

11-676-0011, 11-107-0088
11-676-0012 11-107-0085
11-676-0017 thru 11-677-0023
AFTER RECORDING RETURN TO:

2554566
BK 5115 PG 161

Brighton Homes Utah LLC
12601 W. Explorer Drive, Suite 200
Boise, Idaho 83713
Attention: Legal Department

E 2554566 B 5115 P 161-179
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
9/23/2010 11:38:00 AM
FEE \$56.00 Pgs: 19
DEP eCASH REC'D FOR FIRST AMERICAN TITLE

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
RESERVATION OF EASEMENTS FOR**

THE HOMESTEAD AT GAILEY PARK SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE HOMESTEAD AT GAILEY PARK SUBDIVISION (the "Declaration", including as further defined below) is made this 22nd day of September, 2010, by BRIGHTON HOMES UTAH LLC, a Utah limited liability company, whose principal address is 12601 W. Explorer Drive, Suite 200, Boise, Idaho 83713 ("Declarant", including as further defined below), and the Harold Gailey Family Limited Partnership ("Gailey").

RECITALS

A. Declarant and Gailey own certain real property in the City of Kaysville, Davis County, Utah, as described on that Final Plat of Homestead at Gailey Park Subdivision, recorded as Instrument No. 2548879 on August 10, 2010, in the records of Davis County, Utah, as to Lots 11-12 and 17-23; and a future unrecorded 2nd phase of lots with a legal description found in 'Exhibit A' ("Property").

B. Declarant and Gailey desire to benefit and burden the Property with the terms and conditions of this Declaration as more particularly described herein.

DECLARATION

NOW, THEREFORE, Declarant and Gailey hereby declare that all of the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following protective covenants, conditions, restrictions, reservations, easements, and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property. The protective covenants, conditions, restrictions, reservations, easements, and equitable servitudes (the "Covenants") set forth below shall run with and burden the Property and shall be binding upon all Persons, their heirs, successors and assigns having or acquiring any right, title or interest in the Property, or any part thereof, and shall inure to the benefit of every portion of the Property and any interest therein. In addition, the Covenants shall inure to the benefit of, be binding upon, and enforceable by, Declarant, and each Owner, their respective heirs, executors and administrators, and successive owners and assigns.

ARTICLE I

1. DEFINITIONS

1.1 "Architectural Review Committee" or "ARC" shall mean the architectural review committee created pursuant to Article III below.

1.2 "Architectural Committee Rules" shall mean the rules, if any, adopted by the Architectural Committee.

1.3 "City" shall mean the City of Kaysville, Utah.

1.4 "County" shall mean Davis County, Utah.

1.5 "Declarant" shall mean Brighton Homes Utah LLC, a Delaware limited liability company, and any Person to whom it shall have assigned any rights hereunder of Declarant by an express written assignment executed by the Declarant and recorded in Davis County, Utah. Declarant and/or any Persons assigned Declarant's rights, may terminate such rights at any time by recording a termination in Davis County, Utah.

1.6 "Declaration" shall mean this document as previously defined above, as well as it may be amended or supplemented from time to time, and any assignments and/or terminations made pursuant to Section 1.6.

1.7 "Family" means (a) one or more natural persons related to each other by blood or legally related to each other by marriage or adoption, or (b) a group not so related who maintain a common household in a Residence on a Lot.

1.8 "Lot" or "Lots" shall mean those lots in the Property created by the Plat, upon which a Residence may be constructed, and any improvements constructed thereon. Each Lot shall be a separate freehold estate.

1.9 "Owner" shall mean the Person or Persons, including Declarant, holding fee simple interest of record to any Lot. The term "Owner" includes a seller under an executory contract of sale, but excludes lenders with interest in a Lot as collateral.

1.10 "Person" shall mean a natural individual, limited liability company, corporation, or any other entity with the legal right to hold title to real property.

1.11 "Plat" shall mean the final plat map of the Property, Homestead at Gailey Park Subdivision, recorded on August 10, 2010, in Book 5097 of Plats, Page 510, and any recorded adjustments, amendments, or supplements, of such plat map from time to time.

1.12 "Property" shall mean the real property as previously defined in the Recitals above, including each and all Lots contained therein.

1.13 "Residence" shall mean the building located on a Lot designed and intended for use and occupancy as a residence by a single Family.

ARTICLE II

2. USE RESTRICTIONS

2.1 Use Restrictions.

2.1.1 Single Family Residence. Each Lot shall be used as a single Family Residence and for no other purpose. An Owner may rent his or her Lot to a single Family only, provided that the Lot is rented pursuant to a lease or rental agreement which is (a) in writing and (b) subject to all of the provisions of this Declaration.

2.1.2 Business or Commercial Activity. No part of the Property may ever be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including without limitation any activity for which the provider is compensated or receives any consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license. Nothing in this Section shall preclude Declarant or others specifically authorized in writing by Declarant from maintaining one or more model homes and sales offices in such homes, conducting sales/marketing activities and providing signage on the Property. Any other Person or entity (other than the Declarant) in the business of building and/or selling homes may only conduct sales activities in the Property related to specific homes and lots in the Property that the Person currently owns.

2.1.3 Landscaping. Each Owner shall cause the installation of "Front Yard Landscaping" on each Lot. As used in this Section, "Front Yard Landscaping" means landscaping in the Front Yard between the front of the house and the sidewalk on the entire width of the Lot excluding the driveway, as approved by the ARC. Front Yard Landscaping shall include at least two (2) trees in the park strip, combination of lawn, shrubs or ground cover. Front Yard Landscaping on corner lots shall include at least two (2) trees on the front park strip and two (2) trees on the side yard parks strip, lawn, shrubs or ground cover. Ground cover may include vegetative vines, low-spreading shrubs, or annual or perennial flowering or foliage plants. Front Yard Landscaping shall be maintained by the Owner of the Lot and shall be replaced with the same kind and caliber of plant or tree as initially installed at the sole expense of the Owner of the Lot. An Owner shall ensure the Front Yard Landscaping is completed within one hundred eighty (180) days after such Owner's purchase of a Lot. As used in this Article, "Front Yard" shall mean any Lot area in the front of the Residence facing the street.

2.1.4 Fencing. Each Owner shall cause the installation of a six (6) foot fence that extends from both sides of the Residence to the adjacent property line to effectively separate a Lot's Front Yard from the back yard, in materials and location approved by the ARC. No fence or other similar structure shall be erected in the Front Yard of any Lot in excess of three and one-half feet in height; nor shall any fence or other similar structure be erected in any Lot side or rear yard to a height in excess of, or less than, six (6) feet. Fences must be one of the following materials and colors (if specified): black wrought iron, masonry, Trex (or a product similar to Trex), or white,

tan, or almond vinyl. Fence colors must be harmonious with the Residence. Notwithstanding anything to the contrary in this Section 2.1.4, the existing fencing around the perimeter of the Property is permitted.

2.1.5 Residence Location. No Residence shall be located on any Lot nearer to the front and side street line, if any, than the minimum building set back lines as required by the City.

2.1.6 Storage of Building Materials. No building material of any kind or character shall be placed or stored upon any Lot until the Owner thereof is ready to commence improvements and then the material shall be placed within the property boundaries of the Lot upon which the improvements are to be erected, and shall not be placed in the streets or between the curb and the property line.

2.1.7 Animal Restrictions. Each Lot shall have no more than two (2) domesticated dogs and/or cats, and may have other small pets contained in the Residence which do not unreasonably bother or constitute a nuisance to others; provided that no animals, including, but not limited to, reptiles, poultry, fish, fowl or insects of any kind may be raised, bred or kept on any Lot for any commercial purpose or in violation of any applicable City or County ordinance.

2.1.8 Nuisances. No noxious or offensive activities may be engaged in upon the Property or on any public street abutting or visible from the Property. Furthermore, anything engaged in thereon which may become an annoyance or nuisance to the neighborhood is strictly prohibited.

2.1.9 Signs. Except as provided in this Section, signs, billboards, and advertising structures on any Lot are prohibited. Lot 1 shall contain a permanent Property subdivision sign. Additionally, each Lot is permitted a temporary single sign, not more than 3 feet by 3 feet in size, advertising the Residence or Lot for sale, or for rent, or a construction sign.

2.1.10 Antennae. Owners are prohibited from installing any antennae or "dish" on a Lot or on the exterior of the Residence for any purpose, except: (i) an antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter, or (ii) an antenna that is designed to receive video programming service or wireless internet service, including multi-channel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, that is one meter or less in diameter or diagonal measurement. Any antenna that is designed to receive television broadcast signals shall be installed in the attic of the Residence.

2.1.11 Trash Disposal. The dumping, throwing or disposal of any trash, ashes or refuse on any portion of the Property is strictly prohibited. All Residences must subscribe to a city garbage disposal service. Garbage cans must be stored out of public view from the street and out of the front yard area, except within 24 hours of the weekly City trash pickup.

2.1.12 Temporary-type Structures. The use of temporary structures, including, but not limited to, trailer basements, tents, shacks, garages, barns or other out buildings as a residence, whether temporary or permanent is strictly prohibited.

2.1.13 Detached Buildings. Any detached accessory building erected on any Lot shall conform in design and materials with the Residence on the Lot, and in accordance with the guidelines found in this Declaration, unless a variance is approved in writing by the ARC.

2.1.14 Parking and Storage. The placement of any inoperative vehicle on any Lot or adjacent street for more than 48 hours is prohibited. No vehicles of any kind shall be parked or stored on in the Front Yard of a Lot, except within its garage or driveway. Semi-trucks and trailers may not be parked on the street except while loading or unloading. Trailers, mobile homes, trucks over one-ton capacity, boats, campers not on a truck bed, motor homes, buses, tractors and maintenance or commercial equipment of any kind shall be parked or stored behind the Front Yard in an enclosed area screened from street view. Sufficient side yard gate access should be planned and provided for in the design of the Residence to permit ingress, egress and storage of trailers and recreational vehicles on the side and rear yards. The storage or accumulation of junk, trash, manure or other offensive or commercial materials is prohibited. Facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. The Front Yard shall remain unoccupied and unobstructed by buildings, vehicles and/or hard surfaces such as asphalt, cement and packed surface, except the driveway. In the event of any conflict between the provisions of this Section and any City or County requirements, the more restrictive provision shall control.

2.1.15 Maintenance. Every Lot, including the improvements thereon, shall be kept in good repair and maintained by the Owner thereof in a clean, safe and attractive condition.

2.1.16 Fuel Storage Tanks. No tank for storage of fuel may be installed or maintained in or on any Lot.

2.2 ARC Enforcement. The ARC shall have the authority, but no obligation, to enforce the terms of this Article II.

2.3 Exempt Builder. Declarant may grant an exemption in writing for any or all requirements of this Article II to merchant-builders (each being an "Exempt Builder") for a Lot or Lots, until such time as Exempt Builder conveys title to the Lot(s) to a third party.

2.4 Variance. Any exceptions to the provisions of Article II must be obtained by the written permission of the Declarant and Owners of at least two-thirds (2/3) of the Lots within the Property. Any variance must also be in accordance with City, County and other governmental requirements.

ARTICLE III

3. ARCHITECTURAL CONTROL

3.1 Architectural Control. Except as to construction by Declarant, their affiliates and agents, no development, erection, construction, alteration, grading, addition, excavation, modification, decoration, redecoration or reconstruction of the visible exterior of any improvement, including without limitation any Residence, garage or outbuilding, or any other activity within the jurisdiction of the ARC pursuant to this Declaration ("Construction Activity") shall take place on any Lot until the construction plans and specifications and a plan showing the location of the Residence and/or other improvements have been approved by the ARC as to quality of workmanship, materials, harmony of external design with existing structures, and location with respect to topography and finish grade elevations, and compliance with this Declaration. No Residence, structure or other building, including, without limitation, garages and other out-buildings, shall be painted or repainted in other than its original colors until the color has been approved by the ARC.

3.2 Basic Architectural Requirements. A Residence shall not exceed two (2) stories in height (excluding basements), with its height consistent with applicable zoning and building codes, and shall have a private garage for not less than one (1) vehicle. One (1) story Residences shall have a minimum square footage of 1,200 finished square feet, excluding basement square footage whether finished or unfinished. Two (2) story Residences shall have a minimum of 1,700 square feet finished, excluding basement square footage whether finished or unfinished. Square footage of any style shall be measured excluding garages, porches, verandas, carports, patios, porches and steps. A Residence's construction costs must be a minimum of \$120,000.00 in materials and labor, with such costs excluding the cost of the Lot, and any transaction costs for the purchase and sale and financing of such Residence and/or Lot. Exterior material may be brick, rock, masonry siding, or stucco, or a combination thereof. Vinyl or aluminum siding is prohibited within the Property. Power and telephone lines must be run underground. Any variances from these requirements must be approved in writing by the ARC, which approval may be withheld in the ARC's sole discretion.

3.3 Submittals to ARC. Submittals to the ARC must comply with the provisions herein. Persons submitting proposals or plans and specifications to the ARC (any such Person is referred to in this Article III as the "Applicant") must obtain a dated, written receipt for such plans and specifications and furnish the ARC with the address to which further communications from the ARC to the Applicant are to be directed. The address of the ARC for submission of plans and specifications shall be Declarant's business address for its Utah office, c/o the Architectural Review Committee, unless or until changed by the ARC, whichever occurs first. With each submission, the ARC may require a one-time review fee of up to \$250 to assist the ARC in its duties hereunder, including, but not limited to, any costs for consultants or other professionals. No construction activity of any kind shall be permitted on any Lot until the preliminary drawings and working drawings are approved in writing as required by this Article III.

3.3.1 Preliminary Drawings. Each Applicant shall submit the following preliminary drawing information to the ARC for its review:

3.3.1.1 A plot plan to scale of the entire proposed Lot with Residence and all proposed accessory buildings or structures, and elevation of floors shown above or below a designated point on the street;

3.3.1.2 Floor plans of each floor level, and basement, if any, to scale;

3.3.1.3 Elevations to scale of all sides of the Residence;

3.3.1.4 One major section through the Residence;

3.3.1.5 Specifications of all outside materials to be used on the exterior of the Residence; and

3.3.1.6 The color scheme for the Residence, and any proposed accessory buildings or structures.

3.3.2 Working Drawings. After ARC approval of the preliminary drawings submitted pursuant to Section 3.3.1, the Applicant shall submit the following working drawings to the ARC for its review:

3.3.2.1 Plot plans to scale showing the entire site, building, garages, walks, drives, fences, carriage lights, retaining walls, with elevations of the existing and finished grades and contours including those at the outside corners of the buildings and at adjacent property lines and street fronts, and elevations of floors from a designated point on the street;

3.3.2.2 One-eighth scale detailed floor plans on 11"x17" paper;

3.3.2.3 One-eighth scale detailed elevations, indicating all materials and showing existing and finished grades on 11"x17" paper;

3.3.2.4 Detailed sections, cross and longitudinal;

3.3.2.5 Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc.;

3.3.2.6 Specifications shall give complete descriptions of materials to be used, and shall be supplemented with a notation of the colors of all materials to be used on the exterior of the Residence;

3.3.2.7 Grading plan;

3.3.2.8 Drainage plan which provides for all Lot drainage to a public street and not onto neighboring Lots; and

3.3.2.9 Landscape plan showing at least Front Yard Landscaping and proposed fencing.

All proposals, drawing, plans and specifications in this Section 3.3 shall be collectively referred to herein as the "Plans."

3.4 Approval and Disapproval. The ARC shall review and approve or disapprove the Plans for any proposed improvement, alteration, or addition, thereto on the basis of satisfaction of the ARC with the grading plan; the location of the improvements on the Lot; the finished ground elevation; the color scheme, finish, design, proportions, architecture, shape, height, style, and appropriateness of proposed improvements; the effect on adjoining Lots; the materials to be used; the kinds, pitch or type of roof proposed; the planting, landscaping, size, height, or location of vegetation on the Front Yard Landscaping; compliance with this Declaration, and on the basis of aesthetic considerations and the overall benefit or detriment to the Property generally which would result from such improvement, alteration, or addition. The ARC shall not be responsible for reviewing, nor shall its approval of any plan, design or drawing be deemed approval of the same from the standpoint of structural safety or conformance with building or other codes. **Each Owner shall be responsible for obtaining all necessary permits and for complying with all governmental requirements for the construction of its Residence or any other construction on a Lot.**

3.5 No Waiver of Future Approvals. ARC approval of any Plans does not constitute a waiver of the right to withhold approval or consent for any subsequently submitted similar or additional Plans by the same Applicant or a different Applicant.

3.6 Time Requirements. Until the ARC receives Plans or other materials deemed necessary by the ARC and the review fee (if any), the ARC may postpone review of any Plans submitted for approval. Upon the submission of all Plans required by this Article and the review fee (if any), the ARC shall have forty-five (45) days after the date of the last submitted Plan, to approve, disapprove, or request additional information from the Applicant. If the ARC does not provide approval, disapproval, or such request within such forty five (45) day period, the Plans shall be deemed approved. ARC approval of any Plans, whether written or deemed approved, shall expire six (6) months from the date of such ARC approval. If substantial work pursuant to the approved Plans is not commenced within such six (6) months of ARC approval, the Applicant will be required to resubmit all Plans to the ARC for approval as initially required pursuant to this Article III. All construction activities shall be performed as promptly and as diligently as possible and shall be completed within one (1) year from the date of an Owner's acquisition of a Lot.

3.7 Variance. The ARC may grant variances from this Declaration or the architectural rules it has adopted when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations may require. Such variances may include, without limitation, restrictions on height, size, floor area, placement of structures or similar restrictions. Such variances must be in writing and must be signed and acknowledged by a majority of the members of the ARC. If such variances are granted, no violation of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose, nor shall it affect in any way the Owner's obligation to comply with all laws and regulations of any governmental authority affecting the use of his Lot, including, but not limited to, zoning and building requirements of any governmental agency or entity having jurisdiction over the Property.

3.8 Architectural Review Committee.

3.8.1 Purpose. The ARC's purpose is to ensure a well-developed, attractive community by reviewing and approving each Owner's Plans and general development concepts for its Lot. The ARC may adopt any and all rules, regulations, and principles supplementary to this Declaration as it deems necessary to implement its purpose and duties as provided in this Declaration.

3.8.2 Members of ARC. The ARC shall consist of three (3) members. The initial members shall be representatives of Declarant. Declarant reserves the right to appoint and remove any or all the members of the ARC and to fill any vacancies on the ARC until the "Turnover Date." The Turnover Date shall be the first of either: (a) the date on which a certificate of occupancy has been issued by the relevant governmental authority for the last of all of the Lots in the Property, or (b) the date on which Declarant delivers written notice of withdrawal from the ARC to a majority of the Owners. Declarant may at any time assign in writing the powers of removal and appointment of the members of the ARC to the other Owners, in whole or in part, subject to such terms and conditions as Declarant may impose. After the Turnover Date, the other Owners shall have the power to appoint and remove all of the members of the ARC pursuant to Section 3.8.5 below. With the exception of ARC members appointed by Declarant, ARC members must be Owners. As of the Turnover Date, any representatives of Declarant remaining on the ARC shall be deemed to have automatically resigned and Declarant shall have no further right or obligation to participate on the ARC or enforce any of the covenants, conditions or restrictions of this Declaration.

3.8.3 Compensation of Members. The individual members of the ARC shall receive no compensation for services rendered.

3.8.4 Non-liability of ARC Members. Neither Declarant, the ARC, nor any members thereof, nor their duly authorized representatives shall be liable to any Owner for any loss, damage, or injury arising out of or in any way connected with the performance of the ARC's duties hereunder, unless due to willful misconduct. Plans approved by the ARC are not approved for: (a) engineering design; (b) compliance with zoning, building and safety ordinances, codes and other applicable statutes, ordinances or governmental rules and regulations; (c) compliance with the requirements or any public utility or compliance with any easements or other agreements. By approving any such plans and specifications, neither the ARC nor the members thereof, nor Declarant, their agents, employee, attorneys or consultants assume any liability or responsibility for any improvement constructed or any defect therein as a result of such plans and specifications.

3.8.5 Election of ARC Members. After the Turnover Date, appointment of any member of the ARC by the Owners shall be by election conducted as follows:

3.8.5.1 Voting Rights. Each Owner of a Lot shall be entitled to cast one (1) vote for every Lot owned. Votes may be cast in person or by written proxy. Proxies shall be revocable and shall automatically terminate after completion of the meeting for which the proxy was filed. In the event that more than one Person holds fee title to a Lot ("co-owners"), only one such co-owner

shall be entitled to exercise the vote to which the Lot is entitled. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes are prohibited. Where no voting co-owner is designated, or if such designation has been revoked, the vote for such Lot shall be exercised as the majority of the co-owners of the Lot mutually agree. No vote shall be cast for any Lot where the co-owners present in person or by proxy owning the majority interests in such Lot cannot agree to said vote or other action. The nonvoting co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership.

3.8.5.2 Notice of Election. After the Turnover Date, any Owner (or the Declarant merely as a courtesy to the Owners), may call for an election meeting by (i) mailing to all Owners or (ii) posting at each entrance to the Property which are conspicuous and readily accessible to all Owners, a written notice specifying the date, time, location and purpose of the meeting. Such notice shall be mailed or posted not less than (10) and not more than thirty (30) days before the meeting is to be held.

3.8.5.3 Quorum. A quorum for any such meeting shall be the presence in person or by proxy of no fewer than twenty-five percent (25%) of all Owners entitled to cast a vote ("Qualified Owners"). Absent a quorum, the Qualified Owners who are present at the noticed meeting may adjourn the meeting to a date, time and place specified prior to adjournment which is no less than five (5) and no more than thirty (30) days after the time of the noticed meeting. A quorum at such later "adjourned meeting" shall be the presence in person or by proxy of no fewer than ten percent (10%) of all Qualified Owners.

3.8.5.4 Conduct of Meeting. If a quorum is present at any meeting or adjourned meeting, the first item of business shall be the selection of a Director of Election who shall preside over the conduct of the meeting. The Qualified Owners shall act by majority vote of a quorum, except that members of the ARC shall be elected by plurality such that the individual receiving the highest number of votes shall be elected to fill first vacancy, the individual receiving the next highest number of votes shall be elected to fill a second vacancy (if any), and so on.

3.8.5.5 Term of Office. The term of office of each ARC member elected pursuant to this Section 3.8.5 shall be two (2) years, commencing on the date of election and extending until a successor is elected as provided above. Any such ARC member may succeed himself/herself, and there shall be no limit to the number of terms of any such member.

3.8.5.6 Removal. An ARC member may be removed from office at any time and for any reason by an election conducted and noticed pursuant to this Section 3.8.5. However, the ARC member to be removed must be given personal notice by mail or personal services within the time period provided for

notice under Section 3.8.5, and have an opportunity to be heard at the election. Said member may only be removed by a majority of a quorum of Qualified Owners.

3.9 Builder Exemption. Declarant may grant an exemption in writing for the requirements of this Article III to merchant-builders (each being an "Exempt Builder") for a Lot or Lots, until such time as Exempt Builder conveys title to the Lot(s) to a third party.

ARTICLE IV

4. ENFORCEMENT.

4.1 Enforcement. In the event of any claim, dispute or other matter arising under or relating to this Declaration, the Declarant, ARC, or any aggrieved Owner may initiate any appropriate legal or equitable proceeding to enjoin, abate, restrain or otherwise remedy any violation of the Declaration. Prior to the Declarant, ARC or any aggrieved Owner initiating any such proceedings, the aggrieved Owner shall provide written notice of the grievance to the party allegedly responsible for the grievance and the ARC, and if Declarant owns any Lot in the Property, the aggrieved Owner shall provide a copy of the written notice to Declarant. The covenants, conditions, and restrictions contained in this Declaration shall bind and inure to the benefit of and shall be enforceable by each Owner, the ARC, and the Declarant. Neither the ARC or the Declarant shall have the obligation to enforce any of the terms of the Declaration.

4.2 Construction. Owners agree and acknowledge that the resolution and/or enforcement of any and all warranty issues regarding the construction of their Residences shall be governed by the terms and conditions of the warranty documents issued by each Owner's respective homebuilder, including, but not limited to, any mandatory binding arbitration clauses contained in such warranty documents.

ARTICLE V

5. RESERVATION AND GRANT OF EASEMENTS

5.1 Easements. Easements as are necessary for the consistent development of the Property are hereby reserved by Declarant, as such easements shown on the Plat or are otherwise necessary, as determined by Declarant, from time to time. The following specific easements are hereby granted to Declarant and the other parties described below:

5.1.1 Subdivision Sign Easement. Lot 1 is hereby burdened by, and the Property benefitted by, an easement on Lot 1, for the placement of a Property subdivision sign visible from 100 South Street, and reasonable access to such sign for sign maintenance, repair, and replacement. The Owner of Lot 1 is responsible for the maintenance, repair, and replacement of such sign to the standard of other first-class subdivisions located in Davis County, Utah. The Owner of each Lot shall be responsible for 1/23rd of the cost of such maintenance, repair and replacement of such sign for each Lot owned by such Owner, as such costs are reasonably determined by the Owner of Lot 1.

5.1.2 Pressurized Irrigation. Declarant and Gailey hereby grant and convey, any and all easements and other rights in the Property necessary for the installation, maintenance, operation, repair and/or replacement of the pressurized irrigation system contained within the Property, for the benefit and burden of the Property, and to benefit the applicable irrigation company. Each Owner agrees to pay its share of assessments by such irrigation company as required by such irrigation company for such Owner's Lot(s), or if each Lot is not individually assessed, as otherwise divided equitably among the Lots.

5.1.3 Drainage and Detention Area. Declarant and Gailey hereby grant and convey an easement for the installation, maintenance, operation, repair and/or replacement of the improvements in the Public Utility and Drainage Easement and Detention Area, as shown on the Plat, for the benefit and burden of the Property and the public.

5.2 Reservation of Other Easements. Declarant hereby reserves for the benefit of each Owner and such Owner's Lot reciprocal nonexclusive easements over the adjoining Lot or Lots for the control, maintenance and repair of the utilities serving such Owner's Lot. Declarant expressly reserves for the benefit of all the Property, and for the benefit of all the Lots and of the Owners, reciprocal nonexclusive easements over all Lots, for maintenance and repair of utility services, drainage and flow of water from the Lots resulting from the established drainage pattern of adjoining Lots, and maintenance and repair of any Residence. Declarant and the Owners of Lots on which there is constructed a Residence along or adjacent to a Lot line shall have an easement appurtenant to such Owner's Lot over the Lot line of the adjacent Lot for the purposes of accommodating any natural movement or settling of such Residence, any encroachment of such Residence due to minor engineering or construction variances, and any encroachment of eaves, roof overhangs and architectural features comprising parts of the original construction of such Residence located on such Lot.

5.3 No Limitation. This Declaration shall in no way limit the right of Declarant to grant additional licenses, easements, reservations and rights-of-way to itself, governmental or public authorities (including without limitation public utility companies), or to others, as from time to time may be reasonably necessary to the proper development and disposition of each lot within the Property. Each Owner agrees to execute any commercially reasonable documents to further the purposes of this Article V.

ARTICLE VI

6. MISCELLANEOUS

6.1 Severability. The provisions hereof are independent and severable, and a determination of invalidity, or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction does not affect the validity or enforceability of any other provision hereof.

6.2 Interpretation. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community, and any

violation of this Declaration is a nuisance. The Article and Section headings have been inserted for convenience only, and may not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular includes the plural and the plural the singular; and the masculine, feminine and neuter each include the other, unless the context dictates otherwise.

6.3 Amendment or Termination by Declarant. Until the first conveyance of a Lot to a Person other than Declarant, Declarant may unilaterally amend or terminate this Declaration by recording a written instrument signed and acknowledged by Declarant. After the conveyance of a Lot, Declarant may unilaterally amend this Declaration as follows: (a) if advisable or necessary to carry out the development of the Property and the purposes of this Declaration, in Declarant's reasonable discretion; (b) necessary to bring any provision into compliance with any applicable laws, statutes, rules, plans, ordinances, or other agreements governing the Property; (c) necessary to enable any reputable title insurance company to issue title insurance coverage for the Lots; (d) required by an institutional or governmental lender or purchaser of mortgage loans, to enable such lender or purchaser to make or purchase mortgage loans on the Lots; (e) necessary to enable any governmental authority or reputable private insurance company or lender to make insure or purchase mortgage loans on the Lots, Veterans Administration, Federal Housing Administration, Department of Real Estate, Federal National Mortgage Association, Government National Mortgage Association or Federal Home Loan Mortgage Corporation; and/or (f) otherwise necessary to satisfy the requirements of any governmental or quasi-governmental authority or applicable federal, state or local statute, ordinance, and/or law.

6.4 Amendment or Termination by Owners. This Declaration may be terminated or any term herein may be amended by recording a written instrument which effects the amendment or termination, and which has been executed by the then-Owners of at least three-fourths (3/4) of all of the Lots in the Property, and the Declarant (if Declarant has not terminated its rights as provided in Section 1.5).

6.5 No Public Right or Dedication. Nothing contained in this Declaration constitutes a gift or dedication of all or any part of the Property to the public, or for any public use.

6.6 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 Property does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, 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 Property or any portion thereof.

6.7 Additional Disclosures, Disclaimers and Releases of Certain Matters. Without limiting any other provision in this Declaration, by acceptance of a deed to a Lot or possession of a Lot, each Owner (for purposes of this Section 6.7 only, the term "Owner" shall include the Owner, resident, and their respective families, guests and tenants), shall conclusively be deemed to have purchased its Lot "AS-IS" with respect to the Declarant and Gailey and this Declaration, with no express or implied representations regarding the condition of the Property,

including that each Owner specifically understands, and acknowledges and agrees to, all of the following, without limitation:

6.7.1 Residential subdivision and new home construction are subject to and accompanied by substantial levels of noise, dust, construction-related traffic and traffic restrictions, and other construction-related "disturbances." Each Owner acknowledges and agrees that it is purchasing a Lot and/or Residence which is within a residential subdivision currently being developed, and that the Owner will experience and accepts substantial levels of construction-related "disturbances" until the subdivision, and any neighboring or nearby land, have been completed and sold, and that such construction-related "disturbances" are not a violation of any restriction herein;

6.7.2 The Property is or may be located adjacent to or nearby a religious center and subject to levels of traffic, sound, noise and other disturbances resulting from proximity to such religious center;

6.7.3 The Property is adjacent and to the east of Gailey Park, a regional City park, and subject to levels of noise, traffic, damage from baseballs or other balls, and other disturbances associated with parks and park landscaping, and recreational use of the Park;

6.7.4 The Property is or may be located adjacent to or nearby neighboring commercial and/or industrial uses and subject to levels of traffic, sound, noise and other disturbances resulting from proximity to such commercial and industrial uses;

6.7.5 The Property is or may be located immediately adjacent to or nearby major roadways and subject to levels of traffic, noise, dust, and other disturbances from such roadways and vehicles;

6.7.6 The Property is or may be located adjacent to or nearby a school, and subject to levels of noise, dust, and other disturbances resulting from proximity to such school or otherwise related to such school;

6.7.7 The Lot and other portions of the Property are or from time to time may be located within or nearby certain airplane flight patterns, and/or subject to significant levels of airplane traffic and noise;

6.7.8 The Property is or may be located adjacent to or nearby a storm drain detention basin(s), such as located within Gailey Park, or channel(s) and may be subject to certain disturbances resulting from proximity to such detention basin(s) or channel(s);

6.7.9 The Property is or may be subject to certain utility and other easements, and may be subject to disturbances associated with the use and maintenance of these facilities; and

6.7.10 The Property is subject to a land drain system, which is designed to lower the water table on the Property and facilitate basement construction upon an Owner obtaining appropriate design and engineering plans and approvals for such basement.

By acceptance of a deed to a Lot, each Owner, for itself and all Persons claiming under such Owner, shall conclusively be deemed to have acknowledged and agreed: (a) that Declarant specifically disclaims any and all representations and warranties, express and implied with regard to any of the foregoing disclosed or described matters (other than to the extent expressly set forth in the foregoing disclosures); and (b) to fully and unconditionally release Declarant and the ARC, and their respective officers, managers, agents, employees, suppliers and contractors, from any and all loss, damage or liability (including, but not limited to, any claim for nuisance or health hazards) related to or arising in connection with any disturbance, inconvenience, injury, or damage resulting from or pertaining to all and/or any one or more of the conditions, activities, and/or occurrences described in the foregoing portions of this Declaration.

6.8 Duration. This Declaration shall have perpetual duration. If Utah law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive 20-year periods unless terminated as provided above.

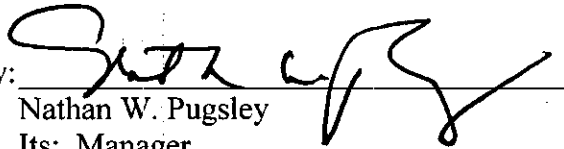
6.9 Exemption of Declarant. Each Lot owned by Declarant is exempt from all provisions of this Declaration, until such time as Declarant conveys title of such Lot to a third party. All activities of Declarant, or its respective agents or representatives, in connection with or incidental to its improvement, development, or sales and marketing activities regarding the Property, shall be exempt from all provisions of this Declaration, so long as any Lot is owned by Declarant.

[End of Text]

IN WITNESS WHEREOF, Declarant and Gailey have executed this Declaration effective as of the date last signed below.

DECLARANT:

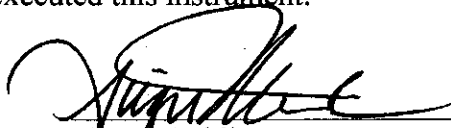
BRIGHTON HOMES UTAH LLC,
a Delaware limited liability company

By: 
Nathan W. Pugsley
Its: Manager

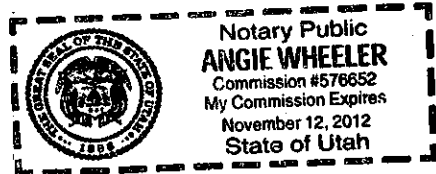
Date: 9-21-10

STATE OF UTAH)
)ss.
County of Davis)

On the 21 day of September 2010, personally appeared before me Nathan W. Pugsley who being by me duly sworn did say that he, Nathan W. Pugsley is the Manager of Brighton Homes Utah LLC that executed this instrument.



Notary Public
Residing at: Bountiful, Ut
My Commission Expires: 11-12-12



GAILEY:

HAROLD GAILEY FAMILY LIMITED PARTNERSHIP

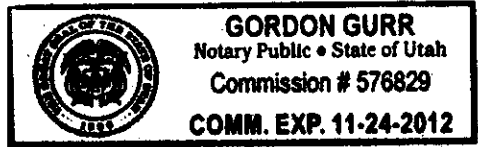
By: John B. Gailey
John B. Gailey
Its: General Partner

Date: 9-22-10

STATE OF UTAH)
)ss.
County of Davis)

On the 22nd day of September, 2010, personally appeared before me John B. Gailey who being by me duly sworn did say that he, John B. Gailey is the General Partner of Harold Gailey Family Limited Partnership that executed this instrument.

Gordon Gurr
Notary Public
Residing at:
My Commission Expires:



LENDER CONSENT:

BANK OF UTAH

By: [Signature]

Its: VP/manager

Date: 9-22-10

STATE OF UTAH)
Weber)ss.
County of Davis)

On the 22 day of September 2010, personally appeared before me Steve Diamond who being by me duly sworn did say that VP Vice President Steve Diamond is the Vice President of Bank of Utah that executed this instrument.

Rebecca Poll
Notary Public
Residing at: Ogden, Utah
My Commission Expires: 11/27/2011

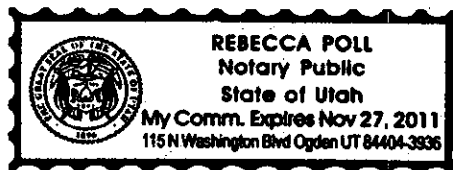


EXHIBIT A
Property

Lots 11, 12, 17, 18, 19, 20, 21, 22 and 23, HOMESTEAD AT GAILEY PARK, according to the Official Plat thereof as recorded August 27, 2010, as Entry No. 1548879, in the Office of the Davis County Recorder, State of Utah.

Proposed Homestead at Gailey Park - Phase 2, more particularly described as follows:

BEGINNING AT A POINT being South $00^{\circ}01'23''$ West 591.00 feet along the west line of Block 13, Plat G, Kaysville Townsite Survey, as recorded and on file in the Office of the Davis County Recorder, and North $80^{\circ}01'23''$ East 425.38 feet from the Northwest Corner of said Block 13, said point also being North $00^{\circ}54'52''$ East 223.63 feet along the section line and North $90^{\circ}00'00''$ East 2209.16 feet from the Southwest Corner of Section 34, Township 4 North, Range 1 West, Salt Lake Base and Meridian, said point also being the northeasterly corner of Phase 1 "Homestead at Gailey Park" subdivision, and running thence North $80^{\circ}01'23''$ East 202.22 feet; thence North $09^{\circ}00'37''$ West 342.53 feet; thence South $89^{\circ}32'40''$ East 177.75 feet to a point on a 172.50 foot radius non-tangent curve to the left (whose radius point bears North $71^{\circ}04'49''$ West); thence 55.59 feet along the arc of said curve through a central angle of $18^{\circ}27'51''$; thence North $00^{\circ}27'20''$ East 84.86 feet to the south line of 100' South Street; thence along said south line South $89^{\circ}32'40''$ East 124.74 feet to the extension of an old fence line; thence leaving said south line and running along said old fence line the following 2 courses; South $01^{\circ}23'02''$ West 273.80 feet and South $06^{\circ}58'45''$ East 217.56 feet to the northerly boundary line of "Happy Homes" subdivision; thence along said subdivision boundary the following 2 courses; South $60^{\circ}30'40''$ West 215.06 feet and South $64^{\circ}36'25''$ West 246.87 feet to the southeasterly corner of Phase 1 "Homestead at Gailey Park" subdivision; thence along said subdivision boundary North $22^{\circ}10'29''$ West 158.44 feet and North $09^{\circ}58'37''$ West 45.00 feet to the POINT OF BEGINNING; Containing 3.940 acres