5.2.2 Two (2) complete sets of building plans and specifications shall be filed with the ACC, together with a site or plot plan showing grading, landscaping and all lighting, indicating the exact part of the building site which the improvements will cover, with such fee as the ACC may determine from time to time, and an application and such supporting material, such as samples of building materials, as the ACC deems necessary. No work shall commence unless and until the ACC shall endorse on one set of such plans its written approval that such plans are in compliance with the covenants herein set forth and with the standards herein or hereafter established by said ACC pursuant hereto. The second set of such plans shall be filed as a permanent record with the ACC.

5.2.3 The ACC shall review a complete application and take final action, approving or denying the application, within 30 days.

5.2.4 If the ACC denies an application, the ACC shall include its reasons for denial in writing.

5.2.5 If the ACC fails to approve or deny the application in compliance with Subsection 5.2.3, the applicant may send a written demand to the ACC requesting that the ACC take final action to approve or deny the application within 15 days of the date the ACC receives the demand. The failure of the ACC to take final action to approve or deny the application within 15 days of receipt of the demand shall constitute an approval of the application.

5.2.6 An approval or denial of an application by the ACC shall not be arbitrary, capricious or against public policy. Failure of the ACC to act on an application shall not be deemed to constitute an approval of any act prohibited by the Declaration or Architectural Guidelines.

5.2.7 The ACC shall have the right to refuse to approve any such plans and specifications and, in so doing, shall have the right to take into consideration, among other things, the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of said building, or other structure so planned, on the outlook from adjacent or neighboring property.

**5.3 *Completion of Work.*** Once construction begins on any improvement, landscaping or alterations, which construction has been approved by the ACC, construction shall be diligently pursued to completion. In the event work begins and remains uncompleted for a period of six (6) months, the Association may undertake to complete the exterior work of the construction, and the cost of which shall be a lien against the Lot which benefited from the construction.

**5.4 *Permit Required.*** No residence, accessory or addition to a residence, other structure or building shall be constructed or maintained, and no grading or removal of natural vegetation or change in natural or approved drainage patterns or installation of fencing or landscaping elements shall occur on a Lot until any required permit or required approval therefore is obtained from the appropriate governmental entity following submission to the appropriate governmental entity of such information as it may reasonably require. The granting of a permit or approval by any governmental entity with respect to any matter shall not bind or otherwise affect the power of the ACC to refuse to approve any such matter.

**5.5. *No Waiver of Future Approvals.*** The approval by the ACC of any proposals or Plans for any work done or proposed or in connection with any other matter requiring the approval and consent of the ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans or matters subsequently or additionally submitted for approval or consent.

**5.6. *Review Fee and Deposit.*** The ACC may assess a nonrefundable fee ("Review Fee") to cover the reasonable cost of reviewing an Application, including the reasonable cost of hiring architects, engineers, or other professionals to review the Application. In addition, the ACC may require a refundable deposit to be paid to the Association according to the terms and in the amounts determined by the ACC from time to time.

**5.7. *Non-Liability of Board and ACC.*** Neither the Board, the ACC, nor any member thereof shall be liable to the Association or to any Owner for any loss, damage or injury arising out of, or in any way connected with the performance of the ACC's duties hereunder unless due to the willful misconduct or bad faith of the ACC or individual member. The ACC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of any plan or design from the standpoint of structural safety or conformance with building or other codes.

**5.8. *Requirements for Dwelling Quality and Size, Landscaping, Etc.*** Requirements for the size, quality, materials, design and construction of any Residence, Improvement, fencing, Landscaping and Lot shall be set forth in Architectural Guidelines by the ACC from time to time.

**5.9.** The Architectural Guidelines may be amended from time to time by the Board or ACC but only upon the approval of a majority of Owners other than the Declarant and only upon the written consent of the Declarant. For any amendment which carries the unanimous support of the Board as documented in the minutes of a Board meeting, an abstention from voting by an Owner, including any failure to cast a vote whatsoever, shall be deemed to be an affirmative vote.

**5.10. *Landscaping.*** Each Owner shall, at such Owner's sole expense, install and/or maintain and repair appropriate Landscaping on such Owner's Lot including, without limitation, regularly cut and trimmed lawns, and shall also maintain any landscaping previously installed on such Owner's Lot.

## **6. ASSOCIATION**

**6.5. *Organization.*** The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the State of Utah. The Articles of Incorporation of the Association provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. All of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association. Such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws (as the same may be amended from time to time) as if they had been drafted to constitute the governing documents of the unincorporated association. The affairs of the Association shall be governed by a Board of Directors as provided in this Declaration and the Bylaws.

**6.6. *Membership.*** Each Owner during the entire period of ownership of one or more Lots within the Community shall be a member of the Association. The membership shall commence, exist and continue by virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

**6.7. *Administrative Control.*** The Declarant shall have the exclusive right to appoint two of the three members of the Board of Directors until the happening of either of the following events, whichever occurs earlier: 1. Upon the date that the Declarant no longer owns more than 25% of the Lots; 2. nine (9) years from the date of the recording of the original Subdivision Plat; or, 3. the surrender of such right by the express written consent of the Declarant. The remaining member of the Board shall be an Owner other than the Declarant and shall be elected by the Association members.

## **7. ASSESSMENTS**

### **7.1. *Covenant for Assessment.***

7.1.1. All Owners. Each Owner, by acceptance of a deed conveying any Lot to it, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments:

- (1) Annual common assessments (the "Annual Assessment") as provided below.
- (2) Special assessments ("Special Assessments") as provided below.
- (3) Individual assessments ("Individual Assessments") as provided below.

7.1.2. Private Lane Lots. Each Owner of a Private Lane Lot by acceptance of a deed hereafter conveying any such Lot to it, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the "Private Lane Assessment" as provided below.

7.1.3. No Owner may exempt itself from liability for Assessments by abandonment of any Lot owned by such Owner.

### **7.2. *Annual Budget and Assessment.***

(a) Annual Budget. The Board of Directors shall prepare, or cause the preparation of, an annual budget for the Association, which shall provide for, without limitation, maintenance, upkeep, and repair, and preservation of the Common Area and the Private Lanes and Islands and for the administration, management and operation of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

#### **(b) Determination of Annual Assessment.**

- (1) Maximum Annual Assessment. Until January 1<sup>st</sup> of the year immediately following the recordation of this Declaration, the Annual Assessment shall not exceed Seventy Dollars (\$70) per month. From and after January 1st of the year immediately following the recordation of this Declaration, the Annual Assessment may be increased each year not more than ten percent (10%) above the Annual Assessment for the previous year unless at least 66% of the Owners other than the Declarant approve a greater increase.

Maximum Private Lane Assessment. Until January 1<sup>st</sup> of the year immediately following the recordations of this Declaration, the Private Lane Assessment shall not exceed Seventy Dollars (\$70) per month. From and after January 1<sup>st</sup> of the year immediately following the recordation of this Declaration, the Private Lane Assessment may be increased each year not more than 10% above the Private Lane Assessment for the previous year unless at least 66% of the Owners of the Private Lane Lots approve a greater increase.

- (2) The Board of Directors of the Association shall fix the amount of the Annual Assessment against each Lot and the amount of the Private Lane Assessment against each Private Lane Lot for each assessment period at least twenty (20) days in advance of the beginning of the period. Written notice of the Annual Assessments shall be sent to all members of the Association, and written notice of the Private Lane Assessment shall be sent to all Private Lane Owners, at least twenty (20) days in advance of the beginning any assessment period.

(3) The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the Annual Assessment or the Private Lane Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this article or a release of any member from the obligation to pay the Annual Assessment or Private Lane Assessment, or any installment thereof, for that or any subsequent assessment period. In the event of such omission, the Annual Assessment or Private Lane Assessment fixed for the preceding period shall continue until a new assessment is fixed.

**7.3. *Equitable Changes.*** Subject to Section 7.2 above, if the Annual Assessments or Private Lane Assessment levied at any time are, or will become, inadequate to meet the expenses incurred by the Association for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors may determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget and establishes the equitable change in the amount of the Annual Assessment or Private Lane Assessment. Owners shall be given at least twenty (20) days' written notice of any changes in the amount of an Assessment

**7.4. *Apportionment of Assessments.*** Assessments shall be apportioned as follows:

(a) Annual and Special Assessments. Each Lot Owner, except the Declarant, shall pay their pro rata share of the Annual Assessment and Special Assessments. The pro rata share shall be based upon the total amount of each such assessment divided by the total number of Lots but it shall not exceed the maximum assessment amounts set forth in Section 7.2 above.

(b) Individual Assessments. Individual Assessments shall be apportioned exclusively against the Lots benefitted or to which the expenses are attributable as provided below.

(c) Private Lane Assessments. All Owners of Private Lane Lots, except Declarant, shall pay their pro rata share of the Private Lane Assessment commencing upon the date the Private Lane Lots are made subject to this Declaration. The pro rata share shall be based upon the total

amount of each such assessment divided by the total number of Private Lane Lots but it shall not exceed the maximum assessment amounts set forth in Section 7.2 above.

(d) Payment of Assessments. The Board shall determine whether installments of Annual Assessments and Private Lane Assessments are levied and collected on a monthly, quarterly, semi-annual, annual or other basis. Any member may prepay one or more installments of any Assessment levied by the Association, without premium or penalty.

**7.5. *Declarant's Option to Fund Budget Deficits.*** Notwithstanding anything herein to the contrary, during the period of Administrative Control, the Declarant may annually elect to pay Assessments on all or less than all of its Lots or to pay the shortage (or operating deficit), if any, for such fiscal year; provided however, Declarant shall not be responsible for any shortage resulting from the failure of any Lot Owner to pay Assessments applicable to such Lot Owner. Such "shortage" shall be deemed to exist if Income and Revenues, as defined in paragraph (i) below are less than the Expenditures incurred, as defined in paragraph (ii) below.

(i) The terms "Income" and "Revenues" mean respectively the amount of all income and revenue of any kind received or earned by the Association, excluding refundable deposits.

(ii) The term "Expenditures" means the amount of all actual operating expenses incurred, or obligated for, by the Association during the fiscal year, including any reserve contributions for such year, but excluding all non-cash expenses, such as depreciation or amortization, all expenditures and reserve contributions for making additional capital improvements or purchasing additional capital assets, and all expenditures made from reserve funds.

Unless the Declarant otherwise notifies the Board in writing at least thirty days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other persons for payment of Common Expenses. The budget shall set forth the amount by which the Declarant is providing or subsidizing services that the Association is or will be obligated to provide. From and after the date that Administrative Control ends, any Assessment made or levied against any Lot to which the Declarant holds record title shall equal twenty-five percent (25%) of that Assessment made or levied against any other Lot.

**7.6. *Personal Obligation and Costs of Collection.*** Assessments imposed under this Declaration, together with interest, late fees, collection costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof, shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment became due. The personal obligation for any delinquent Assessment, together with interest, costs and reasonable attorneys' fees, however, shall not pass to the Owner's successor or successors in title unless expressly assumed by such successor or successors.

**7.7. *Annual Assessments.*** Annual Assessments shall be used to satisfy Common Expenses of the Association.

**7.8. *Special Assessments.*** In addition to the Annual Assessments authorized in this Article, the Association may levy in any assessment year, a special assessment applicable for that year only for the purpose of accomplishing the purposes or obligations of the Association hereunder ("Special Assessment"), provided that during the time of Administrative Control, any Special Assessment in excess of \$5,000 as a combined total against all Lots shall first be approved by a majority of the voting rights of Owners not including the Declarant. After the period of Administrative Control, any Special Assessment in excess of \$500 per Lot shall first be approved by two-thirds (2/3) of those votes cast by members of the Association in a duly held vote thereon, whether at a meeting or otherwise.

**7.9. *Individual Assessments.*** Any expenses benefitting or attributable to fewer than all of the Lots may be assessed exclusively against the Lots affected or benefitted ("Individual Assessment"). Private Lane Lot Owners may require the Association to perform an additional improvement to a Private Lane, above and beyond required maintenance, repair and replacement, upon the approval of 75% of the Owners of Private Lane Lots which Lots are accessed by the Private Lane being improved. The cost of the improvement shall be assessed to those Owners of Private Lane Lots which Lots are accessed by the Private Lane being improved.

Individual Assessments shall include, but are not limited to:

- (a) Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with the provisions of this Declaration or rules and regulations of the Association, including attorneys' fees incurred by the Association, and for fines or other charges imposed pursuant to this Declaration for violation of this Declaration, the Bylaws or any rules and regulations of the Association.
- (b) Any reasonable services provided to an unimproved or vacant Lot by the Association due to an Owner's failure to maintain the same in order to protect the health, safety and welfare of adjoining Lot Owners and the Association in general.
- (c) Assessments levied against all or less than all Private Lane Lot Owners for additional improvements made to the Private Lanes above and beyond required maintenance, repair and replacement, as provided above.

**7.10. *Private Lane Assessments.*** Any expenses of upkeep, maintenance, repair, and replacement of the Private Lanes, including the cost of insuring the same and of funding a reasonable reserve, shall be assessed exclusively as a Private Lane Assessment in the manner provided in 7.4 above.

**7.11. *Reserve Account.*** The Association shall allocate a reasonable portion of the Annual Assessment to a reserve account for the funding of long term maintenance paid for as a Common Expense. The Association shall allocate a reasonable portion of the Private Lane Assessment to a reserve account for the funding of long term maintenance of the Private Lanes and Islands. The Board shall use reasonable efforts to fund said reserve account but shall not be held



personally liable for any alleged failure to fully fund said account as long as gross negligence or intentional misconduct is not proven in a court of law.

**7.12. *Nonpayment of Assessments.*** Any assessment or portion thereof not paid within ten (10) days after the due date (which due date shall be established by resolution of the Board of Directors):

(a) Shall be delinquent and shall bear interest from the date of delinquency at the rate of 18% per annum, compounded monthly, or at the rate established by resolution of the Board of Directors from time to time; and

(b) Shall be subject to a late charge of Thirty Dollars (\$30.00), or such other amount as determined by the Board from time to time; and

(c) If paid by installments, may, in the discretion of the Board, be accelerated (including interest as provided for above) and the entire balance declared due and payable upon not less than ten (10) days written notice to the Owner. If, however, the assessment is accelerated and an Owner subsequently files bankruptcy or the Board otherwise decides acceleration is not in its best interest, the Board, at its option and in its sole discretion, may elect to decelerate the obligation.

**7.13. *Lien for Assessments.*** All Assessments imposed shall be a charge and continuing lien upon each of the Lots against which the assessment is made and shall be construed as a real covenant running with the land and shall attach automatically if any Assessments are delinquent, regardless of whether a separate notice of lien is recorded.

**7.14. *Duty to Pay Independent.*** No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of the each Owner.

**7.15. *Subordination of Lien to Mortgages.*** The lien of the Assessments provided for in this article shall be subordinate to the lien of any first mortgagees or deeds of trust now or hereafter placed upon the Lot subject to assessment and the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. However, such sale or transfer shall not relieve the Lot from liability for any Assessments thereafter becoming due, or from the lien of any future assessment.

**7.16. *Enforcement of Lien.*** The Association may establish and enforce the lien for any Assessment, including Annual, Special, Individual or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Lot against which the Assessment is made. The lien may be established and enforced for damages, interest, costs of collection, late charges

permitted by law, and attorneys' fees provided for in this Declaration or by law or awarded by a court for breach of any provisions of this Declaration, the Bylaws or any rules and regulations of the Association. The lien may be foreclosed in the same manner as deeds of trust, mortgages, or in any other manner permitted by Utah law. The collection remedies stated herein are cumulative and the use of one does not preclude the use of other remedies.

**7.17. Remedies, Including Suspension of Membership Rights and Services.** All membership rights, including the right of an Owner to vote on issues concerning the Association or sit on the Board may be suspended if the Owner is delinquent by more than 60 days in the payment of his or her Assessment. Any service provided by the Association to the Owners shall also be terminated as to the delinquent Owner at the discretion of the Board. The Association shall have each and every remedy for collection of assessments provided in the Utah Community Association Act, Utah Code Title 57, Chapter 8a, as amended from time to time, and the provisions of the Act shall be deemed to be fully set forth herein when required by such Act in order to exercise any such remedy. The Declarant hereby conveys and warrants pursuant to U.C.A. § 57-1-20 and 57-8a-402 to the attorney of the Association, with power of sale, each Lot and all improvements to each Lot for the purpose of securing payment of Assessments under the terms of the Declaration.

**7.18. Appointment of Trustee.** The Declarant, the Association and each Owner hereby appoints the attorney of the Association who has been retained by the Association at the time a foreclosure is initiated as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1, Utah Code and made applicable hereto by Title 57, Chapter 8a, Utah Code Ann., as may be amended from time to time.

## **8. ENFORCEMENT OF VIOLATIONS**

**8.1. The Association's Powers of Enforcement.** Enforcement shall be accomplished by any lawful means, including an action at law or in equity against any person or persons violating or attempting to violate any provision herein, either to restrain violation or recover damages. In the event a legal action is instituted by the Association to enforce compliance with or due to a breach of any of the provisions of this Declaration, the party found to have violated any provision(s) of this Declaration shall be liable to the prevailing party for the prevailing party's legal costs and expenses, including reasonable attorney's fee. Notwithstanding the foregoing, no liability of any nature at all shall attach to the Association, or any member thereof, in acting in good faith pursuant to the provisions of this Declaration.

If after written notice, an Owner fails to remedy a violation (the "Defaulting Lot Owner"), the Association may (in addition to other lawful remedies available to it) cause such violation or condition to be remedied and the cost thereof shall be charged to the Defaulting Lot Owner in which event such costs shall be deemed an Individual Assessment to such Defaulting Lot Owner and shall attach as a lien to the Defaulting Lot Owner's Lot, and shall be subject to levy, enforcement and collection by the Association, in accordance with the assessment lien procedure provided for in this Declaration.

Failure to comply with any of the provisions of this Declaration, Bylaws or rules and regulations adopted pursuant thereto shall be grounds for relief which may include, without limiting the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof, which relief may be sought and liberally construed to effectuate its purpose. Any violation of this Declaration shall be deemed to be a nuisance or unreasonable annoyance. Failure to enforce any provisions hereof shall not constitute a waiver of the right to enforce said provisions hereof.

**8.2. *Fines.*** The Board shall have the right to levy a reasonable fine in the amount determined by the Board, against any Lot or Owner for violations of this Declaration, the Bylaws, or rules and regulations. Any fine levied against an Owner shall become the personal obligation of the Owner and shall also become a lien against the Lot. Fines shall be collectable and enforced in the same manner as Assessments.

**8.3. *Enforcement by Others.*** Additionally and after reasonable notice in writing, an Owner not at the time in default hereunder, or the Association shall have the option of bringing an action for damages, specific performance, or injunctive relief against any defaulting Owner, and in addition may sue to have enjoined any violation of this Declaration. Any judgment shall include an award of the legal costs and expenses, including a reasonable attorney's fee, entered against the losing party and in favor of the prevailing party.

**8.4. *Rights of Entry.*** The Association shall have a limited right of entry in and upon all Lots and the exterior of all Residences for the purpose of taking whatever corrective action it reasonably deems necessary or proper to bring a Lot into compliance with the Declaration. Nothing in this Section or Article shall in any manner limit the right of the Owner to exclusive control over the interior of his or her Residence.

**8.5. *Board Authority.*** The Board shall have the right to enforce any applicable provision hereof in the same manner provided to the Association. The Board shall have the right and authority to establish grievance procedures and requirements as well as alternative dispute resolution procedures, provided however, that any requirement to mediate or arbitrate a dispute in lieu of litigation shall be adopted by the Association only by amendment to this Declaration.

**8.6. *Enforcement Remedies Cumulative.*** Each remedy provided in this Declaration shall be cumulative and not exclusive or exhaustive. Suit to recover a money judgment may be maintained without foreclosure or waiving the lien securing the same.

## 9. INSURANCE

**9.1. *Association Insurance.*** The Board shall at all times purchase, maintain in force, and pay the premiums for, if reasonably available, the following insurance, as well as such other insurance as it deems reasonable:

9.1.1. Property and Liability Insurance. Property insurance, if required by law or deemed necessary by the Board, as well as liability insurance with adequate limits of liability for bodily injury and property damage, consistent with that of similarly situated first-class subdivisions in the county and as consistent with the Act.

9.1.2. Fidelity Coverage. Fidelity coverage in a reasonable amount to be determined by the Board to cover all non-compensated officers and directors, as well as all employees or any other individuals handling or responsible for Association funds, for theft of Association funds. Where the Board or the Association has delegated some or all of the responsibility for the handling of funds to a manager, such coverage is required for the Manager's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Board or Association. The total amount of fidelity bond coverage required shall be based upon the Board's best business judgment, but shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Board, the Association, or the Manager, as the case may be, at any given time during the term of coverage. Nevertheless, in no event may the amount of such coverage be less than a sum equal to three (3) months' aggregate Assessments on all Lots, plus reserve funds.

9.1.3. Miscellaneous Items. The following provisions shall apply to all insurance coverage of the Association:

1) Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

2) Deductible. The Association shall pay for the deductible on any claim made against the Association's property insurance policy, except where the claim is made because of the negligence or willful acts of an Owner or occupant, including a guest, invitee, or visitor, as determined by the Board. In such cases, the corresponding Owner shall pay the deductible amount.

3) Special Endorsements. Each policy shall contain or provide those endorsements commonly purchased by the other community association in the county.

4) Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board or Association may deem necessary or appropriate from time to time.

**9.2. *Owner's Insurance.*** Each Owner and resident shall purchase and maintain adequate liability and property insurance on his or her Lot.

9.2.1. Primary Coverage. The insurance coverage of an Owner shall be primary. The Association shall not maintain insurance on an Owner's Lot, Dwelling Unit, personal property, or contents.

9.2.2. Prompt Repair. Each Owner further covenants and agrees that in the event of any partial or total loss, damage or destruction of its Lot or Dwelling Unit, the Owner shall promptly proceed to repair or to reconstruct the damaged structure in a manner consistent with the original construction or, in the alternative, raze or remove such improvement and cause all debris to be

removed and the site to be left in a level, clean and attractive condition pending the construction of replacement improvements.

9.2.3. **Failure to Repair.** If the Board determines that any Owner has failed to properly discharge its obligation with regard to the repair or reconstruction of the damaged structure, then the Association may, but is not obligated to, provide such repair or reconstruction at the Owner's sole cost and expense subject to the following:

1) **Assessment.** Such costs as are incurred by the Association in the repair or reconstruction of an Owner's Lot or Residence shall be secured by a lien against the Lot regardless of whether or not a notice of lien is filed.

2) **Notice of Intent to Repair.** Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide repair or reconstruction at the Owner's cost and an expense. The Association shall set forth with reasonable particularity the repair or reconstruction deemed necessary by the Board. The notice shall establish a reasonable time after receipt of notice within which the Owner shall commence and complete such repair or reconstruction.

3) **Optional Repairs.** The Association may, but is not obligated to, provide such repair or reconstruction in the manner described above.

## 10. EASEMENTS

10.1. ***Member's Easements and Rights-of-Way.*** Every Member of the Association shall, as an Owner, have the right and nonexclusive easement to use and enjoy the Common Areas. Such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the restrictions contained in the Governing Documents.

10.2. ***Utility, Irrigation and Drainage Easements.*** Easements for installations and maintenance of utilities and drainage facilities are reserved as noted on the recorded map. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements, if any, for which a public authority or utility company is responsible.

## 11. DURATION AND AMENDMENT

11.1. ***Duration.*** This Declaration, as amended from time to time, shall continue in full force and effect until a declaration of termination approved by 75% of the voting rights of the Association is recorded with the County Recorder of Weber County. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Lot from membership in the Association as long as this Declaration shall continue in full force and effect.

11.2. ***Amendment.*** The affirmative vote of at least sixty percent (60%) of the voting rights of the Association shall be required and shall be sufficient to amend the Declaration, provided that

the approval of the Declarant shall be required to amend this Declaration during the period of Administrative Control. For any amendment which carries the unanimous support of the Board as documented in the minutes of a Board meeting, an abstention from voting by an Owner, including any failure to cast a vote whatsoever, shall be deemed to be an affirmative vote. Any amendments so authorized shall be accomplished through the recordation of an instrument executed by the president of the Association. In such instrument the president shall certify that the required vote for amendment has occurred.

## **12. MISCELLANEOUS**

**12.1. *Notice, Affairs, Electronic Means.*** In any circumstance where notice is required to be given to a homeowner, the Association may provide notice by electronic means, including text message, email, or an Association website, if the Board deems the notice to be fair and reasonable. A homeowner may require the Association, by written demand, to provide notice to the homeowner by mail. The Board is authorized to promulgate rules and procedures facilitating the implementation of this section as it deems fit from time to time, including requiring members to furnish the Association with a current email address. Any notice mailed by the Association to the Owner's Lot shall be deemed to have been fully given by the Association and received by the Owner, unless a different address is supplied in writing by the Owner.

Any transaction or action involving the business or affairs of the Association, including but not limited to voting and providing notice or records, may be conducted by electronic means. The Association may accept a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation as the act of the member if the Board does so in good faith and has no reason to believe it is not the act of the member. A writing may be delivered in an electronic medium or by electronic transmission, and may be signed by photographic, electronic, or other means. An electronic record or electronic signature is attributable to a person if it was the act of the person. An electronic signature may consist of a mark, symbol, character, letter, or number or any combination thereof attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record and the same shall be considered the signature of such person. A writing includes any document, record, vote, ballot, proxy, or instrument required or permitted to be transmitted by a Member or by the Association.

**12.2. *Severability.*** Invalidation of any one of these covenants or any portion thereof by judgment or court order shall in no way effect any of the other provisions which shall remain in full force and effect.

**12.3. *Singular Includes Plural.*** Whenever the context of the Declarant requires the same, the singular shall include the plural, and the masculine shall include the feminine.

**12.4. *Covenants, etc., Shall Run with the Land.*** All of the limitations, restriction, easements, conditions and covenants herein shall run with the land and shall be binding in and for the benefit of all the Property and all parties having or acquiring any right, title or interest in the Property and any part thereof and shall inure to the benefit of each Owner and are imposed upon

the Property as a servitude in favor of each parcel thereof as the dominant tenement or tenements.

**12.5. *Limitation on Liability.*** Neither the Board nor the Association shall be liable to any other person for action or failure to act hereunder where such action or failure was in good faith. Additionally, the Association shall indemnify all Board members for all acts absent evidence of intentional misconduct or gross negligence.

**12.6. *Interpretation.*** All questions of interpretation or construction of any of the covenants, restrictions or terms in this Declaration shall be resolved by the Board, and its decision shall be final, binding and conclusive on all parties affected for all purposes.

**12.7. *Effective Date.*** This Declaration and any amendment(s) or supplemental(s) thereto shall take effect upon its (their) being filed for record in the Office of the County Recorder of Weber County, Utah.

**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the president of the Association has executed this instrument on the 30<sup>th</sup> day of March, 2021.

**NORTH OGDEN COVE HOME  
OWNERS ASSOCIATION, INC.**

Jean H. Barclay  
By: Jean H. Barclay  
Director

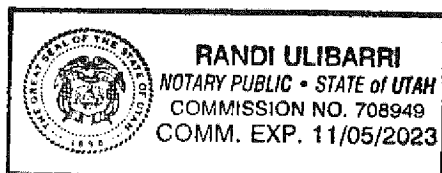
Avery House  
By: [Signature]  
Director

Kami F. Marriott  
By: Kami F. Marriott  
Director

State of Utah )  
County of Weber )  
SS.

On the 30<sup>th</sup> day of March, 2021, personally appeared before me Jean H. Barclay and Avery House and Kami F. Marriott, who being by me duly sworn did that say that they are the Directors of the Association and that said instrument was signed and sealed in behalf of said Association by authority of its Board of Directors; and acknowledged said instrument to be their voluntary act and deed.

[Signature]  
Notary Public





**EXHIBIT "A"**  
**LEGAL DESCRIPTIONS**

ALL OF LOTS 1 THRU 41, 42-R, 43-R, 44, AND 45, NORTH OGDEN COVE 2ND AMENDMENT, NORTH OGDEN CITY, WEBER COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF.

*PARCEL NUMBERS: 16-304-0001 THRU 16-304-0033, 16-304-0048, 16-304-0049, AND 16-304-0035 THRU 16-304-0045*

ALL OF LOTS 46 THRU 89, NORTH OGDEN COVE 2ND AMENDMENT, NORTH OGDEN CITY, WEBER COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF.

*PARCEL NUMBERS: 16-305-0001 THRU 16-305-0032, 16-305-0045, AND 16-305-0036 THRU 16-305-0044*

ALL OF LOTS 90, 91, 92R THRU 95R, 96, 97-R, 98 THRU 115, 119 THRU 127, 132, 133, 134, 137 THRU 143, 146 THRU 153, 156 THRU 173, NORTH OGDEN COVE 2ND AMENDMENT, NORTH OGDEN CITY, WEBER COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF.

*PARCEL NUMBERS: 16-306-0005 THRU 16-306-0030, 16-306-0034 THRU 16-306-0037, 16-306-0092, 16-306-0040 THRU 16-306-0042, 16-306-0047 THRU 16-306-0049, 16-306-0052 THRU 16-306-0058, 16-306-0061 THRU 16-306-0068, 16-306-0071 THRU 16-306-0075, 16-306-0091, AND 16-306-0078 THRU 16-306-0088*

ALL OF LOT 401, NORTH OGDEN COVE 4TH AMENDMENT SUBDIVISION, NORTH OGDEN CITY, WEBER COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF.

*PARCEL NUMBERS: 16-330-0001*

ALL OF LOTS 179 & 180, NORTH OGDEN COVE 5TH AMENDMENT, NORTH OGDEN CITY, WEBER COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF.

*PARCEL NUMBERS: 16-327-0001 & 16-327-0002*

ALL OF LOTS 181, 182 & 183, NORTH OGDEN COVE 6TH AMENDMENT, NORTH OGDEN CITY, WEBER COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF.

*PARCEL NUMBERS: 16-336-0001, 16-336-0002 & 16-336-0003*

ALL OF LOT 701, NORTH OGDEN COVE, 7TH AMENDMENT, NORTH OGDEN CITY, WEBER COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF.

*PARCEL NUMBER: 16-341-0001*

ALL OF LOT 31A, NORTH OGDEN COVE SUBDIVISION 8TH AMENDMENT, NORTH OGDEN CITY, WEBER COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF.

*PARCEL NUMBER: 16-381-0001*

**EXHIBIT B**

**BYLAWS**

**OF**

**NORTH OGDEN COVE HOME OWNERS ASSOCIATION, INC.**

**SECTION 1**

**MEETINGS OF OWNERS**

**1.1. Annual Meetings.** The first annual meeting and subsequent annual meetings of the Association will be held at a time and in a month specified by the Board.

**1.2. Special Meetings.** A special meeting of the Association may be called at any time by the Board or the president of the Association, or by the Board upon the written request of at least 30% of the Owners. A special meeting may only be held for the purposes set forth in the notice for that special meeting.

**1.3. Place of Meetings.** The Board may designate any place in North Ogden City as the place for any annual or special meeting of the Association.

**1.4. Notice of Meetings.** Notice of each meeting stating the place, date, and time of the meeting and the purpose or purposes for which the meeting is called, will be delivered to each Owner entitled to vote at the meeting, not less than 7 nor more than 90 days before the date of the meeting. If mailed, the notice will be deemed to be delivered when deposited in the United States mail, postage prepaid, and addressed to the Owner at its address as it appears in the records of the Association. The Board may set a record date for determining the Owners entitled to notice. The Association will give notice at the Association's expense of any special meeting called by the Owners.

**SECTION 2**

**VOTING; QUORUM**

**2.1. Voting.** Each Lot will be allocated one vote.

**2.2. Quorum.** The number of Owners participating in a meeting in person, by proxy, or by written ballot will constitute a quorum.

**2.3. Voting Method.** Votes may be cast in person, by proxy, or by written ballot.

**2.4. Action by Proxy.** Every proxy must be executed in writing by the Owner or its duly authorized attorney-in-fact and filed with the secretary of the Association before or at the time of the meeting. No proxy will be valid after the expiration of one year from the date of its execution unless otherwise provided in the proxy.

## **2.5. Action by Written Ballot.**

(a) Any action that may be taken at any meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every Owner entitled to vote on the matter. Such written ballot will set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot will be valid only when the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot. Owners submitting a written ballot will be considered to have participated in the meeting for all purposes.

(b) All solicitations for votes by written ballot will: 1) indicate the number of responses needed to meet the quorum requirements; 2) state the percentage of approvals necessary to approve each matter other than election of directors; 3) specify the time by which a written ballot must be received by the Association in order to be counted; and 4) be accompanied by written information sufficient to permit each Owner casting a written ballot to reach an informed decision on the matter.

(c) A written ballot may not be revoked.

(d) Action by written ballot will have the same effect as action taken at a meeting.

(e) The number of votes cast by written ballot will constitute a quorum for action on the matter.

(f) A written ballot may also be used in connection with any meeting of the Association, thereby allowing Owners the choice of either voting in person or by written ballot delivered by an Owner to the Association in lieu of attendance at such meeting. A valid written ballot will be counted equally with the votes of Owners in attendance at any meeting for every purpose.

## **SECTION 3 BOARD & OFFICERS**

**3.1. Number, Election, Term of Directors.** The Board shall consist of three Directors. The Directors shall also constitute the Officers of the Association as set forth in Section 4. Except as provided in Section 6.7 of the Declaration, Directors will be elected at the annual meetings of the Association by a plurality of votes, that is, the candidate(s) with the most votes shall be elected. Each elected Director will hold office for a term of two years.

**3.2. Resignation or Death.** A Director may resign before the expiration of his term by giving written notice to the president or to the secretary of the Association. Such resignation will take effect on the date specified in the notice. Upon the resignation or death of a Director, the remaining Directors will appoint a replacement Director to serve until his successor is elected.

**3.3. Meetings.** Meetings of the Board will be held at least annually, and at any time when called by the president of the Association or by two or more Directors, upon the giving of at least two days' prior notice of the time and place of the meeting to each Director by hand-delivery, prepaid United States mail, fax, email, telephone, or in any other manner deemed fair and reasonable by the Board. Any business may be transacted at a Board meeting. No notice of a Board meeting need state the purposes for holding the meeting, and no notice of any adjourned Board meeting will be required. If the Board establishes a regular meeting schedule, then such regular meetings of the Board may be held without notice of the date, time, or place of the meeting.

**3.4. Place of Meetings.** The Board may designate any location convenient to the Directors in which to hold a Board meeting. Directors may participate in any Board meeting by means of any electronic or telephonic communication by which all participants may simultaneously hear one another during such meeting. Directors who participate in a Board meeting by such means will be considered present for all purposes, including the presence of a quorum.

**3.5. Quorum.** A majority of Directors will constitute a quorum for the transaction of business, but a lesser number may adjourn any Board meeting from time to time. When a quorum is present at any Board meeting, a majority of the Directors in attendance will decide any question brought before such meeting.

**3.6. Waiver of Notice.** Before, at, or after any Board meeting, any Director may, in writing, waive notice of such meeting and such waiver will be deemed equivalent to the giving of such notice. Attendance by a Director at a Board meeting will constitute a waiver of notice by such Director except when such Director attends the meeting for the express purpose of objecting to the transaction of business based on a claim that the meeting was not duly called or convened.

**3.7. Informal Action by Directors.** Any action required or permitted to be taken at a Board meeting may be taken without a meeting (e.g., via email correspondence) if each member of the Board in writing either: (1) votes for the action, or (2) votes against the action, or (3) abstains from voting and waives the right to demand that action not be taken without a meeting.

#### SECTION 4 OFFICERS AND AGENTS

**4.1. General.** The Officers shall be elected by the Board. The Officers of the Association shall be a president, a vice president, and a secretary/treasurer. The Board may appoint such other Officers, assistant Officers, committees, and agents, including assistant secretaries and assistant treasurers, as it may consider necessary or advisable, who will be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the Board. One person may hold any two offices, except that no person may simultaneously hold the offices of president and secretary. In all cases where the duties of any Officer, agent, or employee are not prescribed by these Bylaws or by the Board, such Officer, agent, or employee will follow the orders and instructions of the president.

**4.2. Removal of Officers.** The Board may remove any Officer with or without cause, and elect a successor at any Board meeting.

**4.3. Vacancies.** A vacancy in any office will be filled by the Board for the unexpired portion of the term.

**4.4. President.** The president will be the chief Officer of the Association. The president will preside at all Association meetings and Board meetings. The president will have the general and active control of the affairs and business of the Association and general supervision of its Officers, agents, and employees. The president is designated as the Officer with the power to prepare, execute, certify, and/or file amendments to the Articles, Bylaws, and the Rules and Regulations on behalf of the Association.

**4.5. Vice President.** The vice president will assist the president and will perform the duties assigned to him by the president or the Board. In the absence of the president, the vice president will have the powers and perform the duties of the president.

**4.6. Secretary/Treasurer.** The Secretary/Treasurer will:

(a) keep, or cause to be kept, the minutes of the proceedings of Association meetings and Board meetings;

(b) see that all notices are duly given in accordance with the provisions of these Bylaws;

(c) maintain the records of the Association, including a record containing the names and registered addresses of all Owners, the designation of the Lot owned by each Owner, and, if a Lot is Mortgaged, the name and address of each Mortgagee;

(d) perform all other duties incident to the office of secretary and the duties assigned to her or him by the president or the Board;

(d) be the principal financial Officer of the Association and will have the care and custody of all funds, securities, evidences of indebtedness, and other personal property of the Association;

(e) receive and give receipts and acquittances for moneys paid in on account of the Association and will pay out of the funds on hand all bills, payrolls, and other just debts of the Association upon maturity;

(f) perform all other duties incident to the office of treasurer and, upon request of the Board, make such reports to it as may be required at any time;

(g) if required by the Board, give the Association a bond for the faithful performance of his duties and for the restoration to the Association of all books, papers, vouchers, money, and other property in his possession or under his control belonging to the Association; and

(h) have such other powers and perform such other duties assigned to her or him by the president or the Board.

## **SECTION 5**

### **CONTACT INFORMATION; ADDRESS**

Each Owner is required to register a mailing address, a phone number, and an email address with the Association within ten days after becoming an Owner. The contact information of each Owner will be kept in the records of the Association. Owners must notify the Association of any change in contact information within ten days after the change. Any notice mailed to an Owner's registered address or—if the Owner fails to register an address with the Association—to the address on file with the Weber County Recorder will be deemed duly delivered.

## **SECTION 6**

### **NOTICE, AFFAIRS, ELECTRONIC MEANS**

**6.1. Affairs, Electronic Means.** Any transaction or action involving the business or affairs of the Association, including but not limited to voting and providing notice or records, may be conducted by electronic means. The Association may accept a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation as the act of the member if the Board does so in good faith and has no reason to believe it is not the act of the member. A writing may be delivered in an electronic medium or by electronic transmission, and may be signed by photographic, electronic, or other means. An electronic record or electronic signature is attributable to a person if it was the act of the person. An electronic signature may consist of a mark, symbol, character, letter, or number or any combination thereof attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record and the same shall be considered the signature of such person. A writing includes any document, record, vote, ballot, proxy, or instrument required or permitted to be transmitted by a Member or by the Association.

**6.2 Notice.** In any circumstance where notice is required to be given to the homeowners, the Association may provide notice by electronic means, including text message, email, or an Association website, if the Board deems the notice to be fair and reasonable. A homeowner may require the Association, by written demand, to provide notice to the homeowner by mail. The Board is authorized to promulgate rules and procedures facilitating the implementation of this section as it deems fit from time to time, including requiring members to furnish the Association with a current email address.

## **SECTION 7**

### **AMENDMENT**

Except as limited by law or the Articles, these Bylaws may be amended or repealed by a vote of at least 51% of the votes entitled to be cast by the Owners.

IN WITNESS WHEREOF, The President and Secretary of the Association executes these Bylaws on  
this 20<sup>th</sup> day of MARCH, 2020<sup>th</sup>  
2021

**NORTH OGDEN COVE HOMEOWNERS  
ASSOCIATION**

Jean H. Barclay  
By: Jean H. Barclay  
Director

Avery House  
By: AVERY HOUSE  
Director

Kami F. Marriott  
By: Kami F. Marriott  
Director

## **EXHIBIT C**

### **Architectural Guidelines**

**Amended September 8, 2020**

1: Garages: Each dwelling unit shall have an attached or detached fully enclosed garage for a minimum of three (3) standard size automobiles. Garages attached or detached shall have a paved driveway surface access. Garages shall be constructed with similar style and materials as the main dwelling. No carports shall be allowed.

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.

3: Set Backs: All building set backs shall comply with the regulations of North Ogden City.

4: Dwelling Unit Size: No Dwelling shall be constructed or placed on any lot containing a total floor area, exclusive of basement, open porches and garages of less than the following:

a: For lots located below Mt. Road (Lots 1-19): Two thousand one hundred (2,100) square feet for ramblers and twenty-six hundred (2,600) square feet for two story plans, with no less than sixteen hundred (1,600) square feet on the main floor.

b: For lots located above Mt. 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; 171-176; two thousand three hundred (2,300) square feet for ramblers and two thousand eight hundred (2,800) square feet for two story plans, with no less than one thousand eight hundred (1,800) 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 five hundred (2,500) square feet for ramblers and three thousand (3,000) square feet for two story floor plans, with no less than two thousand (2,000) 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.

5: Construction: 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 the State issued license of the contractor, along with a copy of the General Liability Policy and proof of Workers Compensation Insurance.



6: Exterior Designs, Materials and Colors: All exterior materials and colors selected and used shall be approved by the ACC prior to being placed on buildings on neighboring lots to the end that such buildings will present a unified and coordinated appearance. The use of "earth tones" compatible with the natural surroundings is strongly encouraged. The exterior of any structure erected shall have a minimum of two thirds ( $2/3$ ) of the front and side elevations, excluding openings such as doors and windows covered in brick, native stone or cultured stone if the remaining exterior of the building is stucco. The exterior of any structure erected may have a minimum of one half ( $1/2$ ) of the front and side elevations, excluding openings such as doors and windows covered in brick, native stone or cultured stone, if the remaining exterior of the building is hardy plank type materials. Log homes or log siding will not be allowed. All buildings shall have a roof of at least a 7x12 pitch. Lower roof slopes may be considered at the discretion of the ACC on an individual basis and will be determined based on the architectural style of the dwelling (i.e. modern or contemporary styles). No flat roofs will be allowed. All shingles shall be architectural asphalt shingles or bar tile or wood shake shingles. Exterior designs are to have upgraded, unique architectural features. The ACC has the authority, within reason, to determine if the exterior designs are acceptable.

7: Fencing: 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 location, design, material and color thereof, have been approved in writing by the ACC. All fences and/or walls constructed on a lot shall be in compliance with the applicable ordinance of North Ogden City. Allowable fencing materials will be wrought iron, stone, stone façade or similar materials. Vinyl fencing will not be allowed.

REQUIRED FENCING: Lots # 42R, 43R, 92R, 93R, 94R, 95R, 97R, 174R, 175R will be required to install a minimum 6' tall fence on the side of the lot adjoining the N.O.S. (Detention Basin), which fence shall be installed in accordance with the architectural guidelines and prior to occupancy of the dwelling.

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 will be allowed higher than six (6) feet without 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. All damaged fencing and walls shall be repaired or replaced by the owner of the lot 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 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 on 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 the neighboring lots.

e: All fences constructed or to be constructed on common lot lines shall be constructed and maintained at the equal expenses of the owners of the two lots on which they are located; provided, however, any owner who constructs a fence on the common lot lined 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 neighboring lot owners have built their residence.

8: Landscaping: The following provisions shall govern the landscaping of lots within the subdivision:

a: The owner shall prepare a landscaping 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 landscaping plan.

b: The landscaping for the entire lot shall be installed within six (6) months after substantial completion of the dwelling on the lot, with reasonable extension allowed for weather.

c: Required for front yards:

- two (2) coniferous trees of at least eight (8) feet in height
- two (2) deciduous trees of at least two point five(2.5) caliper inches
- eight (8) five gallon plants
- eight (8) three gallon plants

d: An underground automatic sprinkler system shall be installed sufficient to irrigate all landscaped areas.

e: All parkway strips, meaning the property between the curb and sidewalk, shall be landscaped using Xeriscape principles which are to be covered with natural vegetation, rocks and plants that require no watering, or as approved by the ACC.

f: Grading: Final grade of all lots are to be completed to insure that all run-off and storm waters are diverted away from the structure and into natural and constructed drainage systems. Per requirements on the recorded subdivision plat, lots are to have drainage channels constructed on lot lines to allow for proper diversion of storm waters.

9: Storm Water Protection: During construction and until final landscaping has been completed, lot owner and their contractors are to comply with the Storm Water Protection Plan and are to

make necessary provisions to insure that no construction debris, waste, sediment, etc. enters the storm systems. Installation of silt fence and drainage barriers are required during construction. No construction materials, including sand and gravel products are to be placed in any roadways or curb areas which will allow infiltration into drainage systems. Portable restrooms are to be placed on the lots, and not in roadways. Concrete waste is to be washed-out in designated areas provided by the lot owner and will not be allowed to be dumped on any other lot or common area. The construction site is to be kept in a clean condition and all excess waste is to be disposed of as soon as is reasonably possible to avoid debris contaminating surrounding areas. Measures are to be taken to control and keep airborne dust to a minimum, including street sweeping and the use of water to contain the dust if needed.

10: Protection of existing improvements: Upon closing of any lot, it will become the responsibility of the lot owner to protect all existing improvements. Any damages to sidewalk, curb, asphalt and any underground utilities are to be promptly repaired or replaced. During construction, sidewalk and curbs are to be protected from damage by construction vehicles.

11: Mail Boxes: Common mail boxes will be provided and placed in areas throughout the subdivision under the direction and requirement of the US Postal Service.

12: In the event the exterior design does not comply with the requirements in a certain area of the guidelines, but exceeds the guidelines in one or more of the other areas, the owner shall submit a request for a variance to the ACC for consideration. The ACC will have the authority to allow variances to the design guidelines based on the overall design, look and enhancement the design will bring to the area.