

WHEN RECORDED, RETURN TO:

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**SECOND AMENDED AND RESTATED
DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HERITAGE VILLAGE
(INCLUDING BYLAWS)**

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

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THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereafter "Declaration") is made on the date evidenced below by the Heritage Village Homeowners Association (hereafter "Association").

RECITALS

A. The property subject to this Declaration is the Heritage Village subdivision in Utah County, State of Utah. **Exhibit A** of this Declaration further defines the property subject to this Declaration. All Lots therein are part of the Association and each Owner of a Lot is a member thereof. The Association is created as a planned unit development and contains certain Common Area, Limited Common Area and easements for the benefit of the Owners of Lots therein.

B. The Association desires to continue to provide for the preservation and enhancement of the property values and improvements of the Property and for maintenance of the Common Area.

C. This Second Amended and Restated Declaration of Covenants, Conditions and Restrictions supersedes and replaces all prior declarations, and amendments or supplements thereto, recorded against the subdivision, specifically the Amended and Restated Declaration of Covenants, Conditions and Restriction for Heritage Village, Plats B and D recorded August 14, 2013, as Entry No. 75151:2013, records of the Utah County Recorder, State of Utah (the "Original Declaration"). All Owners, guests, invitees, agents, and residents shall abide by the provisions of this Declaration.

D. AS MORE SPECIFICALLY SET FORTH IN ARTICLE VIII OF THIS DECLARATION, IT IS INTENDED THAT THE PROJECT BE AN AGE RESTRICTED COMMUNITY OF INDIVIDUALS AGE 55 AND OVER. THE PROJECT SHALL BE CONSTRUCTED, MARKETED, MANAGED, AND MAINTAINED IN ACCORDANCE WITH THE PROVISIONS OF THE FEDERAL FAIR HOUSING ACT AND ITS EXEMPTIONS FROM DISCRIMINATION BASED ON FAMILIAL STATUS FOR HOUSING FOR OLDER PERSONS. THE PROJECT SHALL BE ADVERTISED AND PROMOTED AS AN "AGE RESTRICTED" OR "ADULT COMMUNITY"; SHALL HAVE AT MINIMUM 80% OF THE OCCUPIED UNITS OCCUPIED BY AT LEAST ONE PERSON AGE 55 OR OLDER; AND SHALL ESTABLISH REASONABLE MEANS OF VERIFYING AGE AND COMPLIANCE WITH THE FEDERAL FAIR HOUSING ACT;

E. Pursuant to Utah Code § 57-8a-104 and Article XIII, Section 13.1 of the Original Declaration, at least 67% of all Owners of the Association have voted affirmatively to adopt this Declaration.

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

ARTICLE I - DEFINITIONS

The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

- 1.1** “**Act**” shall mean the Utah Community Association Act, Utah Code, Title 57, Chapter 8a, as the same shall be amended from time to time.
- 1.2** “**Articles**” mean the Articles of Incorporation for Heritage Village Homeowners Association, as amended from time to time.
- 1.3** “**Association**” means and refers to the Heritage Village Homeowners Association. It is intended that the Association be a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in dissolution of the Association. The Association may renew its corporate status, reinstate its corporate status, or incorporate without Owner approval. As long as the Association obtains the proper vote, any actions taken during any period of un-incorporation shall be binding.
- 1.4** “**Board**” or “**Board of Directors**” means and refers to the governing body of the Association.
- 1.5** “**Bylaws**” means the Bylaws of the Association (initially attached hereto as **Exhibit B**), as they may be amended from time to time.
- 1.6** “**City**” means Payson City.
- 1.7** “**Common Area**” means the parking areas, open space, all areas around the Living Units; clubhouse, and any other areas shown on the Map as Common Area. The Common Area may consist of landscaping, irrigation equipment, and other improvements. The Association owns all Common Area.
- 1.8** “**Common Expenses**” means all monies spent to administer, maintain, or replace the Common Areas; expenses agreed upon as common expenses by a majority of a quorum of Owners; expenses authorized by the Governing Documents or the Community Association Act as common expenses; any other expenses necessary for the common benefit of the Owners.
- 1.9** “**Community Association Act**” shall mean Utah Code §§57-8a-1 *et seq.*, as amended or replaced from time to time.
- 1.10** “**Declaration**” means this document, as amended, annexed, supplemented, or restated from time to time.
- 1.11** “**Director**” means a member of the Board.
- 1.12** “**Good Standing**” shall mean that the Member is in compliance with all obligations under this Declaration and the Governing Documents. An Owner is deemed in “Good Standing” if they have worked out a resolution with the Board despite not yet being in full compliance with any given issue.

1.13 “Governing Documents” means Declaration, Bylaws, Articles of Incorporation, Map, and rules and regulations.

1.14 “Housing for Older Persons Act” aka “HOPA” means the Housing for Older Persons Act, 42 U.S.C. §§ 3601, *et seq.*, and 24 CFR part 100, subpart E, as such codes and rules shall exist at any given time.

1.15 “Living Unit” means a structure which is designed and intended for use and occupancy as a single-family residence.

1.16 “Limited Common Areas” include, without limitation, driveways, patios and walkways accessing Living Units.

1.17 “Lot” means the separately numbered parcel of property as shown on the Map—a geographical area. Lots that are developed include: The Living Unit thereon, Common Areas, Limited Common Areas, and extends to all utilities exclusively servicing the Lot whether located under or over the Common Areas. The size of a Lot will be shown on the Map.

1.18 “Map” or “Plat” or “Plat Map” (these terms may be used interchangeably herein) Map means the plat map for Heritage Village Subdivision Plats "B" (being a vacation and re-subdivision of Heritage Village Subdivision Plat "A") and "D," on file with the Utah County Recorder and any amendments or supplements thereto or any plat maps recorded for additional phases.

1.19 “Member” means the Owner of record. If an Owner is not a natural person, the Owner may designate in writing to act as its representative. If no representative is designated, then an officer, trustee, director, manager, or member as shown in the entity’s formative documents shall be its representative.

1.20 “Nonprofit Act” means Utah Code §§ 16--6a-101 *et seq.*, as amended or replaced from time to time.

1.21 “Owner” means the owner of the fee in a Lot. If a Lot is subject to an executory purchase contract, the contract purchaser shall be considered the Owner. However, the seller and buyer may otherwise agree but must inform the Board in writing of the alternative arrangement.

1.22 “Person” means an individual, corporation, partnership, association, trustee, or other legal entity.

1.23 “Project” means the Heritage Village Subdivision, as shown on the Map. The project includes the land, buildings, improvements and structures, easements, rights, appurtenances, and articles of personal property intended for use in connection therewith. **Exhibit A** contains the legal description for the Project.

1.24 “Resident” means any Person living at the Project. Residents include without limitation: Owners and family members of Owners as defined in 1.14, 8.1 and 8.2.

1.25 “Rules and Regulations” means and refers to those rules and regulations adopted by the Board from time to time, consistent with the Act, that are deemed necessary by the Board for the enjoyment of, or furthering the purposes of, the Property and Association.

ARTICLE II – SUBMISSION

The Project is submitted to be bound by the Governing Documents, to provisions of the Community Association Act, HOPA, and to the Nonprofit Act. All Owners shall take title subject to the Governing Documents, Community Association Act, and Nonprofit Act. All Residents and other users of the Project shall be subject to the Governing Documents and Community Association Act.

ARTICLE III - PROPERTY RIGHTS IN LOTS

3.1 Use and Occupancy.

Except as otherwise expressly provided in the Governing Documents, the Owner of a Lot shall be entitled to the exclusive use and benefit of such Lot and Living Unit. Each Lot shall be bound by, and the Owner shall comply with the Governing Documents for the mutual benefit of the Owners.

3.2 Easements Reserved.

In addition to the easements shown on the Map or provided for under this Declaration, the Bylaws or law, the following easements are hereby reserved for the benefit of the Owners and the Association:

3.2.1 **Right of Entry.** The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot (Living Unit not included) for the purpose of performing maintenance and determining whether or not the Lot is in compliance with the Governing Documents. No such entry shall be deemed to constitute a trespass or otherwise create any right of action by the Owner of such Lot. The right of entry granted by this subsection applies to all Lots which the Association has maintenance responsibilities as provided for in the Governing Documents.

3.2.2 **Utility-** If a utility line services or benefits a single Lot and is in needs of repair, the Owner shall be responsible for all costs to fix. Any utility line that services more than one Lot shall be the responsibility of the Association, except for those which a public authority or utility provider is responsible.

3.3 Easements Shown on the Map.

Lots shall be subject to the easements shown on the Map as recorded with Utah County.

ARTICLE IV – PROPERTY AND USE RIGHTS IN COMMON AREA

4.1 Member's Right of Enjoyment

4.1.1 The Project will have Common Areas as designated on the Map for the benefit of all owners. Every member of the Association shall have a non-exclusive right and easement for the use, benefit and enjoyment in and to the Common Area and such nonexclusive right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the restrictions herein set forth.

4.1.2 Subject to the Governing Documents, each Resident, guest, or invitee has the right to ingress and egress across the Common Areas necessary for access to his Lot and Living Unit. The rights described in this Section are appurtenant to and pass with title to the Lot.

4.1.3 No portion of the Common Area may be used exclusively by any Owner for personal gardens, storage facilities, or for any other purpose without written approval from the Board.

4.2 Delegation of Right of Use.

Any member of the Association may delegate its rights to the use and enjoyment of the Common Area to Residents, all subject to such reasonable rules and regulations which the Association may adopt.

4.3 Subdivision of Common Area

The Common Area shall not be subdivided or removed from the Project.

4.4 Compliance with Covenants and Restrictions and Rules and Regulations.

Each Owner and Resident shall comply with the covenants and restrictions imposed by this Declaration on the use and enjoyment of the Common Area. Further, each Owner and Resident shall fully and faithfully comply with the rules, regulations and restrictions applicable to use of the Common Area, as such rules, regulations and restrictions are from time to time adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Area.

ARTICLE V - MAINTENANCE OBLIGATIONS

5.1 Association Responsibility.

The Association shall supervise, manage, operate, examine, insure, inspect, care for, repair, replace, restore and maintain the Common Areas. The Association shall also maintain any internal pathways, the landscaped median, the entry feature, project signage, decorative columns, and fencing within the Project (except as provided in Section 5.2), whether or not part of the Common Areas and regardless of whether maintenance is required because of an act of God.

The Board, after notice and opportunity for hearing, or in the case of an emergency, may assume the maintenance responsibility over a Lot if, in the opinion of the Board, the Owner is unwilling or unable to adequately provide such maintenance. Should the Board exercise its right under this provision, it shall not be liable for trespass or nuisance and shall have the right to levy an Individual Assessment to recover its maintenance costs.

5.2 Owner Responsibility.

All maintenance, repair, and replacement of the Living Units and Limited Common Areas shall be the sole responsibility of the Owner thereof, who shall maintain such Living Unit in good repair and in accordance with the Governing Documents of the Association. Maintenance, repair, and replacement responsibility includes, but is not limited to, the driveway and walkways accessing the Living Unit, with the exception that the Association shall provide snow removal. If an owner fences the rear yard area of his Lot, as approved in writing by the Board, the Owner shall be responsible to maintain, repair, and replace all landscaping and improvements within the fenced area, and the fence. Any trees within the Owner's rear yard are the sole responsibility of the Owner to maintain. Furthermore, any porches or patios are the sole responsibility of the Owner for maintenance and repair. The sidewalk approaching the Living Unit is deemed the Owners' responsibility to maintain. The landscaping improvements made by the Owner within the curbed area are the Owner's responsibility. All open areas outside of the Living Unit shall maintain their Common Area and Limited Common Area designations as set forth on the Plat.

ARTICLE VI – ARCHITECTURAL CONTROL

6.1 Architectural Standards and Guidelines.

6.1.1 Except for initial construction and initial landscaping, or an Owner's day-to-day landscape maintenance or minor plantings within curbed areas, (e.g. shrubs, flowers and the like, however, a tree is not a minor planting) any changes to the exterior appearance of Living Unit, any addition or modification to a Lot shall require the prior written approval of the Board and shall comply with the Restated and Amended Development Agreement for Heritage Village, unless a variance is granted by the City.

6.1.2 When repairing, restoring, replacing, remodeling or redecorating the exterior of a Living Unit, the Owner shall use materials and colors that are approved in writing by the Board.

6.2 Waiver, Precedent, Estoppel.

Approval or disapproval by the Board of any requested architectural change shall not be deemed to constitute precedent, waiver, or estoppel impairing its right to withhold approval or grant approval as to any similar matter thereafter proposed or submitted to it.

6.3 Noncompliance.

Any construction, alteration, or other work done in violation of this Declaration shall be deemed to be in noncompliance. The Board, at its discretion may record a Notice of Noncompliance on the offending property. Upon receipt of a Notice of Noncompliance, Owners shall, at their own

cost and expense, remove such non-conforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work. Should an Owner fail to act as required hereunder, the Board or their designee, without liability for trespass or nuisance, shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the change. All costs incurred by the Association shall be an Individual Assessment.

6.4 Liability.

The Board shall not be liable to any Owner, occupant, builder or other person for any damage, loss or prejudice suffered or claimed on account of any action or failure to act, provided only that the Board has acted in good faith based on the actual knowledge possessed by it. The Board is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the Owner.

6.5 Additional Guidelines.

The Board may, from time to time, adopt additional architectural guidelines consistent with the then existing guidelines and general exterior aesthetic of the Project.

ARTICLE VII - ASSESSMENTS

7.1 Covenant for Assessment.

By accepting a deed or other conveyance, each Owner covenants and agrees to pay the Association all regular assessments, special assessments, supplemental assessments, individual assessments, late penalties, and collection costs (including attorney's fees) whether or not a lawsuit is commenced. No Owner may exempt themselves from liability for assessments by abandonment of their Lot, failure of the Association to maintain the Common Areas, or non-use of the Common Areas. Except for foreclosures, the personal obligation for unpaid assessments, late fees, interest, and collection costs, including attorney's fees, shall pass to the successor in title. A successor in title is entitled to a statement from the Association setting forth the amounts due by the prior owner. The amounts set forth in the statement shall be binding upon the Association. If an Owner loses their Lot to foreclosure or voluntarily conveys it, they shall remain personally liable for unpaid assessments, late fees, interest, and collection costs (including attorney's fees).

7.2 Annual Budget.

The Board shall prepare an annual budget for the Association. The annual budget shall provide for: the maintenance, repair, and replacement of the Common Areas; maintenance of other areas required to be maintained by the Association; insurance; all other Common Expenses; and the administration, management, operation, and reserves of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

7.3 Reserve Account.

The Association shall establish a reserve account to fund long-term maintenance and replacement items. In formulating a budget each year, the Board should include a reserve fund line item in an amount the Board determines, based on the reserve analysis, to be prudent. The Board may not use money in a reserve fund for daily maintenance expenses unless a majority of the Owners vote to approve the use of reserve fund money for that or other purposes. The Board shall use reasonable efforts, subject to the Owners rights under the Community Associations Act, to fund the reserve account. The Board shall not be personally liable for failure to fund the reserve unless gross negligence or intentional misconduct is proven in a court of law.

7.4 Regular Assessment.

The Association may collect the regular assessment on an annual basis, semi-annual basis, quarterly basis, or monthly basis. Apart from the initial notice of regular assessment, the Association is not obligated to send periodic invoices for regular assessments. If the Board fails to adjust a regular assessment, the amount of the last regular assessment and payment schedule will continue in effect, whether or not notice is sent.

7.5 Special Assessment.

The Association may levy a special assessment for the purpose of defraying in whole or in part the cost of any construction, reconstruction, maintenance, repair, or replacement of the Common Areas. The Association may levy a special assessment up to 50% of the annual budget without approval from the Owners. If a special assessment exceeds 50% of the annual budget, it must be approved by a majority of a quorum of Owners.

7.6 Supplemental Assessment.

If the regular assessments are inadequate to pay the Common Expenses, the Board shall determine the amount of the shortfall. Once the amount of the shortfall is determined, the Board shall adopt a supplemental budget. The Association may levy a supplemental assessment to fund the supplemental budget. The Association may levy a supplemental assessment up to 50% of the original annual budget without approval from the Owners. If a supplemental assessment exceeds 50% of the original annual budget, it must be approved by a majority of a quorum of Owners.

7.7 Individual Assessment.

Any expenses attributable to less than all the Lots may be assessed exclusively against the affected Lots. Individual assessments include, without limitation:

7.7.1 Assessments levied against a Lot to reimburse the Association for costs incurred in correcting a violation of the Governing Documents;

7.7.2 Fines, late fees, interest, collection costs (including attorney's fees);

7.7.3 Services provided to a Lot due to an Owner's failure to maintain, for emergency repairs, or to protect the health, safety, and welfare of adjoining Lots and Common Areas;

7.7.4 A Reinvestment fee is due at the transfer of title to a Lot. The amount of the reinvestment fee shall be determined by the Board but shall not be more than that permitted by

Utah State statute. A separate Notice of Reinvestment Fee will be recorded providing additional notice, as required by Utah law; and

7.7.5 Any charge described as an individual assessment by the Governing Documents.

7.8 Apportionment of Assessments.

Regular, special, and supplemental assessments will be apportioned equally among the Lots. Individual assessments shall be apportioned exclusively to the Lots benefitted or affected.

7.9 Nonpayment of Assessment.

Assessments not paid within 10 days after the due date established by the Board will be late and subject to interest at 18% per annum on any delinquent balance and a \$25.00 late fee. Late fees may only be charged once per missed payment.

7.10 Application of Payments.

Payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.

7.11 Acceleration.

If an Owner fails to pay their assessments for 61 days or more, the Board may elect to accelerate the remainder of the Assessments due that year.

7.12 Termination of Access to Recreational Facilities.

If an Owner fails to pay their assessments, the Association may terminate access to recreational facilities. The Board shall establish procedures for terminating access to recreational facilities, which shall comply with the Community Association Act.

7.13 Collection of Rent from Tenant

If an Owner, pursuant to Section 8.14 herein, rents their Lot and fails to pay their assessments, the Association may demand the tenants to pay the Association any rent owed to the Owner. Payment of rent to the Association shall not be a violation of the lease by the tenant. The Board shall establish procedures for collecting rents from tenants, which shall comply with the Community Association Act.

7.14 Suspension of Voting Rights.

If an Owner has a delinquent assessment balance, the Association may suspend their right to vote.

7.15 Lien for Assessment.

All assessments, late fees, interest, and collection costs (including attorney's fees) not timely paid shall be a charge and continuing lien upon each Lot against which the assessment is made. The Association shall file a notice of lien with the county recorder as evidence of nonpayment.

7.16 Enforcement of Lien.

Without waiving its right to personally pursue an Owner for unpaid assessments, the Association may foreclose its lien in the same manner as deeds of trust, mortgages, or any other manner permitted by Utah law.

7.17 Appointment of Trustee.

The Owners hereby convey and warrant pursuant to Utah Code Annotated §§ 57-1-20 and 57-8a-402 to a member of the Utah State Bar, with power of sale over the Lot and all improvements to the Lot for the purpose of securing payment of assessments under the terms of the Declaration.

7.18 Subordination of Lien.

A lien for assessments shall be subordinate to a first Mortgage now or hereafter placed upon a Lot. The sale of a Lot pursuant to foreclosure of a first Mortgage shall extinguish the lien for assessments which became due prior to the foreclosure sale. A foreclosure will not relieve the purchaser's obligation to pay six months of assessments, late fees, and penalties.

ARTICLE VIII – RESTRICTIONS ON USE

8.1 AGE RESTRICTIONS - HOUSING FOR OLDER PERSONS, aka "HOPA".

The Project is an age restricted community as allowed by HOPA. The project shall be managed and operated in compliance with this Section and HOPA.

8.1.1 Advertising, Marketing, and Sales. All advertising, marketing, and sales materials or displays of any kind shall reflect that the Project is intended for housing for older persons. All print ads shall substantially contain the following language: "Heritage Village is intended and operated for residents 55 years of age or older as defined in the Housing for Older Persons Act ("HOPA"). As such it is the policy of the Heritage Village Homeowners Association to prohibit permanent residence of persons under 18 years of age as is permitted under HOPA."

Any sale shall be in writing and shall (1) provide that occupancy of the property shall be subject to the provisions of the Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association and (2) state the following: "Heritage Village is intended and operated for residents 55 years of age or older as defined in the Housing for Older Persons Act ("HOPA"). As such it is the policy of the Heritage Village Homeowners Association to prohibit permanent residence of persons under 18 years of age as is permitted under HOPA."

8.1.2 Approved Occupancy. The Project is intended to be occupied by persons 55 years of age or older, as set forth in HOPA. To ensure future compliance with HOPA, the following restrictions apply:

NOTE: In order to avoid any confusion in the interpretation or implementation of any provision of this Declaration or the Bylaws as it relates to the Age Restrictions imposed herein, it is intended that all Living Units will have at least one (1) occupant 55 years of age or older residing therein. In order to preserve the Association's ability to claim status as a community for

older persons, and as stated below, no less than 80% of the Living Units may be occupied by those under the age of 55. However, this does not mean, nor is it intended to mean, that 20% of the Living Units are to be occupied by people of any age. The “20%” is an emergency buffer percentage to be utilized in the event, as an example, a couple is residing in the community with one spouse of or over the age of 55 and one spouse under the age of 55 and the “over 55 year old” spouse passes away. In such an instance, the surviving spouse (under the age of 55) may remain in the Living Unit as long as no more than 20% of the Living Units have residents under the age of 55. Federal law has created this 20% emergency buffer percentage to allow an “under the age of 55” resident to continue to reside in the Dwelling Unit after death, divorce or other similar, but unforeseen circumstance. In other words, in order to retain the Association’s HOPA status, the Association may not have more than 20% of the residents under the age of 55. HOPA status may be lost if this 20% is exceeded as explained herein.

8.1.2.1 As such, a minimum of 80% of the Living Units shall be occupied by at least one person 55 years of age or older and no person 18 years of age or younger shall reside in a Living Unit. However, it is intended for every Living Unit to be occupied by at least one individual person 55 years of age or older. If a person (or persons) that does not meet the above age requirement is staying at a Living Unit for more than two weeks, the Board must be informed.

8.1.2.2 To ensure that the project meets the age requirements for occupants set forth in the Act, the Board shall verify the ages of occupants. A review shall be done in January on each even year. New residents of Heritage Village shall have their ages verified and the information placed into the verification database.

8.2 Use of Lots - Residential Use.

Each of the Lots in the Project is limited to **single-family, residential use only**. The use is further defined by municipal zoning code. Each Lot and Owner is subject to the uses and restrictions imposed by such restrictions (including any parking restrictions).

8.3 No Obstruction of Common Areas.

There shall be no obstructions of, or anything kept in the Common Areas by the Owners, Residents, guests or invitees without the prior written consent of the Board. The Board may, by Rules and Regulations, prohibit or limit the use of the Common Areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Lots or the Common Areas.

Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Board, except as specifically provided herein. Nothing shall be altered on, constructed in or removed from the Common Areas except upon the prior written consent of the Board.

8.4 Cancellation of Insurance, Illegal Activity.

Nothing shall be done or kept in any Lot, Living Unit or in the Common Areas or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or increase of the rate of the insurance on the Project or any part thereof or increase of the rate of

the insurance on the Project or any part thereof over what the Board, but for such activity, would pay, without the prior written consent of the Board.

Nothing shall be done or kept in any Lot, Living Unit or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Board and the Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees.

8.5 Nuisances.

No Resident shall create, maintain or permit a nuisance in, on or about the Project. For purposes of this section a "nuisance" includes behavior which annoys, disturbs or interferes with other Residents and interferes with their right to the quiet and peaceful enjoyment of their property. A nuisance includes but is not limited to the following:

8.5.1 The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or the Common Areas;

8.5.2 The storage of any item, property or thing that will cause any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses.

8.5.3 The accumulation of rubbish, unsightly debris, garbage, equipment, or other things or materials so as to constitute an eyesore as reasonably determined by the Board;

8.5.4 The storage of any substance, thing or material upon any Lot or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;

8.5.5 The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas;

8.5.6 Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;

8.5.7 Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature that diminishes or destroys the enjoyment of the Community by other residents, their guests or invitees;

8.5.8 Too much noise in, on, or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.;

8.5.9 Too much traffic in, on, or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.;

8.5.10 Allowing a pet to be unleashed while outside of the Living Unit;

8.5.11 Continuous barking, meowing, or other animal noises;

8.5.12 Allowing your pet to defecate in the Common Areas or failing to clean up immediately any feces deposited by a pet in the Common Area.

8.6 Rules and Regulations.

8.6.1 The Board may adopt, amend, modify, cancel, limit, create exceptions to, expand, or enforce the Rules and Regulations, subject to limitation and requirements of the law, including the right of the Owners to disapprove a rule pursuant to law, and subject to the Board’s duty to exercise business judgment on behalf of the Association and the Owners.

8.6.2 Before adopting, amending, modifying, canceling, limiting, creating exceptions to, or expanding the Rules and Regulations, the Board shall:

(a) at least 15 days before the Board will meet to consider a change to the Rules and Regulations, deliver notice to the Owners that the Board is considering a change to the Rules and Regulations;

(b) provide an open forum at the Board meeting giving Owners an opportunity to be heard at the Board meeting before the Board takes action under Section 8.6.1; and,

(c) deliver to the Owners a copy of the change in the Rules and Regulations approved by the Board within fifteen (15) days after the date of the Board meeting.

8.6.3 The Board may adopt a rule without first giving notice to the Owners if there is an imminent risk of harm to the Common Area, an Owner, an occupant of a Unit, or a Unit. The Board shall provide notice to the Owners of such a rule within fifteen (15) days of adoption by the Board.

8.7 Structural Alterations.

No improvements, alterations, repairs, excavation or other work which in any way alters the exterior appearance of the Property or the improvements located thereon shall be made without the prior approval of the Board. No building, fence, wall, or other structure shall be erected, maintained, improved, altered, made or done (including choice of exterior color scheme and building materials) without the prior written approval of the Board.

Based on Utah Code §§57-8a-701, 702 and 703, Living Units in the Project can install solar. Solar installations cannot be placed in the Common Areas and must be approved by the Board and other jurisdictions as defined in Utah Code §§57-8a-701, 702 and 703.

8.8 Window Coverings.

The Board, by rule, may require that certain colors and types of window covering be used. Under no circumstances shall any paper, cardboard, or tinfoil be used as window coverings in the Project. Additionally, no stickers or non-holiday decorations will be permitted in windows.

8.9 Window Well Covers.

The Board requires that all window wells be covered for safety considerations. Additionally, this protects the homeowners from potential liability.

8.10 Signs.

No signs shall be erected or maintained in the Common Areas without the prior written consent of the Board. This includes, but is not limited to, commercial and political signs.

8.11 Pets.

No animals, livestock, birds, insects, or poultry of any kind shall be raised, bred, or kept on any Lot, except that not more than two domesticated dogs or cats shall be allowed as long as said animals do not unreasonably bother or constitute a nuisance to others and provided such animals are kept in compliance with the rules and regulations of the Association.

If a pet owner violates any of pet rules and regulations, the Board shall have the express authority to issue citations or levy assessments, and collect these by judgment, lien or foreclosure. In extreme cases, the Board may require that the Owner or Resident remove their pet from the premises.

8.12 Storage and Parking of Vehicles.

The driving, parking, and storing of motor vehicles in, on or about the Project shall be subject to the following:

8.12.1 The parking rules and regulations adopted by the Board from time to time;

8.12.2 No recreational, commercial or oversized vehicles or trailers shall be allowed within the Project except for purposes of loading or unloading passengers or supplies (for a period of time up to 48 hours).

8.12.3 No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, or any other transportation device of any kind may be parked or stationed in such a manner so as to block access to any Lot or parking space or to create an obstacle.

8.12.4 Heritage Village residents shall not park in any visitor parking areas located in the southeast corner of Phase 2 or at the pavilion area in Phase 3. Also, residents shall not park in visitor parking areas next to the Clubhouse, unless actively using the Clubhouse. The Association shall keep visitor parking operational and properly maintained at all times.

8.12.5 No resident shall repair or restore any vehicle of any kind in, on a Lot, (outside the garage) or on the Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

8.12.6 Vehicles parked in violation of this Declaration may be impounded or towed without further notice, and at the Owner's sole expense.

8.13 Aerials, Antennas, and Satellite Dishes.

Aerials, antennas, and satellite dishes larger than one meter in diameter are prohibited. Aerials, antennas, and satellite dishes may not be installed on Common Areas. Two antenna or satellite dishes smaller than one meter in diameter may be installed on the Living Unit. The Association may create policies to create a hierarchy of preferred installation locations to protect the aesthetics of the Project. The hierarchy of preferred installation locations may not interfere with reception.

8.14 Leasing or Rental of Unit.

In order to protect the value of the Living Units, carry out the purposes for which the Project was formed by preserving its character as a residential community of predominantly Owner-occupied Living Units and to prevent the Project from assuming the character of an apartment, renter-occupied complex, the leasing of a Living Unit by any Owner shall be prohibited. This leasing prohibition is subject to the terms of the Act regarding any statutorily required exemptions and procedures which are delineated in Utah Code 57-8a-209.

Despite this leasing prohibition, the Board of Directors shall have the discretion, pursuant to the Act, to provide exceptions to this Section to avoid undue hardship on an Owner. Any Owner who believes that he or she must lease or rent his or her Living Unit to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing, a copy of the proposed lease or rental agreement, and such other information as the Board may reasonably require.

Leasing or renting in the case of an undue hardship shall be permitted only upon the Board's written approval of the Owner's application. However, under no circumstances shall an Owner lease or rent his or her Living Unit on a daily, weekly, or other short-term basis, including Airbnb or other similar leasing or renting practices. Upon approval of a hardship exemption, the Board shall establish an exemption period of no longer than 18 months and approval shall automatically terminate upon expiration of such period.

Any Owner seeking to extend the exemption period must request approval prior to expiration of the exemption period. The Board of Directors may adopt Rules relating to this Section and/or the application process for a hardship exemption. Notwithstanding the foregoing, an Owner may have a co-occupant caregiver reside in a Living Unit if approved in writing by the Board.

If an Owner fails to comply with this Section or rents or leases a Living Unit in violation of this Section, the Board may: (a) Assess fines against the Owner and Owners Unit pursuant to a schedule of fines adopted by the Board; (b) Regardless of whether any fines have been imposed, proceed with any other available legal remedies including, without limitation, an action to require the Owner to terminate the rental or lease agreement and remove the tenant; (c) Pursuant to Rules that may be adopted under this Section, if the Board determines that a tenant has violated a provision of the Declaration, the Bylaws, or Rules and Regulations, the Board may

require an Owner to terminate a rental or lease agreement with that tenant.; (d) In addition to any other remedy for non-compliance, after reasonable notice, the Association shall have the right to initiate an action and obtain a forcible entry and unlawful detainer order from the court, or similar action, with the purpose of removing the offending tenant. The Association, and the Board shall not have any liability for any action taken pursuant to this subsection and the Owner shall indemnify and pay the defense costs of the Association, and the Board arising from any claim related to any action taken in good faith by any of them pursuant to this Section.

8.15 Timeshares.

Timeshares and any time-sharing or fractional ownership of Living Units within the Project is prohibited, and under no circumstances shall any Lot be owned or used for time sharing, including but not limited to a “Timeshare Interest” as that term is defined in Utah Code § 57-19-2(17), as amended.

8.16 Utility Service.

All lines, wires, or other devices for the communication or transmission of electric current of power, including telephone, television and radio signals, shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the Board.

8.17 Temporary Structures, etc.

No structure of a temporary character, or trailer, camper, tent, shack, garage, or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently, unless first approved in writing by the Board.

8.18 Repair of Living Units.

No Living Unit upon any Lot shall be permitted to fall into disrepair. Living Units shall at all times be kept in good condition and repaired and adequately painted or otherwise finished.

8.19 Subdivision of Lots.

No Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner, and no portion less than all of any such Lot, shall be conveyed or transferred by any Owner without the prior written approval of the Board. No Lot may be converted into a condominium or cooperative or other similar type of entity without the prior written approval of the Board. No further covenants, conditions restrictions or easements shall be recorded against any Lot without the written consent of the Board being evidenced on the recorded instrument containing such restrictions and without such approval such restrictions shall be null and void. No applications for rezoning, variances, or use permits shall be filed without the written approval of the Board and then only if such proposed use is in compliance with this Declaration.

8.20 Clothes Drying Facilities.

Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Property.

8.21 Front Porches and Patios.

Front porches and patios are required to be maintained in a clean and tidy fashion. Any outdoor furniture kept on the front porch and patio shall be well maintained and in good condition. The Association may require worn furniture or furniture that detracts from the theme of the community to be removed from the front porch and/or patio.

Front porches shall not be used for storage. Examples of items prohibited from being kept on front porches include, without limitation, bicycles, toys, barbecues, trash receptacles, boxes, ash trays, and anything else which appears unkempt, dirty, or detracts from the appearance of the Project.

8.22 Off-Road Vehicles.

No off-road motor vehicles, including but not limited to snow mobiles, three wheelers or four wheelers may be driven on the footpaths, walkways, or Common Areas within the Project.

8.23 Firearms and Projectile Weapons.

The use of firearms, airsoft guns, BB guns, pellet guns, archery equipment, or any other projectile weapon, however powered, is prohibited.

ARTICLE IX – MEMBERSHIP AND ASSOCIATION

9.1 Membership.

Every Owner is a Member of the Association. Membership in the Association is mandatory, is appurtenant to the Lot, and shall not be separated from the Lot.

9.2 Voting Rights.

Voting is governed by the Bylaws.

9.3 Status and Authority of Board.

The Board is the governing body of the Association. It is obligated to manage, operate, and maintain the Project and to enforce the Governing Documents. The Board has exclusive authority to act in the Association's name. Any action taken by the Board on behalf of the Association will be deemed to be done in the Association's name. The rights and powers of the Board are governed by the Bylaws.

9.4 Composition and Selection of Board.

The Bylaws govern how the Board is established and selected.

9.5 Adoption of Bylaws.

The Association has adopted Bylaws which are being recorded simultaneously with this Declaration.

