

When Recorded Return To:
Heritage Village Homes, LLC
1116 South 730 West
Payson, UT 84651

ENT 120215:2018 PG 1 of 11
Jeffery Smith
Utah County Recorder
2018 Dec 20 04:02 PM FEE 155.00 BY MG
RECORDED FOR Miller Harrison LLC
ELECTRONICALLY RECORDED

**FIRST AMENDMENT TO THE AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
HERITAGE VILLAGE**

An Age Restricted Community Operated for Residents 55 Years of Age and Older

This First Amendment to the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Heritage Village ("**First Amendment**") is effective when recorded in the office of the Utah County Recorder by the Declarant.

RECITALS

- A. The *Declaration of Covenants, Conditions, and Restrictions for Heritage Village* was recorded with the Utah County Recorder's Office on May 12, 2008 as Entry No. 55798:2008.
- B. The *Amended and Restated Declaration of Covenants, Conditions and Restrictions for Heritage Village* was recorded with the Utah County Recorder's Office on August 14, 2013 as Entry No. 78151:2013 ("**Declaration**").
- C. The *Supplement to the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Heritage Village* was recorded with the Utah County Recorder's Office on August 16, 2018 as Entry No. 77689:2018.
- D. The *Notice of Reinvestment Fee Covenant* was recorded with the Utah County Recorder's Office on August 16, 2018 as Entry No. 77690:2018.
- E. The *Amended Supplement to the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Heritage Village* was recorded with the Utah County Recorder's Office on August 28, 2018 as Entry No. 82078:2018.
- F. This First Amendment affects the real property located in Utah County, described with particularity on Exhibit A, which exhibit is attached hereto and incorporated herein by reference.
- G. While it is intended for the Declaration to serve as a binding contract between the Association and each Owner, nothing in the Declaration or this First Amendment is intended to create a contractual relationship between Declarant and the Association or Declarant and any Owner, or to inure to the benefit of any third-party. Additionally, it is not intended that the Declaration be read in conjunction with any deed or real estate purchase contract to create privity of contract between Declarant

and the Association.

H. Bastian Homes, LLC has assigned and transferred all of its rights and obligations as the Declarant under the terms of the Declaration to Heritage Village Homes, LLC.

I. Heritage Village Homes LLC is the Declarant at the time of the recording of this First Amendment and is fully authorized to execute this First Amendment.

J. Pursuant to Section 13.1.4 of the Declaration, the Declarant has the unilateral right to amend the Declaration, so long as Declarant owns any Lot within the Project.

K. The undersigned hereby certifies that this First Amendment was approved by the Declarant pursuant to its unilateral amendment power arising from Declarant's ownership of multiple Lots in the Project at the time of the adoption and recording of this First Amendment.

L. Unless otherwise designated, the capitalized terms in this First Amendment shall have the same meaning as such terms are defined in the Declaration.

AMENDMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, the Declarant hereby executes this First Amendment, which shall be effective as of its recording date with the Utah County Recorder.

- (1) **Amendment No. 1.** Section 1.25 shall be added to the Declaration as follows:

1.25 Declarant

Declarant shall mean Heritage Village Homes, LLC, a Utah limited liability company, and any successor in interest.

- (2) **Amendment No. 2.** Section 7.2 shall be deleted in its entirety and replaced by the following:

7.2 Declarant's Exemption From Assessments

Anything contained in the Governing Documents to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Lot owned by it until such time as the Declarant elects in writing to pay Assessments, and only for so long as the Declarant elects to pay Assessments. In addition, the Declarant may exempt Lots owned by Declarant affiliates from the payment of Assessments During the Period of Declarant Control, in the Declarant's sole discretion.

- (3) **Amendment No. 3.** Section 10.1 shall be deleted in its entirety and replaced by the following:

10.1 Administrative Control

Declarant shall have the right to act as the Board of Directors or appoint Board Members during the Period of Declarant Control. The "Period of Declarant Control" shall mean a period of time commencing on the date the Declaration was recorded and terminating on the occurrence of the earliest of the following events: (i) six (6) months after the date on which all of the Lots and all of the Additional Land, have been conveyed to Persons other than Declarant or its successors, assigns, and affiliates, regardless of whether such Additional Land has been added hereto; or (ii) the Declarant executes and records a written waiver of its right to control the Association. The special Declarant rights contained within this Declaration may last beyond the Period of Declarant Control for the maximum length permitted by law. If the Declarant elects to waive one or more, but not all, of its special Declarant rights, then all special Declarant rights not waived shall remain in full force and effect.

- (4) **Amendment No. 4.** Section 10.2 shall be deleted in its entirety and replaced by the following:

2. Other Declarant Rights

The following rights shall remain in effect during the entire Period of Declarant Control, or for the maximum period allowed by law, whichever is longer:

- 2.1. the right to construct any improvement shown on the Plat or included in the Project;
- 2.2. the right to expand the Project through the annexation of Additional Land, or to withdraw land from the Project;
- 2.3. the right to maintain sales offices, model Living Units, and for sale signs advertising the Project or any Living Unit at any location in the Project;
- 2.4. the right to use easements through the Common Areas as set forth in this Declaration;
- 2.5. the right to create or designate additional Common Area or Limited Common Area within the Project;
- 2.6. the exclusive right to act as the Board of Directors, or appoint or remove Board Members in Declarant's sole discretion;
- 2.7. unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents;
- 2.8. the right to set all assessments for the Association including annual, special, and individual assessments;
- 2.9. the right to set all fines and fees for the Association including but not limited to collection fees, reinvestment fees, architectural review fees, and fines for violations of Association Rules;
- 2.10. the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration;

- 2.11. the unilateral right to amend any Governing Document of the Association, so long as Declarant owns one or more Lots in the Project;
- 2.12. the right to make and adopt Association Rules without being subject to the requirements of Utah Code § 57-8a-217; and
- 2.13. pursuant to Utah Code § 57-8a-211(10), Utah Code § 57-8a-211(2) through (9), shall not apply or have any effect during the Period of Declarant Control, and the Declarant shall have no duty whatsoever to obtain a Reserve Analysis, or to fund any Reserve Fund during the Period of Declarant Control.

Neither the Association nor any Owner may take any action or adopt any Rules that interfere or diminish the Declarant rights contained in the Declaration without Declarant's prior written consent. The Declarant may transfer, convey, or assign its rights created or reserved under this Declaration to any Person in whole or in part. The Declarant's successor shall enjoy any and all Declarant rights set forth in the Declaration regardless of whether such rights are stated to be transferable. All references in the Governing Documents to Declarant shall equally apply to its successor. A contract transferring the Declarant's rights may, but shall not be required to, be recorded in the office of the Utah County Recorder.

- (5) **Amendment No. 5.** Section 12.10 shall be added to the Declaration as follows:

12.10 Flood Insurance

Portions of the Project may be located within a FEMA flood zones. The designation of FEMA flood zones may change after the recording of this Declaration. Owners shall be responsible for the payment of all flood insurance premiums for their Lot or Living Unit. The Association shall not be responsible for obtaining or paying for any flood insurance for Owner's Living Units.

- (6) **Amendment No. 6.** Article 15 shall be added to the Declaration as follows:

15 DISPUTE RESOLUTION

1. Alternative Dispute Resolution Without Litigation

1.1. Bound Parties. The Declarant; the Association; the Owners; the officers, directors, managers, members, employees, representatives, agents, successors and assigns of any of the foregoing; any other person subject to this Declaration; and any other person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all Bound Parties to encourage the amicable resolution of Claims without the emotional and financial costs of litigation or the toll or market taint such litigation can have on the value of the Project and/or the Lots that may be involved or impacted. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim defined in subsections 15.1.2 and 15.1.3, unless and until it has first submitted such Claim to

the alternative dispute resolution procedures set forth in Section 15.2 in a good faith effort to resolve such Claim.

1.2. Claims. As used in this Article, the term "Claim" means any claim, grievance, or dispute arising out of or relating to:

1.2.1. the interpretation, application, or enforcement of the Governing Documents;

1.2.2. the rights, obligations, and duties of any Bound Party under the Governing Documents; or

1.2.3. the design or construction of improvements on the Project, other than matters of aesthetic judgment to be determined by the Board under the Design Guidelines and other provisions hereof, which shall not be subject to review and shall not be subject to this Article.

1.3. Exclusion from Definition of Claims. The following shall not be considered "Claims" unless all Parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 15.2:

1.3.1. any suit by the Association to collect assessments or other amounts due from any Owner;

1.3.2. any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's architectural standards;

1.3.3. any suit that does not include the Declarant, any affiliate of the Declarant, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

1.3.4. any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 15.2;

1.3.5. any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 15.2.1, unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article;

1.3.6. any suit or dispute between the Declarant or an affiliate of Declarant and a builder, developer, contractor(s), subcontractor(s), or any other party contracted by the Declarant or an affiliate of the Declarant in connection with the development of the Project; and

1.3.7. any suit or dispute involving a governmental entity as a party.

Dispute Resolution Procedures

15.2.1 Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

1.3.8. the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

1.3.9. the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

1.3.10. the Claimant's proposed resolution or remedy;

1.3.11. that the person alleged to be responsible for the acts giving rise to the Claim shall have six (6) months to cure or resolve the Claim; and

1.3.12. the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

1.2. Right to Cure. For any Claim arising from a dispute over the construction of improvements within the Project, the Claimant shall provide Respondent six (6) months to rectify alter, or fix the claimed defect(s) in the improvements. The expiration of this six-month cure period shall be a prerequisite to Claimant's ability to initiate litigation as permitted under Section 15.3 below. For all Claims involving alleged defects in construction, the negotiation, mediation, and settlement requirements shall remain in effect during the cure period, however, the mediation deadline set forth in subsection (d) below shall be extended to expire on the same date the cure period expires.

1.3. Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

1.4. Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an individual or entity designated by the Association (if the Association is not a party to the Claim) or to an independent mediator providing dispute resolution services predominately in Utah. Each Bound Party shall present the mediator with a written summary of the Claim or will otherwise comply with the mediator's proscribed procedures and requirements for mediating claims.

1.4.1. Waiver of Claim for Failure to Appear or Participate. If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

1.4.2. Termination of Mediation Proceedings. If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

1.4.3. Costs of Mediation. Each Bound Party shall bear its own costs of the mediation, including attorney fees, and each Party shall pay an equal share of the mediator's fees.

1.5. Settlement. Any Claim settlement through negotiation or mediation shall be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate such proceedings as are necessary to enforce such agreement without the need to comply again with the procedures set forth in this Article. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorney fees and court costs.

2. **Initiation of Litigation by Association**

The requirements of this Section are intended to be in addition to those requirements set forth in § 57-8a-229 of the Act. After expiration of the Period of Declarant Control the Association may not bring a legal action against a Declarant, a Board of Directors, an employee, an independent contractor, an agent of the Declarant, or the previous Board of Directors related to the Period of Declarant Control unless:

- 2.1. the Right to Cure period set forth in Section 15.2.2 above has expired;
- 2.2. the legal action is approved in advance at a meeting by Owners holding more than 50% of the total allocated voting interests of the Owners in the Association:
 - 2.2.1. Owners may be represented by a proxy specifically assigned for the purpose of voting to approve or deny the proposed legal action at the meeting. Any such proxy shall not be valid unless the proxy is notarized with each Owner certifying that they have received and reviewed the information required by Section 15.4.1 and 15.4.2 below.
- 2.3. the Association provides each Owner with the items described in Section 15.4.1 and 15.4.2 below;
- 2.4. the Association establishes a trust account, described in Section 15.4.3 below; and
- 2.5. the Association first goes through the procedures described in Section 15.2 above, giving notice and an opportunity to resolve the dispute that is the basis of the Claim and proposed legal action.
- 2.6. The procedures and approval required in the preceding subsections 15.3.1 through 15.3.5 shall not be required for actions or proceedings:
 - 2.6.1. initiated by Declarant during the Period of Declarant Control on behalf of the Association;
 - 2.6.2. initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
 - 2.6.3. initiated to challenge ad valorem taxation or condemnation proceedings (including bringing an action for inverse condemnation);

2.6.4. initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

2.6.5. to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended without the written consent of the Declarant for a period of 10 years following the expiration of the Period of Declarant Control. Any such amendment shall also be approved by a vote of at least 67% of the total votes of the Association.

3. Informed Vote

Before the Owners, as Members of the Association may vote to approve the filing of a legal action for a Claim, the Association shall first provide each Owner with:

3.1. A written notice stating:

3.1.1. that the Association is contemplating legal action;

3.1.2. the percentage vote required for approval of the litigation;

3.1.3. the date, time, and location of any Member meeting that has been scheduled to discuss the litigation or to vote on the approval of the litigation;

3.1.4. a description of the claims that the Association desires to pursue in sufficient detail to permit each Member to reach an informed decision on the litigation matter; and

3.2. A written report from an attorney licensed to practice in Utah, which provides an assessment of:

3.2.1. The likelihood that the legal action will succeed;

3.2.2. The likely amount in controversy in the legal action;

3.2.3. The likely cost of resolving the legal action to the Association's satisfaction; and

3.2.4. The likely effect the stigma of a legal action will have on value or on an Owner's ability to market for sale, or a prospective Lot buyer's ability to obtain financing for a Lot due to a pending legal action.

3.2.5. In providing this report, the attorney shall obtain and rely on reports and assessments from experts in their field such as construction, real property, sales, or any other relevant factor in the contemplated litigation.

3.3. Before the Association commences any legal action as authorized above, the Association shall:

3.3.1. allocate an amount equal to 25% of the cost estimated to resolve the Claim not including attorney fees; and

3.3.2. place the 25% allocated funds in a trust account that the Association may only use to pay the costs to resolve the Claim.

Sections 15.3 and 15.4 do not apply if the Association brings a legal action that has an amount in controversy of less than \$25,000.00.

15.5. Strict Compliance Required

Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions in this Article. The Bound Parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant Party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Article, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. If any claims or actions falling within the scope of this Article are filed without satisfying all of the requirements set forth above, such claims or actions shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied.

15.6 Owner Warranties

The Declarant may provide certain warranties to the Owners related to a Lot purchased. The first Owner of a Lot to whom any warranty is issued, or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the Declarant of any terms of the warranty, and only consistent with the warranty itself. The Association shall have no right to seek the performance of or take assignment of any rights in any warranties against the Declarant, and the Owner shall have no right to assign any rights of any kind to the Association related to pursuing litigation against the Declarant.

15.7 Unless specifically set forth in this Declaration, no action may be brought by the Association, its Board of Directors, or its Officers on behalf of an Owner, as its respective interest may appear, with respect to any cause of action against the Declarant relating to the Common Areas and facilities.

15.8 ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS ARTICLE AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE.

15.9 The dispute resolution restrictions contained in this Article shall not be amended, altered, or eliminated from the Declaration without the written consent of the Declarant for a period of 10 years after the expiration of the Period of Declarant Control

(7) **Conflicts**. All provisions of the Declaration not specifically amended in this First Amendment shall remain in full force and effect. In the case of any conflict between the provisions of this document and the provisions of the Declaration or any prior amendments, the provisions of this document shall in all respects govern and control.

(8) **Incorporation and Supplementation of Declaration**. This document is supplemental to the Declaration, which by reference is made a part hereof, and all the terms, definitions, covenants, conditions, restrictions, and provisions thereof, unless specifically modified herein, are to apply to this document and are made a part hereof as though they were expressly rewritten, incorporated, and included herein.

(9) **Effective Date.** This Supplemental Declaration shall take effect upon being recorded with the Utah County Recorder.

* * * *

IN WITNESS WHEREOF, the Declarant has executed and adopted this First Amendment.

DATED as of the 17 day of DECEMBER, 2018.

DECLARANT
HERITAGE VILLAGE HOMES LLC
A Utah Limited Liability Company

By: [Signature]

Name: BYRON BASTIAN

Title: President

STATE OF UTAH)
) ss.
COUNTY OF Utah payson

On the 17 day of de cember, 2018, personally appeared before me Byron Bastian who by me being duly sworn, did say that she/he is an authorized representative of Heritage Village Homes LLC, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

[Signature]
Notary Public

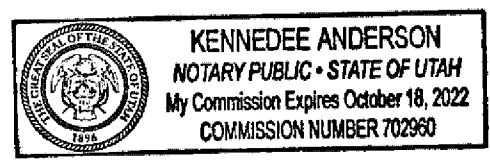


EXHIBIT A
(Legal Description)

All of **Heritage Village Plat "B"**, according to the official plat on file in the office of the Utah County Recorder as Entry Number 78150:2013.

Parcel Numbers: 41:776:0001 through 41:776:0051

All of **Heritage Village Plat "D"**, according to the official plat on file in the office of the Utah County Recorder as Entry Number 19667:2016.

Parcel Numbers: 41:824:0052 through 41:824:0093

All of **Heritage Village Plat "E"**, according to the official plat on file in the office of the Utah County Recorder as Entry Number 77687:2018.

Parcel Numbers: 41:906:0094 through 41:906:0117