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LEANN H KILTS, WEBER COUNTY RECORDER  
10-NOV-16 100 PM FEE \$123.00 DEP DC  
REC FOR: BAILEY ACRES OWNER'S ASSOC

AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS  
FOR BAILEY ACRES  
A CLUSTER SUBDIVISION PHASE 1 AND II

AMENDED 10-2016

Tax ID # 22-144-0001,  
22-144-0004 Thru 22-144-0025,  
22-144-0028 Thru 22-144-0030,  
22-145-0001 Thru 22-145-0009,  
22-146-0001 Thru 22-146-0010,  
22-325-0001 Thru 22-325-0002,  
22-329-0001 Thru 22-329-0002 *LB*

The following is an amendment to the  
Declaration of Covenants, Conditions and  
Restrictions for Bailey Acres, a Cluster  
Subdivision, phase I and II that was originally  
recorded on Sept 1, 1998, in the records of  
Weber County, Utah.

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR BAILEY ACRES  
A CLUSTER  
SUBDIVISION PHASE 1 AND PHASE 2

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTION AND RESERVATION OF EASEMENTS is made this 31st day of October, 2016 by, Bailey Acres Owners Association a Corporation-Domestic-Non-Profit Declarant:

RECITALS:

- A. Description of Land. Declarant is the Owner of certain property in the County of Weber, State of Utah, which is more particularly described in Exhibit "A" attached hereto and incorporated herein.
- B. Owner's Association. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the real property described above ("Properties"), to create a non-profit corporation under the Utah Non-Profit corporation and Cooperative Association Act to which should be delegated and assigned the powers of the covenants and restriction and collecting and disbursing the assessments and charges hereinafter created which said corporation is sometimes hereafter referred to as the "Association".
- C. Development. Declarant will develop and convey all of the Lots, as hereinafter defined, pursuant to a general plan for all of the Properties and subject to certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all running with the Properties and construction of improvements therein, nor Declarants' rights to maintain model homes, construction, sales nor leasing offices or similar facilities on any Lot owned by Declarant, nor Declarant's right to post signs incidental to construction, sales or leasing, as long as, Declarant's actions conform to applicable governmental ordinances,  
Each Owner of a Lot shall be a Member of the Association; upon the elimination of the Class B Membership as provided herein, each of the Lots shall have one (1) vote in the Association. The common obligations shall be distributed in like percentages.
- D. Declaration. Declarant hereby declares that all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved, subject to the following easements, restrictions, covenants conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and

desirability of the Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Properties, or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with the Properties and shall be binding upon all persons having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of and be binding upon Declarant, its successors in interest and each Owner and his/her successors in interest and by the Association.

#### ARTICLE I DEFINITIONS

Unless otherwise expressly provided, the following words and phrases, when used herein, shall have the meaning hereinafter specified:

- 1.1 "Architectural Committee" shall mean the committee created pursuant to the terms herein.
- 1.2 "Articles" shall mean the Articles of Incorporation of the Association, which have or will be filed in the office of the Utah Department of Commerce, Division of Corporations, and as such Articles may be amended, from time to time.
- 1.3 "Assessment" shall mean the charge against a particular Owner and his/her Lot, representing a portion of the total costs to the Association for maintaining, improving, repairing, replacing, managing and operating the Properties.
- 1.4 "Special Assessment" shall mean a charge against a particular Owner and his/her Lot, directly attributable to the Owner for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.
- 1.5 "Capital Improvement Assessment" shall mean a charge against each Owner and his/her Lot representing a portion of the costs to the Association for installation or construction of any improvement on any portion of the Common Area, which the Association may from time to time authorize.
- 1.6 "Association" shall mean Bailey Acres Owners Association, a corporation formed under the Utah Non-Profit Corporation and Cooperative Association and its successors and assigns.
- 1.7 "Beneficiary" shall mean mortgagee under a mortgage or a beneficiary or holder under a Deed of Trust as the case may be and the assignees of such mortgagee, beneficiary or holder.

1.8 "Floor Area" shall mean the total of the horizontal floor surfaces within the Dwelling, including bathrooms and mechanical areas that are under roof and enclosed by walls on three or more sides. In the case of a split level entry or bi-level dwelling with a garage, the floor area shall not include basement as defined by the Uniform Building Code, garage space and open porches, In the case of a one story dwelling floor area shall not include the basement or open porches.

1.9 "Board of Trustees" shall mean the Board of Trustees of the Association, elected in accordance with the By-laws of the Association.

1.10 "By-laws" shall mean the By-laws of the Association, which have been or shall be adopted by the Board of Trustees, and as such By-laws may be amended, from time to time.

1.11 "Common Area" shall mean all the real property and improvements, including without limitation, any landscaped areas, walkways, water and water rights under Weber Conservation District, a political subdivision of the State of Utah and an irrigation water distribution system, and sanitary storm sewer facilities, fences and easement and rights of way appurtenant to the Properties which are owned by the Association for the common use and enjoyment of the Owners of Lots. The Common Area to be so owned by the Association at the time of the conveyance of the first Lots shall also include the property located in the County of Weber, State of Utah which is described in Exhibit "B" and incorporated herein.

1.12 "Common Expenses" shall mean the actual and estimated costs of maintenance, management, operation, repair and replacement of the common Area (including unpaid special assessments, taxes, Reconstruction assessments and capital improvement assessments), including those costs of management and administration of the Association, including but not limited to, compensation paid by the Association to the manager, accountants, attorneys and other employees, the costs of all utilities, gardening and other services benefitting the common Area and if applicable, all al facilities thereon; the costs of fire, casualty and liability insurance, workmen's compensation insurance and other insurance covering the properties and the costs of bonding the Members of the management body; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Properties or portions thereof; and the costs of any other item or items designated by or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with the Properties, for the benefit of all the Owners of Lots.

1.13 "Declarant" shall mean and refer to Bailey Acres Owners Association, its successors and assigns, so long as Declarant assigns such rights of Declarant hereunder to any person by an express written assignment.

1.14 "Declaration" shall mean and refer to this instrument as it may be amended from time to time.

1.15 "Dwelling" shall mean the primary single-family residence to be built on any lot.

1.16 "Improvements" shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, walk-ways, sprinkler pipes, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air condition and water softener fixtures or equipment.

1.17 "Institutional Holder" shall mean a mortgagee which is a bank or other established mortgage lending company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency which has a first mortgage lien on any Unit or Lot in the Project.

1.18 "Properties" shall mean and refer to all of the real property described in paragraph A of the Recitals to this Declaration.

1.19 "Lot" shall mean and refer to any residential Lot shown upon any recorded Subdivision plat of Bailey Acres.

1.20 "Member" shall mean any person or entity holding a Membership in the Association as provided herein.

1.21 "Mortgage", "Mortgagee" shall mean any mortgage or Deed of Trust or other conveyance of a Lot to secure the performance of an obligation, which will be void and reconveyed upon completion of such performance. The term, "Deed of Trust" or "Trust Deed" when used herein, shall be synonymous with the term "Mortgage". The term "Mortgagee", shall mean a person or entity to whom a mortgage is made and shall include the beneficiary of a Deed of Trust; "Mortgagor" shall mean a person or entity who mortgages his/her or its property to another (i.e. the maker of a mortgage) and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor" and the term "Beneficiary" shall be synonymous with the term "Mortgagee".

1.22 "Owner" shall mean and refer to the person or persons or other legal entity or entities, including Declarant, holding fee simple interest of record to any Lot which is part of the Properties, including sellers under executory contract of sale, but excluding those having such interest merely as security for the performance of an obligation.

ARTICLE II  
OWNER'S PROPERTY RIGHTS

2.1 Owner's Easements of Enjoyment. Every Owner shall have a right and easement of ingress and egress and of enjoyment in, to and over the Common Area, subject to the following provisions:

(a) The right of the Association to reasonably limit the number of guests of Owners using the Common Area facilities, if applicable.

(b) The right of the Association to establish uniform rules and regulation pertaining to the use of the Common Area, including but not limited to the right and obligation of the Association to enforce all parking restrictions within the Common Area set forth herein.

(c) The right of the Association to suspend the voting rights and right to use the Common Area by an Owner for any period during which any assessment against his/her Lot remain unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the published rules and regulations of the Association, provided that any suspension of such voting rights or right to use the Common Area shall be made only by the Board of Trustees of the Association, after notice and an opportunity for a hearing as provided in the By-laws of the Association.

(d) With the consent of the applicable governmental authorities and subject to the provision of this Declaration, the Association shall have the right to dedicate, release, alienate or transfer all or any part of the Common Area to any governmental entity or, authority for such purposes, and subject to such conditions as may be agreed to by the Members.

(e) The right of the Declarant (and its sales agents, customers, and representatives) to the non-exclusive use of the Common Area and any facilities thereof (if applicable), without charge, for sales, display, access, ingress, egress and exhibit purposes, which right Declarant hereby reserves; provided, however, that such use shall not be for a period of more than two (2) years after the date of recording of this Declaration, as long as Declarant has approval of Weber County.

(f) The right of the Association (by action of the Board of Trustees) to reconstruct, replace or refinish any improvement or portion thereof upon the Common Area, in accordance with the original design, finish or standard of construction of such improvements, or of the general improvements within the Properties, including Weber County requirements, as the case may be, and not in accordance with such original design, finish or standard of construction with the vote or written consent of the Owners holding a majority of the voting power of the Association.

(g) The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Area.

2.2 Easements for Parking. Deleted in its entirety

2.3 Easements for Governmental Use. In addition to the foregoing easements over the Common Areas, there shall be, and Declarant hereby reserves and covenants for itself and all future Owners, easement for city, county, state and federal public services, including but not limited to, the right of the police to enter upon any part of the Common Area for the purpose of enforcing the laws and permanent easement in favor of any applicable governmental authority to guarantee that the Common Areas remain perpetually in the use for which intended.

2.4 Waiver of Use. No Owner may exempt himself from personal liability of assessments duly levied by the Association nor release the Lot or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon, or by abandonment of his/her Lot or any other property in the Properties.

2.5 Real Property Taxes. Deleted in its entirety

### ARTICLE III MEMBERSHIP IN THE ASSOCIATION

3.1 Membership. Every Owner of a Lot shall be a member of the Association. Membership in the Association shall not be assignable, except to the successor in interest of the Member, and every Membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Lot.

3.2 Transfer. The Association Membership held by any Owner of a Lot shall not be transferred, pledged, or alienated in any way, except upon the sale of encumbrance of such Lot and then only to the purchaser or mortgagee of such Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. A Class A Member who has sold his/her Lot to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser his/her Membership rights in the Association. Such delegation shall be in writing and shall be delivered to the Board of Trustees before such contract purchaser may vote. However the contract seller shall remain liable for all the charges and assessments attributable to his/her Lot until fee simple title to the Lot sold is transferred. In the event the Owner of any Lot shall fail or refuse to transfer the Membership registered in his/her name to the purchaser of such Lot upon transfer of fee title thereto, the Board of Trustees shall have the right to record the transfer upon the books of the Association. The Board of Trustees shall have the right to charge a reasonable Special Assessment against any Owner and his/her Lot, equal to the cost to the Association of effectuating any such transfer of his/her Membership upon the books of the Association.

### ARTICLE IV VOTING RIGHTS

4.1 Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the declarant, and shall be entitled to one vote for each Lot owned.

Class B. Class B Member(s) shall be the Declarant, (as defined in the Declaration), and shall be entitled to three (3) votes for each lot owned. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whoever occurs earlier:

- (a) Five (5) years from the date of which this Declaration is recorded;
- Or
- (b) After seventy percent (70%) of the Lots have been conveyed.

4.2 Amplification. The provisions of the Article may be amplified by the Articles of Incorporation and By-Laws of the Association.

#### ARTICLE V DUTIES AND POWERS OF THE ASSOCIATION

The Association, acting through the Board of Trustees, shall also have power and duty to:

- (a) Maintain, repair and otherwise manage the Common Area and all facilities, improvements and landscaping thereon in accordance with the provision of this declaration.
- (b) Grant easements, rights-of-way or strips of land, where necessary, for utilities and sewer facilities over the Common Area to serve the Common Area and the Lots.
- (c) Maintain such policy or policies of liability and fire insurance with respect to the Common Area and personal property, if any, owned by the Association as provided in furthering the purposes of and protecting the interests of the Association and Members as directed by this Declaration and the By-laws of the Association.
- (d) Employ or contract with a professional manager to perform all or any part of the duties and responsibilities of the Association including the power to delegate its powers to committees, officers and employees. Any such agreement shall be for a term of not in excess of three (3) years subject to cancellation by either party without cause or payment of a termination fee upon ninety (90) days or less written notice.
- (e) Upon reasonable notice, without being liable to any Owner, enter upon any Lot for the purpose of enforcing, by peaceful means, the provisions of this Declaration or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain or repair any such area as required by this Declaration, all at the cost and



- expense of the Lot Owner, which said cost and expense shall be a lien upon said Owner's Lot.
- (f) From time to time promulgate rules and regulations which shall be binding upon the Owners of the Lots.
  - (g) Do and perform any and all things as may be convenient or necessary in connection with the Subdivision.

ARTICLE VI  
COVENANTS FOR MAINTENANCE ASSESSMENT

6.1 Creation of the Lien and Personal Obligations of Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association (1) annual assessments for common expenses; (2) capital improvement assessments; (3) special assessments; and (4) reconstruction assessments; such assessments to be established by the Board of Trustees and as hereinafter provided. Such assessments, together with interest, costs and reasonable attorney's fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. Subject to provisions of the Declaration protecting first mortgagees, the personal obligation of delinquent assessments shall pass to the successors in the interest of such Owner.

6.2 Damage to Common Area by Owner. The forgoing maintenance, repairs or replacement within the Common Area arising out of or caused by the willful or negligent act of the Owner, his/her family, guests or invitee, shall be done at said Owner's expense of a Special Assessment therefor shall be made against his/her Lot; provided, however, that the liability of an individual Owner for such damage to the Common Area shall not be absolute, but shall only be that for which the owner is legally responsible under state law.

6.3 Uniform Rate of Assessment. Assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article must be fixed at a uniform rate for all Lots within the Properties; provided, however, that the Association may, subject to the provision of this Article, levy Special Assessments against selected Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their guest or agents. All Assessments shall be collected on a regular basis by the Board of Trustees, at such frequency, as the Board of Trustees shall determine.

6.4 Date of Commencement of Assessments; Due Date. The annual assessment shall commence as established by the Board of Trustees. The first annual Assessment shall be adjusted according to the number of months remaining in the fiscal year as set forth in the By-Laws. The Board of Trustees shall fix the amount of the annual Assessment against each Lot at least thirty (30) days in advance of each Assessment period. Written notice of any change in the amount of the annual Assessment shall be sent to every Owner subject thereto, at least thirty (30) days prior to the effective date of such change. The due dates shall be established by the Board of Trustees. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments against a Lot is binding upon the Association as of the date of its issuance. The Board of Trustees shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, including deposits in and withdrawals from any Bank Account, and shall cause to be distributed a copy of each such statement to each Member, and to each first mortgagee who has filed a written request for copies of the same with the Board of Trustees, in the manner provided in the By-laws of the Association. At least sixty (60) days prior to the beginning of each fiscal year, the Board of Trustees shall prepare and distribute to the Membership of the Association, a written, itemized estimate (budget) of the expenses to be incurred by the Association during such year in performing its functions under this Declaration.

6.5 Exempt Property. The following property, subject to this Declaration, shall be exempt from the assessment herein:

- (a) All properties dedicated to and accepted by a governmental entity; and
- (b) The Common Areas

ARTICLE VII  
EFFECT OF NON-PAYMENT OF ASSESSMENTS;  
REMEDIES OF THE ASSOCIATION

7.1 Effect of Non-Payment of Assessments; remedies of the Association. Any installment of an Assessment not paid within thirty (30) days after the due date shall bear interest from the due date of such installment at the rate of eighteen percent (18%) per annum. If any installment of an assessment is not paid within thirty (30) days after it is due, the Owner responsible therefor may be required further by the Board of Trustees to pay a late charge of FIFTEEN (\$15.00) DOLLARS or ten percent (10%) of the amount of the delinquent installment, whichever is greater. Any validly imposed assessment or other charges provided for in this Declaration shall constitute a lien against Lots in the Subdivision of any Lot, which fails to pay an assessment or charge in a timely manner. The Association may bring an action at law against the Owner, personally obligated to pay the same; or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability

for the assessments provided for herein by non-use of the Common Area or abandonment of his/her Lot. If any installment of an Assessment is not paid within thirty (30) days after its due date, the Board of Trustees shall mail through the US Postal Service or electronic email, an acceleration notice to the Owner and to each first mortgagee of a Lot, which has requested a copy of the notice. The notice shall specify: (1) the fact that the installment is delinquent; (2) the action required to cure the default; (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner by which such default must be cured; and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Assessment for the then current fiscal year and sale of his/her Lot. The notice shall further inform the Owner of his/her right to cure after acceleration and to bring a court action to assert the nonexistence of a default or any other defense of the Owner to acceleration and sale. If the delinquent installments of Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board of Trustees, at its option, may declare all the unpaid balance payable without further demand and may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law and this Declaration.

7.2 Notice of Assessment. No action shall be brought to enforce any assessment lien herein, unless at least thirty (30) days has expired following the date of a Notice of Assessment is electronically emailed or deposited in the United States mail, certified or registered, postage prepaid to the Owner of the Lot and a copy thereof has been recorded by the Association in the office of the County Recorder in which the Properties are located; said Notice of Assessment must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid assessment at eighteen percent (18%) per annum plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien) and the name and address of the clamant. Such Notice of Assessment shall be signed and acknowledged by an officer of the Association and said lien shall be prior to any Declaration of Homestead recorded after the date on which this Declaration is recorded. The lien shall continue until fully paid or otherwise satisfied.

7.3 Foreclosure Sale. Any such sale provided for above may be conducted by the Board of Trustees, its attorneys or other persons authorized by the Board of Trustees in accordance with the applicable law to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

7.4 Curing of Default. Upon timely curing of any default for which a Notice of Assessment was filed by the Association, the officers thereof shall record an appropriate Release of Lien, upon payment by the defaulting Owner of a fee, to be determined by the Association, but not to exceed SEVENTY FIVE (\$75.0) DOLLARS

to cover the cost of preparing and recording such release. A certificate executed and acknowledged by any two (2) Members of the Board of Trustees stating the indebtedness secured by the liens upon any Lot created hereunder shall be conclusive upon the Association and the owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, not to exceed FIFTEEN (\$15.00) DOLLARS.

7.5 Cumulative Remedies. The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

7.6 Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage (meaning any recorded mortgage with first priority or seniority over mortgages) made in good faith and for value and recorded prior to the date on which the assessment came due. Sale or transfer of any Lot shall not affect the assessment lien.

#### ARTICLE VIII ARCHITECTURAL CONTROL

8.1 Members of the Committee. The Architectural Committee sometimes referred to in this Declaration, as the "Committee", shall consist of (3) members. The Initial Members of the Committee shall consist of representatives of Declarant. Each of said persons shall hold office until the election of the first Board of Trustees by the Membership of the Association. Thereafter, new Members of the Committee shall be appointed by the Board of Trustees and shall hold office until such time as he/she has resigned or has been removed or his/her successor has been appointed, as provided herein. Members of the Committee may be removed at any time without cause. The Board of Trustees shall have the right to appoint and remove all Members of the committee.

8.2 Approval by Committee. No fences or outbuilding of any kind may be erected, placed, altered or permitted without the prior written approval of the Architectural Control Committee. A Lot owner desiring to erect, place, or alter a fence or outbuilding shall submit to the Architectural Control Committee construction plans and specifications and a plot plan showing the location of the structure. In determining whether to approve or disapprove the proposed structure, the Architectural Control Committee shall consider its height, location, quality of workmanship, harmony of design with existing structures, and visual effect on the Subdivision and on other Lots.

(a) Plans Submitted. Plans for the construction of any new Improvement must be submitted to the Architectural Committee for review. The plans must be in

¼ inch scale. It is recommended that a preliminary plan be submitted before the expense of final construction drawings is incurred. The submission must include:

(i) a site plan showing the boundaries of the Lot. The Site Plan will also show the location of the driveways, utility connections and lines, and any retaining walls, excavations, fills, or other modification of the existing surface condition of the site; and

(ii) an Architectural Plan for the Dwelling or other Improvements in sufficient detail to show the detailed drawing of all elevations of all buildings (including showing locations of windows, doors, roof pitches, decks and other exterior elements; a list of exterior siding and roofing materials and/or a sample, including color samples; and a landscape plan showing the location of driveways, walkways, patios, decks and other hard surfaced or irrigated areas and the areas to be disturbed by construction and the means of restoring those areas. In the case of an addition or modification of an existing Dwelling, the Committee may waive any of the foregoing it feels are unnecessary to its review of the remodel or addition.

(b) Review Fee. The applicant will pay a review fee to the Architectural Committee of \$50.00 for each new dwelling, \$25.00 for each addition or remodel, or, in the case of Improvements which cost less than \$1,000.00, or which make no structural changes, the applicant will pay a fee of \$10.00. The primary purpose of the fee is to document the date of submission, but the Committee may also use the proceeds to pay for its expenses in reviewing the plans and giving notice of meetings. No fee will be accepted until the Architectural Committee considers the submission complete.

(c) Review. Within 15 business days from the receipt of a complete submission and payment of the fee, the Committee will review plans and make an initial determination whether or not the plans comply with the condition imposed by this Declaration. If they do not, the plans will be rejected. If they are in compliance the Committee will approve the plans. The Committee may also approve the plans subject to specific modifications or conditions. Owners may desire to submit preliminary plans for review. The committee will review preliminary plans, without fee, and make its comments known to the Owner, provided, however, that no preliminary approval is to be considered a final approval, and no final approval will be granted on less than a complete submission. Upon approval, the Committee and the Owner will each sign copies of the plans, one of which shall be left with the Committee. No construction that is not in strict compliance with the plans approved will be permitted.

(d) Written Record. The Committee will maintain a written record of its actions, and maintain in its files a copy of all plans approved or rejected for a period of five years. The Committee will also provide evidence of its approval for the County, if requested by the Owner.

(e) Failure to Act. If the Committee has not approved or rejected any submission within 45 business days after payment of the review fee and submission of complete plans, the submission is deemed to have been approved unless the approval process has been extended as provided for herein for special review of some aspects of the proposal.

8.3 Extraordinary Costs. Whenever it deems appropriate, the Architectural Committee may engage the services of an independent architect, civil or structural engineer, or other appropriate consultant to assist in its review of any proposed improvements. All costs of such additional review will be paid by the Applicant, provided however that no architect or engineer will be hired without advance notice to the Applicant of the intention to hire a review architect or engineer, and the aspects of the proposal that caused the Committee to believe that professional review was required, and the estimated cost of that review. If the applicant does not withdraw the proposal within fifteen (15) days after receipt of that notice, he/she is deemed to have consented to the Committee retaining services in its review, the reviewing architect or engineer is acting only in an advisory capacity, and the applicant, for himself/herself and his/her successors and assigns, waives any and all claims against the Committee and the Association in the event that advice from, or conditions imposed by, the reviewing professional prove ineffective, unnecessary, or inappropriate to the circumstances. The costs of such review will be billed directly to the applicant in advance, and the review of the plans will be suspended until the costs of the special review have been paid by the Applicant. The review period will be extended for a period of thirty (30) days following payment of the special review costs to allow for the review.

8.4 General Design Review. The Architectural Committee will use its best efforts to provide a consistent pattern of development, and consistent application of the standards of this Declaration. These standards are, of necessity, general in nature, and it is the Committee who should apply them in a manner that results in a high quality, attractive, and well designed community, and reflect the wide range of Lot sizes with the Subdivision.

8.5 Limitation of Review. The Architectural Committee's review is limited to those matters expressly granted in this Declaration. The Committee shall have not authority over the enforcement of building codes, zones ordinances, or other statutes, laws, or ordinances affecting the development or improvement of real property and shall have no liability to any Owner whose plans were approved in a manner that included any such violation. Corrections or changes in plans required by the County to bring them into conformity with applicable codes must be re-submitted to, and approved by the Committee prior to construction. No additional fee will be assessed for reviewing such revisions to the original submission.

8.6 Non-liability of Committee Members. Neither the Committee nor any member thereof, nor its duly authorized Committee representative 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 Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Committee. The Committee shall review and approve or disapprove all plans submitted to it for any purposed improvement, alteration or addition, solely on the basis of aesthetic consideration and the overall benefit or detriment shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color

schemes, exterior finishes and materials and similar features, deemed approval of any plan or designs from the standpoint of structural safety or conformance with buildings or other codes.

8.7 Variance. The committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or any Supplemental Declarations for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulation affecting his/her use of the premises, including but not limited to, zoning ordinances and lot set back lines or requirements imposed by any governmental or municipal authority.

#### ARTICLE IX MAINTENANCE AND REPAIR OBLIGATIONS

9.1 Maintenance Obligation of Association. Subject to the provisions of this Article, the Association shall maintain or provide for the maintenance, of all Common Areas and all improvements thereon, including fence, Common Area landscaping, and landscaping equipment.

9.2 Variance in Exterior Appearance and Design. Any Owner who has suffered damage may apply for approval to the Architectural Committee for reconstruction, rebuilding or repair of his/her residence in a manner, which will provide for an exterior appearance and design different from that, which existed prior to the date of the casualty. Application for such approval shall be made in writing, together with full and complete plans and specifications, working drawings and elevation showing the proposed approval only in the design proposed by the Owner should result in a finished residence as in harmony with exterior design of other residences on the Properties. Failure of the Architectural Committee to act within thirty (30) days after receipt of such a request in writing coupled with the drawings and plot plans showing the full and complete nature of the proposed changes shall constitute approval thereof. If the obligation for repair falls upon the Association, Architectural Committee approval will not be required prior to the commencement of such work.

9.3 Time Limitation. The Owner or Owners of any damaged residence, the Association and the Architectural Committee shall be obligated to proceed with all due diligence hereunder and the responsible party shall commence reconstruction within six (6) months after the damage occurs, unless prevented by causes beyond their reasonable control.

#### ARTICLE X USE RESTRICTIONS

All real property within the Properties shall be held, used and enjoyed subject to the following limitations and restriction, except as to the exemption of Declarant herein:

10.1 Single Family Residence. Each Lot unit and lot shall be used as a residence for a single-family residence and for no other purpose.

10.2 Business Uses. Except as established by the Declarant and as shown on the plat or any Amendments or additions thereto, no portion of the Subdivision may be used for any commercial business use except as approved by the Board and voted upon by a representative majority of the HOA; provided however, that nothing in this provision is intended to prevent (a) the Declarant from using one or more Lots or Units for purposes of a construction office or sales office, or (b) the use by any Owner of his/her lot for a home occupation. Any home occupation approved and voted upon shall remain under regulation by the Board and if deemed a nuisance, shall cease immediately upon written notification. No home occupation will be permitted which requires any employees outside of the Owner's immediate family or household. No retail sales of any kind may be made in the Subdivision. No materials, machinery, equipment, or inventory associated with any home occupation may be stored outside on any Lot. No signs associated with any home occupation are permitted. All use must be in conformance with Weber County ordinances.

(a) A business plan must be submitted to the Board for review; upon approval a ballot will be sent to all lot owners.

(b) Review Fee

The applicant will pay a review fee of \$50.00. The primary purpose of the fee is to document the date of submission and use the proceeds to pay expenses of sending out ballot to all lot owners.

10.3 Nuisances. No Noxious or offensive activity (including but not limited to the repair of motor vehicles) shall be carried on, in or upon any Lot or the Common Area nor shall be done therein which may be or become an unreasonable annoyance or a nuisance to any other Owner. No loud noises or noxious odors shall be permitted on the Properties and the Board of Trustees shall have the right to determine, in accordance with the By-laws, if any noise, odor or activity producing such noise, odor or interference constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound device (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably interfere with television or radio reception of any Owner in the Properties, or exposed to the view of other Owners without the prior written approval of the Architectural Committee.



10.4 Signs. No sign, poster, display, billboard, or other advertising device of any kind shall be displayed to the public view on any portion of the Properties or any Lot without the written consent of the Architectural Committee, except for one sign for each dwelling unit not more than three (3) feet by two (2) feet, used by Declarant, it's successors or assigns, to advertise the Properties during construction and sales periods. All signs and the condition promulgated for the regulation thereof shall conform to the requirements of Weber County.

10.5 Parking and Vehicular Restrictions. No owner of any Lot shall park, store or keep any vehicle except wholly within the designated parking area. Any inoperable vehicle shall be stored only in garages. No Owner shall park, store or keep on any property or street (public or private) within the Properties, any large commercial type vehicle (dump truck, cement mixer truck, delivery truck, etc.) or any other vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board of Trustees. Any recreational vehicle (camper unit, motor home, truck, trailer, boat, mobile home or other similar vehicle) must be parked on a suitable parking pad, either in the driveway or on a cement pad to the side of the Dwelling. No Owner shall conduct major repairs or major restoration of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of the Properties.

10.6 Livestock, Poultry and Pets. No animals or livestock of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets or chickens; may be kept; provided that they are not kept, bred, or maintained for any commercial purpose and are restricted to the owner's control; provided further that no more than four such household pets shall be kept on any lot. Regulations on chickens are that no more than six (6) chickens per lot, no roosters, structures must be well maintained and not less than twenty-five (25) feet from any rear or side lot line, housed in enclosed coop that is constructed in a fashion that is approved by the architectural committee. Must comply with Weber County Code 104-6-3. "Control" for the above purposes shall only mean on a leash or lead, within a vehicle, within the residence of the owner, or within the confines of an electrical fence or fenced, confines on the premises of the owner. Fierce, dangerous, or vicious animals shall not be permitted. The Board of Trustees shall retain the right to require removal of any animal or animals, which are deemed to be a problem to other lot owners. Owners may not allow animals either negligently or with specific intent, to run at large in or about on public property or go upon the land of another without permission. As with all animals in the neighborhood, all persons having custody of animal shall exercise proper care and control in order to prevent said animal from becoming a nuisance. An animal shall be deemed to be a nuisance if, (a) causes damage to the property of anyone other than its owner, (b) causes decrease in property value or overall appeal of the neighborhood (c) causes unreasonable odor, (c) is in unsanitary condition or habitat, (e) is diseased, (f) makes unreasonable disturbing noises. The lot owners shall be responsible for any damages caused by their pets. No more than 2 dogs or 2 cats may reside on one property.

10.7 Vehicles Restricted to Roadways. No motor vehicle will be operated on the Subdivision except on improved roads and driveways. No Snowmobile or motorcycles will be operated on any Lot except for ingress and egress by duly licensed, "street legal" vehicles or while loading the equipment for lawful transport on public streets.

10.8 No Firearms. No small or large caliber firearms of any kind, may be discharged within the Subdivision.

10.9 Clearing and Grading. Deleted in its entirety

10.10 No Transient Lodging Uses. Deleted in its entirety

10.11 No Use or Temporary Structures. No rubbish, trash, garbage or other waste material shall be kept or permitted upon any Lot or Common Area, except in sanitary containers. No odor shall be permitted to arise therefrom so as to render the Properties, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants.

10.12 View Obstructions. No fence, wall or other dividing instrumentality over five (5) feet in height measured from the ground on which it stands shall be constructed or maintained on any Lot, except that Declarant may vary or exceed said height or location of any fence in accordance with its architectural plans. Each Owner, by accepting a deed to a Lot, hereby acknowledges that any construction by Declarant may impair the view of such Owner and hereby consents to such impairment.

10.13 Temporary Buildings. Deleted in its entirety

10.14 Common Area Facilities. Nothing shall be altered or constructed in or removed from the Common Area except upon written consent of the Association and Weber County.

10.15 Declarant Exemption. Declarant or its successors or assigns will undertake the work of constructing dwelling units and developing all of the Lots included within the Properties and any annexation thereto. The completion of that work and sale, rental and other disposal of dwelling units is essential to the establishment and welfare of said property as a residential community. As used in this Section and its subparagraphs, the words "its successors or assigns" specifically do not include purchasers of Lots improved with completed dwelling units. In order that said work may be completed and the Properties established as a fully occupied residential community as rapidly as possible, not Owner nor the Association shall do anything to interfere with and nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its successors or assigns, or their contractors or subcontractors, from doing, on any Lot owned by them, whatever they determine to be necessary or advisable in connection with the completion of said work, including,

without limitation, the alteration of its construction plans and designs as Declarant deems advisable in the course of development; or

(b) Prevent Declarant, its successors or assigns or their representatives from erecting, constructing and maintaining, on any Lot or portion thereof, owned or controlled by Declarant or its successors or assigns or their representatives or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business or completing said work and establishing the Properties as a residential community and disposing of the same in Lots by sale, lease or otherwise; or

(c) Prevent Declarant, its successors or assigns, or their contractors or subcontractors, from construction on any Lot or any portion thereof, owned or controlled by Declarant, or its successors or assigns, or their business of developing, subdividing, grading and constructing dwelling units and other improvements on the Properties as a residential community and of disposing of dwelling units thereon by sale, lease or otherwise; or

(d) Prevent Declarant, its successors or assigns, or their contractors, subcontractors, from maintaining such sign or signs on any Lot owned or controlled by any of them and may be necessary in connection with the sale, lease or other marketing of Lots and dwelling units in the Properties; or

(e) Prevent Declarant, at any time prior to acquisition of title to a Lot in a subdivision by a purchaser from Declarant, to establish on that subdivision additional licensees, reservation and rights-of-way to itself, to utility companies or to others as may, from time to time, be reasonably necessary to the proper development and disposal of the Properties.

10.16 Outside Installation. No radio station or short-wave operators of any kind shall operate from any Lot or Dwelling Unit.

10.17 Insurance Rates. Nothing shall be done or kept in the Properties which will increase the rate of Insurance on any property insured by the Association without the approval of the Board of Trustees nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any laws.

10.18 Drilling. Deleted in its entirety.

10.19 Further Subdivision. No Owner shall further partition or subdivide his/her Lot; provided, however, that this provision shall not be constructed to limit the right of an Owner to: (a) rent or lease all or any portion of his/her Lot by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Lot is not leased for transient or hotel purposes; (2) sell his/her Lot; or (3) transfer or sell any Lot to more than one person to be held by them as tenants in

common, joint tenants, tenants by the entirety or as community property. The terms of an such lease or rental agreement shall be subject, in all respect to the provisions of this Declaration and the By-laws of the Association and any failure by the Lessee of such Lot to comply with the terms of the Declaration or the By-laws of the Association shall be default under the lease.

**10.20 Drainage and Easements.** No Owner shall alter the direction of natural drainage from his/her Lot, nor shall any Owner permit accelerated storm run off to leave his/her Lot without first using reasonable means to dissipate the flow energy. Significant natural drainage areas may be indicated on the Plat, and no Owner will construct Improvements in those areas that interfere with surface run off. Easement for the installation and maintenance of utilities and drainage facilities are reserved, as shown on the recorded map or plat over the rear, side and front of each lot or parcel of land and cross all common areas. Within these easement areas, 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 and drainage facilities. The easement areas of each lot and all improvements thereto shall be maintained continuously by the owner of said lot.

#### ARTICLE XI RESTRICTIONS ON IMPROVEMENTS

All improvements on any Lot shall be subject to the following restrictions and architectural design standards:

**11.1 Dwellings.** Only one Dwelling may be constructed on any Lot. All Dwellings shall have an attached garage large enough to enclose at lease two cars and not more than four cars. Dwellings may not exceed two stories. Construction materials shall be of a quality equal to or superior to Weber County, FHA and/or VA requirements.

**11.2 Placement of Buildings.** Within the Lot, subject to minimum front, side and rear yard set back requirements, the Owner may propose any location for the Dwelling and the irrigated landscaped area around it. The location of the Dwelling and irrigated landscaped area should be selected to minimize removal of trees or other significant vegetation. The placement of the Dwelling and other improvements should also recognize historic drainage patterns and channels, if any, and avoid construction in location that obstruct historic drainage.

**11.3 Building size.** The minimum Floor Area of any one story Dwelling shall be at least 1,700 square feet; if the dwelling is two stories, the main level shall be at least 1,500 square feet, the second story must be at least 1,500 square feet; bi-level dwelling must be 1,800 square feet per level. Each home must have a basement of at least the same size as the main level.

11.4 Building Height. Building location and design should place buildings in a manner to minimize visibility from adjoining or adjacent Lots and so as to avoid view blockage. The intent being to have the building mass follow the natural, existing contours of the land.

11.5 Roof Design. Roof Pitches material, eaves and roofs shall be approved by the architectural Committee. Shingles will be fire retardant material approved by the County. Mansard, fake mansard, A-frame, gambrel, curvilinear, flat and domed roof designs are prohibited. All roof metal such as flashing, vent stacks, gutters and chimney caps will be made of anodized aluminum or painted galvanized metal. All roofs shall have a pitch of 4 inches on 12 or steeper slopes.

11.6 Siding Materials The exterior of all dwellings must consist entirely of 'natural' materials. Unless specifically approved by the Architectural Committee, only the following exterior wall surfaces materials are allowed: brick, wood siding, composite siding stone, and stucco. Textured plywood, metal, vinyl, Masonite or similar manufactured siding materials are prohibited. There shall be no more than two separate exterior wall materials on any wall surface (excluding trim) and no more than three on any one building.

Exterior wall colors must harmonize with the site and surrounding buildings. The predominant tone should be earth tone, whether in the natural color or patina of the weathered color of the wall surface itself or the color of the stain or other coating. Fascia and trim shall also remain in the white, gray, or earth tone spectrum."

11.7 Windows. No mirrored or reflective glass may be used in construction of any dwelling

11.8 Fireplaces/Chimneys. Only wood-burning stoves, pellet stoves and/or natural gas, fireplaces, or other such appliance is permitted on each Lot. The primary heat source must be of a source other than wood. No coal-fired appliances may be used, and no coal shall be burned in fireplaces. All fireplaces and wood burning devises shall meet Federal Environmental Protection Agency guidelines.

11.9 Antenna. Deleted in its entirety.

11.10 Solar Panels. Solar panels will be permitted only with the consent of the Architectural Committee and if permitted at all, must lie flat against the roof and many not differ in pitch from the roof surface on which they are mounted. No free standing solar panels will be permitted.

11.11 No Used or Temporary Structures. Except as required by the Declarant to previously erected, used, or temporary structure, mobile home, trailer house, or any other non-permanent structures maybe be installed or maintained on any Lot.

11.12 No Air Supported Structures. No air supported tennis or swimming pool bubbles or covers will be permitted on any Lot.

11.13 Balconies and Decks. The area under any deck or balcony that is more than twenty-four (24) inches above natural grade must either be landscaped or screened from view so that the view from adjoining Lots or streets is not of the unfinished underside of the deck. The area under the deck shall not be used for storage of equipment, firewood, building material or similar material, unless out of view. The underside of any deck more than four (4) feet above grade must either be completely screened with vertical lattice or siding, or, if exposed (as in the case of a second-story deck) painted or stained to match the house.

11.14 Fences. Chain link or other wire fencing is prohibited. The design of any fencing shall be of quality workmanship and materials and of design that blends in harmony with the external design of the dwelling and landscaping. No fence, wall, or other object or similar design may be constructed on any portion of the front lot. Nor shall any fence, wall or other object of similar design be constructed on any lot to a height greater than five (5) feet. All fencing must be pre-approved in writing by the Architectural Committee.

11.15 Obstructions. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations two (2) feet above the ground shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at forty (40) feet from the intersection of the street lines. No tree shall be permitted to remain with such distance of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

11.16 Driveway Access. Individual driveway accesses to each Lot must be approved by the Architectural Committee as part of the site plan of the Lot. Driveways should be located in a manner to minimize cuts and fills and the need for retaining walls. Driveways shall be wide enough to permit at least two cars to be parked side by side in front of the garage entrance

11.17 Exterior Lighting Standards. All exterior lighting must be adequately shielded and controlled to prevent glare and illumination to adjacent properties or streets. Bare light globes are prohibited.

11.18 Storage Units. All storage and accessory buildings must be pre-approved in writing by the Architectural Committee.

The intent of this declaration is to conserve water. The use of each Lot is subject to the following Landscape Standards:

12.1 Irrigated Landscape Area. Owners are encouraged to use xeriscaping practices with respect to irrigation.

12.2 Landscaping. All landscaping shall be commenced within ninety (90) days of Dwelling occupancy and shall be completed within two (2) years of Dwelling occupancy. Trees, Lawn, shrubs and other plantings provided by the Owner of each respective Lot shall be properly nurtured and maintained by the Owner so as not to become unsightly, offensive or detrimental to any portion of the Properties.

12.3 Landscaping Easement. The Owners of Lots 1-9 and 18-28 are required to maintain a twenty-five (25) foot landscaping easement along their rear property line. No dwelling or other structure shall be built or maintained within this easement. Temporary dwellings or structures are allowed provided the owners fully understand the county can require it to be removed for their purposes. The individual Lot owners shall be responsible for maintaining the landscaping within the easement.

12.4 Erosion. Development of Lot landscaping shall include erosion control devices and sediment trap construction on slopes fifteen percent (15%) or greater. Each lot owner shall be responsible for one hundred percent (100%) of his/her sediment and erosion control.

12.5 Water Shares. Water shares purchased for each lot cover the water needs of the individual lot as well as the shared common area. Therefore, water shares must transfer with the sale of each lot and remain in Bailey Acres Owners Association.

#### ARTICLE XIII OWNERS' MAINTENANCE OBLIGATIONS

It is the obligation of each Owner to maintain his/her Lot at all times in order to preserve and enhance the enjoyment of the Subdivision:

13.1 Duty to Maintain. It is the obligation of the Owner of each Lot to maintain his/her Lot and the Improvement to the Lot in a good state of repair and an attractive, safe and healthy condition.

13.2 Repair by Association. In the event that an Owner permits his/her Lot or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary, or unsightly condition in violation of this Declaration, the Association may give written notice by United States Postal Service, or electronic email to the Owner describing the condition complained of and demanding that the Owner correct the condition within thirty (30) days. If the Owner fails to take corrective action, the

Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement shall be charged to the owner, who agrees to promptly pay the reasonable costs of any work performed under this provision. Unpaid amounts will bear interest at the lawful judgment rate under applicable state law.

13.3 Alterations of Exterior Appearance. The Owners will maintain their Lots and improvements in substantially the same condition and appearance that is approved by the Architectural Committee. No subsequent exterior alteration, improvement or remodeling, or paint color, siding or trim materials will be made without the advance consent of the Architectural Committee.

13.4 Repair Following Damage. In the event of casualty loss or damage to the Improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Architectural Committee; provided however, alteration or deviations from the originally approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent further damage, or to prevent injury or dangerous conditions following loss or damage, before re-construction begins. Such temporary measures may be taken without the consent or approval of the Architectural Committee, provided that any such measure must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. No damaged structure will be permitted to remain on any Lot for more than ninety (90) days without repair commencing, and any damaged structure, which does remain unrepaired after ninety (90) days following the occurrence of damage, is deemed a nuisance, which may be abated by the Association at the expense of the Owner.

#### ARTICLE XIV CONSTRUCTION COVENANTS AND REGULATIONS

These regulations shall be made a part of the construction contract between the Owner and his/her contractor on any Improvement on a Lot. Each Owner shall be bound by these regulations and violations committed by the contractor shall be deemed a violation by the Owner for which Owner is liable.

14.1 Portable Office or Trailer. Any Owner whose contractor desired to bring a portable office or trailer onto a Lot shall first apply for and receive written approval from the Architectural Committee. The Architectural committee will work with the Owner to determine the best location for the portable office. The portable office will be located only in a location approved by the Architectural Committee, which shall be on the Owner's Lot and within the area that can be disturbed by construction or driveway areas.

14.2 Removal of Temporary Office. The temporary office may not be installed prior to the commencement of construction, and must be removed upon the first to



occur of (a) the issuance of a Certificate of Occupancy; (b) the termination, expiration, or cancellation of the Building Permit; or (c) the suspension of construction activities for a period of sixty (60) days.

14.3 Construction Debris Removal. The Owners and their contractors are required to maintain a trash container or dumpster on the Lot during construction. Owners and their contractors are responsible for collection of trash at the end of each workday and depositing construction trash, packing material, unusable scraps, and other debris in a suitable container. Lightweight material must be weighed down to prevent wind from blowing it away. Debris must be contained until removed from the Lot to an appropriate landfill. The dumpster must be regularly serviced. No trash may be burned, buried or otherwise disposed on the Lot. No concrete trucks may be cleaned out on any Lot, open space, or anywhere within the Subdivision.

14.4 Construction Area Appearance. The Lot must be maintained in a reasonably organized and neat condition at all times during the construction of Dwelling or any other Improvements. Materials must be stored in neat stacks and covered. No more material may be delivered to the site than can reasonably be consumed in a week's time, provided that once the Dwelling is enclosed, material may be stored inside, out of sight indefinitely. A portable toilet must be utilized on the construction site.

14.5 Sanitary Facilities. Each Owner is responsible for the installation and maintenance of an approved portable toilet facility on the site during construction. The portable toilet must be located on the Lot at a location approved by the Architectural Committee, and removed from the site at such time as the permanent plumbing system is operational.

14.6 Removal of Mud. Owner and contractors are responsible for keeping mud from the construction site and from being deposited on the roadways of the Subdivision. This may require cleaning of truck tires before leaving the site.

14.7 Duration of Construction. It is the obligation of the Owner to proceed with construction with all reasonable speed once construction has commenced, and in any event all exterior surfaces of the building shall be substantially complete within a period of twelve (12) months from commencement. All landscaping shall be commenced within ninety (90) days of Dwelling occupancy and shall be completed within two (2) years of Dwelling occupancy.

#### ARTICLE XV COMBINATION OF LOTS

Subject to the provisions of this Declaration and limitations set forth in this section, any Owner may combine two adjoining Lots with adjoining frontage on the same street within the Subdivision, subject to the approval of the Architectural Committee and the County. The following regulations will apply in the event of combination:

15.1 Architectural Committee May Deny Combination. The Architectural committee has the power to deny the Owner's application to combine Lots on the basis that the resulting combination concentrated too much building mass on a single Lot, that the combination results in damage to significant natural features on the Property such as natural drainage courses, or results in a structure that violates the provision of this Declaration.

15.2 Combination Deemed Permanent. The combination of Lots is deemed to be permanent and the Lots may not be independently sold once construction has commenced on the Improvements of the combined Lot and there is a Building Parcel Designation as approved by Weber County.

15.3 Record Notice of Combination. The Owner of any Lots that have been combined will execute and deliver to the Architectural Committee a notice in recordable form, contain the name of the Owner and the legal description of the Lots combined, which Notice will state that the two Lots have been combined and cannot subsequently be subdivided. The Owner will also submit a current title report showing any lien holder, who will also be required to sign the Notice. The Committee shall record this Notice with the Weber County Recorder and Weber County Planning office upon commencement of construction.

15.4 Plat Amendment. The combination of Lots may also require a formal Plat Amendment process under applicable state or county regulation, and/or the approval of Weber County, all of which will be done at the sole expense of the Owner.

#### ARTICLE XVI INSURANCE

16.1 Types of Insurance. The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Utah.

- (a) Public Liability Insurance. The Association shall obtain and maintain a comprehensive policy of public liability insurance converging all the Common Areas and Facilities, if applicable, commercial spaces and public way (if any) for Bailey Acres, with a Severability of Interest Endorsement of equivalent coverage which would preclude the insurer from denying the claim of a Lot owner because of the negligent acts of the Association or another Lot Owner, with limits not less than \$1,000,000.00 covering all claims for personal injury and/or property damage arising out of a single occurrence including protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and such other risks as are customarily covered in similar projects. The scope of coverage also includes all other coverage in the kinds and amounts required

by private institutional mortgage investors for projects similar in construction, location and use.

- (b) Workman's compensation Insurance. The Association shall obtain and maintain workmen's compensation and employers liability insurance) if applicable and all other similar insurance with respect to employees of the Association in the amounts in the forms now or hereafter required by law.
- (c) Fidelity Insurance or Bond. The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, Members of the Board of Trustees, and employees and all others who are responsible for handling funds of the Association. Such fidelity bonds shall meet the following requirements;
- a. all shall name the Association as an obligee;
  - b. all shall be written in an amount equal to at least 100% of the estimated annual operating expenses and reserves of the Association, (Exceptions to this requirement will be considered on a case by case basis);
  - c. all shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of 'employee' or similar expression or shall contain an appropriate endorsement to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers;
- (d) Other Insurance. Notwithstanding any other provisions contained herein to the contrary, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirement for development projects established by the Federal National Mortgage Association and the Government National Mortgage Association, so long as either is a mortgagee or Owner of a Lot, except to the extent such coverage is not available or has been waived in writing by the Federal National Mortgage Association or the Government National Mortgage Association.

16.2 Additional Coverage. The Provisions of this Declaration 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 by this Declaration, in such amounts and in such forms as the Association may deem appropriate from time to time.

16.3 Governmental Requirements. Notwithstanding any other provision herein, the Association shall continuously maintain in effect such bonds and other insurance meeting the requirement for similar subdivisions established by the Federal Home Loan Mortgage Corporation (FHLMC), the Government National Mortgage Association, (GNMA), The Federal National Mortgage Association (FNMA), Housing and Urban Development (HUD), Federal Housing Administration (FHA),

Veterans Administration, (VA), State of Utah Finance Agency and conventional lending Institutions, so long as there are any mortgages on any of the Properties.

ARTICLE XVII  
GENERAL PROVISIONS

17.1 Enforcement. This Declaration, the Articles of Incorporation and the By-laws may be enforced by the Association as follows:

- (a) Breach of any of the covenants contained in the Declaration or the By-laws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by an Owner, by the Association or the successor in interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorney's fees in an amount as the Court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.
- (b) The result of every act or omission whereby any of the covenants contained in this Declaration or the By-laws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Owner, by the Association or its successors in interest.
- (c) The remedies herein provided for breach of the covenants contained in this Declaration or in the By-laws shall be deemed cumulative and none such remedies shall be deemed exclusive.

17.2 Severability. Invalidation of any one of these covenants or restriction by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

17.3 Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall insure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, perpetually, unless otherwise provided by an appropriate amendment.

17.4 Interpretation. The provision of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of community recreational facilities and the Common Area. The article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

17.5 Amendments. Except otherwise specifically provided for herein and subject to any rights of the VA or the FHA hereunder, this Declaration may be amended only by the affirmative vote or written consent of the Owners holding not less than a majority of the voting power of each class of Members. Notwithstanding the foregoing, prior to the sale of the first Lot in the Properties. Declarant shall have the right to terminate or modify this Declaration by recordation of a supplement hereto setting forth such termination or modification in accordance with the laws of the State of Utah. For purposes of this Declaration the sale shall be deemed to be the date upon which a Deed conveying a Lot is recorded in the office of the Weber County Recorder. Notwithstanding anything to the contrary contained herein, Declarant reserves the right, by itself, to amend the Subdivision Plat or Plats and the Declaration as amended, from time to time, to provide to adjust the Lot lines and boundaries and the Common Area lines and boundaries to accommodate the building on said lots as actually constructed. Provided, further however, this Declaration shall not be amended in such a manner that the rights of any first mortgagee will be adversely affected.

17.6 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public or for any public use. (Except as shown on the recorded Plat).

17.7 Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties does and shall be conclusively deemed to have consented and agree to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

17.8 Reservation of Easements. Reciprocal easements are hereby reserved for the benefit of adjoining Lot Owners for the control, maintenance and repair of the utilities of adjoining Lot Owners. Declarant expressly reserves, for the benefit of all of the real property in the Properties and the Owners, reciprocal easements of access, ingress and egress over all Lots and over the common Area, for the use and enjoyment of the Lots in accordance with this Declaration, including without limitation, for installation and repair of utility services, for drainage over, across and upon adjacent Lots for water resulting from the normal use of adjoining lots, for maintenance and repair of any dwelling. Such easement may be used by Declarant, its successors, purchasers and all Owners, their guests, tenants and invitee, residing on or temporarily visiting the Properties, for the use and enjoyment of a Lot in the Project. No Owner of a Lot shall interfere with the established drainage pattern over his/her Lot from adjoining or other Lots. Each Owner of a Lot shall make adequate provisions for drainage in the event he/she changes the established drainage over his/her Lot. For purposes of this Declaration, "established drainage", on any Lot is defined as the drainage pattern and facilities in existence at the time

that such Lot in conveyed to a purchaser from Declarant. Declarant further expressly reserves, for the benefit of the Association, its agents and employees, easement of access, ingress and egress over the Lots and Common Area, for the purpose of maintaining, repairing and installing sewer pipelines and laterals in accordance with the provisions on this Declaration and as otherwise provided by law. Each of the Lots and structures thereon shall be and are subject to easements for utilities through, over, under and across said Lots and the structures thereon, including easements for the installation and maintenance of meters of such utilities.

17.9 Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered as provided either personally or by mail, or electronic email. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice or to the residence of such person if no address has been given to the Association. Such address may be changed, from time to time, by notice in writing or electronically to the Association.

17.10 No Representation or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant or his/her agent or employees in connection with the Properties or any portion of the Properties, or any improvements thereon, its physical condition, zoning, compliance with applicable laws, cost or maintenance, taxes or regulations thereof as a planned development, except as Declarant from time to time with the Utah Land Sales Practices Administration or Applicable Governmental Entity.

#### ARTICLE XVIII EXPANSION

18.1 Additional Phase. The Declarant anticipates the development of Bailey Acres will be phased.

18.2 Reservation of Right to Expand and Phase. With the consent of the applicable governmental authority, Declarant hereby reserves the right to expand and/or phase Bailey Acres, without the consent of the Lot owners. In addition, Declarant reserves the right to amend or supplement this Declaration, the Plat or any other instrument to effectuate the phasing and/or expansion if necessary.

18.3 Expansion of Provisions. In the event of such phasing and/or expansion, the provision used in this Declaration automatically shall be expanded to encompass and refer to the project as to expanded and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Lots after such expansion or phase shall be effective to transfer rights in the project, as expanded and phased, by use of the forms of descriptions set forth herein, with additional references to the supplemental declarations and the supplemental Subdivision Plats, if applicable.

18.4 Declaration Operative on New Lots. The new Lots shall be subject to all the terms and conditions of the Declaration and of a supplemental Declaration, if required and the existing Lots therein shall be subject to supplemental Declaration of Declarations if applicable, with all the incidents pertaining thereto as specified therein.

See Exhibits A & B for legal description.

**EXHIBIT "A"**

**OVERALL DESCRIPTION**

PART OF THE SOUTHWEST QUARTER OF SECTION 17, T.7N, R.1E, S.L.B & M., U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 17, THENCE N00°11'08"E ALONG THE SECTION LINE 1331.34 FEET; THENCE S89°46'47"E 17.85 FEET; THENCE N00°11'08" E 1203.29 TO THE SOUTH LINE OF CONWELL ACRES SUBDIVISION; THENCE S89°43'44"E ALONG SAID LINE 908.92 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF 3300 EAST STREET; THENCE ALONG SAID LINE TO THE FOLLOWING TWO (2) COURSES: (1) S15°59'08"E 1113.12 TO A POINT ON A 1105.92 FOOT RADIUS CURVE, THE CENTER OF WHICH BARES S74° 00'52"W, AND (2) ALONG SAID CURVE TO THE RIGHT 143.47 FEET THROUGH A CENTRAL ANGLE OF 07°25'58" TO AN EXISTING FENCE; THENCE N89°24'46" W ALONG SAID FENCE 1331.38 FEET TO THE SOUTH OF SAID SECTION 17; THENCE N89°34'24" W ALONG SAID LINE 651.35 FEET TO THE POINT OF BEGINNING

CONTAINS 49.72 ACRES

**EXHIBIT "B"**

**MOST SOUTHEASTERLY COMMON AREA**

PART OF THE SOUTHWEST QUARTER OF SECTION 17, T.7N., R.1E., R.1E., S.L.B.&M. US SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SECTION 17, SAID POINT BEING S89°34'24" E ALONG SAID LINE 537.00 FEET, FROM THE SOUTHWEST CORNER OF SAID SECTION 17, THENCE N00°27'33" FEET E 337.38 FEET; THENCE N89°32'27"W 238.50 FEET TO A POINT ON A 630.07 FOOT RADIUS CURVE, THE CENTER OF WHICH BARES S89° 32'27" E; THENCE NORTHERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 04°33'06" A DISTANCE OF 50.05 FEET; THENCE S89°32'27" E 197.47 FEET; THENCE N54°57'45"E 149.93 FEET; THENCE N00° 18'17"W 361.58 FEET; THENCE N 89°41'43"E 25.00 FEET TO AN EXISTING FENCE; THENCE S00°18'17"E ALONG SAID FENCE 836.32 FEET TO A POINT ON SAID SECTION LINE; THENCE N89°34'23"W ALONG SAID LINE 114.35 FEET TO THE POINT OF BEGINNING.

CONTAINS 1.65 ACRES

**ISLAND COMMON AREA**

PART OF THE SOUTHWEST QUARTER OF SECTION 17, T.7N., R.1E., S.L.B. & M., U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON A 538.97 FOOT RADIUS CURVE, THE CENTER OF WHICH BARES N82°05'32"W SAID POINT BEING N00°11'08" E ALONG THE SECTION LINE 612.42 FEET AND S89°48'52"E 349.34 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 17; THENCE NORTHERLY ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 19°52.12 A DISTANCE OF 186.91 FEET; THENCE N74°50'48" E 56.53 FEET TO A POINT ON A 545.56 FOOT RADIUS CURVE, THE CENTER OF WHICH BARES S15°09'12"E; THENCE EASTERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE ON 04°49'19" A DISTANCE OF 45.91 FEET; THENCE S07°42'18" 117.51 FEET TO A POINT ON AN 83.35 FOOT RADIUS CURVE, THE CENTER OF WHICH BARES S82°17'42"W; THENCE SOUTHWESTERLY ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 98°09'51" A DISTANCE OF 142.80 FEET; THENCE N89°32'27"W 25.26 FEET TO THE POINT OF BEGINNING.

CONTAINS 0.44 ACRES

**WESTERLY MOST COMMON AREA**

PART OF THE SOUTHWEST QUARTER OF SECTION 17. T.7N., R.1E., S.L.B. & M., U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID SECTION 17, BEING N00°11'08"E ALONG SAID SECTION LINE 1064.89; THENCE N00°11'08"E, CONTINUING ALONG SAID SECTION LINE, 266.45 FEET; THENCE S 89°46'47" E 17.85 FEET; THENCE N00° 11'08" E 904.77 FEET, THENCE S89°43'44" E 30.00 FEET, THENCE S00°11'08" W 246.00 FEET; THENCE S89°43'44" E 100.88 FEET; THENCE S87°35'21" E 244.76 FEET, THENCE S03°40'50" E 25.14 FEET; THENCE N87°35'21" W 246.29 FEET; THENCE S00°11'08"W 619.86 FEET; THENCE S76°25'02" E 186.98 FEET; THENCE S25°33'32"W 24.50 FEET; THENCE N89°32'27"W 289.17 FEET; THENCE S00°27'33"W 118.47 FEET; THENCE N89°32'27"W 30.09 FEET TO THE POINT OF BEGINNING.

CONTAINS 2.80 ACRES

**EASTERLY MOST COMMON AREA**

PART OF THE SOUTHWEST QUARTER OF SECTION 17. T.7N., R.1E., S.L.B. & M., U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON AN EXISTING FENCE, SAID POINT BEING S89°34'24" E 651.35 FEET ALONG THE SECTION LINE AND N00°18'17"E ALONG SAID FENCE 896.32 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 17; THENCE S89°41'43" W 75.00 FEET; THENCE N00°18'17" W 323.55 FEET THENCE N89°32'27" W 207.63 FEET TO A POINT ON A 607.73 FOOT RADIUS CURVE, THE CENTER OF WHICH BARES S67°39'07" E; THENCE NORTHERLY ALONG SAID CURVE TO THE RIGHT 27.20 FEET THROUGH A CENTRAL ANGLE OF 02°33'50"; THENCE S89°32'27" E 245.44 FEET; THENCE N00°27'33"E 124.26 FEET; THENCE S89°32'27" E 93.88 FEET THENCE N00°27'33"E 346.45 FEET; THENCE N03°40'50" W 225.00 FEET; THENCE S86°19'10" W 238.50 FEET; THENCE N03°40'50"W 30.00 FEET; THENCE N86°19'10"E 238.50 FEET; THENCE N73°30'00" E 203.96 FEET; THENCE N70°36'32"E 128.36 FEET; THENCE N15°59'08" W 220.00 FEET; THENCE N74°00'52"E 50.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF 3300 EAST STREET; THENCE ALONG SAID LINE THE FOLLOWING TWO (2) COURSES; (1) S15°59'08" E 862.62 FEET TO A POINT ON A 1105.92 FOOT RADIUS CURVE, THE CENTER OF WHICH BARES S74°00'52"W, AND (2) SOUTHERLY ALONG SAID CURVE TO THE RIGHT 143.47 FEET THROUGH A CENTRAL ANGLE OF 07°25'58" TO A POINT ON AN EXISTING FENCE; THENCE N89°24'46" W ALONG SAID FENCE 627.76 FEET TO AN EXISTING FENCE; THENCE ALONG SAID FENCE S00°18'17"E 435.06 FEET TO THE POINT OF BEGINNING.

CONTAINS 8.78 ACRES.



This amendment was made in accordance with the By-Laws of the Bailey Acres Owners Association and approved on 10-31-2016.

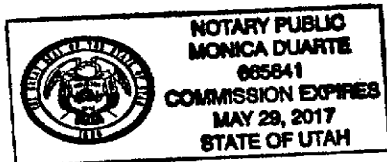
Declarant:  
Bailey Acres Owners Association

*Becky Smith*

Becky Smith, Treasurer

State of Utah  
County of Weber

On this 10<sup>th</sup> day of November 2016, appeared personally before me, Becky Smith, whose identity is personally known to me, that she is Treasurer of the Bailey Acres Owners Association, a Utah non-profit corporation, and the document was signed by her on behalf of said corporation, and acknowledged to me that the corporation executed the same.



*Monica Duarte*  
\_\_\_\_\_  
Notary Public