

When Recorded, Mail to:  
 Craig L Winder  
 IRONWOOD DEVELOPMENT GROUP, L.C.  
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 North Logan, Utah 84341  
 (435) 752-1480

Et 1207388 Bk 2046 Pg 281  
 Date: 5-Nov-2018 03:19 PM Fee \$36.00  
 Cache County, UT  
 Michael Gleed, Rec. - Filed By SA  
 For IRONWOOD DEVELOPMENT GROUP LC

**AMENDED AND RESTATED  
 DECLARATION OF PROTECTIVE EASEMENTS,  
 COVENANTS, CONDITIONS AND RESTRICTIONS  
 OF  
 BLACK ROCK SUBDIVISION**

Reference is made to that certain DECLARATION OF PROTECTIVE EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS OF BLACK ROCK SUBDIVISION dated on or about December 11, 2015 and recorded with the Cache County Recorder's Office on December 15, 2015 as Entry No. 1138622, as amended by that certain Addendum No. 1 to Declaration of Protective Easements, Covenants, Conditions and Restrictions of Black Rock Subdivision recorded with the Cache County Recorder's Office on August 26, 2016 as Entry No. 1154502 (collectively, the "Declaration"). The Property governed by the Declaration is legally described on Exhibit "A", attached hereto (the "Property").

Pursuant to Article 14.02 of the Declaration, owners holding at least 60% of the total outstanding votes of the Owners Association have voted to amend and restate the Declaration in its entirety.

It is understood that one effect of this amendment is to eliminate common areas in the Development; accordingly, the Owners Association shall, upon the recording of this Amended and Restated Declaration, no longer be necessary, and shall be terminated.

Accordingly, the Declaration is hereby amended and restated as follows, with the intent that this document replace, in its entirety, the original Declaration:

**ARTICLE I**

**PURPOSE AND EFFECTUATION**

1.01 Purpose. The purpose of this instrument is to provide for the preservation of the values of Lots within the Black Rock Subdivision, in Smithfield, Utah, (the "Development"), and for the establishment and preservation of the easements therein.

1.02 Effectiveness. From and after the effective date hereof: (a) Each part of the Development and each Lot lying within the boundaries of the Development shall constitute but constituent parts of a single planned development; (b) The Development shall consist of the Lots described and depicted on the Plat; (c) The Declaration for the Development shall consist of this document as the same may be modified, amended, or supplemented in accordance with the

provisions hereof; and (d) The Plat of the Development shall consist of the instrument identified as Black Rock Subdivision, Smithfield City, Cache County, Utah, and thereafter recorded concurrently herewith in the Public Records, as the same is amended by this Declaration, and as it may be hereafter amended.

## ARTICLE II

### DEFINITIONS

When used in this Declaration each of the following terms shall have the meaning indicated:

2.01 “Declarant” shall mean Ironwood Development Group, L.C., a Utah limited liability company, its successors and assigns, if any, as developers of the Development.

2.02 “Declaration” shall mean this Declaration of Protective Easements, Covenants, Conditions and Restrictions as the same may be supplemented or amended from time to time.

2.03 “Development” shall mean the Black Rock Subdivision as it exists at any given time.

2.04 “Lot” shall mean and refer to any of the separately numbered, individually described lots within the Development as designated on the Plat.

2.05 “Mortgage” shall mean any recorded first mortgage or first deed of trust encumbering a Lot; and Mortgagee shall mean the mortgagee or beneficiary named in a Mortgage.

2.06 “Owner” shall mean any person who is the owner of record (as reflected by the Public Records) of a fee or undivided fee interest in any Lot, and any contract purchaser of any Lot. Notwithstanding any applicable theory relating to mortgages, no Mortgagee nor any trustee or beneficiary of a deed of trust or trust deed shall be an owner of a Lot unless such party acquires fee title thereto pursuant to foreclosure or sale or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Lot owned by it. Multiple owners of a particular Lot shall be jointly and severally liable as to all responsibilities of an Owner.

2.07 “Plat” shall mean the final recorded plat map for the Black Rock subdivision, and any supplemental maps pertaining to the Development and recorded or to be recorded in the office of the County Recorder of Cache County, State of Utah, as the same may be amended.

2.08 “Property” shall mean all land covered by this Declaration. The Property shall consist of the land described on Exhibit “A”, attached hereto.

2.09 “Project” shall mean the BLACK ROCK SUBDIVISION project.

2.10 “Public Records” shall mean the Office of the Cache County Recorder.

2.11 “Unit” shall mean one or more fixed structures which is designed, constructed and intended for permanent use or occupancy as a place of business on a Lot, including anything located within or attached to said Unit (but designated and designed to serve only that Unit) such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, platforms, ramps, docks and signage affixed to the outside of the Unit.

### ARTICLE III

#### **PROPERTY DESCRIPTION**

3.01 Submission. The Property which initially is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the real property described on Exhibit “A”, attached hereto and made a part hereof.

3.02 Description of Improvements. The improvements included in this Project are now, or will be, located on the Property.

3.03 Legal Status of Units. All Units are and shall be capable of being independently owned, encumbered, and conveyed.

3.04 Division into Lots. The Development is hereby divided into eleven (11) Lots, as set forth and described on the Plat, with easements of use as set forth in this Declaration.

### ARTICLE IV

#### **DUTIES AND OBLIGATIONS OF OWNERS**

4.01 Maintenance and Repairs. Each Owner shall at his own cost maintain his Lot and any improvements constructed thereon in good condition and repair at all times. In the event of the damage or destruction of any Unit, the Owner of the Lot on which such Unit is situated shall either rebuild the same within a reasonable time or shall raze the remains thereof so as to prevent the unsightly appearance and dangerous condition of a partially destroyed building in the Development. No Owner of any Lot in the Development shall openly or wantonly neglect or fail to do everything possible to keep his Lot and Unit in good and attractive condition and repair at all times.

The maintenance and repair of any portion of an Owner’s Lot that falls within the cross-easements described in Section 5.01 shall be the joint responsibility of the respective Owners party to such cross-easements, and the cost of the same shall be shared among such Owners equally. At a minimum, the asphalt shall be sealed every 3 years. Regarding any other maintenance or repair, the Owners party to the various cross-easements shall meet and confer for the purpose of establishing a maintenance and repair of the parking areas they share. In the event one or more Owners disagree as to the frequency, cost or necessity of maintenance or repair, the Owners shall jointly select an expert in asphalt maintenance and repair, and such expert shall

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determine whether any maintenance or repair should be done on the asphalt in question. Unless otherwise agreed, the Owners shall follow the recommendations given by such expert.

4.02 Owners Insurance. Each Unit Owner shall be responsible to procure and maintain in force at his own cost hazard insurance on his Unit and personal contents and such liability coverage as may be customary in projects such as the Development and which is consistent with each Owner's individual circumstances.

4.03 Transfer of Interests. Except for obligations already accrued, an Owner who, for other than purposes of security, transfers all of his interests in his Lot to another, either voluntarily or by operation of law, shall be relieved of all obligations under this Declaration following such transfer.

## ARTICLE V

### PROPERTY RIGHTS AND CONVEYANCES

5.01 Access and Cross-Parking Easements. Access and cross-parking easements (each such easement an "Access Easement") are established as follows:

5.01(a) Each of lots 08-202-0001 ("Lot 1"), 08-202-0002 ("Lot 2"), 08-202-0003 ("Lot 3") and 08-202-0004 ("Lot 4") shall have appurtenant thereto, and be benefited by, a perpetual right-of-way and access easement for vehicular and pedestrian ingress and egress, across those portions of each Lot dedicated to vehicular and/or pedestrian use. Lot 1 and Lot 2 shall each have appurtenant thereto, and be benefited by, a perpetual cross-parking easement over and across the vehicular parking areas of each other's Lots. Lots 3 and Lot 4 shall each have appurtenant thereto, and be benefited by, a perpetual cross-parking easement over and across the vehicular parking areas of each other's Lots.

5.01(b) Each of lots 08-202-0005 ("Lot 5"), 08-202-0006 ("Lot 6"), 08-202-0007 ("Lot 7"), 08-202-0010 ("Lot 10") and 08-202-0011 ("Lot 11") shall have appurtenant thereto, and be benefitted by, a perpetual right-of-way and access easement for vehicular and pedestrian ingress and egress, across those portions of each Lot dedicated to vehicular and/or pedestrian use. Further, Lots 5, 6, 7, 10 and 11 shall each have appurtenant thereto, and be benefited by, a perpetual cross-parking easement over and across the vehicular parking areas of each other's Lots.

5.01(c) Each of lots 08-202-0008 ("Lot 8") and 08-202-0009 ("Lot 9") shall have appurtenant thereto, and be benefitted by, a perpetual right-of-way and access easement for vehicular and pedestrian ingress and egress, across those portions of each Lot dedicated to vehicular and/or pedestrian use. Further, Lot 8 and Lot 9 shall each have appurtenant thereto, and be benefited by, a perpetual cross-parking easement over and across the vehicular parking areas of each other's Lots.

5.01 (d) The 20-foot access easement indicated on the Plat running along the west boundary lines of Lots 1 through 4 is hereby reduced to a 12-foot access easement through Lots 1 through 4.

5.02 Form of Conveyancing; Leases. Any deed, lease, mortgage, deed of trust, purchase contract or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_ as identified in the Plat recorded in the office of the Cache County Recorder as Entry \_\_\_\_\_, Map Filing No. \_\_\_\_\_ contained within Plat \_\_\_\_\_ of Black Rock Subdivision, Cache County, Utah, SUBJECT TO the Amended and Restated Declaration of Protective Easements, Covenants, Conditions and Restrictions of Black Rock Subdivision, recorded in the office of the Cache County Recorder as Entry \_\_\_\_\_, Book \_\_\_\_\_, at Page \_\_\_\_\_ (as said Declaration may have heretofore been amended or supplemented).

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

5.03 Limitation on Easement. Each Lot's appurtenant right and easement of use and enjoyment concerning the Development shall be subject to the right of any governmental or quasi-governmental body having jurisdiction over the Property within the Development to enjoy access and rights of ingress and egress over and across any street or driveway, parking area, walkway, or open area contained within the Development for providing police and fire protection and providing any other governmental or municipal service; and

5.04 Utility Easements. Each Lot shall have appurtenant thereto and be benefitted by a perpetual, non-exclusive right-of-way and easement for the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of underground utility pipes, lines, wires, conduits and related facilities (including, without limitation, underground pipe, lines, wires, conduits and related facilities for electricity, natural gas, other fuel or power sources, telephone, sewage, storm drainage and all types of water) under, through and across the Lot. If the rights provided for in this Paragraph 5.04 are exercised, the Owner intended to be served by the easement concerned shall pay the cost involved with such exercise and, at such Owner's sole cost, restore to their previous condition any improvements located on any Lot that were damaged as a result of such exercise. Each utility pipe, line, wire, conduit and related facility located within the Development shall be located underground to the extent reasonably possible.

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5.05 Easements for Encroachments. If any structure or Unit improvement (including without limitation, roof overhangs) constructed on any Lot, whether or not constructed in replacement of the structure or improvement previously located thereon (so long as such structure or improvement is in substantially the same configuration and location as such prior structure or improvement), now or hereafter encroaches upon any other Lot, a valid easement for

such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure or Unit (including without limitation, roof overhangs) on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to substantially duplicate the location and configuration of the structure so destroyed, minor encroachments of such structure upon any other Lot (due to the reconstructed structure's being in a slightly different location than its predecessor) shall be permitted, and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

## ARTICLE VI

### USE RESTRICTIONS

6.01 Commercial Use. The Property is zoned for industrial and commercial uses and is restricted to such uses pursuant to applicable provisions of applicable municipal zoning ordinances. Each Lot, Unit and Owner are subject to the uses and restrictions imposed by such zoning, including parking restrictions, and no Lot or Unit shall be used, occupied, or altered in violation of such ordinances or so as to create a nuisance or to interfere with the rights of any other Owner. All Units shall be used for commercial purposes.

6.02 Prohibited Use and Nuisances. The following uses and practices are specifically prohibited, in addition to any additional prohibitions which may, from time to time, be adopted by the Board in Rules and Regulations pursuant to the Bylaws, or prohibited by applicable zoning code:

- (a) No animals of any kind shall be permitted on any Lot or within any Unit.
- (b) No parking of vehicles of any kind within the Development shall be permitted anywhere except the parking areas of the Development.
- (c) No private outside television or radio aerial or antenna exceeding 30 inches are permitted.
- (d) No Owner shall do any act that would impair the structural soundness or integrity of the Improvements or jeopardize the safety of persons or property or impair any easement or hereditament appurtenant to the Development.
- (e) No rubbish or debris of any kind may be placed or permitted to accumulate upon or adjacent to any Unit, and no odors or loud noises may arise or emit from any

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Building, so as to render any Unit or any portion of the Development, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Unit or Lot or any other property in the vicinity thereof or to the occupants of such other Unit or Lot. No other nuisance may be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot or other property in the vicinity thereof or its occupants. Normal construction activities and parking in connection therewith may not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and Units must be kept in a neat and tidy condition during construction periods, trash and debris may not be permitted to accumulate, and supplies of lumber and other building materials must be maintained only in areas approved by the Declarant.

6.03 Construction Period Exemption. During the course of actual construction of any permitted structures or improvements within the Project, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that during the course of such construction, nothing shall be done which will result in a violation of any said provisions, covenants, conditions, or restrictions upon completion of the construction.

6.04 Declarant's Right to Sell Lots. Until Declarant, or any entity designated by the Declarant has completed and sold all of the Lots within the Project, the Lot Owners who have purchased Lots from Declarant, or Declarant's successor in interest, shall not interfere with the completion of the improvements to be completed by Declarant, nor with the sale of remaining Lots. Declarant, or any other entity designated by Declarant may make such use of the unsold Lots as may facilitate such completion and sale, including but not limited to, the storage of equipment, the showing of the Lots, and the display of signs.

6.05 Signs. Except as provided in this Section 6.05, no temporary signs of any kind may be displayed to public view on any Building except one sign of not more than eighty (80) square feet advertising the Building for sale or rent. The placement of signs, graphics, or advertisements that are permanent in nature or represent advertisement for the Owner's business must be approved in writing by a majority of the Lot Owners (not including the Owner seeking approval). No flashing lights are permitted. Lights used to illuminate signs must be directed to as to reflect the light away from, and not be obtrusive to, other Buildings and the vision of passing motorists.

## ARTICLE VII

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### CONSTRUCTION

7.01 Original Construction. Each Lot Owner shall, at its sole cost and expense, be responsible for all original construction and improvements on their Lot, including without limitation those portions of such Lot that are subject to the cross easements described in Section 5.01. Declarant intends to complete any improvements that it undertakes pursuant to applicable municipal approvals, planning and zoning approvals and permits, development agreements and

construction plans and specifications (herein together called “design guidelines”). All original construction by Declarant pursuant to the design guidelines, as they may be amended from time to time, shall be and hereby are approved.

7.02 Construction. Once begun, any improvements, construction, landscaping, or alterations undertaken by an Owner shall be diligently prosecuted to completion, which shall occur no later than 18 months following Lot purchase. This provision shall not apply to Lots owned by Declarant or Declarant’s affiliates.

7.03 Declarant’s Obligation. Declarant hereby covenants in favor of each Owner that on the date on which this Declaration is recorded in the Public Records, all Lots will be located approximately in the locations shown on the Plat.

## ARTICLE VIII

### RIGHTS OF MORTGAGEES

8.01 Title and Mortgagee Protection. A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot or any other portion of the Property. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Lot or any other portion of the Property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee’s failure to give the same is wrongful).

8.02 No Priority Accorded. No provision of this Declaration gives or may give a Lot Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for loss to or taking of Lots.

8.03 Construction. In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article VIII, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority with respect to the subject concerned.

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## ARTICLE IX

### MISCELLANEOUS

9.01 Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner at the latest address for such person.

9.02 Amendment. This Declaration may be amended by an instrument recorded in the Public Records, which is executed either by Owners who collectively hold at least sixty percent (60%) of the total outstanding votes in the Development. For purposes of determining voting rights for any matter requiring a vote under this Declaration, each Owner shall be entitled to one vote for each Lot owned by such owner, provided, Declarant shall be entitled to two votes for each Lot owned by Declarant. The foregoing right of amendment shall, however, be subject to the right to supplement this Declaration in the manner and to the extent provided for in Article III of this Declaration.

9.03 Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number of votes of the Owners, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section 14.03:

(a) All necessary consents must be obtained prior to the expiration of 90 days after the first consent is given by any Owner;

(b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed;

(c) Any change in ownership of a Lot which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose; and

(d) Unless the consent of all Owners whose memberships are appurtenant to the same Lot is secured, the consent of none of such Owners shall be effective.

9.04 Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

9.05 Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include both other genders. The

invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

9.06 Reserved.

9.07 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who heretofore acquired or hereafter acquire any interest in a Lot, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Unit shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration. By acquiring any interest in a Lot or Unit, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

9.08 Enforcement of Restrictions. Any Owner or any Mortgagee shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with or to obtain redress for violation of this Declaration. The prevailing party in an action for the interpretation of, the enforcement of or to obtain redress for violation of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney’s fees.

9.09 Duration/Termination. This Declaration shall remain in effect until such time as there is recorded in the Public Records, following the approval of the applicable municipalities authorizing such termination, an instrument of termination which is executed by seventy-five percent (75%) of the total outstanding votes of the Owners.


9.10 Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat shall take effect upon its being filed for record in the Public Records.

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EXECUTED this 30 day of October 2018.


IRONWOOD DEVELOPMENT GROUP, L.C.,  
a Utah limited liability company

  
By: Jeff Jackson, Manager

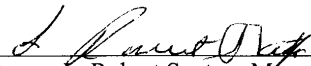
IRONWOOD CONSTRUCTION, LLC,  
a Utah limited liability company

  
By: Jeff Jackson, Manager

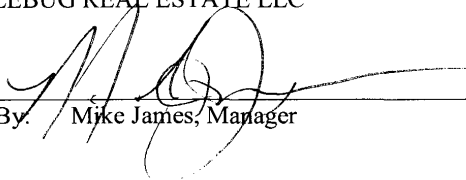
REAL ESTATE INVESTMENT VEHICLE 1 LLC

  
By: Allan Burningham, Manager

L. ROBERT AND ANNETTE G. SAXTON PROPERTIES LLC

  
By: L. Robert Saxton, Manager

DOODLEBUG REAL ESTATE LLC

  
By: Mike James, Manager

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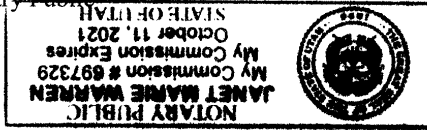
BROWN MONUMENT ASSOCIATES LLC

By: Jeannette Bell, Manager

State of Utah )  
                          §  
County of Cache )

Subscribed and sworn to before me on this 30<sup>th</sup> day of October, 2018 by Jeff Jackson, Manager of Ironwood Development Group, L.C.

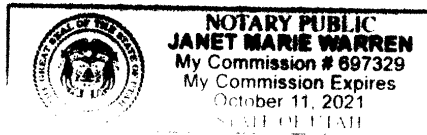
Janet Marie Warren  
Notary Public



State of Utah )  
                          §  
County of Cache )

Subscribed and sworn to before me on this 30<sup>th</sup> day of October, 2018 by Jeff Jackson, Manager of Ironwood Construction, LLC

Janet Marie Warren  
Notary Public

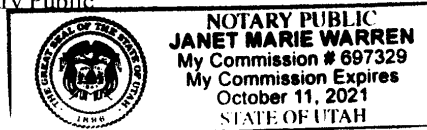


State of Utah )  
                          §  
County of Cache )

Subscribed and sworn to before me on this 30<sup>th</sup> day of October, 2018 by Allan Burningham, Manager of Real estate Investment Vehicle I LLC.

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Janet Marie Warren  
Notary Public

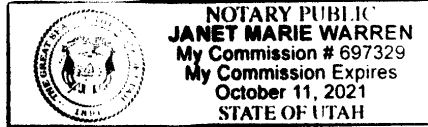


State of Utah )  
                          §  
County of Cache )

Subscribed and sworn to before me on this 5<sup>th</sup> day of November, 2018 by L. Robert Saxton,  
Manager of L. Robert and Annette Saxton Properties LLC

Janet Marie Warren  
Notary Public

State of Utah )  
                          §  
County of Cache )



Subscribed and sworn to before me on this 30<sup>th</sup> day of October, 2018 by Mike James,  
Manager of Doodlebug Real Estate LLC.

Janet Marie Warren  
Notary Public

State of Utah )  
                          §  
County of Cache )



Subscribed and sworn to before me on this 30<sup>th</sup> day of October, 2018 by Jeanette Bell,  
Manager of Brown Monument Associates LLC.

Janet Marie Warren  
Notary Public



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**EXHIBIT A**

PROPERTY DESCRIPTION

BLACK ROCK SUBDIVISION, PER PLAT RECORDED AUGUST 25, 2015 AS ENTRY NO. 1131682, BOOK 2015 PAGE 2852, CACHE COUNTY RECORDER'S OFFICE.

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