

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

FOR

NORTH BENCH FARMS

A RESIDENTIAL SUBDIVISION

IN

OAKLEY, UTAH

NORTH BENCH FARMS, L.L.C.

A Utah limited liability company

AS DEVELOPER

WHEN RECORDED RETURN TO:

Russell W. Grosse Development Co., Inc.

5850 Avenida Encinas, Suite A

Carlsbad, CA 92008

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**ALAN SPRIGGS, SUMMIT CD RECORDER
2001 DEC 11 14:55 PM FEE \$146.00 BY DMG
REQUEST: METRO NATIONAL TITLE**

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**DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
NORTH BENCH FARMS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE NORTH BENCH FARMS SUBDIVISION (this "Declaration") is executed this 16th day of December, 2001, by NORTH BENCH FARMS, L.L.C., a Utah limited liability company, (the "Developer") with reference to the following:

RECITALS

A. Developer is the owner of certain real property located in Summit County, Utah described more particularly on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

B. Developer has subdivided the Property into Lots 1 through 93, inclusive, of THE NORTH BENCH FARMS SUBDIVISION.

C. Developer desires to provide a general plan for the development of all of the Property and for the establishment of covenants, conditions and restrictions to enhance and protect the value and attractiveness of the Property, all in accordance with the provisions of this Declaration.

COVENANTS, CONDITIONS AND RESTRICTIONS

NOW, THEREFORE, for the reasons recited above, the Developer hereby covenants, agrees and declares that the Property shall be subject to the following covenants, conditions and restrictions:

1. Definitions. The following definitions shall apply to this Declaration:
 - a. "Architectural Control Committee" shall have the meaning given in Section 11 below.
 - b. "Assessment" shall mean a Lot Owner's portion of the Common Expenses or any other amount charged by the Association.
 - c. "Association" shall mean all of the Owners acting as a group and may or may not be incorporated as a non-profit corporation.
 - d. "Builder" shall mean an Owner, developer or contractor who obtains a construction or occupancy permit for one or more Lots.

- e. "Common Expense" shall mean and refer to:
- 1) All sums lawfully assessed against the Owners;
 - 2) Expenses of administration, maintenance, repair or replacement of the Common Area Parcels and the improvements constructed or installed thereon;
 - 3) Expenses allocated by the Association among the Owners;
 - 4) Expenses agreed upon as Common Expenses by the Management Committee; and
 - 5) Expenses declared Common Expenses by the Declaration.

f. "Common Area Parcels" shall mean those parcels of land located within the boundaries of the Subdivision which are deeded to the Association and which are presently described in Exhibit "B" attached hereto and incorporated herein with this reference, together with any additional parcels of land deeded to the Association for the purpose of being Common Area Parcels.

g. "Dwelling" shall mean the detached single family residence, place of habitation, abode or living unit constructed upon a Lot.

h. "Lot" or "Lots" shall mean the subdivided and recorded lot or lots within Property and where the context so requires any Dwelling constructed thereon.

i. "Management Committee" shall mean the committee of three (3) Lot Owners elected or appointed to manage the Association and the Common Area Parcels.

j. "Member" shall mean each Owner who, by virtue of accepting a deed or other document of conveyance to a Lot, is deemed to be a shareholder in the Association.

k. "Membership in the Association" shall mean that shareholder interest which is appurtenant to the ownership of a Lot in the Property, which may not be separated or partitioned therefrom and which shall automatically accompany the transfer or conveyance of an ownership interest in the Lot to which it relates.

l. "Owner" or "Owners" shall mean the record owner or owners, whether one or more persons or entities, of a fee simple title to any Lot, excluding those having such interest merely as security for the performance of an obligation.

m. "Subdivision" shall mean THE NORTH BENCH FARMS SUBDIVISION.

2. Area of Application. This Declaration shall apply to all of the Property.

3. Right to Expand Application. The Developer shall have the right to expand the application of this Declaration to other property by written amendment to this Declaration duly recorded.

4. Use Restrictions and Nature of the Property. The Lots are subject to the following use restrictions, which shall govern both the architecture of the Dwellings and the activities therein:

a. Residential Purposes. No Lot shall be used except for residential purposes.

b. Zoning. All land use and buildings shall be in compliance with all zoning and land use ordinances as well as all regulations of the municipalities and agencies governing the Subdivision land use and buildings.

c. Landscaping. All landscaping, grading and drainage of the land in each Lot shall be completed so as to comply with and not impair all flood control requirements of the Subdivision and the other Lots. The Owner must have substantially completed the landscaping of his or her front yard within one hundred fifty (150) days of the date of occupancy and the back yard within one (1) year of the date of occupancy. All landscaping plans (including without limitation any and all fences, walls, hedges and other similar improvements) are subject to prior approval by the Architectural Control Committee. Upon approval and/or completion of the landscaping plan pursuant to this section, no healthy tree shall be removed, nor other major landscaping change be made without approval of the Architectural Control Committee; provided, however, notwithstanding this section, all diseased trees and bushes must be removed by the Owner within a reasonable time after the diseased condition is discovered.

d. Easements. Easements and rights of way for the installation and maintenance of utilities, drainage systems and facilities, snow removal and irrigation are reserved, as set forth herein and in the legal description of the Property. Within these easements and rights of way, no structure, planting or other materials 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, on or about the easements and rights of way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights of way. The easement and right of way of each Lot and all improvements within said area shall be maintained continuously by their Owners, excepting those improvements for which a public authority or utility company is expressly responsible.

e. Fence, Walls and Hedges. No fence, wall, hedge, or other similar structure shall be erected in a front yard to a height in excess of three (3) feet, nor shall any such structure be erected in any side or rear yard to a height in excess of six (6) feet. No fence, wall, hedge or other similar structure shall be erected in any front yard of any adjoining Lot to a height in excess of six (6) feet any nearer to the street than the minimum building setback line. Where a retaining wall protects a cut below the natural grade and is located on the line separating Lots, such retaining wall may be topped by a fence, wall or hedge or similar structure six (6) feet in height. The only

acceptable fencing materials are wood, masonry, vinyl or wrought iron.

f. **Slope and Drainage Control.** No structure, plant, improvement or other material may be placed or permitted to remain, or other activities undertaken which may damage or interfere with established Lot ratios, create erosion or sliding problems, or which may change the direction or flow of drainage channels, or obstruct or retard the flow of water through the channels. The slope control area of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, excepting those improvements for which a public authority or utility company is expressly responsible. It shall be the responsibility of the Owner to see that his Lot conforms with and continues to conform with any established grading and drainage plan that has previously been designed by the Developer.

g. **Nuisances.** No noxious or offensive activity shall be carried on, in or about the Property, nor shall anything be done or permitted thereon which may be or may become an annoyance, disturbance, bother or nuisance to the neighborhood, or which might interfere with the right of other residents to the quiet and peaceful enjoyment of their property. No automobiles, vans, sport utility vehicles, trucks, campers, motor homes, trailers, boats, watercraft, recreational, commercial, oversized or other vehicles shall be stored on streets or in front yards. Recreational, commercial, oversized or other motor vehicles may be stored on cement parking slabs in side yards so long as they are in running condition, regularly used and properly licensed.

h. **Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste (hereinafter referred to collectively as "Trash"). All Trash shall be kept at all times in sanitary containers. All Trash containers shall be kept in sanitary condition. No Trash containers, unsightly material or objects are to be stored on any Lot in view of the general public, except on Trash pick-up days and then for a period not in excess of twenty-four (24) hours.

i. **Temporary Structures.** No Structure of a temporary nature or character, including but not limited to any trailer, shack, shed, tent, garage, barn or other out-building shall be used on any Lot at any time as a residence.

j. **Rental Housing.** No housing units may be used for short term leasing or ski accommodation rentals. No units may be rented for a term less than six-months of continuous use by said occupant. Rental units require 30-day written notification prior to move-in of tenants to the Management Committee.

k. **Construction Time Following Purchase.** The original grantee or grantees of any Lot from Developer within the Subdivision shall, within four (4) months from the purchase date of said Lot, commence construction or landscaping upon the Lot, and having commenced construction shall continue therewith and have a residential structure upon such Lot ready for occupancy within twelve (12) months from the date construction is commenced. In cases of hardship, the Management Committee may choose to allow more time for commencement or

completion of construction, but a decision by the Management Committee to do so in one (1) case shall not be deemed to have set a precedent for other cases. In the event a residence is not constructed in accordance with the above terms and time allotted and is not completed within the time period as specified, Developer or its devisees or assignees shall have the exclusive option to buy said lot for the sum initially paid by the grantee in purchase of such Lot plus one-half (½) the cost of improvements constructed thereon as determined by their actual price or a third-party appraiser. The cost of any such appraisal shall be paid for solely by the grantees. Any construction of any structure on a Lot shall be continued diligently and completed within a reasonable time. A grantor or Owner may not avoid application of this provision by transferring a Lot to an entity owned in whole or part by such grantee or Owner nor through the use of third parties and trusts for the benefit of the same.

1. Construction Area Restrictions. Once construction has begun, the construction of any building on any Lot shall be finished as promptly as reasonably possible. The construction and building area shall be kept reasonably clean and in workmanlike order, free of litter, during the construction period with a garbage can or other garbage disposal facility of sufficient size on the site during such period. If required in the sole discretion of the Management Committee, the Owner of any Lot under construction shall act at its sole cost and expense to ensure that all dust, particulates, mud and other undesirable byproducts of construction shall be thoroughly controlled, mitigated and removed from the Lot under construction and any adjoining parking areas and roads pursuant to any and all applicable government regulations and in keeping with the wholesome, clean and nuisance-free environment sought to be created by this Declaration.

m. Water Restrictions. Consistent with the design of a secondary water system as contemplated by the Development Agreement for the North Bench Farms Project between Developer, Oakley City and Mountainlands Community Housing Association recorded with the Summit County Recorder (the "Development Agreement"), the culinary water provided to the Owner of any Lot or provided for the Subdivision in general shall not be permitted to be used as irrigation water for the watering of lawns, gardens and similar landscaped yard areas. In addition, after taking into consideration the current and future water needs for the Subdivision together with the current water year and projected water fall amounts, the Management Committee shall have the right, power and authority to regulate the days, times and amounts by which the Owner of any Lot may use the irrigation water to water his or her lawn, garden and similar landscaped yard areas.

5. Mandatory Association of Lot Owners. All Owners shall belong to the Association.

6. Management of Common Area Parcels. The Association shall exist for the purpose of managing, operating, maintaining, repairing and replacing, as necessary, the Common Area Parcels and improvements constructed thereon. Upon the recordation of each phase of the Subdivision, Developer shall transfer the Common Area Parcels within such phase to the Association. The Common Area Parcels shall be maintained in accordance with the standards established by Oakley City and the Association shall take the necessary steps to insure such maintenance within twelve months of the recordation of each phase of the Subdivision (and the

corresponding transfer of the Common Area Parcels). The matters for which the Association is responsible include but are not limited to the care, maintenance, repair and, as necessary, replacement of the grass and trees in the park strip, the shrubbery along the exterior fence, the exterior fence, the sidewalk, the sprinkling system or systems, THE NORTH BENCH FARMS marquee and landscaping, and the snow and ice removal from the sidewalks and common walkways. The exterior fence shall be located around the boundary of the Subdivision and shall consist of a mesh and two strand barb wire fence four feet high similar to other rural fencing presently used in the surrounding areas, except, however, at both entries to the Subdivision at which points the exterior fence shall consist of a four foot high, three rail decorative vinyl coated material as shown in that certain exhibit to the Development Agreement.

If, in the reasonable judgment of Oakley City, the Association consistently fails to maintain the Common Area Parcels and the improvements thereon in a clean, attractive and orderly manner and as otherwise contemplated in this Declaration, Oakley City may provide written notice to the Management Committee of its intention to take control of such maintenance, upkeep and other duties heretofore belonging to the Association with respect to the Common Area Parcels and their improvements. Further, if within sixty (60) days after delivery of such notice the Association has not in Oakley City's reasonable judgment satisfactorily cured its problems and fully performed its maintenance duties (which written judgment also shall be delivered to the Management Committee), then Oakley City may take temporary and/or permanent control of such maintenance, upkeep and other duties with respect to the Common Area Parcels and the improvements thereon, as Oakley City sees fit, and Oakley City shall have the right to collect and receive the Assessments (in the manner generally provided herein) allocated by the Management Committee for the Common Area Parcels during such period of time that Oakley City controls and/or maintains the Common Area Parcels.

7. Association and Management Committee. The Association shall be organized by Developer no later than nine (9) months from the date of recordation of this Declaration (which shall be initially funded by Developer within twelve months from the date of recordation of this Declaration) and it shall be operated and controlled by a Management Committee, subject to the following:

a. Members of the Management Committee. The Management Committee shall be comprised of three (3) Owners (any of Developer's authorized representatives, members or employees shall be deemed to be Owners for purposes of being qualified to serve on the Management Committee), acting as a majority, who shall be duly qualified, elected or appointed in the manner set forth below.

b. Voting. Each Owner shall have one (1) vote for each Lot that he owns.

c. Voting Restrictions. The following restrictions apply to voting on Association issues, including but not limited to the election of Management Committee Members: (1) No vote shall be cast or counted for any Lot not subject to assessment; (2) When more than one person or entity owns or holds an ownership interest in a Lot, the vote for such Lot shall be exercised as those

persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one person or entity seeks to exercise it; (3) If an Owner has leased his Dwelling, then he may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to his tenant, provided that a copy of such instrument is furnished to the Secretary of the Association prior to any meeting; and (4) The right of the Management Committee to suspend an Owner's right to vote if he is not current on the payment of his Assessments or is in material violation of any of the terms, covenants or provisions set forth herein.

d. **Composition of Management Committee.** The Developer shall have the exclusive right to appoint all of the members of the Management Committee until the occurrence of the earlier of the following events (hereinafter referred to as the "Event" or "Events") at which time control of the Management Committee (subject to the perpetual right of the Developer to appoint one (1) member of the Management Committee) shall be transferred by the Developer to the Owners:

1) within forty-five (45) days after the date by which One Hundred Percent (100%) of the Lots, on which a dwelling has been constructed and a certificate of permanent occupancy has been issued, have been sold; or

2) at such time as the Developer elects in writing to transfer management and control of the Association.

The initial members of the Management Committee shall be Mark Isaac, Erich Grosse, and Gary W. Harrison. Anything to the contrary notwithstanding one (1) person designated by the Developer shall always remain a member of the Management Committee if Developer so desires.

e. **Terms.** Management Committee Members shall be elected to serve two (2) year terms.

f. **Qualify.** To qualify to serve on the Management Committee, a person must be appointed by the Developer or an individual Owner or the legal representative of an organizational Owner in good standing.

g. **Vacancies.** Any vacant seat on the Management Committee shall be filled with an Owner duly qualified, elected or appointed.

h. **Dismissal.** Any member of the Management Committee who fails on three (3) successive occasions to attend Management Committee meetings (whether regular or special) or who has failed to attend at least twenty-five percent (25%) of all Management Committee meetings (whether regular or special) held during any twelve (12) month period shall automatically forfeit his seat. In such cases, the remaining Management Committee Members shall elect a replacement to sit on the Management Committee until the next meeting of the Association.

i. **Removal of a Member of the Management Committee.** Except for members of the Management Committee appointed by the Developer prior to the occurrence of the Events, members of the Management Committee may be removed at any time by the affirmative vote of at least a majority of the Owners.

j. **Replacement.** Unless a member of the Management Committee is removed by the affirmative vote of a majority of the Owners, he shall be replaced by an appointment of the remaining Members of the Management Committee. A member of the Management Committee removed by the affirmative majority vote of the Owners shall be replaced by the majority vote of those Owners present in person or by proxy at a special meeting called for that purpose. Anything to the contrary notwithstanding, the Developer shall be entitled to replace all Members of the Management Committee appointed by it.

k. **Completion of Term.** Unless he forfeits or otherwise loses his seat as herein provided, a Member shall serve on the Management Committee until his successor qualifies and is properly elected by the Owners or appointed by the Developer.

l. **No Compensation.** Members of the Management Committee shall not be compensated for their services but shall be reimbursed for all expenses reasonably incurred in connection with Management Committee business and approved by the Management Committee.

8. **Officers and Agents of the Association.** The Management Committee is the agent of the Association and it shall perform its functions through those members of the Management Committee elected as officers. All officers shall be elected by the members of the Management Committee. The Management Committee may also perform its duties through such agents or employees as the Management Committee may employ or appoint. Any Management Committee officer, agent, or employee may at any time be removed, with or without cause, by the affirmative vote of a majority of the members of the Management Committee; provided, however, any "Officer" so removed shall continue to be a member-at-large of the Management Committee. One (1) member may hold more than one (1) office at the same time, except that of President and Secretary. The officers of the Management Committee, and their respective powers and functions, shall be as follows:

a. **President.** The President shall be the chief executive of the Association and shall exercise general supervision over the property and the affairs of the Association. The President shall preside over all meetings of both the Management Committee and the Association. The President shall execute all instruments on behalf of the Management Committee, unless he/she chooses to delegate that authority to another Management Committee Member.

b. **Vice-President.** The Vice-President shall have all the powers of the President in the event of the latter's absence or inability to act.

c. **Secretary.** The Secretary shall keep minutes of all of the meetings of both the

Management Committee and the Association as well as all other books and records which are required or made necessary.

d. Treasurer. The Treasurer shall have custody and control of the funds available to the Management Committee. The Treasurer shall cause to be prepared an annual financial statement for each fiscal year of the operation of the Association. The financial books and records of the Association shall be kept in accordance with generally accepted accounting practices. The offices of Secretary and Treasurer may be held by the same Management Committee Member.

9. Management Committee Meetings. A regular meeting of the Management Committee shall be held immediately after the adjournment of each annual Owner's meeting or at such other time as the members of the Management Committee may decide. Other regular meetings shall be held at periodic intervals at such time and place as the Management Committee may determine, but no less than one (1) time per quarter. No notice need be given of regular Management Committee meetings. Special Committee meetings shall be held whenever called by the President or by any two (2) members of the Management Committee. Written notice of all special meetings shall be delivered to each member of the Management Committee at least twenty-four (24) hours before the time fixed for the meeting. The propriety of holding any meeting which is attended by all members of the Management Committee may not be challenged on grounds of inadequate notice. A quorum for the transaction of business at any Management Committee meeting shall consist of a majority of all the Management Committee Members then in office.

10. Status and General Authority of the Management Committee. Any instrument executed by an officer of the Association or the Management Committee that recites facts which, if true, would establish the power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall constitute a legal entity capable of dealing in its own name or in the name of the Management Committee. The Management Committee shall have, and is hereby granted, the following authority and powers:

a. To Enter. The power and authority to enter into or upon any Lot to make repairs and to do other work necessary for the proper maintenance and operation of any easement, right of way, utility or the Common Area Parcels. Except in the case of an emergency, residents shall be given at least twenty-four (24) hours prior notice before the Management Committee or its representative shall exercise this power. In the event of an emergency entry without notice, the party entering the property shall leave in a conspicuous place written notice stating his name and title as well as the day, date, time and purpose of the entry.

b. Grant Easements. The authority, without the vote or consent of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Property as reasonably necessary or useful for the proper maintenance, operation or regulation of the easements, rights of way, utilities and

Common Area Parcels.

c. Execute Documents. The authority to execute and record, on behalf of all Owners, any amendment to the Declaration which has been approved by the vote or consent necessary to authorize such amendment.

d. Standing. The power to sue and be sued.

e. Enter Into Contracts. The authority to enter into contracts which in any way concern the Association, easements, rights of way, utilities or the Common Area Parcels.

f. Promulgate Rules. The authority to promulgate such reasonable rules and regulations as may be necessary or desirable to aid the Management Committee in carrying out any of its functions or to insure that the easements, rights of way, utilities and Common Area Parcels are maintained and used in a manner consistent with their original design and construction.

g. Delegation of Authority. The power and authority to delegate its duties, in whole or in part, to a manager or management company.

h. All other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions for and on behalf of the Owners.

Anything to the contrary notwithstanding, while Developer controls the Association and before the occurrence of the Events described herein, any amendments to the Declaration must be approved in writing and in advance by the Developer.

11. Architectural Control Committee. The Architectural Control Committee is formed for the primary purpose of ensuring the harmonious development of the Lots in the Subdivision and that the buildings and landscaping placed thereon are attractive, of high quality and in keeping with the stylistic and thematic elements of the Subdivision in general. The Architectural Control Committee shall consist of the following number of members and have the duties, powers, rights and responsibilities described hereafter and as otherwise set forth in this Declaration:

a. Number of Members. The Architectural Control Committee shall initially consist of at least one (1) and not more than five (5) persons (who need not be Owners) appointed by Developer. At any time after the earlier of (i) five (5) years from the date hereof and (ii) one (1) year following the sale of the last Lot to be sold by Developer, the then record Owners of a majority of the Lots on the Property shall have the power through a duly recorded written instrument to change the membership of the Architectural Control Committee, but until such time Developer may remove or replace any member of the Architectural Control Committee at any time and for any or no reason without liability. In the event of the death or resignation or the refusal or inability to act of any member of the Architectural Control Committee, the remaining members shall have full

authority to approve or disapprove such plans and specifications and to designate and appoint a successor member of the Architectural Control Committee.

b. **Approval Procedure.** Prior to the commencement of any excavations, construction, remodeling, or alteration to any structure theretofore completed, there shall first be filed with the Architectural Control Committee one (1) complete set of plans and specifications for such excavation, construction, remodeling, or alteration, together with a block or plat plan indicating the exact part of the Property the improvement will cover, and said work shall not commence unless the Architectural Control Committee shall endorse said plans as being in compliance with these covenants and otherwise approved by the Architectural Control Committee. The Architectural Control Committee shall have the right to refuse to approve any such plans and specifications which, in the Architectural Control Committee's sole discretion, are not desirable, and in so passing upon them the Architectural Control Committee shall have the right to take into consideration the suitability of any proposed excavation, construction, remodeling, or alterations and of the materials to be included, the harmony and effect thereof with the surroundings and the effect thereof on the outlook from the adjacent or neighboring property. The Architectural Control Committee may promulgate and maintain a set of standards for guidance in approving or disapproving plans and specifications pursuant to this section. In the event the Architectural Control Committee fails to approve or disapprove in writing said plans within thirty (30) days of their submission (or if revisions are suggested which require more time for resolution and everyone is acting in good faith, more time may be required), then said approval shall be deemed to have been given.

c. **General Powers.** The Architectural Control Committee shall report to the Management Committee (as often as the Management Committee requires), but otherwise shall have the power and authority to take such action as it deems necessary to keep any portion of a Lot and exterior of any structure maintained so that the same complies with the Declaration. In connection therewith, the Architectural Control Committee may notify the Owner of a Lot of any violation hereunder, and after due notice, if the Owner fails to correct such violation, then in such event, the Architectural Control Committee shall cause the necessary corrections to be made and compliance hereunder to be effected and the cost and expenses thereof shall constitute a lien against the said Lot in the manner and nature that mechanics liens are foreclosed and shall also have an action at law against the Owner for the amounts involved. The Management Committee may act to enforce any decision or ruling of the Architectural Control Committee.

d. **No Compensation.** No member of the Architectural Control Committee shall be entitled to any compensation for services performed pursuant to these covenants and restrictions.

12. **Common Profits, Expenses and Voting Rights.** The common profits of the Association shall be distributed among and the Common Expenses shall be charged and the voting rights shall be allocated to the Owners equally. Each Owner, upon receipt of a deed or other document of conveyance or transfer to a Lot, agrees to and shall pay his portion of the Common Expenses or any other Assessment levied against him or his Lot, including any fines resulting from a violation of the Declaration or any rule, regulation or determination adopted or made by the

Management Committee or the Architectural Control Committee as provided herein.

a. **Developer.** Anything to the contrary notwithstanding, the Developer shall not be obligated to pay Assessments on any Lots owned by it until such time as the occurrence of the earlier of the following:

- 1) the physical Dwelling structure on the Lot has been substantially completed, a certificate of permanent occupancy has been issued and the Lot has been sold; or
- 2) Developer elects in writing to pay the Assessment.

b. **Purpose of Common Expenses.** The Assessments provided for herein shall be used for the general purpose of operating the Association as well as maintaining, repairing and replacing the easements, rights of way, and the Common Area Parcels or improvements thereon.

c. **Budget.** At least thirty (30) days prior to the annual meeting of the Owners, the Management Committee shall prepare and deliver to the Owners a proposed Budget which:

- 1) **Itemization.** Shall set forth an itemization of the anticipated Common Expenses for a twelve (12) month calendar year, commencing with the following January 1.
- 2) **Basis.** Shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the operation, maintenance, repair and replacement of the easements, rights of way and the Common Area Parcels as well as the management of the Association.

d. **Approval of Budget and Assessments.** The proposed Budget and the Assessments shall become effective unless disapproved at the annual Owner's meeting by the affirmative vote of a majority of the Owners. Notwithstanding the foregoing, however, if the Owners disapprove the proposed Budget and Assessments or the Management Committee fails for any reason to establish the Budget and Assessments for the succeeding year, then and until such time as a new Budget and Assessment schedule shall have been established, the Budget and Assessment schedule in effect for the then current year shall continue for the succeeding year.

e. **Method of Payment of Assessments.** The Management Committee has the sole authority and discretion to determine how and when any Assessment is to be paid.

f. **Personal Obligation of Owner.** Each Owner is personally liable to pay any and all Assessments levied by the Management Committee against him or his Lot; provided, however, no first mortgage or beneficiary under a first deed of trust who obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title.

g. **Equitable Changes.** If the aggregate of all monthly payments on all of the Lots is too large or too small as a result of unanticipated income or expenses, the Management Committee may from time to time effect an equitable change in the amount of said payments. Owners shall be given at least thirty (30) days prior written notice of any increase in the amount of the Assessment.

h. **Reserve Account.** The Management Committee shall establish and maintain a reserve account to pay for unexpected operating expenses and capital improvements.

i. **Statement of Common Area Assessments Due.** Upon written request, the Management Committee shall furnish to any Owner a statement of Assessments due, if any, on his Lot. Failure to provide the certificate with ten (10) days after a written request, shall be deemed conclusive evidence that all Assessments are paid current. The Management Committee may require the advance payment of a processing charge not to exceed Fifteen and 00/100ths Dollars (\$15.00) for the issuance of such certificate.

j. **Superiority of Common Area Assessments.** All Assessments and liens created to secure the obligation to pay an Owner's share of the Common Expenses are superior to any homestead exemptions to which an Owner may be entitled, which exemptions an Owner, by accepting a deed or other document of conveyance or transfer to a Lot, expressly subordinates or waives.

k. **Suspension of Right to Vote for Non-Payment.** At the discretion of the Management Committee, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of his Assessments and has failed within ten (10) days after delivery of written notice of the default to cure or make satisfactory arrangements to cure the default.

13. **Special Assessments.** The Management Committee, with the affirmative consent or approval of at least a majority of Owners, may levy a Special Assessment to pay for unanticipated expenses, an operation's budget shortfall or any capital improvement.

14. **Fines and Individual Assessments.** The Management Committee may fine Owners and residents for the failure to comply with the Declaration of any rules and regulations adopted from time to time. In addition, individual assessments may be levied by the Management Committee against a Lot or its Owner to compensate or reimburse the Association for:

- a. costs incurred in enforcing or construing the Declaration;
- b. costs associated with the maintenance, repair or replacement of any portion of the easements, rights of way and the Common Area Parcels or any improvements constructed or installed thereon damaged by an Owner or resident;
- c. any other charge, fee or expense designed by the Management Committee as

an individual assessment; and

- d. attorney's fees, late fees, default interest and collection costs.

Provided, however, no fine or individual assessment shall be final until after the Owner or resident shall have received written notice thereof and a reasonable opportunity to be heard. After notice and hearing, the decision of the Management Committee shall be binding, final and conclusive.

15. Collections. Assessments, fines and other monetary charges shall be collected as follows:

- a. Apportionment and Collection of Assessments. The amount of Common Expenses assessed against each Lot is a debt of the Owner at the time the Assessment is made and is collectible as such. Suit to recover a money judgment for unpaid Common Expenses is maintainable without foreclosing or waiving the lien securing it. If any Owner fails or refuses to make any payment of the Common Expenses when due, that amount constitutes a lien on the interest of the Owner in the Property, and upon the recording of notice of lien, it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except:

- 1) tax and special assessment liens on the Lot in favor of any assessing unit or special improvement district; and

- 2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

- b. Late Fees and Accruing Interest. A late fee in the amount of Twenty-Five and 00/100ths Dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater, shall be assessed on payments received more than ten (10) days after their due date. Simple interest at the rate of one and one-half percent (1.5%) per month shall accrue on all delinquent accounts. The Management Committee may, in its sole discretion and under circumstances it deems fair and just, elect to waive fees and accruing interest but is not required to do so.

- c. Foreclosure of Lien and/or Personal Judgment. The Management Committee may elect to institute a lawsuit, foreclose the lien or both in order to collect past due obligations.

- d. No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for his portion of the Common Expenses or the payment of any Assessment, fine or other monetary charge provided for herein by the abandonment of his Lot.

- e. Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Management Committee to take some action or perform some function required to be taken or performed by the Association or Management Committee under this Declaration, or for inconvenience or discomfort arising from the

operation, maintenance, repair or replacement of the easements, rights of way or the Common Area Parcels, or any improvement constructed or installed thereon, for from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, since the obligation to pay Common Expenses and Assessments is a separate and independent covenant on the part of each Owner.

f. **Foreclosure of Lien as Mortgage or Trust Deed.** The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest in its Lot(s). The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of recording notice of lien, certified mail or personal service, foreclosure report, reasonable attorney's and trustee's fees, and a reasonable rental for any Dwelling located on the Lot(s) during the pendency of the foregoing action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Management Committee may bid for the Lot(s) at foreclosure or other sale and hold, lease, mortgage, or convey the same.

g. **Appointment of Trustee.** If the Management Committee elects to foreclose the LIEN IN THE SAME MANNER AS FORECLOSURES IN DEEDS OF TRUST, THEN THE Owner by accepting a deed or other document of conveyance or transfer to the Lot hereby revocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the Power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

h. **Attorney in Fact.** Each Owner by accepting a deed or other document of conveyance or transfer to a Lot hereby irrevocably appoints the Association as his attorney in fact to collect rent from any person renting his Dwelling, if the Dwelling is rented and Owner is delinquent in the payment of his portion of the Common Expenses or any Assessment or fine. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner is current on his obligations to the Association. The Owner shall credit his renter, against rent due, an amount equal to the amount of money paid by the renter to the Association.

16. **Insurance.** The Management Committee may purchase and maintain appropriate property, liability and directors & officers insurance coverage as well as a fidelity bond covering those persons handling and responsible for monies of the Association.

17. **Interpretation.** To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the articles and sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part

thereof and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

18. Covenants to Run with the Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitude's, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Lot, the Subdivision or the Property, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots shall be subject to the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot in the Property, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

19. Enforcement and Right to Recover Attorney's Fees. Should the Association, Management Committee or an aggrieved Owner be required to take action to enforce or construe the Declaration or any rules and regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, including a claim for injunctive relief or damages, whether such remedy is pursued by filing suit or otherwise, the non-defaulting party shall be entitled to recover his reasonable attorney's fees, costs and expenses which may arise or accrue.

20. Limitation of Liability. The protective covenants, conditions and restrictions set forth in this Declaration, together with any rules, regulations and determinations adopted and made by the Management Committee or the Architectural Control Committee, are established for the benefit of the Subdivision and the Owners. Any damage, loss, claim or liability which might arise due to any decision, act, or failure to act of Developer, the Management Committee or the Architectural Control Committee or any of their members shall be exempt from any civil claim or action, including negligence, brought by any person owning or having an interest in any Lot. The Management Committee, the Architectural Control Committee and their members shall be indemnified, saved and held harmless from any such action or failure to act, and exempt from any civil claim or action resulting from any act or failure to act (whether intended or implied) while functioning as a member of such committee, or for decisions that they may render during the course of their service, unless said party is guilty of gross negligence.

21. Amendments. This Declaration may be amended upon the affirmative written approval of at least a majority of the Owners of the Lots and shall be valid immediately upon recording of the document amending the Declaration in the office of the County Recorder of Summit County, Utah, provided, however, so long as the Developer shall own at least one (1) Lot in the Subdivision, no amendment shall be valid or enforceable without Developer's prior written consent.

22. Duration. The covenants and restrictions of this Declaration shall endure for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless otherwise terminated by

the Developer or the majority of the Owners once the Developer no longer owns any of the Lots.

IN WITNESS WHEREOF, this Declaration is executed as of the day and year first set forth above.

DEVELOPER: NORTH BENCH FARMS, L.L.C.,
a Utah limited liability company

By: Russell W. Grosse Development Co., Inc.
a California corporation
Its: Member

By: *Gary W. Harrison*
Name: Gary W. Harrison
Title: President

STATE OF Utah)
COUNTY OF Salt Lake ^{SS}

On December 6, 2001, before me, Carol S. Mackay,
Notary Public, personally appeared Gary W. Harrison, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon half of which the person acted, executed the instrument.



Carol S. Mackay
NOTARY PUBLIC

EXHIBIT "A"

PROPERTY

Commencing at the Southwest corner of Section 20, Township 1 South, Range 6 East, Salt Lake Base and Meridian; thence North 00 deg. 14'00" West along the West line of said section for 2798.720 feet; thence North 89 deg. 46'00" East for 33.000 feet to a point on the East right-of-way line of State Highway U.S. 198, said point also being the POINT OF BEGINNING; thence North 89 deg. 58'08" East along said East right-of-way for 319.330 feet; thence leaving said right-of-way North 00 deg. 00'00" West for 510.062 feet to the South boundary line of the Raff Subdivision Plat "A" as recorded in the Summit County Recorders Office; thence North 89 deg. 55'48" East along said South line for 974.088 feet; thence South 00 deg. 32'45" West for 678.349 feet; thence South 00 deg. 11'44" West for 733.690 feet; thence South 55 deg. 52'26" West for 259.123 feet; thence South 90 deg. 00'00" West for 223.273 feet; thence South 00 deg. 00'00" East for 174.976 feet to the North right-of-way line of Weber Canyon Road; thence South 45 deg. 15'02" West along said North right-of-way line for 57.420 feet; thence North 15 deg. 00'00" West for 94.400 feet to the PEOA South Bench Canal; thence along said centerline the following six (6) courses: North 44 deg. 35'00" West for 106.720 feet; North 85 deg. 00'00" West for 32.000 feet; South 33 deg. 00'00" West for 135.000 feet; South 65 deg. 00'00" West for 120.000 feet; South 83 deg. 00'00" West for 126.332 feet and North 82 deg. 00'00" West for 41.275 feet; thence North 00 deg. 00'00" East for 564.100 feet; thence North 00 deg. 22'50" West for 140.000 feet; thence South 89 deg. 53'14" West to a point on the East right-of-way line of State Highway U.S. 198 for 322.910 feet; thence North 00 deg. 14'00" West along said right-of-way for 205.740 feet; thence leaving said right-of-way North 89 deg. 51'06" East for 216.380 feet; thence North 01 deg. 10'39" East for 86.223 feet; thence North 89 deg. 35'20" East for 101.450 feet; thence North 00 deg. 22'50" West for 209.740 feet; thence South 89 deg. 44'08" West for 319.413 feet to a point on the East right-of-way line of State Highway U.S. 198; thence North 00 deg. 14'00" West along said right-of-way for 60.002 feet to the POINT OF BEGINNING.

OTSM - 1-A

OT-42-N

EXHIBIT "B"

COMMON AREA PARCELS

All of Lots A, B, C, D, E and F, NORTH BENCH FARMS, according to the official Plat thereof, on file and of record in the Office of the Summit County Recorder.