

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

ENT 82078:2018 PG 1 of 6
Jeffery Smith
Utah County Recorder
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RECORDED FOR Wasatch Land & Title
ELECTRONICALLY RECORDED

**AMENDED SUPPLEMENT 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
(Plat "E")**

This Amended Supplement to the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Heritage Village ("**Supplemental Declaration**") is executed and adopted by Bastian Homes LLC, a Utah limited liability company ("**Declarant**").

RECITALS

A. This Supplemental Declaration shall modify and supplement the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Heritage Village ("**Declaration**") recorded with the Utah County Recorder's Office on August 14, 2013 as Entry No. 78151:2013 and the Supplement to the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Heritage Village recorded with the Utah County Recorder's Office on August 16, 2018 as Entry No. 77689:2018.

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

C. Bastian Homes LLC is the Declarant at the time of the recording of this Supplemental Declaration and is the owner and/or is fully authorized by the owner of the real property subject to this Supplemental Declaration.

D. Under the terms of the Declaration, the Declarant reserved the right to expand the Project and annex and subject additional land to the Declaration by the recordation of a supplemental declaration.

E. Declarant desires to expand the Project by adding all of the real property within Heritage Village Plat "E".

F. Unless otherwise designated, the capitalized terms in this Supplemental Declaration shall have the same meaning as such terms are defined in the Declaration.

G. Pursuant to Sections 2.2 and 13.1.4 of the Declaration, the undersigned hereby certifies that this Supplemental Declaration was approved by the Declarant pursuant to its unilateral amendment and annexation power.

AMENDMENT AND ANNEXATION

NOW THEREFORE, in consideration of the recitals set forth above, the Declarant hereby amends and incorporates the following provisions into the Declaration:

1. Exhibit B of the Declaration shall be amended to include all of the Lots and real property within Heritage Village Plat "E", according to the official plat recorded in the office of the Utah County Recorder.

2. Declarant hereby annexes in and submits the following described portion of the Additional Land (herein referred to as "**Subject Property**") to the Declaration, including, without limitation, the Declaration's terms, conditions, restrictions, covenants, assessments, and easements:

ALL PROPERTY IDENTIFIED ON EXHIBIT "A" ATTACHED HERETO.

TOGETHER WITH: (i) all buildings, if any, improvements, and structures situated on or comprising a part of the above-described Subject Property, whether now existing or hereafter constructed; (ii) all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying said Subject Property; and (iii) all articles of personal property intended for use in connection with said Subject Property.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Subject Property or any portion thereof, including, without limitation, any mortgage or deed of trust, The Declaration (as amended, supplemented and/or restated from time to time); all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Plat or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described Subject Property at such times as construction of all improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the above-described Land and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee or successor of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct and complete all of the improvements described in this Declaration or in the Plat recorded concurrently herewith, and to do all things reasonably necessary or proper in connection therewith; and (ii) to improve portions of the Subject Property with such other or additional improvements,

facilities, or landscaping designed for the use and enjoyment of all Owners, as Declarant or as such assignee or successor may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the above-described Land or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire ten (10) years after the date on which this Supplemental Declaration is filed for record in the Utah County records.

3. Heritage Village Plat "E". The real properties described in Paragraph 1, and the improvements to be constructed thereon, all of which are submitted to the terms and conditions of the Declaration, are more particularly set forth on Heritage Village Plat "E", which plat map shall be recorded with this Supplemental Declaration.

4. Submission. The Subject Property shall hereinafter be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens set forth in the Declaration and all supplements and amendments thereto. The Declaration shall run with the land and shall be a burden on the Subject Property.

5. Membership. The Owner of each Lot or parcel within the Subject Property shall be a member of Heritage Village Homeowners Association.

6. Special Declarant Rights. The following Declarant rights shall remain in effect until the Turnover Meeting, or for the maximum period allowed by law:

(a) the right to maintain sales offices, model Living Units, and signs advertising the Project or any Living Unit at any location in the Project;

(b) the right to use easements through the Common Areas as set forth in the Declaration;

(c) the exclusive right to act as the Board of Directors, or appoint or remove Board Members in Declarant's sole discretion;

(d) the right to make and adopt Association Rules without being subject to the requirements of Utah Code § 57-8a-217;

(e) 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 reserves; and

(f) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents.

7. Exclusive Builder. Every Owner of a Lot within Plat E as annexed herein, acknowledges and agrees that Bastian Homes LLC or its successors and assigns shall have the sole and exclusive right to build and construct any residence, home, or structure that is subject to a Payson City certificate of occupancy requirement, on such Lot within Plat E. By

purchasing a Lot within Plat E, each Owner understands and agrees that such Owner shall be strictly prohibited from employing or contracting any individual or entity (including self-performance by the subject Owner) other than Bastian Homes LLC or its successors and assigns to construct any residential improvement or structure until such time as a certificate of occupancy has been issued. Following the issuance of a certificate of occupancy, such exclusive building rights shall expire. Each Owner acknowledges and understands that the foregoing shall constitute a binding covenant, restriction, and equitable servitude running with the land, which is enforceable by and for the benefit of the Declarant, its successors and assigns, Bastian Homes LLC, and for other reasons, including without limitation, the purpose of maintaining harmony among the homes constructed in Plat E. Notwithstanding the foregoing, Declarant, Bastian Homes LLC or its successors and assigns shall have the right to waive or modify the foregoing covenant and agreement in its exclusive and sole discretion.

8. Construction Deadline. Every Owner who purchases a Lot within Plat E shall enter a construction agreement with Bastian Homes LLC or its successors and assigns no later than 18 months from the date the Owner becomes the record owner of the Lot, or such other date as agreed to in writing by Declarant or Bastian Homes LLC and the Lot Owner.

- a. Right of First Refusal. Any Owner shall not sell a Lot within Plat E prior to the expiration of the Construction Deadline set forth in ¶8 herein, and without entering an agreement with Bastian Homes LLC to construct a residence, without first extending the right of first refusal to Bastian Homes LLC for the repurchase of the residence at an amount equal to the appraised value of the Lot at the time of repurchase.

9. Enforcement. Any Owner who breaches or violates the covenants set forth in ¶¶ 7-9 shall be subject to enforcement action for damages, specific performance, fines, liquidated damages, or seller repurchase. Each of the aforementioned remedies may be exercised independently or cumulatively. Failure to enter a construction agreement within the time period established in ¶ 8 herein shall result in a daily penalty of \$50, payable to Bastian Homes LLC or its successors and assigns, or in such amount as agreed to in writing by Declarant or Bastian Homes LLC and the Lot Owner. Such penalty shall be subject to a cause of action maintainable by Bastian Homes LLC including all rights and remedies available for the collection of assessments as set forth in the Declaration. Each Owner further understands, acknowledges and agrees that Declarant, Bastian Homes LLC or its successors and assigns shall be entitled to secure any penalties or fines that accrue for violation of the covenants set forth in ¶¶ 7-9 herein by recordation of a lien against the Lot and all improvements thereon.

10. Limitation on Claims. 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 a Living Unit or the Common Areas and facilities.

11. 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

EXHIBIT A
SUBJECT PROPERTY/ADDITIONAL LAND
(Legal Description)

All of **Heritage Village Plat "E"**, according to the official plat thereof, on file in the office of the Utah County Recorder.

Including Lots 94 through 117

More particularly described as:

BEGINNING AT A POINT WHICH LIES S00°21'43"E 964.56 FEET AND WEST 676.60 FEET FROM THE NORTH QUARTER CORNER OF SECTION 19, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE S00°30'00"E 542.02 FEET; THENCE N89°56'36"W 159.91 FEET; THENCE S00°23'32"E 32.00 FEET; THENCE N89°56'36"W 288.40 FEET; THENCE NORTH 569.68 FEET; THENCE N89°30'00"E 443.38 FEET TO THE POINT OF BEGINNING. CONTAINS 5.74 ACRES.

This Supplemental Declaration is also to be recorded against the following parcels:

All of **Heritage Village Plat "B"**, according to the official plat thereof, on file in the office of the Utah County Recorder.

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

All of **Heritage Village Plat "D"**, according to the official plat thereof, on file in the office of the Utah County Recorder.

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